

# Occupational regulation reforms in the building and construction sector

February 2023





**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

## **Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful**

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

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## Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on this consultation document by 5pm on Thursday, 6 April 2023.

Your submission may respond to any or all parts of this consultation document. For example, you may wish to provide feedback on only the Licensed Building Practitioners proposals and registered architects review regarding design issues.

Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at MBIE's [Have Your Say page](#).

This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can have your say through the following methods:

- Completing a survey online via MBIE's [Have Your Say page](#).
- Filling out the feedback template attached and sending your submission to the e-mail or mailing details below.
- By sending your submission as a Microsoft Word document to [building@mbie.govt.nz](mailto:building@mbie.govt.nz).
- By mailing your submission to:

Occupational Regulation Reforms  
Building System Performance  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6140  
New Zealand

Please direct any questions that you have in relation to the submissions process to [building@mbie.govt.nz](mailto:building@mbie.govt.nz).

## Use of information

The information provided in submissions will be used to inform MBIE's policy development process and will inform advice to Ministers on the review of occupational regulation in the building and construction sector. MBIE may contact submitters directly if we require clarification of any matters in submissions.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

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# Executive Summary

The Ministry of Business, Innovation and Employment (MBIE) is progressing a series of changes to the wider building control system, called the Building System Reforms. These changes include a review of the building consent system, improving consumer protection, and making changes to occupational regulation in the sector.

Occupational regulation aims to protect the public from harm by ensuring services are performed with reasonable care and skill. There is a major risk that substandard work will lead to disastrous failures, harm to the public and destroy consumers' trust and confidence in the professions.

Six occupations are currently regulated in the building and construction sector: architects, electrical workers, engineering associates, engineers, building practitioners, and plumbers, gasfitters and drainlayers.

Some reforms are already well underway to address substandard work and shortcomings within the regimes, such as introducing a new regulatory regime for professional engineers and engineering associates and introducing a code of ethics for the Licensed Building Practitioners regime.

MBIE's work to reform occupational regulation reforms in the building and construction sector continues. Statutory reviews and previous consultations have identified some areas for improvement in the current regimes. An important aim of our reforms is making sure occupational regulation is fit for purpose and is moving towards a consistent approach across the sector where appropriate.

MBIE is now seeking feedback on the following regimes:

- Licensed Building Practitioners.
- Plumbers, Gasfitters and Drainlayers.
- Electrical Workers.
- Registered Architects.

This consultation document covers proposals that have already been developed and are now ready to test with the public. These proposals are outlined in Part 1 of this document and include proposed changes the licensing and supervision areas for the Licensed Building Practitioners regime and codes of ethics for the Plumbers, Gasfitters and Drainlayers and Electrical Workers regimes.

This consultation document also seeks feedback on other issues where proposals are yet to be developed. These issues are outlined in Part 2 of this document and include questions about how the Registered Architects regime can be improved, and how to improve the Licensed Building Practitioners regime's competencies and minimum standards for entry.

Our proposals would improve the public's confidence in the professions and strengthen the specific regimes. Your feedback on these proposals will help us ensure that the occupational regimes are workable, effective and efficient, and proportionate to the risks to public safety.

Questions are asked throughout the document and there is a collated list at the end. You are welcome to provide feedback only on the sections or questions that you consider relevant – for example, if you are a design professional interested in the Registered Architects review and Licensed Building Practitioners competencies, you could choose to only respond to the questions in those sections.

Submissions close at 5pm on Thursday, 6 April 2023.

# Minister's foreword



**MINISTER FOR BUILDING AND CONSTRUCTION**

**HON DR MEGAN WOODS**

The Government knows how important safe, healthy and affordable housing is for the wellbeing of New Zealanders. We also understand the importance of a productive building and construction sector that will help us to achieve our wellbeing and economic goals.

Occupational regulation of building and construction sector professionals is a key part of the building system and the Government is making reforms to the way building and construction sector professionals are regulated.

Consumers and regulators need to be able to rely on the work of building and construction professionals. Strong and appropriate regulation of the building and construction sector's professions leads to increased trust and confidence that practitioners are competent and their work will be free of defects or, if things do go wrong, they will take responsibility for putting it right.

This consultation document sets out a range of proposals across the Licensed Building Practitioners, Plumbers, Gasfitters and Drainlayers and Electrical Workers regimes. It also sets out some potential issues in the Registered Architects regime and the competencies that need to be met to become a licensed building practitioner, and asks what needs to be improved in these areas.

I encourage you to participate in this consultation process to ensure we get this reform process right. The building and construction sector has evolved significantly. The way houses are designed and built has changed, there is increasing specialisation in trades and the sector is adopting new innovations and technologies.

Your feedback will help shape the Government's view on the changes we need to make to ensure that occupational regulation in the building and construction sector is fit for purpose and delivers for all New Zealanders.

# Introduction

Occupational regulation is the primary tool used to manage practitioners in the building sector and make sure they are capable and operating safely.

**Occupational regulation is one part of a wider building control system**

The building control system is the regulatory regime for building in New Zealand. The purpose of the building control system is to provide assurance to building owners and users that buildings are well-made, safe, durable and healthy.

The building control system encompasses a number of critical elements that, together, aim to ensure building work is done right the first time. This includes quality building standards that are effectively monitored and enforced, a skilled and competent building workforce, informed and empowered consumers, and a strong building consent regime.

**The objective of occupational regulation is to protect the public from significant harm**

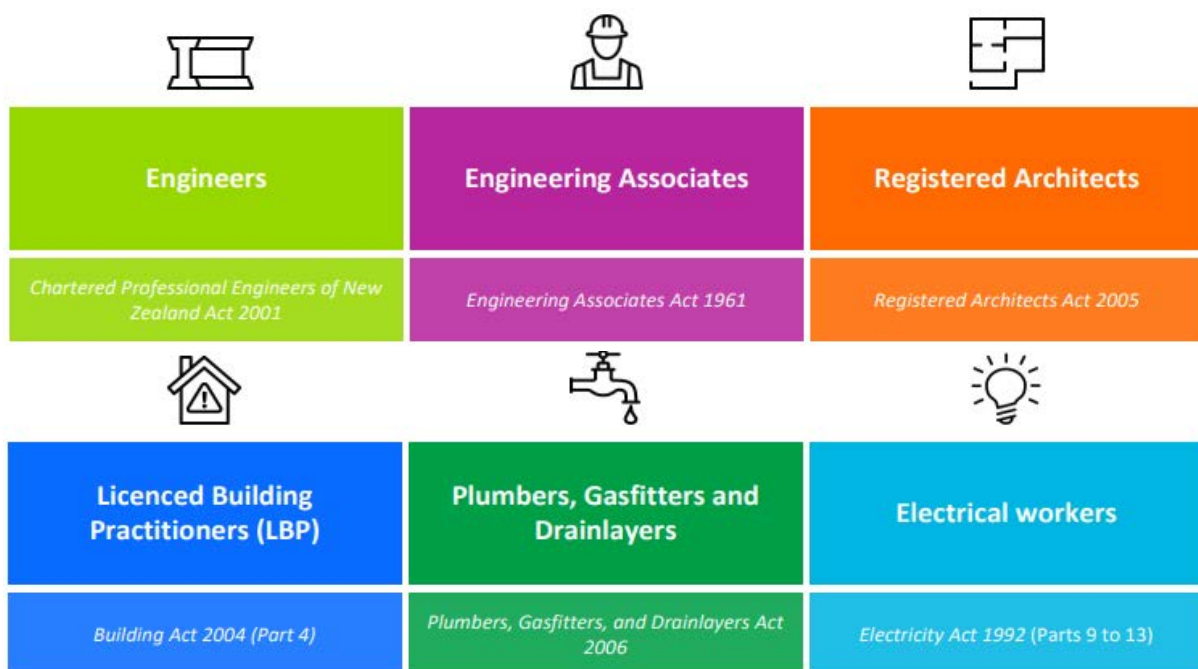
The key objective of occupational regulation is to protect the public from harm that is caused by negligent, reckless or dishonest practice.

A regulated occupation typically has restrictions on who can perform certain tasks, and a person usually needs to demonstrate their technical competence before they can enter a profession. Once admitted to a regulated profession, practitioners are required to maintain specified technical and professional standards.

Practitioners within a regulated occupation benefit from the increased professionalism and skillset of all members, as well as improved public trust and confidence.

**OCCUPATIONAL REGULATION IN THE BUILDING SECTOR**

The building and construction sector has six main occupational regulatory regimes:





## SCOPE OF CONSULTATION

This consultation document seeks feedback on the following occupational regimes:

- For **licensed building practitioners**, we are consulting on proposals for change regarding supervision and licensing, as well as seeking feedback on issues with competencies.
- For **plumbers, gasfitters and drainlayers** and **electrical workers**, we are consulting on the scope of codes of ethics so that poor behaviour can be addressed.
- For **registered architects**, MBIE is reviewing the *Registered Architects Act 2005* and is seeking feedback on a range of issues to determine if the regime is still fit for purpose.

Work continues to be progressed in response to the statutory reviews of the Plumbers, Gasfitters and Drainlayers, and Electrical Workers regimes. This work sits alongside, and supports, other key building system reforms, including a review of the building consent system and a review of consumer protection settings.

### **Recent reviews have highlighted opportunity for improvement**

Occupational regulatory regimes have been reviewed as part of the Building System Reforms to determine regulatory gaps and address issues to make these regimes more effective. The section below summarises key decisions to date and provides an update on the status of this work.

#### ***Plumbers, Gasfitters and Drainlayers regime and Electrical Workers regime***

Between 2019 and 2021, statutory reviews into the Plumbers, Gasfitters and Drainlayers regime and the Electrical Workers regime were carried out. While the reviews' findings highlighted that both regimes are fundamentally sound, the reviews identified opportunities for improvement. For example, regulatory barriers in the regimes have been identified, preventing regulatory boards from taking disciplinary action against licensed practitioners for misconduct.

In March 2021, Cabinet agreed to minor amendments to the *Plumbers, Gasfitters, and Drainlayers Act 2006*. The first series of amendments to that Act focused on clarifying definitions, improving Board processes, removing exemptions that currently allow unqualified people to do restricted work, and removing the barrier for the Registrar to make complaints.

#### ***Licensed Building Practitioners regime***

In April 2021, Cabinet approved consultation on proposals to improve the competency of licensed building practitioners. The consultation found that while the overall regime was operating well, there were some gaps that needed to be addressed. Proposals to address these gaps and issues for further feedback are discussed in this consultation document.

In May 2021, Cabinet also agreed to a package of proposals to strengthen the Licensed Building Practitioners regime. The Cabinet decisions included introducing a code of ethics, and improving the licensing administration processes and complaints and disciplinary processes.

#### ***Engineers and Engineering Associates***

In March 2022, Cabinet agreed to comprehensively reform how all professional engineers are regulated.

The new regime will replace the current voluntary Chartered Professional Engineers regime with mandatory registration for anyone providing engineering services and licensing to restrict who can practise in high-risk fields.

This reform will ensure that all engineers can be held to account for substandard work or behaviour, with governance arrangements that reflect best practice.

## **Registered Architects regime**

The *Registered Architects Act 2005* has not been reviewed since its commencement. Since then, the building and construction sector has undergone notable change and we want to ensure the regime is still fit for purpose to meet the requirements of today and the future.

Recent stakeholder feedback has revealed preliminary issues that warrant further exploration and testing with industry stakeholders.

## **WHAT OUTCOMES ARE MBIE SEEKING?**

The overarching objective of occupational regulation in the building and construction sector is to give people confidence in practitioners and their work, and to protect the public from harm that is caused by negligent, reckless or dishonest practice. This includes managing risk to the health and safety of the public, and the financial risks to consumers, if work is done poorly.

Stakeholders have also emphasised the need for consistency, where appropriate across each of the occupational regimes. In addition to occupational regulation’s overarching objective, there are four objectives MBIE is using to review the of the occupational regulation regimes in the building and construction sector.<sup>1</sup> These are:

Regulation is proportionate to the risks of public safety and wellbeing.	It is important that regulation is in proportion to the risks to public safety and wellbeing, including suitably addressing risks to the public, as well as meeting demand for change from all sides and being simple and cost-efficient to implement.
Practitioners are providing services with reasonable care and skill.	To protect the safety of Aotearoa, it is important that all professionals working in areas involving risk are working with a reasonable level of care and skill. Regulation is one way this can be managed.
Practitioners are operating within their areas and levels of expertise.	A good regulatory regime ensures that practitioners working in areas involving risk are operating at a suitable level of competence, and within their areas of competency.
Practitioners can be held to account for substandard work and poor behaviour.	It is important that regulation provides assurance to the public that practitioners are working within their competencies and can be held to account for substandard work and poor behaviour.

MBIE uses these four sub-objectives as criteria to assess how effective the current occupational regulation regimes are at achieving the overarching objective of improving confidence in the profession and protecting the public from harm from incompetent practitioners.

## **HOW THIS PAPER IS STRUCTURED**

To facilitate an efficient and timely approach to consultation, MBIE is seeking feedback on proposals and issues across different occupational regulation regimes in a single consultation document.

<sup>1</sup> The four objectives come from Cabinet’s [Policy Framework for Occupational Regulation: CO \(99\) 6](#). This framework is used whenever a new occupational regulation regime is established, and the four objectives are used to assess how well the current regimes are operating to achieve these aims.

**Part 1** covers areas where MBIE has already developed proposals and are ready to test them with the sector:

- Licensed Building Practitioners regime: changes to supervision and licensing areas
- Plumbers, Gasfitters and Drainlayers regime and Electrical Workers regime: the scope of codes of ethics.

These proposals are prioritised for change because they are consistent with good practice and other reforms in the sector, and have been developed through previous consultation. Other issues, such as those raised during the statutory reviews of the regimes, will be part of further policy work and consultation if appropriate.

**Part 2** covers areas where MBIE would like to seek early feedback:

- Licensed Building Practitioners regime: improving the regime's competencies and minimum standards for entry
- Registered Architects regime: review of the Registered Architects Act and preliminary issues.

You are welcome to provide feedback on the areas that are of interest and relevant to you, and do not have to provide feedback on every question in the consultation document. For example, if you are a design professional interested in the Licensed Building Practitioners regime competencies and Registered Architects regime, you may choose to only provide feedback on those two areas.

## **NEXT STEPS AND PROCESS**

The submissions received will help inform the next stage of MBIE's reforms of the occupational regulatory regimes, some of which are ready to have its changes tabled before Cabinet.

MBIE intends to release a report of the findings from the consultation and a summary of submissions on its website in mid-2023.

# 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.

The questions in Part 1 seek feedback on whether these proposals should progress and how these proposals could work in practice.

The submissions received will be used to confirm the proposals before seeking Cabinet policy decisions to progress these changes and implementing any decisions.

## *Part 1A*

# Licensed Building Practitioners regime: Proposals for change

## Background

The Licensed Building Practitioners (LBP) regime was introduced in 2007 as a response to the failures in New Zealand's building system that led to the leaky homes crisis. However, since then, there has been no significant change to the regime. MBIE is aware that some stakeholders believe that the LBP regime may not have kept up with the changing face of the building sector.

To date, MBIE has consulted three times on the LBP regime:

- In 2018, MBIE consulted on whether to add a new licence class for stonemasonry to the regime.
- In 2019, MBIE consulted on wider changes to the building sector as part of the Building System Reforms, which included questions on expanding the definition of 'restricted building work' and higher competence requirements.
- In April 2021, MBIE also consulted on further proposals to improve the regime's supervision, licence classes, core competencies and minimum standards for entry.

Overall, MBIE has found that the LBP regime was generally working as intended, but there are areas that need to be improved to ensure it remains fit for purpose.

In April 2021, Cabinet agreed to a package of proposals to strengthen the Licensed Building Practitioners regime. These changes include introducing a code of ethics, making changes to licensing administration processes to ease the administrative burden of the regime, and amending the complaints and disciplinary processes to address issues around natural justice and fairness.

Based on the feedback received during previous consultations, MBIE has identified various parts of the regime that could be improved to raise the overall performance of the regime. This includes supervision of restricted building work, new licensing areas and the competencies that need to be met to join the regime.

## Status quo

The April 2021 consultation provided insight into how the LBP regime is operating, and where it can be improved.

While MBIE has concluded that the regime is generally doing its job in regulating Aotearoa's building sector, there are some smaller regulatory gaps in the regime that need to be addressed. While these gaps may appear small, the impact can be high. For example, the costs to rectify non-compliant or defective work can be high and cause delays. By tightening up the regulatory settings to address the issues the sector has told us about, we can further strengthen the regime and provide for further efficiencies in the licensing process for the benefit of the sector and consumers.

These gaps, if left unaddressed, may affect the overall effectiveness and efficiency of the LBP regime. The regulatory gaps could lead to the approval of poor-quality building work, or inefficiencies with the way that the building sector operates.

### **The LBP regime has gaps that could allow substandard building work to be signed off**

Findings from the 2021 consultation indicated that some LBPs were either not supervising work appropriately or signing off on work that was not compliant with the Building Code, either due to negligence or lack of expertise.

This gap is increasing the risk of poor quality and non-compliant work in the residential sector. Left unaddressed, poor supervision practices can allow for the signing off on building work that is not compliant with the Building Code, and the safety and financial risks that come with that.

### **The LBP regime is not operating as productively as intended**

The LBP regime was set up to make the building sector more efficient. While it has achieved this in part, there are still areas of specialisation that the current licensing structure does not recognise. For areas within the LBP scheme, it means that there are non-licensed practitioners who must engage with LBPs solely to supervise their work, even though they are more experienced than the person supervising. This means the scheme is not operating productively as intended, and also creates extra costs that are often passed on to the consumer.

## **MBIE'S OBJECTIVES WERE USED TO DETERMINE THE PROPOSED CHANGES**

The LBP regime's purpose is to ensure that the public have confidence in LBPs and feel safe in the knowledge that these practitioners are competent, and that the houses and building they build are designed and built right, the first time.

This purpose exists under the primary objective of occupational regulation, which is to give people confidence in practitioners and their work, and to protect the public from harm that is caused by negligent, reckless or dishonest practice.

Based on those two overarching objectives, as well as Cabinet's occupational regulation policy framework, MBIE has developed four objectives that will guide the way the proposals address the issues, as initially outlined on [page 9](#):

- Regulation is proportionate to the risks to public safety and wellbeing.
- Practitioners are providing services with reasonable care and skill.
- Practitioners are operating within their areas and levels of expertise.
- Practitioners can be held to account for substandard work and poor behaviour.

By using these objectives to develop proposals that address the regime's supervision, licensing areas and competencies, MBIE will be able to ensure that Aotearoa's building work is done right, the first time.

## Issue 1: Supervision

A key feature of the LBP regime is that it allows people to undertake restricted building work without a licence, provided that they are supervised by a licence holder. The regime has a flat structure where those licensed in it are able to supervise restricted building work immediately, with no consideration made for what experience they may have or what qualifications they may hold.

The LBP regime differs from other occupational regulation regimes in two ways:

- No experience or skill in supervision is tested before a practitioner can supervise others
- Licensed practitioners may supervise non-licensed people undertaking restricted work.

### PROBLEMS WITH THE CURRENT APPROACH TO SUPERVISION AND THE LICENSING STRUCTURE

Findings from the previous consultation indicated that there were three main issues with supervision in the regime:

#### Some LBPs are unintentionally supervising incorrectly

LBPs who supervise incorrectly, even if done unintentionally, are not meeting their responsibilities as LBPs. This may be due to poor on-the-job training, power imbalances between new and more experienced staff and managers, and that they have not had their competency checked before entering the regime. Poor supervision can mean poor-quality work is signed off, which can pose risks to the general public.

While LBPs may face discipline from the Building Practitioners Board if incorrect supervision is brought to their attention, complaints are often only made for more serious offences. This means that there may be substandard building work signed off on as a result of incorrect supervision than is being reported.

#### Some LBPs are intentionally supervising incorrectly

Some LBPs are intentionally supervising incorrectly. This includes 'renting out' supervision (i.e., stating work has been supervised, when it has not), cutting corners due to external pressures and general negligence. The Building Practitioners Board has been able to mitigate some instances of intentionally incorrect supervision by identifying and disciplining those LBPs. However, evidence from the April 2021 consultation suggests there may be many more LBPs intentionally supervising incorrectly.

#### The regime's flat structure does not differentiate between new entrants and those with more experience and skill

One of the purposes of the LBP regime is to assure consumers that LBPs meet minimum standards of competence in the work they are licensed to do. However, there are some concerns that the current LBP regime does not provide sufficient differentiation between those that meet the minimum standards, and those who are more skilled than their new entrant counterparts. With experienced and skilled LBPs grouped in with new entrants, consumers are not easily able to determine who are the more skilled LBPs. While it is possible for a consumer to look at an LBP's licence on the register, this is not information many consumers are aware of or know how to use.

## Overall effect of the issues

Overall, these issues are impacting on the effectiveness of the LBP scheme in achieving the objectives of occupational regulation. The flat structure does not ensure that those people supervising non-licensed people have the right skills and experience, and we have heard that LBPs do not have enough experience to supervise in the first years of their licence. Unless they do have the right skills and experience, homes are at risk of not being designed or built right the first time. It is also difficult for consumers to determine who has the right skills to supervise unlicensed people and it is unlikely they will be aware of how many unlicensed people may be doing the work under a licensed LBP.

### Question

1 MBIE has outlined a range of problems that are affecting the LBP regime, from the two overarching problems to the more specific problems detailed in each section. Are there any issues that have not been included?

Yes

No

Please explain your answer.

## OPTIONS TO ADDRESS ISSUES WITH SUPERVISION

Following the issues identified through previous consultations, MBIE proposes changes to the way supervision operates in the LBP regime. MBIE considers there is evidence for change based on the findings from the April 2021 consultation,<sup>2</sup> in addition to support from key stakeholders in the sector.

MBIE has identified four options that could address issues with supervision, which have been assessed against the four objectives described earlier in the document:

Options	Description
<b>Option 1: Maintain the status quo</b>	All LBPs will be able to continue to supervise non-licensed practitioners.
<b>Option 2: Introduce a supervision endorsement to each class</b>	This option would restrict who can supervise restricted building work, so LBPs can only supervise if they have demonstrated the ability to supervise others. Eligibility will be determined by experience and/or competency. The Building Practitioners Board may have the power to strip an LBP of this licence if they face disciplinary action.
<b>Option 3: Test all LBPs' ability to supervise at their initial assessment</b>	This option would mean all LBPs would have their ability to supervise tested when they apply for their licence. It would mean that an applicant could fail their application based on incompetency at supervision.
<b>Option 4: Information and education approach (non-regulatory changes)</b>	This option makes no regulatory changes, and instead focuses on a non-regulatory intervention of educating those in the regime.

If the status quo is maintained, MBIE considers that the current issues facing supervision will continue. Option 3 (allowing all LBPs to supervise but testing their competence to do so) will have

<sup>2</sup> A link to the report on the consultation, and the summary of submissions, can be found [on MBIE's website](#).

very high costs, as it will require going back and testing the competency of all current LBPs regardless of whether they want to supervise, and it will also not provide any differentiation of the more-skilled LBPs. Option 4 will not address the issues enough; while the supervision practice note available on the MBIE website is currently being updated, this alone will not be enough to address the issues identified.

Analysis of all these options, and how they address each of the three issues, is attached in [Annex 1](#).

## PROPOSAL TO ADDRESS ISSUES WITH SUPERVISION

### PROPOSAL 1A: INTRODUCE AN ENDORSEMENT FOR THE SUPERVISION OF RESTRICTED BUILDING WORK

MBIE considers that the most appropriate way to address the issues with supervision is Option 2: **introduce a supervision endorsement to the licence classes (except Site)**<sup>3</sup> so that only certain LBPs can supervise.

Option 2, MBIE's preferred option, would see eligible LBPs be able to apply for an endorsement on their licence. This would enable eligible LBPs to supervise unlicensed people undertake restricted building work and would not affect any non-endorsed licence holders from undertaking restricted building work.

Supervision would only be open to LBPs who have a relevant number of years' experience and it may include some supervision-based competencies that need to be met. LBPs who do not have this endorsement would still be able to undertake restricted building work in their licensed classes unsupervised, but will not be able to supervise others.

This option would help address the issue of intentional poor supervision as the Building Practitioners Board would have the power to remove the endorsement from someone facing discipline, where they see fit. This would have the effect of removing these practitioners from the pool of supervising LBPs. It would also provide LBPs an incentive to distinguish themselves from those without an endorsement and make it easier for consumers to make an informed decision.

## OPTIONS TO SET COMPETENCY REQUIREMENTS FOR SUPERVISION ENDORSEMENT

If Proposal 1A above (to introduce a supervision endorsement) is progressed, competency requirements would need to be set for the supervision endorsement. There are two options:

Options	Description
<b>Option A: Eligibility based on experience</b>	LBPs applying for the endorsement must have the same minimum experience requirement for licensing as a supervisor.
<b>Option B: Eligibility based on experience and competency</b>	A minimum experience requirement and the demonstration of additional competencies that show the ability to supervise will be needed before the endorsement is granted.

<sup>3</sup> The Site class has not been included in this proposal as it does not have restricted building work to supervise.



## PROPOSAL TO SET COMPETENCY REQUIREMENTS FOR SUPERVISION ENDORSEMENT

### PROPOSAL 1B: ASSESS LBPS' COMPETENCY BEFORE GRANTING A SUPERVISION ENDORSEMENT

MBIE considers that the best way to introduce the supervision endorsement is Option B: LBPs who want the supervision endorsement would need to **demonstrate that they have the required level of experience through a competency assessment.**

This option will best address the current issues with supervision, ensuring that those who can supervise have been deemed competent to do so. It will also remove inexperienced LBPs from the supervision pool, which will resolve issues arising from inexperienced supervisors, and these LBPs can focus on their vital on-the-job training instead.

### TRANSITION

MBIE estimates that as many as 75 per cent of the over-25,000 LBPs will apply for this endorsement. To ensure that enough endorsements are issued to a sufficient number of LBPs, time will be needed to process these applications.

At this stage, MBIE proposes a transitional timeframe of 24 months from the commencement of any new rules or regulations to allow for enough LBPs to obtain a supervisor endorsement before it becomes enforceable. In this time, there will be no restrictions on who can supervise restricted building work. This will provide enough time to process the anticipated applications before the requirement for a supervision endorsement comes into effect.

There is a potential risk that if not enough practitioners become endorsed, there will be a shortfall of those who are able to supervise when the new rules come into place. This should be addressed by opening applications before the restriction is introduced to allow for enough practitioners to become endorsed before the changes come into effect, with enough transition time to ensure that sufficient LBPs have obtained the endorsement.

Other options could include allowing for non-endorsed LBPs to still be able to supervise one or two non-licensed practitioners to ensure that there will be a pool of supervising LBPs regardless of how many take up the endorsement or allowing non-endorsed LBPs of a certain level of experience to supervise without having their competency tested.

MBIE will monitor the transition to this new supervising model, to make sure that sufficient numbers of LBPs are applying for the endorsement so that there is no shortfall when it comes into force and that, if there is a shortfall, appropriate measures are taken to address this. This monitoring will continue after it comes into effect too, so that MBIE can be sure it is working as intended.

### Questions

- 2 Do you agree with the proposal for a supervision endorsement?
- Yes, and I think that competency needs to be tested to gain the endorsement.
  - Yes, and I think that being licensed for a certain amount of time is enough to gain the endorsement.
  - No, I disagree.

Please tell us why you agree or disagree.

**3** To be eligible to apply for a supervision endorsement, should an LBP be required to hold a recognised supervision qualification?

Yes - LBPs must have a supervision qualification

No - LBPs should be eligible to have their competence tested if they do not have a supervision qualification

Please explain your answer.

**4** Do you agree with the proposed 24-month timeframe for transition before the change comes into effect?

Yes

No, it should be longer.

No, it should be shorter.

Please tell us more.

## Issue 2: Licensing

The LBP regime currently has seven classes: Bricklaying and Blocklaying, Carpentry, Design, External Plastering, Foundations, Roofing and Site. No classes have been added to the regime since Foundations was added in 2010.

In previous consultations, MBIE asked submitters what other professions should be added to the regime. The most popular suggestions were construction masonry,<sup>4</sup> internal waterproofing, and specialist trades such as plasterboard and tanking installation.

### PROBLEMS WITH THE CURRENT LICENSING CLASSES

Regarding the areas that the LBP regime does and does not currently regulate, MBIE has determined that the following problems currently exist:

#### **Stonemasonry work is high risk and not regulated by the LBP regime**

Stonemasonry is a specialised trade involving the sourcing, cutting and shaping of natural stones commonly used as a cladding material in residential buildings.

When used as a veneer material, the quality of stonemasonry and workmanship directly affect building weathertightness and safety. Further, poorly fixed stone panels could detach during a seismic event, damaging the building or injuring people in the vicinity.

While the amount of poorly executed stonemasonry is likely to be a small proportion of the total volume of construction activity in New Zealand, MBIE considers that the risks, and potential costs and consequences for affected consumers, could be high.

#### **Instances of poor internal waterproofing are going unnoticed until it is too late**

Despite being a crucial part of the construction process, waterproofing of internal wet areas such as bathrooms is not covered by the LBP regime.<sup>5</sup> Some work is covered as restricted building work and must be done or supervised by a licensed practitioner, but there are other areas that do not need a licence to be completed. The majority of the sector relies on producer statements; however, these

<sup>4</sup> For the purposes of this document, construction masonry will be referred to as 'Stonemasonry'.

<sup>5</sup> Acceptable Solution E3/AS2 does not specifically define a wet area but uses the terms 'subject to watersplash' and 'showers' when defining wet area requirements.

do not have a legal status under the Building Act. Poor waterproofing often results in failures, leaks and costly repairs which would be lessened greatly by better regulation in the area.

Waterproofing is a minor part of overall construction costs, but accounts for the vast majority of building defect complaints and huge costs in remedial works. Many building leaks stem from bathrooms and wet areas that are not properly waterproofed, which can affect the flooring and wall linings leading to mould, mildew, and rot. The build-up of moisture and mould can cause health hazards such as fungal infections, allergies, and respiratory illness including asthma.

### **Sector specialisation has meant certain specialist installers are not captured by the regime**

The number of specialist practitioners is increasing – these are practitioners who focus on a certain aspect of a licence area (usually Carpentry) and develop their skills within that niche area. These specialist practitioners may not have the competence for a full LBP licence, so they must be supervised by a licence holder in that area.

A licence holder who supervises a specialist practitioner is often someone who is less experienced at the work than the person completing it. This leads to inefficiencies including poor supervision practices and higher costs for consumers, as some businesses will either employ a Carpentry LBP solely as a supervisor or will hire someone to supervise on an ad hoc basis at a premium cost.

### **OPTIONS TO ADDRESS ISSUES WITH LICENSING**

MBIE considers there is a case for change based on submissions from the April 2021 consultation, as well as through recent testing of these proposals with key stakeholders in the sector.

MBIE proposes that three new areas (stonemasonry, internal waterproofing, and specialist installers) should be added to the LBP regime. The below options have been identified that could address each of the problems described above. As with the supervision endorsement, the options have been assessed against the four objectives MBIE outlined earlier in the document, on [page 9](#).

Options	Description
<b>Option 1: Maintain the status quo</b>	No changes to licensing classes will be made to include these new areas. Practitioners in these areas will continue either working outside of the regime or will need to be supervised by someone who is.
<b>Option 2: Create a new licence class</b>	New licence classes will be created for the relevant area, e.g., a new licence for internal waterproofing.
<b>Option 3: Add to an existing licence class</b>	The relevant area will be added into an existing licence class in the LBP regime. This option is best suited for areas that share similar competencies with existing licence classes, e.g., stonemasonry has similarities with bricklaying and blocklaying.
<b>Option 4: Information and education approach (no regulatory changes)</b>	An information and education approach will be taken instead of making any regulatory changes.

Deeper analysis of all the options for each licensing area is attached in [Annex 1](#).

## INTRODUCING STONEMASONRY TO THE LBP REGIME

### PROPOSAL 2A: ADD STONEMASONRY TO THE *BRICKLAYING AND BLOCKLAYING* CLASS

MBIE considers the best way to address issues with stonemasonry is Option 3: **add 'Stonemasonry' as an area of practice to the existing 'Bricklaying and Blocklaying' licence class.** MBIE also proposes renaming the class to 'Construction Masonry', to make it more inclusive and help avoid confusion for the public.

Adding stonemasonry to the LBP regime will mean that the public can be assured of a practitioner's competence before they undertake the work. While stonemasonry only makes up a small amount of building work, the effects of the work going wrong can be significant. Not only can remediation be costly, but in an event such as an earthquake, poor quality stonemasonry can lead to fatalities.

MBIE considers that allowing the status quo to continue is not viable and that a non-regulatory approach will not protect the public from harm. MBIE considers that, of the two remaining options, stonemasonry is best combined with 'Bricklaying and Blocklaying' due to the similarities in competencies.

MBIE is aware that there are concerns about the potential crossover between stonemasonry, and bricklaying and blocklaying if the areas are merged. However, MBIE considers that the competencies are similar enough to warrant the two areas being in the same class, and that the recently implemented code of ethics will help prevent LBP's from crossing into areas that they are not competent in. Stakeholders have also said that some crossover already exists, without much negative effect. Changing the class name to 'Construction Masonry' will reduce confusion for consumers, and make the class more inclusive.

## INTRODUCING INTERNAL WATERPROOFING TO THE LBP REGIME

### PROPOSAL 2B: CREATE A NEW LICENCE CLASS FOR INTERNAL WATERPROOFING

MBIE considers that the best option for internal waterproofing is Option 2: **create a new 'Internal Waterproofing' licence class** and expand the definition of restricted building work to include "application of internal waterproofing".

By adding a class and expanding the definition of restricted building work, only those who have been deemed competent by the Registrar will be able to do internal waterproofing work. Furthermore, the requirement to keep Records of Work will help create better documentation of the completed work.

If a new class is added without expanding the definition of restricted building work, there would be no restriction on who could do the work and the licence would simply act as a mark of competence for those that have it. The sector has emphasised previously that there is no desire for classes that do not have restricted building work.

Waterproofing of wet areas makes up a disproportionate amount of remedial work on a house, and thus the status quo cannot be maintained. A non-regulatory approach will not be enough to address the widespread problems either. Further, there are no existing classes that internal waterproofing shares enough competencies with for it to be added as an area of practice.

## INTRODUCING SPECIALIST AREAS TO THE LBP REGIME

### PROPOSAL 2C: CREATE A NEW LICENCE CLASS FOR SPECIALIST INSTALLERS

MBIE considers the best option for specialist installers is Option 2: **create a new ‘Specialist Installer’ licence class**. This new class will have two areas of practice to begin with: Plasterboard and Tanking. Further areas of practice could be added to this class in the future as specialisations increase.

With the ‘Specialist Installer’ class, there will be an important caveat that will distinguish it from other classes. In other classes, practitioners are able to work in all areas of practice, regardless of which one(s) they were deemed competent in. For this new class, a rule will exist that will stop practitioners from crossing into other areas of practice without being deemed competent by the Registrar. This is due to the technical and varying nature of the professions that will be included and the lack of crossover by these specialists.

Changes will be simpler to implement once this class has been created, as changes will only need to be made to the LBP Rules, so capturing these specialist professions will be straightforward once the class is introduced.

Maintaining the status quo will mean that the inefficiencies that currently exist (such as poor supervision practices will continue). Taking an information and education-based approach is also not suitable to address this issue.

MBIE does not consider Option 3 (adding the specialist areas as areas of practice to existing licence classes and adding a rule to prohibit them from working outside that area) to be workable. While this will provide an avenue for these specialists to become licensed, it runs the real risk of creating confusion for both the sector and uninformed consumers, as well as the risk that these practitioners will hold themselves out as being full licence holders.

Current LBPs who operate in these areas (such as Carpentry LBPs who install plasterboard) will not be affected and will be able to continue to do this work under their current licences.

MBIE’s assessment of the potential benefits and costs of the three licensing area proposals are set out in the impact analysis beginning on [page 21](#).

### TRANSITION

As with the introduction of a supervision endorsement, MBIE proposes a 24-month transition period between the passing of legislation and the commencement of the changes. There may be as many as 5,000 practitioners applying across the three licence areas so it is important that each applicant is assessed correctly before they are deemed competent, given the risks if existing practitioners are simply transitioned into new classes without a competency assessment. During the 24-month transition period, there will be no changes as to who can do the work in these areas.

As with the introduction of the supervision endorsement, MBIE will monitor the proposed changes during both the proposed 24-month transition timeframe, and the initial months after they come into effect. This will allow for MBIE to ensure that enough practitioners have licences in each area and allow for measures such as extending the transition period if this has not happened. This monitoring will allow MBIE to make sure that enough practitioners are licensed and able to do the work when the changes come into effect.

As this is the first time since the regime has matured that new licensing areas have been added, a review may be conducted after the changes have taken effect to assist the process for future licensing area additions.

Questions				
5.	Do you agree with the proposals for stonemasonry, internal waterproofing, and specialist installers?			
		Agree	Disagree	Prefer another option
	Stonemasonry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Internal waterproofing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Specialist installer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Please explain your answer for each profession.				
6.	Internal waterproofing could cover many different trades in the sector. Do you agree that our proposed expanded definition of restricted building work would sufficiently cover all the trades in the sector?			
	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Please explain your answer				
7.	Please tell us what types of trades you think are likely to be impacted by the introduction of this new internal waterproofing class, and what trades should be included as areas of practice?			
8.	There are currently no recognised qualifications for tanking or internal waterproofing. Do you think these need to be in place before these areas are introduced to the regime?			
	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Please explain your answer.				

Potential areas for improvement with the LBP competencies and minimum standards for entry are discussed later in the document, in [Part 2B](#).

## Impact analysis for the proposed changes

### BACKGROUND

These costs represent the total costs incurred by someone applying for or maintaining their licence (or, as in some cases, costs incurred by the Government). Three main categories for costs have been outlined:

- Compliance costs associated with obtaining the competencies or recognised qualification, and applying for, obtaining and maintaining a licence.
- Opportunity costs associated with the delay in being able to supervise work or to become licensed (reduced earning capacity).

- Government costs associated with checking the qualifications and experience of applicants. These are cost recovered from the applicants through fees set under regulations.

There are also non-qualitative impacts that may affect the sector but are not measurable.

## SUPERVISION ENDORSEMENT

MBIE estimates that costs for LBPs who wish to apply for the supervisor endorsement will be minimal and will be similar to the current costs for applying for an LBP licence. This currently stands at \$250 plus a \$127.78 assessment fee, for a qualified application in one area of practice. At this stage, MBIE’s early estimation is that approximately 75 per cent of eligible LBPs will apply for a supervision endorsement. This is based on internal estimations and some stakeholder feedback.

Costs	
Government costs	Compliance costs
<ul style="list-style-type: none"> <li>• Application costs, plus additional costs if an interview is required (less than 10 applications per year)</li> <li>• Processing costs</li> </ul>	<ul style="list-style-type: none"> <li>• Time taken to complete the application</li> <li>• Application and assessment fee</li> <li>• Biannual skills maintenance</li> </ul>
Opportunity costs	Potential impacts (non-qualitative costs)
<ul style="list-style-type: none"> <li>• Assumed lower earning rate for LBPs without supervision endorsement</li> </ul>	<ul style="list-style-type: none"> <li>• There may be a skills shortage if not enough LBPs apply for the endorsement</li> <li>• Potential impact on new housing stock if there are no supervisors</li> </ul>
Benefits	
<ul style="list-style-type: none"> <li>• Higher quality building work the first time, and less remedial work required</li> <li>• Better judgement applied by supervising LBPs</li> <li>• Higher quality of supervision – both on site and remote</li> <li>• Building consent authorities may process consents more efficiently, especially during competency checking</li> <li>• Better informed consumers</li> </ul>	

An eligible LBP will need to apply for the endorsement, and have their competence assessed by the LBP Registrar. There will also be a time cost to the LBP as they prepare for and undertake this process.

LBPs who do not have this endorsement will potentially have lower earning power, based on the presumed higher income for LBPs with the supervision endorsement. This is not likely to be a high cost, as not all LBPs supervise restricted building work, and a new practitioner is unlikely to be hired to supervise restricted building work by an informed consumer.

Processing and assessing of applications will incur a cost to the Government, which would be recovered through the application fee.

The benefits to the sector are hard to quantify, but should result in better quality building work, a better-informed consumer base, increased efficiencies in the consenting process and less remedial work needed in the future.

Some potential impacts, like an effect on the productivity of the regime or on housing affordability, are hard to measure at this stage but are not expected to be great. There is also the potential that new housing stock will be impacted if there are no supervisors to work on the projects. However,

MBIE considers that the proposed 36-month transitional time will ensure that there are enough endorsed supervisors before the changes come into force. Furthermore, the supervision endorsement will only have an effect on the number of practitioners who may supervise non-licensed people undertaking restricted building work – it will not affect the number of LBPs who are able to do the work themselves. This means that the pool of those who can do restricted building work unsupervised is unaffected, so any shortages that may exist will not be compounded by these changes.

## NEW LICENSING AREAS

Introducing licensing to new areas for Stonemasonry, Internal Waterproofing and Specialist Installers (plasterboard installation and tanking) will restrict who can do the work.

Costs	
Government costs	Compliance costs
<ul style="list-style-type: none"> <li>• Application costs, plus additional costs if an interview is required</li> <li>• Processing costs</li> </ul>	<ul style="list-style-type: none"> <li>• Time taken to complete the application</li> <li>• Application and assessment fee</li> <li>• Biannual skills maintenance</li> </ul>
Opportunity costs	Potential Impacts (non-qualitative costs)
<ul style="list-style-type: none"> <li>• Stonemasons and waterproofers who choose not to get licensed may lose work, earn less, or need to hire a supervisor to continue to work in these areas (this impact will be minor for plasterboard installers as they will still be able to continue supervised by a Carpentry LBP if they wish)</li> </ul>	<ul style="list-style-type: none"> <li>• There may be a skills shortage if not enough practitioners apply for the licence</li> </ul>
Benefits	
<ul style="list-style-type: none"> <li>• Increased confidence in previously unregulated areas</li> <li>• More work done right the first time and less remedial work required</li> <li>• Improved efficiencies and lowered costs as practitioners no longer need to rely on a LBPs to supervise specialist work</li> <li>• More trust in the installation of different types of plasterboard product and less council aversion to product substitution due to recognised specialisation</li> </ul>	

A one-off cost will be imposed on practitioners who wish to be licensed in these new areas. This will be an application fee and assessment cost, similar to what would be paid for other classes. There may be potential for a lower assessment fee for the Specialist Installer licence class, due to the amount of competencies that would need to be met. While these costs could be passed on to consumers, this is unlikely to have a great effect on the overall cost of a project.

Processing and assessing of applications will incur a cost to the Government, which would be recovered through the application fee.

There will be an opportunity cost for stonemasonry and internal waterproofing practitioners who choose not to get licensed, as they will not be able to command the same income that they once could, due to their inability to complete restricted building work unsupervised. While this is the same for specialist installers, this is already commonplace in these specialist areas.

For the Specialist Installer class, there will be no additional costs to currently licensed LBPs who wish to continue to operate in these areas under their existing licence (for example, Carpentry LBPs who



wish to continue to install plasterboard). The costs will fall onto these specialists, who would usually operate under the supervision of someone who holds a relevant licence. They will be required to pay the aforementioned licensing costs, as well as any costs required to maintain a licence, such as relicensing fees.

However, there will be wider benefits from the introduction of these licensing areas, which we consider outweigh the costs. The general public will be assured of the quality of tradespeople they are hiring for their work, and there will be greater guarantee that the work will be done right the first time. In the Specialist Installer area, there will be substantial efficiencies achieved as there will be no need to have a supervisor for those who are now licensed. Therefore, not only will time be saved, but there should be monetary savings for both the practitioner and passed onto the consumer too.

## Questions

9. What impacts would you expect on you or your business from the proposed changes? These impacts may be economic/financial, environmental, health and wellbeing, or other areas
10. Do you agree with our estimation that at least 75 per cent of eligible LBPs may apply for a supervision endorsement?
- Yes, 75 per cent or higher.                       No, it will be lower.
- Please explain your answer.

## ***Part 1B***

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

## **Scope of potential codes of ethics**

### **Background**

As discussed in the Introduction of the paper, the statutory review reports of the *Plumbers, Gasfitters, and Drainlayers Act 2006*<sup>6</sup> and the *Electricity Act 1992*<sup>7</sup> (discussed on [page 8](#)) and subsequent consultation highlighted improvement opportunities within each of the regimes' complaints and discipline processes. In particular, there are certain barriers to the regulator's ability to address professional misconduct.

The Government has agreed to introduce a regulation-making power for the Minister for Building and Construction to set codes of ethics for the Plumbers, Gasfitters and Drainlayers regime and the Electrical Workers regime. This will need to be implemented through legislative changes to the respective Acts, which we anticipate could be introduced to Parliament in 2023 and in place in 2024.

