



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

Strengthening the Licensed Building Practitioner Scheme

Targeted Consultation

September – October 2020



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

Ministry of Business, Innovation and Employment (MBIE)

Hikina Whakatutuki - Lifting to make successful

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

MBIE combines the former Ministries of Economic Development, Science + Innovation, and the Departments of Labour, and Building and Housing.

This document is produced by the Building System Performance branch.

More information

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Information, examples and answers to your questions about the topics covered here can be found on our website www.mbie.govt.nz or by calling us free on 0800 20 90 20.

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Contents

1.	Introduction	2
2.	Background	3
3.	Proposed changes to the LBP scheme	4
	Update on the 2019 public consultation	4
	Withdrawn proposals	5
	Next steps	5
4.	Proposals for consultation	6
	Introduce a code of ethics for LBPs	6
	Changes to licensing administration processes for LBPs	9
	Changing the Building Practitioners Board's complaints and disciplinary process	11

1. Introduction

The Ministry of Business, Innovation and Employment (MBIE) seeks your feedback on a package of possible changes to the Licensed Building Practitioners (LBP) scheme set out in the Building Act 2004.

The proposals in this paper include:

- › introducing a code of ethics and accompanying guidelines,
- › changing licensing administration processes for LBPs; and
- › changing the complaints and disciplinary process.

How to provide feedback

Please provide feedback to building@mbie.govt.nz by 5pm, Friday 16 October 2020.

Please answer the questions in the response sheet which can be found on the consultation web page.

What will happen to your feedback?

Your feedback will contribute to advice that MBIE will provide to Ministers on strengthening the LBP scheme.

Your feedback is subject to the Official Information Act 1982.

People will be able to get copies of your submission by making a request under the Official Information Act 1982. If you want us to keep some sections confidential, mark these sections clearly in the comment box for the relevant question and tell us why you'd like it withheld (i.e. commercial sensitivity, etc). MBIE will take your reasons into account and will consult with you when responding to requests under the Official Information Act 1982.

Out of scope

MBIE is not seeking comments on the proposals that were included in the Building system legislative reform discussion paper released in April 2019 as part of this targeted consultation. There will be an opportunity to provide further feedback on the proposals in the discussion paper as part of future Select Committee and regulation-making processes, as detailed in this document.

MBIE is also not seeking comments on proposals that will be included in the next round of targeted consultation, which will include:

- › a review of the licensing classes; and
- › a review of the competency requirements.

Disclaimer

The opinions and proposals in this consultation document are those of the Ministry of Business, Innovation and Employment (MBIE) and do not necessarily reflect government policy. MBIE does not accept any responsibility or liability whatsoever whether in contract, tort (including negligence), equity or otherwise for any action taken as a result of reading, or for reliance on, any or all of the information contained in this document, or for any error, inadequacy, flaw in, or omission from this document.

2. Background

Background to the LBP scheme

The Licensed Building Practitioners (LBP) scheme makes an important contribution to safe and durable buildings. The scheme was introduced in 2007 following an amendment to the Building Act 2004, to help address gaps in the performance-based regulatory system that were exposed during the leaky homes crisis.

The purpose of occupational regulation in the building and construction sector is to manage public safety, and the health and financial risks facing building owners and occupants. It is the primary way the building regulatory system ensures the construction workforce is competent, skilled and held accountable.

The aim of the current LBP scheme, and the suggested changes, are:

- › To ensure builders have the right skills, knowledge, experience and behaviours to do quality building work; and
- › To hold LBPs to account when they do not meet the standards expected of them.

The scheme has not been reviewed as a whole since it was introduced, and has not kept up with all the changes in the building sector. The LBP workforce and the wider building system has continued to evolve and become more specialised, and demands on builders have increased.

MBIE acknowledges the scheme is not currently able to manage some of the poor behaviours which are demonstrated by a portion of practitioners after they are licensed.

The scheme doesn't have the right tools to remove practitioners who carry out or supervise poor quality work, which can create health, safety and financial issues for homeowners.

A stronger LBP scheme, with better standards and levers for accountability, will mean builders have the right skills, knowledge, experience and behaviours to carry out and supervise quality building work. This will increase public confidence and boost the credibility of the scheme, and reduce health, safety and economic risks to homeowners from substandard building work.

The Building System Legislative Reform Programme

MBIE is currently progressing a programme of legislative changes to the building system to lift the efficiency and quality of building work, and to provide fairer outcomes if things go wrong. These reforms are focused on making sure people have the information they need to do their job, have clear roles and responsibilities, and can be held to account for poor performance.

MBIE publicly consulted on the 'Building System Legislative Reform Programme' from April to June 2019. A total of 470 submissions were received from individuals and organisations across the building and construction sector. The feedback received strongly supported the need for legislative change, and showed a high level of support for many of the proposals.

The reform programme is being progressed in stages – the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill, has passed its first reading, and is now at the Select Committee stage. This bill is focused on improving the assurance system for building products, including CodeMark, and creating a system to support manufacturers producing modular components for modern methods of construction.

The next stage of the building reform programme is focused on occupational regulation, and includes a number of proposals to strengthen the LBP scheme.

[Learn more about the changes we are making within the building law reform programme here.](#)

3. Proposed changes to the LBP scheme

Update on the 2019 public consultation

During the 2019 public consultation process, the government asked for feedback on the following changes to strengthen the LBP scheme:

- › Raising the competence standards for LBPs to enter and remain in the LBP scheme, including proposals to:
 - introduce a tiered licensing system for LBPs to establish a progression pathway, including a specific licensing class for supervision;
 - simplify the licensing class categories; and
 - introduce behavioural competence requirements for LBPs, such as a code of ethics.
- › Broadening the definition of restricted building work to include more complex non-residential building work.

MBIE received 142 submissions on these proposals. Submitters strongly supported raising competency standards, introducing behavioural standards, and improving monitoring and enforcement. Submitters also raised concerns about the scheme's monitoring and enforcement, and its ability to lift quality.

[Read the discussion document and a summary of submissions here](#)

The majority of submitters also supported broadening the definition of restricted building work to include more complex, non-residential building work.

Proposals not in scope for this round of targeted consultation

MBIE is staging the consultation process for the measures that are being introduced to strengthen the LBP scheme. Proposals that are part of the overall work to strengthen the scheme, but are not in scope of this round of consultation, include:

- › reviewing licensing classes, which may include:
 - changes to supervision and the possibility of a progression pathway; and
 - changes that improve the flexibility of the scheme in response to changes and innovations in the sector.
- › reviewing competency requirements and the assessments for licensing classes, which may include:
 - changes to how LBPs are assessed and competency is measured;
 - changes to what LBPs are assessed on; and
 - changes to skills maintenance requirements.

The Building Act gives the Minister for Building and Construction the power to make changes to licensing classes, including creating new types of licensing classes, and the competency requirements.

MBIE anticipates inviting key stakeholders to provide feedback in early 2021, with a view that these changes to the scheme should be in force by late 2021 and early 2022.

Withdrawn proposals

MBIE is not proposing to broaden the definition of restricted building work to include more complex non-residential building work as part of the second phase of the building system legislative reform programme.

We recognise that there are serious issues not being addressed by the building regulatory system, particularly in more complex construction, where much of the decision making is not being made by building experts (e.g. company directors or project managers).

However, the main issues identified can be themed as financial issues, quality issues, and coordination issues. These risk areas are underpinned by a range of problematic risk management behaviours that are not strongly linked to any specific occupation that can be regulated. Furthermore, these issues are less a matter of public safety and more about company finances, project efficiency, and corporate decisions made on risk management.

MBIE has identified there would be significant unintended consequences from trying to address these risks using the LBP scheme, and is carrying out other work to achieve better risk management:

- › the Construction Sector Accord is making inroads towards improving contracting and procurement practices, and upskilling the sector;
- › changes to the Construction Contracts Act 2002 are being considered to ensure retention monies are protected as intended;
- › Parliament is considering the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill, which will strengthen assurance systems for products and improve accountability for poor practice, and improve how the regulatory system manages modern methods of construction; and
- › Parliament is also considering amendments to the Fair Trading Act 1986 to better protect consumers and small businesses from unfair contract terms and commercial practices, which would have a positive impact on the business conditions which create risks.

Next steps

MBIE has analysed the feedback from the 2019 public consultation, and come up with measures that help the scheme ensure builders have the right skills, knowledge, experience and behaviours, along with providing the Building Practitioners Board (the Board) additional levers to hold LBPs to account when they do not meet the expected standards.

The current proposals include both measures that were drawn and refined from the 2019 consultation, and additional measures which were identified as part of continued discussion with the sector after the 2019 consultation.

MBIE will run two sets of consultation processes for the changes to the LBP scheme.

This round of consultation include changes to the scheme that will need amendments to the Building Act 2004 will be prioritised and included in this consultation, in addition to the code of ethics, which requires an Order in Council.

In early 2021 MBIE anticipates running a second consultation process that will include changes to the scheme that are within the remit of the Minister for Building and Construction. This means these changes will be on a different timeline and can be enacted using the regulation and rule-making process, instead of going through the full Parliamentary process to amend the Building Act.

4. Proposals for consultation

Introduce a code of ethics for LBPs

The Building Act empowers the Minister to prescribe a code of ethics for LBPs through an Order in Council. The introduction of a code of ethics (COE) will provide mechanisms to better manage poor performance and behaviour, through setting expectations and a clear message to the profession that substandard conduct and behaviour will not be tolerated.

This proposal is based on the high level of support from the April 2019 public consultation for a code of ethics for LBPs. Not only can the code help lift the quality of work, but it can also be used to identify and take action on the portion of repeat substandard LBPs who are unfairly impacting the reputation of the scheme and LBPs in general.

MBIE's intention is to create a simple and concise code of ethics that helps LBPs clearly understand their behavioural obligations. The code of ethics would be a live obligation that LBPs would be required to adhere to in order to remain licensed.

MBIE has identified four key principles in which the code of ethics should focus on. Each of these principles would have a series of standards, which would expand on the expectations of LBPs.

Proposal 1: MBIE proposes to introduce a code of ethics for LBPs.

The purpose of this proposal is to provide mechanisms to manage poor conduct, and support license holders to clearly understand the level of professional behaviour expected of them (Annex One).

■ The four key principles are detailed below:

Key principle	Rationale	Expected standards to sit under this principle
Work safely	Places public protection at the core of the scheme. Ensures LBPs are held to account for unreasonable conduct that could place themselves or others at risk of harm.	<ul style="list-style-type: none"> › Fulfilling responsibilities as a worker and/or business owner with regards to the health and safety of themselves and other people. › Calling out or taking action to address unsafe behaviour. › Considering the impact of working practices on the environment.
Be aware of the law	LBPs will be aware of, and observe, the legal and contractual requirements relevant to the work being carried out by themselves or those they are supervising.	<ul style="list-style-type: none"> › Observing legal obligations within New Zealand law, applicable to the work being carried out. › Calling out and reporting breaches of applicable legislation (particularly related to the building system).

Key principle	Rationale	Expected standards to sit under this principle
Take responsibility	An LBP will treat people fairly and openly – this means being clear with consumers on timelines, costs and risks to work.	<ul style="list-style-type: none"> › Understanding and upholding responsibilities as an LBP. › Being upfront about design and construction risks with clients and colleagues and explaining how they can be dealt with. › Providing sufficient information for clients to make informed decisions. › Holding accountability for any defects resulting from work undertaken, or the work of those supervised. › Advising clients of any delays as soon as they become apparent. › Acting in the client’s interests, consulting with the client when decisions are required. › Taking on board the client’s instructions unless these are contrary to building consent documentation, contractual agreements, against the law, or likely to cause harm to others.
Behave professionally	Behavioural issues, such as treating consumers unfairly through things like being unwilling to remediate poor work, are a major cause of action taken against current LBPs.	<ul style="list-style-type: none"> › Treating colleagues, clients and others fairly, honestly, respectfully and with integrity. › Acting in good faith during the resolving of disputes. › Scoping and pricing work fairly and reasonably, informing the client upfront and obtain their agreement before additional costs are incurred. › Declaring and managing conflicts of interest appropriately. › Maintaining confidentiality and avoiding sharing sensitive client information with others unless there is a good reason to do so, such as a risk of harm. › Acknowledging and respecting cultural norms and values of colleagues, employees and clients. › Conducting business (where applicable) in a responsible manner – such as handling money, keeping accurate records, managing employees and providing appropriate documentation.

■ How the code of ethics could be applied in a practical sense is detailed below:**Work safely – Calling out or taking action to address unsafe behaviour**

Matiu has noticed that one of the other LBPs on site, Colin, is working in a very unsafe manner and he is concerned that this may cause serious harm to Colin and/or the others on the worksite. Matiu has a responsibility under the Health and Safety at Work Act 2015 (HSWA) as a worker to speak up when he has a health and safety concern. He raises his concerns with the site manager, Kyle.

As Kyle is a person conducting a business or undertaking (PCBU), he has a duty to manage health and safety risks in the vicinity of where work is being carried out. Kyle discusses the concerns around Colin's behaviour with Colin directly, who subsequently doesn't seem to change his behaviour. Kyle undertakes a disciplinary process with Colin. Kyle then involves the workers on site to put in place clearer processes and practices to manage health and safety on site to reduce the chances of such behaviours happening again.

Both Matiu and Kyle fulfilled their obligations under both the HSWA and the COE. The Building Practitioners Board may be notified about the actions of Colin and determine that his behaviour did not meet the standards expected of an LBP under the COE.

Take responsibility – Being upfront about design and construction risks with clients and colleagues and explaining how they can be dealt with

Trent is a designer who is working with Jane and Tama to design their new home. He talks them both through his design, which includes a number of features that he is keen to see featured in one of his designs, and they are keen to go along with his suggestions. They go through the building consenting process and are successful in gaining consent from the Council.

Trent failed to price the job before submitting the building consent application to the Council and checking that Jane and Tama had the budget to carry out the project.

Once the project is completed, Jane and Tama are faced with a higher bill than they expected. They make a complaint to the Building Practitioners Board as Trent had failed to explain to them the risks associated with the building the design he had created for them.

Behave professionally – Acting in good faith during the resolving of disputes

Aakash and Simon are undertaking roofing work on Gary's new house when Gary tells them he's not happy with how they've installed the flashings. Aakash and Simon don't react well to this news and are quite angry, knowing that they strictly followed the designs and believe there is nothing wrong with it. Unwilling to discuss this further with Gary, they collect all their tools and any unused materials and walk off the job. They do not return to finish the work and do not return Gary's calls.

The actions of Aakash and Simon do not show them acting in good faith to resolve the dispute and therefore they are in breach of the COE. They instead should have considered responding pragmatically and sat down with Gary and the designer to discuss the designs and how they carried out the work. If it was found that they had constructed it incorrectly, Aakash and Simon should, in good faith, rectify the work to how it should be.

Changes to licensing administration processes for LBPs

MBIE has identified additional measures to strengthen the LBP scheme, which are the result of feedback on the original proposals in the 2019 consultation process, as well as ongoing discussions with the sector.

■ Background information on the licensing administration process

The Building Act 2004 restricts building work that is critical to make a home structurally sound and weathertight. The rules for restricted building work are part of a Building Consent Authority's role in consenting and inspecting building work. They protect current and future owners by creating a record of who did what in a home, and how it meets the Building Code.

All restricted building work must be carried out by an LBP who is licensed to carry out or supervise the work. The purpose of licensing is to assess and record building practitioners as having certain skills or knowledge relevant to building work, and link practitioners to the building work they carry out or supervise.

The process for obtaining and renewing licences is set out in the Building Act. Licence applications must be made to the LBP Registrar, who administers the LBP scheme on behalf of the government and decides whether building practitioners meet the requirements to be licensed or for continued licensing.

The Building Act requires the Registrar to contact LBPs annually and ask if they wish to continue to be licensed. LBPs are then required to pay a licence fee and sign a declaration confirming they are still active in the building industry.

LBPs must also complete and record skills maintenance activities every two years, and must show these have been done before they can renew their licence that year. The skills maintenance requirements help ensure LBPs keep up with changing industry practices and regulatory changes, and continue to meet the minimum standards required to be licensed.

If LBPs do not renew their licence on time, the licence is suspended. LBPs cannot carry out or supervise restricted building work while their licence is suspended. A LBP has 12 months to revive a licence by paying the missed fee, signing the declaration, and completing any outstanding skills maintenance requirements. If a LBP does not complete this process within 12 months the licence expires and is cancelled, removing them from the register and meaning they will need to begin a new application to become licensed.

There are currently around 3,500 relicensing suspensions per year, of which approximately 1,500 are renewed before expiration. The average length of a relicensing suspension is 46 days. In 2019, 83 per cent of late renewals were done within 90 days of suspension.

■ Improving the efficiency of the licensing process

The current renewals process creates a number of issues:

- › the current one-year licensing term is inefficient and creates unnecessary administrative requirements for both LBPs and the Registrar
- › there is a lack of flexibility to change the licensing process to respond to changes in the sector, as any changes require amendments to the Building Act
- › the term 'suspension' suggests an LBP may have a lack of skills or may have engaged in misconduct, and creates confusion
- › LBPs who carry out restricted building work while suspended cannot be held to account by the Board.

MBIE has identified a number of proposals to increase efficiency, flexibility and accountability in the LBP licensing scheme, and is seeking your feedback on these.

Proposal 2: MBIE proposes to move the process for renewing licences from the Building Act to the LBP Rules.

The purpose of this proposal is to provide mechanisms to manage poor conduct, and support licence holders to clearly understand the level of professional behaviour expected of them (Annex One).

Proposal 3: MBIE proposes to set a maximum licence term of five years in the Building Act, and to provide for the licence term to be set in the LBP Rules.

The intent will be to set a two-year licence term to align with skills maintenance requirements.

The purpose of this proposal is to increase flexibility, if changes are necessary to respond to changing industry practices.

Proposal 4: MBIE proposes that:

- › licences that are not renewed by the due date become *expired* instead of *suspended*;
- › LBPs whose licences have expired will not be able to carry out or supervise restricted building work; and
- › an expired licence will be removed from the public register in the same manner as a cancelled licence.

The purpose of these proposals is to provide clarity about the reason for an LBP not having a valid licence and reduce confusion that an LBP might have a suspended licence for disciplinary reasons.

Proposal 5: MBIE proposes that when an LBP's licence is eligible for suspension for not submitting skills maintenance requirements at the same time as the licence is due to expire, the licence is expired rather than suspended.

Proposal 6: MBIE proposes that:

- › expired licences be subject to an '*expiry pending period*' in which the LBP may renew the licence, and that this period will be specified in the LBP Rules; and
- › a licence that is in the '*expiry pending period*' will be recorded as such on the public register in the same manner as a suspended licence, and that pending expiry period will stay recorded for three years.

The intent will be to set the expiry pending period at 90 days. This would capture the majority of late renewals, and provide a balance between having assurance about an LBP's competence, while giving the LBP an opportunity to rectify a missed renewal.

Proposal 7: MBIE proposes that the Board may take disciplinary action against LBPs who undertake restricted building work during the proposed '*expiry pending expiry period*'.

The purpose of this proposal is to increase accountability and lift confidence in the licensing scheme.

Changing the Building Practitioners Board's complaints and disciplinary process

MBIE has identified opportunities to improve the structure of the complaints and disciplinary model, which is run by the Building Practitioners Board (Board), for the scheme. This draws on feedback from submitters in the April 2019 public consultation on the complexity of the process, in addition to supporting the Board being able to implement the code of ethics.

■ About the Building Practitioner's Board

The Board is a statutory body established under the Building Act. It is independent of MBIE, and has the following functions:

- › approve rules relating to LBPs
- › receive, investigate, and hear complaints about LBPs, inquire into their conduct, and discipline them
- › hear appeals against licensing decisions of the Registrar
- › annually review and report to the Minister for Building and Construction on the performance of its functions and duties, and exercise of its powers.

The Building Act gives the Board a range of powers and sets out processes for exercising these functions, including a complaints and disciplinary process. The Registrar helps the Board to receive and investigate complaints, and provides administrative support to the Board to enable it to perform its functions.

■ Impact of the current proposals on the Board's role

The Board will have a role in implementing the proposed changes to the LBP scheme, and it is important to ensure the Building Act gives the Board adequate powers to do this. MBIE does not consider that any changes are needed to the Board's functions of approving rules, hearing appeals against licensing decisions, or annual reporting.

The introduction of a code of ethics will likely have an impact on the Board's function in the complaints and disciplinary process for LBPs. The code of ethics will provide additional levers for the Board to hold LBPs to account for poor behaviour and performance, which may increase the number of complaints and the Board's workload. The Board's current workload is already higher than was anticipated when the LBP scheme was set up.

Reviewing the Board's role in the LBP scheme's complaints and disciplinary process could mitigate a potential increase in the Board's workload. A review would also provide an opportunity to better align the LBP scheme with complaints and disciplinary processes in other occupational regulation regimes, and to bring it closer to best practice.

A comprehensive review of the complaints and disciplinary process would require amendments to the Building Act and to the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations). The proposals in this document focus on amendments to the Building Act. MBIE will seek feedback on any proposed amendments to the Regulations at a later date.

■ Changing the Board's role in the complaints and disciplinary process

The current disciplinary provisions in the Building Act require the Board to receive, investigate, hear and decide on complaints about LBPs. The Regulations require the Registrar to investigate all complaints on the Board's behalf and to prepare a report. The Board must then consider the report and decide whether to proceed with the complaint and hold a hearing. This means the Board must consider every complaint investigated, and is involved at all stages of the complaints process. The Building Act does not provide for the Registrar to triage complaints for the Board.

