

How are

standards

used in policy and legislation





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How standards can be used in policy and legislation

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

To promote the effective use of standards, this guide outlines good practice for regulators selecting and incorporating standards by reference.

Standards New Zealand is available to discuss and provide advice on the use of standards to support policy objectives.

We can help to:

- identify relevant national, regional, and international standards
- check the status and details of a standard
- ensure that references to standards are correct
- keep up to date with revisions and amendments to standards.

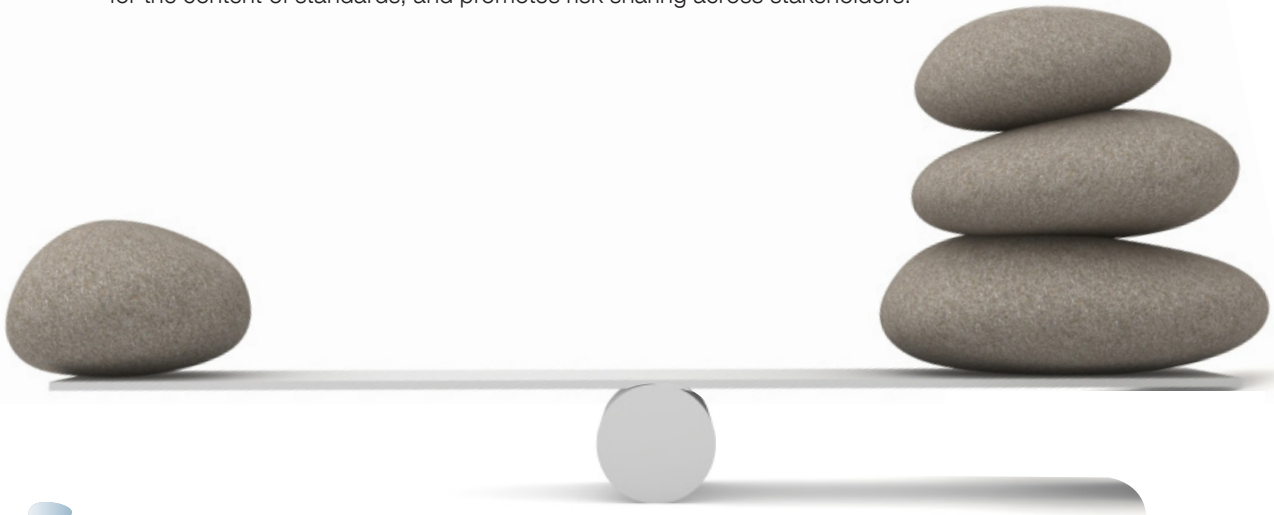


Why use a standard?

Standards provide agreed specifications for products, processes, services, or performance. The technical information in standards has been developed through a robust and transparent process that includes public comment.

Regulators can incorporate standards by reference into Acts of Parliament, delegated legislation, or non-regulatory guidance material as mandatory or voluntary. This means detailed performance or process requirements can be provided without encumbering the Regulation or guidance with technical information. For instance, instead of including all the performance requirements for personal floatation devices in water safety guidance, the regulator could choose to reference the appropriate standards for this information.

What's more, because standards are developed through balanced, expert committees and a consensus-based process, they represent better practice and have the buy-in of industry, community, and government stakeholders. This approach also encourages collective responsibility for the content of standards, and promotes risk sharing across stakeholders.



How should standards be used?

When incorporating a standard by reference, regulators should ensure that:

- the standard's technical content is fully understood and aligned to policy objectives
- the standard is publicly available at the time of incorporation by reference
- there is a clear distinction between the mandatory (normative) content of a standard which does have legal effect, and guidelines or explanatory (informative) content which do not have legal effect¹
- the standard can be complied with in New Zealand, and any specified tests can be done by testing facilities that have been accredited under the International Laboratory Accreditation Cooperation (ILAC) Arrangement.² In New Zealand the organisation that participates on ILAC is International Accreditation New Zealand (IANZ)³
- the standard is held by the regulator in the form of a signed hard copy, as evidence of incorporation.

Standards can be:

- referenced in Acts or Regulations as legally mandatory
- referenced in Acts or Regulations as 'acceptable solutions' or 'means of compliance'. This ensures compliance with legislation but does not prevent the use of an alternative method, provided it meets the specified legislative criteria
- used by a government agency to detail a required condition of contract with an external supplier
- incorporated into non-regulatory material as examples of best practice or guidance for industry
- employed as a means of compliance with industry regulation, for example, specifying requirements for audit certification
- promoted as a means of dealing with legal liability issues. For example, compliance with various risk management standards may be cited in court as proof that all reasonable steps were taken.

