

Departmental Disclosure Statement

Standards and Accreditation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

2 July 2014

Contents

Contents	2
Part One: General Policy Statement	3
Part Two: Background Material and Policy Information	8
Part Three: Testing of Legislative Content	10
Part Four: Significant Legislative Features.....	12

Part One: General Policy Statement

Standards and Accreditation Bill

General policy statement

This Bill amends and consolidates the law relating to standards and accreditation of conformity assessment bodies, and repeals and replaces the Standards Act 1988 and the Testing Laboratory Registration Act 1972.

The purpose of this Bill is to ensure the New Zealand Standards and conformance system is viable and well-functioning, and meets the needs of business, regulators, and consumers into the foreseeable future.

The Bill does this by putting in place new arrangements for New Zealand Standards development and approval, and making minor amendments to the institutional arrangements for the Testing Laboratory Registration Council to better reflect the nature of its functions.

Overview

In relation to New Zealand Standards development and approval, the Bill achieves its purpose by-

- establishing the New Zealand Standards Approval Board (the **Board**)—an independent statutory board to approve New Zealand Standards and membership of standards development committees, and advise the Minister on the currency of New Zealand Standards, priority areas for development of New Zealand Standards, and the review of existing New Zealand Standards:
- establishing the NZ Standards Executive—an independent statutory officer who will be an employee of the Ministry of Business, Innovation and Employment (**MBIE**) responsible for standards development, and who will assume responsibility for New Zealand's membership of the International Organization for Standardization and the International Electrotechnical Commission:
- requiring the NZ Standards Executive to continue the practice of developing standards by using independent committees approved by the Board:
- providing decision-making criteria to guide the Board in approving standards and membership of standards development committees:
- identifying a set of principles to guide the application of the funding model for standards.

This new infrastructure replaces the Standards Council (and its operational arm, Standards New Zealand), which will be disestablished by the Bill.

In relation to accreditation of conformity assessment bodies, the Bill achieves its purpose by updating the provisions of the Testing Laboratory Registration Act 1972 to ensure the Bill more accurately reflects the functions and obligations of

the Testing Laboratory Registration Council.

Standards and conformance arrangements facilitate trade, promote innovation, and enable firms to leverage competitive advantage. Standards are also often cited in legislation. The new arrangements will ensure the value and contribution of standards and accredited conformity assessment bodies to economic development and well-being can continue and can be maximised.

In providing new arrangements for standards and updating provisions for the accreditation of conformity assessment bodies, the Bill addresses the following objectives:

- maintaining confidence and credibility in the standards development and approval process, and in the process of accreditation:
- ensuring the standards and conformance system is responsive to demand from industry, consumers, and regulators:
- ensuring the standards and conformance system continues to meet international expectations, and ensuring the standards system is able to access international and trans-Tasman expertise and intellectual property:
- better alignment of standards with the Government's priorities such as economic growth, innovation, safety, and well-being:
- placing the standards development function on a financially sustainable footing and ensuring it is undertaken cost-effectively.

Locating the standards development function within MBIE is expected to facilitate more effective co-ordination with regulators, who are key commissioners and users of standards, and enhance the visibility and credibility of standards with other parts of government.

Standards

New Zealand Standards Approval Board

The Bill establishes an independent statutory board, the New Zealand Standards Approval Board, responsible for approving New Zealand Standards and membership of standards development committees. The Board will also have an independent role in advising the Minister on the currency of New Zealand Standards, priority areas for the development of New Zealand Standards, and the review of existing New Zealand Standards. The Board will not have a governance role and will not be subject to direction by the responsible Minister in the exercise of its functions.

The Board will decide whether to approve draft New Zealand Standards and proposed standards development committee membership. In doing so, they will be guided by decision-making criteria that are prescribed in the Bill. The decision-making criteria for New Zealand Standards approval are based on the principles that New Zealand Standards-

- are consistent with national and international expectations, including in relation to the composition and operation of standards development committees:
- contribute to trans-Tasman alignment:

- contribute to a more competitive and productive economy, including providing for the overall well-being and health and safety of New Zealanders:
- provide an overall benefit to New Zealand.

The Board will have the power to reject a draft standard or the proposed membership of a standards development committee and will be required to provide reasons for its decision.

The Board will comprise 5 to 7 members appointed by the Minister. Appointments will be based on the skills and experience required to perform the standards approval function, including knowledge of sectors which use standards. The Bill provides for the Minister to seek industry nominations if he or she chooses. These arrangements reflect best practice board appointment procedures.

NZ Standards Executive

The Bill establishes the NZ Standards Executive, an independent statutory officer within MBIE.

The Bill specifies the functions of the NZ Standards Executive, which include to-

- assume responsibility for New Zealand's membership of the International Organization for Standardization and the International Electrotechnical Commission:
- co-operate with international standards organisations to develop draft standards:
- manage the process for forming standards development committees, and to refer proposals for membership of standards development committees to the Board for approval:
- manage the process for reviewing and updating New Zealand Standards, and to refer proposals for New Zealand Standards to the Board for approval:
- make arrangements for access to standards.

