



Inquiry report

# Inquiry into the Plumbers, Gasfitters, and Drainlayers Board

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# Inquiry into the Plumbers, Gasfitters, and Drainlayers Board

This is an independent assurance  
report about an inquiry carried out  
under sections 16 and 18 of the  
Public Audit Act 2001.

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## Auditor-General's overview

This inquiry has been very challenging, and has taken a long time to complete. The difficulty we had in completing the inquiry reflects the scale and complexity of the problems that have beset the Plumbers, Gasfitters, and Drainlayers Board (the Board). It also reflects that the last two years have been a time of considerable change for the Board and the trades it regulates.

In September 2008, the then Minister for Building and Construction asked the then Auditor-General to consider carrying out this inquiry. The request was prompted by concerns about the number and nature of complaints received by the Minister and the Department of Building and Housing, many of which suggested that the Board was not carrying out its core functions adequately.

Earlier in 2008, the Minister had replaced most of the appointed members of the Board. The new Board members took office with a clear understanding that their role was to address the problems confronting the Board.

I record at the outset that the Board members have all been co-operative, and focused on the need to tackle problems, throughout our work.

### What this inquiry was about

Parliament has given the Board significant statutory powers to regulate the plumbing, gasfitting, and drainlaying trades. The work of the Board is important from a public safety perspective, because poor work in any of these trades can endanger people and property. But it is also important for the people regulated by the Board: the Board's decisions affect whether and how a plumber, gasfitter, or drainlayer can work.

Like any public sector organisation exercising public power, it is vital that the Board uses its statutory powers properly. The courts have developed a body of law (known as administrative law) to safeguard people against the improper use of public power. The principles of administrative law are often summarised as being "simply that the decision-maker must act in accordance with the law, fairly and reasonably".<sup>1</sup>

These principles are essentially the hallmarks of good administration. A well-administered organisation has a clear understanding of its legal powers and obligations, supported by well-documented policies and procedures that help its staff to collect the right information, consider all the relevant factors, follow the right process, and explain the process and the decision to the person affected by it. Its work is transparent and documented, its processes are fair, and it can explain the reasons for all of its decisions and actions.

<sup>1</sup> Sir Robin Cooke (1986), "The Struggle for Simplicity in Administrative Law", in Michael Taggart (ed), *Judicial Review in the 1980s: Problems and Prospects*, Oxford University Press, Auckland, page 5.

This inquiry essentially assessed whether the Board was meeting these standards. In looking at whether the Board was carrying out its functions properly, we were therefore often also considering legal questions. Good administration and legality are inextricably linked for bodies exercising public power.

### **What we found in our fieldwork in 2008/09**

During 2008/09, my staff examined in some detail how the Board's functions under the Plumbers, Gasfitters, and Drainlayers Act 1976 (the 1976 Act) were working. We found problems in most functions. The problems differed for the various functions, but included unclear or non-existent policies, poor communication, poor processes, decisions and policies that were not clearly well-grounded in the legislation, and little awareness of the need to embed basic administrative law disciplines into the Board's everyday work and decision-making.

We also talked to many individuals and organisations working in the building and construction sector about their interactions with the Board. We encountered a sector that was characterised by suspicion and discontent. Many plumbers and gasfitters we spoke to were unhappy with the work of the Board at many levels. They often did not understand why the Board made certain decisions, could not see the reasons for some requirements, and were unhappy with the cost. They also felt that they were unable to get clear answers to their questions.

Given that they fund the Board through their fees, many plumbers and gasfitters were becoming increasingly disaffected. Some openly refused to participate in the Board's regulatory processes. Many challenged the fees they are required to pay. Others told us that their frustration was such that they were considering leaving New Zealand to work elsewhere.

### **Why has this situation been able to persist?**

None of these problems appeared to be new, and many of the concerns we identified with the way in which the Board was operating related to practices that had been in place for many years.

We have reflected on how this situation could arise, and then persist for so long. In our view, the answer is mainly that the Board has been subject to little effective accountability. Until April 2010, the Board was not subject to the Ombudsmen Act 1975 or the Official Information Act 1982. Although the Board members were appointed by a Minister, there was no significant accountability relationship with that Minister and no reporting to Parliament.



The 1976 Act provided that those concerned about the Board's decisions could appeal to the High Court, but this is not an effective remedy for an individual tradesperson concerned about a decision. The Board controls the livelihood of those it regulates, yet there is no effective avenue for them to challenge its decisions or hold it to account.

### Steps the new Board members have taken to improve matters

The situation we encountered in 2008/09 was clearly serious. The newly appointed Board members also recognised this. The Board has done a great deal of work during 2009 and in early 2010 to deal with many of these issues. In particular, the Board has:

- improved communication with the trades – for example, through extensive consultation processes, Board members attending meetings around the country, and a new website;
- worked to improve relationships with other sector organisations, including through personal meetings with the governing bodies of those organisations and the development of shared goals and work programmes;
- commissioned an organisational review, to help it consider what changes need to be made to the Board's structure, capacity, and capability;
- brought the Plumbers, Gasfitters, and Drainlayers Act 2006 (the 2006 Act) into force, so that the legal environment for the Board's work is clearer and more able to be adapted to meet modern needs;
- put renewed emphasis on tackling the failure rate for examinations, including commissioning a report into the overall system, surveying candidates about their experience of the examinations, and agreeing directions with others involved in the training process; and
- begun some work on the gas audit system, once it became clear that there were problems with it.

These steps have all been necessary and important, and we commend the Board for the progress it has made. We also note that the Board immediately took up and acted on many other minor matters that we raised in our draft report in December 2009.

### Issues that still need attention

The problems with the Board's activities are deep seated. The changes that have been introduced are a good beginning, but are not yet sufficient. Some of the matters that concerned us about the Board's operations under the 1976 Act continue to present risks with the introduction of the 2006 Act.

My staff spent some time considering the range of problems and discussing them with the Board, to identify common themes and underlying causes. Our conclusion was that the main challenges for the Board now are:

- to fundamentally change the culture of the organisation – from one that is closed, defensive, and relying on the way it has done things in the past to one that is open and engaged with the changing needs of the sector;
- to develop the Board's capacity and capability so that it is able to maintain a coherent overview of the emerging challenges for the sector and for its own role, its relationship with other organisations, and the policy issues that affect it;
- to ensure that it puts legality at the heart of everything it does, because at present we consider that it simply does not have a clear enough focus on the requirements of the legislation and administrative law disciplines, and of the legal risk attached to its activities; and
- to produce the comprehensive, clear, and practical policies and procedures that are needed to turn the legislative rules into good administrative processes and to ensure that the decisions made using those processes are consistent and appropriate.

The two main practical areas of activity that we consider still require substantial attention are the examination system, and the gas certification and audit system. The Board has begun work on both of these, but rebuilding them will require sustained effort by the Board in collaboration with a number of other agencies.

In our view, the organisational or cultural issues that we have identified will also require sustained attention over a long time. In particular, the Board needs to embed the principles of acting fairly, reasonably, and according to law, in everything that it does.

### **Steps that need to be taken to rebuild trust in the Board**

If the Board members keep going with the improvements they have already initiated, and address the additional matters we have highlighted in this report, they will achieve a lot. However, they also need to pay explicit attention to the underlying problem that many in the trades have lost trust in the Board.

There is a great deal of writing on the importance of voluntary compliance in regulatory systems. In any regulatory context, it is too hard to achieve high levels of compliance through force or coercion – effective systems depend on people choosing to participate and follow the rules. For people to want to comply, they have to trust the system and see it as providing an overall benefit. The evidence this inquiry gathered showed that many tradespeople do not have this view of the Board at present.

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

In our view, the Board needs to maintain a clear overall focus on the need to build and maintain trust in the Board. To build trust, it needs to behave fairly and reasonably at all times, and make sure that this is apparent to all those interacting with it. It needs to build the values of openness, accountability, integrity, and fairness into all aspects of its work. It is important that the people the Board regulates, and who fund its work, are able to see and understand what it is doing and why.

There are two specific additional steps that we recommend the Board take to help it regain the trust of the industry. It should establish:

- a simple and effective complaints process for tradespeople who are unhappy with a particular Board decision or action, so that there is an accessible and transparent mechanism for getting a prompt review of a decision; and
- an immediate and short-term process for considering and resolving grievances arising from previous Board decisions that may have wrongly disadvantaged a tradesperson.

The Board has accepted these recommendations.

## Conclusion

If the Board takes all of these steps, and continues with its efforts to rebuild relationships with the sector and to improve its communication, it will slowly change its culture. Its goal needs to be to create a regulatory board that is open, accountable, reasonable, and fair, and constructively working with the rest of the sector in meeting emerging challenges and helping build a modern, effective, and safe industry. This task will take time and effort, but the Board is now on the right track.

I would like to thank the Board members and all of the staff for their co-operation and assistance throughout what has been a difficult inquiry. I also acknowledge the contributions from the many tradespeople and representatives of other sector organisations who have provided us with information.



Lyn Provost  
Controller and Auditor-General

28 July 2010



## Our recommendations

We recommend that the Plumbers, Gasfitters, and Drainlayers Board:

1. review its Licensing Policy Statement to ensure that it complies with the Plumbers, Gasfitters, and Drainlayers Act 2006 and administrative law principles;
2. discuss with the Department of Building and Housing whether mechanisms under the Plumbers, Gasfitters, and Drainlayers Act 2006 are clear and appropriate for controlling the work of exempt people carrying out plumbing, gasfitting, or drainlaying work;
3. revise its Licensing Policy Statement to include a discussion of how it defines “supervision”;
4. review its Registration Policy Statement to ensure that it complies with the Plumbers, Gasfitters, and Drainlayers Act 2006 and administrative law principles;
5. write further policies to guide the exercise of its other powers under the Plumbers, Gasfitters, and Drainlayers Act 2006 and, in doing so, that it carefully consider the legal basis for such policies;
6. consider with the Department of Building and Housing whether the legislation needs to be amended to deal with registration and licensing issues;
7. in preparing questions for any future examinations, ensure that the questions are appropriate for assessment under the Plumbers, Gasfitters, and Drainlayers Act 2006, are able to be answered, are free of mistakes, and do not contain unrealistic scenarios;
8. review its processes for preparing and moderating questions, and for setting examination papers;
9. work with the Ministry of Economic Development and the Department of Building and Housing to consider what changes may be needed to enable the gas certification system to operate as an effective public safety protection;
10. work closely with the Ministry of Economic Development and the Department of Building and Housing to develop a gas audit process that provides adequate assurance of the safety of self-certified gas installations;
11. review its policies for registering well-qualified and experienced plumbers and gasfitters migrating to New Zealand to ensure that its current policies give appropriate effect to its statutory discretion and to ensure that New Zealand makes the best use of the skills of such immigrants;
12. clarify whether it can issue provisional licences to overseas plumbers, gasfitters, and drainlayers before they apply for registration;

13. maintain and embed a practice of reviewing all of its fees and charges against the good practice guide, *Charging fees for public sector goods and services*, to ensure that it is budgeting and setting fees in keeping with its legal authority and good practice expectations;
14. establish a simple and effective complaints process for tradespeople who are unhappy with a particular Board decision or action, so that there is an accessible and transparent mechanism for getting a prompt review of a decision or action; and
15. establish an immediate and short-term process for considering and resolving grievances arising from previous Board decisions that may have wrongly disadvantaged a tradesperson.

# Part 1

## Introduction

- 1.1 In this Part, we briefly explain:
- why we carried out our inquiry;
  - the role of the Plumbers, Gasfitters, and Drainlayers Board (the Board);
  - the recent history of the Board, including previous inquiries;
  - the scope of our work in the inquiry;
  - how we carried out the inquiry; and
  - how this report is structured.

### Why we carried out our inquiry

- 1.2 In September 2008, the then Minister for Building and Construction (the Minister) wrote to the then Auditor-General to ask if we would inquire into the way the Board was carrying out its statutory functions – in particular, its registration and licensing functions. The Minister was concerned about the number and nature of complaints received by the Minister and the Department of Building and Housing, many of which suggested that the Board was not carrying out its core functions adequately.
- 1.3 The complaints raised potentially significant questions about the Board's performance, including whether it was acting within its statutory authority and making decisions on an appropriate basis. At the time, there were few effective avenues for requiring the Board to account for its actions. It was not subject to the Ombudsmen Act 1975 or the Official Information Act 1982, and the types of issues being raised were unlikely to be reviewed through court action. However, the Auditor-General audits the Board and can inquire into its use of its resources.
- 1.4 The work of the Board is important. Through its registration and licensing processes, it controls entry to the plumbing, gasfitting, and drainlaying trades. Effective regulation of these occupations is important for public safety. These trades are also important economically because they are necessary for an effective building and construction industry. Equally, the Board's decisions are important for the more than 10,000 individuals who need current licences to be able to work, and for the businesses that employ them.
- 1.5 The Auditor-General agreed to the request from the Minister and announced terms of reference for the inquiry on 17 November 2008 (see Appendix 2).

### Role of the Plumbers, Gasfitters, and Drainlayers Board

- 1.6 The Board has existed in some form since 1912 to control entry to the plumbing, gasfitting, and drainlaying trades. The Board's workload is significant, particularly because it regulates three trades at once. Most regulatory bodies focus on a single trade or profession.

- 1.7 For all of the period examined by our inquiry, the Board was operating under the Plumbers, Gasfitters, and Drainlayers Act 1976 (the 1976 Act). An updated Act was passed in 2006 (the 2006 Act), but only a small number of its provisions were brought into force straight away. Most of the 2006 Act was to come into force after consultation about the future structure and categories of registration for the regulated trades. The consultation has recently been completed, and the 2006 Act came into force on 1 April 2010.
- 1.8 Under the 1976 Act, the Board's main functions were to:
- make recommendations to those who teach or train people to work in these trades;
  - organise examinations for people wanting to work as plumbers, gasfitters, or drainlayers;
  - register people to work in these trades if they meet an appropriate standard;
  - administer the ongoing licensing system for those currently working in these trades;
  - run a continuing professional development programme for gasfitters to ensure that they maintain an adequate level of competence; and
  - operate the disciplinary system for people breaching the legislation or standards of work.
- 1.9 The 2006 Act continues these functions and broadens them to include, among other functions:
- determining the registration categories for the three trades, the minimum standards that people who wish to be registered must meet, and the terms and conditions under which people are registered;
  - determining for each class of registration the work that they are authorised to do, or to assist in doing;
  - issuing and renewing licences to registered people and prescribing terms and conditions on those licences;
  - promoting, monitoring, and reviewing the ongoing competence and safe work practices of registered people and provisional licence holders; and
  - making recommendations to the Minister about making regulations.
- 1.10 Under the Gas Act 1992 and associated regulations, the Board receives copies of all certificates issued for gasfitting work. It has statutory power to enter premises to check the adequacy and accuracy of those certificates.
- 1.11 The Board is a stand-alone statutory body. A Minister appoints the members of the Board, and the Board appoints a Registrar. The practice has been for the



Registrar to effectively function as chief executive of a small secretariat.<sup>2</sup> The Board does not receive any funding from the government and must fund its activities through the fees it charges.

- 1.12 For many years, the Board was administered as part of the health portfolio. Appointments were made by the Minister of Health, and the Ministry of Health was responsible for the Board's legislation. On 31 January 2008, those responsibilities were transferred to the newly created portfolio of the Minister for Building and Construction. At the same time, the Department of Building and Housing became responsible for the Board's governing legislation.
- 1.13 The regulatory system that the Board operates is complex, and can be quite difficult to understand. It also changed in important ways after the 2006 Act came into force on 1 April 2010.

### Recent history of the Plumbers, Gasfitters, and Drainlayers Board

- 1.14 The Board has had a complex and difficult history in recent times. It has been heavily affected by changes to the organisation of trades, and by changes in the tertiary education system that affected the funding and delivery of trade training and apprenticeships.
- 1.15 In 1999, the 1976 Act was amended to change the composition of the Board. Those changes removed the formal link between the Board and the Master Plumbers Association and other trade bodies, and created instead a link with a newly established Industry Training Organisation (ITO). This was a major shift from the traditional structure of the industry and was controversial at the time.
- 1.16 The introduction of the competitive provision of tertiary training was also significant for the Board. It had a major effect on the relationship between the entry examinations the Board administered and what might be taught in apprenticeship teaching in polytechnic institutes and on-the-job training. The Board had previously worked with the New Zealand Trades Certification Board to arrange examinations, but this body was replaced by the system that established the New Zealand Qualifications Authority (NZQA) and the National Certificate qualification.
- 1.17 In 2001, the Ministry of Health asked Audit New Zealand to investigate concerns about the overall governance of the Board's functions, and specifically the management and conduct of the examinations for registration as a craftsman. That review identified problems with the examination systems that were operating then and recommended changes to strengthen them.

<sup>2</sup> We were told that the Board's policy was for all correspondence to be signed by the Registrar. Unless otherwise stated, the Registrar had signed all the correspondence we refer to.

- 1.18 In 2006, the Minister for Tertiary Education commissioned an independent review into relationships in the plumbing, gasfitting, and drainlaying industry, with a particular focus on training and entry qualifications. The review was carried out by a barrister, Hazel Armstrong, and is known as the Armstrong report. The Armstrong report identified the following underlying issues:
- skills shortages, with insufficient and declining numbers of people achieving registration;
  - substantial increases in government funding for training, while the number of new registrations continued to fall;
  - a dysfunctional relationship between the Board and the ITO, with the Board having lost confidence in the National Certificate as a prerequisite for registration, 90% of National Certificate holders failing the registration examination, and not enough co-operation between the bodies to enable new unit standards to be developed; and
  - poor performance by the ITO, with the Tertiary Education Commission (TEC) expressing concern, a substantial section of the industry withdrawing from it and establishing a separate system for training apprentices, and NZQA refusing to register amended unit standards (which needed Board endorsement).
- 1.19 The backdrop to both reviews was a very low pass rate for people sitting the Board's examinations. The Armstrong report's overall conclusion was that:
- There is a systemic failure at the interface of the training and registration systems which is resulting in poor value for money for both Government and industry.<sup>3</sup>*
- 1.20 The report made a number of recommendations for change, directed variously at TEC, NZQA, the administering government department (at the time, the Ministry of Health), the ITO, the Board, and the select committee that was at the time considering a Bill that would amend the 1976 Act. Some but not all of the recommendations were implemented, and the Board members were replaced.
- 1.21 As already noted, a revised Plumbers, Gasfitters, and Drainlayers Act was passed in 2006. It preserved the basic elements of the regulatory system and the role of the Board but made several changes to modernise the system. Most of the 2006 Act was not brought into force at the time, because consultation and new regulations were needed before it could operate effectively. Completing these steps was hampered by the change to a new administering department and changes in the composition of the Board.
- 1.22 In 2007, the Board raised its licensing fees to take account of the extra costs that it anticipated would follow from implementing the 2006 Act. The increase provoked

<sup>3</sup> H Armstrong (May 2006), *An Independent Review into Relationships in the Plumbing, Gasfitting and Drainlaying Industry*, page 16.

some concern in the industry. The Minister asked us to comment on the Board's processes for setting fees and, in particular, on the adequacy of its consultation, in 2007.

- 1.23 In July 2008, the Minister replaced most of the Board members with new appointments, including Hazel Armstrong, who carried out the 2006 inquiry into problems in the industry. The new Board appointed Ms Armstrong as chairperson.
- 1.24 In September 2008, the Minister asked the then Auditor-General to consider carrying out an inquiry. We have been aware throughout our work that the current Board has been appointed with a mandate to address the existing problems, including those that we might identify, and to usher in the new legislation.
- 1.25 The current Board, working with the Department of Building and Housing, has given priority to implementing the 2006 Act in 2009/10. During 2009, the Board completed a new process of consultation with the industry. The new Act came into force on 1 April 2010.
- 1.26 It has been clear throughout our work that the Board and the trades it regulates have had a turbulent recent past, with a significant amount of change and discontent. When we began our work, a decade after the major reforms of 1999, it was clear that the discontent and concerns had not diminished sufficiently and that significant parts of the dysfunction identified in the Armstrong report still continued. We sought to understand what was driving those problems and what steps might need to be taken to address them.

### Scope of our inquiry

- 1.27 Our terms of reference (see Appendix 2) focused on plumbers and gasfitters, rather than drainlayers, because the concerns that had prompted our inquiry largely related to those trades. Our terms of reference stated that we would examine whether the Board had appropriate policies, procedures, and systems in place for:
- setting examinations for people wishing to become plumbers and gasfitters;
  - registering and licensing people;
  - assessing applicants from overseas; and
  - ensuring proper supervision of people required to work under the direction or supervision of a more experienced (formerly “craftsman” and now “certifying”) plumber or gasfitter.
- 1.28 As is standard in our major inquiries, we also indicated that we could look into any other matter that arose during our work. In practice, we have ended up looking broadly at all of the Board's functions. This is because a very wide range of concerns were raised with us during the inquiry.

1.29 As well as the core areas noted above, we have also considered the disciplinary process, the interaction between the Board and the teaching and training providers, the Board's general approach to interaction with the people it regulates, and some internal governance and management questions.

1.30 This wider scope increased the time needed to complete the inquiry, but we considered that it was important to address the full range of issues that emerged, given the breadth and depth of the concerns raised with us. In summary, those concerns included:

- the Board's interaction with training providers, including the quality of teaching, variability of teaching and assessment, lack of national co-ordination, and unreliable standards;
- the quality of the examination questions, the setting and marking process, and the link with what was being taught;
- the ability of the registration system to respond to overseas applicants effectively, and the way in which several overseas applicants were dealt with;
- the basis on which the Board was making registration and licensing decisions, with many people expressing concern that they did not understand the reasons behind adverse decisions and fears that they were being victimised;
- uncertainty about the legal capacity of the Board to take some of the steps it took, generally and with individuals;
- concern about disciplinary systems, both in how they were initiated and operated in individual cases and the efficiency and responsiveness of the overall system;
- the adequacy of the audit process for gas installations, and its link with the maintenance of standards of competence;
- the adequacy of the continuing professional development programme;
- confusion about supervision and direction requirements for those not yet fully registered, including what was needed to meet these requirements and the approach taken to enforcement;
- concern about the scale of fees and recent increases, with particular concern about the fees for examinations and assessments of overseas applicants;
- many general expressions of lack of faith in the system and dissatisfaction with the nature of interaction and communication between the Board and those it regulates; and
- governance questions about the way the Board was operating, the role of the Registrar, and the general running of the organisation.

- 1.31 Towards the end of 2009, a significant public safety concern emerged about gas installations and the adequacy of the certification and audit regime. The Minister, and the Associate Minister of Energy and Resources, wrote to the Auditor-General to ask that we extend our inquiry to also take account of these events. We agreed, because the issues highlighted the significant public safety goals that the Board's systems are meant to support, and were relevant to a number of processes that we were already considering.

### How we carried out the inquiry

- 1.32 We structured our work in part as an open-ended inquiry and in part as a performance audit (where we systematically assessed the Board's policies and procedures and sampled files to check whether we could see those procedures operating in practice).
- 1.33 We carried out most of our fieldwork in late 2008 and the first half of 2009. We reviewed 100 files of individual plumbers and gasfitters, and a wide range of Board files and minutes relating to the governance of the organisation.
- 1.34 We systematically assessed the Board's standard policies and actions against the legislation, to identify the legal basis for the way in which it was acting. We expected to be able to trace a clear line from the legislation, to an operational policy, to individual decisions and actions.
- 1.35 We interviewed about 60 people, including all current staff, current and past Board members, representatives from major industry organisations, training providers, other government agencies that interact with the Board, and some businesses in the industry. We were also contacted by many individuals working in the industry. We met with some of these people and talked to many others by telephone.
- 1.36 This provided us with a great deal of information and perspectives on all aspects of the Board's operations. We then spent some time analysing that information, and checking many matters of detail and fact. This process included our seeking an independent review of the questions used in the examinations administered by the Board, because concerns were raised so often about the quality of those questions and their marking.
- 1.37 We gathered additional information on the gas certification and audit system by reviewing the Board's files and systems in late 2009, when we were asked to also inquire into the effectiveness of those systems.

- 1.38 In December 2009, we provided an initial draft of our report to the Board for comment. Because the Registrar had recently left the Board, we consulted him separately on the draft report.<sup>4</sup>
- 1.39 Given that the report was long and detailed, we asked for comment initially on the accuracy of the information and analysis it contained, before we formed firm views on the matters we were discussing. As part of this process, the Board provided us with a considerable amount of information about the work it had been doing in 2009 to address some of the problems and to enable the 2006 Act to be brought into force.
- 1.40 We revised the draft report to take account of this information and other comments. As the 2006 Act came into force during this time, we also assessed the effect of the 2006 Act on our findings. We then consulted again with the individuals and organisations discussed in the draft report, both to ensure the accuracy of our work and to ensure that all of those affected by the report had a full opportunity to respond to any criticisms.

### Structure of this report

- 1.41 Our work has been wide-ranging and detailed. We do not attempt to summarise it all in this report. Rather, we have focused on the main areas of the Board's activity and the main matters that we consider need attention. We have included examples to illustrate our findings, but we do not name any individuals in those examples.
- 1.42 The report is complex because we have needed to take account of the 2006 Act coming into force towards the end of our work. Where relevant, we first summarise the requirements under the 1976 Act and our findings when we carried out most of our fieldwork and analysis in 2008/09. We then go on to discuss any changes arising from the 2006 Act or steps taken by the Board, before highlighting any issues that we consider still require attention.
- 1.43 The report summarises our work and conclusions in the following eight Parts:
- Part 2 looks at organisational issues and discusses the Board's policies and procedures, strategic capacity, relationships with the sector, organisational culture, and a number of other issues;
  - Part 3 discusses the Board's role during apprenticeship and training;
  - Part 4 discusses the registration and licensing system operated by the Board;
  - Part 5 discusses the examination system operated by the Board;
  - Part 6 discusses the gas certificate system and gas audit system operated by the Board;

4 We refer to him as the former Registrar when we are reflecting his comments.

- Part 7 discusses the process the Board uses to register overseas applicants;
- Part 8 discusses the fees and charges set by the Board and the process it uses to do this; and
- Part 9 draws together the common themes that emerged from all of these different activities and summarises our overall concerns and comments.

1.44 Appendix 1 sets out the story of Mr Garry Jones, a plumber and gasfitter from Te Anau. We have included his story as a case study of the types of things that can and have gone wrong with the Board's processes. Appendix 2 sets out the terms of reference for our inquiry.





## Part 2

# Organisational issues

- 2.1 In this Part, we discuss our findings on the organisational issues at the Board. We begin by outlining what we found when we carried out most of our fieldwork in 2008/09, and then record the steps that the Board has taken to address many of our concerns.
- 2.2 The Part concludes with a discussion of the issues that we consider still need attention.
- 2.3 Overall, we found that significant organisational problems existed in 2008/09. These included:
- a lack of clear or comprehensive operational policies to guide and explain the way in which the Board gave effect to its statutory tasks;
  - inadequate policy and strategic capacity, so that the Board has not been able to ensure that the legal and regulatory environment has kept pace with current needs;
  - poor relationships with other organisations in the sector;
  - a governing Board struggling with the effects of repeated turnover and with the challenge of carrying out a high disciplinary workload when most Board members work part-time and are self-employed; and
  - an unhealthy organisational culture, with unhappy staff and a lack of openness and accountability to the trades that fund the Board and that it regulates.
- 2.4 By 2010, when we were discussing our draft findings with the Board, the situation was very different. In many instances, the Board was able to provide us with information on the steps it had already taken to begin to tackle the problems. In other instances, it accepted our concerns immediately and began work to deal with them. In our view, these various initiatives are taking the Board in the right direction, and the current Board has made significant progress on the many organisational challenges that confronted it when it took office.
- 2.5 The problems are not yet solved, and some of the challenges created by the current composition and workload of the Board may not be able to be resolved without further policy work and legislative change. The Board also needs to understand that significant change to an organisation's culture takes time, particularly when some of the problems are deeply embedded in its operating practices. It will need to maintain its focus on organisational change for some time.

## What we found in 2008/09

### The Board's policies and procedures

- 2.6 One of the first steps in our inquiry was to obtain a full set of the Board's policies and procedures. The policies can be grouped into two main categories:
- those dealing with governance and internal administration; and
  - those dealing with operational matters.

- 2.7 Operational policies are important for organisations that routinely exercise statutory powers. Operational policies help the organisation to be clear and consistent in the way it exercises its powers, and to follow the right process. Good operational policies protect the organisation by helping it meet its legal obligations, and provide information to the people about whom decisions are made.

### Governance policies

- 2.8 We were given a set of governance policies dated May 2008. These were generally clear and reasonably comprehensive, and had changed little from the previous policies.
- 2.9 We had only minor questions about the substance of these policies:
- We discuss later our concern that the policies suggested too strict a demarcation between the activities of the Board and the Registrar. In the context of the Board, we question whether it is appropriate to limit the role of the Board to a traditional governance function.
  - The conflicts of interest policy was very brief and did not refer to the Local Authorities (Members' Interests) Act 1968. We found no acknowledgement in the Board's documentation that it is subject to this Act. The Local Authorities (Members' Interests) Act requires specific actions if a Board member has a financial interest in a matter coming before the Board, and there are potentially serious consequences (including loss of office) if it is breached. It might also be useful for this policy to provide guidance on how to consider the more complex questions about possible conflicts of roles, as well as direct personal or financial interests.
  - At the time, the Board did not appear to have a policy on disclosing information, whether under the Privacy Act 1993 (which sets out the rights of individuals to access information about themselves) or more generally.

**Operational policies**

- 2.10 The operational policies we were given were less satisfactory. It was unclear when they had been prepared because they were undated. Many were simply a collation of forms, information that was available on the website, and the legislative requirements. We were later told by several staff, including the former Registrar, that these documents had been compiled between the time that our inquiry was announced and the beginning of our investigative work two days later.
- 2.11 We have concluded that the Board did not have clear or comprehensive documented policies to guide and explain its operational activities.
- 2.12 Without clear or comprehensive policies, we found it very difficult to understand what the Board's policy was on various issues. More importantly, we were often unable to find documentation that explained the reasons for those policy decisions, or that showed how the policy or practice related to the legislation that governs the activities of the Board.
- 2.13 Both the 1976 Act and 2006 Act are complex and state many different tests and criteria. In practice, each formal decision the Board makes under the Act should be underpinned by a process for gathering information. In any decision-making system, there should be a range of information readily available about, for example, how the process works, what information and factors are needed or relevant, and how and when decisions are made and communicated. This information is important and useful for those about whom decisions are made. It is also helpful as a guide to staff, and promotes consistent and high quality decision-making.
- 2.14 The importance of the operational policies that underpin administrative decision-making has long been recognised in law. In most public sector organisations, the public have statutory rights to have access to the internal policies, principles, rules, or guidelines that govern how decisions about them are made, and to the reasons for decisions.<sup>5</sup> Now that the 2006 Act is in force and the Official Information Act 1982 applies to the Board, these statutory rights are also available to people regulated by the Board.
- 2.15 These rights are an important practical protection for the rights of individuals to know in advance the principles and rules that will guide decisions about them. They promote accountability and improve the quality of decisions by enabling those affected to present better information and representations to the decision-maker. They reflect good administrative and decision-making practice, and general administrative law principles.

5 See sections 22 and 23 of the Official Information Act 1982.

- 2.16 In our view, the policies and systems of the Board that we reviewed in 2008/09 were not adequate for these purposes. The Board could not easily have provided this information if it had been asked for it. As we noted in our discussion about the governance policies, the Board did not appear to have a policy on disclosing information, whether under the Privacy Act 1993 or more generally.
- 2.17 We regard these gaps as significant, because a theme throughout this inquiry has been the difficulty of communicating with the Board and the inability of people to understand the decisions made about them. We consider that a significant contributing factor has been the lack of clear operating policies explaining how the Board puts the law into operation.

### The Board's strategic capacity

- 2.18 Until recently, the Board has been working with very dated legislation and regulations, in an environment that has changed significantly in the last 30 years. Patterns of employment are changing, and the workforce is now highly mobile, both domestically and internationally. Many people move locations or change jobs frequently. Businesses are also structured in new and different ways, as people look for specialist niches and different ways of providing and packaging services. Not everybody wants or needs to have general skills across a whole trade. People may also want to come into and out of the industry in different ways and at different stages of their working lives.
- 2.19 Other relevant changes include:
- the different training environment as a result of reforms in the tertiary sector;
  - the development of more advanced teaching, learning, and assessment techniques in the education sector;
  - significant changes to the regulatory environment, with reforms of the Building Act 2004 and other relevant legislation and standards; and
  - changing expectations of service and interaction with public sector organisations.
- 2.20 All of these changes posed challenges for the Board's work and the way in which the 1976 Act and regulations operated.
- 2.21 An organisation with good strategic and policy capacity anticipates problems and looks for constructive solutions to them. We expected to see an organisation that was:
- well-connected with other organisations in the sector and the people that it regulates;
  - open;

- thinking strategically about emerging challenges; and
- engaging regularly with the government department with policy responsibility for the legislation about what changes might be needed in the coming years.

- 2.22 Instead, we found an organisation that saw itself as duty bound to continue to enforce out-of-date legislation and regulations despite their growing lack of fit with modern circumstances. Rather than fostering discussion about possible changes, the Board appeared to have had little regular or meaningful contact with its administering department on policy matters, including possible changes to the 1976 Act and regulations. We did not see evidence that the Board was maintaining a strategic or policy overview of its role, the operation of the regulatory system, and the state of the sector.
- 2.23 So long as the 1976 Act remained the law, Board staff had to administer it. But when new situations arose that the 1976 Act might not accommodate well, we expected the Board to engage with the individual to discuss possible options, and to take up the issue at a policy level to promote change, rather than to simply assert that the law does not allow that situation or that level of flexibility.
- 2.24 The former Registrar told us that he met regularly with relevant Ministry of Health staff, but that it was made clear to him that changes to the legislation and regulations were not possible. The Ministry of Health told us that there were some meetings during 2007, and there were also a number of meetings with the Minister of Health. The Ministry regarded these as updates rather than substantial policy engagement.
- 2.25 In our view, this lack of a strategic and policy capability in the Board over many years has been at the root of some of the current problems. It has meant that the Board has failed to identify emerging problems early enough or to interact effectively with the policy and political system to ensure that the legal and regulatory environment keeps pace with current needs.

### **Relationships with other organisations in the building and construction sector**

- 2.26 The Department of Building and Housing has overall policy responsibility for the building and construction sector and the specific legislation. Its role is to advise the Minister on emerging policy issues and the need for any change to the Act or regulations. It needs to work closely with the Board to identify the need for any changes and to develop recommendations, because it will not have the same level of direct practical knowledge of the issues. It is important that there is an effective collaborative working relationship between the Board and the Department of Building and Housing.

- 2.27 When the Board was within the health portfolio, it was a very small part of the work of the Ministry of Health. One of the reasons for transferring responsibility to the newly created building and construction portfolio was to enable greater focus on these regulatory questions in their practical context.
- 2.28 The combination of the transfer of responsibility to the Department of Building and Housing, the need to implement the new legislation, and the controversy surrounding the Board in the last few years has meant that the Board and the Department are now paying significant attention to the issues confronting this sector. We encourage the Board and the Department to maintain that level of engagement, and to ensure that there is meaningful strategic oversight and ongoing policy consideration of emerging issues.

#### **Relationships with training organisations**

- 2.29 All of the different routes for training plumbers and gasfitters ultimately lead to the registration examinations administered by the Board. It is not possible to become a registered plumber or gasfitter without passing the examinations.
- 2.30 The Board has an important informal role in working with training providers and those involved in the qualification system. There needs to be very close alignment between the content of the Board examinations, what is actually taught by training providers and those supervising trainees, and what is prescribed in unit standards and assessed in the National Certificate approved by NZQA. Given that an apprenticeship is up to five years long, any significant changes to the content of apprenticeship training need to be phased in so that the whole system adjusts in a co-ordinated way.
- 2.31 In practice, collaboration is important if the system is to work. No agency has a formal lead role, but the Board sits at the centre of the system as the gatekeeper for entry into the plumbing, gasfitting, and drainlaying trades. It is the only public sector agency focused on these particular trades, because the education agencies all have more general roles. It is therefore logical for the Board to take a central role. In this context, a central role requires a strong focus on building collaborative relationships, which in turn relies on communication, trust, and co-operation between the various bodies.
- 2.32 It is clear from the many discussions we had with industry participants that the Board has not succeeded in this role for many years. Relationships between the Board and others have been difficult. Trust has been low, and the industry as a whole has been very politicised. There has been some improvement in recent years, but the level of communication and co-operation was still far from ideal

when we did our fieldwork in 2008/09. Examples of the difficulties that were put to us included:

- the length of time taken to get new unit standards approved for the National Certificate, which required collaboration between the training providers, the ITO, the Board, and NZQA;
- ongoing debate and discontent about changes to the registration examinations that were not well aligned to the new unit standards or teaching prescriptions; and
- the lack of a clear protocol for how to work through issues.

2.33 All of the other agencies we talked to in 2008/09 told us that it was very difficult to work with the Board because it was not an open organisation and did not appear to appreciate the importance of collaboration.

2.34 Our discussion of the examination system in Part 5 illustrates the relationship difficulties that have prevailed for some time.

2.35 The new Board has consciously worked to improve relationships with the sector during the last year. We consider that this is an important initiative. In our view, the clear inability of agencies to work together effectively in the past has been a factor in the difficulties with the examinations and the low pass rates. Put simply, the Board's failure to build collaborative working relationships with the other agencies in the sector has disadvantaged those trying to train and qualify through the system.

2.36 The relationships between the various bodies are a point of contention in the industry. At times, we have heard conjecture about the significance or consequences of historical and current links. We encourage the Board to address that conjecture by being open about the relationships and roles between the various industry bodies. Relationships are important for the successful development and regulation of the industry. The people who are subject to that regulation and who fund the system through their fees need to be assured that the organisations are working together appropriately.

### **Board turnover**

2.37 The Board has had several full or nearly full changes in membership in the last 10 years. Each time, the relevant Minister has had reasons for making the changes. We do not question those decisions. But we note that this level of change at the governance level always has a cost, because new Board members take time to become familiar with the organisation, their role in it, and the strategic and operational issues that need to be addressed. We were told that new or

departing Board members sometimes did not receive any clear explanation for the membership changes, which they felt hampered their ability to address problems.

- 2.38 The Board has a range of statutory tasks that Board members carry out directly, so these changes have slowed some ordinary business. In particular, the disciplinary processes carried out directly by Board members have required careful management as membership has changed.
- 2.39 Another result has been that the Board staff, in particular the Registrar, have become increasingly important as a source of institutional knowledge and advice for Board members. Many of the current and past Board members we spoke to were open about their practical reliance on the former Registrar for information and advice on a wide range of strategic and operational matters. That will, of course, always be an important role for a permanent secretariat, but it has meant that successive Board members have not been well placed to assess issues for themselves or to question the advice they received.
- 2.40 One part of the role of a governing Board is to bring a wider perspective and to test and challenge management thinking. Any Board subject to frequent and large-scale changes in membership is going to struggle to perform that role well.
- 2.41 In our view, this level of change in recent years has had practical consequences for the governance of the organisation. The Board confirmed to us that, after new members were appointed to the Board in July 2008, it took time to become acquainted with a wide range of challenges and to build the necessary regulatory experience, industry knowledge, and personal relationships with other stakeholders.

### **The composition of the Board**

- 2.42 We also noted some unresolved debate in the sector about the nature of Board appointments and what links with external organisations should or should not exist at Board level.
- 2.43 Before 1999, the 1976 Act dictated the composition of the Board in some detail. In particular, it required two people to be nominated by the Master Plumbers Association, two people to be nominated by the relevant union, one representative of the Gas Association of New Zealand, and one person to be nominated by the Master Drainlayers Association or Society. The other Board members were variously provided by the relevant government departments, Local Government New Zealand, and a local authority.
- 2.44 The 1999 amendments to the Act deliberately removed this level of prescription and the structural links with other industry bodies. The law is now silent on the



composition of the Board, other than requiring two members from each of the three occupations, and allowing the possibility of one person representing a relevant training organisation.

- 2.45 For some years, the Board did not include individuals from the unions, Master Plumbers Association, or the Gas Association. A different approach was taken in 2008, and the Board currently includes one person who works with the Gas Association, and one person who is on the Board of the Master Plumbers Association, as well as a Director of the Plumbing, Gasfitting, Drainlaying and Roofing ITO. Unlike the previous system, these individuals have not been nominated by their organisations, but have been directly chosen and appointed by the Minister. Nonetheless, there has been some suggestion that their appointments were inappropriate.
- 2.46 We do not have a view on whether organisational links through Board appointments is desirable. We note that there is nothing in the legislation to prevent it. We consider that the approach to separation or linkage is a choice available to Ministers when they make the appointments, depending on their approach to building effective working relationships in the sector. Any concern about possible conflicts of interests should be able to be managed by appropriate protocols and meeting procedures.
- 2.47 The Board raised a separate issue with us. It noted that the practical demands on Board members were significant and time-consuming if they were to be done well. The Board is not just a governance body, like a corporate board. It is also a statutory body with substantive decision-making functions under the legislation. In particular, the disciplinary function requires Board members to be available for extended hearings and quasi-judicial decision-making. While the Board continues to be largely made up of people who are running their own small businesses, it will be difficult to find people who have the relevant skills and are able to devote enough time to fulfil the Board's responsibilities.
- 2.48 We agree that this presents a real practical challenge, and that the demands of the disciplinary function, in particular, need to be considered when decisions about the composition of the Board are made.

### **Balance between governance and management**

- 2.49 The fact that the Board has substantive functions to perform also means that the normal organisational balance between governance and management roles is unlikely to be appropriate. We reviewed the current governance policies dated May 2008, as well as the previous policies. They set out quite a strict demarcation between the Board's role, which is focused on strategic direction,

and management. The policies gave the Registrar primary responsibility for all operational activity.

- 2.50 That policy may have matched the approach of previous Boards. However, the balance of roles between the Board and Board staff is only policy and can be adjusted from time to time. The current Board has taken a more active role. For example, Board members have attended and participated in meetings as part of recent consultation about registration categories and other matters needed to bring the 2006 Act into force. They have also been actively working to tackle problems and to build relationships with people in other major organisations in the sector.
- 2.51 It was suggested to us that this level of involvement might constitute inappropriate interference in management matters, but we consider that this criticism is not well founded. We also consider that it may be unwise to describe the different roles in such black and white terms as the current policies do, given that the Board has substantive functions. The law requires it to be integrated into the operational processes and to take responsibility for operational decisions, albeit with appropriate support.

### Openness and accountability

- 2.52 When we began this inquiry, we found it very difficult to get a clear understanding of how the registration and licensing system worked and how the organisation carried out its functions. The website contained very little information, and what was there was not particularly helpful or clear. There was minimal publicly available information to explain the systems, and what people needed to do and why.
- 2.53 Many of the users of the system who contacted us, particularly the overseas applicants, were clearly bewildered by the system. Several people who had come from overseas told us that they were surprised by the full Board requirements when they got here, and had received different and contradictory information from immigration agencies and consultants. Some did not understand or accept the difference between the assessment processes and requirements the Immigration Service applies when assessing whether to allow someone to move to New Zealand, and those the Board applies when regulating the ability to work in the industry.
- 2.54 In 2008/09, we were also surprised by the lack of general communication and public reporting by the Board. Although the Board produced a newsletter, it was not published regularly. The annual report was not available on the website and did not seem to be widely distributed.

- 2.55 The correspondence we reviewed also tended to be reasonably brief and formal, with little explanation about the background reasons for requirements or the approach being taken. When combined with legislation and associated requirements that were confusing, and little clear public explanation of the systems that the Board administered, we could see why people interacting with the Board might not understand the decisions that were made about them. When we talked with tradespeople, we often found that the recipients of the correspondence failed to appreciate the more general regulatory context or were unable to get information from the Board that might have explained the situation to them.
- 2.56 When we talked with tradespeople, we noted that many of them genuinely perceived the correspondence and communications from the Board as threatening or vindictive. We found some correspondence where the tone surprised us. However, most of the correspondence we reviewed was appropriate. Some of the letters that people complained about were standard form letters.
- 2.57 It was often suggested to us that telephone calls and conversations were less circumspect than the written correspondence, and that the formal letter needed to be read against a backdrop of threatening or hostile conversations. We did not find documentary evidence of such conversations, and note that in some cases the individuals were involved in complex disputes with the Board about their status. Also, many individuals in the industry are forthright and strong-minded.
- 2.58 Many of these concerns centred around the operating style of the former Registrar. He has a long background with the industry and has been involved with the Board since 2000, first as a Board member and then as Registrar. He has extensive institutional knowledge and was the public face of the Board for many years. He has been a strong advocate for the Board's role in protecting public safety and has overseen the introduction of a range of new requirements. As a result, he has been a dominant and forceful presence in the industry. People often tended to personalise their dealings with the Board to the former Registrar, because he signed all correspondence.
- 2.59 Nonetheless, we note that a large number of unconnected people have raised similar concerns with us. In our view, there is a reasonably widespread perception that the Board has used its authority inappropriately against individuals. Even if there is no foundation for this perception, the fact that it exists is a matter of concern and needs to be addressed urgently. It is undermining trust in the organisation and its regulatory role.
- 2.60 In our experience, the key to addressing this kind of perception is to ensure that the decision-making system is transparent, so that people can see clearly what decisions are being made and why. We have already noted that it was not easy to

get a clear understanding of the legislative and administrative requirements that led to particular decisions and actions by the Board. In any context, when people do not understand the reason for a decision or action, and are left to infer it for themselves, they will often infer a poor motive.

### Overall organisational culture

- 2.61 The successful implementation of most regulation rests on the consent and co-operation of those being regulated, rather than on coercion and enforcement. Most people need to comply willingly. This is true for such things as criminal law, tax law, health and safety requirements, and many other areas. It is also true for occupational regulation regimes. If the regulation is to be effective, those subject to it need to accept it and to trust the regulatory agency that administers it. Transparency is an important means of building and maintaining that trust.
- 2.62 We did not find that culture in the Board. By the end of our fieldwork, we had a clear overall picture of an organisation that was not particularly open about its activities and did not fully appreciate the need to be accountable to the sector that funds it and that it regulates.
- 2.63 In 2008/09, we found an organisation that sought to impose rules for the good of the industry rather than one that actively worked to build understanding and acceptance of the rules or worked with the industry to develop effective systems. We also saw little awareness of how important it is to maintain the trust and co-operation of those being regulated, or of the importance of openness. The comments we have already made about the lack of strategic capacity and openness are important contributors to this overall culture.
- 2.64 In 2008/09, the internal culture was also poor. The Board is a busy organisation that runs an important system regulating more than 10,000 people. The legislation the staff administered at the time was manifestly outdated, but still had to be followed. Many of the staff had good ideas and wanted to be able to develop or improve the way the Board operated. When we spoke with staff, however, most told us that it was clear that this level of engagement and initiative was not wanted or encouraged. They felt that the Board was not receptive to change and tended instead to strongly defend current practice. Several staff were frustrated and unhappy.
- 2.65 The staff of the Board who we met were dedicated and hard working. Their work is complicated, and it can be a difficult environment. Many people working in the sector do not fully understand the systems and regulatory requirements, or the role of the Board, and they clearly get impatient with “paperwork”. This regularly manifests in rude or abusive telephone calls. Most staff accepted this as part of

the job and thought that they were usually able to talk people through any initial anger or frustration. But we note that it does make the working environment difficult at times, and that the attitude of some can inhibit the willingness of Board staff to engage freely and openly.

- 2.66 Nonetheless, our overall impression was of an organisation that did not value communication or initiative, and was not adequately engaged with the need to develop as circumstances changed. Overall, we found the culture to be defensive and closed, with fixed views, rather than open.

### Changes that the Board has been making

- 2.67 We have already explained that most of the current Board members were appointed in July 2008, and we began our inquiry in November 2008. While we were carrying out our fieldwork and analysing the results, the new Board members were working to address a wide range of problems that they saw with the Board. They identified many of the problems that we describe in this report.
- 2.68 In late 2009, we began discussing with the Board our preliminary findings. We issued a draft of our report to the Board for consultation in December 2009. The Board accepted most of the concerns we raised, particularly about the organisational matters discussed in this Part. In many cases, it was able to provide us with information on the steps it had already taken to tackle the problems. In other cases, it accepted our concern immediately and began work to address the point.
- 2.69 For example, the Board told us in February 2010 that:
- it had already commissioned a full organisational review to help it ensure that the Board develops an appropriate level of strategic and policy capability;
  - it had worked steadily to build effective working relationships with other organisations in the sector, including recently concluding a memorandum of understanding with the ITO;
  - it had begun to comprehensively revise its policies and operating practices;
  - it will prepare policies and processes to ensure that a culture of transparency and accountability is encouraged at all levels;
  - it had been redeveloping the website to make it more informative and user-friendly, and accepts the general need to improve its communication and the amount of information it makes available;
  - it had published the two most recent annual reports on its website; and
  - it had worked hard to consult effectively and thoroughly with the sector during 2009 as part of the process for bringing the 2006 Act into force, including having Board members attend a series of meetings around the country.

- 2.70 The Board also told us in June 2010 that it had:
- drafted and gazetted notices relating to registration, licensing, and fees for each of the three trades;
  - instituted a review of all of the fees charged by the Board, to ensure that it had a full analysis of the cost drivers, sources of funding, and options – the independent consultant was required to obtain the views of multiple stakeholders as part of the review;
  - prepared and published brochures and other information, which had been sent to all relevant stakeholders;
  - launched an 0800 line, to provide improved access to the Board; and
  - started addressing concerns raised by individuals.
- 2.71 In particular, the Board told us that it had written, or was in the process of writing, the following policies:
- Registration Policy Statement;
  - Licensing Policy Statement;
  - Continuing Professional Development;
  - Official Information Act Policy Statement (not yet submitted to the Board);
  - Human Resources policies, including a Privacy Act Policy Statement (not yet submitted to the Board);
  - Examinations (not yet submitted to the Board);
  - Complaints (not yet submitted to the Board); and
  - Overseas Assessment (in development).
- 2.72 We have described this work very briefly, but do not underestimate its significance or the effort that has been involved. In our view, these various initiatives are taking the Board in the right direction, and significant progress has been made on the various organisational challenges that confronted the current Board when it took office.