1 Refer to the Legislation Advisory Committee (LAC) Guidelines.

2 www.ilac.org/ilacarrangement.html

3 www.ianz.govt.nz

The status of standards

A standard is not, of itself, mandatory or legally required. A standard has to be incorporated by reference in an Act or delegated legislation in order to be mandatory. Once referenced it becomes part of the technical regulation framework.



Choosing a standard

In many cases, an appropriate standard for incorporation by reference will already exist, avoiding the necessity to develop a new standard. Using an existing standard can minimise unnecessary duplication, confusion, and inconsistency in policy development.

It is important to consider the use of a standard within the policy analysis objectives under the Regulatory Impact Analysis (RIA) system, overseen by the Treasury.

If an existing standard does not exactly match a regulator's requirements, changes to the text of a standard can be specified into the Act, delegated legislation, or guidance material.

Regional and international standards

The use of joint Australian/New Zealand standards supports trans-Tasman regulatory harmonisation, and the use of international standards is consistent with New Zealand's obligations to reduce technical barriers to trade. Because they are approved by an international community, ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission) standards are rebuttably presumed not to be barriers to New Zealand's trading partners.

‘ If an existing standard does not exactly match a regulator's requirements, changes to the text of a standard can be specified into the Act, delegated legislation, or guidance material ’

There are risks, however, that the content of international standards can be developed or revised without New Zealand input. If regulators incorporate international standards by reference, it is important to ensure that they are involved in, or at least connected to, their development and revision.

By participating in international (ISO and IEC) standards development committees, regulators ensure they are up to date with and are represented in future developments of the international standards they reference. Participation is facilitated by Standards New Zealand.⁴

4 For more information see Standards New Zealand's Protocol for ISO and IEC Technical Committee Participation (www.standards.co.nz/International/International+relationships/default.htm) or contact Standards New Zealand.

Revisions and amendments to standards

Revised editions and amendments to standards are published by standards development organisations to keep standards up to date.

Under section 10(4) of the Standards Act 1988, the Standards Council requires ministerial permission before it can amend, revise, revoke, or replace a standard that is incorporated by reference into legislation. However, overseas standards development organisations are not similarly constrained, and will update incorporated standards without consulting the regulator.

Legislation Advisory Committee Guidelines state that subsequent amendments should not have legal effect unless a relevant Act or delegated legislation expressly provides that they do have effect.

If regulators wish references to standards to reflect amendments and revisions, then they should first consider whether the legislation that authorises the issue of Regulations specifies how subsequent amendments to incorporated instruments are to be dealt with.

Also, consideration needs to be given to the level of understanding end users have about Regulations. For example, would the end user of deemed regulation know to look at the empowering legislation for guidance?

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a standard that is incorporated
by reference into legislation*

In general, it is helpful to be as specific as possible, within the limits of policy objectives, about whether amendments and revisions to standards incorporated by reference should apply. A blanket statement to the effect that the legislation extends to all later versions of the standard could work against policy objectives. Standards development organisations could replace (supersede) one standard with multiple standards, each potentially with a different number and slightly different subject matter than the original standard.

When amendments made to incorporated standards are likewise incorporated by reference, this should be publicly notified by the regulator.

Searching for standards

Standards New Zealand has specialised capability to assist with searching for international, regional, or national standards.

Checking the existence and details of standards is best done by viewing a hard copy. It would also be acceptable to view a PDF copy or the bibliographic details through the website of the issuing standards development organisation. Remember, however, that a signed hard copy is required to be held on file by the regulator.

Many standards development organisations' websites can be accessed through the ISO website at www.iso.org/iso/home/about/iso_members.htm.

New Zealand and joint Australian/New Zealand standards can be checked at www.standards.co.nz.

Always take note of the status of the standard. If it has been superseded or withdrawn you may choose to reference a more recent edition.

Developing a new standard

If there is no suitable existing standard, regulators can sponsor Standards New Zealand to develop one that is specific to their needs.

Standards are developed through a consensus-based process involving widespread consultation with affected parties. When a new standard is developed to assist policy implementation, the process can be a useful means of:

- obtaining feedback on the wider policy
- getting expert input
- publicising the policy and notifying affected parties
- uncovering issues that may arise with implementation
- resolving policy-related conflicts within the sector.

Developing a standard may entail financial costs, time, and the use of human resources. The amount of cost and time necessary to develop a standard will depend on the standard's scope, style or type, and method of implementation.



Writing the reference to a standard

It is important that references to standards are clear and unambiguous. As a minimum, the five components shown in Figure 1 should form each reference to a standard.