In the meantime, MBIE is seeking early feedback on what could be included in the codes of ethics, if the decision is made later to introduce codes of ethics for these regimes. This includes seeking feedback on the scope, principles and standards of the potential codes of ethics.

If the Government decides to introduce codes of ethics for these regimes, MBIE will consult further on the content of the codes of ethics before it comes into force.

### **Issues**

*Regulators have limited powers to address poor conduct or behaviour that may bring the industry into disrepute*

Both the Plumbers, Gasfitters and Drainlayers Board and the Electrical Workers Registration Board have limited recourse to respond when practitioners act unethically or inappropriately in clients' homes or towards other building professionals. Both statutory review reports highlighted the need for options to address serious behavioural and misconduct issues when they arise. The boards can only consider complaints about the technical abilities and work of practitioners, and not professional misconduct.

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<sup>6</sup> A link to the Statutory Review Report of the *Plumbers, Gasfitters, and Drainlayers Act 2006* can be found on the [MBIE website](#).

<sup>7</sup> A link to the Report on the Review of the *Electricity Act 1992* can be found on the [Electrical Workers Registration Board website](#).

Concerns have been raised that some practitioners are getting away with bad behaviour, even amidst repeat allegations. The regimes have shared examples of professional misconduct that currently are being inadequately addressed:

Abuse/Poor behaviour	<ul style="list-style-type: none"><li>• Sending unprofessional and abusive emails to a homeowner about compliance documentation</li></ul>
Fraud	<ul style="list-style-type: none"><li>• Taking deposits for work yet not returning to complete the project</li></ul>
False advertising	<ul style="list-style-type: none"><li>• Advertising as a 24/7 emergency call out company, yet never providing the advertised service</li></ul>
Damage to property	<ul style="list-style-type: none"><li>• Careless work causing additional damage to property, with no attempt to resolve the issue</li></ul>
Threats/Violence	<ul style="list-style-type: none"><li>• Threatening homeowners in person, over the phone and via email after producing poor quality work</li></ul>

This provides a small snapshot into the types of issues being raised to regulators from members of the public. When unaddressed, these types of allegations can weaken public trust and confidence in the professional, and the professions as a whole.

## Options that were considered for each regime

*Introducing professional expectations can address this regulatory gap and improve public confidence in each regime*

### Option 1: Introduce a new disciplinary offence

The Plumbers, Gasfitters and Drainlayers review report recommended that options be explored to ensure the Board can discipline practitioners for serious misconduct and repetitive behaviour issues.

An initial idea was to simply introduce a new disciplinary offence for the Board to address overall poor behaviour if it brings the profession into disrepute.

However, on its own, a disciplinary offence without a set standard or expectation to be adhered to can create ambiguity and confusion for both the professional and regulator.

Such an offence has been in place with other regulators, such as the Building Practitioners Board, but has proven in practice to be set at such a high standard without supporting guidance that allegations were rarely upheld.

The Plumbers, Gasfitters, and Drainlayers Act also has an existing discipline offence under section 89(i) for improper conduct in the performance of a person's work. However, the misconduct has to be both serious at a level that it would disallow the practitioner from remaining licensed **and** occur as part of their work. Due to the high threshold for such an offence, it is rarely used, and stakeholders have indicated it is difficult to enforce.

The Electrical Workers Registration Board have also highlighted this issue regarding professional misconduct in its review report. Unlike the Plumbers, Gasfitters and Drainlayers Board, they have no such disciplinary offence in their regime.

As such, MBIE considers that a new disciplinary offence would be better suited as a complementary measure to a set of professional standards, rather than an alternative option.

## Option 2: Introduce a code of ethics (Preferred)

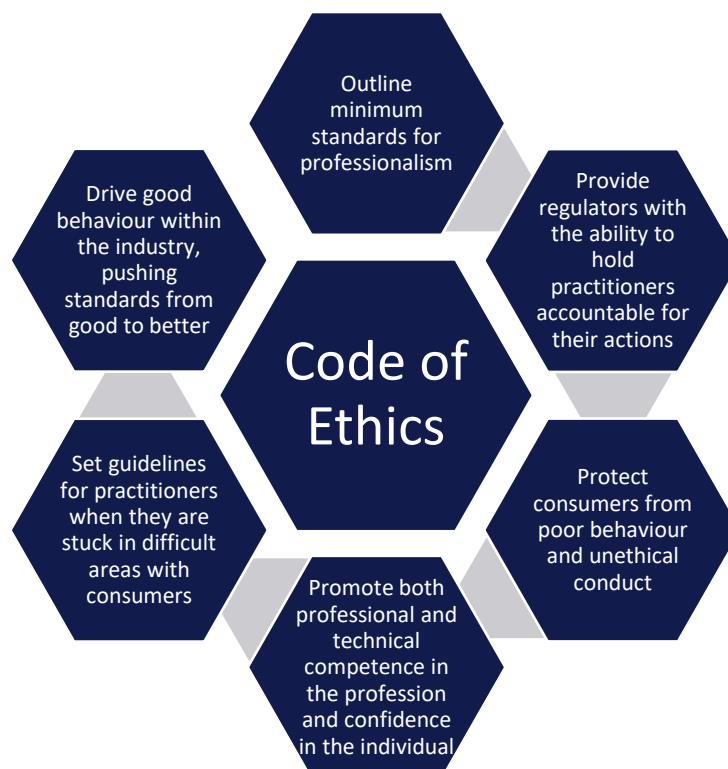
To address issues with professional misconduct, the Electrical Workers review report's recommendation was to introduce the power to set a code of ethics into the Electricity Act, similar to that under the Building Act.

A code of ethics sets the expectations and provides the mechanism for the board to manage conduct – that could then be powered by a disciplinary provision. The building and construction sector also has a recent model to work from with the recent [introduction of a code of ethics for Licensed Building Practitioners](#) in October 2021.

Codes of ethics are common across regulated professions and trades. Regimes without professional expectations or rules lack a level of public accountability, and create opportunities where issues can go unchecked, where regulators are unable to address poor behaviour. Regimes without codes of ethics are also not aligned with best practice and the expectations set upon other regulated professions.

MBIE's recommendation is that codes of ethics be introduced for both regimes as it sets clear professional standards and ensures consistent expectations across the sector. This would then enable the boards to address poor conduct and hold practitioners to account through a complementary disciplinary offence. As noted above, Cabinet has agreed to empower the Minister for Building and Construction to set such codes of ethics for the Plumbers, Gasfitters and Drainlayers regime and the Electrical Workers regime.

*A code of ethics serves many purposes across occupational regulation in setting, educating and enforcing professional standards and behavioural expectations*



## Proposal

**Proposal: Introduce codes of ethics for the Electrical Workers regime and Plumbers, Gasfitters and Drainlayers regime, with a scope aligned across the building and construction sector**

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 set of expectations will also be consistent for practitioners across the sector.

The introduction of codes of ethics will provide a mechanism to better manage poor performance and behaviour, through setting expectations and sending a clear message to the profession that substandard conduct and behaviour will not be tolerated.

In the same way as plumbers, gasfitters and drainlayers and electrical workers have standards for their work, codes of ethics could set enforceable standards for professional behaviour and conduct.

Codes of ethics can help lift the quality of work and can be used to identify and act on the portion of repeat substandard professionals who are unfairly impacting the reputation of the regime and the professions as a whole. Most professionals already adhere and surpass these expectations; codes of ethics simply puts these expectations in writing to ensure consistency and clarity.

*Change has been prioritised to promote consistency and clarity across the sector*

While legislation does not currently empower the Minister for Building and Construction to prescribe codes of ethics for the Plumbers, Gasfitters and Drainlayers regime or the Electrical Workers regime, The Government has recently agreed to changes to the respective regimes to enable codes of ethics to be prescribed by the Minister.

This proposal is being prioritised based on stakeholder support following targeted consultation with the industry bodies and to foster continuing consistency across the sector, with the adoption of an LBP code of ethics. Both professional bodies, [Master Plumbers](#) and [Master Electricians](#) already have existing codes of ethics and conduct for their membership. The introduction of codes of ethics that can be enforced by the respective regulators would build off membership bodies' codes of ethics and apply to all licence holders.

## Potential costs and benefits

Costs	
Regulatory costs	Industry costs
<ul style="list-style-type: none"> <li>• May increase the number of complaints and disciplinary cases dealt with by the Boards as the codes of ethics come into practice</li> <li>• May increase costs of taking enforcement action, if further allegations arise</li> </ul>	<ul style="list-style-type: none"> <li>• Time and resource to ensure ongoing understanding of professional obligations</li> </ul>
Benefits	
<ul style="list-style-type: none"> <li>• Enables consumers to have greater trust and confidence in practitioners</li> <li>• Encourages practitioners to behave professionally at all times</li> <li>• Provides an accountability mechanism if things go wrong</li> <li>• Clearly outlines professional expectations, which most professionals already adhere and surpass</li> <li>• Regimes are able to identify and act on the portion of repeat substandard practitioners who are unfairly impacting the reputation of the profession</li> </ul>	

## PROPOSED PRINCIPLES AND STANDARDS FOR THE CODES OF ETHICS

### Key professional principles for all building and construction professionals

MBIE proposes that the codes of ethics for these regimes [mirror the LBP model](#). Having simple and concise codes of ethics helps plumbers, gasfitters and drainlayers and electrical workers clearly understand their behavioural obligations. The codes of ethics would be live obligations that professionals would be required to follow, to remain licensed.

MBIE has heard from stakeholders of the desire for alignment across the building and construction sector, with a similar set of professional expectations on all such practitioners.

During the development and consultation process for the LBP changes, MBIE identified four key principles that the code of ethics should focus on. Each of these principles had a series of standards, which would expand on the expectations of building and construction professionals.

MBIE proposes to implement a similar model for each of the regimes. We consider that the principles and standards from the LBP code of ethics should be applied to any new code of ethics to ensure consistency and efficiency. However, we are interested in stakeholder views on whether there is anything specific to these professions that should be addressed in the potential codes of ethics.

