

41ST PARLIAMENT



Report 6

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Annual Report 2024

Presented by

Mr Geoff Baker MLA (Chair)

and

Hon Lorna Harper MLC (Deputy Chair)

November 2024

Joint Standing Committee on Delegated Legislation

Members as at the time of this inquiry:

Mr Geoff Baker MLA (Chair)

Mr Stuart Aubrey MLA

Hon Martin Pritchard MLC

Ms Magenta Marshall MLA

Hon Stephen Pratt MLC (until 27 May 2024)

Hon Lorna Harper MLC (Deputy Chair)

Hon Steve Martin MLC

Mr Paul Lilburne MLA

Hon Shelley Payne MLC (from 11 June 2024)

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EXECUTIVE SUMMARY

Introduction

- 1 This report summarises the key activities of the Joint Standing Committee on Delegated Legislation (Committee) between 1 January 2024 and 31 October 2024 (Reporting Period).
- 2 The Committee's role is to scrutinise, on behalf of the Parliament, instruments made under statutory delegation by:
 - the Governor in Executive Council
 - Ministers
 - statutory bodies
 - local governments.
- 3 The Committee determines whether instruments are within power of the authorising primary legislation or otherwise offend the Committee's Terms of Reference.¹

Committee activities

Scrutiny of delegated legislation

- 4 Delegated (also known as subordinate or subsidiary) legislation is legislation made not directly by an Act of the Parliament, but under the authority of an Act of the Parliament. In Western Australia, this covers regulations, rules, local laws and by-laws (referred to collectively in this report as instruments).²
- 5 The Committee considered 290 instruments, including 141 regulations and 57 local laws in the Reporting Period.
- 6 Motions for the disallowance of delegated instruments usually do not proceed in the Parliament if the Committee receives satisfactory undertakings to amend the instrument. The Committee only recommends an instrument be disallowed as a last resort.
- 7 During the Reporting Period, the Committee received one departmental (Ministerial) undertaking and 20 local government undertakings.
- 8 The Committee also tabled its *Annual Report 2023* in the Parliament.³

Other activities

- 9 The Committee worked with the Department of Premier and Cabinet in updating Appendix 2 of Premier's Circular 2023/01 *Subsidiary legislation—explanatory memoranda* (Circular).

Issues relating to local laws

- 10 The Committee requested and obtained 20 undertakings from local governments to either repeal their local laws or amend their local laws to address specific issues identified by the Committee.

¹ The Committee's Terms of Reference appear on the back inside cover of this report.

² *Interpretation Act 1984*. s 42(8).

³ Joint Standing Committee on Delegated Legislation, report 5, *Annual Report 2023*, Western Australia, Legislative Council, April 2024.

- 11 Nine of the undertakings that were obtained facilitated amendments to ensure the local laws were within power of the empowering Act.
- 12 Three of the undertakings sought the repeal of the relevant local laws in their entirety due to the significant number and extent of issues they contained.

1 Introduction

Overview

- 1.1 This report outlines the work of the Joint Standing Committee on Delegated Legislation (Committee) between 1 January and 31 October 2024 (Reporting Period). It discusses some of the more notable instruments the Committee considered and comments on significant issues arising from the Committee's scrutiny of delegated legislation generally.
- 1.2 The Committee holds a standing referral from the Legislative Assembly and Legislative Council to consider instruments of delegated legislation published in the Government *Gazette* or on the Western Australian Legislation website.⁴ Like its predecessors, the Committee in this 41st Parliament considered only:
 - instruments that are subject to parliamentary disallowance⁵
 - instruments noted by an individual Member of the Committee.
- 1.3 Most of the instruments the Committee considered during this Reporting Period were regulations made by the Governor in Executive Council. Other instruments included local laws made by local governments, court rules, by-laws, planning schemes, orders, notices, plans and other variously-named instruments made by a range of persons or bodies.

Terms of Reference

- 1.4 The Committee's Terms of Reference are listed on the back inside cover of this report. They were adopted by the Parliament on 25 May 2021, when the Committee was established.⁶
- 1.5 The Committee operates under the Standing Orders of the Legislative Council.⁷
- 1.6 The Committee decides whether instruments are beyond the scope of the delegated power or otherwise offend any of the requirements set out in item 10.6. of its Terms of Reference.

