



COVERSHEET

Minister	Hon Poto Williams	Portfolio	Building and Construction
Title of Cabinet paper	Building (Code of Ethics for Licenced Building Practitioners) Order 2021	Date to be published	7 December 2021

List of documents that have been proactively released

Date	Title	Author
October 2021	Building (Code of Ethics for Licenced Building Practitioners) Order 2021	Office of the Minister for Building and Construction
21 October 2021	Cabinet minute: LEG-21-MIN-0168	Cabinet Office

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 for the reason of Confidential advice to Government.



COVERSHEET

Minister	Hon Poto Williams	Portfolio	Building and Construction
Title of Cabinet paper	Building (Code of Ethics for Licenced Building Practitioners) Order 2021	Date to be published	7 December 2021

List of documents that have been proactively released

Date	Title	Author
21 October 2021	<i>Building (Code of Ethics for Licenced Building Practitioners) Order 2021</i>	<i>Office of the Minister for Building and Construction</i>
21 October 2021	<i>Cabinet minute: LEG-21-MIN-0168</i>	<i>Cabinet Office</i>

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.

In Confidence

Office of the Minister for Building and Construction
Chair, Cabinet Legislation Committee

Building (Code of Ethics for Licensed Building Practitioners) Order 2021

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Building (Code of Ethics for Licensed Building Practitioners) Order 2021.

Policy

- 2 On 10 May 2021, Cabinet agreed to proposals to introduce a code of ethics for Licensed Building Practitioners (LBPs) under the Building Act 2004 [CAB-21-MIN-0151 refers].
- 3 The LBP scheme is an occupational regulation scheme, and the primary way in which the building regulatory system ensures that a building practitioner undertaking building work is competent. LBPs are building practitioners who have been assessed as competent to carry out restricted building work. This encompasses work that is essential to the structure, weathertightness and fire safety of residential buildings.
- 4 Section 314A of the Building Act 2004 enables the Minister to recommend a code of minimum standards of ethical conduct for LBPs through an Order in Council.
- 5 The Code of Ethics has been drafted to implement the policy proposals agreed to by Cabinet. I now seek approval from Cabinet to submit the Code of Ethics to the Executive Council.
- 6 The Code of Ethics will establish clear behavioural requirements to manage the ethical conduct of LBPs. Additionally, the Code of Ethics will set expectations to practitioners and consumers that substandard conduct and behaviour will not be tolerated, and outlines a clear standard that practitioners can be held to.
- 7 Currently, the Board can take disciplinary action against an LBP in specific circumstances, including where an LBP has brought the LBP regime into disrepute. This threshold is high, and it is difficult for the Board to prove that it has been reached.
- 8 As a result, a small proportion of LBPs engage in conduct, which, despite being unethical, cannot easily be said to meet the threshold of bringing the

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

regime into disrepute. This small group of LBPs are responsible for the majority of complaints about unethical behaviour.

- 9 The introduction of the Code of Ethics will allow the Building Practitioners Board (the Board) to hold these LBPs to account, by providing clear grounds for taking disciplinary action against the unethical conduct of LBPs.
- 10 The need for a code of ethics was identified through consistent feedback from stakeholders that said the LBP scheme can be strengthened by setting clear behavioural standards. The consultation also confirmed most LBPs are behaving appropriately, and there is strong sector and public support for the introduction of a code of ethics.
- 11 The Code of Ethics is based on four principles as agreed by Cabinet [DEV-21-MIN-0086 refers]:
 - 11.1 *work safely* – would require LBPs to be accountable for unreasonable conduct that could place themselves or others at risk of harm, take appropriate action to address the unsafe behaviour and be considerate of the environment;
 - 11.2 *be aware of the law* – requiring LBPs to be aware of, and observe, the legal requirements relevant to the work they are carrying out or supervising, this includes calling out breaches of the Building Act 2004, Building Code and building consents;
 - 11.3 *take responsibility* – placing an obligation on LBPs to treat people fairly and openly, being clear and upfront with consumers on timelines, costs, and risks to works; and
 - 11.4 *behave professionally* – requiring LBPs to treat consumers and colleagues fairly and respectfully (for example, acting in good faith during dispute resolution or divulging client details) and managing conflicts of interest appropriately.
- 12 The above principles are consistent with the scope of other codes of ethics in similar occupational regulation regimes. Each principle is supported by obligations in the Code of Ethics which outline how these principles apply in practice.

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

Confirming minor and technical changes to avoid duplicating other areas of law

13 During the drafting process I have taken some minor and technical decisions to clarify the scope of the Code of Ethics. These changes are consistent with the original policy decisions, and are to avoid duplicating employment and contractual obligations that are more appropriately addressed elsewhere.

Obligation in the Code of Ethics	As considered by the Cabinet Economic Development Committee (DEV) and agreed by Cabinet	As drafted in the final Code of Ethics
<i>You must comply with the law (cl 10)</i>	The paper considered by DEV discussed requiring LBPs to be aware of contractual obligations.	The final Code of Ethics requires LBPs to comply with relevant legislation. No reference to contractual obligations has been included. The final drafting avoids the Building Practitioners Board needing to look into potential breaches of contract.
<i>Act in good faith during dispute resolution (cl 20)</i>	The policy approvals stated that the principle of 'behave professionally' would deal with unwillingness to remedy poor work.	The final Code of Ethics does not refer explicitly to any obligation to remedy work, instead it focuses on resolving disputes in good faith. The final drafting avoids the Building Practitioners Board needing to look into potential breaches of contract.
<i>Conduct your business in a methodical and responsible manner (cl 25)</i>	The policy approvals referred to 'conducting business (where applicable) in a responsible manner, such as handling money, keeping accurate records, managing employees and providing appropriate documentation'.	The final Code of Ethics does not refer to 'managing employees'. It is more appropriate for employment issues to be regulated by the Employment Relations Act 2000.

Timing and 28-day rule

14 I propose the Code of Ethics will come into force 12 months after the Order in Council is notified in the *Gazette*, in October 2022.

15 This differs from the 6 months originally indicated in May 2021. I consider the 12-month commencement timeline better aligns with other changes to the LBP scheme being progressed through amendments to the Building Act 2004.

16 The amendments are changes consulted on as part of changes to strengthen the LBP scheme, including changes to:

16.1 the licensing administration process, and

16.2 the complaints and disciplinary process

17 Confidential advice to Government



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

Milestone/Activity	Timeframe
Building (Code of Ethics for Licensed Building Practitioners) Order 2021 approved by Executive Council	October 2021
Education and guidance material developed	January 2022
Confidential advice to Government	
Commencement of the Code of Ethics	October 2022

Compliance

- 18 The Order complies with:
- 18.1 the principles of the Treaty of Waitangi;
 - 18.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 18.3 the principles and guidelines set out in the Privacy Act 2020;
 - 18.4 relevant international standards and obligations;
 - 18.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 19 I do not consider there are any grounds for the Regulations Review Committee to draw the Order to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 20 The Order was prepared and certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 21 The Regulatory Impact Analysis Team at the Treasury has determined that the proposal to introduce a code of ethics for LBPs is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or minor impacts on businesses, individuals, and not-for-profit entities.

Publicity

- 22 MBIE will contact affected stakeholders directly to notify them of the new Code of Ethics.

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

- 23 MBIE will work alongside the Board to develop educational material and guidance for practitioners, to ensure they understand their obligations under the Code of Ethics prior to its commencement.

Proactive release

- 24 I intend to release this paper proactively, subject to any redactions consistent with the Official Information Act 1982. MBIE will publish a copy of this paper on its website.

Consultation

- 25 The Accident Compensation Commission, Kāinga Ora – Homes and Communities, Ministry of Foreign Affairs and Trade, Ministry of Health, Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development, Ministry of Justice, Registrar of Licensed Building Practitioners, and WorkSafe have been consulted. The Treasury and the Department of the Prime Minister and Cabinet have been informed.
- 26 Consideration of how the Board will enforce the Code of Ethics so that it complements the roles of other relevant regulators, such as WorkSafe, was raised during agency consultation. I have taken this feedback on board. MBIE will work with relevant agencies to identify appropriate arrangements to put in place prior to commencement.
- 27 MBIE has previously undertaken public consultation on the wider building system reform programme in April 2019 and targeted consultation on the changes to the LBP scheme in September and October 2020. Submissions received from stakeholders generally supported changes proposed. Key stakeholders involved in the consultation included individual LBPs, regulators, government bodies, peak industry membership bodies and consumer advocacy groups.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 10 May 2021, Cabinet agreed to introduce a Code of Ethics for Licensed Building Practitioners [CAB-21-MIN-0151 refers].
- 2 **note** the commencement period for the Code of Ethics has been extended from 6 months to 12 months.
- 3 **note** that the Building (Code of Ethics for Licensed Building Practitioners) Order 2021 will give effect to the decision referred to in paragraph 1 above;
- 4 **note** that the Minister for Building and Construction has taken minor and technical decisions to clarify the scope of the Code of Ethics and avoid duplicating obligations that are more appropriately addressed outside of the Licensed Building Practitioners regime;

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

- 5 **authorise** the submission to the Executive Council of the Building (Code of Ethics for Licensed Building Practitioners) Order 2021;
- 6 **note** that the Building (Code of Ethics for Licensed Building Practitioners) Order 2021 will come into force in October 2022, 12 months after the Order in Council is notified in the *Gazette*;
- 7 **note** that the Building Practitioners Board will release guidance and educational material to support Licensed Building Practitioners and their employers to understand the Code of Ethics prior to October 2022.

Authorised for lodgement

Hon Poto Williams

Minister for Building and Construction

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