



Submission to the
Parliament of Western Australia
Joint Standing Committee on Delegated Legislation

Inquiry into Access to Australian Standards
Adopted in Delegated Legislation

by

SAI Global Limited
ABN 67 050 611 642

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Head Office

Level 37
680 George Street
Sydney NSW 2000 Australia
Postal Address
GPO Box 5420
Sydney NSW 2001 Australia

Phone +612 8206 6000
Fax +612 8206 6011
Email mail@saiglobal.com
Web www.saiglobal.com

Submission highlights

SAI Global Limited (“SAI Global”) welcomes the opportunity to submit this response to the Parliament of Western Australia, Joint Standing Committee on Delegated legislation in relation to its inquiry into access to Australian Standards adopted in delegated legislation (“the Inquiry”).

SAI Global’s unequivocal position is that the current *Copyright Act, 1995 (Cth)* (“the Act”) and existing practices provide for adequate and appropriate levels of access to Australian Standard® publications, whether they are referenced in legislation or otherwise.

SAI Global respectfully submits that:

- Australian Standard® publications are essential to facilitating trade and commerce and can be highly useful for some purposes of government. However, copyright in Australian Standard® publications is proprietary and is owned by Standards Australia Limited (“Standards Australia”). It is essential that copyright, and the protections it affords, be respected and protected.
- The development, publication and distribution of Australian Standard® are largely privately funded:
 - Australian Standard® publications are developed by Standards Australia, Australia’s peak non-government Standards organization and charged by the Commonwealth Government to meet Australia’s need for contemporary, internationally aligned Standards and related services.
 - Under the terms of a Publishing Licence Agreement, effective from December 2003 and for which there has been an exchange of valuable consideration, Standards Australia has granted to SAI Global the exclusive right to publish, distribute, market and sell Australian Standard® publications in respect of which Standards Australia receives royalties from SAI Global.
- When considering free public access to publications, distinction needs to be drawn between privately funded copyright material (like Australian Standard® publications) and taxpayer funded copyright material (like legislation). Both the author (Standards Australia) and publisher (SAI Global) rely upon publishing revenues to sustain their respective businesses.
- SAI Global already distributes Australian Standard® publications at a relatively low cost to the community when compared with comparable practices in other countries. A shift to free access or expanded free access would significantly disadvantage SAI Global. It would threaten, if not destroy, SAI Global’s market and its ‘publishing asset’ for which it has paid valuable consideration and which, in turn, may impact the future development and distribution of Australian Standard® publications.
- Australian Standard® publications are currently made available free of charge for public reference purposes through State and Territory libraries and for student reference purposes in many tertiary education institutions.
- Permitting further free use of Australian Standard® publications through open access or by other regimes (such as the Crown) would diminish the incentive for innovation or creation in this context.
- **Status quo should be preserved:** it represents the right balance between the interests of the copyright owner, the publisher, the Crown and the public that the Crown serves.

1. SAI Global: an overview

SAI Global is an Australian based company listed on the Australian Securities Exchange (“ASX”). It is ranked in the S&P/ASX 200 index. It is one of the world’s leading information services (including publishing), compliance, training and assurance organisations.

SAI Global is a leader in the use of web-based technologies for the production, distribution and licensing of intellectual property. Its Information Services (Publishing) division delivers Australian Standard® publications and international and other standards, legislation, technical and regulatory update and news services. These products are delivered in hard copy and via on-line subscription and other web-based services. Through a Publishing Licensing Agreement with Standards Australia, SAI Global holds the exclusive rights to publish and distribute Australian Standard® publications worldwide. It also publishes and distributes other Standards developed by international standardization bodies and other national standards bodies globally.

2. Process for development of Australian Standard® publications

In Australia, Standards Australia is the body charged with the development of internationally aligned Standards and other solutions that make a positive contribution to the community.

Every Australian Standard must demonstrate positive *Net Benefit* to the community as a whole. All Australian Standards must provide a value or benefit that exceeds the costs likely to be imposed on suppliers, users and other parties in the community as a result of its development or adoption and implementation. Net Benefit, ie "*having an overall positive impact on relevant communities*", is a core component of how Standards Australia operates.

Standards Australia is responsible for the assessment of any proposal that purports to:

- develop, revise or amend Australian (or joint Australia/New Zealand) Standards,
- adopt new or existing International Organisation for Standardisation (“ISO”), International Electrotechnical Commission (“IEC”) or other standards or documents; and
- adopt new or to revise existing international standards or participate in development activities through ISO or IEC.

Standards Australia’s Standards development process is clear and rigorously defined- based on three (3) internationally recognised principles:

- openness and transparency of process
- consensus; and
- balance of representation
-

The summary review and approval process for dealing with proposals are as follows:

- Proposals received are logged centrally and confirmation sent to the proponent.
- Proposals may be made publicly available on the Standards Australia website.

