

Regulatory Impact Statement

Final Proposals from the 2012 Standards and Conformance Infrastructure Review

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment.
2. It provides an analysis of options to ensure the New Zealand Standards system is viable and well-functioning and meets the needs of firms, regulators and consumers into the foreseeable future.
3. Consultation with Standards users helped provide information on the unique benefits of the Standards system and identify the issues and opportunities to be addressed. The analysis has also been informed through working closely with the Standards Council and Standards New Zealand, and independent advice from Martin Jenkins on the financial sustainability of the Council and an assessment of institutional options. Analysis was based on our understanding of the unique functions of the Standards system, and consideration of the best form for delivering these functions.
4. The advice we have received suggested that overall costs of Standards development can be reduced by moving the function into a larger organisation. However, other changes to the environment we are anticipating, such as a desire by regulators to make their documents available to key users at no or low cost, may change the costs that specific commissioners of Standards pay over time. The specific changes in the costs over time are not able to be quantified or readily predicted.
5. Some stakeholders have indicated the risk that experts may no longer be willing to participate on Standards development committees, given their perception that the independence of Standards will be eroded under the proposed changes. We consider experts will continue to have incentives to participate, however the actual impact is uncertain.

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26 September 2013

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Introduction

1. The Standards and Conformance Infrastructure Review commenced in mid-2012 with a focus on the Standards system. The outcome sought by the review is a viable and well-functioning Standards system that meets the needs of firms, regulators and consumers into the foreseeable future. This paper addresses recommendations resulting from the review.
2. A discussion document on the proposals entitled ['Proposals to enhance the delivery of Standards by New Zealand's national standards body'](#) was released in March 2013.

The role of New Zealand Standards

3. Standards make an important contribution to economic growth and health and safety. Standards promote innovation, facilitate international trade and enable firms to leverage their competitive advantage. Many Standards are also designed to increase safety or manage risk.
4. Compliance with Standards is generally voluntary compared to technical regulations and rules, where compliance is mandatory. The exception is where Standards are cited in regulation, often as a means of demonstrating compliance or meeting certain quality benchmarks.
5. The International Organisation for Standardisation (ISO) develops international Standards covering most aspects of technology and business. The ISO defines a standard as *"a document that provides requirements, specifications, guidelines or characteristics that can be used consistently to ensure that materials, products, processes and services are fit for their purpose"*. Internationally recognised Standards are developed by consensus and approved by a recognized body.
6. The Standards Council is New Zealand's member of the ISO and International Electrotechnical Commission (IEC). It is the sole developer of Standards designated as New Zealand Standards (NZS).
7. NZS cover a range of topics from building materials and processes, energy safety, medical devices, to management systems. They are a part of the broader standards environment which comprises standards produced by entities including regulators, trans-Tasman bodies (such as Food Standards Australia New Zealand), industry organisations, non-government standards bodies and firms.
8. NZS have strong domestic and international recognition and are widely used in trade, commerce and regulation. Standards can support a more productive, innovative and competitive economy in several ways, including:
 - helping facilitate the creation and diffusion of technology by codifying information on better ways to make products and carry out processes
 - helping boost exports by ensuring that New Zealand standards are internationally aligned with those of our key trading partners
 - contributing to a healthier and safer society by providing 'how to' guidance documents which clarify and communicate regulatory requirements to firms and employers.

9. For example, common Standards across our trading partners help New Zealand firms get products to export markets. Ensuring effective New Zealand participation in the development of ISO or the IEC Standards can help ensure that standards do not pose barriers to our exports.

Status Quo - New Zealand's Current Standards System

10. This review is focused on the NZS system which has these distinctive functions that provide unique value:
 - being New Zealand's member organisation of the ISO and IEC and providing access to the intellectual property in trans-Tasman and international standards
 - the ability to contribute to and influence the development of international and trans-Tasman standards, in partnership with industry and consumers
 - using an internationally recognised process to produce domestic Standards or modify international Standards, e.g. a Standards development process that is representative of the views of all interested parties and is consistent with New Zealand's obligations under the World Trade Organisation Agreement on Technical Barriers to Trade (WTO TBT)
 - the NZS brand which signifies that a Standards document is robust, authoritative and credible
 - stewardship, development and maintenance of the NZS catalogue to ensure that NZS are fit-for-purpose and up-to-date
 - managing commercial and royalty arrangements as New Zealand's link to the wider international national standards bodies' network, and providing access to the intellectual property in trans-Tasman and international standards.
11. The Standards Council is New Zealand's member of the ISO and IEC. It is an autonomous Crown entity established under the Standards Act 1988. It comprises up to twelve members. All members are appointed by the Minister of Commerce with up to eight nominated from organisations identified in regulations, and up to four directly appointed by the Minister.
12. The Council maintains a catalogue of over 2500 Standards, 82% of which are joint Australia/New Zealand Standards, and many of which are based on international standards developed by the ISO/IEC.
13. The Council performs its primary functions of developing and promoting Standards through its operating arm, Standards New Zealand (SNZ), which employs about 40 staff.
14. The Standards Council is responsible for approving Standards and Standards development committee membership, but in practice delegates this to the SNZ Chief Executive. Currently the criteria for the approval of Standards are not provided in statute, or otherwise made transparent.
15. The Standards Council also has the role of promoting, encouraging and facilitating the use of Standards in New Zealand, including research and educational work. In this context, it has also at times taken up a policy role of promoting Standards and standardisation as a means of contributing to the government's desired outcomes, e.g. supporting innovation, facilitating international trade, and contributing to health and safety.

16. SNZ delivers these functions through:

- project management and support for Standards development committees
- ensuring that committees are balanced and comprise technical experts from industry sectors, consumers, independent academics and regulators (where relevant)
- international facilitation and support functions e.g. facilitating participation of New Zealand experts at ISO/IEC committees
- publishing and distribution of Standards, including sales.

17. Standards tend to be commissioned by government regulators or industry sectors. Users of Standards include firms or individuals (such as trades people) looking to comply with regulations, industry norms or improve their efficiency and productivity.

