



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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Statutory Review Report of the Plumbers, Gasfitters, and Drainlayers Act 2006

**Findings from the statutory review of the operation of
the Plumbers, Gasfitters, and Drainlayers Act 2006**

March 2021

Contents

Executive summary.....	5
Part 1: Introduction	6
1. Overview	7
1.1. ABOUT THE REVIEW	7
1.2. ABOUT THIS REPORT	8
1.3. DELIVERABLES	8
1.4. RECOMMENDATIONS	8
2. Review phases.....	9
3. The PGD Act in context.....	10
3.1. POLICY FRAMEWORK FOR OCCUPATIONAL REGULATION	10
3.2. PRIMARY OBJECTIVE OF REVIEW	10
3.3. PURPOSE AND SCOPE OF THE PGD ACT	10
3.4. WIDER REVIEW OF BUILDING SYSTEM LEGISLATION.....	11
3.4.1. <i>Phase One – amendment Bill changes being progressed</i>	11
3.4.2. <i>Phase Two – Building System Legislative Reform Programme</i>	12
4. Review of how the PGD Act is operating	13
5. Review methodology.....	14
5.1. ISSUES IDENTIFIED BEFORE THE LAUNCH OF THE REVIEW	14
5.2. TRIAGING THE KNOWN ISSUES	14
5.3. WORKING WITH STAKEHOLDERS.....	14
5.4. ASSESSMENT CRITERIA	15
5.5. KEY AREAS TO BE ADDRESSED	15
5.5.1. <i>Exemptions</i>	15
5.5.2. <i>Supervision quality</i>	16
5.5.3. <i>Self certification</i>	16
5.5.4. <i>Definitions</i>	16
5.5.5. <i>Complaints, Discipline and Prosecution</i>	16
5.5.6. <i>PGD Board composition</i>	16
5.5.7. <i>'Fit and proper person' test</i>	16
Part 2: Findings and Recommendations	17
6. Exemptions.....	18
6.1 BACKGROUND	18
6.1.1. <i>Registration and Licensing</i>	18
6.1.2. <i>PGD Act Exemptions</i>	18
6.1.3. <i>Building System Legislative Reform Programme</i>	18
6.2. ISSUES	19
6.2.1. <i>Exemptions for householder and rural plumbing</i>	19
6.2.2. <i>Exemptions for work carried out under supervision</i>	19
6.3. WORK UNDERWAY	20
6.3.1. <i>Building System Legislative Reform Programme – Phase Two</i>	20
6.3.2. <i>Potential new class of registration</i>	20
6.4. RECOMMENDATIONS	20
6.5. TRANSITIONAL ARRANGEMENTS	21

7. Supervision quality	22
7.1. BACKGROUND	22
7.2. ISSUES	22
7.2.1. <i>Variability in the quality of supervision resulting in non-compliant work</i>	22
7.2.2. <i>Some certified practitioners may not have required skills and experience</i>	23
7.2.3. <i>Oversight of compliance with supervision requirements</i>	23
7.3. ANALYSIS	23
7.4. WORK UNDERWAY	24
7.4.1. <i>Level 5 NZQA specialist qualifications</i>	24
7.5. RECOMMENDATIONS	24
THE QUALITY OF SUPERVISION IS AN IMPORTANT ISSUE THAT NEEDS TO BE ADDRESSED; HOWEVER, IT DOES NOT REQUIRE LEGISLATIVE CHANGES. INSTEAD, THESE ISSUES CAN BE MANAGED THROUGH THE MINISTER FOR BUILDING AND CONSTRUCTION'S OUTPUT AGREEMENT WITH THE PGD BOARD.	24
8. Self-certification	25
8.1. BACKGROUND	25
8.2. CURRENT PRACTICE FOR CERTIFYING PLUMBING AND DRAINLAYING WORK	25
8.3. ISSUES	26
8.3.1. <i>Quality and consistency of training</i>	27
8.3.2. <i>Lack of useable information about inspection outcomes</i>	27
8.3.3. <i>Recordkeeping and auditing</i>	27
8.4. ANALYSIS	27
8.4.1. <i>Self-certification</i>	28
8.4.2. <i>Sapere recommendation</i>	28
<i>Stakeholder opinion</i>	29
8.4.3. <i>Further work is required</i>	29
8.5. RECOMMENDATIONS	30
9. Definitions	31
9.1. BACKGROUND	31
9.2. ISSUES	31
9.2.1. <i>Drain definition – overlap between sanitary plumbing and drainlaying</i>	31
9.2.2. <i>Drainlaying definition – excavation work</i>	32
9.2.3. <i>Gasfitting definition – exclusions</i>	32
9.2.4. <i>Sanitary plumbing definition</i>	33
<i>On-farm reticulation systems</i>	33
9.3. ANALYSIS	34
9.4. WORK UNDERWAY	34
9.4.1. <i>Regulatory System Amendment Bill 3</i>	34
9.5. RECOMMENDATIONS	35
10. Complaints, discipline and prosecution	36
10.1. BACKGROUND	36
10.2. ISSUES	36
10.2.1. <i>Restrictions on who can make a complaint</i>	36
10.2.2. <i>The disciplinary process lacks flexibility</i>	36
10.2.3. <i>Infringement offences are not being used effectively</i>	37
10.2.4. <i>Funding of prosecutions and infringements</i>	38
10.2.5. <i>Poor conduct that may bring the industry into disrepute</i>	38
10.2.6. <i>Financial penalties are out of date</i>	39
10.2.7. <i>Cost of disciplinary levy</i>	39

10.2.8.	No sanctions for not participating in competence review.....	40
10.2.9.	Administration of register	40
10.3.	ANALYSIS.....	40
	<i>The issues identified in relation to the complaints, discipline and penalty arrangements for plumbers, gasfitters and drainlayers are interlinked.</i>	<i>40</i>
10.3.1.	Enable the Registrar to make a complaint	40
10.3.2.	Reducing the quorum of PGD Board members for disciplinary hearings	41
10.3.3.	Addressing serious poor conduct or behaviour that may bring the industry into disrepute 41	
10.3.4.	Work to consider increasing financial penalties.....	41
10.3.5.	Review the disciplinary levy.....	42
10.3.6.	Competence review	42
10.3.10	IMPROVING ADMINISTRATIVE PROCESSES.....	42
10.4.	RECOMMENDATIONS	42
PGD Board Composition		43
10.5.	BACKGROUND	43
10.5.1.	Composition of the PGD Board.....	43
10.5.2.	Office of the Auditor-General review into the PGD Board.....	43
10.6.	ISSUES	44
10.6.1.	Achieving a diversity of skills, experience and perspectives	44
10.7.	ANALYSIS.....	45
10.8.	RECOMMENDATIONS	45
11. 'Fit and proper person' test		46
11.1.	BACKGROUND	46
11.2.	ISSUES	46
11.2.1.	The 'fit and proper person' test is first considered at registration	46
11.2.2.	The PGD Board's 'fit and proper person' test focuses on criminal convictions	46
11.3.	ANALYSIS.....	47
11.4.	RECOMMENDATIONS	47
Part 3: Summary and Conclusions		48
12. Conclusions		49
13. Summary of recommendations		50
	<i>Minor and technical regulatory changes</i>	<i>50</i>
	NON-REGULATORY CHANGES.....	51
	CHANGES ALREADY BEING PROGRESSED THROUGH OTHER REGULATORY LEVERS	51
Annexes		53
Annex 1 – Terms of reference		54
Annex 2 – List of Acronyms		55
Annex 3 – Minor matters to be addressed		56
Annex 4 – PGD Board Memorandum of accounts		57

EXECUTIVE SUMMARY

The Ministry of Business, Innovation and Employment (MBIE) has a statutory obligation to review the *Plumbers, Gasfitters, and Drainlayers Act 2006* (PGD Act) under section 187 of that Act. The primary purpose of the PGD Act is to protect the public from harm by ensuring that services are performed with reasonable care and skill.

The objective of this review is to assess the operation of the PGD Act to consider whether any amendments are necessary. Under section 187 of the Act, MBIE is required to report on the review to the responsible Minister. The Minister must then present a copy of the report provided on the PGD Act review to the House of Representatives as soon as practicable after receiving it.

The review found that the PGD Act is generally working well and the recommended changes to the legislative framework focus on improvements to the PGD Act.

Focus areas for the review were determined at the early stages of the review process. It was clear there was a need for change in seven key areas: supervision quality; self-certification; definitions; the complaints, discipline and prosecution regime; the composition of the Plumbers, Gasfitters and Drainlayers Board (PGD Board); and the 'fit and proper person' test.

MBIE engaged early with industry associations, occupational bodies, regulatory partners, and other key stakeholders on these issues. This consultation on the issues has informed the recommendations in this Report.

The recommendations fall into four categories of work: minor and technical regulatory changes, non-regulatory changes; changes that are already being progressed through existing work streams; and changes that need to be further explored before being progressed. The report also identifies other levers of change to address the key focus areas that don't require legislative changes. This includes the Minister's Output Agreement with the PGD Board.

Although not every recommendation must be accepted for the operation of the PGD Act to be improved, caution should be taken with considering any one recommendation in isolation. This is particularly the case for recommendations made to improve the complaints, discipline and prosecutions regime.

PART 1: INTRODUCTION

CHAPTERS IN PART 1:

1 Overview

2 Review phases

3 The PGD Act in context

4 Review of how the PGD Act is operating

5 Review methodology

1. Overview

1.1. About the review

The work undertaken in this review was a response to a mandatory requirement to review the *Plumbers, Gasfitters, and Drainlayers Act 2006* (PGD Act). Section 187 of the PGD Act requires the Ministry responsible for administering the PGD Act to carry out a review three years after the commencement of the reviewing section. This document constitutes the report of the findings of the review, in accordance with the Terms of Reference found in Annex 1.

The approach to the review was based on internationally accepted best practice principles. In addition to a thorough reading and examination of the text of the PGD Act, and a review of literature and comparable Acts from other jurisdictions; the review featured the following key elements:

- Early engagement with key industry stakeholders to ensure both a broad and deep understanding of how the PGD Act is currently operating for its users;
- Face-to-face meetings with key stakeholders to identify new issues; and
- A series of face-to-face meetings and workshops with stakeholders to provide feedback on analysis as the work progressed.

There was strong engagement and participation by stakeholders, and the face-to-face meetings resulted in respectful dialogue and debate. The review was conducted in an open and transparent manner.

The following key stakeholders were involved in these engagements:

Stakeholders	
Local Government	Local Government New Zealand Society of Local Government Managers Building Consent Authorities (BCAs)
Occupational bodies	PGD Board The Electrical Workers Registration Board (EWRB)
Industry bodies	Home Owners and Buyers Association Plumbing, Gasfitting and Drainlaying Federation Master Plumbers New Zealand Milking and Pumping Trade Association (MPTA) Irrigation New Zealand Building Officials Institute of New Zealand (BOINZ) GasNZ
Government	Worksafe Ministry of Health Accident Compensation Corporation

1.2. About this report

This report is structured as follows:

Part 1 (Chapters 1-5): looks at the background to the review, the PGD Act in context, and the approach taken to the review.

Part 2 (Chapters 6-12): examines seven key focus areas identified as needing change; and provides commentary and analysis for each on current practice, stakeholder feedback, and whether (and how) operations could be improved.

Part 3 (Chapters 13-14): covers the report's summary and conclusions and includes the full summary of recommendations.

Annexes (Annexes 1-4): include information that is ancillary or related to the main report, such as the Terms of Reference for undertaking this review, and a list of acronyms used in the report.

1.3. Deliverables

The reviewers were tasked with preparing this report for submission to the Minister responsible for the administration of the PGD Act, ensuring the report includes:

- an executive summary;
- a summary of the research and analysis of the legislative provisions;
- a summary of the consultation process, including information regarding participant groups, issues and concerns, emerging themes, and recommendations from stakeholders; and
- detailed findings and recommendations for the Minister's consideration.

1.4. Recommendations

Based on the work done as part of this review, the Ministry of Business, Innovation and Employment's (MBIE) primary finding is that the PGD Act is working well overall. However, it would benefit from some amendments to improve its operation and reflect the experience gained since its implementation. Recommendations range from minor adjustments to more substantive changes, for example to definitions, exemptions, and penalties as a result of the review.

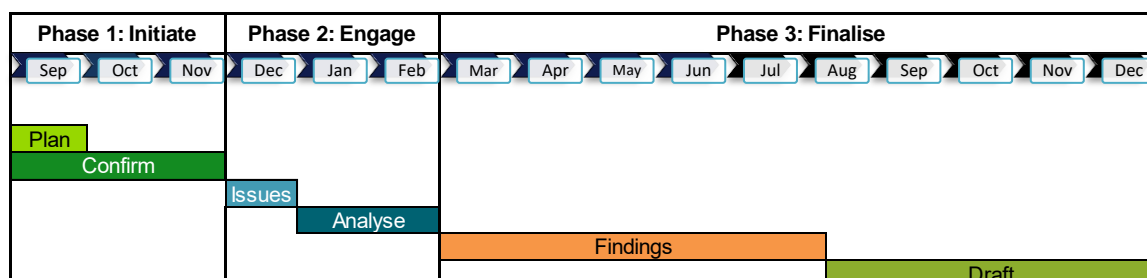
The recommendations being made in this report fall into four categories:

1. Minor and technical regulatory changes;
2. Non-regulatory changes;
3. Changes that are already being progressed through other work streams; and
4. Changes that require further work before being implemented

In deciding whether to adopt the recommendations in this report, there are risks to taking a 'pick and mix' approach. A full summary of all the recommendations can be found in Part 3 of this report at chapter 14. The recommendations can also be found, in context, in the discussion of each of the identified issues in Chapters 6 to 12.

2. Review phases

The PGD Act review was planned across three broad phases, each broken into activity ‘stages’ as shown below:



The review was timed in such a way that it could maintain synergies with work taking place in the main Building Sector Legislation Review Programme (BSLRP), and take advantage of lessons learned in that work stream.

Key Phase	Indicative timing
Phase 1: Initiate	September to mid November 2019

The **planning** stage ensured a sound governance structure; established the Terms of Reference; and set out the project’s critical stages, deliverables, and timelines.

The **confirmation** stage asked for assurance that the review approach and scope were appropriate, and included seeking the Minister’s agreement on the project’s proposed Terms of Reference, identified stakeholders, and timelines.

Phase 2: Engage	November 2019 to February 2020
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The **issues** stage looked to challenge any assumptions, consolidate findings, and gather information on possible new issues.

The **analysis** stage identified and analysed how issues might be addressed.

Phase 3: Finalise	Late February 2020 to March 2021
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The **findings** stage made recommendations based on the previous analysis and included a briefing to the Minister reporting on the findings.

The **drafting** stage resulted in a Cabinet paper with recommendations, including that the report be tabled in the House of Representatives.

3. The PGD Act in context

3.1. Policy framework for occupational regulation

The policy framework for occupational regulation aims to protect the public from the risks of substandard work, by providing assurance that practitioners meet approved standards, and that effective action is taken against those that do not meet those standards.

Occupational regulation is governed by best practice principles requiring:

- a clear purpose and roles;
- appropriate skills and competence;
- independence, accountability, transparency and consistency; and
- a positive culture and good relationships.

This review set out to ensure that the PGD Act is fit for purpose and in line with best practices.

3.2. Primary objective of review

The primary objective was to review if the purpose of the PGD Act is being achieved; and to ensure that the regulatory framework for plumbers, gasfitters, and drainlayers is fit for purpose by checking that:

- the regulation is proportionate to the risks to public safety and wellbeing;
- practitioners are providing services with reasonable care and skill;
- practitioners are operating within their areas and levels of expertise; and
- practitioners can be held to account for substandard work and poor behaviour.

3.3. Purpose and scope of the PGD Act

The purpose of the PGD Act is to protect the health and safety of the public by ensuring the competency of people engaged in providing the regulated services. The PGD Act provisions cover the following:

- restrictions on and exceptions for doing PGD work;
- registration, licensing and classes;
- a register of practitioners;
- complaints, discipline and investigations;
- offences;
- membership, functions, and powers of the PGD Board; and
- fees, levies, and forms.

The PGD Board does this by establishing and administering a registration and licensing system for plumbers, gasfitters, and drainlayers which includes competency development, discipline, and prosecution.

3.4. Wider review of building system legislation

This review took place in the context of wider building legislation work being undertaken as part of the Building System Legislative Reform Programme (BSLRP).

BSLRP proposes to make major changes to New Zealand’s building law to improve the efficiency and quality of building work, and to provide fairer outcomes when things go wrong. These changes are being progressed in phases.

Phase One	Phase One includes changes to building methods and products, the building levy, offences and penalties, and public notification
Phase Two	Phase Two includes proposals for change to ensure people are accountable and skilled for the work they do through occupational regulation

3.4.1. Phase One – amendment Bill changes being progressed

Phase One focuses on building products and methods of construction and has resulted in the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill (the Bill). The Bill is currently before the House.

Regulations will be developed in consultation with stakeholders and material will be prepared ahead of implementation. Changes to the building levy, offences and penalties, and public notification will be the first changes to be given effect through the Bill.

Building methods and products

Agreed changes	Objectives
<ul style="list-style-type: none"> • Manufacturers and suppliers of building products will need to make a minimum level of information publically available. • It will be an offence not to comply with these information requirements, or to provide false or misleading information. • A new modular component manufacturer scheme (MCM) for prefabrication and off-site manufacturing will be introduced. • CodeMark, the existing product certification scheme, will be strengthened. MBIE will approve product certificates and certification bodies, as well as investigate, suspend, or revoke them. 	<ul style="list-style-type: none"> • People have better information to make good decisions about products and products are used in the way intended. • People are accountable for building methods and products, and people will know their roles and responsibilities. • Consenting may be faster as BCAs will have better information needed to ensure compliance. • Risky methods and products are more likely to be kept off the market with warnings and bans. • Consenting for MCM is easier, more efficient, and consistent between BCAs. • Confidence in the CodeMark scheme increases, making consenting more efficient and buildings more safe and durable. • The quality of building work improves.

Building levy

Agreed changes	Objectives
<ul style="list-style-type: none">• Broaden the purposes for which the levy can be spent.	<ul style="list-style-type: none">• To support the Chief Executive to carry out functions related to the broader building regulatory system.

Offences, penalties and public notification

Agreed changes	Objectives
<ul style="list-style-type: none">• Higher penalties for individuals and organisations will apply.• Enforcement agencies will have 12 months (moved from six months) to lay a charge.• Changes to the <i>Building Act 2004</i> (Building Act) can be notified online.	<ul style="list-style-type: none">• Deter sub-standard work and poor behaviour from people and organisations.• Allow time for thorough investigative work.• Recognise people get information through multiple channels.

3.4.2. Phase Two – Building System Legislative Reform Programme

Phase Two focuses on the professionals in the sector. It will progress reforms to occupational regulation of engineers and practitioners in the building and construction sector, so people can have more confidence in these professions and their work. It will respond to issues identified by MBIE, members of the sector and others in the buildings system.

The overarching objectives of the Phase Two reforms are to ensure:

- Practitioners are providing services with reasonable care and skill.
- Practitioners are operating within their areas and levels of expertise.
- Practitioners can be held to account for substandard work and poor behaviour.
- The regulations is proportionate to the risks to public safety and wellbeing.

Where time allows, amendments to improve the operation of the PGD Act will be incorporated as part of Phase Two.

4. Review of how the PGD Act is operating

Section 187 of the PGD Act requires that the Ministry responsible for administering the PGD Act reviews the operation of the PGD Act after three years of its commencement; consider any legislative amendments which are necessary or desirable; and prepare a report on that review.

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.

Based on the work done as part of this review, MBIE's primary finding is that the PGD Act is working well overall, although some key areas would benefit from change to improve how they operate and to reflect the experience gained since the PGD Act was implemented. These key areas cover:

- exemptions;
- supervision quality;
- self-certification;
- definitions;
- complaints, discipline and prosecution (CDP);
- PGD Board composition;
- the 'fit and proper person' test.

5. Review methodology

5.1. Issues identified before the launch of the review

Work carried out with key stakeholders in the first half of 2018 helped identify six initial key areas on which to focus:

Definitions – some definitions of plumbing, gasfitting, and drainlaying work are unclear or need updating.

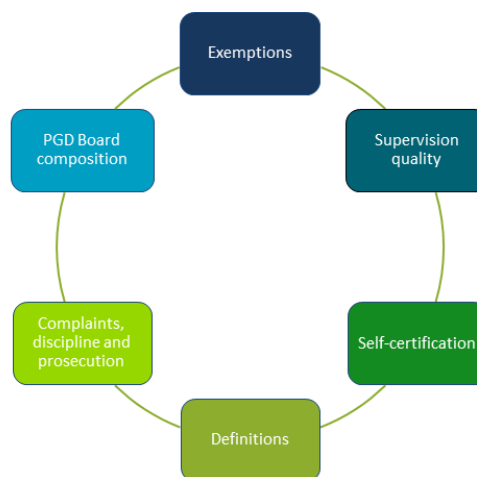
Exemptions – some exemptions are redundant and/or could pose risks to health and safety.

Supervision – there are opportunities for the PGD Board to improve training and guidance to supervising practitioners.

Self-Certification – inconsistent approach to self-certification, with gasfitters permitted to self-certify but not plumbers and drainlayers.

Complaints, Discipline and Prosecution – lack of flexibility with the process which is contributing to the cost of disciplinary levy fees, and the PGD Board having to deal with all complaints (even if they are old or not supported by any evidence), internal staff unable to lodge complaints, and the infringement regime not being used.

PGD Board composition – it is unclear whether the PGD Board competency requirements under the PGD Act are aligned with best practice for occupational regulation.



5.2. Triaging the known issues

Before the review was launched, some of these issues had been triaged into those more pressing matters to be progressed through the Building System Legislative Reform Programme, and those that could be progressed separately through this review. Issues that have been accelerated include the exemptions for householder and rural plumbing and carrying out work under supervision. Minor technical changes to definitions that don't require significant policy changes have also been progressed separately to this review.

5.3. Working with stakeholders

Once the review was formally launched, there was a need to re-engage with stakeholders to confirm existing issues, identify new issues, and develop early options on how to address those issues.

There was general consensus that MBIE had correctly represented the issues already identified. Significant value was added by key stakeholders during the face-to-face meetings.

This included:

- Adding detail to current issues. For example, for the PGD Board composition issue, if the quorum for disciplinary hearings is reduced, to make sure that the quorum still has the requisite technical competency.
- Putting theoretical issues into a real-world context. For example, for the self-certification issue, understanding that the issuing of construction producer statements (PS3) is going on in a piecemeal manner, and enabling a contractor to issue a PS3 to confirm their work is in accordance with the consented plans and Building Code is self-certification by default.
- A better understanding of the background of different issues. For example, the effect that the Review of Vocational Education is having on the drop-off in the number of apprentices, and other labour-supply related issues.
- Bringing new issues to the table, such as the 'fit and proper person' test not taking place until registration, when it might be more useful to have this test before people even enter training.

5.4. Assessment criteria

The following assessment criteria was utilised in recommending opportunities to improve the operation of the PGD Act (equal weighting was given to each criterion):

Effectiveness

- Will the change reduce risks to public health and safety?

Efficiency

- Will the change produce a net financial benefit (including set up, transition, and ongoing costs, and costs to practitioners, the public, and government)?

Feasibility

- Can the change be practically implemented?

Transparency/clarity

- Will the change result in a clearer understanding of the legislation and reduce anomalies in its provisions?

Simplicity/ease of administration

- Will the change reduce the burden of administration on regulated parties and the regulator?

5.5. Key areas to be addressed

Seven key areas were confirmed following engagements with key stakeholders.

5.5.1. Exemptions

Some of the current exemptions under the PGD Act create arbitrary gaps in regulation, and make it hard to hold some people to account when they complete work that would otherwise be restricted. These exemptions create unfair situations where some contractors or homeowners can gain an exemption from regulatory requirements while others are bound by them.

Exemptions are discussed in Chapter 6 of this report.

5.5.2. Supervision quality

The quality of supervision and how this may lead to non-compliant work was raised by a number of industry stakeholders as an issue. Contributing factors to this issue includes a lack of appropriate skill and experience among certified practitioners to provide quality supervision. Legislative changes are not required as the lever to address these issues relate to improving training and professional development opportunities.

Supervision quality is discussed in Chapter 7 of this report.

5.5.3. Self certification

How plumbers and drainlayers have their work certified has been raised as an opportunity to align with practices of gasfitters and electrical workers. MBIE raised concerns about plumber and drainlayer industry readiness to self-certify their work. An independent review was conducted by Sapere to inform recommendations in this section.

Self-certification is discussed in Chapter 8 of this report.

5.5.4. Definitions

Issues were identified with a number of aspects of the definitions of restricted plumbing, gasfitting and drainlaying work. The definitions had created ambiguity between the trades and were potentially capturing work that should not be restricted.

The definitions of plumbing, gasfitting, and drainlaying work under the PGD Act are unclear in places, such as some milking and pumping piping installations and some simple gas connections (or they cover some work that is low risk and may not need regulation).

Definitions are discussed in Chapter 9 of this report.

5.5.5. Complaints, Discipline and Prosecution

A number of issues were identified with the processes for complaints, discipline, and prosecution. These range from how the PGD Board is funded to prosecute, to who the PGD Board is responsible for prosecuting. There have been a range of issues for other occupational boards on this matter, and there are benefits to addressing these collectively.

The complaints, discipline, and prosecution regime is discussed in Chapter 10 of this report.

5.5.6. PGD Board composition

The legislative settings for the PGD Board appointments are prescriptive and limit the flexibility needed to ensure the composition of the PGD Board and competency reflects current challenges and opportunities.

The composition of the PGD Board is discussed in Chapter 11.

5.5.7. 'Fit and proper person' test

The purpose of the 'fit and proper person' test is to ensure the PGD Board is protecting the health and safety of members of the public and regulating who can do sanitary plumbing, gasfitting and drainlaying work. However, the PGD Board highlighted the difficulty of achieving this when the test is only conducted at registration and considerations are restricted to criminal convictions. The 'fit and proper person' test is discussed in Chapter 12.

PART 2: FINDINGS AND RECOMMENDATIONS

CHAPTERS IN PART 2:

6 Exemptions

7 Supervision quality

8 Self-certification

9 Definitions

10 Complaints, discipline and prosecution

11 PGD Board composition

12 'Fit and proper person' test

6. Exemptions

6.1 Background

6.1.1. Registration and Licensing

Licensing under the PGD Act grants an exclusive right to perform certain tasks, as specified under that Act. Plumbers, gasfitters, and drainlayers have to be registered and licensed by the PGD Board to undertake restricted work. However, the level of work they can undertake depends on their class of registration and licence.

There are currently three classes of registration:

- **Certifying** – this is the highest qualification available and demonstrates that the Certifier possesses the advanced competencies required to test and certify their own work and the work of anyone they supervise.
- **Tradesman** – for those who have demonstrated they possess the fundamental competencies required to work in their trade, but must be supervised by a Certifying person who is ultimately responsible for ensuring work is done competently.
- **Journeyman** – for those who have not passed the PGD Board’s relevant licensing exam but have completed their qualification.

Once a tradesperson is registered with the PGD Board, they can apply for a New Zealand practising licence to carry out restricted work depending on their class of registration.

6.1.2. PGD Act Exemptions

The PGD Act provides 11 exemptions that allow people to perform specific work without meeting the PGD Board’s registration and licensing requirements. While people may seek exemptions to complete restricted work without a licence, they are still required to meet the requirements of the Building Code and meet any building consent requirements. Section 27 of the PGD Act requires exemption holders to work within the limits prescribed by any regulation.

Some restricted sanitary plumbing work may be undertaken without relevant qualifications under an exemption for householders and some rural areas. Additionally, some tradespeople may also undertake restricted sanitary plumbing, drainlaying, or gasfitting work without any relevant qualification provided that they work under supervision.

The exemptions fall into three broad categories:

- **Exemptions for specified areas** – sanitary plumbing exemptions may apply for some householders in specified areas, and in specific rural districts. They apply in places approved by the Minister for Building and Construction after consulting a local authority.
- **Exemptions for work done under supervision** – these exemptions cover sanitary plumbing, drainlaying and gasfitting.
- **General exemptions** – these generally relate to certain gas installations or the conveying of gas and may require the approval of the PGD Board or any gas operator.

6.1.3. Building System Legislative Reform Programme

In March 2019, MBIE undertook stakeholder engagement on exemptions under the PGD Act as part of the Building System Legislative Reform Programme. Two proposals in particular were

discussed: repealing householder and rural areas exemptions; and repealing exemptions that allow anyone to complete restricted plumbing, gasfitting, and drainlaying work under supervision. Insights from these engagements have informed the issues identified and the recommendations made in this section.

6.2. Issues

6.2.1. Exemptions for householder and rural plumbing

Householder and rural exemptions create inconsistency in regulation, allowing some contractors or homeowners to complete restricted work that cannot be regulated by the PGD Board. These exemptions are a legacy of the previous *Plumbers Gasfitters, and Drainlayers Act 1976* (the 1976 Act). They recognised possible labour shortages, geographic limitations and the distance and time involved for tradespeople to reach some properties in the past.

These exemptions are now considered outdated and infrequently used. Work conducted by the former Department of Building and Housing with BCAs suggests that the knowledge and use of these exemptions is not widespread, with no new exemptions being approved since 1994.

Stakeholder feedback:

The PGD Board indicated that these exemptions also make it difficult to verify or discipline unregistered people who complete work that would otherwise be restricted, where by the work undertaken does not meet the requirements of the Building Code.

Feedback received by MBIE indicates that exemptions are not usually promoted by councils or BCAs, and are not thought to be widely used. MPTA see these exemptions as a means for their members to carry out on going farm reticulation services captured under the definition of 'sanitary plumbing'. However, there is limited utility in this belief as only one rural exemption has ever been granted (for Waimea county, now part of Tasman District), and repealing the exemptions will have little impact on the MPTA.

MPTA's concerns are addressed further in the definition section of this review (clarifying the demarcation between sanitary plumbing and on-farm reticulation).

6.2.2. Exemptions for work carried out under supervision

The exemptions in section 19, 21 and 25 of the PGD Act allow any person to undertake sanitary plumbing, gasfitting, and drainlaying work under supervision by a certified plumber, gasfitter or drainlayer.

Currently, 2,100 people hold around 2,700 exemptions for performing sanitary plumbing, gasfitting and drainlaying work under supervision. This represents nearly one third of the total plumbing, gasfitting and drainlaying sector. The extent of substandard work completed by people working under supervision is hard to assess because those being supervised are not documented in inspection failures.

Those working under the supervision exemptions face little or no regulatory accountability for substandard work or poor conduct because supervisors are solely responsible for work that is completed. This creates unfair situations where some tradespeople can gain an exemption from regulatory requirements while others are bound by them. However, the primary concern for the PGD Board is how exemptions can circumvent their ability to protect the health and safety of the public by ensuring people working in the trades are competent.

6.3. Work underway

6.3.1. Building System Legislative Reform Programme – Phase Two

Exemptions are considered high priority because of the impact any poorly carried out work can have on health and safety (and therefore not meeting the purpose of the PGD Act). MBIE has progressed work on removing these exemptions following public consultation in 2019. This work is being progressed through Phase Two of the Building System Legislative Reform Programme.

The objectives of these changes are to:

- ensure that restrictions on building work are proportionate to the risks to public safety; and
- ensure that those who are licensed to undertake restricted work have the right level of competence, and are held accountable for substandard work or poor conduct.

Removing the existing exemptions will ensure that sanitary plumbing, gasfitting and drainlaying work is done by people who are appropriately skilled and can be held to account for their work, reducing the risk of substandard work and the potential associated hazards.

6.3.2. Potential new class of registration

The PGD Board has powers under the PGD Act to designate classes of registration. The powers include specifying the sanitary plumbing, gasfitting, or drainlaying that the particular class can do or assist in doing.

In response to the work being progressed to repeal exemptions for work carried out under supervision, the PGD Board has started work to develop a new class of registration (Plumbing/Gasfitting/Drainlaying Assistant). The new class will be for people currently working under supervision, allowing them to keep doing the same work they are already doing, but reduces the risk of substandard work by making them accountable and giving the PGD Board visibility over them.

The PGD Board has a statutory obligation to consult on the settings for any new class of registration before seeking Ministerial approval to publish a *Gazette* notice.

Specific transitional arrangements will depend on the drafting and timing of amendments to remove the exemptions.

6.4. Recommendations

Minor and technical regulatory changes

<i>Recommendation 1</i>	Remove householder and rural area exemptions, and exemptions that allow people to complete restricted work under supervision without oversight from the PGD Board.
<i>Recommendation 2</i>	Amend minor and consequential changes related to exemptions accordingly.
<i>Recommendation 3</i>	Revoke Gazette notices for exemptions still in force.

6.5. Transitional arrangements

MBIE and the PGD Board will work together to ensure transitional arrangements provide a smooth process to remove exemptions. For those working under supervision, these arrangements will allow for transition to a new class of registration. These arrangements will provide for those currently working in the industry under supervision to be able to continue working after legislative changes take effect.

These arrangements will give clarity about what happens to those working under exemptions and to any work underway while the legislative changes are being put in place.

The removal of rural and householder exemptions will also be managed to provide a smooth process and clear communication to those who may be affected.

7. Supervision quality

7.1. Background

The PGD Act provides the PGD Board with the power to designate classes of registration and licensing for plumbing, gasfitting, and drainlaying. As mentioned earlier in the exemptions section of this report, certifying is the highest qualification and allows the certifying practitioner to supervise another person carrying out work in that trade. The PGD Board may also authorise a person to supervise work under Section 18 and 20 of the PGD Act.

The definition of supervision in the PGD Act is relatively generic with the intention to allow for some industry flexibility in the kind of supervision undertaken. Where the PGD Act provides for work to be performed under supervision, the supervision must be sufficient to ensure that:

- the work is performed competently;
- while the work is being undertaken, appropriate safety measures are adopted; and
- the work completed complies with the relevant regulations and legislation.

This allows for tradespeople or those completing training to undertake restricted work with a supervisor who will ensure the quality of the work protects life safety and achieves Building Code compliance.

The PGD Board's Supervision Policy came into effect in December 2016. This policy sets out the people who may supervise others, the PGD Board's expectations of supervisors, the specific supervision requirements, and the supervision arrangements.

Conditions are imposed on relevant licenses, with the primary obligation being that a certifying practitioner must notify the PGD Board about all individuals being supervised and pay the prescribed fee. The supervisor remains responsible for all work done by the supervisee until the PGD Board has received written notice that they are no longer the supervisor.

7.2. Issues

7.2.1. Variability in the quality of supervision resulting in non-compliant work

The quality of supervision is an issue that cuts across multiple occupations in the building and construction sector. Industry stakeholders have expressed broad concerns about the quality of supervision that may lead to non-compliant work. This is because supervision is not always aligned to the experience of the person performing the work, or the risks and complexity of the work.

There are anecdotes of people 'selling their tickets', intentionally skirting the intention of the supervisory scheme. More broadly, industry stakeholders have expressed concerns about site supervisors being pushed beyond their supervisory capacities, particularly where they have only recently become certified in their chosen profession.

Sound supervision is important for ensuring that standards of competency and safety are achieved by those being supervised. It helps to lift capability, ensure quality control, and provide confidence in the industry.

7.2.2. Some certified practitioners may not have required skills and experience

The minimum standards for certifying plumbers, gasfitters, and drainlayers all contain references to supervision as one of the competencies that the certifier must demonstrate in their registration exam. However, the exam currently has no supervision course of study associated with it. Additionally, there are no ongoing professional development opportunities for certifying tradespeople to upskill and improve the quality of supervision they provide.

Industry stakeholders advise that a supervisor's ability to competently supervise others relies on a range of complementary skills and attributes in addition to their technical skills. These skills may include oral communication, interpersonal skills, time and priority management, leadership and a willingness to coach and mentor others. An appropriate system of training and ongoing professional development is required to reinforce the desired behavioural shifts in the sector.

7.2.3. Oversight of compliance with supervision requirements

Relevant membership bodies have indicated that some unlicensed people and supervisors are not ensuring that supervision is appropriate to ensure quality of work. Examples have been sighted where:

- authorised tradespeople may be supervising too many people;
- the supervisor is not physically present for less experienced people; and
- supervision levels are not adequate depending on work complexity or the skills and experience of those being supervised.

In response, some BCAs are requesting to sight licences at inspections and checking that practitioners are authorised to supervise others. To ensure these issues are being addressed by the PGD Board, feedback loops between BCAs and the PGD Board need to be strengthened. This will provide the PGD Board with greater visibility over training gaps and development needs of supervisors and for BCAs to feel more engaged in the process.

7.3. Analysis

Issues with the quality of supervision provided by certified practitioners are influenced both by a lack of access to training and professional development opportunities, and the efficiency in addressing compliance issues when they arise. These are both issues that can be addressed through the current functions of the PGD Board and therefore do not require legislative changes.

The Minister responsible for administering the PGD Act has an Output Agreement with the PGD Board, setting expectations for the PGD Board to deliver on. This is a lever that can be utilised to ensure the PGD Board is exercising their role effectively and focusing on issues identified within the sector. Further to this, it is low cost as it doesn't require regulatory changes, and reinforces the existing work the PGD Board is doing by the Minister explicitly highlighting it as a priority.

The Minister's Output Agreement can also be utilised to require the PGD Board to build stronger feedback loops with BCAs. Receiving feedback from BCAs about the conduct of practitioners can help the PGD Board identify skill gaps and areas for growth and development for the sector. This will also ensure issues relating to supervisors not being present on site for less experienced people or supervising more people than authorised are identified early and practitioners are held to account. This will reduce the risk to public health and safety by incentivising certified practitioners to meet their responsibilities when supervising. Ensuring

the PGD Board is addressing issues within the sector efficiently will also contribute to building trust with BCAs and reducing the administrative burden of requesting proof of certification to supervise at the request of BCAs at inspection.

7.4. Work underway

7.4.1. Level 5 NZQA specialist qualifications

The PGD Board is currently working with the relevant Industry Training Organisation (ITO) to develop a course of study to improve the supervision quality for those approved to supervise work. Three Level 5 specialist qualifications are being designed for people who already have their Level 4 trade qualification and will have a focus on designing systems, as well as the knowledge and skills necessary for supervision.

The new Level 5 qualifications are being designed for online delivery, and will be rolled out once the consent and moderation requirements have been approved by the New Zealand Qualifications Authority (NZQA).

7.5. Recommendations

The quality of supervision is an important issue that needs to be addressed; however, it does not require legislative changes. Instead, these issues can be managed through the Minister for Building and Construction's Output Agreement with the PGD Board.

Non-regulatory changes

<i>Recommendation 4</i>	<p>Include in the Output Agreement a requirement for the PGD Board to:</p> <ul style="list-style-type: none">a) Continue to develop and maintain a suitable supervisory-level qualification;b) Work with a provider to ensure delivery of the training programme;c) Include a requirement to strengthen the focus on continuing professional development for supervisors; andd) Continue to build stronger feedback loops with Building Consent Authorities to improve the efficiency in which the PGD Board can address issues when they arise and disincentivise non-compliance.
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8. Self-certification

8.1. Background

Self-certification is a mechanism for regulating output quality. This contrasts with occupational regulation which focuses on the input and entry into an occupation. A number of different mechanisms can be utilised to certify an installation or design. This includes organisations such as BCAs, the installer or designer, or an independent third party contracted by the building owner (the latter two being self-certification).

In early 2017, Master Plumbers wrote to MBIE proposing that the Government introduce a self-certification regime for plumbing and drainlaying work. Plumbers and drainlayers presently must have their work signed off by a Building Consent Officer. This differs from the position of gasfitters, who are able to certify work through the issue of a Certificate of Compliance if they are a certifying gasfitter.

Preliminary work conducted by MBIE concluded that there are concerns which would need to be addressed before considering progression to self-certification for plumbers and drainlayers. These were in relation to inspection failure rates, practitioners' knowledge gaps with Building Code requirements, an inability to read consented plans, and some concerns about self-certification systems in the construction industry such as poor levels of auditing and record keeping.

In December 2018, the Minister for Building and Construction agreed that MBIE should evaluate the effectiveness of self-certification models in the New Zealand building and construction industry before considering similar self-certification approaches for plumbers and drainlayers. The Minister for Building and Construction agreed that the readiness of plumbers and drainlayers to move to self-certification should be considered as part of this work.

The objective of the review into self-certification, conducted by Sapere, was to report on the following:

- key features of self-certification in regulated occupations and critical factors that make it successful;
- relevant lessons from the current systems of self-certification practiced by gasfitters and electrical workers; and
- the opportunity for plumbers and drainlayers to transition to self-certification.

The full *Self-certification in construction industry trades* report by Sapere is available on MBIE's website alongside this review report.

8.2. Current practice for certifying plumbing and drainlaying work

All sanitary plumbing and drainlaying must comply with the Building Code. Where a building consent is required, the work must be checked by a plumbing and drainage inspector from the local BCA.

BCAs will issue building consents where required before restricted plumbing or drainlaying work can commence and a Code Compliance Certificate is issued on completion of the work. A

Code Compliance Certificate cannot be issued until the work has been signed off by the plumbing and drainage inspector.

Producer statement – self-certification by default

A producer statement gives evidence that specific building work, design, or specifications comply with technical requirements, in order to comply with the provisions of the Building Code or a building consent. For plumbing construction, the producer statement is a PS3. Although these no longer have legal status, many BCAs still require them.

The statement is signed by a recognised specialist working within their scope of expertise and competency. They ensure that their plumbing pipe work and fittings have been selected and constructed to comply with the relevant consented building plans and that they have personally tested the water supply system by one of the permitted methods.

The BCA will then follow this up by checking whether the tradesperson's registration is current and whether they accept the PS3 as establishing compliance with the consented plans.

Numerous councils provide plumbing PS3 forms on their websites. However, the scope of work that can be covered by a PS3 varies between BCAs, and they are typically limited to the installation and/or testing of water supply pipework only.

For example, in Auckland, a plumbing PS3 can be provided by pre-approved contractors to cover the installation and testing of the water supply pipework and these are accepted by Auckland City Council as establishing compliance with the consented plans and Building Code clause G12 Water Supplies. In Invercargill, a plumbing PS3 can be provided by pre-approved contractors to cover the testing of the water supply pipework only and these are accepted by Invercargill City Council for testing only of small bathroom/kitchen and laundry alteration up to a maximum of 20m of pipework in length.

Self-certification regime for gasfitting

Gasfitting is a self-certifying trade in New Zealand. For the work they carry out, certifying gasfitters must issue a Certificate of Compliance and Gas Safety Certificate under the *Gas (Safety and Measurement) Regulations 2010* (GSMR). WorkSafe is the agency responsible for gasfitting certification requirements. Under this system, a Certificate of Compliance is issued by the person who did the work or supervised the work – and who is authorised under the GSMR to certify that category of gasfitting. It is the same for Gas Safety Certificates.

A certifying gasfitter must provide a signed gasfitting certificate to a consumer where they have done gasfitting work at the consumer's property. Records of certificates must be retained by gasfitters in hard copy or electronic storage for seven years. The certifying gasfitter that provides the certificate must be satisfied that the work was carried out in accordance with the law and prescriptive compliance documents, such as the Australia Standards/New Zealand Standards that specifies how gasfitting work must be done.

8.3. Issues

In principle, self-certification can improve outcomes by creating the right environment to enhance accountability for work done, ensure regulation is proportionate to the risks, reduce compliance costs and incentivise higher training. However, the Sapere report identified a number of issues within the current regulatory system for plumbers and drainlayers that are vital factors to ensuring self-certification is successful.

8.3.1. Quality and consistency of training

Stakeholders share concerns about the approach to training. The risk of error is influenced both by the complexity of the task and the skill of the tradesperson, therefore highlighting the importance of a robust training programme. The prevailing view is that the training system is inconsistent as it relies on the employer's ability to teach, their technical expertise, and being up to date with the practice. Although it works well for some, self-certification requires a high level of consistency.

Issues with the current training system include:

- the skills required to certify work are different to the skillset acquired by practitioners for installations; and
- the risk to maintaining skills due to the supply of suitable trainers and the availability of training.

8.3.2. Lack of useable information about inspection outcomes

Data is critical in a performance-based regulation system. The inspection data that is currently collected by BCAs does not provide adequate insight into the extent that plumbing work is left incomplete or unsafe. As a result, the level of non-compliant work is unknown. Consistently recording information about consents and installations would provide valuable information for monitoring and decision making. However, providing a pass or fail isn't helpful where it does not explain the reason for failure or pass clearly.

MBIE provided Sapere with inspection data for seven BCAs between 2008 and 2018. Within this time there were 75,927 entries for plumbing and drainlaying of which 45 per cent were recorded as 'fail'. However, this does not give a strong indication of competence as it was found to be common for there to be multiple entries per consent, and plumbers recorded that BCAs routinely fail inspections until the final inspection.

The reasoning for failed inspections can be ambiguous, as notes were often unclear. No reason was given for 39 per cent of fails, and other reasoning included Building Code compliance, poor work, and work being not to plan.

8.3.3. Recordkeeping and auditing

There is currently no central register of plumbing and drainlaying work, limiting ability to determine if work is being incorrectly specified as general or low risk when it is actually high risk work. The current ambiguity of data being collected and inconsistency of record keeping creates significant barriers to audit work effectively. Addressing this will ensure auditing can be utilised to deter non-compliant work.

8.4. Analysis

MBIE has considered three possible options for how to progress self-certification in the construction industry:

1. Ruling out self-certification for plumbing and drainlaying;
2. Migrating an existing self-certification model from gasfitters to plumbers and drainlayers; or
3. Considering a revised model of self-certification for trades as part of wider work on the future of the construction sector (preferred option).

The findings from the Sapere report have informed MBIE's recommendation regarding self-certification.

8.4.1. Self-certification

Self-certification has been seen as a way to increase efficiency. In a number of countries, the decision to move to self-certification was primarily based on an expected reduction in costs associated with time delays due to regulatory authorities being overwhelmed with inspection requests. For example, delays in plan review and permitting was estimated to cost the US domestic construction industry \$15 billion (USD) per year in costs of financing, lost opportunity, and delay.

In the UK, a major factor motivating the shift to self-certification was addressing local authorities' ability to cope with the growth in the volume of inspections required following changes to the Building Code. A review of their self-certification system noted a time and money saving of £60-180 as a result of removing the requirement to notify the building control body and have their work checked.

In Norway and Sweden, the shift to private self-regulation was largely a result of the local authorities being unable to cope with the administration burden of conducting inspections. In Hong Kong the shift has addressed barriers caused by excessive red tape and delays caused by processing applications.

However, if consumers are not aware of the existence of a self-certification system, it may be difficult for them to identify who is able to carry out and self-certify their work. Ensuring the public is aware of the self-certification system, and who has required credentials to self-certify will be vital to ensuring tradespeople are complying with regulations and are not misleading consumers.

The literature also warns that abrupt change to the system or shifting to self-certification too fast poses a significant risk if the industry and regulatory system isn't ready. For example, in Norway and Sweden there was a lack of uniformity across the sector, causing chaos. Similarly, there were views that Australia moved too quickly to a self-certification model without being mature enough.

8.4.2. Sapere recommendation

The findings from the Sapere report highlighted a number of issues that need to be addressed before a shift to self-certification is considered. The Sapere report identifies four key elements as vital to ensuring any self-certification scheme is successfully implemented:

- Clear rules setting out responsibilities and requirements of tradespeople, that are understood by consumers;
- Robust training and registration regime that ensures tradespeople are competent and up to date with current practices and regulations and that certifiers have the required skills to conduct their roles;
- Credible auditing regime to disincentivise non-compliant work; and
- Enforceable obligation on the certifier to remediate quality issues over a suitable period.

Stakeholder opinion

Engagements were conducted with MBIE officials, WorkSafe, licensing boards, Master Plumbers, BCAs, and building inspectors to inform the review into self-certification.

Master Plumbers are strongly in favour of a self-certification system for plumbing and drainlaying, and see it as an opportunity to increase accountability and create efficiencies in the consenting process, particularly in cases where BCAs may be stretched for capacity and capability to inspect building work.

The PGD Board also supports the idea in principle, and thinks it could administer a self-certification scheme quite well. They consider any self-certification system should include aspects such as the need to file all signed-off work (not just high-risk work, like the gasfitting scheme).

Overall, stakeholders highlighted the following concerns regarding self-certification:

- *The extent of which designs are non-standard* – not all designs are practical for installation;
- *Installations vary from designs* – plumbing and drainlaying has been cited as the reason for the majority of building consent variation. This is commonly due to practicality from the tradespersons perspective or a lack of technical understanding of design issues;
- *Competence of various parties* – the current training system is inconsistent (the skill level varies between tradespeople and inspectors);
- *Losing centralised recording of information* – ensuring critical information such as connections to the three water systems is still recorded; and
- *Accountability and remediation* – the ability to hold plumbers and drainlayers to account to remediate faults is vital to a successful self-certification regime.