The Bill requires the NZ Standards Executive to act independently in undertaking his or her functions, and to have regard to the value of standards, how they are appropriately employed, and the importance of maintaining expert input in the standards development process. The Bill enables the Executive to delegate his or her functions.

Where New Zealand Standards are cited in legislation, the Bill requires the NZ Standards Executive to notify the Minister responsible for that legislation if any amendment is proposed. This reflects the need to protect the integrity of legislation citing New Zealand Standards by ensuring the responsible Minister is aware of proposed changes to New Zealand Standards and can promote changes to the legislation if that is considered appropriate.

Standards development committees

The Bill provides for independent, balanced standards development

committees, which could include industry and technical experts, consumer representatives, and, if appropriate, regulators. Membership will be proposed by the NZ Standards Executive and approved by the Standards Approval Board. This continues the central role of independent standards development committees in standards development.

Standards development committees will also be established to provide New Zealand input into the development of international standards. The New Zealand Electrotechnical Committee, whose existence is a requirement of membership to the International Electrotechnical Commission, will continue.

Principles for funding model

The Bill strengthens the current cost recovery funding model for standards. The Bill provides a framework to enable the NZ Standards Executive to set fees for access to standards and to recover the costs associated with developing, approving, maintaining, and providing access to New Zealand Standards and other standards-related publications, and other related activities. Costs include royalty and licensing fees associated with the intellectual property incorporated in standards. There is also specific provision for the NZ Standards Executive to enter into contractual arrangements for the development of New Zealand Standards and the recovery of costs in relation to these.

The framework provides for a balance between initial development costs and ongoing access costs for particular standards to be negotiated and agreed between the NZ Standards Executive and those commissioning New Zealand Standards. The Bill also specifies principles the NZ Standards Executive must have regard to in setting the amount of fees or charges for cost-recovery, namely, equity, efficiency, transparency, and flexibility.

Collectively, these measures are intended to ensure the standards system is financially sustainable, with flexibility available around the balance between upfront funding and recovery of development and access costs at a later date.

Consequential amendment to Copyright Act 1994

The Bill amends section 27 of the Copyright Act 1994 to maintain existing copyright protections for standards. This amendment is important to protect intellectual property owned by third parties (including international parties) and is required to remove uncertainty in the application of copyright or Crown copyright in New Zealand Standards that arises as a result of moving the standards development function into a Ministry.

Accreditation of conformity assessment bodies

The Bill updates the provisions of the Testing Laboratory Registration Act 1972 to make the following changes:

- replacing the term “registration” with the term “accreditation” to more accurately reflect the functions of the Testing laboratory Registration Council, including renaming the Council the Accreditation Council;
- recognising the Accreditation Council as New Zealand's good laboratory practice compliance monitoring authority, in line with existing international

obligations:

- changing the composition and appointment process for the Accreditation Council in order to streamline and strengthen the governance arrangements.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>The Ministry of Business, Innovation and Employment released the following documents as a basis for the 2012 Standards and Conformance Review:</p> <ul style="list-style-type: none"> • <i>Terms of Reference: 2012 Review of the New Zealand Standards and Conformance Infrastructure</i>, June 2012, which is available at http://www.med.govt.nz/business/standards-conformance/pdf-docs-library/Standards-Conformance-Review-2012-Terms-of-Reference.pdf • <i>Standards and Conformance Infrastructure Review Discussion Document</i>, March 2013, available at http://www.med.govt.nz/business/standards-conformance/pdf-docs-library/standards-conformance-review-2012-discussion-paper.pdf 	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<ul style="list-style-type: none"> • <i>Final Proposals from the 2012 Standards and Conformance Infrastructure Review</i>, Ministry of Business, Innovation and Employment, September 2013, available at http://www.med.govt.nz/business/standards-conformance/pdf-docs-library/standards-and-conformance-infrastructure-review/ris • <i>Application of Crown Copyright to New Zealand Standards under the new Standards Regime</i>, Ministry of Business Innovation and Employment, February 2014, available at http://www.mbie.govt.nz/about-us/publications/ris/standards-crown-copyright.pdf 	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
Neither of the Regulatory Impact Statements met the threshold for receiving an independent opinion on the quality of the RIS for the RIA team in the Treasury.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
--	------------

Providing decision-making criteria for the Standards Approval Board in the Bill

Cabinet's decision [CBC Min (13) 5/4 refers] provided for regulations to be made prescribing criteria to guide decision making by the Standards Approval Board when approving standards and approving membership of standards development committees.

In consultation with the Parliamentary Counsel Office it has become clear that the proposed decision-making criteria for the Standards Approval Board are a matter more appropriately enacted by Parliament, rather than through regulation as they determine the way the Board carries out its functions. In practice, the criteria are unlikely to change very often.

