



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY (LEGISLATIVE SCRUTINY)
Mrs Giulia Jones MLA (Chair), Ms Bec Cody MLA (Deputy Chair), Mr Deepak-Raj Gupta MLA

The Hon Karen Andrews MP
Minister for Industry, Science and Technology
Parliament House
CANBERRA ACT 2600

Dear Minister

Access to Australian Standards adopted in legislation

The ACT Legislative Assembly's Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (**ACT Committee**) seeks an update in relation to access issues created by the increasing practice of ACT legislation to rely on Australian Standards and Australian Standards/New Zealand Standards. As you would be aware, this is an issue for legislative scrutiny committees in all Australian jurisdictions, as exemplified by the 2016 report of the Joint Standing Committee on Delegated Legislation of the Western Australian Parliament, on *Access to Australian Standards adopted in delegated legislation* (available at [http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914263a663fa6312f3c877948257fdb00358426/\\$file/4263.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914263a663fa6312f3c877948257fdb00358426/$file/4263.pdf)).

For your information, I note that an issue in the ACT is that, ordinarily, material (including Australian Standards) incorporated by reference becomes a "notifiable" instrument, for the *Legislation Act 2001* (ACT) (**ACT Legislation Act**), and must be published on the ACT Legislation Register (therefore making it freely-available to users). However, ACT legislation regularly uses a power in section 47 of the ACT Legislation Act to exempt Australian Standards from these requirements.

For its part, the ACT Committee has adopted a policy of requiring Ministers and agencies to justify this exemption from notification requirements and identifying any alternative mechanisms for accessing the relevant material, free of charge.

In relation to the justification requirement, Ministers and agencies routinely refer to limitations involving the copyright in the relevant material. This occurs especially in the case of Australian Standards.

In relation to alternative access arrangements, two themes are evident in explanatory material for legislation and in Ministerial responses to the ACT Committee's comments. One is that

“some” Australian Standards are available, for perusal, in the National Library of Australia and in State libraries. As you would be aware, however, that access has been problematic, in the recent past, due to issues with the contractual arrangement under which this library access is provided.

The other alternative access mechanism that the ACT Committee routinely sees is the making available of relevant material (including Australian Standards), for perusal, in specified government agency premises, during office hours.

Despite the ACT Committee’s best efforts, access issues continue to arise. I offer the following examples.

In the Committee’s *Scrutiny Report 13* of the 9th Assembly (6 February 2018) (available at https://www.parliament.act.gov.au/data/assets/pdf_file/0004/1161238/Report-13.pdf), the Committee considered the Work Health and Safety Legislation Amendment Bill 2017. Among other things, that Bill proposed to insert a new subsection 213(2) into the *Dangerous Substances Act 2004*, to displace subsection 47(6) of the ACT Legislation Act, in relation to the application, adoption or incorporation of the ADG Code (the Australian Code for the Transport of Dangerous Goods by Road or Rail). The Bill also proposed to substitute section 5 of the *Dangerous Substances (Explosives) Regulation 2004*, to provide for the disapplication of subsection 47(5) of the ACT Legislation Act to various instruments, including Australian Standards, that are applied, adopted or incorporated under that Regulation.

In the Committee’s *Scrutiny Report 26* of the 9th Assembly (5 February 2019) (available at https://www.parliament.act.gov.au/data/assets/pdf_file/0008/1315709/Report-26.pdf), the Committee commented on the Consumer Protection Legislation Amendment Bill 2018, identifying it as an example of a “better” approach. The Committee note that that Bill proposed to create an Eggs (Labelling and Sale) Regulation, that would, largely, replicate requirements currently set out in Schedule 1 of the *Eggs (Labelling and Sale) Act 2001* (ACT), with amendments to reflect the (then) recently-introduced Australian Consumer Standard (Free Range Egg Labelling) Information Standard 2018 (Cth). The Committee noted that the explanatory statement for the Bill stated that the shift to regulations was due to the “technical nature of definitions relating to egg types, and to ensure that the Eggs Act is able to keep pace with the transient nature of Commonwealth regulation in this area”.

In *Scrutiny Report 26*, the Committee stated:

The new regulation will continue the current approach in the Eggs (Labelling and Sale) Act of defining define egg types by reference to “the Model Code of Practice for the Welfare of Animals: Domestic Poultry, made by the Animal Welfare Committee of the Standing Committee on Agriculture and Resource Management, as in force from time to time” (“the Model Code”). The new regulation will also contain a provision displacing

the requirements of section 47(6) of the Legislation Act 2001, meaning that any changes to the Model Code do not have to be notified on the legislation register or otherwise subject to scrutiny by the Assembly.

The Committee draws this displacement of the requirements of section 47(6) to the attention of the Assembly, but notes that the new Regulation will continue the current reliance on the Model Code in regulation of sale of eggs, that the new Regulation contains a note indicating where the Model Code is available on the CSIRO web site, that the code is currently available free of charge, and that the explanatory statement accompanying the Bill includes reference to the displacement due to copyright reasons.

A good, more-recent, example, that also provides and expel of the ACT Government's approach to the Committee's concerns, is set out in the ACT Committee's *Scrutiny Report 34* of the 9th Assembly (10 September 2019) (available at <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety-legislative-scrutiny-role/reports/2016/Report-34.pdf>), in comments on:

- Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2019 (DI2019-194); and
- Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2019 (DI2019-195).

The explanatory material for each of those instruments (available here <https://www.legislation.act.gov.au/di/2019-194/> and here <https://www.legislation.act.gov.au/di/2019-195/>) anticipates and addresses the ACT Committee's concerns. However, the bottom-line is that access to material relied upon by the instruments in question is problematic. In the particular example, the ACT Committee sought advice from the ACT Minister for Climate Change and Sustainability and received a response that can be found here https://www.parliament.act.gov.au/data/assets/pdf_file/0008/1418741/Response-DI2019-194-and-DI2019-195.pdf

The ACT Committee acknowledges the Minister's response (and the discussion in the explanatory material for the relevant instruments) but feels that the underlying issues must be addressed, as soon as possible.

I write to you, now, in view of your role in relation to the work of the Industry and Skills Council Standards Accessibility Working Group of the Council of Australian Governments, which I understand is currently working on issues relevant to this letter. I seek your advice as to the progress of the work of the Working Group and a time-line for the conclusion of that work.

In making this request, I should also indicate that the ACT Committee is also aware of the consultation process recently undertaken, separately, by Standards Australia, in relation to its distribution and licensing policy framework, which is relevant to these issues. I would be

grateful if you could let the Committee know of any other work that is being done, federally, on this issue (of which you are aware).

I should also indicate that the Committee has also raised issues in relation to Access to Australian Standards with the ACT Chief Minister, in 2017. In his response, in May 2017, the Chief Minister referred to the ongoing discussions in relation to access to Australian Standards in Australian libraries, suggesting that the best approach was to allow those discussions to continue to resolution, rather than him becoming involved in the matter, on behalf of the ACT. The Chief Minister also referred to the consideration of the issues by the Working Group (mentioned above).

Access to Australian Standards (and Australian Standards/New Zealand Standards) adopted in legislation is an important issue, in the ACT and in other jurisdictions. I seek your assistance in ensuring that proper, free access is provided, to users of legislation, as soon as possible.

Yours, etc

A handwritten signature in black ink, appearing to read 'Giulia Jones', written in a cursive style.

Giulia Jones MLA

CHAIR

2 December 2019