

**JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION**

**INQUIRY INTO ACCESS TO AUSTRALIAN STANDARDS
ADOPTED IN DELEGATED LEGISLATION**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
FRIDAY, 14 AUGUST 2015**

SESSION SIX

Members

Mr P. Abetz (Chair)
Hon Robin Chapple (Deputy Chair)
Hon Mark Lewis
Ms S.F. McGurk
Mr P. Papalia
Hon Martin Pritchard

Hearing commenced at 1.00 pm**Mr JOHN GELAVIS****Executive Director, Housing Industry Association of Western Australia, sworn and examined:**

The CHAIR: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I need to ask you to take either the oath or the affirmation.

[Witness took the oath.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

Mr Gelavis: Yes.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, and please be aware of the microphone and try to talk into it, and ensure you do not put papers in front of it or make too much noise near it. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

John, would you like to make an opening statement before we start bombarding you with questions?

Mr Gelavis: No, not really, other than some questions were provided to me by correspondence, and to make sure we are providing the most accurate level of information I have provided some notes on those, so if it is okay with the committee, I would like to be able to read from those as they relate to the questions, and anything I cannot answer I am happy to take on notice and come back if need be. I feel I have done a fair bit preparatory work.

Hon ROBIN CHAPPLE: Thank you for the preparation of all this material. It is great.

Mr Gelavis: Thank you.

The CHAIR: With anything that is presented here, we need to give it a status of either private or public. Are you happy for these to be made public in the sense that that would go on to our website under the inquiry heading as material that has been provided?

Mr Gelavis: Yes, certainly. What we provide, particularly in terms of policy and member alerts, are effectively in the public domain. If you go onto our website, you will see our policies, and these are just clearly communication that we make with members on a day-to-day basis as need be.

The CHAIR: They can be made public without any objection.

Mr Gelavis: No, no objection.

The CHAIR: Just for the context, I guess, as the delegated legislation committee, the reason for having the inquiry is that we are concerned about the fact that when there are Australian Standards in regulations or legislation, there is a significant cost and inconvenience involved in accessing those for many people, and we believe that laws and regulations are expected to be obeyed, therefore they ought to be very readily available, and that is our concern.

Mr Gelavis: Quite right.

The CHAIR: Just having a quick look at your sheet here, I spotted the third dot point on page 2 and I think you are the same page as we are!

Mr Gelavis: We certainly are. It has been our policy for quite some time.

The CHAIR: Do you provide any kind of advisory service to your members with regards to providing access to or copies of the relevant standards or give advice on their application or meaning; and are you aware of any external advisory service regarding standards?

Mr Gelavis: I will read from my notes, if that is okay. HIA provides a technical advisory service to all our members in all states and territories. This advisory service includes the ability for members to phone or visit HIA's office and speak directly to our staff and ask questions about Australian Standards. We have an office here in Osborne Park and our members regularly come in or communicate via our communication channels.

The CHAIR: Would you have copies of the standards there for them to access at your office or not?

Mr Gelavis: We have a technical manager and—I will get to that point—for any issues that crop up, we will provide information. We do not provide the standards free, but we might provide excerpt from that relating to a particular matter. HIA has access to a library of Australian Standards referenced by the National Construction Code and use these as a resource for staff to assist members. HIA does not provide free copies of these standards but, as I have said, we provide, where appropriate, an extract of a relevant clause that might assist in providing advice to a member. They could be on a building site and might require that advice, and it is part of being an HIA member that they get access to this particular type of service. HIA members can purchase at any cost the Australian Standard from the HIA stationery store or we will direct members to SAI Global if they wish to purchase a full document by that avenue. HIA will assist in the interpretation of the Australian Standard where possible. As this advice is open to interpretation, HIA will always preface such advice with a recommendation that the member speak to the relevant building surveyor, council or other building professional who has raised the concern or question. From time to time HIA prepares written information on Australian Standards that are referenced in the National Construction Code. This may be able to provide clarification on the interpretation of a matter or to let members know that a change has occurred. There are some information sheets, I think, that you have there about residential slabs, footings and the requirements of garage doors in cyclonic areas as an example of such information sheets that we provide our members, providing clarity on those types of things. In addition, HIA provides advice to members about the application of Australian Standards and how they are used in the National Construction Code and state building laws through these information sheets. So, we would have as an example, "Why do you need to use Australian Standards?" This particular document references why standards apply to building work, how to manage references of Australian Standards in your project and other things. These are the type of information sheets that we provide our members. As I have said, the three key ones are the information sheets that we have prepared on new requirements for garage doors in cyclonic areas, residential slabs and footings and when you need to use Australian Standards. In terms of response, hopefully, that covers that particular point.

