

## **Occupational Licensing Reform**

Purpose: This paper proposes improvement to the Occupational Licensing structure which will reduce cost, improve the quality of workmanship, enable greater nimbleness in dealing with changing work practices and improve the ability to deal with complaints. The proposal seeks to extend learnings from the activities of the Plumbers, Gasfitters and Drainlayers Board and apply them to the operations of the Licensed Builders Practitioners Board and the Electrical Workers Registration Board.

### **1) Introduction**

In 2015 the Minister of Building and Construction announced an intention to review the Occupational Licensing structure within the building industry. This review has not yet progressed beyond the potential for a consultation paper being circulated by MBIE later this year, with reform unlikely until late 2018 or early 2019. With the licensing system forming such an integral part of industry quality control and workmanship, it is essential that the industry and practitioners with experience and knowledge of the current system play a substantial consultative role in shaping a reformed structure; one that in their view can better contribute to advancing surety of quality performance up to the highest standards expected by users of their services and expertise.

In our view the prime issue to be addressed is whether the structure can be improved in a manner which will contribute to a lift in industry standards of workmanship. If this can be achieved, what are current deficiencies for which remedies need to be found?

In an attempt to answer these questions and propose a model for reform which would better meet the needs and demands of consumers, government and the industry, CSG, has canvassed the views of those with a knowledge of the system. These indicate that a more nimble structure is required, to provide more flexibility to quickly adjust to trends and complexities perceived by licensing entities. These include requirements asked of license holders and the relationship of their skill sets to ever changing industry needs; enforcement of requirements both in relation to license holders and observance by build entities that work can only be carried out by a license holder; and educational needs of consumers regarding use of qualified tradespeople and of license holders themselves. Tardiness in response is commonly attributed to rigidities or budgetary constraints in the administration or regulatory systems that are outside the regulating body's ability to control

CSG has therefore focused on developing a model that gives more controlling administrative capability to licensing bodies, while recognizing that the Crown has an unquestioned interest on the public's behalf in ensuring quality governance of the system, financial viability and administration that is free of corruption. We also seek a structure that provides for improved interaction between the licensing authorities and those who use the services of licensees –

industry participants and consumers - so that an increase in potential responsiveness is matched by an incoming information flow for assessment.

Our focus has been on the activities of licensing bodies dealing with building and construction trades, rather than entities with responsibilities for professional groups within the industry, such as Architects, Designers and Engineers. We see no reason, however, why the responsibilities they discharge could not be fitted into the overall structure proposed for consideration.

## **2) Proposed model/structure**

The proposed model envisages a new Crown entity, The Building and Construction Trades Regulation Board (the regulator), with responsibilities as follows:

- Establishment of common procedures for each of the three trade licensing boards (Plumbers, Gasfitters and Drainlayers Board; Licensed Builders Practitioners Board; Electrical Workers Registration Board). These procedures would cover competency assessment, registration and licensing, appeals, skills maintenance, complaints and discipline and enforcement of regulated activities.
- Provision of administration and defined common specialist (eg communications, educational) services as required by the specialist Boards.
- Monitor trade board operating practices to ensure adherence to good practice governance and competency guidelines and ensure strategic alignment across construction trades

The Minister of Building and Construction would appoint the specialist Boards (LBP, EWRB and PLGD) with appropriate skill sets in each of the licensing sectors to whom a registrar with administrative responsibility would report. These Boards would be responsible for disciplinary, registration and licensing matters, have their own investigation and support teams, issue infringement notices and report on their activities at set intervals to the overarching Board.

Membership of The Building and Construction Trades Regulation Board would comprise the Chairs of the three trade licensing entities; four representatives appointed by the Minister of Building and Construction;

This is not a new concept. In the 2013 annual report of the Building Practitioners Board, the Chairman, Alan Bickers, JP, stated:

*“In my view there would also be considerable benefits from amalgamating the functions of the occupational licensing boards within the building and construction sector, namely Building Practitioners, Plumbers Gasfitters and Drainlayers and Electrical Workers into a single licensing board operating as a Crown Entity. This would ensure common procedures for competency assessment, registration and licensing, appeals, skills maintenance, complaints and discipline and enforcement of regulated (restricted) activity.”<sup>1</sup>*

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<sup>1</sup> Annual Report of Licensed Building Practitioners 2013

### **3) The need for change**

Successful regulators are those who are responsive, nimble and able to adapt their compliance strategies to match the behaviour, attitudes and characteristics of regulated parties. Such an approach requires a skilled workforce and a high level of engagement and interaction between the regulator and those being regulated.

Industry's view is that the current model is flawed, with only one of the trades' regulators holding the stand-alone ability to rapidly adapt its practices to changes taking place within the workplace. The EWRB and LBP are administered within a Government Ministry (the Ministry of Business, Innovation and Employment) while the PGDB is administered by an autonomous organisation. The latter is able to build direct and close relationships with the trade practitioners it regulates, and adopt fresh approaches when subsequent feedback suggests better compliance can be achieved through new education initiatives, information provision and stronger enforcement.

