Plumbers, Gasfitters and Drainlayers Board

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18 December 2025

Clerk of the Committee

Transport and Infrastructure Committee

Parliament Buildings

Wellington

Submission to the Transport and Infrastructure Committee on the Building and Construction Sector (Strengthening Occupational Licensing Regimes) Amendment Bill

The Plumbers, Gasfitters and Drainlayers Board (**Board**) welcome the opportunity to submit on the Building and Construction Sector (Strengthening Occupational Licensing Regimes) Amendment Bill (**Bill**).

The Board was first established in 1913 and currently operates under the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**). The Board is responsible for protecting the health and safety of the public by ensuring the competency of people who carry out sanitary plumbing, gasfitting, and drainlaying. This submission reflects the Board's role in ensuring that the regulatory framework for plumbers, gasfitters, and drainlayers supports high standards of workmanship, public protection, and industry compliance.

The Bill introduces important changes to strengthen occupational licensing systems, improve disciplinary processes, and enhance public confidence. The Board supports these objectives. The Board takes this opportunity to address some of the proposed changes in the Bill it considers unworkable and to suggest a number of other changes that would strengthen the regulation of plumbers, gasfitters, and drainlayers and better protect the public.

Executive Summary

The Board supports the intent of the Bill to strengthen its licensing regime and improve accountability. However, the success of these reforms, and public confidence in them, depends on ensuring the Board has the right tools to act as the gatekeeper. The Board recommends amendments to:

1. Ensure proper input and consultation on any code of ethics.
2. Remove the proposed right for complainants to appeal complaints decisions due to significant resource and process implications.
3. Change the power of the Registrar to initiate a complaint to a power to initiate an investigation to avoid a clear conflict.

4. Enable mandatory practitioner competence reviews to support ongoing compliance and the implementation self-certification.
5. Confirm the removal of exemptions in line with previous Cabinet decisions.
6. Bring limited certificate trainees under the Board's disciplinary jurisdiction.
7. Strengthen disciplinary and governance provisions to ensure accountability and consistency.
8. Introduce regular statutory reviews to align with other occupational regulatory regimes.

Key Topics

1. Matters covered in the Bill

Introduction of code of ethics

The Board strongly supports the introduction of a Code of Ethics (**Code**) as a positive step to reinforce professional standards and support public confidence in practitioners. Key to the effectiveness of a code of ethics will, of course, be what the Code will cover. The Board notes that the content of the code of ethics will be set by Ministry of Business, Innovation and Employment (**MBIE**). The Board considers that it would be more effective if the Board is engaged early in that process, given its statutory role, regulatory experience, and operational oversight of practitioners.

The Board would **welcome the opportunity to provide input** on the practical implications of proposed ethical requirements, ensure alignment with existing regulatory obligations, and support the development of a Code that is workable, enforceable, and clearly understood by the sector.

Given that the importance of the Code in public protection, the Board also expects that its content would be the **subject of public consultation**.

To ensure proper implementation and compliance, the Board considers that a **minimum one-year transition period** is required to allow practitioners and the public to understand and adopt the Code. The Board will also need to align implementation with the Electrical Workers Registration Board for consistency across the regulated trades, and incorporate lessons learned from the Licensed Building Practitioners Board's experience with its code of ethics.

Recommendation

- Ensure any code of conduct is made with proper input and consultation.

Power for Registrar to initiate complaint

The Board supports the proposal to give it the power to initiate complaints on its own initiative. However, we consider that this cannot be done by giving the Registrar the power to initiate a complaint. This is because it is the Registrar who must appoint an investigator if a complaint proceeds to an investigation and it would be a clear conflict if the Registrar had to make a decision to appoint an investigator in respect of their own complaint.

The Board proposes that it would be better to amend the Act to **allow the Registrar to appoint an investigator on their own motion**. This would achieve the same outcome but would avoid the conflict.

Recommendation

- Change the Registrar power from initiating a complaint to initiating an investigation.

Appeals to Board

The Bill proposes introducing two new powers of appeal under the Act which would allow a person to appeal to the Board against:

- a decision by the Registrar determining a complaint is frivolous or vexatious
- a finding of an investigator that a complaint or part of a complaint should not be considered by the Board.

The Board does **not support these proposals**. The Board's reasons are set out below in detail.

Right of appeal against Registrar decision complaint is frivolous or vexatious

As a matter of law, a high threshold is required to establish that a complaint is frivolous or vexatious. This cannot be done through a preliminary consideration of a complaint. An investigation will be required to establish whether a complaint is without any merit. As such, it is extremely unlikely that the Registrar would be able to determine a complaint was frivolous or vexatious and a **right of appeal against such a decision is therefore unnecessary**.

Right of appeal against decision of the Board not to proceed with a complaint

A right to appeal a finding of an investigator that a complaint should not be considered by the Board **misconceives the Board's complaints jurisdiction** which is focused on wider public protection and not individual consumer redress. The purpose of the Board's complaints jurisdiction is to identify practitioners whose competence may be deficient and to address that incompetence in the interests of public protection and the maintenance of proper industry standards. The disciplinary powers of the Board allow it to control the work a practitioner can do and/or how they can do it, require them to undergo training, denounce their conduct, and impose a fine as a means of deterrence from further offending both for the practitioner concerned and as a lesson to the wider industry.

The Board does **not have an individual consumer protection role**. The Board cannot consider complaints about contractual matters between practitioners and consumers or issues relating to invoicing, warranties or guarantees, or civil disputes. The Board does not have disciplinary powers that benefit individual complainants such as the power to order a practitioner to remediate their work, provide documentation, or pay the complainant compensation. The Board's only disciplinary powers are directed at the wider public interest and not that of the individual complainant. A right to appeal to the Board that a complaint should not be considered by the Board would therefore be of no personal benefit to the complainant.

Levels of response

As with all regulators, the Board has a **range of enforcement tools** to respond to concerns about practitioner competence. These include providing technical resources and a technical helpline for practitioners, arranging educational sessions for a practitioner with a subject matter expert, providing informal advice, issuing formal written warnings, and, finally, conducting disciplinary hearings.

Only the most serious competence deficits warrant a disciplinary hearing. However, this is often not understood or accepted by a complainant who may feel strongly invested in their complaint irrespective of its relative seriousness. Establishing a right of appeal against a finding of the investigator will **encourage complainants to be less accepting of lesser but appropriate options** for dealing with less serious practitioner competence concerns.

Funding model

Under the Act, all Board activities must be funded by fees and levies from practitioners. The Board does not receive any public funding. A right of appeal against a finding of an investigator that a complaint is not considered by the Board would therefore have to be funded by practitioners. This amounts to **making practitioners pay for appeals against decisions that are in their favour** which is unprincipled particularly as not all complaints identify significant or serious competence deficits.

Costs and resources burden

The introduction of a right of appeal to the Board from an investigator's finding will result in a **significant increase in the Board's workload**. Currently, the Board meets for a full day every six weeks, followed by two full days for disciplinary hearings. The requirement to convene additional meetings to consider appeals would not only increase Board member's workloads but would also have a substantial impact on staff responsible for arranging and managing Board meetings.

In addition, the Act requires a quorum of five Board members for all meetings of the Board, and this would include hearing appeals from investigators' findings. This presents an administrative complication. Board members who consider an appeal could not consider any subsequent disciplinary hearing. It is already a **significant administrative exercise** to ensure disciplinary hearing panels can accommodate both Board member availability and the required trade skills for each complaint. This exercise would become more challenging if five Board members were precluded from being on the disciplinary hearing panel because they had been on the appeal panel.

Related to the point above about funding, this **increased workload would have to be funded by practitioners** through the disciplinary levy. Currently practitioners must pay $205 as a disciplinary levy and $70 as an offences levy (to fund prosecutions of unauthorised people) on top of licence fees of $100 per trade. Introducing appeal rights for complainants would almost certainly necessitate an increase to the disciplinary levy to meet the associated costs. Careful consideration would therefore be needed to ensure that any additional financial burden placed on practitioners is justified, transparent, and proportionate to the outcomes sought.

Finally, the Board **questions whether there is any unmet need on the part of complainants** that do not have their complaints considered by the Board. As already stated, the Board has a range of proportionate enforcement options short of a disciplinary hearing which are appropriate for addressing lower-level competence concerns. These tools enable the Board to respond to issues in a way that is timely, targeted, and consistent with modern regulatory practice.

Board staff already **routinely consider any concerns raised by complainants** about the outcome of their complaint or investigation consistent with the Board's natural justice obligations. It is also important to recognise that complainants also have a number of other existing avenues for pursuing concerns that fall outside the Board's disciplinary remit. These include Disputes Tribunal for civil matters and consumer guarantees matters, the Commerce Commission in relation to false or misleading conduct and the Office of the Ombudsman for concerns about how the Board has exercised its statutory function.

Together, **these avenues provide an appropriate and accessible framework for oversight and redress** without the need to introduce a further appeal right within the disciplinary regime.

For the reasons above, the Board **does not consider that the proposed appeal rights are necessary. Nor would they better protect public health and safety**.

Recommendation:

- Remove the proposed appeal provision from the Bill.

2. Matters which should be included in the Bill

The Board considers there are a number of additional steps that could be taken to strengthen the regulation of plumbers, gasfitters, and drainlayer to better support the protection of public health and safety.

Repeal of supervised exemptions for all trades

Sanitary plumbing, gasfitting, and drainlaying work is regulated because if performed incompetently it poses significant risks to public health and safety. **Entry into these trades requires substantial training** with a training provider and on-the-job experience.

It takes a minimum of two years to become registered at the lowest level in drainlaying and three years in sanitary plumbing or gasfitting. After achieving registration, practitioners must complete a further two years supervised work and pass an additional exam set by the Board to register at the highest level of registration, the certifying class. Many practitioners hold qualifications in more than one trade, and it takes **seven years to become a certifying practitioner in all three trades**.

Despite the level of training registered practitioners must carry out in order to do this work, the **Act establishes a number of exemptions** which allow unqualified people to do this work providing they work under supervision (sections 19, 21, and 25). People working under an exemption are outside the Board's jurisdiction. The Board cannot receive complaints about their work, cannot consider any disciplinary outcomes, cannot review their competence, and cannot require them to undertake any continuing professional development.

Given that people working under exemptions are legally permitted to carry out this work but operate outside the Board's regulatory oversight, they represent the **greatest risk to public health and safety** within the current framework. The Board can, and does, prosecute completely unauthorised individuals who perform restricted work through the District Court. However, exempt workers sit in a grey zone: they cannot be disciplined because they are not registered, and they cannot be prosecuted because they are legally authorised to do the work.

This creates a **semi-regulated segment of the industry**, where individuals are performing potentially high-risk work without being subject to the same accountability mechanisms as registered practitioners. In the Board's view, this undermines the integrity and purpose of the regulatory regime, which is intended to ensure that those carrying out this work meet appropriate standards in the public interest.

Over the past 12 years, the Board has made a number of submissions to MBIE as part of the review of the Act (section 187) seeking to **have the exemptions repealed.** The Board would establish a new 'labourer' registration class for people currently operating under the exemptions so these people could still be part of the industry. However, as registered practitioners they would come under the regulatory oversight of the Board with the ability to address any competence concerns with them. This proposal was agreed by Cabinet in 2021, but no changes have yet been made to the Act to give effect to this decision.

Recommendation:

- Repeal the exemptions under sections 19, 21 and 25 of the Act, as agreed by Cabinet in 2021.

Repeal of householder and rural exemptions for sanitary plumbing

In addition to the exemptions referred to above, the Act allows the Minister for Building and Construction to declare areas in which **householders can carry out sanitary plumbing** in any premises occupied by themselves or their family (section 15) and **rural areas where any person may do any sanitary plumbing** in that area (section 16).

Currently, there is **one rural area exemption and nine householder exemptions** throughout the country, including ones that apply to Wellington and Dunedin cities. These exemptions are old (ranging from 1978 – 1994) and were created by the Minister of Health when the Ministry of Health oversaw the regulation of sanitary plumbing, gasfitting, and drainlaying. In addition, the scope of these exemptions is unclear given they refer to area boundaries that existed at the time, some of which have since changed.