Committee members

- 1.7 The Committee had one change of membership during the Reporting Period.
- 1.8 Hon Stephen Pratt MLC was a member of the Committee until 11 June 2024. He was replaced on that date by Hon Shelly Payne MLC.
- 1.9 The Committee membership is noted on the front inside cover of this report.

⁴ Either under section 41(1)(a) of the *Interpretation Act 1984* or another written law: Term of Reference 10.5: [Standing Orders of the Legislative Council](#), Schedule 1, cl 10.5. The Western Australian Legislation website can be viewed [here](#), accessed 9 October 2024.

⁵ Pursuant to section 42 of the *Interpretation Act 1984* or another written law.

⁶ Hon Sue Ellery MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)* 25 May 2021, pp 670-671.

⁷ [Standing Orders of the Legislative Council](#), Schedule 1, cl 10.

Figure 1. *Committee members in 2024*



Mr Geoff Baker MLA (Chair)



Mr Stuart Aubrey MLA



Mr Paul Lilburne MLA



Mrs Magenta Marshall MLA



Hon Lorna Harper MLC
(Deputy Chair)



Hon Martin Pritchard MLC



Hon Shelley Payne MLC



Hon Steve Martin MLC

Committee process

- 1.10 When the Committee has questions about an instrument, it writes to the relevant Minister or local government President or Mayor to request further information to assist in its examination of the instrument. In many instances, the responses received address the Committee's questions and no further action is required.
- 1.11 When the Committee forms the view that a clause or clauses in an instrument offend the Committee's Terms of Reference, it usually seeks an undertaking from the responsible Minister or local government to amend or repeal the instrument.
- 1.12 The Committee's usual practice is to require the responsible Minister or local government to undertake to amend or repeal the delegated legislation within 6 months of the date of giving the undertaking. The Committee monitors whether undertakings have been fulfilled within the timeframe given.
- 1.13 While the Committee awaits further information on its request for undertakings on a particular instrument, it is often necessary to authorise a Committee Member to give notice of a motion to disallow the instrument in the Legislative Council.⁸ Notice must be given within 14 sitting days after the instrument is tabled in the Parliament.⁹ This gives time for agencies to answer questions or give undertakings on the instrument.
- 1.14 Notices of motion to disallow an instrument in the Legislative Council:
- protect the Parliament's right to disallow the local law should the Committee recommend disallowance
 - provide the Committee with additional time to scrutinise the local law and, if necessary, obtain further information.

⁸ The Legislative Council has procedures in place for dealing with motions for disallowance, including those motions which are initiated by the Committee: refer to [Standing Orders of the Legislative Council](#), Standing Order 67.

⁹ [Interpretation Act 1984](#), s 42. Note that other Acts may provide for a different period during which Notices of Motion to disallow their delegated legislation may be given.

- 1.15 Most of these notices of motion¹⁰ are later discharged from the Legislative Council Notice Paper following receipt of satisfactory responses from Ministers or local governments.¹¹
- 1.16 The Committee only recommends the disallowance of an instrument as a last resort, that is:
- where agreement cannot be reached
 - where the identified defect in the instrument cannot be cured without re-making the instrument—for example, because statutory procedures for the making of the instrument were not followed, or because the contents of the instrument go beyond what is authorised in the empowering Act.
- 1.17 In those cases, the Committee reports to the Parliament recommending the disallowance of all or part of the instrument. The Legislative Council must then vote on the disallowance motion.

Undertakings lists

- 1.18 The Committee posts 2 lists of undertakings on its webpage ([Delegated Legislation Committee](#)):
- departmental undertakings (undertakings provided by Ministers, government departments, agencies and statutory authorities)
 - local government undertakings.
- 1.19 These lists inform stakeholders of issues the Committee has raised and assist departmental and local government officers in drafting delegated legislation. In particular, the local government undertakings list allows local governments and their advisers to identify systemic problems in local laws.

