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Building Policy
Building System Performance
Ministry of Business, Innovation and Employment

Email: building@mbie.govt.nz

Kia ora koutou

RE OCCUPATION REGULATION REFORMS IN THE BUILDING AND CONSTRUCTION SECTOR

Thank you for the opportunity to provide feedback on the Ministry of Business, Innovation, and Employment's (MBIE) consultation document on *Occupational regulation reforms in the building and construction sector*.

Engineering New Zealand (formerly IPENZ) is New Zealand's professional home for engineers. We are New Zealand's strongest and most influential voice on engineering issues, with more than 24,000 members who want to help shape the public policy agenda and engineer better lives for New Zealanders.

In forming this submission, Engineering New Zealand consulted with the Electrical Workers Group (a technical group of Engineering New Zealand), the Registered Architects Board and the Electrical Engineers Association.

We also spoke with the MBIE team leading the consultation. Thank you for your engagement with us.

OUR POSITION

Engineering New Zealand has worked closely with MBIE on changes to the occupational regulation of engineers. Overall, we support occupational reforms and their aim of protecting the public from harm by ensuring services are performed with reasonable care and skill.

We are interested in the framing of MBIE's consultation document. In many instances the framing focuses on the individual's ability to ensure **quality outcomes**. It is our view that individuals have an important role to play in delivering quality outcomes, but they are not the only ones responsible for this. Quality outcomes are a product of all the component parts of the system working together (individuals, companies, regulators, etc), and not solely the product of an individual.

According to Cabinet Office Circular 99 CO (99) 6, Government intervention to regulate a trade or profession is focused on the need to **protect the public from harm**. Harm is caused by incompetent, reckless or dishonest practice of an occupation. Without doubt, poor quality outcomes can lead to a

range of harm, from economic harm to loss of life. However, this connection is not clear in the consultation document, and we are concerned that MBIE is focusing its endeavours to improve quality outcomes in the building system on the individual, without also focusing on the wider system the individual works within, and the role of that system to mitigate poor quality outcomes.

Occupational regulation, while important, is just one aspect of achieving quality outcomes in the building industry. Other factors such as quality assurance processes, regulations and standards, use of audits and current industry landscapes, contribute to shaping the quality of the work produced. MBIE may be able to improve some quality outcomes by implementing regulatory constraints through occupational regulation, however it is our view that many of the concerns raised in the document will not be addressed without wider reforms, some of which we understand are underway (for example the review of the building consent system).

In this submission, we highlight our concerns with the consultation document and respond to MBIE's consultation in two ways:

1. General comments on key points of the consultation document
2. Answering MBIE's questions in detail, as per the feedback form (**Appendix A**).

In Appendix A we do not answer every question posed by MBIE. Instead, we focus our feedback on the proposed introduction of a Code of Ethics for electrical workers and the planned review of the Registered Architects legislation.

Lack of evidential basis for regulatory intervention

As a final general comment, we are concerned with the lack of evidential basis to support the claims made in this consultation document. Throughout the document, statements such as "some LBPs are unintentionally/intentionally supervising incorrectly", "concerns have been raised that some practitioners are getting away with bad behaviour", and more, are made while omitting data to support the claims. Further, when discussing the Registered Architect's regime, MBIE alludes to possible harm caused by architects, without providing evidence to support the claims made. Following a conversation with the MBIE team, we understand the intent of this is to lead the responder to provide evidential information on harm caused so that it can understand the ongoing case for regulating the profession. We were unclear on this when we read through the consultation document.

OUR SUBMISSION

Background on the overlap between the chartered professional engineers, licensed building practitioners and electrical workers systems

The Electrical Workers Registration Board (EWRB), Licensed Building Practitioners (LBP) and Chartered Professional Engineers (CPEng) systems have several similar and overlapping functions. This means that Engineering New Zealand, as the Registration Authority for Chartered Professional Engineers, is interested in changes that affect EWRB and LBPs.

Licensed Building Practitioners

Under section 291 of the Building Act 2004, a CPEng is automatically treated as an LBP licensed in the design class (Area of Practice 3). We have previously raised concern with MBIE that the LBP Code of

Ethics is contradictory to Engineering New Zealand's Code of Ethical Conduct. Although complaints received by the LBP Board about CPEngS are referred to the Registration Authority for management (section 316 of the Building Act), we are still concerned by the inconsistent codes across the building sector.

Electrical Workers Registration Board

Under the Electricity Act 1992, a CPEng specialising in electrical engineering is a class of person who can provide electrical services under the Act. A qualified pathway to become an electrical engineer under EWRB is by being a CPEng. We have CPEngS who are registered with the EWRB.

We are unaware of provisions under the Electricity Act for complaints about CPEngS being referred to the Registration Authority. This being the case, should Government implement a Code of Ethics for those registered with the EWRB, CPEngS may potentially be held to account under two very different ethical frameworks. This is not ideal.

Below we expand on our concerns that MBIE is using the LBP Code of Ethics and expanding this across other regulatory systems.

We have significant concerns on proposals under Part 1B (electrical workers regime, and plumbers, gasfitters and drainlayers regime: scope of potential codes of ethics)

We are concerned about the use of the LBP Code of Ethics as a model for the electrical workers regime and the plumbers, gasfitters, and drainlayers regime. We previously raised our concerns with the LBP Code of Ethics as it includes several requirements that we believe are unwise and contradictory.

When the LBP Code of Ethics was released in 2021, Engineering New Zealand expressed concern the Code of Ethics was poorly considered. In particular, the LBP Code of Ethics includes a reference to being required to follow a client's instructions. We believe that this promotes a culture of blindly following instructions and puts LBPs in an untenable position if their clients instruct them to undertake activities that are against their professional judgement and/or a breach of the building code. We believe the LBP Code of Ethics focuses more on business development than ethical support.

This creates a tension between the codes, which were, and still are, discordant. We strongly advise MBIE to reconsider using the LBP code as a guiding or template document for the proposed Code of Ethics for the electrical workers regime and the plumbers, gasfitters, and drainlayers regime, which will undoubtedly create further dissonance for engineers.

The Engineering New Zealand Code of Ethical Conduct is based on professional competence, personal integrity, and social responsibility. CPEngS are subject to the Code and commit to it each year. The Code reminds engineers of their obligations as engineering professionals, and the responsibilities they have to others. There are some points of overlap between the Engineering New Zealand code and the LBP code. Notably, both codes emphasise the health and safety and environmental effects of engineering or building work, acting professionally, and maintaining confidentiality.

However, there are notable contradictions between the codes. The Engineering New Zealand Code of Ethical Conduct requires a CPEng to act in the public interest and to uphold the reputation of the engineering profession. The LBP code does not require this. The Engineering New Zealand code requires

engineers to report any breaches of the code by other members, while the LBP Code does not. This creates an unfavourable situation when engineers must decide which code to follow as both codes are, in our view, significantly different.

Other comments

We support a review of the Registered Architects Act

We support a review of the Registered Architects Act 2005. We understand the Registered Architects Board consider a review is warranted to address issues of overlap between the LBP and Registered Architects regimes. The Registered Architects Board is also requesting MBIE to review policy settings around a possible building and construction industry tribunal and a single registration entity for architects, LBPs (Design), architectural designers and architectural technicians that sets professional standards, makes registration assessments and decisions, administers public registers, and investigates complaints. We support a review of these points, as we understand unresolved policy work in this area has led to considerable points of ambiguity between the regimes.

The role of CPEngs in the LBP design class needs to be highlighted for transparency

We note that Part 1B of the consultation document predominantly refers to the architectural regime. However, we note that certain trade professionals can also be treated as licensed under the LBP scheme. Elements of restricted building work can be undertaken by qualified and registered trade professionals, who are under the jurisdiction of their Boards. This is especially the case for CPEngs as they are automatically treated as licensed under the LBP scheme but are under our jurisdiction. Any changes in the LBP regime will undoubtedly have implications for CPEngs, and we are concerned that engineers are being overlooked in this consultation.

CONCLUSION

Thank you for the opportunity to provide comment on MBIE's consultation document *occupational regulation reforms in the building and construction sector*. This consultation is important to engineers for the overlap between the CPEng, LBP and EWRB systems. Attached as an **Appendix** is our submission on those questions of relevance to the engineering profession.

Our most significant concerns with this consultation are two-fold, as outlined in this letter:

1. Focus of MBIE's occupational regulation work
2. Expanding the LBP Code of Ethics to the EWRB

If we can be of additional support, please do not hesitate to contact us.

Ngā mihi



Dr Richard Templer
Chief Executive

Appendix – Submission Form

MBIE would appreciate you providing some information about yourself. If you choose to provide information in the 'About you' section below it will be used to help MBIE understand the impact of our proposals on different occupational groups. Please note that all questions are optional. Any information you provide will be stored securely.