MBIE proposes the following principles and standards, based on the LBP code of ethics:

Key principle	Why the codes of ethics should focus on this principle	Expected standards to sit under this principle
<b>Work safely</b>	Places public protection at the core of the regime. Ensures plumbers, gasfitters and drainlayers and electrical workers are held to account for unreasonable conduct that could place themselves or others at risk of harm.	<ul style="list-style-type: none"> <li>• Fulfilling responsibilities as a worker and/or business owner with regards to the health and safety of themselves and other people.</li> <li>• Calling out or taking action to address unsafe behaviour.</li> <li>• Considering the impact of working practices on the environment.</li> </ul>

<p><b>Be aware of the law</b></p>	<p>Plumbers, gasfitters and drainlayers and electrical workers, should be aware of, and observe, the legal and contractual requirements relevant to the work being carried out by themselves or those they are supervising.</p>	<ul style="list-style-type: none"> <li>• Observing legal obligations within New Zealand law, applicable to the work being carried out.</li> <li>• Calling out and reporting breaches of applicable legislation.</li> </ul>
<p><b>Take responsibility</b></p>	<p>Plumbers, gasfitters and drainlayers and electrical workers should treat people fairly and openly – this means being clear with consumers on timelines, costs and risks to work.</p>	<ul style="list-style-type: none"> <li>• Understanding and upholding responsibilities as a plumber, gasfitter, drainlayer/electrical worker.</li> <li>• Being upfront about risks with clients and colleagues and explaining how they can be dealt with.</li> <li>• Providing sufficient information for clients to make informed decisions.</li> <li>• Holding accountability for any defects resulting from work undertaken, or the work of those supervised.</li> <li>• Advising clients of any delays as soon as they become apparent.</li> <li>• Acting in the client’s interests, consulting with the client when decisions are required.</li> <li>• Taking on board the client’s instructions unless these are contrary to contractual agreements, against the law, or likely to cause harm to others.</li> </ul>
<p><b>Behave professionally</b></p>	<p>Behavioural issues, such as treating consumers unfairly through things like being unwilling to remediate poor work, are a major cause of action taken against current plumbers, gasfitters and drainlayers and electrical workers.</p>	<ul style="list-style-type: none"> <li>• Treating colleagues, clients and others fairly, honestly, respectfully and with integrity.</li> <li>• Acting in good faith during the resolving of disputes.</li> <li>• Scoping and pricing work fairly and reasonably, informing the client upfront and obtain their agreement before additional costs are incurred.</li> <li>• Declaring and managing conflicts of interest appropriately.</li> <li>• Maintaining confidentiality and avoiding sharing sensitive client information with others unless there is a good reason to do so, such as a risk of harm.</li> <li>• Acknowledging and respecting cultural norms and values of colleagues, employees and clients.</li> <li>• Conducting business (where applicable) in a responsible manner – such as handling money, keeping accurate records, managing employees and providing appropriate documentation.</li> </ul>

## Transition and implementation

*MBIE proposes a one-year transition period to implement the codes of ethics*

If introduced, the adoption and implementation of codes of ethics into both regimes will need to be phased in over a reasonable timeframe. The LBP code of ethics was set by regulation in October 2021 and came into force a year later.

Once developed with public and industry input, MBIE considers that a one-year transition period will provide plumbers, gasfitters and drainlayers and electrical workers the opportunity to understand their obligations, and allow the regulators time to prepare implementation and build in education and compliance tools.

A corresponding disciplinary offence would need to be introduced to enable enforcement of the codes of ethics. MBIE also intends to develop guidance that includes explanations and practical examples of how the codes of ethics can be applied. Similar [guidelines were released for LBPs](#), which assisted in understanding how the expectations would be applied in practice.

## Next steps

*Further review work is being progressed for future consultation*

The development of the codes of ethics is just one change that is being progressed within a broader review of both regimes. MBIE continues to progress work to review the operation of each regime and to respond to recommendations in the statutory review reports. This work is aimed at better understanding ongoing issues, ensuring that the regimes meet the needs of the public and are aligned with best practice and other regulatory models. The scope of work includes analysis of:

- registration classes, including employer licences
- competence assessments
- complaints and discipline processes
- penalties and fines
- governance structure.

MBIE will continue to engage with regulators, industry and consumers as proposals are developed and intend to further consult on subsequent changes over the coming year.

### Questions

**11A.** 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.

**11B** 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.



**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?

**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 the next steps and any proposals for change.

### Part 2A

## Review of Registered Architects Act

### Background

Architects are a regulated occupation in the building and construction sector in New Zealand. The occupational regulatory regime for architects consists of:

- The *Registered Architects Act 2005* (Architects Act)
- The *Registered Architects Rules 2006* (Architects Rules).<sup>8</sup>

Architects design a range of structures, including residential and commercial buildings. Only architects registered under the New Zealand Registered Architects Board (NZRAB) may legally call themselves registered architects or architects (when designing buildings). A registered architect's professional status is protected by the Architects Act. The NZRAB is the regulatory body legislated to set and supervise professional standards and registered architects.

New Zealand is not the only country to regulate the profession, with Australia, Canada and the United Kingdom all having registration boards like the NZRAB maintaining a register of architects. These jurisdictions have similar legislation and regulations across states, territories and provinces setting out the regulation for the profession.

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<sup>8</sup> The Architects Act provides a framework for ensuring the competence of registered architects by requiring them to undertake continuing professional development and putting in place measures to discipline registered architects.

The Architects Rules contain minimum standards (competency, continued registration and ethical conduct) and rules governing registered architects (title protection and registration).

The Architects Act has not been reviewed since its commencement in 2006, and MBIE considers it is timely to initiate a review. Recent stakeholder feedback has revealed issues warranting further exploration and testing with industry stakeholders.

## Reviewing the settings for the Registered Architects regime

*Cabinet’s occupational regulation policy framework informs the review*

The case for government intervention for any occupation, through occupational regulation, depends on a combination of the harm which could occur from incompetent, reckless or incomplete provision of a good or service by an occupational group and would be required when:

- Significant harm to consumers or third parties is possible
- Existing means of protection from harm for consumers and third parties are insufficient
- Intervention by government is likely to improve the outcomes
- There is market failure which industry cannot remedy
- The industry is unable to regulate itself because of the costs involved.

The scope of the review is focused on whether the current settings are meeting the original intended benefits of the Architects Act and to determine if it is fit for purpose. The review also considers whether government has a role in regulating architects through an occupational regulatory regime.

*Issues identified with the current settings*

MBIE has identified issues with how the current settings are meeting the intended benefits of the regulatory regime detailed in the table below. MBIE would like to get your feedback on whether government should have a continued role in regulating architects.

Intended benefits and outcomes of the registered architects’ regulatory regime	Issues identified for feedback
Increase in the overall competency of architects	Does registration hold registered architects at a higher competency threshold compared to other design professionals?  Is there a material difference in the work undertaken by registered architects and other design professionals?
Increased confidence in the building industry by increasing the credibility of those undertaking design work as architects	How does an architect’s title protection work to increase credibility of the profession?
Higher standards in the building design industry	How have registered architects increased confidence in the building industry?  Does there continue to be sufficient risk to public harm to justify regulatory intervention for architects?

To get an understanding of the profession and signal the kinds of issues identified with the current settings, MBIE conducted targeted engagement with representatives in the architecture profession, including:

- NZRAB (regulatory body responsible for the Architects Act and Architects Rules)
- Architectural Designers New Zealand (design professionals membership organisation)
- Te Kāhui Whaihanga New Zealand Institute of Architects (professional membership organisation for registered architects).

Feedback from these targeted engagement sessions have been included in MBIE's understanding and analysis of the issues.

The next section of Part 2A will explore these issues to determine whether the current settings are meeting the intended benefits and outcomes of the Architects Act under the occupational regulatory regime.

## **OUTCOME 1: INCREASE IN THE OVERALL COMPETENCY OF ARCHITECTS**

Section 8 of the Architects Act sets out registration provisions for an individual to become a registered architect.

### **Issues with how the current settings increase the overall competency of architects**

#### ***Does registration hold registered architects to a higher competency threshold compared to other design professionals?***

The intent of registration is to demonstrate that the regulatory body governing architects (the NZRAB) deems an individual competent in the profession based on relevant criteria. This level of minor regulatory intervention is designed to give people confidence and signifies the architect has obtained a high-level tertiary qualification and gained considerable work experience while working towards registration.

The NZRAB aligns its competency with the New Zealand Construction Industry Council Design Guides across seven competencies. While registration is meant to improve outcomes related to competency for architects, it is only a voluntary regime for interested individuals and feedback suggests the voluntary regime has certain limitations, including:

- Competency is only assessed at a general level
- Competencies need to expand and evolve with the profession
- No recognition of specialists and specialists' competencies.

Stakeholder feedback has indicated there is “no harmonised system of registration”, and registration is a difficult and time-consuming process, with an individual assessed on competency and safety.

There is a generalist approach at initial registration and architects will work at their own competency levels, but there are differing views on the value of a generalist approach. Some stakeholders consider there is a need for an architect's competency to take a multi-disciplinary approach and go beyond the basic competencies. Others consider individuals are required to demonstrate a good level of general knowledge when undergoing registration and show this competency through case studies.

#### ***Self-regulated competency standards for other design professionals***

Competency standards are also not limited to registered architects, as other design professional bodies have competency criteria for its members.

For example, Architectural Designers New Zealand (ADNZ), a professional body for architectural designers and architects, has a professional membership process where designers must go through a robust assessment process. This process is led by its accredited assessment team (similar to NZRAB's registration process) to determine if applicants meet its competency standards.

Stakeholders have indicated the assessment of competence for the Design class through the LBP regime is seen as a lower threshold compared to the architectural design profession's self-regulated standards.

### ***Is there any material difference in the work undertaken by registered architects?***

Initial stakeholder feedback suggests there does not seem to be any material difference in the work undertaken by architectural designers and registered architects. Some stakeholders consider registration acts as an artificial barrier.

Both registered architects and other architectural designers do similar design work, and there are broad interactions across the sector. There are no requirements in the building regulatory system, outside of design work for restricted building work being done by LBPs, for any particular design work to be done by a registered architect. However, some stakeholders did note some design work can be very specialised and done only by registered architects.

### **Summary and questions for feedback:**

Initial feedback suggests issues with a registered architect's knowledge beyond general practice and it is not clear how the voluntary registration regime is lifting the overall competency of architects.

While competencies are best placed to be determined by the regulator and registration assessors, initial feedback suggests there is no material difference in the work undertaken by registered architects and architectural designers.

Issues with the LBP regime design class and restricted building work will be explored later in Part 2B on LBP competencies.

### **Questions**

**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.

## **OUTCOME 2: INCREASED CONFIDENCE IN THE BUILDING INDUSTRY BY INCREASING THE CREDIBILITY OF THOSE UNDERTAKING DESIGN WORK AS ARCHITECTS**

Section 7 of the Architects Act outlines provisions for the title of "registered architect".<sup>9</sup>

### **Issues with how the credibility of architects is increasing confidence in the building industry**

#### ***Does title protection work increase the credibility of the profession?***

To demonstrate this benefit/outcome, title protection should be able to clearly differentiate between registered individuals and therefore increase the credibility of registered architects.

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<sup>9</sup> The Architects Act protects the title of 'Registered Architect' and providing some form of legal barrier to entry. The purpose of title protection is to demonstrate that an individual meets the requirements for and is competent to register with NZRAB.

However, MBIE has not found a strong evidence base to demonstrate how this benefit is being met under the current settings.

Feedback from stakeholders has suggested registration can have certain benefits for individuals, such as the ability to charge higher fees, or the increased status title protection can provide.

Ideally, occupational regulation results in greater quality of work, and title protection works under the assumption that consumers will have greater confidence in the profession's work.

While the term "registered architect" may be a signifier within the industry i.e., registered architect compared to architectural designer, this understanding does not seem to extend to consumers.

While New Zealand's title protection of registered architect's is aligned with other jurisdictions such as Australia, Canada and the United Kingdom, initial feedback suggests title protection is confusing to consumers because it does not mirror the wider skills of the profession, nor does it translate into a public benefit because it is unclear to consumers why and what the title of registered architect protects.<sup>10</sup>

The United Kingdom government's March 2017 review of its architecture regulatory regime<sup>11</sup> found continued title protection provides a specific but limited form of consumer protection. Its review suggested title protection through registration demonstrates competency and accreditation.

However, the review did note it is the credibility of the register of architects and regulatory body, rather than registration itself, that supports wider consumer protection. Therefore, if an individual uses the title of "registered architect" it is a qualifier and provides assurance they have the necessary skills to be registered.

The emphasis on the register and the findings from the UK's review is also influenced by the proactive and educative role its regulator (Architects Registration Board) takes on. In New Zealand, the NZRAB does not have the same legislative mandate or resourcing to perform this educative function.

