

Standards Australia Distribution and Licensing Policy Framework

Submission from the Australian Library and Information Association, National and State Libraries Australia and the Australian Libraries Copyright Committee

Together the Australian Library and Information Association (ALIA), National and State Libraries Australia (NSLA) and the Australian Libraries Copyright Committee (ALCC) commend Standards Australia (SA) for its commitment to developing a more accessible Standards system for Australia. We welcome an opportunity to contribute to the consultation process to achieve this outcome.

Libraries represent opportunities and solutions for Standards Australia

Australian libraries have been represented at consultative forums around Australia. We have contributed to discussions about ways to improve access to Standards for the benefit of industry, enterprise, government and society as a whole, while maintaining the necessary economic return for a sustainable Standards future.

Libraries offer a **unique opportunity** to provide access to Standards in ways that complement and balance the commercial imperative with the public good.

Libraries offer an **unprecedented solution** to enable access to historic Standards, through existing services such as the ground-breaking National edeposit service (NED),¹ which will be launched on Friday 16 August, by Mr Paul Fletcher MP, Minister for Communications, Cyber Safety and the Arts.

¹ <https://ned.gov.au>

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Executive Summary

- ALIA, NSLA and the ALCC are supportive of a non-exclusive model for the distribution of Standards information in Australia. This has the potential to result in a more accessible Standards system, which we welcome.
- We are also supportive of SA's proposed principles – greater reach, awareness and use of Standards, ensuring long-term sustainability – but believe 'access' should also be included, setting a minimum requirement for public access to the Standards.
- We support the calls in other submissions to make the Standards publicly available under a Creative Commons (CC) licence, to maximise public access.
- In addition, SA should not limit its licensing to a single commercial licensor model. It should also provide one or more separate licences for non-commercial users, designed to meet the needs of these users and meet SA's important public access mandate.
- To ensure SA's financial sustainability, these licences could be provided at a reasonable rate designed to recover the cost of producing the Standards. Additional revenue could also be obtained through commercial licensing for products aimed at trade professionals, for whom the base level access provided through a library is inappropriate.
- Finally, we propose that SA partners with libraries and archives to make archived Standards freely and easily available to professionals and the general public, utilising purpose-built systems such as the (NED) service.

Libraries in Australia

We estimate there are some 13,600 libraries in Australia, serving approximately 12.9 million users. When considering libraries, most people will think of public libraries - but there are also school, TAFE, university, health, law, government, national, state and territory libraries. Libraries are a powerful force for democracy.

Libraries are funded at a local, state, territory and national level. The vast majority are government run, but there are also corporate libraries. Library networks are complex but can be activated on a national scale through agreements with NSLA and ALIA entities such as the Australian Public Library Alliance.

They provide access to information to all Australians, helping to create a more equitable and knowledge-rich society.

Our response to the Standards Australia discussion paper is informed by our commitment to providing access to information to those who need it. This is not necessarily free, unlimited access. Libraries pay for materials and uphold rights management to ensure creators receive appropriate recompense. At the same time, we strongly oppose the imposition of restrictions on the rights of our clients to have reasonable access to public information.

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“As SA itself notes, it has an important public benefit role in Australian society, and there is a strong public interest in providing free public access to all Australian Standards.”

Substantive Comments

Standards Australia should adopt minimum standards of public access

Australia's libraries and archives support the objectives proposed for SA's new distribution and licensing framework, and particularly the drive to increase its reach and relevance to those affected. We strongly agree that moving away from the prior exclusive licensing model is a first step towards meeting these objectives.

However, we submit that SA should also add a public access mandate to the proposed objectives, emphasising that reasonable public access must be provided to the Standards, or at a minimum to the Regulated and Consumer Interest Standards.

As SA itself notes, it has an important public benefit role in Australian society, and there is a strong public interest in providing free public access to all Australian Standards. This public interest arises from fundamental characteristics of the Standards. They play an important public health and safety role in our society, and timely access to the Standards underpins the operation and success of millions of Australian businesses, and the economy as a whole. If businesses are unable to afford to access the Standards, their whole reason for existing – i.e. to set common rules across industry – is undermined. Even more importantly, the quasi-legislative² nature of Standards – with many of the Standards made compulsory through regulation – means that members of the public

must have access to them under the basic principle of rule of law i.e. that all laws must be clear, predictable and accessible.³

