



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.

In Confidence

Office of the Minister for Building and Construction

Cabinet Economic Development Committee

Establishing a new occupational regulator for professional engineers

Proposal

- 1 This paper seeks Cabinet's agreement to establish a new regulator of professional engineers, to oversee the regime proposed in the accompanying primary Cabinet paper *Establishing a new occupational regulatory regime for professional engineers* (Paper 1). It also seeks decisions on how the regulator will operate a complaints and disciplinary process.

Executive Summary

- 2 I propose a new occupational regulatory regime for engineers in the primary paper, *Establishing a new occupational regulatory regime for professional engineers* (Paper 1). If Cabinet agrees to the proposals in Paper 1, subsequent policy decisions are required to establish a new regulator to oversee this regime.
- 3 This paper seeks Cabinet's agreement to the overarching governance arrangements and institutional form of the new regulator, as well how day-to-day registration, licensing and disciplinary functions will be delivered under the Act.
- 4 I seek agreement to establish the Engineers Registration Board to oversee the new regime. The Board would set the minimum standards expected of registered and licensed engineers, in rules to be approved by the Minister for Building and Construction. Paper 1 sets out the matters to be contained in rules, and requirements for the Board to consult with the profession and other stakeholders. This process will ensure that obligations reflect and complement evolving best practice in engineering, so that the burden on engineers of continuing professional development aligns with the standards that New Zealand requires and expects of the profession.
- 5 Supporting the Board would be further new statutory functions:
 - 5.1 one or more Registrars to perform registration and licensing functions, including assessing applications and maintaining the registers
 - 5.2 a Complaints Officer to refer complaints to an investigator and prosecute investigated complaints at disciplinary hearings
 - 5.3 a Disciplinary Committee, established by the Board and approved by the Minister, to hear and determine complaints and impose sanctions, with appeals to the District Court.

- 6 As a default, the Chief Executive of the Ministry for Business, Innovation and Employment (MBIE) would be the Registrar and Complaints Officer. Other bodies may be designated by Order in Council to hold these functions. Criteria will be set in the Act to ensure that any designation to another body is in the interests of the regime and the public.
- 7 This flexibility would support the regime to be future-proof, including to adapt to evolving engineering disciplines and leverage resources and expertise held by public agencies and industry bodies that already work with engineers.
- 8 I anticipate that Engineering New Zealand, as the current Registration Authority under the *Chartered Professional Engineers of New Zealand Act 2002*, could be designated as a Registrar under the new regime. A further policy process will be required to designate this function to bodies other than MBIE.
- 9 The detailed policy proposals for the regulator, and complaints and discipline process, draw on comparable occupational regimes and advice from government agencies on best practice regulation.

Background

- 10 Paper 1, *Establishing a new occupational regulatory regime for professional engineers* seeks Cabinet's agreement to replace the voluntary regime under the *Chartered Professional Engineers of New Zealand Act 2002* (Chartered Professional Engineers Act) with requirements for all persons providing professional engineering services to be registered, and for those practicing in high risk fields to be licensed.
- 11 If Cabinet agrees to the proposals in Paper 1, subsequent decisions are required to establish a new regulator to deliver the new registration and licensing functions. A new complaints and discipline process is also required to enforce the minimum standards for registration and licensing.
- 12 Under the Chartered Professional Engineers Act the current regime is governed by:
 - 12.1 Engineering New Zealand (as Registration Authority)
 - 12.2 the statutory Chartered Professional Engineers Council, established to oversee the Registration Authority's performance. The Minister for Building and Construction must appoint at least half of CPEC members based on nominations from professional membership bodies¹.
- 13 Engineering New Zealand is an incorporated society with the objective of advancing engineering and New Zealand's engineering profession. As a professional membership body, its functions include representing the profession, contributing to good practice and supporting career development

¹ The CPEng Act requires the Minister for Building and Construction to appoint three members on nomination from Engineering New Zealand and one member nominated by the Association of Consulting Engineers of New Zealand.

