

Master Plumbers' submission to MBIE on issues for consideration in the review of the PGD Act

1 Background

- 1.1 The Ministry of Business, Innovation and Employment (**MBIE**) is carrying out a review of the Plumbers, Gasfitters, and Drainlayers Act 2006 (the **PGD Act**). This Act sets out the restrictions on doing sanitary plumbing, gasfitting, and drainlaying and is the governing legislation of the Plumbers, Gasfitters, and Drainlayers Board (**PGD Board**).
- 1.2 Later this year, MBIE will consult publicly on proposed amendments to the Act. Master Plumbers has been asked to contribute its views on existing MBIE proposals, as well as any additional suggested amendments, for consideration in advance of that public consultation.
- 1.3 This document sets out Master Plumbers' views on the MBIE proposals, as well as its own additional proposals.

2 Certification of plumbing and drainlaying work

- 2.1 Master Plumber strongly submits that the Government should introduce a certification regime for plumbing and drainlaying work, commonly called self-certification.
- 2.2 Plumbers and drainlayers are presently unable to certify any of the work they carry out. This differs from the position for gasfitters and electricians, who are able to certify their work through the issue of a certificate of compliance (for high risk and general work, this is compulsory). A certificate of compliance also serves as an energy work certificate under the Building Act 2004 (**Building Act**), which serves as proof of compliance with the building code. A building consent is not required for the gasfitting or electrical work covered by the energy work certificate.
- 2.3 We propose that the self-certification model that currently applies to gasfitting and electrical work apply to plumbing and drainlaying work.
- 2.4 We think the current system creates a number of problems:
 - The current system encourages a lack of care on the part of some plumbers and drainlayers, because a significant range of work does not require formal sign off in any way and, where Council consent to work is required, some plumbers and drainlayers do not take the requisite level of care in the (mistaken) belief that Councils will carry liability for them. This creates a risk to the health and safety of the public and other costs to the public through poor quality work.
 - The requirement to obtain a building consent for a significant range of plumbing and drainlaying work and for Council inspections (where that is required by a building consent) creates processing and application costs, and can create lengthy and costly delays to building projects, due to staff and resource shortages within some of the larger building consent authorities. For example, in the Queenstown-Lakes District, our members are currently reporting a 20 day wait for inspections.
 - The building consent requirement also creates a false illusion of reassurance. In Auckland less than 50% of consented work receives an inspection.
 - In some areas, the technical knowledge and qualifications of building inspectors is questionable. Certainly, in some areas, some inspectors have had only short (eg 5 days)

training in plumbing and drainlaying matters, and no other plumbing or drainlaying experience. This compares to the 6 years needed to obtain qualification as a certifying plumber.

- There are inconsistent requirements between Councils, which creates costs for plumbers and drainlayers working across different districts and cities.
- Some councils are making use of PS3 forms and even PS4 forms, completed by the installing plumber. However, these have no statutory basis and the scope of work that plumbers are being asked to sign-off is causing concern to plumbers, along with additional requirements for insurance. The reliance that those Councils place on these forms to avoid or limit their liability may also be illusory.
- The work that gasfitters, electricians, plumbers and drainlayers undertake all carries a similar degree of risk to public health and safety, and it would be desirable to have a consistent model for all to reduce consumer confusion, and standardise industry practices.

2.5 Master Plumbers proposes that that the self-certifying regime apply to all sanitary plumbing work, as defined in section 6 of the Act. We propose that the regime:

- Apply to all sanitary plumbing work, without any differentiation between high risk, general and low risk work, which is the approach taken for electrical and gasfitting work. We think that the risks arising from any kind of sanitary plumbing work are such that certification for all sanitary plumbing work should be required.
- Require certifying plumbers, or any tradesman plumber or gasfitter authorised by a certifying plumber, to issue a certificate of compliance. All certificates of compliance will need to be provided to the customer and submitted electronically to the PGD Board. We envisage that all certificates would be available publicly, searchable by address. There would be a fee payable to the PGD Board for each certificate of compliance.
- Include amendments to the Building Act to provide that the certificate of compliance can be treated as evidence under the Building Act 2004 that the work complies with the building code. This is the same regulatory regime which already applies to electrical and gasfitting work, but we are not sure about calling a certificate of compliance for sanitary plumbing work an “energy work certificate”.
- Include changes to the Plumbers, Gasfitters, and Drainlayers Regulations 2010 to set out the standards that work must meet in order to be certified.
- Require stronger auditing and investigatory powers for the PGD Board, and a well-funded auditing programme. We envisage that 15% of certificates would need to be audited each year. Auditors could be existing local government inspectors, where appropriately qualified or qualified plumbers and gasfitters. As they will be a dedicated workforce, their general level of expertise should be higher on average than the existing inspector workforce.
- Involve an associated increase in funding for the PGD Board, to reflect the additional responsibilities.

