



COVERSHEET

Minister	Hon Poto Williams	Portfolio	Building and Construction
Title of Cabinet paper	Licensed Building Practitioners Regime: Public Consultation on Supervision, licence classes and minimum standards of competence	Date to be published	10 June 2021

List of documents that have been proactively released

Date	Title	Author
14 April 2021	<i>Licensed Building Practitioners Regime: Public Consultation on Supervision, licence classes and minimum standards of competence</i>	Office of the Minister for Building and Construction
14 April 2021	[DEV-21-MIN-0073]	Cabinet Economic Development Committee

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The appendix *Licensed Building Practitioners Regime: Supervision, licence classes and minimum standards of competence* has not been included as it has already been published on MBIE's website.

Some information has been withheld to protect the confidentiality of advice tendered by ministers and officials.

In Confidence

Office of the Minister for Building and Construction

Cabinet Economic Development Committee

Licensed Building Practitioners Regime: Public Consultation on Supervision, licence classes and minimum standards of competence

Proposal

- 1 This paper seeks agreement to release the discussion document *Licensed Building Practitioners Regime: Supervision, licence classes and minimum standards of competence* (the discussion document) for public consultation.

Executive Summary

- 2 The Licensed Building Practitioner (LBP) scheme is an occupational regulation regime established under Part 4 of the Building Act 2004 (the Building Act). It was introduced in 2007 as part of a wider response to systemic building failures and to address gaps in the performance-based regulatory system that were exposed during the leaky homes crisis.
- 3 LBPs are building practitioners who have been assessed as competent to carry out restricted building work, which encompasses work that is:
 - 3.1 essential to the structure, weathertightness and the design of some fire safety of residential buildings; and
 - 3.2 carried out on single detached dwellings and small-to-medium apartments, unless parts of the building have non-residential uses.
- 4 LBPs must demonstrate they meet minimum competency requirements to both enter and remain in the scheme. Each LBP is linked through records of work to restricted building work that they carry out or supervise under a building consent. There is a formal complaints and disciplinary process for LBPs.
- 5 The scheme has not been systemically reviewed since it was first introduced in 2007, with ongoing feedback from the sector and general public indicating opportunities to improve the scheme to ensure it is meeting the needs of New Zealand today and in the future.
- 6 A number of potential improvements to strengthen the LBP scheme were identified through stakeholder engagement. Public consultation on these was incorporated in the Building System Legislative Reform Programme consultation undertaken in April 2019.
- 7 Based on the feedback from the April 2019 consultation, work to strengthen the LBP scheme will be split into two categories: matters that are now ready

for Cabinet policy decisions (Category One, which will be considered by Cabinet in early May) and matters that require further testing through consultation (Category Two, outlined in this paper).

- 8 The issues being tested through Category Two matters are essential to ensure LBPs work within their competence, and that consumers understand who is competent to do certain work.
- 9 I propose to undertake public consultation on the Category Two issues. These issues have been raised by the building sector and building consent authorities, and informed through engagement between the Building Practitioners Board (the Board), MBIE and the LBP Registrar.
- 10 Submissions will inform advice to me on potential changes to the licence class structure, and further work that may be required to strengthen the LBP Rules and MBIE operational practice. I will report back to Cabinet on the outcome of this consultation Confidential advice to Government

Background

- 11 The proposals in this paper are being progressed as part of the Building System Legislative Reform Programme (the Reform Programme), which is a series of reforms to building laws to lift the efficiency and quality of building work, and provide fairer outcomes if things go wrong.
- 12 The reforms are progressing in three phases:
 - 12.1 *Phase One* is progressing as the Building (Building Products and Methods, Modular Components and Other Matters) Amendment Bill, and is currently before the House.
 - 12.2 *Phase Three* will investigate options to address the lack of a building warranty insurance market and risk allocation in the building and construction sector.
- 13 The proposals in this paper are part of Phase Two of the Reform Programme, which focuses on the professionals in the sector. It will progress reforms to occupational regulation of engineers and practitioners in the building and construction sector, so that people can have more confidence in these professions and their work. It will respond to issues identified by the Ministry of Business, Innovation and Employment (MBIE), members of the sector and others in the building system, as well as the Canterbury Earthquakes Royal Commission.
- 14 Implementing decisions from Phase Two will require amendments to primary legislation. I have sought a position on the 2021 Legislation Programme for a Building and Construction Sector Occupational Regulation Bill. This would be an omnibus bill with the single broad policy of ensuring people have confidence in engineers and regulated building practitioners, and their work.
- 15 Alongside this paper, I am also asking the Committee to approve the release of another public discussion document on proposals for regulations to support

the Building (Building Products, Modular Components, and Other Matters) Amendment Bill. This work is part of Phase One of the Reform Programme.

The Licensed Building Practitioner scheme

- 16 The objective of the Building Act is to ensure buildings are safe, healthy, support wellbeing, and promote sustainable development. One of the ways it does this is through the establishment of a licensing regime for building practitioners under Part 4 of the Building Act.
- 17 The LBP scheme is an occupational regulation regime. The purpose of occupational regulation regimes is to protect the public from the harm that could be caused by incompetent, reckless or dishonest practices within the professional bodies they regulate. This is achieved by providing assurance that practitioners meet approved standards, and effective action is taken against those that do not meet these standards.
- 18 The LBP scheme is the primary way in which the building regulatory system ensures that the practitioner undertaking residential building work is competent, and can be held to account. The LBP scheme regulates 25,761 individual LBPs (as at 30 June 2020).
- 19 The scheme was introduced as part of the wider response to systemic building failures, following the leaky homes crisis. LBPs are building practitioners who have been assessed as competent to carry out restricted building work, which encompasses work that is:
 - 19.1 essential to the structure, weathertightness and the design of some fire safety of residential buildings; and
 - 19.2 carried out in single detached dwellings and small-to-medium apartments, unless the parts of the apartment has non-residential uses.
- 20 Only someone who is licensed under the LBP scheme can carry out or supervise restricted building work. LBPs must demonstrate they meet minimum competency requirements to both enter and remain in the scheme, and each LBP is linked through records of work to restricted building work that they carry out or supervise.
- 21 The scheme is administered in accordance with Part 4 of the Building Act. Under this Part, the LBP Registrar determines applications for licences, issues licences and maintains a public register. There is a formal complaints and disciplinary process which is handled by the Board.

Consultation on the Reform Programme included strengthening the LBP scheme

- 22 The scheme has not been comprehensively reviewed since its inception in 2007. Public consultation in April 2019 sought feedback on a range of issues encompassed by the Reform Programme, including on strengthening the LBP scheme. Two broad changes to the scheme were proposed in the consultation, which were:

- 22.1 to broaden the definition of restricted building work to include more complex non-residential building; and
 - 22.2 to raise the competence standard for LBPs to enter and remain in the scheme by establishing a progression pathway, simplifying the licensing classes, and introducing behavioural competence requirements.
- 23 Submissions received from a range of stakeholders generally supported the proposed changes proposed in that round of consultation.

The LBP work is being progressed in two stages: Category one and Category Two

- 24 Based on both the feedback from the April 2019 consultation and from discussions with internal stakeholders, I have decided that work to strengthen the LBP scheme be split into two categories. This split is on the basis of how far the policy work, consultation and analysis has progressed. These are set out in the following table.

Category One <i>Proposals consulted on and ready for Cabinet policy decisions</i>	Category Two <i>Proposals ready for consultation</i>
<ul style="list-style-type: none"> • Introducing a code of ethics. • Changes to licensing administration processes. • Changes to the role of the Board in the complaints and disciplinary process. 	<ul style="list-style-type: none"> • Reviewing and improving licensing classes. • Reviewing and improving competency requirements.

Key issues in Category Two: Supervision, licence classes and minimum standards of competence

- 25 Supervision, licence classes and minimum standards of competence are essential to ensuring LBPs work within their competence, and that consumers understand who is competent to do certain work. They are also important to all LBPs as they influence practitioners’ ability to work day-to-day and how they maintain their skills over time.
- 26 *Supervise* is defined by section 7 of the Building Act as providing control or direction and oversight of building work to ensure that it is performed competently, and complies with the building consent under which it is carried out (if applicable). Under section 285, an Order in Council may designate which licence holders may supervise restricted building work. Currently there is no separation of supervision, and any LBP with any level of experience may supervise a non-licensed person undertaking restricted building work.
- 27 Licence classes under the scheme define the broad types of work an LBP is competent and licensed to undertake or supervise. These are set by Order in Council under section 285 of the Building Act. There are currently seven

licence classes that cover various aspects of the building sector. They are the Design and Site licence classes (each separated into three areas of practice based on building type), and the five trade classes (Brick and Blocklaying, Carpentry, External Plastering, Foundations, and Roofing).

- 28 Work in the Brick and Blocklaying, External Plastering, Foundations, and Roofing classes is further distinguished by the types of work that require specific competencies, skills or experience. These specialisations relate to work with particular building products or methods and are known as 'areas of practice' in the LBP Rules. For example, the Roofing licence class has seven areas of practice, such as 'concrete or clay tile roof' and 'metal tile roof'.
- 29 Currently, to become licensed in a particular class, a prospective LBP must provide a record of any relevant qualifications and/or experience, but are not required to demonstrate to the Registrar that they are competent in *all* of the areas of practice in that class. Once licensed, a LBP can work across any area of practice for their licence class, however, section 314B of the Building Act requires a LBP to only carry out or supervise work that is within their competence. This judgement is made based on self-assessment.
- 30 Minimum standards of competence for entry into the scheme and continued licensing are set in the LBP Rules. These are supported by requirements for how LBPs must demonstrate they are competent through assessment and skills maintenance. LBP Rules are prepared by MBIE and approved by the Building Practitioners Board and then the Minister for Building and Construction, under sections 354 to 361 of the Building Act.

It is timely to review the LBP scheme to ensure it effectively promotes confidence in LBPs and their work

- 31 MBIE has regularly received feedback from the building sector, building consent authorities and the public that there are opportunities to improve how the LBP scheme is operating. These concerns, and complaints to the Building Practitioners Board, suggest there are opportunities to lift confidence in the scheme. It is also timely to check whether the LBP scheme reflects evolving industry practice.
- 32 In April 2019, MBIE undertook targeted consultation on proposals to strengthen the LBP scheme, as a part of wider changes to the building sector through the Reform Programme. The feedback received showed support for reform for the LBP scheme, and suggested that there was some low confidence with the scheme and how those within it were operating. This round of consultation will build on those results by asking deeper questions about the issues and aiming the questions specifically at LBPs and those involved in their work.

Issues for public consultation

- 33 The key issues proposed for consultation in the draft discussion document relate to supervision, licence class structure, and competencies and minimum standards.

- 34 Identification of these issues was informed by the feedback received in the April 2019 consultation, as well as information received from the LBP Registrar, reporting by the Building Practitioners Board and MBIE's own internal findings.
- 35 The aim of the proposed consultation is to confirm with the sector that these are the key issues within the LBP scheme, and to seek preliminary ideas on how they may be addressed. The questions in the discussion document are intended to reveal what is driving low confidence in the scheme, and the appropriate direction to take to remove this perception.

Supervision

- 36 Currently, someone who is not licensed under the scheme can complete restricted building work if they are supervised by someone who is licensed in that class of work.
- 37 The discussion document asks questions to assess perceived issues with the way supervision within the scheme works, and how widespread instances of poor supervision practices, as informed by complaints made to the Building Practitioners Board, really are.
- 38 Potential issues with supervision on which I propose to consult include:
- 38.1 LBPs may not be providing adequate supervision (especially remote supervision), posing risks to the building sector and there may be substandard work that has gone unnoticed.
 - 38.2 Sector specialisation may have led to some LBPs not being as skilled at a task as the person they are supervising.
 - 38.3 Current competencies may not adequately address the skills required to supervise restricted building work, meaning that some LBPs may not actually be capable of supervising effectively.

Licence class structure

- 39 The licence class structure has not been reviewed as a whole since the scheme's inception. This means the LPB scheme may not have kept up with changes within the sector, such as increased sector specialisation and changing ways of constructing buildings. Issues on which I propose to consult include:
- 39.1 Current licence classes may not reflect what needs to be regulated in the building industry today, and some classes may need to be added or removed.
 - 39.2 LBPs can legally work in an area they have not been officially deemed competent in, which may result in substandard work as the only person stopping a LBP from operating outside of their competence level is the LBP themselves.

