

Standards New Zealand
submission to the
Independent Taskforce on Workplace Health and Safety

27 November 2012

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Introduction

National and international Standards (those developed by national and international standardisation bodies) can strengthen and enhance the regulatory framework for creating and maintaining best practice workplace health and safety in New Zealand.

These consensus-based Standards outline recognised best practice for governance roles and responsibilities, identifying risk, and managing compliance. They also disseminate expertise on preventing harm that could come from methods of working, equipment and supplies, building design, freight and logistics, and workplace systems and processes. Their status allows a dissemination of best practice so wide that it permeates beyond individual workplaces throughout the global economy.

Standards New Zealand is New Zealand's national Standards body and country member of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). It is a self-funded, autonomous Crown entity governed by the Standards Act 1988. More detail on Standards New Zealand and how Standards can be used is included in **Appendix A**.

Our submission aims to highlight the linkages between Standards and workplace health and safety outcomes for New Zealand by outlining:

- the role of Standards in the overall workplace health and safety system
- where Standards New Zealand perceives that there may be gaps in the current workplace health and safety regulatory framework
- how these could be addressed through a more integrated approach to working with the national Standards body and better use of Standards.

The taskforce's specific questions are referred to where we have addressed them.

The Standards Council and Standards New Zealand would be pleased to meet with the taskforce to expand on any of the matters raised in our submission.

Standards in the overall workplace health and safety system

Standards play a fundamental role in regulatory and knowledge systems and the economic environment. While New Zealand Standards (big 'S') and the national Standards body are not explicitly identified in the taskforce's outline of the overall workplace health and safety system, we assume they are implicit in the references to regulation, self-regulation, and standards (small 's').

Standards feature in knowledge systems by codifying the expertise of Standards development committees, providing tools for education and building competency, and disseminating technological information and innovation.

Standards impact on the economic environment because they provide quality assurance between members of a supply chain, support the operation of trade agreements between countries, and facilitate regulatory harmonisation schemes.

Our submission focuses largely on the regulatory system, specifically the interface between Standards and regulation, and also touches on aspects of the knowledge system where education and capability building are concerned. As can be seen in Figure 1, national and international standardisation bodies, and the Standards they develop, are internationally recognised as key inputs into a regulatory system. Standards form a critical layer which supports the full spectrum of performance-based through to prescriptive regulation.

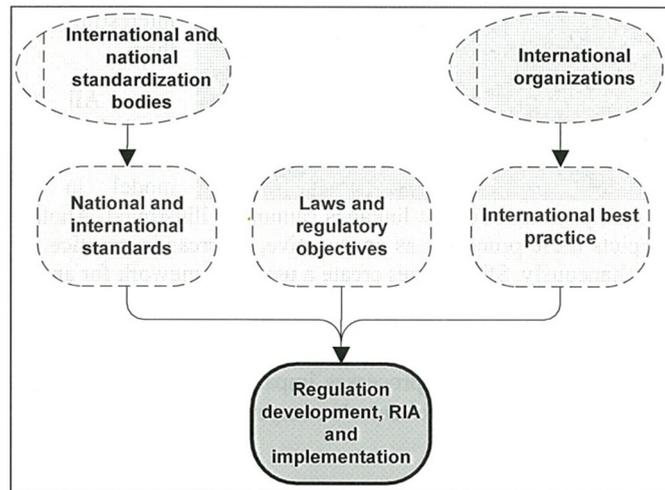


Figure 1 – Important inputs to regulatory frameworks. Extracted from *Risk management in regulatory frameworks: Towards a better management of risks*. United Nations Economic Commission for Europe, 2012.

Gaps in the current regulatory framework

This section addresses the taskforce’s third question in its consultation document ‘What do you think the challenges are with the current workplace health and safety regulatory framework?’

From our perspective, there appear to be gaps in the current workplace health and safety regulatory framework that potentially increase the risk of workplace fatalities and serious injury. These arise, in part, from a lack of support for the role that standardisation bodies and Standards play in regulatory frameworks, and what we consider to be suboptimal use of national and international Standards.

Changes within the public sector have had a direct impact on the use of Standards. Regulatory reforms, tightening public sector budgets, mergers, and the focus on ‘doing more with less’ have impacted on the way regulators use Standards and their relationship with the national Standards body, including:

- increasing reference to existing national Standards in regulation and guidance, yet
- less development of new national Standards¹ and a proliferation of in-house standards (developed by government or industry), and
- less frequent review of existing national Standards incorporated by reference into regulation and guidance.

¹ The development of new national Standards includes the adoption or adaption of international Standards into the national Standards catalogue and the development of joint Australian/New Zealand Standards.

Other gaps are created when there is a lack of clarity on the status of national Standards and how to comply with them, and when organisations take reactive rather than preventative approaches to workplace health and safety.

Increasing reference to Standards, but less development

In general, the number of instances where Standards are incorporated by reference into regulation or guidance material is increasing. Our analysis shows that since 2008, the number of references to Standards (from the national Standards catalogue) incorporated by reference in regulation (acts, regulations, deemed-regulation) and non-regulatory codes of practice and guides has increased by 59%. In the workplace health and safety sector, the increase has been even greater. The number of recorded instances of references to Standards has increased by 78%.²

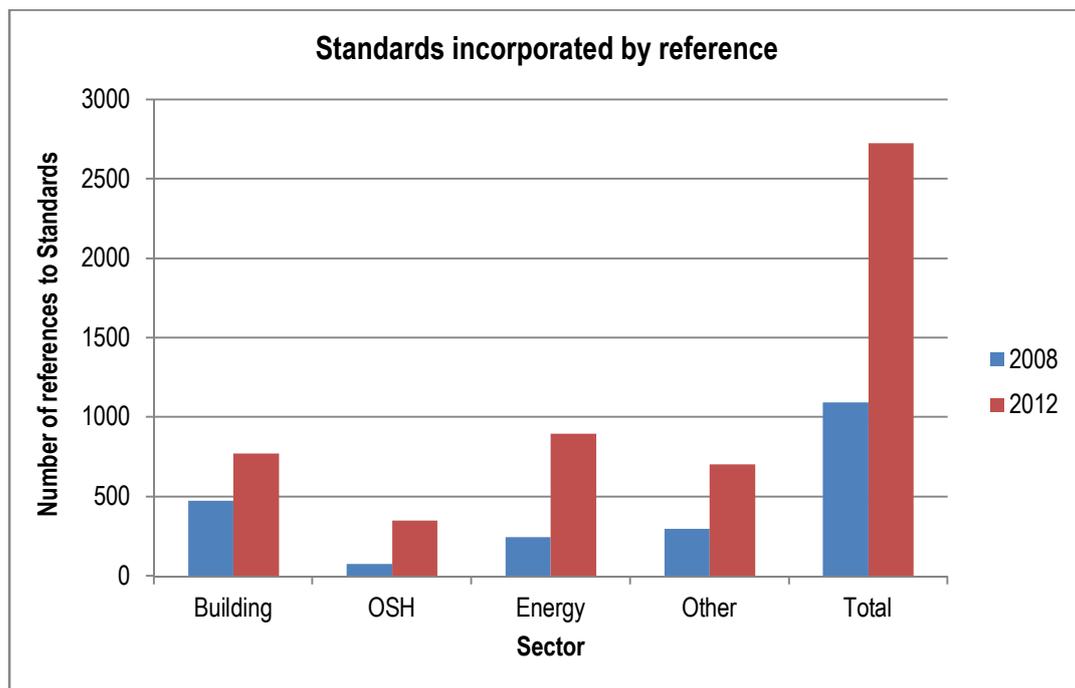


Figure 2 – Change in Standards referenced in New Zealand legislative instruments

However, funding support for the development and review of national Standards is decreasing. We see evidence of this in the age of the national Standards catalogue. At 30 June 2012 more than half of the New Zealand Standards catalogue was over 10 years old (based on the publication date of latest amendment to the Standard). Analysis we undertook this year shows that since 2010 there has been a 13% increase in the number of Standards over 10 years old. International best practice suggests that Standards should be reviewed every 5 – 7 years.

