BUILDING PERFORMANCE

Consultation submission form

A Proposed Occupational Regulatory Regime for Engineers

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

New Zealand Government

Submitter information

MBIE would appreciate if you would provide some information about yourself. If you choose to provide information in the "About you" section below it will be used to help MBIE understand the impact of our proposals on different occupational groups. Any information you provide will be stored securely.

A. About you

Name:	Jane Brown
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B. Are you happy for MBIE to contact you if we have questions about your submission?

☒ Yes ☐ No

C. Are you making this submission on behalf of a business or organisation??

☒ Yes ☐ No

If yes, please tell us the title of your company/organisation.

The Insurance Council of New Zealand/ Te Kāhui Inihua o Aotearoa

D. The best way to describe your role is:

☐ Engineer (please specify your discipline below)
☐ Other engineering professional (please specify below)
☐ BCA/Building Consent Officer
☐ Consumer of engineering services
☐ Architect or designer
☒ Other (please specify below)
☐ Builder or tradesperson
☐ Prefer not to say

Please specify here.

Legal Counsel

E. If you are an engineer, are you:

☐ Chartered Professional Engineer
☐ Engineering New Zealand member
☐ Neither

The case for intervention

Occupational regulation of a profession aims to protect the public from harm caused by incompetent or reckless practitioners. Our current approach to regulating engineers is not adequately protecting the public. Many engineers are practising outside of a regulatory regime, the public lacks information on who is competent to practice, there are few restrictions on who can practice in high risk fields, and the current governance structure is not sufficiently accountable, transparent, or independent from the profession.

Questions for the consultation

1. Do you agree there is a case for occupational regulation of professional engineers? Why do you think so?

The Insurance Council of New Zealand/ Te Kāhui Inihua o Aotearoa (**ICNZ**) agrees that an occupational regulatory regime for engineers ought to be introduced in Aotearoa New Zealand. In addition to some of the more well-known examples of engineering failures, insurers, who provide liability insurance for professionals such as engineers, have knowledge of and experience with many other incidents, some of which have been fortunate to avoid loss of life. While Engineering New Zealand and use of the CPEng have provided some form of monitoring for engineering activity in the country, ICNZ believes that a formal and mandatory regime for engineers would result in a lift in service standards, greater public confidence, and greater options for management and recompense in those situations where something does go wrong.

ICNZ does not believe that it is tenable to argue that professional engineers should not be subject to formal occupational regulation when other comparable professions are, as is noted on page 15 of the Discussion Document. It is therefore timely and appropriate that these proposals have been introduced.

We note in the impact section on page 38 of the Discussion Document that MBIE raises concerns that the proposals could have an impact on the supply of engineers. We take this opportunity to point out that the same argument was made with respect to the introduction of the new licensing scheme for financial advisers which came into force on the 15th of March this year. Notably, the scheme came with a new Code of Professional Conduct for Financial Advice Services[1] which sets out competence, knowledge, and skill requirements for financial advisers. When the requirements were first introduced, concerns were raised that the obligations would be particularly onerous for those who had been in the sector for a long time and they might lead people exiting the industry rather than having to comply with new obligations late in their career. The flow-on effect of this would potentially be increased costs for consumers as it became more difficult to engage an adviser. In reality, while adviser registrations have been slow, it does not yet appear that the concerns about attrition have come to pass.

[1] https://financialadvicecode.files.wordpress.com/2021/03/codeofprofessionalconduct-march2021.pdf.

The case for intervention

2. Have we identified the issues with the status quo correctly? Are there any issues that we have not included?

ICNZ believes that the matters set out in the problem definition on pages 12-15 of the Discussion Document accurately reflect the issues with the status quo position. In particular, we agree that there are significant risks in there being no mandatory checks on professionalism and competence, no formal complaints or disciplinary process, and that currently, there is a lack of accountability, transparency and independence from the profession.

3. We are unable to verify the number of practising engineers and those who may be operating at substandard levels. Can you suggest information sources for us?

ICNZ does not hold any information on the number of practising engineers.

