



## COVERSHEET

<b>Minister</b>	Hon Poto Williams	<b>Portfolio</b>	Building and Construction
<b>Title of Cabinet paper</b>	<b>Strengthening the Licensed Building Practitioners Scheme: Category one proposals</b>	<b>Date to be published</b>	10 June 2021

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
14 April 2021	<i>Strengthening the Licensed Building Practitioners scheme: Category One proposals</i>	Office of the Minister for Building and Construction
14 April 2021	[DEV-21-MIN-0086]	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.

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

## **Strengthening the Licensed Building Practitioners scheme: Category One proposals**

### **Proposal**

- 1 This paper seeks agreement to progress the Category One legislative and regulatory proposals to strengthen the Licensed Building Practitioners scheme.

### **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 as part of a wider response to systemic building failures, most notably leaky homes.
- 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 there are opportunities to improve the scheme and 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, outlined in this paper) and

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matters that require further testing through consultation (Category Two, which were approved by Cabinet for public consultation on 14 April 2021).

- 8 This paper seeks policy decisions on Category One proposals. In addition to public consultation undertaken in April 2019, the Category One proposals were subject to targeted consultation with key stakeholders from September to October 2020 to ensure that they were effective and fit for purpose. There was no opposition to the proposals.
- 9 The final package of proposals that I seek your agreement on includes the proposals developed following public and targeted consultation, with slight adjustments, and subsequent substantive feedback from the Building Practitioners Board.
- 10 I now seek Cabinet's approval to progress the following regulatory and legislative changes in order to strengthen the LBP scheme:
  - 10.1 Introduce a code of ethics for LBPs to establish clear and concise behavioural requirements to manage poor ethical conduct;
  - 10.2 Amend the following licensing processes in the Building Act to ease the administrative burden of the scheme, by:
    - 10.2.1 moving the process for renewing licences from the Building Act to the LBP Rules;
    - 10.2.2 allowing for the licence term to be set in the LBP Rules, and prescribing the licence term to be no longer than five years in the Building Act;
    - 10.2.3 adjusting the wording on the public register to distinguish between where an LBP has not renewed their licence in a timely manner, and where a licence has been suspended due to disciplinary reasons;
    - 10.2.4 allow for licences that have not been renewed in a timely manner to be subject to a grace period during which the LBP may renew their licence;
    - 10.2.5 allowing the Board to take disciplinary action against LBPs who undertake restricted building work during the grace period; and
    - 10.2.6 adjusting the wording on the public register to distinguish between where an LBP is eligible for suspension for not completing their skills maintenance in a timely manner, and where a licence has been suspended due to disciplinary reasons;
  - 10.3 Amend the complaints and disciplinary process in the Building Act to align with the Electricity Act 1992 to address issues around natural justice and fairness, by:

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- 10.3.1 separating the investigative and adjudicative functions in the complaints and disciplinary model to clarify and strengthen the Board's role as an impartial decision maker;
  - 10.3.2 allowing the Board to hold parts of meetings or hearings in private where it is appropriate;
  - 10.3.3 allowing the Board to amend an order of the Board where an administrative error has been made;
  - 10.3.4 allowing the Board to suspend an LBP's licence should they fail to comply with a training order;
  - 10.3.5 allowing the Board to take disciplinary action against LBPs for carrying out or supervising building work without a building consent when one is required;
  - 10.3.6 granting the investigator powers to require a person provide any document or information that may be required, where necessary for the purposes of investigating a complaint, by written notice;
  - 10.3.7 making it an offence to not comply with a notice to supply the required document or information; and
  - 10.3.8 improving the triaging powers of the LBP Registrar.
- 11 If agreed, the proposal to introduce a code of ethics for LBPs will be implemented by Order in Council.
- 12 If agreed, the proposals to amend the licensing processes and complaints and disciplinary processes will require legislative amendment.
- 13 The regulatory and legislative changes will come into effect after a delay period, with a transition strategy in place to ensure LBPs understand their new obligations. I propose:
- 13.1 the Code of Ethics obligations come into effect six months after the Order in Council is made, to provide time for an education and awareness campaign to be implemented so practitioners are aware of their new obligations; and
  - 13.2 the changes to the licensing processes and the complaints and disciplinary come into effect six months after the Building and Construction Sector Occupational Regulation Bill receives Royal assent, to provide the Board time to implement administrative changes to ensure it has the necessary capability to implement the new process.
- 14 Changes to the disciplinary practices and procedures will apply to existing licence holders. New penalties and grounds for complaint (including a breach of the code of ethics) will only apply to conduct that occurred after commencement.