² We acknowledge that our data may not capture all of the references to Standards. There is no duty for regulators to notify the national Standards body when they reference Standards, and so the data is based on what we have collected ourselves. We also acknowledge that the accuracy of our data has improved over time. While this may account for some of the increase in recorded references to Standards, it certainly does not account alone for the significant increase.

This paradox, that the use of national Standards is both simultaneously increasing and decreasing, shows us that while Standards are valuable tools for regulators, some are either not taking a coordinated approach to reviewing and developing Standards, are not prepared to fund their maintenance, or both.

Where new or revised national Standards should have been developed, regulators and industry are producing in-house guidance (which often references existing national Standards). Regulation and deemed regulation also continue to reference national Standards, yet many regulators are not actively reviewing these Standards to ensure they remain fit for purpose.

Out-of-date or unfit Standards present a number of risks to workplace health and safety, however, the national Standards body, as a self-funded, cost-neutral Crown entity, is not able to unilaterally develop or review Standards without external resources.

Limitations of in-house guidance

Instead of new or revised national Standards, in-house standards and guidance documents have proliferated. There is a perception that in-house standards development is faster and cheaper than using the national Standards body. While this perception is incorrect (particularly when you account for the true costs of producing these documents), what is more significant in this context is that these documents can be poor substitutes for national Standards.

The development process for in-house standards documents or guidance may not be as robust or independent as the process for developing national Standards. Regulator-developed standards are often criticised for being difficult to understand because they are not necessarily written by those with the relevant technical expertise. On the other hand, incentives for industry-developed guidance can be vastly different from regulatory objectives. These standards can result in confusion, a lack of consensus on what constitutes best practice, and a lack of buy-in from those required to use the guidance.

This approach also tends to be fragmented and can result in a duplication of effort. It is important that New Zealand has a coordinated approach to standardisation and draws on existing national or international Standards as best practice. A fragmented approach to standardisation can easily become inefficient and ineffective, and is not consistent with Better Public Services and value for money initiatives.

References to existing national Standards

References to national Standards, which appear in regulation and in-house guidance, are not being regularly reviewed to ensure that the Standards being referenced remain fit for purpose.

We know that many Standards support the current regulatory framework for workplace health and safety. According to our records, as at 2 November 2012, New Zealand's health and safety regulator incorporates over 200 New Zealand and joint Australian/New Zealand Standards by reference into almost 80 distinct pieces of regulation and guidance.

However, it appears that their use is not being coordinated or monitored closely enough. While all of the references made in regulation and deemed regulation refer to current national Standards, our records show that 90% of the references that appear in other in-house guidance, such as codes of practice and accredited codes of practice, are to Standards that have either been superseded or withdrawn from the national Standards catalogue.

While some regulators intentionally reference Standards at a point in time, others specify that the most recent Standard should be always referred to. It is important that whatever approach is chosen it is clear to the user what the intentions are, and this is not always the case.

In our view, when a regulator references national Standards it then has a responsibility to ensure that these references are to Standards that are fit for purpose. If this is not being done in a systematic and coordinated way, then it may increase the risk of workplace fatalities or serious injury.

Compliance with Standards

While Standards New Zealand is not directly responsible for implementing, enforcing, or monitoring the use of Standards by regulators and industry groups, it can help build capability in this area. Our broad experience of different regulatory approaches used by various regulators means we can share learning about what works in practice.

Clarity on status

Standards must be accorded the appropriate status to effectively support regulation. Careful risk analysis and regulatory planning should identify whether Standards should be mandatory, voluntary, performance-based, or prescriptive. Our Standards development process and preliminary scoping work with stakeholders can provide invaluable input into the Regulatory Impact Assessment and cost benefit analysis that regulators are required to complete.

Compliance capability

Standards and other documents in the national Standards catalogue can help to build compliance capability. For example, as part of the CCCP (Compliance Common Capability Programme), a joint Department of Internal Affairs and Learning State initiative, Standards New Zealand developed a free online resource *Achieving Compliance – a guide for compliance agencies in New Zealand*. The guide makes compliance expertise and best-practice principles available to all those engaged in the business of achieving compliance.

