MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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3

Discussion paper –
Building system legislative reform

Occupational regulation

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Contents

Summary of part 3: Occupational regulation

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

Regulating who can do certain kinds of work (licensing) aims to protect the public from harm by ensuring only appropriately skilled and competent people carry out specific work.

Occupational regulation should make sure that:

- regulation is proportionate to the risks to public safety
- registered or licensed practitioners have the right skills or qualifications
- practitioners are held to account for substandard work.

Six types of jobs in the building process are currently regulated occupations[1]:

- Architects are regulated by the New Zealand Registered Architects Board.
- Electrical workers are regulated by the Electrical Workers Registration Board.
- Engineering associates are regulated by the Engineering Associates Registration Board.
- Engineers are regulated by Engineering New Zealand as the Registration Authority for professional engineers, which is monitored by the Chartered Professional Engineers Council.
- Licensed Building Practitioners (LBPs) are regulated by the Building Practitioners Board (BPB).
- Plumbers, gasfitters and drainlayers are regulated by the Plumbers, Gasfitters and Drainlayers Board (PGD Board).

The changes set out in this section will address three priority areas where there are problems with the current occupational regulation schemes

These three areas offer the best opportunities to move the regimes towards best practice, and meet the desired outcomes for occupational regulation.

The LBP scheme

The definition of restricted building work (RBW) in the Licensed Building Practitioners (LBP) scheme is too narrow. The definition of RBW only includes houses and small apartments. This means that builders working on other buildings, including multi-storey apartments and office buildings, and schools, hospitals and stadiums, are not required to be LBPs. Yet these buildings are generally more complex to design and build and present greater risk to public safety than a house or small apartment building.

1 Licensed or registered people make up about 64,000 of the estimated 241,700 people working in the construction industry (as at June 2018). The remainder are still carrying out work that is regulated under the Building Act and general business law, and may be working under the supervision of someone who is licensed or registered.

Engineers

Few restrictions are placed on who can carry out engineering work on buildings; the Chartered Professional Engineer title does not provide sufficient assurance of competence. Chartered Professional Engineers (CPEng) are automatically deemed to meet the design licensing requirements for restricted work under the LBP scheme. Engineers and BCAs have raised concerns about the usefulness of CPEng in providing assurance of an engineer's competence to carry out very complex or specialised work.

Plumbers, gasfitters and drainlayers

Exemptions allow unqualified people to carry out plumbing, gasfitting and drainlaying work. The *Plumbers, Gasfitters, and Drainlayers Act 2006* (PGD Act) provides 11 exemptions that allow people to perform specific work without meeting the PGD Board's registration and licensing requirements. Exemption holders are still required to meet the requirements of the building code and meet any building consent requirements. There is a risk to public health and safety when unqualified people carry out restricted work.

We want stakeholders' feedback on seven proposals

1	Broaden the definition of RBW to include more complex non-residential building work.
2	Raise the competence standard for LBPs to enter and remain in the LBP scheme. This includes proposals to: ■ Introduce a tiered licensing system for LBPs to establish a progression pathway, including a specific licence for supervision. ■ Simplify the licence class categories. ■ Introduce behavioural competence requirements for LBPs.
3	Establish a new voluntary certification scheme that provides assurance of an engineer's professionalism and general competence and phase out CPEng.
4	Restrict who can carry out or supervise safety-critical structural, geotechnical and fire-safety engineering work within the building sector. This would cover all medium-to-high complexity work and be triggered by factors such as building size, use and location.
5	Establish a new licensing scheme to regulate who can carry out or supervise engineering work that has been restricted.
6	Repeal sanitary plumbing exemptions for householders in specified areas and for rural districts.
7	Repeal exemptions for restricted sanitary plumbing, gasfitting and drainlaying work under supervision.

These changes will help deliver the programme's outcomes

The objectives of the proposed changes are to address regulatory gaps in the system of occupational regulation and make sure that:

- restrictions on building work are proportionate to the risks to public safety
- those who are licensed to undertake restricted work have the right level of competence, and are held accountable for substandard work.

The proposals will:

- rebalance risk in the building process by making sure that those who are best able to manage risks will be held to account for substandard work
- give the public and those involved in the building process greater assurance that building work has been carried out by competent people with reasonable care and skill
- enable a more efficient consenting process.

Review of complaints and discipline across the regulated occupations in the building sector is a future phase of work

The review of the occupational regulation of LBPs, engineers, and plumbers, gasfitters and drainlayers has highlighted issues related to complaints, discipline and prosecution that cut across all six regulated occupations in the building sector. There are opportunities to align the regimes with best practice, improve information sharing across the sector, achieve greater consistency and efficiency, and ensure penalties are sufficient to ensure compliance with the rules and standards.

3.1: The LBP scheme

The LBP scheme makes a crucial contribution to safe and durable buildings

The LBP scheme aims to manage public safety, health and financial risks facing building owners and occupants. The LBP scheme is the primary way in which the building regulatory system ensures the construction workforce is competent, skilled and held accountable.

How the LBP scheme works today

The definition of restricted building work (RBW) determines what type of building work is regulated under the LBP scheme, and underpins the scheme's licensing classes. The licensing of building practitioners intends to provide assurance that building practitioners carrying out or supervising RBW have the right skills and competence.

RBW is currently defined in regulations [Building (Definition of Restricted Building Work) Order 2011] as:

- construction and alteration or design of the primary structure of a house or a small-to-medium apartment building (s5.2(a)(i))
- the external moisture-management system of a house or a small-to-medium apartment building (s5(2)(ii))
- design of fire safety systems for small to medium apartments proposed to be constructed or altered (s7).

This means that, under the current RBW definition, building practitioners aren't regulated by the scheme when they carry out work on:

- commercial buildings
- mixed-use buildings
- high-rise residential buildings.

The result is that the scheme doesn't manage risk proportionately. High-rise buildings are more complex designs than houses, and require a higher level of competence to construct.

An updated scheme will manage risks proportionately and support a productive building sector

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

An updated and improved scheme is critical to the success of the building regulatory system reform programme. The reform programme involves wider changes:

- The fairer allocation of risk in the building process. The proposal to require guarantee and insurance products for new residential builds and significant alterations would require builders to meet some minimum standards in order to get insurance cover. Lifting the competence standards in the LBP scheme will help builders to meet requirements from guarantee and insurance product providers.
- Builders will have clearer responsibilities in relation to building products.
- The licensing of engineers for safety critical work.

MBIE aims to raise the competence bar for entry to the LBP scheme. LBPs will be expected to have higher technical competence and meet ethical behavioural standards. The scheme will signal to consumers and other parties which LBPs have the right skills to carry different types of work, and more complex work.

The construction sector has changed significantly since the scheme was introduced

The definition of RBW was driven by assumptions that are no longer valid:

- that residential builds were most vulnerable to the systemic weaknesses of the building system
- that commercial developments had more sophisticated quality assurance systems for managing risks.

Building Consent Authorities (BCAs) previously only had a duty of care towards residential builds. In 2012, the BCA duty of care was extended to cover complex multi-storey apartment buildings and other commercial construction with the *Spencer on Byron* decision.[2] Oversight on construction sites has also changed over time, moving away from experienced building professionals such as clerks of work, towards project managers.

Commercial building work risk management practices don't always manage risk adequately

Stakeholders have told us that contracting processes in the commercial sector have a stronger focus on the allocation and pricing of risk rather than on quality assurance of the work. Commercial risk management practices are voluntary, with approaches on the level of due diligence left to the discretion of building companies.

2 BODY CORPORATE NO. 207624 v NORTH SHORE CITY COUNCIL [*Spencer on Byron*] [2012] NZSC 83 **https://www.courtsofnz.govt.nz/cases/body-corporate-no.-207624-v-north-shore-city-council-1/@@images/fileMediaNotes?r=33.6908305432**

Inspection failure rates highlight that commercial building work risk management practices are no better than those for residential building work. Data from seven BCAs[3] indicates comparable building inspection failures between residential and commercial building work.
One-third of commercial building inspections fail. This highlights the anomaly between building practitioner accountability in the residential building sector and the commercial building sector.
BRANZ[4] surveyed industry experts on their experience of compliance failures for new buildings (residential and non-residential). Compliance failures relating to weathertightness were identified as a particular issue for multi-unit housing.

Building work on larger apartment buildings faces at least as many risks as work on houses

Owners and occupants of apartments in high-rise or multi-use buildings are equally vulnerable to the risks of something going wrong in the build process as owners of stand-alone homes. Large multi-storey apartment buildings and non-residential buildings are likely to be more complex in terms of structure, weathertightness and fire-safety – but building work on these buildings is currently excluded from the LBP scheme.

The competence standards for entry to the LBP scheme are too low

Builders must meet competency standards established by the Building Practitioners Board (BPB) to become and remain licensed. The BPB sets minimum standards of competence for each licensing class under the Licensed Building Practitioners Rules 2007. A building practitioner who wants to become an LBP must meet these standards. People can become LBPs through either a qualification-based pathway or an experience-based pathway.

One of the original policy intentions of the LBP scheme was to provide incentives for upskilling the workforce. The scheme was intended to shift over time to a more qualifications-based scheme.[5] Feedback from stakeholders indicates the entry level to the LBP scheme was intended to be raised over time. However, the focus in the original implementation was to get existing building practitioners licensed. The entry level has not changed since the LBP scheme was introduced.

Competence in the LBP scheme has been identified as a key area of concern

Builders, BCAs and industry groups don't have confidence in the LBP scheme:

- Many believe the entry level to the scheme is set too low to be a reliable standard of skill.
- Qualifications are not required for entry to the scheme.
- The scheme's licensing structure doesn't recognise different levels of competence.
- LBPs don't value the scheme as it does not clearly signal a high level of competence. LBPs notice other LBPs with low competence.
- Many builders rely on BCAs to identify non-compliant building work and ensure buildings have been constructed to the consented plans. Relying on BCAs to identify issues and defects is not an appropriate method of ensuring that building work is completed competently.

3 MBIE data search, GoGet data - Inspection failures from January 2012 to June 2017 across 7 BCAs.

4 Page, I. & Gordon, G. (2017). *What is quality in buildings?* BRANZ Study Report SR380. Judgeford, New Zealand: BRANZ Ltd

5 Cabinet Economic Growth and Infrastructure Committee. 2009. Licensing of Building Practitioners.

Research MBIE carried out in 2018 found that levels of competency are an issue.[6] Research participants were concerned that the competence level to enter the scheme was too low.

Complaints against 128 LBPs were upheld by the BPB in the 2017/2018 year.[7] Key themes in complaints included LBPs failing to build in accordance with the building consent, LBPs carrying out RBW without a building consent, proceeding with non-compliant work, failing to comply with contractor obligations, and poor application of supervision.

