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## **Review of the Plumbers, Gasfitters and Drainlayers Act 2006**

### **Introduction**

1. The Ministry of Business, Innovation and Employment is reviewing the operation of the Plumbers, Gasfitters, and Drainlayers Act 2006 (the PGD Act) as required by Section 187 of the PGD Act. As part of the review process, the Ministry is gathering information from the sector to gain a better understanding on how well the PGD Act is operating. The Ministry invited the Plumbers Gasfitters and Drainlayers Federation (the Federation) to have an input on the review of the operation of the PGD Act.
2. Part of the review will test how well the PGD Act is achieving its principal aim of protecting the health and safety of the public by ensuring the competency of people engaged in the provision of sanitary plumbing, gasfitting and drainlaying.

### **Key Issues**

3. The Ministry has asked for the Federation's views on the following key questions which were asked to the industry by way of a questionnaire:
  - How safe is the work carried out by licensed plumbers, gasfitters, and drainlayers?
  - How compliant is work by licensed plumbers, gasfitters and drain layers, with the relevant legislation?
  - How well is non-compliant work reported and followed through with enforcement action?
  - How appropriately supervised is the work by plumbers, gasfitters and drainlayers, that has to be carried out under supervision?
4. The Ministry has asked how well the interface between PGD Act and the Building Act, and the Electricity Act, are operating given that plumbing, gasfitting and drainlaying work is closely associated with building and electrical work. The PGD Act interfaces with both the Electricity Act 1992 and the Building Act 2004, specifically:

- the Electrical Workers Registration Board may delegate any of the its functions or powers under subpart 114 of the Electricity Act
  - under the Building Act 2004 sanitary plumbing and drainlaying are defined as building work that must comply with the building code, be carried out in accordance with a building consent and be issued with a code compliance certificate (sections 7, 17, 40 and 94)
  - the Building (Designation of Building Work Licensing Classes) Order 2010 provides for people registered under the PGD Act as a licensed or certifying plumber or gasfitter to be licensed to carry out specified building work , such as roofing.
5. From desk research the Ministry identified five key problem areas for the PGD Act:
- Institutional and funding structure
  - Registration and licensing of tradespeople
  - Competency of tradespeople
  - Exemptions
  - Complaints and discipline
6. The Federation will address these issues towards the end of this report as it believes a lot of the questions can be answered through the Federation’s analysis of the Act.

### **The Plumbing Gasfitting and Drainlaying Industry**

7. The plumbing gasfitting and drainlaying industry is unique in a lot of ways, but in particular, one of the unique aspects is that the regulation of the industry and the prosecution of unauthorised people who choose to illegally do sanitary plumbing, gasfitting or drainlaying is 100% funded by the tradespeople in the industry.
8. When people refer to the plumbing, gasfitting and drainlaying industry funding its regulation, that is not entirely true as it is only the tradespeople operating within the industry that fund the regulation. It is also important to appreciate that the current legislation requires employees to fund this cost from their wages, this is unique as no other employee in New Zealand of any trade or profession is encumbered with this expense. No fees or levies are imposed on training organisations, suppliers, wholesalers, designers etc., unlike other industry where funds are obtained from building, construction and electrical levies.
9. The tradespeople who operate in the plumbing, gasfitting and drainlaying industry are unique in that a lot have more than one trade. A large proportion are self employed requiring them not only to keep abreast of their trade regulation, but also business and employer compliance requirements, in addition most are licensed building practitioners with regards to roofing.

### **Plumbers Gasfitters and Drainlayers Board**

10. The Plumbers Gasfitting and Drainlaying Board (PGD Board) are the regulation and licensing authority for the plumbing gasfitting and drainlaying industry. They operate as a consumer protection Board and have publicly stated they are not in existence for the industry but for the protection of the public and their property.
11. The direction of this review seems to be targeted at industry competence, funding and powers of the PGD Board. It would seem industry needs do not enter into the equation.

12. It is the Federation's opinion the PGD Board has continually used competence, discipline and prosecutions as measurements of success - however the Federation believes they are measurements of failure. Success would be better measured in complaints regarding work standards, and how many complaints per year are to do with competence or work standards.
13. The Federation believes the PGD Board are creating a lot of the issues by the manner in which they impose regulations on the industry. This seems to be by way of force and *coercion*.
14. The first two questions in the request for submissions is a prime example of the confusion caused by the PGD Board.
  - How safe is the work carried out by licensed plumbers, gasfitters, and drainlayers?
  - How compliant is work by licensed plumbers, gasfitters and drainlayers, with the relevant legislation?

Does this refer to the qualification of licensed plumber, gasfitter and drainlayer or does it refer to all registered tradespeople who are licensed? If those close to the industry are confused, then what of the public?

#### **Federation Holistic View**

15. The performance of the PGD Act is crucial to the regulation and performance of the tradespeople operating in the industry but the PGD Act does not operate in isolation so a holistic view must be taken. An all encompassing view based on knowledge, functions and properties of the industry, their interactions, and their relationship to the construction industry must be taken.
16. This holistic view must look at training, the operation and effectiveness of the Industry Training Organisation (Skills), the New Zealand Qualifications Authority, PGD Board, industry groups and others.
17. The PGD Act cannot operate in isolation and the Federation believes other factions such as the industry ITO and the PGD Board are failing both the industry and the public. These issues will be discussed later in this report.
18. The Federation's view is that the PGD Act only requires a few minor changes to improve the regulation of the industry but what needs major change is the manner in which it is interpreted and implemented.
19. In addition there are issues with training and qualifications which need urgent attention and that link directly to the issues faced by the industry.
20. The Federation have reviewed the PGD Act section at a time and have commented on relevant sections of concern. Answers to the Ministers and Ministry questions follow the Federation's comments on relevant sections of the PGD Act.

#### **Section 4: Interpretations**

21. For appropriate interpretations of the PGD Act a number of subjects need defining:

- When does a trainee cease being a trainee?
- What is competence with regard to trade skills?
- What is a Competence Programme?
- What are "matters" as it pertains to Section 32

### **Section 13: Exemption for Trainees**

22. When does a trainee cease to be a trainee? Does it have to be formalised training that the trainee is participating in? This needs clarification.
23. An example is where a trainee has gained national certificate but it not yet registered i.e. the no man's land time period before they gain first time registration and the fact that many wait until the new licensing year to do this.

### **Section 15: Exemption for householders**

24. How long do the Gazette Notices remain in force for exemptions for householders? Should there be a renewal?
25. A recent question asked of the Wellington City Council who apparently have an exemption in place for householders revealed they could not inform the person making the query when the Minister had gazetted the notice.
26. The Federation's advice would be that it is a requirement for the Minister to reissue or promulgate the Gazette notice annually.

### **Section 19: Exemption for sanitary plumbing under supervision**

27. At what stage does an application for an exemption for sanitary plumbing under supervision have to be made and when does it take effect?
28. This section deregulates some of the industry in that the Board has no authority to discipline or impose fees or levies on the exemption holder.
29. The manner in which this section is applied by the PGD Board results in the Supervisor taking all the responsibility for the exemption holder including the payment of fees.
30. The legality of the PGD Board imposing fees on the supervisor is, in our opinion, questionable.

### **Section 21: Exemption for gasfitting under supervision**

31. At what stage does and application for an exemption for gasfitting under supervision have to be made and when does it take effect?
32. This section deregulates some of the industry in that the Board has no authority to discipline or impose fees or levies on the exemption holder.
33. The manner in which this section is applied by the PGD Board results in the Supervisor taking all the responsibility for the exemption holder including the payment of fees.

34. The legality of the PGD Board imposing fees on the supervisor is, in our opinion, questionable.

### **Section 23: Exemption for gasfitting under supervision**

35. If the PGD Board and Government are serious about safety why don't people in this category have to be Certified Gasfitters?

### **Section 25: Exemption for drainlaying under supervision**

36. At what stage does an application for an exemption under supervision have to be made and when does it take effect?

37. This section deregulates some of the industry in that the Board has no authority to discipline or impose fees or levies on the exemption holder.

38. The manner in which this section is applied by the PGD Board results in the Supervisor taking all the responsibility for the exemption holder including the payment of fees.

39. The legality of the PGD Board imposing fees on the supervisor is, in our opinion, questionable.

### **Section 28-29: Classes of registration may be designated by the Board**

40. The Federation believes the classes of registration currently in place cause confusion and only hold a portion of the industry wholly accountable for their actions. The Federation believes there should be only three qualifications being Registered Plumber, Registered Gasfitter and Registered Drainlayer.

41. Currently there are licensed Certifying Plumbers, Gasfitters and Drainlayers and licensed Licensed Plumbers, Gasfitters and Drainlayers. Those who obtain the Licensed Qualification are not permitted to apply their trade unless they are under supervision which creates supervision issues.

42. Who controls the direction of the industry here - is it the NZQA or the PGD Board?

43. The PGD Act 1976 referred to doing an apprenticeship but that has been excluded from the PGD Act 2006 which has resulted in people being given qualifications by the Board when those individuals have never completed an apprenticeship or even sat relevant exams.

44. The Federation does not see how an individual without the relevant training can be deemed safe for the public solely based on the PGD Board's word.

### **Section 30: Board may prescribe other registration and licensing matters**

45. A so called Continued Professional Development (CPD) scheme has been implemented by the PGD Board claimed that it is a competence programme. The Federation believes what has been

implemented by the PGD Board is nothing more than a “mechanism” to implement a Competence Programme.

46. The term Competence Programme needs defining as it has implications throughout the entire PGD Act from terms and conditions of licensing to discipline order issues.

**Section 32: Principles guiding prescribing of registration and licensing matters**

47. Section 32 needs clarification based on the intent of the PGD Act.
48. The Federation believes the application of section 32 by the PGD Board is wrong and is not in accordance with the general objects and intentions of the PGD Act. They have consulted and implemented a mechanism, namely a points scheme called Continuing Professional Development (CPD) and have applied section 32 to that scheme. They have instituted an extra step in the competence based licensing intent of the PGD Act and have legislated themselves power and have made the scheme mandatory.
49. Section 32 states that the matters must be necessary, for matters of a competency programme to be necessary those matters must be based upon a demonstrated need and as such the programme must be mandatory the Boards current scheme does not meet this threshold.
50. The scheme is not a competence programme but a mechanism. The Federation believes the PGD Board has implemented the CPD point’s scheme that takes away the application of Section 32 of PGD Act. Section 32 has not been applied in the manner in which it was intended and does not match the purpose of the PGD Act. The Federation asserts the Board does not have the statutory right to authorise itself power in this manner.
51. The application of section 32 to a mechanism rather than to a competence programme removes the protection afforded by section 32 to the industry with regard to cost. The PGD Board has no control over costs that can be imposed on practitioners as a result of the mandatory nature of the implementation. These costs are market driven and the resulting risk is the burden of the practitioners who are forced to obtain CPD points in order to obtain a practicing license.
52. The manner in which CPD have been implemented is an abuse of the powers inferred on the PGD Board and as a result the PGD Board has not instigated a robust, efficient regime to best monitor what matters are necessary to meet the needs of the PGD Act and to help ensure delivery of maximum benefits at minimum cost. The PGD Board has legislated themselves authority at a cost to practitioners.
53. Section 32 of the PGD Act is the main point of contention. Section 32 describes principles the Board must be guided by when prescribing registration and licensing requirements and is as follows:

**Principles guiding prescribing of registration and licensing matters**

In prescribing matters under sections 28 and 30, the Board must be guided by the following principles:

- (a) the matters must be necessary to—
- (i) protect the health or safety of members of the public; or
  - (ii) promote the prevention of damage to property; or
  - (iii) promote the competency of persons who do, or assist in doing, sanitary plumbing, gasfitting, or drainlaying; or

- (iv) carry out, give effect to, or provide for a matter that is incidental to, or consequential on, the matters relating to subparagraph (i), (ii), or (iii); and
- (b) the matters may not unnecessarily restrict the registration or licensing of persons as plumbers, gasfitters, or drainlayers; and
- (c) the matters may not impose undue costs on plumbers, gasfitters, or drainlayers, or on the public.

54. During the consultation process the PGD Board issued a consultation document and also a document entitled ***“The Board’s consideration of Section 32 principles in relation to the proposed CPD scheme”***. This document was misleading in our opinion, and places into question if the consultation was in fact relevant.

55. The considerations appeared sub titled in the document like this:

- *s32(a)(i) – the proposed CPD scheme must be necessary to protect the health and safety of members of the public.....*
- *s32(a)(ii) – the proposed CPD scheme must be necessary to promote the prevention of damage to property.....*
- *s32(a)(iii) – the proposed CPD scheme must be necessary to promote the competency of persons who do, or assist in doing, sanitary plumbing, gasfitting or drainlaying.....*
- *s32(a)(iv) – the proposed CPD scheme must be necessary to carry out, give effect to, or provide for a matter that is incidental to, or consequential on, the matters relating to subparagraph (i), (ii) or (iii).....*
- *s32(b) – the proposed CPD scheme may not unnecessarily restrict the registration or licensing of persons as plumbers, gasfitters and drainlayers.....*
- *s32(c) – the proposed CPD scheme may not impose undue costs on plumbers, gasfitters, or drainlayers, or on the public.....*

56. As can be clearly seen the PGD Board have applied section 32 to **the proposed CPD scheme**. This is nothing more than a misleading document. Refer to section 32 above and you will notice the section states:

- ***the matters must be necessary to.....***
- ***the matters may not unnecessarily.....***
- ***the matters may not impose.....***

57. The term "the Matters" needs to be defined as it pertains to the PGD Act.

58. The telling difference being, the PGD Board has replaced **“the matters”** with **“the proposed CPD Scheme”**. The PGD Board have applied section 32 to **“the proposed scheme”** to justify the purpose of the Act which is:

*The purposes of this Act are—  
to protect the health and safety of members of the public by ensuring the competency of persons engaged in the provision of sanitary plumbing, gasfitting, and drainlaying services; and  
to regulate persons who carry out sanitary plumbing, gasfitting, and drainlaying.*

59. It is well known that most sections (if not all) are there to meet the purpose of the PGD Act. The PGD Board have applied section 32 for the protection etc of the public.

60. Section 32 was instituted into the PGD Act for the Protection of the tradespeople. The following passage is from the Plumbers, Gasfitters and Drainlayers Bill as reported by the Commerce Committee and appears in the Commentary.

*“We were concerned by the introduction of licensing requirements for tradespeople in the later years of their profession, who after thirty or forty years of plying their trade will be required to pass competency tests. In the event that there are no outstanding or obvious complaints against these practitioners, we ask that the Board gives special consideration to how they deal with renewal of ongoing licenses in these cases”*

61. There were obvious concerns about what the PGD Board could impose on the industry with regard to competency and licensing conditions. We know the PGD Board have done nothing about this which is costing the industry experienced people.

62. The Commentary went on to say this with regard to section 32:

***“Principles for prescribing registration and licensing matters”***

*We recommend the inclusion of new clause 83A setting out principles to guide the Board in setting classes of registration and competency standards, as we are concerned that the bill as introduced gives the Board too much power in this respect. This is the same approach we took in our recommended amendments to the Energy Safety Review Bill.*

*The guiding principles are as follows:*

*The prescribed matters must be necessary to protect the health and safety of members of the public or promote the prevention of damage to property:*

*The prescribed matters may not unnecessarily restrict the registration of persons as plumbers, gasfitters, or drainlayers:*

*The prescribed matters may not impose undue costs on plumbers, gasfitters, or drainlayers or on the public”*

63. This section of the commentary rightly states the committee’s concerns regarding the powers given to the PGD Board. The committee realized the matters to deal with competency and licensing had to be restricted and monitored for the protection of the tradespeople and as such was the intent of section 32 of the PGD Act.

64. So what are **the matters**? Matter is defined as substance, material, subject, topic, theme – so it is clearly seen that when dealing with competency standards, as recommended by the committee in its commentary, the matters are the content of the courses/training. So in this case **the content must be necessary** to promote the competency etc.

65. The PGD Board have applied section 32 to the scheme for the protection of the public where section 32 is for the protection of the tradespeople to prevent from happening exactly what **is** happening - the accreditation and application of courses that are not necessary or possibly not even relevant. Course such as “Hearing Conversations”, “Clan Labs”, “Demonstrate knowledge of health and fitness for civil infrastructure personnel”.

66. The PGD Board have made the “CPD Scheme” a term and condition of licensing and it is compulsory for all tradespeople relicensing. The Regulation Reviews Committee had this to say:

*We note that section 32(a) does not prevent the board offering other courses to practitioners which it considers would be useful for them. However, in our view, such courses cannot be included in a system that is compulsory as a condition on licensing.*

67. In an historical complaint dealt with by the PGD Board regarding CPD where it was proved the scheme was illegal under the 1976 Act, Helen Cull QC who reported on the complaint was asked



by the Board to remove the following paragraph as the Board claimed issues under the 2006 Act were beyond the scope of her investigation:

*Even under the 2006 Act, the Board may only prescribe requirements relating to the completion of competence programmes by notice in the Gazette. It was not open to the Board, in my opinion, for it to impose a mandatory system on applicants, when those mandatory requirements infringed the statutory rights and opportunities of the applicants and was implemented without the relevant considerations of the regulation-making process.*

68. It seems to be the PGD Board have interpreted the CPD Scheme as being a competence programme which it is not, it consists of a number of courses some of which could be competence programmes. This is evidenced by section 106 of the PGD Act where the PGD Board is empowered to order a person to:

- pass any specified examination:
- complete any competence programme or specified period of training:
- attend any specified course of instruction.

69. We don't believe it is likely the PGD Act would intend for a person to undertake the entire CPD Scheme (Competence Programme) as interpreted by the PGD Board. It is very likely they may have to attend a course of instruction.

70. The Federation submits that CPD must be as a result of a demonstrated need. We have expressed this view multiple times to the Minister (both Maurice Williamson and Dr Nick Smith), and the PGD Board themselves.

71. The PGD Board have removed the protection intended by the Act and have regulated themselves **more power** which is what section 32 was supposed to prevent.

72. The PGD Board had this to say in the its own consideration of section 32 where they state:

*“A scheme of the type discussed would be a mechanism to improve the competency of tradespeople”*

73. What is also notable is that the consideration addresses and attempts to justify the “CPD Scheme” not the “matters”. For the sake of analysis we ask that you remove section 32 from the equation for the time being and ask what changes in the PGD Act? You will find the PGD Act could have operated without section 32 and the Board would have had the same powers if not more.

74. Section 31 would have operated without reference to section 32 and so would have section 55 and other sections referred to by the PGD Board. The Board have applied section 32 to issues which Parliament have already given them the power and resources to impose on the industry. The issues were justified when the Act was legislated. For example:

- **“s32 (a) (i) – the proposed CPD scheme must be necessary to protect the health and safety of members of the public”** Protecting the health and safety of members of the

public is the purpose of the Act and has been justified by the legislating of the Act. It does not need to be justified by section 32 or the CPD scheme.

- **s32 (a) (iii) – the proposed CPD scheme must be necessary to promote the competency of persons who do, or assist in doing, sanitary plumbing, gasfitting or drainlaying.** Section 31 gives the Board the power to impose minimum standards to achieve that result and has been legislated as such. Section 32 does not need to justify that which is already legislated.

75. So it must be agreed that the PGD Act could have progressed without section 32. If we now put section 32 back into the equation as considered by the PGD Board, we note they have applied section 32 to a mechanism and not the matters to do with competency. They have gazetted themselves power over and above that intended by the PGD Act and have removed protection from the industry which was obviously intended by the PGD Act.

76. Harry Duynhoven on 23 November 2006 Energy Safety Bills – Third Reading Speech stated:

*" Another important feature of these two Bills is that they provide for competency-based licensing. This will ensure that before a worker is issued with a new license he or she is competent in specified areas such as the use of new equipment, and changes in standards and regulations"*

77. Even this statement emphasized *new equipment, and changes in standards and regulations* not to retest on what was already known, or to do courses that are years old and have been sitting on a shelf.

78. The Federation is of the opinion that if there is **no demonstrated need for a CPD course then it is unnecessary and the cost cannot be justified.** The Government wants the industry to trust in the professionalism of the PGD Board. The same PGD Board that unlawfully implemented CPD under the 1976 Act, the PGD Board that unlawfully took millions of dollars from the industry, the PGD Board that are non representative of the industry and the PGD Board that have cut off communication with part of the industry because they have a different opinion.

### **Section 33: Board must consult before publishing notices**

79. Section 33 needs the inclusion of "in a timely manner". The actions of the PGB Board currently has consultation concluding immediately before licensing commences taking away any right of appeal over the PGD Board decision prior to the industry incurring the costs or terms and condition imposed.

### **Section 34: Notices published under sections 28 and 30 must be approved by Minister**

80. The Federation believes there should be a requirement for the Minister to consult with representatives of the industry prior to approving notices to be published under sections 28 and 30. This would be a courtesy to ensure the PGD Board have satisfied the industry needs as industry needs currently are believed to be ignored..

81. It appears the Minister simply follows the recommendations of the PGD Board but perhaps he should also take into account industry and tradespeople's views and needs.

**Section 49: Duration of practicing licenses**

82. The PGD Act has the provision for a 5 year license but the industry still has a one year license imposed on it which was not the intent of the PGD Act.
83. It is the Federation's opinion that annual licensing is oppressive to the industry. It does nothing for the protection of the public and imposes costs and terms and conditions that are not necessary annually.
84. The Federation believes it should be a two year license at the very minimum but 5 years would be preferable.

**Section 53: Review of registered person's competence**

85. The PGD Board attempted to make it mandatory for attendance at a competency review and this was rejected by the industry. The cost of the review was to be the responsibility of the tradesperson. Section 53 of the PGD Act is adequate for the review of competence if the PGD Act is followed. The incident which sparked the knee jerk reaction by the PGD Board for competency reviews to be mandatory was a result of the PGD Board not following the procedures as detailed in the PGD Act.
86. A review of competence can be such that the individual does not need to be involved. The PGD Board should have in place monitoring, they can check on complaints made, they can check with local councils and if nothing is identified then no further action is required.
87. The onus is on the PGD Board to prove incompetence, not for the individual to prove competence at the PGD Board's whim. As with a lot of issues the PGD Board are attempting to shift responsibility and cost to the tradespeople and to legislate themselves more power to control an industry that is rejecting them.
88. The question needs to be asked – "How many times does a tradesperson need to prove their competence and at what cost, and why is the industry rejecting the PGD Board?"

**Section 54: Procedure on review of competence**

89. This section again highlights that a definition of competence programme is needed. Does this section mean the PGD Board can order that a registered person undertake a Competence Programme being their CPD Scheme, or to undertake a course of instruction?
90. Again is CPD a Competence Programme?

**Section 55: Competence Programmes**

91. This section clearly states the purpose of a competence programme is for examining or improving the competence of persons who do or assist in doing sanitary plumbing, gasfitting or drainlaying. It makes no mention of buying points to prove competence on subjects that tradespeople are already qualified in.
92. This section poses the question that if CPD is a competence programme and a person buys their

required points, is deemed competent by the PGD Board and is given authority to do sanitary plumbing, gasfitting and drainlaying then what happens if they are ordered to do a competence programme as a result of action under discipline? What competence programme do they do if they have already been deemed competent by the CPD scheme? This shows CPD is not a competence programme and is unlawful as a term and condition of licensing.

### **Section 72: Purpose of the register**

93. Part of this section gives the public information concerning which persons have been disciplined under the Act within the last three years. The Federation believes this is a heavy punishment considering a lot of the offences are not as a result of workmanship but more breaches of supervision and licensing regulations.
94. Members of the public are not continually punished in this way for offences under other Acts and in fact their past is not permitted to be bought up in new actions against them so why should tradespeople be punished in this manner? Perhaps the term "equal justice for all" should be adhered to where tradespeople also have rights.
95. The Federation believes it is punishment enough that their name and offence are in local news papers the same as members of the public and also in PGD Board publications around the time of the guilty decisions.

### **Section 82: Register to be public**

96. This section allows for the PGD Board to charge for copies of information from the register. It is not known if this occurs or not. The section makes no mention of charging for access to the Public Register on line. Why should tradespeople have to pay for members of the Public to have access as it is of no benefit to the tradesperson.
97. We now live in a world of user pays so we believe the public should pay. An example is the charges incurred to check on the ownership of a car or a property.

### **Section 88: Persons to whom this subpart applies.**

98. The Federation see problems around this section in that the manner in which the PGD Act has been interpreted means people with exemptions are not held accountable in any way. The Federation is a firm believer that people should be qualified and are accountable for their own work.
99. The PGD Act does not encourage people to get qualifications or to be responsible for their work. People working under exemptions have an out at all times and this creates problems with supervisors who are held accountable for the actions of the exemption holder.

### **Section 89: Disciplinary offences.**

100. It is unfair for the tradespeople to be subject to stringent offences when those imposing the law such as the Board and the Secretariat, investigators and others are not subject to the same level of accountability. For example if a tradesperson can be held accountable for performing

their trade in a negligent or incompetent manner then why can't others be held accountable for their actions?

**Section 91: Registrar must appoint investigator.**

101. Certain levels of the investigative process are missing or appear to be missing. The Federation believes a more stringent screening process should be in place where a complaints officer would access the complaint to firstly ensure the PGD Board has jurisdiction over the alleged offence, see what level of detriment there is to people and property and based on that level, whether a warning is required, an infringement notice or a full investigation.
102. Only after the screening process criteria has been met should the recommendation for action go to the registrar for further action.
103. Such a screening criteria would enable the Board to collect information relating to trends where mandatory training may be required.
104. Investigators should not be appointed solely because they can read legislation. The Paul Gee case is a prime example where the legislative knowledge of the investigator clouded the investigation to such an extent that a proper investigation was not conducted.

**Section 92: Investigation of complaint.**

105. There needs to be proper supervision of investigators to ensure the investigators operate in a fair and proper manner. The Paul Gee case was an example of charges being laid which should not have been, where there was improper legal disclosure, where evidence was withheld, where witnesses made false and misleading statements based on the direction given to them by the investigator and the Board appointed lawyer, and the list goes on.
106. Due to the severity and consequences of punishments the Federation believes any accused should have their rights to consult and instruct legal counsel explained to them. As it stand the Board send a letter to an accused outlining the allegations and ask for a response and this seems to be the catalyst for further action. Do the police send a letter to a murder and ask what he has to say about the allegations?
107. Real investigators who understand fairness and the investigative process should be employed and they should use other tradespeople for expert advice and evidence. Why employ tradespeople to investigate an offence?

**Section 100: Board must hold hearing if investigator reports that complaint should be considered by Board.**

108. The Federation does not see a need for this section which appears to waste resources. If an offence liability format is used in the screening and investigative process it will plainly show if the ingredients of an offence have been met. If they have not then there is no need to proceed - if they have then the process follows on to the disciplinary hearing or prosecution.

**Section 107: Costs and expenses**

109. In recent years costs imposed on tradespeople have outweighed the combined costs and fines imposed on members of the public. Most offences dealt with by the courts have costs of \$113 however tradespeople who choose to defend themselves in a discipline hearing incur costs in the thousands of dollars if not tens of thousands.
110. If found innocent there is no avenue for the recovery of costs from the Board. For example in the case of Paul Gee where he was accused of 44 offences and was only found guilty of two offences he was unable to recover his costs for the 42 offences he was found not guilty of.
111. There have been cases where accused tradespeople have been attending hearings at the PGD Board office and have been informed they are not catered for but yet everyone else attending the hearing was. The irony here is probably the only person who has paid for the catering that is present is the tradesperson themselves.
112. There should be provision for the recovery of costs if an individual is found innocent.
113. Costs imposed on tradespeople found guilty should be relevant to the punishment imposed and should not be used as additional punishment.
114. It should be noted most tradespeople plead guilty to offences even when innocent simply to keep costs down. This explains why the PGD Board claimed at a select committee hearing to have a 100 % success rate with prosecutions.
115. Fear of costs imposed is not justice.

**Section 114: Investigator to prosecute matter**

116. The Paul Gee hearing highlighted problems with this section where not only did the lawyer prosecute the case but he also recorded statements from witness and then claimed legal privilege for any notes that were taken. This denied the defence to any interview notes. As it transpired a lot of the statements were proven to be false and some witnesses withdrew their statements when cross examined.
117. The question is asked if the lawyer is prosecuting or investigating and what does the Act permit?

**Section 116: Appointment of persons to assist investigator.**

118. Does the appointment of a person to assist the investigator include a lawyer? This seems to be the case where the lawyer has been recording statements on behalf of the investigator. The Federation does not support this practice.

**Section 119: Orders must be in writing.**

119. The Federation agrees with the orders being in writing but more importantly the orders need to be measurable and achievable. In the case of Paul Gee an order was made and Paul Gee

had to pay for a course to be specifically written for him at his cost and then he had to attend the course.

120. If a competency course does not exist how can an individual be required to undergo a period of instruction on that competency - absolutely ridiculous.

#### **Section 129: Infringement Notices.**

121. The PGD Board have stated it is not cost effective for infringement notices to be issued but the Federation fails to see how this can be so. Other enforcement agencies use infringement notices successfully so why is it not cost effective for the PGD Board to do so?
122. This appears to be a financial decision based on the fact the infringement fee is paid to a Crown bank account not to a PGD Board bank account.

#### **Section 131: Payment of infringement fee.**

123. This section needs to be altered so payment is made to a PGD Board bank account.

#### **Section 134: Membership of Board.**

124. If the current line of thought and process is such that the PGD Board is a consumer protection Board then why is there a need for ten Board members? If it is purely a consumer protection Board and not an industry Board there is no need for members to be trade qualified. We also believe that for an organisation of this type 10 Board members is excessive.
125. The Federation believes the intent of the Act was for the PGD Board to operate as an industry Board along the lines of the Institute of Professional Engineers of NZ (IPENZ) where governance, training and discipline meet the needs of the industry and the purpose of the PGD Act.
126. As it stands the industry has no voice or representation on the PGD Board.
127. This section poses the question as to the intent of the Act - is it a consumer protection Board or an industry Board? When reading what the PGD Board consists of you note two persons are plumbers, two are gasfitters and two are drainlayers. The four other persons, of whom one (but not more than one) may be a registered person; and one must be a person whom the Minister considers has appropriate experience in relevant tertiary or vocational education; and two must be persons whom the Minister considers are able to represent consumer interests.
128. What is of interest is the statement '*two must be persons whom the Minister considers are able to represent consumer interests*'. If the Minister is appointing two persons specifically to represent consumer interests then who do the other eight people represent?
129. Currently the Board operates as a consumer protection Board where it is interpreted that all ten Board Members represent the interests of the consumer. If this was to be the case why appoint plumbers, gasfitters and drainlayers to the Board, why appoint someone with experience in tertiary or vocational education? No one represents the industry.

130. There needs to be clarification as to why the PGD Board exists. If it is not an industry Board then why are the tradespeople in the industry funding it?

#### **Section 137: Functions of the Board.**

131. Following on from the above all of these functions are currently interpreted to be consumer protection focused and appears no thought has been given to the fact that if they were industry focused, the same, if not better outcomes would be achieved whilst producing a more productive industry.

#### **Section 140: Registrar of Plumbers, Gasfitters and Drainlayers.**

132. This administrative position has been made into something it is not, being a Chief Executive position where delegated powers have been allocated and the impression is the CE/Registrar make the decisions and these are only signed off by the PGD Board.
133. With a large proportion of the functions of the Board being delegated it follows that a lot of the decisions seem to be left up to one person (the CE) which does not sit well with many of the tradespeople in the industry. It leaves the processes open to personality conflicts instead of fair conclusions based on a group consensus by the PGD Board.
134. Delegations can go too far and the Federation believes that is currently the case.

#### **Section 141: Other officers**

135. The Federation is presuming it is under this section the Chief Executive position is established but note it is focused on people to **assist** the Registrar i.e. Deputy Registrar. This supports the Federation's argument that the top level management position of Chief Executive wasn't intended by the Act and the top position was to be that of Registrar.

#### **Section 142: Board may prescribe fees**

136. In this section there is no problem with the legislation but more with the manner in which the PGD Board impose fees and use them to entice profit making organisations to support the PGD Board's activities. A prime example is Continuing Professional Development. Initially there was a fee charge to organisations to have courses accredited and re-accredited every two years.
137. As it came to light that the tradespeople did not support the CPD scheme the PGD Board removed the accreditation fee and re-accreditation fee to ensure the continued support of the training organisations. The tradespeople are required to fund the accreditation and re-accreditation of the courses leaving no cost on the profit making organisations for accreditation and re-accreditation e.g. suppliers.
138. There is also a question of the legality surrounding the requirement of Certifying tradespeople having to pay the fee for people under their supervision. If the PGD Board cannot impose discipline, competence or licensing fees on a group of people then should that category of licensing exist? If there was one classification of license i.e. Registered Plumber etc this



problem would not occur.

#### **Section 142: Disciplinary and prosecution levy**

139. A levy is nothing more than a tax imposed on a group of people for a specific purpose, in this case for discipline of registered people and the prosecution of unauthorised people doing sanitary plumbing, gasfitting or drainlaying.
140. The level of levy is questionable - the overhead costs far outweigh the cost of performing the function. The Federation asks why the plumbing, gasfitting and drainlaying tradespeople are the only tradespeople in New Zealand levied to prosecute unauthorised people.
141. Why are the public not levied for their own protection and in saying that, why aren't others in the plumbing gasfitting and drainlaying industry not levied to protect the public? A prime example is the supply of goods to unauthorised people - the supplier is aiding the unauthorised person to commit the offence but yet it is the tradesperson who pays the tax to prosecute the unauthorised person.
142. Builders and electricians are supported out of energy and construction levies so why isn't there something similar for the plumbing gasfitting and drainlaying industry. Where is the fairness and equality amongst regulated trades?

#### **Section 146: Application of money received by Board**

143. The Federation has questioned the PGD Board's role as either a consumer protection Board or an industry Board. If the PGD Board is a consumer protection Board why is money being spent on *contributing towards the cost of educating or training any person wishing to enter the sanitary plumbing, gasfitting, or drainlaying trades, and providing scholarships or bursaries and making donations for that purpose?*
144. The contributing towards the cost of educating or training any person wishing to enter the sanitary plumbing, gasfitting, or drainlaying trades, and providing scholarships or bursaries and making donations for that purpose would be totally understandable for an industry Board but not for a consumer protection Board.

#### **Section 148: Unauthorised expenditure**

145. The Federation is not supportive of this section. If the PGD Board is as professional as they portray themselves and are collecting \$4,000,000 annually from the industry then the Federation expects the expenditure of every cent to be legal.

#### **Section 171: Exclusion of Liability**

146. If the PGD Board are going to use this section for the protection of their positions and actions then there must be some process put in place for when tradespeople believe anything has been done in bad faith or without reasonable care.
147. As it stands with this section, and a lot of the PGD Act, if a registered person wishes justice they must engage a lawyer and spend thousands if not tens of thousands of dollars to get that

justice.

148. There should be a process in place to deal with liability, acts of bad faith or issues done without reasonable care. As the PGD Board cannot be held liable anyone who proves their innocence has no recourse to recover their costs.
149. Numerous cases have not been taken against the Board by tradespeople as the tradespeople know the Board will only waste money the tradespeople have paid and fees will increase if they need more money.
150. Lay a complaint and impose more costs on the industry or walk away in disgust with no increased costs - not much of a choice.

### **Key Questions Answered**

151. The Ministry has asked for the Federations views on the following key questions :
- How safe is the work carried out by licensed plumbers, gasfitters, and drainlayers?
  - How compliant is work by licensed plumbers, gasfitters and drainlayers, with the relevant legislation?
  - How well is non-compliant work reported and followed through with enforcement action?
  - How appropriately supervised is the work by plumbers, gasfitters and drainlayers, that has to be carried out under supervision?

#### ***How safe is the work carried out by licensed plumbers, gasfitters, and drainlayers?***

152. All tradespeople have had safety, both personal and work, drummed into them throughout their apprenticeships and as such do not purposefully endanger anyone.
153. In general the work carried out by licensed and certifying plumbers, gasfitters and drainlayers is safe however over recent years with the poor standard of formalised apprentice training the standard is at risk. In addition the number of unauthorised tradespeople in the industry is creating an environment of no accountability.
154. Economic and contract pressures can sometimes influence safety so they need to be carefully monitored and most tradespeople do this well however when they are required expend money and time on senseless issues such as CPD then safety can be like other aspects of an operation where cost saving measures can influence on site safety.
155. The manner in which regulation is being imposed on tradespeople is pushing them to operate unlawfully, but in most cases the standard of safety is remaining high - however the circumstances for people to lapse in their standard is being created.

#### ***How compliant is work by licensed plumbers, gasfitters and drainlayers, with the relevant legislation?***

156. This is a very similar response to the one given above that in general the work carried out by licensed and certifying plumbers, gasfitters and drainlayers is of a high standard however over recent years with the poor standard of formalised apprentice training the standard is at risk. In addition the number of unauthorised tradespeople in the industry is creating an environment

of no accountability.

157. Economic and contract pressures can sometimes influence work standards so they need to be carefully monitored and most tradespeople do this well however when they are required expend money and time on senseless issues other aspects of an operation needed for cost saving measures can influence work standards.
158. The manner in which regulation is being imposed on tradespeople is pushing them to operate unlawfully but in most case the standard of work is remaining high however the circumstances for people to lapse in their standard is being created.
159. When it is considered the number of jobs performed by tradespeople in the industry the number of complaints relating to workmanship would be lucky to reach 1%. A look at the PGD Board Annual Reports shows very few of the disciplinary actions taken are due to work standards.

***How well is non-compliant work reported and followed through with enforcement action?***

160. Non complaint work is very seldom reported by tradespeople as it is generally repaired and nothing is said. This is due to the tradespeople not having respect in the regulation of the industry. They do not trust the PGD Board and find the level of evidence required to lay a complaint in a lot of cases is unachievable.
161. A lot of tradespeople do not see any value for money in reporting incidents as each report increases the PGD Board workload which increases the fees and levies required to be paid by the tradespeople in the industry. It is only a decade ago that disciplinary levies were around \$25 annually where they are now in excess of \$256 annually. The PGD Board claim that \$256 is also subsidised by reserved funds. Why in times of economic strain would a tradesperson take an action to increase their costs when they get no return from the increase?
162. It appears the PGD Board will only take on cases that are a sure thing. The Federation knows of a number of cases that the Board have not followed through with because they appear too difficult.

***How appropriately supervised is the work by plumbers, gasfitters and drainlayers, that has to be carried out under supervision?***

163. Supervision is a problem that has been created by the PGD Board and the classes of registration they have gazetted. The implementation of the registration class of Licensed Plumber, Gasfitter and Drainlayer has allowed for partially trained people to operate in the industry. The Federation does not believe it was the intent of the PGD Act that a person will complete four years as an apprentice and still not be responsible for their work and be required to be under supervision for eternity or until they achieved the status of Certifiers.
164. Supervision is flaunted as to stick to the stringent regulations would not be economically viable. Small business cannot sustain the requirements and hence take the risk of not being caught. This is increasing the risk on the public as the standard of formalised training continues downwards to nearly a non-existent level.

165. The requirements being placed on Certifiers is discouraging them from taking on trainees which is lowering the number of tradespeople. The following chart shows the effect of the current regulation and environment created by the current regulation of the industry.

Year	Population	Plumbers	Population per Plumber	Gasfitters	Population per Gasfitter
2002	3975000	5310	719	2082	1909
2003	4039000	5310	760	2232	1809
2004	4083000	4960	823	1936	2108
2005	4127000	4835	853	1936	2131
2014	4471100	4673	956	1975	2263

166. As can be seen the population per plumber has increased by over 33% in just over a decade and the increase in population per gasfitter has increased by around 18% over the same period of time. Based on those statistics plumbers, gasfitters and drainlayers should be busier than ever - but they are not. Most are just surviving so who is doing all the work? The Federation would suggest it is unsupervised and unauthorised people operating in the industry.

167. The issue of supervision can only be resolved by better training and having one qualification so that when an apprentice qualifies at completion of an apprenticeship and are registered then they are responsible for themselves. The current system does not encourage people to obtain full qualifications.

168. Business owners will not risk the survival of their businesses for the sake of supervision. It is an added cost that should not be necessary.

169. The increase in pre-trade courses has also contributed to people who “know just enough to be dangerous” operating outside of the regulated industry.

170. The Federation has heard of one case where it is alleged an individual has been self employed for the duration of his apprenticeship and right through to Certifying status. For this to occur someone must have been flaunting the supervision rules and has left a situation where an individual is self taught and is now capable of training apprentices.

### The Ministry questions answered

171. The Ministry has asked know how well the interface between PGD Act and the Building Act, and the Electricity Act, are operating given that plumbing, gasfitting and drainlaying work is closely associated with building and electrical work.

- The PGD Act interfaces with both the Electricity Act 1992 and the Building Act 2004, specifically the Electrical Workers Registration Board may delegate any of the its functions or powers under subpart 114 of the Electricity Act
- Under the Building Act 2004 sanitary plumbing and drainlaying are defined as building work that must comply with the building code, be carried out in accordance with a building consent and be issued with a code compliance certificate (sections 7, 17, 40 and 94)
- The Building (Designation of Building Work Licensing Classes) Order 2010 provides for

people registered under the PGD Act as a licensed or certifying plumber or gasfitter to be licensed to carry out specified building work, such as roofing.

172. In reality the impact on the tradespeople is not noticed and very few tradespeople actually take any notice or care about the interface. Most tradespeople continue to do as they have always done until someone forces them to stop.
173. Too much legislation and over regulation is causing tradespeople to turn their back on the regulation of the industry and when and if they get caught they simply leave the industry.
174. One huge issue is that the PGD Board and Government are expecting “hands on” tradespeople to sit and read screeds of legislation to comply with bureaucracy, all in the name of safety of the public and their property. If tradespeople do take the time to read the legislation and still don't understand they are told by the relevant government departments to seek legal advice. In most cases when legal advice is sought the lawyers don't even understand.
175. Tradespeople have taken the approach that they ignore the legislation or comply with parts of it until legal action is taken against one of them to create a legal precedent. The implementation of the gas certification system in place is a prime example.
176. The PGDB could take the notice of the EWRB and include in a real competency programme updates on legislation and regulation on a bi-annual cycle.