Other documents can educate end users on how to achieve compliance. Standards New Zealand can create supplementary, tailored resources to provide detailed guidance on complying with Standards and regulation. For example NZS 8500:2006 *Safety Barriers and Fences Around Swimming Pools, Spas and Hot Tubs* aims to assist New Zealanders to avoid pool-related drowning by providing various options which are designed to deny, delay, or detect unsupervised entry to the swimming pool area by young children. It was developed after the introduction of the Fencing of Swimming Pools Act 1987, to further support a reduction in the number of youth drownings in New Zealand.

Prevention

Standards have a critical role supporting voluntary, employer-led initiatives for workplace injury prevention. Organisations can help to protect themselves and their employees by implementing an occupational health and safety management system (OHSMS). AS/NZS 4801:2001, the joint Australian/New Zealand Standard for Occupational Health and Safety Management Systems, is used as the benchmark to assess an organisation's OHSMS. To help organisations develop and implement AS/NZS 4801, a complementary standard, AS/NZS 4804: *Occupational Health and Safety Management Systems - General Guidelines on Principles, Systems and Supporting Techniques* has been developed. It contains invaluable guidance for meeting legal requirements and for establishing a sustained improvement in health and safety performance.

Standards also underpin the major workplace injury prevention programmes operated by the Accident Compensation Corporation (ACC) for larger 'accredited employers' (these employers cover over 25% of the New Zealand workforce). The audit standards for the ACC Partnership Programme are designed to help employers to create safer workplaces and are aligned to AS/NZS 4801:2001.

Why use the national Standards body?

Standards New Zealand is ideally placed to partner with the Ministry of Business, Innovation and Employment to support an improvement in workplace health and safety outcomes because it:

- is New Zealand's leader in Standards development
- brings together recognised experts and other stakeholders (including government and the public)
- uses a trusted, consensus-based, and transparent process
- is New Zealand's link to overseas and international Standards
- can support initiatives to improve capability, compliance, and prevention.

Our Standards development work is world class. The 1995 Australian/New Zealand Standard for risk management was considered ground breaking for its time and subsequently formed the basis for the international Standard ISO 31000 *Risk Management – Principles and Guidelines*.

A document recently released by the United Nations Economic Commission for Europe (UNECE)³ recognises and draws extensively from ISO 31000 and AS/NZS 5050:2010 *Business continuity – Managing disruption-related risk* as the way to manage disruption related risk within a regulatory framework.

Conclusion and recommendations

New Zealand has a specialist, internationally connected standardisation body that is not being utilised to its full potential. We perceive that this has created standardisation 'gaps' in the current regulatory framework, and that these gaps pose a risk to workplace health and safety.

³ Risk management in regulatory frameworks: Towards a better management of risks. United Nations Economic Commission for Europe, 2012

Over time there has been a gradual shift in the regulator's use of Standards and in their relationship with the national Standards body. Standards New Zealand has begun initial discussions with the Labour Group of the Ministry of Business, Innovation and Employment to explore this further.

We believe national Standards can and should be better integrated into the 'toolkit' used by the regulator in future.

Recommendations

This section addresses the taskforce's fourth question in its consultation document 'How do you think the workplace health and safety regulatory framework could be improved?'

In short, we believe the health and safety regulator needs to build a closer relationship with the national Standards body and commit to taking a more active role in the development of national Standards, the revision of existing national Standards, and participation in international Standards development.

This should involve:

- a centralised and coordinated approach to standardisation to support strategies for workplace health and safety
- systematic and regular review of Standards referenced in regulation and guidance
- alignment of New Zealand health and safety Standards to international best practice, wherever possible
- risk analysis and scoping workshops to identify the type of Standard (mandatory, voluntary, performance-based, or prescriptive) that is best suited to various regulatory objectives
- identification and development of supplementary materials to support implementation of and compliance with Standards.

Pike River

The Pike River Royal Commission's report recommendations point to the need, not just for Standards to exist, but for their application to be fit for purpose and effectively deployed into industry sectors – particularly those that may expose workers to higher levels of health and safety related risk.

Standards New Zealand supports the recommendations made by the Commission in that:

- the development of health and safety regulation, Standards, and guidance should be coordinated through a prioritised strategy for workplace health and safety in New Zealand
- detailed technical and risk management guidance supports better education and less ambiguity on health and safety requirements for employers and workers
- New Zealand's guidance should draw from and align to regional and international best practice (to avoid reinventing the wheel, and get New Zealand up to speed with international Standards).

We note the Commission's references to our Standards⁴ as sources of information to guide governance principles and health and safety management systems. We believe any further Standards and guidance to support workplace health and safety should be developed using robust, proven consensus building approaches used by the national Standards body to ensure industry, regulator, and public buy-in.

An exemplary approach

Standards New Zealand believes that the approach taken by Energy Safety, part of the Ministry of Business, Innovation and Employment, demonstrates exemplary practice in using Standards to support regulatory objectives.

Energy Safety provides policy advice on the safe supply and use of electricity and gas, while recognising the impact that regulation has on the economy. One of its key objectives is to improve the quality and reliability of key infrastructure services that support growth. This outcome is achieved in part through ongoing work with Standards New Zealand and industry to develop, review, and revise Standards on which the regulations rely.

Standards New Zealand supports Energy Safety's work through its independence, robust and transparent Standards development process, and access to technical experts to support a comprehensive risk-based approach to regulation.

Standards New Zealand's membership of ISO and IEC means the regulator can quickly adopt international best practice. It also provides a channel for regulatory harmonisation and for the regulator to promote safety issues and get international Standards issues prioritised and accelerated. Energy Safety has worked with Standards New Zealand and industry to promote a shift towards direct adoption of international Standards where appropriate.

⁴ AS/NZS ISO 31000:2009 *Risk Management – Principles and Guidelines*, AS/NZS 4804:2001 *Occupational Health and Safety Management Systems – General Guidelines on Principles Systems and Supporting Techniques*, and AS/NZS 4801:2001 *Occupational Health and Safety Management Systems – Specification with Guidance for Use*.

Appendix A: About Standards and Standards New Zealand

The form and function of the Standards Council

New Zealand has five Crown standards and conformance bodies. This national structure includes all of New Zealand's standards conformance activity, from setting a specification through to judging whether a particular product, process, or service meets that specification.

One of the Crown bodies is the Standards Council. As an autonomous Crown entity, the Standards Council is charged under the Standards Act 1988 with developing, promoting, and facilitating the use of Standards and standardisation to help deliver social and economic benefits, including increased productivity, enhanced market access for producers, promoting innovation, and improved health and safety.

The Standards Council, and its operating arm Standards New Zealand, function as the country's national Standards body and have a leadership role in Standards development and solutions in both New Zealand and internationally. Standards New Zealand is not directly responsible for in implementing, enforcing, or monitoring the use of Standards by regulators and industry groups.

International and regional connections

As New Zealand's member for ISO, IEC, and the Pacific Area Standards Congress (PASC), Standards New Zealand is able to:

- draw on existing international and regional Standards for best practice
- share New Zealand expertise and knowledge to inform regional and international Standards development
- ensure that New Zealand interests are considered in the development of regional and international Standards.

Standards New Zealand has a close working relationship with Standards Australia. Over 80% of the New Zealand Standards catalogue is comprised of joint Australian/New Zealand Standards.

How Standards New Zealand is funded

Government policy settings currently require Standards New Zealand to be a self-funded, independent body that is cost neutral. Standards New Zealand supports its work by securing service funding for the development and maintenance of Standards, and through the sales of developed Standards.

Standards New Zealand also relies on the in-kind contribution of over 2000 New Zealand technical experts and consumer representatives that donate their time, knowledge, and skills to serve on the committees that write and review Standards.

The Standards development process is robust, consensus-based, and transparent

Standards New Zealand is an independent organisation that specialises in facilitating a balanced and consensus-based Standards development process. The Standards we develop have some distinguishing features when compared to those that are developed in-house by regulators or industry.