2.6 Master Plumbers submits that the PGD Board should assume responsibility for auditing certificates of compliance for plumbing and drainlaying work, and that the fees for certificates of compliance for plumbing and drainlaying be paid to the PGD Board. We think the PGD Board is the best body to administer this regime as it ties in with its responsibilities to regulate plumbers and drainlayers.

2.7 The benefits of these changes would be:

- Brings home to plumbers and drainlayers their personal responsibility for work
- Clearer requirements on plumbers and drainlayers, within a statutory framework (as opposed to the informal PS3 system), of what their responsibilities are.

- Far less scope for work to go unchecked or to go “under the radar” because no consent is required.
- Responsible tradesperson clearly identified to customer.
- Possible reduction in non-licensed work, because certificates can only be issued by certifying plumbers or their delegates.
- Fewer delays in the building consent process, and associated costs of delay. This will be helpful for an already-stressed construction sector, especially with the Government’s KiwiBuild project.
- Work no longer inspected by poorly-qualified Council inspectors and improperly signed-off by those inspectors.
- Consistency across the regulatory regimes for electricians, gasfitters, plumbers and drainlayers.
- Clearer audit trail for all work.

2.8 We think these matters will lead higher quality work and reduced risk to public health and safety.

2.9 For Councils, the change will mean that they can no longer be liable for approving plumbing or drainlaying work that later proves to be faulty, and they can focus their compliance efforts on other matters.

3 Product standards

3.1 Master Plumbers seeks the introduction of a compulsory product standards regime for plumbing products, involving independent third party testing of products. We think there is an urgent need to introduce a robust compulsory standards regime for plumbing products as evidenced by our recent testing of a small sample of locally purchased tapware. This saw one of five tested taps fail to meet NZ Standards. The level of lead leaching from this product was 70% higher than the allowable limit in drinking water product standard (AS/NZS 4020:2005).

3.2 We are participating in MBIE’s review of building products assurance and regulatory systems (**Building Products Review**). One of the issues under consideration in that review is the question of standards for building products.

3.3 We are concerned, however, that the scope of the Building Products Review could be too narrow and focus only on the standards regime for products to meet the building code or that could affect building integrity. In particular, because that review is occurring within the framework of the Building Act, we are concerned that it will not adequately take account of the risks that unsafe and poor quality products (particularly tap fittings) raise for public health, water use and consumers’ costs.

3.4 While it may be possible to address the health and safety of products within the Building Products Review, we note the purposes of the Building Act relate to the regulation of building work and licensing for building practitioners (matters which are correspondingly dealt with under the PGD Act in respect of plumbers) and have an overall focus, unsurprisingly, on the integrity of the building as a whole, rather than on specific products. This is the context in which the warranties in the Building Act must be read, and it creates a position which is not sufficiently clear in relation to the standards that products are required to meet. Master Plumbers suggests that New Zealand:

- Adopt a standards scheme similar to the Australian Watermark scheme, where the statutory scheme is based on a number of principles, namely:
 - Fitness for purpose
 - Risks of personal illness, loss, injury or death

- On-site environmental degradation
 - Contamination of the water resource
 - Adverse impact on infrastructure (public or private)
 - Contamination of water supplies from the point of connection to the points of discharge
 - Wastage of resources (water and energy)
 - Risks to building integrity should, of course, also be a consideration.
 - Products must comply with product standards and be verified at import or by manufacturers as compliant.
 - As part of that scheme, recognise products certified under the Australian Watermark scheme or other suitable overseas standards systems.
 - If a product is not compliant under an overseas scheme, it would need to be verified as compliant either with a NZ standard or acceptable overseas standard by a 3rd party tester. Compliance with the scheme be advised to customers at retail.
- 3.5 Master Plumbers also submits that the current system raises public health risks that need to be addressed with reasonable urgency and has concerns that the Building Products Review may take too long to adequately address these risks.
- 3.6 Master Plumbers considers that a compulsory product standards regime would be best implemented under the PGD Act as part of the current review, rather than the Building Act. Master Plumbers has a real concern that the importance of safe plumbing products may not be adequately reflected if the only mechanism to address this is as part of the Building Act, particularly if the Building Act cannot be amended to accommodate a compulsory standards regime as described above or the Building Products Review is likely to be too lengthy.

