

Scoping report

NZS 3910 Conditions of contract for building and civil engineering

Inge Mautz-Cooreman
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Purpose

The purpose of this report is to define the scope and outline the process steps for the revision of NZS 3910:2013 *Conditions of contract for buildings and civil engineering construction* to ensure the end product is fit for purpose and widely accepted.

The contract between Standards New Zealand (SNZ) and the New Zealand Construction Industry Council (NZCIC) includes the following as the agreed outputs:

- Agreed finalised scope for a project to revise NZS 3910;
- A description of likely risks or impact of proposed changes if NZS 3910 is revised;
- A description of contentious issues that could arise during the revision;
- Feedback on revision of associated standards NZS 3915, NZS 3916, NZS 3917;
- The possibility of setting up a standing committee;
- The format of the document; and
- A list of relevant stakeholders.

Furthermore, the committee agreed that the objective of this revision is to ensure that the Standard remains up to date and consistent with industry-wide expectations. It aims to:

- Incorporate industry-accepted best practice in procurement;
- Strengthen the independence and impartiality of the Engineer;
- Support a culture of greater trust and encourage collaboration between parties;
- Align with changes in legislation since the 2013 edition;
- Provide for pandemic-type events;
- Define the allocation of risk and any limits of liability; and
- Incorporate new technology where it will make the Standard more effective for users.

Executive summary

As a result of the discussions held by the scoping group and SNZ, it is recommended that a development committee is formed that will be responsible for:

- a) drafting an NZS 3910 interim standard; and simultaneously
- b) revising the full NZS 3910 standard.

The standards will be published in a smart format that can easily be updated, and enables users to immediately see changes that have been made in the Special Conditions section.

The table below summarises the key content to be included in the interim and full revisions.

Interim revision – non-contentious issues	
Legislative amendments	Collaboration (Accord objectives)
COVID-19 (pandemic) clause	Liability cap optional clauses
Full revision – remaining issues	
Bond	Liquidated damages
Contract type	Optional clauses to minimise special conditions
Concurrent delay	Order of precedence
Default and termination	Payments
Defects	Personnel
Design obligations	Procurement/Conditions of Tendering
Disputes	Programme
Disruption	Quality
Early Contractor Involvement (ECI) provisions	Retentions
Engineer & Engineer Rep roles	Risk
Environmental/social	Technology
Extension of Time (EOT) provisions	Time limits/notices
Final account	Time-related cost
Guidelines	Tracked changes
Insurances	Utilities
Indemnity	Variations
Limitation of liability issues	Warranty

Background

In July 2020 the New Zealand Construction Industry Council (NZCIC) engaged with Standards New Zealand to discuss the prospect of updating NZS 3910.

NZS 3910:2013 *Conditions of contract for building and civil engineering construction* is used as the foundation for the majority of New Zealand contracts in the building, engineering, construction and infrastructure industry sectors¹.

It provides a standard form of general conditions of contract for incorporation into building and civil engineering construction contract documents, ensuring they are suited to New Zealand's industry and legislative environment. It enables Principals, Engineers, and Contractors to quickly establish contractual arrangements that deliver a wide variety of building and civil engineering projects.

NZS 3910 has not been updated since 2013. This means it has not kept pace with legislative and other changes in the industry, and consequently in most cases has a proliferation of special conditions added to the document.

It was of particular concern to industry representatives that the future of the standard needs to take into consideration the ability to be able to be updated regularly and also be released in a more usable format – for example, by highlighting changes in the body of the text as revisions are made (track changes).

Contracts based on this Standard will be comprehensive but at the same time easy to understand, fit for purpose, able to be tailored, and reflect fair risk allocation agreed between the parties.

The Standard contains essential commercial provisions aligned with the requirements of the Construction Contracts Act 2002.

To progress the revision, Standards New Zealand and NZCIC agreed that an initial scoping workshop involving a wide range of stakeholders would be held. The purpose of this scoping workshop was to:

- discuss whether NZS 3910 would remain a New Zealand Standard or become a sector/industry maintained guideline document
- establish the proposed scope for the revision of NZS 3910
- address the scheduling of the review of NZS 3915, 3916 and 3917 (post or simultaneous to the review of 3910)
- seek feedback from the group on the format of the document and how the standard should be reviewed and regularly updated in the future
- release a proposed scope (the outcome of the initial scoping workshop) for public comment requesting feedback.

The requested public feedback on the proposed (or current) scope's impact included suggestions for further scope changes, explanations as to why some organisations sought not to use NZS 3910, and any additional scope inclusions or exclusions.

¹ A Russell McVeagh industry-wide survey reported that over 80% of respondents base their contracts on NZS 3910. *How to get it right from the ground up*, www.russellmcveagh.com 29 March 2019

A second meeting was held to review the feedback received from public submissions and to finalise the scope of the revision.

Collaboration

Throughout the project Standards NZ, represented by Inge Mautz-Cooreman and Katherine May, worked in close collaboration with:

- Peter Silcock, NZCIC representative
- Peter Degerholm, Calderglen Associates Limited
- Helen Macfarlane, Hesketh Henry and Council member of the Society of Construction Law

Scoping group

The following key stakeholders, representative for those who are directly involved/impacted by the construction contract standard, were invited to be a part of the P3910 Scoping Group:

Clients	
Auckland Transport	Ministry of Education
Auckland Council	Ministry of Health
Kāinga Ora Homes and Communities	Property Council New Zealand
Kiwirail	University of Auckland
Local Government New Zealand	Waka Kotahi NZ Transport Agency
Lawyers	
Bell Gully	Minter Ellison Rudd Watts
Hesketh Henry	Society of Construction Law
Contractors, engineers and designers	
ACE NZ	Naylor Love
Civil Contractors New Zealand	New Zealand Construction Industry Council
Concrete New Zealand	New Zealand Institute of Architects
DH Steel	New Zealand Institute of Building
Dominion Contractors	New Zealand Institute of Business Studies
Downer	RCP
Engineering New Zealand	Registered Master Builders
Fletcher Building	Specialist Trade Contractors Federation
Fulton Hogan	Water New Zealand

Institute of Public Works Engineering Australasia	
Government agencies	
Infrastructure Commission	Ministry of Business, Innovation and Employment
Other	
Arbitrators and Mediators Institute	Insurance Council of New Zealand
Calderglenn Associates	Royal Institution of Chartered Surveyors
Commercial Management Consulting Ltd	

The process we followed and the way we worked together

1. 23 November 2020 – 1 day scoping workshop in Wellington

A scoping workshop was organised by SNZ with a wide range of stakeholders. The following topics were discussed:

- a. Should NZS 3910 be an official NZ Standard or a sector-maintained standard?
- b. The process and frequency of updates
- c. The future format of the Standard
- d. The scope for a future revision
- e. Risks, contentious issues and mitigation strategies
- f. The benefits of a review
- g. Decisions (recommendations) to determine the scope and timing for the review of associated Standards NZS 3915, NZS 3916 and NZS 3917
- h. Funding of revision
- i. Advice on committee representation for the NZS 3910 revision

Key documents produced from the meeting

- Minutes (Appendix A)
- Stakeholder survey (Appendix B) – Sector consultation on proposed revision to NZS 3910:2013 – scope definition. The survey was designed to receive feedback from the wider industry with regards to:
 - The need for a revision and if it should be an interim and/or full revision or no revision
 - The scope of interim and/or full revision
 - The revision of NZS 3915, NZS 3916, NZS 3917

2. 18 December 2020 to 14 February 2021 – survey opened for participation

The purpose of the sector consultation survey was to collate feedback on the proposed scope for the revision of NZS 3910 from as many individuals associated with the construction sector as possible. The survey was distributed via the following channels:

- Standards NZ email list of organisations/people who purchased the previous NZS 3910 (3,600 people)

- Civil Contractors New Zealand (CCNZ) (3540)
- Construction Accord newsletter (numbers to be confirmed)
- NZCIC (50 member associations many of whom distributed it to their own members)
- Society of Construction Law
- Scoping group (30)

Individuals and organisations were encouraged to share the survey with members of the construction industry association and/or individuals with an interest in the construction sector.

Survey results

- Summary of survey responses (Appendix C)
- Revision scope interim vs full revision – content of open questions categorised in interim and full revision (Appendix D)

3. 1 March 2021 – Post public consultation meeting

The following topics were discussed:

- a) High level summary of survey responses
- b) Key conclusions
- c) Process overview from SNZ
 - i. Interim standard
 - ii. Timelines – Interim standard & full revision
 - iii. Governance
- d) Feedback and discussion on:
 - i. Topics listed for interim and full revision
 - ii. Interim revision (Q2)
 - iii. Full revision (Q5)
 - iv. Scoping group recommendation
- e) Expectations going forward – sharing information
- f) Funding and resources
- g) Next steps

Key documents produced from the meeting

- Minutes (Appendix E)
- Survey on the scope of interim vs full revision sent out to the scoping group after the meeting (Appendix F)
- Results from scoping group feedback (Appendix G)

Outcomes

a. Decision regarding retaining NZS status

During the initial scoping workshop, the group was asked whether NZS 3910 should stay as a New Zealand Standard or become an industry-owned standard.

There was broad support for the view that if the current Standard's issues were addressed (the development of a smart contract with track changes to reflect amendments in Special Conditions, the set-up of a standing committee to address ongoing/quick changes) then the industry should continue with the Standard. Key reasons for this support were the mana of having a contract developed through NZ Standards, the independence of Standards NZ, the strong linkage with NZ Government, and Standards NZ experience, structures and its declared willingness to be flexible in the way they approached the review. The issues concerning the current Standard raised by the group were addressed by Standards NZ in a letter to Peter Silcock, NZCIC Executive member (Appendix H).

b. Decision regarding the need for an Interim standard and/or full revision

Subsequently, the scoping group decided to opt for the revision as an interim standard while simultaneously revising the full standard. This decision was supported by 80% of the scoping group, and 41.7% of the wider sector engagement was in favour of this approach, 25.1% in favour of a limited review only and 23.2% a comprehensive review only.

The idea to introduce an interim revision (initially called a fast-tracked revision) originated from the initial scoping workshop when discussing the scope. The standard had not been revised since 2013, which was a limited scope revision, and therefore a full revision was deemed necessary. However, concerns were raised with regards to timeframes. The revision of the full standard might take years while there is a need for a fast tracked revision to address the non-contentious issues. An interim standard would offer an 'interim' solution with a more fit for purpose document in the short term while the full review is underway.

An interim standard can only address non-contentious issues. The changes made in the interim standard need to be agreed upon by the whole committee (100% consensus).

Key differences between an interim standard and a normal standard:

- An interim standard does not require a public consultation period
- The interim standard is approved by the National Manager of SNZ, and does not require approval from the Standards Approval Board.

c. Defined scope/s for interim standard and full revision

The scope/s for the interim and full revisions are set out below.

Interim revision – non-contentious issues	
Legislative amendments	Collaboration (Accord objectives)
COVID-19 (pandemic) clause	Liability cap optional clauses
Full revision – remaining issues	
Bond	Liquidated damages
Contract type	Optional clauses to minimise special conditions
Concurrent delay	Order of precedence
Default and termination	Payments
Defects	Personnel
Design obligations	Procurement/Conditions of Tendering
Disputes	Programme
Disruption	Quality
Early Contractor Involvement (ECI) provisions	Retentions
Engineer & Engineer Rep roles	Risk
Environmental/social	Technology
Extension of Time (EOT) provisions	Time limits/notices
Final account	Time-related cost
Guidelines	Tracked changes
Insurances	Utilities
Indemnity	Variations
Limitation of liability issues	Warranty

d. Potentially contentious issues that could arise during the revision

The topics identified in the scope for the revision are potentially all contentious. Some scope items may not be capable of being addressed as there is no clear answer. However, most items will relate to risk allocation, which could be addressed with optional clauses or provisions and defined in a table.

Contract risks need to be fairly and clearly allocated to the party best able to manage and mitigate the risks.

Controversial topics

The position/role of the Engineer to the Contract

When discussing the Engineer to the Contract amendments, the interests of the different parties involved have to be taken into account. This might lead to strong discussions and/or the risk of disengagement of committee members.

Format of the document (see f)

Poor timelines

The revision can also be hindered by delays when the committee fails to complete tasks within the scheduled timeframes and/or when parties cannot come to a consensus.

All the above problems will be mitigated by having a clearly defined scope, effective governance and by appointing a Chair with excellent leadership skills.

e. List of risks or impacts that proposed changes might bring

The key risks are that the Standard changes to such an extent that:

- Industry members are reluctant to use it (adapt to it); or
- The Standard is amended in a way that is unsatisfactory to a segment of the sector (for example, principal/contractor).

This will lead to inconsistent use of the Standard.

It was noted that some organisations are happy with their current contract which has been tailored to their needs by Lawhawk (Document Automation Specialists, the company that provided the value-add project on NZS 3910). A number of people raised in discussion the importance of avoiding “throwing the baby out with the bathwater” if fundamental changes are made to a widely-accepted document, which could result in a migration from 3910 to other contractual formats such as FIDIC or NEC.

All risks should be mitigated. Risks are mitigated by ensuring that the balanced committee represents all sectors impacted by the standard, and that there is extensive public consultation.

Expected benefits of revising NZS 3910

The purpose of the scoping workshop was to engage with a working group representing the sectors impacted by the standards and to test their findings with the wider industry through a survey. Through this robust process, the NZCIC commissioner intends to have a solid understanding of the sector’s thinking and to make available a revised standard that:

- is widely accepted and fit for purpose
- improves understanding of contracts due to fewer special conditions
- allocates risk fairly
- results in more contracts that embody Construction Accord Principles
- allows the industry to document contracts quickly and easily (improving productivity) and address common issues

f. Proposed format and key features of the document

The format of the document was discussed in detail during the scoping workshop, the post public consultation meeting and was addressed in the stakeholder survey. The industry specified that the contract should:

- be available in hard copy and printable electronic form and also be able to be completed online by licenced users using an intelligent interface.
- be produced in such a form that special conditions, when properly inserted by a user, will appear as tracked changes within the body of the text.

Standards NZ confirmed that they will collaborate with the industry and the vendor to improve the end product. This will better align the product (contract) with the needs of the industry, within the boundaries of the *Standards and Accreditation Act 2015*.

Following a meeting with Lawhawk, Standards NZ suggested that more research needed to be done on how the industry would like to move forward with the smart document. It became clear that changing the format of the document would probably not be a “quick fix” and should therefore be categorised as a topic to be tackled under the full revision rather than as part of the interim standard revision.

It was also suggested that councils, government departments, contractors and lawyers would be willing to share a copy of standard amendments for NZS 3910 for committee consideration. The committee would then be able to select the best features that fit with 3910 default risk allocation. This would add to the efficiency of the revision process, and was agreed by the scoping committee.

g. Request to update the standard regularly

During the scoping workshop Standards NZ was asked to recognise a properly constituted standing committee which would review and initiate amendments or addenda to the published Standard regularly (perhaps annually) or on an emergency basis. The purpose of this standing committee would be to bring the Standard into line with legislative changes or industry issues (such as the proper treatment of COVID-19) and initiate future reviews.

Standards NZ is supportive of having a standing committee set up after the revision and to trial this new way of working for 2-3 years.

How this would work

- The committee makes a consensus-based decision as to who will be part of the standing committee (core group of 8 to 10);
- This core group will respond in a frequent and timely matter to industry changes;
- Additional experts can be formally on-boarded as required for any revision;
- The Board will be informed of this set up, the normal approval of the revision procedure will operate;
- The standing committee will follow the Standards NZ process but with reduced timeframes due to the limited change required. The timeframes will be set in collaboration with SNZ;
- The effectiveness of this way of working is dependent of a high level of co-ordination and facilitation from those involved, the standing committee members, the chair, and SNZ.

h. Feedback on the need to update NZS 3915, NZS 3916, NZS 3917

The results of the survey indicated a preference for a revision of the associated standards. However, the scoping workgroup decided that the revision of the associated standards would not be part of the interim or full revision. The standing committee is to make a decision on when the associated standards should be revised.

The table below indicated the support for the revision of each standard.

Standard	Strongly agree & agree
NZS 3915:2005 <i>Conditions of contract for building and civil engineering construction</i>	58.8%
NZS 3916:2013 <i>Conditions of contract for building and civil engineering - Design and construct</i>	61.6%
NZS 3917:2013 <i>Conditions of contract for building and civil engineering - Fixed term</i>	48.2%

i. Provision of list of relevant stakeholders required for the revision

Industry sector		Organisation	
Contractors	Vertical	Registered Master Builders, NZ Certified Builders	
	Horizontal/infrastructure	Civil Contractors NZ	
	Specialist trades (subcontractors)	Specialist Trade Subcontractors Federation	
Principals	Private developers	Commercial	Property Council, Property Institute, Universities NZ
		Residential	Community Housing Aotearoa
	Government agencies	National	Waka Kotahi, Ministry of Education, Kainga Ora, Ministry of Health, KiwiRail
		Local government	Local Government NZ
Consultants/contract administrators	Architects/engineers	ACE NZ, Engineering NZ, NZ Institute of Architects, Institute of Public Works Engineers of Australasia	
	Project Managers	NZ Institute of Building	

	Quantity surveyors	NZ Institute of Quantity Surveyors, Royal Institute of Chartered Surveyors
Others	Procurement	NZ Infrastructure Commission, MBIE Procurement
	Insurers	Insurance Council of NZ
	Lawyers	Society of Construction Law, Arbitrators and Mediators Association of NZ
To be consulted	Financial institutions	Not needed could be consulted as part of process

SNZ will go out to all nominating organisations who:

- might decide not to nominate a person or
- may choose to nominate more than one person.

It is important to note that SNZ is responsible for the set-up of a balanced committee which will be approved by the independent Standards New Zealand Approval Board.

SNZ will take the feedback provided by the scoping group on board, namely that it is important to have a good Contractor-Principals-Engineers/Consultants balance on the committee to ensure the process is not captured by any one of these groups.

Funding for the revision work

It is recognised that ongoing industry commitment is critical to the effective revision of the standards and their adoption, and that it may take some time to confirm the availability of funding.

The NZCIC commissioned the current scoping process. Its further involvement is subject to member approval, but it is likely that NZCIC will agree to be the vehicle to commission the review, subject to strong support and funding assistance from industry. The industry includes government and private clients, construction industry companies and professional organisations and industry consultants.

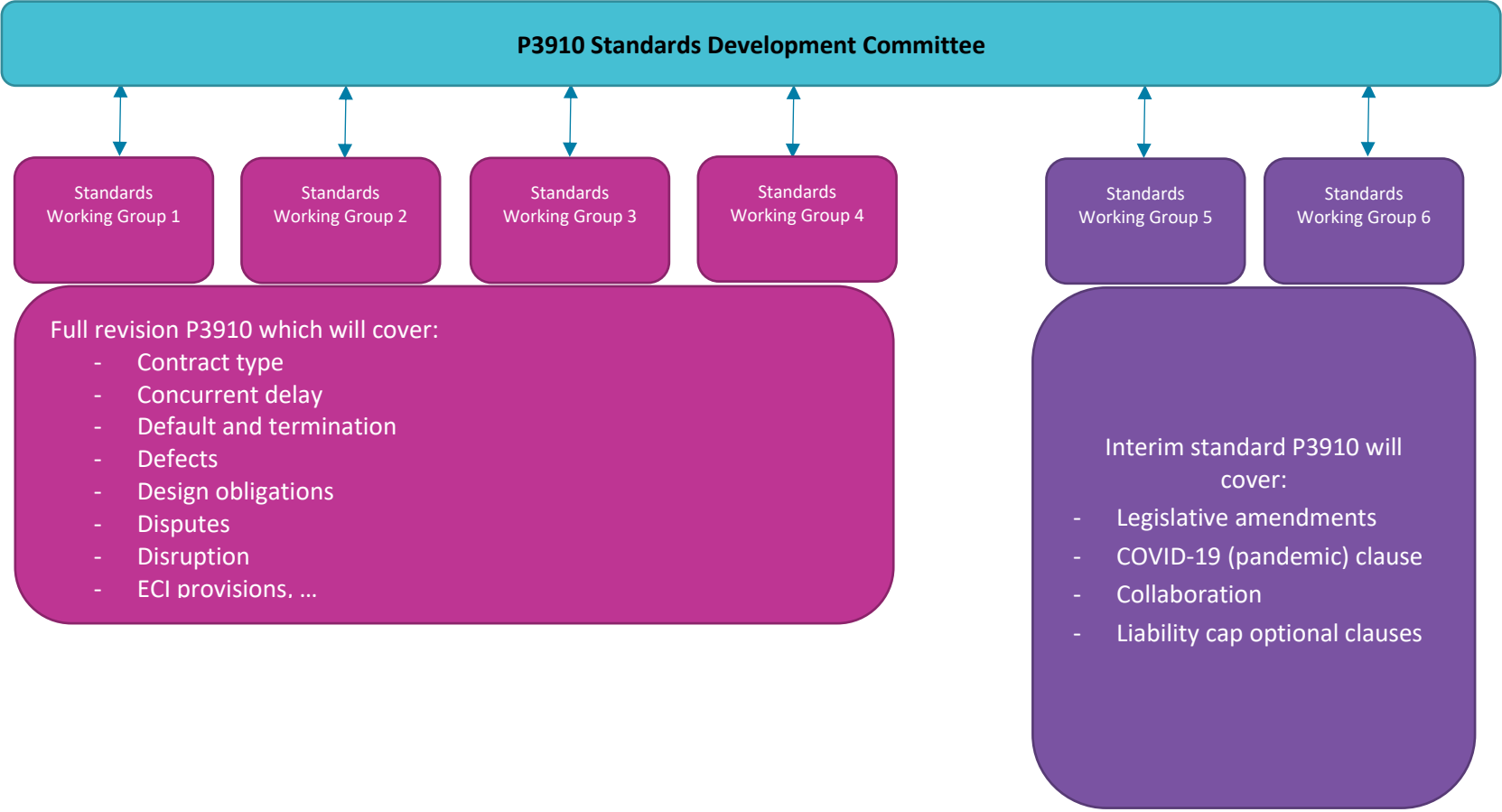
Funding for the scoping workshop was contributed by NZCIC, KiwiRail, Kāinga Ora, Waka Kotahi NZTA, MBIE, MoE and Infracom. However, the funding requirements for the revision will be substantially higher. Subject to member approval NZCIC could also be the lead organisation to apply for any funding (such as from the Accord) and to co-ordinate funding from within the industry and government.

Standards New Zealand will provide an estimate of the cost once the scope has been agreed, noting that the cost of the revision compared to what the industry is currently paying in legal fees each year for reviews of the extensive changes often made in special conditions is likely to be relatively small, resulting in a net saving to the industry.

Operating guidelines for the revision of NZS 3910

The scoping group and Standards NZ recommend setting up a development committee that will draft an interim standard NZS 3910 and simultaneously revise the full NZS 3910 standard.

Governance



Indicative timeframes

This is an indicative timeframe. The project’s commencement is dependent on how quickly the contract and funding are confirmed.

Phase and timeframe – Full revision standard

Phase	Duration
1 – Initiation	2 months
2 – Development of standard	12 months
3 – Public consultation	5 months
4 – Approval of Standard by the Standards Approval Board (SAB meets the first Wednesday of every month)	1 month
5 – Publication	1 month
Total of months	21 months

Phase and timeframe – Interim standard

Phase	Duration
1 – Initiation	2 months
2 – Development of interim standard - Edit and consensus of committee on standard	3 months
3 – Public consultation	N/A
4 – Approval of standard by SNZ National Manager	1 month
5 – Publication	1 month
Total of months	7 months

Phases

Please note that the tasks within each phase, outlined in the table below, are for the revision of a standard. The interim standard does not require phase 3.

Phase	Task	Who	Key deliverable/output	Timeframe
Phase 1 – Initiation	<ul style="list-style-type: none"> Finalise contractual information Prepare project brief for SAB to note Establish committee and identify chair Prepare a memo for SAB to approve the committee and the chair 	Standards New Zealand Standards Approval Board	<ul style="list-style-type: none"> Signed contract Noted project brief Nominated organisations invitations and responses Approved committee and chair Draft Terms of Reference 	<p>Max 1-3 months.</p> <p>The duration required for this phase is determined in part by the timely response to requests for nominations and availability of committee members.</p>
Phase 2 – Development	<ul style="list-style-type: none"> Prepare for and facilitate committee meetings (in person and/or Zoom) Finalise Terms of Reference Develop draft of revised NZS 3910 and prepare for public consultation 	Standards New Zealand Development committee	<ul style="list-style-type: none"> Signed Terms of Reference Minutes and actions from committee meetings Publication consultation draft of NZS 3910 	<p>This timeframe will be determined by the commitment of the industry. It can be as short as 5/6 months (including the time for the editor to prepare the draft for PC)</p>
Phase 3 – Public consultation	<ul style="list-style-type: none"> Draft NZS 3910 released for public consultation Prepare for and facilitate 1 committee meeting (2 	Standards New Zealand Development committee	<ul style="list-style-type: none"> Ballot draft of NZS 3910 	<p>Min 4 months.</p> <p>Period consists of: 8 weeks of public consultation, PC summary distributed to chair</p>

	days) to review public comments			and group and discussed in detail at the PC meeting
Phase 4 – Approvals	<ul style="list-style-type: none"> Undertake committee ballot process Prepare NZS 3910 for SAB approval 	Standards New Zealand Development committee Standards Approval Board	<ul style="list-style-type: none"> Standards Approval board memo Approval to publish NZS 3910 	Up to 1 month (SAB meetings the first Wednesday of every month)
Phase 5 – Publication and project closure	<ul style="list-style-type: none"> Finalise NZS 3910:202X Prepare NZS 3910:202X for NZSE to note Publish NZS on SNZ website Close project 	Standards New Zealand New Zealand Standards Executive	<ul style="list-style-type: none"> NZSE notes memo NZS 3910:202X publication copy – digital and print – released Project closure report for commissioner 	Up to 1 month during which time the PC comments are included as agreed by the committee and the editor and designer finalise the content for publication.

Next steps

While Standards NZ can make recommendations, it is up to the commissioner(s), to make a decision on how to progress the revision.

Once the commissioner(s) gives the green light for the project to go ahead Standards NZ will provide a:

- proposal which will include:
 - Standards NZ's approach
 - Assumptions
 - Indicative timelines
 - Budget (partnership approach will be included)
 - Project team
 - Quality assurance
 - Risk management
- contract which will be drafted and signed by the parties when mutually agreeable to its content.

The project will start on signing of the contract.

Acknowledgement

Special thanks to Peter Silcock, Peter Degerholm and Helen MacFarlane for their ongoing support, their dedication and the amount of work they have put into the preparation for the meetings and surveys.

Special thanks also to my colleagues Katherine May and Noreen MacMahon for providing input and feedback on the report.

List of Appendices

Appendix A – Minutes scoping workshop

Appendix B – Stakeholder survey

Appendix C – Summary of survey responses

Appendix D – Revision scope interim vs full revision – content of open questions categorised in interim and full revision

Appendix E – Minutes post public consultation

Appendix F – Survey on the scope of interim vs full revision sent out to the scoping group after the meeting

Appendix G – Results from scoping group feedback

Appendix H – SNZ letter to Peter Silcock regarding issues raised in scoping workshop

NZS 3910 SCOPING - COMMITTEE IN-CONFIDENCE

APPENDIX A – Minutes scoping workshop

Committee-in-confidence

Minutes of NZS 3910 scoping workshop held from 9.00am to 4.00pm on 23 November 2020 at MBIE, 15 Stout Street, Wellington Central, Wellington.

Chairperson: Peter Degerholm
Project Manager: Inge Mautz-Cooreman
Project Coordinator: Katherine May

1. Attendance and apologies

Name	P/A/NP	Nominating organisation
Natasha Possenniskie	P	Urban Outcomes
Nick Beale	P	RCP
John Lucas	P	Insurance Council of New Zealand
Peter Fehl	P	University of Auckland
Peter Silcock – facilitator	P	Civil Contractors New Zealand
Paul O'Brien	P	Dominion Constructors
David Kelly	P	Registered Master Builders
Marilyn Moffatt	P	New Zealand Institute of Quantity Surveyors
Helen Macfarlane – facilitator	P	Hesketh Henry (Society of Construction Law)
Sam Jack	P	Fulton Hogan
Mijo Wilson	P	MBIE
Stephen Greenhough	P	MBIE
Raine Selles	P	Commercial Management Consulting
Peter Degerholm – chair	P	Calderglenn Associates
Trina Lincoln	P	Kāinga Ora – Homes and Communities
Duncan Halliwell	P	Downer
Rod Fulford	P	Specialist Trade Contractors Federation
Wayne Carson	P until 1.47pm	D & H Steel Construction
Marcus Hogan	P	New Zealand Institute of Architects
Tania Williams	P	Engineering New Zealand
Rebecca Robertshawe	P	Ministry of Education
Travis Tomlinson	P	Minter Ellison Rudd Watts
Karen Mitchell	NP	Advisian
Lauren Whitehead	P	Kiwirail
Jonathon Clark	P	New Zealand Infrastructure Commission
Peter Spies	P	NZTA
Gavin Shaw	P	ACENZ

Standards New Zealand

Michael Taylor	P	Russell McVeagh/Property Council
Kelly Lavalley	P	Local Government New Zealand
Fleur Aldridge	P	Auckland Council

(P)PRESENT - (A) APOLOGIES - (NP) NOT PRESENT

2. Welcome

- The meeting commenced at 9.00am. Inge opened the meeting by welcoming everyone and providing background to the revision.
- Inge gave an overview of the standards development process and outlined where the scoping workshop fits in. The group were informed that the information discussed during this meeting would be collated and sent out for public comment.
- The Chair explained that there was a lot of work to get through. A criticism of the last revision was that it had a limited scope so the group might consider how to incorporate those missed opportunities. He reminded the group that discussion would be limited to overarching ideas and themes for a revision, but not detail of individual clauses.
- The Chair gave an overview of the day, outlining they would go through section by section and identify the issues and opportunities in the light of the following three questions:
 - What we want from 3910 in the future?
 - What are the key themes that should guide the review?
 - Whether sections require minor updates or major revisions?

3. Future

Peter Silcock and Helen Macfarlane led the discussion with regards to the future version of NZS 3910. They asked the group for their thoughts regarding whether NZS 3910 should stay as a New Zealand Standard or become an industry standard. The benefits and downsides of an industry standard and a New Zealand Standard were outlined. A discussion followed and some key points are below.

- The UK has the Joint Contracts Tribunal (JCT) which produces standard forms of construction contracts that are regularly amended. This works well, with various organisations from the sector being included representing both clients and contractors.
- The NZS 3910 contract needs to respond to the rapidly evolving requirements of the industry. This is a major drawback of the standards process as the revision can take over a year. The group asked if Standards would be able to amend the document regularly, say every year.
 - Inge reminded the group that the timeframes of drafting the standard depend on the commitment of the committee, namely how fast the committee is willing to work. She stated that it is important to keep in mind that standards are developed by volunteers who provide their own time to the process. Additionally, many comments can come in during public consultation.
- The body the standard sits under, Standards NZ, does not represent the construction industry and may have different priorities. The group thought the agency needs to better meet the needs of the construction sector as there may be different priorities from their funding.
 - Inge explained that Standards New Zealand's role is to look at the nominating organisations and ensure the committee is balanced and all areas of the sector are involved in the revision. Standards NZ works on a cost-recovery basis and is externally funded by commissioners.
- Usability and tracked changes were raised and the need to make the contract more user friendly.
- Suggested establishing an on-going standing committee to make ongoing / as needed changes.
- Changes to legislation are not incorporated into the standard for years due to the complexity and cost of revisions. If legislation is changed could the standing committee quickly agree on a clause and put an update into the market?

At the end of the discussion, there was broad support for the view that provided these issues could be sufficiently addressed with Standards NZ then the industry should (at least for now) continue with the standard.

4. Themes

The Chair outlined issues addressed by the ITU Report August 2019 which made a strong case for the review being done and, as an industry, we need to make it happen. He also noted that we have a lot of information to collect as an industry.

Potential areas for amendment were outlined, and the potential for capitalising on momentum generated by the Construction Sector Accord (the Accord). There is a widespread acceptance of the Accord principles, but many question whether we can achieve the culture shift required, which is only happening slowly. It was generally agreed that incorporating Accord principles in a 3910 update would positively impact on industry culture.

Flexibility to respond to legislative changes was again brought up, and it was noted that Special Conditions are there to fill gaps as the standard cannot possibly fit all circumstances.

A number of Accord principles were outlined including greater collaboration, a culture of greater trust, clear risk allocation, redefine the Engineer role, liability caps, Covid-19 provisions, better procurement practice, and greater Principal/Contractor engagement.

A discussion followed and some of the key points are below:

- New Zealand is many years behind the UK in terms of a collaborative approach to contracting and contract administration, e.g. as through NEC3 & 4. There is a need for the NZ industry to work together collaboratively and the role of the engineer should be revisited.
- Should the suite of NZS 391X contracts be reviewed, or extended e.g. to include subcontracts?
- A need for better training of contract administrators.
- Higher level principles from the Accord, such as culture of trust, should be integrated in to 3910.
- The role of Engineer to the Contract should be reviewed, including whether its adjudicative role should be replaced by (for example) an Expert as in NZS 3915.
- The scope of any review should include the guidelines which aid in interpreting the standard.
- The standard should cover not only big projects but also focus on smaller projects -- one local government agency commented that 95% of its contracts are under \$10m.
- Extensive Special Conditions should be discouraged as contractors and consultants, who do not have a legal background, may not understand them.
- Document needs to be in a form that works for all parties.
- Plain wording.
- Risk allocation is unclear, and currently scattered throughout the document. Need for clarity e.g. by introducing a risk register and making it part of the contract.

Summary: what is required to improve the NZS or industry standard:

1. Flexibility – change should be able to be made within a reasonable time frame;
2. Contract administration role needs to be reviewed,
3. Collaboration is important;

4. Risk allocation – need for clarity of allocation in wording and process;
5. Predetermined options in the contract may reduce need for Special Conditions.

5. Section by section review

The group went through each section and discussed some of the key issues. The main points of this discussion are noted below.

- a. Contract Agreement
 - Keep contract agreement where it currently sits but suggestions included:
 - a description of the works. It was noted that this level of feedback will be received at PC.
 - an order of precedence
 - Signatory details
 - Certainty – Technology is moving at a rapid pace, Ministries are going paperless, and contracts go through an electronic portal meaning certainty is important. There is a need to provide for electronic signatures.
 - Comparison was made with subcontractor agreement process used by contractors (where clarifications are addressed in pre-acceptance meeting – SA 2017 might provide a useful model.
- b. Section 1 – Interpretation
 - Need definition section.
 - Remove “Temporary Works” from definition of On-Site Overhead.
- c. Section 2 – The Contract – major work to be done
 - Address Schedule of Prices ambiguity in lump sum. Consider adding GMP option and framework.
 - Confusion – clarification around topics like cost reimbursement.
 - Risk allocation in this section needs major rework.
 - Provide for ECI arrangements. The ECI model is becoming more prevalent, starting with preliminary form of agreement that turns into a construction contract. ECI arrangements were out of scope in the 2013 revision and need to be addressed in the next revision.
 - Subcontractors being engaged ahead of main contractors.
- d. Section 3 – Bonds
 - Issue: Seldom a Principal’s bond but always a contractor’s bond which indicates distrust.
 - Should be clear for both parties when the bond may be called.
 - Should not need to go to another section to look for retentions. Section 3 should cover security of performance.
 - Fit for purpose security both ways.
 - Discuss bonding requirements with banking sector.
- e. Section 4 – Subcontracts – complete overhaul is needed

- Subcontractor – term needs to be clarified.
 - A standard form of continuity guarantee.
- f. Section 5 – General Obligations
- Greater clarity risk allocation e.g. design should be explicitly listed in the contract Schedule 1 Specific Conditions.
 - Combine programme (5.10) and time (section 10). Engineer should be required to approve programme, address Contractor float.
 - Need to encourage exchange of information and ECI and review of design. Need to have a balance between not using ECI to transfer design risk but still requiring contractors to engage responsibly.
 - Health and Safety – update needed.
 - 5.4.2 – contract suspension needs to be dealt with. If late site handover the Engineer should be required to suspend the works.
 - 5.11.10 – legislative changes need to be updated.
 - Introduction of a risk matrix as part of the contract.
 - Express provision for Principal engagement in 5.21.
 - Clarify producer statement requirements for Contractor design elements.
 - Express product substitution clause in 5.9.
 - Express statement in 5.1 that unless specified in the contract (and identify where) the Contractor shall not be responsible for design.
- g. Section 6 – Engineer’s Powers and Responsibilities – major overhaul necessary
- The Engineer’s powers and responsibilities had already been discussed.
- h. Section 7 – Indemnity
- A limit on liability should be included as in Accord principles.
 - Why do Contractors take unlimited risk but designer’s typically do not? Risk should be considered as to the project rather than to the Principal, Consultant or Contractor.
 - Possible consequential loss exclusion.
 - More fulsome proportionate liability provision than 7.1.4.
- i. Section 8 – Insurance
- John Lucas gave the insurance industry perspective. He noted that insurance goes in cycles with respect to appetite for risk and that currently we are in a cycle of being risk averse. This was particularly true in the construction sector.
 - As to Section 8, he did not see any major problems, but in the current environment thought there would not be much appetite for insurance provisions to be extended to cover further risks. One way to encourage insurers would be to take steps to reduce risk. He said that insurance is only a risk transfer mechanism and asked if the standard could possibly place some controls to reduce the risk of loss events happening in the first place.

- Schedule 1 (4 pages of insurance) may be better documented as a separate insurance schedule without changing any content.
- Structural issue of the document – NZS 3910 should explain the purpose of insurance.
- Obtaining project specific PI insurance was becoming increasingly difficult. However, liability caps might help make this more accessible, noting however that PI only covers design / professional risk. Having contractual liability caps does remove some uncertainty and so assists in pricing that risk. So consider options for variable liability caps.

j. Section 9 – Variations

- Silent on loss of productivity/disruption.
- Need to incentivise cash flow objective by more timely settlement of variation prices – benefit for subcontractors also.
- Section 9.1 limits Engineer’s powers to changes within project scope.
- Consider renaming section as ‘Contract Price Adjustments’ and rework section accordingly to cover all contract price adjustments (i.e. PC and Provisional Sums etc are presently in section 12).
- Include provision for Contractor-Principal negotiation and agreement on variations and final account (as FIDIC).
- Provide for cost-only and cost + margin adjustments (as FIDIC).
- Include ‘final account’ process to establish Final Contract Price at earliest opportunity (including interim final account ASAP after Practical Completion).
- Time limits in working days (not month) for consistency between sections 9 and 10.
- Clarify ‘unforeseen physical conditions which...could not reasonably have been foreseen...’

k. Section 10 – Time for completion – complete overhaul necessary.

- Entitlement for getting an EOT is vague. There needs to be a clear process for putting in a claim for an extension for time.
- When the assessment is made – prospective or retrospective?
- Review grounds for extension of time, these should all be in one place.
- Address concurrent delay.
- Tighten EOT process – NOD and claim.
- Address relevance of programme (tender programme and as provided under 5.10).
- Spell out critical path delay requirement.
- Engineer standalone power to grant EOT.
- Option for limitation or cap on liquidated damages.
- Engineer power to direct acceleration.
- Address wet season delay in earthworks contracts.
- Include optional provisional allowance for weather (currently only Appendix B – roading contracts).

- l. Section 11 – Defects Liability
 - Is a better process needed (Engineers often do not follow the process)?
 - Clause on defect reset.
 - Warranties review – when should they be provided?
 - Effect of transition – consider separation of timing for paperwork and physical completion.
- m. Section 12 – Payments
 - Principal deductions – can currently make a deduction for anything. This needs to be specified.
 - Variations need to be agreed upon.
 - Certificate of subcontracting and right to make direct payments.
 - Terminology of offsite material payments should be specified as well as clarity around processes (COVID-19 situation was brought up).
 - Interest entitlement to be reviewed.
 - How can the process of prompt payment be streamlined?
 - Clarity around retention is needed e.g. include in bond section, option of ‘no-retentions, staged retentions?
 - Separate final payment claim from final account (move to section 9).
 - Should there be a right of set off and to what extent?
- n. Section 13 – Disputes – Section needs to be streamlined to reflect disputes in NZ.
 - Better process to get a third party to review the dispute.
 - Encourage parties at the beginning to sit down together to iron out the issues
 - Get rid of Engineer’s review - depends on how role of Engineer is addressed.
Get rid of mediation provision - compulsory mediation pointless; voluntary mediation can always take place.
 - Provide for executive negotiation.
 - Allow exception to arbitration (i.e. litigation) for multi-party disputes.
- o. Section 14 – Frustration and Default, and Section 15 – Service of Notices
 - These sections were skipped through, but address conflict between 15.1.1, 5.1.2 and 9.2.2 was noted for section 15.
 - Provide for force majeure.
 - Liability for consequential costs to be considered.
- p. Appendix A and B
 - The following points were quickly mentioned on the PowerPoint presentation:
 - Appendix A – revisit formula including use of currently available indices
 - Appendix B – Should not be exclusively for roading contracts, and use as vehicle for optional clauses, triggered by specific/particular conditions.

- q. Schedules – Schedules to be made fit for purpose
- Conversation needed around risk but also on double jeopardy clause.
 - Schedule 1
 - Could be renamed as ‘specific’ or ‘particular conditions’ to make it clear that Schedule 1 merely selects options, allocates responsibilities, risk etc but does not change general conditions.
 - Separate insurance section into a separate schedule as it dominates existing Schedule 1 (see above).
 - Schedule 2
 - See comment above re ability to read the amended contract as a coherent whole e.g track changes.
 - Other schedules
 - Consider other schedules e.g. model payment claim, payment schedule etc.
- r. Conditions of Tendering
- Provide for special conditions of tendering? Provide additional schedules as templates?
 - Incorporate best practice in the procurement part of NZS 3910. Need to look at what procurement pathways are used.
- s. Guidance notes and worked examples
- Working day rate calculation.

6. Other Issues

- Peter Silcock asked the group whether revision should have a limited scope or a very open scope. Scope may restrict what can be looked at, but a wide scope may take longer. The group discussed that the revision needs a full scope as other items would just need to be updated later.
- Discussed whether there is a contract that could be used that already exists. *Helen and the Chair had done some work on this which suggested that Australian standards are outdated, FIDIC is more directed to larger projects and the NEC contractual process requires active contractual management / administration by all parties throughout the project in a way that is not common in New Zealand. There was some discussion on this with differing views expressed, including a suggestion of switching to NEC. Others considered that, while more engaged approaches could (and perhaps should) be encouraged over time, in the short to medium term a switch to another contract such as NEC requiring a significant shift in behaviours would be unlikely to gain wide acceptance or fill the need for NZS 3910 as a NZ standard contract. However, consideration of alternative contract forms needs a separate discussion.* The following points were discussed:
 - Would need to be amended to New Zealand environment;
 - Cultural change doesn’t happen overnight;
 - Smaller projects would find it hard to adjust, and NEC likely to be too complex;
 - If NZS 3910 is significantly changed it gives a false sense of security;
 - NEC is an administratively heavy form of contract;
 - NZS 3910 is well understood by industry, and can adjust to new revisions.
- Engineering New Zealand was asked for their thoughts on the impacts on Engineers. They mentioned that the ETC role in fact encompasses many professions (architects, quantity surveyors and the like) so a change in title to “contract administrator” or similar seems logical.

- The group then discussed which potential organisations should be represented on the committee. They looked at previous nominating organisations and NZIOB, Society of Construction Law and Property Council were named as additional stakeholders. The group had concerns about the balanced representation of the group and Inge informed the committee that the Standards Approval Board oversees this and will not approve a committee that is unbalanced. In addition to the Chair, 14 main groups were identified:
 - Contractors
 - Vertical
 - Horizontal / infrastructure
 - Specialist trades (subcontractors)
 - Principals
 - Private Developers
 - Commercial
 - Residential
 - Government agencies
 - National
 - Local govt
 - Consultants / Contract Administrators
 - Architects / engineers
 - Quantity surveyors
 - Procurement
 - Infracom
 - Representative from non-govt sector?
 - Insurers
 - Financial Institutions
 - Lawyers
- Funding was discussed, noting that the last revision was funded jointly by Clients, Engineers, Designer Groups, and Contractors. Peter Silcock reminded everyone the amount of money that is currently spent on Special Conditions could be better invested in the revision to reduce the need for such extensive contracts. *Peter Silcock stated that the Construction Accord may be able to provide some funding but generally the Accord wanted to see matching industry funding for projects.*
- *The group discussed potential candidates for chairing the committee. It was mentioned that SNZ will follow the normal procedure and liaise with the commissioner on who should be put forward to the Approval Board as chairperson once all the nominations have been received. Ultimately, it is the Board's decision to approve or disapprove the nomination.*
- The group had many questions regarding the standards development process. Some main questions from the discussion were the ability to have tracked changes, the ability to have a standing subcommittee, and if SNZ would sell the intellectual property of the standard if they no longer wish to continue with NZ standard. Standards New Zealand said they would discuss these issues internally and provide an answer as soon as possible.

7. Next steps

- Minutes will be drafted, peer reviewed and circulated to the scoping group.
- SNZ will collaborate with Peter Silcock, Peter Degerholm and Helen Macfarlane to draft the public comment (PC) document.
- The PC document will be circulated to the scoping group for feedback.
- PC is scheduled to go up on 14 December 2020.
- The scoping group will meet in March 2021 to discuss the received public comments.

10. Close meeting

Meeting closed at 3.47pm.



Revision of NZS 3910:2013 - Stakeholder feedback

Standards New Zealand and the New Zealand Construction Industry Council have completed a preliminary scoping workshop for the revision of NZS 3910:2013 *Conditions of contract for buildings and civil engineering construction*. This workshop was attended by a wide range of representatives from organisations that use this standard.

As someone with an interest in this sector, we would like your feedback about the proposed scope of NZS 3910. We want to ensure that the revised standard is widely accepted and fit for purpose. This survey should take about 15 minutes to complete and will provide us with valuable information on how to progress the revision. Thank you.

* 1. Please tick the response below that you agree with the most

- NZS 3910 does not need to be revised
- NZS 3910 needs a limited revision only
- NZS 3910 needs a comprehensive revision only
- NZS 3910 needs a comprehensive revision, with a parallel and fast-tracked limited revision to address certain non-controversial issues while the comprehensive revision is underway

2. For a limited revision process, health and safety legislation has been identified. Please identify up to three other issues you think could be addressed in a fast-tracked, limited scope revision.

Issue 1:

Issue 2:

Issue 3:



Revision of NZS 3910:2013 - Stakeholder feedback

* 3. The ideal outcome for a revision of NZS 3910, would be a standard contract which . . . *(please indicate whether you agree or disagree with each of the following statements):*

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
a. Fosters a spirit of collaboration between parties	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Allocates risk clearly and transparently	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Incorporates best procurement practice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d. Has an independent and impartial decision-maker	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Includes optional caps on liability/indemnity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f. Has clear and unambiguous processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g. Encourages a 'no surprises' approach	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h. Can be regularly updated	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
i. Has plain language	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
j. Has standard optional clauses to minimise need for special conditions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
k. Allows special conditions to show as tracked changes in the printed contract	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
l. Uses technology that allows contract agreement and schedules to be generated automatically	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



Revision of NZS 3910:2013 - Stakeholder feedback

* 4. The contract elements that should be addressed in the revised standard include . . . *(please indicate whether you agree or disagree with each of the following statements):*

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
a. Procurement/ Conditions of Tendering	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b. Provision for Early Contractor Involvement (ECI) or Engagement (ECE)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. Role of Engineer to Contract	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d. Role of Engineer's Representative	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e. Variation process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f. Insurance provisions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g. Extension of time	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h. Disruption	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
i. Concurrent delay	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
j. Progress payments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
k. Final account	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
l. Indemnity limits/ liability caps	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
m. Health and safety legislation changes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
n. CCA changes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
o. Other legislative changes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
p. COVID-19 / force majeure provisions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5. Please identify up to three other contract elements you would like to add to this list.

Contract element 1:

Contract element 2:

Contract element 3:



Revision of NZS 3910:2013 - Stakeholder feedback

6. Please tell us if you *agree or disagree* that the following associated standards also need to be updated.

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
NZS 3915:2005	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
NZS 3916:2013	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
NZS 3917:2013	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7. Please briefly tell us why you *strongly agree or strongly disagree* with the possible revision of any of the previously listed standards.

8. Please tell us anything else you think we should know about NZS 3910.

9. Please follow the outcome of this survey and our standard development processes on our [website](#). Otherwise, if you would like to be informed of the outcome of this survey, then please provide the following contact details. Your information will be kept confidential and only used for the purposes of this review.

Name

Organisation

Email Address

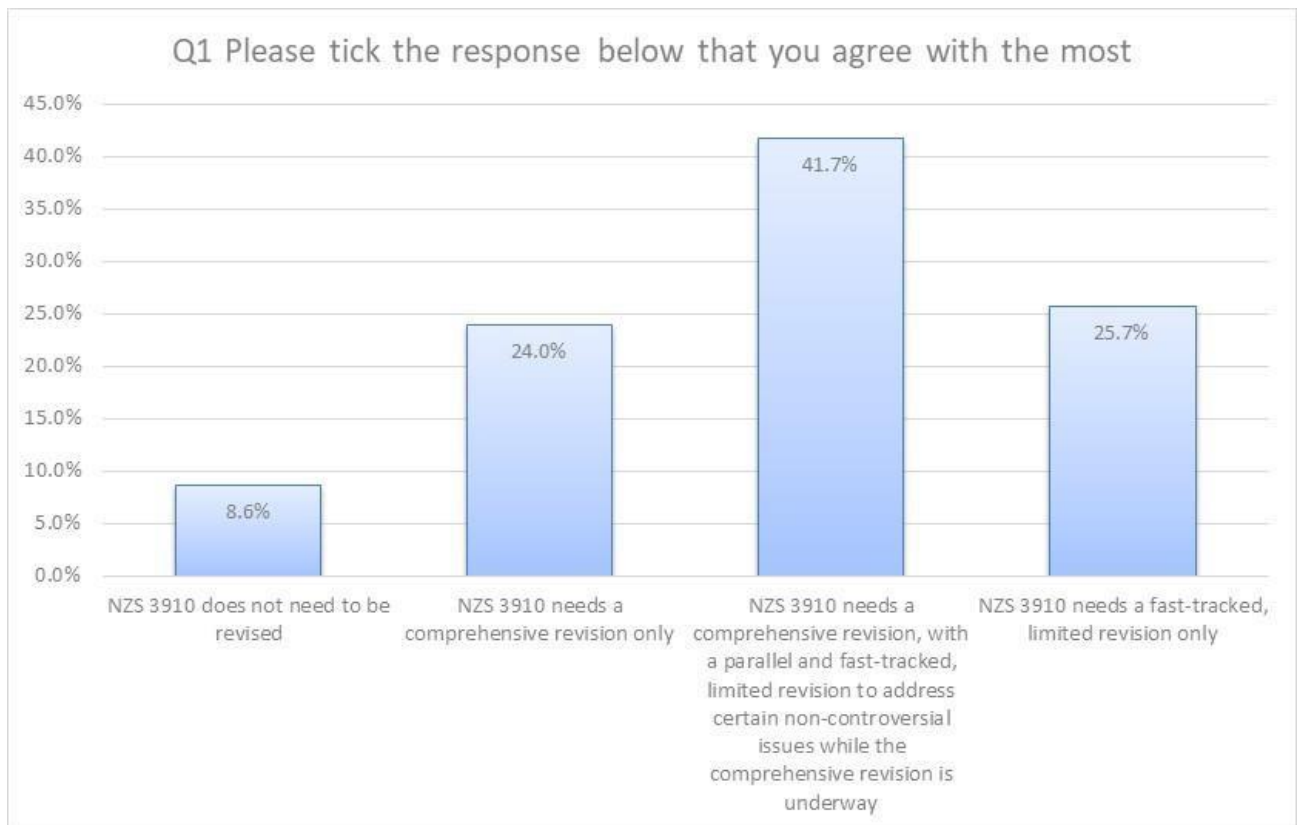
Thank you for taking the time to respond to this survey, your input is important to ensure that any revision to NZS 3910 will be widely accepted and fit for purpose.

**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
Summary of Responses to Sector-Wide Survey closing 14 February 2021**

APPENDIX C – Summary of survey responses

QUESTION 1

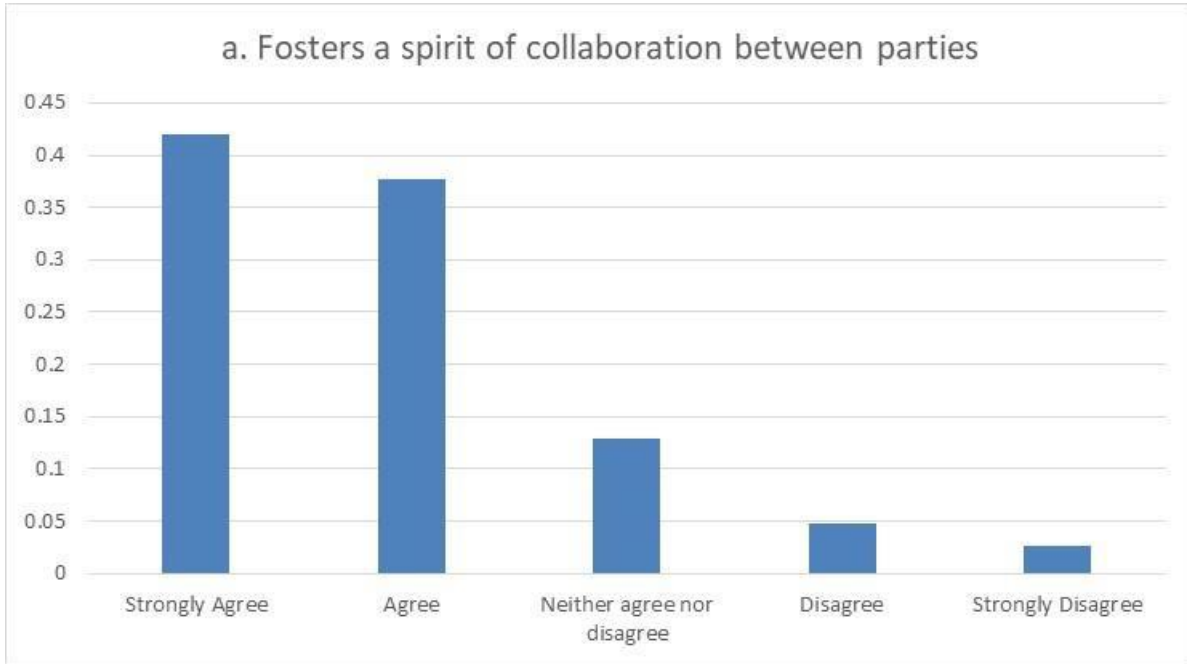
Q1 Please tick the response below that you agree with the most	Count of Response	
NZS 3910 does not need to be revised	55	8.6%
NZS 3910 needs a comprehensive revision only	154	24.0%
NZS 3910 needs a comprehensive revision, with a parallel and fast-tracked, limited re	268	41.7%
NZS 3910 needs a fast-tracked, limited revision only	165	25.7%
Grand Total	642	



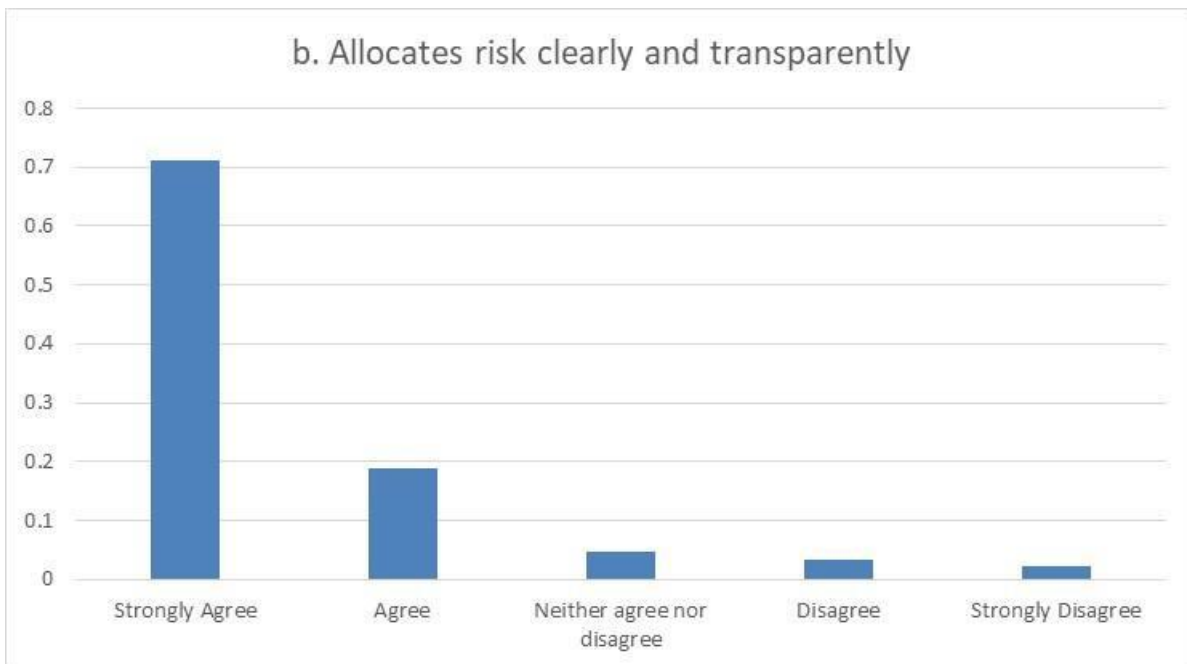
**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
Summary of Responses to Sector-Wide Survey closing 14 February 2021**

QUESTION 3

The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
a. Fosters a spirit of collaboration between parties	42.0%	37.6%	12.9%	4.8%	2.6%	0%	
	192	172	59	22	12	0	457

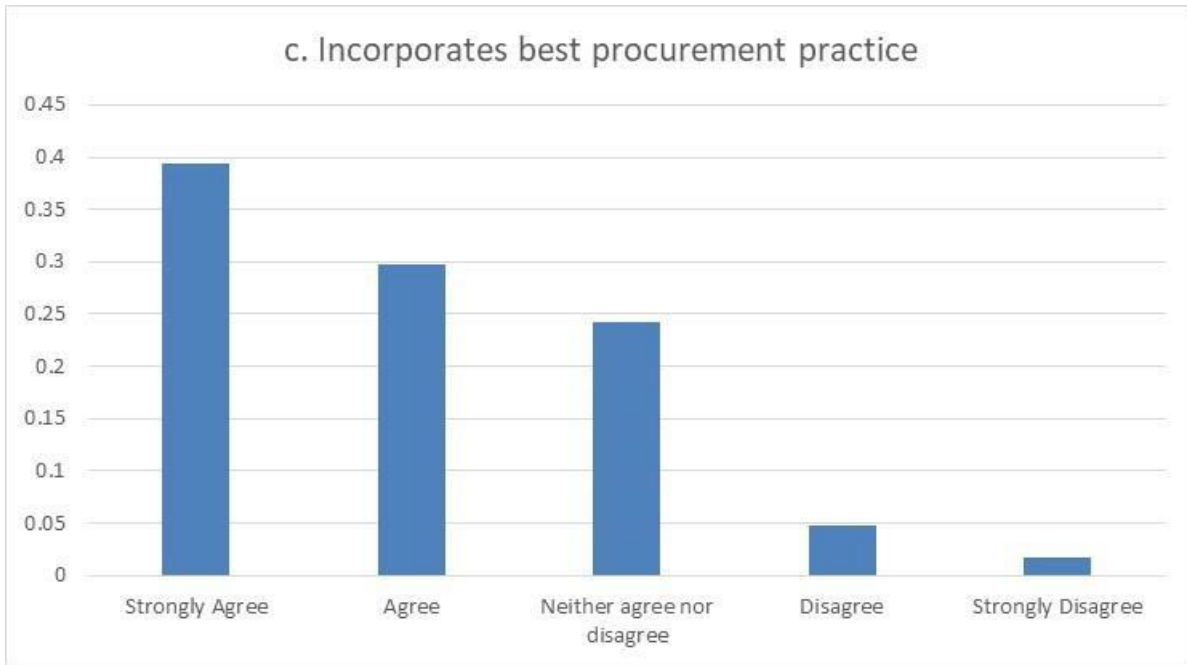


The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
b. Allocates risk clearly and transparently	71.1%	18.8%	4.6%	3.3%	2.2%	0%	
	325	86	21	15	10	0	457

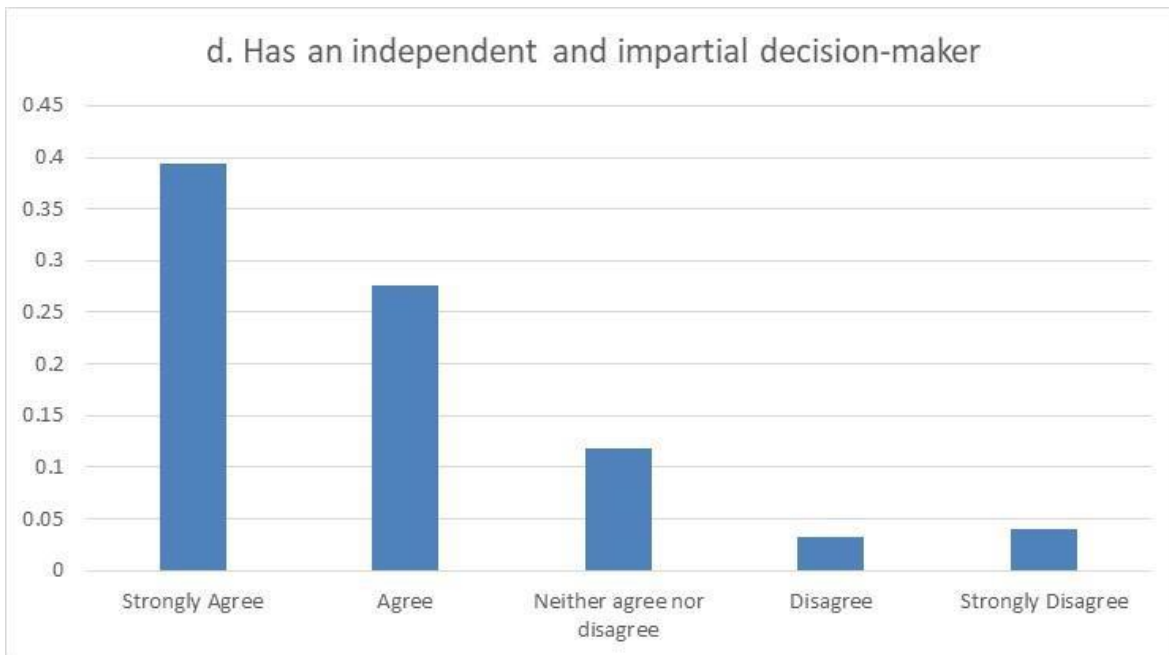


**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
Summary of Responses to Sector-Wide Survey closing 14 February 2021**

The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
c. Incorporates best procurement practice	39.4%	29.8%	24.3%	4.8%	1.8%	0%	
	180	136	111	22	8	0	457

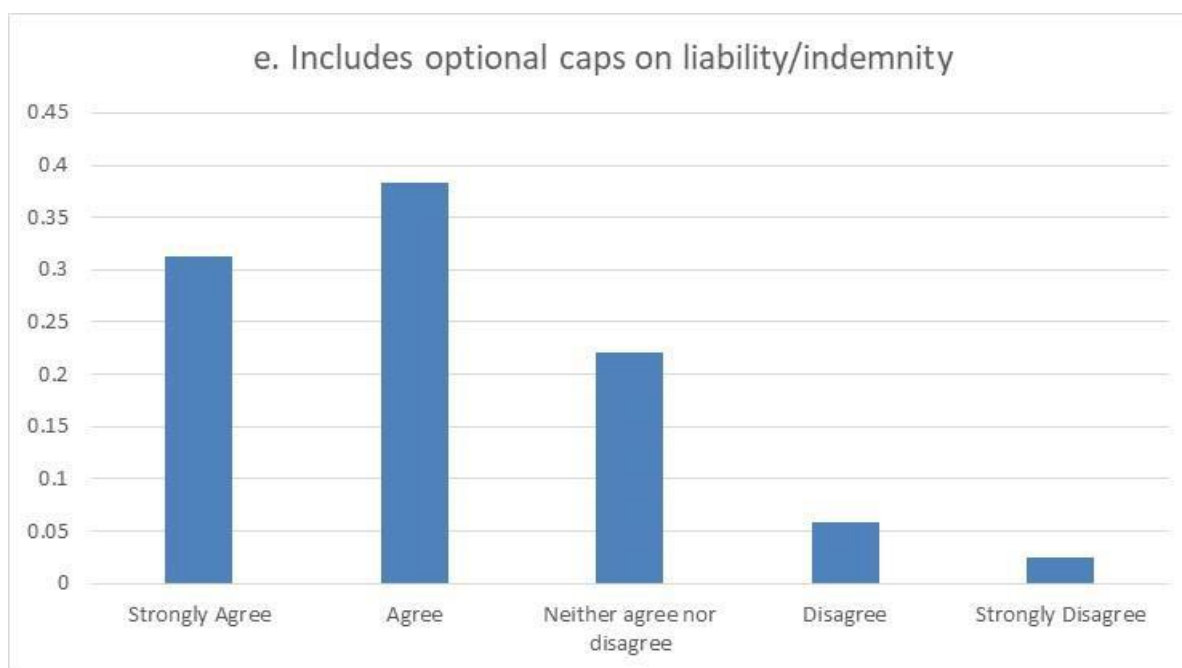


The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
d. Has an independent and impartial decision-maker	39.4%	27.6%	11.8%	3.3%	3.9%	0%	
	180	126	54	15	18	0	457

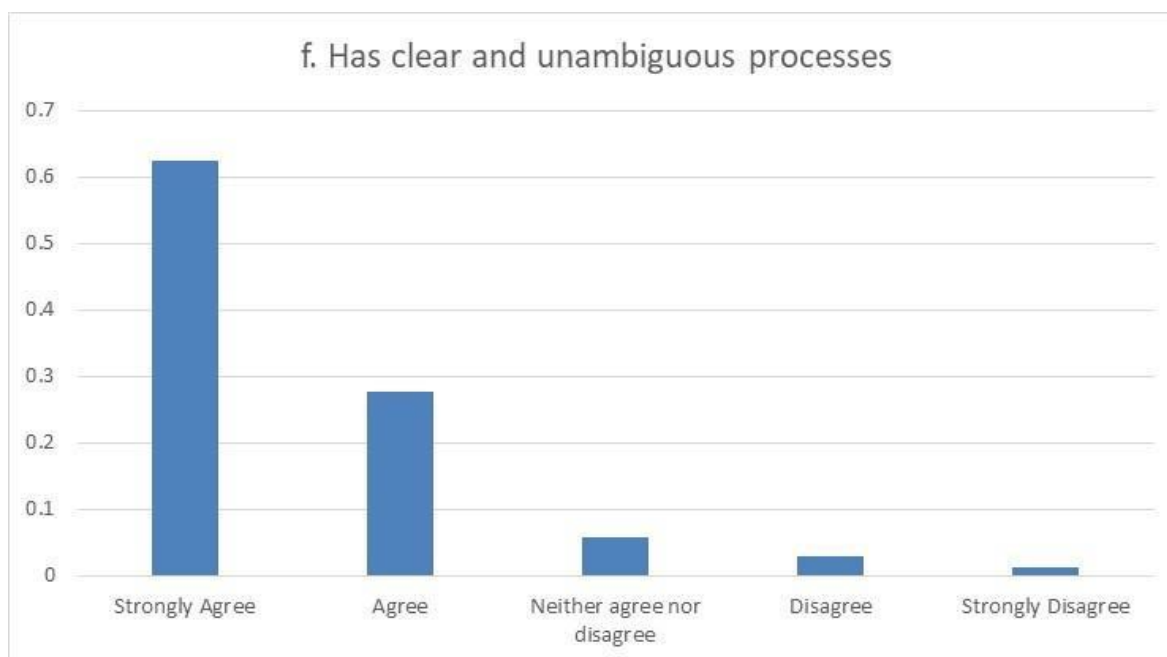


**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
Summary of Responses to Sector-Wide Survey closing 14 February 2021**

The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
e. Includes optional caps on liability/indemnity	31.3%	38.3%	22.1%	5.9%	2.4%	0%	
	143	175	101	27	11	0	457

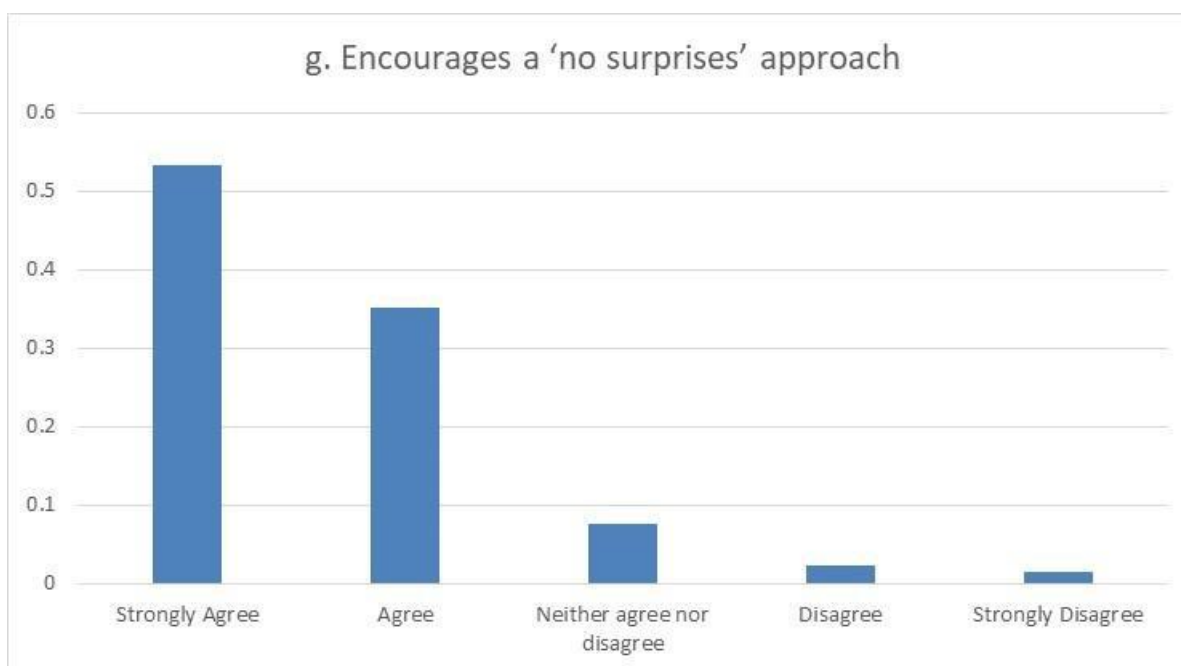


The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
f. Has clear and unambiguous processes	62.4%	27.8%	5.7%	2.8%	1.3%	0%	
	285	127	26	13	6	0	457

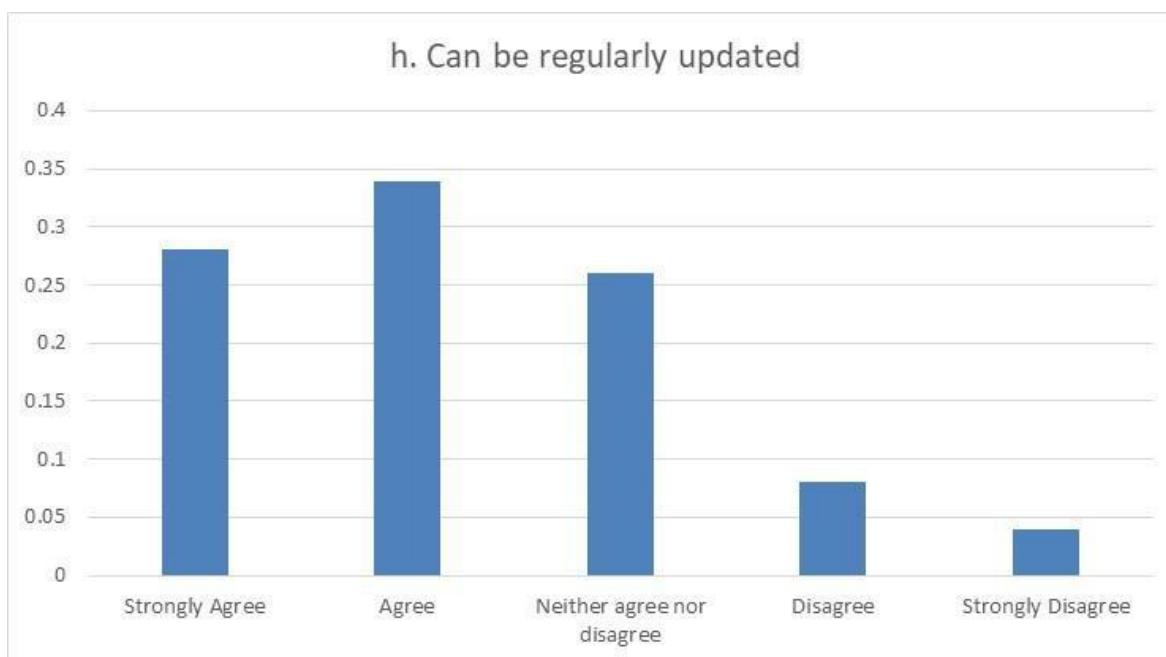


**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
Summary of Responses to Sector-Wide Survey closing 14 February 2021**

The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
g. Encourages a 'no surprises' approach	53.4%	35.2%	7.7%	2.2%	1.5%	0%	
	244	161	35	10	7	0	457

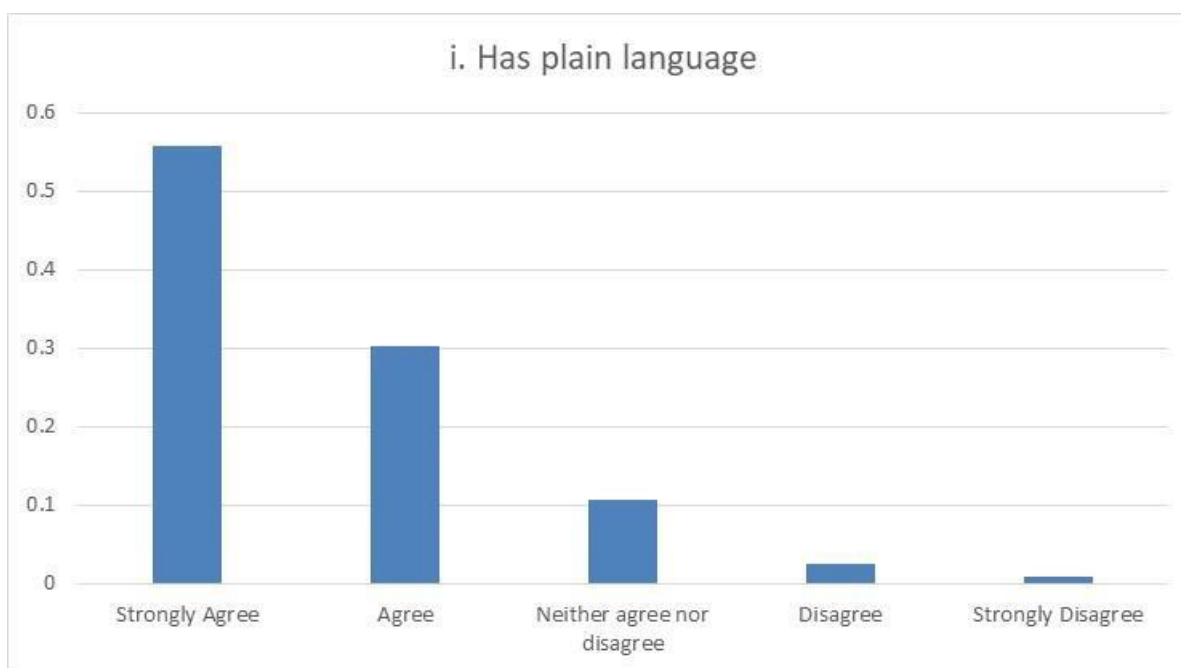


The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
h. Can be regularly updated	28.0%	33.9%	26.0%	8.1%	3.9%	0%	
	128	155	119	37	18	0	457

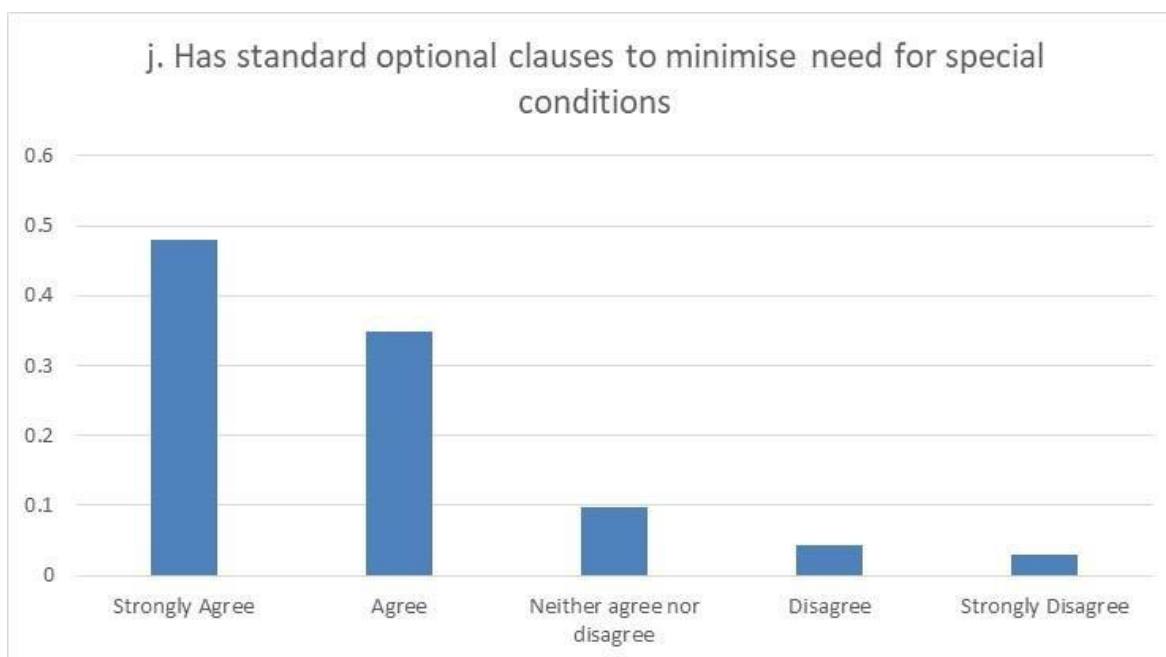


**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
Summary of Responses to Sector-Wide Survey closing 14 February 2021**

The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
i. Has plain language	55.8%	30.2%	10.7%	2.4%	0.9%	0%	
	255	138	49	11	4	0	457

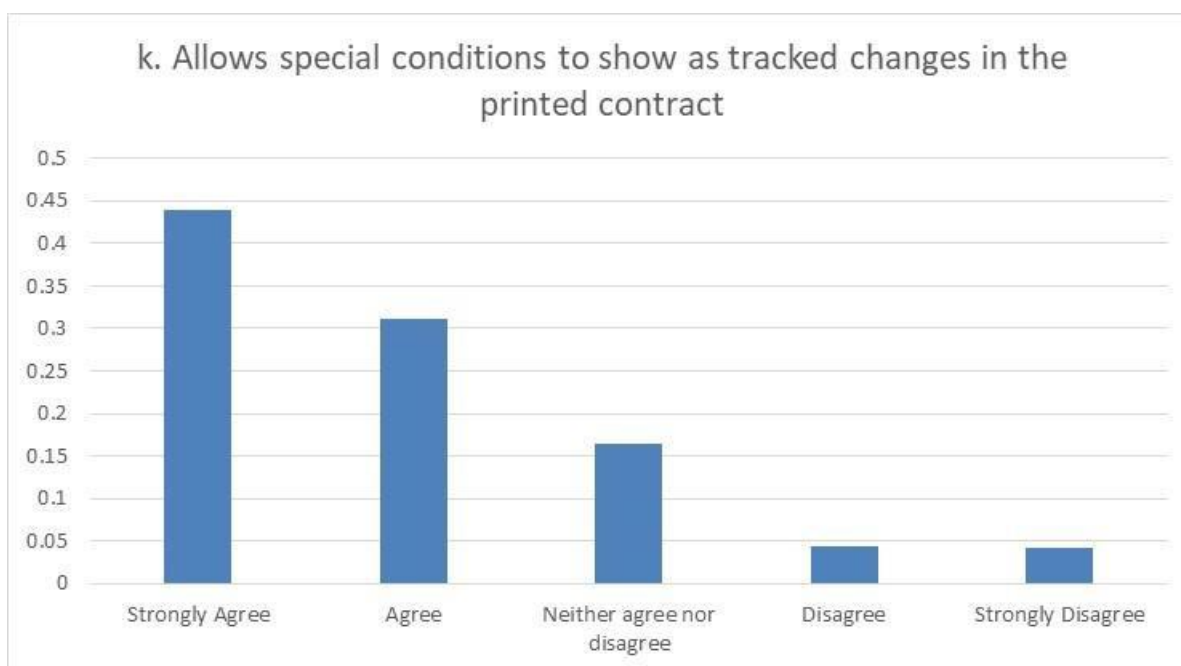


The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
j. Has standard optional clauses to minimise need for special conditions	47.9%	34.8%	9.8%	4.4%	3.1%	0%	
	219	159	45	20	14	0	457

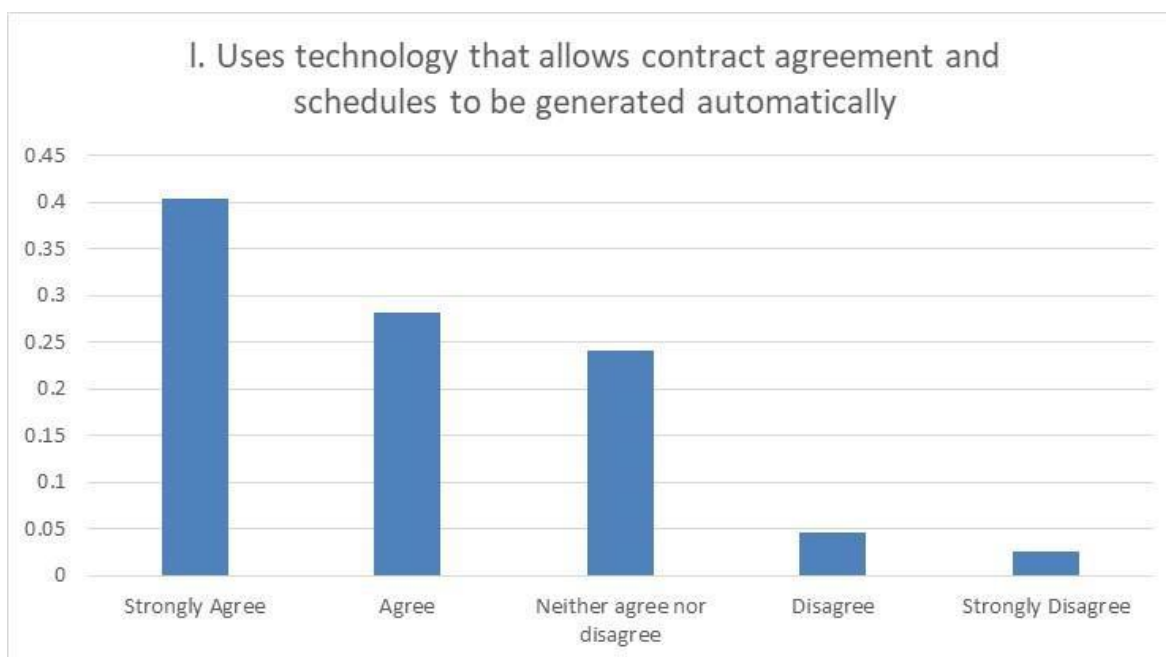


**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
Summary of Responses to Sector-Wide Survey closing 14 February 2021**

The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
k. Allows special conditions to show as tracked changes in the printed contract	44.0%	31.1%	16.4%	4.4%	4.2%	0%	
	201	142	75	20	19	0	457



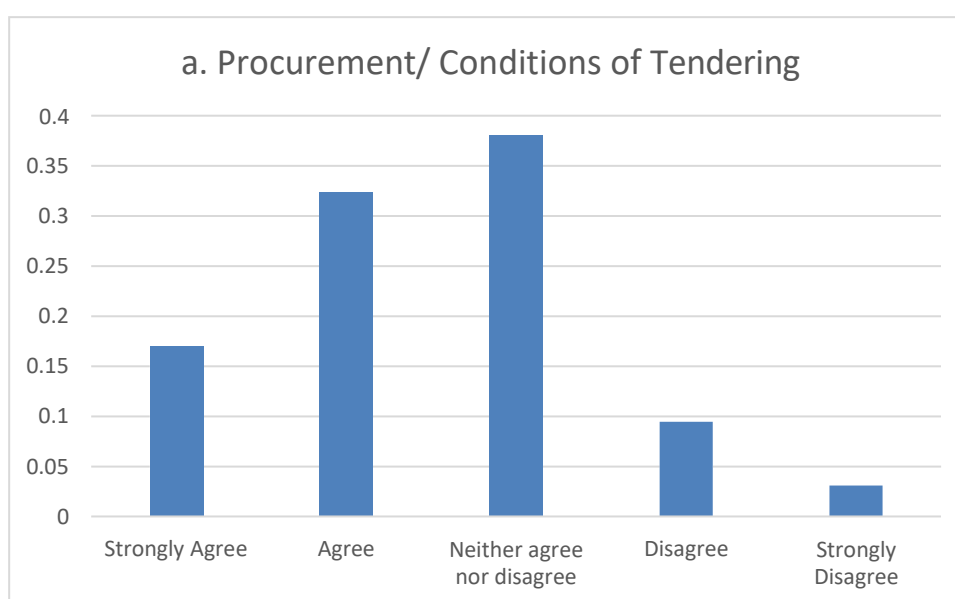
The ideal outcome for a revision of NZS 3910, would be a standard contract which . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
l. Uses technology that allows contract agreement and schedules to be generated automatically	40.5%	28.2%	24.1%	4.6%	2.6%	0%	
	185	129	110	21	12	0	457



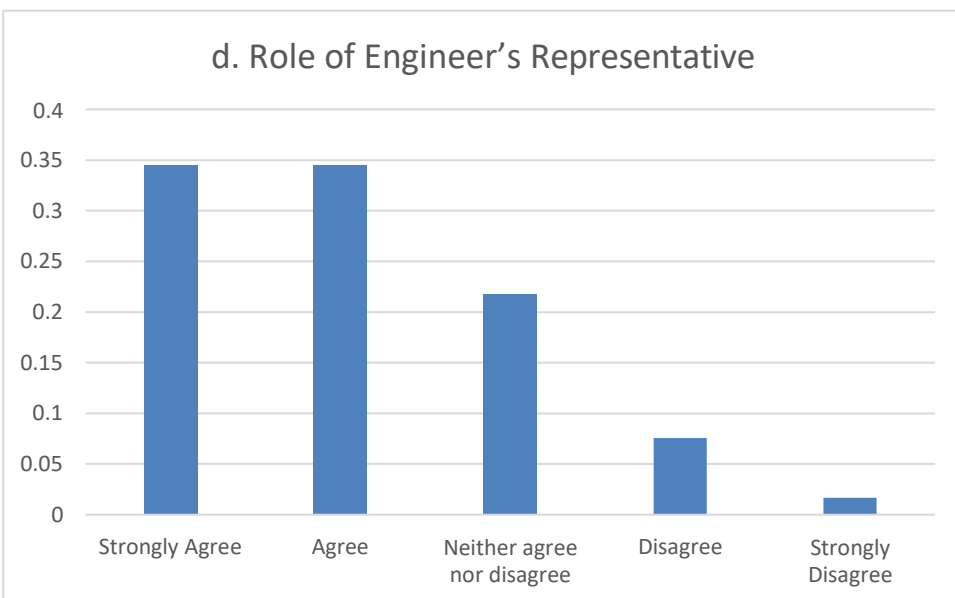
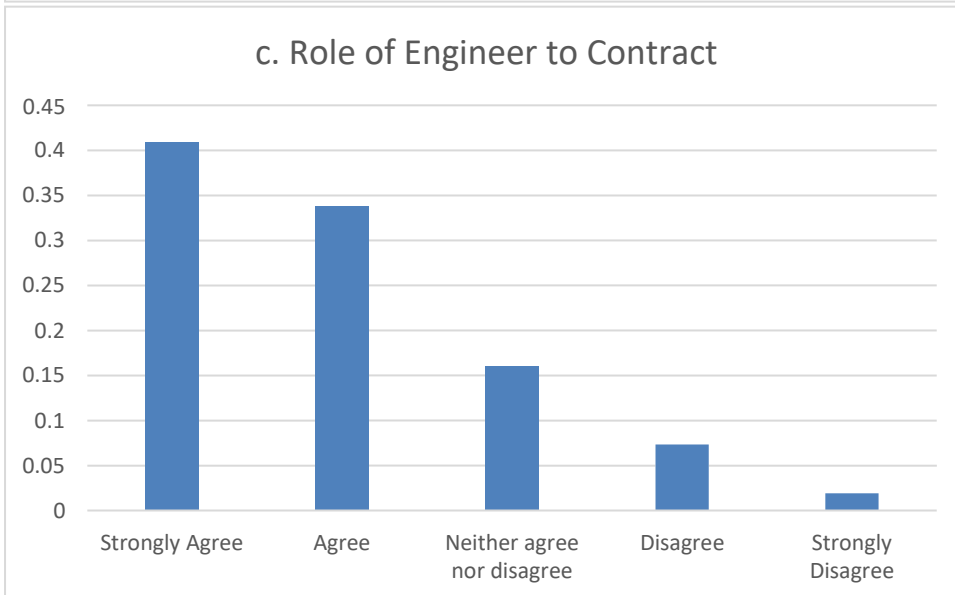
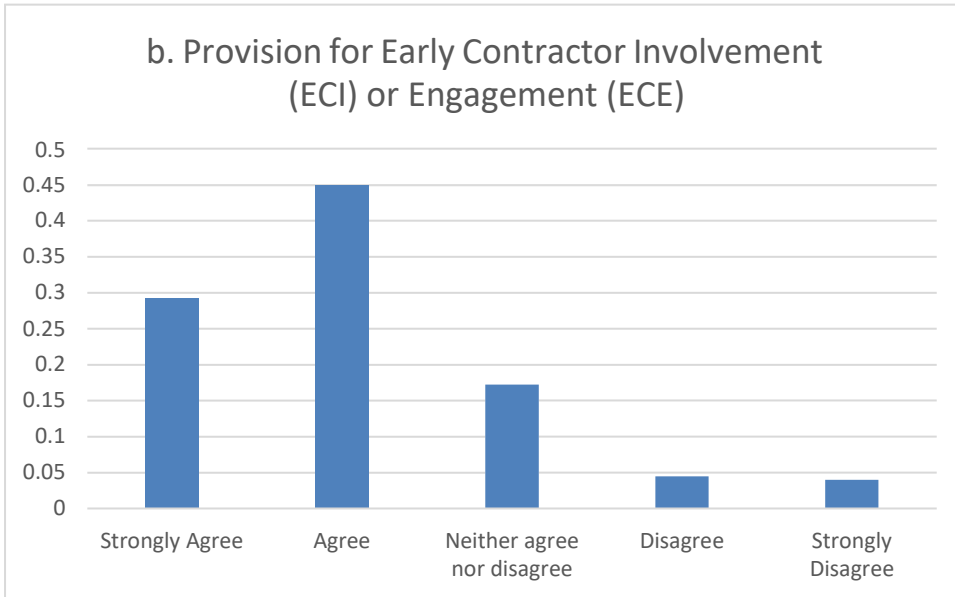
**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
Summary of Responses to Sector-Wide Survey closing 14 February 2021**

QUESTION 4

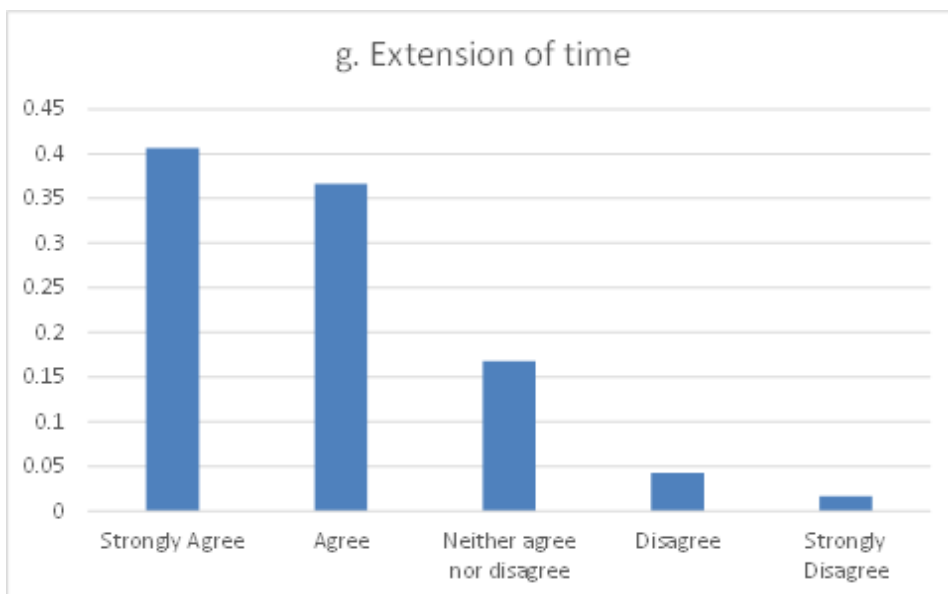
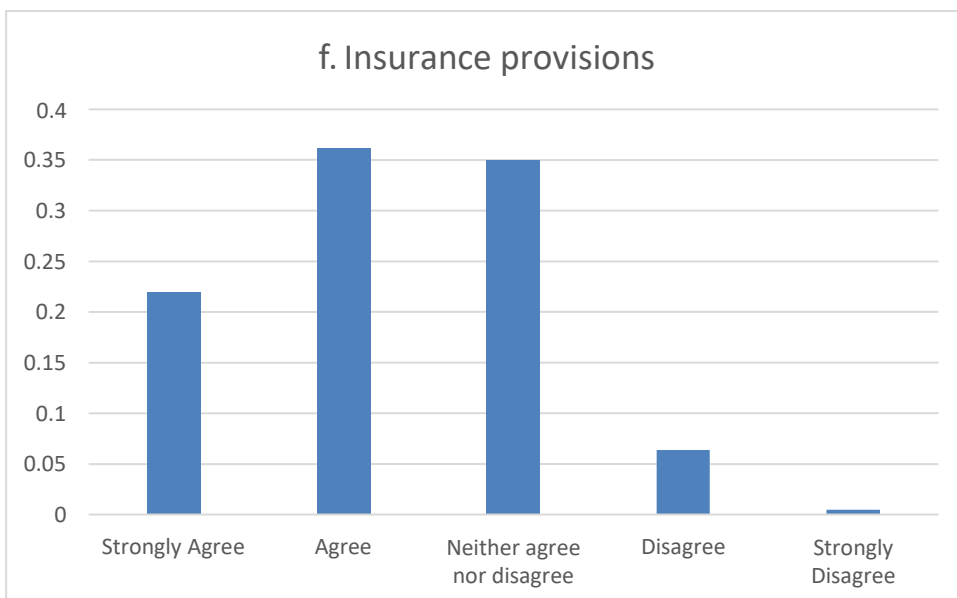
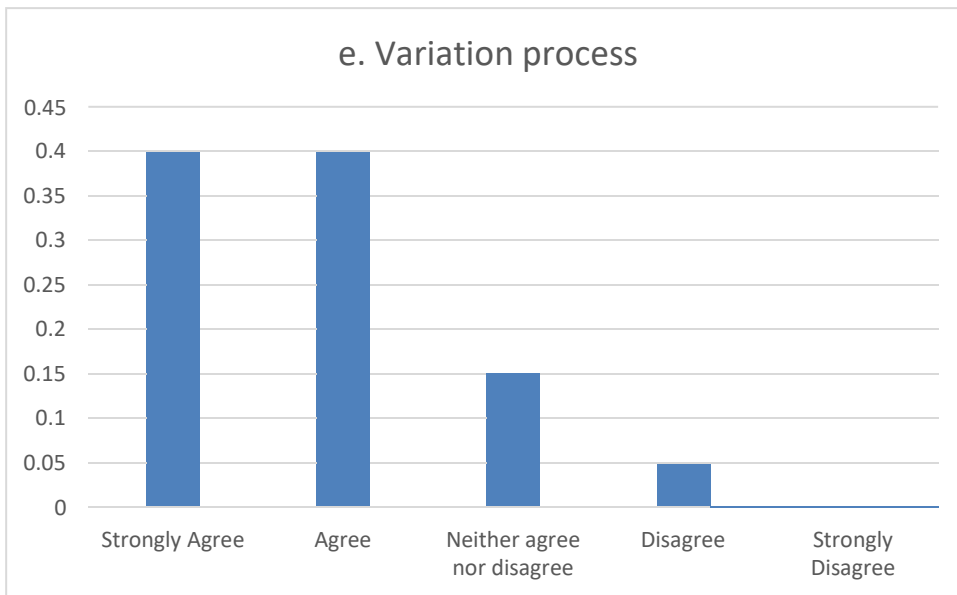
The contract elements that should be addressed in the revised standard include . . .	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No Response	Total
a. Procurement/ Conditions of Tendering	17.0% 72	32.4% 137	38.1% 161	9.5% 40	3.1% 13	0% 0	423
b. Provision for Early Contractor Involvement (ECI) or Engagement (ECE)	29.3% 124	44.9% 190	17.3% 73	4.5% 19	4.0% 17	0% 0	423
c. Role of Engineer to Contract	40.9% 173	33.8% 143	16.1% 68	7.3% 31	1.9% 8	0% 0	423
d. Role of Engineer's Representative	34.5% 146	34.5% 146	21.7% 92	7.6% 32	1.7% 7	0% 0	423
e. Variation process	39.2% 166	39.5% 167	15.6% 66	4.5% 19	1.2% 5	0% 0	423
f. Insurance provisions	22.0% 93	36.2% 153	35.0% 148	6.4% 27	0.5% 2	0% 0	423
g. Extension of time	40.7% 172	36.6% 155	16.8% 71	4.3% 18	1.7% 7	0% 0	423
h. Disruption	36.6% 155	41.4% 175	17.7% 75	2.8% 12	1.4% 6	0% 0	423
i. Concurrent delay	41.8% 177	39.0% 165	15.4% 65	2.4% 10	1.4% 6	0% 0	423
j. Progress payments	21.7% 92	27.0% 114	38.3% 162	10.4% 44	2.6% 11	0% 0	423
k. Final account	21.5% 91	30.0% 127	37.1% 157	8.7% 37	2.6% 11	0% 0	423
l. Indemnity limits/ liability caps	32.9% 139	34.3% 145	26.7% 113	5.0% 21	1.2% 5	0% 0	423
m. Health and safety legislation changes	37.1% 157	34.5% 146	22.7% 96	4.5% 19	1.2% 5	0% 0	423
n. CCA changes	33.3% 141	39.7% 168	21.5% 91	3.8% 16	1.7% 7	0% 0	423
o. Other legislative changes	24.6% 104	39.2% 166	31.7% 134	3.3% 14	1.2% 5	0% 0	423
p. COVID-19 / force majeure provisions	39.5% 167	39.5% 167	16.1% 68	3.5% 15	1.4% 6	0% 0	423



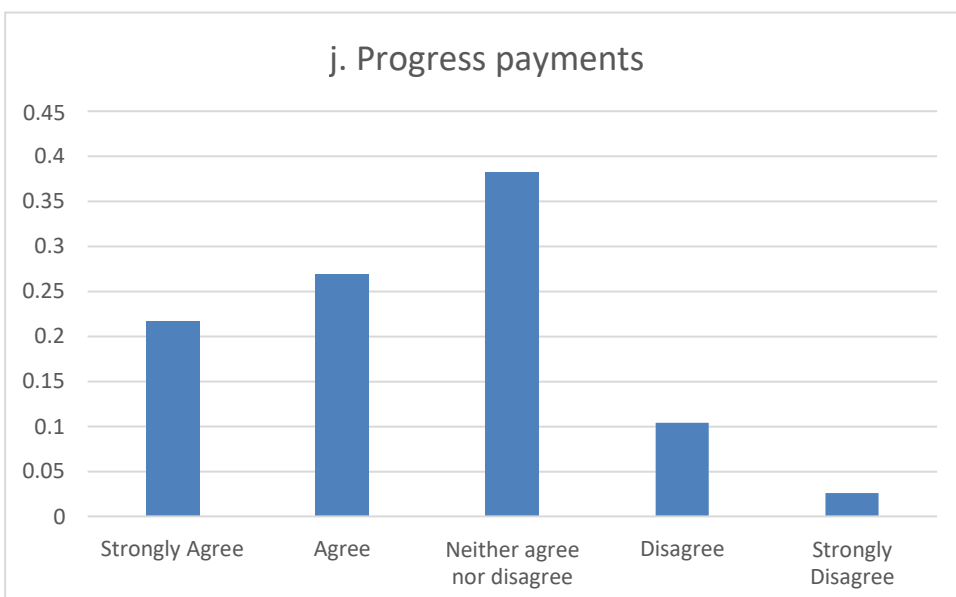
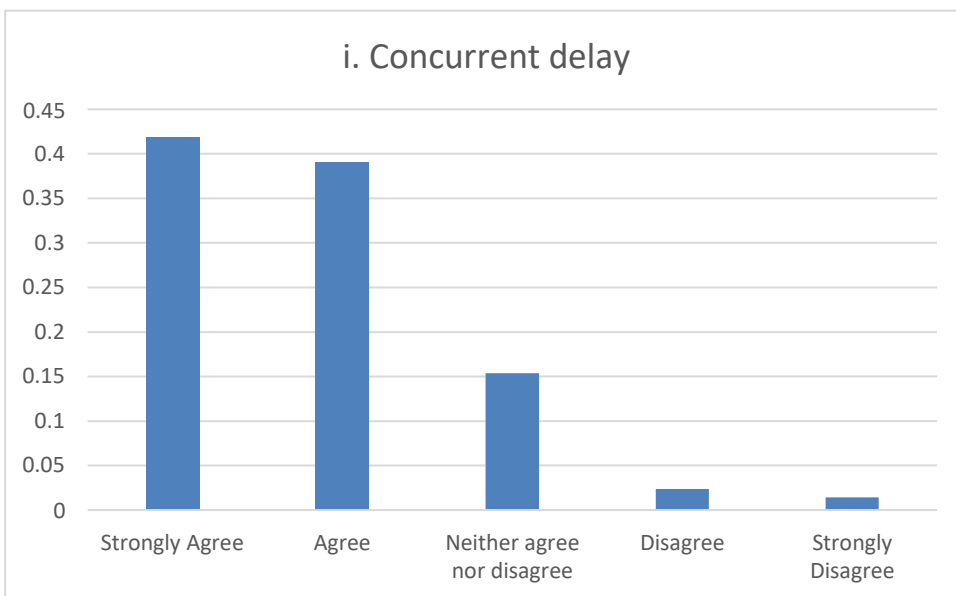
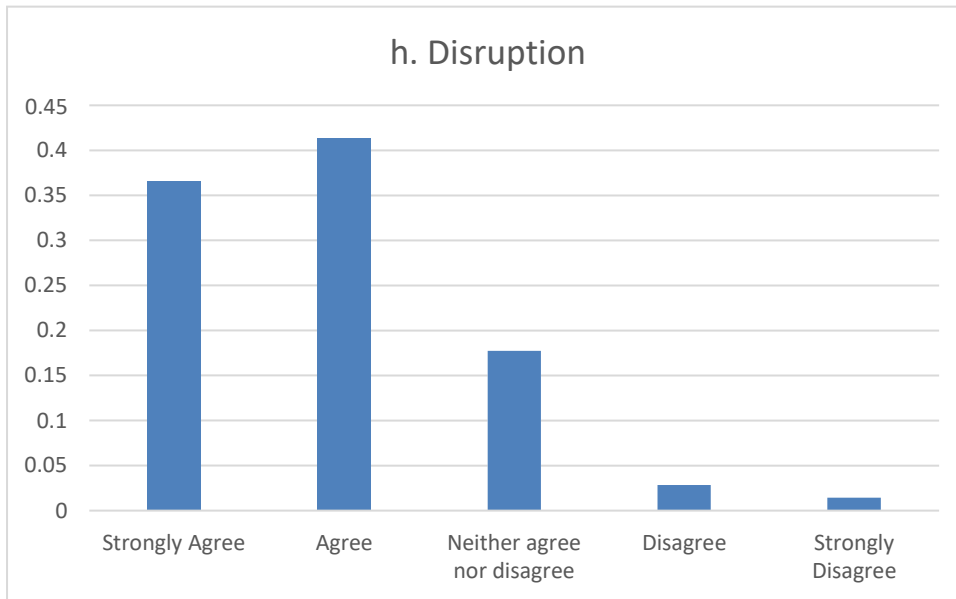
**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
Summary of Responses to Sector-Wide Survey closing 14 February 2021**



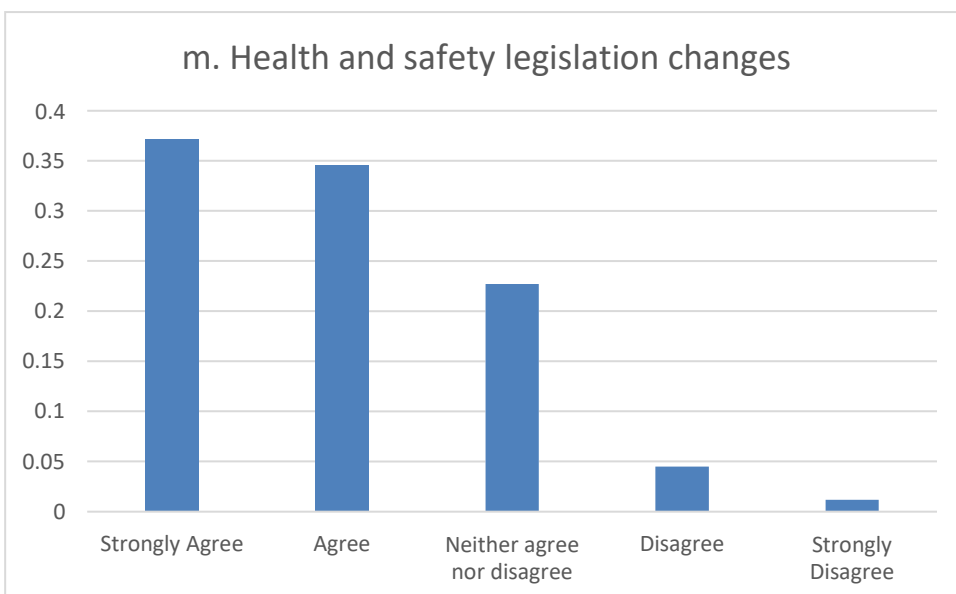
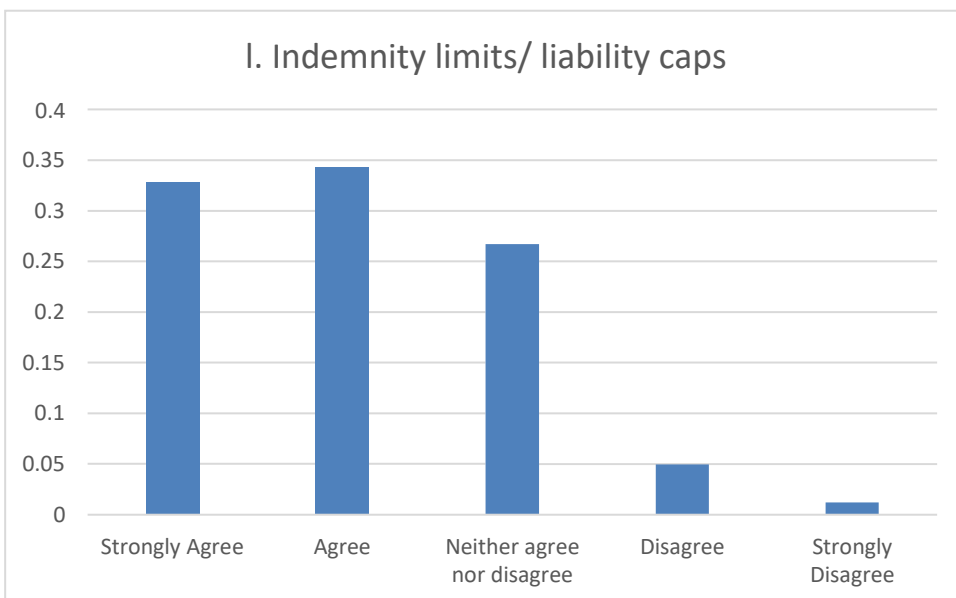
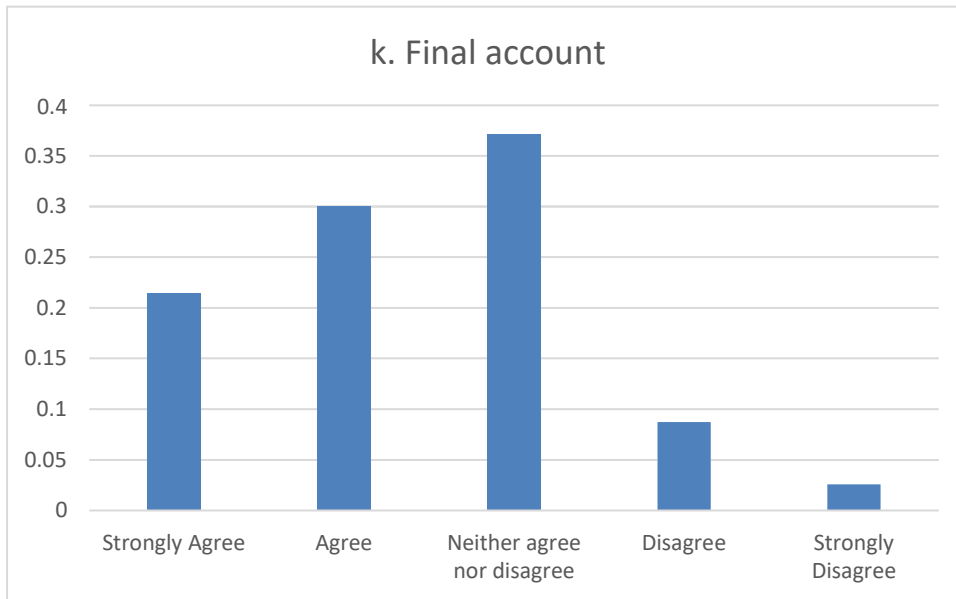
**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
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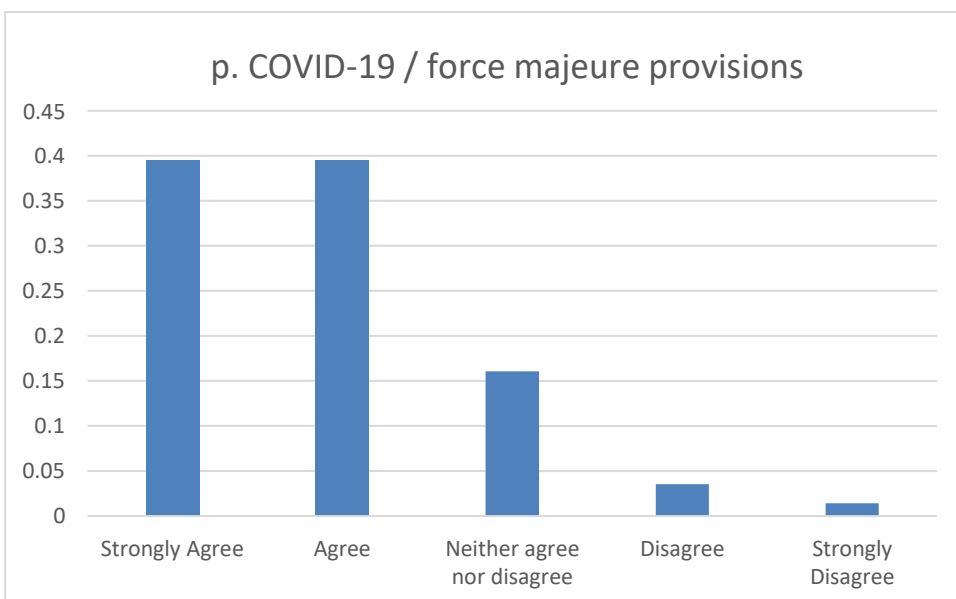
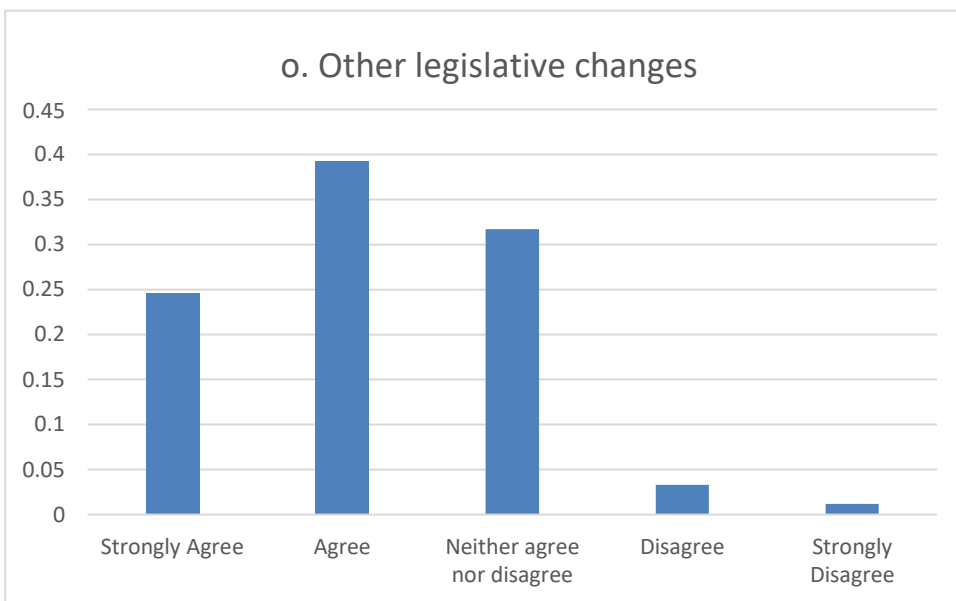
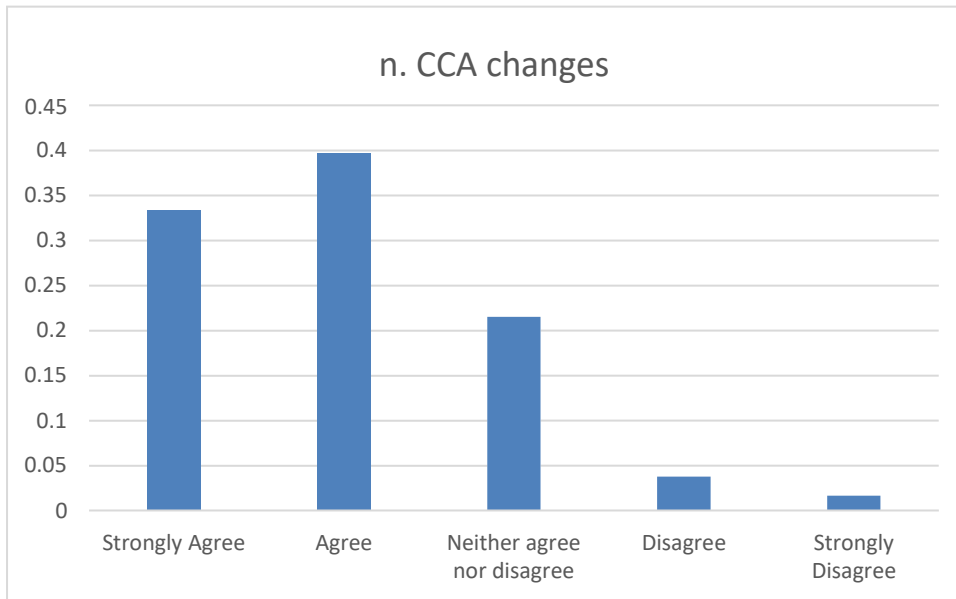
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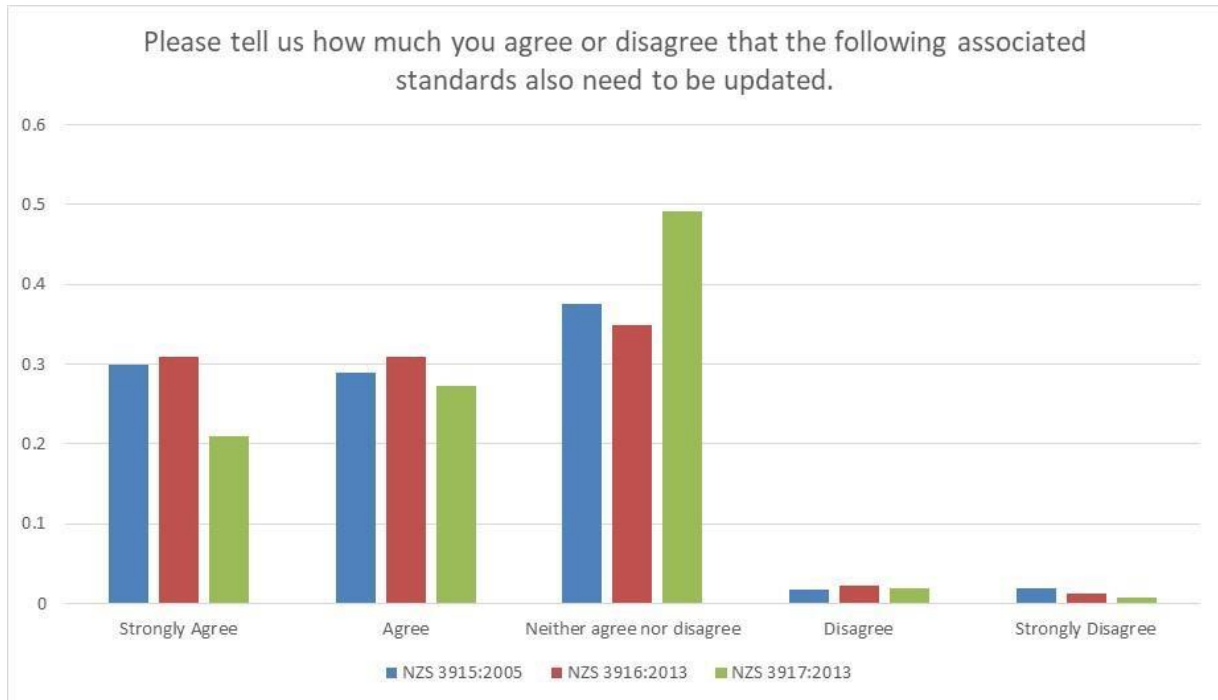
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Summary of Responses to Sector-Wide Survey closing 14 February 2021**



**Standards New Zealand Scoping Survey for Proposed Revision to NZS 3910:2013
Summary of Responses to Sector-Wide Survey closing 14 February 2021**

QUESTION 6

Please tell us how much you agree or disagree that the following associated standards also need to be updated.	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	Total
NZS 3915:2005	29.9%	28.9%	37.6%	1.7%	1.9%	
	124	120	156	7	8	415
NZS 3916:2013	30.8%	30.8%	34.9%	2.2%	1.2%	
	128	128	145	9	5	415
NZS 3917:2013	21.0%	27.2%	49.2%	1.9%	0.7%	
	87	113	204	8	3	415



APPENDIX D – Revision scope interim vs full revision – content of open questions
categorised in interim and full revision

NZS 3910 SECTOR CONSULTATION - MATTERS FOR POTENTIAL REVISION

The following is a list (in alphabetic order) of issues raised by respondents for possible consideration in a revision (including the range of matters raised in open Questions 2 & 5).

The boxes are shaded to indicate for discussion the “non-contentious” items that could potentially be included, with a further column for “out of scope”. As will be explained only “non-contentious” changes can be included in an interim (‘fast-tracked’) revision. These are matters where there is broad agreement in principle, and it would be up to the relevant committee research, consult and develop relevant underlying clauses.

The Scoping Group will be asked to form a collective view as to the appropriate column for each issue.

Issue recommended by respondents for review	SCOPING GROUP RECOMMENDATION		
	Interim Revision (non-contentious)	Full Revision	Out of Scope
Bond			
Collaboration (Accord objectives)			
Concurrent delay			
Contract type			
Covid (pandemic) clause			
Default and termination			
Defects			
Design obligations			
Disputes			
Disruption			
ECI provisions			
Engineer & Engineer Rep roles			
Environmental/ social			
EOT provisions			
Final account			
Force Majeure clause			
Guidelines			
HSWA 2015 amendments			
Insurances			
Other legislation - CCA, RMA, Rural Fires Act			
Liability / indemnity cap option			
Liquidated damages			
Order of precedence			
Optional clauses to minimise special conditions			
Payments			
Personnel			
Procurement / Conditions of Tendering			
Programme			
Quality			
Retentions			
Risk register			
Technology for contract agreement & schedules			
Time limits/ notices			
Time-related cost			
Tracked changes			
Utilities			
Variations			
Warranty			

APPENDIX E – Minutes post public consultation

Committee-in-confidence

Minutes of NZS 3910 scoping workshop (post public consultation) held from 10.00am to 12.00pm on 1 March 2021 via Microsoft Teams.

Chairperson: Peter Degerholm
Project Manager: Inge Mautz-Cooreman
Project Coordinator: Katherine May

1. Attendance and apologies

Name	P/A/NP	Nominating organisation
Natasha Possenniskie	P	Urban Outcomes
Nick Beale	P	RCP
John Lucas	P	Insurance Council of New Zealand
Peter Fehl	A	University of Auckland
Peter Silcock	P	Civil Contractors New Zealand
Paul O'Brien	NP	Dominion Constructors
David Kelly	P	Registered Master Builders
Marilyn Moffatt	P	New Zealand Institute of Quantity Surveyors
Helen Macfarlane	P	Hesketh Henry (Society of Construction Law)
Sam Jack	P	Fulton Hogan
Mijo Wilson	P	MBIE
Stephen Greenhough	P	MBIE
Raine Selles	NP	Commercial Management Consulting
Peter Degerholm – chair	P	Calderglen Associates
Trina Lincoln	P	Kāinga Ora – Homes and Communities
Duncan Halliwell	P	Downer
Rod Fulford	P	Specialist Trade Contractors Federation
Wayne Carson	P (from 10.30)	D & H Steel Construction
Marcus Hogan	P	New Zealand Institute of Architects
Tania Williams	P	Engineering New Zealand
Rebecca Robertshawe	P	Ministry of Education
Janine Stewart	P	Minter Ellison Rudd Watts
Travis Tomlinson	P	Minter Ellison Rudd Watts
Lauren Whitehead	NP	Kiwirail
Jonathon Clark	P	New Zealand Infrastructure Commission
Peter Spies	P	NZTA
Gavin Shaw	P	ACENZ
Ed Crook	P	Russell McVeagh/Property Council
Kelly Lavalley	P	Local Government New Zealand
Fleur Aldridge	P	Auckland Council
Amanda Greenwood	P	Fletcher Building
Sue Morse	P	Royal Institution of Chartered Surveyors representative - Hestia

(P)PRESENT - (A) APOLOGIES - (NP) NOT PRESENT

2. Welcome

- The meeting commenced at 10.00am. The chair opened the meeting by welcoming everyone and introduced Amanda, representing Fletcher Building, and Sue, a RICS representative, who did not attend the scoping workshop.
- The chair asked the group to keep their microphone muted and raise their hand before speaking. Due to the short two-hour format it was noted that there is not much room for discussion.
- The minutes from the previous meeting were accepted.

3. Survey responses

The chair outlined that the survey responses show the group what questions should be on the table. He noted that text oriented questions were difficult to identify what people wanted, these questions have been categorised as best as possible. For this meeting, the responses were put into a list of most popular and issues that are less contentious.

There was a strong support for NZS 3910 even as it is. The standard is well liked, which is important to take on-board to retain the best features and enhance the standard where feasible to do so.

3. Process overview

At the previous meeting there was a discussion regarding a fast track revision and a full revision. Inge presented the options available. Some of the key points are as follows:

- A fast track revision comes under the umbrella of an interim standard where changes can happen in a short timeframe.
- An interim standard can only address non-contentious issues. The changes need to be agreed upon by the whole committee (100% consensus). The differences with a normal standard:
 - An interim standard does not require a public consultation period and
 - the interim standard is approved by the National Manager of SNZ, it does not require approval from the Standards New Zealand Approval Board.
- Interim standards only have a lifespan of two years, which can be extended by another year if the full standard is not ready to publish yet. The new full standard will supersede the interim standard.
- Timelines of interim standards and a full revision were discussed
 - The development of an interim standard can happen quickly, dependent on how fast the proposal/contract is signed. If the initiation phase started in May/June the interim standard could be published in November/December.
 - For a full revision, the initiation period is the same with the same committee formed. The development of the standard will be much longer, dependent on the size of the scope. The standard then needs to go out for public consultation. If started at the same time as the interim standard (May/June) the full revision could publish December 2022.
- The overall governance of any revision lies within the development committee (whether it's an interim standard only, a full revision only or both are revised simultaneously).

Standards New Zealand will reach out to potential nominating organisations and invite them to submit a nominee. Committee members and a proposed chair will be submitted to the Standards Approval Board for approval, who will suggest other organisations if an area is not represented. Inge reminded the group that nobody sits on the committee representing their own personal interests, every committee member represents the views of their nominating organisation. The committee has overall responsibility for revising the standard, but can be split into working groups that focus on specific areas. Externals may be invited to join these working groups if they bring **additional technical expertise** to the committee that is not already or sufficiently available in the committee. The final technical content remains the responsibility of the whole development committee.

It was also noted that Standards New Zealand is open to setting up a standing committee. The standing committee will come together on a regular basis to decide whether an update of the standard is necessary.

A brief discussion was had regarding this and some of the main points are as follows:

- Can we expedite the tracked changes option?
 - It was noted that there are some options, but at the moment it is unclear what is possible. Trina Lincoln advised that it took Kainga Ora four months to complete the special conditions so that time should be factored in. She would be happy to take the group through their journey of automating their contracts.

- Other than copyright issues, what is difficult about switching to tracked changes and unlocking NZS 3910?
 - It can be done, but unlocking the document means any changes can be made, which may eventuate in some contracts where the document is worse than before. Clauses need to be blocked that shouldn't be changed which can't be done in the document's current form. A web-based document could be looked into. Before deciding how long this will take it needs to be understood what problem we are trying to solve and what would be the best way to go about it.
 - Copyright issues will also need to be looked at when making track changes available.
 - The chair noted that automation of the document's format would need approval from the Standards Board.
- It was noted that if the document is opened up to changes the market confidence could be eroded. The original discussion had outlined enabling editing of the contract to the extent that changes could tracked within the clauses, straying further from this could lead to loss of confidence in the document and cause for concern. On the other hand, an advantage of tracked changes was expressed as it would allow for changes to be read more easily.
- It was mentioned that;
 - the circulation of a fully editable document would be a huge benefit but need a cultural shift.
 - The document as it stands is in any event amended at the discretion of each party.
 - An interim standard may divert resources from the full revision. However, a scope will be set up for both which will not be up for discussion once set.
- The chair recommended that the track changes option could realistically only be incorporated in the full revision.

4. Feedback and discussion on topics listed for interim and full revision

The chair showed the group the suggested points for the interim and full revisions. He outlined that these suggestions will be put into a survey for the group to decide whether they agree or if they should be moved to the full revision or into the interim revision, or not touched on at all.

Points discussed:

- It was noted that there is potential for overlap with optional clauses.
- It was questioned whether it is worth doing an interim revision if half of the points might be better to be applied to a full revision.
- The group would need to be specific about which areas of special conditions would be addressed as there was concern it might become contentious.
- It was mentioned again that it is the committee's decision to agree what should be included in the interim standard, and as it needs 100% consensus the issues must be non-contentious.
- 4 people were opposed to an interim revision. The following reasons were given:
 - An interim standard may not be adopted by many organisations as it can take some organisations a while to adopt a full revision.
 - Better to spend energy on a full revision rather than interim.

After the discussion it was concluded that having an interim standard has support from the majority of the group. An opportunity for individual responses would be provided by a survey link to be sent out by the chair shortly after the meeting.

The chair stated that adding some popular clauses to the interim standards would provide feedback for the full revision which is a benefit.

5. Expectations going forward

There was a discussion about government agencies' current solutions. The chair asked the group whether organisations are prepared to share their documents so that the committee could use these documents as a starting point of the discussion. Some members of the group expressed that they would be happy to share their experiences.

Multiple group members mentioned the need for a balanced group around the table, which is part of the standards development process. SNZ added that the committee will not be approved by the Board unless there is balanced representation.

In terms of the scope of the full revision, the committee will have the ability to look at every clause but the scoping document that will be prepared after this meeting will emphasise what the core areas of focus should be.

6. Funding and resources

It was noted that industry commitment is needed and that it may take some time to find funding. Peter Silcock stated that the NZ Construction Industry Council had commissioned the current scoping process and would be likely to agree to be the vehicle to commission the review subject to strong support and funding assistance from industry including government and private clients, construction industry companies and organisations and consultants. He said that it was fairly easy to find funding for the scoping workshop which had included funding from NZCIC, KiwiRail, Kāinga Ora, Waka Kotahi NZTA, MBIE, MoE and Infracom. However the budget and consequently the funding for the revision will be substantially larger. He also stated that NZCIC would be willing to be the lead organisation to apply for any funding (such as from the Accord) and to co-ordinate funding from within the industry and government.

The group was asked to think about who should be nominated for the committee, and engage with any organisation with which they are associated, so that they have nominees available when requested by Standards NZ.

Standards New Zealand can only provide an estimate of the cost once the scope has been defined. It was noted that the cost of the revision compared to what the industry is paying in legal fees each year would be relatively small.

There was concern that in the past standards review budgets has been exceeded and finishing touches weren't completed properly. The budget would need to be well considered and contain a contingency.

7. Next steps

Chair to circulate a SurveyMonkey link for scoping group feedback on the scope of interim vs full revision. Survey to close on Tuesday 2 March, and feedback will be provided to the group.

Inge will write the scoping report which will include an agreed finalised scope for the project. The scope should be clear after the short survey, sent out by the chair after the meeting, has been completed.

The interim standard was supported by 80% of the group but agreement needs to be reached on what will be in scope and out of scope for both revisions before the budget can be determined.

The report is due in the week of the 22nd March and will be sent to the commissioner, NZCIC. The report will include a list of stakeholders that SNZ should contact for a nomination. The chair asked the group to identify any other organisation that should be invited to be part of the committee.

It was noted that another group meeting should be set up late March/ early April to discuss the report, and recommend next steps towards a revision. Further meetings of the group are anticipated through to the establishment of a revision committee.

SNZ will develop a proposal once the commissioner has given the green light to SNZ on how they would like to move forward.

Once the proposal has been agreed upon by all parties (SNZ and commissioner(s)), a contract will be drawn up. It will be up to the industry to find the funding. The project can get underway when the contract is signed by all parties.

Minutes from this meeting will be written and circulated. Peter and Inge thanked the scoping group for the time they have put in noting that the revision will be complex. Thanks were given from the chair to Inge and Katherine for their work.

10. Close meeting

Meeting closed at 12.00pm

APPENDIX F – Survey on the scope of interim vs full revision sent out to the scoping group after the meeting

1. Should "Collaboration (Accord objectives)" be in scope for an interim revision?

Yes

No

2. Should "Covid/pandemic clause)" be in scope for an interim revision?

Yes

No

3. Should "HSWA 2015" be in scope for an interim revision?

Yes

No

4. Should "Other Legislation" be in scope for an interim revision?

Yes

No

5. Should "Liability / Indemnity Cap" be in scope for an interim revision?

Yes

No

6. Should "Optional clauses to minimise special conditions" be in scope for an interim revision?

Yes

No

7. Should "Risk Register" be in scope for an interim revision?

Yes

No

8. Which (if any) items in the Full Revision column should be included in an interim revision?

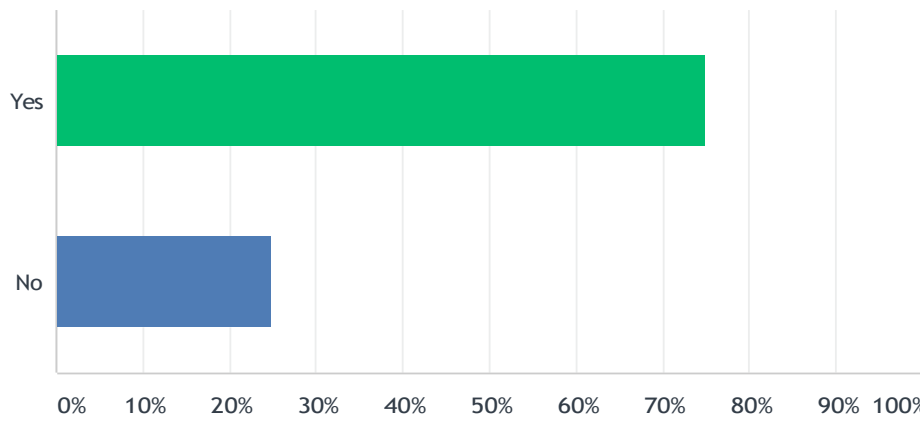
9. Which (if any) items in the Full Revision column should be Out of Scope, and therefore not included even in a full revision?