18. The current funding arrangements for the Council were established in the late 1980s, with a move away from bulk funding. Funding for Standards activities is a mix of government funding and user-pays, including:

- ISO/IEC membership fees are funded by the Crown
- Ministry of Business, Innovation and Employment (MBIE) contribute funding for coordinating New Zealand's input into ISO/IEC standards via a contract for services
- Ministry of Foreign Affairs and Trade (MFAT) funds the cost of administering the WTO TBT Inquiry Point via a contract for services
- government regulators contribute funding for public good standards on a contract for services basis
- funding for other Standards via contracts for services
- users contribute towards the development and production of Standards either by purchasing access or through access provided for some occupational groups, (usually paid for by industry levy or registration fees eg: energy safety Standards).

19. Government regulators are generally encouraged to see the value of the Standards Council as a provider, but there is no obligation on them to engage the Council. They can use a range of regulatory and non-regulatory instruments as they feel appropriate.

20. The key components of the current NZ Standards system are shown in the diagram at Appendix 1.

Problem Definition

21. The purpose of the Standards review is to develop proposals for a viable and well-functioning standards system that meets the needs of firms, regulators and consumers into the foreseeable future.

22. The Standards review identified several issues which informed further analysis into the underlying causes. The main issues were:

- the Standards Council is not financially sustainable over the medium to longer term as confirmed by the analysis undertaken by Martin Jenkins – in 2012 it reported a loss of \$350,000, despite focussed cost reduction efforts which has resulted in the main cost savings opportunities now having been exhausted

- the development of Standards is not as responsive as it could be to the needs of industry, regulators and consumers, for instance in terms of the timeliness of the standards development process and high average age of the Standards catalogue
- the potential to strengthen the contribution of Standards to the government's desired outcomes, e.g. in the areas of innovation, international trade, and health and safety.

23. We consider there are three underlying problems which constrain the existing model:

- there are tensions between the Council's statutory functions of developing Standards and promoting Standards and standardisation – i.e. the difference between being a focussed service delivery organisation, and an advocacy and policy organisation
- the distance from government inherent in the Crown entity model makes it difficult for the Council to retain relevance, visibility and credibility with other parts of government
- the difficulties for a small, standalone organisation with a limited client base to achieve the flexibility and scalability required in a dynamic environment – such as the expectations of customers that Standards are increasingly readily available online.

24. There have been several reviews and adjustments to the current Standards system, including changes in Council members and senior management at the operational level (SNZ), as well as an injection of one-off funding. Changes over the last 20 years have not resolved these issues.

25. While some of these issues (such as the statutory functions) could be addressed solely by amending the statute, a sustainable solution to the other problems requires institutional change.

26. Some specific examples of these underlying problems are described below.

27. The Standards Act 1988 provides the Standards Council with a very broad set of functions, which might not be entirely complementary, and has led to competing priorities at times. The Council's primary functions relate to the development and promotion of Standards with the objective of promoting quality, standardisation and industrial development; and health, safety and welfare. For example, this positions the Council to set and promote Standards in areas that are also the responsibility of particular regulators, in some instances this can result in duplication or inconsistency that needs to be resolved.

28. It is desirable for Standards to remain widely used to support regulatory instruments, and for regulators to continue to consider the use of Standards where appropriate. However, there are some inherent differences between the process for developing Standards and the criteria for developing regulations which can be reconciled (e.g. as has occurred in the energy safety area), but requires on-going effort and an understanding of both Standards and the regulatory environment. The location of Standards development in a Crown entity poses a potential barrier to the entity gaining a deep understanding of regulators' needs. The ability to align Standards with the requirements of the regulatory environment will also benefit industry, by ensuring consistent, clear rules, and the ability to meet regulatory requirements.

29. The current business model and structure places commercial pressure on the organisation to survive, but with overall demand for Standards thin and changing expectations from clients (such as more documents that are more readily available, such as online) this model is no longer sustainable. A standalone body has a certain level of fixed costs which need to be met.
30. One of the key issues identified was the sustainability of SNZ. MBIE have considered the current funding model and consider that it remains appropriate, where regulators and industry sectors are able to exercise choices about the use of Standards and to pay for their development accordingly.
31. NZS are only one of the tools available for standardisation and to support regulation, and are not always the most appropriate choice. As commissioners of Standards regulators and industry have choices about whether, and how, they use Standards.
32. Regulators are best placed to determine the most appropriate regulatory or non-regulatory instruments to use. This includes the use of Standards which are commonly used to underpin regulatory rules by providing detailed information on 'best practice' or 'quality' that are beyond the level of specificity appropriate in a technical rule or regulation.
33. Industry also have choices about standardisation which include using uncodified generally accepted practice, firm or industry standards, as well as development of NZS, joint Australia and New Zealand Standards, or international Standards (ISO/IEC).

Objectives

34. In developing proposals from the review we have used the following objectives:
- better alignment of Standards to wider government priorities
 - maintaining confidence and credibility in the Standards development and approval process
 - ensuring the Standards system is responsive to demand for Standards from industry, consumers and regulators
 - ensuring the Standards system continues to meet international expectations and to access international (ISO/IEC) and trans-Tasman (Standards Australia) expertise and intellectual property
 - placing the Standards development function on a financially sustainable footing and ensuring it is undertaken cost effectively.
35. These objectives have been developed from:
- our knowledge of how Standards could contribute to policy outcomes such as innovation, international trade, and health and safety
 - our understanding of the unique value of Standards in the context of other ways of achieving standardisation and the desire to maintain and maximise this value
 - our understanding of the value of the need to be connected to the international community of Standards, to ensure that New Zealand Standards are well-aligned with international standards
 - the analysis undertaken by Martin Jenkins of the Standards Council's financial sustainability and institutional options.

36. Our knowledge and understanding have been derived from the extensive literature on Standards and standardisation, the experience gained from our policy and Crown entity monitoring responsibilities for the Standards system, and the information and views gathered from the users of the Standards system throughout the review.