4 Milking and pumping piping installations

- 4.1 Master Plumbers understands that MBIE has been approached by the dairy farming industry about establishing an exemption or special licence for sanitary plumbing work on dairy farm milking, pumping and piping installations, to permit the companies installing those installations to carry out sanitary plumbing work.
- 4.2 Master Plumbers is very concerned that such an exemption or special licence could give rise to significant public health risks. Specifically, we are concerned about the potential for badly designed or poorly installed work to cause contaminants to enter the potable water supply, in particular through failure to properly install appropriate backflow preventers at the correct places or poorly designed and installed plumbing that carries foul water. Also, we are concerned that human waste is being mixed with animal effluent.
- 4.3 If contaminants enter the potable water supply, this can cause illness to any person consuming the potable water and secondary infection to other persons. Where a farm is taking town supply, the potential impacts can be significant, but problems can also arise for farms on their own water supply.
- 4.4 We consider that this a real risk. Our members have seen unsafe installations on dairy farms. We are able to provide you with information on some of those instances.
- 4.5 Master Plumbers strongly recommends that MBIE not progress the proposal from the dairy farming industry any further. If it is to be included in any discussion paper, Master Plumbers recommends that the paper say that the proposal from the dairy milking industry is not supported and the Government does not intend to take it further. We are able to assist further in providing information to support such a position.

- 4.6 We are also concerned that the regime under the Building Act 2004, which requires a building warrant of fitness for properties with backflow devices, including an annual inspection by an independently qualified person, is not being complied with adequately, leading to risks of contamination to potable water supplies. Master Plumbers is aware from its members, who carry out checks as independently qualified persons, that these requirements are not always complied with. To ensure the water source is protected, no lesser requirements should be substituted as part of any changes to legislation, and stronger enforcement action is required.
- 4.7 Further, the requirements of the Health Act 1956 in relation to protecting water supplies from the risk of backflow is not being enforced properly. Networked suppliers are required to test each backflow protection device operating in its network at least once a year and to advise the territorial authority in its area of the results. As above, Master Plumbers is aware that these requirements need greater enforcement, and submits that no lesser requirements should be substituted as part of any changes to ensure the water source is protected.

5 Apprentices Levy

- 5.1 Master Plumbers submits that the Government should consider adding a levy called an apprentice levy. The reason is that there is a significant shortage in the industry of apprentices to meet future needs, and even current needs. This shortage has been well documented.
- 5.2 The Government is undertaking a number of measures to address this shortage, as is the industry. However, Master Plumbers considers that significant investment needs to be made in training facilities. The funds for this are lacking in both the public and private sectors.
- 5.3 One of the current problems in the industry is that some plumbing companies employ apprentices, and do so on a regular basis. Other companies never or hardly ever engage apprentices, but go into the market once the apprentices are trained. The result is that some companies are effectively free-riding on the efforts of other companies.
- 5.4 As the issue of apprentices is one with industry wide effect, Master Plumbers considers that the cost of apprentices should be shared more widely. To address both issues, Master Plumbers recommend a levy apply where a company does not engage apprentices. It could also apply where a company does not engage a number of apprentices relevant to its size.
- 5.5 This approach applies in the UK, and has enabled investment in modern and well used training facilities, which have helped draw more trainees into the industry.
- 5.6 If this proposal is appealing, we would like to work further with the Government to develop it for the consultation. An alternative would be to provide for deductions from registration and licensing fees where a business engages trainees.