Acknowledgements

- 1.20 The Committee relies on the assistance provided by relevant Ministers, departments, statutory bodies, the Western Australian Local Government Association and local governments in undertaking its function of scrutinising a large volume of delegated legislation within time constraints. The Committee extends its appreciation to those Ministers and contact persons who provided that assistance during the Reporting Period.

2 Committee activities in 2024

Volume and nature of work

- 2.1 The Committee held 13 meetings in the Reporting Period.
- 2.2 Table 1 provides a breakdown of the Committee's activities regarding instruments published in the *Government Gazette* and on the Western Australian Legislation website during that period.

¹⁰ These notices of motion usually become motions to disallow on the third sitting day after they have been given: [Standing Orders of the Legislative Council](#), standing order 67(3).

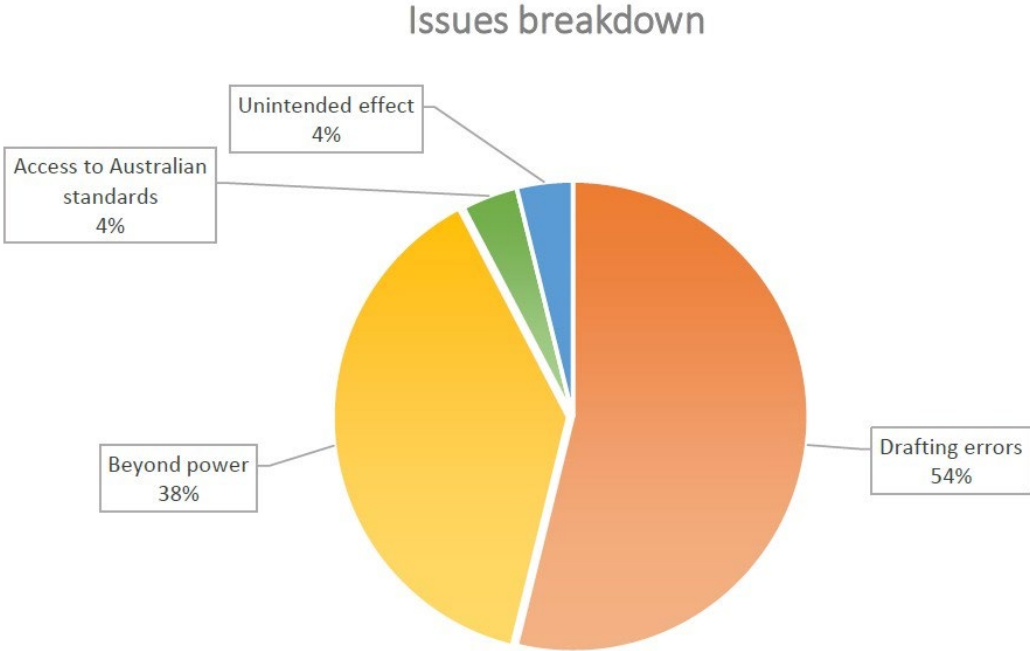
¹¹ The statistics relating to this practice are contained in Table 1 on page 4.

Table 1. *The Committee’s work statistics for 2024 (1 January to 31 October 2024)*

Disallowable instruments published in the <i>Government Gazette</i> and on the Western Australian Legislation website and scrutinised by the Committee	290
<ul style="list-style-type: none"> Regulations 	141
<ul style="list-style-type: none"> By-laws (made by the Executive) 	3
<ul style="list-style-type: none"> Local laws (made by local government) 	57
<ul style="list-style-type: none"> Rules 	21
<ul style="list-style-type: none"> Other instruments referred (including planning schemes, orders, codes, notices and plans) 	68
Notices of motion for disallowance given	12
Motions to disallow discharged	11
Hearings held by the Committee	0
Instruments for which undertakings were provided to the Committee to amend the instrument	18
Instruments for which undertakings were provided to the Committee to repeal the instrument	3
Reports tabled	1
Disallowance reports tabled	0

2.3 Figure 2 sets out information about the 21 instruments where undertakings were given to the Committee. It provides an indication of the nature, number and frequency of issues the Committee considered. Some instruments (local laws) contained multiple issues.

