



Fair
Trading

Statutory Review of the Plumbing and Drainage Act 2011

Wednesday 12 November 2014

NSW Fair Trading
Office of **Finance & Services**, NSW Treasury



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Executive Summary

In June 2009, the Better Regulation Office and NSW Office of Water published the report *Reforming arrangements for regulating plumbing and drainage in NSW*. The report found the current system is complex, fragmented and inflexible. The report recommended a number of reforms, including establishing NSW Fair Trading as the single plumbing regulator in NSW, and the adoption of the Plumbing Code of Australia as the technical standard for on-site plumbing and drainage work in NSW.

In November 2011, the NSW Parliament passed the *Plumbing and Drainage Act 2011* (the Act), which gave effect to the Better Regulation Office's recommendations. The Act established a single scheme of regulation of on-site plumbing and drainage work in New South Wales.

The Act has had a relatively short period of operation having commenced on 1 July 2012.

The principal objective of reform was to simplify a complex and fragmented system that was confusing and costly to industry. This review finds that this 'simplification' goal has been achieved.

Like all reforms, however, it is anticipated that improvements to the regulatory framework for plumbing and draining work in NSW will continue to be realised. This will be accomplished because the framework is sound, industry is engaged and administrative enhancements are evolving.

The two recommendations arising from this review concern the continuation of industry engagement and consultation, which will maximise the opportunities the regulatory framework has put in place.



Background to Review

Requirement for Review

The Act requires the Minister review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The review is to be undertaken in the twelve months following the two year anniversary of the date of assent to the Act. A report of the outcome of the review is to be tabled in each House of Parliament within the twelve month period. The Act was assented to on 16 November 2011.

The Act commenced on 1 July 2012.

Plumbing reforms in NSW

In June 2009, the Better Regulation Office and NSW Office of Water published the report *Reforming arrangements for regulating plumbing and drainage in NSW*. The report found the current system is complex, fragmented and inflexible. The report recommended a number of reforms, including establishing NSW Fair Trading as the single plumbing regulator in NSW, and the adoption of the Plumbing Code of Australia as the technical standard for on-site plumbing and drainage work in NSW.

In November 2011, the NSW Parliament passed the Act, which gave effect to the Better Regulation Office's recommendations.

The new legislative framework commenced in two phases. From 1 July 2012, all requirements of the Act commenced in full in the Sydney Water Corporation and Hunter Water Corporation operational areas. Part 2, Division 1 of the Act also commenced across NSW, requiring plumbing and drainage work:

- to be carried out only by authorised persons;
- to comply with the Plumbing Code of Australia; and
- to use only authorised (WaterMark) fittings.

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From 1 January 2013, the other requirements of the Act commenced in the remainder of NSW and the plumbing regulator, the Commissioner for Fair Trading, delegated regulatory powers to local or county councils, where appropriate.



Policy objectives of the Act

Objectives

The Act does not contain specific objectives. The objectives, however, are outlined in the second reading speech introducing the Act into Parliament on 13 October 2011. In this speech, the then Minister stated the Act would establish a new regulatory framework with a single regulator and a single set of nationally consistent technical standards.

The intent of the policy was to simplify a complex and fragmented system that was confusing and costly to industry.

- **A single regulator**

The Act established the Commissioner for Fair Trading as the plumbing regulator. The plumbing regulator is responsible for implementation and administration of the Act for plumbing and drainage.

The Act contains the functions of the regulator, including a power to delegate functions.

- **A single set of technical standards for NSW plumbing and drainage work**

The Act specifies the Plumbing Code of Australia as the technical standard in NSW for plumbing and drainage work which is defined in the Act. This enabled NSW to adopt the National Construction Code comprising both the Plumbing Code and the Building Code of Australia.

The Act (and in turn the Regulation made under the Act) sets out administrative requirements for the pre-notification, inspection and certification of on-site plumbing and drainage works. The procedures were based on the previous practices of local councils and the major water utilities prior to the commencement of the Act.



Consultation about the Act

The Act was the product of extensive consultation with industry and other stakeholders.

The consultation commenced in 2008 under the stewardship of the Better Regulation Office. In 2009, it released a final report which called for the establishment of a single agency to take on the functions of standard-setting, on-site regulation and licensing for plumbing and drainage work in NSW.

Following further consultation with key stakeholders on how best to implement the recommendations, the then NSW Government introduced a Bill late in the Spring Session of Parliament in 2010. The Bill was not finalised before Parliament was prorogued in early 2011. This provided another further period of time for consultation and revising the Bill.

The final bill was passed on 9 November 2011, following the change of Government in March 2011.

