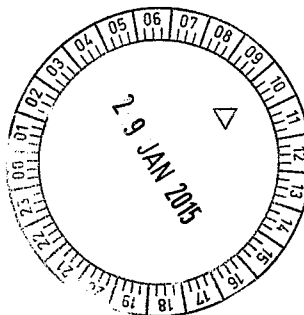




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29 January 2015

Mr D Driscoll
Parliamentary Officer (Committees)
Standing Committee on Delegated Legislation
Legislative Council
Parliament of Western Australia
PERTH WA 6000
Email: delleg@parliament.wa.gov.au

Dear Mr Driscoll

Inquiry into access to Australian Standards adopted in delegated legislation

On behalf of the Housing Industry Association (HIA) I would like to provide the following comments to the Committee in respect to the *Inquiry into access to Australian Standards adopted in delegated legislation*.

HIA has extensive experience with the application of Australian Standards (standards) in the residential building industry and welcomes the opportunity to put forward how this impacts on residential builders, trade contractors and design professionals.

Referencing of Australian Standards to provide technical requirements that support regulations is an accepted part of the legal framework in Australia. The primary legislation with respect to residential building in Western Australia is the *Building Act and Regulations 2012*. Under the Building Regulations, the National Construction Code (NCC) is referenced. The NCC, in turn, makes primary references to over 100 Australian Standards.

HIA believes that any Australian Standard referenced directly in delegated legislation or as a secondary reference, such as the NCC, should be made freely available to the public in an online format. The use of standards in this manner has the effect of making them 'quasi-regulation' and therefore it is our view that they should be freely available in the same manner as the delegated legislation.

HIA has long held this view and it is the basis of our successful efforts to have the National Construction Code (NCC) made freely available online. However, the welcome decision to provide the NCC freely available online from May 2015, unfortunately did not include free access to the standards it references. HIA will continue to seek support for these standards to be freely available.

The costs associated with the purchase of NCC reference standards varies depending on the type of business. Building designers and building surveying professionals will generally purchase and maintain a full set of the NCC and the reference standards annually. A subscription to this service costs around \$2,000 per year.

The majority of builders and trade contractors will not purchase the NCC or the reference standards annually due to the high cost and limited use through most of the year. Builders will choose to purchase ad hoc

standards that relate to specific areas of construction. For example, many builders will purchase a copy of *AS 1684 Residential Timber Framing Code* as a one off version. A new copy would only be purchased if a significant update was made. This standard provides specific details about the design of timber framing, and as many builders undertake this design work they see value in owning a copy. Whereas, a material standard such as *AS 3999 Bulk thermal insulation* would rarely be purchased as a standalone document as it relates to the manufacturing of the product, which the builder are not responsible for, and provides some technical details regarding installation. Builder will generally rely on the NCC to provide such installation requirements and therefore will not purchase a copy.

This approach does create potential risks for builders and trade contractors as they may not be aware of changes or the 'fine detail' of certain building requirements. This is not a preferred outcome, however, it is a direct result of the need to purchase these standards. It is essential for promoting ongoing high standards of building in the state, and equitable, given that compliance is a legal requirement, that builders have ready access to the technical standards they are mandated to meet under the Regulations for no cost.

HIA assists builders by providing a wide range of information and educational material about changes to Australian Standards, and the NCC. However, it is often not until a problem occurs on a building project that the builder or trade contractor become aware of changes to a particular standard.

In respect to other matters that the Committee should consider, HIA believes that any standard referenced in delegated legislation, either as a direct reference, such as the electrical and plumbing Regulations which refer to AS 3000 and AS 3500 series, or as a secondary reference through the NCC, should be subject to the same scrutiny as the Regulations when being drafted and adopted. These standards should require the preparation of a Regulation Impact Assessment prior to their referencing to ensure that they deliver a net cost benefit to the community.

HIA would also like to raise concern over the ad hoc referencing of Australian Standards by local government in planning schemes and other council policy documents. When this occurs, it tends to relate to standards that are not referenced by the NCC, although there are examples of local government seeking to override the NCC through planning policies. As stated above, these unreferenced standards have not been subject to any scrutiny in their drafting process and there will have been no assessment of the cost implications for residential buildings. This 'Regulation by stealth' adds unknown costs to the building process and creates confusion with standards that are legally applicable for consumers, builders and regulators.

HIA does not support the referencing of Australian Standards in local government planning and building policies. Where a local government believes there may be merit in the use of an Australian Standard, they should be required to refer this to the State government for approval and to undertake a Regulation Impact Assessment type process to ensure there is a positive cost benefit.

Lastly, HIA does not support the use of non-referenced Australian Standards in the consideration of disputes between a builder or trade contractor and a consumer.

HIA members have experienced instances where a consumer dispute has arisen and a decision is made based on an unreferenced standard, requiring the builder to make good the perceived defect. Builders can not be reasonably expected to know the details of the myriad of un-referenced Australian Standards that exist. Their legal obligation is limited by the Act and Regulations and the contract with the customer. It is essential that this approach be respected by regulators when considering any disputes that may arise.

The referencing of Australian Standards in Regulation is an important matter for the residential building industry and therefore I appreciate the Committee undertaking this inquiry. Should you require any further information in relation to these comments to assist the Committee please do not hesitate to contact me on 9492 9200 or j.gelavis@hia.com.au.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED



John Gelavis
HIA WA Executive Director