

# Occupational regulation

## Occupational regulation aims to protect the public from harm by ensuring services are performed with reasonable care and skill.

Six types of jobs in the building process are currently regulated: architects, electrical workers, engineering associates, engineers, building practitioners, and plumbers, gasfitters and drainlayers.

The licensed or registered members of these occupations make up about 64,000 of the estimated 241,700 people working in the building and construction sector. The remainder are still carrying out work that is regulated under the *Building Act* and general business law, and may be working under the supervision of someone who is licensed or registered.

Occupational regulation should ensure that:

- regulation is proportionate to the risks to public safety
- practitioners who are registered or licensed are appropriately skilled and productive
- practitioners are held to account for carrying out substandard work.

The occupational regulatory system doesn't capture all work in the building process that poses significant risk of harm to building users in the event of a building failure. Risks of harm can arise from the complexity of the building or the type of people who use it.

It is not always clear that people authorised to carry out restricted work have the necessary competence to do this work. There are also challenges holding people to account for substandard work or poor conduct.

### Three occupational regulation schemes have the most pressing need for change:

- Licensed building practitioners
- Engineers
- Plumbers, gasfitters and drainlayers.

**'Registration'** is where a regulatory body sets a standard for practitioners to be on a public register and provides exclusive right to use a title.

**'Licensing'** is where it's unlawful to carry out a specified range of work without first having obtained a licence, which confirms that the licence holder meets prescribed standards of competence.



# Licensed building practitioners

## MBIE wants your feedback on two sets of proposals

1

Broaden the definition of restricted building work to include more complex non-residential work.

2

Higher competence requirements to increase confidence in the LBP scheme.

### 1. Broaden the definition of restricted building work to include more complex non-residential work

#### Proposal



Broaden the definition of restricted building work (RBW) to include all residential and more complex non-residential building work. It would include:

- all residential building work, including simple houses and mixed use residential/commercial buildings and apartments
- commercial and communal buildings currently defined as importance level 3 and above, and importance level 2 buildings with a height of 12 metres or more or capacity over 200 persons. Building importance levels are determined by risk to human life, the environment, economic cost and other risk factors in relation to its use.<sup>1</sup>

The Licensed Building Practitioner (LBP) scheme protects building users from harm by ensuring that those carrying out or supervising work that is critical to the safety of the building are skilled and competent, that work is done right the first time, and that builders are held to account for substandard work or poor conduct.

Builders carrying out or supervising structural, weathertightness, or fire safety design work on commercial, mixed use buildings or high-rise apartments aren't regulated by the LBP scheme and do not have to complete a competency assessment to show they have the right skills and knowledge.

**The rates of inspection failure highlight that commercial building work risk management practices are no better than those for residential building work. One third of commercial building inspections fail.<sup>2</sup>**

The proposed changes to the LBP scheme will more proportionately manage risks to life safety and make sure that New Zealand's building sector is competent and productive.

- **High-rise buildings** are more complex to build than simple houses and present higher risk of things going wrong in the building process. The impact of building failure is often much greater due to the higher number of potential building occupants.
- **Importance level 3** buildings include educational, day care and health care facilities. These buildings pose greater risks to building occupants in the event of building failure because they may house large numbers of people or vulnerable occupants (e.g. older people, children and people who are disabled or have poor health).

1 See Clause A of the Building Code: [www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM4417717](http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM4417717)

2 Data based on a small sample of building consent authorities.

## How it would work



Increasing the coverage of the scheme means that more people will need to become an LBP or be supervised by one to do restricted work. People seeking to become a LBP will need to demonstrate they have the necessary skills and competence to do the work.

Developers, building owners and building consent authorities (BCAs) will have more assurance that the work has been carried out or supervised by technically competent building practitioners with reasonable care and skill, and that the practitioners will be held to account for poor quality building work or poor conduct.

There will be a transition period to introduce the expanded definition of RBW. MBIE proposes a two year timeframe to introduce the expansion of RBW. The forecasted increase in building activity combined with a broader definition of RBW will increase demand on the existing pool of LBPs – MBIE's estimate is between 8,000 and 12,000.

## Tell us what you think



What are your views on the proposed expanded definition of RBW and its effectiveness for managing risk to public safety and protecting vulnerable owners and occupants?

Do you agree with the proposed threshold for the definition of RBW?

What do you think are the impacts of the proposed expansion of RBW on builders, building companies, building owners and occupants?

