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IN OTHER NEWS

Is Regulation Difficult?

As detailed in the main column, reviews are underway on two issues that regulate the industry - the legislation and the manner in which it is enforced.

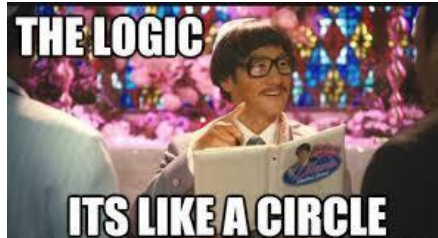
The issue we see is that it always seems about "enforcement imposed on practitioners," rather than encouragement.

We don't see the regulation of the industry as an incentive. It was said at one of the Select Committee hearings a couple of years ago that being in a regulated industry was a benefit to the practitioners.

We questioned the statement at the time and stated we were paying dearly to be in a regulated industry and the costs we were paying bordered on being a penalty.

The regulation of the plumbing gasfitting and drainlaying industry has been a battle field for decades and it has always been about funding and

Review of the PGD Act and Occupational Regulation within the Building and Construction Sector



Time goes by and we all get busy doing other things, but at the Federation we operate a "call up system" where we get reminded of events.

Two events we have been reminded about are the review of the Plumbers Gasfitters and Drainlayers Act 2006, and the review of Occupational Regulation within the Building and Construction sector.

Just to refresh your memory, the review of the Plumbers Gasfitters and Drainlayers Act 2006 was written into the Act as follows:

187 Review of Act

(1)The Ministry must, after the expiry of 3 years after the commencement of this section,—

(a)review the operation of this Act since the commencement of this section; and

(b)consider whether any amendments to this Act or any other law are necessary or desirable in relation to plumbing, gasfitting, or drainlaying; and

(c)report on its findings to the Minister.

(2)The Minister must present a copy of any report provided under this section to the House of Representatives as soon as practicable after receiving it.

The Act came into effect in April 2010.

Commencement

(1)Section 1, this section, and sections 28 to 35, 142 to 145, and 172 come into force on the day after the date on which this Act receives the Royal assent.

(2)The rest of this Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions.

heavy handed regulation imposed on practitioners.

It has been going on for so long that even those riding on the coat tails of the industry have become involved in what is imposed on practitioners.

Sub industries have been created from regulation which has caused animosity within the industry along with industrial exclusion where the practitioners haven't been listened to.

The Federation believes the Ministry of Business, Innovation and Employment should be recommending a change in tactics and try incentivising the regulation within the industry.

The Government, MBIE and the PGD Board to a certain degree, need to ask the questions regarding the survival of the industry as it can't be a given that the industry will survive and maintain the standard required by the Plumbers Gasfitters and Drainlayers Act 2006 and supporting legislation.

In the Auditor General's report into the Plumbing Gasfitting and Drainlaying industry six years ago it stated:

"There is a great deal of writing on the importance of voluntary compliance in regulatory systems. In any regulatory context, it is too hard to achieve high levels of compliance through force or coercion – effective systems depend on people choosing to participate and follow the rules. For people to want to comply, they have to trust the system and see it as providing an overall benefit.

Section 2(2): the rest of the Act brought into force, on 1 April 2010, by the Plumbers, Gasfitters, and Drainlayers Act Commencement Order 2010(SR 2010/46).

Yes - you picked up on it, April Fool's Day, so someone has a sense of humour!

One big thing to note is the wording "review the operation of this Act ". So it's not a review of the Act as such, but more the way it is operating and it is the operational matters that affect us the people at the coal face.

We question what incentive the Ministry of Business Innovation and Employment (MBIE) has to put any sort of priority on this issue because they have nothing to lose. **They don't fund the implementation, application and enforcement of the Act.**

The Act is now ten years old and it is three years since the review of its operation should have started, and it would appear MBIE is still drafting the final report to be submitted to the Minister, who is then required to table it to the House of Representatives.

There have already been failures in the operation of the Act with retrospective legislation being slammed on tradespeople to cover up the "so called mistake" in the wording, this meant the PGDB did not have to refund the money we believe was taken illegally.

If more changes are needed then there would be a process of review, drafting, consultation, debate and implementation, in the meantime we as an industry **continue to pay the price**. For example, what happens if the review of the operation of the Act identifies funding for enforcing the Act should come from elsewhere?

Unfortunately the Plumbers Gasfitters and Drainlayers Board are stuck in the middle having to heed direction from the Government who take their advice from MBIE. This takes away a lot of the relevance of being an Independent Statutory Board.