Regulatory Impact Analysis

Options

Development of the packages of options

37. The government needs to ensure three key roles in relation to NZS are delivered efficiently and effectively:
- approval of Standards
 - development of Standards
 - connecting to international Standards development.
38. Having regard to the problem definition three packages of options were developed to address the key roles and functions necessary for a viable and well-functioning NZ Standards system.
39. The packages of options developed and later assessed (in Table 2) against the objectives of the Standards review are:
- Option 1 - a revised status quo retaining current institutional arrangements with changes to legislation and operational processes
 - Option 2 - a Standards approval board and the Standards development function undertaken by International Accreditation New Zealand (IANZ) (IANZ is the operating arm of the Testing Laboratories Registration Council, a Crown entity which is part of the standards and conformance system and is responsible for accreditation)
 - Option 3 - a Standards approval board and the Standards development function undertaken by a statutory officer located in MBIE.
40. These packages of options include a mix of components to deliver the key functions, including:
- a Standards approval function (included in each package)
 - three different options for the Standards development function
 - changes to the Standards Act and Regulation (included in each package)
 - improvements to operational processes (included in each package).
41. Each of the sub-options for the Standards approval and Standards development functions and other components are described in more detail in the following section.

Components of the Packages of Options

The Standards approval function

42. It is proposed that the Standards approval function be undertaken by an independent statutory Board. The intent is to retain the independence of the approval function, a critical element to ensure the credibility of the NZ Standards system.
- 40 The board's decisions regarding approval of Standards and committee membership would be based on criteria set out in regulations (e.g. balanced committees, consensus decision-making), which will be underpinned by high-level principles in legislation.
- 41 The board would comprise five to seven members appointed by the Minister of Commerce. Members would be appointed based on the skills and experience required to perform the Standards approval function, including knowledge of sectors which use Standards.
- 42 Three **sub-options were considered for the legal form of the Standards approval function** to address practical and legal implications arising. These sub-options were developed based on their ability to meet the objectives of the review, address the legal and operational risks, and stakeholders' views on independence. The three sub-options considered were:
- Sub-option A - a statutory board (without body corporate status) with functions to:
 - approve Standards with reference to a set of clear criteria
 - approve Standards development committee membership
 - provide information to the Minister on the currency of the catalogue.
 - Sub-option B - an autonomous Crown Entity (ACE) with significantly reduced functions (compared to status quo ACE), limited to:
 - approve Standards with reference to a set of clear criteria
 - approve Standards development committee membership
 - provide information to the Minister on the currency of the catalogue
 - entering into agreements with international Standards bodies
 - owning and enforcing copyright.
 - Sub-option C - a hybrid model where the approval board is given the legal status of a 'natural person', but with constrained functions limited to:
 - approve Standards with reference to a set of clear criteria
 - approve Standards development committee membership
 - provide information to the Minister on the currency of the catalogue
 - entering into agreements with international Standards bodies
 - owning and enforcing copyright.
- 43 These three sub-options were assessed against their ability to meet the objectives of the Standards review and the legal and operational risk arising from each sub-option was also considered.
- 44 The assessment concluded that sub-option A, an independent statutory board, would provide a clearly defined role for the board by specifying its functions in the Standards Act. The clearly defined functions and clarity in roles would ensure a focused board and its lack of separate legal powers would also minimize risks of the board acting, or being challenged for acting, outside its powers.

- 45 Sub-option B is more complicated from a legal and operational perspective, as the usual Crown Entities Act functions and powers would need to be specifically constrained by the powers conferred on the board by the Standards Act. The possibility remains of the ACE being able to exercise extensive powers given its status and this would need to be managed carefully through framing of its statutory functions and potentially through the use of Ministerial direction under the Crown Entities Act. This sub-option retains risks of the board having the capacity, as an ACE, to exercise powers not intended for it
- 46 Sub-option C effectively provides a compromise between sub-options A and B, but poses significant operational difficulties. There is also a risk that there would be legal challenges around whether the body has acted beyond the scope of its powers or that it would be unable to carry out its functions in a particular way because of the constraints on its legal powers, thereby necessitating legislative change to empower it. It does not provide sufficient clarity or certainty for the board or others.
- 47 MBIE's preferred legal form for the Standards approval function is sub-option A, a statutory board, because it most readily addresses the need for an independent and focused Standards approval function, and minimizes legal and operational risks compared to sub-options B and C.
- 48 This option would need to be complemented by subsequent technical legal amendments, such as an exemption from some Crown copyright provisions in the Copyright Act to ensure the current protections regarding copyright are retained. Functions that require the legal status of a 'natural person', such as ISO and IEC membership and holding copyright, would need to be undertaken by the Standards development function body.

The Standards development function

- 49 **Sub-options for the Standards development function** reflect three delivery options previously consulted on in the discussion document, one of which represents a revised status quo option which emerged as a strong preference for many stakeholders. The status quo is also assessed.
- **Sub-option 1** - revised status quo with changes to supporting legislation and operational processes
 - **Sub-option 2** - Standards development function to be undertaken by International Accreditation New Zealand (IANZ). This sub-option would place the Standards development and accreditation functions in the same organisation. This is not consistent with international best practice due to the lack of separation between the key functions of the Standards and conformance system.
 - **Sub-option 3** - the Standards development function would be undertaken by a Statutory Officer (an example is the Companies Registrar) located in MBIE. (This is the preferred option). The role of the Standards statutory officer would be to:
 - provide the Standards development function and manage the process for developing Standards
 - form Standards development committees, which would then be referred to the board for approval
 - hold memberships of ISO and IEC
 - hold copyright for New Zealand Standards and associated copyright on behalf of international Standards bodies
 - oversee access arrangements for Standards

- enforce copyright associated with the New Zealand Standards catalogue.

50 Each of these options are assessed as part of the option packages in the next section.

51 Financial modelling of the three options for institutional arrangements of the Standards development function, described in the discussion document, was undertaken by Martin Jenkins. Modelling was based on a bottom-up estimate of (FTE) resource required, and reflects the more focussed functions and operational requirements of these options compared to the status quo.