10. Please enter your name (for validation purposes only)

APPENDIX G – Results from scoping group feedback

Q1 Should "Collaboration (Accord objectives)" be in scope for an interim revision?

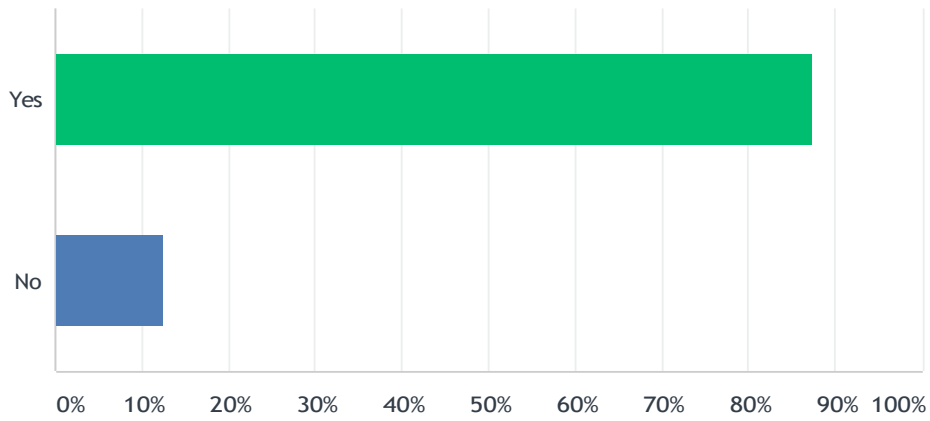
Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	75.00%	18
No	25.00%	6
TOTAL		24

Q2 Should "Covid/pandemic clause)" be in scope for an interim revision?

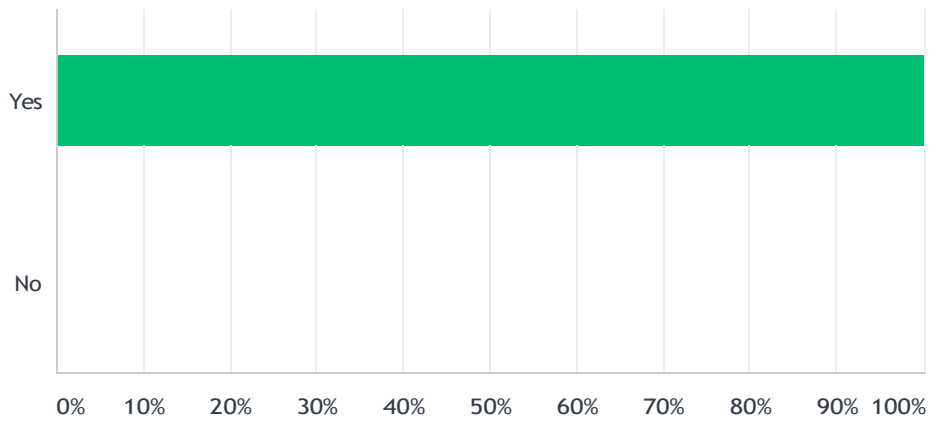
Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	87.50%	21
No	12.50%	3
TOTAL		24

Q3 Should "HSWA 2015" be in scope for an interim revision?

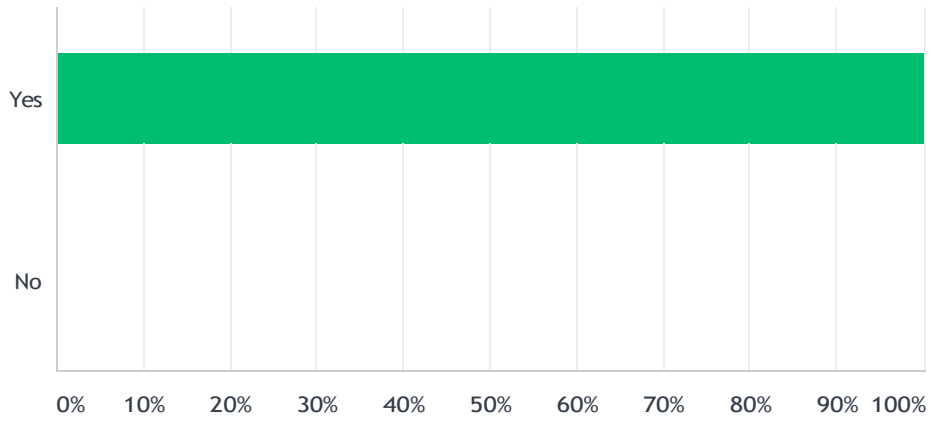
Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	100.00%	24
No	0.00%	0
TOTAL		24

Q4 Should "Other Legislation" be in scope for an interim revision?

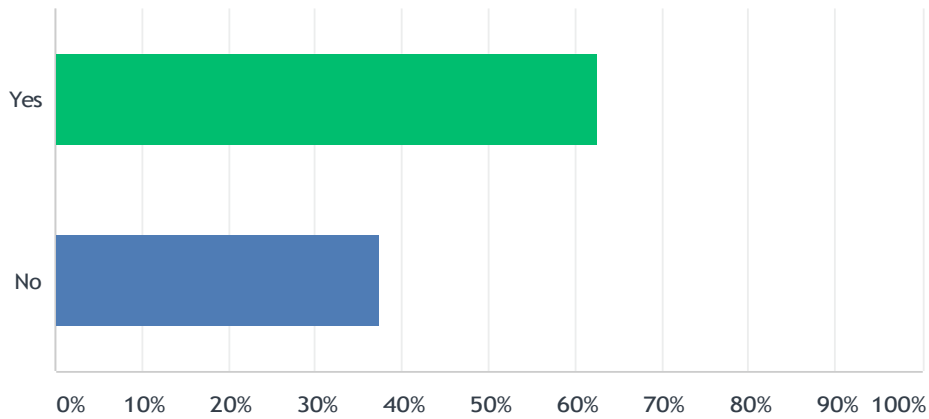
Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	100.00%	24
No	0.00%	0
TOTAL		24

Q5 Should "Liability / Indemnity Cap" be in scope for an interim revision?

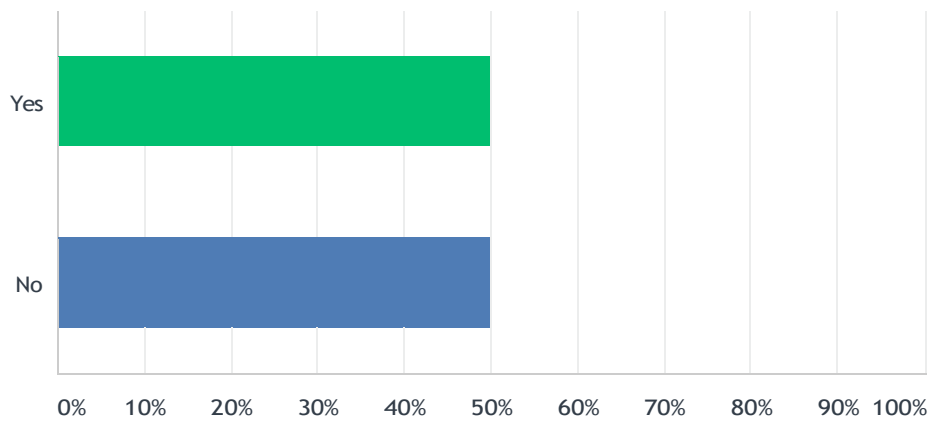
Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	62.50%	15
No	37.50%	9
TOTAL		24

Q6 Should "Optional clauses to minimise special conditions" be in scope for an interim revision?

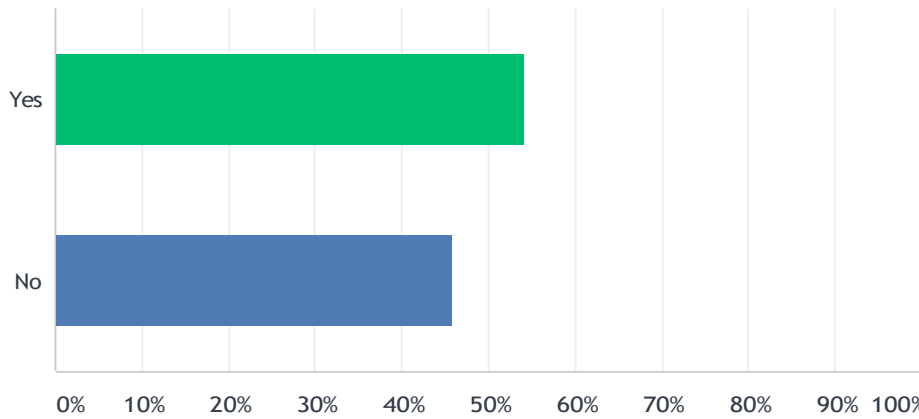
Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	50.00%	12
No	50.00%	12
TOTAL		24

Q7 Should "Risk Register" be in scope for an interim revision?

Answered: 24 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	54.17%	13
No	45.83%	11
TOTAL		24

Q8 Which (if any) items in the Full Revision column should be included in an interim revision?

Answered: 21 Skipped: 3

#	RESPONSES	DATE
1	Bond form	3/2/2021 8:48 PM
2	None	3/2/2021 5:23 PM
3	Force Majuere - to cover anything else other than the COVID pandemic	3/2/2021 5:10 PM
4	Consider insurance to the extent that the Indemnity and liability cap wording is also revisited	3/2/2021 1:49 PM
5	ETC many revisions, better provs for nominated subs, dispute mechs, eot process, ECI processes, collaboration,	3/2/2021 1:44 PM
6	Force majeure clause	3/2/2021 1:35 PM
7	Force Majeure clause (in addition to COVID/pandemic clause); Order of Precedence; Electronic/editable [Tracked changes] versions - this is fundamental	3/2/2021 1:25 PM
8	order of precedence; time limits/notices	3/2/2021 12:28 PM
9	The purpose of the interim revision is to address the immediate needs of the industry (HWSA, COVID-19(?) and other legislative changes) and if time and resources allow, you may start to tackle other subject areas.	3/2/2021 11:33 AM
10	ECI, retentions	3/2/2021 8:07 AM
11	None.	3/1/2021 8:51 PM
12	None	3/1/2021 5:29 PM
13	Force Majeure;	3/1/2021 4:41 PM
14	Tracked changes	3/1/2021 3:28 PM
15	Those noted above	3/1/2021 2:40 PM
16	None	3/1/2021 2:37 PM
17	none	3/1/2021 2:31 PM
18	Nil	3/1/2021 1:49 PM
19	Tracked changes - should be investigated for inclusion	3/1/2021 1:33 PM
20	No additional items - the allocation in Peter D's original table looks good	3/1/2021 1:27 PM
21	It may be expeditious for the items identified for the 'interim revision' to simply become standardised special conditions that government and industry agree to adopt. This could substantially simplify the interim piece of work and allow greater focus on the full revision.	3/1/2021 1:24 PM

Q9 Which (if any) items in the Full Revision column should be Out of Scope, and therefore not included even in a full revision?

Answered: 17 Skipped: 7

#	RESPONSES	DATE
1	None	3/2/2021 8:48 PM
2	None	3/2/2021 5:23 PM
3	None	3/2/2021 5:10 PM
4	Nil	3/2/2021 1:49 PM
5	havent got full rev to hand and under the pump	3/2/2021 1:44 PM
6	none	3/2/2021 12:28 PM
7	My opinion is that the committee should be bold and try and tackle all the areas identified so the contract can be brought up to date. Then any future committee can then make incremental changes. If the committee creates a series of subcommittees with each subcommittee being tasked with three or four subjects, the task will be significantly more manageable. We shouldn't underestimate the task, but at the same time, we shouldn't limit ourselves at the beginning.	3/2/2021 11:33 AM
8	Covid clauses should remain outside scope. We don't know if covid will affect the industry in the long term to an extent to warrant inclusion in general conditions.	3/1/2021 8:51 PM
9	No comment	3/1/2021 5:29 PM
10	None a full revision should be open to everything including items not yet on the list	3/1/2021 3:28 PM
11	None	3/1/2021 2:40 PM
12	None	3/1/2021 2:37 PM
13	none	3/1/2021 2:31 PM
14	None, however as noted in the meeting, due to the significant breadth of the review and likely pressure on time, cost and resourcing it may be necessary to rank and prioritise the list. This could enable a trenched approach which delivers incremental updates over a period of several years and thus finds a balance between speed and completeness.	3/1/2021 1:49 PM
15	None	3/1/2021 1:33 PM
16	Everything should be up for revision in the Full Revision	3/1/2021 1:27 PM
17	All items should be on the table for the full revision.	3/1/2021 1:24 PM

Post to: PO Box 1473,
Wellington 6140
Deliver to: 15 Stout Street,
Wellington 6011
Phone: +64 3 943 4259
Email: enquiries@standards.govt.nz
Web: www.standards.govt.nz

1 December 2020

Peter Silcock
NZCIC Executive member
L4, Solnet House
70 The Terrace
Wellington 6011

Dear Peter,

Subject: Response to scoping workshop questions

Thank you for your letter of 25th November 2020.

Katherine and I met with Stanil Stanilov, Manager Standards Development, to discuss the questions raised in your letter. In summary, Standards NZ will collaborate with the industry to ensure that the process and the end products are fit for purpose for the sector. It is critical for our business to listen to our clients (stakeholders) and find a mutually agreeable solution.

Question 1 & 2:

1. Will Standards NZ work with industry to publish future versions of NZS 3910 as a “smart contract”? The contract would need to be available in hard copy and printable electronic form but able to be completed on-line by licensed users using an intelligent interface.
2. Will Standards NZ allow the contract to be produced in such a form that special conditions, when properly inserted by a user, will appear as tracked changes within the body of the text? This might be similar to the process used for bills presented to Parliament.

Response: Standards NZ is happy to collaborate with the industry and the vendor to improve the end product. We would welcome the opportunity to work with you so that we can better align the product (contract) with the needs of the customers, within the boundaries of Standards and Accreditation Act 2015. We have a meeting planned with LawHawk – Document Automation Specialists, the company that provided the value add project on the NZS 3910. Lawhawk is aware of the negative feedback you clearly outlined, and they are keen to look at the possible options available to provide a better customer experience.

Question 3:

3. Will Standards NZ recognise a properly constituted standing committee to review and initiate amendments or addenda to the published Standard regularly (say annually) or on an emergency basis to bring the Standard into line with legislative changes, or to address industry issues such as the proper treatment of Covid-19 matters?

Response: Standards NZ is very supportive of the idea to have an advisory group set up after the revision. Standards NZ is happy to trial this new way of working for 2/3 years.

How would this work?

- The committee makes a consensus based decision as to who will be part of the advisory group (core group of 8 to 10);
- This core group will respond in a frequent and timely matter to industry changes;
- Additional experts can be formally onboarded as required for the revision;
- The Board will be informed of this set up, the normal approval of the revision procedure will operate;
- The advisory group will follow the Standards NZ process but with a reduced timeframe due to the limited change required;
- Working in this way will be effective, but will be dependent on great co-ordination and facilitation from those involved.

Question 4:

4. If Standards NZ is unable to satisfy the industry as to these matters, or if for any other reason industry elects to produce its own model contract, would Standards NZ be prepared to grant or sell a license and hand over the intellectual property in NZS 3910:2013 to an appropriately constituted industry body to develop a successor contract?

Response: Standard NZ will be prepared to sell the licence and hand over the intellectual property if the industry decides to use another organisation.

Let's talk about time frames

When we talk about time frames, it's important to understand the 5 phases of the standards development process we undertake to ensure that the final draft is worthy of approval from the Board. I have outlined the different phases in the table below stipulating the various tasks in each phase. You'll notice that phase 2 – Development has the biggest impact on the time frame, it's entirely driven by the commitment of the committee.

Phase	Task	Who	Key deliverable / output	Time frame
Phase 1 – Initiation	<ul style="list-style-type: none"> Finalise contractual information Prepare project brief for Standards Approval Board to note Establish committee and identify chair Prepare a memo for Standards Approval Board to approve the committee and the chair 	Standards New Zealand Standards Approval Board	<ul style="list-style-type: none"> Signed contract Noted project brief Nominated organisations invitations and responses Approved committee and chair Draft Terms of Reference 	Timeframe:1-3 months The duration required for this phase is determined in part by the timely response to requests for nominations and availability of committee members.
Phase 2 – Development	<ul style="list-style-type: none"> Prepare for and facilitate committee meetings (in person and/ or zoom) Finalise Terms of Reference Develop draft of revised NZS 3910 and prepare for public consultation 	Standards New Zealand Development committee	<ul style="list-style-type: none"> Signed Terms of Reference Minutes and actions from committee meetings Publication consultation draft of NZS 3910 	This timeframe will be determined by the commitment of the industry. It can be as short as 3-5 months (including the time for the editor to prepare the draft for PC)
Phase 3 – Public consultation	<ul style="list-style-type: none"> Draft NZS 3910 released for public consultation Prepare for and facilitate 1 committee meeting (2 days) to review public comments. 	Standards New Zealand Development committee	<ul style="list-style-type: none"> Ballot draft of NZS 3910 	Time frame: 3 months Period consist of: 8 weeks of Public Consultation, PC summary distributed to chair and group and discussed in detail at the PC meeting
Phase 4 – Approvals	<ul style="list-style-type: none"> Undertake committee ballot process Prepare NZS 3910 for Standards Approval Board approval 	Standards New Zealand Development Committee Standards Approval Board	<ul style="list-style-type: none"> Standards Approval Board memo (SAB) Approval to publish NZS 3910 	Time frame: Up to 1 month (SAB meets every first Wednesday of the month)
Phase 5 – Publication and project closure	<ul style="list-style-type: none"> Finalise NZS 3910:202X Prepare NZS 3910:202X for NZSE to note Publish NZS on Standards New Zealand website Close project 	Standards New Zealand New Zealand Standards Executive	<ul style="list-style-type: none"> NZSE notes memo NZS 3910:202X publication copy – digital and print – released Project closure report for commissioner 	Time frame: up to 1 month during which time the PC comments are included as agreed by the committee and the editor and designer finalise the content for publication.

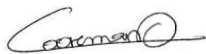
Reducing cost

We could conduct this revision on the basis of a partnership model where Standards New Zealand (SNZ) partners with the industry. This means that the development phase of the standard development process is run by the partner which could be, for example, NZCIC if the resources are available. The partner assigns a Development Lead who will collaborate with SNZ throughout the process. SNZ will assist where necessary in the development of the standard while the partner (the Development Lead) organises, hosts and manages the development meetings of the Committee, drafts the changes to the Standard, and ensures consensus from the committee. The SNZ team would provide an overview of the process during the first meeting and provide support to the partner on any standards related issues in managing the development of the Standard. By working this way, the cost for the revision will be significantly reduced. We can discuss this more in detail if you are interested in working this way.

This is quite a lot of information in one go, happy to discuss any of these topics during our meeting on Monday.

Have a lovely weekend.

Ngā mihi,



Inge Mautz-Cooreman
Senior Standards Project Manager