Hon ROBIN CHAPPLE: You do mention that some of the standards cost over \$1 500. Do you know what your membership or your organisation would be paying out a year in terms of accessing standards?

Mr Gelavis: That is probably more of a national discussion, if I can take that one on notice. I will probably need to get back to you on what it would be for our association. I run WA, so it is difficult to comment on the national cost.

Hon ROBIN CHAPPLE: It might be useful to have the WA costs too, because a lot of the information is very difficult to come by. We know the population of Western Australia, and if we can sort of look at WA, we can make a case literally for Australia, but using our population base. Both would be useful, I think.

Mr Gelavis: So this is the cost of purchasing the standards.

Hon ROBIN CHAPPLE: Purchasing—what it costs the industry. It would be really great if we could get an overall cost, but also the physical cost of buying standards by your members and/or by your organisation, that would be really, really valuable.

The CHAIR: John, we know how much it costs to run Standards Australia, the organisation putting the standards together—what they spend every year. What we are trying to figure out is how much it is actually costing industry and government in all these fees that we are paying for that to SAI Global. Is it actually not much more cost efficient for governments—the federal government and the state government—to say, “Look, we’ll pay for the cost of running Standards Australia, provided they make everything available on the website free to the end user”? What sort of cost savings would that provide for, say, your industry, because I guess the cost saving is what it costs you now—what you would need to be spending? That is what we are trying to ascertain.

[1.10 pm]

Mr Gelavis: I am happy to take that on notice if I can and come back to you.

Hon ROBIN CHAPPLE: Obviously it is not just your organisation—it is local government; all sorts of people. There are really huge costs associated with that.

Hon MARTIN PRITCHARD: The Building Code is now free, is it not?

Mr Gelavis: It is online.

Hon MARTIN PRITCHARD: In previous years it would have cost a lot more than it will now and into the future.

Hon MARK LEWIS: Do you know whether your association is a member of Standards Australia?

Mr Gelavis: That is a good question. I am not sure 100 per cent sure whether we are or not. That process is really managed at a national level as opposed to a state level.

Hon MARTIN PRITCHARD: It is a not-for-profit limited company.

The CHAIR: Perhaps you could take that on notice and find out for us; that would be appreciated.

Mr Gelavis: Sure.

The CHAIR: Thanks.

Hon MARTIN PRITCHARD: The reason for that is that Standards Australia indicate that they draw a lot of in-kind assistance from the industry, and those people tend to be members of the entity.

Mr P. PAPALIA: I have looked it up, and, yes, you are.

Hon ROBIN CHAPPLE: We have Mr Google over there!

The CHAIR: Mr Google is on our committee! Thanks, Paul.

Your submission refers to success in getting the National Construction Code made available online free of charge to the end-user. Were you involved in discussions about getting standards referenced in that code made similarly available; and, if so, are you aware of any progress being made in that regard?

Mr Gelavis: Yes. There is a copy here that I will reference headed “Housing Industry Association Welcomes Building Code Free Online”. HIA adopted a formal position in 2005 that the National

Construction Code and the Australian Standards reference become available. So, we have taken that position.

The CHAIR: Are the Australian Standards references available free of charge to the end-user or is it only the National Building Code that is free of charge at the moment?

Mr Gelavis: The National Construction Code is what I understand is free.

The CHAIR: But at the moment people still have to pay to access the Australian Standards references?

Mr Gelavis: Yes, that is my understanding.

Hon MARTIN PRITCHARD: I think these cover building and plumbing.

Mr Gelavis: Yes. There is building, and there is also the plumbing. There are three types of volumes. Volume 1 is the Australian Standards. There is the Building Code, which references 81 standards; the National Construction Code volume 1, which is another 118; and the Plumbing Code. So there are effectively three volumes, which reference a large number of codes.

Since that time, HIA has consistently called for the National Construction Code to be free online, including support for the relevant standards to be made freely available online. So we fundamentally have always taken that position. I have referred to a copy of our press release supporting that position. HIA recognises that providing free standards is a separate commercial matter, as these documents are not owned by the government in the same manner as the NCC is. As part from HIA's ongoing work with the Australian Building Codes Board, we continue to advocate for reform. A copy of the media statement is there as well.

Hon MARTIN PRITCHARD: Just to quote from here, it indicates that there is a plethora of related Australian Standards.

Mr Gelavis: Yes.

Hon MARTIN PRITCHARD: So you are pushing for those to also be made free of charge?

Mr Gelavis: Yes. When you look at the number of standards that are referenced in the codes, there are 81 in volume 2 and 118 in volume 1, and then another 46 in the Plumbing Code.

The CHAIR: What level of complaints do you receive from your members about the inability to access standards, or is that not an issue?

Mr Gelavis: We do not have that sort of information specifically.

The CHAIR: I guess they come to you and they can access them at your office?

Mr Gelavis: Well, no, not in that sense. If there is an inquiry, we might provide an excerpt. We do have the codes within our office but we do not provide them free.

The CHAIR: Sure.

Mr Gelavis: We have a technical manager, and if a builder is on site and has a particular issue, he might call the technical manager and ask for advice, and an excerpt might be forwarded to him about the particular standard and what is required. So, we are providing advice, but it is certainly up to them to have their own.

Hon ROBIN CHAPPLE: Just on that—if this sounds like some sort of cross-examination, it is not—I am wondering about the legality of providing an excerpt, given that you normally have to pay for the standard. I am just being quizzical.

The CHAIR: Does your licence with SAI Global allow you to forward an excerpt from the standards to your members?

Mr Gelavis: I did not establish that agreement, but that is something that I am sure would have been addressed at the time. I could not comment on the licensing agreement and that particular arrangement.

Hon ROBIN CHAPPLE: I noted when you gave us your information sheets that you do not actually quote the standard. What you do is identify the changes, which is a way of getting around it. I thought that was very clever.

Hon MARK LEWIS: Now that we know that HIA is a member of Standards Australia, are you aware that the exclusive licence with SAI is over in 2018?

Mr Gelavis: No. To be honest, again, the way the structure in our organisation works is that —

Hon MARK LEWIS: So there is an opportunity in 2018 for HIA and other members to review the exclusive licence arrangements. That might be worth noting.

Hon ROBIN CHAPPLE: We are sort of giving you a heads-up here.

Mr Gelavis: Yes; I got that!

The CHAIR: When your members require a particular standard, is there commonly an issue with keeping themselves updated with developments in these standards? How you do and your members keep up to date with developments and changes in the standards, and what are the consequences for members if they do not keep up to date? That is question 5.

Mr Gelavis: Members who purchase an ongoing subscription to the standards receive updates and advice on changes, but more generally members need to do their own research about changes to the standards and stay informed. Members who purchase a standard as a one-off item will not automatically receive any amendments to the standard or even advice that the standard has been superseded. SAI Global does an email newsletter as well, which provides information, and many members may receive this. HIA has a subscription to the standards referenced in the NCC and hence we receive updates from time to time. HIA will use the information to provide advice to members through our normal email and information sheet channels, which are the documents that we are providing to you. On the whole, standards are not frequently updated, hence the burden to keep up to date with the 81 standards referenced in the NCC for homes when at any given time one or two documents may be changing.

The CHAIR: When we got our submission from the Tasmanian government, they said that on any given building site up to 250 standards might be enforced, not including the standards adopted under occupational health and safety law. What is your comment on that?

Mr Gelavis: I think that is what we are saying, yes. There are a significant number of standards—the 81 in volume 2, the 118 in volume 1, and the 46 referenced in the Plumbing Code. The standards are typically product-specific and generally address the different steps in the product development and manufacturing process. The standards provide guidance on how product is designed, manufactured and tested, or even installed, commissioned and maintained. Not all products will have standards. The majority of building products have a design and manufacturing standard of the product, along with the use or installation standard. Many products will have testing standards and some will have maintenance standards. Not all buildings will need to make reference to the 250 standards. The complexity for builders is to know what standards apply to what buildings or to what projects.