As the Western Australian Joint Standing Committee on Delegated Legislation noted in its 2016 report on access to the Australian Standards, the commercial 'end-user pays' model used in the past erroneously identifies the public as voluntary 'users' in a balanced market. Yet “in terms of adopted Standards, [the public] are only users to the extent that they are forced to be users to access laws that should otherwise be freely available on rule of law principles.”⁴ Paragraphs 6.30–6.34 of Chapter 6 in the WA Delegated Legislation Committee report details numerous potential scenarios where non-compliance with a Standard referenced by regulations may result in penalties or sanctions.⁵ We also note that at least one court case has already been impacted by lack of access to the Standards, with a Victorian court dismissing a 2016 case regarding compliance with laws regarding motorcycle helmets specifically because the relevant Standards were not publicly available.⁶

This public interest is only heightened by the privileged role SA is granted in Australian society. The community perception is that SA is a government entity. While this is not accurate,⁷ it arises from the important role SA plays in Australian society, and the monopoly it is granted by the government over vital public interest information. This privileged position comes with a very strong moral expectation that the public will have access to Standards information, at the very least through the national network of libraries.

² The WA Delegated Legislation Committee report provides a comprehensive overview of Standards as a type of quasi-legislation. See paragraphs 2.34–2.49 in Chapter 2 in Report 84 of the Joint Standing Committee on Delegated Legislation – Access to Australian Standards Adopted in Delegated Legislation, pp. 14–19.

³ See, for example: <https://www.ag.gov.au/About/Pages/Ruleoflaw.aspx>

⁴ Report 84 of the Joint Standing Committee on Delegated Legislation – Access to Australian Standards Adopted in Delegated Legislation, p.141. The WA Delegated Legislation Committee report also stated that, “The general public, businesses, peak trade bodies, unions, government departments and local councils should, in an ideal world, be able to gain access to any material which forms a part of the law without charge, so that they may fully understand the laws applicable to them and the obligations they are under.”

⁵ See paragraph 2.17 in Chapter 2 and paragraphs 6.30–6.34 in Chapter 6 in Report 84 of the Joint Standing Committee on Delegated Legislation – Access to Australian Standards Adopted in Delegated Legislation, pp.64–65.

⁶ Maurice Blackburn wins helmet camera appeal in County Court (Maurice Blackburn, 12 February 2016) <https://www.mauriceblackburn.com.au/about/media-centre/media-statements/2016/maurice-blackburn-wins-helmet-camera-appeal-in-county-court/>

⁷ As noted in the WA Delegated Legislation Committee report, “Standards Australia is not a government or public entity,” “... Standards Australia is not a government or public entity”. Report 84 of the Joint Standing Committee on Delegated Legislation – Access to Australian Standards Adopted in Delegated Legislation, p. 25.

This public access mandate is recognised in SA's own Constitution, which states that SA will "promote the general adoption of Standards (including international Standards)" and "utilise all available forms of communications and media to ensure that the Standards and related services needs of all stakeholder groups are met."⁸ These stakeholder groups include the public, particularly where Regulated and Consumer Interest Standards are concerned.

It is further recognised in SA's MOU with the Department of Industry, Innovation and Science, in which SA commits to provide:

- 'Competition in the distribution of Standards by supporting multiple channels for distribution;
- Innovative, digital, mobile and other channels for access to Standards to give users more choice and to better meet community needs;
- Flexibility in pricing structures to facilitate economical access for users; and
- Options for partnering with Standards Australia **to facilitate forms of public access to Australian Standards, particularly where referenced in regulation, or where they relate to public interest outcomes, such as health and fire safety.**⁹ [emphasis added]

As well as meeting SA's public access mandate, the broad distribution of SA products would also provide benefits to SA in terms of increasing the reach and understanding of the Standards among the general Australian population (one of the stated aims of this review), and supporting the training of future customers for its professional products.

Restrictive commercial licensing is inappropriate for the Standards

Arguably, the public interest in access to the Standards overrides all other considerations, and should be SA's primary focus in redesigning its distribution model. In particular, it should take precedence over concerns regarding obtaining commercial level of returns from the Standards. While we recognise that SA must meet its baseline costs and remain sustainable, any use of restrictive commercial licensing to achieve a profit is clearly inappropriate for an entity of its nature, and could be argued to be an abuse of

its monopoly position. Yet such a focus has clearly been fundamental to the licensing practices implemented by SAI Global, and continues to be a risk should the new model focus exclusively on commercial licensing.

The closed and expensive licensing model of the past has led to significant public criticism of SA. In its 2016 report on access to the Australian Standards, the Western Australian Joint Standing Committee on Delegated Legislation found that:

"Generally, the evidence and correspondence received during this course of the Inquiry revealed a deal of frustration and unease at the general lack of freely-available access to Standards that had been called-up. This frustration is not confined to Western Australia."¹⁰

SA's contributors and clients have also been extremely vocal in their criticism, with SA member Choice saying that the SAI Global licensing model "fails a common sense test" and was "clearly a case of corporate greed."¹¹ Meanwhile, Safety Institute of Australia called the prices for Australian and International Business Standards "excessive, unsustainable, and unfair to Australian business."¹² Maintaining public access at a reasonable rate is essential to cultivate public trust in SA.

High licensing fees aiming at commercial profit are particularly inappropriate as the majority of the Standards are developed by volunteers who provide their services for free precisely because they believe in the important role of the Standards in society. Their altruism is undermined by the commercial licensing arrangement. As the WA Delegated Legislation Committee report noted: "it is possible that those previously seemingly abundant volunteers merely felt aggrieved that, after 2003, the fruits of their knowledge and endeavour were being enjoyed by the shareholders of SAI Global."

SA also receives substantial support from the Australian government at all levels, both in the form of direct funding and employee time, for this reason. It is inappropriate for materials which are developed using volunteer labour and government funding to be then licensed back to these same volunteers and the general public at high rates aimed at commercial profit.

⁸ <https://www.standards.org.au/getmedia/cfb67076-d76d-42e7-978c-5f9290165e18/Standards-Aust-Constitution-dated-13-November-2015.pdf.aspx>

⁹ <https://www.industry.gov.au/sites/default/files/2018-12/Standards-australia-memorandum-of-understanding-13-november-2018.pdf>

¹⁰ Report 84 of the Joint Standing Committee on Delegated Legislation – Access to Australian Standards Adopted in Delegated Legislation (June 2016) para 6.9 [http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/416D0BF9688DB17048257FDB0009BEF9/\\$file/dg.asa.160616.rpf.084.xx.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/416D0BF9688DB17048257FDB0009BEF9/$file/dg.asa.160616.rpf.084.xx.pdf)

¹¹ Lucy Cormack, Free access to Australian standards no longer available in public libraries (Sydney Morning Herald, 7 June 2016) <https://www.smh.com.au/business/consumer-affairs/free-access-to-australian-standards-no-longer-available-in-public-libraries-20160607-gpd8ng.html>

¹² Media Release: Call for Australian Standards to be free to Australian Businesses (Australian Institute of Health & Safety, 29 November 2018) <https://www.aihs.org.au/news-and-publications/news/media-release-call-australian-standards-be-free-australian-businesses>

Library access to Standards is essential

The best way to meet SA's important public access mandate is to ensure that access to all Standards is provided through existing public services in libraries, archives and educational institutions.

If one of the primary goals of this review is indeed to increase the reach and impact of the Standards, these institutions are the obvious partners. They are society's most important community information hubs, and the logical place for the public to seek information on the Standards. We note that at SA's public meetings a large number of non-library entities – including State governments, tradespersons and Standards committee members – provided strong support for public access in particular through libraries. In fact, we note that SA itself encourages people to access the Standards through their libraries in the FAQ section of their website.¹³

Many users already seek access to the Standards through national, state and territory and public libraries nationwide. Importantly, as the examples below show, those who seek access to the Standards through libraries are not the professionals who are the target of the commercial licensing model on which SA's consultation has so far focused. Such professionals and the associations to which they belong need a level of access that libraries cannot provide, including quick and repeated access to multiple Standards and functionality like searchability. They

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are the perfect candidates to develop and make use of the enhanced products on which SA's proposed commercial licensing model focuses.

In contrast, library users on the whole tend to fall into one of the following categories:

- private individuals who need one off access to, for example, verify the compliance of home renovations;
- volunteers working for charities and community groups;
- students seeking to complete training and qualifications.

None of these categories are eligible for access via the professional organisations who provide the major market for SA's commercial products. Nor can they afford excessive licence fees. Yet their need – and right – to access the Standards is real.

Examples of library requests for Standards access ¹⁴
A retiree seeking a specific Standard relating to traffic lights to support a submission to council. The relevant government website had an incomplete paragraph and the patron wanted to consult the rest of it.
A student who is studying a Certificate in Building and Construction, but is not currently employed in the field or with a company.
Representatives of a small not-for-profit cooperative who are keen to ensure that they are in compliance with relevant Standards for community safety purposes.
A volunteer for a nonprofit that provides building access to people with disabilities and the homeless, who is trying to draft an emergency evacuation plan. He has past knowledge of old Standards, but wanted to start by consulting the most current version.
A retired electrician who now volunteers for a charity organisation doing tagging & testing, who wants to see if anything has changed in the latest update.
A private home owner seeking information to ensure plans for modifications to existing structures around an indoor pool comply with the current Standards, for the purpose of approvals.
An international visitor wanting to see how the latest Australian Standards compare with the UK's in his field of expertise.
A private homeowner who suspects a fire retardant wall in her house is not built to the specifications of the relevant Standard.