Figure 2. *The nature, number and frequency of issues encountered by the Committee in 2024 where undertakings were provided*



2.4 The issues identified in Figure 2 are defined as follows:

- Unintended effect

- Access to Australian standards. Where an instrument incorporates Australian standards by reference, which become part of the law, but cannot be accessed by the public free of charge.¹²
- Beyond power. An instrument is invalid if it is not authorised or contemplated by the empowering Act.
- Drafting errors. These can include—
 - typographical, grammatical or formatting errors
 - cross-referencing to the wrong clause or schedules
 - referencing repealed legislation
 - other errors which make the clause difficult to understand.

Issues identified

- 2.5 38 percent of the issues the Committee considered during the Reporting Period related to instruments being beyond power. This is slightly higher than last year. The majority of instruments found to be beyond power related to bush fire brigade and cat local laws.
- 2.6 Drafting errors accounted for 54% of issues identified by the Committee. Many of these could have been avoided by local governments conducting thorough proofreading and cross-reference checks prior to publishing the instruments.
- 2.7 Drafting issues also arise when local governments rely upon a local law of another district, without checking whether:
- the Committee has identified any issues in that local law
 - sufficient time has lapsed to ensure the Committee has scrutinised the precedent local law, noting that there is often a necessary delay between local laws being published in the *Government Gazette* and the Committee finalising its scrutiny of a local law.

Committee reports

- 2.8 In the Reporting Period, the Committee presented [Report 5: Annual Report 2023](#) to the Legislative Assembly and the Legislative Council. It was tabled in both Houses on 18 April 2024.

Undertakings

- 2.9 Giving an undertaking to a Parliamentary Committee is a serious matter; the Committee does not agree to accept them lightly. The Committee relies on undertakings when deciding to rescind or discharge notices of motion in the Legislative Council.
- 2.10 A failure to comply with an undertaking frustrates the Committee’s ability to recommend disallowance of an instrument. Non-compliance with undertakings may be reported to the Legislative Council for further action, which may include a finding of contempt of Parliament. Such a finding may lead to criminal consequences.
- 2.11 During the Reporting Period, the Committee received one departmental (Ministerial) and 20 local government undertakings. The lists of undertakings can be viewed at [Delegated Legislation Committee](#) and choosing ‘Undertakings’ and then ‘Local Governments (Current)’ and ‘Government Departments and Agencies (Current)’.

¹² Joint Standing Committee on Delegated Legislation, report 84, [Access to Australian Standards Adopted in Delegated Legislation](#), Western Australia, Legislative Council, 23 June 2016.

Update to Appendix 2 of Premier’s Circular 2023/01

- 2.12 Premier’s Circular 2023/01, *Subsidiary legislation—explanatory memoranda* (Circular) directs delegated legislation makers to provide the Committee with the explanatory material it requires to perform its role.
- 2.13 The Department of Planning, Lands and Heritage (Department of Planning) advised the Committee that Appendix 2 of the Circular, *Region Planning Scheme Statutory Procedures Checklist* (Checklist) required amendment. This was to reflect recent legislative changes.
- 2.14 The Department of Planning provided the Committee with an amended Checklist. The Committee agreed with the suggested amendments. It identified several minor typographical and referencing errors.
- 2.15 The Committee requested the Department of Premier and Cabinet (DPC) update the Checklist. This was completed in April 2024.¹³ The Committee extends its thanks and appreciation to DPC for incorporating its requested changes to the Circular.

3 Applied national legislative instruments

- 3.1 The Committee scrutinised a large number of applied national legislative instruments referred to it by virtue of the commencement of the *Therapeutic Goods Law Application Act 2024* (Application Act). That Act applies ‘therapeutic legislative instruments’ (TLIs) made under the *Therapeutic Goods Act 1989* (Cth) as laws of Western Australia.
- 3.2 All TLIs made on or after 27 November 2023 are subject to disallowance and referred to the Committee for consideration.
- 3.3 Given the high volume of TLIs to be applied on commencement of the Application Act, and the fact that TLIs are made by Commonwealth agencies, the Department of Health submitted a proposal to the Committee for the provision of modified explanatory information in relation to TLIs.
- 3.4 The Committee was satisfied the proposal met its provision of information requirements to ensure robust scrutiny. This is particularly important given TLIs are made under Commonwealth legislation and will apply automatically until they are disallowed by a House of the Western Australian Parliament.

4 Issues in local laws

Cat local laws

Generally

- 4.1 The Committee has reported its position on cat local laws that were inconsistent with the *Cat Act 2011* in every Annual Report in this Parliament.¹⁴
- 4.2 It is disappointing that the same problematic clauses continue to appear in cat local laws. The Committee’s time and local government resources are being spent on avoidable issues, with many cat local laws being subject to undertakings for amendment.

¹³ [Premier’s Circular 2023/01 - Appendix 1, Region Planning Scheme Statutory Procedures Checklist](#).

¹⁴ Joint Standing Committee on Delegated Legislation, report 2, [Annual Report 2021](#), Western Australia, Legislative Council, June 2022, pp 9-10, Joint Standing Committee on Delegated Legislation, report 3, [Annual Report 2022](#), Western Australia, Legislative Council, March 2023, pp 9-11 and Joint Standing Committee on Delegated Legislation, report 5, [Annual Report 2023](#), Western Australia, Legislative Council, April 2024, pp 8-9.

- 4.3 The Committee strongly encourages local governments to check the undertakings list on the Committee's website¹⁵ to identify systemic problems in local laws before commencing their own local law-making process.
- 4.4 The Committee's role is to interpret current legislation. Policy decisions regarding cat containment and any amendments to the *Cat Act 2011* are matters for this Government or the next.

City of Gosnells Cat Amendment Local Law 2024

- 4.5 The amendment local law inserted a clause 2BD into the principal local law.¹⁶ The new clause provides as follows:

2BD Cat containment in specified areas

- (1) An owner who keeps a cat on a premises in a specified area must ensure that a portion of that premises is enclosed in a manner capable of confining the cat.
- (2) For the purposes of subclause (1), a **specified area** means **any land which falls within 200m of the boundary of a Cat Prohibited Area**, as listed in Schedule 2A of this local law.

Penalty: \$2,000 (emphases added)

- 4.6 The 'specified areas' defined in clause 2BD include private properties.
- 4.7 The amendment local law also inserted a new Schedule 2A into the principal local law. The new Schedule 2A prescribes 'cat prohibited areas' and consists of 23 pages of properties identified by lot number, survey number and PIN. Approximately 1,100 individual parcels of land are prescribed. These are specific and defined lots of land, rather than a general description of land. This is consistent with the Committee's requirement for land to be clearly and separately identified, rather than a general ban on all land.
- 4.8 The Committee had concerns with clause 2BD and Schedule 2A.

Specified areas – Clause 2BD

- 4.9 The Committee's concern was that, given the opacity of the 'specified areas' in clause 2BD, owners or occupiers of properties in this class of dwelling may not be aware they are now regulated and required to build an enclosure capable of confining cats.
- 4.10 The Committee asked the City:
- Whether the owners or occupiers of these properties were separately consulted or informed before the amendment local law was made.
 - What transitional measures are contemplated for any owner or occupier who already owns a cat that is caught within the Cat Prohibited Areas or the cat containment 'specified areas'.
- 4.11 The City advised it did not consult separately with the owners and occupiers of properties in 'specified areas' but met all its statutory obligations for advertising and public notice in making the amendment local law.¹⁷

¹⁵ The list of departmental and local government undertakings given to the Committee can be viewed on the Committee's webpage at [Delegated Legislation Committee](#).

¹⁶ *City of Gosnells Cat Local Law 2014*.

¹⁷ A Hort, Acting Mayor, City of Gosnells, letter, 14 May 2024.

- 4.12 It also advised it considers clause 2BD:
- is more educative than enforceable. A dwelling is capable of confining a cat which means that effectively, every property where cats are kept will satisfy clause 2BD(1) of the local law.¹⁸
- 4.13 The Committee considers clause 2BD is poorly drafted as an owner or occupier may simply place a small enclosure in their garden to comply, regardless of whether the cat goes in it. By the City's admission a dwelling is also sufficient to comply, making the clause unnecessary.
- 4.14 Local governments can 'educate' residents in any number of ways. Making a local law that, by the Acting Mayor's own admission, is unenforceable, is a waste of the local government's time and money and a waste of this Committee's time and resources. Local law processes should not be used merely as a method of gaining the approval of local activists.

