



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

**Ministry of Business,
Innovation and Employment**

on the

**Standards and Conformance Infrastructure Review:
Proposals to enhance the delivery of Standards by New
Zealand's national standards body**

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1. Introduction

- 1.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 340,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The CTU and its affiliated unions have a longstanding interest in New Zealand standards, with unions and their members participating in reviews in their industries in a variety of areas. We are also pleased to be recognised for that interest in our representation (shared with Consumer New Zealand) on the board of the Standards Council, currently through Michael Wallmansberger. We value that representation through a person with Michael's expertise and knowledge.
- 1.4. Much (though not all) of our interest in standards arises from concerns about health and safety, and particularly health and safety in the workplace. Standards are cited in health and safety regulations and approved codes of

practice and some are relevant in their own right. The Ministry of Business, Innovation and Employment (MBIE) is of course aware of the Independent Review of Workplace Health and Safety currently under way, which will report to the Minister of Labour shortly after the deadline for this submission has closed.

- 1.5. There could be significant implications for both the content and the process of developing standards relevant to health and safety arising from the recommendations of the Workplace Health and Safety Review, and we would expect those to be integrated into the Standards Review.

2. General comments

- 2.1. While we answer some of the specific questions from the Discussion Document below, there are some general points we wish to make. Some reiterate points we made in our letter of 31 July 2012 at an earlier stage of the review.
- 2.2. We support the processes used by Standards New Zealand (SNZ) to develop standards. However we want to see more union and worker representation in the development process. The value of “industry” involvement is acknowledged in this review, and indeed is critical to success, but “industry” is made up of both the workforce and businesses. Both have an interest in the development of effective and useful standards, and both can offer insights and experience that can improve the quality of the standards. We note that the terms of reference of the review do not acknowledge this reality.
- 2.3. The need for worker participation is particularly important where workplace health and safety is an issue. It is workers whose life, health and limbs are at stake. As the Pike River disaster showed, it is all too easy to design systems focused on production without taking into account health and safety needs. Standards can become de facto guidelines taken into account by the courts because they can be regarded as being among the “all practicable steps” employers and other duty holders are required to take under the Health and Safety in Employment Act. There are internationally agreed arrangements

where health and safety is concerned, based on the principle of tripartism which recognises that in partnership with government, employers and workers are entitled to representation and participation through organisations of their own choosing to influence policies which affect the interests of those they represent. Employers and workers are represented through the most representative national organisations of employers and workers. In New Zealand these are Business New Zealand and the CTU. We suggest tripartism should apply to all standards development, though CTU involvement in areas not impacting health and safety may vary. This of course does not rule out the involvement of others, such as relevant experts. **We submit that an entitlement to worker participation, through the most representative national organisation of workers, should be a mandatory requirement in bodies and committees undertaking the development and maintenance of standards.**

- 2.4. The inclusion of all industry groups, experts or interests in the development of standards may require funding of a group or individual who would otherwise not be able to participate and without whom, balanced participation and a complete picture of the sector or its issues is not ensured. The “volunteer” aspect of joint standards committee often precludes participation of stakeholders for whom cost is a barrier. **We submit that funding should be available to enable proper representation of expertise and interests in the standards development and maintenance process.**
- 2.5. The principle of the participation of worker representation also extends to governance of the National Standards Body (NSB) and of any other bodies with responsibility for creating and maintaining standards. In our experience, the current structure of the Standards Council which includes nominees from stakeholder organisations has been very successful in bringing together experience, expertise and viewpoints that would not otherwise have been available through normal selection processes. By appropriate consultation around the nomination process it has been able to maintain a good mix of expertise and experience. We have not heard criticism of the Standards Council’s governance. We would strongly oppose any suggestion that the

board become like most other Crown Entities – all or predominantly ministerial appointments – or that the NSB has no board at all. **We strongly support continued CTU and other stakeholder representation on the NSB board.**