BRANZ (2018) has identified several New Zealand surveys into residential building quality that have reported defects in new homes. In 2014, 8 per cent of new houses had what could be considered 'serious defects'. Most of these defects were due to poor workmanship.[8]

Licence classes need to be changed to address supervision and site management issues

The *Building Act* 2004 specifies that an LBP must carry out or supervise RBW. Unlicensed builders can carry out RBW under supervision. Supervision is a critical component of the LBP scheme to ensure the construction workforce has flexibility and can operate productively, while ensuring buildings are safe and durable. Supervision ensures that RBW not being done directly by LBPs is still being done competently and in compliance with building consents and the building code.[9]

An LBP can carry out supervision without any supervision experience or training

Anyone who gains a licence under the LBP scheme can immediately carry out and supervise RBW. Inexperienced LBPs taking on supervision are likely to be taking on more risk than they realise, without having sufficient supervision competence to manage risk. Our 2018 research report of stakeholder views found that some entry-level builders didn't consider themselves competent enough to become licensed as they weren't ready to supervise others and be accountable for the building work of others.[10] All builders are liable for the building work they do, but are not all accountable under the LBP scheme.

Applying effective supervision requires technical skills and judgement, but no competency requirements for supervision are in place (MBIE has issued guidance on how to apply the appropriate type of supervision.)[11] LBPs are required to judge the appropriate application of supervision based on the type and complexity of the work, the experience of the people being supervised, and the geographic spread of the work.

Supervision of unlicensed builders is not working well

BCAs, builders and complaints data have all indicated a proportion of LBPs are not adequately supervising unlicensed builders carrying out RBW. We've heard that some LBPs are supervising across a high number of sites without applying the appropriate judgement about the level of required supervision. BCAs have told us that they're not confident in the level of supervision by LBPs.

6 **https://www.lbp.govt.nz/assets/documents/lbp-stakeholder-research-report-september-2018.pdf**

7 **https://www.lbp.govt.nz/assets/documents/annual-reports/annual-report-2018.pdf** Page 26.

8 BRANZ 2018, "Building quality issues: a literature review." SR375. **https://www.branz.co.nz/cms_show_download.php?id=8748debf21c48edf999affc9f484b99a190010d9**

9 **https://www.lbp.govt.nz/assets/documents/lbp-stakeholder-research-report-september-2018.pdf**

10 **https://www.lbp.govt.nz/assets/documents/lbp-stakeholder-research-report-september-2018.pdf**

11 **https://www.lbp.govt.nz/assets/documents/Practice-note-supervision.pdf**

Who can carry out restricted building work?

Licensed building practitioner

- Can carry out restricted building work
- Can supervise unlicensed builders carrying out restricted building work

Unlicensed builder under supervision

- Can carry out restricted building work

Unlicensed builder

- Can't carry out restricted building work without supervision

Our 2018 stakeholder research report found that Building Consenting Officials (BCOs) have identified many instances when the LBP is not present during building inspections. BCOs aren't able to discuss the building work or the appropriateness of supervision with the LBP. This doesn't give BCOs confidence that the level of supervision is appropriate.[12]

Inspection failure rates are an additional indication that supervision hasn't been applied adequately. On average 31 per cent of BCA inspections of residential homes failed between January 2012 and June 2017. This failure rate has remained relatively constant between 2014 and 2017.

The site licence is not providing the intended value in the building process

The site licence in the LBP scheme was intended for competent professionals in their chosen fields to aspire to, reflecting a change of role from being solely on the tools to being responsible for coordinating and overseeing the building construction or alterations. Its original intention was to remedy the lack of integration across the different elements of a building that was seen to have contributed to the leaky homes crisis.

We've heard feedback from builders that the site licence is not providing value. Site licence holders aren't able to supervise RBW under this licence class. When the scheme was being established in 2007, there was concern that the site lead role could create unintended new liabilities. It was found that site leads might face liability for construction defects on the grounds that they had a general duty of care for a construction project as a whole. This liability arose in part from having legal responsibility to certify that construction meets the building consent. This would have conflicted with implied warranties in the *Building Act*, which places duties on all builders and owners to ensure construction meets building consent requirements. It would also have conflicted with BCA responsibilities.[13] The site licence is the only licence class that has supervision competencies, even though other licence class holders are able to both do and supervise work. Uptake of the licence is relatively low and is decreasing, with 4,758 site licence holders as at 30 June 2018.[14]

12 **https://www.lbp.govt.nz/assets/documents/lbp-stakeholder-research-report-september-2018.pdf**

13 Cabinet Business Committee (07) 55, 20 April 2007 "Changes to the Building Practitioner Licensing Regime".

14 **https://www.mbie.govt.nz/assets/d89e8ad463/national-construction-pipeline-report-2018.pdf**

The licence classes need to be updated

Licence classes – see table 3.1.1 below – are defined in regulations under the Building (Designation of Building Work Licensing Classes) Order 2010. They directly relate to the definition of RBW.

We've heard concerns from builders and BCAs that:

- builders are required to get multiple licences due to the licence class structure
- licence classes don't clearly signal areas and levels of competence to others in the system
- licence classes are not well linked to sector training programmes
- there are regulatory gaps between the licence classes.

TABLE 3.1.1

Licence classes and types in the current LBP scheme

Licence Class	Licence Class Type
Design Site	General
Carpentry Roofing External plastering Bricklaying and blocklaying Foundations	Trade

The LBP scheme does not have the full range of tools it needs to hold LBPs to account

The scheme requires LBPs to have sufficient technical competence to carry out or supervise RBW. But no requirement is in place to ensure that LBPs don't cut corners or carry out poor quality building work – the scheme does not have behavioural competence standards.

Under the current scheme, the BPB may consider the previous conduct, including criminal convictions, of LBPs as part of the complaint process. An LBP can have their licence suspended or removed on the basis of a previous or new criminal conviction if a complaint is made.

LBPs don't need to meet any character or behavioural standard in the licensing application process. This means that building owners may only find out about their LBP's poor ethical behaviour when something goes wrong. This means that building owners aren't able to make fully informed decisions about the LBPs they choose to engage.

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

The *Building Act* currently has provisions for a code of ethics to be prescribed by Order in Council for minimum standards of ethical conduct for LBPs.

MBIE proposes two changes to the LBP scheme

1 Broaden the definition of RBW to include more complex non-residential building work

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

- Introduce a tiered licensing system for LBPs to establish a progression pathway, including a specific licence for supervision.
- Simplify the licence class categories.
- Introduce behavioural competence requirements for LBPs.

The objectives of these changes are to:

- ensure that restrictions on building work are proportionate to the risks to public safety
- ensure that those who are licensed to undertake restricted work have the right level of competence, and are held accountable for substandard work.

1. A broader definition of RBW will help manage risk

Proposal

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

This proposal aims to ensure the regulation of building work is more proportionate with risks to public safety and recognises that apartment owners are equally financially vulnerable to building failure as house owners.

MBIE is proposing to broaden the definition of RBW to better manage risks to public safety, and better protect building owners and users by ensuring builders have the right skills and knowledge and are held accountable for their work. The LBP scheme can better manage risks to public safety and better protect vulnerable building occupants, such as older persons, children and people who are disabled or have poor health.

We are also proposing to use the risk aspects set out in the Building Importance levels in the building code to inform the definition of RBW.[15] Building Importance levels have been determined by risk to human life, the environment, economic cost and other risk factors in relation to building use. Buildings with a high capacity of building users present a high risk to public safety should a building failure occur. Higher capacity buildings are also usually more complex to design and build. Failing to build complex high-rise buildings to the agreed and consented design greatly affects public safety.

Building use and occupancy are key considerations in the proposal

High numbers of vulnerable occupants such as older persons, children and people who are disabled or have poor health face a higher risk to their safety if a building fails. Vulnerable occupants are unable to escape buildings quickly, particularly buildings with high capacity. MBIE wants to expand the definition of RBW to capture higher risks. We don't want to capture lower-risk commercial and industrial buildings which are more straight forward designs to construct, and may not usually be occupied.

Other jurisdictions also regulate building practitioners in the commercial sector

Many other jurisdictions regulate building practitioners across both residential and commercial sectors. This occurs in all but two Australian jurisdictions. Several jurisdictions link practitioner licensing to the complexity of building work rather than the use of a building, with the inclusion of licensing for medium- and high-rise buildings.

15 A building is given an importance level between 1 (low risk) and 5 (catastrophic risk) as determined by risk to human life, the environment, economic cost and other risk factors in relation to its use. See Clause A of the Building Act: **https://www.building.govt.nz/building-code-compliance/a-general-provisions/a3-building-importance-levels/**. Also see Clause A of the building code: **http://www.legislation.govt.nz/regulation/public/1992/0150/latest/DLM162576.html#DLM4417717**

An expanded RBW will include more building types

MBIE proposes that primary structure, weathertightness and fire safety systems remain the core elements of RBW under an updated definition. These three elements are critical to the safety and durability of a building and require an appropriately skilled and competent person to design or construct them. They also pose the highest risk to building owners and occupants from safety, health and financial perspectives. Failure of weathertightness in buildings creates safety risks for building owners and users because water damage to buildings can result in structural damage to the building. Water damage to timber can also result in toxic fungal growth that presents health risks.[16]

The proposed definition of RBW focuses on structural, weathertightness and fire safety work and is expanded to include:

- all residential building work, including simple houses and mixed use residential/commercial buildings and apartments
- commercial and communal buildings currently defined as:
  - Importance Level 2 buildings with a height of 12 metres or more **or** capacity over 200 persons. This is only a subset of Importance Level 2 buildings. Building capacity will be determined by a licensed fire engineer.
  - Level 3 and above.

The definition of RBW will exclude restricted engineering work, but may include some engineering work that doesn't meet the threshold for restricted engineering work.

Questions for stakeholders	
3.1.1	How effective do you think expanding the scope of RBW will be in managing risks to public safety in the building sector?
3.1.2	Do you agree with the proposed threshold for the definition of RBW?
3.1.3	**For builders:** What impacts do you think the proposals for RBW will have on you and your business (including type of work, recruitment, training and costs)?
3.1.4	What impacts do you think the proposals for RBW will have on homeowners, building owners and building occupants?
3.1.5	How do you think the proposed changes for the LBP scheme would affect the behaviour of LBPs?
3.1.6	What impact do you think expanding the scope of RBW will have on the construction sector skill shortage?

16 The Hunn report, the report summarising the inquiry into leaky homes, noted that water-damaged timber will become structurally unsound and fail if undetected. See "Report of the overview group on the weathertightness of buildings to the Building Industry Authority." 31 August 2002 **https://www.stepupgroup.co.nz/wp-content/uploads/2011/09/32682.pdf**

2. Higher competence requirements will increase confidence in the LBP scheme

Proposals

Raise the technical competence standard for LBPs to enter and remain in the LBP scheme.

Introduce a tiered licensing system for LBPs to establish a progression pathway, including a specific licence for supervision.