## Background

- 15 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.
- 16 The reforms are progressing in three phases:
- 16.1 *Phase One* is progressing as the Building (Building Products and Methods, Modular Components and Other Matters) Amendment Bill, which is currently before the House.
- 16.2 *Phase Three* will investigate options to address the lack of a building warranty insurance market and risk allocation in the building and construction sector.
- 17 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 MBIE, members of the sector and others in the building system, as well as the Canterbury Earthquakes Royal Commission.
- 18 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 intent of ensuring people have confidence in engineers and regulated building practitioners, and their work.
- 19 The objective of the Building Act 2004 (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 (LBPs) under Part 4 of the Building Act.
- 20 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.
- 21 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 currently regulates 25,761 individual LBPs (as at 30 June 2020).
- 22 The scheme was introduced as part of the wider response to systemic building failures, following the leaky homes crisis. LBPs are building

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practitioners who have been assessed as competent to carry out restricted building work, which encompasses work that is:

- 22.1 essential to the structure, weathertightness and the design of some fire safety of residential buildings; and
  - 22.2 carried out in single detached dwellings and small-to-medium apartments, unless the parts of the apartment has non-residential uses.
- 23 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.
- 24 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 Building Practitioners' Board (the Board).

### *Consultation on the Reform Programme included strengthening the LBP scheme*

- 25 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:
- 25.1 to broaden the definition of restricted building work to include work on complex non-residential buildings; and
  - 25.2 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.
- 26 Submissions received from a range of stakeholders generally supported the changes proposed in that round of consultation.

### *The LBP work is being progressed in two stages: Category One and Category Two*

- 27 Based on both the feedback from the April 2019 consultation, 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.

**I N C O N F I D E N C E**

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

28 Category One includes legislative and regulatory proposals that received strong feedback and support from stakeholders during the April 2019 public consultation. The proposals (discussed in detail below) are:

- 28.1 introducing a code of ethics by Order in Council;
- 28.2 changing licensing administration processes in the Building Act; and
- 28.3 changing the complaints and disciplinary process in the Building Act.

29 Category Two includes policy issues identified with LBP licensing classes, and the associated competency requirements. These require further testing with stakeholders.

*Key findings from the targeted consultation on the Category One proposals*

30 Targeted consultation on the Category One proposals was undertaken from September to October 2020. Key stakeholders involved in the targeted consultation included individual LBPs, regulators, government bodies, peak industry membership bodies, and consumer advocacy organisations.

31 The consultation ran for eight weeks and reached out to approximately 26,000 stakeholders. Over the course of the consultation period, MBIE received 79 written submissions, and engaged with 277 webinar attendees across two webinars.

32 In regards to the policy intent, there was overall agreement on the logic of the proposals. Submitters that disagreed on the policy intent generally fell into two groups:

- 32.1 those who viewed the LBP scheme as too much intervention in the sector, and who raised concerns that the proposals would create additional burdens on building practitioners; and
- 32.2 those who were concerned that the scheme was not performing or the proposals did not go far enough, and considered that the LBP scheme could benefit by imposing a range of additional obligations on LBPs to improve how they conduct themselves.

33 In light of the feedback received, I intend to progress all the proposals supported in the targeted consultation.

*Other changes proposed by the Building Practitioners Board*

- 34 The Board submitted on the Category One proposals as part of the targeted consultation undertaken in September 2020. Subsequent to undertaking consultation, the Board has requested additional changes to improve its ability to discharge its functions under the proposed new disciplinary process of the Building Act.
- 35 I have determined that these changes in relation to the complaints and disciplinary process are consistent with the policy intent of Category One proposals, and propose to progress them as part of this package of reforms.

**Category One proposals**

*Introducing a code of ethics*

- 36 I propose to introduce a code of ethics for LBPs.
- 37 MBIE receives consistent feedback from stakeholders, including the Building Practitioners Board (the Board), that the LBP scheme can be strengthened by setting clear behavioural standards.
- 38 Currently, the Building Act only allows for disciplinary action to be taken against LBPs for a limited scope of behaviours due to the current threshold that must be met. An LBP can only be disciplined on matters that relate to their behaviour where it meets the threshold of “bringing disrepute to the scheme”. This is a high threshold, and it is difficult to prove it had been reached.
- 39 There is a portion of repeat substandard LBPs who are unfairly impacting the reputation of the scheme and LBPs in general, and because it is difficult to prove their behaviour meets the threshold for “bringing disrepute”, they are continuing to negatively affect the reputation and effectiveness of the scheme.
- 40 My intent is to introduce a code of ethics to address the small proportion of LBPs that are responsible for the majority of ethical complaints. This has been well-understood by the sector and the wider public, who widely supported the introduction of a code of ethics.
- 41 Concerns were raised during consultation that the code of ethics will conflict with existing mechanisms to regulate LBP behaviour, such as tribunals or WorkSafe. The code of ethics will be specifically designed to complement existing mechanisms, and align with best practice for other regulatory regimes.
- 42 Section 314A of the Building Act empowers the Minister to prescribe a code of ethics for LBPs through an Order in Council. The introduction of a code of ethics will provide mechanisms to better manage poor performance and behaviour of LBPs, through setting expectations and sending a clear message to the profession that substandard conduct and behaviour will not be tolerated.



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- 43 The new code of ethics will give the Building Practitioners Board additional powers for dealing with LBPs. It will establish clear and concise behavioural requirements to manage poor ethical conduct and provide clear grounds to take disciplinary action for poor conduct. It will also send a clear signal to LBPs and consumers about how building practitioners should conduct themselves.
- 44 I propose the code of ethics include four principles:
- 44.1 *Work safely* – MBIE worked closely with WorkSafe on this principle, which would require LBPs to be accountable for unreasonable conduct that could place themselves or others at risk of harm;
  - 44.2 *Be aware of the law* – requiring LBPs to be aware of, and observe, the legal and contractual requirements relevant to the work they are carrying out or supervising;
  - 44.3 *Take responsibility* – placing an obligation on LBPs to treat people fairly and openly, being clear with consumers on timelines, costs, and risks to works; and
  - 44.4 *Behave professionally* – holding LBPs to account on issues such as treating consumers unfairly (for example, by refusing to remediate poor work).
- 45 The proposed principles are consistent with the scope of other codes of ethics in similar occupational regulation regimes. Each of these principles will be supported with a series of standards included in the Order in Council which will provide additional guidance on what these behaviours would look like in practice.
- 46 The principles, with their expected standards, are outlined in more detail in Appendix One.
- 47 I propose that obligations under the code of ethics come into effect six months after the Order in Council is made. This will enable an education campaign to be undertaken to ensure LBPs are aware of their obligations. The education campaign will be supported by other materials, such as guidelines and examples so it is clear how compliance with these principles will look in practice.

### *Changing licensing administration processes in the Building Act*

- 48 I propose to make a number of changes to the licensing process to increase the efficiency and flexibility of the scheme, and to reduce the administrative burden for LBPs.
- 49 The process for obtaining and renewing licences is set out in the Building Act. Licence applications must be made to the LBP Registrar, who administers the LBP scheme on behalf of the government and decides whether building practitioners meet the requirements to be licensed or for continued licensing.

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- 50 The Building Act requires the Registrar to contact LBPs annually and ask if they wish to continue to be licensed. LBPs are then required to pay a licence fee and sign a declaration confirming they are still active in the building industry.
- 51 If LBPs do not renew their licence on time, it is suspended. LBPs cannot carry out or supervise restricted building work while their licence is suspended. An LBP has 12 months to reactivate a suspended licence by paying the missed fee, signing the declaration, and completing any outstanding skills maintenance requirements. If an LBP does not complete this process within 12 months the licence expires and is cancelled, removing them from the register and meaning they will need to begin a new application to become licensed.
- 52 There are currently around 3,500 relicensing suspensions per year, of which approximately 1,500 are renewed before expiration. The average length of a relicensing suspension is 46 days. In 2019, 83 per cent of late renewals were completed within 90 days of suspension.
- 53 LBPs must also complete and record skills maintenance activities every two years, and must show these have been done before they can renew their licence that year. The skills maintenance requirements help ensure LBPs keep up with changing industry practices and regulatory changes, and continue to meet the minimum standards required to be licensed.
- 54 The current renewals process creates a number of issues, including:
- 54.1 the current one-year licensing term is inefficient and creates unnecessary administrative requirements for both LBPs and the Registrar;
  - 54.2 it is not aligned to the two-year skills maintenance requirements;
  - 54.3 the term 'suspension' suggests an LBP may have a lack of skills or may have engaged in misconduct, which creates confusion; and
  - 54.4 LBPs who carry out restricted building work while suspended cannot be held to account by the Board.
- 55 The changes I propose to address these issues, and the reasons why, are set out in the table below:

<b>Proposed change to LBP licensing process</b>	<b>Purpose of the change</b>
Move the process for renewing licences from the Building Act to the LBP Rules.	Increase flexibility if changes are necessary to respond to changing industry practices.
Allow for the licence term to be set in the LBP Rules, and stipulate that the licence term may be no longer than five years in the Building Act.	The intent will be to set a two-year licence term to align with skills maintenance requirements. This proposal will increase flexibility if further changes are necessary to

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<b>Proposed change to LBP licensing process</b>	<b>Purpose of the change</b>
	respond to changing industry practices, and aligns with comparable regulatory regimes.
A licence that is not renewed by the due date and a licence that has been suspended due to disciplinary reasons are distinguishable on the public register.	This helps differentiate between LBPs who have not completed paperwork on time, and LBPs who have been disciplined for the building work they have carried out or supervised, on the public register to support consumers to make more informed choices.
A licence that is eligible for suspension for not submitting skills maintenance requirements, and a licence that has been suspended due to disciplinary reasons are distinguishable on the public register.	This helps differentiate between LBPs who have not completed paperwork on time, and LBPs who have been disciplined for the building work they have carried out or supervised, on the public register to support consumers to make more informed choices.
Allow licences that are not renewed in a timely manner to be subject to a grace period, in which the LBP may renew the licence, and that this period will be specified in the LBP Rules.	The intent will be to set the expiry pending period at 90 days. This would capture the majority of late renewals, and provide a balance between having assurance about an LBP's competence, while giving the LBP an opportunity to rectify a missed renewal.
When a licence is renewed in the grace period, it will be recorded on the public register in the same manner as a suspended licence; that is, the register will show the dates the license was suspended or subject to renewal, and that it will stay recorded for three years.	This allows consumers to see the reasons why an LBP was unable to carry out or supervise restricted building work.
A licence that is cancelled or suspended as a result of a disciplinary order will be recorded for three years on the public register.	Currently when a LBP ceases to be licensed they are no longer shown on the public register, meaning consumers are not aware of the Board's order. This proposal will balance the right of consumers to know who they are employing with the right for LBPs to make mistakes and move on.
The Board may take disciplinary action against LBPs who undertake restricted building work during the grace period.	To increase accountability and lift confidence in the licensing scheme.

- 56 I have heard from stakeholders who suggested additional ways to reduce administrative burden. They were generally positive about the introduction of a grace period for late licence renewals.
- 57 Some concerns were raised at the proposal to remove the process governing licensing administration from the Building Act into the LBP Rules, with submitters sharing their view it would allow for further changes to be enacted without proper consultation. Section 355 of the Building Act sets out mandatory requirements for the chief executive to consult LBPs or any person

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the chief executive reasonably considers to be representatives of LBPs or of other persons affected by the proposed rule changes.

- 58 A transitions strategy will be established to ensure the changes to licensing administration processes will be incorporated into the scheme over time. An education campaign will help to ensure LBPs are aware of the changes, which will be supported by guidelines.

### *Changing the complaints and disciplinary process in the Building Act*

- 59 I propose to amend the complaints and disciplinary process in the Building Act to improve the structure of the LBP scheme's complaints and disciplinary model run by the Board.
- 60 The Board is a statutory body with a range of powers given to it by Part 4 of the Building Act to help it exercise its functions, including operation of a complaints and disciplinary process.
- 61 Currently, the complaints and disciplinary process of the LBP scheme does not align with best practice occupational regulation. Concerns were raised through the public and targeted consultations on the issues created by the Board holding both the investigative and adjudicative functions, and the efficiency of the process.
- 62 The Board holding both the investigative and the adjudicative functions creates operational issues, such as alienating complainants who must be kept at arms-length from the Board to ensure impartiality. It also creates issues in regards to natural justice, in that by holding both functions the Board cannot be the contradictor should a ruling be appealed to the District Court.
- 63 A contradictor is the party in the proceedings who can appropriately put forward an opposing view to a court or tribunal. As the Board is both prosecutor and adjudicator in the current model, they cannot be the contradictor; nor can the LBP Registrar in the District Court. As the Board are not party to the complaint, the complainant must take on the role of contradictor. This can place considerable pressure on the complainant and lead to costs should they seek professional legal counsel.
- 64 A number of other features of the complaints and disciplinary process create regulatory gaps and reduce the effectiveness of the scheme. This includes not being able to enforce training orders, having limited powers to gather information during investigations, lacking the ability to hold parts of meetings in private where appropriate, and not being able to amend administrative errors in an order.
- 65 I propose to change the complaints and disciplinary process to separate the investigative and adjudicative functions of the Board, and to close regulatory gaps and align with best practice. The changes I propose will align the LBP process with comparable regulatory regimes which are considered current best practice, in order to increase fairness, efficiency, and accountability in the LBP licensing scheme.



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- 66 I consider the disciplinary provisions in the Electricity Act 1992 and the separation of roles between the Electrical Workers Registration Board, the Electrical Workers Registrar and the investigator to be a good model, and propose to align the LBP scheme with this regulatory regime.
- 67 This is why I propose to change the complaints and disciplinary process. It will allow the Board to focus on its key role of hearing and deciding on complaints, provide a clear separation of roles between the prosecutor and adjudicator, provide for a more appropriate contradictor should a decision be appealed to a District Court, and address issues of fairness and natural justice.
- 68 The changes I propose, and the reasons why, are set out in the table below:

<b>Proposed change to LBP complaints and disciplinary process</b>	<b>Purpose of the change</b>
Complaints made to the Board must be made through the Registrar.	This will reinforce the separation of the investigatory and adjudicative functions. By splitting out the investigatory and adjudicative function, and to protect the role of the Board as impartial decision-makers, this function would sit with the Registrar.
The Registrar can make an initial determination on whether the complaint warrants investigation, and may decline to investigate if satisfied the complaint is vexatious or frivolous.	Currently, the Registrar prepares an initial report for the Board, and the Board makes the decision whether to decline to investigate, request further information, or begin a hearing. Enhancing the Registrar's role in triaging complaints will help ensure the Board remains impartial and focused on important matters, and will improve the regulatory framework for LBPs who may be unfairly exposed to the complaints and disciplinary process, as this process can be costly for individual LBPs even when the LBP is found in favour.
Grant complainants the right to appeal to the Board if the Registrar decides to not proceed with a complaint because the Registrar considers the subject matter to be vexatious or frivolous.	This improves the integrity of the process by ensuring the complainant has the opportunity to challenge the Registrar's decision.
If the Registrar determines the complaint should proceed, the chief executive of MBIE appoints an investigator to investigate the complaint.	Other occupational regulatory regimes model best practice by requiring the appointment of an investigator, separate from the Registrar and from the adjudicator (the Board), to investigate a complaint, and decide on whether a complaint should proceed to a hearing. If the complaint does proceed, the investigator becomes the prosecutor. This will address the issues presented by the current model in relation to natural justice and lacking a contradictor should the finding be appealed to the District

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<b>Proposed change to LBP complaints and disciplinary process</b>	<b>Purpose of the change</b>
	Court, and aligns with comparable regulatory regimes.
The investigator must send particulars to the person complained against and give them reasonable opportunity to make written submissions and be heard.	This ensures that the person complained against is given a fair and reasonable opportunity to participate in the process.
The investigator must provide a report to the Board on the outcome of the investigation and determine whether the complaint should be considered by the Board.	This aligns with comparable regulatory regimes and is considered current best practice.
The investigator must also send a copy of the report to the person complained against and the complainant.	This ensures that both parties are given access to the information of the report, which can support either party making an appeal should they disagree with the report's findings.
If the investigator reports that a complaint should be considered by the Board, the Board must hold a hearing, and the investigator must prosecute the matter at the hearing, and may be represented by counsel or otherwise.	This supports separating the investigative and adjudicative functions, and ensures that the investigator is able to act as a contradictor should the ruling be appealed to the District Court.
<i>The proposals below were suggested by the Board in a letter provided to MBIE after the consultation closed, and was in addition to the submission they provided</i>	
The investigator will be granted powers to require a person provide any document or information that may be required, by written notice, for the purposes of investigating a complaint, where necessary for the investigation.	This provides the investigative function powers that may be necessary to carry out an effective investigation.
It will be a criminal offence under the Building Act to not comply with a notice to provide the required document or information, with persons liable for a penalty not exceeding \$2,000 upon conviction.	This will allow the investigator improved powers to compel the supply of the required document or information. A criminal offence is proposed due to: <ul style="list-style-type: none"> <li>• the complexity that may arise should a person challenge whether the document or information is necessary for the investigation (taking into account the time/cost of accessing and supplying the information)</li> <li>• the lack of judicial oversight of MBIE, should they be responsible for both determining what is 'necessary information' and penalising persons failing to provide the information</li> <li>• the interest to the public in ensuring people cannot withhold information to prevent investigations into practitioners' conduct, which could obstruct disciplinary action from</li> </ul>

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Proposed change to LBP complaints and disciplinary process	Purpose of the change
	being taken to prevent a person from carrying out or supervising restricted building work.
The investigator will be granted powers to obtain and execute a warrant to enter land or premises for the purposes of investigating a complaint, where necessary for the investigation.	This provides the investigative function powers that may be necessary to carry out an effective investigation, including complaints initiated by a third party, such as a passer-by or a territorial authority.
The Board may hold parts of meetings or hearings in private where it is appropriate.	This ensures sensitive information can be correctly handled in accordance with privacy and protected disclosure requirements.
The Board may amend an order of the Board where an administrative error has been made.	This allows the Board to correct errors that are made, improving the fairness and integrity of the scheme.
The Board may take action if a LBP fails to comply with a training order.	This will allow the Board to enforce training orders, which improves on the current situation where the Board has no recourse should the LBP choose not to undertake the training.
The Board may take disciplinary action against LBPs for carrying out or supervising building work without a building consent when one is required.	Currently, the Board must use negligence provisions to take action against LBPs who have carried out or supervised building work that did not comply with a building consent, when one was required. Stipulating that the Board can take action directly would send a clear signal to the sector.

- 69 I heard from stakeholders during targeted consultation that they supported the proposed changes to improve oversight and efficiency of the system, as well as providing consistency with similar regimes. Concerns were raised that the proposed changes could make the scheme more complicated, or might not address the root problems of the complaints and disciplinary process.
- 70 The proposed changes will not make the scheme more complicated or fail to address the root problems of the complaints and disciplinary process. The changes will strengthen the regulatory tools the Board has to respond to poor behaviour. The changes will also improve efficiency of the scheme rather than add additional administrative burden.
- 71 The changes to the complaints and disciplinary processes will be incorporated into the scheme over a period of time, currently proposed to be six months, to provide time for the LBP Board to ensure it has made necessary administrative changes to support its capability to effectively implement the proposals.

### Financial Implications

- 72 There are no direct financial implications for the Crown.



## Legislative Implications

- 73 Amendments to the Building Act and secondary legislation made under the Building Act will be required to implement the proposals.
- 74 I intend for these amendments to progress alongside other occupational reforms under Phase Two of the Reform Programme, including a new regulatory framework for engineers and amendments to the Plumbers, Gasfitters, and Drainlayers Act 2006. Confidential advice to Government
- 75 I have requested a position on the 2021 Legislation Programme for an omnibus Building Sector Occupational Regulation Reform Bill, Confidential advice to Government
- 76 The proposals will also require amendments to the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008, Confidential advice to Government
- 77 The changes to the licensing administration processes, and the complaints and disciplinary process, will come into force six months after the date on which the legislative changes receives Royal assent.
- 78 I also intend to seek a delayed commencement for the introduction of the code of ethics by Order in Council, in order to support an effective transition and ensure the affected parties understand their obligations.
- 79 The amendments to the Building Act will bind the Crown.