- 2.6. A further concern lies in the way that standards are selected for development. Because there is no public funding, it is driven by industries or government agencies which have sufficient resources (skills, time and finance) rather than necessarily by greatest need or greatest national benefit. We understand that the bulk of SNZ revenue comes from the construction sector for example. One consideration is that this can set up conflicts (in practice if not in principle) as to the ownership and control of the standards.
- 2.7. In the case of government agencies which have funded SNZ work, most face increasing funding stringencies themselves and in response they are bringing standards in-house or considering this. This also threatens rigorous standards-making processes and risks those standards becoming tools that are convenient for regulators or for transmitting government policy but do not serve wider needs as well as they should.
- 2.8. Even more importantly, standards have a considerable “public good” element which is not recognised in the current self-funding model. The requirement for self-funding can result in a lack of capacity and priority being given to standards that most would consider of high importance (e.g. health and safety) compared to some standards work that is currently being undertaken. There is concern that there are significant gaps in the coverage of standards and that many are old and have not been reviewed sufficiently recently. **We submit that high importance standards should be funded directly by government.**
- 2.9. It has been a major impediment to the effective operation of the Standards Council and to the creation of standards which would benefit New Zealand’s economy and society that the Council has not been funded for its public good work.

- 2.10. A further effect of lack of government funding has been inadequate access to the standards documents. Standards, like legislation, regulations and official statistics, should be freely and publicly available. Instead, the charges for access to these documents constitute one of SNZ's main sources of income on which it depends. Accessible and affordable copies of standards are essential for industry compliance with the standards. Currently many workers (as well as small businesses and others) do not have access to many of the standards due to their cost. This is self-defeating as every industry participant who ignores the standard (unwillingly or willingly) lessens the value of the standard to others in the industry and to the economy.
- 2.11. It can also be an impediment to good practice in other ways. For example some occupational health and safety regulations and approved codes of practice refer to standards. If those standards are unavailable or not easily accessed, the effectiveness of those regulations and codes of practice are weakened, and people find them too difficult to observe.
- 2.12. While we recognise that there may be issues of ownership of the intellectual property in the standards, we believe those can and should be resolved. **We submit that high accessibility of national standards should be a priority and that they should be made available free of charge.**
- 2.13. In relation to the issue of international consistency of standards, we recognise the benefits that consistency and harmonisation can bring. But the harmonisation of standards risks standards being developed and implemented that do not suit local conditions and or recognise different realities, practices and environments. This applies equally to international and trans-Tasman relationships.
- 2.14. We also stress that the harmonisation of standards process should not limit countries (in the international context) or sectors from developing higher quality or more effective standards. International trade is a consideration in these matters, but not the only, let alone over-riding, consideration.
- 2.15. Finally, as we have already observed, standards play a key role in workplace health and safety. Careful consideration should be given to the work and

recommendations of the Independent Taskforce on Workplace Health and Safety Review which is due to report to the Minister of Labour on 30 April.

3. Answers to questions in the Discussion Document

3.1. Below are answers to questions raised in the Discussion Document. They should be read in the context of the matters and recommendations raised above.

Section 3: Unique value and distinctive functions of the NSB

1. Do you agree that the functions in <u>section 3</u> are valuable and unique to the NSB?
<p>Yes</p> <p>The most important aspect of the NSB is that it maintains excellent processes that provides for the participation of all interested parties, and ensures that any organisation in New Zealand that has delegated responsibility for standard setting adheres to those processes.</p>
2. What additional unique functions do you think the NSB has, and why are they unique to the NSB?
<p>Ensuring that standards documents are readily and freely available.</p> <p>They can be published in various ways, through various channels, but the NSB as the owner of the standards should have a responsibility and a function to ensure open access.</p>
3. What other functions (if any) do you think the NSB should be responsible for? Why?