Simplify the licence class categories.

Introduce behavioural competence requirements for LBPs.

MBIE proposes raising the competence standards required of licensed builders in response to concerns that the current standards of competence are set too low.

To change these standards, the BPB must develop new competency standards in the LBP rules. The process will include a consultation process with the construction sector to identify the right levels of technical competence. MBIE will need to draft changes to the rules and the BPB will need to approve those changes. The Minister for Building and Construction will then also need to approve them.[17] Skills maintenance requirements for LBPs will be aligned with the new competence standards.

A redesigned tiered licensing system would recognise different skill levels

We propose redesigning the LBP scheme licence class structure to shift to a tiered licensing class structure from the current specialised licensing class structure. A tiered approach to licence classes would recognise different levels of skill and seek to encourage more builders to become LBPs. It would achieve this by providing a pathway to upskill and progress through the industry. Licences would be tiered based on the level of skill required to undertake or supervise RBW. The existing seven specialised licence classes would be simplified.

The proposal will complement the Government Skills Strategy and Skills Action Plan by supporting career pathways for new and existing building practitioners. The first Skills Action Plan focuses on getting people into the construction industry. The expectation is that up to 4,000 more people will choose construction-related careers and qualifications (including apprenticeships) in the next three years.[18]

Introducing a supervision licence would recognise higher levels of skills and ease pressure on less experienced LBPs

MBIE proposes a supervision licence tier. Standards of competence for supervising RBW would be set at a higher level than the standard of competence for someone carrying out RBW. Holders of a supervision licence would be able to both carry out and supervise RBW in their area of competence. LBPs without a supervision licence would only be able to carry out RBW in their area of competence.

17 This process is prescribed in section 360 of the *Building Act 2004*. **http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM308691.html?search=sw_096be8ed817f9e65_360_25_se&p=1&sr=1**

18 See Cabinet paper at **https://www.mbie.govt.nz/assets/7b96257cf6/cabinet-paper-action-plan-construction-skills-strategy.pdf**

A supervision licence tier would ease pressure on new LBPs to provide supervision as soon as they become licensed, and help recognise the higher level of skills of more experienced LBPs.

Internationally, supervision is commonly recognised as an additional competence to carrying out building work. Australian states have different regulatory approaches to practitioners, but most recognise supervision as a competency.

TABLE 3.1.2

Proposed Licence Class Tiers and Overall Competence Requirements

Licence Class Tier	Competence Requirements
LBP 1	Technical competence to carry out building work of that licence class type. Must follow code of ethics and meet requirements for fit and proper person
LBP 2	Technical competence to carry out building work of that licence class type. Supervision competence and using judgement to apply the appropriate level of supervision. Must follow code of ethics and meet requirements for fit and proper person.

As part of changes to competence standards and licence class redesign, we will consider how often licences should be renewed

Licences under the LBP scheme are currently required to be renewed each year. MBIE wants to make the licensing renewal process more meaningful, and less frequent than it is currently.

MBIE will review site licence requirements when redesigning the overall licence classes

MBIE proposes reviewing the site licence in the LBP scheme as part of redesigning the overall licence classes. This review will take into account the need to ensure:

- oversight of building work on a site is provided
- the oversight contributes to the overall building quality
- the oversight role is carried out by people best placed in the building process to be responsible for this work.

Introducing behavioural standards will improve public confidence in the LBP scheme

MBIE proposes introducing behavioural standards for LBPs. These standards would be implemented alongside improvements to technical competence standards to improve the quality of building work. Their shared goal would be to cement public confidence in the LBP scheme. It would provide confidence for consumers that the practitioner not only has the technical skills for the job, but can also be expected to perform their job with integrity.

If the behavioural requirements are clear, then this would provide clear grounds for the BPB to take any necessary disciplinary action. Clarifying behavioural requirements can be achieved by:

- raising the entry bar for the scheme, which will provide more assurance that builders presenting a high risk of poor behaviour don't become licensed, and will reduce the risk to consumers
- setting clear standards of behaviour for LBPs, which will provide a clear signal to LBPs and consumers about how LBPs should conduct themselves.

A fit and proper person requirement would raise the bar for entry to the LBP scheme

MBIE proposes implementing a fit and proper person test to raise the bar for entry to the scheme, and to provide the grounds for discipline specified in the *Building Act*. This could include if the applicant has:

- a conviction by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term or six months or more, and the carrying out of the offence reflects adversely on the person's fitness to carry out or supervise building work
- a conviction for an offence under the *Building Act*
- held themselves as being licensed to carry out or supervise building work of a type that, at that time, they weren't licensed to carry out or supervise
- for the purpose of becoming licensed, made a false declaration or representation
- behaved in any way or done anything that brings, or is likely to bring, the scheme into disrepute
- breached the code of ethics prescribed in the Act.

In conducting a fit and proper person assessment, the BPB would apply the principles of natural justice in coming to its decision. They could also consider other relevant issues, such as the seriousness of the incident, how long ago it occurred, its consequences, whether it was a one-off action and the applicant's attitude toward the incident.

A code of ethics would support the fit and proper person requirement

MBIE proposes implementing an accompanying code of ethics for LBPs, as specified in section 314A of the Building Act.[19] A code of ethics would support the fit and proper test and could include provisions that require the LBP to:

- abide by laws
- conduct their professional activities honestly and fairly and with reasonable skill, care and diligence
- take reasonable steps to safeguard health and safety
- avoid significant conflicts of interest
- report any breaches of the code of ethics
- maintain confidentiality
- uphold the reputation of the profession.

19 The code of ethics for licensed building practitioners states: The Governor-General may, by Order in Council made on the recommendation of the Minister, prescribe a code or codes of minimum standards of ethical conduct for licensed building practitioners or classes of licensed building practitioners'. See **http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM4358305.html?search=sw_096be8ed817f9e65_ethics_25_se&p=1#DLM4358305**

LBPs will have clarity of what behavioural standards builders must meet. Builders who don't meet fit and proper person requirements (as determined by the BPB) cannot be licensed. The BPB can currently only take disciplinary action about behavioural misconduct if it brings the LBP scheme into disrepute. This is a high threshold and complaints of behavioural misconduct are rarely upheld. Introducing a code of ethics establishes a clearer standard against which to measure LBP behaviour.

Increased support to the Building Practitioners Board would help it manage the broader scope of the LBP scheme

MBIE will consider consequential changes to amend and support the roles and functions of the BPB, to manage the broader scope of the LBP scheme and changes in competency standards. The BPB may need new members to manage a broader LBP scheme with a different focus. This may include expertise on ethical conduct standards.

Questions for stakeholders	
3.1.7	How effective do you think raising the competence standards for the LBP scheme would be in increasing confidence in the LBP scheme?
3.1.8	What impact would changing the competence standards for the LBP scheme have on builders, building companies, building sector associations and training organisations?
3.1.9	**For builders:** Would the introduction of tiered licence classes make you more likely to apply to become an LBP, and why?
3.1.10	**For builders:** If you're already an LBP, would you be likely to apply to become licensed under a new supervision licence class, and why?
3.1.11	**For builders:** Do you still see potential value in having a site licence for residential and commercial building projects; and how can this licence contribute to the coordination of building work?
3.1.12	**For builders:** Who do you think should be responsible for coordinating building work on a site and what skills are required for this type of role?
3.1.13	Do you think that the introduction of a fit and proper person test and a code of ethics for LBPs will help to ensure that building professionals are held accountable and improve the public's confidence in the LBP scheme?

Changes required to introduce the proposals

Building Act	■ Amendments to references to "carry out and supervise" ■ Amendments to the BPB's role and function to support a broader LBP scheme scope ■ Specify that LBPs must follow the code of ethics and meet 'fit and proper person' requirements to be licensed.
Regulations	■ Restricted Building Work ■ Licence class redesign
Rules	■ Changes to the competence standards and licensing assessment processes for existing licence classes ■ Introduction of competence standards for new licences ■ Development of a code of ethics and fit and proper person requirements in the Rules.

How the proposed changes measure up to our five assessment criteria

Does the proposal meet the objectives for occupational regulation?

The proposed changes are intended to address regulatory gaps in the system of occupational regulation to reduce risk to public safety and provide assurance that buildings are safe and durable:

- The proposed changes would ensure that the regulation of building work is more proportionate to the level of risk.
- LBPs will have a higher level of competence, can competently supervise those who are not licensed, and are held accountable for substandard work.
- Building owners, BCAs and others will get a stronger signal about an LBP's skill level and what area they're competent to practice in. That skill level will differ depending on the nature and complexity of the work. The skill level may be entry, experienced, or proficient in a specific area of competence.
- The credibility of the LBP scheme will improve, as it's directly linked to competence standards. Competence standards will include a higher standard of current technical competence as well as new competence standards to demonstrate good judgement and ethical behaviour.
- The BPB will be better supported when handling complaints against LBPs for unethical conduct. In turn, this will reduce risk to consumers and improve the credibility of the scheme.

Does the proposal support the desired behavioural shifts in the building sector?

The proposals support the desired behavioural shifts in the building sector by raising the competency standards for RBW, which should reduce the risk associated with substandard practice across the building process. This supports proposed changes to achieve a fairer allocation of risk across the sector.

Builders will have stronger incentives to fulfil their obligations, be accountable for their work, and promptly remedy defects. In turn, BCAs will be more confident that technically competent builders have carried out or supervised RBW with reasonable care and skill. This will reduce reliance on BCAs to identify errors in building work.

Would the benefits of the proposal outweigh the risks and costs?

Further work is needed to quantify the costs and benefits of the proposals.

By widening the definition of RBW to include more complex non-residential work, the proposed changes would ensure that the regulation of building work is proportionate to the level of risk associated with the work. Raising the competency standards and introducing tiered licensing classes, including a supervision licence class, would provide building owners, the public and BCAs with greater assurance about the skills, knowledge and competence of people doing or supervising restricted building work.

There are also potential risks.

The forecast increase in building activity (mostly residential) over the next few years combined with a broader definition of RBW would increase demand on the existing pool of LBPs. Additional LBPs would be required to meet the increased demand for LBPs. While it is difficult to estimate with any accuracy how many more would be required, because projects will vary in length, duration and complexity, MBIE's estimate is in the range of 8,000 to 12,000.

The proposals could also have the effect of reducing the available pool of LBP supervisors, in the short term at least, as only those LBPs who are licensed under the supervision licence class could supervise RBW. This could potentially result in a slowdown in building activity.

A reasonable transition period would be required to minimise the risk of reducing building activity.

There is likely to be some increased cost to a small number of LBPs associated with upskilling as a result of the proposals to raise competency standards and introduce a licence class for supervision.

Is the proposal consistent with other elements of the building regulatory system?

The focus on providing clear roles and responsibilities for those undertaking restricted building work is consistent with other parts of the building legislative reform programme.