The Board considers that these exemptions present an **unnecessary risk to public health and safety** both because they give unqualified and unsupervised people authority to carry out sanitary plumbing, but also because of the lack of understanding of the reasons for the establishment of the exemptions in these areas and the uncertainty around the scope of the exemptions in terms of their boundaries. While these exemptions are not the Board's responsibility given they are ministerial and would be the responsibility of MBIE to administer, the Board considers they present an unnecessary risk and undermine the regulation of plumbers.

The Board made a submission to MBIE during the review of the Act seeking to **repeal sections 15 – 17 of the Act and revoke all existing exemption notices** and this was agreed by Cabinet in 2021. However, no changes have yet been made.

Recommendation:

- Repeal sections 15 – 17 of the Act and revoke all exemptions created under those provisions, as agreed by Cabinet in 2021.

Bringing limited certificate holders under Board's disciplinary jurisdiction

Under the Plumbers, Gasfitters, and Drainlayers Act 1976, holders of limited certificates were subject to the disciplinary provisions in the Act. This provision was not carried over to the current Act meaning there is **no ability for the Board to investigation complaints about a trainee raising competence concerns.** While a trainee who works outside the terms of their limited certificate can face criminal charges, criminal prosecution is a blunt instrument that does not allow for necessary education and upskilling of the trainee.

Given that people working under limited certificates are undergoing training in the trades with the goal of becoming registered, they are intending to have a future in the industry. Trainees are also working while undertaking training and are working in people's homes and businesses. It would therefore seem appropriate for the Board to have the ability to consider the complaints it receives about trainees raising competence concerns and have the ability to **identify and address incompetent work practices by limited certificate holders** in the interests of public health and safety.

Recommendation:

- Amend the Bill to provide that limited certificate holders are subject to the Board's disciplinary provisions.

Compliance with competence review

One of the key regulatory tools available to the Board under the Act are the competence review provisions set out in sections 53 – 56 of the Act. These provisions allow the Board to **review the competence of a registered practitioner** whether or not the Board has concerns that their competence may be deficient; require a practitioner to complete a competence programme; and suspend a practitioner's licence until they have successfully completed a competence programme.

The Board, however, does **not have the power to enforce compliance with a requirement to take part in a competence review**. This gap has directly affected the Board's ability to manage competence concerns. On previous occasions, the Board has been placed in the position of having to revoke an order requiring a practitioner to undergo a competence review because the practitioner refused to participate, and the Board had **no lawful means of compelling compliance**.

The Board has made a number of submissions to MBIE as part of the Act review seeking to **have a power to compel compliance with a competence review** introduced into the Act. To date this change has not been made and the Board finds this disappointing as it means that a key regulatory tool to support practitioner competence and public protection cannot be used.

The Bill should **empower the Board to require compliance with a competence review**. Not only will this support oversight of practitioners in relation to their competency to carry out sanitary plumbing, gasfitting, and drainlaying competently and compliantly, it would be an important tool to support new responsibilities for plumbers and drainlayers who will be certifying their work. Without this power, the Board will be limited in its powers to assure competence for practitioners including in relation to certifying their own work.

This recommendation has also been included in the Board's submission on the Building and Construction Sector (Self-certification by Plumbers and Drainlayers) Amendment Bill.

Recommendation:

- Amend the Bill to provide the Board with explicit authority to **compel compliance with a competence review**.

Change to definition infringement offence

Under section 4 of the Act, an **infringement offence** is defined as any offence under section 123 of the Act or any offence specified as an infringement offence. Section 123 of the Act establishes criminal offences in relation to doing sanitary plumbing, gasfitting, or drainlaying work when not authorised and employing an unauthorised person to do this work.

The Act allows for this charge to be brought either by way of a criminal charge or an infringement offence. However, given the seriousness of unauthorised work and the risks it presents to the public, the Board **always brings charges under section 123 as criminal charges** as this meant they could result in a criminal conviction.

In 2015, the High Court[1] determined that the reference to section 123 as an infringement offence in the definitions section of the Act meant it was an infringement offence regardless of how the charge was brought. This meant no criminal conviction could result from such a charge.

