Law Council
OF AUSTRALIA

Business Law Section

1 August 2025

Ms Anna Barker
Assistant Secretary (A/g)
National Competition Policy Branch
The Treasury
Langton Crescent
PARKES ACT 2600

By email: nationalcompetitionpolicy@treasury.gov.au

Dear Ms Barker

Lowering barriers to the adoption of international and overseas standards

1. This submission is made by the Infrastructure and Construction Committee of the Business Law Section of the Law Council of Australia (the **Committee**) in response to the Consultation Paper *National Competition Policy: Lower barriers to the adoption of overseas standards in regulation*.

2. The Committee is made up of experienced senior legal practitioners working in the area of infrastructure and construction law.

3. This submission address Consultation Questions 1 and 4 of the Consultation Paper and is primarily focused on access to Australian Standards.

Key Points

4. The key matters the Committee wishes to bring to Treasury's attention are as follows:

   (a) an underlying tenet of the rule of law requires that the law is accessible, both to the public and parliament and at no cost;

   (b) the Australian Construction Industry is required to legally comply with Australian Standards as a matter of law and contract; and

   (c) access to Australian Standards is controlled by Standards Australia, which both charges fees for access and imposes technological locks on access that limit fair use and can hinder compliance with the law.

5. The Committee recommends that steps be taken to ensure that Australian Standards referenced in Australian legislation are freely available at no cost where compliance is required by law with an Australian Standard.

6. The Committee otherwise considers that mandatory compliance with standards that are not freely available is contrary to the tenets of proper law-making and that law-makers should desist from incorporating such standards into the law.

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Submissions

Access to law

7. An underlying tenet of the rule of law requires that the law is accessible, both to the public and parliament.[1]

8. Australian Standards refer to documents published by Standards Australia, which provide guidance around safety, performance and reliability for goods, products and standards.

9. Australian Standards, in and of themselves, are not law. However, many laws incorporate Australian Standards by reference into legislation, and accordingly, within the construction industry, the instance of mandatory compliance is extensive.

Significant Issue for the Australian Construction Industry

10. This is a particular issue for the Australian Construction industry because:

    (a) many Australian Standards are referenced in the National Code of Construction, which industry participants are required to comply with; and

    (b) these Australian Standards go to fundamental issues of worker and public safety.

11. As an indication of the scale of this issue, in February 2015, the Commonwealth Department of Industry and Science put the number of items of primary and delegated legislation that cite Australian Standards nationwide at 1832.[2] This number does not include local laws.[3] Furthermore, these 1832 standards may cross-reference to other standards (secondary references). The Committee estimates that there are approximately 500 secondary references (i.e. additional Australian Standards with which industry participants need to comply) in the National Construction Code alone.

12. The Australian Standards are also heavily referenced in Australian Workplace Health and Safety Laws. For example, Safe Work Australia lists 17 Australian Standards referenced in the Model Work Health and Safety Regulations.[4]

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[1] See, eg, Law Council of Australia, *Rule of Law Principles* (Policy Statement, March 2011). Principle 1 states that the 'law must be both readily known and available, and certain and clear' <https://lawcouncil.au/resources/policies-and-guidelines/rule-of-law-principles>.

[2] Letter from the Hon Ian Macfarlane MP, Minister for Industry and Science (Cth) to Mr Peter Abetz, Chair, Joint Standing Committee on Delegated Legislation, Parliament of Western Australia, 4 February 2015 <https://www.parliament.wa.gov.au/Parliament/commit.nsf/luInquiryPublicSubmissions/CA7C2E9501AEEA1348257DF100012FFE/$file/dg.asa.150209.let.001.im.pdf>.

[3] Joint Standing Committee on Delegated Legislation, Parliament of Western Australia, *Access To Australian Standards Adopted In Delegated Legislation* (Report No 84, June 2016) [3.2] <https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/A2F94727585C301A48258028000C6961/$file/dg.asa.160908.rpf.088.xx.pdf>.

[4] Safe Work Australia, *Model Work Health and Safety Regulations* (1 September 2024) <https://www.safeworkaustralia.gov.au/sites/default/files/2024-11/model-whs-regulations-1_september_2024.pdf>. See also Safe Work Australia, *Australian and other Standards* (Web Page) <https://www.safeworkaustralia.gov.au/law-and-regulation/duties-under-whs-laws/australian-and-other-standards>.

Limits to Access to Australian Standards

13. Australian Standards are owned by Standards Australia. Standards Australia is a company limited by guarantee and registered with the Australian Charities and Not for Profits Commission.

14. Standards Australia sells access to the Australian Standards via its website and app store or through a limited number of licensed providers.

15. The price to purchase an individual Australian Standard is in the hundreds of dollars. Prices are in the thousands for subscription-based services. The overall cost of access to businesses, government, and industry is significant.

16. Issues also exist with technological locks imposed by Australian Standards on access that limit fair use.

17. These costs and technological locks have led to an inappropriate constraint on access.

Conclusion and further contact

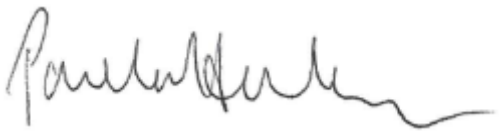
18. It is the view of the Committee that, in accordance with the fundamental tenets of proper law-making, Australian Standards referenced in Australian legislation (whether federal, state or local laws) must be made accessible and available at no cost.

19. The Committee otherwise considers that mandatory compliance with standards that are not freely available is contrary to the tenets of proper law-making, and law-makers should desist from incorporating such standards into law.

20. The Committee would be pleased to discuss any aspect of this submission.

21. Please contact the Deputy Chair of the Committee, Megan Calder, [redacted], or Committee Member, Kiri Parr, [redacted]

Yours faithfully



Professor Pamela Hanrahan
Chair
Business Law Section