Law Council
OF AUSTRALIA

27 February 2026

NCC Modernisation
The Treasury
Langton Crescent
PARKES ACT 2600

By email: NCCmodernisation@treasury.gov.au

Dear Treasury

Streamlining and modernising the National Construction Code

1. The Law Council of Australia welcomes the opportunity to respond to Treasury's Discussion Paper 'Streamlining and Modernising the National Construction Code'.

2. The Law Council thanks the Law Institute of Victoria and the Infrastructure and Construction Committee of the Business Law Section for their contributions to the preparation of this submission.

Introduction

3. This submission addresses Theme Three 'usability and accessibility' and responds generally to:

   - Question 9: How could the National Construction Code (**NCC**) be improved to make it easier to understand and use?
   - Question 10: How could the NCC better interact with regulations that sit outside the NCC (e.g. with international standards and Australian Standards referenced in the NCC)?
   - Question 11: How do you access the NCC (e.g. on a device or via a printed copy)? Do you find it easy to locate and use? What would make it easier to use?

4. In particular, the Law Council considers that usability and accessibility of the NCC would be improved by providing free and convenient access to the Australian Standards referred to in the NCC. This reform would support and promote the rule of law and encourage compliance.

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The NCC and the Australian Standards

5. A key principle of the rule of law is that the law must be both 'readily known and available' and 'certain and clear'.[1] As such laws must be accessible to the public. This is particularly critical where the failure to comply with a law can result in significant penalties and disciplinary consequences.

6. The 'Australian Standards' are a set of documents published by Standards Australia, which provide guidance around safety, performance and reliability for goods, products and standards.

7. In and of themselves, the Australian Standards are not law. However, many laws, including the NCC, incorporate the Australian Standards by reference. As just one example, NCC Volume 2, Section H4 (Health and Amenity), D3 (Materials and installation of wet area components and systems) states:

> *Performance Requirement H4P1 is satisfied for materials and the installation of wet area components and systems if—*
>
> *(a) building elements in wet areas are water resistant or waterproof in accordance with clauses 10.2.1 to 10.2.6 of the ABCB Housing Provisions; and*
>
> *(b) they comply with either—*
>
> *(i) **AS 3740** and clause 10.2.12 of the ABCB Housing Provisions; or*
>
> *(ii) 10.2.7 to 10.2.32 of the ABCB Housing Provisions.*

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

9. Despite the number of references to Australian Standards in the NCC, the Standards sit behind a paywall.

10. This is a particular issue for the Australian Construction industry (including consumers) because many of these Standards go to fundamental issues of worker and public safety and a failure to comply can lead to significant financial penalties, restrictions and prohibitions on undertaking work.

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1 See, eg, Law Council of Australia, Rule of Law Principles (Policy Statement, March 2011) 2 (Principle 1).

2 Joint Standing Committee on Delegated Legislation, Parliament of Western Australia, Access to Australian Standards Adopted in Delegated Legislation (Report, June 2016) 23 [3.2], citing a letter from the Hon Ian Macfarlane MP, Minister for Industry and Science (Cth) (4 February 2015).

3 Ibid.

Limits to access to the Australian Standards

11. The 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.

12. Standards Australia sells access to the Australian Standards via its website and app store or through a limited number of licensed providers. 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 for businesses, government, industry and interested consumers is significant.

13. The Law Council notes that some Standards are freely accessible online. However, these are generally in disparate locations that are not government-endorsed websites. Consequently, there is no guarantee that these Standards are up to date. The complete Standards catalogue is only available to purchase on the Standards Australia's website.

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

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

16. Free and convenient access to the Standards increases financial accessibility for industry participants and is likely to encourage greater compliance.

17. Furthermore, the ramifications of non-compliance with the NCC include heavy penalties and disciplinary action which can result in a person being prevented from working in their chosen field of qualifications. The Law Council considers that such ramifications are contrary to natural justice where the compliance documentation is not made accessible and available at no cost to industry participants.

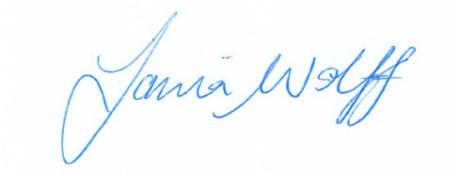
18. The Law Council also suggests that access to the Standards at no cost would support consumers who want to learn more about compliant construction practices or understand whether their contracted builder is meeting NCC compliance requirements for their own construction project.

Contact

19. The Law Council would be pleased to discuss any aspect of this submission.

20. Please contact the Deputy Chair of the Infrastructure and Construction Committee, Megan Calder [redacted] or Committee Member, Kiri Parr [redacted]

Yours sincerely



Tania Wolff
President