¹³ Under “Will I have to pay to view the Standards” <https://www.Standards.org.au/faqs>

¹⁴ This table sets out anonymised versions of real requests for Standards access at libraries provided to us by our members.

A single, commercial-focused licence would result in an equal but inequitable model of distribution, as it does not recognise the different needs of different users.¹⁵ SA should offer direct licences that cater specifically to their nonprofit distributors, who will be the best partners in meeting the public access mandate for the Standards.

Restricting direct licensing from SA to a single licensing model aimed at commercial users will funnel all Standards access into a for-profit model, as nonprofit groups such as libraries and educational institutions would be forced to obtain downstream licences from commercial entities. Yet the experience of nonprofit entities in dealing with commercial distributors of the Standards has so far been extremely poor. As noted above, commercial distributors focused exclusively on profit have little motivation to deal with non-commercial entities, to consider the SA public access mandate, or to provide quality services that meet the needs of diverse clientele.

This is amply demonstrated by the problems libraries and educational institutions have had in dealing with the commercial distributor SAI Global. To quote one librarian: "I found the overall cost as well as the yearly increases excessive, and the pricing and subscription model (i.e. no discounts for multiple users) unsatisfactory. I was also disappointed with customer and user experience aspects, notably the platform which was unchanged in over a decade."

These problems are well documented, and can be found discussed in detail in the Western Australian Report and submissions to it.¹⁶ However, in summary, they include:

- little or no transparency in fees, with quotes that are frequently inconsistent between different institutions and include massive fee increases without explanation or warning. Despite the move to a non-exclusive licence, we have been informed that SAI Global recently provided renewal quotes that represented a 100 percent increase in one year without any increase in services or explanation as to the requirement to increase cost. The new licensor Techstreet is also reportedly providing quotes at a similar inflated level, or even higher;
- technical services that are restrictive and unreliable. Users at educational institutions report frequent failure of services without warning. Even when those services are available, they provide inadequate functionality to meet the ordinary needs of the clientele eg downloaded Standards only being available for 24 hours;¹⁷ and
- licences that prohibit ordinary actions that are permitted under the *Copyright Act 1968*, such as students printing out a copy of a standard for reference in their study.¹⁸ This particularly impacts on educational users. Current restrictive per-head license arrangements do not reflect market norms (eg providing bulk licences or discounts for multiple users) and make it nearly impossible for teachers to undertake ordinary and obvious practices, such as directing all students to view Standard(s) during a class.

"A single, commercial-focused licence would result in an equal but inequitable model of distribution, as it does not recognise the different needs of different users. SA should offer direct licences that cater specifically to their nonprofit distributors, who will be the best partners in meeting the public access mandate for the Standards."

¹⁵ See explanations of the meaning of equality v equity at <https://edtrust.org/the-equity-line/equity-and-equality-are-not-equal/> and <https://www.writerscentre.com.au/blog/qa-all-things-being/>

¹⁶ See, for example, the State Library of Western Australia submission at [http://www.parliament.wa.gov.au/Parliament/commit.nsf/lulnquiryPublicSubmissions/99DFDBF5F3D2283E48257DF10005B1EE/\\$file/dg.asa.150130.sub.013.State%20Library%20of%20Western%20Australia.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/lulnquiryPublicSubmissions/99DFDBF5F3D2283E48257DF10005B1EE/$file/dg.asa.150130.sub.013.State%20Library%20of%20Western%20Australia.pdf); the Public Libraries of Western Australia submission at [http://www.parliament.wa.gov.au/Parliament/commit.nsf/lulnquiryPublicSubmissions/FBB25E34BFF8B6A648257DF1000A280F/\\$file/dg.asa.150206.sub.021.Public%20Libraries%20Western%20Australia%20Inc.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/lulnquiryPublicSubmissions/FBB25E34BFF8B6A648257DF1000A280F/$file/dg.asa.150206.sub.021.Public%20Libraries%20Western%20Australia%20Inc.pdf)

¹⁷ Problems with access are discussed further in the Copyright Advisory Group to the Council of Australian Governments Education Council (CAG) submission to Standards Australia, through the National Copyright Unit (NCU).