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53 The higher SNZ resourcing includes additional management functions required of a standalone organisation, Crown entity accountability requirements, and the wider scope and focus of some functions that SNZ delivers under the status quo. For example SNZ undertakes a business development role pursuing potential opportunities for new Standards. This activity is resource intensive with uncertain returns. Business development activities are not included in the revised function under any of the proposition packages considered.

54 Annual operating costs were then estimated for each for the four core standards development activities which are:

- Standards development
- maintaining links with International Standards bodies
- sales of Standards
- ancillary services (including shared services).

55 As the ability to share services and the associated cost of overheads differs across the three options, these were calculated separately on a cost per FTE basis, based on SNZ overhead costs.

56 Based on the estimates of FTE resources for each option, the following range of annual operating costs (\$,000s), and overhead costs were estimated:

Table 1: Operating and overhead cost estimates for Standards development function options (Source: Martin Jenkins Report: Detailed design Standards infrastructure scenarios, July 2013)

| | Standards development function in: | | |
|---------------------------------|---|-------------|-------------------------|
| | MBIE | IANZ | Standalone Organisation |
| Annual Operating Cost (\$,000s) | \$1800-2400 | \$2300-3100 | \$2500-3200 |
| Overhead cost per FTE | \$40 (\$30-\$70 range given MBIE's own continuing restructuring and integration of business systems). | \$90 | \$85 |

57 The MBIE option provides the lowest operating and overhead costs of all options. This reflects the ability to scale resources and to make use of the wider MBIE shared corporate services.

58 The IANZ option has lower operating costs compared to the standalone option, although overhead costs for the standalone option were marginally lower than the IANZ option.

Other parts of the change package

59 **Changes to the Standards Act and Regulations** to enable implementation in line with the objectives of the review. Proposed amendments to the Act and Regulations include:

- to amend the scope and focus of functions relating to Standards
- amendments to the composition and appointment procedures for the board
- provision of high level principles in the Act
- criteria for approval of Standards in regulations
- a number of technical and consequential amendments to ensure existing legal protections and intellectual property relationships are maintained (such as indemnity for Standards development committee members and copyright arrangements).

60 This is a feature of all option packages, except the status quo.

61 **Improved operational processes** are a feature of all option packages, except the status quo, and include:

- approaches to improve the development and accessibility of Standards
- measures to maintain the currency of the Standards catalogue
- enhancing access to cited Standards (such as online, or to particular occupation groups using alternate pricing)
- speeding up the development of Standards
- further mitigating the risk of industry capture of the Standards process.

62 No change is proposed to the underlying funding model, although principles to clarify it are proposed, and discussed in more detail as part of the preferred option (Option 3).

Assessment of the Packages of Options

63 As noted previously each of the components described above make up three packages of options for new arrangements for the development and approval and maintenance of NZ Standards.

64 Three option packages and the status quo have been assessed against the objectives of the Standards review in Table 2. Each of the option packages have been assessed as meeting, partially meeting or not meeting each objective. An overarching assessment summarising the assessment in Table 2 is also provided

Table 2: Analysis of Option Packages

| Options | Better alignment of Standards development to wider government priorities | Maintaining confidence and credibility in the Standards development and approval process (Independence of decision making and transparency of decision criteria are considered key features in supporting this objective) | Ensuring the Standards system is responsive to demand for Standards from industry, consumers and regulators | Ensuring the Standards system continues to meet international expectations and to access international (ISO/IEC) and trans-Tasman (Standards Australia) expertise and intellectual property | Placing the Standards development function on a financially sustainable footing and ensuring it is undertaken cost effectively |
|--|--|---|---|---|---|
| Status Quo Standards Council (a Crown entity) Standards NZ (the operating arm of the Council) undertakes standards development function No Change to Standards Act Existing operating arrangements | Does not meet objective ✖ Standards Council as a Crown entity is one step removed from Ministerial oversight with regard to the efficiency and effectiveness of processes around development, maintenance and access to Standards. ✖ Does not address the distance from Crown inherent in the Crown entities model, or inherent tension between regulatory processes and those for standards. ✖ Standards Council as a Crown entity does not have a policy role in standardisation or other policy areas related to a more competitive and productive economy. | Partially meets objective ✖ The current Standards Council is a Crown entity and is at arm's length from government oversight in its role of developing and approving Standards and approving committee membership. In practice these activities, including approval, are delegated to SNZ. ✖ Criteria for approval of Standards are not specified in Statute or otherwise made transparent. ✓ Standards are developed by balanced committees and by consensus. ✓ Standards development process will continue to be consistent with guidance from ISO and IEC guidance and with New Zealand's obligations under the WTO TBT | Less likely to meet objective ✖ Stakeholder feedback indicates the current system is not as responsive as it could be. ✖ Distance from government inherent in Crown entity model makes it difficult for the Council to retain relevance, visibility and credibility with other parts of government. ✖ Small standalone organisation has lack of ability to be flexible and to scale resources to meet changing demand for standards. | Meets objective ✓ Standards Council continue to hold membership of ISO and IEC and other national standards bodies including Standards Australia. | Does not meet objective ✖ Limited ability to further reduce costs as previous cost reduction efforts have been exhausted. ✖ High proportion of fixed costs compared to alternatives due to smaller critical mass, no ability to share services and lack of ability to scale. |
| Option 1 Revised Status Quo Standards Council (a Crown entity) Standards NZ (the operating arm of the Council) undertakes standards development function Changes to Standards Act and Regulations Improved operating arrangements | Does not meet objective ✓ Improved clarity of functions in an amended Standards Act will be helpful. ✖ Does not resolve distance from Crown inherent in the Crown entities model, or inherent tension between regulatory processes and those for standards. ✖ Standards Council as a Crown entity does not have a policy role in standardisation or other policy areas related to a more competitive and productive economy. | Meets Objective ✖ The current Standards Council is a Crown entity and is at arm's length from government oversight in its role of developing and approving Standards. ✓ Standards approval would be made in accordance with criteria established in regulations which provide transparency in decision-making. ✓ Criteria to be developed in consultation with the board and the public. ✓ Standards continue to be developed by balanced committees and by consensus. ✓ Standards development process will continue to be consistent with guidance from ISO and IEC guidance and with New Zealand's obligations under the WTO TBT agreement. | Less likely to meet objective ✖ Stakeholder feedback indicates the current system is not as responsive as it could be. ✖ Distance from government inherent in Crown entity model makes it difficult for the Council to retain relevance, visibility and credibility with other parts of government. ✖ Small standalone organisation has lack of ability to be flexible and to scale resources to meet changing demand for standards. ✓ Improved operating provisions will help ensure Standards are developed faster and more efficiently ✓ Measures to enhance access to Standards cited in regulations (eg: increased online access), and currency of the catalogue ✓ Standards development processes will continue to be consistent with ISO/IEC guidance and NZ obligations under WTO TBT. | Meets objective ✓ Standards Council continue to hold membership of ISO and IEC and other national standards bodies including Standards Australia. ✓ Standards development process will continue to be consistent with guidance from ISO and IEC guidance and with New Zealand's obligations under the WTO TBT agreement. | Does not meet objective ✓ The board will be a smaller with some reduction in costs. ✖ Long term viability and cost effectiveness remains in doubt, given dynamic and changing operating environment. ✖ High proportion of fixed costs compared to alternatives due to smaller critical mass, no ability to share services and lack of ability to scale. ✖ Additional regular funding would still be needed to address immediate financial concerns. Likely on-going deficit estimated of up to \$350k per annum. |