Cat prohibited areas – Schedule 2A

- 4.15 The plots of land in Schedule 2A are not readily identifiable. It was not clear to the Committee whether the approximately 1,100 plots listed are public or private land, and if public, owned or managed by whom.
- 4.16 The Committee considered this provision could have serious implications for any cat owners whose dwellings are listed, given there are no transitional provisions.
- 4.17 In response to Committee questioning, the City of Gosnells confirmed that none of the properties listed in the schedule to the local law are privately owned – they are either Crown land or owned by the City of Gosnells.¹⁹

Access to standards – Reader Room

- 4.18 When Australian standards are adopted in delegated legislation, they become part of that legislation. Therefore, the Committee, and its previous iterations, holds the view that Australian standards adopted into delegated legislation should be publicly and freely accessible. The Committee investigated whether the 'Reader Room' recently established by Standards Australia (SA) could be a useful method of accessing Australian standards that have been adopted by delegated legislation.

Reader Room

- 4.19 The Reader Room online platform is a pilot project.²⁰ The platform offers limited no-fee access for non-commercial (personal, domestic or household) use of SA publications.²¹ Access to the Reader Room is limited by time and number and the portal only contains a selection of all the publications that are available.

Level of free access to standards provided by Reader Room

- 4.20 Term 1 of the terms of use indicates that the Reader Room provides free access to selected standards and other publications.²² As at 16 October 2024, there were 3,503 standards available for viewing.²³

¹⁸ A Hort, Acting Mayor, City of Gosnells, letter, 14 May 2024.

¹⁹ A Hort, Acting Mayor, City of Gosnells, letter, 14 May 2024.

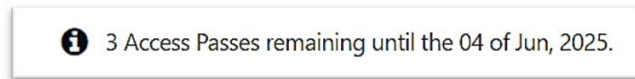
²⁰ Standards Australia (SA), *NOTE: Reader Room public pilot*, SA, accessed 4 June 2024.

²¹ SA, *Reader Room help guide*, SA, 2024, accessed 4 June 2024.

²² SA, *Reader Room terms of use*, SA, 2023, accessed 16 October 2024.

²³ SA, *Reader Room – Search for standards*, SA, 2024, accessed 16 October 2024.

4.21 A Reader Room user will have 3 access passes upon registration (see paragraphs 4.31–4.32 for details of the registration procedure). From the date of registration, the user will have 12 months to view the selected standards that have been uploaded to the Reader Room. The main search page will indicate how many access passes a user has left and how much time in which to use them. For example, immediately after the Committee’s registration, the main search page stated:



4.22 The Reader Room allows the user to either preview a standard or unlock the full version of a standard.

Previewing a standard

4.23 Previewing the standard will allow the user to obtain a general overview of the standard, which includes these headings:

- ‘About this publication’ – date published, publication history, the committee that prepared the standard and the committee members.
- ‘Preface’ – includes the object of the standard.
- ‘Scope and general; – includes the definitions used in the standard.

4.24 Previewing a standard will not require the user to use any of their access passes. The user is unable to print, or copy and paste from, a previewed standard.

Unlocking a standard

4.25 Unlocking the full version of a standard will require the user to use one of their access passes. The user will have 24 hours (measured down to the minute) in which to view an unlocked standard. Internal links within the standard will work, but links to external documents will not.²⁴ The user is also unable to print, or copy and paste from, an unlocked standard.

4.26 Upon unlocking a standard, the user will see the following warning:

This document is prepared for ... , User ID: ... Any reproduction, sharing or breach of the terms of service is strictly prohibited.

4.27 The access passes will reset to 3 available passes after the anniversary of a user’s first registration. If more access is required, the user is directed to contact SA.

