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## IN OTHER NEWS

### NIO QUIZ

What is NIO? Put simply it is negligent, incompetent or other.

Let's try and put the negligent, incompetent or other status into context from your point of view.

You will be given a number of scenarios and all you have to do is deem if it is negligent, incompetent or other actions. You can select as many as you feel are appropriate for each scenario. Good luck.

An Act is implemented with a review scheduled 3 years after implementation but 7 years later the review isn't complete. **Negligent / Incompetent / Other**

A Board unlawfully takes money from practitioners in an industry to fund prosecutions. **Negligent / Incompetent / Other**

A Government implements retrospective legislation to make lawful that which was unlawful. **Negligent / Incompetent / Other**

Apprentices do 4 year apprenticeships but are not deemed workplace competent upon completion. **Negligent /**

## APPRENTICESHIPS



We can live in hope that we will get younger and powerful apprentices. The beginning of July saw a lot of support for apprenticeships from the Government. Free apprenticeship fees for the apprentices and a payment on a monthly basis for the employer.

This is great and for those of us with apprentices and it is some welcome relief. It's along the lines of what the Federation has been saying - that the apprenticeships should be government funded and the Federation goes a step further by saying apprenticeships should be Government controlled the way it used to be when the Apprenticeship Board existed.

We still feel an Apprenticeship Board would go well with the Review of Vocational Education (RoVE) recommendation of control over the Polytechnics. We are sure this would enable standardised training throughout the country.

Training is all over the show at the moment and the Skills Organisation as our Industry Training Organisation (ITO) does not communicate with the Industry at all in a meaningful way. They appear to pick the people and organisations that will support their line of thought to benefit them, not necessarily the industry.

Perhaps it is time for the Government to keep it moving and make the changes needed for the long term goals not the band aids that have been used over the last couple of decades.

### ***Incompetent / Other***

A two tier qualification regime is in place where both exams are based on the same code and legislation. ***Negligent / Incompetent / Other***

44 charges are laid against a practitioner. Only 2 are proven by the investigator. ***Negligent / Incompetent / Other***

A discipline hearing identifies other people have committed offences but takes no action to bring them to justice. ***Negligent / Incompetent / Other***

False statements are produced at a hearing recorded by the lawyer for the investigator. ***Negligent / Incompetent / Other***

Block courses for apprentices are taken from being teaching sessions to being assessments. ***Negligent / Incompetent / Other***

Qualified industry trainers at a polytechnic become workshop supervisors. ***Negligent / Incompetent / Other***

A polytechnic does not have the capability to run courses for apprentices due to not having qualified instructors. ***Negligent / Incompetent / Other***

Apprenticeship fees increase by over 300% in a decade for less service. ***Negligent / Incompetent / Other***

An employer has 5 apprentices over a decade and none of the apprentices are on the same apprenticeship version supplied by the ITO. ***Negligent / Incompetent / Other***

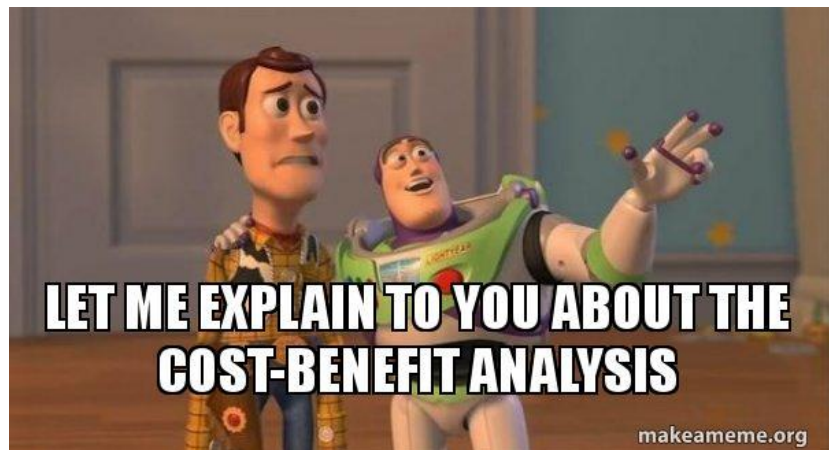
A qualification is in place for 40 years but there is no pathway of training to achieve the qualification. ***Negligent /***

The Government helping foot the bill for apprentices makes the cost benefit analysis look much better in that perhaps when the Government has money invested in the apprentices they may hold more people to account with regard to training to ensure they get value for their investment in the apprentices.

The Government is helping with the costs but there is still a lot to be done on the benefits as currently the Certifiers take all the responsibility and risk for supervision, and recent disciplinary action by the Board shows this is a huge risk that can break a person and their business.