(among others). Engineering New Zealand operates a self-regulatory professional regime for its members.

- 14 Engineering New Zealand is also the Registration Authority under the Chartered Professional Engineers Act. It sets out requirements for registration as a Chartered Professional Engineer, assesses if applications are eligible, and hears and decides on complaints against engineers.

Proposed governance arrangements for the new regulator

- 15 If Cabinet has agreed to expand the scope of engineers who must be registered and licensed in New Zealand then it is crucial that the regulator is set up with governance and accountability arrangements that will support public and professional confidence in the regime.
- 16 I propose that a new statutorily independent Engineers Registration Board (the Board) is established to set minimum standards for the profession. The Board would be accountable to the Minister for Building and Construction. MBIE would monitor the Board on behalf of the Minister and provide administrative support.
- 17 The *A3 Proposed structure for the occupational regulator of engineers* (Appendix One) shows how the Board would work with the Minister for Building and Construction and day-to-day functions, including one or more Registrars, a Disciplinary Committee and a Complaints Officer.

The Engineers Registration Board would govern the regime, supported by other statutory functions

- 18 The Board's key role would be to set the minimum standards expected of registered and licensed engineers. I propose that the Board must make rules prescribing:
- 18.1 minimum standards that must be met for registration
 - 18.2 minimum standards of competence (including standards relating to knowledge and skills) that must be met for each licensing class.
- 19 Paper 1 seeks Cabinet's agreement to the requirements that I propose the Board must follow when making rules, including consultation requirements to ensure rules are informed by the profession and other stakeholders.
- 20 Day-to-day functions would be delivered by other statutory roles, including one or more Registrars, a Complaints Officer and a Disciplinary Committee. These roles would be held by MBIE as a default, and could be designated to other public or private bodies by Order in Council.

- 21 The Board would oversee these functions. Throughout the paper I propose that the Board will:
- 21.1 monitor the performance of regulatory functions and report to the Minister for Building and Construction
 - 21.2 establish the Disciplinary Committee, subject to approval of the Minister for Building and Construction
 - 21.3 refer a potential disciplinary matter to the Complaints Officer for investigation where there is no complaint and it considers the grounds for discipline may have been met
 - 21.4 consider appeals of a Registrar's decisions
 - 21.5 consider appeals of decisions of the Complaints Officer.

An independent board supported by existing bodies is appropriate and supports efficiency

- 22 My officials engaged the Public Service Commission on the merit of other institutional forms, such as a Crown entity. A statutorily independent Board supported by other bodies is appropriate as the regulator needs a balance of independent leadership, accountability to Government and input from the profession to promote confidence in registered and licensed people and public safety.
- 23 Decisions that affect individuals must be seen to be independent of Ministerial influence as well as appropriately distanced from the profession. In this case, that outcome can be achieved through statutorily independent functions and does not require an independent Crown entity.
- 24 Providing for existing bodies to take on new functions, rather than creating a standalone body, will allow the regulator to leverage existing resources and expertise. I expect this will allow the regulator to deliver its functions to a higher standard while minimising the costs to registered and licensed people.

Existing governance bodies would not meet my objectives for the new regime

- 25 I have considered the potential to transfer the governance of the new regime to the Chartered Professional Engineers Council and/or Engineering New Zealand. A new Board is required because the governance arrangements under the Chartered Professional Engineers Act do not provide enough accountability, transparency and independence from the profession to inspire confidence from the public.
- 26 The current roles of the Chartered Professional Engineers Council and Engineering New Zealand allocate significant governance functions to members (or nominees) of professional membership bodies. This undermines trust that the regulator will hold the profession accountable for meeting minimum standards.

IN CONFIDENCE

- 27 Engineering New Zealand holds considerable expertise, resources and relationships with the profession that are useful in its role as a regulator. However, submitters, including the CTV Families Group, have shared concerns that Engineering New Zealand has a conflict of interest between its role as the Registration Authority for Chartered Professional Engineers and as a representative and advocate for its members, particularly when it comes to hearing complaints against members.
- 28 As Engineering New Zealand is a private body, the Minister for Building and Construction does not have any influence over Engineering New Zealand's Board. Engineering New Zealand is also not subject to the accountability measures that are usually expected of a regulator (such as the Official Information Act 1982 or the Ombudsmen Act 1975).

Proposals for Board appointments, composition and accountability

29 Table 1 sets out the key features I propose for the Board. These features draw on comparable occupational board models and on provisions of the *Crown Entities Act 2004* as they apply to Crown entities.

Table 1: proposed features of the Board

Appointment and removal of Board members	Minister for Building and Construction to appoint Chair of the Board, Deputy Chair and Board members. The Minister may appoint persons with the appropriate skills, knowledge and experience to assist the regulator to achieve its objectives and perform its functions. Appointments criteria will ensure the Board represents the interests of regulated people and the public. The Act will provide appropriate provisions for appointments, qualifications and terms based on sections 28 to 32, 34 and 35, and 41 of the Crown Entities Act 2004 or similar provisions. Section 37, or similar provisions, subject to the advice of the Parliamentary Counsel Office, of the Crown Entities Act will apply to removal of any Board member as though the Board were an autonomous Crown entity. This means that the Minister may remove a member for any reason the Minister believes justifies the removal, and must give notice with the reason for removal.
Composition	A minimum of six members, up to a maximum of eight members.
Expectations for performance	There must be an output agreement between the Minister for Building and Construction and the Board setting out the Minister's expectations for how functions will be delivered.
Performance and financial reporting	The Board must prepare an annual report to the Minister for Building and Construction, consistent with sections 150 to 156 of the Crown Entities Act 2004 or similar provisions.
Other accountability	Anyone exercising statutory functions under the new regime would be subject to the Official Information Act 1982 and Ombudsmen Act 1975. Board members would be protected from liabilities of the Board, and immune from civil liability – sections 120 and 121 of the Crown Entities Act, or similar provisions, would apply.

One or more Registrars would perform day-to-day registration and licensing

- 30 I propose that a Registrar of Engineers will:
- 30.1 maintain the Registers for Registered and Licensed Engineers, and Registered Engineering Associates, consistent with the purposes of those Registers
 - 30.2 receive, assess and decide on applications for registration and licensing
 - 30.3 collect fees and levies from registered and licensed people.

A Registrar would be the chief executive of MBIE, or designated by Order in Council

- 31 I propose the Act would provide for a Registrar to be:
- 31.1 As a default, the chief executive of MBIE, or
 - 31.2 Another public or private body designated by Order in Council, with the Order specifying responsibility for all, or some of the registration and licensing functions, delivered to all, or specified classes of, engineers.
- 32 Where functions are designated to another body, MBIE will no longer be the Registrar for those functions.
- 33 I have considered whether the Act should provide for MBIE to be the sole Registrar. MBIE performs the Registrar function for various occupational regimes, including in the building and construction sector. However, there are a range of public and private bodies with existing systems and relationships with the profession.
- 34 Flexibility in delivering registration and licensing functions would allow the Minister and Cabinet to determine when operational functions could be effectively and appropriately provided by a third party in place of MBIE, while governance functions remain with the independent Board.
- 35 I propose that the Act must provide criteria to be satisfied before a body may be designated as a Registrar by Order in Council, to ensure the Order is in the public interest and will support the regime to be delivered effectively. These criteria could include, for example, that the proposed body can demonstrate that it holds the necessary systems, resources and expertise to deliver registration and licensing functions.

Additional Registrars could be appointed to serve certain functions or people

- 36 I propose that there may be one, or more Registrars as a Registrar could be designated some, or all registration and licensing functions. The functions could also be designated in relation to either all engineers, or a specified class of engineers. For example, other regulators may be Registrars where they hold complementary functions, such as WorkSafe NZ with respect to the groups of engineers they current regulate.