### Summary and questions for feedback:

It is unclear how title protection has achieved the outcome of increasing the credibility of the architecture profession in the building industry. There could be greater public confidence and awareness from an educative approach.

#### Question

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.

<sup>10</sup> Title protection does enable a reciprocal relationship with these other jurisdictions' who have title protection in place. This recognition enables a like-for-like understanding of a registered individual's competency and ability to register overseas.

<sup>11</sup> Department of Communities and Local Government Periodic Review Report: [Architects Regulation and the Architects Registration Board](#)

- 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.

## OUTCOME 3: HIGHER STANDARDS IN THE BUILDING DESIGN INDUSTRY

The process of competency assessment, either granting or suspending registration, is intended to increase confidence in the building industry by increasing the credibility in the design work of architects.

### Issues with how the Architects Act is setting higher standards in the building design industry

#### ***Do competency requirements for registered architects need to be legislated under the Architects Act?***

Currently, the NZRAB employs independent assessors for initial and continued registration and design professional bodies have their own competency requirements for members to maintain continued membership.

MBIE's initial discussions with stakeholders indicate there are to be two pathways to demonstrate competency, one that is regulated and the other that is self-regulated. However, both these models are voluntary.<sup>12</sup>

MBIE's initial view of the current settings is that the intended outcome of setting higher standards in the building design industry is not being met, as only those in the profession who choose to undergo registration are bound by the requirements under the Architects Rules and code of ethics.<sup>13</sup>

#### ***Is there sufficient risk to public harm to justify regulatory intervention for architects?***

The need for intervention under Cabinet's [occupational regulation policy framework](#) depends on the nature of the risk of significant harm from an occupation.

Professional standards and continual reviews help to strengthen the competency of the profession, but there needs to be sufficient justification for continuing to legislate minimum standards.

Initial stakeholder feedback suggests there is very little risk to public safety though architecture design work, noting any health and safety element for building design is undertaken by engineers who are responsible for these elements. Additionally, as many architecture professionals are generalists, any safety risks or concerns are often resolved through the building consent process.

However, feedback has also noted the trend of a decreasing number of practitioners being able to undertake on-site observation, because individuals are assessed on theory rather than practical skills at initial registration. As noted, there have been issues raised with the generalist nature of the

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<sup>12</sup> Feedback on the registration process has indicated difficulties, for example there are issues for new graduates reaching initial registration due to the minimum work experience required coupled with high levels of student debt following completion of an architecture degree.

<sup>13</sup> The NZRAB's process for continuing registration involves reviewing a registered architect's competency every five years. Individuals are issued an annual Certificate of Registration for the next five years and continue to work as registered architects.

profession, and there may be a need for greater practical skills to be assessed to ensure the regime is fit for purpose in the future.

### *No insight into disciplinary actions against registered architects*

Currently, consumers have access to the register, but there is limited information publicly available about the registered architects on the register.<sup>14</sup> When consumers are undertaking due diligence, they should be able to know if a registered architect has had any disciplinary actions against them.

If an architect undergoes any disciplinary action, there is no insight to whether any complaints are related to risk to public harm.<sup>15</sup> Even where there is no indication of significant risk to public harm, understanding what a registered architect is capable of would enable consumers to drive some behaviour change in the building design industry.

There is little information available about complaints against registered architects, including the nature of the complaint and whether there was a risk of significant harm following an architect's performance. Complaints proceeding to litigation are often resolved through mediation, and due to confidentiality of settlements, there is little information that is publicly available.

Claims for compensation need to proceed through separate civil proceedings in the appropriate court or tribunal, because the NZRAB does not have powers to award compensation to complainants. When a complainant is seeking to hold a registered architect accountable for unagreed costs, civil proceedings provide more flexibility and opportunities for outcomes benefiting the complainant.

While there is no transparency in the complaints process and whether architects have caused harm to public safety in their designs, the preliminary feedback suggests there is no significant risk to public safety from architecture work. This is because there are checks and balances in place due to the nature of the building process and the interaction of architects and engineers.

### **Summary and questions for feedback:**

MBIE's initial assessment of the regime against this outcome is it is unclear how the current regime has achieved or contributed to higher standards in the building design industry.

There is a lack of evidence regarding the level of harm and risk to public safety resulting from architects' work, with feedback suggesting there is very low level of risk to public safety.

Competency and compliance are regulated through minimum standards and a code of ethics the NZRAB upholds through the Architects Rules, but these are only applicable to those in the design profession who choose to go through registration to become a registered architect.

However, with no insight into the full nature of complaints against architects (which could help inform the risks of the profession), it is difficult to determine how the current settings are meeting Cabinet's occupational regulation policy framework to ensure effective and efficient regulation.

### **Questions**

- 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.

<sup>14</sup> Currently information publicly available on the register of architects includes an architect's name, registration number and registration status.

<sup>15</sup> The NZRAB have competency and compliance measures for the continued development of registered architects and disciplinary actions for those that breach compliance measures as set out under its code of ethics.



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.

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

- Yes
- No

Please explain your answer.

## Next steps

Once MBIE has received feedback on its review and understanding of the issues of the regulatory regime for registered architects, it will assess and provide a summary of the responses. This feedback will inform what issues require further exploration and identify any options for change.

Any options or proposals for change will be discussed and tested with industry stakeholders and the public through further public consultation.

MBIE is also seeking feedback on the LBP regime's competencies. Part of this includes the design licence class and considering if the competency requirements for these designers are set at sufficient level to ensure buildings are designed right the first time. See Part 2B below for discussion on competencies in the LBP regime.

A discussion on the potential issues with how the LBP regime's design class interacts with the Registered Architects regime is in **Part 2B**.

## ***Part 2B***

# **Competencies in the Licensed Building Practitioners regime**

## **Background**

As discussed in Part 1A of this consultation document, the LBP regime assesses and records the competency of building practitioners (i.e., having certain skills and knowledge relevant to restricted building work) and the work only an LBP may carry out or supervise.

The regime is competency-based, with applicants assessed by independent assessors recruited from the building industry. The LBP Rules under the Building Act set out the standards of competence that must be met for someone to become licensed in the LBP regime, as well as detailing procedures for assessing competence. Schedule 1 of the LBP Rules describes the competencies for the seven current licensing classes.

Competencies set out the minimum standards for licensing and therefore should:

- meet required building code standards
- reflect current and critical practices
- have performance indicators that are demonstrable and assessable.

Developments in industry practices require competencies to be updated and clarified from time to time to remain relevant. If competencies are not kept up-to-date, LBPs may not be assessed for relevant competencies in some areas and consumers will not know if LBP work meets the required standards.

## **Interaction of LBP Design competencies with Registered Architects regime**

Stakeholders engaged in the Registered Architects review have indicated that the assessment for a Design licence through the LBP regime is perceived to be set at a lower threshold compared to the architectural profession's self-regulated standards. The pathway to becoming a registered architect is both more expensive and time-consuming. Additionally, there is a perception that some prospective architects are using the LBP Design class as an easier gateway into the profession.

MBIE is also aware that there are concerns with the quality of LBP Design work produced by registered architects as part of their 'deemed LBP' status under section 291 of the Building Act. This understanding is based on submissions received during the 2021 LBP consultation.

While the vast majority of those who apply for a LBP Design licence hold a qualification, the regime does not officially recognise a qualification. This means that all applicants to the LBP Design class, regardless of their background, must be assessed along the more rigorous 'Experienced' licensing pathway. One potential way to close the gap between the two professions is to make qualifications mandatory, however this will only affect a small percentage of applicants.

MBIE considers that there is a gap that exists between the two professions that needs to be closed. This is to ensure that loopholes are not exploited by either side, as this could lead to substandard and potentially dangerous building work being designed and completed if not picked up on. This could include raising the competencies for the LBP Design class to decrease the gap or improving the

complaints process so that professionals on either side are held to account when they work across other areas (e.g. a registered architect being disciplined for substandard LBP Design work).

MBIE is interested in:

- understanding the interaction between the LBP and Registered Architects regimes,
- whether there are any LBP Design competencies that should be changed or added, and
- what could be done to better align the two regimes and avoid regulatory gaps and unnecessary overlaps.

## What MBIE needs

As the proposed changes to the LBP regime's supervision and licensing areas will involve modifying and adding competencies, MBIE would like feedback and suggestions for improving other areas of practice competencies that LBPs must meet.

In previous consultations, MBIE asked submitters what they thought about the current competencies for LBPs. Many submitters thought that they were not fit for purpose for the current regime, however, the reasons and exact problems were not clear. The feedback received in the 2021 LBP consultation showed that a slight majority of those in the sector considered the minimum standards for entry were too low and that poor workmanship was a result of it.

However, the submissions from the 2021 LBP consultation were not forthcoming as to how the competencies could be improved. The assessment process for the LBP regime is based on a judgement from the assessor, as opposed to a more uniform process like an exam where an applicant needs to get a certain percentage to pass. Therefore, MBIE is seeking feedback on what specifically needs to be changed to lift the level of competency of those who enter the regime.

It is important to bear in mind that the purpose of occupational regulation is to set the minimum level of competency that needs to be met to enter the regime. However, it is also crucial that those who enter the regime can do the work they are licensed to do. Therefore, feedback is welcome from both those who have been through the regime's assessments and those who have suggestions on ways the current process could be improved.

MBIE is looking at a two-pronged approach for bringing the competencies into line with the demands of the present-day sector.

First, it is important to ensure that the competencies match what is needed on building sites across Aotearoa. For that reason, we want to know if there are any new competencies that should be added that will need to be met when an applicant to the regime is being assessed.

MBIE is already looking at adding such competencies as showing an understanding of the new LBP code of ethics, knowledge of sustainability practices and understanding obligations to consumers.

## Questions

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.
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?

## 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. 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 later this year.

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.

#### Question

22. 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.

# Summary of questions

LBP Proposals																	
<b>1.</b>	<p>MBIE has outlined a range of problems that are affecting the LBP regime, from the two overarching problems to the more specific problems detailed in each section. Are there any issues that have not been included?</p> <p><input type="checkbox"/> Yes <span style="margin-left: 150px;"><input type="checkbox"/> No</span></p> <p>Please explain your answer.</p>																
<b>2.</b>	<p>Do you agree with the proposal for a supervision endorsement?</p> <p><input type="checkbox"/> Yes, and I think that competency needs to be tested to gain the endorsement.</p> <p><input type="checkbox"/> Yes, and I think that being licensed for a certain amount of time is enough to gain the endorsement.</p> <p><input type="checkbox"/> No, I disagree.</p> <p>Please tell us why you agree or disagree.</p>																
<b>3.</b>	<p>To be eligible to apply for a supervision endorsement, should an LBP be required to hold a recognised supervision qualification?</p> <p><input type="checkbox"/> Yes - LBPs must have a supervision qualification</p> <p><input type="checkbox"/> No - LBPs should be eligible to have their competence tested if they do not have a supervision qualification</p> <p>Please explain your answer.</p>																
<b>4.</b>	<p>Do you agree with the proposed 24-month timeframe for transition before the change comes into effect?</p> <p><input type="checkbox"/> Yes <span style="margin-left: 100px;"><input type="checkbox"/> No, it should be longer.</span> <span style="margin-left: 100px;"><input type="checkbox"/> No, it should be shorter.</span></p> <p>Please tell us more.</p>																
<b>5.</b>	<p>Do you agree with the proposals for stonemasonry, internal waterproofing, and specialist installers?</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;"></th> <th style="width: 16.6%;">Agree</th> <th style="width: 16.6%;">Disagree</th> <th style="width: 16.6%;">Prefer another option</th> </tr> </thead> <tbody> <tr> <td>Stonemasonry</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Internal waterproofing</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Specialist installer</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>Please explain your answer for each profession.</p>		Agree	Disagree	Prefer another option	Stonemasonry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Internal waterproofing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Specialist installer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Agree	Disagree	Prefer another option														
Stonemasonry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>														
Internal waterproofing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>														
Specialist installer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>														

6. Internal waterproofing could cover many different trades in the sector. Do you agree that our proposed expanded definition of restricted building work would sufficiently cover all the trades in the sector?