## 2. Higher competence requirements to increase confidence in the LBP scheme

### Proposal



Raise the competence standard for LBPs to enter and remain in the LBP scheme. This includes proposals to:

- Raise the technical competence standard for LBPs
- Introduce a tiered licensing system for LBPs to establish a progression pathway, including a specific licence for supervision
- Simplify the licence class categories
- Introduce behavioural competence requirements for LBPs, including a fit and proper person requirement and a Code of Ethics
- Reduce the frequency of licensing renewal.

MBIE proposes to raise the competence standards required of LBPs in response to stakeholder concerns that the current standards are too low. We want to ensure that those who are licensed to undertake RBW have the right level of competence and are held accountable for substandard work.

Higher technical competence and new behavioural competence requirements would provide confidence for developers, building owners and BCAs that the practitioner not only has the technical skills for the job, but can also be expected to perform their job with integrity. Currently, the LBP scheme does not have the full range of tools it needs to hold LBPs to account.

Licence classes need to be changed to address supervision and site management issues. Currently, an LBP can supervise without any supervision experience or training. Supervision of unlicensed builders is not working well and the licence classes do not recognise that different skills are required for supervision. The licence classes overall do not clearly signal areas and levels of competence to others in the system and are overly complex, so builders are required to get multiple licences.

**Of the six occupational groups in the building sector that are regulated, all but the LBP scheme have a code of ethics or a fit and proper person requirement for registration or membership.**

## Tell us what you think



What are your views on the proposals to raise technical competence standards and introduce behavioural competence standards, and what you think the impacts on the building sector are?

What do you think about the proposed supervision licence and proposed redesign of the licence classes?

# Engineers

## MBIE wants your feedback on two sets of proposals for the occupational regulation of engineers

1

Establish a new voluntary certification scheme for all engineers.

2

Restrict who can carry out or supervise safety-critical engineering work within the building sector and establish a new licensing scheme.

### 1. Establish a new voluntary certification scheme for all engineers



#### Proposal

Establish a new voluntary certification scheme that provides assurance of an engineer's professionalism and general competence and phase out the Chartered Professional Engineers scheme.

The Chartered Professional Engineers (CPEng) scheme is a voluntary statutory certification scheme that provides assurance of an engineer's professionalism and general competence to solve complex engineering problems. It provides a means to hold people to account for engineering work on buildings that do not require specialised skills. Certification also fulfils the statutory requirements of regulatory regimes outside of the building sector that require competent engineers to carry out specific tasks.

CPEng in its current form does not serve its purpose. Many BCAs do not consider CPEng to be a reliable mark of competence as the assessment process is largely self-driven by the engineer applying for CPEng. Many engineers also choose not to obtain CPEng as it is considered too onerous in terms of time and effort for a generic title.

**There are around 3,600 CPEng, but at least twice as many engineers practising and capable of obtaining CPEng.**

A new voluntary certification scheme would have a clearer purpose, streamlined assessment process and stronger sanctions for engineers acting unethically or doing substandard work. The body administering the scheme would be directly accountable to the Minister for Building and Construction, and be required to report on performance against expectations set by the Minister.

There will be a transition period to establish a new certification and licensing regime. MBIE proposes that Engineering New Zealand would continue to administer the CPEng regime during this period. Engineers with a current CPEng would transition to the new regime once it is fully established and rules for certification are in place.

## Tell us what you think



Do you agree that there is a need for a statutory mark for engineers of professionalism and general competence to solve complex problems?

How well do you think CPEng currently provides this assurance? What do you think needs to change?

Do you agree that a new title is needed for engineers that have been certified? If so, do you have a view on what that title should be?

For engineering work on buildings that does not require specialised skills, do you think certification would provide sufficient assurance of general competence and reduce the risks of substandard work?

## 2. Restrict who can carry out or supervise safety-critical work within the building sector and establish a new licensing scheme



### Proposals

Restrict who can carry out or supervise safety-critical structural, geotechnical and fire safety engineering work in the building sector. This would cover all medium-to-high complexity work and be triggered by factors such as building size, use and location.

Establish a new licensing scheme to regulate who can carry out or supervise engineering work that has been restricted.

Many engineers carry out or supervise engineering work on buildings that requires technical competence in a specialised field. This includes structural, geotechnical and fire safety engineering work that ensures buildings are safe and durable, and that people have time to evacuate in the event of an emergency.

The Canterbury Earthquakes Royal Commission found that there should be greater assurance that complex buildings are adequately designed to minimise the risk of building failure and consequent loss of life. People engaging engineers to undertake specialised engineering work on buildings need assurance, over and above what is provided through a mark of general competency, of who has the technical competence to do the work.