4. What is your perception of the overall performance of engineers? Does your perception depend on the engineering discipline? Do you have examples of poor engineering you can share?

ICNZ's perception of the overall performance of engineers is that like any sector, there are excellent operators and there are poor operators. However, the potential risk exposure to death or injury, or damage to property, relating to this profession is far higher compared to some others. We are aware that engineering is an area where significant claims can be incurred, resulting in very high loss ratios (meaning that the percentage of claims that have been paid out by insurers is high in comparison to the amount of premiums paid for the cover). This then has the potential to make liability insurance premiums unaffordable or for cover to become unavailable for some.

We also believe that it is likely that the public's perception of engineers has been coloured by the frequency of high-profile events and subsequent media coverage. For example, the collapse of Southland Stadium in 2010 was a prominent event which was fortunate not to result in the loss of life. When the matter went to court, the stadium's engineer was found to be 90% liable for the damage, and the local authority, Invercargill City Council, 10% liable. However, because the engineer only held $1 million in professional indemnity insurance and that amount was quickly exhausted, Invercargill City Council's insurer ended up paying close to $17 million.

Other coverage includes the following article relating to engineers was published in January of this year: https://www.nzherald.co.nz/nz/engineers-withdraw-from-building-consent-work-in-wellington/FM7YTMAQBE4H6XKUXVT3F4KLEQ/. In the article, Wellington City Council attributed their failure to meet the statutory timeframe for issuing building consents to a drop in engineering service contracts, which in turn they said was due to an inability by engineers to secure coverage or meet increasing insurance costs. Engineering New Zealand echoed the comments about an increasing inability to find liability insurance. Evidence from both ICNZ members and other local authorities who have not encountered the same challenges in meeting building consent deadlines suggests that the problem relating to engineers is limited to the Wellington region. Statistical data from ICNZ members supports this position, with insurers having responded to a large number of claims from engineers in Wellington, where there appears to have been a disproportionately poor claims experience. As already stated above, a poor claims experience can then impact on the availability of liability insurance.

More generally, the following have been provided by ICNZ members as examples of claims they have received due to poor performance by engineers in a number of practice fields:

The case for intervention

- The movement of a building due to issues with a retaining wall.
- Defects in the design of a fire sprinkler system.
- Machinery failed to work as designed.
- Errors in geotechnical investigation which then lead to later defects.
- Incorrect product specifications used in a fixed-price contract project.
- Separate failures to identify issues with a trailer and truck axels during a certificate of fitness.
- Faulty design of hydrant and underground works.

Proposal 1: Establish a new registration requirement for persons who practice professional engineering

All persons who provide professional engineering services would need to be registered. Registered engineers would be subject to a code of conduct, continuing professional development obligations and a complaints and disciplinary process.

Questions for the consultation

5. Does our working definition of professional engineer and professional engineering services adequately reflect the profession? Can you suggest any changes?

ICNZ agrees that the working definitions of professional engineer and professional engineering services are appropriately broad so as to capture all necessary people and services within the regime.

6. Do you agree that the regime should cover all professional engineers? Are there any disciplines that should be exempted and why?

ICNZ agrees that all professional engineers should be covered by the regime. It seems sensible for engineers to be covered by the same registration and licensing conditions (if applicable), code of conduct and related disciplinary process, no matter the particular field they operate within. It is unlikely that members of the public appreciate the differences between the different types of engineers, so to omit certain engineers from the regime would risk undermining the goal of giving people confidence in the engineering profession. Leaving some classes of engineers out of the regime could also be seen as an indicator that that practice field or class(es) of engineers are less risky than others, which, may not be accurate, and may be problematic for the Government to be signalling, should a serious incident subsequently occur.

Consistent with comments on page 21 of the Discussion Document which identify risks with engineering fields outside of the building sector, the claims experience of ICNZ's members also demonstrates that it would be difficult to identify a particular class of engineers who present such an obvious lower level of risk that would justify an exception to the regime. Claims are frequently received from geotechnical engineers, hydro-engineers, mechanical engineers, fire engineers, general engineers, as well as structural engineers. It would also seem inconsistent with other regulated professionals to exempt certain persons from the regime. On this basis, we believe that consistency is important, and all professional engineers ought to be subject to the proposed regime.