8.4.3. Further work is required

MBIE recognises the gains that self-certification can have for industries to allow skilled people to undertake and record their work in a way that meets regulatory requirements and enables visibility and accountability of work done. There is a need for efficiencies in the building consent system to help alleviate strain on an industry which forms an important part of New Zealand's economic recovery from the effects of Covid-19. However, it is unlikely that migrating plumbers and drainlayers to such a system now would achieve these results. Work in other parts of the sector are addressing immediate issues common to the sector (as well as the effects of Covid-19) including to find efficiencies in the consenting system.

Any shift to self-certification would require significant work to amend legislation, write rules and regulations, re-educate tradespeople and the public, and set up the technology solutions needed to enable such a scheme. Shifting tradespeople to such a scheme is not a simple 'copy and paste' of existing requirements for the gasfitting trade and as such, these changes will take years to develop and embed.

MBIE already has work underway to address inefficiencies in the consenting system and to support the construction industry, keeping the response to the economic impacts of COVID-19 centred in this response. These changes need to be embedded first before further changes should be considered for the consenting system.

There are gaps which need addressing first

The Sapere report confirmed for MBIE that there are gaps in existing system settings and tradespeople capability which would undermine the success of a shift to self-certification in the short term.

Although current self-certification schemes appear to be working overall, a distinct lack of consistent data on the performance of tradespeople and records of work completed, risks issues not becoming apparent until they are acute and widespread in a similar way to the experience of the leaky homes crisis.

The consistent competency of tradespeople is essential to a self-certification scheme, including good recordkeeping to support audits of works done. Moving more tradespeople to existing self-certification schemes increases the risk that current weaknesses in the system result in regulatory failure. The concerns raised about existing models, while not warranting urgent change, would need addressing before MBIE could consider widening those schemes to include a wider range of tradespeople.

Self-certification should be considered as part of wider, long term reforms

In the short term, challenges faced by plumbers and drainlayers in consenting processes are neither unique to their trades, nor more acute than with other trades. Responses to immediate issues and the economic impact of COVID-19 need to be addressed for the whole of sector as they are common to the whole industry.

MBIE considers that self-certification should not be ruled out, and that a revised model of self-certification for trades as part of wider work on the future of the construction sector would allow for issues with existing models to be addressed, for all trades to be considered as part of such a system, and for gaps in the wider system to be addressed first to create the correct environment for a successful implementation of self-certification.

8.5. Recommendations

In the long term, self-certification presents real opportunities for the entire construction industry and MBIE should consider these benefits as part of its strategic role in addressing some of the big challenges the building system needs to overcome. This should be considered as part of work on occupational regulation for the construction industry as a whole, not just plumbers and drainlayers.

Changes that require further work before being implemented

<i>Recommendation 5</i>	Self-certification is not extended from gasfitters to include plumbers and drainlayers at this time. However, a revised model of self-certification for construction trades as a whole is considered as part of wider work to improve the consenting process.
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9. Definitions

9.1. Background

The PGD Act places restrictions on who may do or assist in doing sanitary plumbing, gasfitting, and drainlaying work. The purpose of the definitions of ‘plumbing’, ‘gasfitting’, and ‘drainlaying’ is largely to identify work that is restricted.

Restricted work can only be performed by a registered person who has a current practicing license or who is otherwise permitted to perform that work under the PGD Act. Restricted work is required to comply with the Building Code, and where a building consent is required, the work must be checked by the building inspector from the BCA.

A number of issues were identified as part of this review that will require amendments or further work on options for amendments. The definitions and issues raised in this section were worked through with technical experts to understand what modern definitions should look like. Engagements with key regulatory bodies and technical bodies were critical to this work.

9.2. Issues

The current definitions of restricted work are outdated and do not accommodate for evolutions in technology or modern practice. The definitions also:

- blur the demarcation between restricted plumbing and restricted drainlaying;
- exclude gasfitting work that should be restricted, while placing unnecessary restrictions on low risk gasfitting work; and
- create industry confusion about the demarcation between restricted sanitary plumbing and other water reticulation activities that share the same water source.

9.2.1. Drain definition – overlap between sanitary plumbing and drainlaying

The PGD Board identified that some drainlayers have been doing what the PGD Board interprets as sanitary plumbing without being licensed as plumbers. Consequently, this has the potential to lead to health and safety risks as practitioners can, under this interpretation, complete work that they have not been adequately trained to complete.

Sanitary plumbing is defined under the PGD Act as including any work involved in fixing or unfixing any sanitary fixture or appliance. This includes fixing or unfixing any tap, waste or soil pipe, ventilation pipe or overflow pipe, and any pipe that supplies or is intended to supply water.

The policy intention of the definition of drainlaying is to separate work that requires different skill sets, and ensure people are licensed and qualified for the trade that covers the work they are doing. However, the overlap in definitions is causing confusion within the industry.

The PGD Board proposed that this issue be addressed by adding the definition of ‘sanitary plumbing’ as an exclusion to what is considered a ‘drain’ under section 4 of the PGD Act. This recommendation does not make any significant changes to the policy intention of the definition, and work to make this change has already been initiated as part of the Regulatory Systems Amendment Bill (3) process.

9.2.2. Drainlaying definition – excavation work

The definition of ‘drainlaying’ under the PGD Act does not currently include earthworks associated with drainlaying. Poor earthworks or excavation works can have health and safety implications. However, the PGD Board doesn’t have the necessary levers to sanction a drainlayer who carries out earthworks in an incompetent manner.

To address this issue, the PGD Board has proposed that if a person is a drainlayer and doing earthworks associated with drainlaying, they should be required to perform them competently. This recommendation is also being progressed through the Regulatory Systems Amendment Bill (3) process.

9.2.3. Gasfitting definition – exclusions

Replacing LPG cylinder O rings

LPG gas cylinders are typically connected to gas installations by a flexible pipe that has a manually removable screw-threaded coupling (e.g. a gas pipe). Gas pigtail couplings typically incorporate an O ring which is required to obtain a gas-tight seal at the connection to the LPG gas cylinder.

Due to the broad definition of ‘fittings’ in the *Gas Act 1992*, and the subsequent referencing of this in the PGD Act, replacing the O rings on a gas pigtail coupling is technically considered restricted gasfitting work. However, this does not match current practice where O rings are often replaced by unlicensed people (often the LPG cylinder installer).

This issue raises the question of whether O rings can or should be excluded from the definition of ‘gasfitting’. A first principles review of the issue provides the following answers:

- When LPG gas cylinders are exchanged by the gas suppliers, the installer of the new cylinders check that there is no leak at the point of connection once the cylinder has been turned on.
- If a leak due to a perished or missing pigtail coupling O ring is identified, it would be considered reasonable that an exchange cylinder installer who has been trained in the replacement of pigtail coupling O rings could carry out this work.
- It is overly risk averse to require an authorised gasfitter to be engaged to replace a perished or missing pigtail coupling O ring during a cylinder exchange (one of the goals of the review is to ensure regulation is proportionate to the risks to public safety).

Testing products

The scope work that is considered ‘gasfitting’ is impractical for an efficient certification regime as it does not allow for testing of products during manufacture in a practical way.

In manufacturing situations, gasfitting work covers temporary connections of appliances such as gas fires or pipework to a gas supply. Temporary connections (‘temporary work’) occur where a person connects a manufactured product to a gas supply, tests and checks that the product complies with the relevant regulations, and then disconnects it. This work has to be carried out by an authorised gasfitter.

Covering temporary work under the definition of ‘gasfitting’ unnecessarily regulates work to protect public health and safety. Under the GSMR, temporary work is classified as low risk in certain situations.

9.2.4. Sanitary plumbing definition

The definition of ‘sanitary plumbing’ has some ambiguities and doesn’t reflect changes in technology.

On-farm reticulation systems

The PGD Act makes it clear that restricted work on any sanitary facility must be carried out by a licensed and registered plumber. A plumber is also required to ensure the potable water is protected from contamination.

If pipework on a farm supplies or is intended to supply any sanitary fixture or sanitary appliance, then it is sanitary plumbing. If pipework on a farm is solely intended to be pumped from a non-potable source to an irrigation system, dairy shed, milking shed, or wash-down facility, then it is not sanitary plumbing.

However, the PGD Act does not explain how to create a demarcation between sanitary and other water services where they share the same water source. This means that any water services sharing the same water source must be installed by a plumber as the entire system is deemed to be sanitary plumbing.

A typical farm reticulation system comprising a shared water source for the supply of irrigation water, a farm dairy shed, and potable water to a dwelling may also be regarded as sanitary plumbing. For rural areas, some industry stakeholders have expressed concern that registered plumbers have limited capacity or skills to undertake complex on-farm reticulation, including bore holes, the supply and installation of heavy equipment such as bore bumps and dairy equipment. Additionally, farm technicians don’t have the required qualifications to perform restricted plumbing work because it doesn’t teach the skills required to perform on-farm reticulation work.

The current overlap between restricted sanitary plumbing requirements and the installation of on-farm reticulation systems is causing uncertainty for trade associations, irrigators, and regulators on when a registered and licensed plumber is required. This requires a balancing act between protecting potable water from contamination while not hindering the practical day-to-day running of a farm.

Amendments are required to allow for the effective protection of a water source and sanitary fixtures by means of backflow prevention or other protection to create an effective demarcation between sanitary and other water services.

The Building Code requires water supply systems and any backflow prevention devices to be able to be isolated for testing and maintenance. Regional councils typically impose backflow prevention requirements as a condition of a water permit under the *Resources Management Act 1991* to ensure water sources are protected.

Taking into account new technologies

Section 6(2)(d) of the PGD Act excludes ‘repairing or replacing taps, ball valves, tap washers, or plugs’ from the meaning of sanitary plumbing. However, this was potentially already out of date in 2006 when it was carried over from the 1976 Act. Sanitary plumbing system components are now very different and considerably more complex than they were in 1976.

The commonly understood meaning of some of these terms has also changed. For example, the term ‘ball valve’ was historically used to refer to a ‘ballcock valve’, which is a float-controlled valve, typically installed within a water storage tank or toilet cistern. However, the term ‘ball valve’ is now commonly interpreted as meaning a quarter-turn isolation valve which

uses a hollow, perforated and pivoting ball to control flow through it. These are entirely different components of a sanitary plumbing system, and the replacements of what would now commonly be interpreted as a 'ball valve' should only be undertaken by a licensed and registered plumber.

For a 1976-era homeowner to re-bend a ball-valve arm to adjust the water level in a toilet cistern or to turn off the toby to replace a rubber tap washer was relatively straightforward and unlikely to result in any health and safety issues, or cause damage to property.

However, most modern tapware involves complex cartridges or ceramic valves to mix the hot and cold flow before it comes out of the faucet. Modern toilet cisterns have also done away with ball valves completely. For some homeowners, 'repairing or replacing taps' could include a wall-mounted ceramic disc with sub-standard work resulting in unseen leaks into a wall cavity.

The risk associated with the list of work outlined in section 6(2)(d) have also shifted with the changes to technology. The commonly understood meaning of the terms used in this section has evolved and technology has introduced increased complexity and the likelihood of something going wrong. The sanitary plumbing system components that can be repaired or replaced with little risk to health and safety or damage to property needs to be clearly outlined to ensure any complex, high risk work is being completed by a licensed and registered plumber.

9.3. Analysis

Gasfitting definition - extend exclusion list

Amending the PGD Act so that the replacement of LPG cylinder O rings, and testing products during manufacture, are not restricted to licensed people will ensure the protection of public health and safety is balanced with the level of risk associated with work being conducted. This is because replacing O rings is not considered high risk work that requires skills specific to practitioners. Additionally, the effort required to bring in a gasfitter to a remote place to change the O ring is overly onerous when this is a task that can be completed by an LPG cylinder installer. This will also provide a clearer understanding of the PGD Act by ensuring restricted work is consistently defined.

Sanitary plumbing definition – further work is required to remove ambiguity

Further work is required to create a clear demarcation between sanitary plumbing and other water services that share the same water source, while still protecting public health and safety. This would ensure that a plumber is only needed for work that relates to sanitary plumbing, and remove the barrier for farm technicians who currently have to either become certified practitioners to conduct on-farm reticulation work that they are already capable of undertaking or having to bring on a certified plumber to conduct specialised reticulation work that the plumber may not necessarily be trained for.