Section 4: Functions of the Standards board as part of the NSB

4. Do you agree with the proposal to enable other entities to develop NZS?
<p>We do not believe there is a pressing need for other entities to be given the right to develop and maintain standards in a small country like New Zealand, where there has been an inability to find sufficient sponsors to cover gaps in coverage, and where there are, as stated in the Discussion Document, risks of sector capture. This seems to be a solution to the wrong problem. The main problem is lack of funding, whether from industry or government.</p> <p>We cannot rule out however that there may be areas of highly specialised expertise or industry knowledge where it could be justified that another entity takes this responsibility. If allowed, it should be on the basis of such a specialist need rather than because a body wants to have control of the development process or to set up in competition with the NSB. It should also be under strict oversight by the NSB as to the processes it follows, which should be consistent with and no less inclusive than the processes the MSB follows in its own</p>

development of standards. The NSB should also play a role in coordinating public notifications of standards developments at all stages in their development to ensure that interested parties are able to decide whether they wish to participate from the outset.

We are very concerned that such entities, especially if they are “industry bodies”, will follow their own processes which do not provide for full worker participation (and perhaps selective participation in other ways where commercial interests produce conflicts) and if there is a plethora of such entities, it will be difficult to know what development is occurring across the whole system, making participation even more difficult.

5. Do you agree with the other functions of the Standards board in [Section 4](#)?

No

The Standards board should continue to be the governing body of an autonomous or independent Crown Entity. It should have the functions decided for the NSB, and delegate them as appropriate to its operating arm through its chief executive.

It is vitally important that the NSB be seen to be independent and free from political influence in both its decision making and its operations.

6. What additional functions do you think the Standards board should have, and why?

7. Does having a statutorily independent Standards board achieve the necessary independence required for the NZS approval function?

No

The Standards Board should govern the operating arm and together they should have statutory independence.

8. How do you think access to the NZS catalogue could be improved?

Documents should be freely available through the internet, much as the www.legislation.govt.nz web site does. This should give easy access to not only full documents but also to sections of the documents which may be referred to and linked to by other documents (such as occupational health and safety regulations or approved codes of practice).

9. What do you think is the relative capacity and willingness to form SDOs (Standards Development Organisations) in New Zealand?

Low

10. Would your organisation have a potential interest in becoming an SDO? What are the likely factors that would affect this interest?

No

Section 5, Part A: Criteria for approving SDOs

11. Do you agree with the criteria for approving SDOs in Part A of section 5?

Yes, subject to the comments above in answer to Question 4, which proposes limiting SDOs to areas of highly specialised expertise or industry knowledge where it would be impractical for the NSB to take this responsibility; and the following amendments to the proposed criteria:

Criterion 2: Representation of the relevant sector in New Zealand, it is not clear what being “representative of the sector” means. It should be made clear that this includes worker representation as well as other interests.

Criterion 4: Written procedures for NZS development. The NSB should prescribe minimum requirements for these such as notifications of progress in any process of development or review, and tripartite involvement at all stages.

Criteria 7 and 8: international compatibility of standards should be subject to local requirements.

12. What additional criteria do you think should be included in Part A of section 5, and why?

The approval of an SDO should be reviewed on a regular basis (e.g. every 5 years).

13. What considerations should the board take into account when applying the criteria in Part A of section 5?

It should set out minimum requirements for these criteria. It should consult with stakeholders (including worker representatives) when deciding on an application for approval as an SDO, or considering a SDO’s continuing status. Audits and reviews should include the views of stakeholders.

Section 5, Part B: Criteria for approving Standards

14. Do you agree with the criteria for approving Standards in Part B of section 5?

Criterion 1: Net benefit should include social impacts.

There should be a higher standard than “net benefit” where human health and safety is concerned. The overriding principle should be, as in the Australian Model Work Health and Safety Act, that “workers and other persons should, so far as is reasonably practicable, be given the highest level of protection against harm to their health, safety and welfare from

hazards and risks arising from work.” This means that only after taking into account risk, the state of knowledge and ways to eliminate or minimise risk, “only then can the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.”