## Impact Analysis

### Regulatory Impact Statement

- 80 The Regulatory Quality Team at the Treasury has determined that the regulatory proposals included in this form are exempt from the requirement to provide a Regulatory Impact Statement on the basis that they have no or minor impacts on businesses, individuals, or not for profit entities.

### Climate Implications of Policy Assessment

- 81 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

### Population Implications

- 82 The proposals in this paper are not expected to have significant implications for population groups.



## **Human Rights**

- 83 This paper complies with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## **Consultation**

- 84 The following agencies and Crown entities were consulted on the proposals in 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, Accident Compensation Corporation, Infrastructure Commission, WorkSafe, and Parliamentary Counsel Office.

## **Communications**

- 85 I intend to release a media statement once Cabinet decisions have been made.

## **Proactive Release**

- 86 This Cabinet paper, appendices and associated minute will be published on MBIE's website subject to any necessary redactions.

## Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **Note** this paper seeks Cabinet agreement to progress the following Category One proposals to strengthen the Licensed Building Practitioners (LBP) scheme:
  - 1.1 introducing a code of ethics;
  - 1.2 making changes to licensing administration processes; and
  - 1.3 making changes to the complaints and disciplinary process;
- 2 **Agree** to introduce a code of ethics for LBPs based on the four principles outlined below and detailed in Appendix One:
  - 2.1 work safely;
  - 2.2 be aware of the law;
  - 2.3 take responsibility; and
  - 2.4 behave professionally;
- 3 **Agree** to amend the LBP licensing administration processes in the Building Act 2004 so that:
  - 3.1 the process for renewing licences is moved from the Building Act 2004 to the LBP Rules;
  - 3.2 the licence term is set in the LBP Rules, and the licence term may be no longer than five years in Building Act 2004;
  - 3.3 a licence that is not renewed by the due date and a licence that has been suspended due to disciplinary reasons are distinguishable on the public register, to provide consumers with clarity as to the reasons they have been labelled as such;
  - 3.4 a licence that is eligible for suspension for not submitting skills maintenance requirements and a licence that has been suspended due to disciplinary reasons are distinguishable on the public register, to provide consumers with clarity as to the reasons they have been labelled as such;
  - 3.5 allow licences that are not renewed in a timely manner to be subject to a grace period in which the LBP may renew the licence, and that this period will be specified in the LBP Rules;
  - 3.6 a licence that is renewed in the grace period will be recorded as such on the public register in the same manner as a suspended licence, and that it will stay recorded for three years;

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- 3.7 a licence that is cancelled or suspended for a disciplinary order will stay recorded on the public register for three years; and
- 3.8 the Board may take disciplinary action against LBPs who carry out or supervise restricted building work during the grace period;
- 4 **Agree** to amend the complaints and disciplinary process in the Building Act 2004 so that:
  - 4.1 complaints are to the Board, but must be made through the LBP Registrar;
  - 4.2 the Registrar can make an initial determination on whether the complaint warrants investigation;
  - 4.3 the Registrar may dismiss a complaint during the initial determination stage if they are satisfied the complaint is vexatious or frivolous, or if the subject matter of the complaint is vexatious or frivolous;
  - 4.4 complainants will have the right to appeal to the Board if the Registrar decides not to proceed with a complaint on the grounds that it is vexatious or frivolous;
  - 4.5 if the Registrar determines the complaint should proceed, the chief executive of the Ministry of Business, Innovation and Employment appoints an investigator to investigate the complaint;
  - 4.6 the investigator must send particulars to the person complained against and give them reasonable opportunity to make written submissions and be heard;
  - 4.7 the investigator must provide a report to the Board on the outcome of the investigation and determine whether the complaint should be considered by the Board;
  - 4.8 the investigator must send a copy of the report to the Board, to the person complained against and the complainant;
  - 4.9 if the investigator reports that a complaint should be considered by the Board:
    - 4.9.1 the Board must hold a hearing; and
    - 4.9.2 the investigator must prosecute the matter at the hearing, and may be represented by counsel or otherwise;
  - 4.10 the investigator will be granted powers to require a person to provide any document or information required for the purposes of investigating a complaint, by written notice, where necessary for the investigation;