There is **no** incentive for the Government or MBIE to change the legislation or manner in which they deal with our industry because they have the legislation in place to discipline the industry if we don't tow the line. They have **no savings to make** because practitioners in our industry fund the application and enforcement of the Act.

Moving in line with the review of the operation of the Act, the Minister for Building and Housing has MBIE leading a Review of Occupational Regulation within the Building and Construction sector. This is a high level review that looks at the overall design of the system, and how the system is delivered.

The focus is on the way that core functions (such as the registration function, and the complaints and discipline system) are organised across the occupations within the sector. Apparently the objectives are to ensure that the way that the occupations within the sector are regulated is simple, clear, flexible, easy to understand, and equitable across the different occupations.

The evidence this inquiry gathered showed that many tradespeople do not have this view of the Board at present.

If more people drop out of the regulatory system or choose to ignore it, the system will not be effective in protecting public safety"

The regulation of the industry seems to show benefit to everyone except the practitioners. The public get their health and safety protected at no cost, the Government gets a regulated industry at no cost and offenders get prosecuted at no cost to the public or the Government.

The only system that hasn't been tried is a system where there is benefit to the industry

How about a system where there is incentives for compliance not just punishment?

A system where there are incentives for training apprentices?

A system that rewards advancement in training and qualifications?

A system where practitioners are encouraged to protect the health and safety of the public by reporting unauthorised people operating in the industry?

A system where practitioners are listened to?

A system where the prosecution of unauthorised people is paid for through taxes or levies rather than being funded by practitioners who choose to be plumbers gasfitters or

Given that the review is focused on the overall design and delivery of the system, detailed provisions and rules for each occupation within the sector are not be examined at this stage.

Work on the regulation of three occupational groups within the sector is currently underway:

professional engineers
plumbers, gasfitters and drainlayers
electrical workers.

The insights and findings from the current work within each of these areas will be fed into the high level review.

Any proposals emerging from the current work for changes to the way that functions are organised and delivered, and any proposals that would require legislative change, will be examined in the context of the high level review rather than being progressed independently.

It seems the Minister intended to the release a discussion document in late 2015 setting out his ideas for reform of the system of occupational regulation within the sector, and inviting comments and feedback more formally. MBIE have informed the Federation that work has begun on the discussion document. (Four months late and counting....)

We look forward to seeing the discussion document but when we think of previous reviews such as the Gas Certification scheme where a good workable system was dumped after much over-analysing, over-thinking and over-reacting, we don't hold our breath for something that is going to help businesses in our industry, help innovation and employment. Others seem to take priority over our industry.

We believe it is a given that there will be no recommendations that will cost the Government money, or that will question other aspects of their policies such as employment, industry training organisations, qualifications and such like.

We wait with an open mind as to what will happen, but it seems we are being chucked in a big pot with other industries and MBIE are going to explain to the Minister what is going on in their head when they probably don't understand the real issues themselves.

Perhaps this will be another case of over-thinking that twists things around, makes practitioners worry and just makes everything much worse than it actually is.

It be interesting to see how the Government will take different trades, with different manners in which they qualify, with different levels of qualifications, with different funding imposed by legislation and regulate them in a way that is simple, clear, flexible, easy to understand, and equitable across the different occupations.

We have the Ministry of Business Innovation and Employment who are advising on the Review of the PGD Act 2006 and Occupational Regulation within the Building and Construction Sector but we just

drainlayers - after all police officers don't pay to be in the police force or pay to prosecute offenders.

When you look at all the money spent on reviews every decade or less into why things aren't changing in the industry, it would probably fund the industry for a number of years.

The continual circle of reviews into the review, into the review, is not logical but comical.

Desk top reviews by people who only believe they understand the issues because their degree says they understand won't change anything.

Our high level desktop research has identified issues such as funding for apprentices, training, qualifications and regulation that assist the industry - incentives to make things better. (And it didn't cost the practitioner a thing....)

seem to go around in a big circle.

If MBIE is to live up to its name where is the assistance for business in our industry, where is the support for innovation in our industry, and where is the support for employment in our industry?

Perhaps good regulation simply takes incentive. Have a read of the side column and give us your feedback.

Our suggestion when it comes to reviews like this is simple – talk to the people affected by any changes, talk to the people at the coal face, talk to the people who work within these regulations day in and day and out and get their input – it might just be amazing to see what ideas they have.

“High level review” often means someone or several people with degrees sitting behind lap tops googling what happens overseas and what happens in New Zealand and making some assumptions around that.

It would be good if the high level review, actually involved some of the “lower level” people, who unsurprisingly – have some pretty common sense thinking around this.

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