There are currently no restrictions on who can carry out or supervise engineering work on buildings, other than what is restricted under the LBP scheme. The LBP scheme was not intended to regulate complex engineering work and excludes work on non-residential buildings and apartments that are over 10 metres high.

The proposals provide strong incentives for licensed engineers to carry out work in a satisfactory way to avoid losing their licence and therefore their ability to carry out or supervise engineering work that has been restricted.

Developers, building owners and BCAs will have greater assurance that engineering work on complex buildings has been carried out or supervised by technically competent engineers with reasonable care and skill. Risks of substandard work will be reduced through assurance that engineers working outside of their competence, and/or carrying out or supervising substandard work will be held to account.

**Even if someone has their CPEng cancelled because of negligence or incompetence, there is no legal restriction on their ability to practice, other than design work that is restricted under the LBP scheme.**

## How it would work



The *Building Act* would be amended to enable certain engineering work to be restricted and allow 'restricted engineering work' to be defined by regulations. This would allow flexibility to adjust the definition as required over time.

MBIE proposes that the restrictions be based on building size, use and the ground conditions. These are the most significant factors determining the complexity of the engineering work and present greater risks to public safety in the event of a building failure.

The definition would be set through a separate regulatory process. The definition would be a simple, clearly defined and objective test that would not require interpretation. The aim would be to set the threshold at a level that includes work that poses risks to public safety, while not imposing unnecessary costs on more straightforward building projects.

## Tell us what you think



Do you agree that life safety should be the primary focus to determine what engineering work is restricted?

What combination of the following factors should be used to determine what engineering work is restricted: building size; building use; ground conditions; other?

In your opinion, does geotechnical, structural and fire safety engineering work pose the greatest life safety in the building sector? Do you think there are other engineering specialities that pose greater life-safety risks in the building sector that are not included here?

Do you agree that engineers should satisfy the requirements for certification before they could be assessed for licensing?

What impact do you think the restrictions and licensing would have on the number of engineers who can carry out or supervise engineering work on buildings that require technical competence in a specialised field? Do you feel that there are enough engineers with the necessary technical competence to meet any new demand?

What impact do you think the restrictions and licensing would have on the cost of engaging an engineer?

How effective do you think the proposed restrictions and licensing would be in reducing the risks to public safety from substandard engineering work?

# Plumbers, gasfitters and drainlayers

## MBIE wants your feedback on two proposals

1

Repeal sanitary plumbing exemptions for householders in specified areas and for rural districts.

2

Repeal exemptions for restricted sanitary plumbing, gasfitting and drainlaying work under supervision.

### Proposals

The first proposal would ensure that householders are not exposed to hazards from substandard work that they have carried out themselves.

The second proposal would close gaps in regulation and reduce unfair situations where some tradespeople benefit from regulatory exemptions while others are bound by them.

These exemptions create gaps in the regulatory system that increase the likelihood that work completed does not meet the requirements of the Building Code. This poses a risk to public health and safety.

### How it would work



Householders would no longer be able to do work that is normally restricted. This work would be consistently completed by a tradesperson who is registered and accountable for their work.

Anyone previously working under a supervision exemption would not be made worse off because they would be deemed to be registered. They would be able to apply for a licence before the exemptions are repealed to allow a smooth transition for tradespeople. This would ensure that anyone who intends to continue working, can do so.

All those who transition to the new licence would have access to opportunities for training and professional development to develop their competencies. They would also face the accountability requirements for doing substandard work or for poor conduct. Fees to renew licences would continue, as would disciplinary levies.

For more tradespeople in the sector, it would mean that there are fairer and more consistent levels of regulatory oversight that is proportionate to the risks to public health and safety.

**Currently, 2,100 people hold around 2,700 exemptions for sanitary plumbing, gasfitting and drainlaying. This represents nearly one third of the total plumbing, gasfitting and drainlaying sector.**

## Tell us what you think



Have you encountered instances of hazards or health issues from sanitary plumbing work completed by unlicensed people?

Do you think that a person should be qualified to do sanitary plumbing work on your property?

How often do you find substandard work carried out under a supervision exemption?

What benefits (if any) do you see from regulating people who are currently exempted if they work under supervision?

What potential issues (if any) do you see from removing the exemptions for doing restricted work under supervision?

Do you support allowing people currently working under supervision exemptions to continue working as a regulated person under a new registration and licence?



**Submissions close  
on 16 June 2019**



## Have your say

Find out more about the occupational regulation proposals and have your say at:

[www.MBIE.govt.nz/building-reform](http://www.MBIE.govt.nz/building-reform)