The decision-making criteria are therefore prescribed by the Bill rather than in regulations, as originally intended. The decision making criteria in the Bill were developed based on principles previously agreed to by Cabinet [CBC Min (13) 5/4 para 16 refers].

The Select Committee process will provide an opportunity for stakeholders to engage and provide comment on the nature of the decision-making criteria for approval of standards and standards development committee membership.

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
The Regulatory Impact Statement assessed the likely impacts on different groups. Impacts were assessed as part of the RIS at paragraphs 69-72 and in Table 3. http://www.med.govt.nz/business/standards-conformance/pdf-docs-library/standards-and-conformance-infrastructure-review/ris	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

Officials engaged with the Secretaries General of the International Organization for Standardisation (ISO) and International Electrotechnical Commission (IEC) during the policy development and have kept both organisations informed regarding progress.

Changes to the arrangements for development and approval of New Zealand Standards have been designed to ensure they continue to be consistent with international expectations from ISO and IEC and with New Zealand's obligations under the World Trade Organization Technical Barriers to Trade Agreement.

In relation to changes to the existing Testing Laboratories Registration Act 1972, the Bill will recognise the renamed Testing Laboratory Accreditation Council as New Zealand's good laboratory practice compliance monitoring authority, in line with existing international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No specific steps have been taken to determine that the policy is consistent with the priorities of the Treaty of Waitangi, as the proposed changes relate to government institutional arrangements for standards and are not likely to impact on obligations or principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Advice from the Attorney General on whether the Bill is consistent with the New Zealand Bill of Rights Act 1990 is normally made available on the Ministry of Justice website before the Bill is introduced. That website is : <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>There have been four distinct periods of consultation and engagement on the policy:</p> <ul style="list-style-type: none"> • In July 2012 the Ministry of Business, Innovation and Employment invited stakeholders to provide initial written input to assist with the identification and analysis of issues with the current standards system. A total of 77 written comments were received. This was complemented by stakeholder workshops with Standards users. • Further targeted stakeholder workshops were held with key Standards users in September 2012. These workshops focused on how standards are used, and the aspects stakeholders considered important to enable the development and use of standards. These workshops helped inform the problem definition and development of the options. • A discussion document entitled '<i>Proposals to enhance the delivery of Standards by New Zealand's national standards body</i>' was released in March 2013 for public consultation. The discussion document further articulated the issues and identified proposals for reform. A total of 116 submissions were received. • In August 2013 further targeted engagement was undertaken with key stakeholders with a focus on those with significant roles or as major users of the Standards system, in order to test the feasibility of the preferred option identified. Key stakeholders included representatives of the business community, consumers and retailers, local government, as well as key sectors that are significant users of standards, including the construction, electricity and gas sectors. 	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>In May 2014 further targeted consultation was undertaken with a small group of stakeholders including those directly affected by the decision, and stakeholders with significant knowledge of the standards system and sectors that use standards. The purpose of consultation was to test the workability of the provisions of the Bill to implement Cabinet's decisions and to identify any technical or potentially contentious issues ahead of the Parliamentary process.</p> <p>Key stakeholders included representatives of the business community, consumers and retailers, local government, Standards Australia, as well as key sectors that are significant users of Standards, including the construction, electricity and gas sectors.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>The Bill strengthens the current cost recovery funding model for Standards. The Bill provides a framework to enable the standards statutory officer to set fees for access to standards and to recover the costs associated with developing, approving, maintaining and providing access to NZ Standards and other standards-related publications, and other related activities. Costs include royalty and licencing fees associated with the intellectual property incorporated in standards. There is also specific provision for the NZ Standards Executive to enter into contractual arrangements for the development of NZ Standards and the recovery of costs in relation to these. The fees are intended for cost recovery only and are not in the nature of a tax.</p> <p>The Bill also specifies principles the NZ Standards executive must have regard to in setting the amount of fees or charges for cost-recovery, namely: equity, efficiency, transparency and flexibility.</p> <p>The provisions and principles for fees and cost recovery in the Bill are developed in accordance with Treasury and Auditor-General Guidelines.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>The Bill will provide immunity from civil liability for members of the Standards Approval Board (Schedule 1, CI 29) and members of standards development committees (CI 20) in respect of acts or omissions taken in good faith and in performance or intended performance of the entities' functions. These provisions seek to preserve the existing protections provided by the Crown Entities Act 2004 to the members of the Standards Council and standards development committees. Ensuring that these protections are preserved for Board members and committee members will help maintain continued participation in Standards approval and development while specifically preserving criminal liability, judicial review, and civil liability in relation to acts of bad faith and /or outside the scope of the entities' functions.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill provides for the Governor General, by Order in Council, on the recommendation of the Minister to make regulations providing for any matter reasonably contemplated by the Bill for giving it full effect or for its administration</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO