



Fellow Practitioner Special Edition PGDB Consultation Competency Reviews

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IN OTHER NEWS

Review Discussion

The Board has indicated they will review the competence of 150 practitioners every year at an undisclosed cost to the industry.

We estimate the direct cost of participation to a company will be \$440.00 per person. This is simply the loss of charge out for the individual and wages for a four hour period. No travel cost or incidentals have been included.

Total cost for the 150 participants will be 600 downtime hours at a cost of \$66,000.00. Based on a recovery return of 1:6 this would be \$396,000.00 of turnover for the industry to cut even on the expenditure.

We estimate the cost to the Industry via the Board's costs is estimated to be 4 hours for the review interview, 3 hours travel and 3

Proposal to prescribe participation in competence reviews as a standard term and condition of a licence.

As you are aware the Plumbers Gasfitters and Drainlayers Board is on its second round of consultation regarding prescribing participation in competence reviews as a standard term and condition of a practicing licence. There is no consultation on the reviews - only on the "participation in the reviews" being a term and condition of licensing.

The results of the first consultation have not been released for the industry to consider, so we can only deduce it was rejected by the industry. The Board has issued more meaningless information to support them legislating themselves more power by imposing the threat of not issuing practitioners with a practicing license if they refuse to participate in a competence review.

The Board has even gone to the extent of threatening to seek changes to the Plumbers Gasfitters and Drainlayers Act 2006 to meet their needs. This behavior is not beyond them as they demonstrated last year when they got the Government to support the unlawful taking of close to two million dollars from the industry.

Is the information a smoke screen?

The Board have released a lot of information about conducting the competence reviews but very little about the consultation subject being the reviews becoming a "**term and condition**" of licensing.

Our first question is: "Why does it need to be another restriction on our licensing by becoming a "term and condition" of licensing?"

We believe the answer is simple - the review process proposed is so Horrendous that the e Board is anticipating resistance from the industry.

It is a process where 150 certifying practitioners will be reviewed annually. Apparently the practitioners names will be selected randomly by using a MS Excel generated random sort. For example the random sort criteria could be "select all practitioners not Master Plumbers Members," or "select only known Federation members". Anyone with experience in computing will tell you the information you search for can be manipulated to get what you want. It should be noted the reviews are only for practitioners with Certifying status. Yes this means more restrictions and responsibilities on Certifiers.

The Board in the November Info Brief:

"The reviews are unlikely to take more than two to three hours of a

hours reporting. This 10 hours based on Investigators rates equates to \$1,100.00. So for the 150 reviews the Board will be looking at wages/contract rates of \$165,000.00 funded from our fees.

Other costs would be travel, meals, accommodation, administration such as working out who would be reviewed, postage etc. Even if only 10% of the Board's operating costs were allocated to competence reviews this would be estimated to be around \$346,000.00 which is comparative with other functions in the Board. Look at the expenditure with overheads for other functions in 2013:

- Discipline \$836,907.00
- Examinations \$456,875.00
- Gas Audits \$550,080.00
- Licensing \$789,225.00
- Offences \$789,225.00
- Registration \$373,446.00

We are looking at a three quarters of a million dollar cost to the industry to prove that we are competent yet again.

It also places into question the worth of Continuing Professional Development because as it stands, if practitioners buy sufficient points they are deemed competent but a review may deem they are incompetent and vice versa, they could be deemed competent in the review so what then would be the worth of doing CPD as we have already been deemed

person's time. The primary focus of the reviews will be on knowledge of compliance requirements, and the systems that certifying tradespeople have in place to achieve compliance.

These reviews will not be undertaken for the purpose of catching people out. They will identify issues that tradespeople are commonly experiencing problems with, so that attention can then be given in these areas. This could be in the form of developing new training material and/or continuing professional development (CPD) requirements"

It all sounds like a nice friendly chat to get information from practitioners and if that is the case wouldn't a survey do the same job? After all, the Board uses surveys to ensure IT is providing good service to the industry and are proud of the results of their performance so obviously they must trust the information they are provided with from the survey.

If it's as friendly as the Board is portraying, what does it matter if a person chooses not to participate? The Board claims it is not about catching people out - yet there is the prospect of having to undergo directed competence programmes or even disciplinary action arising out of these reviews. The Act already allows for the reviewing of competence by way of section 53 to 56 – this unnecessary giving of more power to the Board is both unnecessary and not in the spirit of the Act itself.