The CHAIR: A lot of the standards would simply say that the toilet system has to conform with Australian Standard such and such. As long as it is on the label of the pipe that he is installing, he does not need to know what is in that standard at all. As long as he has got that number and it is on there, that is good enough. Would that be the bulk of the standards that a builder has to conform to? The concrete slab one is obviously one where the builder has to actively know what is involved.

[1.20 pm]

Mr Gelavis: There would be a number of standards that they would regularly be using—no doubt about it. The slab one is probably more of an example.

The CHAIR: Your submission also referred to particular problems faced by your members where decisions on customer disputes are resolved citing unreferenced standards. Could you expand on that issue for the committee with, perhaps, some examples?

Mr Gelavis: Yes, that can be an issue, without a doubt. I guess the key thing to understand is that the Australian Standards only have legal effect if referenced directly or indirectly in legislation, whether commonwealth or state. The National Construction Code is directly referenced in the state building legislation—Perth—but the National Construction Code directly references a number of Australian Standards and therefore these do have legal effect. Other state legislation includes direct reference to the Australian Standards, such as electrical and plumbing legislation. An Australian Standard that is not referenced in the legislation has no legal effect unless the building contract makes specific reference to it. That is an important point. It is HIA's position that unreferenced standards should not be used as a reference or for tribunals such as SAT when considering issues such as building defects and workmanship. Given the significant time and effort required of a licensed builder to maintain a working knowledge of the standards that have a legal effect, it is also considered impractical and unreasonable to assume that builders will have a similar knowledge of unreferenced standards. Unreferenced standards have not been subjected to an assessment—good regulatory practice—and therefore may not deliver a net-cost benefit to society, which is required by state regulations, including the NCC. The standards have not had a regulatory impact statement to prove they are cost-effective ways to build. HIA, although is aware of examples in other states where a member has been found to have not met a standard of workmanship due to failure to meet requirements of an unreferenced standard, this is not, in our view, an acceptable approach by a tribunal. We do not believe the builder has a legal obligation to do otherwise. There is certainly a lot to consider as a residential builder and the compliance and regulatory process and regime; to consider unreferenced standards becomes also problematic. There is a recent judgement that I think we have provided a copy on to the committee prior to the hearing.

The CHAIR: You referred to an unreferenced standard. What does that actually mean? Is that not an AS-particular number?

Mr Gelavis: Correct. That is right.

The CHAIR: It is some other standard from somewhere else.

Mr Gelavis: It has not be called up and it is not referenced.

The CHAIR: Right. Is there any particular problem that you face regarding occupational health and safety regs?

Mr Gelavis: No.

The CHAIR: That is not an issue in the building industry?

Mr Gelavis: No. There is nothing I can provide there.

The CHAIR: Do you have any suggestions for the committee to consider regarding greater access to standards?

Mr Gelavis: I guess the key point to make is that HIA continues to support the need for referenced standards to be made freely available online. I think that is the critical aspect of our comments there.

Hon ROBIN CHAPPLE: Just on that, are you aware of any other industry bodies, such as yourselves, that might have a similar view?

Mr Gelavis: No, I am not aware of any others that would have our view.

Hon ROBIN CHAPPLE: Shame.

Mr Gelavis: We hope!

Hon ROBIN CHAPPLE: I am sure there are.

Mr Gelavis: It is very difficult to speak on behalf of other associations.

Hon ROBIN CHAPPLE: It is interesting; in doing this inquiry, we are finding that there is a great deal of concern but it has never been a big one for anybody, yet it is collectively big. Even for government agencies. Thank you very much indeed for a great presentation. There was a lot of information there—tremendous.

Mr Gelavis: Good. On behalf of the HIA, I would like to thank you for the opportunity to address the committee. We look forward to providing further information as you require it. We will certainly come back on any outstanding matters and we are happy to provide and appear as required.

The CHAIR: Is there anything further you want to share with us before we close?

Mr Gelavis: No, I think we have covered everything, but my office is available for any further comment or support. We are happy to do that if required.

The CHAIR: Thank you very much for coming. Hansard will forward to you the transcript of the proceedings today. The covering letter will tell you how many days you have got to get it back and make any corrections you need to and. As was mentioned before, until the final transcript is made public, you are not to make the uncorrected transcript public. Thank you very much.

Hearing concluded at 1.25 pm