- 37 There would be only one Registrar responsible for any one licence or registration at a time.

A Disciplinary Committee and a Complaints Officer would enforce minimum standards

- 38 Paper 1 seeks Cabinet's agreement to grounds for discipline of registered and licensed people, as well as sanctions that would be available to the regulator to address any breaches.
- 39 Managing complaints and discipline needs to be robust, fair, impartial and transparent to ensure that all parties have confidence in the regime. This includes registered and licensed people, those who raise complaints and those who trust in the regime to guarantee that minimum standards are met.
- 40 I propose that the complaints and disciplinary functions are delivered by:
- 40.1 a Disciplinary Committee as the key decision-maker
 - 40.2 a Complaints Officer triaging complaints and referring some for investigation
 - 40.3 an investigator reporting on whether the grounds for discipline may have been met.
- 41 I propose that the chief executive of MBIE is responsible for investigating and prosecuting criminal offences relating to occupational regulation of engineers.

A Disciplinary Committee would determine whether grounds for discipline are met

- 42 I propose that the key disciplinary decision-maker is a Disciplinary Committee established by the Board and approved by the Minister, to:
- 42.1 hear complaints and determine whether grounds for discipline have been met
 - 42.2 impose sanctions, where appropriate, as the Committee sees fit.
- 43 Following best practice, this Committee would separate the Board's governance of the regime from decisions that affect individuals. I propose that the Committee is chaired by a Board member, but may include any person with the necessary skills and expertise to perform the functions of the Committee. This approach should retain Board oversight and consistency, while allowing for the right expertise for the complaint at hand.
- 44 The Disciplinary Committee would consider complaints following an investigator's report that grounds for disciplinary action may have been met if the investigator reports that a complaint should be heard by the Committee, the Committee must hold a hearing to determine whether grounds for discipline have been met and whether any sanction should be imposed.

- 45 Appropriate provisions will be developed relating to membership of the Committee, procedure for holding hearings and receiving evidence, and hearing-related offences. These details will be developed in consultation with the Ministry of Justice and based on provisions of the Building Act 2004 where appropriate, or comparable occupational regimes.

Allocating complaints triage and investigation functions

- 46 I propose that the Complaints Officer is the Chief Executive of MBIE by default. MBIE is experienced in complaints investigations from its other statutory roles, including in the Licensed Building Practitioners, Electrical Workers and Immigration Advisors regimes.
- 47 I propose some flexibility to designate the Complaints Officer to an appropriate person or role in another appropriate and effective body, by Order in Council. This is consistent with the approach I have also proposed for the registration and licensing functions. The Act would set criteria to be satisfied before a person outside of MBIE is designated as Complaints Officer, to ensure that:
- 47.1 doing so supports the public interest, natural justice and accountability to the Board and Minister for Building and Construction
 - 47.2 the body has the resources and expertise to exercise the functions efficiently and effectively.
- 48 Engineering New Zealand considers it would be appropriate for it to operate the new complaints and disciplinary function in a similar way to how it currently considers complaints against Chartered Professional Engineers and Engineering New Zealand members.
- 49 There are issues to be worked through to determine whether designating the Complaints Officer function to Engineering New Zealand would support the criteria at paragraph 47. I have heard concerns that this arrangement would lead to a real or perceived conflict of interest for Engineering New Zealand.
- 50 Submitters to MBIE's May 2021 consultation generally agreed as responsibility for enforcing regulatory standards should be separate from other services to that profession. The Legislation Design and Advisory Committee has also advised caution around allocating investigative functions with intrusive powers to private bodies.

A Complaints Officer would receive and triage complaints

- 51 I propose that a Complaints Officer would hold functions to:
- 51.1 receive a complaint and decide whether it warrants investigation
 - 51.2 appoint an investigator to investigate the complaint
 - 51.3 prosecute an investigated complaint at a Disciplinary Committee hearing.