New Zealand Standards follow an internationally recognised development process. This involves considering what international or regional best practice exists that can be directly adopted or adapted (to suit local conditions) into New Zealand’s Standards catalogue.

A balanced committee of technical experts and other stakeholders (such as government and consumer representatives) is established to develop each Standard. Both internationally and in New Zealand, Standards development committees consist of some of the top experts in their field. These experts are committed to the development of best practice and this is reflected in the donation of their time to work on Standards.

The development process is robust, consensus-based, and transparent, and includes a prescribed period for public comment. This seeks to ensure that Standards are practical, relevant, and widely recognised and supported.

Standards are flexible

New Zealand Standards are used by a diverse range of organisations to enhance their products and services, improve safety and quality, meet industry best practice, and support trade into existing and new markets.

Standards are generally voluntary, but can be mandatory when cited in acts, regulations, or other legislative instruments. Standards may also be referenced in regulations as one means of compliance or as an acceptable solution under those regulations, without being mandatory.

Figure 3 shows the various ways that Standards can be used, from industry self-regulation (in lower risk situations) through to supporting direct government regulation (in higher risk situations). Standards are a successful way to bridge government regulation and industry self-regulation.

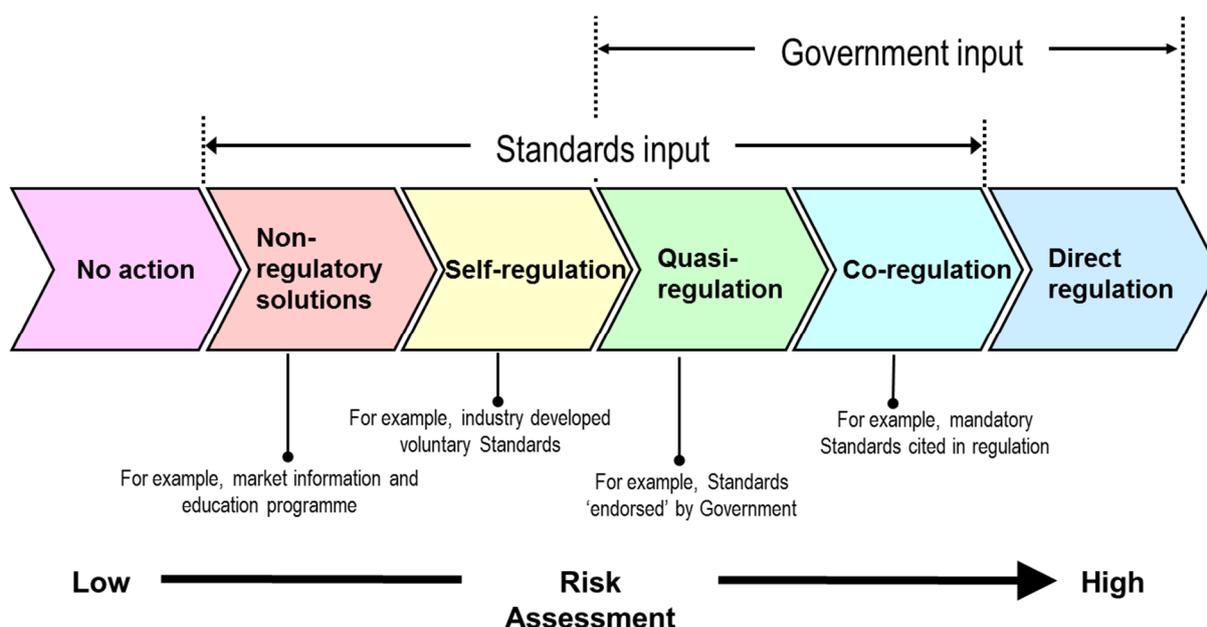


Figure 3 – Standards in the regulatory continuum

While all Standards solutions are focused on outcomes there are different approaches including performance-based, prescription-based, and verification methods. Standards New Zealand also develops solutions such as interim Standards, publicly available specifications, handbooks, guidelines, codes of practice, and audit tools. Often, the latter four solutions support the implementation and monitoring of the application of national Standards. Standards are also tools for education. Our customers include numerous industry training organisations and universities.