The Board made mention in the consultation document about a situation where a person that the Board was concerned about refused to undergo a review and claimed there was nothing they could do about it. We believe the refusal to participate was the result of the Board not following the procedures themselves, as detailed in the Act, and so now the Board want to legislate themselves power to impose on the industry more restrictions and cost to cover their own incompetence. This is not right, nor is it necessary.

So the second question is: "What is the effect of the competence review becoming a term and condition of licensing?"

It means the Board can withhold the issuing or re-issuing of a practicing licence and can take disciplinary action under section 89 of the Act. Quite simply it means practitioners have to do it the Board's way or the Board won't let them work in their chosen industry - or they will press charges either through a Board hearing or through the courts.

How do others review competence?

It appears the Board wants the competence reviews to be part of the monitoring of the industry. Other Boards have similar functions and some of their relevant Acts have similar wording.

The following are some examples of how other Boards deal with competence reviews and what they are used for:

- **The Dental Council** is responsible under the Health Practitioners Competence Assurance (HPCA) Act 2003 for protecting the health

competent?

Don't forget there may be educational programme costs to be paid for by the practitioner if any deficiencies are found and also the training of professionals to conduct the reviews.

This is yet another example where the Board created the situation where a person refused to participate and to cover their own failures they want to impose new regulations to force people to take part, and yes they are implying they will get the Government on Board to change the law yet again to support them if the industry disagrees with them.

We believe the Board have again got the intent of the Act wrong with regard to the purpose of the review process and as a result are attempting to legislate themselves power to support their misinterpretation.

Yes there is a place for competency reviews

A competency review aims to ensure that the practitioner is practicing at the required standard and is a useful tool once an **issue is identified**.

A competency review is not a disciplinary process and nor should it be linked to a discipline offence or restrict the licensing of a practitioner for not participating in the process, it is designed to review and educate.

The Board is attempting to force people to participate in a process which should only be used when an issue is

*and safety of the public by ensuring that oral health practitioners are competent and fit to practise. Under the HPCA Act oral health practitioners can have their competence reviewed at any time or in response to concerns about their practice. **The Council has agreed that competency review procedures will only be instituted when public safety issues arise about a practitioner with identified or alleged competency deficiencies.***

- ***The Psychologists Board, under Part 3 of the Health Practitioners Competence Assurance Act 2003, is required to oversee a system providing for Competence Reviews and Competence Programmes. These reviews and programmes are not disciplinary in nature. A review is for the purpose of assessing a psychologist's current competence, and is therefore evaluative and educational in nature. There has to be significant concern about a psychologist's standard of competence to trigger a Competence Review.***

- ***The Occupational Therapist Board NZ follows principles of fairness and natural justice in seeking information in relation to any complaint or notification. It considers all the information, including the therapist's response, and only proceeds with a review if the complaint or notification is clearly not frivolous or vexatious.***

- ***The Nursing Council is a statutory body continued in existence by the Health Practitioners Competence Assurance Act 2003 (HPCA Act). The HPCA Act sets out several functions concerning the registration, continuing competence and fitness to practise of nurses. Under the HPCA Act, the Council can review the competence of a nurse if he or she has not maintained the required standard of competence or there is evidence to suggest the nurse's practice poses a risk of harm to the public or at any other time.***

We have been unable to find evidence of participation being linked to licensing but what we did find was that organisations conduct competence reviews as the result of an event or information suggesting possible harm to members of the public, however the Plumbers Gasfitters and Drainlayers Board want to CREATE the event or extract the information. The whole proposition reeks of a grab for more power – more empire building – and more unnecessary expense using practitioner's money.

For whatever reason, the Board has deemed it necessary to review 150 practitioners annually where other Boards do not. The Board now wants to make it a term and condition of licensing so they can impose their will upon the industry due to their continual failing to get industry support.

It appears the legal advice and interpretations supplied to the Board is of a forced compliance nature not one of voluntary compliance.

The Federations Submission

The Federations draft submission follows:

Proposal to prescribe participation in competence reviews as a standard term and condition of a licence Submission form

Question 1. Do you agree with the Board's proposal to make

identified.

The Board is making statements such as “it is not to catch people out” and “is an educative process”, yet their actions reek of forced compliance.

If the Board was so concerned about educating people they would have employed five people to provide the industry with advice, however they have employed five lawyers to assist them in forced compliance.

Terms of reference for competence review

If it is identified that a competence review of an individual is required, the Board should develop terms of reference for the review, which provides a summary of why the competence review is being carried out, the scope of the review and the recommended assessment methods to be used.

Most reviews should be focussed on particular areas of concern, but on occasions the terms of reference may be wider if there are indications of a more general competence problem.

The Board has made no reference to a practitioner’s right of appeal regarding anything to do with the competence review during this consultation process.

The competence review process observes the statutory requirements of the Plumbers Gasfitters and Drainlayers Act 2006 and the principles of natural

participating in competence reviews a standard term and condition of a licence, to be set out in a Gazette notice made under section 30 of the Act?

NO

Please make any comments to explain why you agree or don’t agree with the proposal, or suggest alternatives you think the Board should consider.

The Federation and its members totally disagree with the proposal of the Board and feel this is yet again an attempt by the Board to legislate itself power over and above the Act. Section 53 and section 54 of the Act allow provision for the review of competence if adhered to appropriately by the Board.

The intent of the Act was to ensure that the practitioner is practising at the required standard. Competency review is not a disciplinary process. It is designed to review and educate as detailed in the sections 53 and 54. The proposal of the Board does nothing more than legislates the Board more power beyond the intent of the relevant sections of the Act being sections 53 and 54.

The proposal of making the participation a term and condition of licensing empowers the Board to take disciplinary action under section 89 (c) of the Plumbers Gasfitters and Drainlayers Act 2006. This was not the intent of the Act.

The current review process as legislated in the Act should remain without change and be used appropriately by the PGD Board as other Boards in regulated industries do.

As far as monitoring competence goes, the Board should move away from forced compliance and lift its standards so it is respected and supported by the industry and get concerns about a practitioner's competence from other sources including:

- other practitioners
- local councils
- employers
- employees
- customers

As it already details in section 54, the practitioner should be told about the concern and asked to comment. The matter should not be taken any further if the notification is considered to be frivolous or vexatious. The Board should consider the concern, the practitioner's comments and any other information it may have about the practitioner's performance against strict guidelines and decide whether a competence review is required.

The Board should consider that the following factors increase the probability of underlying incompetence and are likely, in combination or on their own, to lead to a competence review:

justice.

The practitioner has the right of appeal when the Board imposes conditions on his or her scope of practice or suspends registration or the practising license.

Appeals would be to the District Court.

A competence review is not a punitive or disciplinary process. Nor is it normally a re-examination of knowledge or skill. Rather it is an assessment of performance in actual practice.

Specific complaints are not investigated as part of the competence review process - although they may give an indication where the review should be focussed.

Competence review is an educative opportunity where the practitioner is assessed and where necessary assisted through a training programme to ensure they are practising to the required standard of competence.

The PGD Board are attempting to use competence reviews as a monitoring tool as they do not have the required credibility to be able to do anything else, hence the reason for so many lawyers to help force compliance and cover the Board's known shortcomings.

- A pattern of poor standards or competence - several instances, or one instance over a sustained period
- The magnitude of the mistakes, including the size of the suspected deficit, and the possible degree of serious departure from normal safe and accepted standards of practice
- The practitioner belongs to an 'at risk' group which includes practitioners working in a professionally isolated environment (e.g. working alone and/or not affiliated with any professional body) and those working at the outer boundaries of, or beyond, their scope of practice.

If the Board considers that a competence review is required it should appoint a Competence Review Committee (CRC) comprised of two (trained) peers and one (trained) lay person. The peers should include a practitioner familiar with education, examinations or peer review and a true peer. A competence review should not be based upon the opinion of one person.

The review should be limited to particular areas of concern unless there are indicators of a general competence problem.

Final Word

The above submission will be filed on behalf of the Federation and its members. If you have any suggestions please send them to Wal Gordon by 14 January 2014.

If you do not support the submission please notify wal.gordon@xtra.co.nz by 14 January 2014 so your vote can be removed from the Federation numbers. As is common practice by the Board your silence will be taken that you support the submission.

In the side column is additional information about the review process from the Federation's point of view.

We would appreciate you forwarding this email to other trades people calling for their consideration of the matters.

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