Navigating to Reader Room

4.28 Members of the public will not be able to find a link to the Reader Room through a search engine, such as Google or Bing. They will also not be able to search for the link within the SA website.²⁵ The only ways to access the Reader Room are to navigate to it from the [SA website](#) or to type the URL of the [Reader Room's landing page](#) into the address bar of an internet browser.

4.29 To find the Reader Room through the SA website, a user must undertake the following steps:

- In an internet browser, navigate to [SA website](#)

²⁴ SA, [Reader Room help guide](#), SA, 2024, accessed 4 June 2024.

²⁵ SA, [Reader Room help guide](#), SA, 2024, accessed 4 June 2024.

- Scroll down to the 'Public Access' link (in the page footer, at the bottom of each page within the SA website).

4.30 A 'note' window appears after clicking the 'Public Access' link. This is the Reader Room landing page. The note reads as follows:

Reader Room is now a Public Pilot platform for all Australian Residents to use.

Standards Australia will periodically update the list of publications available in Reader Room.

We welcome feedback via the "Contact Us" links in the page footer and "Menu" launcher within the App.

Refer to the [Reader Room - Terms of Use](#)²⁶

The user is then prompted to click 'Accept' to proceed and accept the terms of use.²⁷

Registering to use/logging into Reader Room

- 4.31 A prospective user will need to register their email address, mobile number and a password with minimum security requirements. The email address will then require verification for the registration to be complete.
- 4.32 Each time a user logs into Reader Room, they will be asked to authenticate the request (via an authenticator app that will provide a verification code that must be typed into the relevant field on the screen). When logging in for the first time, another verification code will then be sent to the user's mobile phone and this code must be typed into the relevant field on the screen. Once all of these steps are completed, the user will be taken to the main search page.
- 4.33 The above processes were correct as at 4 June 2024.

Committee's position on Reader Room

- 4.34 Given the limitations of the Reader Room, as discussed in paragraphs 4.20–4.27, makers of delegation legislation should be wary of relying on the Reader Room to provide free public access to the standards they adopt in their instruments. They should check that the standards adopted are actually available to be accessed in full in the Reader Room. If they are adopting more than 3 standards, they will also need to provide another access option to readers.



Mr Geoff Baker MLA
Chair

²⁶ SA, [NOTE: Reader Room public pilot](#), SA, accessed 4 June 2024.

²⁷ For the terms of use, see: SA, [Reader Room terms of use](#), SA, 2023, accessed 29 May 2024.

GLOSSARY

Term	Definition
Application Act	<i>Therapeutic Goods Law Application Act 2024</i>
Checklist	<i>Region Planning Scheme Statutory Procedures Checklist</i>
Circular	Premier's Circular 2023/01, <i>Subsidiary legislation—explanatory memoranda</i>
Committee	Joint Standing Committee on Delegated Legislation
Department of Planning	Department of Planning, Lands and Heritage
DPC	Department of Premier and Cabinet
Reporting Period	1 January 2024 to 31 October 2024
SA	Standards Australia
TLI	Therapeutic legislative instrument for the time being in force and made under the <i>Therapeutic Goods Act 1989</i> (Cth)

Joint Standing Committee on Delegated Legislation

Date first appointed:

25 May 2021

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'10. Joint Standing Committee on Delegated Legislation

- 10.1 A Joint Standing Committee on Delegated Legislation is established.
- 10.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.
- 10.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 10.4 (a) A report of the Committee is to be presented to each House by a member of each House appointed for the purpose by the Committee.
- (b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
- 10.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 10.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -
- (a) is within power;
- (b) has no unintended effect on any person's existing rights or interests;
- (c) provides an effective mechanism for the review of administrative decisions; and
- (d) contains only matter that is appropriate for subsidiary legislation.
- 10.7 It is also a function of the Committee to inquire into and report on -
- (a) any proposed or existing template, *pro forma* or model local law;
- (b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and
- (c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.
- 10.8 The Standing Orders of the Legislative Council relating to Standing Committees will be followed as far as they can be applied.
- 10.9 In this order-
- "instrument" means -
- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
- (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
- "subsidiary legislation" has the meaning given to it by section 5 of the *Interpretation Act 1984*."



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