A review of competence standards will support risk being allocated more fairly. It will ensure people carrying out or supervising RBW have a higher technical competence. It will hold people to account if they work outside their area of competence or carry out substandard work. It will incentivise people to better manage risks in the building process so that work is carried out effectively and efficiently.

Is the proposal consistent with related government policy and regulations?

The proposals are consistent with other government policies, such as the Construction Skills Strategy, by providing assurance that building practitioners have the skills, knowledge and competence to construct safe and durable buildings.

Options we considered, but don't recommend

MBIE has considered licensing building companies but does not propose it in the reform programme.

Rather, we're prioritising the licensing of individual building practitioners to tackle the key problems with the definition of RBW. Building companies in the commercial sector cannot directly assess the competency of builders or building work because of the subcontracting structure and the different types of roles in commercial building projects. It's more reasonable to first regulate the people who can manage risks relating to building work.

We've considered introducing offences and penalties for building companies who engage non-LBPs to carry out or supervise RBW, and for directing LBPs to carry out RBW that is of poor quality or non-compliant. We're prioritising the competence standards, including introducing behavioural competence standards, for LBPs to tackle concerns with the quality of building work. We may consider introducing building company offences in future.

Potential impacts of the proposed changes

Building practitioners

The individual licensing model of the LBP scheme will stay in place.

Existing LBPs

Competence standards will be raised. LBPs will be required to demonstrate higher technical competency and knowledge of the LBP code of ethics before they can be licensed or relicensed. A small number of LBPs may face increased costs to upskill to meet the new competency standards.

New LBPs

The biggest expected impact of the new definition of RBW on builders will be on builders who work only on commercial and mixed-use building projects. Broadening the definition will mean that builders who carry out or supervise work defined as RBW in some of the commercial construction sector will need to be licensed, and meet new competence standards. Any new LBP will need to pay a licensing fee. MBIE wants to make the licensing renewal process less frequent than it is currently.

All LBPs

Competence standards will include supervision competencies for higher tiered LBPs. While the proposal to introduce a supervision licence with a higher level of competency may create some barriers to being supervisors, it would also ease pressure on new LBPs to provide supervision and may encourage more builders to join the LBP scheme. LBPs will undergo some reassessment of their competence to ensure they're on the right tier for their level of skill and competence. The proposal may also reduce the number of available LBP supervisors in the short term.

Competence standards will also include minimum standards of ethical conduct and requirements for fit and proper persons. Both will change the LBP scheme entry bar for a small number of LBPs, including the licensing renewal process. Discretion by the BPB with fit and proper person assessments will ensure the LBP scheme is applied reasonably and fairly.

Builders overall

Based on stakeholder feedback, we assess that commercial building projects may require two to three LBPs to carry out or supervise RBW. We estimate an additional 8,000 –12,000 LBPs will be required under the expanded definition of RBW. As the size and duration of building projects vary, we can't accurately estimate the number of LBPs required. Our estimate considers:

- the forecast increase in building activity over the next five years (see the National Construction Pipeline Report 2018)
- the current number and proportion of non-residential consent issued
- stakeholder feedback indicating more LBPs are required for commercial building projects
- stakeholder feedback indicating some LBPs work in both the residential and commercial sectors.

Allowing enough time to transition the changes will minimise potential risks.

BCAs

BCAs will have more confidence that RBW has been carried out or supervised by technically competent building practitioners with reasonable care and skill. The proposed changes are expected to reduce building inspection failures or instances where remediation of work is required. By lifting competency requirements, the proposed changes are expected to reduce inefficiencies in the consenting and inspecting processes.

Building owners/ developers

Building owners and developers will have more assurance that RBW has been carried out or supervised by technically competent building practitioners with reasonable care and skill, and the building practitioner will be held accountable for poor quality building work.

A potentially smaller pool of LBP supervisors to draw on in the short term could slow down the building process. This would happen because only those LBPs who meet the required competency standards for supervision could supervise the work. Currently, all LBPs are permitted to supervise the work.

MBIE/Building Practitioners Board

The proposed change will enable them to hold building practitioners accountable for their work where they act outside their competency.

Training organisations

Changes to competence standards and a broader definition of RBW will impact industry training organisations. Training programmes will need to include new competence requirements for LBP licences. The changes will involve MBIE, the BPB and training providers working together and ensuring significant lead-in time so that training providers are well prepared.

Public

The public will benefit from better quality building work and safer buildings. The public will have more confidence in the LBP scheme and the competence of LBPs.

MBIE proposes a transition over several years to implement the changes

The proposed changes to the LBP scheme need to be phased in over a reasonable timeframe to minimise the potential risks arising from the changes, in particular, such a timeframe will reduce the risk of slowing down building activity over the short term. A transition period is needed to allow the sector to adjust their practices and the workforce (including existing LBPs) to upskill and be reassessed when required.

We assess that the transition period for introducing the new definition of RBW will provide enough time for builders currently doing building work that will become restricted. This timeframe aims to minimise impacts on productivity and ensure enough LBPs are available to work on commercial and multi-use buildings.

TABLE 3.1.3

Proposed transition process for LBP scheme changes

Proposed action
Redefine RBW in the regulations
Confirm the role and functions of the BPB, and include any changes in legislative process
Redesign the licence classes
Set the competency standards
Implement changes to the BPB
Provide time for the BPB and Minister to make decisions about the competency standards
Plan for re-assessing existing LBPs, and assessing new LBP scheme applicants
Implement the transition period: ■ reassess every existing LBP under the new competency standards after two years (November 2022); reassessment will be done when each licence comes up for renewal. ■ assess new LBP applicants under the new competency standards; assessment will start in November 2022.

Questions for stakeholders

3.1.14	Do you agree the proposed timeframe for the changes to the LBP scheme is sufficient?
3.1.15	What should we consider in setting the transition timeframe?

Recap of questions

Part 3.1 – The LBP scheme	
3.1.1	How effective do you think expanding the scope of RBW will be in managing risks to public safety in the building sector?
3.1.2	Do you agree with the proposed threshold for the definition of RBW?
3.1.3	**For Builders:** What impacts do you think the proposals for RBW will have on you and your business (including type of work, recruitment, training and costs)?
3.1.4	What impacts do you think the proposals for RBW will have on homeowners, building owners and building occupants?
3.1.5	How do you think the proposed changes for the LBP scheme would affect the behaviour of the LBPs?
3.1.6	What impact do you think expanding the scope of RBW will have on the construction sector skill shortage?
3.1.7	How effective do you think raising the competence standards for the LBP Scheme would be in increasing confidence in the LBP scheme?
3.1.8	What impact would changing the competence standards for the LBP scheme have on builders, building companies, building sector associations and training organisations?
3.1.9	**For builders:** Would the introduction of tiered licence classes make you more likely to apply to become an LBP, and why?
3.1.10	**For builders:** If you're already an LBP, would you be likely to apply to become licensed under a new supervision licence class, and why?

3.1.11	**For builders:** Do you still see potential value in having a site licence for residential and commercial building projects; and how can this licence contribute to the coordination of building work?
3.1.12	**For builders:** Who do you think should be responsible for coordinating building work on a site and what skills are required for this type of role?
3.1.13	Do you think that the introduction of a fit and proper person test and a code of ethics for LBPs will help to ensure that building professionals are held accountable and improve the public's confidence in the LBP Scheme?
3.1.14	Do you agree the proposed timeframe for the changes to the LBP is sufficient?
3.1.15	What should we consider in setting the transition timeframe?

3.2: Engineers

The primary purpose of this proposal is to reduce the risks to public safety resulting from substandard engineering work

The proposed changes in this paper seek to better align the level of regulation with the risks to public safety resulting from substandard engineering work. This will be achieved by placing restrictions on who can do medium to high complexity engineering work that has implications for life safety, and establishing a licensing regime. The licensing regime will provide greater assurance that those carrying out safety-critical engineering work:

- have the right skills, knowledge and behaviour
- can be held to account if they carry out substandard work.

The proposals in this paper also respond to a finding of the Canterbury Earthquakes Royal Commission that there should be greater assurance that complex buildings are adequately designed to minimise the risk of building failure and consequent loss of life.

How the occupational regulation of engineers works today

Engineers can, and do, operate outside of the occupational regulatory system for engineers

The Chartered Professional Engineer (CPEng) credential was established as a voluntary occupational regulatory regime. CPEng is a statutory title that provides recognition of an engineer's general competence and professionalism. It is administered by Engineering New Zealand, with oversight from the Chartered Professional Engineers Council (CPEC). CPEng requires reassessment at least every six years and demonstration of New Zealand specific good practice. CPEng are automatically deemed to meet the design licensing requirements for restricted building work under the Licensed Building Practitioners (LBP) scheme without any further assessment.

Engineering New Zealand also administers a self-regulatory system. Chartered members must demonstrate competency and professionalism that is set to an international benchmark. Competency standards are similar to those for CPEng.

There are nearly twice as many members of Engineering New Zealand with chartered membership or higher than those with CPEng. Most individuals that have CPEng would also be chartered members or higher.

What we mean by 'engineering work'

For the purposes of this paper, 'engineering work' is defined as design work requiring professional judgement, informed by underlying scientific principles, with the intent to ensure building occupant safety (including maintenance of structural stability and that occupants are safe during and after a fire). Engineering work also includes monitoring that the construction has been carried out in accordance with the design.

Few restrictions are placed on who can carry out engineering work on buildings

Many engineers carry out building work that is critical to public safety. This includes structural, geotechnical and fire safety engineering work that ensures buildings are safe and durable, and that people have time to evacuate in the event of an emergency.

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

There are different views about the purpose of CPEng

The purpose of CPEng is not clearly defined. The *Chartered Professional Engineers of New Zealand Act* states that the purpose is to "establish the title of chartered professional engineers as a mark of quality. . ."

The lack of clarity about the purpose of the scheme has contributed to it being both a mark of professionalism and general competence for all engineers, as well as a mark of technical competence to undertake very complex and specialised work.

The lack of clarity has led to uncertainty about whether the objective is to protect the reputation of engineers, resolve disputes, protect the public from harm, or some combination of these objectives. This makes it difficult to determine when a regulatory response is required and what the appropriate sanction should be.

CPEng in its current form is not fit for purpose as a mark of general or technical competency

Engineers and BCAs have raised concerns about CPEng's usefulness in providing assurance of an engineer's competence to carry out complex or specialised work. The assessment process is largely self-driven by the engineer applying for CPEng.

BCAs rely on third-party expertise to inform their decision making on whether to grant consent. Some BCAs have developed ad-hoc ways to determine if an engineer is capable of certain work and maintain their own lists of 'competent' engineers. This lacks transparency and consistency, especially for engineers that work across territorial authority boundaries.

Many engineers choose not to obtain CPEng as it is considered too onerous in terms of time and effort for a generic credential.