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- 4.11 it will be an offence under the Building Act to not comply with a notice to provide a required document or information, with persons liable for a penalty not exceeding \$2,000 upon conviction;
- 4.12 the investigator will be granted powers to obtain and execute a warrant to enter land or premises for the purposes of investigating a complaint, where necessary for the investigation;
- 4.13 the Board may hold parts of meetings or hearings in private where it is appropriate due to the nature of the evidence;
- 4.14 the Board may amend an order of the Board where an administrative error has been made;
- 4.15 the Board may take disciplinary action if an LBP fails to comply with a training order; and
- 4.16 the Board may take disciplinary action against LBPs who carry out or supervise building work without a building consent, when one is required;

### *Other changes to the LBP scheme*

- 5 **Note** I received Cabinet approval to carry out a public consultation on LBP licensing classes, supervision, and competency requirements [DEV-21-MIN-0073 refers];

### *Drafting instructions*

- 6 **Authorise** the Minister to issue drafting instructions to the Parliamentary Counsel Office to draft legislation giving effect to the policy proposals in this paper;
- 7 **Agree** to delegate the Minister authority to make decisions on minor and technical matters that arise during drafting that are consistent with the policy decisions in this paper;

### *Next steps*

- 8 **Note** I intend to report back to the Cabinet Legislation Committee and Cabinet Confidential advice to Government to seek approval to introduce a code of ethics for Licensed Building Practitioners by Order in Council;
- 9 **Note** I intend to report back to the Cabinet Legislation Committee and Cabinet Confidential advice to Government to seek approval for introduction of the Building and Construction Sector Occupational Regulation Bill.

Authorised for lodgement

Hon Poto Williams

Minister for Building and Construction

## Appendix One

### Detailed information on the principles and expected standards of the Licensed Building Practitioner (LBP) scheme code of ethics

Key principle	Intention	Expected standards to sit under this principle
Work safely	Places public protection at the core of the LBP scheme. Ensures LBPs are held to account for unreasonable conduct that could place themselves or others at risk of harm	<ul style="list-style-type: none"> <li>• Fulfilling responsibilities as a worker and/or business owner with regards to the health and safety of themselves and other people.</li> <li>• Calling out or taking action to address unsafe behaviour.</li> <li>• Considering the impact of working practices on the environment.</li> </ul>
Be aware of the law	LBPs will be aware of, and observe, the legal and contractual requirements relevant to the work being carried out by themselves or those they are supervising.	<ul style="list-style-type: none"> <li>• Observing legal obligations within New Zealand law, applicable to the work being carried out.</li> <li>• Calling out and reporting breaches of applicable legislation (particularly related to the building system).</li> </ul>
Take responsibility	An LBP will treat people fairly and openly. This includes being clear with clients on timelines, costs and risks to work.	<ul style="list-style-type: none"> <li>• Understanding and upholding responsibilities as an LBP</li> <li>• Being upfront about design and construction risks with clients and colleagues and explaining how they can be dealt with.</li> <li>• Providing sufficient information for clients to make informed decisions.</li> <li>• Holding accountability for any defects resulting from work undertaken, or the work of those supervised.</li> <li>• Advising clients of any delays as soon as they become apparent.</li> <li>• Acting in the client's interests, consulting with the client when decisions are required.</li> <li>• Taking on board the client's instructions unless these are contrary to building consent documentation, contractual agreements, against the law, or likely to cause harm to others.</li> </ul>
Behave professionally	Behavioural issues, such as treating consumers unfairly through things like being unwilling to remediate poor work, are a major cause of action taken against current LBPs.	<ul style="list-style-type: none"> <li>• Treating colleagues, clients and others fairly, honestly, respectfully and with integrity.</li> <li>• Acting in good faith during the resolving of disputes.</li> <li>• Scoping and pricing work fairly and reasonably, informing the client upfront</li> </ul>

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<b>Key principle</b>	<b>Intention</b>	<b>Expected standards to sit under this principle</b>
		<p>and obtaining their agreement before additional costs are incurred.</p> <ul style="list-style-type: none"><li>• Declaring and managing conflicts of interest appropriately</li><li>• Maintaining confidentiality and avoiding sharing sensitive client information with others unless there is a good reason to do so, such as a risk of harm.</li><li>• Acknowledging and respecting cultural norms and values of colleagues, employees and clients.</li><li>• Conducting business (where applicable) in a responsible manner, such as handling money, keeping accurate records, managing employees and providing appropriate documentation.</li></ul>