¹⁸ In relation to SAI Global's licensing the Western Australian Joint Standing Committee on Delegated Legislation said, "There are other ways in which SAI Global could assist the public good at little cost to itself. A relaxation of library licence terms, for example, to allow for something that is already permitted by the *Copyright Act 1968* (Cth), i.e. the sharing with other regional libraries to assist people living in or companies based in rural areas." - Report 84 of the Joint Standing Committee on Delegated Legislation – Access to Australian Standards Adopted in Delegated Legislation, (June 2016) para 12.11 [http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/416D0BF968BDB17048257FD80009BEF9/\\$file/dg.asa.160616.rpf.084.xx.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/416D0BF968BDB17048257FD80009BEF9/$file/dg.asa.160616.rpf.084.xx.pdf)

As a result of these problems, these commercial services were highly criticised by the WA report, which noted that:

“The very fact that what amounts to the law of the State can only be accessed on one site [the State Library of Western Australia], between the hours of 9am and 4pm, Monday to Friday, in an area of some 2.6 million square kilometres, is a problem. Free access to the law is, and should be in the Committee’s view, a right and a necessity.”¹⁹

As SA knows, since July 2018 all access to electronic Standards at the State Library of Western Australia has been denied by SAI Global and Standards Australia. There is currently no public access to Australian Standards for State Library users.

Relying on the same or similar distributors to provide access to all licensees seems bound to repeat the mistakes of the past. It is therefore essential that non-commercial entities such as libraries and educational institutions be provided with licensing options tailored to their needs and the casual users they serve, and that these licences are provided directly by SA themselves, rather than through a commercial proxy, to ensure that a profit motive does not dictate the terms and fees for the licence.

“To ensure the maximum public access to the Standards, they should be released under an open access licence, preferably a Creative Commons Attribution (BY) licence.”

Proposed distribution model

Open licensing should be the default

As a matter of principle, we support the calls in several other submissions to the review for the full Standards to be made publicly available under an open access licence. In particular, we support the recommendations of Creative Commons Australia, COAG TAFE, and AustLII.

To ensure the maximum public access to the Standards, they should be released under an open access licence, preferably a Creative Commons Attribution (BY) licence.

This would recognise the important quasi-legislative role they play, and the importance of ensuring full public access to them. Using open licensing

would align with the best practice Standards set for public sector information produced by the government, which are prescribed by the *Department of Communications, Cyber Safety and the Arts Guidelines on licensing public sector information for Australian Government entities*.²⁰

These state that the default or starting position is that public sector information should be released free of charge under an open licence, preferably a Creative Commons ‘BY’ licence.

This position is derived from the recommendations of the Gov 2.0 Taskforce,²¹ which noted that open access licensing improves both the findability and usability of materials, and significantly increases the public impact and hence value of the material: “When information is released it creates new and powerful dynamics which can drive innovative use and reuse. Allowing the commercial, research and community sectors to add value to it can provide important social and community benefits.”²²

¹⁹ Report 84 of the Joint Standing Committee on Delegated Legislation – Access to Australian Standards Adopted in Delegated Legislation, (June 2016) para 6.29 [http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/416D0BF9688DB17048257FDB0009BEF9/\\$file/dg.asa.160616.rpf.084.xx.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/416D0BF9688DB17048257FDB0009BEF9/$file/dg.asa.160616.rpf.084.xx.pdf)

²⁰ See <https://www.communications.gov.au/documents/guidelines-licensing-public-sector-information-australian-government-entities>

²¹ Engage: Getting on with Government 2.0, Report of the Government 2.0 Taskforce (22 December 2009) <https://apo.org.au/sites/default/files/resource-files/2009/12/apo-nid19954-1196666.pdf>

²² Engage: Getting on with Government 2.0, Report of the Government 2.0 Taskforce (22 December 2009) <https://apo.org.au/sites/default/files/resource-files/2009/12/apo-nid19954-1196666.pdf> p.47

“Pricing of licenses needs to reflect capacity to pay – TAFEs, for example, are asked to pay extremely high ‘academic’ licence fees despite their low funding levels.”

Proposed Public Access Licence

To facilitate access through libraries, schools and other noncommercial providers we propose that SA offer one or more noncommercial distributor licence/s separate from the standardised commercial licence on which its consultation paper focuses.

The nonprofit licences should be provided directly by SA on a wholesale basis. SA would not have to become a distributor itself, but merely provide libraries and other nonprofits the same materials it provides to its commercial licensors on reasonable licence terms. This would prevent noncommercial entities having to obtain licences through commercial licensors who have a history of rent seeking and restrictive licensing.

The licence/s would be available to nonprofits at a reasonable price designed to cover the baseline costs of creation of the Standards. Pricing of licenses needs to reflect capacity to pay – TAFEs, for example, are asked to pay extremely high ‘academic’ licence fees despite their low funding levels. TAFE institutions cannot avoid their obligation to provide access to standards for trainees and learners, as they are necessary to deliver compliant training.

Best estimates based on publicly available data suggest that this fee could be a number of magnitudes lower than any being offered commercially, and still provide SA with sufficient return to meet the cost of creating the Standards. For example, we note that in 2017 Standards Australia earned \$6.8 million in royalties, while SAI Global is estimated to have earned \$60 million from the same materials.²³ This would appear to indicate that the cost of creation does not make up a significant portion of the licence fees.