The current regime does not have the full range of tools it needs to hold engineers to account for acting outside their competence, or carrying out substandard work. A CPEng found to have performed engineering services in a negligent or incompetent manner, or breached the code of ethics or other rules, can only be censured, have their CPEng registration suspended or cancelled, and/or pay a maximum fine of $5,000.

There is nothing to prevent an engineer who has had their CPEng registration cancelled or suspended from continuing to design buildings, including complex buildings that require a higher level of technical competence and judgement. Instead, there is a reliance on people not engaging an engineer that has had their CPEng cancelled or suspended, or BCAs applying greater scrutiny of the engineer's work.

MBIE proposes three changes to the occupational regulation of engineers

1 Establish a new voluntary certification scheme that provides assurance of an engineer's professionalism and general competency and phase out CPEng.

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

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

The objectives of these changes are to:

- ensure that restrictions on building work are proportionate to the risks to public safety
- ensure that those who are licensed to undertake restricted work have the right level of competence, and are held accountable for substandard work.

1. A new voluntary certification scheme for all engineers

Proposal

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

MBIE proposes to establish a new certification scheme that would replace CPEng.

Engineers applying for certification would be required to meet prescribed competency standards that demonstrate an ability to deal with complex engineering problems, and commit to continuing professional development.

The regulator would have the powers to determine the competency standards and assessment process. The regulator would be required to address the problems that have undermined confidence in CPEng as a mark of general competence and made it unattractive to many engineers.

We considered modifying CPEng, but concluded that it would be more effective to establish a new title that is fit for purpose as a standalone credential that can also be used as a step towards licensing.

The certification scheme would have more direct oversight by the Minister for Building and Construction.

Competency standards would be similar to those for chartered membership of Engineering New Zealand

MBIE expects the competency standards would be similar to those for chartered membership of Engineering New Zealand and that an Engineering New Zealand member with chartered membership or higher would meet most of the requirements for certification.

Certification provides statutory assurance of professionalism and general competency

Many types of engineering work in the building sector aren't safety critical and don't need to be carried out or supervised by a licensed engineer. There are also many engineers working outside of the building sector. In these situations, consumers need the option to engage an engineer that has their competence and professionalism assessed to a consistent standard and have assurance that the engineer will be held to account if something goes wrong.

Professional bodies, including Engineering New Zealand, often have strong incentives to self-regulate as they want to maintain the good standing of their profession. Industry self-regulation can be more efficient and more easily able to adjust in response to new circumstances or developments.

Government regulation is more appropriate where there is a risk of significant harm to the public or where intervention by government is likely to improve outcomes.

MBIE seeks feedback on the proposal to replace CPEng with a new statutory certification scheme. Statutory certification provides assurance that the regulator acts in the interests of the public, rather than the profession, provides for powers to enforce sanctions and protection of title, and ensures the regulator is accountable to the Minister for Building and Construction.

There are also several regulatory regimes outside of the building regulatory system that require CPEng. The new credential needs to fulfil the statutory requirements for competent and skilled engineers in these regimes. These regimes include:

- *Amusement Devices Regulations 1978*
- *Health and Safety in Employment Regulations 1995*
- *Health and Safety in Employment (Pressure Equipment, Cranes, Passenger Ropeways) Regulations 1999*
- *Fire and Emergency New Zealand Act 2017*
- *Heavy Motor Vehicle Regulations 1974*

A new title for engineers that have been certified

Engineers that have been certified would be given exclusive right to use a certain title. The title provides the public with assurance that the engineer has met the prescribed standards. It would be an offence for a person to use the title or abbreviation of the title, if they have not been certified.

MBIE proposes to create a new title for engineers that have been certified, that distinguishes the new regime from CPEng. We are seeking feedback on what the title should be. This could be, for example 'certified engineer', 'chartered engineer' or something else. The title will need to demonstrate professionalism and be meaningful to people using engineering services in New Zealand and overseas. It will also be important to ensure that the title, which will have protection, is not confused with other titles that do not have protection, such as Chartered Members of Engineering New Zealand.

Questions for stakeholders

3.2.1	Do you agree that there is a need for a statutory mark for engineers of professionalism and general competence to solve complex engineering problems?
3.2.2	How well do you think CPEng currently provides this assurance? What do you think needs to change?
3.2.3	Do you agree that a new title is needed for engineers that have been certified? If so, do you have a view on what that title should be?
3.2.4	For engineering work on buildings that does not require specialised skills, do you think certification would provide sufficient assurance of general competence and reduce the risks of substandard work?

2. Restrictions on medium-to-high complexity engineering work in the building sector will help reduce life safety risks

Proposal

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

MBIE proposes to introduce restrictions on fire, geotechnical, and structural engineering work that is medium-to-high complexity and that has implications for life safety. This is to ensure that suitably competent people are carrying out, or supervising, that work. This work presents the greatest risk to life safety and has little regulatory oversight.

The *Building Act* would be amended to allow 'restricted engineering work' to be defined by regulations

This would allow flexibility to adjust the definition as required over time. Once the enabling legislative amendments are passed by Parliament and come into effect, a regulatory process to finalise the threshold for restricted engineering would commence.

Regulations would establish a simple and clearly defined test for restrictions based on building complexity, size, occupancy, location and use

MBIE proposes to base restrictions on building size, use and ground conditions as these are the most significant factors determining the complexity of the engineering work and present greater risks to public safety in the event of building failure. Further detail on how these factors affect complexity and risk is provided in Figure 1.

The definition of restricted engineering work would be a simple, clearly defined and objective test that would not require interpretation. The aim would be to set the threshold at a level that includes building work that poses risks to public safety, while not imposing unnecessary costs on more straightforward building projects. It would set out the particular criteria that would be applied to determine if one or more licensed engineers were required.

FIGURE 1
Factors that would be included in setting the threshold for restricted engineering work.

Building size (height and area)

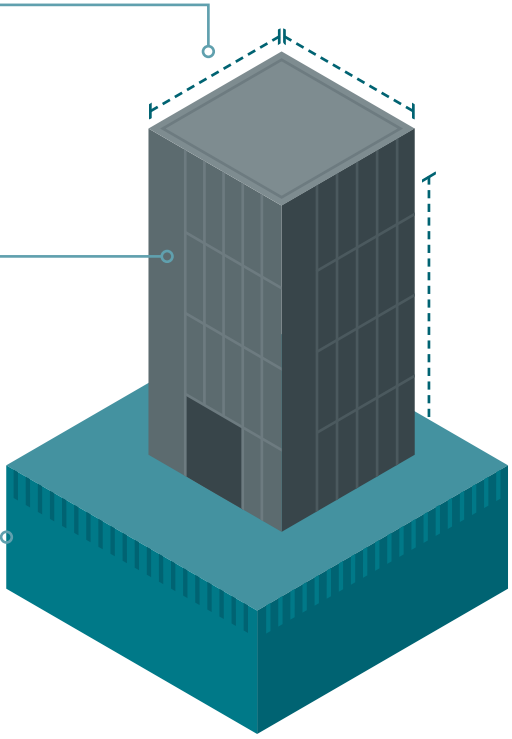
The larger the building, all else being equal, the greater the complexity involved in the engineering design, which represents risks to public safety (a particular concern for structural, geotechnical and fire safety design).

Building use

Buildings that have vulnerable occupants, contain hazardous materials or are occupied by large numbers of people pose greater risks to public safety in the event of building failure (a particular concern for structural and fire safety design).

Ground conditions

Complex ground conditions pose significant risks of building failure if not managed appropriately and have significant impacts on decisions for building foundations and the building structure (a particular concern for geotechnical and structural design).



A task-based test is likely to be more expensive and less certain

We considered a task-based approach to restrictions (where individual elements of the engineering process are licensed rather than the engineer), but decided against this option as it would likely create additional costs and/or uncertainty. Task-based restrictions are more likely to become complicated and highly prescriptive in order to clearly define restricted work, while a simple and high-level set of task-based restrictions would remain open to interpretation, creating uncertainty and potential disagreement between developers, engineers and regulators.

Questions for stakeholders

3.2.5	Do you agree that life safety should be the priority focus determining what engineering work is restricted?
3.2.6	What combination of the following factors should be used to determine what engineering work is restricted: building size; building use; ground conditions; other?

3. Licensing would regulate who can do restricted engineering work

Proposal

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

An independent regulator would administer the licensing and certification schemes. The regulator would be directly accountable to the Minister for Building and Construction. Engineering New Zealand staff would carry out some of the functions for the regulator initially. MBIE would provide oversight and monitor the performance of the regulator in carrying out its functions. An independent decision-maker would make decisions on whether there has been a disciplinary breach and impose sanctions.

MBIE proposes to establish a new licensing regime in legislation to regulate who can do restricted engineering work. A licensing regime provides a mechanism to prevent those without the necessary licence, and who therefore haven't been assessed to be competent, from carrying out restricted engineering work without supervision.

Engineers would be required to demonstrate their technical ability in a specialised field to obtain a licence to carry out restricted engineering work. Entry competency requirements would match the threshold for restricted engineering work. Engineers would need to satisfy the professionalism and general competency requirements for certification before they could be assessed for licensing, although it may be possible for an engineer to apply for certification and licensing at the same time.

Licensed engineers would still be responsible for determining which work they're competent to carry out within the scope of their licence. However, they would be subject to disciplinary action for doing work outside of their competency. For example, a structural engineer who specialises in single-storey steel warehouse structures may not be competent to design a 20-storey, high-rise building.

It would be an offence for a person to carry out or supervise restricted engineering work that they're not licensed to carry out. It would also be an offence for a person to engage another person to carry out or supervise restricted engineering work if they know that person isn't licensed to carry out that work.

A move from voluntary certification to licensing for safety-critical engineering work

'Certification' refers to situations in which a regulatory body sets a standard for practitioners to be placed on a public register and provides exclusive right to use a title. 'Licensing' refers to situations in which it's unlawful to carry out a specified range of work without first having obtained a licence, which confirms that the licence holder meets prescribed standards of competence.

This proposal would shift regulation of safety-critical engineering work on buildings – what will be known as 'restricted engineering work' – from a voluntary certification system to a licensing regime.

Regulations would define the licence classes

Initial licence classes would be geotechnical, structural and fire safety engineering. However, this framework would enable licence classes to be created for other engineering disciplines at a later date.

These three engineering disciplines have been identified as priorities as they present a significant life safety risk if work is carried out poorly or there is insufficient supervision.

Figure 2, on the next page, sets out an overview of the options and progression available under the proposed regime.

The new regulatory regime will have a clearer statement of purpose

MBIE proposes that the purpose of the new regime would be to:

- protect the public from harm by ensuring engineering services are performed with reasonable care and skill
- require engineers carrying out or supervising work that has been restricted to have the necessary technical competence to do that work.

The certification and licensing schemes will need an independent, capable regulator

The preferred form of the regulatory body and governance arrangements will depend on final decisions on the establishment of a new certification scheme and the scope of engineering work restricted to licensed engineers. This section sets out some of the proposed features of a new regulatory body.

A new regulatory regime for engineers needs to be rigorous, and independent from the engineers it regulates. MBIE proposes three measures that would give the regime the independence and powers it will need:

- An independent regulator. The certification and licensing schemes would be administered by an independent regulator.
- Accountability. The regulator would be accountable to the Minister for Building and Construction, and be required to report on performance against expectations set by the minister.
- Oversight. MBIE would have oversight of the regulator and monitor its performance.

MBIE considers additional oversight by a third party, such as CPEC, would be unnecessary and potentially lead to a confusion of roles and responsibilities, as the regulator would be directly accountable to the Minister and MBIE would provide the monitoring functions.

The regulator would have powers to propose rules and make decisions

The regulator would have powers and functions to:

- propose rules for certification and licensing (including competency standards) for approval by the Minister for Building and Construction
- make decisions on applications for certification and licensing
- maintain public registers of certified engineers and licensed engineers
- set requirements for continuing professional development
- monitor compliance with the rules, standards and conditions of certification and licensing, and receive and triage complaints

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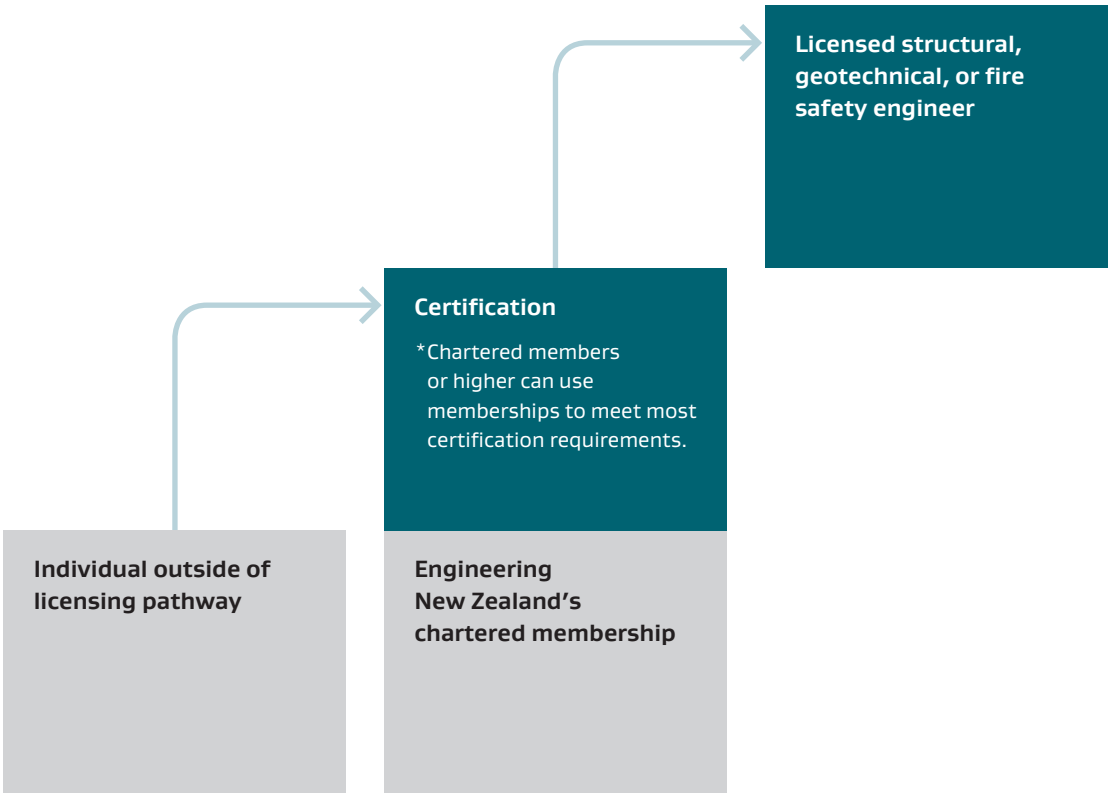
FIGURE 2
Options and progression for qualified engineers under the proposed licensing and certification regime



Comparison of different stages of the proposed licensing pathway

	Licensed engineer	Engineer with certification	Chartered Member of Engineering New Zealand	Individual outside of licensing pathway
The title provides...	Demonstration of an engineer's technical competence in a specific area	A general mark of quality	A general mark of quality	No regulatory or industry body guarantee of competence or professionalism
Protected statutory title	✓	✓	– [20]	–
Can carry out restricted work without supervision?	✓ [21]	–	–	–
Engineer can demonstrate professionalism and general competence (can solve complex engineering problems)	✓	✓	✓ [22]	–
Assessed as being technically competent in a specific field	✓	–	–	–
Fulfils regulatory requirements for competent and skilled engineers in other regimes	✓	✓	–	–

20 Professional body provides and protects marks of quality
21 Can carry out and supervise restricted engineering work
22 Chartered members or higher can use membership to meet most certification requirements

Engineering New Zealand is uniquely suited to support the new regulator

Engineering New Zealand has developed considerable in-house expertise from administering the CPEng scheme.

MBIE proposes to enable the new regulator to utilise this expertise to establish and administer the certification and licensing schemes. This would be simpler and more efficient than requiring the regulator to recruit its own staff before it could begin to establish the schemes.

Independence would be managed by making the Engineering New Zealand staff performing tasks for or on behalf of the regulator directly accountable to the regulator, and the regulator accountable to the minister. Legislation would enable these tasks to be done by another body or person if required.

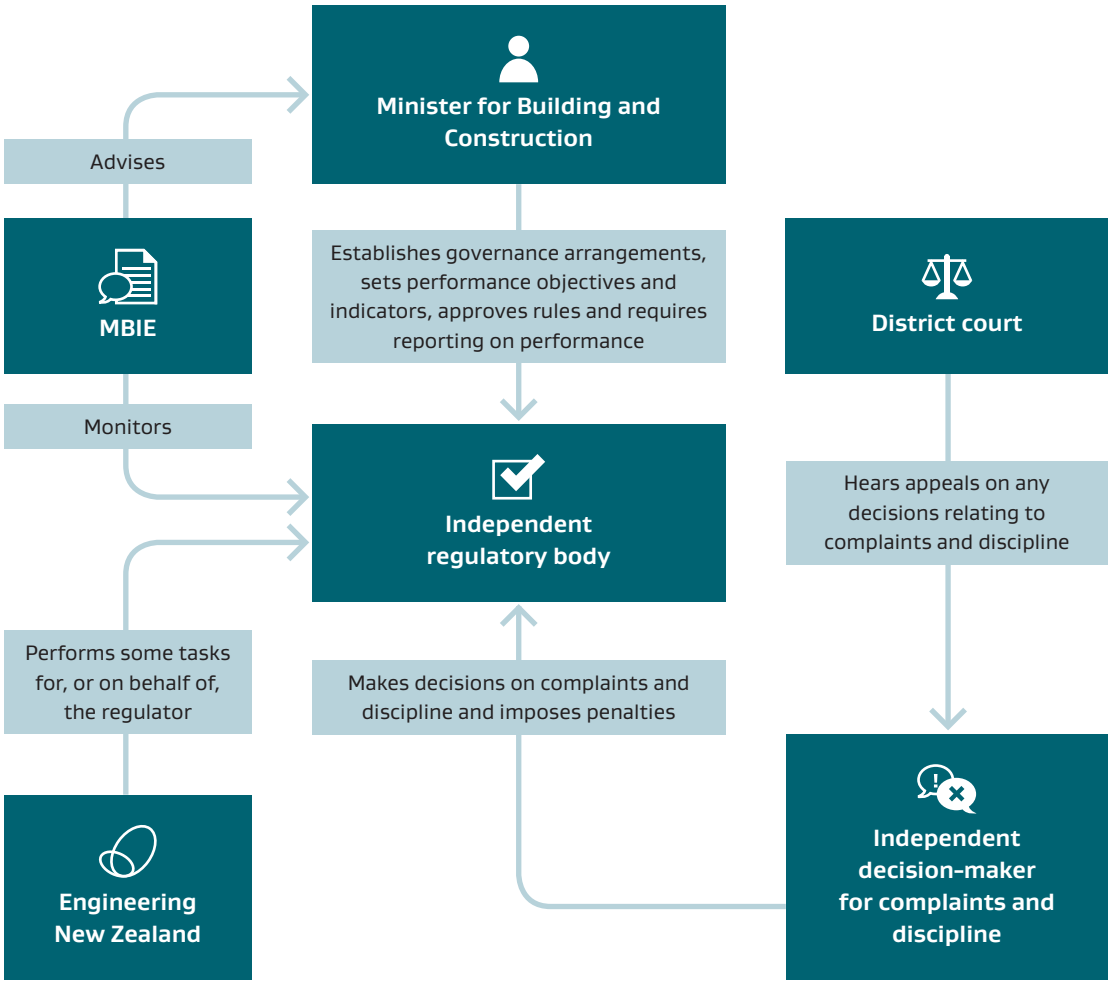
The regime would be funded by fees and levies

The costs of processing and assessing applications for certification and licensing (including renewals) would be recoverable through fees. A separate annual levy would cover costs not directly related to the processing and assessment of applications. These costs would include:

- developing rules and standards
- monitoring compliance
- investigating and making decisions on disciplinary matters
- servicing the licensing board.

The level of fees and levies would be set through a regulatory process, including consultation, and would be required to comply with Treasury guidelines for the setting of fees.

FIGURE 3
Proposed governance and oversight arrangements for the regulator



There will be a robust process to manage complaints and discipline

The management of complaints and discipline needs to be robust, fair, impartial and transparent to ensure that all parties – including engineers, building owners, developers, BCAs and the wider public – have confidence in the regime. This requires:

- clear separation of discipline functions from those providing services to members to mitigate the risks of any conflict of interest
- a person deciding if a standard has been breached should be different to the person that takes the complaint to the decision maker, so that one person or body is not both the prosecutor and judge.

MBIE proposes that the regulator would monitor compliance with the standards and rules and receive and assess complaints. Two features will help deliver a robust, fair, impartial and transparent process:

- An independent decision-maker. An independent decision-maker would make decisions on whether there has been a disciplinary breach and impose penalties.
- An appeals process. A person would be able to appeal to the district court against any decision by the disciplinary decision-maker.

Grounds for discipline would be similar to those of the current CPEng scheme

We have taken the current grounds for discipline of registered engineers under section 21 of the *Chartered Professional Engineers of New Zealand Act 2002* as our starting point and added some grounds for discipline from the LBP Scheme in relation to work that has been restricted.

The list below is not an exhaustive list. We are keen to hear your views if there are other grounds that should be added, or if there are any that should be modified or removed.

The proposed grounds for discipline of licensed or certified engineers are:

- carrying out restricted engineering work without appropriate supervision that they were not licensed to carry out
- supervising restricted engineering work that they were not licensed to carry out or supervise
- publicly stating that they can carry out or supervise restricted engineering work that they were not licensed to carry out or supervise
- being convicted of an offence before or after registration that was punishable by term of imprisonment of no less than six months, if the offence adversely impacts on a licensed or certified engineer's ability to practice
- breaching the standards of professional conduct
- carrying out engineering services in a negligent or incompetent way
- providing false or misleading information for an application for licensing or certification (for their own application or another person's)
- failing to comply with the terms or conditions of their licence
- misrepresenting their competence or carrying out or supervising work outside their competence.

Disciplinary penalties would be in proportion to the breach of discipline

Breaches of discipline would be subject to a range of penalties, including:

- cancelation of certification or licensing
- suspension of certification or licensing
- restrictions on the type of work the person may carry out or supervise (if licensed)
- censure
- publicly naming
- an order to undertake training
- an order to pay a fine.

The maximum fine would be set at a level that is consistent with the framework for penalties in Part 6 of the discussion paper.

Questions for stakeholders	
3.2.7	In your opinion, does geotechnical, structural and fire safety engineering work pose the greatest life safety risk in the building sector? Do you think there are any other engineering specialities that pose greater life-safety risks in the building sector that are not included here?
3.2.8	Do you agree that engineers should satisfy the requirements for certification before they could be assessed for licensing?
3.2.9	What impact do you think the restrictions and licensing would have on the number of engineers who can carry out or supervise engineering work on buildings that requires technical competence in a specialised field? Do you feel that there are enough engineers with the necessary technical competence to meet any new demand?
3.2.10	What impact do you think the restrictions and licensing would have on the cost of engaging an engineer?
3.2.11	How effective do you think the proposed restrictions and licensing would be in reducing the risks to public safety from substandard engineering work?
3.2.12	If you engage a licensed engineer, would you feel confident that the engineer has the necessary technical competence to do the work?
3.2.13	Do you agree with the proposed grounds for discipline of licensed and certified engineers?
3.2.14	Is there anything else that you think should be grounds for discipline? Are there any proposed grounds for discipline that you think should be modified or removed?

How the proposed changes measure up to our five assessment criteria

Does the proposal meet the objectives for occupational regulation?

The proposal meets the three objectives for occupational regulation:

Regulation is proportionate to the risks to public safety

This proposal restricts work that if carried out poorly could have a significant impact on life safety and economic wellbeing – but the threshold will be designed to strike a balance with work that is more straightforward or has less associated risk. This kind of lower-risk building work will be regulated through other parts of the building regulatory system.

Practitioners who are registered or licenced are appropriately skilled and productive

The licensing requirements demonstrate rigorous assessment of technical competence in a particular field and remedy a gap in the current system.

Certification will demonstrate professional capability and general engineering competence of engineers carrying out less risky work, engineers in the earlier stages of their career who do not yet meet the requirements for licensing, or engineers who work outside of the building regulatory system.

The new licensing regime will make it clear to the sector – and the public – which engineers are competent to carry out particular work.

Practitioners are held to account for carrying out substandard work

The current voluntary regime has low associated penalties. A move to licensing will set clear competency-based restrictions and clear offences and penalties for not complying.

Engineers would be subject to sanctions if they:

- act outside their competence without appropriate supervision
- carry out or supervise work without a licence
- carry out substandard work.

Does the proposal support the desired behavioural shifts in the building sector?

The proposal supports the desired behavioural shifts in the building sector:

- **Engineers.** Engineers are required to demonstrate their competence to carry out or supervise restricted engineering work. There are then strong incentives for licensed engineers to carry out work in a satisfactory way to avoid losing their licence/ability to supervise or carry out restricted engineering work. Risks of substandard work will be reduced through assurance that engineers working outside their competence and/or carrying out or supervising substandard work will be held to account.
- **BCAs.** Having authenticated, competent engineers carry out or supervise work should provide confidence to BCAs that work with a higher level of risk was carried out with the appropriate level of skill and care. This should support a more efficient consenting process. This would also remove the need for individual BCAs to keep lists of competent engineers, and minimise the use of producer statements[23] that councils rely on to minimise their risk.
- **Consumers and developers.** It will be clear what work is restricted, and when a licensed engineer is needed. Consumers and developers will be able engage appropriately competent engineers and rely on them. This should reduce risks to life safety, reduce costs of remedying problems and lead to better design work.

Would the benefits of the proposal outweigh the risks and costs?

Reducing the risk to public safety from building failure, together with efficiencies in the building process, should outweigh the costs of this proposal.

Ensuring that restricted engineering work has been carried out or supervised by competent engineers with reasonable care and skill will reduce the risk and cost of building defects requiring rectification. BCAs will have greater confidence in the quality of the work, enabling a more efficient consenting process.

There is a risk that the restrictions may limit the supply of engineers who can carry out or supervise safety-critical geotechnical, structural and/or fire safety engineering work. This could particularly affect some regional areas where some engineers may be currently doing work outside of their competence under remote guidance from a more specialised engineer.

The risk of a shortage of licensed engineers needs to be weighed against the risks to public safety of restricted engineering work being carried out by engineers who don't have the necessary technical competence. The proposed transition period provides time for engineers currently doing work proposed to be restricted to become licensed before the restrictions come into effect. We are seeking feedback on whether the proposed timeframe to obtain a licence is sufficient.

23 A producer statement is a professional opinion based on sounds judegement and specialist expertise. They are used as one source of information which a BCA may rely on to determine whether there are reasonable grounds to conclude that work complies with the building code.

Some engineers who could meet the standards to become licensed may not see sufficient value in going through the application and assessment process. This may particularly apply to engineers near the end of their careers. However, we've heard that engineers want to be able to demonstrate their technical competence – something that CPEng does not let them do now – and that the restrictions on engineering work would create market demand for licensed engineers.

The costs of the regime will be funded through a mix of fees and levies. Actual costs will depend on final decisions on the design and administration and will need to go through a regulatory process, including consultation, and will comply with the Treasury's guidelines.

Is the proposal consistent with other elements of the building regulatory system?

Proposed changes to rebalance risk and liability (see Part 4 of the discussion paper) depend on practitioners being competent, taking responsibility for their role in the building process and being held accountable for substandard work.

Restricting who can do safety critical engineering work and establishing a licensing regime will ensure the regulation of engineers is consistent with proposals to widen the scope of restricted building work under the LBP scheme and lift the competence standards of LBPs.

Is the proposal consistent with related government policy and regulations?

The proposal is consistent with other government policies intended to improve public safety, including the safety of building users. This includes obligations on designers in the *Health and Safety at Work Act 2015* and work underway to remove section 162 of the *Crimes Act 2002* (which states that no-one can be held criminally responsible for a death that occurs more than a year and a day after an act that contributed to the person dying) and to create an offence of corporate manslaughter.

Potential impacts of the proposed changes

Engineers

There will be a nationally consistent approach for engineers to demonstrate their technical competency in a specialised field.

Engineers seeking certification or licensing will be required to pay a fee for application and assessment. An annual levy would cover costs not directly related to the processing and assessment of applications. Actual costs will depend on final decisions on the design and administration and will need to go through a regulatory process, including consultation, and comply with the Treasury's guidelines.

Consumers and developers

Able to access the public register of licensed engineers. That register would make it clear if an engineer is licensed and what kind of engineering work they can practice, and show any conditions on their licence.

Those in regional areas may need to bring in a licensed engineer from one of the main centres, where this work may have been previously done by a less experienced or competent engineer under remote guidance from a more experienced engineer. However, the changes will provide greater assurance that buildings are safe and durable, and that people will have time to get out of buildings in the event of an emergency.

BCAs

More confident that restricted engineering work has been carried out or supervised by technically competent engineers with reasonable care and skill. This confidence would enable a more efficient consenting process. It should also reduce BCAs relying on their own lists of capable engineers, lists that are not consistent across the country.

Banks / insurance providers

Less likely to face risk associated with sub-standard engineering work. These proposals should increase confidence as they make it clear who is competent to carry out particular kinds of engineering work.

Wider public

Benefit from better quality engineering work and safer buildings and assurance that individuals can be held to account for any poor practice.

It will take time to establish a new regime and transition to it

MBIE estimates that a transition period to establish the regime in full could take up to six years from when enabling legislation is passed and comes into effect. The regime would need to be in effect before restrictions on who can do restricted engineering work could be enforced.

We propose that Engineering New Zealand should continue to administer the CPEng regime during this transition period, with oversight by CPEC, to allow the new regulator to focus on establishing the licensing regime.

Once the licensing regime is fully established and rules are in place for certifying engineers, provisions for the regulator to issue certificates would come into force. Engineers with a current CPEng at that date would transition to the new regime and the *Chartered Professional Engineers New Zealand Act* would be repealed.

Some of the actions to be completed during this transition period include:

- establish governance arrangements
- developing regulations to set the threshold for restricted engineering work, and the fees and levies for licensing
- recruiting any additional staff needed to administer the regime, and develop and implement processes and systems
- developing and approving the competency standards and rules for licensing, and ensure compliance with existing mutual recognition arrangements
- developing assessment processes and systems, and recruiting assessors
- receiving and assessing applications for licensing.

Questions for stakeholders	
3.2.15	What things should we consider when we develop transitional arrangements? What supports would you need to help you during this transiton?
3.2.16	**For engineers who currently do not have CPEng or higher:** Would you be likely to apply for a licence (fire safety, geotechnical, structural)?

Recap of questions

Part 3.2 – Engineers	
3.2.1	Do you agree that there is a need for a statutory mark for engineers of professionalism and general competence to solve complex engineering problems?
3.2.2	How well do you think CPEng currently provides this assurance? What do you think needs to change?
3.2.3	Do you agree that a new title is needed for engineers that have been certified? If so, do you have a view on what that title should be?
3.2.4	For engineering work on buildings that does not require specialised skills, do you think certification would provide sufficient assurance of general competence and reduce the risks of substandard work?
3.2.5	Do you agree that life safety should be the priority focus determining what engineering work is restricted?
3.2.6	What combination of the following factors should be used to determine what engineering work is restricted: building size; building use; ground conditions; other?
3.2.7	In your opinion, does geotechnical, structural and fire safety engineering work pose the greatest life safety risk in the building sector? Do you think there are any other engineering specialities that pose greater life-safety risks in the building sector that are not included here?
3.2.8	Do you agree that engineers should satisfy the requirements for certification before they could be assessed for licensing?
3.2.9	What impact do you think the restrictions and licensing would have on the number of engineers who can carry out or supervise engineering work on buildings that require technical competence in a specialised field? Do you feel that there are enough engineers with the necessary technical competence to meet any new demand?
3.2.10	What impact do you think the restrictions and licensing would have on the cost of engaging an engineer?
3.2.11	How effective do you think the proposed restrictions and licensing would be in reducing the risks to public safety from substandard engineering work?