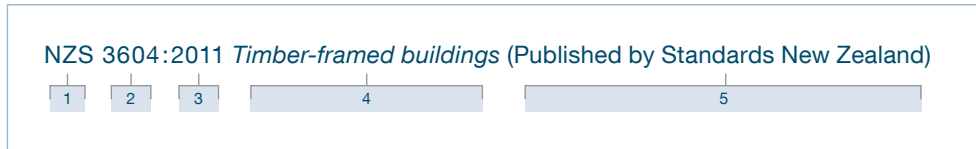


Figure 1 – Example of a reference to a standard

1 – Prefix

The prefix of a standard will indicate the issuing body as well as some information about the type of standard. Table 1 provides some examples.

Table 1 – Examples of prefixes for standards

PREFIX	WHAT IT MEANS
NZS	New Zealand Standard
AS/NZS	Joint Australian/New Zealand Standard
AS/NZS ISO	Joint Australian/New Zealand adoption of an ISO Standard
NZS AS	New Zealand adoption of an Australian Standard
ISO/IEC TR	A Technical Report jointly issued by ISO and IEC

2 – Number

Standards can be published as stand-alone documents, or as a series of documents, in parts. Include all part numbers that are applicable. Table 2 provides some examples.

Table 2 – Examples of standards numbers

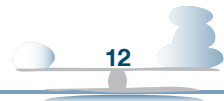
NUMBER	INTERPRETATION
3604	This indicates standard number 3604
60079.11	This indicates standard number 60079, Part 11
4407.3.2	This indicates standard number 4407, Part 3.2

Some standards development organisations use full stops or periods (.) between number and part number; others use hyphen (-). The British Standards Institution (BSI) usually uses a hyphen between the number and part, and a period between part and subpart.

Always reference each standard that is part of a series individually. Citing only the number of the standard, but not the part number, may lead to confusion.

3 – Year of issue

In most cases a standard's year of issue is used by standards development organisations to differentiate between editions. However, not all standards development organisations use a year to indicate edition. Some use edition numbers, or a combination of year and edition number (for example IEC 60974-4 Edition 2.0 2010-08), while others provide only a publication date as the means of clearly identifying editions.



Under section 23 of the Standards Act 1988, where incorporations do not specify the year of issue of a New Zealand Standard:

any such citation shall (unless the context otherwise requires) be deemed to include and refer to the latest New Zealand Standard with that citation (together with any modifications to it) promulgated by the Council before the Act was passed or the Regulation or bylaw made.

However, empowering legislation may require a different interpretation of which edition is referenced if no year is specified.

4 – Title

Always accurately quote the full title of a standard. Many standards' titles can be very similar. The full title for any given standard includes at a minimum the number title (series title), and the part title if it exists.

Using AS/NZS 3008.1.2:2010 as an example, Table 3 outlines the titles for both the standard's series and this particular part of the series. These two titles should be combined to be fully correct.

Table 3 – Title of AS/NZS 3008.1.2:2010

SECTION	TITLE
Number title (series title/ overall subject)	Electrical installations – Selection of cables
Part title	Part 1.2: Cables for alternating voltages up to and including 0.6/1 kV – Typical New Zealand conditions
Combined full title	Electrical installations – Selection of cables – Part 1.2: Cables for alternating voltages up to and including 0.6/1 kV – Typical New Zealand conditions

5 – Name of issuing organisation

It is good practice to specify the name of the standards development organisation in full, as the prefix does not always accurately indicate which organisation produced the standard.

Some organisational acronyms do not always match the English translation of the name. For example, ISO is officially the International Organization for Standardization, but is commonly known as the International Standards Organization.

In the case of New Zealand standards (NZS), the standards development organisation is Standards New Zealand (SNZ), which operates under the authority of the Standards Council of New Zealand. Standards only become valid documents when approved by the Standards Council. It is the Standards Council that is the subject of the Standards Act 1988.



Other considerations

Advising Standards New Zealand when standards are used

It is good practice to advise Standards New Zealand when incorporating a standard by reference, so that we can ensure that references are correct and follow appropriate procedures if the standard changes in the future.

Under section 10(4) of the Standards Act 1988, the Standards Council requires ministerial permission before it can amend, revise, revoke, or replace a standard that is incorporated by reference into legislation. We keep a database of incorporated Standards to support this process.

Availability of incorporated material

Regulators should ensure that a reasonable number of hard copies of the standard are readily available for inspection, during the consultation phase before the Act or delegated legislation is made, and also when the Act or delegated legislation is in effect, for the benefit of those required to comply with the standard.

New Zealand and overseas standards are subject to copyright. Standards New Zealand can discuss various options to provide incorporated standards to users at reduced or no charge, provided that cost recovery is achieved consistent with the Standards Council's policy settings.

It is good practice to advise Standards New Zealand when incorporating a standard by reference, so that we can ensure that references are correct and follow appropriate procedures if the standard changes in the future



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