



COVERSHEET

Minister	Hon Poto Williams	Portfolio	Building and Construction
Title of Cabinet paper	Plumbers, Gasfitters, and Drainlayers Act 2006: Statutory Review	Date to be published	5 May 2021

List of documents that have been proactively released

Date	Title	Author
17 March 2021	Plumbers, Gasfitters, and Drainlayers Act 2006: Statutory Review	Office of the Minister for Building and Construction
17 March 2021	Plumbers, Gasfitters, and Drainlayers Act 2006: Statutory Review – Minute of Decision DEV-21-MIN-0038	Cabinet Office

Note: the Ministry of Business, Innovation and Employment's *Statutory Review Report of the Plumbers, Gasfitters, and Drainlayers Act 2006* was published in March 2021 and is available at <https://www.mbie.govt.nz/dmsdocument/13715-statutory-review-report-of-plumbers-gasfitters-and-drainlayers-act-2006>

Information redacted

YES

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Some information has been withheld to protect the confidentiality of advice tendered by ministers and officials.

In Confidence

Office of the Minister for Building and Construction
Cabinet Economic Development Committee

Statutory Review of the Plumbers, Gasfitters, and Drainlayers Act 2006

Proposal

- 1 This paper presents the findings of the statutory review of the Plumbers, Gasfitters, and Drainlayers Act 2006 (PGD Act), and seeks Cabinet agreement to progress minor and technical changes to improve the operation of the PGD Act.

Relation to government priorities

- 2 The proposals in this paper are being progressed as part of the Building System Legislative Reform Programme (the Reform Programme), which is a series of reforms to building laws to lift the efficiency and quality of building work, and provide fairer outcomes if things go wrong.
- 3 The reforms are progressing in three phases:
 - 3.1 *Phase One* is progressing as the Building (Building Products and Methods, Modular Components and Other Matters) Amendment Bill, and is currently before the House.
 - 3.2 *Phase Three* will investigate options to address the lack of a building warranty insurance market and risk allocation in the building and construction sector.
- 4 The proposals in this paper are part of Phase Two of the Reform Programme, which focuses on the professionals in the sector. Phase Two will progress reforms to occupational regulation of engineers and practitioners in the building and construction sector, so that people can have more confidence in these professions and their work. It will respond to issues identified by the Ministry of Business, Innovation and Employment (MBIE), members of the sector and others in the building system, as well as the Canterbury Earthquakes Royal Commission.
- 5 Implementing decisions from Phase Two will require amendments to primary legislation. Confidential advice to Government
This would be an omnibus bill with the single broad policy of ensuring people have confidence in engineers and regulated building practitioners, and their work.

Executive Summary

- 6 MBIE is required under section 187 of the PGD Act to review the operation of the PGD Act, and to consider whether any amendments need to be made. A report of these findings must be provided to the responsible Minister, who must then table the report in the House of Representatives.
- 7 The statutory review was formally launched in 2019. MBIE undertook targeted consultation with a range of key stakeholders to confirm existing issues, identify new issues, and develop early options on how to address those issues. Stakeholder engagements included local government, industry membership bodies, occupational bodies, and government agencies.
- 8 Key stakeholders engaged include the Plumbers, Gasfitters, and Drainlayers Board (the PGD Board), Master Plumbers, New Zealand Milking and Pumping Trade Association (MPTA), the Plumbers Gasfitters and Drainlayers Federation, and Irrigation New Zealand.
- 9 There was general consensus from stakeholders that MBIE had correctly identified most of the issues that needed to be addressed. Stakeholders added significant value by providing new detail to current issues, putting theoretical issues into context, and bringing new issues to the table.
- 10 The outcome of stakeholder engagement resulted in MBIE identifying seven key focus areas for the statutory review: exemptions; supervision quality; self-certification; definitions; complaints, disputes, and prosecution; the PGD Board composition; and the 'fit and proper persons' test.
- 11 For the purposes of section 187 of the PGD Act, MBIE has prepared the *Statutory Review Report of the Plumbers, Gasfitters, and Drainlayers Act 2006* (the Statutory Review Report). The Statutory Review Report is attached as Appendix One.
- 12 This Cabinet paper categorises the proposed changes to address issues identified in each of the focus areas into four groups of work: minor and technical changes to legislation that are ready for policy decisions; non-legislative changes; changes that are already being progressed through other legislative amendments; and changes that require further work before being implemented.
- 13 An overview of the identified issues, solutions, and the phase of work that these solutions fit into is provided in the table below:

Focus Area	Issue	Proposed Action	Outcome
Exemptions	Householder and rural area exemptions, and exemptions that allow people to complete restricted work under supervision without adequate accountability, are creating arbitrary gaps in regulation of otherwise restricted work.	Remove householder and rural area exemptions, and exemptions that allow people to complete restricted work under supervision.	Minor and technical

I N C O N F I D E N C E

Supervision quality	The quality of supervision is raising concerns about non-compliant work due to a lack of training and development opportunities, and a lack of awareness of compliance issues when they arise.	Set expectations for the PGD Board to address these concerns through the Minister's Output Agreement with the PGD Board.	Non-legislative
Self-certification	Master Plumbers proposed that self-certification be extended to include plumbing and drainlaying work.	MBIE to work with the PGD Board on an approach to lift industry readiness. Future work to consider self-certification is better placed in MBIE's wider work to improve the consenting system.	Further work required
Definitions	The current definition of 'gasfitting' is overly risk averse, incorporating work considered low risk, such as replacing LPG cylinder O rings and testing products during manufacture.	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.	Minor and technical
	The meaning of terms used in the current exclusion list of the 'sanitary plumbing' definition has evolved. The exclusions do not accurately reflect new technologies and their associated level of risk.	Amend the PGD Act to clarify the components of work that can be excluded from the scope of sanitary plumbing because the associated risk does not justify the work being restricted to licensed persons.	
	Some drainlayers are doing sanitary plumbing without being licensed plumbers.	Clarify that a 'drain, or drainlaying' under the PGD Act excludes the elements within the current definition of 'sanitary plumbing'.	Cabinet approval already obtained through the Regulatory Systems Amendment Bill 3 process (refer CAB-19-MIN-0362)
	Restricted 'drainlaying' work does not include earthworks associated with drainlaying, therefore, making it difficult to hold practitioners to account who carry out earthworks in an incompetent manner.	Include earthworks and excavations associated with drainlaying as restricted drainlaying work so that these activities are subject to regulation by the PGD Board.	
	The definition of 'sanitary plumbing' does not explain a clear demarcation between sanitary plumbing and other water services where they share the same water source.	Explore options to create a clear demarcation between restricted sanitary plumbing and other water reticulation activities that share the same water source.	Further work required

IN CONFIDENCE

Complaints, Discipline, and Prosecution	Section 90(2) of the PGD Act currently restricts the Registrar from making a complaint, consequently creating risks of known issues within the industry continuing on without being addressed.	Remove the barrier in the PGD Act to the Registrar being able to make a complaint to the PGD Board.	Minor and technical
	The PGD Board indicated that the requirement to have a five-member quorum for disciplinary hearings is unnecessarily expensive.	Amend the PGD Act so that only three members are required for the purpose of hearing a disciplinary matter.	
	A practicing licence holder has a duty to notify the Registrar of a change of address within three months, however, the PGD Board considers this too long, considering the importance of maintaining an updated register of practitioners.	Amend the PGD Act to require a licence holder to notify the Registrar of a change in address within one month.	
	The disciplinary levy for plumbers, gasfitters, and drainlayers is high compared to other trades. This is due to the PGD Board prosecuting individuals that are not registered or licensed.	The PGD Board to reassess the disciplinary levy attached to prosecuting unregistered and unlicensed people.	Non-legislative change
	The PGD Board raised issues with the requirement for it to investigate complaints it considers shouldn't be progressed, but which do not meet the grounds for dismissal of being 'frivolous or vexatious'.	Explore options to ensure the PGD Registrar and the Board can effectively triage complaints, while supporting natural justice for complainants.	Further work required
	There are currently no regulations prescribing infringement offences and fees in order for the PGD Board to deal with minor offences.	Develop regulations prescribing infringement offences and setting fees.	Further work required
	The PGD Board currently receives no Crown funding to cover the costs of prosecution activities. There is no financial incentive for the PGD Board to prosecute non-compliant or illegal work.	Look into ways for the Crown to reimburse the PGD Board for the cost of prosecution activities.	
	The financial penalties in section 122 and 123 are outdated and considered too low given the seriousness of the offences.	Review the financial penalties in section 122 and 123 of the PGD Act to ensure they appropriately reflect the seriousness of those offences.	

I N C O N F I D E N C E

	Section 123 offences are serious offences, and are the most frequently used, and are not considered appropriate as an infringement offence.	Amend the PGD Act so that section 123 offences are criminal offences rather than infringement offences.	
	Existing grounds for disciplining registered and licensed people may not adequately provide the PGD Board with the ability to address repetitive poor conduct and behavioural issues.	Explore options to ensure the PGD Board can discipline practitioners for serious poor conduct and repetitive behavioural issues.	
PGD Board composition	The current legislative settings for the PGD Board's composition are too restrictive.	Amend the PGD Act to provide more flexibility in the representation of skills and experience.	Minor and technical
Fit and proper person test	The PGD Board raised concerns that the information available to determine whether an individual is fit and proper is limited.	MBIE considers the PGD Board can use their current powers to request relevant medical information.	Non-legislative change

- 14 I seek Cabinet's approval to progress the following minor and technical changes to the PGD Act in order to address issues highlighted through the statutory review:
- 14.1 remove householder and rural area exemptions and exemptions that allow people to complete restricted work under supervision and make minor and consequential changes accordingly;
 - 14.2 amend the scope of restricted 'gasfitting' work to ensure restrictions on work are proportionate to the associated risk;
 - 14.3 clarify the components of work that can be excluded from the scope of sanitary plumbing, where the associated risk does not justify the work being restricted to licensed persons;
 - 14.4 remove the barrier to the Registrar being able to make a complaint in order to improve the PGD Board's ability to address compliance issues effectively and efficiently;
 - 14.5 include an exception to the necessary quorum of five Board members so that three members may hear a disciplinary matter;
 - 14.6 require a licence holder to notify the Registrar of a change in address within one month, rather than three months; and
 - 14.7 provide more flexibility in the Board's representation of skills and experience.
- 15 Following Cabinet agreement, MBIE will progress these changes as part of Phase Two of the Building System Legislative Reform Programme and

identify the appropriate levers to implement the non-legislative changes highlighted in the table above.

- 16 MBIE will also progress work to identify possible options to address the issues identified in the table that require further work.

Background

- 17 The primary objective of occupational regulation in the building sector is to give people confidence in the relevant professions and in their work. This is achieved by providing assurance that practitioners meet approved standards, and by ensuring that effective action is taken against those that do not meet these standards in their work.
- 18 The PGD Act aims to protect public health and safety by ensuring the competency of people engaged in sanitary plumbing, gasfitting, and drainlaying services; and to regulate the people who can carry out sanitary plumbing, gasfitting and drainlaying.
- 19 To achieve this, the PGD Act provisions cover the following areas:
- 19.1 restrictions on and exceptions for doing plumbing, gasfitting and drainlaying work;
 - 19.2 registration, licensing, and classes;
 - 19.3 a register of practitioners;
 - 19.4 complaints, discipline, and investigations;
 - 19.5 offences;
 - 19.6 membership, functions, and powers of the PGD Board; and
 - 19.7 fees, levies and forms.
- 20 Section 187 of the PGD Act requires the Ministry responsible for administering the PGD Act to review its operation, identify any amendments that need to be made, and present these findings to the responsible Minister to be tabled in the House of Representatives. The Statutory Review Report is attached as Appendix One.
- 21 MBIE undertook targeted consultation with stakeholders early in the review process to gain better insights into how the PGD Act is operating, to identify areas for improvement, and to discuss the appropriate solutions to see these changes implemented effectively.

Scope of the statutory review of the PGD Act

- 22 The following approach was taken to carry out the statutory review:

- 22.1 MBIE formally launched the statutory review of the PGD Act in September 2019;
 - 22.2 known issues to MBIE were identified and triaged;
 - 22.3 stakeholders were re-engaged to confirm current issues and identify any new issues and solutions to address these issues; and
 - 22.4 the recommendations were developed based on analysis.
- 23 The primary objective of the statutory review was to ensure the regulatory framework for plumbers, gasfitters, and drainlayers is fit for purpose by checking that:
- 23.1 the regulation is proportionate to the risks to public safety and wellbeing;
 - 23.2 practitioners are providing services with reasonable care and skills;
 - 23.3 practitioners are operating within their areas and levels of expertise; and
 - 23.4 practitioners can be held to account for substandard work and poor behaviour.
- 24 Stakeholder engagements included local government; occupational bodies such as the PGD Board; industry bodies such as Master Plumbers, the New Zealand Milking and Plumbing Trade Association (MPTA), GasNZ, and the Building Officials Institute of New Zealand; and government agencies.

Key findings of the statutory review

- 25 The statutory review found that the current regulatory system for plumbers, gasfitters and drainlayers is working overall. The statutory review therefore focuses on improvements to how the PGD Act is operating.
- 26 Stakeholder engagements identified seven key focus areas for the statutory review: exemptions; supervision quality; self-certification; definitions; complaints, discipline, and penalties regime; PGD Board composition; and the 'fit and proper person' test. The key findings and policy decisions sought from Cabinet within each of these focus areas are outlined below.

Recommendations that require further work

- 27 There are three focus areas where MBIE considers that further work is required to ensure there are no unintended or adverse consequences from implementing the recommendations, and to ensure there is adequate industry readiness. These are recommendations in relation to:
 - 27.1 extending self-certification to plumbers and drainlayers;

- 27.2 a number of recommendations relevant to complaints, discipline, infringements and prosecutions under the PGD Act; and
 - 27.3 creating a clear demarcation between 'sanitary plumbing' and other water services where they share the same water source.
- 28 Further work is required to inform MBIE's final policy recommendations in relation to these matters, including further engagement with the PGD Board, industry and the Ministry of Justice.

Self-certification

- 29 In 2017, Master Plumbers proposed that the Government introduce a self-certification regime for plumbing and drainlaying work in order to improve efficiency and bring consistency across the plumbing, gasfitting and drainlaying trades. Currently, only gasfitters are able to self-certify through the issuing of a Certificate of Compliance and Gas Safety Certificate.
- 30 Preliminary work conducted by MBIE raised concerns about industry readiness to adopt self-certification. Consequently, MBIE commissioned an independent review to evaluate the effectiveness of self-certification models in the New Zealand construction industry and the readiness of plumbers and drainlayers to move into self-certification. The findings of the independent review confirmed the concerns raised by MBIE.
- 31 I recognise 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. I consider that, in principle, self-certification should be extended to plumbers and drainlayers. However, there are a number of gaps within the current regulatory system for plumbers and drainlayers that need to be addressed before self-certification is implemented (e.g. improving recordkeeping and ensuring there are appropriate measures to ensure accountability).
- 32 I have directed my officials to engage further with the PGD Board to develop an approach to industry readiness. MBIE will also consider the potential impact of implementing this recommendation as part of wider work to improve the consenting system.

Exemptions

- 33 The PGD Act currently provides 11 exemptions that allow people to perform specific work without needing to meet the registration and licensing requirements of the PGD Board.
- 34 The statutory review identified issues with the following exemptions:
- 34.1 householder and rural area exemptions allowing for some restricted sanitary plumbing work to be undertaken without relevant qualifications; and

- 34.2 exemptions that allow some tradespeople to undertake restricted work without any relevant qualification, provided they work under supervision.
- 35 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.
- 36 These exemptions are now considered outdated and infrequently used. 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, when the work undertaken does not meet the requirements of the Building Code.
- 37 The exemptions in sections 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.
- 38 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. These people face little or no regulatory accountability for substandard work or poor conduct due to certifying practitioners being solely responsible for completed work.
- 39 I propose to remove the householder and rural exemptions, and exemptions for work carried out under supervision from the restrictions on doing or assisting with sanitary plumbing, gasfitting or drainlaying.
- 40 The objectives of these changes are to ensure the restrictions on building work are proportionate to the risks to public safety, and to ensure that those who are licensed to undertake restricted work have the right level of competence and are held to account for substandard work or poor conduct.
- 41 MBIE and the PGD Board will work together on transitional arrangements to ensure those people currently working under supervision have a pathway to continue working, to minimise disruption to the industry.

Definitions

- 42 The PGD Act places restrictions on who may do or assist in doing sanitary plumbing, gasfitting, and drainlaying work.
- 43 The statutory review concludes that aspects of the meanings of, and situations captured under, restricted plumbing, gasfitting, and drainlaying under the PGD Act are outdated and do not accommodate for technological developments and modern practice.

Changes already being progressed – ‘drain’ and ‘drainlaying’ definition

- 44 Prior to the launch of the statutory review, MBIE identified a number of minor and technical issues with definitions as part of regular engagements with stakeholders. One issue was an overlap between sanitary plumbing and drainlaying. This overlap 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.
- 45 Additionally, the definition of 'drainlaying' under the PGD Act does not include earthworks associated with drainlaying. Poor earthworks or excavation works can have health and safety implications, but the PGD Board does not have the necessary levers to sanction a drainlayer who carries out earthworks in an incompetent manner.
- 46 In 2019 Cabinet approved the following policy proposals to address these issues through the Regulatory Systems Amendment Bill (3) [CAB-19-MIN-0362 refers]:
- 46.1 clarifying that a drain excludes the elements within the current definition of sanitary plumbing, and that plumbing and drainlaying are distinct areas of work; and
- 46.2 including earthworks and excavations associated with drainlaying (and carried out by people who are licensed drainlayers) within the definition of drainlaying. This will enable the PGD Board to deal with complaints about, or discipline the drainlayer.

The definition of 'gasfitting' is overly risk averse

- 47 Currently, replacing the LPG cylinder O rings¹ on a gas pigtail coupling² is considered to be restricted gasfitting work³. However, this does not match current practice where O rings are often replaced by unlicensed people (often the LPG cylinder installer).
- 48 The Statutory Review Report concludes that 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).
- 49 In addition, in manufacturing situations, gasfitting work currently covers the temporary connection of appliances such as gas fires or pipework to a gas supply. This would occur, for example, where an appliance is connected to a gas source for the purpose of checking whether it works, and is then disconnected. Including this temporary work as restricted gasfitting unnecessarily restricts work to protect public health and safety. Under the Gas (Safety and Measurement) Regulations 2010, 'temporary work', in manufacturing settings, is classified as low risk.

¹ The purpose of an LPG cylinder O ring is to seal a device and block the pathway that fluid or air may escape through.

² A gas pigtail coupling is used to connect LPG cylinders to manifolds (gas distribution device that serves to bring many junctions into one place) or multi-cylinder systems.

³ section 2 of the Gas Act 1992 defines 'fittings' broadly, and this is reflected in section 4 of the PGD Act.

- 50 I propose an amendment to the PGD Act to exclude the replacement of LPG cylinder O rings from the scope of restricted gasfitting work.
- 51 I propose a further amendment to the PGD Act to exclude the testing of products during manufacture from the scope of restricted gasfitting work, as the associated risk does not justify that work being restricted to licensed persons. These changes would ensure the protection of public health and safety is appropriately balanced with the level of risk associated with the work being conducted. They would also provide clarity by ensuring restricted work is consistently defined.

Updating components of sanitary plumbing to reflect modern terminology

- 52 The Statutory Review Report also highlights issues with the current exclusion list under the definition of 'sanitary plumbing'. 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. 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.
- 53 I propose to amend the PGD Act to clarify that the following components are excluded from the meaning of sanitary plumbing:
- 53.1 repairing or replacing compression washer taps, ballcock valves, and plugs; and
- 53.2 repairing or replacing bench-mounted taps.

The definition of 'sanitary plumbing' has some ambiguities where there is a shared water source

- 54 The PGD Act does not have a clear demarcation between sanitary plumbing and other water services where they share the same water source. This means that any water services must be installed by a plumber as the entire system is deemed to be sanitary plumbing. This is causing uncertainty among trade associations, irrigators and regulators.
- 55 I have directed my officials to explore options to create a clear demarcation between restricted sanitary plumbing and other water reticulation activities that share the same water source. This is to ensure a clear demarcation can be sufficiently implemented while still protecting public health and safety.

Complaints, discipline and penalties regime

- 56 The PGD Board is responsible for monitoring and enforcing compliance standards. This enforcement role involves the PGD Board investigating complaints, disciplining registered tradespeople, and prosecuting people who breach the PGD Act including by doing unauthorised work.
- 57 A number of issues were identified with the current complaints, discipline and penalties regime for plumbers, gasfitters, and drainlayers.

Restriction on who can make a complaint

- 58 Section 90(2) of the PGD Act currently restricts the PGD Board or the Registrar from making a complaint. Consequently, the Registrar is unable to launch an investigation into issues they become aware of, and instead have to rely on a formal complaint being made. This is creating risks of the known issues within the industry continuing without being addressed.
- 59 To ensure compliance issues are dealt with effectively, I propose to amend the PGD Act to remove the barrier to the Registrar being able to make a complaint. Enabling the Registrar to make a complaint is appropriate as, unlike the Board, they are not involved in the determination of complaints. This will reduce the risk to public health and safety by ensuring people conducting non-compliant work are held to account.

The disciplinary process lacks flexibility

- 60 The requirement to have five PGD Board members present at a disciplinary hearing is unnecessarily expensive and intimidating, especially when the case is straightforward. The PGD Board also considers that some of the complaints it receives should not be progressed to an investigation, but do not meet the threshold of being frivolous or vexatious for dismissal.
- 61 I propose an amendment to the PGD Act to include an exception to the required quorum of five members, to three members for the purpose of hearing a disciplinary matter. This will address frustrations caused by the administrative burden of bringing together five PGD Board members.
- 62 The issue of extending the ability to dismiss a complaint beyond the frivolous or vexatious threshold requires further work, to balance the Board's interest in triaging complaints with natural justice for complainants and practitioners.

Serious poor conduct and behavioural issues that may bring the industry into disrepute

- 63 In some cases, the PGD Board has received serious complaints about the conduct of a tradesperson but has been unable to address the issue, because it does not fall within existing disciplinary offences. Outside of existing disciplinary offences, there is currently no threshold that the PGD Board can apply to address repetitive poor conduct and serious behavioural issues that risk bringing the industry into disrepute.
- 64 Further work is required to develop options that would ensure the Board is able to address these behaviours, including consultation with the Ministry of Justice on the design of any new offence.

Cost of disciplinary levy

- 65 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.

- 66 The statutory review highlights that the registration and licensing fees for plumbers, gasfitters, and drainlayers are high compared to the equivalent fees in similar industries due to a lack of economies of scale with only a small number of regulated tradespeople.
- 67 The Statutory Review Report recommends that the PGD Board reassess the disciplinary levy attached to non-registered people. No legislative amendment is required to the PGD Act to implement this recommendation. This will be progressed through the work MBIE is currently doing with the PGD Board.

Infringement offences are not being used effectively

- 68 Section 129 of the PGD Act allows for the use of infringement notices to deal with minor offences. However, there are currently no regulations prescribing infringement offences and fees to enable an infringement regime to be used by the Board.
- 69 I have directed my officials to engage further with the PGD Board to begin developing an approach to create regulations prescribing infringement offences under the PGD Act and setting fees for these.

Offences and penalties for unauthorised work

- 70 Section 123 offences for an unauthorised person engaging in restricted work (or employing an unauthorised person to engage in restricted work) are serious offences, with a penalty of up to \$10,000 for a criminal conviction.
- 71 The PGD Act also refers to section 123 as an infringement offence. 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. Since this case, it has not been possible to obtain a criminal conviction for any person found guilty of an offence under section 123.
- 72 Financial penalties for criminal offences under the Act are also perceived as too low by many registered tradespeople, causing concern that they do not reflect the seriousness of the offences.
- 73 A comparative review highlighted that penalties under the PGD Act are mostly comparable with existing regimes. However, they do not align with proposals to increase the maximum penalties for similar offences relating to unauthorised persons who engage in restricted building work under the Building Act. 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.
- 74 To address these issues, I have directed my officials to progress further work, in consultation with the Ministry of Justice, to:

- 74.1 increase the financial penalties in section 122 and section 123 for individuals and bodies corporate to ensure they reflect the seriousness of these offences; and
- 74.2 repeal the reference to section 123 in the definition of 'infringement offence' so that any conviction under section 123 will become a criminal conviction to reflect the seriousness of the offence.

Funding of prosecutions and infringements

- 75 The PGD Board has a statutory role in prosecuting unregistered and unlicensed people carrying out illegal work. However, the PGD Board has no financial incentive to prosecute non-compliant work or illegal work because they incur all costs for this activity.
- 76 To address this issue, I have directed my officials to explore opportunities for the Crown to reimburse the PGD Board for the cost of these prosecution activities, which could remove financial barriers that may disincentivise the PGD Board from prosecuting non-compliant or illegal work. This will also reduce the risk to public health and safety by increasing the PGD Board's scrutiny of non-compliant work.

No sanctions for not participating in competence review

- 77 Section 53 of the PGD Act provides the PGD Board with the power to review the competence of a registered person at any time. However, the PGD Board raised concerns around their ability to fulfil this function as they do not have the power to require participation from individuals.
- 78 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.
- 79 The review recommends no changes are made as a competence review can progress without a person agreeing to take part, or having to appear.

Administration of register

- 80 A practising licence holder has a duty to notify the Registrar of a change of address within three months. However, the PGD Board considers this too long given the importance of maintaining an updated register of practitioners. This is also inconsistent with the duty to notify a change of name within one month.
- 81 I propose that the PGD Act is amended to require a licence holder to notify the Registrar of a change in address within one month.

Updating the source of the Board's hearing powers

- 82 Separately to the review of the PGD Act, the Department of Internal Affairs has undertaken some initial work exploring options for repealing the Commissions of Inquiry Act 1908. The PGD Board is one of the many

statutory bodies that derives powers for conducting hearings from the Commissions of Inquiry Act 1908.

- 83 I propose to update the powers available to the PGD Board for the purposes of conducting a hearing, to remove reference to the Commissions of Inquiry Act 1908 and refer instead to equivalent powers in the Inquiries Act 2013.

Supervision quality

- 84 The PGD Act provides the PGD Board with the power to designate classes of registration and licensing for plumbing, gasfitting and drainlaying. The Certifying class is the highest qualification available. It demonstrates that the practitioner possesses the advanced competencies required to test and certify their own work and the work of anyone they supervise. In the 2019/20 licensing year, the PGD Board reported a total of 8,973 certifying plumbers, gasfitters and drainlayers out of 23,410 licensed practitioners in total.
- 85 Stakeholders raised concerns about the quality of supervision being provided by certifying practitioners and the risk this is creating for non-compliant work. The most common causes cited were situations such as certifying practitioners supervising too many people, the supervisor not being physically present for less experienced people, and supervision levels not being adequate for the complexity of the task or the skills and experience of those being supervised. There were also anecdotes where some people were seen to not be taking their obligations under the PGD Act seriously.
- 86 The statutory review identified two underlying issues contributing to these concerns: a lack of available training and continued professional development opportunities, and the lack of feedback loops between the PGD Board and Building Consent Authorities when compliance issues arise.
- 87 Consequently, certifying practitioners do not have access to the necessary training opportunities to ensure they are providing quality supervision to practitioners. Additionally, the lack of awareness of compliance may incentivises certifying practitioners to ignore their responsibilities as supervisors if they will not be held to account.
- 88 The PGD Board is currently working with the relevant Industry Training Organisation to develop a course of study to improve the supervision quality for those approved to supervise work. The New Zealand Qualification Framework Level 5 qualification is designed to improve supervision quality of practitioners, and drive skill development and competence to ensure quality control.
- 89 I will also formalise my expectations through my Output Agreement with the PGD Board to continue to progress the development of a training and professional development programme for supervision, and continue to build stronger feedback loops with Building Consent Authorities.

PGD Board composition

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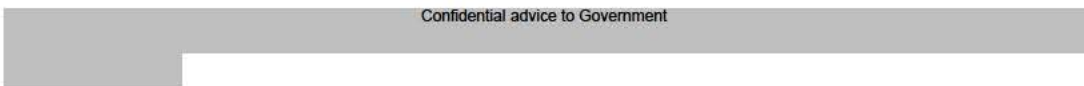
- 90 Section 134(1) of the PGD Act prescribes that the PGD Board must consist of the following members:
- 90.1 two registered members from each of the plumbing, gasfitting and drainlaying trades (with one person from each of the trades also holding a current practising licence);
 - 90.2 one registered tradesperson;
 - 90.3 one person that the Minister considers has relevant tertiary or vocational education experience; and
 - 90.4 two people the Minister considers able to represent consumer interests.
- 91 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.
- 92 A mix of trade skills and 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.
- 93 I propose to amend requirements around the composition of the PGD Board to enable it to broaden its membership, while still enabling the tradespeople majority to be retained.
- 94 The proposed changes will mean the PGD Board will be comprised of the following:
- 94.1 three registered and licensed tradespeople made up of one person from each of the plumbing, gasfitting and drainlaying trades;
 - 94.2 one additional registered tradesperson from any of the plumbing, gasfitting or drainlaying trades;
 - 94.3 two people whom the Minister considers are able to represent the interests of consumers;
 - 94.4 one person whom the Minister considers are able to represent other skills the PGD Board requires; and
 - 94.5 three additional people from paragraph 94.2 or paragraph 94.4 as the Minister considers fit.
- 95 This amendment will allow the PGD Board to balance specialist trade knowledge with the kind of administrative law and governance knowledge that will improve the PGD Board's ability to effectively conduct their functions.

Fit and proper person test

- 96 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). To fulfil this requirement, the PGD Board assesses whether applicants are fit and proper by taking into account their responsibility to:
- 96.1 protect the health and safety of members of the public by ensuring the competency of people who do sanitary plumbing, gasfitting and drainlaying; and
 - 96.2 regulate the people who do sanitary plumbing, gasfitting and drainlaying.
- 97 The PGD Board raised concerns that apart from criminal record information (or overseas police certificates, where relevant), there is little they can use to satisfy legislative requirements under the PGD Act.
- 98 To address this, the PGD Board suggested enabling them to request medical information to ensure individuals are fit and proper to perform plumbing, gasfitting and drainlaying work. However, the Statutory Review Report concludes that the PGD Board can request this information, if relevant, under their current powers.
- 99 No legislative changes are required to address this issue.

Next steps

- 100 I will table the Statutory Review Report in the House of Representatives as soon as practicable following Cabinet consideration.
- 101 Following Cabinet agreement, MBIE will progress work to identify potential options and appropriate levers to progress the non-legislative proposals, and will address those matters that are categorised as requiring further work.

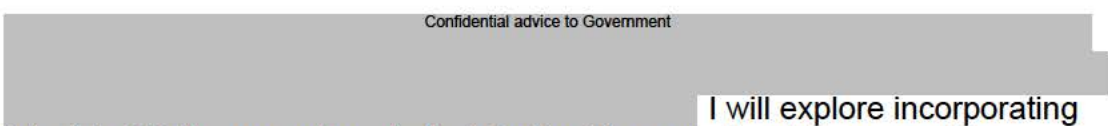
102  Confidential advice to Government

Financial Implications

- 103 There are no direct financial implications for the Crown.

Legislative Implications

- 104 I intend for the proposed amendments to the PGD Act to progress through a Building and Construction Sector Occupational Regulation Bill alongside reforms to the regulation of engineers and licensed building practitioners.

105  Confidential advice to Government

I will explore incorporating into this Bill the amendments that Cabinet has previously approved for inclusion in the Regulatory Systems Amendment Bill (3).

106 The proposed Building and Construction Sector Occupational Regulation Bill is planned for introduction in February 2022. Confidential advice to Government
I intend to report back to the Cabinet Legislation Committee and Cabinet with the draft Bill, to seek approval for introduction in February 2022.

107 The PGD Act and proposed amendments will bind the Crown.

Impact Analysis

Regulatory Impact Statement

108 The Regulatory Quality Team at the Treasury has determined that the regulatory proposals included in this form are exempt from the requirement to provide a Regulatory Impact Statement on the basis that they have no or minor impacts on businesses, individuals, or not for profit entities.

Climate Implications of Policy Assessment

109 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

110 The proposals in this paper are not expected to have significant implications for population groups.

Human Rights

111 This paper has no implications under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

112 The following agencies and Crown entities were consulted on the proposals in this paper: Ministry of Education, NZQA, ACC, Ministry of Justice, The Treasury, Ministry of Primary Industries, Ministry of Health, WorkSafe, Parliamentary Counsel Office. The Department of the Prime Minister and Cabinet has been informed.

Communications

113 I intend to release a media statement once Cabinet decisions have been made.

Proactive Release

114 I intend to proactively release this Cabinet paper, appendices and associated minute on the MBIE website within 30 business days following the Report being tabled at the House of Representatives.

Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** that a statutory review has been undertaken in accordance with section 187 of the Plumbers, Gasfitters, and Drainlayers Act 2006 to consider whether any amendments to the Act are required to improve its operation;
- 2 **note** the Statutory Review Report on the Plumbers, Gasfitters, and Drainlayers Act 2006 (Annex One) is the report required to be prepared under section 187 of the Plumbers, Gasfitters, and Drainlayers Act 2006;
- 3 **note** the Statutory Review Report's key focus areas covered exemptions; supervision quality; self-certification; definitions; complaints, disputes, and prosecution; the Plumbers, Gasfitters, and Drainlayers Board composition; and the 'fit and proper persons' test;
- 4 **note** that there is a statutory requirement under section 187(2) of the Plumbers, Gasfitters, and Drainlayers Act 2006 to present the Statutory Review Report on the Plumbers, Gasfitters, and Drainlayers Act 2006 to the House of Representatives;
- 5 **note** this Cabinet paper categorises the proposed changes to address issues identified in each of the focus areas into four groups of work: minor and technical changes to legislation, non-legislative changes, changes already being progressed through other legislative amendments, and changes that require further work;
- 6 **note** that I am seeking Cabinet agreement to progress the minor and technical changes to legislation recommended through the Statutory Review Report on the Plumbers, Gasfitters, and Drainlayers Act 2006;

Definitions (minor and technical proposals)

- 7 **note** amendments to the 'drain' and 'drainlaying' definitions under the Plumbers, Gasfitters, and Drainlayers Act 2006 are already being progressed through the Regulatory System Amendment Bill (3) [refer CAB-MIN-0362] and I will explore including them in a proposed Building and Construction Sector Occupational Regulation Bill;
- 8 **agree** to remove the exemption currently provided under section 15 of the Plumbers, Gasfitters, and Drainlayers Act 2006 that allows householders and their family members to do sanitary plumbing in premises that fall within a local authority area that has been specified by the Minister for Building and Construction;
- 9 **agree** to remove the Minister's power, currently provided under section 16 of the Plumbers, Gasfitters, and Drainlayers Act 2006, to designate areas as areas where sanitary plumbing may be done by any person;
- 10 **agree** to remove the exemptions currently provided by sections 19, 21 and 25 of the Plumbers, Gasfitters, and Drainlayers Act 2006 that allow an unlicensed

I N C O N F I D E N C E

person to do or assist with sanitary plumbing, gasfitting or drainlaying respectively, under the supervision of person with the appropriate licence;

- 11 **agree** to amend the Plumbers, Gasfitters, and Drainlayers Act 2006 to provide that the replacement of LPG cylinder O rings is not restricted gasfitting work;
- 12 **agree** to amend the Plumbers, Gasfitters, and Drainlayers Act 2006 to provide that work on temporary connections, for the purposes of testing products, is not restricted gasfitting work;
- 13 **agree** to amend the Plumbers, Gasfitters, and Drainlayers Act 2006 to clarify that the work that is not restricted under section 6(2)(d) relates to repairing or replacing compression washer taps, ballcock valves, plugs, and bench-mounted taps;

Complaints, Discipline and Prosecution (minor and technical proposals)

- 14 **agree** to amend the Plumbers, Gasfitters, and Drainlayers Act 2006 to remove the barrier to the Registrar being able to make a complaint under Part 3 of the Act;
- 15 **agree** to amend the Plumbers, Gasfitters, and Drainlayers Act 2006 to include an exception to the existing requirement under Schedule 1, Clause 3 so that the Board can have a quorum of three members for the purpose of hearing a disciplinary matter;
- 16 **agree** to amend the duty to notify a change in address under section 76(1) of the Plumbers, Gasfitters, and Drainlayers Act 2006 from '3 months' to '1 month';
- 17 **agree** to amend the Plumbers, Gasfitters, and Drainlayers Act 2006 to update the powers available to the Plumbers, Gasfitters, and Drainlayers Board for the purposes of conducting a hearing, to remove reference to the Commissions of Inquiry Act 1908 and refer instead to equivalent powers in the Inquiries Act 2013;

Plumbers, Gasfitters, and Drainlayers Board Composition (minor and technical proposal)

- 18 **agree** to amend the Plumbers, Gasfitters, and Drainlayers Act 2006 so that the Plumbers, Gasfitters, and Drainlayers Board is comprised of:
 - 18.1 three registered and licensed tradespeople, made up of one person from each of the plumbing, gasfitting, and drainlaying trades;
 - 18.2 one additional registered tradesperson from any of the plumbing, gasfitting or drainlaying trades;
 - 18.3 two people whom the Minister considers are able to represent the interests of consumers;

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- 18.4 one person whom the Minister considers are able to represent other skills the PGD Board requires; and
- 18.5 three additional people from paragraph 18.2 or paragraph 18.4 as the Minister considers fit;

Future work to progress the Report recommendations

- 19 **note** that the Ministry of Business, Innovation, and Employment will consider self-certification as part of wider work to improve the consenting system;
- 20 **note** that the Ministry of Business, Innovation and Employment will progress further work to review the complaints, discipline, infringements and prosecution regime for plumbers, gasfitters and drainlayers;
- 21 **note** that the Ministry of Business, Innovation and Employment will undertake further work to create a clear demarcation between restricted sanitary plumbing and other water reticulation activities that share the same water source;

Next steps

- 22 **agree** to the tabling of the Statutory Review Report on the Plumbers, Gasfitters, and Drainlayers Act 2006 in the House of Representatives as soon as practicable following Cabinet consideration;
- 23 **authorise** the Minister for Building and Construction to issue drafting instructions to the Parliamentary Counsel Office to draft legislation giving effect to the policy proposals at paragraphs 8 to 18.5;
- 24 **agree** to delegate the Minister authority to make decisions on minor and technical matters that arise during drafting, that are consistent with the policy decisions in the paper;
- 25 **note** I intend to report back to the Cabinet Legislation Committee and Cabinet to seek approval for introduction of the Building and Construction Sector Occupational Regulation Bill in February 2022; and

26

Confidential advice to Government

Authorised for lodgement

Hon Poto Williams

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Minister for Building and Construction

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Appendix One: *Statutory Review Report of the Plumbers, Gasfitters, and Drainlayers Act 2006*