



Australian Government
**Department of Infrastructure,
Regional Development and Cities**

Submission to Parliamentary Scrutiny of Delegated Legislation Inquiry

January 2019

The Department of Infrastructure, Regional Development and Cities welcomes the opportunity to make a submission to the Standing Committee on Regulations and Ordinances' Parliamentary Scrutiny of Delegated Legislation Inquiry.

The Department supports the existing role and operation of the Committee in examining legislative instruments prepared by the Infrastructure Portfolio. The Committee has demonstrated its effectiveness in examining legislative instruments prepared by the Infrastructure Portfolio, identifying a range of matters requiring clarification or further action. This important check and balance has ensured delegated legislation and accompanying explanatory material continues to be prepared and implemented accountably, in accordance with legislated requirements, and to a high standard.

The Department supports the Committee's existing practices that encourage timely compliance, such as through its requests and reporting through the Delegated Legislation Monitor, and use of notices of motions for disallowance. These practices generally remain appropriate, including leaving final consideration of certain matters to the discretion of the Senate.

We encourage the Committee to examine the following items during its Inquiry:

- The Department queries whether there may be scope for some minor, non-controversial queries and requests to be raised directly with officials in the first instance, possibly through the Committee Secretariat. Addressing such matters more directly could accelerate their resolution, such as requests for additional, factual information. This may reduce the volume of formal correspondence between the Committee and Ministers and minimise potential delays to responses, which may in turn reduce the number of notices of motion for disallowance the Committee may need to issue for more minor matters.
- Review of the older reference material that the Committee uses to assess adherence to the Committee's scrutiny principles. These include the Guide to Framing Commonwealth Offences, Infringements Notices and Enforcement Powers (the Guide) and the report of the Administrative Review Council on What Decisions Should be Subject to Merit Review (ARC Report). The Department notes that these documents are somewhat dated, with the latest version of the Guide available on the website of the Attorney General's Department dated 2011 and the ARC Report dating back to 1999.

Regarding Term of Reference 1b iii, an issue of access to material incorporated into the law by reference to external documents, such as Australian and international standards, has been raised previously by the Committee in relation to national vehicle standards determined under the *Motor Vehicle Standards Act 1989*, the Australian Design Rules (ADRs). The Committee's fundamental principle has been that such referenced standards must be readily and freely accessible, without cost, to any person subject to the law.

We are advised that this is an Australian Government wide issue and that the Department of Industry, Innovation and Science is coordinating the work around it for the longer term. Ministers have been considering options to progress towards a more open and cost-effective approach to accessing standards, including continuing to support public access to standards for noncommercial users through national and state libraries. The Council of Australian Governments Industry and Skills Council is currently exploring how the accessibility and pricing of standards may be improved, especially those referenced in legislation.

In the interim, the Department queries whether the fundamental principle that referenced standards must be readily and freely accessible, without cost, to any person subject to the law, could be further refined so that it takes into account the nature of the standard being considered.

In the case of ADRs, these are critical safety requirements for new vehicles that are being supplied to consumers in Australia. They are highly complex and detailed technical documents. While the bulk of the content of the ADRs is based on international standards that are freely accessible, without cost, some of the more specialised standards referenced within the international or local content do entail a cost. However, the referenced standards within the ADRs are only ever accessed by vehicle manufacturers and test facilities as part of their professional libraries. These same organisations are involved in the development of the content in the first place and are fully consulted by the Government before an ADR is legislated.

Continuing to pursue a principle of universal access without cost for these referenced standards provides no real benefit, other than reducing the cost marginally for vehicle manufacturers and test facilities. However, it does frustrate the current incentive for a body other than a government to resource and carry out this essential work. Alternatively, it forces the removal of crucial content from newly legislated standards and reworking of existing standards such that they become a less practical set of requirements.

Until a longer term solution is found on a Government wide basis, we query whether the Committee could consider that highly technical standards that apply to sophisticated manufacturing processes, particularly in the field of consumer safety, be recognised for their small and specialised audiences rather than broad use by the public or general industry. As such, we would appreciate the Committee allowing for these to be accessed at a cost as part of a professional library, with the expectation that the cost incurred would continue to contribute towards their further review and development.