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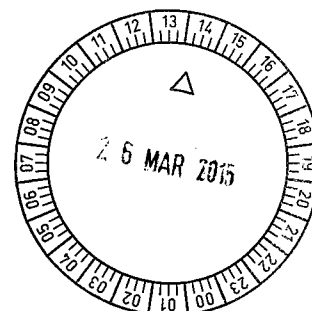
Queensland
Government

For reply please quote: *SocPol/DT – TF/14/23781 – DOC/15/47085*
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Department of the
Premier and Cabinet

24 MAR 2015

Mr Peter Abetz MLA
Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH WA 6000



Dear Mr Abetz

Thank you for your letter of 4 December 2014 to the former Premier concerning your committee's inquiry into access to Australian Standards adopted in delegated legislation.

I apologise for the delay in responding, which is due to the recent change of Government in Queensland. Your secretariat has indicated to my department that your inquiry is still ongoing and your request for information remains current.

I am pleased to provide you with the enclosed response to the series of questions you posed. The response has been prepared in consultation with the Office of the Queensland Parliamentary Counsel, State Library of Queensland and other government departments, predominantly the Department of Housing and Public Works.

Should you require any further information, you can contact Mr David Thannhauser, Principal Policy Officer, Social Policy, Department of the Premier and Cabinet on telephone (07) 3003 9369. Mr Thannhauser is happy to assist with any inquiries.

I trust this information is of assistance and I wish the committee well in its deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dave Stewart', written over a horizontal line.

Dave Stewart
Director-General

***Encl**

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Attachment

Responses to the Committee's questions

- 1. Does your Government have any understanding or agreement with Standards Australia or SAI Global relating to Government agencies, the Parliament or public access to Australian Standards?**
- 2. Does the issue of access to Australian Standards fall within the responsibility of one Government agency?**

The issue of general access to Australian Standards is not the responsibility of one central agency and the Department of the Premier and Cabinet, Queensland (DPC) is not aware of any Queensland whole-of-government agreement with Australian Standards about access to Australian Standards. In relation to building standards, SAI Global Ltd offers an online subscription product in relation to all Australian Standards referenced under the National Construction Code (NCC). This removes the need for consumers to separately purchase each Australian Standard relating to building. Please also see information below under questions 8 and 9.

- 3. Is it known approximately how many Australian Standards are adopted in delegated legislation in your jurisdiction? If no, is it common practice to adopt Australian Standards in delegated legislation in your jurisdiction?**

As an indication of the extent of references of Australian Standards in Queensland legislation, a search of the exact phrase "Australian Standard" on the Queensland legislation website at www.legislation.qld.gov.au produces 196 hits in 44 Acts and regulations. Queensland legislation that adopts Australian Standards does so by referring to a particular standard by designated number (see, for example, section 3 of the Fair Trading (Safety Standards) Regulation 2011) or by referring to Australian Standards generally (see, for example, section 11 of schedule 1 of the Transport Operations (Road Use Management-Vehicle Standards and Safety) Regulation 2010). Some items of subordinate legislation include several references (see, for example, the Electrical Safety Regulation 2013).

4. What provisions in legislation authorise Australian Standards to be adopted in delegated legislation?

Section 23 of the *Statutory Instruments Act 1992* authorises subordinate legislation to make provision for a matter by applying, adopting or incorporating the provisions of a document other than legislation.

Section 23 provides:

23 Statutory instrument may make provision by applying another document

- (1) If an Act or statutory instrument (the *authorising law*) authorises or requires the making of a statutory instrument with respect to a matter, a statutory instrument made under the authorising law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—
 - (a) an Act, statutory instrument or other law; or
 - (b) another document (whether of the same or a different kind);as in force at a particular time or from time to time.
- (2) If a statutory instrument made after 1 January 1992 applies, adopts or incorporates the provisions of a document, the provisions applied, adopted or incorporated are the provisions as in force from time to time unless the statutory instrument expressly provides otherwise.
- (3) In this section—
law includes a law of the Commonwealth, another State, a Territory or a foreign country.

5. What legislation, if any, relates to or improves access to Australian Standards?

6. What other measures, if any, have been taken to improve access to Australian Standards?

DPC is not aware of any legislation or other measures aimed at improving access to Australian Standards. Some items of Queensland legislation include an editor's note (which does not form part of the legislation) informing the reader that a copy of the relevant Australian Standard may be purchased from SIA Global's website (see, for example, section 3 of the Fair Trading (Safety Standards) Regulation 2011).

