New Zealand Law Society
Te Kāhui Ture o Aotearoa

Building and Construction Sector (Strengthening Occupational Licensing Regimes) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

18 December 2025

1. Introduction

1.1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (the **Law Society**) welcomes the opportunity to comment on the Building and Construction Sector (Strengthening Occupation Licensing Regimes) Amendment Bill (**the Bill**).

1.2. This omnibus Bill proposes to amend the Building Act 2004 (**BA**), the Plumbers, Gasfitters, and Drainlayers Act 2006 (**PGDA**), and the Electricity Act 1992 (**EA**). The explanatory note states the policy aims of the Bill are to:

- improve regulatory oversight of building and construction professionals; and
- enhance the governance, administration, complaints, and disciplinary functions and processes within the regulatory regimes for those professionals; and
- ensure licensing standards are upheld consistently across professions in the building and construction sector.

1.3. This submission focuses on drafting improvements, to improve clarity and workability, and strengthen protection of the privilege against self-incrimination, and disclosure of legally privileged information.

1.4. The Law Society does not wish to be heard on this submission.

2. Part 1 – Amendments to the Building Act

Clause 4 – Interpretation

2.1. Clause 4 proposes to amend section 7 of the BA, to define the terms "automatically licensed person" and "licensed building practitioner."

2.2. Each of these definitions is drafted in the present tense – meaning that the terms apply to a person who currently has that status. This may create issues in areas such as prosecution of offences under the Act where a person has had their licence revoked or has voluntarily ceased operating. We recommend amending the definitions so that they refer to a person who "is or was at the relevant time" licensed or treated as being licensed.

Clause 14 – Information contained on register

2.3. Clause 14 proposes to amend section 301 of the BA, which specifies the matters that must be contained on the register of licensed building practitioners (**LBPs**). It will insert a requirement to include on the register information about individuals whose licensing has been suspended or cancelled in the last three years. It will also require the Registrar to remove from the register information about a former LBP if the person's licensing was cancelled more than three years ago.

2.4. We note here that there may be claims or other actions involving a formerly licensed building practitioner, for which this information is relevant. Removal from the register ought not result in destruction of the information, which should remain available by way of request under the Official Information Act 1982, despite three years' having passed.

Clause 17 – new sections 316 and 316A – Appointment, delegation and immunities of Investigator

2.5. Clause 17 will insert new section 316, requiring the chief executive to appoint an investigator, as soon as practicable after being informed by the Registrar of a complaint received or initiated under new section 315. Pursuant to new section 316(2)(a), the investigator must be "suitably qualified and trained to perform or exercise all or any of the functions, duties, and powers of an investigator."

2.6. Reference to "all *or any* of the functions, duties, and powers *of an investigator*" raises two queries.

- First, whether it is intended to mean that an investigator simply needs to be qualified in investigative techniques, rather than subject matter (i.e., construction) expertise.
- Second, whether reference to "all or any" means competence in a single field or only some investigative techniques (depending on the answer to the first question) will be sufficient, even where an investigator may then be investigating matters outside of their sphere of competence.

2.7. Further, new section 316A(3) enables an investigator appointed to investigate a complaint under section 315 to delegate any of the functions or powers of the investigator, either generally or specifically. There is no equivalent provision to new section 316(2), and so no qualification or training requirements for the appointed delegate.

2.8. The Law Society recommends the Select Committee consider whether each of these provisions ought to be amended to ensure that an investigator and their delegate are suitably qualified in all necessary investigative techniques and/or areas of work that are to be investigated. Given the technical nature of the complaints that may require investigation, empowering the appointment of an investigator (or delegate) who may not be suitably qualified and trained in the matters raised by the complaint, risks undermining the complaints regime. This is contrary to the intent of the Bill, which aims to strengthen these processes.

2.9. It may also be worthwhile including an equivalent provision to that of new section 316(4), to the effect that – just like the investigator – an investigator's delegate is not personally liable for any act done or omitted to be done in good faith in the performance or intended performance of their functions, duties, or powers under the Act.

Clause 17 – new section 316D – Power to require documents and information

2.10. Clause 17 proposes to introduce section 316D, which empowers an investigator to require, by written notice, the production of information and documents by any person. The only limitation on the scope of this power is new section 316D(5), which specifies that:

> *Every person who is required to supply information or documents to an investigator under this section has the same privileges in relation to the supply of the information or documents as witnesses have in any court.*

2.11. This qualifier appears aimed at protecting the privilege against self-incrimination. However, it is unclear why this is not specifically referenced, and inclusion of the terms "as

witnesses have in any Court" narrows its scope. As drafted, it is not sufficient to protect individuals served with a notice requiring information and/or documents, from infringement of the privilege against self-incrimination, and it does not adequately protect legal professional privilege. Nor is the provision drafted sufficiently clearly for those who may consult the legislation when served with such a notice.

2.12. There are existing legislative provisions that can inform better drafting of this clause. For example, sections 138 and 139 of the Search and Surveillance Act 2012, which refer to self-incrimination and other privileges, and provide an avenue for judicial determination of a claim of privilege. Section 133 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**), explicitly provides that a requirement to provide information and/or answer questions, does not require a person to answer questions that might incriminate them (and they must be informed of this right), and does not require a person to disclose any privileged communications.

2.13. The Law Society recommends that new section 316D is redrafted to explicitly provide that any person who receives a notice under section 316D(1) is not required to (and the notice must state that they are not required to):

- produce documentation or provide information that would (or could) incriminate them
- produce documentation or provide information that would (or could) breach other privileges recognised by section 54 to 58 of Evidence Act 2006, for example legal professional privilege and litigation privilege.

2.14. It should also to be made clear that a person is entitled to claim privilege when notice is given, and this can then be determined by the District Court (or other suitable court), if necessary.

2.15. Finally, for clarity, we recommend that new section 316D explicitly tie the power to require information to the investigator's functions. At present, the power is drafted broadly, as a power to require any information and/or documents or class of information and/or documents. For example, this could be drafted as "The investigator may, for the purposes of investigating a complaint and by written notice served on any person, require that person – …".

3. Part 2 – Amendments to the Plumbers, Gasfitters, and Drainlayers Act

Clauses 41 and 44 – Investigator's powers and power to enter household or marae

3.1. The intended effect of the proposed amendments to section 93 (clause 41) and proposed new section 96 (clause 44) appears to be that an investigator cannot exercise powers of entry into a household unit or marae under section 93, but should instead use new section 96 and enter a household unit by consent or with a warrant.

3.2. To achieve this, clause 41 proposes to replace section 93(2) with drafting that states that for premises that are a household unit or marae, readers of the legislation should "see section 96".

3.3. Rather than using the term "see", this requirement could be clarified and strengthened by including in 93(1)(a) after the words "any land or premises" the terms "(but not a household unit or marae)". Similar drafting is used, for example, in section 133(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

3.4. Section 93(2) could also be strengthened, by stating that subsection 1(a) does not apply to household units or marae, entry to which must be carried out under section 96.

3.5. We note that new section 316E(2) uses similar language, which could also be revised as above, though this provision does have the benefit of the relevant provision for household and marae entry following immediately afterwards (section 316F).

Clause 47 – Code of Ethics

3.6. Clause 47 proposes to insert section 105A into the PGDA. This will enable a code of ethics to be made by Order in Council, on the recommendation of the Minister.

3.7. To ensure the code is effective, practical, and accessible, the Select Committee may wish to consider whether the Minister should be required to consult, potentially with industry bodies, before recommending the issue of a code of ethics. Consultation obligations exist across a range of regulatory regimes. See for example, the requirement to consult if amendments are proposed to the Electricity Industry Participation Code,[1] on the creation of amendment of lawyers' practice rules,[2] and on the code of conduct for immigration advisers.[3]

Clause 52 – New section 113D – Evidence and privileges in disciplinary matters

3.8. Clause 52 proposes to introduce new sections 113A to 113F, which will enable the Board to (amongst other things) hear evidence and issue summons. The new provisions also provide for witness fees, privileges, and establish a new offence of failing to comply with a summons.

3.9. New section 113B authorises the issue of a summons to require a person to attend a hearing and give evidence (including under oath) and/or product documents, information, things etc. that are relevant to the hearing.

3.10. New section 113D establishes the offence for failure to comply with a summons. Subsection (1) specifies a number of actions that a person summoned must do. This includes giving evidence, answering questions, and providing documents, things, or information as required by the Board. Failure to comply with section 113D(1), "without sufficient cause" is an offence.

3.11. New section 113E then provides that a person who provides documents, information, or things to the Board, or gives evidence or answers questions at a hearing, "has the same privileges as witnesses have in a court." We assume, therefore, that "sufficient cause" for the purposes of section 113D(2) would include, for example, refusing to provide a

1 Section 39, Electricity Industry Act 2010.
2 Sections 100 and 103, Lawyers and Conveyancers Act 2006.
3 Section 37, Immigration Advisers Licensing Act 2007.

document that is subject to legal privilege or not answering a question because it may self-incriminate.

3.12. The drafting of sections 113D and 113E could be improved in three respects;

- First, the phrase "sufficient cause" is unusual, and it is not clear whether this drafting is an intentional deviation from the more typical drafting of "reasonable excuse", which is employed elsewhere in the Bill. It is not clear what is meant by "sufficient" and whether this is intended to be a lesser or higher standard. For clarity, we recommend replacing "sufficient cause" with "reasonable excuse".
- Second, it is not clear why there is a need for both proposed section 113D(1) and also the offence provision in section 113D(2). Section 113D(1) says a person must do the actions in section 113D(1)(a) to (e), but section 113D(2) says it is only an offence to fail to do those actions without sufficient cause. Including section 113D(1) suggests it is still unlawful to fail to do the actions in (a) to (e) even if there is sufficient cause, which is presumably not the intent. To remove this potential issue the drafting of similar provisions in other legislation could be adopted. See, for example, Schedule 5, clause 59 of the Financial Markets Conduct Act 2013 where the failure to comply with the summons "without reasonable excuse" is an offence but there is no clause which says that compliance "must" occur as in proposed section 113D(1).
- Third, as discussed above in respect of new section 316D of the BA, the drafting of section 113E is not sufficiently clear. Although its context and placement within the BGDA provide greater clarity than new section 316D of the BA, it would also benefit from specific reference to the privileges recognised under the Evidence Act. It may also be worthwhile considering the drafting of section 133 of the AML/CFT Act, and incorporating within new section 113D that a person is not required to comply with subsection (1) if to do so would, or could, incriminate them or require the disclosure of legally privileged information.

Clause 57 – Appeals

3.13. The effect of proposed section 162(3) appears to be that where the Board hears an appeal from a decision or finding under subsection 1AAA then its decision is final, because there is no appeal to the District Court.

3.14. The Law Society recommends the Select Committee consider whether that is appropriate or whether there should be a further right of appeal to the District Court from these decisions. We note that these decisions involve the Board adjudicating on the 'in-house' decisions of the Registrar or an investigator.

4. Part 3 – Amendments to the Electricity Act

Clause 75 – Code of Ethics

4.1. See comment on clause 47, above. Clause 75 is drafted similarly, and we recommend consideration of a requirement for consultation prior to recommending the issue of a code of ethics.

Clause 78 – Evidence and privileges in disciplinary matters

4.2. See comment on clause 52, proposed new section 113D and 113E of the PGDA, above. The same concerns arise in respect of the proposed amendments to the EA and proposed sections 147RF and 147RG.

Clause 82 – Appeals

4.3. See comment on clause 57, above. We recommend the Select Committee consider whether the restriction on appeal to the District Court is appropriate in this context.

Clause 90 – Appeal on question of law

4.4. Clause 90 proposes to amend section 147ZH(1) of the EA, to state that: "A party to an appeal to the District Court under this Part may appeal to the High Court against any question of law arising in the appeal."

4.5. The formulation of appeal "against any question of law" is not typical, as you would not usually appeal "against" a question of law. The better formulation is that used in clause 65 of the Bill, which states a party "may appeal to the High Court <u>on</u> any question of law arising in the appeal".

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