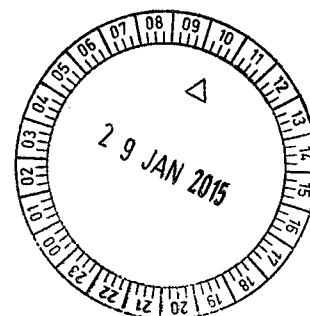




Government of **Western Australia**
Department of **Local Government and Communities**



Ref: E1501805



Mr Peter Abetz MLA
Chairman
Joint Standing Committee on Delegated Legislation
Legislative Council Committee Office
GPO Box A11
PERTH WA 6837

Dear Mr Abetz

**INQUIRY INTO ACCESS TO AUSTRALIAN STANDARDS ADOPTED IN
DELEGATED LEGISLATION – DEPARTMENT SUBMISSION**

This letter is in response to the Committee's invitation on 4 December 2014 for the Department to provide a written submission regarding the use of Australian Standards in delegated legislation.

The Department's submission is attached to this letter and addresses the inquiry's terms of reference as it relates to the Department's legislative portfolio.

I would like to thank the Committee for providing the Department with the opportunity to contribute to the inquiry.

Yours sincerely

Jennifer Mathews
DIRECTOR GENERAL

23 January 2015

Department of Local Government and Communities

Inquiry into public access of Australian Standards in Delegated Legislation

Statistics:

In recent years, it has become common for subsidiary legislation to adopt Australian Standards by reference.

Departmental records indicate that a significant number of local laws made by local governments make reference to Australian Standards and create offences designed to enforce compliance with those standards.

In 2014, approximately a hundred draft local laws were submitted to the Department for scrutiny. Of these local laws, almost a quarter contained references to Australian Standards or amended a local law which did.

Legislation:

Local Government Act 1995

The *Local Government Act 1995* contains specific sections which relate to the adoption, access and copying of Australian Standards. These sections are listed as follows:

- Section 3.8(1)(c) provides that local laws may adopt the text of external documents, including standards issued by Standards Australia;
- Section 5.94(j) provides that the public may attend the offices of a local government and inspect, free of charge, any text which is directly or indirectly adopted by a local law, in the form in which it is held by the local government;
- Section 5.96 provides that the public may request a copy of the above information and local governments must provide the information, though it may charge a fee for the copy on a cost-recovery basis.

It is uncertain if section 5.94 or 5.96 would apply in situations where a local government does not possess a copy of an Australian Standard adopted by a local law. This is because section 5.94 allows a person to access information “in the form...in which it is held by the local government”.

The Act does not directly compel local governments to keep a copy of the standards they adopt in local laws. It is arguable that if a local government does not possess a standard, then there is no “text” capable of being inspected or copied for the purposes of section 5.94.

Cat Act 2011

Section 82 of the *Cat Act 2011* provides that local laws made under the Cat Act may adopt the text of Australian Standards.

The Cat Act does not specifically provide that the public has any right to access or obtain a copy of an Australian Standard adopted by a local law.

However, cat local laws are jointly made under the Cat Act and Local Government Act. As a result, the rights provided by sections 5.94 and 5.96 of the Local Government Act will apply to cat local laws.

Health Act 1911

Section 344A of the *Health Act 1911* provides that a health local law or regulation can adopt any standards published by Standards Australia.

The section also provides that where a local law or regulation adopts an Australian Standard, the CEO of the Department of Health is to ensure that the Standard is available for public inspection without charge during normal office hours at a place prescribed by regulation.

Health local laws are generally made under the Health Act and the Local Government Act. This means that the access rights provided by the Health Act operate in addition to the public access rights provided by the Local Government Act.

References to Standards in other subsidiary legislation

References to Australian Standards are used in several regulations jointly administered by the Department and local governments. These regulations include:

- *Caravan Parks and Camping Grounds Regulations 1997*;
- *Cat Regulations 2012*;
- *Control of Vehicles (Off-road Areas) Regulations 1979*;
- *Dog Regulations 2013*;

None of the above regulations directly provide any right for the public to access or request copies of standards adopted in these regulations.

Other jurisdictions

The majority of other Australian jurisdictions do not appear to address whether local laws can adopt Australian Standards, or provide for public access to those standards.

The *Local Government Act 1989* in the State of Victoria is a notable exception which contains the following provisions:

- Section 112 of that Act provides that local laws can adopt standards published by another authority;
- Section 120 of the Act provides that the local government must keep a copy of the standard and ensure it is available for public inspection.

The Victorian legislation is similar to the Western Australian approach; however, the Victorian legislation goes further by placing a positive duty on local governments to keep a physical copy of the standards adopted in their local laws so these documents will be available for inspection.

Conclusion:

The *Local Government Act 1995* currently provides the public with limited rights to inspect and request copies of Australian Standards adopted by local laws.

Several regulations administered by the Department also contain references to Australian Standards, but do not directly provide for any public access to these documents.

These regulations could potentially be amended to provide the public with a right to inspect or request a copy of the referenced Australian Standards.

Such an approach would most likely require an amendment of the primary legislation which enables these regulations. While the relevant primary legislation currently provides a head of power for regulations to adopt Australian Standards, these Acts do not provide a direct head of power for regulations to provide for public access to adopted standards.

Prior to the announcement of the Committee's inquiry, the Department has not received any feedback from stakeholders or the public sector indicating that increased public access to Australian Standards was necessary.

Any legislative amendments designed to improve public access to Australian Standards would remain subject to any restrictions imposed by federal copyright law. While the Australian Standards may be referenced by legislation, the documents are produced and distributed by an independent non-government organisation.

The Department is aware that Australian Standards documents are accessible for public viewing at the State Library and official copies of the Standards can be purchased from Standards Australia.

When the Department scrutinises a local law containing references to Australian Standards, it is Department policy to advise the local government that:

- The public should be made aware of where the relevant standards can be accessed or purchased; and
- The local law should contain the full citation of the standard so that the public can easily locate the standards if necessary.

Premier's Circular 2014/01 states that whenever a Department or agency gazettes subsidiary legislation, the Delegated Legislation Committee must be provided with a copy of any external documents or Australian Standards adopted by the legislation.

The Committee may wish to consider whether a similar requirement should be placed on local governments. This could be done by updating the *Local Laws Explanatory Memoranda Directions 2010* or the statutory procedures checklist.