



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Building and Construction
Title of briefing	Occupational regulation reforms in the building and construction sector: minor policy decisions and release of consultation document	Date to be published	3 April 2023

List of documents that have been proactively released

Date	Title	Author
February 2023	Occupational regulation reforms in the building and construction sector: minor policy decisions and release of consultation document	Office of the Minister for Building and Construction
15 February 2023	Building and Construction Sector: Occupational Regulation Reforms DEV-23-MIN-0004 Minute	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.

In Confidence

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

Occupational regulation reforms in the building and construction sector: minor policy decisions and release of consultation document

Proposal

1. This paper seeks Cabinet's approval to:
 - 1.1. make minor legislative changes to improve the complaints and disciplinary processes for the Plumbers, Gasfitters and Drainlayers and Electrical Workers occupational regulation regimes
 - 1.2. release a consultation document on proposed changes to the Licensed Building Practitioners regime and seek feedback on other matters relevant to the occupational regulation regimes in the building and construction sector.

Executive Summary

2. The Government's Building System Reforms aim to address underlying systemic and historic challenges facing the building and construction sector. The proposals in this paper relate to the second of three areas of work within the wider Building System Reforms: reforms to the occupational regulation of construction sector professionals.
3. I seek Cabinet's approval to make minor legislative changes to improve the complaints and disciplinary processes for the Plumbers, Gasfitters and Drainlayers regime and Electrical Workers regime. These are:
 - 3.1. Introducing a power to allow the responsible Minister to set a code of ethics for each regime to enable regulators to hold people to account for unprofessional or negligent behaviour.
 - 3.2. Allowing for the Registrar of the Electrical Workers Registration Board to make a complaint about an electrical worker.
4. I also seek Cabinet's approval to release a consultation document that will seek feedback on the following occupational regimes:
 - 4.1. *Licensed Building Practitioners*: proposals to make changes to improve supervision practices and licence classes, as well as seeking feedback on issues with competencies.
 - 4.2. *Plumbers, Gasfitters and Drainlayers and Electrical Workers*: seeking feedback on the scope of codes of ethics so that poor behaviour can be

addressed (subject to Cabinet approving my proposal to introduce a power to set codes of ethics).

- 4.3. *Registered Architects*: seeking feedback on how the *Registered Architects Act 2005* is functioning and whether the regime is fit for purpose.
5. Subject to Cabinet's approval, I intend to include the minor changes to the Plumbers, Gasfitters, and Drainlayers regime and Electrical Workers regime in the Building and Construction Sector Occupational Regulation Bill, Confidential advice
Confidential advice to Government
6. I intend to seek Cabinet approval for introduction of the Building and Construction Sector Occupational Regulation Bill in 2023, alongside a bill to implement the reforms to the engineers' occupational regime that Cabinet has already agreed.
7. I also intend to report back to Cabinet on outcomes from this public consultation, any resulting policy recommendations and other matters requiring further consultation in 2023.

Background

Wider context

8. The Government's Building System Reforms aim to address underlying systemic and historic challenges facing the building and construction sector. The Building System Reforms encompass three areas of work: the review of the building consent system, reforms to the occupational regulation of construction sector professionals and consumer protection.
9. The building control system is the regulatory regime for building in New Zealand. The building control system encompasses critical elements which, together, aim to ensure building work is done right the first time. This includes ensuring a robust building consent system, effectively monitoring and enforcing quality building standards, empowering and informing consumers and ensuring a skilled and competent workforce.
10. A well-functioning occupational regulation regime is a key component of a successful building control system. Occupational regulation aims to protect the public from harm by ensuring professionals perform work with reasonable care, competence and skill. Occupational regulation should be proportionate to the risks to public safety, ensure registered and licensed practitioners have the right skills or qualifications to carry out their work and regulated professionals are held to account for their conduct and substandard work.

Rationale for the occupational regulation reforms

11. As Minister for Building and Construction, I am responsible for six occupational regimes in the sector:
 - 11.1. chartered professional engineers

- 11.2. engineering associates
 - 11.3. licensed building practitioners
 - 11.4. plumbers, gasfitters and drainlayers
 - 11.5. electrical workers
 - 11.6. registered architects.
12. It is necessary to undertake reforms of the occupational regulation regimes now, to ensure they remain fit for purpose now and into the future. Some of these regimes have not been systematically reviewed since their introduction and other regimes have opportunities for improvement, which have been identified through statutory reviews or recommendations from the Canterbury Earthquakes Royal Commission.
13. The occupational regulation reforms sit alongside and supports other key Building System Reforms, including the review of the building consent system and a review of consumer protection measures. Cabinet has already made several decisions on reforms to occupational regulation in building and construction:
- 13.1. In March 2022, Cabinet agreed to establish a new occupational regulatory regime and regulator for professional engineers and engineering associates [DEV-22-MIN-0036; DEV-22-MIN-0037]. This will ensure all engineers can be held to account for substandard work.
 - 13.2. In May 2021, Cabinet agreed to a package of proposals to strengthen the Licensed Building Practitioners regime. This included amending the *Building Act 2004* to ease the administrative burden of the regime, improving the complaints and disciplinary processes and introducing a code of ethics to ensure minimum standards of professional behaviour [DEV-21-MIN-0086].
 - 13.3. In March 2021, Cabinet noted the *Statutory Review Report on the Plumbers, Gasfitters, and Drainlayers Act 2006* and agreed to minor amendments to that Act [DEV-21-MIN-0038]. The first series of amendments focused on clarifying definitions, improving Board processes, removing exemptions that currently allow unqualified people to do restricted work, and removing the barrier for the Registrar to make complaints.
14. The reforms outlined in paragraph 13 above will be included in an Engineers Occupational Regulation Bill and a Building and Construction Sector Occupational Regulation Bill. I expect to introduce these bills together in 2023, subject to Standing Order requirements.
15. The proposals in this paper and the attached consultation document build on previous work. In combination, the reforms will build public confidence in practitioners in the building and construction sector.

16. As I undertake reforms to professionals and professions across the building and construction sector, the ability to introduce consistency and best practice across the six occupational regulation regimes continues to be an important consideration.

Policy decisions I seek approval for now

A regulation-making power to enable codes of ethics to be set for the Plumbers, Gasfitters and Drainlayers regime and Electrical Workers regime

17. I propose to amend the *Plumbers, Gasfitters, and Drainlayers Act 2006* and *Electricity Act 1992* to introduce a regulation-making power to enable the responsible Minister (currently the Minister for Building and Construction) to make a code of ethics for each regime.
18. This proposal will respond to recent statutory review reports, which found the Plumbers, Gasfitters and Drainlayers Board and the Electrical Workers Registration Board have limited ability to take disciplinary action to address a registered individual's professional conduct.
19. Establishing a code of ethics for each regime will address this issue by setting clear behavioural standards that are expected of licensed practitioners. This will improve how the regimes can respond to poor conduct.
20. Currently, the boards can only consider issues and complaints based on a practitioner's technical abilities and work, and not professional misconduct. When consumers raise issues that subsequently go unaddressed, this gap in accountability can affect public trust and confidence in the professional, and the profession as a whole.
21. A code of ethics serves many purposes across occupational regulation, including setting, educating and enforcing professional standards and behavioural expectations.
22. A code of ethics is common practice for regulated trades and professions. A code of ethics for licensed building practitioners was set by regulation in October 2021 and came into force a year later. Cabinet also agreed the new engineers' regulatory regime will have a code of ethics.
23. I also propose to amend the *Plumbers, Gasfitters, and Drainlayers Act 2006* and the *Electricity Act 1992* to allow for enforcement of the new codes of ethics when they are introduced. Through the amendments, a breach of the codes of ethics will warrant disciplinary action by adding such a breach to the respective legislations' disciplinary provisions.
24. New grounds for disciplinary action will allow the respective boards to undertake proceedings for code of ethics breaches, as they would with any of the current disciplinary offences in the legislation. In both regimes, this could potentially result in, for example, a board cancelling an individual's registration or licence and issuing a fine. I intend that the offences and penalties will replicate the

current disciplinary model in the *Building Act 2004* for breaches of the code of ethics by Licensed Building Practitioners.

25. Later in this paper I outline my proposal to consult on a range of other proposals and issues across building and construction occupational regulation regimes. If Cabinet approves the amendments outlined above, and the release of the consultation document, the consultation document will seek feedback on what could be included in a code of ethics for each regime. The proposals for feedback will include the scope, principles and expectations.

Removing the barrier for the Registrar of the Electrical Workers Registration Board to make complaints

26. I propose to remove the current barrier in the *Electricity Act 1992* that prevents the Registrar of the Electrical Workers Registration Board from making complaints when they become aware of information on an electrical worker's conduct or work that warrants further investigation.
27. The Electrical Workers Registration Board's recently completed statutory review report raised this as an issue. Even if the Registrar is aware of issues and has information that merits further action, they cannot use this information to launch an investigation themselves. This hinders the regulator's ability to act on information they hold or become aware of.
28. It is unusual for modern regulators to be prohibited from referring issues for investigation where they may meet grounds for action. Such a barrier does not exist in the Licensed Building Practitioners regime and Cabinet has already agreed to amend Part 3 of the *Plumbers, Gasfitters, and Drainlayers Act 2006* to remove the barrier for that Registrar to make a complaint [DEV-21-MIN-0038].
29. Enabling the Registrar to make a complaint will improve the effectiveness of the legislation in reducing the risk to public health and safety and the reputation of the profession by ensuring professionals conducting non-compliant work can be held to account, without relying on a complaint from a third-party. This change will help improve the efficiency and effectiveness of the complaints process, by ensuring issues can be addressed when they arise and bring the regime in line with other occupational regulation regimes.

Targeted consultation supports my proposals for minor legislative change

30. My officials recently completed targeted engagement with key stakeholders, who are broadly supportive of these changes. Stakeholders acknowledged the need for consistency across the sector on matters relating to technical and professional competency, and other disciplinary processes.
31. These proposals will address issues raised in the statutory review reports of the Plumbers, Gasfitters and Drainlayers regime (required under section 187 of the *Plumbers, Gasfitters, and Drainlayers Act 2006*) and the Electrical Workers regime (required under section 158 of the *Electricity Act 1992*).

Approval for release of a consultation document

32. I propose to release a consultation document on occupational regulation reforms in the building and construction sector. While the issues and proposals are at different stages of the policy process, I believe this approach will enable an efficient consultation process and promotes consistency across the different regimes.
33. The consultation document is split into two parts. The first part focuses on proposals already developed and ready to be publicly tested. This section includes the proposed changes to the supervision and licensing areas in the Licensed Building Practitioners regime and the scope of codes of ethics for both the Plumbers, Gasfitters and Drainlayers regime and the Electrical Workers regime.
34. The second part of the consultation document tests issues within some of the regulatory regimes, rather than seeking feedback on proposals for change. This includes:
 - 34.1. Issues that form the scope of a review of the Registered Architects Act 2005. Feedback from consultation will help to determine if the regime is fit for purpose and whether the government should have a continued role in regulating architects.
 - 34.2. The possible scope of a review of the Licensed Building Practitioners regime's competencies and minimum standards for entry to determine what further improvements could be made.

Part One of the consultation document: Proposals for change

I propose to consult on changes to improve the Licensed Building Practitioners regime

35. In April 2021, Cabinet agreed to release a discussion document on potential areas for improvement to the Licensed Building Practitioners regime's licensing, supervision and core competencies and minimum standards for entry [DEV-21-MIN-0073].
36. Policy proposals have been developed in response to the feedback received during last year's consultation, which are now ready for public consultation. The Licensed Building Practitioners regime proposals focus on addressing issues with the supervision and licensing in the regime.
37. For supervision, I propose to introduce a licence endorsement which will allow only licensed building practitioners who have a minimum level of experience and who the Registrar deems competent to supervise restricted building work.
38. Introducing this new endorsement will reduce instances of licensed building practitioners signing off poor building work through poor supervision practices. It will be easier for uninformed consumers to differentiate between less and more skilled and experienced licensed building practitioners.