3.2.12	If you engage a licensed engineer, would you feel confident that the engineer has the necessary technical competence to do the work?
3.2.13	Do you agree with the proposed grounds for discipline of licensed and certified engineers?
3.2.14	Is there anything else that you think should be grounds for discipline? Are there any proposed grounds for discipline that you think should be modified or removed?
3.2.15	What things should we consider when we develop transitional arrangements? What supports would you need to help you during this transiton?
3.2.16	**For engineers who currently do not have CPEng or higher:** Would you be likely to apply for a licence (fire safety, geotechnical, structural)?

3.3: Plumbers, Gasfitters and Drainlayers (PGD)

The PGD Act aims to protect the public's health and safety

The purpose of the *Plumbers, Gasfitters, and Drainlayers Act 2006* (PGD Act) is to protect the health and safety of the public by ensuring the competency of persons engaged in providing the regulated services. The Plumbers, Gasfitters and Drainlayers Board (the PGD Board) does this by establishing and administering a registration and licensing system for plumbers, gasfitters and drainlayers that includes competency development, discipline and prosecution.

Some restricted sanitary plumbing work may be undertaken without relevant qualifications under an exemption for householders and some rural areas. Some tradespeople may also undertake restricted sanitary plumbing, drainlaying or gasfitting work without any relevant qualification provided that they work under supervision.

How the legislation works today

MBIE is reviewing the operation of the PGD Act; as required by the Act.

This review has identified a range of issues with the overall functioning of the PGD Act. The exemptions allowing work to be undertaken without relevant qualifications are the most important changes to be progressed now and are relevant to fulfilling objectives in the building system legislative reform programme. Other identified issues will be addressed through future work.

Eleven exemptions allow unqualified people to carry out restricted work

The PGD Act provides 11 exemptions that allow people to perform specific work without meeting the PGD Board's registration and licensing requirements. Exemption holders are still required to meet the requirements of the building code and meet any building consent requirements.

The exemptions fall into three broad categories:

- Exemptions for specified areas. Sanitary plumbing exemptions may apply for some householders in specified areas, and in specified rural districts. They apply in places approved by the Minister for Building and Construction after consulting a local authority.
- Exemptions for work done under supervision. These exemptions cover sanitary plumbing, drainlaying and gasfitting.
- General exemptions. These generally relate to certain gas installations or the conveying of gas and may require the approval of the PGD Board or any gas operator.

Exemptions for specified areas are a carry-over from 1970s legislation

Sanitary plumbing exemptions for specified areas are a legacy of the previous *Plumbers, Gasfitters, and Drainlayers Act 1976*.

The householder exemption lets homeowners in areas as diverse as the Hurunui district, the Hauraki Gulf Islands Ward of Auckland City, Porirua, Wellington and Kiwitea County, Oroua County, and Pohangina County do their own sanitary plumbing. The rural areas exemption allows anyone to complete restricted work in specified rural areas. No new exemptions have been approved since 1994.

People without relevant qualifications can carry out restricted work if they're supervised by a certified tradesperson

Currently, 2,100 people hold around 2,700 exemptions for sanitary plumbing, gasfitting and drainlaying. This represents nearly one third of the total plumbing, gasfitting and drainlaying sector. These exemptions let tradespeople do restricted work if supervised by a certified plumber, gasfitter or drainlayer. Most of these people are not registered in a trade. Certified tradespeople, as supervisors, are solely responsible for completed work.

These exemptions are no longer appropriate

The current exemptions create arbitrary gaps in regulation. They make it hard to hold some people to account when they complete work that would otherwise be restricted.

Some specified areas no longer exist as recognised territorial areas. This is because local government boundaries have changed. For other areas, such as Wellington and Porirua, the rationale to let homeowners do their own sanitary plumbing is unclear or out of date.

The exemptions for doing restricted sanitary plumbing, gasfitting and drainlaying work under supervision create unfair situations where some tradespeople can gain an exemption from regulatory requirements while others are bound by them. Tradespeople working under the supervision exemptions face little or no regulatory accountability for substandard work or poor conduct. The scale of substandard work completed by people working under supervision is hard to assess because supervisees are not documented in inspection failures.

MBIE proposes to repeal exemptions for specified areas, and work done under supervision

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

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

The objectives of these changes are to:

- ensure that restrictions on building work are proportionate to the risks to public safety
- ensure that those who are licensed to undertake restricted work have the right level of competence, and are held accountable for substandard work or poor conduct.

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

Proposal

Repeal the current sanitary plumbing exemptions for householders in specified areas and for rural districts, including the current Gazette notices for districts made under the *Plumbers, Gasfitters and Drainlayers Act 1976.*

MBIE proposes to repeal the householder and rural districts sanitary plumbing exemptions. These exemptions create public health and safety risks to current and future householders where unqualified people attempt to do sanitary plumbing work that would otherwise be restricted. Using a qualified plumber would address the risk that work does not meet building code requirements and ensure that people are not exposed to hazards from substandard work. Such hazards include the loss of hot water, the leakage of foul water, moisture problems and contaminated water.

Questions for stakeholders

3.3.1	Have you encountered instances of hazards or health issues from sanitary plumbing work completed by unlicensed people?
3.3.2	How often do you find work undertaken under a householders or a rural areas exemption that does not comply with the requirements of relevant codes and standards?
3.3.3	Do you think that a person should be qualified to do sanitary plumbing work on your property?

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

Proposal

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

MBIE proposes to repeal the exemptions for restricted sanitary plumbing, gasfitting and drainlaying work under supervision. These exemptions create risks to public health and safety and unfair situations where some tradespeople are exempted from regulatory requirements while others are bound by them. This creates gray areas in regulation and makes it difficult to train and grow competency through continuing professional development and to hold some tradespeople to account for substandard work or poor conduct. Tradespeople working under a supervision exemption would be deemed to be registered. They would be able to apply for a new class of licence before the exemptions are repealed to allow a smooth transition for people in work.

Questions for stakeholders

3.3.4	How often do you find substandard work carried out under a supervision exemption?
3.3.5	What benefits (if any) do you see from regulating people who are currently exempted if they work under supervision?
3.3.6	What potential issues (if any) do you see from removing the exemptions for doing restricted work under supervision?
3.3.7	What impacts (such as business impacts) would removing the supervision exemptions have on how your business is managed?
3.3.8	Do you support allowing people currently working under supervision exemptions to continue working as a regulated person under a new registration and licence?
3.3.9	Is anything else required to support the transition of exempted tradespeople to a new registration and licence?

How the proposed changes measure up to our five assessment criteria

Does the proposal meet the objectives for occupational regulation?

These proposals would ensure clear roles, responsibilities and accountability for completing restricted work.

The overall impact would be more consistent levels of accountability and competency for restricted work. More tradespeople completing restricted work under the PGD Act would be subject to the regulatory powers and competency requirements of the PGD Board.

Does the proposal support the desired behavioural shifts in the building sector?

The proposal would have the desired behavioural shift by protecting public health and safety and by lifting competency and improving levels of accountability.

Tradespeople would be more consistently held to account for the quality of their work.

Tradespeople previously working under exemptions would have to meet the PGD Board's requirements for continuing professional development. This would help support high standards competency and skill in the sector.

Would the benefits of the proposal outweigh the risks and costs?

Further work is needed to quantify the costs and benefits of these proposals. Our initial assessment is that they strike the best balance between costs and benefits.

The cost of being licensed to be able to complete restricted work would be balanced by a reduced need for remedial work to address non-compliant work done by unskilled people.

Is the proposal consistent with other elements of the building regulatory system?

These proposals are broadly consistent with other elements of the building regulatory system that seek to lift competency and accountability and close gaps in building sector regulation.

Is the proposal consistent with related government policy and regulations?

These proposals are consistent with the approach to other regulated occupations where high-risk, complex work must be done by people licensed to do the work and be held accountable for the quality of their work. They also supports a fairer allocation of risk and responsibility across the building sector.

Potential impacts of the proposed changes

Householders in designated areas

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

This would address the risk that work does not meet building code requirements and ensure that householders are not exposed to hazards from substandard work. Such hazards include loss of hot water, leakage of foul water, moisture problems, and contaminated water.

Tradespeople currently working under supervision

Accountable for their work and conduct. They would not be made worse off because they would be deemed to be registered and would be able to apply for a new licence. They would have access to opportunities for training and professional development.

All tradespeople

Fair and more consistent levels of regulatory oversight. Examples of oversight include suspending or cancelling a registration or licence, disqualifying a tradesperson from doing certain types of work, and requiring a tradesperson to complete a competency related programme.

The proposed transition includes time to develop and put in place a new class of licence

Once new legislation is in place, the PGD Board would have time to develop, consult and gazette a new class of licence before the supervision exemptions for plumbers, gasfitters and drainlayers are repealed.

Anyone previously working under a supervision exemption would be deemed to be registered. They could apply for a licence before the exemptions are repealed to allow a smooth transition for tradespeople. This would ensure that anyone who intends to continue working can do so.

All those who transition to the new licence would need to undertake ongoing training and develop their competencies. They will also face the accountability requirements for doing substandard work or poor conduct. Fees to renew licences would continue, as would disciplinary levies.

The time needed to transition would depend on how long it would take the PGD Board to design and implement a new class of licence for tradespeople who currently work under supervision.

Recap of questions

Part 3.3 – Plumbers, Gasfitters and Drainlayers (PGD)	
3.3.1	Have you encountered instances of hazards or health issues from sanitary plumbing work completed by unlicensed people?
3.3.2	How often do you find work undertaken under a householders or a rural areas exemption that does not comply with the requirements of relevant codes and standards?
3.3.3	Do you think that a person should be qualified to do sanitary plumbing work on your property?
3.3.4	How often do you find substandard work carried out under a supervision exemption?
3.3.5	What benefits (if any) do you see from regulating people who are currently exempted if they work under supervision?
3.3.6	What potential issues (if any) do you see from removing the exemptions for doing restricted work under supervision?
3.3.7	What impacts (such as business impacts) would removing the supervision exemptions have on how your business is managed?
3.3.8	Do you support allowing people currently working under supervision exemptions to continue working as a regulated person under a new registration and licence?
3.3.9	Is anything else required to support the transition of exempted tradespeople to a new registration and licence?

List of acronyms

BCA	Building consent authority
BCO	Building consent official
CE	Chief executive
CPEC	Chartered Professional Engineers Council
CPEng	Chartered Professional Engineer
LBP	Licensed Building Practitioner
MBIE	Ministry of Business, Innovation and Employment
PGD	Plumbers, gasfitters and drainlayers
PGD Act	*Plumbers, Gasfitters, and Drainlayers Act 2006*
RBW	Restricted building work

Submissions close on 16 June 2019

Have your say

See **page 4** of the introduction (Part 1) for details on how to submit your feedback.