



15 January 2015

Dear Sir / Madam

## **Submission to Commerce Select Committee**

### **Standards and Accreditation Bill**

#### **Background**

The intent of the Government to move Standards setting from an independent body with a high level of private sector governance input to one administered by the Ministry of Business, Innovation and Development (MBIE) was not greeted with enthusiasm by many in the building industry. That was largely due to the unique character of the building and construction sector and the performance-based nature of the NZ Building Code, which makes workability and industry acceptance of Standards particularly significant to the sector. While a Standard may set out a given solution, which in turn may be cited as a means of compliance with the Building Code, there are often many other solutions available, each differing in the methods used but each potentially just as valid in terms of achieving compliance. Such complexity is already difficult for manufacturers, specifiers and users to negotiate. The idea that industry input into the Standards process might now be further diluted is viewed with concern.

Further, a Standard set for a particular segment, product or service in the building industry may well be valid today but out of date tomorrow because of continuing advances in the manufacture or application of building products and systems. Such innovation then appears inconsistent with the (now out-of-date) Standard, even though the new solution may produce the desired end result. With first-hand knowledge, industry provides an effective barometer of requirements for Standard maintenance and updating, meaning industry input is particularly important.

Standards are also significant to the Acceptable Solutions and guidance notes issued by MBIE as instructions on how the Building Code itself, and relevant Standards, can be complied with by builders and product/systems suppliers. In some instances, Acceptable Solutions and guidance notes may include particular departures from published Standards for the reading of specific clauses in the Code or Standards.

Certification and Appraisal bodies express opinions on whether the products or systems may be deemed either an Acceptable Solution - by reference to Compliance Documents and cited documents - or an Alternative Solution by other means. Reference to Standards is a necessary part of both aspects of this verification.

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This regime is intended to deliver quality assurance to consumers as to the performance of their buildings and building products and systems. At all points, significant technical expertise is needed to ensure that a Standard is sufficiently “tight” to ensure quality and performance, sufficiently flexible to allow for innovation and development, and also providing cost effectiveness.

Traditionally these experts have come from industry. More often than not they are, or have been, employed by companies in the particular fields. Not unexpectedly their views can differ. The output from technical committees working within the Standards system frequently turns out to be developed through robustly expressed opinions. Differences are rarely apparent on an objective but focus more often on the qualities required to achieve it. This is a very effective process and one that has produced world leading and internationally recognised Standards for use in the NZ building industry. Retaining and continuing to attract such talent from industry to the Standards process is considered crucial to future development of the Standards system.

Consequently, when the Explanatory Note to this Bill states that the purpose is to: *“maintain confidence and credibility in the standards and development and approval process, and in the process of accreditation”* ....and *“to better align standards with the Government’s priorities such as economic growth, innovation, safety and well-being”* and places administration within the public sector, there is nervousness within industry that the new system will be as accepting of robustly expressed differences in view that take into account the merits of differing product types and systems both in their composition (for example wood, steel or synthetic materials) and the manner in which they seek to be fit for purpose.

While industry might see a need for a new or amended Standard to meet the development of a fresh system or product range, the public sector opinion might well be that other priorities stated by the Government of the day should take precedence. A traditional response to industry in these situations is: “If you want it, you pay for it”. Delay occurs while money is found – funding is often needed from competitive interests with a natural reluctance to come forward with cash – and as a result innovation may be stifled or less-than-acceptable performance is allowed to continue.

This means that in carrying through the transformation of Standards setting process to a greater level of public sector administration extra care needs to be taken in respect of the Building and Construction Industry that the new system provides for at least equal weight to be given to industry views of what new Standards are needed, what are obsolete and what should be given priority. The industry works with Standards every day. The importance of them to the industry cannot be overstated. And it is at the practical “on the job” level that they come into effect. The industry is sceptical that a public service administrator behind a desk in the Capitol can fully understand the impact his or her decisions have on a building site or in a manufacturing facility. Such scepticism can only be overcome if there is confidence within industry that its needs and opinions can be expressed and will be heeded in the governance and operational process of the new system.

### **Relevant examples**

Examples of industry need that in recent years provoked problems because of ongoing differences of view between industry on the one hand and the public sector on the other included concrete, steel and wood, all materials that are basic to the industry at work. In each case, the industry view of what was needed has subsequently been vindicated, despite earlier disinterest from the public sector.

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**Concrete:** There are 25 cement and concrete-related Standards, developed largely with goodwill from the cement and concrete sector together with experts from the wider construction community under the previous Standards model.

The cement and concrete sector also produced its own weathertight construction Standard, *CP 01 - Code of Practice for Weathertight Concrete and Concrete Masonry Construction*, which is now cited directly through the New Zealand Building Code Clause E2 External Moisture, as Acceptable Solution 3.

This document was produced by industry as the public sector held the view that an Acceptable Solution covering weathertight concrete and concrete masonry construction was unnecessary as weathertightness was not an issue for these materials. Such a view had a perverse outcome in that Building Consent Authorities were reluctant to issue consents for concrete systems because an Acceptable Solution did not exist.

The development of *CP 01 - Code of Practice for Weathertight Concrete and Concrete Masonry Construction* was led by the Cement & Concrete Association of New Zealand (CCANZ), an industry body that aims to ensure decision makers realise the full potential of concrete as key to a sustainable built environment. The methods CCANZ employs to achieve its objectives include delivering industry solutions based on technical expertise, providing effective representation to Government, regulators and other stakeholders, as well as co-ordinating concrete-based education, training and research initiatives.

**Steel:** An industry body, The National Association for Steel Framed Housing, has produced the NASH Standard for Residential and Low Rise Steel Framing Part 1: Design Criteria which is now referenced in the NZ Building Code.

**Wood:** An extensive suite of timber based building Standards (in excess of 40 at last count on the SNZ website) have been produced by largely construction industry personnel under the previous Standards NZ regime. Some examples include:

NZS 3602: Timber and wood based products for use in building

NZS 3603: Timber structures standard

NZS 3604: Timber framed buildings

### **Particular submissions**

It is against this background that the following points are made:

#### **1. New Zealand Standards Approval Board:**

The Building and Construction Industry has difficulty with this section of the Bill because the Standards system deals with a considerable range of industry and social sectors, most of which have little relevance to building and construction. Therefore it is difficult to contemplate that a Board of five to seven members could have at best more than two members who are fully conversant with the requirements and peculiarities of the building industry and, at worst, none at all. Yet the building and construction industry is particularly affected by the content and quality of Standards relevant to it.

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In these circumstances we are of the view that meeting the requirements of sub-clause (h) of clause 12(1) of the Bill for this Board dealing with the currency and priority areas for development and review of Standards requires mandatory representation of the building and construction industry on the Board, so that the new system at not odds with industry views and does not increase consumer risk.

**Our recommendation is:**

*That an additional sub-clause be added as sub-clause (2) of clause 1 of Schedule 1 as follows:  
The Board shall include at least two members who are experienced in, and conversant with, the Building and Construction Industry.*

**2. New Zealand Standards Executive:**

International best practice has historically been to allocate the Standard-setting function to industry. The required technical expertise is principally found within the ranks of day to day practitioners within the sectors to be covered. Further, Standard-setting should not be subject to direct political influence by the government of the day.

To the extent that the Bill breaks with this historic global practice the Building and Construction sector was, and is, concerned that the position of Executive is now to be filled by an executive of the Ministry of Business, Innovation and Development (MBIE) appointed by the Chief Executive of that Ministry. The industry does not question the integrity of the Chief Executive of MBIE but is concerned that the appointment process and the subsequent administrative tenor of the appointee will be influenced significantly and dominated by public sector and government requirements at the expense of industry requirements and needs.

The industry is effectively told through this Bill to accept that MBIE knows best and, in the absence of any guaranteed position or positions on the New Zealand Standards Approval Board for provision of building-industry-specific oversight, to also accept that we have no ability to balance the influence of the public sector.

The examples in the concrete, steel and wood sectors outlined above indicate why this concern is widespread. It is, in our view, preferable that experienced Standards and Conformance personnel from outside the MBIE environment should be able to accept the position and the Approval Board not be bound to accept whoever the Ministry decides to appoint from within its own ranks. We accept that for administrative servicing reasons there is good reason for the Standards organisation to be, in effect, housed within MBIE. However, in our view sub-sections (j) and (k) of Clause 7 relating to reporting and advising of Ministers suggest this new body will be “independent” with a small “i” under the current Bill.

**Our recommendation is:**

*That Clause 6 “Appointment of NZ Standards Executive” be amended to read: The Chief Executive must nominate a suitable person or persons with experience in the administration or operation of Standards and Conformance services for approval by the New Zealand Standards Approval Board to be the NZ Standards Executive.*

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A consequential amendment would be required to clause 12 of the Bill to record the approval of the NZ Standards Executive as one of the functions of the Board.

### 3. Clauses 7 to 9

The extent of the powers of delegation to be given the NZ Standards Executive within MBIE suggest that it is intended the Standard-setting administration will in future be little more or less than a public service function within MBIE. The Bill does not provide for oversight of such delegations by the NZ Standards Approvals Board. We suggest that such delegations should be subject to Board's approval prior their being made.

### 4. Clause 10

This Clause offers up the prospect of political micro-management of the Standards process in a manner which brought protest from Standards and Conformance international sources during the consultation process on a change to the previous regime. Does this Clause mean that "informing" the responsible Minister of every proposal to amend, revise, revoke or replace the Standard before the proposal is referred to the Approvals Board will make referral or not to the Approvals Board subject to the Minister's opinion? Or does the word "inform" in this context limit Ministerial response to simply one of acknowledgement of receipt of the information?

### 5. Clause 17

Subsection (3) says a member of a Standards Development Committee who is personally interested in a matter relating to the work of such a committee must not vote or take part in any discussion or decision of the committee relating to the matter.

This could rule out a majority of industry-based technical experts and advisers from involvement in the process, because they are employed by a party with a particular competitive interest in the subject-matter of the Standard. These experts are present, often nominated by a trade group within the industry, because of their known expertise in the relevant topic. Many of the best-qualified and best-informed experts in a particular field are employed by or associated with private industry interests. It is not in the interests of quality Standard-setting that these experts be prohibited from participating in the process.

Under the current Standard-setting regime there are many examples of colourful debate between experts representing competing companies about the merits or demerits of proposals for inclusion in a Standard. Sometimes these are influenced by the competitive advantage that such a Standard might or might not bestow on a particular company. But while this may occur, there is a general acceptance that the presence of these individuals on a standard-setting committee is for the industry and consumer good and that individual (company) advantage must take a back seat to the setting of a fair, high-quality standard.

The present form of this legislation would likely bar necessary and useful expertise from participating in the Standard-setting process, to the detriment of quality outcomes. It could also create a new body of "Standards" consultants, independent of commercial interests but unfamiliar with trends and innovations among private industry participants.

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We support subsection (1) concerning disclosure of conflicts of interest, and consider that this enables appropriate management of a Standards development committee which includes private commercial interests. It has been proven under the current regime that quality Chairmanship, informed about the interests of Committee members, is capable of oversight that prevents private interests overriding fair and high-quality Standard-setting by the committee as a whole.

**Our recommendation is:**

*That subsection (3) of Clause 17 be amended to provide that:*

1. *Subclause (3) shall not apply to a member simply because that member is, or is employed by, a commercial participant in the relevant industry or sector affected by the work of the standards development committee, provided that fact is disclosed under sub-section (1).*
2. *No member who has a personal interest in a matter relating to the work of any standards development committee shall be eligible to be the chairperson of that committee.*

**6. Clauses 23 to 25**

It is widely understood within the Building and Construction industry that the Crown will pay all costs associated with the establishment of new or revised standards for citing in the Building Code, and other regulatory or legislative actions; and that industry will pay for or contribute to those Standards which are developed especially for the benefits of the industry sector which requires the Standard. Reasoning for this approach is based on the fact that Standards developed for use in enforcement and workability of the Building Code (regulatory and legislative purpose) are for “community good” while those developed for a particular sector, while contributory to the common good, are most needed for day to day industry practice. There is a case for Standards associated with the Building Code to be freely available to builders, commercial constructors and product manufacturers through downloading from, or inspection on, the Internet. This is based on the fact that access to them is essential for the performance of their work in respect of the consent and compliance regime. We would urge the Committee to recommend that MBIE consider this course of action. A cost-based charge for printed copies of the relevant Standards is acceptable. The Committee could require the Standards Executive to take into account when considering charges for access whether a Standard is cited in legislation or regulation.

While the Bill refers to the recovery of costs for New Zealand Standards Development, approval, maintenance and access, there appears no reference to payments for the work of those people commissioned to work on Standard Development Committees. In view of this we would be appreciative of the Committee ascertaining from MBIE its intentions in regard to payments for such services. In recent years de facto practice has been for industry to make available its technical experts for the Standards setting process both for Standards associated with the Building Code and for those of a particular sectorial need. This contribution was to a significant extent predicated on the basis that the industry itself often contributed directly to the governance and administrative processes of the Standard setting administration under the previous regime.

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## 7. General

Overall, the Building and Construction Industry considers it debateable whether the change in Standards administration envisioned through this Bill will better meet its often complex technical requirements. While we are prepared to support the measure, with some of the changes we have suggested, we believe that its success will be largely dependent on a co-operative approach from MBIE. Recent dialogue between the industry and the Ministry suggests such co-operation will be forthcoming. We look forward to working with it in the interests of consumers, the industry and the wider public.

We would appreciate the opportunity to appear before the committee to provide oral support for our submission and answer queries that committee members may have.

Yours sincerely

*Bruce Kohn*

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