39. I also propose to introduce three new licensing classes to the regime: stonemasonry, internal waterproofing and specialist areas (such as plasterboard installation and tanking).
40. Adding these licensing classes to the Licensed Building Practitioners regime will provide better regulation in currently unregulated specialist areas, ensuring houses are built right the first time. It will also create a more efficient regime, as non-licensed specialists will be able to apply for their own licence rather than relying on a licensed building practitioner to supervise their work.
41. The changes will require some changes to the competencies prospective licensed building practitioners must demonstrate before they are granted a licence.
42. Paragraphs 48-53 of this paper outline my proposal to begin an overall review of the regime's competencies and minimum standards for entry. This review will consider what new competencies are required to support any new licence classes, as well as determine what other improvements could be made. I will seek feedback on the competencies from stakeholders in Part Two of the consultation document.

I propose to consult on the scope of a potential codes of ethics for the Plumbers, Gasfitters and Drainlayers regime and the Electrical Workers regime

43. If Cabinet approves the introduction of a regulation-making power to develop a code of ethics for the Plumbers, Gasfitters and Drainlayers regime and the Electrical Workers regime, I propose the consultation document seek feedback on:
 - 43.1. the purpose and scope of the codes of ethics
 - 43.2. a set of minimum expectations of professionals, based on the key principles outlined in the code of ethics for licensed building practitioners
 - 43.3. whether these expectations should be consistent across the sector, and
 - 43.4. a proposed one-year transition period for the introduction of the codes of ethics.
44. Following the legislative amendment to empower the codes of ethics to be set and feedback from the consultation document, a draft code will be developed for each regime and tested through targeted consultation.
45. Assuming Cabinet agrees to this regulation-making power and the legislative amendments are in force, the proposed codes of ethics will be prescribed through Orders in Council, with a one-year transition period in place for implementation, following the process for introducing the Licensed Building Practitioners regime's code of ethics.

Part Two of the consultation document: Issues for feedback

I have commenced a review of the Registered Architects Act 2005 and propose to seek feedback on issues with the current regime

46. I have initiated a review of the *Registered Architects Act 2005* to determine if it is still fit for purpose and whether the government should have a continued role in regulating architects. This is the first time the regime has been reviewed since its commencement.
47. The scope of the review focuses on whether current regulatory settings are meeting the original benefits of the *Registered Architects Act 2005* to ensure effective and efficient regulation of architects, which include:
 - 47.1. increasing the competency of architects
 - 47.2. increasing confidence and standards in the industry.
48. A fundamental question that consultation will seek feedback on is whether there continues to be or is sufficient risk to public harm to justify continued government regulation of architects and, if so, whether the current regime and arrangements are fit for purpose.

I propose to seek feedback on a review of competencies within the Licensed Building Practitioners regime

49. In the 2021 public consultation on the Licensed Building Practitioners regime, a common theme raised was the competency level required to enter the regime was not high enough.
50. My proposed changes to the Licensed Building Practitioners regime's supervision and licensing areas¹ will involve creating new competencies. I consider it appropriate to use this opportunity to review the rest of the regime's competencies at the same time and seek feedback on whether there are any new competencies needing addition to reflect changing sector practices.
51. As there are no set proposals yet, I have included this section in Part Two of the consultation document, instead of alongside change proposals for the Licensed Building Practitioners regime section in Part One of the document.
52. While previous consultation responses suggested the minimum standards for entry were too low, they were not forthcoming in how they could be lifted. This section will ask respondents to provide specific examples of how they believe the competencies could be raised, including drawing from past experience if they are in the Licensed Building Practitioners regime themselves.
53. It will also seek feedback on the interaction between the Licensed Building Practitioners regime's Design licence class and the Registered Architects

¹ The term 'licensing areas' has been used to denote that not all proposals involve the addition of a new licence class. Some proposals involve the creation of areas of practice within an existing licence class.

regime, as registered architects are automatically deemed licensed building practitioners.