There must be more benefits than just returning something to the industry by training the next generation of practitioners. It would help if there was trust in the training and qualification regime. We believe it is leadership required in this area, not misguided oversight. Let us know your thoughts.

### **THE COST OF REGULATION**



Every day we see money spent by the Government to support the wellbeing of New Zealanders. For example millions of dollars spent on sport which is good for participants and for spectators. We see money on welfare and on justice, and all of this spending comes from the tax payer, which we don't have a problem with, but we do have a problem with costs imposed on plumbing, gasfitting and drainlaying practitioners for the benefit of all New Zealanders.

It's like we are treated as though we have chosen the trade as a devoted follower of a plumbing, gasfitting and drainlaying faith, the way priests and monks do with their religious beliefs. We seem to be expected to make sacrifices for the good of all New Zealanders because we have chosen to be a practitioner in the plumbing, gasfitting and drainlaying industry.

For over a decade we have been fighting for equality with other industries and professions which has never eventuated. Every year more is expected of practitioners and Section 32 of the Plumbers Gasfitters and Drainlayers Act 2006 (the Act), which was instilled in the Act for the protection of practitioners, gets ignored.

In the words of the Controller and Auditor General in May 2014 regarding plumbers, gasfitters and drainlayers:

### **Incompetent / Other**

Competences are listed in qualifications but it's debateable if the competencies are part of sanitary plumbing, gasfitting or drainlaying. **Negligent / Incompetent / Other**

Questions are asked in exams that are based on old legislation or the answer schedule is wrong. **Negligent / Incompetent / Other**

A person who did not meet the standard for appointment to a Board is asked by the Ministry in charge of recruiting if they are aware of anyone from the LGBT community that would be suitable for the Board. **Negligent / Incompetent / Other**

Top level qualifications are granted by a Board to people who have never completed an apprenticeship in the relevant trades. **Negligent / Incompetent / Other**

An investigator withholds relevant evidence in a disciplinary hearing. **Negligent / Incompetent / Other**

CPD training is conducted overseas using industry money for a selected group. **Negligent / Incompetent / Other**

An exam paper is set that tests practitioners for things that are not sanitary plumbing gasfitting or drainlaying. **Negligent / Incompetent / Other**

A person's qualification progression in the gas industry is held up due to licensing being refused because they haven't done CPD imposed unlawfully under the 1976 Act. **Negligent / Incompetent / Other**

Legislation is implemented

*There is no doubt that the costs of regulation fall heavier on the group of trades that the Board regulates than some other regulated workers. The Board regulates a much smaller number of tradespeople than, for example, the Electrical Workers Registration Board or the Building Practitioners Board. It is entirely funded by tradespeople, and it has a unique role in prosecuting unregistered and unlicensed people carrying out unlawful work. The result is that costs to plumbers, gasfitters, and drainlayers are higher than the costs for some other tradespeople.*

A few years ago a member of the Regulation Review Committee stated that the benefit of being a registered tradesperson was that we get to work in a regulated industry where no one else can work or words to that affect.

We look back at the Regulatory Impact Statement for the enacting of the Plumbers Gasfitters and Drainlayers Act 2006.

**Summary of expected net impact Government.** Net benefit - No new costs for Government are expected. Benefits include:

- greater assurance of practitioner skill leading to reduced likelihood of future weather tightness claims
- increased monitoring capabilities which will provide greater assurance of Board and regulation performance.

**Industry.** Net cost – Introduction of competence based licensing will impose cost on practitioners. Benefits include:

- increased practitioner skill
- a greater availability of information from the Board.

**The Board.** Net cost – Introduction of increased reporting requirements will require the Board to improve existing administrative arrangements (estimated cost \$600,000). It will also impose ongoing costs on the Board. Benefits include greater information provision to facilitate Board decision making and increased efficiency and effectiveness in organisational operation.

**Consumers.** Net benefit – Cost implications for individual practitioners are expected to be minimal. In addition, these costs will be spread across clients resulting in minimal, if any cost increases to consumers. Benefits include:

- Greater assurance of practitioner skill leading to reduced likelihood of weather tightness problems and other more minor problems associated with practitioner workmanship
- Greater accountability of practitioners through increased ability to access information about practitioners from the Board.