It is not common for Queensland legislation to refer to Australian Standards being available for inspection by the public. However, an editor's note in the Explosives Regulation 2003 suggests that copies of Australian Standards mentioned in that regulation are available for inspection at the administering agency's office (see section 3). Please also see information below under questions 8 and 9.

7. Are explanatory materials to delegated legislation required to refer to Australian Standards adopted in delegated legislation or is the agency required to provide a copy of the adopted standard to the Parliament or a committee of the Parliament to aid in the scrutiny of the legislation?

Explanatory notes accompanying subordinate legislation are required to cover the matters listed in section 24 of the *Legislative Standards Act 1992*. That provision does not require explanatory notes to include or make reference to applied, adopted or incorporated documents (e.g. Australian Standards). Explanatory notes are prepared under the authority of the responsible Minister and it is a matter for each Minister to decide upon the content of the explanatory notes accompanying draft legislation. During the scrutiny of legislation, nothing prevents a Parliamentary Committee from seeking access to relevant Australian Standards.

8. How and where are Australian Standards adopted in delegated legislation made available to the public? What level of public access is available at your State library and public libraries? Is access free or do charges apply?

9. Do Government agencies provide access to Australian Standards to the public at their offices or their libraries? Is access free or do charges apply?

Access at Government agencies

Notwithstanding the reference to the Explosives Regulation above, DPC is not aware of agencies routinely keeping Australian Standards available for inspection by the public or making Australian Standards otherwise routinely available. Agencies giving public access to Australian Standards might contravene usage licences. (We would suggest that usage conditions, and any restrictions such conditions place on public access, is a matter worthy of further exploration by the Committee.) Pointedly, section 4 of the Petroleum and Gas (Production and Safety) Regulation 2004 specifically refers to particular documents mentioned in the regulation being available for inspection—free of charge—and Australian Standards are expressly excluded from the provision.

Accordingly, as a general whole-of-government proposition, Government agencies provide access only to their own officers. Various departments have online IP (Internet Protocol) authenticated access for departmental officers. DPC understands these departments are the Departments of: Main Roads and Trade; Housing and Public Works; Natural Resources and Mines/Environment and Heritage Protection (combined access); Agriculture, Fisheries and Forestry; Queensland Health; Disability Services within the Department of Communities, Child Safety and Disability Services; and the Public Safety Business Agency/Queensland Police Service/Queensland Fire and Emergency Services (combined access). Other government departments have access via the Government Research and Information Library (GRAIL) to print copies of standards as required.

Access at public libraries

Australian Standards are accessible at select public libraries. The Queensland State Library (SLQ) has electronic onsite access for one concurrent user. Only one page at a time may be printed, up to a total of 10% of the standard.

The only other public libraries in Queensland that provide access to Australian Standards to the public are the Brisbane City Council Library (electronic onsite only, view only, no printing) and Gold Coast City Council Libraries (onsite only, 2 concurrent users, limited printing). The only cost is the printing charge of 15 cents per A4 black and white copy (SLQ).

None of the above libraries have access to LexConnect: Australian Standards and the Law. As DPC has informed the Committee's secretariat previously, LexConnect is a useful electronic resource. It describes itself as a service that "presents the legislation in which the [Australian] Standard is referenced or indicates whether the Standard is referenced in legislation, lists other Standards referenced within that piece of legislation, hyperlinks through to the relevant legislation and hyperlinks to the Standards". LexConnect is available at:

http://www.saiglobal.com.ezlocal.slq.qld.gov.au/Information/Standards/Law/?utm_source=Link&utm_medium=Website_SOL&utm_campaign=SOLLeftMenu_Lexconnect

10. Are you aware of any Government report or report of the Parliament dealing with the issue of access to Australian Standards? If so, please provide details.

DPC is not aware of any government or parliamentary report dealing with the issue of access to Australian Standards. However, the 2009 Victorian Bushfires Royal Commission's Final Report made a recommendation (recommendation 48) that the Australian Building Codes Board (ABCB) should negotiate, with Standards Australia and SAI Global Ltd, an arrangement for free online access to AS3959-2009 - Construction of Buildings in Bushfire-prone Areas, and any other standards relating to that standard. As a result of the recommendation, the ABCB has limited numbers of free hard copies of AS 3959 and the Handbook (HB 330-2009: Living in bushfire-prone areas) available on request.

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