- Once proposals are evaluated and reviewed, and a decision has been made by Standards Australia, the outcome is communicated directly to the proponent. A list of approved projects published on the Standards Australia website under Sector Updates.
- Project proponents and responsible committees are then notified with details on project commencement activities.

Reference: <http://www.standards.org.au/StandardsDevelopment/Pages/default.aspx>

3. Economic and social benefits of Australian Standard® publications

Australian Standard® publications must be developed when there is a demonstrated need and where there is an underlying objective of facilitating commerce. There are numerous economic benefits of standardization. These include:

- Trade facilitation
- The elimination of duplication
- Confidence
- Interoperability
- Supply chain efficiency
- Lower transaction costs
- Increased consistency
- Safety
- Efficiency
- Effectiveness
- Enhanced quality
- Environmental protection
- Risk management
- Business process improvement

With the globalisation of business, the efficiency of trade will increasingly put pressure on governments and international bodies to develop common standards. SAI Global supports Standards Australia in its work in this area. SAI Global also supports the Australian business community by providing easy access to new international standards as they are developed and keeping them abreast of global market trends.

4. SAI Global's relationship with Standards Australia

SAI Global is a key partner in the delivery of economic and social benefits from Australian and international standardisation. Its customers are highly dependent upon the efficiency and effectiveness of the Australian Standards development process.

SAI Global's role is essential in the delivery of the economic and social benefits that arise from the development and publication of Australian Standards. The development of Australian Standard® publications and their accessibility are largely dependent on the revenues that SAI Global derives from its Information Services (Publishing) division. When viewed holistically, Australian Standard® publications are privately funded on a copyright user-pay basis. It is the copyright that provides an incentive to develop and publish meaningful content that plays a very important role in the 'commercial' market place. Without the protection that copyright affords, Standards Australia would not have the incentive (or financial means) to develop, revise and update Australian Standard® publications and SAI Global would not have the incentive to publish and distribute them.

4.1 *SAI Global's relationship with Standards Australia*

In December 2003, Standards Australia granted to SAI Global an exclusive worldwide licence to publish, distribute, market and sell, amongst other content, Australian Standard® publications. These rights extend for a 15 year period from December 2003. There is an option to renew for a further 5 year term¹. Approximately 42% of all Australian Standard® publications are adoptions of International Standards developed by ISO and IEC. The Australian Commonwealth Government is a member of, and Standards Australia is the Government's nominated representative to, both these organisations.

4.2 *Funding and distribution*

Under the aforementioned Publishing Licence Agreement, SAI Global pays to Standards Australia a royalty of 10% of the net revenues derived from the sale of Australian Standard® publications and other content covered by the agreement. In addition, it pays a further bonus royalty of 15% in relation to significant new material developed by Standards Australia.²

Standards Australia's 2014 Annual Report notes that roughly 20% of Standards Australia's total income is derived from royalties paid by SAI Global under the current arrangements between the parties.

Notwithstanding the commerciality of its publication business, SAI Global distributes Australian Standard® publications at what it believes to be a comparatively low cost to the community. SAI Global's research indicates that the Australian Standard® publication prices are not inconsistent with prices charged by standards publishers in other jurisdictions.

¹ SAI Global Prospectus, 2003, p40.

² SAI Global Prospectus, 2003, p78.

The table below provides national retail prices for a sample Australian Standards as compared to equivalent (as far as possible) Standards in USA, UK and Germany.

RETAIL PRICE IN AUSTRALIAN \$				
Ref AS or AS/NZS	Aust Standard sold by SAI Global	ANSI (USA) Equivalent	BSI (UK) Equivalent	DIN (Germany) Equivalent
AS/NZS3000 Wiring Rules	\$150.24	NFPA 70:2014, National Electrical Code \$177.90	BS 7671:2008, Requirements for electrical installations. IET Wiring Regulations. Seventeenth edition \$130.18	VDE 0100-410:2007, VDE 0100-442:2013, VDE 0100-537:1999, VDE 0100-540:2012, VDE 0100-551:2011, VDE 0100-701:2008, VDE 0100-717:2010, VDE 0100-718:2014, VDE 0140-1:2007. \$1,064
AS1698 Motor Vehicle Users Helmets	\$44.32	ANSI Z90.1-92, Protective headgear for vehicular users – Specifications Price unknown	BS 6658:1985, Specification for protective helmets for vehicle users \$174.59	No equivalent standards
AS/NZS4801 OHS System	\$88.05	AIHA Z10:2012, Occupational Health And Safety Management Systems \$210	BSOHSAS 18001:2007, Occupational Health and Safety Management Systems – Requirements \$50.17	OHSAS 18001 has been adopted in Germany. DIN edition of the standard is not listed on the Info Store.