So the introduction of competence based licensing lived up to the expectation of imposing costs on practitioners but what about the benefits of increased practitioner skill and a greater availability of information from the Board. We haven't seen any of that in fact the availability of information has gotten worse, because now if you want

where there is limited scope for holding a Board or their employees or contractors to account for wrong doing. **Negligent / Incompetent / Other**

A Board will not apologise or admit any wrong doing as it may leave them liable. **Negligent / Incompetent / Other**

Legislation is imposed where there is no compensation for victims of wrong doing by the Board, employees or contractors. **Negligent / Incompetent / Other**

Travel is planned for the Chair person of a Board and their CEO to go to Germany to attend a trade fair and conference using industry money. **Negligent / Incompetent / Other**

The CEO of a Board travels overseas on fact finding missions pertaining to training and apprenticeships using industry money. **Negligent / Incompetent / Other**

Board meeting minutes are released with personal information breaching the Privacy Act. **Negligent / Incompetent / Other**

It is implied a person who reported a privacy breach by a Board has manipulated the document. **Negligent / Incompetent / Other**

Legislation is imposed that the industry it regulates has no say in Board appointments. **Negligent / Incompetent / Other**

A Board Chairperson advises the Ministry doing renewal of Board members contracts if they are suitable for renewal. **Negligent / Incompetent / Other**

any historical information such as Annual Reports you have to put in an Official Information Act request.

So this competency based Act was supposed to do all these wonderful things and you will note weather tightness gets mentioned twice as tradespeople cop the blame for the leaking building saga when all tradespeople know it was materials, design and accountability that caused the leaking building problems.

So as practitioners we got the blame and the cost of that was the implementation of the Plumbers Gasfitters and Drainlayers Act 2006 (the Act) with its raft of benefits for all except the practitioners regulated by the Act.

The Act has empowered the Board to regulate the industry as it sees fit with very little if any accountability. The practitioners pay for the regulation and for holding everyone in New Zealand accountable if they choose to do plumbing, gasfitting or drainlaying when not authorised to do so.

When we look at the justice system taxpayers pay for the courts, the police, the prisons, the probation service and as an industry and as tax paying practitioners we all contribute to the regulation and policing of all New Zealanders and visitors to New Zealand. But when it comes to the regulation of plumbing, gasfitting and drainlaying we as practitioners exclusively pay for that policing and that's because of the funding model imposed by the Government and the Act.

If a person chooses to be police officer do we expect them to pay to police all New Zealanders, NO we don't it comes out of every New Zealanders tax so why do we as plumbers, gasfitters and drainlayers have to pay to bring to justice those who choose to do plumbing, gasfitting and drainlaying without authority.

One dollar per person in New Zealand annually would fund the Board to their current limited standard. Two dollars would fund the Board and give them the resources to do what the legislation says they should be doing by policing the public as well as registered practitioners.

So why do thousands of registered practitioners in the plumbing gasfitting and drainlaying industry pay hundreds of dollars annually each to be part of the regulated industry. The simple answer is no one knows but the Act gives the Board and the Government the power to impose it on practitioners. Is it because of the misguided belief in the purpose of the Regulatory Impact Statement mentioned above?

Nearly a decade ago the then Acting Registrar of the Board gloated to a select committee that the Board had a 100% success rate with its prosecutions. We believe there was a reason for that, being that most practitioners pleaded guilty for fear of huge fines and costs. Recent disciplinary action by the Board again highlighted the risk of defending a prosecution put forward by the Board's investigators.

We note the same week a member of the public got prosecuted for doing illegal gasfitting where people could have been injured and all they got a was a \$2,500 fine and \$130 in costs. This doesn't seem fair compared to the Board's recent fine and costs imposed on a practitioner



A Board Chairperson sits on the recruitment panel for a Board appointed by a Minister where person preferences can be imposed. **Negligent / Incompetent / Other**

A Board CEO cuts off communication with an industry group because they are critical of their work and direction. **Negligent / Incompetent / Other**

A new Board CEO rebuilds relationships with an industry organisation but uses false information to exclude that industry group when they are critical of their work and direction. **Negligent / Incompetent / Other**

An industry membership organisation is excluded from advisory groups because they are a breakaway group for a major industry membership organisation. **Negligent / Incompetent / Other**

CPD training is conducted but is refresher training as it is generally not new information and is not really necessary. **Negligent / Incompetent / Other**

A Board, an ITO and an industry membership organisation form a cartel to control the direction of an industry. **Negligent / Incompetent / Other**

A Board, ITO and an industry membership group attempt to implement an accelerated apprenticeship scheme which is nothing more than a Pre-trade which previously had been restricted by the entire industry. **Negligent / Incompetent / Other**

A Board confirms that it is legally unable to regulate exempt people, but is able to regulate their supervisor. **Negligent /**

being a \$7,200 in fines and \$36,100 in costs.

He is also to undertake further training in relation to certifier responsibilities and the Building Code. Good luck on finding relevant training at Certifier level as we recall Paul Gee had to have a course written so he could meet the Board's requirements.