Proposal 1. Establish a new registration requirement for persons who practice professional engineering

7. Do you agree with establishing a new protected title? Do you have a preference for what it is?

ICNZ agrees with the establishment of a protected title, and was surprised to learn that it was not already protected in the same way that "insurer", "bank", "lawyer", etc. are protected terms. To give the public confidence, they must be sure that when they engage an "engineer", that person is in fact a suitably qualified and licensed professional who is capable of carrying out the work they have been engaged to perform. Allowing anyone to call themselves an engineer risks letting an unqualified, or not sufficiently qualified person to carry out work, with the potential to cause serious harm to life and/or property.

ICNZ believes that there is a risk that the term "professional engineer" implies that there is a lesser "engineer" category and questions whether a more generic term, without a qualifier such as "professional", "chartered", "certified" etc. would be more appropriate.

8. Is a qualification enough for registration? Should we also include experience and an assessment of competence?

ICNZ believes that Aotearoa New Zealand's regulatory regime should be consistent with that in other jurisdictions and there should therefore be a certain level of experience and competence required, in addition to the prescribed qualifications, before a person can become a fully registered engineer.

We acknowledge the comments made on page 22 of the Discussion Document that requiring engineers to demonstrate their experience and/or competence would increase compliance costs for engineers and the regulator. In our view, the value in these additional checks would be worth the cost incurred as they would increase the likelihood of this regime achieving its objective of increased confidence in the engineering profession.

9. Would limiting registration to those with an engineering qualification (such as a Washington Accord level degree or equivalent) exclude some engineers in the profession? How can we recognise those engineers?

No comment.

Proposal 1. Establish a new registration requirement for persons who practice professional engineering

10. Do you engage engineers from overseas? Would requiring them to be registered affect your ability to engage their services? Or would overseas engineers be able to work under the supervision of a local engineer?

No comment.

11. Do you agree that all engineers should be subject to a code of conduct and continuing professional development obligations? Please share your reasons if you disagree.

ICNZ strongly supports the introduction of a code of conduct and continuing professional development (**CPD**) obligations for engineers. ICNZ has had its Fair Insurance Code (**FIC**) since 1994 which is used to self-regulate our members (in addition to the regulatory obligations that general insurers must comply with such as the Insurance (Prudential Supervision) Act 2010, the financial advice regime, and the various Insurance Law Reform statutes). Codes such as the FIC help to lift the trust and confidence in a sector via high standards of service, timeframes for responding to claims, utmost good faith and transparency, and importantly, by providing information about the complaints processes that must be complied with. It is a vital part of the provision of any professional service for there to be appropriate channels for consumers to bring complaints when they have a grievance. This is because research shows that providing customers with an easy to use and effective complaints process is crucial for customer satisfaction and retention.[2]

Additionally, CPD is a common requirement for professional such as chartered accountants, financial advisers, registered architects, and certified insurance professionals, and we believe that it would be logical to also require the same of engineers.

ICNZ's views is that both a code of conduct and CPD requirements will lift the level of professionalism and expertise amongst engineers and help to provide the public, and stakeholders such as insurers, with additional confidence in the engineering profession.

While we make this point, we cannot comment on whether requirements such as these will have any impact on the cost or availability of professional indemnity insurance for engineers. Whether overall risk associated with engineers and the professional services they provide reduces following the introduction of this regime will depend on the robustness of registration and licensing requirements, and the efficacy of monitoring and enforcement by the regulator.

12. Do you agree with the proposal for a practising certificate? Do you have any other suggestions for how we can link registration to continuing professional development?

ICNZ agrees with the proposal for engineers to be issued with a practising certificate and believe that renewal should be on an annual basis. We would also encourage MBIE to consider a register of engineers who hold practising certificates, similar to that for lawyers, which would allow customers to both search for an engineer within the necessary field for the work to be carried out and to ensure that the person they intend to engage is suitably qualified.