54. This section will also ask about new practices that could be added to the competencies to ensure they represent today's building sector. Examples include showing knowledge of the recently introduced code of ethics, Building Code changes and sustainability practices.

Next steps

55. I propose to report back to Cabinet in 2023 with outcomes from this public consultation, any resulting policy recommendations and other matters requiring further public consultation. Further consultation on an options paper may be required to address the issues identified through this consultation document.
56. Subject to Cabinet's approval and Standing Order requirements for omnibus bills, the minor changes to the Plumbers, Gasfitters and Drainlayers regime and Electrical Workers regime could be included in the Building and Construction Sector Occupational Regulation Bill.
57. I intend to seek Cabinet approval to introduce the Building and Construction Sector Occupational Regulation Bill in 2023, alongside a bill to implement Cabinet decisions to reform the engineers' occupational regulation regime.

Financial Implications

58. There are no financial implications from the proposal to release the consultation document on occupational regulation reforms in the building and construction sector.
59. There will be future financial implications if the proposals to improve the Licensed Building Practitioners regime are progressed. The Impact Analysis in the discussion document outlines these costs. Costs incurred will be recovered through fees paid by licensed building practitioners when applying for and maintaining their licences.
60. There may be some financial implications with the development and implementation of the codes of ethics for the Plumbers, Gasfitters and Drainlayers regime and the Electrical Workers regime. These costs will be explored through further targeted consultation on the draft codes of ethics, once developed.

Legislative Implications

61. The proposal to introduce regulation making powers for the Plumbers, Gasfitters and Drainlayers and Electrical Workers codes of ethics and the proposal to remove the barrier for the Registrar to make a complaint under the electrical workers regime will require legislative amendments to the *Plumbers, Gasfitters, and Drainlayers Act 2006* and Part 10 of the *Electricity Act 1992*.

62. These proposals could be progressed through the Building and Construction Sector Occupational Regulation Bill, Confidential advice to Government
63. Secondary legislation under the *Building Act 2004* will need to be made and amended if the proposals in the consultation paper to improve the Licensed Building Practitioners regime are progressed.

Impact Analysis

Regulatory Impact Statement

Exemption for proposals regarding Electrical Workers regime and Plumbers, Gasfitters and Drainlayers regime

64. The Treasury's Regulatory Impact Analysis (RIA) team has determined that the proposals to introduce the power to set a code of ethics and remove the barrier to the Registrar making a complaint for the Plumbers, Gasfitters and Drainlayers regime and the Electrical Workers regime are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Exemption for proposals regarding Licensed Building Practitioners regime

65. The Treasury's RIA team has determined that the proposals for Licensed Building Practitioners regime's supervision and licensing areas are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it would substantively duplicate the discussion document. This exemption is granted on the condition that the discussion document includes the key features of an interim Regulatory Impact Statement. The Ministry of Business, Innovation and Employment (MBIE) has reviewed the discussion document and confirmed that it meets these requirements. A separate Regulatory Impact Statement will be completed at a later date to inform Cabinet's final decisions on this proposal once it returns from consultation.

Exemption for review of Registered Architects Act 2005

66. The Treasury has determined that Part 2 of the discussion document is outside of RIA requirements because it seeks stakeholder views on issues only.

Climate Implications of Policy Assessment

67. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to these proposals as the threshold for significance are not met.

Population Implications

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

Human Rights

69. The proposals are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, and any human rights implications resulting from a potential code of ethics will be assessed at a later stage once a draft code of ethics is developed and before it is introduced.

Consultation

70. The following agencies and Crown entities were consulted on the proposals in this paper: Accident Compensation Corporation, Department of Internal Affairs, Department of the Prime Minister and Cabinet, Ministry of Housing and Urban Development, Infrastructure Commission, Kāinga Ora, Ministry of Foreign Affairs and Trade, Ministry of Education, Ministry of Health, WorkSafe New Zealand, Te Puni Kōkiri, The Treasury, Ministry of Justice.