(See the Model Law and the Explanatory Memorandum pages 6 and 14 at <http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/model-whs-act/pages/model-whs-act>)

Criterion 3: Balanced representation should include workers (see above).

Criterion 9: Patents. This needs clarification.

15. What additional criteria do you think should be included in Part B of section 5, and why?

Application of the precautionary principle where knowledge is insufficient to be conclusive regarding health and safety or other potential harm or risk of harm.

16. How do you think any liability or risk relating to the relevance and accuracy of NZS should be managed?

Section 5, Part C: Maintenance of the NZS catalogue

17. Do you agree with the proposed settings for maintaining the NZS catalogue in Part C of section 5?

We are unclear what the role of MBIE is in this, and why it is needed. The NSB should have an overall coordinating role in collating, publishing and advertising the availability, update or review of all New Zealand standards. If any are the responsibility of SDOs, they should also notify stakeholders and the public of reviews and updates, but the NSB should act as a single channel of information about standards so that users do not have to search for and maintain contact with multiple organisations.

<p>18. What additional settings do you think should be included in <u>Part C</u> of section 5, and why?</p>
<p>The same principles should be followed regarding stakeholder participation whether a standard is being created, being reviewed, or being amended or updated.</p> <p>There should be a strong expectation of SDOs that standards will be regularly updated. Any decision not to update should be a deliberate one that is not simply “we don’t have the money”, with consideration being given to withdrawing it rather than allowing it to linger on in a potentially misleading out of date “archived” state.</p>
<p>19. Where should accountability sit for ensuring NZS are relevant and up-to-date?</p>
<p>With the NSB, delegated to an SDO if it exists.</p>

Section 6: Other opportunities to improve the standards process

<p>20. How good a fit do you think the NZS system is for your sector, and why?</p>
<p>In principle it is a sound system, but the lack of government funding for its public good activities including both standards development and providing access to standards, is a major problem. It makes participation difficult, restricts access to standards and constrains development of needed standards. It is difficult to make standards development “faster and more efficient” under these circumstances.</p> <p>We would be concerned if, as suggested, regulators gained greater control over the policy elements of a standard.</p>
<p>21. What things (if any) could be done to make the NZS system a better fit for your sector? Please provide actual examples wherever possible.</p>
<p>See above.</p>
<p>22. Do you think use could be made of a sector levy fund to develop and maintain some NZS? How might a levy work for funding NZS in your sector?</p>
<p>This might work in some sectors, and would be worth consideration for heavy users such as the Construction industry. It could both provide funding to the NSB and ensure there were no</p>

free-loaders. However for standards with cross-sector importance, such as health and safety, it is hard to see how an industry level levy would work; an alternative might be that the relevant regulator provided the required funding.

Section 7: Opportunities and risks arising from institutional options

23. What opportunities and risks do you think the three institutional options (outlined in section 7) provide for delivering on the NSB's unique value and distinctive functions (as outlined in Section 3)?

As described above we strongly support an option similar to Option C, of a standards board also being the governance body for an operational function, all part of an independent or autonomous Crown Entity. We believe the independence this gives is vital and do not support the other options which either tie the organisation to MBIE, or separate the operating arm (into International Accreditation New Zealand, IANZ). An independent board needs a secretariat, which increases the cost of separating it from the operating function, and on the other hand benefits from a close relationship to those experienced in implementing its policies.

24. Are there any other Standards board and/or operating arm configurations that you think would work better than those outlined in section 7? Why?

See answer to previous question and above.

25. What impact (if any) would the three institutional options have on you as an expert who contributes to NZS? Why?

Independence of the NSB is greatly valued in that it provides some assurance that the process followed in developing the standard will provide the final standard without modification or pressure from the government of the day. Experienced operators who do, and are seen to do, an effective job of running the development process without fear or favour are also very important in maintaining confidence in the process. Embedding the operating arm in MBIE (Option A) loses that independence and potentially isolates the board. Option B also isolates the board and we are unsure how much expertise there is in IANZ for running good standards development processes.