A. About you

Name:

Richard Templer

Email address:

Richard.Templer@engineeringnz.org

B. Are you happy for MBIE to contact you if we have questions about your submission?

Yes

No

C. What is the best way to describe your role/organisation? If you hold any licences, please list them below too.

Chief Executive of Engineering New Zealand FEngNZ

D. What is your age?

- Under 18
- 18-24
- 25-34
- 35-44
- 45-54
- 55-64
- 65+

E. What part of the country are you in?

- | | |
|--|---|
| <input type="checkbox"/> Northland | <input type="checkbox"/> Taranaki |
| <input type="checkbox"/> Auckland | <input type="checkbox"/> Manawatū-Whanganui |
| <input type="checkbox"/> Waikato | <input type="checkbox"/> Wellington |
| <input type="checkbox"/> Bay of Plenty | <input type="checkbox"/> Nelson- |
| <input type="checkbox"/> Gisborne | <input type="checkbox"/> Tasman |
| <input type="checkbox"/> Hawke's Bay | <input type="checkbox"/> Marlborough |
| <input type="checkbox"/> Otago | <input type="checkbox"/> West Coast |
| <input type="checkbox"/> Southland | <input type="checkbox"/> Canterbury |

Other (please state):

We represent engineers from all over New Zealand.

A. Are you making this submission on behalf of a business or organisation?

YES

No

If yes, please tell us the title of your company/organisation.

Engineering New Zealand

B. Privacy information

- The Privacy Act 2020 applies to submissions. Please tick the box if you do **not** wish your name or other personal information to be included in any information about submissions that MBIE may publish.
- MBIE may upload submissions or a summary of submissions received to MBIE's website at www.mbie.govt.nz. If you do **not** want your submission or a summary of your submission to be placed on our website, please tick the box and type an explanation below:

Part 1: Proposals for change

Part 1 of this document focusses on proposals for change within some of the occupational regulation regimes:

- 1A: supervision and licensing areas for the Licensed Building Practitioners regime
- 1B: the scope of a codes of ethics to be introduced for the Plumbers, Gasfitters and Drainlayers regime and the Electrical Workers regime.

Part 1A – removed

Part 1B

Electrical Workers regime, and Plumbers, Gasfitters and Drainlayers regime:

For this section, please refer to pages 25-32 of the consultation document.

MBIE proposes that a Code of Ethics be introduced for the Electrical Workers regime and Plumbers, Gasfitters and Drainlayers regime. This will provide a mechanism for regulators to manage poor conduct, promote public confidence and support licence holders to clearly understand the level of professional behaviour that is expected of them. The aim is to have a set of expectations that will be consistent for all practitioners across the building and construction sector, following the recent introduction of the LBP Code of Ethics.

11 A Do you think that the introduction of codes of ethics for plumbers, gasfitters and drainlayers will help to ensure that professionals are held accountable and improve the public's confidence in the respective regimes?

Yes

No

Please explain your answer.

We are supportive of the EWRB introducing a code of ethics, however we have significant concerns about the code proposed (as outlined in the cover letter of our submission).

11 B Do you think that the introduction of codes of ethics for electrical workers will help to ensure that professionals are held accountable and improve the public's confidence in the respective regimes?

Yes

No

Please explain your answer.

We believe that a good code of ethics would assist in holding professionals to account and can help improve public confidence in the regimes. However, as we raise in our cover letter, we strongly advise against using the LBP's code of ethics for this regime.

12. Do you agree that the professional expectations should be consistent across the building and construction sector?

Yes

No

Please explain your answer, in particular if there is anything specific to each profession that would need to be addressed in the code?

It is our view that professional expectations should be consistent across the building and construction sector.

If a code of ethics is enacted for this for the EWRB, it must be consistent with other existing code of conducts in the sector. Inconsistencies between code of conducts (as seen between the Engineering New Zealand Code of Ethical Conduct and the LBP Code of Ethics) will only result in confusion and inconsistencies across the sector. Further, if a code is enacted, it must favour public good and safety (as the aim of occupational regulation dictates), rather than favouring the interests of clients.

13. Do you agree with the proposed one-year timeframe for the introduction of the codes of ethics?

Yes, the transition period sounds appropriate.

No, it should be shorter.

No, it should be longer.

Please explain your answer.

Part 2: Issues MBIE would like feedback on

Part 2 of this document focusses on issues that MBIE would like to seek feedback and evidence on, to inform our understanding of the issues. This is work that is in early stages of the policy development process, and not yet ready to progress to options or proposals for change.

MBIE is seeking feedback and evidence on the following regimes and issues:

- 2A: Registered Architects regime: Review of the *Registered Architects Act 2005* to determine if it is still fit for purpose.
- 2B: Licensed Building Practitioners regime: Review of the competencies and minimum standards for entry that must be met to be licensed.

Following public consultation and consideration of the submissions, MBIE will undertake further policy work and develop options for consultation next year, if appropriate. Your feedback will inform

Part 2A Review of Registered Architects Act

For this section, please refer to pages 32-40 of the consultation document.

MBIE is undertaking a review of the registered architects regime to determine whether the current regime has achieved the benefits that were originally intended and has resulted in the effective and efficient regulation of architects.

We are now seeking your feedback on the extent of the issues MBIE has identified with the regime and your views on whether the regime has achieved the following outcomes:

- increased the overall competency of architects
- improved confidence in the building industry by increasing the credibility of those undertaking design work as architects
- resulted in higher standards of those providing design services in the building industry.

Outcome 1: Increase in the overall competency of architects

14. Is there a difference in the quality of a registered architect's design work compared to other design professionals, such as design LBPs?

Yes

No

Please explain your answer.

We are unclear on the intent of this question. Individuals eligible to be a Registered Architect (those with a Bachelor and/or Master's degree and experience) have a higher level of training compared to other design professionals. Their scope of practice is larger. While their work in the residential sector may, at times, be like that of other designers, their scope of practice is more extensive and their core assessed competency higher.

Outcome 2: Increased confidence in the building industry by increasing the credibility of those undertaking design work as architects.

15. How have registered architects increased credibility in the building industry?

Please choose one of the four options below, providing feedback on whether architects have increased credibility in the building industry:

- Option one: registered architects provide a high level of confidence within the building industry through the quality of their work.
- Option two: registered architects provide some level of confidence within the building industry through the quality of their work.
- Option three: registered architects do not provide any confidence within the building industry through their work.
- Option four: Not sure about how registered architects contributed to increased credibility in the building industry.

Please explain your answer.

It is our view that this is the wrong question and is subjective. The goal of professional regulation is public safety. The system must ensure it can either remove or sanction individuals who are acting without appropriate care and skill. The public's view on the profession is irrelevant to the public safety outcome sought.

Outcome 3: Higher standards in the building and design industry

16. What are the potential risks of harm that could arise from an architect's role in the building process? Do you have any evidence of public harm that has been caused by architects?

Please explain your answer.

Like other design professionals, architects can cause harm through defective building work, building failures and different types of loss, such as physical injury or economic loss, such as loss of income.

17. How well do you think the current occupation regulation regime is at holding architects to account?

Very Good

Good, but needs some improvements

Not good, needs significant improvement

Other

Please explain your answer:

Please see above for our comments on the overlap of the LPB (designer) class and the Registered Architects system and our support for a review of the Registered Architects regime.

18. Is continuing occupational regulation justified for the architectural profession in New Zealand?

Yes

No

Please explain your answer.:

We support ongoing occupational regulation for architects, as per the position of the Registered Architects Board.

Part 2B

Competencies in the Licensed Building Practitioners regime

Background

For this section, please refer to pages 41-43 of the consultation document.

MBIE would like feedback and suggestions for improving areas of practice competencies that LBPs must meet to be licensed. This includes setting the current competencies at a higher level, or adding new areas to the competencies. Improving the competencies will bring the competencies in line with the demands of the present-day sector.

19. How can the current competencies be improved to set them at a higher level? What specifically can you point to that needs to be improved?

-

20. Are there any new areas that should be added to the competencies? These may be general across all classes or may be specific to a certain class.

-

MBIE would also like feedback on the interaction between the Design LBP class and the Registered Architects regime. MBIE is aware that some see the Design LBP class as a lower threshold compared to the Registered Architects regime and that there is a perception that the quality of work produced by some Design LBPs is of a low standard.

MBIE would like feedback on the interaction between the two regimes, whether any competencies should be added to the Design class, and what can be done to align the two regimes and close any regulatory gaps.

21. Do you agree with our assessment of the interaction between the Design class and the Registered Architects regime?

Yes

No

Could you recommend any improvements to the competencies in the Design class? Do you believe that the two should be more closely aligned and, if so, how?

We support MBIE's review of the competency requirements for entry to the LBP design class but defer to the Registered Architects Board for their expertise in this matter.

Part 3: Next steps

PROCESS AND TIMEFRAMES

Thank you for taking the time to read and respond to the questions in this paper. MBIE will analyse the submissions received and will report back to the Minister for Building and Construction in mid-2023. A summary of submissions will be released publicly on MBIE's website.

For the work covered in Part 1, MBIE will begin finalising the proposals based on the feedback received, including seeking final Cabinet policy decisions by potentially late-2023.

For the work covered in Part 2, your submissions will be used to determine a series of potential options for improvements to the respective regimes. MBIE intends to seek feedback on these options in 2024 through public consultation.

12. There will be further targeted consultation on the design and implementation of the proposals contained in Part 1 of the document before they are implemented. Would you like to be involved in this?

Yes

No

If so, please indicate which area(s) you would like to be consulted on

All proposals.