The Board reported the case cost \$71,000 for the conduct of the investigation and hearing. Imagine the uproar if costs like this were handed on to offenders in the normal justice system. Remember Paul Gee's case cost the Board over \$200,000!!!

The Board claims the average cost of an investigation and hearing by the Board is \$13,469. That's a cost we as practitioners pay. We would presume the cost to prosecute in the courts would be similar if not more.

The above prosecution of a Certifying Plumber found him guilty of charges of negligent and incompetent sanitary plumbing and breach of an enactment in relation to work carried out.

From what has been reported it would appear that due to the practitioners Certifying Registration he has been held to account for not supervising the work of other trades and designers and architects. Apparently the investigator told the hearing the buck stopped with the certifying plumber.

This creates a huge conundrum where a person holds a qualification where there is no pathway to getting that qualification and where they are expected to take responsibility for the designs by architects, for the failures of others on projects to check work, for other trades that work on the projects and also for materials used. They also risk breaching other enactments in relation to work carried out. This could be endless.

Managing risk is very important in these changing times so we believe all practitioners need to do a cost benefit analysis. Weigh up the cost of being in the plumbing, gasfitting and drainlaying industry against the benefits. Currently the costs and risks far outweigh the benefits.

We are not saying leave the industry what we are saying is ensure you are aware of the risk and if you own a business make sure you are getting a return to cover the risk.

Think about the real cost to the practitioner. Could you afford to pay a \$7000 fine and \$32000 in costs, for the Board, plus your own legal fees? If you were in business could you afford to lose \$39,000 plus your legal costs out of your profit? We estimate that would be the profit on about \$240000 in turnover. Add on defence costs and time off work and you would be looking at another \$30000 in costs and that's about \$180000 in turnover. A total of around \$420,000 in turnover.

Are you sick of seeing people being referred to as incompetent? We do CPD and the Board deems us competent but it's just a snapshot in time and has been dealing with historical issues not current or perceived advancements in technology.

Are we really accountable for some of the issues we are being held accountable for? Look at supervision. We note a few of the punishments

## **Incompetent / Other**

A Board CEO does not hold staff to account for relevant issues mentioned above. **Negligent / Incompetent / Other**

A Board does not hold a Board CEO to account for relevant issues mentioned above. **Negligent / incompetent / Other**

A Minister does not hold a Board to account for relevant issues mentioned above. **Negligent / Incompetent / Other**

The Government does not hold a Minister to account for relevant issues mentioned above. **Negligent / Incompetent / Other**

After doing the Quiz we found negligent seems to be the purposeful act where the person or persons have the knowledge and skills but don't apply them.

Incompetent appears to be where they don't have the knowledge and skills and continue on anyway.

Other to us was issues of deceit, carelessness and dishonesty.

For us negligent was the clear winner followed closely by incompetent and then other.

How did you get on? Please let us know.

dished out by the Board are about responsibilities. For example refreshers on the responsibilities of a certifier with regard to supervision. The Board's policy is all about responsibilities of a supervisor. Practitioners are being held to account for supervision or lack of it but where is the training on this area? It's one thing to know what the responsibilities are but it's another to actually have the skills to actually do it.

You could use the example of the Certifying qualifications the Board gave to people who had never done an apprenticeship in the relevant trades, and sure they may know what the responsibilities are and what the legislation and regulations say, but can they actually do the job? Can they fulfil the practical functions of a Certifier? Likewise with the supervision requirements its one thing to know what is required but it's another to have the skills to actually do it.

We have seen charges laid by the Board where they claim people should have known, but is knowing actually doing? Does knowing something give you the skills to do it, and if you haven't been trained can you be held accountable or even disciplined for it?

Supervision requirements have been prescribed in Registration and Licensing Gazette notices published by Board. These prescribed requirements and the supervision guidelines developed by the Board form the basis of what practitioners are held accountable to.

The Board have said *"These are guidelines only, as opposed to rules, and, are therefore not binding. However, as best practice statements, they will be used by the Board to assist it in determining when to take action against individuals for not exercising proper supervision."*

So there is a lot happening and the Act isn't helping practitioners who seem to be getting called negligent and incompetent more often. We feel this actually brings discredit on the industry. The thesaurus lists negligence can be - neglect, carelessness, inattention, disregard, laxity, slackness, casualness, or forgetfulness and incompetent can be - useless, inept, bungling, lacking ability, unskilled, ineffectual, or hopeless.

It seems like in their hearings the Board can't decide if a person is negligent or incompetent so they get hit with both. To us it seems like it is about the state of mind a bit like the difference between murder and manslaughter where the only difference is intent to do the act.

This is all serious stuff so you may want to have a go at the NIO quiz in the side column which could help explain the difference.

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