6 Definitions under the Act

- 6.1 The Act applies only to sanitary plumbing work, which is defined in section 6 of the PGD Act to mean:
- 6.1.1 the work of fixing or unfixing any sanitary fixture or sanitary appliance or any associated fittings or accessories;
- 6.1.2 the work of fixing or unfixing any trap, waste or sewer pipe, ventilation pipe, or overflow pipe connected with or intended to be connected with or accessory to any sanitary

fixture or any sanitary appliance or any drain (whether or not the sanitary fixture, sanitary appliance or drain is there when the work is done);

6.1.3 work of fixing or in fixing any pipe that:

- i. supplies or is intended to be a means of supplying water to any sanitary fixture or sanitary appliance (whether or not that sanitary fixture or sanitary appliance is there when the work is done); and
- ii. is within the legal boundary of the premises in which that sanitary fixture or sanitary appliance is or will be installed (whether or not that sanitary fixture or sanitary appliance is there when the work is done);

6.1.4 generally all plumbing work associated with any sanitary fixture or sanitary appliance.

6.2 Under this definition, work on potable water supplies will be covered where the water supply ends up in a sanitary fixture or sanitary appliance. Potable water supplies are not themselves part of the definition of sanitary plumbing, and therefore fall under the scope of the Act only in an incidental way.

6.3 This means that work on potable water supply fixtures and fittings is not covered by the Act where those fixtures and fittings do not end in a sanitary fixture or sanitary appliance. This could occur, for example, with taps that do not open to a sink or drain or water fountains. There are no doubt other examples.

6.4 This is potentially concerning, as work on potable water supplies needs to be carried out in a competent and professional manner to ensure that there is no chance of contamination entering the potable water supply. The possibility that work on such supplies could come outside the scope of the Act raises issues for public health.

6.5 Master Plumbers therefore submits that work should be taken into clarifying the application of the Act to fixtures and fittings associated with potable water supplies. We would be happy to work with you further on this issue.

6.6 In addition, Master Plumbers agrees with the submissions from the PGD Board to include hot water circulating systems and medical gases in the PGD Act.

6.7 For heating and hot water circulating systems, there is a significant public health risk from Legionnaire's disease. This can arise, for example, if systems are not set at the right temperature or have "dead legs". Plumbers have the training and knowledge to avoid these problems occurring.

6.8 For medical gases, medical facilities now have an extensive range of pipework and fittings to deliver medical gases to bedsides. These networks raise many of the same safety issues as networks for fuel gases. It seems inconsistent that they are not covered by the PGD Act.

6.9 Master Plumbers also supports the submissions of the PGD Board on the definitions of "sanitary plumbing", "gasfitting" and "drainlaying".

7 Other MBIE proposals

7.1 Other proposals that MBIE is considering including in the consultation, and Master Plumber's views on them, are:

Other MBIE Proposals	
Proposal	Master Plumbers' views
<p>1) Simple gas installations</p> <p>We understand that an issue has been raised with MBIE about work on simple gas installations, eg an electrician repairing the electrics on a gas stove, requires dis/connection of gas and a gasfitter's attendance.</p>	<p>Master Plumbers is cautious about the risks this proposal raises for gas safety. It is concerned that any work undertaken on gas lines and fittings by inexperienced persons could lead to major accidents. Master Plumbers recommends that a change only be made if:</p> <ul style="list-style-type: none"> • It is restricted to works only on the electrical parts of an appliance, and not involve any works on or interference with the gas fittings in an appliance. • The work does not require, and can be safely undertaken without requiring, disconnection and reconnection of gas supply to the gas appliance. • Even with the above conditions, the safety risks are addressed. • The limited certificate would require completion of a short training course and regular refreshers (say every two years).
<p>2) Complaints, Discipline and Prosecution.</p> <p>MBIE has suggested:</p> <ul style="list-style-type: none"> • Code of ethics required • Allow a quorum of less than five for minor disciplinary action • Consider shifting responsibility for prosecution of non-tradespeople to MBIE 	<ul style="list-style-type: none"> • Master Plumbers supports proposals for a code of ethics and changes to quorum. Code of ethics should be developed by PGD Board, in consultation with industry and consumers, and proposed to Minister (with Minister able to give feedback). • Master Plumbers does not think that responsibility for prosecution of non-tradespeople should be shifted to MBIE. We consider that the focus of the PGD Board on plumbing, gasfitting and drainlaying is beneficial, and are concerned about the risk of lower enforcement levels (there is a view that this has happened in other occupational areas). • Master Plumbers also considers that the Board's work in investigating and prosecuting illegal work by non-tradespeople should be Crown funded rather than funded by levies against registered and licensed people. This work has a significant public benefit, and it is not appropriate that it be funded by industry. The funding also needs to be at a realistic level to ensure the issue is properly tackled, as is becoming a larger problem, especially in Auckland. • Master Plumbers also suggests that the PGD Act be amended to give the Board the ability to take action under Part 3 (as a disciplinary offence) against any person who undertakes work under an exemption issued under section 12 of the Act (commonly called "restricted work") in breach of the exemption.
<p>3) PGD Board makeup and competency</p>	<p>Master Plumbers is not sure what MBIE's concern is and hasn't been able to find best practice guidance</p>