The pricing models and terms of the licence/s could be tailored to their target groups. For example, a licence for libraries would at a minimum permit:

- onsite access to the Standards
- offsite access for registered users. This is essential to meet the geographic challenges particular to Australia, with our diverse population scattered over extremely vast distances. It is entirely inappropriate to suggest that a homeowner in Perth should be able to access the Standards to determine whether their renovation contractor is compliant, but that a homeowner in Broome should not.
- use of the Standards as permitted under the *Copyright Act*. It is essential that the public access licence allow libraries and their clients at a minimum to make use of the Standards as permitted by law. This includes not only allowing the general public to print and copy excerpts of the Standards as a fair dealing for research and study, but also allowing libraries to manage the Standards as a part of their collection on an ongoing basis. Copyright in the Standards lasts over a hundred years from their creation, so focusing exclusively on how they may be used over their commercial lifespan is shortsighted. Standards will remain part of the national collection long after they have been archived and the commercial interest in them has ceased, and will remain of interest to the public. Libraries therefore must have the ability to preserve them and provide access to, for example, the historians of next century.

²³ David Clarke, Australian Standards: The Unfair Exchange (3 December 2018) <https://myosh.com/blog/2018/12/03/australian-standards-the-unfair-exchange/>

²⁴ See more detailed provided in the submission of the Council of Australian University Libraries.

Other access terms might be appropriate for educational users and other nonprofits interested in distributing the Standards, such as Austlii.²⁴ For example, a licence designed for TAFEs would:

- be based around reasonably priced multiple user licenses providing on and off site access through commonly available authentication methods which protect the privacy and data of students;
- allow institutions/classes to selectively access Standards relevant to their training profile;
- allow students to easily print Standards for their reference; and
- allow institutions to integrate Standards materials into Learning Management Systems.

These sectors are well represented by their member organisations, such as our own, who would be happy to discuss appropriate cross-sector licensing terms.

This model would in particular meet SA's obligations to the Department of Industry to:

- support multiple channels for distribution;
- give users more choice and better meet community needs;
- provide flexible pricing structures to facilitate economical access for users; and
- provide options for those wishing to partner with SA to facilitate public access to the Standards.

Financial stability

SA has placed a strong emphasis in its consultation on the importance of its financial stability. We, of course, agree that it is important that SA be able to continue to operate and provide independent oversight of the Standards.

However, as a nonprofit established to provide a valuable public service, SA must ensure that the need for financial sustainability does not become confused with the need for profit. This obligation is only heightened by SA's monopoly over important public information, and the fact that it is strongly supported by volunteer labour.

Based on SA's Annual Review, it receives the vast majority of its funding from investments.²⁵ If this existing funding, combined with the money it receives from government and reasonable licence fees for the proposed non-commercial licence, is not sufficient to sustain SA then increased government funding and/or membership fees should be considered to ensure free public access to the Standards is possible. It is essential that SA's public access mandate take precedence over profit concerns.

Additional funds could continue to be raised through commercial licensing of enhanced products, search and bundling for particular industries, non-regulated Standards, etc. To facilitate the development of these products, the versions available under the non-commercial licence could be "white" versions i.e. simple reproductions of the Standards that do not have the enhanced functionality required by the professional market. Where commercial products add value, professional users will continue to pay for them.

However, SA has indicated in its public consultations that only a few of the Standards are commercially valuable. This only increases the need for a move away from a commercial licensing focus to a more diverse licensing model, which prioritises broad public access to the Standards. It is clearly inappropriate for the full complement of Standards to essentially be 'locked up' in the interest of maintaining the market for these few commercial products. We also suggest that should the Standards be made more accessible to a broader range of users, with sufficient transparency for users to feel they are being charged at an appropriate rate and receiving value for their fees, SA is likely to see more sales across its complete catalogue.

The proposed approach would be akin to the freemium model that has been one of the most successful of the modern era ie whereby a basic product is provided for free or at low cost, while commercial rates are charged for a premium product. This model has arisen in response to the massive reduction in distribution costs that the internet has enabled, and successfully supports many, if not most, of the online services we all use daily, from YouTube to Slack to Spotify.

"The proposed approach would be akin to the freemium model that has been one of the most successful of the modern era ie whereby a basic product is provided for free or at low cost, while commercial rates are charged for a premium product."