#### **Draft high-level problem analysis for the PGD Act**

177. From desk research the Ministry identified five key problem areas for the PGD Act. The Federation's comments on the issues follow.

#### ***Institutional and funding structure***

178. *The institutional and funding structure established by the PGD Act results in costs, and means of funding those costs, that are out of alignment with similar trades (building and electrical work). This potentially reduces the PGDB's ability to achieve safety outcomes in the most cost effective manner.*
179. The Federation believes that the problem as described by the Ministry is a contributing factor but the issues go deeper. Even the statement from the Ministry - *This potentially reduces the PGDB's ability to achieve safety outcomes in the most cost effective manner* - ignores one crucial ingredient and that is the support of the tradespeople operating legitimately in the industry.
180. The current funding model is neither fair nor equitable and this was brought to the attention of the PGD Board and the Government five years ago, and the issue has been totally ignored. Ignoring the problem has caused a great deal of resentment in the industry to the extent that the PGD Board is no longer respected or trusted to an even greater extent than was reported by the Office of the Auditor General in 2010.
181. Overheads incurred by the PGD Board outweigh the cost of performing the function, for example licensing was reported in the PGD Board 2014 Annual Report as having Licensing

Direct Expenditure of \$232,009 and Licensing Allocated Overheads of \$840,339. Registration had Direct Expenditure of \$18,560 and Allocated Overheads of \$306,224.

182. Likewise in the PGD Board 2014 Annual Report it was stated Discipline Direct Expenditure was \$345,063 and Discipline Allocated Overheads was \$644,909. Direct Expenditure for Offences was \$162,101 and Allocated Overheads was \$442,701.
183. This is an area of concern for the Federation. Has the PGD Board scoped itself to a level beyond that which is required to perform its function. If it was an industry Board providing for development and governance of the industry which also performed the regulatory function there probably wouldn't be too many concerns but as it stands as a consumer protection Board the tradespeople get nothing for the fees and levies they pay.
184. In any business when overheads outweigh the cost of performing a function you go bankrupt. This obviously doesn't happen with the PGD Board because they regulate to take more money from the tradespeople which only creates more resentment towards the PGD Board. It must be remembered there is no demonstrated gain or benefit for tradespeople in the industry.
185. It has been claimed in select committee hearings that the benefit is the fact the tradespeople operate in a regulated industry but is that a benefit when taking into account the cost and responsibility placed on the tradespeople, the continual risk of prosecution or of not having a job?

### **Registration and licensing of tradespeople**

186. *The registration and licensing processes in the PGD Act are not as efficient as they could be which affects the efficiency of the regime and the cost of achieving safety outcomes. This is because:*
  - a. *some parts of the PGD Act lack sufficient flexibility to meet the current needs for registration/licensing and may create barriers that restrict competition. For example, overseas-qualified applicants must have applied for registration before they can apply for a provisional licence*
  - b. *a lack of clarity in places creates confusion regarding the operationalisation of the PGD Act.*
187. The Federation does not understand what is meant with regard to "restrict competition" as registration and licensing have nothing to do with competition and what does "operationalisation" mean?
188. The Federation does not understand the example used above as if it is not done this way people could enter New Zealand on a provisional license and then remain until the expiry of the provisional license without applying for registration but the Federation does agree a lot of work needs to be done in this area.
189. The Federation is not happy that Registration is being handed to people who have never done apprenticeships or passed relevant exams and yet other applicants with vast overseas experience and who have done apprenticeships are denied registration. Instances were reported to the past Chairman of the PGD Board and the previous Minister of Building and

Construction where the Minister accepted it was the PGD Board's decision.

### **Competency of tradespeople**

190. *Insufficient clarity regarding the linkage of the ongoing competency requirements for tradespeople to safety outcomes in the PGD Act affects the cost and effectiveness of the continuing professional development specified by the PGDB. Specifically, there is insufficient:*
- a. clarity regarding the meaning of competency, supervision, and the upskilling requirements*
  - b. power for the PGDB to carry out some competency reviews, particularly auditing work to identify areas of work that need upskilling*
  - c. enforcement power to make tradespeople comply with the PGDB's competency review process*
  - d. linkage between the level of risk associated with areas of work, auditing, and ongoing competency requirements.*
191. The entire competency regime by the Government appears to be a kneejerk reaction to the leaking building issue where all tradespeople have received the blame and have been deemed incompetent due to bureaucratic blunders. Plumbers, gasfitters and Drainlayers were not the cause of the leaky building farce – the Government needs to look closer at architects, engineers and certain suppliers of certain products.
192. The Federation agrees there needs to be clarity of the meaning of competency, supervision and upskilling but this needs to be taken into the context of what is good for the tradesperson. No matter how many points a tradesperson buys to have the PGD Board deem them to be competent that person is only as good as their knowledge and skills and their willingness to apply them.
193. The existing CPD Scheme is a total failure and does nothing to encourage tradespeople to improve their skills, in fact it is quite the opposite - more time is spent avoiding the scheme they do not support, or looking for free courses than actually looking at the competency and knowledge needs.
194. The PGD Board have been claiming incompetence based on points rather than having monitoring and analysis systems in place to assess what knowledge, skills and competence are needed. Not every piece of information that is useful is a competence and needs to be in a formal course setting. Some organisations have less relevant training now than ever before because they need to save the time and resources for buying their CPD points for licensing.
195. The Federation does not believe ongoing competence, knowledge and skills should be linked to relicensing. The monitoring systems should be in place by the PGD Board to assess what is needed by individual tradespeople as everyone is different, and anything that all tradespeople or classes of tradespeople need to know should be mandatory. We have made suggestions around this several times to the PGDB and they have ignored us.
196. The Government and PGD Board's failures are being laid squarely on the tradespeople who are already qualified and proven their competence of the minimum standard required for registration - those failures are training at apprenticeship level and allowing for an out

point of partially trained people at Licensing Class. CPD is being used to top up the skills and knowledge of partially trained trainees due to them not being taught appropriately during their apprenticeship.

197. Appropriately trained people should at conclusion of their apprenticeship be competent at all the competences and after that only need the skills and knowledge brought about by new technology or changes in legislation etc. As it currently stands tradespeople are being asked to re-qualify on subjects they have already been deemed competent in.
198. The Federation believes a check of the number of people disciplined for competency based issues would be very few based on the quantity of work performed annually in the industry.
199. The PGD Act currently has sufficient powers to conduct competency reviews if the procedures detailed in the PGD Act are adhered to. The PGD Board attempted to impose on the rights of individuals who refused to participate until the PGD Board did adhere to the legislation. The PGD Board took this as a blooded nose and now want to legislate power to force compliance and attendance at competency reviews.
200. The Board have indicated there will be a cost to the tradesperson for the review. This is yet again imposing costs on tradespeople to again prove their competence. How many times does a tradesperson need to prove their competence? Does the Government require a random selection of drivers to re-sit their license every year to prove their competence or to identify areas for improvement - no they don't. There are numerous other ways to identify areas for improvement.
201. Pushing for compulsory attendance at competence reviews will drive more tradespeople from the industry. The PGD Act has provision for attendance now and this should be left as it is.
202. The level of risk plays an important part in the level of monitoring required and again the PGD Board needs to put in place monitoring and assessment techniques that will need to be justified. These techniques need to be measurable as do the results. The current points system doesn't measure competence but measures how many points have been purchased.
203. Training and having the industry supporting the Board's activities is far more important for competence than what exists now. All qualified tradespeople have reached the required level of competence and only require upskilling in the issues they don't know.