- 39.3 The Site licence class, which was originally envisioned as a major part of the LBP scheme that would oversee the entire building site and would monitor the junction between different trades in a building, may be redundant and need overhauling.
- 39.4 The LBP scheme may be too flat. Allowing those who have just entered the scheme to complete the same level of work as someone who has been in the industry for decades may not adequately recognise more experienced LBPs.

Competencies and minimum standards

- 40 Feedback when MBIE consulted on strengthening the LBP scheme in 2019 suggested that the scheme is not an effective mark of competence. This further consultation will help MBIE understand what may be driving low confidence in the scheme, and how widely-held such perceptions are. Issues on which I propose to consult include:
 - 40.1 Minimum standards for entry into the scheme may be too low, and may need to be lifted to raise confidence that LBPs are adequately assessed when they enter the scheme.
 - 40.2 Many LBPs enter the scheme with qualifications, however, they are not mandatory. Requiring qualifications may help lift confidence in the scheme.
 - 40.3 The scheme's assessment process and skills maintenance requirements may not adequately ensure that LBPs' skill levels are properly assessed once in the scheme, leading to risks that skills are not kept at the level they were at the time of entry.

Financial Implications

- 41 There are no financial implications that will arise directly from this paper.

Legislative Implications

- 42 There are no legislative implications that will arise directly from this paper. The outcome of consultation may include proposals for regulatory change. I will report back to Cabinet Confidential advice to Government with proposals to amend existing regulations, if required.

Impact Analysis

- 43 On advice from Treasury, Regulatory Impact Analysis requirements do not apply to the discussion document as it seeks early stakeholder views on problems for future investigation. MBIE will seek further advice from Treasury on impact analysis requirements as policy options are developed.

Climate Implications of Policy Assessment

44 A Climate Implications of Policy Assessment is not required.

Population Implications

45 As the discussion document only seeks feedback on issues and will not make any decisions, there is no anticipated impact on specific population groups.

Human Rights

46 There are no inconsistencies with either the *New Zealand Bill of Rights Act 1990* or the *Human Rights Act 1993* within this paper.

Consultation

47 The following departments were consulted on this paper: Ministry of Housing and Urban Development, The Treasury, Te Puni Kōkiri, Kāinga Ora, Department of Internal Affairs, Ministry for the Environment, Ministry of Health, Ministry of Education, Department of Corrections, Ministry of Justice, Waka Kotahi NZ Transport Agency, Department of the Prime Minister and Cabinet, Inland Revenue Department, Infrastructure Commission, and WorkSafe New Zealand.

48 The issues in the discussion document have been informed by previous submissions to MBIE from LBPs, building consent authorities, industry bodies and others who work within the industry. MBIE has also engaged with the LBP Registrar and internal occupational licensing team, and incorporated insights reported/feedback from the Building Practitioners Board.

Communications

49 I intend to issue a media statement accompanying the release of the discussion document. The discussion document and summary documents will be made publicly available on MBIE's website. The consultation period will run for six weeks over April and May 2021.

50 MBIE will ensure the discussion document is promoted to LBPs and those who work closely with the LBP scheme to ensure feedback is sought from those who know the scheme best.

Proactive Release

51 I propose to release this Cabinet paper and associated Cabinet Minute in full. The Cabinet paper and Minute will be published alongside the discussion document on MBIE's website, within 30 business days following Cabinet approving the release of this discussion document.

Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** that there are potential issues in the LBP scheme with supervision, the licence class structure, and competencies and minimum standards for entry;
- 2 **note** that the attached discussion document builds on issues originally raised in consultation undertaken in April 2019;
- 3 **note** that the discussion document will seek feedback on the issues and how they are being observed in the sector to inform development of policy options to address them;
- 4 **note** that the Minister for Building and Construction will report back to Cabinet Confidential advice to Government on the outcome of the consultation;
- 5 **agree** to the release of the attached discussion document *Licensed Building Practitioners Regime: Supervision, licence classes and minimum standards of competence* on or about 21 April 2021;
- 6 **authorise** the Minister for Building and Construction to make minor amendments and refinements to the discussion document and supporting documents before they are released.

Authorised for lodgement

Hon Poto Williams

Minister for Building and Construction

Appendix

Appendix 1: *Licensed Building Practitioners Regime: Supervision, licence classes and minimum standards of competence* Discussion Document