



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

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Cabinet Economic Development Committee

Minute of Decision

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Establishing a New Occupational Regulatory Regime for Professional Engineers (Paper 1)

Portfolio **Building and Construction**

On 16 March 2022, the Cabinet Economic Development Committee (DEV):

Background

- 1 **noted** that occupational regulation aims to protect the public from the risks of incompetent or reckless engineering work;
 - 2 **noted** that the regulatory regime for engineers in New Zealand is not fit-for-purpose and risks significant harm to life, health, property, economic interests, the public welfare or the environment;
 - 3 **noted** that in May 2021, DEV agreed to publicly consult on a proposed two-tiered regulatory regime that would:
 - 3.1 introduce a mandatory registration requirement for all persons providing professional engineering services;
 - 3.2 restrict practise in high risk engineering disciplines to persons holding a licence;
 - 3.3 establish a new two-tiered regulator to oversee the regime;
- [DEV-21- MIN-0087]
- 4 **noted** that 250 submissions were received on proposals, the majority supporting the proposed changes;
 - 5 **agreed** to establish a new occupational regulatory regime for persons providing professional engineering services, featuring mandatory registration, licensing where there is a need to demonstrate competency, and a new regulatory board;

Registration

- 6 **noted** that mandatory registration would lift the professionalism of the engineering profession and provide an avenue for substandard performance to be addressed;
- 7 **noted** that the majority of submitters supported mandatory registration for all professional engineers, regardless of discipline;

- 8 **agreed** that any person who provides professional engineering services must be registered;
- 9 **agreed** that only persons entered onto the register may call themselves a registered engineer or a similar term developed during the drafting process;
- 10 **agreed** that the purpose of the register will include enabling members of the public to:
- 10.1 determine whether a person is registered;
 - 10.2 determine if a person is licensed;
 - 10.3 view the status and relevant history of a person's registration or licence, including whether a person has been disciplined under the proposed Act (the Act) in the past three years;
- 11 **agreed** that some engineering services may be excluded from the requirement to be registered, such as when those services are prescriptive or are routine in nature;
- 12 **agreed** that the Engineers Registration Board (the Board) will set rules for eligibility for entry onto the register;
- 13 **agreed** that the Board must consult with any relevant Minister, any relevant professional body, and the public when developing rules for eligibility;
- 14 **agreed** that the Board must also be satisfied that the Minister agrees with the rules for eligibility before approving them;

Conditions of registration

- 15 **agreed** that all persons entered onto the register will be subject to a code of minimum standards of ethical conduct;
- 16 **agreed** that a code of minimum standards of ethical conduct will be established by regulations;
- 17 **noted** that continuing professional development helps ensure registered engineers maintain and improve their competence;
- 18 **agreed** that that the Board may set requirements for continuing professional development through rules;
- 19 **agreed** that the Board must consult with any relevant Minister, any relevant professional body, and the public when developing rules for continuing professional development;
- 20 **agreed** that initial and ongoing registration will require meeting any standards or requirements around professional development set by the Board through rules;
- 21 **agreed** that registered engineers must make an annual statement of compliance with the code of ethical conduct and with professional development obligations, if any;
- 22 **agreed** that failure to meet any standards or requirements without a reasonable excuse may result in the Board taking appropriate action, including deregistration or suspension;
- 23 **agreed** that there is an obligation on registered persons to notify the Registrar of any change in circumstances;

- 24 **agreed** that registered persons, or persons seeking registration, must provide the Registrar or Deputy Registrar with the required information, at the required times, or in the required manner, as set out in regulations;
- 25 **agreed** that the Board may carry out audits of a registered person's professional development records;

Engineers regulated under other regimes

- 26 **agreed** that the Act will provide for preventing overlap with other occupational regulatory regimes, such as under the civil aviation or maritime transport regimes;
- 27 **agreed** that the code of ethical conduct will apply to those persons recognised under other regulatory regimes;
- 28 **agreed** that the Board may waive fees or levies in full or in part for such engineers;

Overseas engineers

- 29 **noted** that there will be professional engineering services provided by engineers resident outside of New Zealand that are sufficiently specialised and that it would not be appropriate for them to be supervised by a New Zealand registered engineer;
- 30 **agreed** to establish a temporary registration class for engineers based outside of New Zealand, whereby registration is granted for an individual applicant for no more than three months, following application by an applicant and consideration and approval by the Board;
- 31 **agreed** that all engineers with temporary registration are subject to the code of ethical conduct for the duration of registration and may be subject to disciplinary action as a result of conduct during the period of temporary registration, but are not subject to any continuing professional development requirements;

Licensing of high risk engineering practice fields

- 32 **noted** that some engineering practice fields pose a higher risk to life, health, property, economic interests, the public welfare or the environment;
- 33 **noted** that in 2019, submitters expressed strong support for restricting who can offer engineering services in high risk practice fields;
- 34 **agreed** that licensing classes may be established that restrict who can provide specific professional engineering services to those that hold a licence;
- 35 **agreed** that the Minister for Building and Construction (the Minister) will recommend the designation of licence classes to be made by regulations;
- 36 **agreed** that the Minister must take certain matters into account when recommending the designation of a licence class to ensure that licensing is targeted at high-risk situations, and that these matters may include:
- 36.1 protecting the life, health, property, economic interests, the public welfare or the environment;
 - 36.2 promoting the competency of persons who do, or assist doing, the class of engineering work;

- 37 **agreed** that regulations specifying a licence class must contain at a minimum:
- 37.1 what engineering work is to be restricted;
 - 37.2 the frequency at which a licence must be renewed, being no more than every six years;
- 38 **agreed** that when developing a recommendation, the Minister must consult with:
- 38.1 any relevant Minister;
 - 38.2 any relevant professional body;
 - 38.3 the public;
- 39 **agreed** that the Board may develop rules that set out the standards of competence and the assessment process for licencing classes;
- 40 **agreed** that the Board may undertake audits of a licensed engineer's work to satisfy itself that the licensed engineer remains competent, in response to a complaint or at intervals the Board sees fit;

Disciplinary grounds and actions

- 41 **noted** that procedures for managing complaints and discipline need to be robust, fair, impartial and transparent to ensure that all parties have confidence in the regime;
- 42 **agreed** that registered engineers, including licensed engineers (as well as those who have been registered/licensed previously when conduct occurred) can be held to account for breaching minimum standards, based on grounds for discipline set out in the Act;
- 43 **agreed** that the Act will set out the grounds for disciplinary action, and that these are likely to include if the person:
- 43.1 has been convicted of an offence punishable by six months or more imprisonment and the offending reflects adversely on the person's fitness to be registered;
 - 43.2 has breached the code of ethical conduct for registered people;
 - 43.3 has provided false or misleading information under the Act or its regulations, including as part of becoming registered or licensed or as part of another person becoming registered or licensed;
- 44 **agreed** that the Board may take disciplinary action if any of the following grounds apply to registered and/or licensed people, in relation to restricted engineering work:
- 44.1 has carried out or supervised restricted engineering work negligently or incompetently, including in ways that create a risk to people or property;
 - 44.2 has carried out or supervised restricted engineering work that the person was not licensed or otherwise authorised to do, including breaching any licence conditions;
 - 44.3 has held themselves out as being licensed to do restricted work that they were not licensed or otherwise authorised to do;

- 45 **agreed** that the actions the Board may take, if it finds ground/s for discipline apply, may include one or more of:
- 45.1 cancel a person's licence and/or registration and order that person may not re-apply for a certain period;
 - 45.2 suspend a person's licence and/or registration for up to 12 months, and the Board may impose conditions that the person must meet;
 - 45.3 for restricted work, limit the scope of the work that the person is allowed to do;
 - 45.4 issue a formal censure (statement);
 - 45.5 require the person to undertake specified training;
 - 45.6 order that the person pay a fine of up to \$10,000;
- 46 **agreed** that if the Board is taking action relating to a licensed person they may also consider cancelling or suspending that person's registration at the same time;
- 47 **agreed** that the Board may take disciplinary action whether or not the person is still registered or licensed, and that any action is enforceable whether or not the person remains registered or licensed;

Offences

- 48 **agreed** that the Act will establish new criminal offences to protect titles from misuse and otherwise protect members of the public from serious risks as a result of unauthorised work;
- 49 **agreed** that it will be a criminal offence for any person other than a registered engineer or registered engineering associate to use a protected title in connection with their business, employment or profession or otherwise intend to cause another person to believe that the person is a registered engineer or registered engineering associate;
- 50 **agreed** that it will be a criminal offence to provide professional engineering services without being registered;
- 51 **agreed** that a person who commits the above offence is liable on conviction to a fine of up to \$10,000;
- 52 **agreed** that it will be a criminal offence to knowingly make a false or misleading statement under the Act or any regulations;
- 53 **agreed** that a person who commits the above offence is liable on conviction to a fine of up to \$20,000 for an individual or \$60,000 for a body corporate;
- 54 **agreed** that it will be a criminal offence for any person to carry out or supervise restricted engineering work if they are not licensed to carry out or supervise that type of restricted engineering work, or if doing so breaches their licence;
- 55 **agreed** that a person who commits the above offence is liable on conviction to a fine of up to \$50,000;
- 56 **agreed** that it will be a criminal offence for any person to knowingly engage another person to carry out or supervise restricted engineering work that that person is not licenced to carry out or supervise;

57 **agreed** that a person who commits the above offence is liable on conviction to a fine of up to \$50,000 for an individual or \$150,000 for a body corporate;

Engineering Associates Act 1961

58 **noted** that the number of Registered Engineering Associates has been steadily declining;

59 **agreed** to repeal the Engineering Associates Act 1961, subject to the advice of the Parliamentary Counsel Office;

60 **agreed** to establish a separate register for Registered Engineering Associates to be administered by the Board;

61 **agreed** that the Act provide for a fair transition for persons currently registered as Registered Engineering Associates to be registered on the new register;

62 **agreed** that the Board may set eligibility requirements for admission as a Registered Engineering Associate by way of rules;

63 **agreed** that the Board must consult with any relevant Minister, any relevant professional body, and the public when developing rules for eligibility;

64 **agreed** that conditions of registration or offenses that apply to registered engineers generally also apply to registered engineering associates, unless a different approach is appropriate;

65 **agreed** that only persons entered onto the Registered Engineering Associates register may call themselves Registered Engineering Associate or a similar term developed during the drafting process;

Transitional measures

66 **agreed** that the Act may include appropriate transitional measures, including:

66.1 retaining the Chartered Professional Engineers credential and scheme for an appropriate period after the new scheme comes into place, and then removing it;

66.2 transitioning persons who have demonstrated their eligibility for registration through other regimes, such as through the Chartered Professional Engineers regime, onto the register;

66.3 providing for applications for registration or licensing to be considered, processed and granted in such a way as to avoid the Registrar being inundated with applications while allowing applicants to provide engineering services;

66.4 providing for existing bodies to continue exercising functions for an appropriate period;

Funding of the regime

67 **agreed** that the ongoing costs of the regime be recovered from registered and licensed people, and others who receive services provided by the regime;

68 **agreed** that primary legislation provide authority to charge registered persons fees and levies to recover the costs of regulatory functions, and that fees and levies may be set by regulations;

Legislative implications

- 69 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 70 **agreed** that the Minister is authorised to further clarify and develop policy matters relating to the above paragraphs in a manner not inconsistent with the policy recommendations contained in the paper under DEV-22-SUB-0036.

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