By way of comparison, in the case of the other two regulatory entities, the necessary administrative requirements for changes in approach must proceed through departmental procedures. These have associated budgetary, justification and policy considerations that act as a brake on early implementation. They represent a barrier to the degree of nimbleness required by a regulator in dealing with trades in which the one constant is change – of techniques, of materials and workplace.

The contrast is demonstrated in enforcement. MBIE, as the provider of administrative services to the LBP Board and the EWRB Board, provides investigation services. These are for the most part desk bound and do not engage with the industries they regulate on an ongoing basis. The PGDB currently operates a model where investigators are out in the field moving about the industry. As a consequence there is a high level of engagement with the regulated practitioners. Relationships are formed that allow high quality intelligence to be gathered, from which a need for changes in enforcement methods, professional development, education and information provision can be identified and responded to. Such a level of engagement cannot currently be matched by the LBP and the EWRP Boards.

Further evidence of difference in approach between the autonomous regulator and those under MBIE administrations emerges in the employment by the PGDB of qualified tradesmen, who have the twin responsibilities of enforcement and facilitation of compliance through education and assistance to practitioners. They become the workplace face of the regulator. Their presence engenders an understanding among practitioners of the positive role of the regulator.

Other examples of differences in approach that the stand-alone autonomous regulator is able to adopt in contrast to the other two Boards are apparent.

There is no suggestion that either the LBP or the EWRB regulator models are not working. Nor should this be taken as a criticism of the people who serve on those Boards or the staff who work for them. Rather, the contrasts suggest that the standalone regulatory model can be more effective in raising standards within building trades than those which are administratively tied to public sector procedures.

#### 4) Cost

The current combined income of PGDB, EWRB and LBP is \$12m with their annual expenditure accounting for almost all that income each year. In the case of the LBP and EWRB regulatory models administration costs accounted for within this expenditure are allocated to MBIE.

Financial analysis carried out within the industry suggests that savings in excess of \$2 million could be achieved through the sharing of administrative tasks under the standalone model proposed. We believe this, when coupled to the potential for enhanced effectiveness of the model proposed, is sufficiently compelling to warrant close attention by Ministers. The savings could well be applied to fresh educational and enforcement programmes of value to enhancing workmanship standards and quality.

#### 5) Factors considered

##### Best practice regulatory design.

International best practice has identified three features that are crucial to the success of any regulatory model:

- Regulatory Practice;
- Regulator Culture; and
- Leadership and Regulator Workforce Capability. <sup>2</sup>

##### Regulatory Practice

*“Many factors are important for ensuring the effectiveness of regulation, none more so than the practices of the agency charged with implementing the regulatory regime. The regulator is at the “sharp end” when it comes to delivering on the objective that Parliament intended.”<sup>3</sup>*

*“There is no single, superior regulatory strategy. The key lies in understanding and adapting regulatory strategies to take account of the influences and dynamics of the many different contexts in which they are deployed”<sup>4</sup>*

##### Workforce capability

Workforce capability also plays a key part in Regulator success:

*“the increasing sophistication of regulatory regimes requires an increasingly professional regulatory workforce”.<sup>5</sup>*

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<sup>2</sup> These are summarised in “Regulatory Institutions and Practices” NZ Productivity Commission, June 2014.

<sup>3</sup> “Regulatory Institutions and Practices” NZ Productivity Commission, June 2014, page 55

<sup>4</sup> “Regulatory Institutions and Practices” NZ Productivity Commission, June 2014, finding F3.7, page 73

While all regulators require a common set of capabilities, common functions will be implemented in different ways by different regulators:

*“Specialist knowledge of the subject matter is often required to perform core functions in a manner that is appropriate to the regulatory task at hand.”<sup>6</sup>*

*“...each area of regulation is different, requiring tailored application in each unique regulatory environment.”<sup>7</sup>*

People who understand the subject matter they are regulating are crucial:

*“Regulatory agencies also need people who understand or have a background and experience in the area they are regulating. Deep sector knowledge can be very important for the credibility of the regulator and for the acceptance and legitimacy of the regulatory regime by the regulated parties.”<sup>8</sup>*

## **6) Conclusion**

We submit that the proposed model would facilitate the development of deeper sector knowledge which would increase the credibility of the regulator in the construction trade sector. In particular, we would suggest that the success of the standalone model as exists in the case of the PGDB indicates such a change along the lines suggested would open the door to more assured quality of workmanship within the building industry as a whole. It would, in our view, meet the broad requirements as set out by the Productivity Commission and be in line with international best practice.

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<sup>5</sup> Regulatory Institutions and Practices” NZ Productivity Commission, June 2014, page 111

<sup>6</sup> Regulatory Institutions and Practices” NZ Productivity Commission, June 2014, page 114

<sup>7</sup> Regulatory Institutions and Practices” NZ Productivity Commission, June 2014, page 117

<sup>8</sup> Regulatory Institutions and Practices” NZ Productivity Commission, June 2014, page 117