Currently the Board is both the prosecutor and the decision-maker when a complaint is made. This is not in line with best practice for occupational regulation, which would be to ensure the independence of the decision on the complaint by separating the investigative and adjudicative functions. By splitting out these functions it will mean the Board can focus on impartial decision making based on a prosecuted case, and provide for a more appropriate contradictor should a decision be appealed to a District Court.

Other occupational regulatory regimes model best practice by requiring the appointment of an investigator, separate from the Registrar and from the decision-maker, to investigate a complaint, and to make a decision on whether a complaint should proceed to a hearing. If the complaint does proceed, the investigator becomes the prosecutor. This is the case for complaints about electrical workers under the Electricity Act 1992, and about plumbers, gasfitters, and drainlayers under the Plumbers, Gasfitters, and Drainlayers Act 2006 (PGD Act).

■ **Aligning the disciplinary process for LBPs in the Building Act with the Electricity Act**

The provisions for electrical workers under the Electricity Act require the electrical workers Registrar to make an initial determination on whether or not a complaint should be investigated, and if so, require the Chief Executive of MBIE to appoint an investigator. The investigator acts as the fact finder and makes a recommendation to the Electrical Workers Registration Board (EWRB) who acts as the decision-maker.

MBIE considers the disciplinary provisions in the Electricity Act and the separation of roles between the EWRB, the electrical workers Registrar and the investigator to be a good model for the LBP scheme. The current process under the Electricity Act works well, and the regulated populations and number of complaints are comparable. However, the EWRB hears fewer complaints than the Board, which may be partially due to the separation of roles between the prosecutor and the decision-maker.

The proposed complaints and disciplinary process will allow the Board to focus on its key role of hearing and deciding on complaints. It will also provide a clear separation of roles between the prosecutor and decision-maker, and will bring the LBP scheme closer to best practice.

Proposal 8: MBIE proposes to amend the complaints and disciplinary process in the Building Act to align with certain provisions in the Electricity Act, so that:

The purpose of this proposal is to provide mechanisms to manage poor conduct, and support licence holders to clearly understand the level of professional behaviour expected of them (Annex One).

- a. complaints are to the Board, but must be made through the Registrar
- b. the Registrar makes an initial determination on whether the complaint warrants investigation
- c. if the Registrar determines the complaint should proceed, the Chief Executive of MBIE appoints an investigator to investigate the complaint
- d. the investigator must send particulars to the person complained against and give them reasonable opportunity to make written submissions and be heard
- e. the investigator must provide a report to the Board on the outcome of the investigation and determine whether the complaint should be considered by the Board
- f. the investigator must send a copy of the report to the Board, to the person complained against and the complainant
- g. if the investigator reports that a complaint should be considered by the Board:
 - i. the Board must hold a hearing; and
 - ii. the investigator must prosecute the matter at the hearing, and may be represented by counsel or otherwise.

■ Increasing the Registrar's role in triaging complaints

As noted above, the Building Act currently does not enable the LBP Registrar to triage complaints for the Board. The Regulations include a provision that a complaint does not warrant further investigation if its subject matter is "minor or trivial". However, this assessment is only made after the Registrar has completed its investigation and provided a report to the Board, and so cannot be used as a tool for reducing the number of complaints the Board considers.

The Electricity Act 1992 allows the EWRB Registrar to dismiss a complaint at the initial determination stage if the Registrar is satisfied that the complaint is frivolous or vexatious. There is also a useful provision in the Immigration Advisers Licensing Act 2007 that enables the Registrar to decide to not pursue a complaint if it "discloses only a trivial or inconsequential matter", but complainants have a right to appeal the Registrar's decision. Including similar provisions in the Building Act as part of the Registrar's initial determination process would likely further reduce the number of complaints that would need to be investigated and considered by the Board, and support the Board to focus on more substantive matters.

Increasing the LBP Registrar's role in triaging complaints and the proposed changes to the complaints and disciplinary process will help to ensure that the Board has the capacity to deal with a potential increase in the number of complaints as a result of the introduction of a code of ethics for LBPs.

Proposal 9: MBIE proposes to allow the Registrar to dismiss a complaint during the initial determination stage if it is satisfied the complaint is frivolous or vexatious, or if the subject matter of the complaint is trivial or inconsequential.

Proposal 10: MBIE proposes to give complainants the right to appeal to the Board if the Registrar decides to not proceed with a complaint because the Registrar considers the subject matter to be trivial or inconsequential.