1. Source: SAI Global's research
2. Non-SAI Global supplier prices stated do not include additional exchange rate fees that would be added by a financial institution.

4.3 Free access

SAI Global is committed to providing certain Standards at no cost to the user. Presently, over 1,500 Australian and International Standards and other normative publications, particularly on the subject of telecommunications and healthcare technology, are freely available on the SAI Global InfoStore. In addition, Australian Standards are currently made available free of charge for public reference purposes through State and Territory libraries and for student reference purposes in many tertiary education institutions.

4.4 *Accessibility and coherence*

Australia leads the world in providing access to Standards that include national Australian Standard® publications. Users of Australian Standard® publications benefit from a framework that effectively raises awareness of new, existing and updated Australian Standard® publications. Under licence from Standards Australia, SAI Global supports the accessibility of Australian Standards and other Standards by providing cost efficient and effective delivery, through:

- instant online delivery in PDF format;
- fast print on demand service for hard copy;
- sophisticated search engines that guide the visitor to the Australian Standard® publications potentially relevant to them;
- electronic watching services alerting Standards users to changed Standards;
- marketing and information services;
- complete collection of Australian Standard® publications;
- customisable collections of Standards;
- licences for the incorporation of Standards content (being copyright owned by Standards Australia) into clients' internal and external documentation; and
- mobile devices such as tablets and smart phone.

As a value-added service to Standards users, SAI Global continues to work to build a comprehensive collection of national, international and industry Standards. Currently this collection includes publications from ASTM in USA, British Standards Institution (BSI) in the UK, Deutsches Institut Fur Normung e.V. (DIN) in Germany, American National Standards Institution (ANSI) and Japan Industrial Standards (JIS). The collection provides a single reference point for Australian and other international users of Standards that include Australian Standards® publications.

SAI Global supports the current system of Australian Standard® development that allows many organizations to draft proposals that are then subject to a consensus approval process before attaining Australian Standard® status.³ Consistent with the processing framework, a key strength of the Australian system is that all approved Australian Standards can be sourced through a single comprehensive collection. This is in stark contrast to the situation in the USA where there are in excess of 400 organisations developing Standards, even competing in industry sectors.

Under the current system, industry has access to Australian and International Standards and other related documents and publications that may be sourced from a central point but accessed via many channels, including subscription services to an online database of Standards and related documents and publications.

³ Refer section 2.

5. The Inquiry's terms of reference

The Joint Standing Committee is inquiring into access to Australian Standards adopted in delegated legislation in Western Australia including:

(i) **The level of free public access to adopted Australian Standards in metropolitan and regional Western Australia**

SAI Global has addressed this issue in section 4.3 of this submission.

(ii) **Whether amendments to legislation are required to improve public access to adopted Australian Standards**

The current statutory licence scheme for Crown use of copyright materials, as set out in sections 183 and 183A of the Act, gives the Commonwealth and State governments rights to use copyright material "*if the acts are done for the services*" of the relevant government.

SAI Global notes the following in relation to the statutory licence:

The right of governments to use copyright material is already very broad. The courts in Australia have interpreted "*for the services*" to include supplying third parties and other acts done for the purpose of performing a duty or exercising a power of the relevant government.⁴

- (a) Section 183 extends to the Crown to do "*... any acts comprised in the copyright*". This includes the rights of communication, which are so important in an online world. The role of the collecting societies under section 183A is limited to the reproduction right and copies made under the statutory licence. Any communication online of copyright material under the statutory licence would need to be notified and paid for under section 183 (rather than via the collecting society under section 183A).
- (b) The better view⁵ is that the licence is in addition to other rights of the Crown to use copyright material. For example, fair dealing rights might allow the use of a fair amount of a work for certain purposes without payment, implied licences might allow use in other cases and express statutory provisions in yet others. These are existing free use exceptions or rights. In other cases, the statutory licence applies and allows use, including use of the whole of the work (not just a fair part) but in return for equitable remuneration.
- (c) In relation to the reproduction right, the statutory licence requires payment to be based upon the number of copies made, which is to be calculated using a sampling system. This method of calculating payment is clearly not quite appropriate when invoking communication right, where, in one instance, a communication could be the equivalent of a single copy (eg where the work is electronically transmitted to a single user on a basis which prevents further copies being made) and in another instance, a communication could be the equivalent of many thousands of copies (eg where the work is put online and publicised to all members of a trade association who access and download it; and subsequently send it online to others).