| Options | Better alignment of Standards development to wider government priorities | Maintaining confidence and credibility in the Standards development and approval process | Ensuring the Standards system is responsive to demand for Standards from industry, consumers and regulators | Ensuring the Standards system continues to meet international expectations and to access international (ISO/IEC) and trans-Tasman (Standards Australia) expertise and intellectual property | Placing the Standards development function on a financially sustainable footing and ensuring it is undertaken cost effectively |
|---|---|---|---|---|---|
| Option 2 Independent Statutory Approvals Board IANZ undertake Standards development function Changes to Standards Act and Regulations Improved operating arrangements (IANZ is the operating arm of the Testing Laboratories Registration Council, a Crown entity which is part of the standards and conformance system. IANZ is responsible for accreditation) | Does not meet Objective ✓Improved clarity of functions in an amended Standards Act will be helpful. ✗Does not resolve distance from Crown inherent in the Crown entities model, or inherent tension between regulatory processes and those for standards. ✗IANZ as a Crown entity is one step removed from Ministerial oversight with regard to the efficiency and effectiveness of processes around development, maintenance and access to Standards. ✗Standalone body does not have a policy role in standardisation or other policy areas related to a more competitive and productive economy. | Meets Objective ✓Standards approval undertaken by an independent statutory board in accordance with criteria established in regulations which provide transparency in decision-making. ✓Criteria to be developed in consultation with the board and the public. ✓Board approves membership of Standards committees to ensure appropriate representation and balance. ✓Standards continue to be developed by balanced committees and by consensus. ✓Standards development process will continue to be consistent with guidance from ISO and IEC guidance and with New Zealand's obligations under the WTO TBT agreement. | Partially meets objective ✗Distance from government inherent in Crown entity model makes it difficult for IANZ to retain relevance, visibility and credibility with other parts of government. ✓Some ability to scale resources to meet changing demand for Standards. ✓Improved operating provisions will help ensure Standards are developed faster and more efficiently. ✓Measures to enhance access to Standards cited in regulations (eg increased online access), and currency of the catalogue. ✓The implementation phase will address issues around transfer of copyright in Standards and royalty arrangements, which will continue to align with international expectations. ✓Standards development processes will continue to be consistent with ISO/IEC guidance and NZ obligations under WTO TBT agreement. | Partially meets objective ✗International best practice does not favour colocation of standards and conformance functions. ✓Standards board would hold membership of ISO and IEC. ✓The Standards development function in IANZ would hold the commercial and operational relationship with ISO/IEC and NSBs, including Standards Australia. ✓Standards development process will continue to be consistent with guidance from ISO and IEC guidance and with New Zealand's obligations under the WTO TBT agreement. ✓The implementation phase will address issues around transfer of copyright in Standards and royalty arrangements, which will continue to align with international expectations. | Partially meets objective ✓The approvals board will be a smaller, more focused, meeting on a needs basis only and without governance responsibility. This will reduce the cost of the board (compared to the status quo and option 1) while focusing their efforts. ✓Reduced operating costs compared to status quo and Option 1, but greater than Option 3. ✓Some ability to scale resources in response to demand with some ability to share services. ✗Potential risk to IANZ's sustainability by requiring a shift in resources and management focus to the new Standards development function. ✓Principles to guide the funding model for Standards (i.e. cost recovery by public and private sectors). |
| Option 3 (Preferred Option Package) Independent Statutory Approvals Board A Statutory Officer (similar to the Companies Registrar) located in MBIE undertake Standards development function Changes to Standards Act and Regulations Improved operating arrangements | More likely to meet Objective ✓Improved clarity of functions for standards development in an amended Standards Act will be helpful. ✓Enables closer coordination with core government policy on how standardisation could contribute to a more competitive and productive economy. ✓Ability to facilitate more effective coordination with regulators who are key commissioners and users of Standards. ✓Provides Ministers with more direct oversight of the efficiency and effectiveness of processes around development of and access to Standards. | Meets Objective ✓Standards Approval undertaken by an independent statutory board in accordance with criteria established in regulations which provide transparency in decision-making. ✓Criteria to be developed in consultation with the board and the public. ✓Board approves membership of Standards committees to ensure appropriate representation and balance. ✓Standards development function (comprising project management and forming committees) located in a different part of MBIE to the key regulators who use Standards. Overseen by a Statutory Officer (similar to Companies Registrar) for Standards development and associated functions. ✓Standards continue to be developed by balanced committees and by consensus. ✓Standards development process will continue to be consistent with guidance from ISO and IEC guidance and with New Zealand's obligations under the WTO TBT agreement. | Most likely to meet objective ✓MBIE will be able to assist closer alignment of Standards with government priorities, eg: innovation, and a more productive economy, health and safety. ✓MBIE can provide more effective coordination with regulators. ✓MBIE is subject to direct Ministerial oversight with regard to the efficiency and effectiveness of processes around Standards development, maintenance and access to Standards. ✓MBIE is able to be flexible and scale resources to meet changing demand for Standards. ✓Improved operating provisions will help ensure Standards are developed faster and more efficiently. ✓Measures to enhance access to Standards cited in regulations (eg increased online access), and currency of the catalogue. ✓The implementation phase will address issues around transfer of copyright in Standards and royalty arrangements, which will continue to align with international Standards development processes will continue to be consistent with ISO/IEC guidance and NZ obligations under WTO TBT agreement. | Meets Objective ✓ Statutory Officer in MBIE would hold ISO/IEC membership and enforce copyright infringement. ✓MBIE Standards development function would hold the commercial and operational relationship with ISO/IEC and national standards bodies, including Standards Australia. ✓Standards development process will continue to be consistent with guidance from ISO and IEC guidance and with New Zealand's obligations under the WTO TBT. ✓The implementation phase will address issues around transfer of copyright in Standards and royalty arrangements, which will continue to align with international expectations. | Meets Objective ✓The board will be a smaller, more focused board, meeting on a needs basis only and without governance responsibility. This will reduce the cost of the board (compared to the status quo and option 1) while focusing their efforts. ✓Reduced operating costs and the lowest annual operating and overhead costs of all options. ✓Ability to scale resources in response to demand. Opportunity to leverage MBIE's shared services, providing a higher proportion of variable costs compared to fixed costs. ✓MBIE sustainability not affected by new Standards development function. ✓Principles to guide the funding model for Standards (i.e. cost recovery by public and private sectors). |