9.4. Work underway

9.4.1. Regulatory System Amendment Bill 3

Issues with the definitions of 'drain' and 'drainlaying' were known prior to this review, and work is underway to progress minor and technical changes as below through the Regulatory Systems Amendment Bill (3) process.

Drain definition - overlap between sanitary plumbing and drainlaying

The changes will ensure there is a clear distinction between sanitary plumbing and drainlaying work.

Drainlaying definition – excavation work

The changes will include earthworks and excavations associated with drainlaying (and carried out by people who are licensed drainlayers) within the meaning of ‘drainlaying’. This will enable the PGD Board to deal with complaints about, or discipline the drainlayer where issues relate to earthworks and excavations.

9.5. Recommendations

MBIE will provide advice to the Minister for Building and Construction on options to progress the following recommendations and further work.

Minor and technical regulatory changes:

<i>Recommendation 6</i>	Amend the PGD Act with the outcome that the replacement of LPG cylinder O rings, and testing products during manufacture, do not require licensed persons as the associated risk does not justify these activities being restricted.
<i>Recommendation 7</i>	Amend the PGD Act to clarify the components of work that can be excluded from the scope of sanitary plumbing at section 6(2)(d) because the associated risk does not justify the work being restricted to licensed persons: <ul style="list-style-type: none">• Repairing or replacing compression washer taps, ballcock valves, and plugs; and• Repairing or replacing bench-mounted taps.

Changes that are already being progressed through other regulatory levers

<i>Recommendation 8</i>	Note the amendments to the definition of ‘drain’ and ‘drainlaying’ will be accelerated through the Regulatory System Bill 3.
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Changes that require further work before being implemented

<i>Recommendation 9</i>	Progress further work on creating a clear demarcation between restricted sanitary plumbing and other water reticulation activities that share the same water source.
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10. Complaints, discipline and prosecution

10.1. Background

The functions of the PGD Board include monitoring and enforcing compliance standards. The enforcement role involves the PGD Board investigating complaints, disciplining registered tradespeople, and prosecuting people who breach the PGD Act.

The PGD Board, Registrar, and Investigator each have different roles to play in addressing complaints made under section 90 of the PGD Act:

- The Registrar informs the PGD Board and appoints the Investigator;
- The Investigator determines the value of the complaint. Whether it should be considered by the PGD Board, and reports their findings to the PGD Board; and
- The PGD Board acts as the adjudicator, considering the evidence that the Investigator has presented.

The PGD Board's disciplinary powers include suspending a practising license, limiting the work a person may do, or requiring them to undertake further training.

Segmentation of the overall occupational regulatory system inhibits the ability for Boards to identify trends and address challenges facing the sector. Currently, there is inconsistency across the occupations (and sometimes across different cases within an occupation), as to what actions constitute a serious complaint, and what sanction is applied. This undermines trust in the process and reduces incentives.

Although out of scope of this review, there may be benefits from a new model for complaints and discipline that covers all six regulated occupations. In any case there are changes that could be made now for plumbers, gasfitters, and drainlayers that are based on policy first principles. Such changes could inform development of a common model in the future.

10.2. Issues

10.2.1. Restrictions on who can make a complaint

Section 90(2) of the PGD Act currently restricts the PGD Board, a member of the PGD Board, or the Registrar from making a complaint. Although the PGD Board has developed passive means of collecting information on non-compliant or illegal work (such as the 'report a cowboy' application), they cannot use this other intelligence to launch an investigation themselves and must rely on a formal complaint.

There are also instances where some registered and licensed tradespeople may have knowledge of issues, but for reasons such as protecting access to clientele, may choose only to make an informal complaint. However, the PGD Board is unable, legally, to follow up. This creates the risk of known issues within the industry continuing on without being addressed. It should be noted that complaints about non-compliant building products should be reported to MBIE, not the PGD Board.

10.2.2. The disciplinary process lacks flexibility

PGD Board quorum

The PGD Board and relevant membership bodies have indicated that complaints and hearings generally do not require a five-member quorum. This requirement can make some hearings unnecessarily expensive and intimidating, especially where the case is straightforward. Reducing the required quorum for hearings from five to three would reduce costs and ease the process for the PGD Board, and make it less daunting for those appearing before the PGD Board.

The PGD Board and relevant membership bodies also indicated that in some cases, defendants are willing to admit fault upfront, or the case is of such a simple nature that it could be settled outside the disciplinary process. However, the PGD Board is bound to hold a full hearing nonetheless. Reducing the quorum for hearings will go some way to address this frustration as it will mean a simpler process. Recommendations to change the infringement offence regime (section 10.2.3 below) should also assist with the need for increased flexibility where defendants admit fault.

Grounds for complaints

The PGD Board also considers that there are times when it receives complaints that should not progress to investigation but that cannot be dismissed as they do not meet the frivolous or vexatious criteria for dismissal. This means the PGD Board must investigate. Examples include where a complaint relates to conduct that occurred so long ago that it may be difficult to investigate.

10.2.3. Infringement offences are not being used effectively

No infringement fee regulation

Section 129 of the PGD Act allows for the use of infringement notices to deal with minor offences. However, regulations have not been developed to clearly provide for infringement offences and appropriate infringement fees. The high cost of complaints, discipline and enforcement provisions has been exacerbated as a result of there being no Board policy (or specific regulations) for the use of infringement notices to address minor offences.

Discussions with the PGD Board as part of this review confirmed the continued need for a power to deal with relatively minor breaches of the PGD Act. The review recommends that officials work with the PGD Board to develop regulations prescribing offences in the PGD Act as infringement offences and setting the infringement fees for those offences.

No financial incentives for the PGD Board to use infringement offences

There is currently no financial incentive for the PGD Board to implement infringement fees as they would incur all the expenses for infringement activities, while revenue generated would go to the Crown. This differs from other regulated occupations where the costs of regulation are covered in part by the Crown (such as the Electrical Workers Registration Board).

If the PGD Board was able to keep the revenue of infringement notice fines then there could be an incentive to generate revenue through the issue of infringement notices. However, it would be contrary to public policy to change the flow of infringement revenue.

Section 123 offences not appropriate to be included as an infringement offence

An 'infringement offence' is defined in section 4 of the PGD Act as an offence under section 123 (engaging in work in breach of restricted sanitary plumbing and drainlaying as outlined in section 8 and 10 of the PGD Act); and an offence prescribed as an infringement offence.

Section 123 offences are the most frequently used offence provision in the PGD Board's prosecutions under the PGD Act. Section 123 offences are serious offences, attracting a

penalty of up to \$10,000 for a criminal conviction. The PGD Board considers that an unauthorised person engaging in restricted work (or employing an unauthorised person to engage in restricted work) is sufficiently serious that a criminal charge is the only appropriate action.

In the case of *Plumbers, Gasfitters and Drainlayers Board v Maaka* [2015] NZHC 1948, the High Court determined that reference to section 123 in the definition of infringement offence meant that the section was an infringement offence, irrespective of whether the Registrar proceeded against someone under section 123 by way of a charging document or an infringement notice. Accordingly, since this case, it has not been possible to obtain a criminal conviction for any person found guilty of an offence under section 123.

The review recommends that the PGD Act be amended so that any conviction under section 123 will become a criminal conviction.

10.2.4. Funding of prosecutions and infringements

The PGD Board has a statutory role in prosecuting unregistered and unlicensed people carrying out work illegally. Even though administering breaches of the PGD Act has been delegated from the Crown, the PGD Board does not receive any Crown funding for prosecution activities. Therefore, there is no financial incentive for the PGD Board to prosecute non-compliant or illegal work because they are not reimbursed for the cost of prosecuting people.

Section 142 of the PGD Act allows the PGD Board to charge fees for registration applications, licences, applications for exemptions, examination fees, and any other matter that the PGD Board must do to carry out its functions. To resolve funding issues experienced by the PGD Board, the *Plumbers, Gasfitters, and Drainlayers Amendment Act 2013* extended the levy imposed on registered people for prosecutions to also include breaches by non-registered people.

The PGD Board is constituted as a body corporate under the PGD Act. As a body corporate it may incur all the liabilities and obligations of a natural person and therefore operates independently from the Crown. This contrasts with the Building Practitioners Board and the Electrical Workers Registration Board. These are statutory boards created under the provisions of their respective Acts, which are partly funded by the Crown for prosecuting people who breach those Acts. MBIE directly administers and manages the revenue and expenses of these boards and the Crown controls how the funds provided are spent.

10.2.5. Poor conduct that may bring the industry into disrepute

The Board can exercise disciplinary powers if a person is guilty of a disciplinary offence. The list of disciplinary offences in the Act does not include an offence relating specifically to conduct and behavioural issues which would bring the industry into disrepute. This has meant there have been a number of complaints that the PGD Board has not been able to consider because they do not relate to a specific offence in section 89.

In some cases, the PGD Board have received serious complaints about the conduct of a tradesperson, yet they have been unable to address these issues, and as a result there have been no repercussions for the tradesperson concerned. Examples of conduct that did not fall under existing disciplinary offences but would have been amenable to a charge of an act or omission contrary to the integrity of the trade include:

- a drainlayer who disconnected a person's home from sewer mains because of a disputed invoice which left the home owner with raw sewerage running through their property;
- a supervisor who signed off a producer statement for a tradesman who had not done the plumbing work concerned;
- a tradesman plumber preparing a producer statement for work they knew had been done by an unauthorised person.

10.2.6. Financial penalties are out of date

The PGD Board has reported that financial penalties are perceived by many of their registered tradespeople as too low, causing the PGD Board concern that there is no financial incentive for people to follow the law (i.e. that it is cheaper to behave badly and pay the penalty than it is to comply with the law).

A comparative review was carried out to look at penalties in legislation for other regulated occupations. This included the Building Act, the *Electricity Act 1992* (Electricity Act), the *Registered Architects Act 2005*, the *Chartered Professional Engineers of New Zealand Act 2002*, and the *Health and Safety at Work Act 2015*. The findings of this review highlighted that penalties under the PGD Act are mostly comparable.

For example:

- the \$500 penalty under section 76 and 77 (duty to notify) of the PGD Act is the same as in the Electricity Act.
- the \$10,000 penalty under section 94 (representing yourself to be the holder of a warrant) is the same as the *Health and Safety at Work Act 2015* penalty for impersonating an inspector.

However, the \$10,000 penalty under section 99 (failing to comply with notice to supply information) is much higher than the \$2,000 penalty for a similar provision for Architects and Engineers.

10.2.7. Cost of disciplinary levy

The PGD Board's Annual Report for the year ending in March 2017 noted that the following costs relating to registration and licensing:

- annual registration fee: \$355
- annual practising licence fee: \$86
- annual disciplinary and prosecution levy: \$271

The registration and licensing fees for plumbers, gasfitters, and drainlayers are high compared to the equivalent fees for builders, electricians, and other regulated occupations outside the building and construction sector, such as nurses. This finding was substantiated in a 2014 report by the Office of the Auditor-General.¹

That report highlighted a number of reasons as to why the costs of regulation was higher for the group of trades that the PGD Board regulates than for some other regulated workers:

¹ Inquiry into the Plumbers, Gasfitters, and Drainlayers Board: Follow-up report. Office of the Auditor-General. May 2014. <https://www.oag.govt.nz/2014/plumbers/docs/plumbers-follow-up.pdf>.

- **Lack of economies of scale** – a much smaller number of tradespeople are regulated compared to the EWRB or the Building Practitioners Board.
- **High disciplinary levy** – disciplinary action is funded entirely by tradespeople and is unique amongst regulated occupations in that it extends to prosecuting unregistered and unlicensed people who carry out unlawful work.

In 2019, the PGD Board only carried out three prosecutions at a direct cost of \$65,000, but with an overhead allocation to the prosecution activity of just under \$650,000 (Annex 5).

Anecdotally, relevant membership bodies have indicated that in some cases, practitioners who are aware of substandard work may be choosing to avoid making a complaint as they view the disciplinary process as contributing to the high costs of the levy and the overall fees structure that must be paid by registered and licensed tradespeople.

10.2.8. No sanctions for not participating in competence review

Under section 53 of the PGD Act, the PGD Board may, at any time, review the competence of a registered person to do, or assist in doing, sanitary plumbing, gasfitting, or drainlaying work; whether or not there is a reason to believe that the person's competence may be deficient. The competence review takes into consideration whether the person meets the current minimum standards, whether they may endanger the health and safety of members of the public, and whether the work was carried out to the expected standard.

However, the PGD Board has indicated a need for new powers as there are cases of tradespeople who resist undergoing a competency review. This undermines the PGD Board's ability to carry out these reviews, as they need to have access to as much information as possible. However, there is currently no express power to compel a registered person to take part in a competence review under section 53 of the PGD Act.

10.2.9. Administration of register

A practising licence holder, provisional licence holder, or employer licence holder is under a duty to notify the Registrar of a change of address (section 76) or name (section 77). Any person who fails to do so within three months (for address) or one month (for name) commits an offence and is liable on conviction to a fine not exceeding \$500. The penalty is the same as in comparable sections (section 130 and 131) of the Electricity Act.

The PGD Board has indicated that a three month timeframe to notify the Registrar of a change of address under section 76 is too long considering the importance of maintaining an updated register of practitioners.

10.3. Analysis

The issues identified in relation to the complaints, discipline and penalty arrangements for plumbers, gasfitters and drainlayers are interlinked.

10.3.1. Enable the Registrar to make a complaint

Although it would be inappropriate for the PGD Board to be able to make a complaint, the Registrar does not sit on the PGD Board or participate in the determinations of complaints. Enabling the Registrar to make a complaint will improve the effectiveness of the PGD Act in reducing the risk to public health and safety by ensuring people conducting non-compliant work are held to account. This option will also improve the efficiency and effectiveness of the complaints process by ensuring issues can be addressed when they arise.

As long as the PGD Board is able to develop and follow a written policy that clarifies each of the three roles (Registrar, Investigator, and the PGD Board), and ensures the separation of functions and independence of each, then this review recommends changing the PGD Act to allow the Registrar to make a complaint.

10.3.2. Reducing the quorum of PGD Board members for disciplinary hearings

Reducing the quorum will go some way to address frustrations caused by the administrative burden and costs associated with bringing together five PGD Board members for disciplinary hearings. Ensuring that the knowledge and expertise required for a disciplinary hearing is represented in the PGD Board's quorum of three will ensure the public is not exposed to increased health and safety risk.

10.3.3 The threshold required for making complaints

Further work is required to address the Board's concerns about grounds for dismissing complaints without investigating. It is important that the Board can efficiently and effectively triage the complaints it receives. However, MBIE needs to undertake further work to ensure any solution balances the interest in natural justice for complainants and practitioners.

10.3.5 Crown funding for prosecutions and infringements

In addition to prescribing infringement offences through regulations, the review recommends looking into other ways in which the Crown can reimburse the PGD Board to prosecute unregistered people who undertake restricted work. Noting that the independent structure of the PGD Board will have an impact on how any annual Crown funding could be provided. Given the current structure of the PGD Board, any Crown contribution should be restricted to the direct costs associated with the prosecution activity. The Crown needs to avoid funding the overheads of what is an independent board. This option will also reduce the risk to public health and safety by disincentivising non-compliant work.

10.3.3. Addressing serious poor conduct or behaviour that may bring the industry into disrepute

Further work is required on options to ensure the Board can discipline practitioners for serious poor conduct and repetitive behavioural issues.

Implementing a Code of Ethics for plumbers, gasfitters, and drainlayers would be one possible option to addressing poor performance and behaviour within the industry. However, the PGD Board saw this as over complicating a long standing and well established system. Instead, the PGD Board supports a new disciplinary offence relating to bringing the industry into disrepute.

While there are precedents for such a disciplinary offence, MBIE would need to ensure policy options are consistent with Ministry of Justice advice on the design of offences and penalties. The Ministry has indicated it would prefer that new offences should instead be focused on the conduct to be addressed, rather than the impact on the industry.

10.3.4. Work to consider increasing financial penalties

Currently, section 122 (an unlicensed or unregistered person must not claim to be licensed or registered) and section 123 (non-compliance with PGD Act restrictions on doing or assisting sanitary plumbing, gasfitting and drainlaying work) of the PGD Act set a maximum fine of \$10,000 for anyone found guilty of committing these offences. The exception to this is section 123(2) where the individual penalty is \$50,000 for doing or assisting in doing restricted gasfitting work prescribed in section 9 of the PGD Act.

The maximum penalties for similar offences relating to unauthorised persons who engage in restricted building work under the Building Act are proposed to increase. The Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill would increase the maximum penalties for these offences to \$50,000 for an individual and \$150,000 for a body corporate.

Further work is required for MBIE to review the penalties for criminal offences under the PGD Act to increase them to a level that reflects the seriousness of the conduct involved.

10.3.5. Review the disciplinary levy

The PGD Board has made efforts to reduce its costs where possible. It faces constraints in terms of its broad functions and relatively small population of tradespeople from whom to collect the levy. Therefore, there is a need to identify opportunities to reduce the cost of the disciplinary levy so that the PGD Board can fund the carrying out of its responsibilities at a cost that is acceptable to the trades.

Recommendations made in other parts of this report are likely to reduce the overall cost to the PGD Board of undertaking its prosecution activities. This includes incorporating grounds for disciplinary actions when considering complaints, a smaller quorum to hear disciplinary matters, and developing regulations that prescribe infringement offences and infringement fees.

10.3.6. Competence review

The PGD Board have proposed implementing sanctions to require practitioners to participate in a competence review. However, the review recommends no changes are made as a competence review can progress without someone agreeing to take part or having to appear.

10.3.10 Improving administrative processes

The requirement for notifying a change of name under section 77 is one month, and it would make sense if the requirement for notifying a change of address was also one month. The register is a critical part of the licensing and quality assurance system, and allows members of the public to choose a suitable person to do their sanitary plumbing, gasfitting and drainlaying work based on the information kept on the register.

10.4. Recommendations

Minor and technical regulatory changes

Recommendation 10	Remove the barrier to the Registrar being able to make a complaint.
Recommendation 11	Provide that only three Board members are required for a quorum to hear a disciplinary matter.
Recommendation 12	Explore options to ensure the PGD Registrar and the Board can effectively triage complaints, while supporting natural justice for complainants.
Recommendation 13	Amend the duty to notify a change in address under section 76(1) from '3 months' to '1 month'.

Non-regulatory proposals

Recommendation 14	The Plumbers, Gasfitters, and Drainlayers Board to reassess the quantum of disciplinary levy attached to non-registered people.
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Changes that require further work before being implemented	
Recommendation 15	Develop regulations under the Plumbers, Gasfitters, and Drainlayers Act 2006 prescribing infringement offences and setting fees.
Recommendation 16	Look into ways for the Crown to reimburse the Plumbers, Gasfitters and Drainlayers Board for the cost of infringement activities.
Recommendation 17	Review the financial penalties in section 122 and 123 of the PGD Act to ensure they appropriately reflect the seriousness of those offences.
Recommendation 18	Amend the PGD Act so that section 123 offences are criminal offences rather than infringement offences.
Recommendation 19	Explore options to ensure the PGD Board can discipline practitioners for serious poor conduct and repetitive behavioural issues.

PGD Board Composition

10.5. Background

10.5.1. Composition of the PGD Board

The PGD Board is the regulatory body responsible for ensuring practitioners are appropriately skilled and competent to carry out restricted building work. The constitution of the PGD Board is prescribed in the PGD Act and is mostly a continuation of the 1976 Act.

Section 134(1) of the PGD Act states that the PGD Board must consist of the following members:

- two people who are registered members from each of the plumbing, gasfitting, and drainlaying trades (with one person from each of the trades also holding a current practising licence); and
- four others being made up of the following:
 - one (but no more than one) registered tradesperson;
 - one person that the Minister for Building and Construction considers has relevant tertiary or vocational education experience; and
 - two people the Minister for Building and Construction considers able to represent consumer interests.

10.5.2. Office of the Auditor-General review into the PGD Board

In 2010, the Auditor-General conducted a review into the PGD Board.² This review highlighted issues with the way that the PGD Board undertook many of its functions. This included

² Office of the Auditor-General. (2010). Inquiry into the Plumbers, Gasfitters, and Drainlayers Board. Office of the Auditor-General.

decisions and policies not being clearly grounded in legislation, and a lack of awareness of the need to underpin its everyday work and decision making in basic administrative law principles.

The reviewer set the expectation for the PGD Board to place the matter of legality at the centre of its work. This included being able to see the following:

- a clear and obvious basis for the PGD Board’s operating policies and decisions; and
- the PGD Board being transparent with decision making including natural justice protections.

In 2013, a follow-up report from the Office of the Auditor-General recognised the progress that the PGD Board made in addressing the concerns raised in the 2010 report, but considered legality to be an aspect that the PGD Board needs to keep focusing on because of the complexity of the PGD Act.³

10.6. Issues

10.6.1. Achieving a diversity of skills, experience and perspectives

MBIE provides recommendations to the Minister for Building and Construction regarding potential appointments or reappointments to the PGD Board based on the legal criteria. While it is important that the PGD Board has strong occupational experience, prescriptive provisions in the PGD Act limit the ability to consider other skills and attributes that contribute to a high performing sector when making appointments.

There have been indications that the PGD Board could benefit from a greater focus on administrative law or, more recently, on new technologies and new areas such as occupational diversity. Industry stakeholders have also suggested that the PGD Board needs specific skills to govern effectively, in addition to relevant trade qualifications⁴.

At the end of 2019, the PGD Board membership was represented by an equal split between male and female, including two women practitioners. The representation is despite the industry being overwhelmingly dominated by men and appointments rely heavily on using non-trade positions to bolster female representation. A lawyer was appointed to strengthen governance skills.

The PGD Board indicated to MBIE that they needed a member with financial skills. However, the PGD Board expressed the opinion that if the PGD Board is to retain credibility across its stakeholders, then this requires a majority membership of tradespeople.

A mix of trade governance skills are needed for effective sector leadership to identify and address emerging challenges and issues facing the sector. Less prescriptive settings for appointments would help create a flexible appointment process to ensure a consistently high performing sector.

³ Office of the Auditor-General. (2014). *Inquiry into the Plumbers, Gasfitters, and Drainlayers Board: Follow-up report*. Office of the Auditor-General.

⁴ Office of the Auditor-General. *Inquiry into the Plumbers, Gasfitters, and Drainlayers Board: Follow-up report*. May 2014

10.7. Analysis

Amending the PGD Act to enable broader PGD Board membership would allow the PGD Board to retain a majority of tradespeople (the four mandatory members from paragraphs (a) and (b) of recommendation 22). It would also allow the PGD Board to balance specialist trade knowledge with the kind of administrative law and governance knowledge that was crucial to the findings in the earlier inquiry and follow up by Auditor-General. This will improve the PGD Board's ability to effectively conduct their functions.

10.8. Recommendations

Minor and technical regulatory changes

<i>Recommendation 20</i>	Provide for the Plumbers, Gasfitters, and Drainlayers Board to be comprised of: <ul style="list-style-type: none">a) three registered and licensed tradespeople, made up of one person from each of the plumbing, gasfitting, and drainlaying trades;b) one additional registered tradesperson from any of the plumbing, gasfitting or drainlaying trades;c) two people whom the Minister considers are able to represent the interests of consumers;d) one person whom the Minister considers are able to represent other skills the PGD Board requires; ande) three additional people from b) or d) as the Minister considers fit.
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11. ‘Fit and proper person’ test

11.1. Background

The PGD Board must be satisfied that a person is ‘fit and proper’ to be registered, hold a practising licence, and be entitled to a renewal of their licence (as set out in sections 36(d), 44(d), and 51(1)(d) of the PGD Act). In assessing whether a person is fit and proper, the PGD board considers the purposes of the Act which are to:

- protect the health and safety of members of the public by ensuring the competency of people who do sanitary plumbing, gasfitting and drainlaying; and
- regulate the people who do sanitary plumbing, gasfitting and drainlaying.

Apart from criminal record information (or overseas police certificates, where relevant), there is little that the PGD Board can use to satisfy legislative requirements under the PGD Act.

Most convictions aren’t relevant to whether a person can do their job as a plumber, gasfitter, or drainlayer and would not prevent a person from being registered and licenced. The PGD Board takes a holistic view in its consideration of ‘fit and proper’ and looks at things such as the seriousness of the matter, how long ago it occurred, whether there was an on-off or repeated, and how relevant it is to the applicant doing their job if they were registered.

11.2. Issues

11.2.1. The ‘fit and proper person’ test is first considered at registration

The PGD Board apply the ‘fit and proper person’ test when the tradesperson completes their training and seeks registration to practice their trade. A rare issue that some tradespeople experience is that they may fail the ‘fit and proper person’ test after completing several years of training.

Since this appears to be a rare occurrence it would be overly interventionist for the PGD Board to apply the ‘fit and proper person’ test when a trainee begins training. This is a rare occurrence because most convictions aren’t relevant to whether a person can register as a plumber, gasfitter, or drainlayer. For example, someone may be imprisoned when they enter an apprenticeship (and therefore might not pass the ‘fit and proper person’ test), but by the time they come to register they have left prison joined the workforce, and have an employer who will support their rehabilitation; they would likely meet any reasonable application of ‘fit and proper’.

11.2.2. The PGD Board’s ‘fit and proper person’ test focuses on criminal convictions

The PGD Board’s ‘fit and proper person’ test primarily focuses on criminal convictions. However, it is also desirable that a person does not have a physical or mental condition that may affect their ability to safely do plumbing, gasfitting, or drainlaying when registering. If a person declares they have a physical or mental condition, they can be required to provide a full written explanation of the relevant matter; and any relevant documentary information.

11.3. Analysis

The PGD Board has proposed introducing the ability for them to request medical certificates to determine whether a person is ‘fit and proper’ through legislation. There are a number of factors, risks, and issues to consider when requesting medical information. For example, the costs of requesting information and who will cover this, and how this information will be stored securely to protect the privacy of the individual.

Comparable legislation, such as the Electricity Act does not explicitly provide a right to request medical information. However, when registering with the Electrical Workers Registration Board, applications are required to declare whether any factors highlighted in the fit and proper person test criteria applies to them. If supporting information is required to determine whether an applicant is fit and proper, but is not provided, the applicant will be deemed to not be a fit and proper person.

Similarly to the Electricity Act 1992, it is also an offence under section 121 of the PGD Act to make a false declaration or representation for the purpose of obtaining any registration, licence, renewal of a licence or certificate.

MBIE recognises the importance of protecting the health and safety of members of public by regulating who can register to perform plumbing, gasfitting, and drainlaying work. Medical information may be relevant to an application. MBIE considers the PGD Board can request relevant medical information under their current powers if they have concerns about a person’s fitness to work. In doing so, the PGD Board will also need to take into account other legal frameworks such as the principles of the Privacy Act 2020.

11.4. Recommendations

Non-regulatory changes

<i>Recommendation 21</i>	The Plumbers, Gasfitters and Drainlayers Board uses their current powers to request medical information if it is relevant to ensure they are able to make informed decisions about whether a person is fit and proper.
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PART 3: SUMMARY AND CONCLUSIONS

CHAPTERS IN PART 3:

13 Conclusions

14 Summary of recommendations

12. Conclusions

The primary purpose of the PGD Act is to protect the health and safety of the public by ensuring the competency of people performing restricted plumbing, gasfitting and drainlaying work.

The review concludes that the PGD Act, in general, achieves this purpose. Most of the recommendations in this report relate to ways to optimise operations, rather than any glaring defects in the drafting of the PGD Act. Some recommendations or proposed further work simply aim to bring the PGD Act up to date with changes that have taken place in the 10 years since it came into force. In a couple of areas, however, most notably exemptions, the status quo allows for public health and safety to be compromised.

The independent review of self-certification in the building and construction sector confirmed the view of MBIE that it would not be appropriate to move plumbers and drainlayers to self-certification before changes are made to the wider system and competency of the industry is of a consistently higher level. The results of that review and recommendations are covered in this report (see Chapter 8).

A number of recommendations have also been made that aim to improve the current complaints, discipline, and prosecution regime under the PGD Act. These recommendations primarily focus on improving the effectiveness and efficiency of the regime by removing barriers to ensuring the purpose of the PGD Act is achieved (see Chapter 10). Further work is required for a number of the recommendations to ensure the end result also reflects good practice across the occupational regulation regimes in the building and construction sector, and achieves natural justice for complainants and practitioners.

The review also identifies opportunities to enable greater diversity in background, skill and experiences on the PGD Board by making recommendations that enable more flexibility in membership (see Chapter 11). The review also makes recommendations to enable the PGD Board to meet their responsibilities in regulating who can perform restricted plumbing, gasfitting and drainlaying work (see Chapter 12).

Other recommendations that do not require legislative changes are also highlighted in this review. For example, addressing supervision quality issues through the Minister for Building and Construction's Output Agreement with the PGD Board.

13. Summary of recommendations

Minor and technical regulatory changes

Exemptions (Chapter 6)

Recommendation 1 Remove householder and rural area exemptions, and exemptions that allow people to complete restricted work under supervision without sufficient accountability to the PGD Board.

Recommendation 2 Make minor and consequential changes related to exemptions accordingly.

Recommendation 3 Revoke Gazette notices for exemptions still in force.

Definitions (Chapter 9)

Recommendation 6 Amend the PGD Act with the outcome that the replacement of LPG cylinder O rings, and testing products during manufacture, do not require licensed persons as the associated risk does not justify these activities being restricted.

Recommendation 7 Amend the PGD Act to clarify the components of work that can be excluded from the scope of sanitary plumbing at section 6(2)(d) because the associated risk does not justify the work being restricted to licensed persons:

- Repairing or replacing compression washer taps, ballcock valves, and plugs; and
 - Repairing or replacing bench-mounted taps.
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Complaints, Discipline and Prosecution (Chapter 10)

Recommendation 10 Remove the barrier to the Registrar being able to make a complaint.

Recommendation 11 Provide that only three Board members are required for a quorum to hear a disciplinary matter.

Recommendation 13 Amend the duty to notify a change in address under section 76(1) from '3 months' to '1 month'.

Plumbers, Gasfitters, and Drainlayers Board Composition (Chapter 11)

Recommendation 20: Amend section 134(1) so that the Plumbers, Gasfitters, and Drainlayers Board is comprised of:

- (a) three registered and licensed tradespeople made up of one person from each of the plumbing, gasfitting, and drainlaying trades;
 - (b) one additional registered tradesperson from any of the plumbing, gasfitting or drainlaying trades;
 - (c) two people whom the Minister considers are able to represent the interests of consumers;
 - (d) one person whom the Minister considers are able to represent other skills the PGD Board requires; and
 - (e) three additional people from either paragraph (b) or paragraph (d) as the Minister considers fit.
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Non-regulatory changes

Supervision quality (Chapter 7)

Recommendation 4: Include in the Output Agreement a requirement for the Plumbers, Gasfitters, and Drainlayers Board to:

- (a) continue to develop and maintain a suitable supervisory-level qualification;
 - (b) work with a provider to ensure delivery of the training programme;
 - (c) include a requirement to strengthen the focus on continuing professional development for supervisors; and
 - (d) continue to build stronger feedback loops with Building Consent Authorities to improve the efficiency in which the PGD Board can address issues when they arise and disincentivise non-compliance.
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Complaints, Discipline and Prosecution (Chapter 10)

Recommendation 14: The Plumbers, Gasfitters, and Drainlayers Board to reassess the disciplinary levy attached to prosecuting unregistered and unlicensed people.

'Fit and proper person' test (Chapter 12)

Recommendation 21: The Plumbers, Gasfitters and Drainlayers Board uses their current powers to request medical information if it is relevant to ensure they are able to make informed decisions about whether a person is fit and proper.

Changes already being progressed through other regulatory levers

Definitions (Chapter 9)

Recommendation 8: Note the amendments to the definition of 'drain' and 'drainlaying' will be progressed through the Regulatory System Bill 3.

Changes that require further work before being implemented

Self-certification (Chapter 8)

Recommendation 5: Self-certification is not extended from gasfitters to include plumbers and drainlayers at this time. However, a revised model of self-certification for construction trades as a whole is considered as part of wider work to improve the consenting process.

Definitions (Chapter 9)

Recommendation 9: Progress further work on creating a clear demarcation between restricted sanitary plumbing and other water reticulation activities that share the same water source.

Complaints, Discipline and Prosecution (Chapter 10)

Recommendation 12: Explore options to ensure the PGD Registrar and the Board can effectively triage complaints, while supporting natural justice for complainants.

Recommendation 15: Develop regulations under the Plumbers, Gasfitters, and Drainlayers Act 2006 prescribing infringement offences and setting fees.

Recommendation 16: Look into ways for the Crown to reimburse the Plumbers, Gasfitters and Drainlayers Board for the cost of infringement activities.

Recommendation 17: Review the financial penalties in section 122 and 123 of the PGD Act to ensure they appropriately reflect the seriousness of those offences.

Recommendation 18: Amend the PGD Act so that section 123 offences are criminal offences rather than infringement offences.

Recommendation 19: Explore options to ensure the PGD Board can discipline practitioners for serious poor conduct and repetitive behavioural issues.

ANNEXES

ANNEXES TO MAIN REPORT:

Annex 1 - Terms of Reference

Annex 2 - List of acronyms

Annex 3 - Minor matters to be addressed

Annex 4 - PGD Board Memorandum of Accounts

Annex 1 – Terms of reference

The terms of reference for the statutory review of the *Plumbers, Gasfitters, and Drainlayers Act 2006* (the PGD Act) are:

1. Confirming the extent to which the PGD Act is delivering on its legislative purposes of:
 - a. protecting 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
 - b. regulating persons who carry out sanitary plumbing, gasfitting, and drainlaying.
2. Addressing systematic issues and inefficiencies in the operation of the Act that have an impact on the sector, practitioners, and stakeholders, including:
 - a. ensuring its efficient operation
 - b. finding gaps in regulations
 - c. maintaining or growing sector skills and competence;
 - d. identifying opportunities for more consistency in the regulated occupations.
3. Improving the efficiency of the legislation to respond to changing circumstances.
4. Addressing anomalies which have been identified through past experience in the operation of the PGD Act, including matters raised by stakeholders.
5. Oversight for occupational regulation and exemptions will be held by Building Systems Legislative Reform Programme governance group. Oversight for all other review issues will be retained by the PGD Act review project team for reporting to the Minister although synergies between the two work streams will be maintained.
6. The review will be completed by June 2020.

Annex 2 – List of Acronyms

BCA	Building Consent Authority
BSLRP	Building Systems Legislative Reform Programme
CDP	Complaints, Discipline and Prosecution
CoC	Certificate of Compliance
EWRB	Electrical Workers Registration Board
GSC	Gas Safety Certificate
GSMR	Gas (Safety and Measurement) Regulations 2010
ITO	Industry Trade Organisation
LBP	Licensed Building Practitioner
MBIE	Ministry of Business, Innovation and Employment
MMC	Modern Methods of Construction
NZQA	New Zealand Qualifications Authority
PGD Act	Plumbers, Gasfitters, and Drainlayers Act 2006
PGD Board	Plumbers, Gasfitters, and Drainlayers Board
RSB	Regulatory Systems Bill
RSB3	Regulatory Systems Bill 3

Annex 3 – Minor matters to be addressed

The minor and technical matters set out in Table 1 can be addressed through the next omnibus bill:

Table 1: Minor matters to be addressed in the PGD Act

Section	Matter
8(3)	Omit: 'in accordance with sections 12 to 27' and replace with: 'in accordance with sections 12-14, 18, 20, 24, 26, and 27'.
8(3)	Omit: 'subject to subsection (3) and sections 11 to 27' and replace with: 'subject to subsection (3) and sections 11-14, 18, 20, 24, 26, and 27'.
137(q)	To make recommendations to the Minister with respect to the making of regulations controlling gasfitting, or the making of regulations controlling sanitary plumbing or drainlaying under the <i>Health Act 1956</i> .

Annex 4 – PGD Board Memorandum of accounts

MEMORANDUM ACCOUNTS FOR FUTURE PROCESSES AS AT 31 MARCH 2019

Discipline process		
Revenue		
Discipline Levy	1,148,645	
Fines and costs discipline	156,482	1,305,127
Expenditure		
Direct expenditure	116,160	
Allocated overheads	1,227,101	1,343,261
Surplus for 2018-2019 year		(38,134)
Balance brought forward from 31.3.18		572,655
Balance to carry forward to future years		534,521
Offences prosecutions		
Revenue		
Offences fees	723,952	
Fines and costs offences	10,309	734,261
Expenditure		
Direct expenditure	64,923	
Allocated overheads	648,950	713,873
Surplus for 2018-2019 year		20,388
Balance brought forward from 31.3.18		204,027
Balance to carry forward to future years		224,415