[2] Huntswood *Complaints Outlook 2019*, https://www.huntswood.com/insights/complaints-outlook-2019-insight.

Proposal 1. Establish a new registration requirement for persons who practice professional engineering

13. How often should an engineer need to renew their practising certificate?

As per our response to the above question, we believe that practising certificates should be renewed on an annual basis, which would be consistent with other professions.

14. Should issuing a practising certificate be contingent on an engineer completing their continuing professional development commitments?

ICNZ believes that the issuance of a practising certificate should be contingent on an engineer completing their CPD commitments, and that the annual renewal ought to include a declaration that the necessary CPD has been completed within the previous year. We also assume that the regulator will undertake random audits to ensure that registered engineers are complying with their CPD obligations, as is done for other professionals with CPD requirements such as lawyers and certified insurance professionals. This will help to ensure compliance with the CPD requirement.

15. Should electrical engineers registered by the Electrical Workers Registration Board continue under that regime rather than the new one proposed?

ICNZ's view is that regulatory duplication ought to be avoided where possible to ensure that compliance does not become unduly onerous or costly. In principle, we therefore believe that engineers registered by the Electrical Workers Registration Board should be recognised by the new regime, rather than having to hold two registrations. This is on the basis that while we do not hold enough information about engineers registered by the Electrical Workers Registration Board, we assume that they are subject to requirements that would put them at an equivalent level of expertise and qualification as will be required by the new regime.

Proposal 1. Establish a new registration requirement for persons who practice professional engineering

16. Are there other engineering practice fields that should also be recognised for similar reasons? What are they, and why should they be recognised?

No comment.

17. Should we include engineering associates, engineering technologists, engineering technicians and/or engineering geologists in the new regime?

ICNZ does not have a strong view either way as to whether engineering associates, engineering technologists, engineering technicians and/or engineering geologists are included in the new regime. We do acknowledge however, that for the sake of consistency, and ensuring that all those involved in engineering fields are subject to the same obligations, it would seem appropriate to do so.

18. If we expand the scope, should we make registration mandatory for those practising in these additional areas?

Consistent with the above response, we believe that registration for those practising in these additional areas should be mandatory.

19. Is a recognised statutory credential of value for engineering associates, technologists, technicians, and engineering geologists? Why?

No comment.

Proposal 2: Restrict who can carry out or supervise high risk engineering work

High risk practice fields would be restricted to licensed engineers only. Unlicensed engineers would only be permitted to practice if under the supervision or a licensed engineer or under a prescriptive standard.

Questions for the consultation

20. Do you support the Minister being able to decide what practice fields should be licensed? Or would you prefer greater certainty by setting out licensed practice fields in the primary legislation?

ICNZ supports the Minister being able to decide what practice fields should be licensed, as this will allow flexibility to reflect those practice fields which are high risk. While some practice fields will always be deemed high risk due to the inherent risk of harm involved in their performance, it is possible that others may move in or out of the categorisation. Allowing the Minister to identify licensing classes via regulation will allow more timely recognition of and response to those classes.

We believe that the need for flexibility outweighs the certainty provided by primary legislation in this particular instance.

21. Do you agree with the proposed list of criteria that the Minister would use to prioritise the development of licence classes? Are there other criteria that should be considered?

ICNZ agrees with the proposed list of criteria that the Minister would use to prioritise the development of licence classes and believes that the evidence of risk of significant harm posed by substandard work in the practice field should hold the greatest weight.

22. What sort of eligibility requirements for licensing would provide a suitable level of assurance on an engineer's expertise? Should they differ depending on the practice field?

No comment.

23. Should licensed engineers undergo regular checks of their continued competency?

ICNZ agrees that licensed engineers should undergo regular checks of their continued competency to ensure that they still meet the requirements to be licensed. Not doing so would risk having people who fail to meet the threshold for high-risk engineering work, carrying out that work. It is therefore essential that the licensing of engineers for high-risk work is not a "set and forget" exercise, and instead, there are regular and thorough checks carried out by the regulator.