### Issues that still need attention

- 2.73 The organisational issues we have raised are significant. Although the Board has recognised them and begun to make changes, we are concerned that some of the problems are deeply embedded in the culture and operating practices of the Board.
- 2.74 We encourage the Board to take a long-term view of the change process it has started. We consider that it will need to maintain a strong focus on changing to a culture of openness and accountability for some years yet. It also needs to

maintain the policy relationship it has developed with the Department of Building and Housing, because there are policy and legislative matters that are likely to require attention in the near future.

### Reviewing and publishing the operational policies

- 2.75 Now that the 2006 Act is in force, the Board is subject to the Ombudsmen Act 1975 and the Official Information Act 1982. This gives people a general right to request a wide range of information from the Board, and the ability to ask the Ombudsmen to review decisions on the release of information and to review administrative decisions that they are unhappy with.
- 2.76 In our view, this change could be significant. It will force greater openness and accountability on the Board on a wide range of governance and administrative practices, and will give those affected by its decisions an accessible avenue for complaint and review.
- 2.77 The Board has told us that it is beginning to comprehensively revise all of its policies. We encourage it to do this as a priority, and to publish on its website its operational policies on its main statutory decision-making processes. This will help it respond to the statutory rights of access that now apply to it. We have noted that, in 2009, we doubted that the Board would be able to respond adequately to such a request. The Board has confirmed to us that it is committed to publishing all of its operational policies, and we note that it has already published some initial policy statements.
- 2.78 The Board needs to prepare comprehensive and detailed policies on all aspects of its operations. The policies need to explain how the Board puts the 2006 Act and regulations into practice, the systems operated by staff, the information that is needed, and how matters are presented to the Board for decision. The policies should also explain what rights individuals have in this process, including their rights to have access to the information being presented to the Board and to have their views included. Because no policy can cover every eventuality, the policies should explain how and why decisions might take a different approach if the circumstances seem to require it.
- 2.79 As with all governance and operational policies, the policies should be formally adopted by the Board and reviewed from time to time.

## Openness

- 2.80 The Board has recently redeveloped its website to provide easier access to information for members of the trades it regulates and for the public. The new website is better, but there is scope to use it much more.
- 2.81 Many organisations actively use their websites to achieve considerable openness and accountability. For example, most local authorities put full meeting papers and minutes on their websites, as well as a wide range of governance documentation (including annual reports, and strategic and planning documents). Many government agencies also use websites as a convenient and cost-effective way of giving access to a wide range of organisational information, including current projects and information on costs.
- 2.82 We encourage the Board to think creatively about how it can use its website and other mechanisms to publicise more information about its work. Putting effort into ensuring that the organisation is as open as possible will be one of the most important ways of rebuilding trust in the Board.
- 2.83 The Board also needs to review how it communicates with the people it regulates, to ensure that the communication is effective. This may involve reviewing templates for correspondence, as well as the background information it is able to provide to people.
- 2.84 Effective communication is particularly important for the plumbers, gasfitters, and drainlayers that the Board regulates. Where the Board is exercising its regulatory powers and performing its regulatory functions, people need to understand on what basis the Board is doing so, the reasons for such action, and their ability to challenge that action. If the Board is transparent about how it exercises its powers and performs its functions, people are more likely to consider that it has done so appropriately. This in turn will lead to greater confidence in the Board.
- 2.85 The Board also needs to take account of the way in which it is currently perceived in some quarters: some people feel threatened by it, assume that decisions are personalised, and do not understand the system very well. This context makes it even more important that the Board ensures that communication is clear and cannot be misinterpreted.

## Strategic and policy capacity

- 2.86 In 2008/09, we identified the lack of strategic and policy capability as an important weakness. The Board accepted this and is taking steps to ensure that it develops and maintains that capability. In our view, this investment



will be important. The 2006 Act has just come into force, and there are already indications of problems with it. The Board and the Department of Building and Housing are both aware that a more thorough review of the Act may be needed at some point.

- 2.87 We encourage the Board and the Department to maintain a policy focus on the way in which the industry is regulated and whether there is a need for change. Issues that are already apparent include:
- the composition of the Board, and whether the current requirements for practitioner members can be reconciled with the Board's workload, particularly in the disciplinary process;
  - the difficulties that have been identified with the gas certification and audit systems, which we discuss further in Part 6; and
  - a range of practical questions that are arising as the 2006 Act is brought into force.
- 2.88 The Board needs to ensure that it has the capability to keep thinking about challenges to the regulatory regime it administers, and to be able to work with the Department of Building and Housing on what policy or legislative responses may be needed. We note that maintaining the necessary level of policy and strategic expertise can be challenging for small and self-funded regulatory bodies such as the Board. It will need to continue to liaise closely with the Department to find the right balance between the in-house expertise it needs and what it can rely on the Department to provide.



## Part 3

# Role during apprenticeships and training

- 3.1 In this Part, we look at the Board's role while people are in apprenticeships or training, or are working without full qualifications. Under the 1976 Act, the role had two main aspects:
- issuing limited certificates for apprentices and others who were not fully qualified; and
  - overseeing the requirements for supervising the holders of limited certificates.
- 3.2 Under the 2006 Act, only those in training need limited certificates from the Board. Other unqualified people work under defined statutory exemptions.

### Summary of our findings

- 3.3 Our main findings about how these functions worked under the 1976 Act were:
- The policy statements and guidance developed by the Board on the supervision requirements were confusing and inconsistent.
  - The Board's responses were not always supported by their published policies. Responses were sometimes inconsistent about what information on the supervision arrangement was required with an application for a limited certificate, and about enforcement action when a person appeared to be working without proper supervision. Because of this inconsistency, some people perceived their treatment as vindictive.
  - There was some legal risk with the Board's actions, because:
    - it was relying on an implied power when cancelling limited certificates outside the statutory disciplinary process, rather than being able to point to an express statutory power and clear decision-making process; and
    - its communication with the affected person was not always clear on the process for refusing or cancelling a certificate, where the person was up to in that process, or on the person's procedural rights before final decisions were made. These were potentially natural justice failures.
- 3.4 In 2010, when we assessed the approach taken under the 2006 Act, we had slightly different concerns. The Board had carefully considered its approach to those in training and those working under exemptions when it consulted on and developed the registration and licensing categories under the 2006 Act and the *New Zealand Gazette* notices that put them into effect. It also developed a Licensing Policy Statement to sit alongside the *Gazette* notices and explain how the system would operate in practice. We saw these efforts to clearly communicate the new requirements as positive.

- 3.5 However, we were concerned that the relevant *New Zealand Gazette* notice – and the Licensing Policy Statement in particular – set out policies that we regarded as having some legal risk. Our main concerns related to the approach taken to people working under the exemptions in sections 19, 21, and 25 of the 2006 Act, but we also queried other more minor issues.
- 3.6 We discussed these concerns several times with the Board, which took our concerns seriously and engaged a lawyer to assist it. As we set out later in this Part, on some minor matters, the Board agreed to look further at the issues we had raised, but it disagreed with our view on the risks associated with its approach to sections 19, 21, and 25.
- 3.7 In our view, a regulatory authority of this kind should take a conservative approach to legal risk – especially to legal risks with its core operational activities that have a significant practical effect on those it regulates. When its actions are effectively stopping a person from working, and are a reasonably regular part of its work, we consider that the legal authority for those actions needs to be more than arguable. It should be clear. It is a problem if a regular part of an authority’s regulatory work operates at the margins of its legal mandate. If the Board sees deficiencies in the legislation and its legal powers, it should take that up as a policy issue rather than attempt to find a way around the perceived deficiencies.

## What we found in 2008/09

### The limited certificate system under the 1976 Act

#### The legal requirements

- 3.8 The Board’s main role under the 1976 Act, for people who were in training, was to administer the system for issuing them with limited certificates.
- 3.9 If a person was not registered as a plumber, gasfitter, or drainlayer, they could apply to the Registrar for a limited certificate to do plumbing, gasfitting, or drainlaying work. The application had to be countersigned by the registered or craftsman person who employed the applicant or supervised their work. If these requirements were met, the Registrar was required to issue the limited certificate.
- 3.10 The 1976 Act also set out the supervision requirements for the work of limited certificate holders. They were complex, but in summary they required:
- someone on the “time served”<sup>6</sup> path to work under the direct supervision and in the presence of a craftsman or registered plumber or gasfitter (as the case may be) for the first two years of their limited certificate; and

<sup>6</sup> Rather than completing an apprenticeship, under certain circumstances people could become registered as a plumber, gasfitter, or drainlayer after working in the industry under certain conditions and for a certain amount of time. This was called the “time served” path.

- an apprentice, or someone on the “time served” path who had held a limited certificate continuously for two years, to be supervised or employed by a craftsman or registered plumber or gasfitter (as the case may be).

- 3.11 There were equivalent requirements for drainlayers, but they were simplified to take account of the fact that this trade did not have formal apprenticeships or craftsman status.
- 3.12 The Board had an internal manual of procedures that covered issuing limited certificates. The manual required staff to check that the application was countersigned by the registered person who would supervise the work of the applicant. If the applicant was an apprentice, staff had to also check that the applicant was enrolled with a training provider.
- 3.13 The internal manual explained the supervision requirements. The internal manual differed from the requirements of the 1976 Act and also contained very stringent practical supervision requirements for non-apprentices.

#### **The Board’s published policy**

- 3.14 In March 1996, the Board published its policy determinations on the practical meaning of the words “direction” and “supervision”. This guidance was explained in a document published on its website called *Obligations of Registered and Non-registered persons under Plumbers, Gasfitters and Drainlayers Act 1976*.
- 3.15 In essence, this document simply repeated the requirements of the legislation. It gave some guidance on the meaning of supervision, as follows:
- Supervision requires the supervisor to make their own assessment of a particular job by attending the site, or giving appropriate instructions, and approving what the limited certificate holder proposes to do.
  - The supervisor is not required to be continuously present while the work is being carried out.
  - The supervisor must attend the job on a basis that is sufficient to satisfy the supervisor that all phases of the job, especially critical testing phases, have been correctly carried out.
  - On completion of the work, the supervisor must take responsibility for “sound trade practice” and compliance of the work.
- 3.16 The document did not explain whether there were any equivalent expectations under the alternative option that someone is employed rather than supervised. Nor did it explain what is meant by “direct supervision and in the presence of” the supervising person, although the Board’s internal manual did set out an interpretation.

- 3.17 The policy statement was confusing. On the one hand, it said that a limited certificate holder was required to work in the presence of a registered person. On the other hand, the statement says that a supervisor did not have to be continuously present while work was carried out.
- 3.18 The Board's policy statement contradicted the requirements in its internal manual for limited certificate holders. The manual referred to the need for the supervisor to be in "line of sight or earshot", which was contrary to the policy statement that the supervisor did not have to be continuously present while the work was being carried out.
- 3.19 In our view, the Board's policies for the supervision of limited certificate holders were not clear and were unlikely to provide meaningful assistance to those in the industry. They did not add significantly to the requirements set out in the Act, and they were not consistent with the internal policy manual. Parts of the internal manual were also potentially inconsistent with the 1976 Act.
- 3.20 The Board later told us that the internal manual was a draft and was not the operational policy on supervision for limited certificate holders. However, the internal manual we received did not indicate in any way that it was a draft. Our comments in Part 2 on the Board's lack of effective operational policies when we began our work are relevant here.

#### **What was happening in practice**

- 3.21 We reviewed a sample of the registration files held by the Board to establish whether the confused nature of these policies had resulted in any unfairness to limited certificate holders or to applicants for a limited certificate. During our inquiry, we also spoke to a range of people about how the supervision requirements worked in practice.
- 3.22 Our review of the files and standard forms for limited certificate holders showed that applicants were required to record the name and registration number of the person supervising them. An apprentice applying for a limited certificate was required to state the name of their employer and the training agency providing the apprenticeship training.
- 3.23 The records we examined indicated that Board staff checked all relevant details before the Registrar approved applications. This process happened reasonably efficiently.
- 3.24 However, we saw some files where the approach taken was not consistent with usual practice. For example, in one file in early 2009, an apprentice plumber enrolled for a course in plumbing. The apprentice then applied to the Board for a

limited certificate. The name of the craftsman plumber who was to supervise the plumbing work was provided as part of the application. The Board wrote to the craftsman plumber asking him to complete a statutory declaration that he would be supervising the apprentice when sanitary plumbing work was being carried out. The craftsman plumber was also asked to provide details of the supervision arrangements.

- 3.25 In our review of the registration files, we did not see any other records where the supervisor of an apprentice was asked to sign a statutory declaration confirming the supervision arrangements as well as being asked to provide a statement setting out the details of the arrangements.
- 3.26 The statutory declaration and a statement setting out the supervision arrangements were provided. There was a further letter from the Board, which stated that the supervisor had not described what was meant by “direct supervision”. The letter said that until the Board received this information:
- ... and I [the Registrar] have satisfied myself that you will be working in accordance with section 38 of the Plumbers, Gasfitters and Drainlayers Act 1976, I will not be issuing your limited certificate. You have the right to appeal to the Board if you wish. The Board has the power to confirm or reverse my decision or direct that a limited certificate be issued when any conditions that it specifies have been met.*
- 3.27 The apprentice believed that the supervisor had already provided the Board with enough details. The apprentice decided to act on the recommendation in the letter and sought an opportunity to appeal to the Board. The apprentice wished to appear before the Board. The next letter from the Board said that the Registrar had not declined the application, but was seeking further information. The letter requested an explanation from the supervisor about the supervision arrangements and a copy of the training agreement, and stated that the application could not be approved or declined until this was received.
- 3.28 A copy of the training agreement was provided. The Board then responded, saying that the certificate could not be granted because the supervising person was not the employer of the apprentice. The Board’s interpretation of the 1976 Act was that either the apprentice had to be employed by the supervising person or the supervising person had to be employed full time by the firm where the apprentice worked. In this case, the supervising person was not employed full time by the company where the apprentice worked.

- 3.29 The apprentice was eventually granted a limited certificate, but it was revoked almost immediately when the person who had agreed to be the supervisor withdrew from this role.
- 3.30 In our review of the registration files, we did not see another example of the Board checking on the employment status of the supervising person.
- 3.31 In the case of non-apprentice limited certificate holders, the Board seemed to have a more relaxed approach to the supervision requirements. Two years ago, the Board was asked if someone in the first two years of a plumbing or gasfitting limited certificate could work as a self-employed contractor. The Board replied that:
- The Board does not give advice to a limited certificate holder relating to the manner in which they choose to work. However the Board does have power to ensure that limited certificate holders work legally. In particular, in the first two years the limited certificate holder is required by law to work under supervision and in the presence of a registered person who is named as the limited certificate holder's supervisor. Whether or not the limited certificate holder works as a self-employed contractor or employee is not a matter under the Board's jurisdiction: i.e. the terms of his or her engagement with the supervisor.*
- 3.32 The Board's position seemed to be that, in the case of an apprentice limited certificate holder, the terms of employment of the supervising person of the apprentice was a matter that it should be concerned about, and it had refused a limited certificate because it was not happy about these employment arrangements. But in the case of a non-apprentice limited certificate holder working in the first two years of the certificate, the Board had stated that the terms of the employment arrangements for the limited certificate holder were not under the Board's jurisdiction. It was difficult to reconcile the Board's position in these two files.
- 3.33 We also observed some serious inconsistencies in the way in which the Board acted to enforce the supervision requirements for limited certificate holders:
- In one instance, the Board was aware that a plumber who had given up his apprenticeship before completing it was running his own business and was working without supervision. The Board was aware of this situation because complaints had been made to it. Despite the Board insisting on written explanations from the limited certificate holder, none were received and it took months for the craftsman plumber to send in the statutory declaration confirming that the supervision arrangements complied with the 1976 Act. The Board seemed reluctant to take more immediate action to ensure that the limited certificate holder complied with the 1976 Act.



- In the same year, there was another instance involving a limited certificate holder (a gasfitter) who was running his own gas appliance retail business. In this case, the gasfitter held a limited certificate and had a craftsman gasfitter to supervise his work. The craftsman gasfitter lived several hours away. The supervisor would visit to inspect the work completed by the limited certificate holder. The Board was informed of this situation and immediately rang the limited certificate holder and the supervising craftsman for details of the supervisory arrangements. The Board took the view that these supervision arrangements did not comply with legislative requirements, because the limited certificate holder was not working in the presence of the supervisor, and cancelled the limited certificate. Both the limited certificate holder and the supervisor made written submissions explaining the supervision arrangements, but the limited certificate was not reinstated.
- 3.34 The prompt way in which action was taken against the second person was in direct contrast with the first case, where the Board took some time to act after the limited certificate had lapsed. In the earlier case, the Board also did not insist that the limited certificate holder had to work in the presence of the supervisor. We have not formed a view on which approach was the more appropriate; our primary concern is with the inconsistency.
- 3.35 We also note that there was some legal risk involved in the second situation, as there is no clear statutory power to cancel a limited certificate outside the formal disciplinary process. However, the Board's legal advice is that it has an implied power to take such actions to support the public safety purpose of the legislation. In such situations, it is also important that the Board explains the process to the affected person carefully and clearly to safeguard their procedural rights.
- 3.36 We talked to several non-apprentice limited certificate holders who said that they had never been supervised and knew of other non-apprentice limited certificate holders who also received no supervision. We also talked to many more senior people in the trade who thought that there was widespread flouting of the supervision rules, particularly in larger urban centres. It was suggested to us that many junior employees "were given a van and a phone" within a few weeks of starting work and sent out on their own.
- 3.37 In this general context of a widespread perception of a relatively relaxed approach to these requirements, the firm treatment of individual cases such as those we have noted stood out as anomalous. The former Registrar and the Board told us that they acted when cases came to their attention, but could not control practice or enforce requirements where they were unaware of problems. However, many of the people we talked to clearly felt that they had been singled out for no apparent

reason. Without any other explanation, they tended to assume that the decisions were motivated by bad faith or personal relationships.

## Recent changes

### New systems introduced by the 2006 Act

#### Trainees

- 3.38 For people in training, the 2006 Act takes a similar approach to the 1976 Act. Trainees are exempted from the prohibition on unregistered people doing plumbing, gasfitting, and drainlaying, provided they carry out their work in keeping with a limited certificate issued by the Board. Trainees are defined as people who are undergoing instruction or training in plumbing, gasfitting, or drainlaying work for the purpose of registration, and includes apprentices. Under the 2006 Act, the Board may issue trainees a limited certificate, subject to such terms and conditions as it thinks fit. It also has the power to amend any condition on the certificate, and to either cancel a limited certificate or refuse to renew it.
- 3.39 The Board has made clear policy decisions under the 2006 Act about the types of training that it will recognise for the purpose of registration. It is clear who can apply for a limited certificate as a trainee. The powers of the Board to impose conditions on those certificates, and to take action to enforce them, are clear in the legislation.

#### Exemptions

- 3.40 The 2006 Act also provides for a number of exemptions from the prohibition on unregistered people doing plumbing, gasfitting, or drainlaying. There are two broad kinds of exemptions:
- Some exemptions exist by virtue of a set of facts being present (exemptions in sections 19, 21, and 25).
  - Some exemptions require the person to satisfy the Board that they are competent to carry out the exempted work (exemptions in sections 18, 20, and 24) and to have an exemption formally granted.
- 3.41 There are different legislative provisions for each of these different exemptions. Some of the provisions enable the Board to impose terms and conditions on the exemptions, including time limits, but others do not.
- 3.42 The exemptions that exist as a matter of fact under the 2006 Act are:
- section 19 – an unregistered person can do plumbing work under the supervision of a certifying plumber holding a current licence or the holder of an exemption under section 18;

- section 21 – an unregistered person can do gasfitting work under the supervision of a certifying gasfitter holding a current licence or the holder of an exemption under section 20; and
- section 25 – an unregistered person can do drainlaying work under the supervision of a certifying drainlayer holding a current licence.

3.43 People who previously worked as non-apprentice limited certificate holders will now work under these exemptions. These exemptions also apply to any person, whether working casually or on a personal and domestic basis, so long as they are working under proper supervision.

3.44 The exemptions that must be applied for and approved are:

- section 18 – the Board can approve an exemption for an unregistered person to install and maintain particular plumbing equipment;
- section 20 – the Board can authorise an unregistered person to carry out or supervise particular gasfitting; and
- section 24 – the Board can authorise gasfitters to fix water heaters.

#### **Supervision requirements**

3.45 As we discussed above, the supervision requirements under the 1976 Act were complex. The 2006 Act simplifies matters significantly by directly defining supervision. Supervision is defined as meaning that:

*... the work is undertaken under the control and direction of a person authorised under this Act to do the work or, in the case of sections 19, 21, 22, and 25, a person authorised to supervise work under those sections as is sufficient to ensure—*

*(a) that the work is performed competently; and*

*(b) that while the work is being undertaken, appropriate safety measures are adopted; and*

*(c) that the completed work complies with the requirements of—*

*(i) regulations; and*

*(ii) in the case of sanitary plumbing or drainlaying, regulations under the Building Act 2004; and*

*(iii) in the case of gasfitting, regulations under the Gas Act 1992.*

3.46 The Board has set different supervision requirements, as a matter of policy, depending on the level of experience:

- A trainee in the first year is required to work in the presence of the certifying plumber, gasfitter, or drainlayer, or a registered person who is supervised by that certifying person. After one year of work experience, the trainee must simply be supervised.

- A person working under the exemptions in sections 19, 21, or 25 must work in the presence of the certifier or another licensed person who is supervised by the same certifier, for the first two years. After two years, the general supervision requirements apply.
- A registered person must be supervised but does not have to work in the presence of the certifying person.

3.47 These policies are put into practice by imposing conditions on the relevant licences or certificates. The primary obligation is on the certifying person, and their licence requires them to meet these various supervision obligations.

### Issues that still need attention

3.48 We reviewed the parts of the Licensing Policy Statement issued by the Board in March 2010 that deal with exemptions and limited certificates. We also reviewed the licensing and registration *New Zealand Gazette* notices issued for each trade and the *Gazette* notice that set out the fees payable to the Board. We identified a number of concerns with the parts of the Licensing Policy Statement relating to exemptions and limited certificates. Many of these were about whether there was a clear legal basis for the Board's stated policy.

### People working under sections 19, 21, and 25

- 3.49 Our main concern related to the way in which the Board appeared to be thinking about people working under the exemptions in section 19, 21, and 25. As noted, under the 2006 Act, these exemptions exist as a matter of fact and the Board does not have any direct power to regulate people working under these exemptions.
- 3.50 Although these provisions cover people whom the Board used to regulate as non-apprentice limited certificate holders, the coverage is potentially wider than this group. For example, this exemption could cover workers or property owners assisting a qualified person. However, the Board's approach to this exemption appears to have concentrated on the group that it used to regulate.
- 3.51 The Board's consultation documents on the implementation of the 2006 Act show early recognition that the 2006 Act does not cater for non-apprentice limited certificate holders and that the Board can no longer directly regulate this group of workers. The focus of the discussion was on how to continue to control the way in which this group worked. The Board's legal advice was that it would need to focus on the certifying person and impose conditions on the way in which they supervised these people's work.

- 3.52 On this basis, the relevant *New Zealand Gazette* notices require the supervisor, as a condition of the supervisor's licence, to:
- submit to the Board the name, address, and telephone number of every person who intends to work under these exemptions, before the person does any work;
  - submit this information annually on or before 1 April each year (the licensing renewal date);
  - pay an additional fee for each notified person, each year;
  - supervise notified people in keeping with the Board's requirements (that is, in the presence of the supervisor or another registered person for the first two years, then generally); and
  - require the exempt person to carry an identification card issued by the Board and produce it on demand.
- 3.53 We accept that the Board is able to put conditions on the supervising person to ensure that the work they are responsible for is safe. However, there must be limits to the Board's ability to control the work and activity of a third party through such conditions. For example, we question whether the capacity extends to imposing a condition on the supervisor that requires a third party (the exempt person) to carry an identification card. We also question whether it is practicable to require any person who might help a certified person under these exemptions to be notified to the Board before doing any work, or for that notification to be annual.
- 3.54 It is unclear how either of these requirements would apply to casual workers or property owners helping a qualified person with a particular job. They appear to have been developed with only a particular group of workers in mind – those who work in the industry and whom the Board used to regulate through limited certificates. In our view, there is a risk that, by imposing such controls through the supervision requirements, the *New Zealand Gazette* notice may narrow the scope of the exemption too much.
- 3.55 Our concerns are strengthened by the Licensing Policy Statement, in which the Board explains its regulatory approach. That document includes a number of statements that suggest that the Board is in effect attempting to regulate people working under these exemptions. For example, it states that "In practice, exempt persons are governed by the Registrar under delegated authority from the Board", and that "to ensure the competence of exempt persons, the Board needs to know which persons are working under an exemption and have some means of regulating them".