Summary of analysis of option packages

65 Based on the assessment of option packages in Table 2 above, MBIE's view is:

- The **Status quo** arrangements do not meet the objectives of the review, or address the underlying problems identified in consultation and further analysis.
- **Option 1** (the revised status quo) partially meets the objectives of the review. Changes to the Act and regulations and improved operational processes contribute to objectives. However the long term viability and cost effectiveness of this option remains in doubt, given the dynamic and changing operating environment, and the lack of ability to scale resources to meet demands, continuing higher overhead costs compared to the other option packages, with a likely continuing shortfall is estimated to require up to \$350k per annum. The institutional arrangements maintain the arm's length relationship with government and therefore limit the ability to retain relevance, visibility and credibility with other parts of government.
- **Option 2** (a board and IANZ doing the Standards development function) partially meets the objectives of the review, although concerns remain regarding the colocation of standards and conformance activities, which is not consistent with international best practice. This option provided improved cost effectiveness, through some ability to scale resources, although risks to IANZ's own sustainability were identified. The institutional arrangements maintain arm's length relationship with government and therefore limit the ability to retain relevance, visibility and credibility with other parts of government.
- **Option 3** (a board and a Statutory officer located in MBIE undertaking the Standards development function) most fully meets the objectives of the review and is able to address the underlying problems identified in consultation and further analysis. MBIE will be able to assist closer alignment of Standards with government priorities, and coordination with regulators. It is also the option most likely to provide long term viability of a well-functioning NZ Standards system, given the ability to scale resource to meet changing demand.

66 The preferred package is Option 3 (as shown in the diagram in Appendix 3). It was assessed as being most likely to achieve the objectives of the review and the needs of industry, consumers and regulators into the foreseeable future.

67 Key industry stakeholders have previously voiced concerns regarding a perceived loss of independence of Standards setting where the standards development function is located in MBIE. MBIE's view is that the independence of the Standards approval and development functions will be maintained through the independent approval board and the role of the independent Statutory Officer responsible for the Standards development function. No feasible alternate models have been suggested by stakeholders, other than additional funding for the Standards Council.

68 Ministers will need to use judgement and weigh the trade-offs and anticipated benefits of Option 3 with any remaining stakeholder views.

Impact analysis of the preferred option package – Option 3

69 Moving the Standards development function from the Standards Council to a statutory officer located in MBIE would result in benefits including:

- focusing the contribution of Standards on wider government priorities through closer coordination with core government policy on how standardisation could contribute to a more competitive and productive economy
- facilitating more effective coordination with regulators who are key commissioners and users of Standards
- providing Ministers with stronger and more direct oversight of the efficiency and effectiveness of Standards development processes
- providing cost efficiencies, and the ability to scale resources to changing demand and benefits from MBIE shared services. On-going savings for operational costs, compared to the status quo, are estimated to be up to \$350k per annum.

70 In addition to these benefits there will also be some one-off transition and implementation costs. Initial estimates by MBIE indicate that the transition and implementation costs of the preferred option package (Option 3) in this paper are not expected to exceed \$1.4 million. These costs would be met from the existing reserves of the Standards Council, which stands at about \$3.2 million. These estimates will be refined during the transition and implementation phase.

71 Overall the benefits of the proposed option package are considered to outweigh the costs significantly and are expected to provide a net benefit to New Zealand in relation to economic and broader wellbeing.

Impacts on those most likely to be affected

72 The impacts of the preferred package (Option 3) compared to the status quo, for those groups most likely to be affected are identified in the Table 4 below.

Table 3: Costs and Benefits of Preferred Option (Option 3)

| | Costs | Benefits |
|---|--|--|
| Users of Standards documents (industry and consumers and regulators eg: trades people, firms, regulators) | <p>Users will still need to pay to access Standards either directly or indirectly.</p> <p>Cost of accessing Standards is likely to be no greater than the status quo.</p> | <p>Potential for improved access to Standards cited in regulations, e.g. through greater use of online access (as already provided in the energy safety area for particular occupation groups).</p> |
| <p>Commissioners of Standards</p> <ul style="list-style-type: none"> • government regulators • industry sectors | <p>The principle of cost recovery including a proportion of overhead costs will be apportioned to agencies and industry sectors which fund development and maintenance of Standards. This may require changes to the level of funding provided by commissioners of Standards.</p> <p>Some up-front work will need to be done to review the status of all Standards in the catalogue, and to categorise them as reconfirmed</p> | <p>Improved transparency in criteria for approving Standards.</p> <p>Greater flexibility in deciding how to fund and provide access to Standard's (i.e.: choices about relative cost of direct access or indirect access for specific user groups funded in part by levy or registration fees).</p> <p>Improved responsiveness of standards development including processes to enable faster</p> |

| | | |
|--|---|---|
| | <p>or needing revision. Costs for this activity remain uncertain. The relevant commissioner of the Standard (either an industry sector or regulator) would need to fund any review of a Standards if they chose to do so.</p> | <p>development process, flexibility on the criteria for consensus as appropriate.</p> <p>Regular updates of the catalogue meaning Standards are fit for purpose and remain up to date, and relevant to industry and regulator needs.</p> <p>Introduction of dispute resolution processes.</p> |
| Nominating bodies to the Standards Council | <p>The proposal will remove the nominating bodies listed in current regulations, with appointments to the Standards board made solely by the Minister, based on skills and experience required to perform the Standards approval function, including knowledge of sectors which use Standards.</p> <p>The Minister will still publicly call for nominations and can formally write to specific organisations to invite nominations.</p> | None. |

Consultation

73 There have been four distinct periods of consultation and engagement:

- In July 2012 we 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 broad 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 '*Proposals to enhance the delivery of Standards by New Zealand's national standards body*' 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.

- 74 The discussion document released in March 2013 sought feedback on a set of proposals from the review, including the proposal to set up a statutory board for approving Standards and to locate the Standards development function either in MBIE, IANZ or a standalone body. A total of 116 submissions were received.
- 75 It included a proposal that the board approve other organisations to develop Standards (Standards Development Organisations or SDOs), and to enable SDOs, such as industry groups, to produce Standards that would be submitted to the board for approval as New Zealand Standards.
- 76 Feedback received from submitters indicated that there would be very few organisations which would have the scale, resources and interest in becoming approved to be an SDO. In addition, SDOs are likely to add complexity to the Standards system, e.g. in terms of the need to negotiate copyright arrangements between SDOs and ISO and IEC. We have therefore decided not to progress this proposal.
- 77 Some stakeholders also suggested merging the NSB with Standards Australia. This option was not progressed as it is likely that Australia and New Zealand would have to share a single membership of ISO and IEC, and would subsequently have only one set of voting rights. It is possible that a merger would also put at risk the ability to develop Standards to address needs specific to New Zealand (e.g. seismicity).
- 78 Some of the key themes raised by submitters in response to the discussion document were:
- more than 40% of submitters had no comments on the opportunities and risks arising from the three location options for the Standards development function. Of those who commented, most were in favour of the standalone option
 - few alternative institutional options were identified
 - mixed feedback on what impact the options would have on submitters as experts contributing to Standards development. Some are willing to maintain their contribution regardless of the option while others are less willing to do so and/or expect to be paid for their contribution under the MBIE and IANZ options
 - mixed feedback both across sectors and within sectors about whether NZ Standards are a good fit for them
 - mixed feedback on the fit between Standards and the regulatory system, and a lack of understanding of how Standards fit into the regulatory framework.
- 79 In August 2013 further targeted engagement was undertaken with key stakeholders including representatives of the business community, consumers and retailers, local government, as well as key sectors that are significant users of Standards, including the design, building, electricity and gas sectors.
- 80 The key issues raised by most stakeholders related to the perception of the loss of independence should MBIE undertake the Standards development function. A few stakeholders had particularly strong views on this point and are of the view that Standards development needs to be undertaken by an independent body. The specific points raised by stakeholders on this issue were:
- regulators would be able to exert undue influence on the Standards development process given that MBIE is also responsible for several regulatory functions (e.g. in the building and energy and gas safety areas)

- the significant risk that their members will no longer contribute to Standards development committees or will want to be compensated for their contribution
- the loss of perceived independence could have a negative impact on those exporters that use Standards should international recognition be out at risk
- the desire for status quo arrangements with enhanced funding
- MBIE would not devote sufficient attention to the needs of the industry relative to those of regulators
- the composition of the board is critical including the extent to which it is representative.

81 Our view is that the independence of Standards approval and development will be maintained and strengthened in the following ways:

- the body approving Standards and committee membership would be a statutory board not subject to the direction of Ministers
- the board would approve Standards and committee membership based on criteria set out in regulations (e.g. balanced committees, consensus), which will be underpinned by high-level principles in legislation (e.g. consistency with international expectations)
- these regulations would be developed through consultation with the public and the board
- the key features of the process for developing Standards would continue to be consistent with guidance from ISO and IEC and with New Zealand's obligations under the WTO Technical Barriers to Trade Agreement.

82 The risk of experts no longer contributing to Standards committees is hard to quantify but is mitigated because many experts on Standards committees derive benefits themselves from participating on committees, given the unique value provide by the Standards system.

Conclusions and Recommendations

83 The status quo and the status quo with additional funding are not recommended because it does not resolve the underlying problem identified that the current institutional arrangements are not best suited to delivering the core functions required of the Standards system.

84 The preferred option to establish an independent statutory Board primarily responsible for approving standards and membership of Standards development committees; locate the Standards development function with the statutory officer located in MBIE; and to make changes to Standards development and delivery to improve the operational processes, have been assessed as most likely to achieve the objectives and outcome of the review.

85 Key industry stakeholders have previously voiced concerns regarding a perceived loss of independence of Standards setting where the standards development function is located in MBIE. MBIE's view is that the Standards development function, undertaken by an independent Statutory Officer, located in MBIE, responds to stakeholder concerns.

86 On the whole MBIE's view is that the independence of the Standards approval and development functions have been maintained and improved with key features of the proposed model. No alternate models have been suggested by stakeholders, other than additional funding for the Standards Council.

- 87 Ministers will need to use judgement and weigh the trade-offs and anticipated benefits of Option 3 with likely Stakeholder views.