<p>Act currently sets out the key competencies that members of the PGD Board must have to ensure they are able to adequately fulfil their role as a regulator. MBIE says that it is not clear that the competency requirements under the Act are aligned with best practice for occupational regulation.</p>	<p>on this issue. We would like to discuss further. Subject to those general comments:</p> <ul style="list-style-type: none"> • We agree that Board members should have key competencies, and it would be useful to identify these. • We think it essential that there remains expertise within the PGD Board on how work is undertaken in the industry, on technical matters and on professional standards within the industry. For this reason, we think that at least 6 Board members need to be industry members.
<p>4) Exemptions</p> <p>We understand that MBIE considers that there are some legislated exemptions which are redundant and could pose health risks. We understand that MBIE is referring to the householder exemptions under section 15 of the PDG Act and, possibly, the rural districts exemption, in section 17.</p>	<p>Master Plumbers supports the removal of these exemptions. The exemptions raise risks to public health and safety.</p>

8 Additional Master Plumber proposals

8.1 Additional proposals from Master Plumbers for consideration by MBIE are:

Additional Master Plumbers' Proposals	
Issue	Master Plumbers' proposal
<p>1) Fit and proper test</p> <p>At present, any person is able to enter the industry as a trainee without any need to pass a fit and proper test. However, a fit and proper test applies when they apply for registration or licensing. Some trainees are failing this test, and may therefore not be able to work in the industry or pursue their career further (being restricted to only being a trainee).</p>	<p>Master Plumbers submits that MBIE consider how to apply a fit and proper test at an earlier stage eg by adding that as a requirement of a limited certificate issued under section 14 of the Act.</p>
<p>2) Registration by company name</p> <p>At present, registration is individual to each plumber. Most tradespersons, however, work through a company and the name of the company is sometimes different from the certified person, if there is one at all. In some instances, the certified person is not even a principal of the company and does not have any shareholding. This can make it difficult for consumers to identify whether</p>	<p>Master Plumbers proposes that the PGD Act be amended to:</p> <ul style="list-style-type: none"> • require any company carrying out plumbing, gasfitting or drainlaying work for the public to be registered and to identify the certified plumber(s), gasfitter(s) or drainlayers that will certify work for the company • require any company carrying out plumbing, gasfitting or drainlaying work for the public to identify to the customer the name(s) of the certifying plumber(s), gasfitter(s) or