Section 123 is the offence provision most commonly used by the Board for prosecuting members of the public who do sanitary plumbing, gasfitting, or drainlaying unlawfully. The reduction of this offence to a mere infringement offence is **not consistent with the importance of the offence** as a means of deterring untrained people from doing this work and putting the health and safety of the public at risk. Reducing section 123 to an infringement offence undermines deterrence and increases the risk of unqualified work as people may see fines, which are low for these offences, as an acceptable 'cost of doing business'. The Board seeks an amendment to the definition of infringement offence in section 4 of the Act to remove the reference to section 123 to reinstate this as a convictable offence.

Recommendation:

- Remove section 123 from the definition of infringement offence under the Act.

[1] *Plumbers, Gasfitters, and Drainlayers Board v Maaka* [2015] NZHC 1948

Quorum of Board for disciplinary hearings

Under the Act **disciplinary hearings must be conducted by five Board members**. This is because hearings are a meeting of the Board and the quorum for Board meetings is five members. The Act also expressly precludes the Board from delegating any of its disciplinary functions meaning the Board cannot establishing smaller committees of the Board to consider disciplinary matters. Having five Board members on hearings is unnecessarily intimidating for practitioners, increases the costs of hearings, and is resource intensive to manage.

The Board would like the Act to be amended to allow **disciplinary hearings to be conducted by three Board members** with the requirement that at least one of those members must be a practitioner member. Cabinet agreed to allow for a quorum of three Board members for disciplinary hearings in 2021, but the change has yet to be made.

Recommendation:

- Provide for disciplinary hearings to be conducted by three Board members

Review of the Act

Section 187 of the Act provides that after the expiry of three years from the commencement of the Act (1 April 2010), MBIE must **review the operation of the Act** and consider whether any amendments are necessary or desirable to the Act or any other legislation relating to sanitary plumbing, gasfitting, or drainlaying. MBIE's findings must be reported to the Minister of Building and Construction who must present the report to the House of Representatives.

As has been stated above, the Board has made a number of considered and detailed submissions to MBIE **seeking changes to the Act to better support the efficient and effective regulation of practitioners and the protection of public health and safety**. Despite the Act review obligation arising in 2013, it was March 2021 before MBIE produced a report on the review of the Act. And, to date, not a single change has been made to the Act despite Cabinet decisions supporting specific legislative changes and further work in other key areas of the Act.

The Board is deeply frustrated at the time that it has taken to get a statutorily mandated review of the Act and the **total lack of progress** on addressing any of the issues identified as part of that review. Key areas of the Act such as the definitions of restricted sanitary plumbing, gasfitting, and drainlaying, are old, out of date, unclear, and are becoming increasingly problematic as technology and trade science advances. Other issues such as the lack of a power to compel compliance with a competence review render critical compliance tools under the Act unusable and these things are having a real impact on the Board's ability to carry out its statutory functions.

The Board notes that section 158 of the Electricity Act 1992 contains a similar review provision to section 187 of the Act. However, it allows for the review to be conducted at 5-year intervals. The Board considers that the Plumbers, Gasfitters, Drainlayers Act should also be **reviewed at 5-year intervals to enable it to keep pace with changing technology in the trades and wider construction sector**. This would ensure the Act was always able to meet its purpose of protecting public health and safety. Regular reviews will also ensure responsiveness to emerging issues and assist with compliance with new schemes such as self-certification.

Recommendation:

- Section 187 be amended to provide for reviews of the Act at regular intervals.

Conclusion

The Board has been the occupational regulator for these trades for 112 years and is acutely aware of the importance of its role in protecting public health and safety. It supports any appropriate moves to strengthen its ability to do that.

The Board supports the objectives of the Bill and is committed to working with the Government to ensure its successful implementation. Changes to the Bill are necessary to strengthen compliance powers and enable the Board to effectively oversee the people who carry out sanitary plumbing, gasfitting, and drainlaying in order to protect public health and safety. The Board would welcome the opportunity to appear before the Committee to speak to this submission.

Nāku noa, nā



Martin de Gouw

Chair

Plumbers, Gasfitters, and Drainlayers Board