Yes  No

Please explain your answer

7. Please tell us what types of trades you think are likely to be impacted by the introduction of this new internal waterproofing class, and what trades should be included as areas of practice?

8. There are currently no recognised qualifications for tanking or internal waterproofing. Do you think these need to be in place before these areas are introduced to the regime?

Yes  No

Please explain your answer.

9. What impacts would you expect on you or your business from the proposed changes? These impacts may be economic/financial, environmental, health and wellbeing, or other areas

10. Do you agree with our estimation that at least 75 per cent of eligible LBPs may apply for a supervision endorsement?

Yes, 75 per cent or higher.  No, it will be lower.

Please explain your answer.

## Electrical Workers and Plumbers, Gasfitters and Drainlayers codes of ethics

11A. 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.

11B. 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.

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?

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.

## Registered 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.

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.

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.

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.

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

- Yes
- No



Please explain your answer.

## LBP competencies

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.
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?

## Other

22. 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.

# Annex 1: Analysis of options for LBP proposals – Supervision and Licensing Areas

There are a total of four proposals outlined in the LBP section of this paper. These are:

- Proposal 1A & 1B: Introduce a supervision endorsement based on a competency assessment
- Proposal 2A: Introduce stonemasonry to the LBP regime
- Proposal 2B: Introduce specialist areas to the LBP regime
- Proposal 2C: Introduce internal waterproofing to the LBP regime.

Different options have been presented for each proposal, and each option has been assessed against the occupational regulation objectives to determine which one is most suitable. The following tables provide analysis on each option and how it sits against the four objectives.

The below table provides a key for the assessments:

Key	
++	Significant improvement
+	Improvement
0	Status quo
-	Deterioration
--	Significant deterioration

## Issue 1: [Supervision](#)

### Proposals 1A & 1B: Introduce a supervision endorsement based on a competency assessment

Option 1: Maintain status quo	Evaluation against criteria	
Maintaining the status quo will not address any issues with supervision, and the problems will continue unabated. This includes the possibility that substandard building work is being signed off on, and LBPs working outside their areas of expertise.	The regulation is proportionate to the risks to public safety and wellbeing	0
	Practitioners are providing services with reasonable care and skill	0
	Practitioners are operating within their areas and levels of expertise	0
	Practitioners can be held to account for substandard work and poor behaviour	0
	Overall assessment	0
Option 2: Introduce a supervisor endorsement	Evaluation against criteria	
Anyone who wanted to supervise restricted building work would need to have been deemed competent by the LBP Registrar. This would mean reduced instances of poor work being signed off on. A supervision endorsement could also be stripped off practitioners who have been intentionally supervising incorrectly, removing them from the pool of practitioners who can do this work. It would also provide LBPs an incentive to distinguish themselves from those without an endorsement and make it easier for consumers to make an informed decision.	The regulation is proportionate to the risks to public safety and wellbeing	++
	Practitioners are providing services with reasonable care and skill	++
	Practitioners are operating within their areas and levels of expertise	++
	Practitioners can be held to account for substandard work and poor behaviour	++
	Overall assessment	+++++++
Option 3: Add supervision to the general competencies	Evaluation against criteria	
While this option would mean that new LBPs would have their ability to supervise tested, those already in the regime would either need to be grandfathered in or have their ability tested regardless of whether they intend to supervise, at great cost to the Government. It will not address issues with inexperienced LBPs supervising, nor will it provide a way to distinguish more experienced and skilled LBPs.	The regulation is proportionate to the risks to public safety and wellbeing	-
	Practitioners are providing services with reasonable care and skill	+
	Practitioners are operating within their areas and levels of expertise	+
	Practitioners can be held to account for substandard work and poor behaviour	0
	Overall assessment	+
Option 4: Non-regulatory approach	Evaluation against criteria	
While there may be a slight rise in supervision quality if new material is released on the issue, this will involve optional engagement from the sector. Overall, a non-regulatory approach will not address most of the problems presented in the document, and therefore these will continue unabated.	The regulation is proportionate to the risks to public safety and wellbeing	0
	Practitioners are providing services with reasonable care and skill	0
	Practitioners are operating within their areas and levels of expertise	0
	Practitioners can be held to account for substandard work and poor behaviour	0
	Overall assessment	0

## Issue 2: [Licensing Areas](#)

### Proposal 2A: Introduce Stonemasonry to the LBP regime

Option 1: Maintain status quo	Evaluation against criteria	
Maintaining the status quo will not change the way that stonemasons are not regulated, nor will it address any risks posed to the public. Practitioners would not be able to be held to account by the Building Practitioners Board.	The regulation is proportionate to the risks to public safety and wellbeing	0
	Practitioners are providing services with reasonable care and skill	0
	Practitioners are operating within their areas and levels of expertise	0
	Practitioners can be held to account for substandard work and poor behaviour	0
	Overall assessment	0
Option 2: Introduce as a separate class	Evaluation against criteria	
While there would be regulation in this area and practitioners could be held to account for poor workmanship and behaviours, the regulatory response would be out of proportion as it would create a new class for an area that shares competencies to an already-existing class. This could help contribute to complicating the regime, which is against Government priorities.	The regulation is proportionate to the risks to public safety and wellbeing	-
	Practitioners are providing services with reasonable care and skill	++
	Practitioners are operating within their areas and levels of expertise	++
	Practitioners can be held to account for substandard work and poor behaviour	++
	Overall assessment	+++++
Option 3: Add to existing class	Evaluation against criteria	
Adding Stonemasonry to a renamed Bricklaying and Blocklaying class would provide regulation in the area and would allow practitioners to be held to account for poor workmanship or behaviours. Stonemasons would need to meet a minimum level of competence before they could undertake restricted building work.	The regulation is proportionate to the risks to public safety and wellbeing	++
	Practitioners are providing services with reasonable care and skill	++
	Practitioners are operating within their areas and levels of expertise	++
	Practitioners can be held to account for substandard work and poor behaviour	++
	Overall assessment	+++++++
Option 4: Non-regulatory approach	Evaluation against criteria	
A non-regulatory approach may provide slight increases in the quality of stonemasonry work, it will still exist outside the LBP regime and therefore there will be no efficient way of holding these practitioners to account should poor workmanship continue, and the level of resource put into this would not achieve enough of an outcome to justify it.	The regulation is proportionate to the risks to public safety and wellbeing	-
	Practitioners are providing services with reasonable care and skill	+
	Practitioners are operating within their areas and levels of expertise	0
	Practitioners can be held to account for substandard work and poor behaviour	0
	Overall assessment	0

## Proposal 2B: Introduce Internal Waterproofing to the LBP regime

Option 1: Maintain status quo	Evaluation against criteria	
Maintaining the status quo will not change the fact that internal waterproofers are not regulated, nor will it address any risks posed to the public. Practitioners would not be able to be held to account by the Building Practitioners Board.	The regulation is proportionate to the risks to public safety and wellbeing	0
	Practitioners are providing services with reasonable care and skill	0
	Practitioners are operating within their areas and levels of expertise	0
	Practitioners can be held to account for substandard work and poor behaviour	0
	Overall assessment	0
Option 2: Introduce as a separate class	Evaluation against criteria	
This option would restrict who can do the work and ensure that those who do are of a minimum level of competence. Practitioners will be subject to the LBP code of ethics and would be held to account by the Building Practitioners Board.	The regulation is proportionate to the risks to public safety and wellbeing	++
	Practitioners are providing services with reasonable care and skill	++
	Practitioners are operating within their areas and levels of expertise	++
	Practitioners can be held to account for substandard work and poor behaviour	++
	Overall assessment	+++++++
Option 3: Add to existing class	Evaluation against criteria	
While this option would bring regulation and accountability to the area, there are no current classes that have similar competencies, so adding Internal Waterproofing to an existing class would cost far more than it would achieve.	The regulation is proportionate to the risks to public safety and wellbeing	--
	Practitioners are providing services with reasonable care and skill	-
	Practitioners are operating within their areas and levels of expertise	++
	Practitioners can be held to account for substandard work and poor behaviour	++
	Overall assessment	+
Option 4: Non-regulatory approach	Evaluation against criteria	
A non-regulatory approach may provide slight increases in the quality of internal waterproofing, but it will exist outside the LBP regime and therefore there will be no efficient way of holding these practitioners nor knowing if they are operating at a minimum standard.	The regulation is proportionate to the risks to public safety and wellbeing	-
	Practitioners are providing services with reasonable care and skill	+
	Practitioners are operating within their areas and levels of expertise	0
	Practitioners can be held to account for substandard work and poor behaviour	0
	Overall assessment	0

## Proposal 2C: Introduce Specialist areas to the LBP regime

Option 1: Maintain status quo	Evaluation against criteria	
Maintaining the status quo will not change the way that specialists are or are not regulated, nor will it address any risks posed to the public. Practitioners would not be able to be held to account by the Building Practitioners Board.	The regulation is proportionate to the risks to public safety and wellbeing	0
	Practitioners are providing services with reasonable care and skill	0
	Practitioners are operating within their areas and levels of expertise	0
	Practitioners can be held to account for substandard work and poor behaviour	0
	Overall assessment	0
Option 2: Introduce as a separate class	Evaluation against criteria	
Introducing a new Specialist Installer class would allow these practitioners to become licensed without affecting other licence classes. It would increase efficiencies in the sector, would mean these practitioners could be held to account by the Building Practitioners Board, and would also allow for further specialisations to be added to the regime efficiently in the future.	The regulation is proportionate to the risks to public safety and wellbeing	++
	Practitioners are providing services with reasonable care and skill	++
	Practitioners are operating within their areas and levels of expertise	++
	Practitioners can be held to account for substandard work and poor behaviour	++
	Overall assessment	+++++
Option 3: Add to existing class	Evaluation against criteria	
Separating specialists in already-existing classes, especially the Carpentry class which does not currently have areas or practice, may cause confusion for the general public as they may perceive these specialists to be fully licensed Carpenters. It would also not allow for the efficient adding of other specialisations in the future.	The regulation is proportionate to the risks to public safety and wellbeing	--
	Practitioners are providing services with reasonable care and skill	++
	Practitioners are operating within their areas and levels of expertise	++
	Practitioners can be held to account for substandard work and poor behaviour	++
	Overall assessment	++++
Option 4: Non-regulatory approach	Evaluation against criteria	
A non-regulatory approach may provide slight increases in the quality of plasterboard installation and tanking if practitioners choose to engage with educational material produced, but the same inefficiencies will still exist.	The regulation is proportionate to the risks to public safety and wellbeing	-
	Practitioners are providing services with reasonable care and skill	+
	Practitioners are operating within their areas and levels of expertise	+
	Practitioners can be held to account for substandard work and poor behaviour	0
	Overall assessment	+



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