



COVERSHEET

Minister	Hon Poto Williams	Portfolio	Building and Construction
Title of Cabinet paper	Establishing a new occupational regulatory regime for professional engineers	Date to be published	31 March 2022

List of documents that have been proactively released		
Date	Title	Author
March 2022	<i>Establishing a new occupational regulatory regime for professional engineers</i>	<i>Office of the Minister for Building and Construction</i>
16 March 2022	<i>DEV-22-MIN-0036</i>	<i>Cabinet Office</i>
March 2022	<i>Establishing a new occupational regulator for professional engineers</i>	<i>Office of the Minister for Building and Construction</i>
16 March 2022	<i>DEV-22-MIN-0037</i>	<i>Cabinet Office</i>
11 February 2022	<i>Regulatory Impact Statement</i>	<i>MBIE</i>
11 November 2021	<i>Cost benefit analysis</i>	<i>Sapere</i>
March 2022	<i>Summary of submissions</i>	<i>MBIE</i>

Information redacted

NO

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.



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Establishing a New Occupational Regulator for Professional Engineers (Paper 2)

Portfolio **Building and Construction**

On 16 March 2022, the Cabinet Economic Development Committee:

Background

- 1 **noted** that the paragraphs outlined below are subject to Cabinet's decisions on the associated paper *Establishing a New Occupational Regulatory Regime for Professional Engineers (Paper 1)*, under DEV-22-SUB-0036;
- 2 **noted** that decisions are required to establish a new regulator to deliver the new registration and licensing functions, and a complaints and discipline process;

Engineers Registration Board

- 3 **agreed** to establish a new statutory Engineers Registration Board (the Board) with a minimum of six, and up to eight members;
- 4 **agreed** that the Board's functions will be to:
 - 4.1 set the minimum standards expected of registered and licensed engineers, and engineering associates, through rules prescribing:
 - 4.1.1 minimum standards that must be met for registration;
 - 4.1.2 minimum standards of competence (including standards relating to knowledge and skills) that must be met for each licensing class;
 - 4.1.3 recognise any overseas qualification as part of setting minimum standards;
 - 4.1.4 consider appeals of a Registrar's decision, and confirm, reverse or modify that decision or take any action that was available to the Registrar;
 - 4.2 consider appeals of decisions of the Complaints Officer, and confirm, reverse or modify that decision or take any action that was available to the Complaints Officer;
 - 4.3 establish the Disciplinary Committee, subject to the approval of the Minister for Building and Construction (the Minister) and/or other appropriate safeguards;
 - 4.4 monitor the performance of regulatory functions in order to report to the Minister;

- 4.5 refer a disciplinary issue to the Complaints Officer if it appears that there are potential concerns with a person's fitness to be registered or licensed, and/or the grounds for discipline may have been met;
- 5 **noted** that the associated Paper 1 under DEV-22-SUB-0036 seeks agreement to requirements that the Board must follow when setting minimum standards in rules;
- 6 **agreed** that Board members will be appointed by the Minister, and that appropriate provisions for appointing or removing Board members, and annual reports, based on the Crown Entities Act 2004 or a similar occupational regulatory regime, will apply;
- 7 **agreed** that provisions for the appointment of Board members will ensure that the Board represents the interests of regulated people and the public, or similar objectives;
- 8 **agreed** that the proposed Act (the Act) will require there to be an output agreement between the Minister and the Board setting out the Minister's expectations for:
- 8.1 how registration and licensing, and complaints and discipline functions will be delivered across the regulator;
- 8.2 how the Board will oversee those functions to ensure they are being performed effectively;
- 9 **agreed** that sections 120 and 121 of the Crown Entities Act 2004, or similar provisions subject to the advice of the Parliamentary Counsel Office, would apply to protect Board members from liabilities of the Board and provide immunity from civil liability;
- 10 **agreed** that the Board, Registrar, Complaints Officer, Disciplinary Committee and any other functions under the Act will be subject to the Official Information Act 1982 and the Ombudsmen Act 1975 in the exercise of those functions;

Role of the Registrar/s

- 11 **agreed** to establish a new Registrar of Engineers, and that the Registrar's functions include:
- 11.1 maintaining the Registers for Registered and Licensed Engineers, and Registered Engineering Associates;
- 11.2 receiving, assessing and deciding on applications for registration and licensing;
- 11.3 collecting fees and levies from registered and licensed people;
- 12 **agreed** that the Registrar be an appropriate person or role within a public or private body, or bodies, designated by Order in Council to perform registration and/or licensing functions as specified in the Order;
- 13 **agreed** that there may be one or more Registrars, as a Registrar may perform some or all registration and/or licensing functions for registered engineers and engineering associates, or for a group of registered engineers and/or engineering associates, as described by Order in Council;
- 14 **agreed** that the Act will provide criteria that must be satisfied before a person may be designated as a Registrar by Order in Council, for example demonstrated that the relevant body holds the necessary systems, resources and expertise to deliver registration and licensing functions;

- 15 **agreed** that the Chief Executive of the Ministry for Business, Innovation and Employment be the Registrar in respect of any functions, and/or groups of engineers or engineering associates, that have not been designated by Order in Council as the responsibility of another Registrar;

Role of the Disciplinary Committee

- 16 **agreed** that the Board must establish a Disciplinary Committee to carry out the following functions:
- 16.1 hear complaints;
 - 16.2 determine whether any grounds for discipline have been met;
 - 16.3 impose sanctions, where appropriate;
- 17 **agreed** that the Disciplinary Committee be chaired by a Board member, and may be made up of Board members and non-Board members;
- 18 **agreed** that the Act will include appropriate provisions relating to membership of the Committee, procedure for holding hearings and receiving evidence, and hearing-related offences;
- 19 **agreed** that decisions of the Disciplinary Committee may be appealed in the District Court;
- 20 **agreed** that the Act will include appropriate provisions for procedural matters relating to complaints and investigations, such as the way in which a complaint must be made, and how the investigator must engage with parties to a complaint;

Role of the Complaints Officer and investigators

- 21 **agreed** to establish a Complaints Officer to carry out the following functions:
- 21.1 receive complaints;
 - 21.2 make an initial determination on whether the complaint warrants investigation;
 - 21.3 appoint an investigator;
 - 21.4 prosecute complaints at a hearing of the Disciplinary Committee;
- 22 **agreed** to establish criteria for when the Complaints Officer may take no action on a complaint following initial assessment, for example if the complaint or its subject matter is vexatious or frivolous, minor or trivial;
- 23 **agreed** that parties to a complaint may appeal a decision of the Complaints Officer to the Board, and that the Board may confirm, reverse or modify the Complaints Officer's decision or take any other action that that the Complaints Officer could have taken;
- 24 **agreed** that the Board may refer a matter to the Complaints Officer for investigation where there is no complaint, if it appears there may be concerns with a person's fitness to be registered or licensed, and/or the grounds for discipline may have been met;
- 25 **agreed** that if the Complaints Officer determines a complaint should proceed:
- 25.1 they must appoint an investigator to investigate the complaint;

- 25.2 the investigator must inform the person complained against and give them a reasonable opportunity to make submissions and be heard;
- 25.3 the investigator must report to the Disciplinary Committee with the outcome of the complaint and determination of whether it should be heard by the Committee;
- 25.4 a copy of the report must go to the complainant and the person complained against;
- 26 **agreed** that if the investigator reports that a complaint should be heard by the Committee:
- 26.1 the Committee must hold a hearing to determine whether the grounds for discipline have been met and whether any sanction should be imposed;
- 26.2 the Complaints Officer must prosecute the matter at the hearing, and may be represented by counsel or otherwise;
- 27 **agreed** that the Act will provide appropriate provisions that empower the investigator to, for the purpose of investigating a complaint:
- 27.1 by written notice, require any person to provide information necessary to further the investigation;
- 27.2 obtain and execute a warrant to enter land, premises or vehicles, where necessary for the investigation;
- 28 **agreed** the requirements in Part 4 of the Search and Surveillance Act 2012 will apply to the entry powers at 27.2 where appropriate and with any necessary modifications to suit the circumstances;
- 29 **agreed** that it will be a criminal offence to not comply with a notice to provide a required document or information, with persons liable for a penalty not exceeding \$2,000 on conviction;

Designating complaints triage and investigation functions by Order in Council

- 30 **agreed** that the Complaints Officer is:
- 30.1 the Chief Executive of the Ministry of Business, Innovation and Employment; or
- 30.2 an appropriate person or role within another public or private body designated by Order in Council;
- 31 **agreed** that the Act must provide criteria to be satisfied before a person may be designated the Complaints Officer, to ensure that:
- 31.1 doing so supports the public interest, natural justice and accountability to the Board and Minister;
- 31.2 the relevant body has sufficient resources and expertise;
- 32 **agreed** that the Chief Executive of the Ministry of Business, Innovation and Employment will investigate and prosecute criminal offences under the Act;

Sharing information with other regulators

- 33 **agreed** that appropriate provisions will be developed in consultation with the Office of the Privacy Commissioner, to allow the regulator to share information about a person's registration or licence to perform engineering work, including information about complaints and investigations, with another regulator, where relevant to the other regulator's statutory functions;

Next steps

- 34 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 35 authorise the Minister to further clarify and develop policy matters relating to the above paragraphs in a manner consistent with the policy decisions in the paper under DEV-22-SUB-0037.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Kris Faafoi
Hon Willie Jackson
Hon Michael Wood
Hon Dr David Clark
Hon Meka Whaitiri
Hon Phil Twyford
Rino Tirikatene MP
Dr Deborah Russell MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV