

7 September 2012

Submission to the Canterbury Earthquakes Royal Commission

By:

Chartered Professional Engineers Council (CPEC)

1. This is a submission by CPEC (the Council) in response to the supplementary submission made by the Ministry of Business Innovation and Employment published on 6 September 2012.
2. The Council is a statutory body created by the Chartered Professional Engineers of New Zealand Act 2002. The functions of the Council are limited under the Act. They are (s45):
 - (a) *review and, if the proposed rules meet the applicable requirements, approve proposed rules containing CPEng standards in accordance with section 41:*
 - (b) *hear appeals from decisions of the Registration Authority in accordance with Part 2:*
 - (c) *review and report to the Minister on the performance and exercise of the Registration Authority's and the Council's respective functions and powers under this Act in accordance with this Part.*
3. A number of years ago the Council did suggest to the Department of Building and Housing that a further function be added, namely "to uphold the purpose of the Act". This suggestion was made since the Council felt the purpose of the Act found in section 3 "to establish the title of chartered professional engineer as a mark of quality" was not adequately reflected in the functions set out in s45. The suggested amendment did not proceed.
4. Given the limited nature of the Council's role under the Act it has not previously provided a submission to the Royal Commission. However, given the content of the Ministry's supplemental submission the Council considered it might be helpful to the Royal Commission if it were to set out some of its experiences over the last 10 years or so.
5. The Ministry's supplemental submission addresses two issues: the Code of Ethics and the appropriateness of the current regulatory framework.

Code of Ethics

6. The Code of Ethics is to be found in the Chartered Professional Engineers Of New Zealand Rules (No2) 2002. It has not been amended since first being published in regulations.
7. The Code of Ethics has no hierarchy and the Council's view if it entertains any appeal concerning the Code of Ethics is that all obligations under the Code of Ethics are of equal value; breach of any one of those obligations is a disciplinary matter under s21(b) of the Act. If a breach is proven then the severity of that breach in the context of a particular Chartered Professional Engineer's activities should be reflected in any penalty. It is notable that the only matter referred to twice in the Code of Ethics is health and safety. It is mentioned as the first obligation in Rule 43:

A chartered professional engineer must, in the course of his or her engineering activities, take reasonable steps to safeguard health and safety of people.

8. It is then mentioned for a second time in the context of Rule 50 which imposes an obligation on a Chartered Professional Engineer not to disclose confidential information without the agreement of the client or employer. However this Rule is expressly subject to a disclaimer that reads:

Subclause (1) does not apply if-

- (a) *The failure to disclose information would place the health or safety of people at significant and immediate risk;*

9. The Council considers that this is the only real area where a conflict could occur in the Code of Ethics and the Rules themselves provide that health and safety issues override any obligations of confidentiality.
10. Therefore, the Council does not agree that there should be a hierarchy in the Code of Ethics as set out in point 2.3 of the Ministry's Supplemental Submission.
11. The Council has not had any appeal that has raised "competing obligations" under the Code of Ethics as an issue. Given that the Council would consider the breach of any aspect of the Code of Ethics as being a disciplinary matter the issue of conflict on an appeal would be unlikely to arise.
12. It is of note that section 21(c) of the Act also makes it a disciplinary matter to:

"perform engineering services in a negligent or incompetent manner"
13. It is invariably the case in any appeal that Section 21(c) is the central plank of any complaint. Appeals are also made on the basis of breach of the Code of Ethics under Section 21(b), and sometimes both grounds of appeal are raised.
14. In the Council's decisions we have found it helpful to consider where the bar for "negligent or incompetent" sits to make reference to the competencies that are set out in Rule 6 of the Rules.

15. The Council does not agree with the Ministry's submission which states:

that the Code of Ethics requires that engineers work within their scope of competence which is self identified and self assessed. [underlining added]

16. It is critical to the operation of the Act and the Rules that assessment of competence is undertaken by the Registration Authority appointing an assessment panel of independent engineers whose recommendation is then considered and if appropriate ratified by the Competency Assessment Board. Competence is not self-assessed by the engineer seeking registration. Members of the Council have attended meetings of the Competency Assessment Board in order to obtain a practical appreciation of the level of detail that the registration process requires. Members of the Council who are not engineers have been impressed by the apparent thoroughness of this process which is by no means a "rubber stamping" exercise.
17. The first competency that a person must satisfy to become registered is contained in Rule 6(1):
- "... a person must demonstrate that he or she is able to practise competently in his or her practice area to the standard of a reasonable professional engineer"* [underlining added]
18. Notwithstanding this, once on the Register, it is possible that a Chartered Professional Engineer could wrongly represent their competence in a given field, and if that were to happen it would be a breach of the Code of Ethics and a disciplinary matter. So this is already a "key plank" of the Registration process and the Code of Ethics as referred to by the Ministry in the second paragraph of point 2.2 of its Supplementary Submission.
19. All of this obviously responds to the position if a complaint is made and the Council's role is largely limited to this. The Registration Authority is best placed to address issues around awareness of the complaints process and the timing and making of complaints by complainants.
20. The Council notes that the Ministry considers that there is confusion as to whether the Code of Ethics permits laying of a complaint by one Chartered Professional Engineer against another. The Council has not encountered any confusion, and has heard a number of such complaints, and is presently hearing one appeal where the complainant is a Chartered Professional Engineer. The Council also notes that the Registration Authority is also empowered to conduct its own investigations of a Chartered Professional Engineer and may bring its own disciplinary complaint if it considers this appropriate (s21(1)).
21. Similarly, there is nothing to prevent a Building Consent Authority from complaining to the Registration Authority about the conduct of a Chartered Professional Engineer.
22. The Council notes that it has no power to make Rules as referred to in paragraph 2.3 of the Ministry's submission. The power to revise the Code of Ethics rests with the Registration Authority under s39(a) of the Act.

23. We advise that the Council has a good working relationship with the Registration Authority and we are currently engaged on a joint project with them reviewing the disciplinary rules with the aim of simplifying and speeding up the complaints process. We have been advised in undertaking this process that it would not be possible to review the Act and that any changes promoted must therefore fit within what is currently provided for by the Act.
24. We are also involved in undertaking one of our functions, in reviewing the management of any perceived conflict of interest between the roles of the Registration Authority and IPENZ as a professional membership body. In this work we are taking note of a recent piece of work concerning similar issues, by the Financial Markets Authority, which examined potential conflict in the New Zealand Stock Exchange. This is being discussed with IPENZ.
25. The outcomes of these matters will be included in our next report to the Minister.

Occupational Review

26. We have no submissions to make on the issue of occupational review which is a policy issue for consideration in the future and which is arguably outside of the scope of our functions.

Yours faithfully



Graham Shaw
Chairman