²⁵ For example, in 2018 SA received \$5.9 million from royalties, \$2.6 million from the government, and \$22.6 million from its investments. <https://www.Standards.org.au/getmedia/faaafe5d-3107-4e2e-8ad7-c576aa31c114/Annual-Review-2018.pdf.aspx> p.48

Importantly, similar models are already being successfully used by many nonprofit agencies providing public services in Australia and abroad. The Australian Bureau of Statistics, for example, provides its baseline statistical products for free via its website, licensed under a Creative Commons Attribution 4.0 licence. They also sell premium products such as publications, and prepare customised data reports to individual clients at a cost.²⁶ As the ABS notes, this model “makes a wealth of data more readily available to governments, the community, researchers and businesses, facilitating innovative research and development projects based on quality statistics, and promoting the wider use of statistics in the community, which is one of our core objectives.”²⁷ Similarly, the United States National Institute of Standards and Technology provides Standards and conformity assessment information free to the public through their Standards.gov website²⁸ whilst also selling commercial products such as fee-based Standards Reference Data.²⁹

While SA is not a government agency and so does not receive the level of government funding of these bodies, in the above proposal this is compensated for by SA charging cost recovery fees for its baseline product to non-commercial providers such as libraries and schools. Thus SA would continue to ensure its sustainability whilst preserving its ability to profit from its premium products and removing the access restrictions which have been the cause of so much public disadvantage and criticism.

Library and archive access for older Standards

In addition, we would like to propose that SA consider its distribution strategy for its archived Standards ie older Standards which are no longer in force.

We understand that due to a lack of commercial levels of demand, access to older Standards can be costly, time consuming and unreliable. Commercial distributors do not have an incentive to provide access to archived Standards, and the options available to access them via existing providers are poor. Reports from library clients are that it is difficult to find information on how to access them, and when ordered they have a long delivery lag. This discourages access by all but the most persistent users, further reducing demand.

However, these Standards are a priceless resource for Australia and still have an important role in many fields, from public safety to business to historical research. For example:

- where older buildings and products need to be maintained, assessed or improved the original Standards must be accessed;
- legislation, which is slow and difficult to update, will often refer to Standards long after they superseded;

- where a researcher seeks to establish how a Standard has changed over time (eg to inform a review or provide recommendations) they need access to multiple past versions, not just the latest; and
- in legal cases where access to the Standard as it was written in a specific time frame is required.

We propose that SA should partner with Australia's libraries to explore opportunities to provide sustained and ongoing access to this valuable public resource. With additional development to existing platforms such as the NED service, the archived Standards could potentially be turned into a new national resource, an asset that will reap benefits for our commercial, nonprofit and government communities.³⁰ NED has been developed, tested and successfully trialled with commercial publishers over the last three years. It provides a platform which would be ideally suited to making historic Standards easily accessible, through a managed repository. This would enable SA to meet its legal deposit obligations, reduce its own costs in managing past Standards and remove the administrative burden of historical access from its commercial distributors, while at the same time meeting SA's objective of improving public access to and understanding of the Standards in the wider population.

²⁶ <https://www.abs.gov.au/websitedbs/D3310114.nsf/Home/%A9+Copyright?opendocument>. We note that many other government agencies use a similar model, including Geoscience Australia (<https://www.ga.gov.au/copyright>) and those agencies who participate in Data.gov.au (<https://data.gov.au/page/about>)

²⁷ <https://www.abs.gov.au/websitedbs/D3310114.nsf/Home/Creative+Commons+licensing>

²⁸ <https://www.nist.gov/Standardsgov/about-Standardsgov>

²⁹ <https://www.nist.gov/srd/srd-catalog>

³⁰ NED is a collaboration of Australia's nine national, state and territory libraries, which allows publishers to easily deposit, manage, preservation, and deliver electronic material across Australia. Publishers can meet their legal deposit obligations under both Federal and State laws with a single deposit, whilst at the same time ensuring digital preservation and long-term access to their publications. All materials deposited to NED are made available onsite at all the member libraries, and are made available to offsite clients under the limits of the *Copyright Act*. Publishers may also choose to make their material available to the public via NED's online service or under Creative Commons licences. As a deposit service, NED is not currently configured to manage version control, i.e. to clearly indicate resources superseding previous versions, or to indicate the current version. NSLA would welcome exploring opportunities to extend the service to meet this need See <http://ned.gov.au>

“We propose that SA should partner with Australia’s libraries to provide sustained and ongoing access to this valuable public resource. Utilising existing platforms such as the NED service, the archived Standards could be turned into a new national resource, an asset that will reap benefits for our commercial, nonprofit and government communities.”

Response to Selected SA Questions

A. Do you agree with Standards Australia’s broad objectives?

Yes, ALIA, NSLA and the ALCC support SA’s proposed principles: greater reach, greater awareness and use of Standards, ensuring the long-term sustainability of SA.

B. Are there other broad objectives that should be considered by SA’s Board?

We believe, given SA’s objects, ensuring public access to the Standards should also be included in the objectives of SA’s new nonexclusive licensing model.

As we outline in more detail above, this will better reflect SA’s constitutional objects, align with its commitment in its MOU with the Department of Industry, Innovation and Science, and ensure its obligations under the principle of rule of law are respected.

C. Do you support a non-exclusive model for the distribution of Standards content in Australia?

Yes, we are supportive of a non-exclusive model for the distribution of Standards information in Australia. However, we strongly believe SA should not limit its licensing to commercial licensing only. It should also provide a separate licence for noncommercial users, designed to meet the needs of these users and meet SA’s important public access mandate.

D. What criteria do you think should be applied to the selection of distribution partners?

We do not have any specific feedback on selection criteria for determining suitable distribution partners, except to encourage the inclusion of partners that can facilitate public access to Standards information. SA should also ensure that any future preferred distributors are accountable to both SA and its stakeholder community eg through formal feedback mechanisms on cost, performance and service levels, that allows users to evaluate return on investment.

I. How do we ensure we strike the right balance between facilitating innovation by third parties and maintaining the financial sustainability of Standards Australia?

This question has been addressed at length in the substantive comments above. In summary, SA aim to ensure its financial sustainability through a combination of government funding, reasonable licensing fees and commercial licensing for premium uses. Financial concerns, and in particular the potential for profit, should not take precedence over the primary aim of ensuring appropriate public access to the Standards.

J. How can SA ensure that distribution activities do not negatively impact its public benefit role in Standards development?

By not limit its licensing to commercial licensing only and providing a separate licence for noncommercial users SA will carve out a licensing mechanism through which it can provide public access and deliver on its public benefit, whilst still allowing room for premium products in the commercial market.

L. How can Regulated Standards be made more accessible to the end user while maintaining the financial sustainability of the Standards ecosystem?

This question has been addressed in the substantive comments above. We note that the argument to prioritise access above profit is particularly strong in relation to the Regulated Standards.

M. How can access beyond existing channels be made easier for user groups like TAFE and university students?

We endorse the submissions of the Council of Australian University Librarians and COAG TAFE with respect to how to best address the needs of these specific user groups.

N. How can useful information be better provided to the public regarding Consumer Interest Standards?

While we are supportive of the development of plain English information to supplement Standards we do not support public access to this plain English information as a substitute for providing public access to the Standards. Summary documents may indeed be helpful in some circumstances (e.g. for members of the public wishing to understand basic obligations better), and certainly should be an educational tool explored by SA. However, this does not satisfy the important rule of law requirement that all quasi-legislative obligations must be publicly available. Australian consumers and businesses, including SMEs and sole traders, are legally bound to adhere to the Standards themselves, and cannot afford the legal or public safety risk of relying on summary documents alone. As the samples provided above demonstrate, those seeking to access Standards through libraries are generally seeking specific details that are likely to only appear in the Standards themselves, rather than a general overview or summary.

O. Do you have a view on what types of partners SA could work with in providing better information to the public regarding Consumer Interest Standards?

As mentioned libraries are an appropriate partner to facilitate public access to Standards information. We also encourage SA to continue to work closely with consumer expert groups such as Choice, who we understand SA is already in discussions with.

About us



Australian Library and
Information Association

About ALIA³¹

The Australian Library and Information Association (ALIA) is the professional organisation and peak body for the Australian library and information services sector.

On behalf of our 5,000 personal and institutional members, we provide the national voice of the profession in the development, promotion and delivery of quality library and information services to the nation, through leadership, advocacy and mutual support. We represent school, public, academic, research, corporate, law, health, government, National, State and Territory libraries and the people who staff them.



National
and State
Libraries
Australia

About NSLA³²

National and State Libraries Australia (NSLA) is the peak body for Australia's national, state and territory libraries. Member libraries include the National Library of Australia, ACT Libraries, State Library of New South Wales, Northern Territory Library, State Library of South Australia, State Library of Queensland, Libraries Tasmania, State Library Victoria and State Library of Western Australia.



Australian Libraries'
Copyright Committee

About the ALCC³³

The Australian Library Copyright Committee (ALCC) is a representative for Australian libraries, archives and information providers on copyright matters. The ALCC advocates for copyright law reform in the public interest, and offers informed contributions to domestic and international copyright law and policy discussions. It also organises copyright education, including training and online information resources targeted at the library and archive sectors.

The ALCC and its members support a copyright framework that appropriately protects the interests of right holders while ensuring access to important cultural, educational and historic content for the public's benefit.

³¹ See more at <http://alia.org.au>

³² See more at <http://nsla.org.au>

³³ See more at <http://libcopyright.org.au>