⁴ Discussed in Gilchrist, "Crown Use of Copyright Material" *Canberra Law Review* (2010) 1 at 27.

⁵ See Gilchrist, *ibid.*

In these situations section 183 would require the Crown to give notice of the particular communication to the copyright owner and agree a price or seek determination from the Copyright Tribunal. SAI Global submits that this is absolutely appropriate and that a sampling regime administered by a collecting society would not be appropriate.

- (d) The statutory licences do not extend to local government. Whereas duties in respect of public health or education or the like arguably justify allowing a government to do acts comprised in the copyright in a work without needing to seek the owner's consent, including reproducing or communicating the whole work, the same public interest does not exist at the local government level. In the case of Australian Standard® publications, SAI Global does in fact make them all available to local government for purchase / licence on reasonable terms. But to have hundreds of councils around Australia, some of whom would have little or no copyright compliance infrastructure or culture, the risk of under-reporting, lack of security and an inability to ensure the compliance with remuneration obligation is significantly multiplied in our online world, eg mass communication of the copyright material made via online delivery under a statutory licence. SAI Global is not aware of nor believe there are any compelling arguments that an extension of the section 183 licence to local councils is necessary to meet any public interest that are not already being met by commercial distribution of Standards.

There is no evidence that any acts which currently require a statutory licence need to be free, that the licence imposes undue burdens on governments or hinders access to or use of works such that new free exceptions, or changes to the statutory licence, are required.

Equitable remuneration for copying or communicating Standards is critical to the viability of SAI Global because it supports its sale and licensing of Standards. If the Crown decides to copy an entire Standard without buying a copy, SAI Global has a lost sale and is compensated for this at a relatively modest price (25 cents per page in some cases) and this is assuming that the use is disclosed in a sample survey by Copyright Agency Limited. If the Crown communicates the Standard online to hundreds of people then SAI Global will lose many sales. Again, compensation is uncertain and would be dependent on the use being disclosed in a sample survey by Copyright Agency Limited.

It is vital that SAI Global is be able to invest in its publishing and distribution activities and infrastructure, including innovations to improve the range of works and the way that they are made available. It is equally vital that SAI Global is be able to flow-through funding to Standards Australia (by the payment of publishing royalties) that, in part, support the development of Standards. The statutory licence already encompasses the new digital right of communication and so is well adapted to the digital economy. Accordingly, SAI Global submits that not change to the current statutory licensing regime needs to be further considered.

- (iii) **Other measures to improve public access to adopted Australian Standards**
- (iv) **Measures to improve access to adopted Australian Standards provided to the Joint Standing Committee on Delegated legislation; and**
- (v) **Any other related matters that arise during the course of the inquiry.**

The premise that Australian Standard® publications should be made available for free (at least to those who are compelled to comply with them) attracts public debate from time to time.

In its 2006 Research Report on Standards Setting and Laboratory Accreditation, the Productivity Commission considered whether Standards should be available for the public to access free of charge. The Productivity Commission noted that:

*'... funding to subsidise access to Australian Standards would be best made directly by the government agencies responsible for the relevant regulations. The cost of facilitating free or low cost access could then appropriately be considered in any assessment of the costs and benefits of proceeding with the regulatory standard.'*⁶

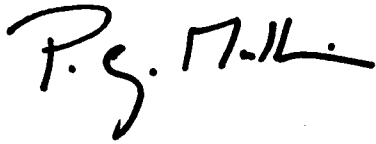
SAI Global submits that this remains an approach that is preferable to granting free rights to copy and communicate, whether under the Act or other laws (which might be exercised to facilitate free distribution to and use by the public) which would undermine the financial model which underpins the development, publication and distribution of Standards. Governments have chosen to leave these activities to the commercial sector and SAI Global in particular. Any broad fee use exception in favour of government users would give it (and the public) the benefit of these activities without having to meet or contribute to the costs in respect of these services.

⁶ PC Report, page 129.

Conclusion

SAI Global respectfully submits that:

- the statutory licensing scheme concerning the use of copyright material for the Crown in division 2 of Part VII of the Copyright Act 1968 (Cth) is adequate and appropriate in the context of Australian Standard® publications;
- any shift towards free use exceptions or broader statutory licences in the context of Australian Standard® publications would threaten SAI Global's publishing market;
- Australian Standards and their publication and distribution are not funded by the Commonwealth and should not be treated analogous to taxpayer-funded copyright material; and
- given the benefits that Standards deliver to the public, there are good reasons to maintain the current balance in copyright laws. These laws provide SAI Global and Standards Australia with the incentive to develop and publish much-needed Standards and to be innovative in the way that they are made available to the public.



Peter Mullins
Chief Executive Officer / Managing Director
SAI Global Limited

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