Implementation

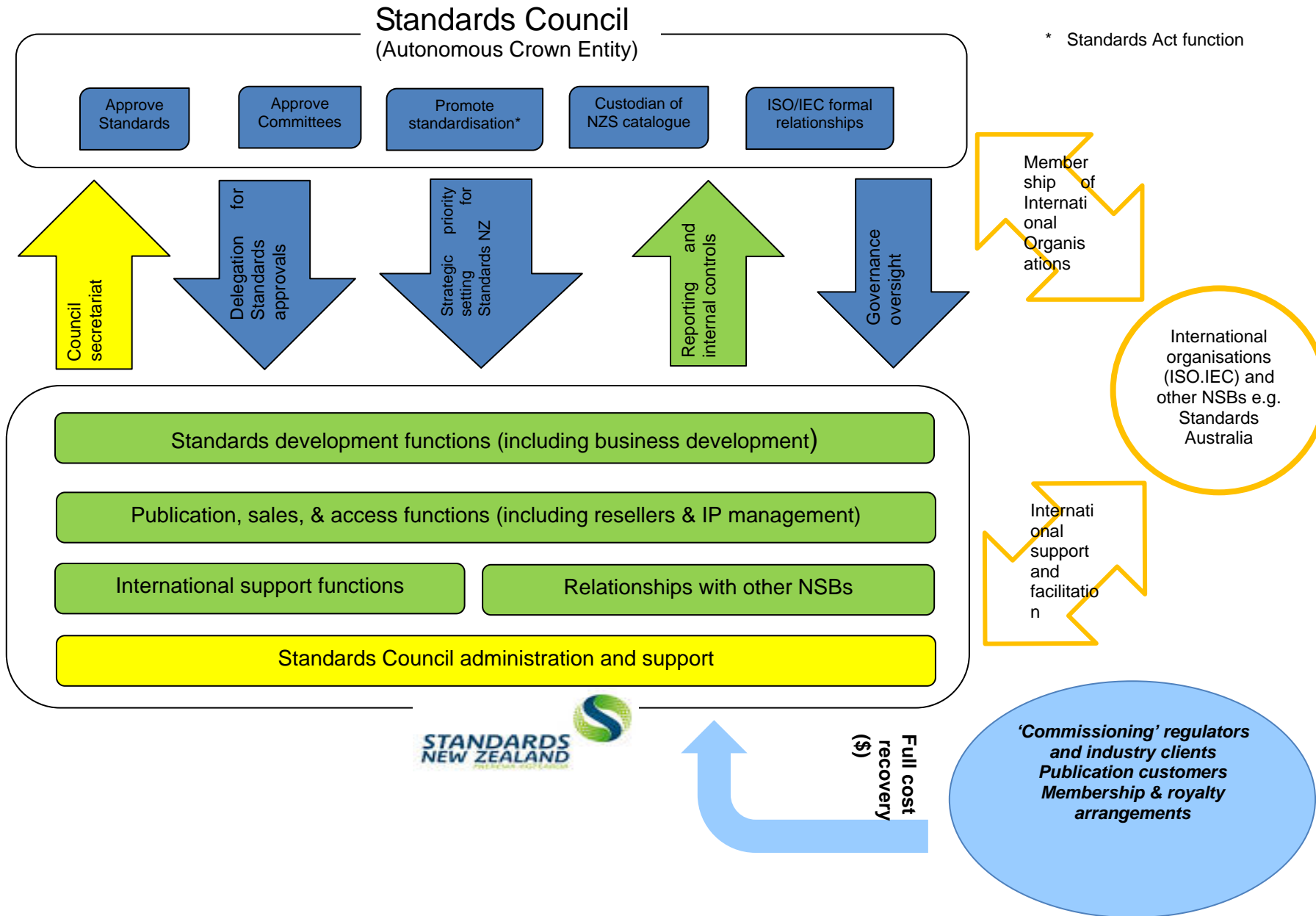
- 88 The changes to the Standards Infrastructure will require changes to the Standards Act 1988 and Standards Regulation 2006.
- 89 An oversight group will be established to oversee the transition and implementation process for the proposals in this paper. The group will be chaired by MBIE, and consist of members of the Standards Council and MBIE officials. The oversight group will appoint a project manager and project team which would be responsible for executing the implementation plan for the preferred proposal in this paper.
- 90 Wherever feasible, MBIE intend to start putting in place elements of the agreed proposal prior to the passing of legislation which would enable the transfer of the Standards development function to the statutory officer in MBIE. This means that the Standards Council and SNZ will be expected to actively support the steps that need to be taken to implement this transfer, and rationalise aspects of the Standards development function prior to its transfer.
- 91 The implementation plan will focus on ensuring that Standards development work continues in a business-as-usual manner with no adverse impact on timeliness or quality, relationships with key stakeholders are maintained, and key personnel risks are managed.
- 92 The plan will also include a workstream on the due diligence of SNZ and a consultation process with SNZ staff. It will also address the potential transfer of any existing SNZ staff to the statutory office in MBIE to undertake the Standards development function.
- 93 As part of detailed implementation MBIE would develop principles to clarify the basis of the existing funding model for Standards. The set of principles would guide the funding model for Standards, in order to ensure that both the approval and development functions are placed on a financially sustainable footing (i.e. cost recovery from agencies and industry sectors, and no cross-subsidisation except within groups of like Standards such as Standards supporting the building control system).
- 94 MBIE will also increase its policy effort, (separate to managing the Standards development process), to strengthen the contribution of standardisation to the government's desired outcomes. This will focus on the role of Standards and strengthening the contribution of Standards to innovation, international trade and health and safety outcomes

Monitoring, Evaluation and Review

- 95 The arrangements for monitoring and review will be developed further by the oversight group, and will be finalised prior to legislation coming into force.
- 96 The Standards development function, located in MBIE, will be subject to usual agency oversight.

APPENDIX 1 STATUS QUO

* Standards Act function



APPENDIX 2 PROPOSED MODEL

* Based on criteria set out in Regulation