<p>the work is carried out by or under the authority of a certified person, especially if the name of the certified person is not identified to the company.</p>	<p>drainlayers that will certify work for the company</p> <ul style="list-style-type: none"> • add offence provisions to support above changes <p>These changes will be important for consumer confidence and industry reputation, but could also be of assistance to changes in trainee requirements and will help enforcement.</p>
<p>3) Complaints, discipline and prosecution</p> <ul style="list-style-type: none"> • Gap in offence provisions: At present, the PGD Act provides offences for an unlicensed or unregistered person claiming to be licensed or registered (section 122) and for a person doing any sanitary plumbing or drainlaying in breach of the authorisations under sections 8 and 10 (section 123). One of the problems at the moment is that many consumers do not realise that registration or licensing is required for sanitary plumbing or drainlaying work. Also, it can be difficult to detect offences against these provisions as actual work in breach of the sections needs to be identified. • Fines: At present, PGD Act has a \$10,000 fine for unlicensed work. In practice, this results in fines typically in the \$3,000 to \$5,000 range. This is a small amount, compared to the money that can be earned by an unlicensed tradesperson and, the risks created by unlicensed work. The deterrent effect is also low due to the low detection and prosecution rate. At present, the fine for unlawful gasfitting work is (\$50,000 for an individual and \$250,000 for a company). The fine levels for disciplinary offences under Part 3 also seem low. • Infringement offences: The PGD Act allows the carrying out of unlicensed work and other offences prescribed by regulation to be dealt with as an infringement offence. Where appropriate, infringement offences provide a lower cost way of dealing with minor level offending. However, it does not appear that supporting regulations and having statutory requirements have been made to implement. • Appeal rights: At present, only the person who the PGD Board makes a finding against can appeal a decision of the PGD Board. There is no right for Master Plumbers or any other party representing industry interests to appeal the decision, even if they think it is inadequate. • Payment of fines for unlicensed work to PGD Board: At present, the fines paid by non-tradespeople prosecuted and fined for breaches under the Act are made to the 	<p>Master Plumber proposes:</p> <ul style="list-style-type: none"> • New offence provision: A new offence of representing that a person is able to undertake sanitary plumbing or drainlaying work, when that person is not registered or licensed under Part 2 to carry out that work. This offence provision goes slightly further than section 122, in that section 122 is focused on representations that a person is licensed or registered. The intent of the proposed new provision is to prevent people from holding out that they are able to do plumbing work generally, when they are not licensed or registered to do so. As this is focused on the way that unlicensed or people hold out our business, it should be easier to enforce than the existing provisions. • Fines: Increase significantly, eg to \$50,000. Also review the levels of fines that can be ordered by the PGD Board. • Infringement offences: Review whether infringement offences could be implemented to aid enforcement. Could be worthwhile also reviewing whether additional offences could be provided for, that are dealt with as infringement offences, eg for being registered but not obtaining a licence. • Appeal Rights. MPPGD have the right to lodge an appeal from a decision of the PGD Board. • PGD Board powers: PGD Board needs more flexibility in its powers to give it a wider range of options in dealing with disciplinary proceedings, including: <ul style="list-style-type: none"> ○ Power to initiate investigations and proceedings without a complaint (i.e. on own motion). At present, some consumers are reluctant to complain because PGD Board cannot absolutely guarantee confidentiality for the licence holder or the consumer, and that may put the complainant at risk. Further, we are aware that there is a reluctance within the industry for plumbers to complain to the Board about the substandard work or practices of others. There should be the ability for the PGD Board to take action, regardless of how it becomes aware of the information. ○ To manage complaints and remove and reject fictitious claims from consumers

<p>Crown and not the PGD Board, despite the PGD Board carrying out the prosecution. This creates unrecoverable costs for the PGD Board and is a possible dis-incentive to the Board carrying out investigations and prosecutions associated with this.</p>	<p>which are based around financial aspects rather than workmanship or of minor nature.</p> <ul style="list-style-type: none"> ○ Power to exclude claims that really fall under other legislation (eg Building Act). ○ Shortcut process when complainee pleads guilty. • Note some of these may be already adequately provided for in the Act, and are a matter for discussion with the PGD Board. • Payment of fines for unlicensed work to PGD Board: All fines should be paid to PGD Board to assist with Board funding.
<p>4) Employer licences for plumbing and drainlaying work</p> <p>PGD Act allows employer licences for gasfitting work but not for plumbing and drainlaying. It seems to Master Plumbers that there are situations where an employer licence could be appropriate,</p>	<p>Master Plumbers proposes that employer licences be allowed for plumbing and drainlaying work, provided they are applied only in appropriate settings and the same safety outcomes as under the current licensing regime can be achieved.</p> <p>The purpose of an Employer Licence is to permit employees of a company to carry out any work that fits within their scope of operations providing the persons are appropriately trained and following suitable procedures (and the current implementation of employer licences may need to be reviewed to ensure these outcomes are met).</p>
<p>5) Administrative</p>	<p>Master Plumbers proposes:</p> <ul style="list-style-type: none"> • Make Register available electronically • PGD Board be authorised to publish aggregated information on industry statistics, to assist understanding of the industry, especially among the public (e.g. number of registered plumbers). Could also assist in recruiting trainees to the industry (i.e. by identifying that there is a shortage of registered plumbers)