Communications

71. I intend to make a media statement to accompany the release of the consultation document, *Occupational regulation reforms in the building and construction sector* once Cabinet decisions have been made.
72. The consultation document will be made publicly available on MBIE's website and key stakeholders will be contacted to invite them to submit on the paper. The consultation period is expected to run from late February to early April 2023.

Proactive Release

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

Recommendations

The Minister for Building and Construction recommends that the Committee:

1. **note** that occupational regulation in the building and construction sector aims to protect the public from harm by ensuring services are performed with reasonable care and skill;
2. **note** that some of these regulatory regimes are no longer fit for purpose and work is already underway to address the most significant shortcomings and improve how the regulatory regimes operate;
3. **note** that in March 2022, Cabinet made decisions to establish a new occupational regulatory regime and regulator for professional engineers and engineering associates [DEV-22-MIN-0036; DEV-22-MIN-0037];
4. **note** that the decisions in recommendation 3 will be included in an Engineers Occupational Regulation Bill;

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

5. **note** that in April 2021, Cabinet made decisions to amend the *Building Act 2004* that will strengthen the Licensed Building Practitioners regime [DEV-21-MIN-0086];
6. **note** that in March 2021, Cabinet agreed to minor amendments to the *Plumbers, Gasfitters, and Drainlayers Act 2006* [DEV-21-MIN-0038];
7. **note** that the decisions in paragraphs 5 and 6 are included in the Building and Construction Occupational Regulation Bill, Confidential advice to Government
8. **note** that stakeholders are supportive of introducing a regulation-making power to enable a code of ethics to be set for the Plumbers, Gasfitters and Drainlayers regime and the Electrical Workers regime and removing the barrier to the Registrar of the Electrical Workers Registration Board from making a complaint;
9. **agree** to amend the *Plumbers, Gasfitters, and Drainlayers Act 2006* to empower the responsible Minister to prescribe a code of ethics through Order in Council;
10. **agree** to amend the *Plumbers, Gasfitters, and Drainlayers Act 2006* to add a breach of the prescribed code of ethics as a disciplinary offence;
11. **agree** to amend the *Electricity Act 1992* to empower the responsible Minister to prescribe a code of ethics through Order in Council;
12. **agree** to amend the *Electricity Act 1992* to add a breach of the prescribed code of ethics as a disciplinary offence;
13. **agree** to amend the *Electricity Act 1992* to remove the barrier to the Registrar of the Electrical Workers Registration Board being able to make a complaint under Part 11 of the Act;
14. **authorise** the Minister for Building and Construction to issue drafting instructions to Parliamentary Counsel Office to give effect to the policy proposals in recommendations 9 to 13 above;
15. **authorise** the Minister for Building and Construction to make decisions on minor and technical matters that arise during drafting, consistent with the policy decisions in this paper;
16. **note** that the Minister for Building and Construction intends to seek approval from the Cabinet Legislation Committee in 2023 for introduction of the Building and Construction Sector Occupational Regulation Bill;
17. **note** that the Building and Construction Sector Occupational Regulation Bill could be the legislative vehicle to make the legislative changes outlined in recommendations 9 to 13 above;
18. **agree** to release the attached consultation document titled *Occupational regulation reforms in the building and construction sector*, subject to minor editorial changes;

19. **note** that MBIE has carried out targeted engagement with key stakeholders to test the proposals and issues included in this consultation document;
20. **note** that stakeholders are broadly supportive of the proposals to strengthen the Licensed Building Practitioners regime included in the consultation document;
21. **note** that stakeholders are supportive of commencing a review of the *Registered Architects Act 2005* and seeking feedback on issues with the current regime through the consultation document;
22. **note** that the Minister for Building and Construction intends to report back to Cabinet on progress made in relation to matters requiring further consultation in 2023.

Authorised for lodgement

Hon Dr Megan Woods

Minister for Building and Construction