### **Exemptions**

204. *The current exemptions under the PGD Act partially deregulate the plumbing, gasfitting and drainlaying trades and may have a negative impact on public health and safety outcomes as the exemptions:*
  - a. *limit accountability*
  - b. *compromise the public health and safety principles that underpin the regulatory regime*
  - c. *may cause issues when a property is sold because nobody is accountable if the work is not compliant and has not been checked by anyone.*



205. It is the Federation's opinion that "Exemptions" have been used to cover for failures in the training regime and is firmly of the opinion apprenticeships should be extended to 10000 hours and when qualified, the trainee becomes a registered plumber, gasfitter or drainlayer or a combination. Only one qualification is needed, that of Registered (such as we see with our counterparts in the electrical industry).
206. This would require the changing of the current registration classes and the NZQA qualification which is currently being worked on. Anything less than this and there will forever be issues with unqualified people working in the industry under questionable supervision.
207. The Federation believes educating people and picking them up if they are failing is a far better way of protecting the public than allowing partially qualified people to operate in the industry.
208. If something does go wrong to a job done by an exemption holder what is going to be achieved by holding the supervisor to account? The supervisor will be pissed off, the Exemption holder will lose their job, the supervisor will be anti the PGD Board and will probably leave the industry feeling bitter.

### ***Complaints and discipline***

209. *The complaints and discipline provisions in the PGD Act lack flexibility, which reduces their effectiveness and increases the cost of achieving safety outcomes. For example, an investigator must report their findings to the Board and determine whether, in their opinion, the Board should consider the complaint. The Board must then hold a hearing to determine whether it should exercise its disciplinary powers.*
210. Complaints by members of the public have been used as a tool to prevent payment to tradespeople and the PGD Board have supported the complaints at a cost to tradespeople.
211. The PGD Board needs a proper complaints process where liability formats are followed and this will show what action needs to be taken - but discipline should be a final resort. Nothing is achieved by taking exorbitant costs off an individual and hitting them with heavy fines. This only drives people from the industry and makes them bitter towards the PGD Board. We favour the Board collecting data on discipline to see if there are knowledge gaps in industry – which could then be fed back into the apprenticeship system as necessary. Of course individuals who transgress need to be dealt with but there is a bigger picture here as well.
212. Experienced investigators need to be employed and trained to meet the industry needs.
213. Infringement notices need to be adopted for minor offences.
214. The use of lawyers to assist in investigations should be stopped as this is a costly way to assist an investigator.
215. The punishments and costs imposed on tradespeople are not fair and equitable for the level of

offending. The Federation believes there should be a focus on education not punishment so perhaps a form of diversion or a form of administrative settlement which can be negotiated between the parties. This has been very successful for the likes of the Commerce Commission.

### **PGD Federation General View**

216. There have been a lot of criticisms of the PGD Act but in general the Federation feels there have been few problems with the PGD Act but more with the way the PGD Board have implemented and interpreted parts of the PGD Act.
217. The regulations supporting the PGD Act, we believe, have been misused and have not adhered to the intent of the PGD Act. Numerous examples have been provided in this submission and in other submissions made by us over the last five years.
218. The PGD Boards over the past decade have used the regulations supporting the PGD Act as a tool to force the tradespeople working in the industry into submission to comply with the direction supported by a few in the industry, not necessarily tradespeople.
219. If research is done to the time prior to the last decade it would be found the relationship between tradespeople and the PGD Board was a very harmonious one, and the industry and the public benefited from the relationship.
220. Enter competence based licensing and Industry Training Organisations and this was the decline of the industry. Standards in training slipped and then became non-existent. Millions of dollars have been pumped into the ITO's to provide industry training and it has been targeted at Level Four. Level Four in the plumbing gasfitting and drainlaying trades is a person who has reached licensing registration but is still not deemed capable of applying their trade without supervision.
221. As training has concentrated on level four a large number of trainees have opted not to progress to Certifying Registration. This has resulted in a large number of people requiring supervision which has brought about its own issues within the industry.
222. The retrospective legislation imposed by the Government with regards to fees and levies and the Government voting against the recommendations of the Regulations Review Committee have created an environment of mistrust which has placed the PGD Board in a position as being seen as puppets to the Government.
223. This puts the PGD Act and supporting regulations under immense scrutiny. This coupled with the PGD Board's inability to win the support of the tradespeople in the industry has left the Board in a position of an industry actively rejecting their regulation of the industry.
224. When reviewing the PGD Act and the application of the Act it must be remembered most tradespeople it affects are funding their own training and licensing. They are resentful of having to pay for the PGD Board which does nothing but impose costs on them for the benefits of others and continually impose terms and conditions regarding competence and licensing.
225. The Federation opposes the funding of the PGD Board unless there is some proven measurable benefit to the tradespeople operating in the industry. Currently the only people who don't

benefit from the PGD Act and its enforcement are the tradespeople funding the Act and the PGD Board.

226. If tradespeople in the industry reject the regulation imposed on them the Government have a situation where they have a shortage of legal tradespeople and have an escalation of illegal operators whereby they lose control of the so called protection they provide the public.
227. Should the current situation of heavy handed regulation and excessive costs and terms and conditions of licensing continue plumbing, gasfitting and drainlaying will join the list of vanishing trades. There will be opposition to this comment by some and it will generally be those who stand to benefit from the reduced number of qualified tradespeople.
228. For the plumbing, gasfitting and drainlaying industry to progress and provide the level of protection intended by the PGD Act it needs an industry Board or similar to provide leadership and governance of the industry. The current structure of the PGD Board provides for that to happen but the functions of the Board have been interpreted to follow a consumer protection role by enforcement and forced compliance only.
229. The tradespeople in the industry are not in a position to fund two Boards, one for governance and leadership and the other for the protection of the public. The 20% increase in productivity sought by the Government won't be achieved under the current regulation and the shortage of tradespeople will increase.
230. Experience is leaving the industry due to its regulation, terms and conditions of licensing and cost of remaining legal.
231. Lack of meaningful communication and disinterested action by the Minister and Government are fueling the situation of resentment which will continue to escalate until total rejection is reached.
232. At the writing of this report the Federation was actively advising its members to consider their options including ignoring the PGD Board, but staying legal, and also passing on compliance costs to the consumer. The force and coercion used on the tradespeople over the last decade hasn't and won't work no matter what format it is put in. Getting voluntary compliance is the only type of regulation that will work.



Wal Gordon  
Chairperson  
Plumbers Gasfitters and Drainlayers Federation