Proposal 2. Restrict who can carry out or supervise high risk engineering work

24. How often should the regulator check a licensed engineers' competency?

ICNZ believes that because of the possible risks associated with having someone who is not suitably competent performing high-risk work, the regulator should check a licensed engineer's competency at least every two years.

25. What tools would be most useful to check competency in your practice field?

No comment.

26. Would you prefer using the Chartered Professional Engineering (CPEng) credential for licensing classes rather than creating a new credential? Why?

No comment.

27. Do you prefer the option of licensing companies instead of individuals? Why?

ICNZ agrees with MBIE's view that it is preferable for individuals to be licensed rather than the company. This would ensure that each individual working in a high-risk field is competent to do so, rather than requiring the relevant company to make the assessment. Placing an obligation on the company to ensure that only engineers with suitable expertise work on a particular project could lead to errors if there are a large number of individuals involved in a project, or if the company frequently engages contractors.

Proposal 3: Establish a new two-tiered regulator comprised of an independent regulatory board and a regulatory service provider

A new two-tiered regulator would oversee the regime. A regulatory board would report to the Minister for Building and Construction, with the Ministry of Business, Innovation and Employment (MBIE) providing oversight and monitoring. The regulatory board would determine who can be registered, what work needs to be licensed, and investigate complaints. The Minister would have the ability to designate a regulatory service provider to provide all or some of the board's functions. Appeals would be heard by the District Court.

Questions for the consultation

28. Do you agree with the proposed two-tier regulator model of a regulatory board and a regulatory services provider? Are there any other models we should consider?

ICNZ agrees that the proposed two-tier regulator model is an appropriate model for this regime as it will provide the necessary "separation of powers" between the body who registers and licenses engineers, and holds hearings on complaints, and the body who provides the regulatory services to the board.

29. Do you have a preference for who the regulatory service provider should be?

ICNZ does not have a strong preference for who the regulatory service provider should be but is not of the view that Engineering New Zealand would be the appropriate choice. We do not believe that the appointment of a representative body to that position would offer the necessary impartiality and independence to best perform the role.

30. Do you agree with the proposed functions of the regulator and regulatory service provider? Can you suggest any different functions?

We agree with the proposed functions of the regulator and regulatory service provider and have not identified any other functions.

31. Have we missed any other grounds for discipline? Have we proposed grounds for discipline that you think should be modified or removed?

We believe that the grounds for discipline appear to be appropriate although we note that more grounds may emerge as the regime develops further.

Implementation

It will take time to transition to a new regime. The board would have the ability to recognise some existing engineers as registered or licensed. Once the regime is in place, the Chartered Professional Engineers scheme would be disestablished.

Questions for the consultation

32. Should the regulator have the flexibility to recognise and automatically deem some existing practitioners as registered and/or licensed?

If the regulator could be satisfied that existing practitioners hold the same level of qualifications as newcomers to the profession would, under the new requirements, and can also satisfy any fit and proper standards, then ICNZ believes it would be appropriate to recognise and automatically deem some existing practitioners as registered and/or licensed. We do however think, that this should be done on an individual basis, rather than generally, simply because a group of people hold a certain professional qualification or are a member of Engineering New Zealand.

33. Do you have any suggestions for other ways to transition the profession to the new regime?

We do not have any suggestions as to how the profession might be transitioned to the new regime, however we do note that MBIE has estimated a very lengthy transition period of up to six years. We believe that this period is at odds with the possible risk posed by engineers currently (and as recognised in the strong case for occupational regulation of engineers established on pages 11-12 of the discussion document) and would encourage MBIE to reduce this timeframe. While not strictly analogous, we note that the financial advisers regime which has already been mentioned and that involved new legislation, a new code of conduct, and a requirement for financial advisers to be licensed and hold certain qualifications, only had a transition period of four years between the legislation being enacted and being required to hold a full license.

On a comparison of the potential level of risk to life and/or property, we take the view that there would be a more pressing need to introduce a regulatory regime for engineers, who, for those who choose to be under such a regime, are currently only subject to voluntary standards.

34. Should we retain the Chartered Professional Engineer credential in the longer term? If we do, what role should it play?

No comment.