- 3.56 We discussed these concerns with the Board and the Department of Building and Housing. The Board provided us with its legal advice, which confirmed that it was not regulating the exempt person, but was regulating the certifying person who supervised the exempt person. It had done this by imposing conditions on the licences of certifiers who supervised such exempt people. It maintained that these conditions were necessary if the Board was to give adequate effect to the public safety purposes of the Act.
- 3.57 We recognise that the Act is unhelpfully written and sends conflicting messages. Although it sets out exemptions that exist as a matter of fact and need no application or approval, it also in section 26 appears to give a power to cancel all kinds of exemptions, including those available under these provisions. The Board reasons that, if it has the power to cancel the application of an exemption to a particular person, it should know who is working under such exemptions. As noted, we also accept that the Board has some capacity to control the work done under these exemptions through conditions on the person supervising the work.
- 3.58 Overall, however, we remain concerned that it appears as if the Board is purporting to still regulate a group of workers directly, when the 2006 Act took away that capacity. The Board may regard this as a deficiency in the Act, and consider that it is necessary in the interests of public safety to continue to control the work of this group. We caution it against taking this approach too far. If there is a gap in the Act, as opposed to a deliberate change in approach, then it should work with the Department of Building and Housing to address that gap directly by amending the legislation. From our research into the background to the Act, we have been unable to establish conclusively whether this was a deliberate change or an accidental omission.
- 3.59 It may be possible to go some distance towards addressing the issue by focusing on the responsible supervisor, but the Board needs to carefully consider the limits of this approach. It needs to keep any conditions and fees for people working under sections 19, 21, and 25 squarely related to the certifying person who is supervising such people and that certifying person's licence. It also needs to ensure that all of its communication explains the requirements in these terms. At present, the way the Licensing Policy Statement is drafted makes it look as if the Board is directly regulating exempt people working under sections 19, 21, and 25. The Board told us that it appreciates that it cannot directly regulate such people and that it will review the relevant sections of the Licensing Policy Statement.

### Other issues with the Board's policy on exemptions

- 3.60 We identified several other detailed issues, which the Board has accepted require further work.
- 3.61 The Licensing Policy Statement states that, if a trainee plumber, gasfitter, or drainlayer who holds a limited certificate ceases instruction or training, their limited certificate is automatically revoked. It is not clear to us that the Board has the power to deem a limited certificate to be automatically revoked in such circumstances. We note that it does have the power to cancel a limited certificate. However, this requires a positive act by the Board and needs to be accompanied by some kind of process to ensure that natural justice requirements are met before action is taken. We raised this issue with the Board, and it told us that it will consider the issue further.
- 3.62 The Licensing Policy Statement sets out that people holding exemptions under section 18 (exemption for an unregistered person to install and maintain particular plumbing equipment) are subject to terms and conditions that the Board has set. There does not appear to be any power in the 2006 Act for the Board to apply such terms and conditions. The Licensing Policy Statement also sets out that such an exemption lasts for only one year, but the 2006 Act does not explicitly set any time limit on exemptions under section 18. The Board told us that it is carrying out work on this issue.
- 3.63 The Licensing Policy Statement sets out that exemptions under section 24 (Board-granted exemption to allow a gasfitter to fix water heaters) are for only one year, but section 24 does not set any time limit on such exemptions. It may be that the Board has a legal basis for imposing such a requirement, but this is not explained in the Licensing Policy Statement.
- 3.64 The Board has the power to grant exemptions under section 24 if the Board is satisfied by examination or otherwise that the gasfitter is competent to fix water heaters. The Licensing Policy Statement does not contain any information about how the Board will assess competence before granting an exemption, nor on whether competence will be reassessed from time to time. The policy statement on section 24 is not yet developed enough to explain to people what they need to do to qualify for this exemption.
- 3.65 We note that the Board has not issued any guidance in its Licensing Policy Statement about how it interprets the definition of supervision contained in the 2006 Act. Because the Board has the power to take disciplinary action or to refuse to renew a licence where there was no supervision, or where supervision did not meet the requirements of the 2006 Act, it would be helpful for the Board to advise

plumbers, gasfitters, and drainlayers what it considers “supervision” means in practice. The Board told us that it has added this to its work programme.

### Overall comment

- 3.66 Overall, we are satisfied that the type of inconsistency that we identified under the 1976 Act is unlikely to recur. The Board has worked hard to prepare clear policies alongside the legal requirements it has been putting in place. It has also consulted on those policies and published them on its website. The 2006 Act also generally gives it a much clearer basis for its actions and resolves some of our previous legal concerns.
- 3.67 The Board needs to develop its policies further because there are some matters that are not yet covered. As we have noted, it has accepted the need for further work on a range of matters that we raised with it during the inquiry.
- 3.68 We still have concerns about the Board’s approach to its legal mandate and its readiness to rely on the purpose of the 2006 Act as a basis for a broad interpretation of its regulatory authority. We note that the principles in the Act are wider than public safety and also include not unnecessarily restricting registration and licensing, and not imposing undue costs on those being regulated. We have already commented that, in our view, it is preferable for a regulatory authority to take a reasonably conservative approach to legal issues of this kind.

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#### Recommendation 1

We recommend that the Plumbers, Gasfitters, and Drainlayers Board review its Licensing Policy Statement to ensure that it complies with the Plumbers, Gasfitters, and Drainlayers Act 2006 and administrative law principles.

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#### Recommendation 2

We recommend that the Plumbers, Gasfitters, and Drainlayers Board discuss with the Department of Building and Housing whether mechanisms under the Plumbers, Gasfitters, and Drainlayers Act 2006 are clear and appropriate for controlling the work of exempt people carrying out plumbing, gasfitting, or drainlaying work.

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#### Recommendation 3

We recommend that the Plumbers, Gasfitters, and Drainlayers Board revise its Licensing Policy Statement to include a discussion of how it defines “supervision”.

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## Part 4

# The registration and licensing system

- 4.1 In this Part, we discuss our findings on the registration and licensing system, under the 1976 Act and the 2006 Act.

### Summary of our findings

- 4.2 At a system level, the processes operated well and the Board took care to check each application. Although the Board's documentation and record-keeping had been poor in the past, there had been substantial improvements during the last five to six years.
- 4.3 Our main concerns were legal questions. We identified several issues under the 1976 Act where we were not satisfied that there was a strong legal basis for some basic policies. We acknowledge that the Board has now obtained legal advice that supports the approach it was taking, but we still consider that there was an undesirable level of legal risk associated with some policies.
- 4.4 Many of these legal concerns have been addressed with the implementation of the 2006 Act, but we still have questions about some of them.
- 4.5 We discuss these legal issues in detail in this Part, because we and the Board take different views. We cannot finally determine the legal questions. Rather, we are raising these issues because we are concerned that they show an organisation that has not been giving careful or close enough attention to the legal basis of its policies and procedures. As we explained in Part 2, the proper exercise of its statutory powers should be at the heart of the Board's work.

## The registration and licensing system under the 1976 Act

### Registration

- 4.6 The 1976 Act stated that a person was eligible for registration as a plumber or gasfitter once they had passed the relevant examinations, paid the fee, and:
- already been registered in the other trade; or
  - completed an apprenticeship; or
  - held a limited certificate for five years.
- 4.7 There was also separate provision for registering very long-serving members of the profession who passed examinations under an earlier system.
- 4.8 A candidate who met all these requirements applied to the Board for registration, enclosing copies of the relevant documentation and the required fee. The Board then considered the application. If the Board was satisfied that an applicant met

the requirements for registration as specified in sections 21 and 25 of the 1976 Act, then registration was granted. Registration was for life unless a person was struck off the register as a result of disciplinary action or asked to be removed from the register.

- 4.9 Once registered as a plumber or gasfitter (or both), a registered person could apply for registration as a craftsman plumber or gasfitter. We discuss below that the legal requirement was for one year of experience after registration, but in practice the Board required two years. As well as the two years' post-registration experience, applicants had to have obtained a pass in the craftsman common examination and in either (or both) the craftsman plumbing examination or the craftsman gasfitting examination.

### Licensing

- 4.10 Registered people and craftsmen were required to periodically apply for and obtain a licence. The licences authorised practitioners to legally carry out sanitary plumbing or gasfitting or drainlaying for the year in which the licence was issued. Although the 1976 Act authorised the Board to grant licences for up to five years at a time, in practice it chose to issue only annual licences.
- 4.11 The 1976 Act stated that the Registrar was required to issue a licence to a registered plumber or drainlayer on payment of the prescribed fee. For gasfitters, the requirement was slightly more complex. The 1976 Act stated that the application had to also specify whether the applicant was actively engaged in work as a gasfitter, and any other matters that were prescribed in regulations. There was also provision to make regulations to prescribe conditions about ongoing training and professional development. However, no regulations were made to prescribe any additional requirements or any conditions relating to ongoing training. Therefore, the law required the Registrar to issue a licence if a gasfitter paid the fee and specified that they were currently working as a gasfitter.

### What we found in 2008/09

- 4.12 To check that the Board was operating a registration and licensing system that was well organised, we selected at random a sample of about 100 registration files from 2000 to 2008. We wanted to check that the files contained the documentation to support the decision to register a practitioner and to renew their annual licence.

## Documentation

- 4.13 Our review of the registration files showed that, before 2004, the files did not contain all the documentation necessary to support the decisions to register that person. This does not mean that the documentation does not exist, only that it was not on the file we reviewed. For example:
- In 2003, the Board approved registration of a person as a craftsman gasfitter. There were no papers on file indicating how he attained either registration status or craftsman status.
  - One file contained a computer printout of a limited certificate granted to a plumber in 1994, and he was then registered in 1999. There are no papers on file indicating that he had completed an apprenticeship or gained the required qualifications.
  - In another case, the registration file for a plumber showed that a limited certificate was issued in 2000 and registration as a plumber granted in 2003. However, the registration file contained no copies of documents that would verify the completion of an apprenticeship and qualifications obtained.
- 4.14 Board staff explained to us that, in the past, registration documents were not systematically filed. A lot of time had been spent in bringing together the papers and establishing a unique file for each practitioner. The lack of documentation on files does not mean that it is impossible to establish that a registered person has the qualifications to be properly registered.
- 4.15 We chose at random the file for a plumber who was registered before 2000 to see if he had met the requirements for registration. A note on the file indicated that he was registered in 1987. The Board has bound volumes of every registered practitioner, dating back to 1912. This record, which is handwritten, contains the name, registration number, and examination results for all registered persons. The record contained in the bound volume confirmed that the plumber had been properly registered. To find the actual documents that would have been provided with the original application, however, would have required a substantial search of the files held in the Board's archives.
- 4.16 Our review of the registration files showed that there has been a substantial improvement in the record system maintained by the Board during the last five to six years. The files contained all the relevant records, and it was easy to establish from the documentation on file that an applicant for registration was entitled to registration.
- 4.17 The registration files also contained copies of the licences issued to practitioners each year. The Board requires plumbers and gasfitters to apply annually for

licences. The 1976 Act required applicants for limited certificates to have their applications countersigned by the craftsman or registered person who was supervising them. Similarly, Board policy required the licence application for a registered person to be countersigned by the craftsman who was directing the work of the registered person.

- 4.18 Our review of the registration files showed that, up until about 2007, licence applications sometimes omitted the name of the supervising registered person or the name of the craftsman providing direction for a registered person. More recently, Board staff have been carefully checking the applications for the annual licences to ensure that the supervisors have countersigned the application.

### Registration

- 4.19 We had some concerns with the way in which the Board was registering overseas applicants. We discuss this issue specifically in Part 7.
- 4.20 Our other main concern with the way in which the Board carried out its registration function was with its policy on when registered people were eligible to sit craftsman exams (and therefore eligible to qualify to be registered as craftsmen).
- 4.21 As noted in Part 1, we systematically reviewed all the main decisions or actions of the Board to check their legal basis. We did this because many of the concerns that led to our inquiry suggested that there might not always be a clear connection between the legislation and the Board's actions. Wherever we identified a question from our own analysis of the legislation, we researched Board papers and Board minutes to attempt to establish the basis on which the Board had instituted a particular approach.
- 4.22 On this issue, the policy, as set out in a Board minute from November 1990, was:  
*Craftsman: In addition to passing the prescribed examinations and satisfying the practical work experience requirement [a candidate] must have held registration as a registered plumber/gasfitter for a minimum period of two years since obtaining registration at registered level.*
- 4.23 This policy did not appear to us to be well-grounded in the 1976 Act. Section 21 of the Act stated that:  
*Subject to section 27 of this Act, a person shall, on payment of the prescribed fee, be entitled to be registered as a craftsman plumber if he satisfies the Board –*  
*(d) That after obtaining registration as a plumber, he has undergone such course of training and acquired such experience and passed such examination or examinations as may be prescribed, or, if no course or experience or*

*examination (as the case may require) is prescribed, as may be approved by the Board, for the purposes of this section.*

- 4.24 If no training, experience, or examination requirements were prescribed by the 1976 Act or regulations, the Board had the discretion to set those requirements. The regulation-making power in section 66 of the Act said that regulations could be made “prescribing the nature and duration of any training or experience necessary for the purposes of obtaining registration under this Act, and relating any period so prescribed to the time of undertaking any examination for such purpose”.
- 4.25 The relevant regulations accordingly set out the examinations that needed to be passed and a work experience requirement. As required by the regulation-making power, the two were linked so that the experience requirement controlled when the examination could be sat. The work experience requirement in the regulations was one year of work after passing the registration examination.
- 4.26 In our view, therefore, a person was entitled as a matter of law to be registered as a craftsman plumber if they had completed one year of work since passing the registration examinations, sat and passed the craftsman examinations, and paid the fee.
- 4.27 This is not the approach the Board took. As set out above, it required a person to have been registered for two years.
- 4.28 When we looked for the source of the two-year requirement in the Board’s files, we were unable to find anything. From the documents we reviewed, it appears that the two-year requirement may have been Board policy since at least 1984, was explicitly confirmed in 1990, and was reviewed again in 2003. The 2003 paper showed that the different parts of the Board’s systems recorded different requirements, and that at various times a one-year requirement may have been applied. The outcome of that paper was not clear, but all the Board’s public information when we began our inquiry was that the two-year requirement was mandatory. We could not find anything in the Board’s papers indicating when it was introduced, or what its basis in law was.
- 4.29 We raised this issue with the Board and the former Registrar. The former Registrar told us that he believed that it had been Board policy since November 1990, and believed it had been done after consulting with the trades and the Ministry of Health.
- 4.30 The former Registrar also suggested to us that it would have been difficult to adhere to a one-year requirement, as the registration examinations were held only once a year in November, with results released in January. Therefore, a person

who passed the registration exam and applied for registration would not have one year's experience by the time the craftsman examinations were held in November of that year. They would have to wait until the November of the next year to sit the craftsman examination.

- 4.31 We note that the regulations gave the Registrar a discretion to manage this type of timing issue. The Registrar has the power to let a person within three months of completing the experience requirement sit the examinations. We also note that the two-year requirement had not changed even though the Board moved to holding examinations twice a year. In our view, it is unlikely that the basis of the policy was simply because of timing.
- 4.32 We were also told that the industry consensus was that additional work experience of about two years was necessary before a person took on final and supervising responsibilities for work.
- 4.33 The Board sought external legal advice about whether it had the power under the 1976 Act to require candidates for the craftsman examination to have two years' experience. The legal advice was that the regulations simply prescribed eligibility requirements for sitting examinations, and the Board still had discretion under section 21 to set separate and additional criteria for registration. The initial advice did not address the terms of the regulation-making power in section 66, which links the experience and examination requirements, or analyse the working of section 21.
- 4.34 A second opinion advised that section 66(1)(f) had two limbs and that regulations were made in relation to only the second limb. That is, the regulations referred to the time requirements for sitting any examination, but did not refer to the duration of experience necessary for the purpose of obtaining registration. Therefore, the Board could prescribe the experience and training required for registration as a separate matter under section 21.
- 4.35 After discussing this issue further with the Board and its legal adviser, we concluded that the lawfulness of this policy depended on the interpretation of section 66(1)(f), and in particular on whether the two limbs were linked, so that the second was contingent on the first, or whether they could be separated. The Board received advice that they could be separated and therefore the policy was lawful. However, we consider that the more logical interpretation is that the two are linked, and the experience requirement for registration had to be set by reference to the time for sitting the examination.
- 4.36 The issue is now historical. The 2006 Act clearly gives the Board power to set new requirements, and we have no concerns about the way it has put in place a

two-year requirement under the new system. However, we are concerned that the Board continued with a significant requirement that was legally arguable for so many years. As noted, we were unable to find any clear consideration by the Board of the basis of the policy requirement. This issue is another illustration of our general concern that the Board did not give enough focus to the legal basis for its policies and actions.

- 4.37 It is hard to know how important this additional restriction has been in practice. It is potentially significant, because until plumbers and gasfitters were registered as craftsmen they were required to work under the direction of another craftsman. It created limits on the ability of tradespeople to work autonomously, which can affect business structures. However, the Board told us that most people prefer to sit the two craftsman examinations one after the other, and so the effect might not have been so great.

### Licensing

- 4.38 We had some concerns with the way in which the Board had operated the licensing system under the 1976 Act. In particular, we were surprised to find that the Board maintained that it had the ability to refuse to issue or renew licences on the following grounds:
- failure to meet the supervision requirements of the Act;
  - in the case of gasfitters, failure to obtain enough points in continuing professional development courses in the previous year; and
  - failure to pass the gas audit.
- 4.39 The 1976 Act was also amended in 1992, to alter the way in which the quality of gasfitting work was regulated. Alongside the self-certification system (which we discuss in Part 6), the Board was given a new function of ensuring that craftsman gasfitters maintained an adequate level of competence. The provisions on registering and licensing gasfitters were amended, and a new power to make regulations prescribing conditions on people applying for gasfitting licences was also inserted.
- 4.40 No regulations were ever made to impose additional conditions on people applying for gasfitting licences. In our view, if a gasfitter who was currently working applied to the Registrar for a licence and paid the required fee, the Registrar was required to issue the licence. If the person was not currently working as a gasfitter, the Board would consider the application. The Board could only issue the licence if it was satisfied the person was competent to work as a gasfitter.

- 4.41 The Board publicly maintained that it had introduced a competence-based licensing system for gasfitters from 1 April 2004 (although a system for audits of gasfitters had been in place since 1993). It described the system of continuing professional development for gasfitters, and of auditing the competence of gasfitters every two years, as mandatory. It regarded itself as having the power to withhold licences if these systems showed a concern with competence. However, it had taken no formal steps to use the legal mechanism that had been legislated to enable these systems to be linked into the regulatory requirements of the 1976 Act.
- 4.42 We could see no clear legal basis on which the Registrar could refuse to grant a licence because a craftsman gasfitter had failed to obtain enough continuing professional development points or had failed a gas audit. It would have been possible if regulations had been made to impose these prerequisites, but no such regulations had been made. If a person had failed a gas audit, the Board may have been able to exercise its disciplinary powers, under other parts of the 1976 Act, to deal with competence issues.
- 4.43 We could also see no clear legal basis on which the Registrar could refuse to grant a licence on the basis of supervision arrangements. However, we note it was an offence under the 1976 Act for a registered person to work other than under the supervision of a craftsman. Therefore, if the Board believed that the requirements for supervision had not been adhered to, then it could carry out its own investigation to determine if an offence had occurred and take whatever action it considered necessary through the disciplinary process.
- 4.44 We discussed our concerns with the former Registrar and the Board. The former Registrar told us that he sought legal advice about this at the time. The advice he was given was that the power existed as a result of the new function given to the Board. We did not see a copy of that legal advice, but have seen reference in the early papers to the fact that legal advice was sought when the systems were first developed.
- 4.45 The Board obtained fresh legal advice about this in response to our questions. The advice was that, when the Act was amended in 1992, the Board was specifically given the function of ensuring that craftsman gasfitters maintained an adequate level of competence. Given the Act's purpose, this function was considered to have effectively given the Registrar an implied power to refuse to grant licences on these various grounds, because they provided evidence of a lack of competence. Although regulations could have been made, they did not need to be as the amendments effectively also gave the Board wide discretion.



- 4.46 We can see the logic of this argument, and understand the need to, at times, read an incidental power into legislation to give proper effect to the statutory purpose. However, we consider that it is arguable whether a court would support implying a power in this circumstance. We note that the legislation was amended to include an express mechanism for prescribing conditions at the same time as the new function was conferred on the Board. Our reading of the parliamentary debates when the Act was changed suggests that the intention was for the regulations to be used to set the standards that the Board would then enforce. We question whether a court would imply a power to sit alongside an express mechanism that had been created for the same purpose but not used.
- 4.47 The doctrine of implied powers also has limits, and is most commonly applied to incidental matters. Withholding a licence is not an incidental matter; it prevents a person from working. This is a significant power, which would usually attract reasonably strong natural justice protections. The Board's explanatory material on the licensing system did not contain any clear explanation of the process or rights of affected individuals when the Board considered such decisions.
- 4.48 Only the courts can finally determine legal issues of this kind. We regard this issue as important, from an organisational perspective, because it is another example of the Board operating with a surprising, and unnecessary, amount of legal risk. There were steps it could take, with the administering department, to remove this risk. But it does not appear to have pressed for regulations on this issue.

## Recent changes

### The registration and licensing system under the 2006 Act

- 4.49 The processes and requirements for registration and licensing have changed with the 2006 Act coming into force. Currently, there are six classes of registration – certifying plumber, licensed plumber, certifying gasfitter, licensed gasfitter, certifying drainlayer, and licensed drainlayer. The key difference between certifying and licensed is that a certifying person can work on their own and certify their own work as meeting statutory requirements. A licensed person is required to work under the supervision of a certifying person and cannot certify their own work, which must be done by a certifying person.
- 4.50 Before 1 April 2010, the registration and licensing processes were governed by the 1976 Act. Under that Act, there were five classes of registration – craftsman plumber, registered plumber, craftsman gasfitter, registered gasfitter, and registered drainlayer. Craftsmen could work on their own and certify their own work, but registered people had to work under the direction of a craftsman and could not certify their own work.

## Registration

- 4.51 Under the 2006 Act, the Board has the power to designate classes of registration and to prescribe minimum standards to be met for registration, such as competence, qualifications, and experience. The Board can also set the terms and conditions subject to which a person is registered. In prescribing registration matters, the Board is required to have regard to section 32 of the Act, which provides:

*Principles guiding prescribing of registration and licensing matters*

*In prescribing matters under section 28 and 30, the Board must be guided by the following principles:*

- (a) *the matters must be necessary to –*
    - (i) *protect the health or safety of members of the public; or*
    - (ii) *promote the prevention of damage to property; or*
    - (iii) *promote the competency of persons who do, or assist in doing, sanitary plumbing, gasfitting, or drainlaying; or*
    - (iv) *carry out, give effect to, or provide for a matter that is incidental to, or consequential on, the matters relating to subparagraph (i), (ii), or (iii); and*
  - (b) *the matters may not unnecessarily restrict the registration or licensing of persons as plumbers, gasfitters, or drainlayers; and*
  - (c) *the matters may not impose undue costs on plumbers, gasfitters, or drainlayers, or on the public.*
- 4.52 If the Board designates classes of registration, minimum standards for registration, or the terms and conditions under which people are registered, the Board is required to consult on these and, after approval from the Minister, publish them in notices in the *New Zealand Gazette*.
- 4.53 The Board has designated the classes of registration (listed in paragraph 4.49). It has also set minimum standards for registration for each of these classes, but not terms and conditions of registration. The minimum standards were published in *New Zealand Gazette* notices in March 2010.
- 4.54 The 2006 Act also sets out the process that the Board is to use when registering a person. Once granted, registration stays in force unless it is suspended or cancelled, or the person dies.

## Licensing

- 4.55 Under the 2006 Act, registered people are required to obtain practising licences from the Board if they wish to carry out plumbing, gasfitting, or drainlaying. For each class of registration, the Board can set the terms and conditions under which licences are issued, prescribe requirements relating to competent and safe work practices and the testing of those practices, and prescribe requirements relating to the completion of competence programmes. As with registration, if the Board does this, it is subject to section 32 of the 2006 Act. It is also required to consult on these and, after approval from the Minister, publish this information in a *New Zealand Gazette* notice.
- 4.56 The Board has set terms and conditions that apply to licences it issues to the various types of registered people. These include terms and conditions for completing continuing professional development, carrying licence cards, who can certify work, and supervision requirements for supervisors and the people they supervise. The Board issues licences annually. In general, we have no concerns about the way this has been done.
- 4.57 The Board also has the power to grant a number of types of exemptions that then enable unregistered people to carry out specific types of plumbing, gasfitting, or drainlaying. In particular, the Board has the power under section 13 of the 2006 Act to grant an exemption to trainees. The Board can also issue limited certificates to such trainees, which we discuss in Part 3.

## Issues that still need attention

- 4.58 The 2006 Act came into force on 1 April 2010 and introduced a different system for registration and licensing. We have described that process above. The Board has produced a Registration Policy Statement and a Licensing Policy Statement, to help guide it in applying the provisions of the 2006 Act.
- 4.59 We reviewed both the Registration Policy Statement and the Licensing Policy Statement. We consider that these documents are a good step forward for the Board, and indicate their desire to ensure that they exercise their registration and licensing powers lawfully. However, these documents did raise some concerns for us – in particular, that the policies do not always comply with the Board's legal powers and obligations. We summarise those issues below.

## Registration Policy Statement

- 4.60 The Registration Policy Statement appears to provide that the Registrar requires applicants for registration to send in more information than the Registrar is required to consider under the 2006 Act. The Board needs to ensure that the

information that it assesses in determining whether to register a person is information that it is able to assess under the Act. It was unclear to us why it required more information than it was able to assess, and this seemed to us to place additional unnecessary requirements on applicants.

- 4.61 The Registration Policy Statement provides that limited certificate holders who have followed the “time served” path are required to sit the practical test of workmanship to be eligible for registration as a licensed plumber or gasfitter. This is current Board practice. However, the Board cannot require this. To do so, it would have to include such a requirement in the *New Zealand Gazette* notice on registration. The Board told us that it is considering whether it needs to amend the *Gazette* notice.
- 4.62 The Board has the power under section 52(1) of the 2006 Act to exempt a person from meeting the requirements for registration. It can do this for individuals or classes of people. There is no information in the Statement as to how the Board would exercise this power.
- 4.63 Section 36 of the 2006 Act provides that a person is entitled to be registered if they satisfy the Board in a range of listed matters. These matters include that the applicant is a “fit and proper person”. There is no discussion in the Statement of how the Board assesses this requirement, and what information it would require from an individual.

### Licensing Policy Statement

- 4.64 The Licensing Policy Statement provides that certifying gasfitters are required to participate in the gas audit system as a condition of their licence. It further states that the Board may suspend the licence of a certifying gasfitter who has failed a gas audit. We could not see the legal basis for stating that participation in the gas audit system is mandatory. We discuss this further below.
- 4.65 As we discuss in more detail in Parts 3 and 7, the Board has the power to issue provisional licences to people while it is considering their application for registration. The Statement suggests that the Board intends to do so for overseas people who are yet to sit the registration exams. While that may be sensible, it is possibly not in accordance with section 38 of the 2006 Act. The Board told us that it is considering this issue further. The Statement also suggests that the power to grant provisional licences will be used only for overseas people, but there might be other cases where it is appropriate to grant a provisional licence.
- 4.66 One of our major concerns after reviewing the Licensing Policy Statement was the Board’s apparent fettering of its discretion. The legislation gives the Board certain discretionary powers, but the Statement states that the discretion will either

never be exercised or exercised only in a particular way. For example, the Board has stated that it will not issue licences to people residing overseas. It is not clear how this would apply in the case of a New Zealand plumber working and living in the United Kingdom (the UK) who is registered here and wants to return home to work.

- 4.67 The law does not allow public decision-makers to fetter their discretion in this way.

### Gasfitter audits are still voluntary

- 4.68 As we discussed above (and also discuss in more detail in Part 6), in our view, participating in the gas audit system was voluntary under the 1976 Act. We consider that the Board could not refuse to grant licences to tradespeople who failed to participate in that system. The 2006 Act includes a clearer set of provisions that enable the Board to review the competence of a plumber, gasfitter, or drainlayer. These provisions set out a process for doing so.
- 4.69 We were told that, initially, the Board proposed to include a condition on the licences of certifying gasfitters that would require them to participate in the gas audit system. This condition would be published in the licensing *New Zealand Gazette* notice. The Department of Building and Housing told the Board that it could not impose a condition requiring participation in the gas audit system through the licensing system in this way, because the 2006 Act provided a separate and specific process for reviewing a gasfitter's competence. It was more appropriate to use the specific process rather than to read this into its general powers on licensing.
- 4.70 However, the Licensing Policy Statement that was published alongside the *New Zealand Gazette* notices still refers to the need to pass gas audits as a condition of licensing.
- 4.71 In discussion with us, the Board confirmed that it would look further at the content of the Licensing Policy Statement and consider whether it would be better to implement the gas audit system under section 53 of the 2006 Act.

### Conclusion

- 4.72 We appreciate that the Board has been attempting to develop clear policies and procedures alongside the new registration and licensing systems under the 2006 Act. The 2006 Act gives a much clearer legal framework for the Board to exercise the kind of oversight that it considers necessary, and most of the requirements are now clearly grounded in the 2006 Act.

- 4.73 However, the Board could still considerably improve the clarity of the policies and the amount of detail used to explain processes and rights. We encourage the Board to regard the current policy statements as a step in the right direction, rather than as completed documents.
- 4.74 We remain concerned that the Board does not yet have an adequate appreciation of the legal environment in which it operates, its legislative powers, and the general administrative law disciplines that govern their interpretation and operation. We have described that we saw considerable legal and procedural risk with some of the policies that were operating under the 1976 Act, and that the Board did not appear to be aware of these risks. Although some of these risks have been removed with the 2006 Act, we are concerned that the need to pay careful and conscious attention to the legal basis for policies and actions is not yet embedded into the Board's way of operating.
- 4.75 We encourage the Board to strengthen its focus on legality, in terms of legislation and natural justice procedural requirements, as it continues to work on the new registration and licensing systems. These are fundamental to the Board's work, and there should be no room for argument about the legality of its basic systems.

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**Recommendation 4**

We recommend that the Plumbers, Gasfitters, and Drainlayers Board review its Registration Policy Statement to ensure that it complies with the Plumbers, Gasfitters, and Drainlayers Act 2006 and administrative law principles.

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**Recommendation 5**

We recommend that the Plumbers, Gasfitters, and Drainlayers Board write further policies to guide the exercise of its other powers under the Plumbers, Gasfitters, and Drainlayers Act 2006 and, in doing so, that it carefully consider the legal basis for such policies.

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**Recommendation 6**

We recommend that the Plumbers, Gasfitters, and Drainlayers Board consider with the Department of Building and Housing whether the legislation needs to be amended to deal with registration and licensing issues.

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## Part 5

# The examination system

- 5.1 The Board's registration and craftsman examinations have a high failure rate, and have been a source of concern for some time. Previous reports on the Board have been prompted by concerns with the examination system.
- 5.2 We heard a range of criticisms about the questions asked in the examinations and about the way they are prepared and marked. Therefore, a significant part of our work concentrated on reviewing the Board's processes for ensuring that the examinations are fair, relevant, and accurate.
- 5.3 In this Part, we discuss our findings on the examination system, including:
- the legal requirements to hold examinations;
  - the Board's process for setting questions and exam papers;
  - the quality of the examination questions; and
  - the practical link with the teaching curriculum used in training institutions and the National Certificate qualification.

### Summary of our findings

- 5.4 Overall, we found that:
- the system used by the Board to prepare examination questions was not as reliable or robust as the Board believed;
  - there were unanswerable questions in some examination papers and mistakes in some questions that would make them unnecessarily difficult to answer; and
  - the current prescriptions for examinations do not match the listed competencies in the *New Zealand Gazette* notices about registration.

### Registration examinations

- 5.5 The 1976 Act required that candidates for registration as plumbers or gasfitters had to sit a registration examination. Candidates for registration as craftsman plumbers or gasfitters were also required to sit two examinations – an examination on technical matters and another on business matters (the craftsman common exam). The Plumbers, Gasfitters, and Drainlayers Regulations 1977 set out the type of examination, the topics to be examined, and eligibility to sit the examinations.
- 5.6 The regulations stated that, for a candidate who had completed an apprenticeship in plumbing only, the registration examination was to consist of two written examinations, each of not less than three hours' duration. A practical test of

workmanship was also required. The examination requirements were the same for someone who had completed an apprenticeship in gasfitting only.

- 5.7 If a candidate had completed an apprenticeship in both plumbing and gasfitting, the requirements in the regulations were for three written papers, each of not less than three hours' duration, and for a practical test of workmanship.
- 5.8 For a candidate who wanted to become qualified as a craftsman plumber or gasfitter, the regulations required two written examinations, each of three hours' duration. The craftsman common examination contained material that all craftsmen were required to be examined on, including about running a business and health and safety requirements.
- 5.9 The regulations also set out, in general terms, the topics to be covered by each examination at both registration and craftsman level. If a person was sitting the craftsman examinations in both trades, the regulations stated that they did not need to be examined on the common material twice.

### **The Board's system for setting questions**

- 5.10 The Board had in place what appears to be a comprehensive process for checking the accuracy and fairness of questions. NZQA also checked the questions. To understand how examination questions might nonetheless contain errors, we reviewed the processes the Board followed for checking examination questions. The processes were such that it is possible for incorrect questions to be included in the examinations.
- 5.11 The questions for the registration and craftsman examinations were set at "moderation meetings". The Board examination manual stated that the purpose of the moderation meeting was to consider new questions and answers for inclusion in the Board examination database. The Board organised the meetings, which were held twice a year. Representatives of all training providers and the examiners appointed by the Board to set and mark the examinations attended the meetings. Representatives from the Board also attended these meetings.
- 5.12 The examiners provided most of the questions and answers. All questions and answers that had been moderated and agreed to were then compiled into a "Question and Answer Examination Database".

### **Process for setting examination papers**

- 5.13 Examiners appointed by the Board selected questions from the examination database and prepared a draft examination paper. An NZQA-appointed examination expert reviewed the draft examination paper. The examination



expert met with the examiners at a meeting described by the Board as the “linguistics meeting”. This meeting took three to four days and reviewed the examination questions and answers to ensure that the questions were clearly written and that matters such as formatting were correct.

- 5.14 As the title of these meetings implies, the purpose of the meeting was to check the clarity of the questions. The meeting did not address the technical accuracy of the questions. The assumption was that this would have been addressed in the moderation meetings. When we spoke with the NZQA reviewer, he was clear that he did not have technical expertise and was not reviewing the questions from that perspective.
- 5.15 After the linguistics meeting, the draft examination papers were reviewed at a meeting with industry representatives. The examination manual said that the purpose of this meeting was to check that the questions were at a level that candidates could answer. No record was kept of the matters discussed at these meetings.
- 5.16 The Board told us that these industry meetings provided the opportunity for industry representatives to provide feedback on the extent to which the examination questions reflected current industry practices. Our understanding of these meetings was that there was no review of individual questions and answers to check their accuracy. Changes made to the questions would negate the work of the moderation committee. The examination papers were then reviewed at a meeting of NZQA and the examiners, and any final changes made.

### **What we found in 2008/09**

- 5.17 The 1977 regulations were very out of date. For example, they still referred to the New Zealand Trades Certification Board as the examining authority. That Board was abolished in 1990, when the NZQA system was established.
- 5.18 NZQA had a different role, and at first there was some uncertainty and debate about which agency was now responsible for running the examinations and what NZQA's role was. At a practical level, this issue was resolved when the Board entered into a service level agreement with NZQA. The Board now effectively runs the examination, with support from NZQA, even though this is not what the 1976 Act provided.
- 5.19 We also note that the basic shape of the assessment system set out in the regulations – of extensive written examinations – may now be somewhat dated. Several people we spoke with questioned whether there might be a better way of assessing the relevant knowledge and skills than lengthy written examinations.

### The Board system for setting questions

- 5.20 The examination process seemed, on paper, to be soundly based and well organised. A crucial part of the process was the moderation meeting where new questions are agreed to. We assumed that a meeting where all questions were considered in detail would guard against any faulty questions. Board staff told us that those attending the meeting had the power to reject any questions that they did not agree with.
- 5.21 No minutes of these meetings were kept, so it was not possible to confirm the procedures that were followed or whether there were objections to questions and how such objections were resolved. However, we interviewed some of the representatives of the training providers who attended these meetings. They told us that questions could be included in the database even if those attending the meeting did not agree that they should be included. They also told us that the moderation meetings were required to consider a large number of questions in a short period of time, and it did not appear that there was enough time to consider the accuracy of the questions included.
- 5.22 The Board told us that training providers were expected to teach the topics covered by the National Certificate. It stated that questions in the examination database were drawn from the National Certificate syllabus. If a training provider objected to a question because the topic was not taught, and it was established that the topic was in the National Certificate syllabus, their objection would not constitute a valid objection.
- 5.23 We were told that disagreeing with examination questions and the moderation process could be difficult. On one occasion, a representative of a training provider said that he had expressed concerns to the Board about issues arising from a moderation meeting. He received a telephone call from the Board telling him to stop raising issues at the moderation meetings. The Board also wrote to his superiors at his work place and he was not allowed to write directly to the Board on these matters. He understood from the Board actions that it would not be in the interests of his career to raise objections at the moderation meeting or to write to the Board expressing his concerns.

### The quality of the examination questions

- 5.24 The most serious allegation made to us was that some of the examination questions contained incorrect data or incomplete information, making it difficult to correctly answer the question. We were told that the alleged faults with the questions had been drawn to the attention of the Board on several occasions but had been ignored.

- 5.25 We decided to have some of these questions independently reviewed to confirm whether the questions could be answered. Our reviewer was a qualified engineer, who had no involvement in the Board examinations or in any other Board activity. He was asked to review 13 questions in the registration examinations and the craftsman registration examinations for 2007/08. He consulted with two other members of his engineering team.
- 5.26 The reviewer and his colleagues found mistakes in 10 of the 13 questions. The mistakes were such that it would have been difficult for candidates to correctly answer the question. In our view, some of the mistakes were so serious that it would be unreasonable to expect candidates to be able to correctly answer these questions. The mistakes included:
- A question in a craftsman common examination asked candidates to calculate the discharge power from two pipes of different sizes. There is no such term as “discharge power” in fluid dynamics. Asking candidates to answer a question about a term that does not exist means that the question would be very difficult to answer.
  - A question in a craftsman plumbing examination asked a series of questions about pump performance. The vertical height between the pump and the water supply was not provided. Without knowing the vertical height, the question cannot be answered.
- 5.27 There were mistakes in several other questions that would make them unnecessarily difficult to answer:
- A question in the craftsman gasfitting examination asked candidates to calculate the gas input rate for a gas heater. There were several mistakes in this question. The specific heat capacity of water had been incorrectly stated. The heating value of gas had been incorrectly written. The formula given in the examination to calculate the input rate was incomplete.
  - A craftsman gasfitting examination asked candidates questions about installing a gas supply for a motel. Candidates had to make a number of calculations, including calculating the size of gas pipe work from the first stage regulator to the second stage regulator. There were several errors in this question. The data provided to answer the questions stated “pipe size m”, when it should be “pipe size mm”. The unit rating for the water heater was incorrectly stated. The gas pressure from the outlet was not specified. Another part to this question asked about the sizing of LPG pipe work. Information in the form of a chart was provided to enable candidates to answer the question. However, not enough information was provided to use the chart accurately.

- Another question said that 1kg of LPG will deliver 250m<sup>3</sup> of gas, when in fact 1kg of LPG will deliver 0.5m<sup>3</sup> of gas. The review team stated that this was “out by a factor of 500”.
- 5.28 We gave the Board a copy of the report from our reviewers. The Board did not agree that in all cases the mistakes meant that it was difficult for people to correctly answer the questions. In its view, there were two questions that could not be answered (the two questions described in paragraph 5.26), and there were technical shortcomings in four other questions.
- 5.29 Although we have different views on the extent of the problems with examination questions, we and the Board agree that some questions that have been used are fundamentally flawed, and that others have shortcomings.
- 5.30 These problems take on more significance when put in the context of an examination that comprises 11 to 16 questions, with a 60% pass mark. Having some faulty questions could materially reduce the candidate’s chances of passing the examination.
- 5.31 As already noted, the examinations have a high failure rate. Figure 1 sets out recent pass rates for the different registration and craftsman (now certifying) plumbing, gasfitting, and drainlaying examinations.

**Figure 1**  
Percentage of applicants who passed examinations, 2004-2008

	2004 pass rate %	2005 pass rate %	2006 pass rate %	2007 pass rate* %	2008 pass rate* %
Plumbing registration	31	12	37	32	36
Gasfitting registration	65	58	49	72	36
Craftsman common	32	58	37	23	34
Craftsman plumbing	31	38	63	35	20
Craftsman gasfitting	49	62	47	41	30
Drainlaying registration	N/A	N/A	75	55	51

\* Combines the June and November examination cycles.

Note: N/A means not applicable.

Source: Plumbers, Gasfitters and Drainlayers Board (2009) *Annual Report Year ended 31 March 2009*, Wellington.

#### Use of unrealistic scenarios in questions

- 5.32 Another issue raised with us by representatives from training providers was that some of the examination questions describe situations that are unrealistic. For example, a question in a craftsman plumbing examination described the design

of a hot water system to be installed in a sports club to feed a number of showers. It then asked candidates to calculate the plumbing requirements for the system. One part of this question asked candidates to calculate the volume of water that had to be heated and stored. The calculations showed that the hot water tank would need to hold 2500 litres of water. We were told by a tutor that most plumbers would not have encountered a hot water tank of this size and would assume that their calculations were wrong and would not attempt the rest of the questions.

- 5.33 Another plumbing tutor, with extensive experience in the plumbing industry, was more explicit in his criticisms of this question. He told us that a 2500 litre hot water tank does not exist and that the scenario described in this question makes no sense. In the situation described in the question, where the hot water is to be used only twice a day, for 30 minutes, plumbers would install instantaneous water heaters, which would be a cheaper and more efficient system.
- 5.34 The issue of presenting unrealistic scenarios in questions had been raised with the Board but rejected. The Board took the view that the point of such questions was for candidates to be able to demonstrate that they can work through the calculations and that they should ignore the scenario presented in the question.

## Recent changes

### Changes brought in by the 2006 Act

- 5.35 Under the 2006 Act, the Board can prescribe for each class of registration the minimum standards for registration, which can include requiring a person to have passed an examination to be registered.
- 5.36 In the Registration and Licensing Notice published in the *New Zealand Gazette*, the Board set out that the minimum standards for registration include:
- certifying plumbers, gasfitters, and drainlayers are required to pass the Board's three-hour certifying exam for that trade as well as the Board's three-hour common exam; and
  - licensed plumbers, gasfitters, and drainlayers are required to pass the Board's three-hour licensing exam.
- 5.37 The notice also sets out that, to pass the Board's examinations, candidates must demonstrate a series of competencies that are listed in the notice for each class of registration.
- 5.38 The Board has published prescriptions for its examinations. These prescriptions are largely the same as the prescriptions issued for the examinations that the Board held under the Plumbers, Gasfitters, and Drainlayers Regulations 1977.

- 5.39 We note that, under the 2006 Act, the Board does not have to hold examinations itself, or require people to pass examinations to be registered.

### **What the Board has been doing to address the problems**

- 5.40 The Board takes the concerns with the examinations seriously and has resolved to address them. In a newsletter dated March 2009, the Chairperson of the Board explained that more than 100 candidates who had passed the November examinations had been interviewed. Candidates who had failed were also interviewed. In addition, the Board called together the examiners, representatives from training providers, NZQA, the ITO, and the Master Plumbers Association to further discuss the reasons for the low pass rates. Some of the problems identified included that:
- there is no standard text book for students to study from and for tutors to teach from; and
  - the teaching material varies throughout New Zealand. The Board believes this makes it difficult for students who shift around the country and who then find that other training providers teach different topics.
- 5.41 The Board commissioned a review of the examinations. At its meeting in November 2009, it adopted the reviewer's recommendations, including:
- working with the ITO to move towards three staged and shorter qualifying examinations embedded within the National Certificate;
  - development with the ITO of new unit standards to meet the Board requirements;
  - fostering alignment between training and examinations by formally involving the ITO in the examination-setting process; and
  - supporting the development of baseline reference documents.
- 5.42 The Board is also considering a number of changes to the examination system, including:
- allowing open book examinations;
  - providing model answers to questions; and
  - ensuring that all training providers teach to a standard text and that questions set for the examination reflect the topics taught to students.
- 5.43 The introduction of the 2006 Act has given the Board an opportunity to review the current examination system and introduce a system that is more modern and fit for purpose. The changes the Board is considering should, if implemented, go a long way towards removing unnecessary impediments and improving the pass rates.

## Issues that still need attention

- 5.44 Until the Board implements a new examination system, the current system will continue. As discussed above, we have significant concerns about the robustness of the current examination system – in particular, about the quality of the questions.
- 5.45 We encourage the Board to consider what steps it needs to take to ensure that the current examination system operates fairly while it remains in place. We are pleased to record that the Board told us that it has now “quarantined” the questions in its database. It will prepare new written examinations using a new process involving external training providers.
- 5.46 We also note that the new prescriptions for the examinations do not match the listed competencies in the registration and licensing *New Zealand Gazette* notice issued by the Board. The prescriptions meet the requirements of the Plumbers, Gasfitters, and Drainlayers Regulations 1977, which are no longer relevant. The Board will need to ensure that any questions it includes in its examinations meet the new requirements rather than those of the 1977 regulations.

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### Recommendation 7

We recommend that the Plumbers, Gasfitters, and Drainlayers Board, in preparing questions for any future examinations, ensure that the questions are appropriate for assessment under the Plumbers, Gasfitters, and Drainlayers Act 2006, are able to be answered, are free of mistakes, and do not contain unrealistic scenarios.

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### Recommendation 8

We recommend that the Plumbers, Gasfitters, and Drainlayers Board review its processes for preparing and moderating questions, and for setting examination papers.

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## Part 6

# Gas certificates and gas audits

6.1 In this Part, we discuss our findings on the process the Board used for gas certificates and gas audits, including:

- the process the Board used for the purchase of gas certificates;
- the process the Board used for filing and checking gas certificates;
- the gas audit system the Board used; and
- the recent focused gas audit work that the Board has carried out.

### Summary of our findings

6.2 Overall, we found that:

- the online system was not widely used by craftsman gasfitters;
- the manual system used for issuing gas certificates had a weak system of controls, which the Board had known about for some time before the problems with a number of gasfitters arose in late 2009;
- the Board did not check the accuracy of certificates that were required to be returned to the Board;
- the gas audit system used for checking the competency of gasfitters was not mandatory, although the Board thought it was;
- auditors checked only a small number of gas certificates issued by each craftsman gasfitter;
- there were practical problems with the gas audit system;
- the recent focused gas audit work the Board has carried out indicated that the gas audit did not provide an adequate check on either the competency of craftsman gasfitters or the practice of certification of gas installations; and
- it is likely that there are a greater number of non-compliant gas installations that have been certified by gasfitters than has ever been identified by the gas audit process.

### Introduction

6.3 All gas installations must be certified, as a basic public safety check. The certificate must be signed by the craftsman gasfitter responsible for the work. That person must certify that the gasfitting work they have carried out (or that has been carried out under their supervision or direction) is safe and complies with the requirements of the Gas Act 1992 and regulations made under that Act. Craftsman gasfitters must buy the certificates from the Board and return a completed copy to it. There is no independent inspection of gasfitting work. Rather, the policy behind the legislation is to focus on ensuring the competence of those certifying the work.

- 6.4 The Board operated a system of gas audits to check the competency of craftsman gasfitters. The auditors selected one or more jobs carried out by the craftsman gasfitter, or a person supervised by them, and inspected that work. We discuss the gas audit system in more detail below.
- 6.5 Towards the end of our inquiry, the Ministry of Economic Development told us about a problem with the purchase of gas certificates. A concern had arisen that a craftsman gasfitter was using certificates inappropriately, and letting other unqualified people issue these certificates without the craftsman gasfitter actually checking the work. Copies of the certificates were not returned to the Board.
- 6.6 The Minister, and the Associate Minister of Energy and Resources, asked whether the Auditor-General could, as part of this inquiry, take account of these events. The Board and the Ministry of Economic Development conducted detailed investigations into tracking all the unauthorised gasfitting certificates and checking potentially unsafe gas installations. Their work was to ensure public safety and to consider whether disciplinary or criminal proceedings should be instituted (because these are all outside the scope of our inquiry).
- 6.7 During our inquiry, we examined the processes the Board used to issue gas certificates. We also carried out some additional work as a result of the request to take these events into account. In this Part, we summarise our views on the gas certification system and the gas audit system.

### Gas certificates and the process used to issue them

- 6.8 The Board has been issuing gas certificates since 1993. The procedure for obtaining gas certificates was that craftsman gasfitters requested the gas certificate forms from the Board. The forms were sold in books of 10, and each certificate cost \$25. Board staff checked that the applicant held a current licence as a craftsman gasfitter and that the payment was correct before posting out the forms. Each certificate had four copies, colour coded as follows:
- blue – craftsman’s copy;
  - yellow – gas supplier’s copy;
  - white – consumer’s copy; and
  - pink – Board’s copy.
- 6.9 The Board also had an online system for purchasing gas certificates. However, most gas certificates were still purchased manually when we did our initial fieldwork.

- 6.10 Once the gasfitting work was certified, the craftsman gasfitter had to send the pink copy back to the Board. The Board stored tens of thousands of copies. The Board sometimes received requests to search for copies of the forms, and this was a major exercise for staff. The Board could also be asked to provide a copy of a gas certificate and charged \$25 for a copy.
- 6.11 Gas certificates are important documents. The gas certificate recorded the gas work that was carried out at a property, who carried out the work, when the work was checked, and the name of the craftsman gasfitter who certified the work. The certificates ensured that there was a record that established accountability for the gas work and were intended to safeguard public safety. For this reason, each certificate had a unique number and was issued to craftsman gasfitters for their use only.

## What we found in 2008/09

### Online system was not widely used by craftsman gasfitters

- 6.12 In 2003, the Board decided to develop an online gas certificate system. The Board believed that “The public and registered persons alike should be able to interact at every level via the online system.” A project was established to allow online purchasing of licences and gas certificates, and online filing of gas certificates. The project also provided for the public to be able to view the status of a registered person. Testing of the online gas certificate system went into its final phase in late 2005, and the system went live a year later.
- 6.13 We expected that, almost three years after introducing the system, most gas certificates would be purchased online. However, of the 40,000 gas certificates purchased from the Board each year, only about 7000 were purchased online.
- 6.14 Purchasing certificates online was less labour intensive for Board staff and allowed for better checks and controls. Online certificates could not be ordered in bulk but were issued singly for each job. Each craftsman gasfitter had a password for accessing the online system.
- 6.15 We were told that the reason for the much smaller than expected use of the online gas certificate system may have been because of the large number of gasfitters who were in an older age group and who were not comfortable with the use of online systems. However, when the system was introduced, a Board newsletter said that the favourable comments received by industry representatives who tested the system “reinforced the Board’s approach in ensuring that all those who will use the system are able to do so regardless of their computer skills, speed or technology they are using”. The Board had clearly intended that the online system would be easy to use for all craftsman gasfitters.

- 6.16 A more likely reason for the lack of use of the online system is that, despite the assurances that the system had been fully tested before it was introduced, there had been numerous problems. Significant staff time had been spent trying to correct problems.

### **Manual system for issuing gas certificates had a weak system of controls**

- 6.17 The system used by the Board for manually purchasing bulk supplies of gas certificate forms had a weak system of controls. In particular, people other than craftsman gasfitters could purchase an unlimited number of gas certificates. The Board had no manual of standard procedures for the purchase and filing of gas certificates. Processing the forms had been the responsibility of junior staff, and the lack of clear instructions meant there was a risk of staff developing their own individual approach to carrying out this work.
- 6.18 Because the system had a weak system of controls, it was open to misuse.

### **The Board had known about the weak system of controls for some time**

- 6.19 The Board had been aware of the weak system of controls and its potential for misuse for several years. It had not changed the system despite evidence of misuse.
- 6.20 As a result of investigations in 2004 and 2005, the Board became aware that certificates might be being misused. It found examples of craftsman gasfitters using or completing certificates issued to other craftsman gasfitters (despite the statement on the gas certificates that the certificates were non-transferable), and of a gasfitter adding work to a certificate after it had been signed by the craftsman gasfitter and without his knowledge.
- 6.21 They also found that crucial information was missing from the certificates. For example, the name and registration number of the gasfitter who carried out the work was missing, and details of the certificate owner were not included. The Gas Regulations 1993 required the certification of gasfitting to be completed within 10 working days of the gasfitting work. The forms that were examined by the investigations had examples of work that had been certified weeks – and, in one case, three months – after the work had been carried out. The investigations made no comment on these breaches of the Gas Regulations.
- 6.22 The Gas Regulations also required a copy of the certificate to be sent to the Board within five working days of certifying the gas work. None of the certificates that

we saw, which had been reviewed as part of the Board's investigations, were submitted to the Board within five working days. The investigations by Board staff did not comment on this further breach of the Gas Regulations.

- 6.23 In 2005, the Board conducted an inquiry into a craftsman gasfitter for failing to check the work that he was certifying. The craftsman gasfitter admitted that he had pre-signed a gas certificate for the installation of a particular type of gas fire without carrying out any inspections. The Board imposed a fine of \$2,500. Board staff, as part of their inquiry, questioned the craftsman gasfitter and asked how many of these gas fire installations he had certified. They were told that he had certified 50-60 such installations. When asked if he had inspected all these installations before signing the certificates, the notes of the interview stated that "No conclusive answer was obtained."
- 6.24 The fact that 50-60 certificates may have been signed without the gas fire installations being inspected did not result in any further action by the Board. There was, for example, no review of the process for issuing gas certificates to see if procedures needed to be tightened.

### **The Board did not check copies of gas certificates that were returned to it**

- 6.25 Once a craftsman gasfitter has certified a gas installation, a copy of the certificate had to be sent to the Board. These copies were a key part of the Board's gasfitter audit system, which is discussed in more detail below. The Board would send the gas auditor a number of certificates certified by a craftsman gasfitter. The auditors then selected from the gas certificates those gas installations that they wished to audit.
- 6.26 Given the importance of ensuring that all completed certificates were returned, we assumed that the Board would regularly reconcile the certificates that had been issued against the copies of the certificates that had been returned. The Board had no such system to reconcile the certificates. It might be expected that the most "at risk" certificates were those that had not been returned. Anyone using, or misusing, a certificate would know that failing to return a certificate meant that the Board's auditors would never check the gasfitting work.
- 6.27 The former Registrar told us that he had put in place a process to check the gas certificates and that he had been assured by staff that this process was followed. We saw no evidence of such a system.
- 6.28 The ability of Board staff to reconcile outstanding certificates was greatly hampered by the filing system that they used for gas certificates. Before 2007, the

returned copies of the gas certificates were filed under the name of the craftsman gasfitter. Since then, they have been filed by the date on which they are received.

6.29 It appears that Board staff had not, until recently, checked the details of the completed gas certificates sent to them. Therefore, gas certificates could be incomplete or contain information that might have suggested that the gas installation was unsafe. In work carried out by the Board recently, staff reviewed a large number of certificates and identified that one-third of them did not meet requirements (for example, they were incomplete, or pressure testing information was outside normal ranges). We note that there was no express legal requirement for the Board to check gas certificates returned to them.

6.30 It appears that the Board had earlier absolved itself of responsibility for this role. The Board's manual on registration had a section on gas audits. One part of this section said that:

*A craftsman gasfitter is expected to be competent to fill out gasfitting certificates and it is not the Board's role to check each certificate for accuracy and completeness. However the gas auditor will check that the gasfitting certification certificates are completed and filed correctly at the time of the gas audit.*

6.31 As noted, the former Registrar told us that he had later put in place a system for checking the gas certificates, which he understood was working until the recent problems arose.

### Conclusion

6.32 In our view, for many years Board staff, and staff contracted by the Board to audit craftsman gasfitters, did not pay enough attention to the need to check the gas certificates to ensure that they had been completed correctly and that the requirements set out in the Gas Regulations 1993 had been complied with.

6.33 The certificates were not transferable, yet Board staff raised no objection to evidence showing that craftsman gasfitters were using forms that had not been issued to them. Time requirements for certifying the work and filing the certificates were not adhered to. Selling the gas certificates was a major source of revenue for the Board, and the approach by Board staff seemed to be dominated by the need to make it as simple as possible for craftsman gasfitters to purchase the certificates. Order forms for the gas certificates could be easily downloaded from the Board's website, sent to the Board together with the appropriate payment, and bulk supplies of gas certificates obtained.

## The gasfitter audit system

- 6.34 The gasfitter audit system was introduced from 1992, along with certification of gas installations by gasfitters, continuing professional development, and competency-based licensing.
- 6.35 The Board used gasfitter audits to check the competency of craftsman gasfitters. The Board has explained that it used this audit system to:
- ... determine and monitor the ongoing knowledge and practical competence of the individual Craftsman gasfitter and exemption holder ensuring their work is to a safe and acceptable standard. The Gas Audit, in conjunction with the Board's ongoing professional development requirements, will determine whether a Craftsman Gasfitter or exemption holder is competent to be licensed to practise.<sup>7</sup>*
- 6.36 Each craftsman gasfitter was audited every two years. The audit had two parts: an interview with the gasfitter to assess whether their knowledge and skills were up to date, and site visits to inspect work that has been done either by the craftsman gasfitter or by someone under their supervision. The main part of the audit was the interview, which took up to an hour and a half. The focus of the interview was meant to be on public health and safety issues.
- 6.37 The Board sent a number of gas certificates to the gas auditor, who then used these to identify a range of gasfitting jobs carried out by that craftsman gasfitter that would be checked. The Board's documents state that the site visit focused on "materials, installations and methods". If a copy of a gas certificate was not returned to the Board, that job would never be checked during an audit.
- 6.38 The Board contracted out the conduct of the audits to a private sector provider. The cost of the audit system was met from the fees charged for gas certificates.
- 6.39 The results of each gasfitter audit were reported to the Board. Before April 2010, a craftsman gasfitter who failed the audit would be re-audited after a period of time. For major concerns, that follow-up audit may have been within a few days to ensure that the problems had been addressed. For more minor matters, the follow-up may have been scheduled for some months or a year later. Once the Board had the results of the audit, it then decided what steps needed to be taken, if any, to respond to any problems. If serious concerns were identified, this may have included disciplinary proceedings. These proceedings were formal and lengthy. At the end of them, the Board had the power to impose a range of penalties, including removing a gasfitter from the register permanently or temporarily.
- 6.40 The Board suspended its biennial audit process on 1 April 2010 while it reviewed the effectiveness of the system (see paragraph 6.48).

<sup>7</sup> Board News (March 2004), page 5.

## What we found in 2008/09

### The purpose and legal basis for the gasfitter audit system

- 6.41 We considered the purpose of the system and its legal basis. As noted, the Board has a statutory function to ensure an adequate level of competence in gasfitters. The Gas Act 1992 also contains provisions about the need for gas certificates. These include a power of entry for the Board or its authorised representative to inspect and test a gas installation and to check that the work has been properly certified. There are no other legislative provisions that support the system for auditing all certifying gasfitters. We have already explained that the 1976 Act included the capacity to introduce regulations to set conditions for renewing licences (including potentially a condition requiring participation in the gas audit system), but no such regulations were ever made.
- 6.42 We have already set out, in Part 4, the different views that we and the Board took on the Board's ability under the 1976 Act to require people to participate in the audit system as a condition of their licence.

### Gas auditors checked only a very small number of gas certificates issued by a craftsman gasfitter

- 6.43 All craftsman gasfitters had a sample of their work checked every second year by a gas auditor. The Board supplied a number of completed gas certificates to the gas auditor, who used them to select which work to audit. The gas auditor reviewed the gas certificates issued by the craftsman gasfitter for that work to ensure that they were complete and accurate, and made site visits to inspect work certified by the craftsman gasfitter.
- 6.44 We expected that, as part of the audit, the gas auditors would review a large sample of the gas certificates to ensure that they were complete and accurate. However, the gas auditor checked only two certificates each audit. This meant that there was very little effective checking of most of the gas certificates.

### Other practical problems with the adequacy of the system

- 6.45 We also identified some concerns with the practical operation of the audit system. Particular concerns included:
- The amount of notice given to craftsman gasfitters about which sites would be audited – The Board documents stated that the gasfitter would be given a minimum of 24 hours' notice of a site visit. We were told that, in practice, the auditors gave about eight weeks' notice. We accept that reasonable notice would be needed to ensure that a craftsman gasfitter was available to attend



the site visit, but we were concerned that eight weeks' notice may allow a craftsman gasfitter time to revisit the site and ensure that the work was up to standard.

- The number of sites that are audited – The Board policy stated that only one installation would be audited if a craftsman gasfitter had issued fewer than 20 certificates in the last two years. For craftsman gasfitters who had issued more than 20 certificates, a minimum of two sites would be visited. We understand that the standard practice was to visit only two sites. This was not a big sample from which to judge a person's competence.

## Recent changes

### Response to issues raised about gas certificates

- 6.46 The Board carried out a substantial amount of work in late 2009 to check some gas installations and gas certificates, after concerns were raised about the practices of gasfitters in three districts. As a result, the Board has begun disciplinary proceedings and some District Court prosecutions against a number of individuals.
- 6.47 We cannot discuss the details of those individual cases while they are before the courts. We simply note that the results of these investigations have raised concerns about the adequacy of self-certification and the gasfitter audit system as ways of ensuring safe and fully compliant work.
- 6.48 The Board suspended all biennial gas audits on 1 April 2010 and is reviewing the gas audit process to ensure that it is gathering the appropriate evidence of the work that gasfitters are doing. In the meantime, the Board is carrying out only special audits where risk has been identified and audits of those persons who are returning to the gas industry after years of absence. The Board told us that it is planning to pilot a new audit system by the end of August 2010.
- 6.49 In its Licensing Policy Statement, the Board sets out that it will take a risk-based approach to the outcomes of audits. That is, more serious failures of audits will result in more serious responses from the Board. The Licensing Policy Statement classifies audit failures into three types, with different responses by the Board depending on which type of failure has occurred.

### Board staff are now checking copies of returned gas certificates

- 6.50 Staff now check every returned gas certificate to verify that all required data has been provided and that the test results for the gas installations are within the required parameters. If the test results are outside the required parameters, the

form is referred for further review to a senior staff member who is also a certifying gasfitter. Where there is missing data or doubt about the test results, the forms are returned to the certifying gasfitter for an explanation. Copies of all returned gas certificates are now filed under the name of the certifying gasfitter.

### **Moves to remove manual purchasing system and replace it entirely with the online purchasing system**

- 6.51 The Acting Registrar has since, with the Board's approval, begun planning for the introduction of a system that provides only for the online purchase of gas certificates. Online certificates can be accessed through individual passwords issued to each certifying gasfitter, and in that sense are a more secure and effective way of accounting for the certificates. There are plans to upgrade the current online system to ensure that certificates can be obtained only from the online system. This will ensure closer controls over the purchase and oversight of the gas certificates.
- 6.52 The Board has determined that, after 1 November 2010, it will no longer use hardcopy gas certificates. The Board told us that it intends to develop a user manual for electronic gas certificates. It has also set up a system to ensure that only limited numbers of gas certificate books are issued until November. It is also reconciling sold gas certificates with those returned, and it will actively pursue the outstanding gas certificates.
- 6.53 The Board told us that it will arrange an independent external review of the gas certificate process and audit of practitioner competence.

## **Issues that still need attention**

### **Gas certificates**

- 6.54 In our view, the Board will need to ensure that there are documented procedures governing the management of the gas certificates and that these procedures are adhered to. The Board will also need to consider revising the gas audit process so that a specified number of gas certificates are audited.

### **Need to give the gas audit system a legal basis**

- 6.55 We have already discussed in Part 4 that the Board still needs to take steps to give the gas audit and competence review system a proper legal footing.

### Gas audit system and self certification

- 6.56 In our view, the recent focused gas audit work carried out by the Board has indicated that the scale of non-compliance of gas installations is possibly greater than that identified by its routine gas audit work. The gas audit is designed to be a check on the quality of certification carried out by certifying gasfitters. This in turn raises questions about whether the gas audit process that the Board uses is effective in providing assurance about certification. It also raises questions about whether the current certification arrangements can provide adequate assurance to home and building owners that gas installations in their buildings are safe.
- 6.57 While the focused gas audit work has identified that gasfitters have incorrectly certified their work, it is impossible to determine whether there are more widespread problems with certification and therefore more non-compliant gas installations.

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#### **Recommendation 9**

We recommend that the Plumbers, Gasfitters, and Drainlayers Board work with the Ministry of Economic Development and the Department of Building and Housing to consider what changes may be needed to enable the gas certification system to operate as an effective public safety protection.

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#### **Recommendation 10**

We recommend that the Plumbers, Gasfitters, and Drainlayers Board work closely with the Ministry of Economic Development and the Department of Building and Housing to develop a gas audit process that provides adequate assurance of the safety of self-certified gas installations.

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## Part 7

# Overseas applicants

- 7.1 One of the reasons we carried out this inquiry was to examine concerns expressed by migrant plumbers and gasfitters that they were being unfairly treated by the Board. In this Part, we review the Board's policies for assessing migrant plumbers and gasfitters from countries other than Australia (overseas applicants), and the process the Board used to register overseas applicants. We have examined:
- the registration system used before 2003;
  - the registration system used since 2003, including the Board's Immigrant Qualification Assessment System; and
  - the registration system under the 2006 Act.

### Summary of our findings

- 7.2 Overall, we found that:
- the Board had fettered its statutory discretion under the 1976 Act and so acted unlawfully by refusing to consider registering any overseas applicants at craftsman level;
  - the Board operated a very rigid system for assessing overseas applicants; and
  - the Board may not be able to grant provisional licences under the 2006 Act to overseas applicants before they file applications for registration.

### Registration system under the 1976 Act

- 7.3 Before 2003, the Board used a registration system for overseas applicants that was different from the system it uses now.
- 7.4 Section 26 of the 1976 Act set out the Board's powers to register overseas applicants. The Board had the power to register a person at either craftsman or registration level, provided the requirements of section 26 about qualifications and examinations were met. The Board also had the power, under section 64 of the Act, to arrange for the reciprocal recognition of plumbers and gasfitters from other countries.
- 7.5 The Board has had reciprocity arrangements with Australia since 1950. These arrangements allowed registered plumbers and gasfitters from Australia and New Zealand to work in either country without any requirements for their skills and experience to be assessed. However, the process used to register plumbers and gasfitters from other countries was different.

### Registration system for overseas applicants before 2003

- 7.6 Before 2003, it was easier for migrants to be granted registration as a plumber or gasfitter. Migrants would submit details of their qualifications and experience to the Board, which would issue a provisional practising licence that was valid for three months.
- 7.7 During the three months, the holder of the provisional licence was expected to become familiar with New Zealand's requirements. Board staff would meet with the provisional licence holder and assess their competency. If the provisional licence holder was considered to be competent in plumbing or gasfitting, the provisional status was removed and the Board would register them. In some cases, where the person was considered to have superior skills in plumbing or gasfitting, the Board would register them as a craftsman. In other cases, a person would be registered and told that, if they completed specified correspondence papers, they could achieve craftsman status.
- 7.8 If a person was not considered to be sufficiently skilled, the provisional licence was removed and the Board would require that person to work on a limited certificate, under the supervision of a registered person. It would also be necessary for the person to gain a New Zealand qualification. In practice, the Board rarely applied this option.

### Registration system for overseas applicants from 2003 until 2010

- 7.9 In June 2003, the Board decided to tighten the system for considering applications for registration from migrants. It decided that all migrants would have to sit and pass the New Zealand registration examinations before being eligible for registration.
- 7.10 Our review of the registration files showed that there were good reasons for tightening up the system. One of the files we reviewed was of a migrant gasfitter who applied for registration in 2001. Board staff interviewed the person and noted that he had limited understanding of the controls applying to gasfitting, possibly because of his limited English language ability. The report of this interview noted that he had been self-employed as an electrician and gasfitter, but the report did not state his formal qualifications. The report noted that:
- Language difficulties being a major factor during the assessment however, with patience by all parties and the use of numerous sketches we were able to draw out his knowledge. The assessment was carried out over a period of some 8 hours.*
- 7.11 Despite the language difficulties and the fact that the migrant came from a country whose qualifications in gasfitting were not recognised in New Zealand,<sup>8</sup>

<sup>8</sup> New Zealand has recognised plumbing and gasfitting training and qualifications from 17 countries as a prerequisite for registration.

he was registered. Granting registration in these circumstances suggests to us that it had become too easy for migrants to be registered. In our view, applicants should be able to explain, in English, how to safely install gas appliances without resorting to sketches.

- 7.12 In 2007, the Board introduced further restrictions. To be eligible for registration, applicants were required to pass the registration examinations and also pass a practical examination.
- 7.13 The reason the Board gave for tightening the requirements for migrants was its analysis of disciplinary cases over a five-year period. During the five years, there were 26 disciplinary cases. Eleven of these cases involved UK-qualified tradespeople. The Board concluded from this analysis that, because of the large number of disciplinary cases involving people who were trained overseas, it needed to tighten the system for assessing plumbers and gasfitters seeking New Zealand registration.
- 7.14 The Board stated that its primary mandate under the Act was the protection of public health and safety, and that it must ensure that tradespeople from New Zealand and overseas met minimum standards for registration.
- 7.15 The Board issued a policy document on the Immigrant Qualification Assessment System (IQAS) that it operated for registering immigrants. The IQAS has been in place, largely in the form described below, since November 2007.
- 7.16 Under the IQAS, applicants for registration sent certified copies of their qualifications, training experience, and work experience to the Board. Board staff then assessed those qualifications and determined whether the applicant had relevant qualifications and adequate experience. Board staff then interviewed the applicant, either by telephone or in person, to verify their qualifications and experience.
- 7.17 If the applicant was considered to have enough knowledge and experience to be eligible for registration, they were then required to pass both the Board's registration examination and a practical test of workmanship. The Board could grant provisional licences to applicants until they were registered. This enabled them to work under the supervision of a craftsman plumber or gasfitter until they were registered.
- 7.18 The practical test of workmanship was conducted over four days at the Board's assessment centre in Wellington. Applicants paid \$3,200 for each practical assessment. A mark of 75% was required to pass the practical assessment. Pass marks in the registration examination and practical test of workmanship meant that an applicant was then eligible for registration.

- 7.19 Applicants whose qualifications and experience were not considered to have met the Board's prerequisites for assessment were referred to the ITO for training and assessing under the National Certificate. Once they had obtained the National Certificate, they were then eligible to sit the registration examination. If they wanted to work, they were required to obtain a limited certificate and work under the supervision of a craftsman plumber or gasfitter until they obtained registration. They effectively entered the system as apprentices or exemption holders.

### What we found in 2008/09

- 7.20 The main problem that we found was with the way the Board exercised its discretion to register overseas applicants. The 1976 Act gave the Board substantial discretion in how it recognised overseas qualifications and at what level it let a person start work in New Zealand. Section 26 enabled the Board to assess a person's overseas qualifications and their experience, and to then register them at the craftsman or the registered level, as appropriate.
- 7.21 We understand the practical and public safety concerns that led the Board to tighten its assessment and entry processes. However, we were surprised that the Board adopted a fixed policy that all overseas applicants were required to enter at the registration level and could not move directly to craftsman status. The statute gave the Board capacity to register someone at either level.
- 7.22 We question whether it was lawful for the Board to have adopted such a fixed view and to effectively fetter its discretion by discounting the possibility of direct entry as a craftsman in all cases. In general public law terms, public decision-makers cannot refuse to consider choices that are legally available to them.
- 7.23 The Board told us that the policy was a reflection of long experience, because no overseas candidate was qualified enough to seek anything other than registration. It considered that this was not a matter of fettering of discretion, but rather reflected the reality that overseas applicants needed to spend time gaining experience and a practical understanding of New Zealand conditions before they would be ready for craftsman status.
- 7.24 We note that, in practice, these requirements have been a significant barrier for people who may be well qualified. Again, this is significant because, until the people were qualified as craftsmen, they were required to work under the supervision of another craftsman.
- 7.25 Migrants, particularly from the UK, have been very critical of the Board's policy that required them to pass the registration examinations. They argued that



they have many years of experience in plumbing or gasfitting in the UK, yet effectively must start again as apprentices. Some migrants who were given a limited certificate until they become registered stated that they received very little supervision, possibly because, in their view, they were recognised as being skilled practitioners.

- 7.26 We were presented with totally contrary views about whether the system was necessary and appropriate. The Board maintained that most overseas qualifications and training were not readily comparable to the New Zealand training and that it was important to assess all migrant applicants carefully. In particular, the Board was concerned that modern UK qualifications may often relate only to particular types of plumbing or gasfitting rather than the general training that New Zealand practitioners need.
- 7.27 We spoke with many migrant practitioners who held the opposite view. They showed us evidence of the businesses they had run elsewhere and, in some cases, were very critical of the quality of work they saw here. Most accepted that a small amount of retraining and supervision would be appropriate, while they learned about New Zealand legislation and the special conditions and materials used here. They thought that the Board's requirements were excessive.
- 7.28 We are not technically competent to assess the merits of either view. For the purposes of this report, we simply note that the requirements did not appear to be widely accepted or understood and that many people considered them overly onerous. Some regarded the barriers to entry to these occupations, through the retraining, stand-down periods, and fees for assessment and examinations, as protectionist.
- 7.29 We also received a number of complaints from overseas applicants about the way the Board had treated them. These included complaints relating to supervision requirements, licensing, and examinations, and we have dealt with them in the Parts that deal with those issues more generally.

## Recent changes

### Modified requirements under the 2006 Act

- 7.30 Under the 2006 Act, the Board has the power to prescribe the minimum standards for registration for both certifying and licensed plumbers, gasfitters, and drainlayers. If it does so, the Board is required to publish these as a *New Zealand Gazette* notice. Under the 2006 Act, the Board also has discretion to recognise any overseas qualification, certificate, registration, or licence as satisfying a particular minimum standard for registration, if that overseas qualification is, in the opinion

of the Board, equivalent to or “as satisfactory as” that minimum standard for registration. If the Board recognises such a qualification, it is required to publish it in a notice in the *New Zealand Gazette*.

- 7.31 The Board has published *New Zealand Gazette* notices that set out the minimum standards for the registration of plumbers, gasfitters, and drainlayers at licensed and certifying level. The *Gazette* notices do not include any recognised overseas qualifications that satisfy the minimum standards for registration at either licensed or certifying level. However, the *Gazette* notices do set a minimum standard for registration for overseas people. They are required to:
- hold an overseas qualification that is accepted by the Board as equivalent to the New Zealand National Certificate in plumbing or gasfitting or drainlaying – to meet this requirement, they are required to provide the Board with documentary evidence of their qualifications and an assessment of those qualifications (it is not clear what this requires) and attend an interview with Board staff to verify documentation and validate their experience and technical proficiency; and
  - pass the Board’s three-hour registration exam at licensing level in plumbing or gasfitting or drainlaying; and
  - pass the Board’s practical test of workmanship.
- 7.32 As discussed above, the Board applies the IQAS to register overseas applicants.

### **What the Board has been doing to address the problems**

- 7.33 The Board told us that the immigrant policy would be reviewed and published as part of a general review of policies. We note that the latest version of the IQAS is dated April 2010 and largely replicates the IQAS that operated previously. The main difference is that the Board proposes to grant provisional licences to applicants until they have been registered, provided that the person has met the criteria to enable them to sit the registration examination and practical test of workmanship. People working under provisional licences are required to work under the supervision of a certifying person.
- 7.34 The Board has also told us that it will revisit the process it uses for the practical test of workmanship to improve access and, if appropriate, reduce costs. It currently costs \$3,200 to sit each practical test of workmanship, and the test is held over four days. Several people who contacted us were concerned that the cost of sitting these tests in each trade, and the opportunity cost of a week not working each time, acted as a significant barrier to entry.

## Issues that still need attention

- 7.35 In our view, the system the Board operates for assessing overseas people for registration is still too rigid. The 2006 Act gives the Board a discretion to recognise overseas qualifications as satisfying a particular minimum standard for registration. However, it does not appear that the Board has considered how it could exercise this discretion. Rather, it has specified minimum standards for overseas people to meet to be registered, and only at the licensed level.
- 7.36 The effect of this is that someone from overseas – regardless of their qualifications and experience – must sit both the Board registration examination and practical test of workmanship to be able to work under the supervision of another person. They then have to work for two years under that person’s supervision before they can apply to be registered at certifying level. They cannot work independently until they have reached certifying level. Therefore, a person running a plumbing or gasfitting business in their home country will have to wait more than two years before they can work autonomously here.
- 7.37 We also note that the Board has the power under section 52 of the 2006 Act to exempt a person from complying with the minimum standards for registration. There is no indication in the IQAS policy that the Board would use its exemption powers for any overseas applicants.
- 7.38 The Board told us that it is trying to adopt a standardised approach for overseas applicants. When an overseas person makes an application, the applicant will be assessed and placed at the appropriate level. The Board will be able to exercise a discretion under section 52 for those applicants who clearly meet the competencies for a certifying gasfitter or plumber. The Board is also in discussions with the ITO about merging IQAS and the general competency assessment systems to ensure that the route to training and registration is simple and consistent.
- 7.39 In its Licensing Policy Statement, the Board indicates that it intends to exercise its discretion to grant provisional licences to overseas applicants who have applied for registration and meet the criteria for sitting the registration examination and practical test of workmanship. In our view, while this may be a good solution to the problem, it is not clear that the Board’s powers under the 2006 Act are so broad.
- 7.40 The Board has the power under section 38 of the 2006 Act to issue provisional licences to any person pending the consideration of their application for registration or for a practising licence. The holder is then authorised to carry out the plumbing, gasfitting, or drainlaying work specified in the licence. Section

39 provides that provisional licences are issued for a period of not more than 12 months or until the application has been determined.

- 7.41 In our view, the power to grant a provisional licence is quite narrow – that is, the Board can grant a provisional licence to a person pending the consideration of their application for registration. However, an overseas person’s application for registration is not in fact made until they have sat and passed the registration examination and practical test of workmanship. Therefore, we are not certain that the Board has the power to issue a provisional licence to an overseas applicant until that applicant has applied for registration after passing the registration examination and practical test of workmanship. The Board told us that it is reviewing this issue.

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**Recommendation 11**

We recommend that the Plumbers, Gasfitters, and Drainlayers Board review its policies for registering well-qualified and experienced plumbers and gasfitters migrating to New Zealand to ensure that its current policies give appropriate effect to its statutory discretion and to ensure that New Zealand makes the best use of the skills of such immigrants.

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**Recommendation 12**

We recommend that the Plumbers, Gasfitters, and Drainlayers Board clarify whether it can issue provisional licences to overseas plumbers, gasfitters, and drainlayers before they apply for registration.

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## Part 8

# Fees and charges

- 8.1 The Board receives no funding from the government and must cover its costs through the fees it charges. Both the 1976 Act and the 2006 Act enable it to charge fees for registration applications, licences, applications for exemptions, supplying certificates and copies of documents, and any other matters that the Board must do to carry out its functions. A separate provision enables it to charge a disciplinary levy to fund the costs of investigations and disciplinary proceedings. The Gas Act 1993 also enables the Board to charge a fee for gas certificates.
- 8.2 Cost was a regular theme in our interviews and the correspondence we received. People were concerned about the licensing and registration fees – both the size of the fees and the requirement to pay the same fee for each licence. The examination fees are contentious, particularly given the concerns with the quality of the process, and the fees for the newly introduced assessment for overseas applicants have also provoked criticism.
- 8.3 Many in the industry have been concerned with increases in the licensing fee in recent years. For example, the licence fee was increased in 2007 from \$75 to \$85 a year and increased again in 2008 to \$155 a year. Each licence holder has also, until now, had to pay an annual disciplinary levy of \$50 for each licence.
- 8.4 We examined how the Board set its budget, managed its costs, and decided what fee to charge for particular services. In this Part, we set out our findings about:
- the general approach that we expect public sector organisations to take when setting fees for goods and services; and
  - the fees charged by the Board.

### Summary of our findings

- 8.5 Overall, we found that:
- in the past, the Board did not always appear to have carried out strong analysis or costings in setting some of its fees; but
  - the recent work that it has done on the cost structures and fees being charged has laid the groundwork for an improved approach.

### Setting fees in the public sector

- 8.6 The approach that we expect public sector organisations to take when setting fees for goods and services is set out in our good practice guide, *Charging fees for public sector goods and services*, which was updated and reissued in June 2008. We prepared this guide in collaboration with the Regulations Review Committee of Parliament, because one of the functions of that Committee is to review whether fees set in regulations are an appropriate use of the legal authority given by Parliament. We have, traditionally, helped the Committee with this work.

- 8.7 The starting point is the constitutional principle that Parliament's explicit approval is needed to impose a tax. Setting a fee that recovers more than the costs of providing the goods or services could be viewed as a tax. Any statutory power to charge fees is implicitly limited by a requirement that the fee be set at no more than the amount necessary to recover costs.
- 8.8 The precise application of this principle will depend on the scope and generality of the legislative authority, the extent to which cross-subsidisation between different types of activity is authorised, and the way in which the organisation forecasts and budgets for its costs.
- 8.9 The main points in the guidance are:
- the need for all fees to be within the scope of the legislative authority, which can require careful consideration of how to avoid over-recovery while spreading costs across a number of years, and of what level of cross-subsidisation is permissible;
  - the need to understand and monitor costs in some detail to ensure that the organisation is functioning efficiently and delivering value for money for those paying for its services; and
  - the importance of accountability, which requires an organisation to ensure that its processes for identifying costs and setting fees are transparent. Transparency and accountability are best achieved through effective public consultation, clear financial records, and oversight by the Regulations Review Committee, the High Court, and the Auditor-General.

### What we found in 2008/09

- 8.10 As noted above, the 1976 Act (and the 2006 Act) gave the Board the power to charge fees for certain matters. The Board also had a separate power to charge a disciplinary levy to fund the costs of the disciplinary system. The Gas Act 1993 gave it power to charge fees for issuing gas certificates.
- 8.11 Section 15(3) of the 1976 Act provided that:
- ... all money received ... by the Board may be applied for ... the payment of all costs and expenses incurred in doing whatever the Board considers expedient to best accomplish the purposes for which it is established.*
- 8.12 This was an unusual general enabling provision that appeared to give the Board significant capacity to spread its costs across its different sources of revenue, and to enable a measure of cross-subsidisation.

- 8.13 We note that there is a similar, but narrower, provision in the 2006 Act. It limits the Board to applying money for the payment of any expenditure, costs, or expenses incurred by it in the performance of its functions and duties or the exercise of its powers.

### **Problems with the setting of its fees and budget**

- 8.14 We were concerned about some aspects of the way in which the Board had set its fees and budget in the past. The Board could not provide us with analysis and costings to show the basis for setting particular fees or the expected costs of particular activities. For example, the Board could not provide us with any costings to show how it set the fees for the new practical test of workmanship for migrant plumbers and gasfitters.
- 8.15 The assessments take four days, and the first such test was held in Wellington in November 2008. The fee for each assessment had been set at \$3,200. An applicant who wished to practice as a plumber and a gasfitter would need to pay \$6,400 for the assessment. They were also required to pay separate fees to sit the written examinations, as well as fees for registration and licensing if they were successful.
- 8.16 Other matters that we queried included:
- some fees that might have been excessive, such as an examination reconsideration (that is, remarking an examination paper) fee of \$100 when the marker was paid only \$21 and the administrative overhead for this activity was low; and
  - the reason why practitioners were required to relicence or reapply for exemptions every year when there was legislative capacity to issue licences for up to five years. Without a clear reason, this policy risked being seen as a revenue-gathering exercise.

### **The income from gas certificates**

- 8.17 The income from gas certificates made up a significant proportion of the overall income of the organisation. Figure 2 sets out the Board's main sources of income for the last three years.

**Figure 2**  
Main sources of income for the last three years

The Board's main sources of income	Year ended 31 March 2009	Year ended 31 March 2008	Year ended 31 March 2007
Examination fees	\$352,182	\$286,097	\$193,730
Gas certificates	\$831,370	\$915,184	\$905,065
Licence fees	\$1,760,674	\$1,034,939	\$892,953
Registration fees	\$710,377	\$461,384	\$248,837

- 8.18 The Board explicitly stated that it used the income from gas certificates to meet the costs of the competency-based licensing system for gasfitters, the main components of which were the gas audits and the continuing professional development programme.
- 8.19 In practice, however, the gas certificate fees appeared to support a wide range of general office costs and overheads. From the Board's published financial statements, and from our interviews with staff, it seemed that the particular functions associated with the competency-based licensing system were relatively small.
- 8.20 For example, the direct cost of the gas audit system in 2006/07 was only \$132,603, although there were other internal costs, but the revenue gained from gas certificates in that year was \$905,065. We were surprised to read, in a 2007 submission to the Ministry of Economic Development asking for the gas certificate fee to be increased, that the Board estimated that the gas certificate system cost it \$1,218,579 each year. It also estimated that the salary cost was \$258,000 when the total salary cost for all the Board activities in the previous year was \$736,157. In our view, the case made by the Board to increase the fee in that submission was not credible.
- 8.21 Given the general capacity given to the Board under the 1976 Act to spread costs, noted above, this might have been within the authority of the charging provision, but it appeared to be an extensive level of cross-subsidy.
- 8.22 The Ministry of Economic Development declined to increase the fee payable for gas certificates, because it was not persuaded that the increase was necessary. The Board then decided to increase the licence fee, to cover the costs it anticipated it would incur as a result of the 2006 Act coming into force.
- 8.23 Papers prepared for the Board showed that an increase from \$80 to \$120 was considered to more than cover the expected deficit. However, the Board set the fee at \$155, and we have seen no papers justifying that additional increase.



- 8.24 These examples suggest that the Board's approach to budgeting and setting fees has not always been robust enough.

### Recent changes

- 8.25 The costs of regulation by the Board are a significant and contentious issue for the industry. We discussed the issue of fees with the Board when we provided it with our first draft report in December 2009. We encouraged the Board to be more open about how it budgets and allocates costs to set fees. Transparency and clear explanations of the cost drivers and approach to spreading those costs may help to reduce the level of concern and achieve greater acceptance of the fees. We also advised the Board to give more attention to the principles of cost recovery, the limits of the various legislative provisions, and the importance of consultation, as set out in our good practice guide.
- 8.26 The Board told us that it intends to develop policies and procedures about fees and that it will publish these. It has also recently thoroughly reviewed fees with the assistance of an external consultant, which has included careful consultation with the industry. For the first time, it has consulted on issues such as the methodology to set the fees, the level of cross-subsidisation, the level of reserves, and the actual fees to be charged. The Board told us that the fees review was carried out using the principles in our good practice guide. The consultation paper is available on the Board's website.
- 8.27 The new fees were approved on 29 June 2010 and were published in a *New Zealand Gazette* notice that is available on the Board's website. They are a significant change from the previous fee structures and levels, and may attract some comment. But they have been set transparently, after open consultation with those who must pay.

### Issues that still need attention

- 8.28 We encourage the Board to maintain and embed this approach to managing its budget and setting fees. It must recognise that the cumulative effect of the various fees can be significant, and that the people paying those fees need to understand the basis for these charges. Being transparent about costs can only help people trust that the Board is setting the fees responsibly and fairly.

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#### Recommendation 13

We recommend that the Plumbers, Gasfitters, and Drainlayers Board maintain and embed a practice of reviewing all of its fees and charges against the good practice guide, *Charging fees for public sector goods and services*, to ensure that it is budgeting and setting fees in keeping with its legal authority and good practice expectations.

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## Part 9

# Our analysis of the problems and possible solutions

### Summary of our findings

- 9.1 We began our inquiry in late 2008. During our initial work in 2008 and early 2009, it became apparent that the issues that concerned us about the way the Board was operating were wide ranging and significant. As we have explained in the preceding Parts, we found problems with the way that the Board was performing nearly all of its functions.
- 9.2 We spent some time considering this range of problems to identify common themes and any underlying causes. We discuss those themes and causes in this Part. In our view, the main challenges for the Board are:
- to fundamentally change the culture of the organisation – from one that is closed, defensive, and relying on the way it has done things in the past to one that is open and engaged with the changing needs of the sector;
  - to develop the Board’s capacity and capability so that it is able to maintain a coherent overview of the emerging challenges for the sector and for its own role, its relationship with other organisations, and the policy issues that affect it;
  - to ensure that it puts legality at the heart of everything it does, because at present we consider that it simply does not have a clear enough focus on the requirements of the legislation and administrative law disciplines, and of the legal risk attached to its activities; and
  - to produce the comprehensive, clear, and practical policies and procedures that are needed to turn the legislative rules into good administrative processes and to ensure that the decisions made using those processes are consistent and appropriate.
- 9.3 These general points underpin the problems we have outlined with supervision and training, registration and licensing, enforcement, the treatment of overseas applicants, and aspects of the gas certification and auditing systems. We discuss each of these general points below.
- 9.4 Before we do so, we must record our appreciation of the way that the appointed members of the Board and Board staff have responded to our concerns. We discussed our initial findings with the Board in late 2009, and it has been working since then to address many of the issues that we identified. The Board has made good progress. Whenever we have raised issues with it, it has considered them carefully, even if we do not always agree. In our view, the Board is motivated and committed to improving.

- 9.5 However, the problems that the Board faces are still significant. The Board's strategic, policy, and legal capacity is not yet what it needs to be. As we have noted, the work it has done so far to issue policy statements is good, but is only a beginning. There is much more to do before the Board's policies and processes will be at an appropriate standard and sufficiently comprehensive. Further close work with the Department of Building and Housing to identify and work through policy and legislative issues is also needed.
- 9.6 To achieve what it has so far, the Board has been contracting in expert help as needed. Although this has enabled it to address immediate needs, we are aware that it does not yet have the in-house capacity to sustain this level of activity. We are also aware that the work of the last year has required a substantial time commitment from individual Board members, which may also not be sustainable in the longer term.
- 9.7 There is a risk that securing the necessary in-house capability to develop and maintain the regulatory system appropriately will increase the Board's costs. Given the level of concern in the sector about rising fees, any cost increases will need to be carefully analysed and discussed with the industry.

### Organisational culture

- 9.8 In 2008/09, the Board had poor relationships with other organisations in the sector. In some cases, these poor relationships had significant effects, such as the delay in implementing the new unit standards.
- 9.9 We also found that the Board's culture and its poor communication had led to the perception among some in the trade that it was acting vindictively or in bad faith.
- 9.10 In our view, a large part of this reputation has arisen because of ineffective and inappropriate communication. In 2008/09, the Board secretariat was also in poor shape, with nearly all of the staff unhappy with the environment they were working in.
- 9.11 The Board has started working to mend its poor relationships with other organisations in the sector. This has included signing a memorandum of understanding with the ITO and starting to work more closely with the Department of Building and Housing. We encourage the Board to maintain this activity and its investment in effective and collaborative working relationships with other organisations.
- 9.12 The culture of the Board, and the perception among some members of the trade that the Board has acted in bad faith in the past, is going to require significant effort by the Board to change. Part of this involves communicating more openly with those it regulates, in a more appropriate manner, and more frequently.

- 9.13 Consultation needs to be meaningful and extensive, especially where it will result in increased costs to those in the trade. If the Board does not consult adequately, it risks increasing the number of disaffected members of the trade, possibly leading to some deciding to work outside the system.
- 9.14 We have been encouraged by the approach to consultation that the Board has taken during the last year, as it has brought the 2006 Act into force and reviewed its fees. It needs to embed this type of interaction and openness into its daily working behaviour.

### Capacity and capability

- 9.15 In 2008/09, the Board lacked strategic capability. It lacked the skills it needed to address the problems it was facing with very dated legislation, or to address problems that arose. Examples of this included how it responded to problems with the gas certificate system, the high examination failure rate, and situations where people were choosing to work in new ways to take advantage of niche business opportunities. The failure to respond to weaknesses identified in the gas certificate system has meant that the problems that arose in 2008/09 were not avoided. As a result, significant questions have been raised about the integrity of the gas certificate system as a method of ensuring the safety of gas installations.
- 9.16 The Board has been carrying out an organisational review. We consider that this is a vital step to ensure that it has the appropriate mix of skills that it needs. We understand that the morale of staff has improved significantly in recent times.
- 9.17 In carrying out its organisational review, the Board needs to ensure that it has staff with the appropriate strategic capability. The Board and the Department of Building and Housing are aware that the 2006 Act will need further work. We agree with this assessment and note that the Board will need to maintain some policy capability and a close working relationship with the Department of Building and Housing for the foreseeable future.
- 9.18 Given the problems we have identified throughout this report, we also encourage the Board to secure stronger in-house legal capacity and capability.

### Legality

- 9.19 Throughout this report, we have raised questions about the legal basis for the Board's policies or actions. Some of these have related to general operating policies, which in our view were not well grounded in the legislation; others related to the process by which individual decisions were made, and an apparent lack of explanation of procedural rights to affected individuals.

- 9.20 In late 2009, we discussed our concerns about legal issues with the Board. The Board obtained external legal advice, from a Queen's Counsel, on some of the issues that we had raised with it. We have summarised in this report the differing views on these legal issues. In general, the Board's legal advice was that it had legal authority to do many of the things we had questioned, although in some cases the advice was that these powers were implied rather than express. In some cases, we accepted the arguments and did not pursue the issues further. In other cases, we did not regard the arguments as persuasive and so have recorded the differing views in this report.
- 9.21 We cannot finally determine these legal issues: only the courts can do that. In any event, some of the issues are historical because they related to the 1976 Act and have been resolved by the implementation of the 2006 Act.
- 9.22 We have devoted some time to these issues because we see them as indicating a more general organisational problem. Our concern is that the Board has, in the past, not shown enough appreciation of the need for a public sector decision-maker to be scrupulous about the legal basis for its actions, and about the process by which it is making decisions that affect the rights of individuals.
- 9.23 In our view, many aspects of the Board's basic activities had a significant level of legal risk that the Board does not appear to have been aware of until now.
- 9.24 When we have raised questions, the Board has had to obtain external expert advice on these legal issues. There has not been clear internal documentation that the Board could draw on, setting out when and how policies and practices have been adopted, and the legal basis for them.
- 9.25 In our view, it is unsatisfactory that a regulatory authority, which makes decisions that are significant both for the affected individuals and for public safety more generally, should operate on such an uncertain legal basis and be so unaware of the risks that it is taking. We appreciate that no organisation can be totally free of risk, but we expect that an organisation will consciously manage its risks. We do not consider that that has been the case here.
- 9.26 We expect the Board to take the issue of legality to heart, and place it at the centre of its work. We would like to see a clear and obvious basis for all of the Board's operating policies and decisions in the legislation, and that the processes by which it makes decisions are transparent and have natural justice protections built in at every stage.

## Policies and procedures

- 9.27 To ensure that its decisions are lawful, the Board needs to ensure that it has clear policies and procedures that are well grounded in law. One of the main problems in the past has been that the Board has lacked clear policies on its various operational functions to guide its decision-making. Now that the 2006 Act has come into force, the Board will need to carefully review its current policies and procedures to determine whether they meet the requirements of the 2006 Act. The Board also needs to write a wide range of new policies to guide its decision-making under the 2006 Act. The Act is now in force, so it is important that this policy work occur quickly.
- 9.28 In 2008/09, we found examples of inconsistent action by the Board. For example, the Board took varying stances on the supervision of limited certificate holders by craftsmen. As we noted, the Board lacked written published policies for most of its core functions. One of the risks of not having such policies is that a body will act inconsistently or inappropriately, or follow a poor process.
- 9.29 As we have discussed, one of our core findings was that there was a perception by some people that in some cases the Board was acting in bad faith. Without policies, and where people do not understand why decisions are made or the reasons for them, it is easy to attribute such decisions to bad faith on the part of the decision-maker. An unusual or tough decision can easily be seen as arbitrary or punitive. Policies can help in making decision-making more transparent. People can see why decisions are made, and that they are in keeping with policy.
- 9.30 We discussed our concerns about the lack of policies with the Board in late 2009. The Board has recognised that it needs to write policies and has started working on these. We have reviewed the three policy statements that it has issued and found significant problems with one of them. We also note that the Board has adopted processes that it used under the 1976 Act, such as the IQAS, without apparently questioning whether such processes fit with the 2006 Act or whether they are appropriate. In our view, the Board needs to completely overhaul all of its systems.
- 9.31 The Board needs to continue to prepare these operational policies as a matter of priority. Until these are prepared, it cannot be certain that its decision-making will be transparent, consistent, and lawful. It will also not be able to fulfil its obligations under the Official Information Act 1982 to provide people with basic information on the way in which decisions about them will be made.

## Creating effective accountability

### Practical complaints mechanism for people with concerns about the Board's decisions or actions

- 9.32 We spoke to a number of plumbers, gasfitters, and drainlayers who had concerns about the Board's decisions or actions. Until now, the Board has had no complaints mechanism for people who had concerns about those decisions or actions. Legally, these people might have had the right to seek judicial review of such decisions or actions, but in reality this will not usually be feasible. Judicial review is expensive and can take a long time. Similarly, the appeal rights provided in the Act are expensive to exercise and do not provide a swift remedy. A person who has been refused renewal of a licence, and therefore had their ability to work removed, needs a speedy and inexpensive process.
- 9.33 The Board needs to have a practical complaints mechanism for people with concerns about the Board's decisions or actions, to sit underneath the formal legal avenues for challenge. It needs to be swift and to carry little cost. Ideally, it would involve an independent person who could impartially assess the actions of the Board's decision and recommend practical steps that could be taken to resolve the problem.
- 9.34 Given the previous perceptions that the Board was closed and defensive, establishing a system of this kind would be a powerful demonstration that the Board's culture has changed. It would help people gain some assurance that decisions were properly made, and that the Board was prepared to be scrutinised and correct errors that might be identified.
- 9.35 The Board has indicated to us that it will accept this recommendation and put in place a system for receiving and considering complaints about itself. It also intends to publish user-friendly information about the system and other avenues people have to question or challenge decisions, including the ability to ask the Ombudsmen to investigate.
- 9.36 The Board also intends to monitor the number and type of complaints that it receives. We encourage it to publish this information periodically, as a form of accountability to the industry.



### Addressing past grievances

- 9.37 As we discuss elsewhere in this report, we spoke with a large number of plumbers, gasfitters, and drainlayers who had grievances with the Board. Many of these were deeply held concerns.
- 9.38 We appreciate that most organisations receive complaints from people who are simply unwilling to accept a decision that has gone against them. Not all complaints have merit. However, in the Board's situation, we consider it possible that some grievances may be well founded, and that there are likely to be some people who have been disadvantaged by poor or possibly unlawful decision-making. The Board should not assume that people who have complained to it are merely disaffected.
- 9.39 In our view, the Board needs to find a way to address these grievances. Where they prove to be well founded, it should consider what can be done to put things right, so far as possible. Some of the solutions may be very simple, such as letting a person sit an examination again, waiving a fee for a reconsideration, or reconsidering a licensing or supervision decision.
- 9.40 The appeal rights provided under both Acts are subject to limitations on when proceedings can be filed. These are likely to have passed for all historic grievances, and these rights will be unavailable. We do not consider that judicial review proceedings are a feasible option for most of those affected, because of the cost involved and time for the proceedings to be heard.
- 9.41 We are concerned that, if the Board does not acknowledge and resolve them, these past grievances will continue to be discussed in the industry and will fester as a source of discontent and distrust. The risk is that they will impede the Board's progress in rebuilding its reputation and the trust of the industry. The Board might also otherwise find itself caught in a series of complex and time-consuming arguments about the rights and wrongs of its past actions.
- 9.42 Again, there is the potential to send a powerful message about the new Board's willingness to hold itself to account and to deal openly and fairly with people, if there is a systematic attempt to address the needs of people who may have been wronged in the past.
- 9.43 The Board told us that it accepts that there is a need to address past grievances, and that it has begun to talk with individuals with concerns about registration on a case-by-case basis. The Board's aim is to consider a workable way forward for those people, but on the basis that appropriate standards for registration are still met. The Board has told us that, where it is appropriate to apologise for past treatment, it will do so.

- 9.44 The Board told us that, where it has worked with individuals to date, it has received positive feedback from the individuals.
- 9.45 We realise that the Board will not be able to solve all of these problems, or address every perceived grievance. But we are very pleased with the steps that it is taking to reconsider what has been done in the past and to apologise and look for solutions where appropriate. Although these are individual cases, rather than system-wide solutions, there is huge value in addressing them. We encourage the Board to continue its efforts.

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**Recommendation 14**

We recommend that the Plumbers, Gasfitters, and Drainlayers Board establish a simple and effective complaints process for tradespeople who are unhappy with a particular Board decision or action, so that there is an accessible and transparent mechanism for getting a prompt review of a decision or action.

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**Recommendation 15**

We recommend that the Plumbers, Gasfitters, and Drainlayers Board establish an immediate and short-term process for considering and resolving grievances arising from previous Board decisions that may have wrongly disadvantaged a tradesperson.

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# Appendix 1

## Mr Jones' story

This case study is about a registered plumber and gasfitter, Mr Garry Jones. Mr Jones arrived in New Zealand before the Board's change of policy in June 2003 that required all migrants to sit the registration examination. We interviewed Mr Jones, who agreed to us describing in our report the details of his many interactions with the Board.

To compile this case study we have:

- reviewed the Board's file on Mr Jones;
- reviewed the investigation report that the Department of Building and Housing commissioned into his situation;
- discussed his file and the concerns with Board staff, including the most recent former Registrar;
- interviewed Mr Jones;
- interviewed the relevant staff member from the local authority involved;
- contacted the relevant Australian organisation for information; and
- sought comments from Mr Jones, appointed members of the Board, and the most recent former Registrar on drafts of this summary.

Mr Jones' dealings with the Board span 10 years, three sets of Board members, and three Registrars. We identified many different substantive or procedural problems, on several different issues, during these 10 years. His case also shows how some of the legal and procedural concerns we have discussed in the body of the report can affect an individual tradesperson.

### **Moving to New Zealand and initial registration in 2001**

Mr Jones worked as a plumber and gasfitter in the United Kingdom (UK) for more than 20 years. For much of this time he operated his own plumbing and heating business. He holds the City and Guilds of London Institute Advanced Certificate in plumbing. This qualification includes gasfitting.

In 2001, Mr Jones decided to move to New Zealand. His application to immigrate was handled by a London firm of immigration consultants, who also handled his application to the Board. The immigration consultants provided copies of his qualifications to the Board and asked the Registrations Manager if Mr Jones was able to gain registration and, if so, at what level his qualifications would be recognised: plumber only, plumber/gasfitter, plumber/drainlayer, or plumber/gasfitter/drainlayer.

The Registrations Manager emailed the consultant explaining that Mr Jones would be registered as a plumber and gasfitter. There was no reference to the possibility of him being registered as a craftsman plumber and gasfitter, or to the processes he would need to go through to achieve that status. The Registration Manager registered Mr Jones as a plumber/gasfitter and posted his certificate of registration to Mr Jones' UK address. His registration certificate was dated September 2001.

Mr Jones arrived in New Zealand soon after obtaining his registration and started work as a plumber and gasfitter. He was not contacted by the Board about any matters. In particular, he was not informed by Board staff that he could be assessed on arrival in New Zealand and that he might be able to be registered as a craftsman plumber and gasfitter relatively quickly.

From the documentation we have reviewed, we can see a possible failure of communication between the immigration consultant and the Board. The consultant asked a question that confused categories of registration (which trades) and the level of registration. The Board's response appears to have looked only at categories and not to have considered the level of registration. The response did not volunteer information on the system that was operating then for assessing overseas qualifications and deciding the level of entry.

The process the Registrations Manager followed in registering Mr Jones differed from the way in which other applicants from overseas were dealt with at the time. For example, in 1998, a UK-based plumber and gasfitter applied, from his UK address, for New Zealand registration as a plumber and gasfitter. He had the same advanced qualifications as Mr Jones and had also operated his own business. He was told by the then Registrations Manager that on arrival in New Zealand he would need to obtain a three-month provisional licence from the Board. During this time, he would be visited by Board staff, who would assess his competency as a plumber and gasfitter. If he received a favourable report, he would be granted full registration.

The assessment did not take place until April 2000, and in the meantime the plumber and gasfitter continued to practise under a provisional licence. The assessment was of his knowledge and abilities. The Board's assessors concluded that, subject to completing several correspondence courses, he should be registered not just as a plumber and gasfitter but as a craftsman plumber and gasfitter. These courses were completed and the Board registered this individual as a craftsman plumber and gasfitter in late 2001.

We also identified some internal confusion in the Board about Mr Jones' status. The documentation shows that he was given full registration rather than a

provisional licence in 2001. Yet at some later point, the Board appears to have assumed that he was on a provisional licence only, because the Board minutes show that his registration as a plumber and gasfitter was formally approved by the Board on 24 April 2003.

To summarise, at this early point, Mr Jones' treatment shows inadequate communication or information, apparent inconsistent treatment, and some internal confusion about his status.

### Application in 2003 to upgrade to craftsman status

Mr Jones worked as a plumber and gasfitter for 14 months before deciding to apply to the Board to have his registration upgraded to craftsman status. In late 2003, he wrote to the Board stating that he was unaware, before leaving the UK, that he would need craftsman status to work without supervision. He wrote that he wanted to apply for that status.

By the time that Mr Jones wrote to the Board, the Board had changed its policy on registering people with overseas qualifications. The Board now required all applicants seeking craftsman status to sit and pass the craftsman examination. We discuss this change, and the problems with this policy, in Part 7. The then Registrar wrote to Mr Jones and told him about the new requirement.

Mr Jones was not happy with this response. From talking with other UK-trained plumbers and gasfitters with the same qualifications, he was aware that they had been granted craftsman status without sitting the examinations. Mr Jones approached the Board again about being registered as a craftsman plumber and gasfitter, and was again told that he would need to sit and pass the examinations.

Mr Jones wanted the Board members to formally consider his case to be registered as a craftsman plumber and gasfitter. The Board's Examinations Committee considered his request on 2 February 2004. The Committee confirmed that the Registrar's letter to him had correctly set out the requirements for him to be eligible to be registered as a craftsman.

All of this correspondence from the Board is written as if the Board is applying a rule (its policy). There is no recognition in the documents we have seen that the Board had a statutory discretion about how to register overseas applicants that it might not have properly exercised when he first applied, and that it was effectively being asked to exercise that discretion now. Mr Jones was entitled to make a case for the Board to exercise that discretion and to be accorded procedural rights in the process.

Mr Jones decided to sit the examinations. He has sat the gasfitting examination twice, and the craftsman common examination twice, but was unable to achieve pass marks. He sat these examinations with very little preparation and believed that passing the examinations would necessitate taking too much time off work to study and prepare.

Mr Jones said that the time needed to prepare was significant because he had to memorise material that he usually carried with him in reference manuals (because the examinations are closed book), and because there are several possible solutions for most work. He needed time to become familiar with the approach favoured by the examiners here. He noted that there was no standard way of teaching and preparing people for the examinations, and that he struggled in particular with the business and taxation elements of the examinations. In practice, Mr Jones found it was not possible to close his business and not respond to customers for the time he needed.

Mr Jones' grades in some of his attempts at the examinations have been close to the pass mark of 60%. We have not attempted to check whether the examinations he sat included problematic questions that were ambiguous or could not be answered, but we note that his inability to pass the examinations may not be a reliable indicator of his competence. As noted elsewhere in this report, we have raised concerns about the fairness of the examinations.

### Seeking registration in Australia in 2005

This part of Mr Jones' story is contested, and we record both perspectives here.

Mr Jones told us that, in early 2005, he decided to investigate the possibility of working in Queensland. He rang the Department of Natural Resources and Mines in Brisbane and outlined his UK qualifications and experience. He was told that his qualifications and experience entitled him to a gas works licence, which meant he would be able to work independently. Mr Jones was also told that he could be issued with a gas works licence almost immediately. He decided to travel to Brisbane to confirm absolutely that he would be able to obtain a gas works licence and work independently as a gasfitter.

Mr Jones travelled to Brisbane in May 2005. At the office of the Department of Natural Resources and Mines, his papers were checked and photocopied. He tells us that he was told that he was eligible for a gas works licence that would let him work without supervision, and it would be posted to his home address within a fortnight.

Mr Jones sought confirmation from a more senior official. This official confirmed that Mr Jones was eligible for the gas works licence. Mr Jones said the senior official he spoke to was aware that he was not a craftsman gasfitter in New Zealand and the advice that he would be granted a gas works licence was made on the basis of his UK qualifications and experience.

The licensing of plumbers is handled by a different agency and Mr Jones also applied there for a plumbing licence that would allow him to work independently. His UK qualifications were assessed and he was told that, because of the extensive use of solar energy in Queensland, he would need to complete a one-week course on solar energy. He could complete this course in Brisbane or by correspondence in New Zealand.

Soon after returning to New Zealand, Mr Jones received his Queensland gas works licence, dated 10 June 2005. It was valid until 24 May 2010.

Mr Jones told us that he then saw an article in the Board's newsletter of June 2005, which explained the reciprocity arrangements between Australia and New Zealand for registering plumbers and gasfitters. These arrangements allow someone registered as a plumber or gasfitter in Australia to work in New Zealand at the same level of registration that they held in Australia. The same arrangements apply to New Zealand plumbers and gasfitters wishing to work in Australia. Mr Jones said he was not previously aware of these arrangements.

Mr Jones telephoned the Board's Registrar to ask if his Queensland gas works licence would be recognised in New Zealand. This would mean that he would be able to work without supervision as a gasfitter. He was told that he would need a Certificate of Reciprocity from the Department of Natural Resources and Mines. Mr Jones obtained this certificate, which is dated 4 July 2005. It states that Mr Jones has met the minimum competencies for a gas works licence covering two classes of work: gasfitting (independent certifier) and liquid petroleum gasfitting (independent certifier).

Mr Jones then rang the Registrar to say that he had obtained the reciprocity certificate for gasfitting. He was told that he needed to send all his original documentation to the Board. Mr Jones was reluctant to do this and offered to send verified copies of the documents. The Registrar told Mr Jones that the Board was investigating how he had obtained his Queensland gas works licence.

The Board wrote to Mr Jones, on 29 August 2005, explaining that his application for registration as a craftsman gasfitter had been deferred while the Board made enquiries with the Department of Natural Resources and Mines. The Board emailed the Department of Natural Resources and Mines and asked what test

Mr Jones underwent to obtain his gas works licence. The email said that, under the reciprocity agreement that New Zealand has with Australia, the Board might have to accept the Certificate of Reciprocity and grant Mr Jones independent status as a gasfitter, when the Board knew that he has not been able to meet the requirements in New Zealand.

The Department of Natural Resources and Mines told the Board that the Department had been misinformed, and had assumed that Mr Jones was able to work independently in New Zealand as a gasfitter. It said that the licence had been issued based on reciprocity with New Zealand, rather than the UK qualifications. The Department said that it would now cancel the licence issued to Mr Jones.

We note that, if that is the basis on which the application was processed, it would not have been supported by the right documentation. Mr Jones had not provided any reciprocity certificate from the Board.

Mr Jones told us that he rang the Department of Natural Resources and Mines to find out why his licence was to be cancelled. He said he was told by a senior official that he was entitled to his licence but, because the Board was annoyed that Mr Jones had been granted the licence, the Department had decided to cancel it.

The Board and the now former Registrar told us that the relevant senior official at the Department of Natural Resources and Mines had repeatedly told them that Mr Jones had been attempting to abuse the system to obtain craftsman status by another route.

From this point, both the Department of Natural Resources and Mines and the Board appear to have operated on the basis that the licence had been obtained by deception. The Department cancelled the gas works licence, and the Board resolved to reject the application from Mr Jones to be awarded craftsman status as a gasfitter based on reciprocity. We did not see any documentation to suggest that these assertions were put to Mr Jones for comment before the decisions were made.

Mr Jones maintains that he acted in good faith, and that his Queensland gas works licence was cancelled because the Board was unhappy that it might have to register him and put pressure on the Department of Natural Resources and Mines.

The Board's view, which it has set out in writing a number of times, was that this was an attempt to dishonestly manipulate the system.



We attempted to check with the Department of Natural Resources and Mines to establish the basis on which the licence was issued and then cancelled. It was not able to provide any useful clarification this long after the event.

Over the years, Mr Jones said he has had a number of conversations with the now former Registrar of the Board. Although other staff maintained a record of their telephone conversations with Mr Jones, there is no record of the Registrar's conversations with Mr Jones.

Given the lack of written records, we have not been able to establish exactly what conversations took place. The written records do show a failure to afford Mr Jones basic natural justice procedural rights, such as an opportunity to see and comment on the information being relied on, and to be heard by the decision-maker.

### **Further discussions with the Board about craftsman status and supervision arrangements in 2006 and 2007**

In 2006, the District Council of the area in which Mr Jones lives and works wrote to the Board, asking about the supervision arrangements for Mr Jones. The craftsman who was supervising Mr Jones lived nine hours away by road, and the District Council wanted to check that supervision from this distance met the requirements of the Act.

The reply from the Registrar to the District Council said that supervision arrangements were for the craftsman supervisor to determine and it is the craftsman who was ultimately responsible for the work of the registered person. The Registrar also said that, because the Board has a complaints jurisdiction, it had to remain impartial and could not give an opinion on the supervision arrangements.

The District Council was looking at this issue because it was changing some of its own requirements. In October 2006, it advised all tradespeople that, from 1 January 2007, it would require the responsible craftsman to personally sign the application form for a code of compliance certificate at the end of some work. The District Council said that it was making this change because of concerns about supervision that had been raised by the local master plumbers group, and in anticipation of changing requirements about building work.

The Board was copied into some of the correspondence between the District Council and Mr Jones. The Board flagged Mr Jones' file as requiring follow-up action about this.

Mr Jones told us that, when a new Board was appointed in 2006, he thought it might be worthwhile to raise the question of his registration status again. He contacted the Board. A staff member there suggested that, if he wanted to have his situation reviewed, then he might consider writing to the Ministry of Health. Mr Jones took up this suggestion in 2007.

A Ministry of Health official wrote to the Board and sought its views on the matter. The Registrar responded with a detailed summary of the interactions from the Board's perspective. The letter included some strong statements. It said that Mr Jones had been very selective in the information he had provided, and that he supplied false information to the Department of Natural Resources and Mines in his attempt to be registered in Queensland. Based on this information, the Ministry wrote to Mr Jones advising that it considered that he had been treated fairly.

About this time, Mr Jones recalls receiving a telephone call from the Registrar just before 10pm one night, which he found intimidating. The Registrar does not recall making such a telephone call.

### **Scrutiny of supervision arrangements from March to May 2008**

In March 2008, Mr Jones rang the Board to obtain a new password so that he could uplift his annual practice licence for the 2008/09 year. The Registrar telephoned him back, saying that the District Council was not happy with the supervision arrangements and that no licence would be issued until the Registrar was satisfied with the supervision arrangements.

Mr Jones later received a letter from the Registrar, advising that the District Council would be contacting him about the supervision arrangements. The letter also explained that, until the Registrar was satisfied that Mr Jones was working under the direction of a craftsman plumber and gasfitter, his licence would not be renewed. This would mean that Mr Jones could not legally work as a plumber and gasfitter.

We discussed in Part 3 our concerns with this type of action by the Board. We consider that there is a good argument that the Board does not have the legal authority to withhold a licence on this basis. Even if it does have the power to do this, its process was wanting because we have seen no evidence of natural justice procedural rights being afforded to Mr Jones.

Mr Jones contacted the District Council, which said it had no problems with his work but were under pressure from the Board to tighten the supervision arrangements. The District Council later wrote to Mr Jones indicating that it was

happy with the existing supervisory arrangements, but if Mr Jones did not obtain craftsman status by mid-2008 it would need to review the situation because the Board had indicated that distance arrangements were no longer acceptable.

Mr Jones's licence expired on 1 April 2008, and he was unable to do any plumbing or gas work until he found a local craftsman plumber and gasfitter willing to supervise him. He was forced to suspend work for two weeks until he could find a local supervisor.

In the meantime, a colleague of Mr Jones met with a local member of Parliament (MP) and explained the problems that Mr Jones was having. The MP put him in touch with his electorate secretary, and she was able to arrange for a craftsman plumber and gasfitter, who lived a two-hour drive away, to supervise Mr Jones. The Registrar wrote to the craftsman plumber and gasfitter, on 4 April 2008, asking how he intended to supervise Mr Jones. The firm for which the craftsman plumber and gasfitter worked replied on 6 May 2008, confirming the supervision arrangements. The Registrar then asked for a statutory declaration from the craftsman plumber and gasfitter that was supervising Mr Jones. Such a declaration was eventually obtained.

Mr Jones told us that he feared that the Board was using the renewing of his annual licence as a means of applying pressure, to ensure that he would not continue to press the Board to be registered as a craftsman.

The former Registrar told us that, once the supervision arrangements came to the Board's attention, it needed to act to enforce the requirements.

### **Investigation of a complaint about supervision in May 2008**

In May 2008, the Board received a complaint about Mr Jones. The allegation is contained in one line and simply said that in the firm operated by Mr Jones there was no craftsman direction in both plumbing and gasfitting. No evidence was presented. There was a second allegation that an employee of Mr Jones, who held a limited certificate in gasfitting, was listed in a motor caravan handbook as a craftsman gasfitter.

The second complaint was easily resolved. The Registrar said he spoke with a representative of the motor caravan association who said that the mistake was theirs and would be amended. The association had not understood the distinction between a limited certificate holder and a craftsman.

The Registrar decided that the first allegation warranted investigation, even though in the same month he was completing his confirmation of Mr Jones' supervision arrangements. The Registrar also decided to investigate how Mr

Jones was supervising the person who worked for him, although there had been no complaint about the supervision nor any evidence to suggest that it was improper.

Several months later, in November 2008, the Registrar wrote to Mr Jones saying that he had found that he was supervising the limited certificate holder in compliance with the requirements of the Act.

The Registrar also concluded that Mr Jones had not been carrying out work without proper direction. The Registrar said in his letter to Mr Jones that, although on this occasion he had no specific evidence that Mr Jones was not properly supervising the person who worked for him, or that Mr Jones was carrying out work without proper direction, if there were any further complaints where there was evidence then the Registrar would “not hesitate to proceed with disciplinary actions against you”.

Mr Jones told us that he understood this to be a further attempt at intimidation. The Registrar told us that this was standard wording when the Board was “letting someone off with a warning”. We are unclear what the basis for a warning was, because it had been established that Mr Jones' actions were appropriate.

### **Attempts to complain and the Board's responses during 2008 and 2009**

Through 2008 and 2009, Mr Jones continued to challenge the Board's actions. The local MP who had earlier supported Mr Jones raised concerns with the Board. We have already described the essence of the Board's comments in response. The local MP then contacted the Minister for Building and Construction and the Department of Building and Housing. The Department commissioned an independent lawyer to review the file, interview Mr Jones, and prepare a report. The report raised many questions about the Board's actions.

A draft of the report was sent to the Board in April 2009. In a response to the Private Secretary of an MP, dated 30 April 2009, the Registrar said that Mr Jones travelled to Australia in an attempt to usurp the requirements of becoming registered in New Zealand, and supplied false information to the Department of Natural Resources and Mines. The Department, based on this information and its mistaken belief that Mr Jones already had craftsman status in New Zealand, issued him with a Reciprocity Certificate to work in Queensland. The Registrar described a telephone conversation that he had with a senior official at the Department of Natural Resources and Mines about Mr Jones. According to the Registrar, the senior official said that Mr Jones was a dishonest man who provided false information. Although the Board has a system that requires staff to record

the details of all telephone conversations with particular people, we could find no record of this telephone conversation on Mr Jones' file.

### More recent developments

In early 2010, we started discussing our likely findings and recommendations with the Board, including the recommendation that it should work to resolve long-standing grievances (where possible). The Board has been acting on this recommendation. One of the people it has met with to try to find a solution is Mr Jones.

Our understanding is that Mr Jones now refuses to sit the examinations again. He believes he was initially entitled to be considered for craftsman status and would like to be given that status now. We note that all those we spoke to about Mr Jones, including the relevant District Council employee, said that there were no issues with Mr Jones' work, which was of good quality. He was seen as providing valued services in a remote area.

The Board also considers that, now that he has worked in New Zealand for so long and has failed the examinations, it could not properly award him craftsman status on some other basis. That would be unfair to others sitting the same examinations. Instead, it has offered him a range of practical help with preparing for the examinations.

We are pleased that the Board has now engaged directly and constructively with Mr Jones, but are concerned that the parties may be at an impasse. We cannot resolve the situation for them, but it would be a concern if the result was that a skilled tradesperson left New Zealand because of his frustrations with the Board. Mr Jones tells us that his employee has already left the trade and left the country because of these difficulties. Mr Jones is now considering doing so too.



# Appendix 2

## Terms of reference for our inquiry

### Auditor-General's inquiry into the Plumbers, Gasfitters, and Drainlayers Board

**17 November 2008**

The Auditor-General has decided to inquire into how the Plumbers, Gasfitters, and Drainlayers Board (the Board) has carried out its registration and licensing functions, and other related activities. This document sets out the terms of reference for this inquiry.

#### Background

A range of concerns have been raised with the Auditor-General, with Ministers, and with Parliament in recent years about the way in which the Board carries out its functions. The Auditor-General has been asked to review specific aspects of the Board's activities several times since 2000, resulting in advice at different times to the Board, Ministers, and the Regulations Review Committee of Parliament.

In 2006 the Minister for Tertiary Education commissioned an independent review into relationships in the industry with a particular focus on training and entry qualifications, which resulted in a number of recommendations for change. In September 2008, the Minister of Building and Construction asked the Auditor-General to investigate concerns that have been raised with him about how the Board has carried out its registration and licensing functions.

The Auditor-General has made preliminary enquiries into these matters and has decided that an inquiry is warranted, to provide assurance to Parliament and to the public about the way the Board is operating and to assess progress with implementation of changes.

#### The inquiry

The inquiry will examine the extent to which the Board has appropriate policies, procedures, and practices in place for:

- setting examinations for people wishing to become plumbers and gasfitters;
- registering and licensing plumbers and gasfitters;
- assessing applicants from overseas who want to be registered; and
- the supervision of plumbers and gasfitters who are required to work under the direction of a craftsman plumber or gasfitter.

The inquiry will also consider any other matters that the Auditor-General considers it desirable to report on.

The Auditor-General will decide on the appropriate manner in which to report the findings once the inquiry has been completed.

### **Our mandate**

The Board is a public entity and so falls within the Auditor-General's statutory mandate.

The inquiry will be conducted under sections 16(1) and 18(1) of the Public Audit Act 2001:

#### **Section 16 – Performance audit**

- (1) *The Auditor-General may at any time examine–*
- (a) *the extent to which a public entity is carrying out its activities effectively and efficiently;*
  - (b) *a public entity's compliance with its statutory obligations;*
  - (c) *any act or omission of a public entity, in order to determine whether waste has resulted or may have resulted or may result;*
  - (d) *any act or omission showing or appearing to show a lack of probity or financial prudence by a public entity or 1 or more of its members, office holders, and employees.*

#### **Section 18 – Inquiries by Auditor-General**

- (1) *The Auditor-General may inquire, either on request or on the Auditor-General's own initiative, into any matter concerning a public entity's use of its resources.*



# Publications by the Auditor-General

Other publications issued by the Auditor-General recently have been:

- Inland Revenue Department: Managing child support debt
- Inquiry into New Zealand Defence Force payments to officers seconded to the United Nations
- The Civil Aviation Authority's progress with improving certification and surveillance
- Annual Plan 2010/11
- Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: Second monitoring report
- Local government: Examples of better practice in setting local authorities' performance measures
- Local government: Results of the 2008/09 audits
- Statement of Intent 2010–13
- Performance audits from 2008: Follow-up report
- Effectiveness of arrangements for co-ordinating civilian maritime patrols
- Auditor-General's inquiry into certain types of expenditure in Vote Ministerial Services – Part 1
- Local authorities: Planning to meet the forecast demand for drinking water
- Central government: Results of the 2008/09 audits
- Auckland City Council: Management of footpaths contracts
- Investigation into conflicts of interest of four councillors at Environment Canterbury
- Effectiveness of arrangements to check the standard of services provided by rest homes
- Ministry of Justice: Supporting the management of court workloads

## Website

All these reports are available in HTML and PDF format on our website – [www.oag.govt.nz](http://www.oag.govt.nz). Most of them can also be obtained in hard copy on request – [reports@oag.govt.nz](mailto:reports@oag.govt.nz).

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