52 I propose that the Act provides for the circumstances in which the Complaints Officer could, after an initial assessment, decide to take no action where the complaint has not been made in good faith or otherwise does not justify a formal investigation and hearing. These circumstances could include, for example, that the complaint is frivolous or vexatious, minor or trivial. I propose that parties to a complaint may appeal the Complaints Officer's decision to the Board.

Role of investigators

53 As is the case in comparable regimes, I propose that an investigator would investigate complaints in order to report to the Disciplinary Committee with the outcome of the complaint and determination of whether it should be heard by the Committee.

54 I propose that an investigator may, by written notice, require any person to provide information necessary to further the investigation. 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.

55 I propose that the Act also provides appropriate powers for the investigator to obtain and execute a warrant to enter land, premises or vehicles for the purposes of investigating a complaint, where necessary for the investigation. The requirements in Part 4 of the Search and Surveillance Act 2012 will apply to the entry powers where appropriate and with any necessary modifications.

56 Provisions will be developed to ensure natural justice in the investigation, including that the investigator must inform the person complained against and give them a reasonable opportunity to be heard.

The Board could refer a matter to the Complaints Officer where there is no complaint

57 The Board may be aware of concerns with a person's fitness to be registered or licensed, without the Complaints Officer having received a complaint. There may be no willing complainant and the issue could come to the Board's attention by other means, such as through the media.

58 To ensure that these issues can be investigated where justified, I propose that the Board may 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 breached.

Information sharing

59 Regulating engineering work has connections to other statutory functions, for example those to do with safety of buildings, transport and the environment.

60 I propose 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.

Transitional arrangements

- 61 Paper 1 outlines how I propose to transition occupational regulation of engineers from the current Chartered Professional Engineers regime.
- 62 The Chartered Professional Engineers Act will need to remain in place until its replacement is operational, at which point it will be repealed. A number of other regimes rely on the current Act (such as dam engineers) and repealing the Act immediately would leave a significant regulatory gap that might endanger the public.
- 63 The Chartered Professional Engineers Act will continue to be administered by Engineering New Zealand and overseen by the Chartered Professional Engineers Council until it is wound up.
- 64 I note that the existing complaints and discipline process will need to remain so that a Chartered Professional Engineer can be held to account for historic substandard work or behaviour. Once the Act is repealed, the Board would be responsible for inquiring into complaints.
- 65 MBIE will work with the Ministry of Justice and Parliamentary Counsel Office to ensure that transitional provisions for the complaints process support natural justice for parties to a complaint.

Financial Implications

- 66 Paper 1 seeks agreement to recover the ongoing costs of the regime from registered and licensed people through fees and levies.
- 67 Paper 1 also describes the establishment costs for the new regime. I anticipate that the establishment costs may be met from the building levy, with any shortfalls subject to a future Budget bid following the passage of the bill.

Legislative Implications

- 68 I have sought a position on the 2022 Legislation Programme for a bill to reform the occupational regulation of engineers. The priority sought is Category Five: to be referred to a select committee in the year. This bill may proceed as an omnibus bill or cognate alongside other proposed reforms to occupational regulation. The aim of these bills will be to ensure people have confidence in engineers and regulated building practitioners, and their work.
- 69 The proposed Act would bind the Crown. This is consistent with other occupational regimes (such as under the Building Act 2004 and Plumbers, Gasfitters and Drainlayers Act 2006) and the Health and Safety at Work Act 2015. In the interests of public safety, professional engineers employed by the Crown, or contracted to provide services, must meet the same professional standards as their colleagues in the private sector.

Impact Analysis

Regulatory Impact Statement

- 70 A Regulatory Impact Statement has been prepared for the proposals to establish a new registration and licensing framework for engineers and is attached to Paper 1. Paper 1 reflects that the Panel considers that the information and analysis summarised in the Impact Statement is sufficient to meet the criteria necessary for Ministers to make informed decisions on the proposals in that paper.
- 71 The Regulatory Impact Statement does not assess options for the structure of the regulator as the cost drivers are expected to be consistent regardless of the form of the regulator.

Climate Implications of Policy Assessment

- 72 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

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

Human Rights

- 74 This paper has no implications under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. There are no gender or disability implications arising from this paper.

Consultation

- 75 The following agencies have been consulted on this paper: Accident Compensation Corporation, Civil Aviation Authority, Ministry of Housing and Urban Development, Department of Internal Affairs, Department of the Prime Minister and Cabinet, Maritime New Zealand, Ministry for the Environment, Ministry of Justice, Ministry of Transport, the Treasury, Parliamentary Counsel Office, Public Service Commission, Taumata Arowai, Waka Kotahi NZTA, Worksafe NZ.
- 76 Paper 1 discusses substantive comments from the Ministry of Transport on the scope of the proposed regime.

Communications

- 77 I will issue a media statement following Cabinet decisions.

Proactive Release

- 78 This Cabinet paper and associated minute will be published on MBIE's website within 30 days of final Cabinet decisions, subject to any necessary redactions.

Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** that the recommendations in paragraphs 2 to 35 are subject to Cabinet agreeing to establish a new occupational regulatory regime for professional engineers, sought through the primary Cabinet paper *Establishing a new occupational regulatory regime for professional engineers* (Paper 1);
- 2 **note** that if Cabinet agrees to the proposals in Paper 1, subsequent 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 **agree** to establish a new statutory Engineers Registration Board (the Board) with a minimum of six, and up to eight members;
- 4 **agree** 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.
 - 4.2 recognise any overseas qualification as part of setting minimum standards
 - 4.3 consider appeals of a Registrar's decision, and confirm, reverse or modify that decision or take any action that was available to the Registrar
 - 4.4 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
 - 4.5 establish the Disciplinary Committee, subject to the Minister's approval and/or other appropriate safeguards
 - 4.6 monitor the performance of regulatory functions in order to report to the Minister for Building and Construction

- 4.7 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 **note** that Paper 1 seeks Cabinet's agreement to requirements that the Board must follow when setting minimum standards in rules;
- 6 **agree** that Board members will be appointed by the Minister for Building and Construction, and 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 **agree** 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 **agree** that the Act will require there to be an output agreement between the Minister for Building and Construction 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, and
- 8.2 how the Board will oversee those functions to ensure they are being performed effectively;
- 9 **agree** 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 **agree** that the Board, Registrar, Complaints Officer, Disciplinary Committee and any other functions under the Act are subject to the Official Information Act 1982 and the Ombudsmen Act 1975 in the exercise of those functions;

Role of the Registrar/s

- 11 **agree** 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 **agree** that the Registrar is 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 **agree** 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 **agree** 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 **agree** that the Chief Executive of the Ministry for Business, Innovation and Employment is 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 **agree** 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 **agree** that the Disciplinary Committee is chaired by a Board member, and may be made up of Board members and non-Board members;
- 18 **agree** 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 **agree** that decisions of the Disciplinary Committee may be appealed in the District Court;
- 20 **agree** 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 **agree** 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;

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

- 22 **agree** 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 **agree** 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 **agree** 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 **agree** 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 **agree** 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 **agree** 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 **agree** 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 **agree** 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 **agree** that the Complaints Officer is:
- 30.1 the chief executive of the Ministry of Business, Innovation and Employment is the Complaints Officer, or
 - 30.2 an appropriate person or role within another public or private body designated by Order in Council;
- 31 **agree** 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 **agree** 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 **agree** 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 **invite** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the Cabinet decisions set out in this paper;
- 35 **agree** that the Minister is authorised to further clarify and develop policy matters relating to the proposals in this Cabinet paper in a manner not inconsistent with the policy recommendations contained in the paper.

Authorised for lodgement

Hon Poto Williams

Minister for Building and Construction

Appendices

Appendix One: A3 Proposed structure for the occupational regulator of engineers

Appendix: Proposed structure for the occupational regulator of engineers