During the Parliamentary process, the then Minister for Fair Trading agreed to establish a Ministerial Advisory Council to provide advice on the issues surrounding the regulation of plumbing in NSW. The Council operated from 2012 to 2013 and a summary of its deliberations is attached at Appendix A.

Prior to April 2012, there was extensive consultation for the development of the supporting Plumbing and Drainage Regulation. The Regulation mainly provides for the requirements for the notification of work, the provision of compliance certificates and plans to the plumbing regulator, and the setting of fees for works inspections.

As the Act has been in operation for over two years, there should be further consultation about whether these Regulation provisions are practical and can be improved. While the Review concludes that the Act is operating well as an overall framework, it would be worthwhile to also conduct a review of the more detailed provisions of the Regulation.



Recommendation 1

It is recommended the Commissioner for Fair Trading engage with industry to establish what, if any, amendments are required to the Plumbing and Drainage Regulation 2012 to improve its effectiveness.



Review

In order to identify if the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives, the following observations about the Act's implementation and operation are made.

Centralised standards and enforcement

- The plumbing regulator is the Commissioner for Fair Trading, replacing more than 100 separate entities that were charged with each setting and enforcing standards.
- The functions of the regulator are to monitor compliance with the Act and ensure that any plumbing and drainage work carried out does not threaten public health and safety. The regulator has a power to give directions as to the fittings that may be used or not used in plumbing and draining work.
- As noted above, the Plumbing Code of Australia has been promulgated as the State-wide technical standard.

Delegations

- The functions of the plumbing regulator are able to be delegated.
- Delegations of certain functions of the plumbing regulator have been made to local and county councils which relate to compliance and enforcement of on-site plumbing and drainage work requirements in the respective councils' areas of operation.
- The inspection of on-site plumbing and drainage work in the areas of operation of the Sydney Water Corporation and the Hunter Water Corporation are undertaken by NSW Fair Trading.
- There has been no delegation by the Commissioner of the powers to authorise fittings used for plumbing and draining work, or to authorise an alternative solution to a Plumbing Code of Australia requirement.



Administrative reforms

- To assist industry and regulators to identify the local authority responsible for plumbing and drainage regulation administration, Fair Trading developed and maintains a guide to local plumbing regulators in NSW.
- Fair Trading has also developed a standard format for essential compliance documentation – the Notice of Work, Certificate of Compliance and Sewer Service Diagrams. These forms have been developed in fillable PDFs formats and made freely available for use State-wide from the Fair Trading website.
- A web-based forum for regulators has been established to support knowledge-sharing and ensure there is a consistent and authoritative understanding of technical information, and the appropriate regulatory response.
- Fair Trading has produced a small number of technical notes for the plumbing industry that provide information on technical solutions, installation requirements and code interpretations. It is intended to continue to produce such notes, as required, to support consistent up-to-date application of technical standards.
- An authoritative training resource for authorised officials carrying out plumbing and draining work inspection services is being developed by Fair Trading, with targeted consultation with plumbing industry associations and registered training organisations.
- Fair Trading has developed and implemented an on-line gateway for inspections and compliance in its own areas of operation. The 'MyInspections' portal allows industry to pay inspection fees and lodge compliance paperwork on-line 24/7, rather than having to use previous shop-front services.



Findings

Streamlined system for plumbing and drainage work

The establishment of the single NSW plumbing and drainage regulator under a single technical standard has produced benefits and efficiencies.

- Public health continues to be ensured through a robust system for controlling who undertakes and in what manner plumbing and drainage work is carried out. There has been no diminution in the reliability of plumbing and draining regulatory activities as the status quo has been maintained in the transition.
- The system for authorising fittings used for plumbing and drainage work continues to be sound as the power to authorise those fittings has not been delegated, and has continued to be exercised in same manner as prior to the commencement of the Act.
- The specification of a single nationally consistent technical standard for plumbing and draining work, the Plumbing Code of Australia, has been achieved. As an additional benefit, the Code will be made freely available on-line from 1 July 2015 as a result of an intergovernmental agreement. This will save a minimum of \$400 per business annually when the purchase price is removed.
- For plumbing and draining work in the Sydney Water Corporation and Hunter Water Corporation areas of plumbing and drainage, improved administrative systems and the use and introduction of on-line services is increasing productivity.

Feedback mechanisms for users

This Act (and Regulation) is still in the early stages of implementation. In order to support continued operational improvement, opportunities and a mechanism need to be provided for industry to provide feedback and have input about service enhancements.

It is noted that a 'Plumbing Industry Roundtable' is being established by Fair Trading to facilitate consultation between the agency and plumbing stakeholders related to the regulation of plumbing under the Act and the Regulation.



Recommendation 2

It is recommended the Commissioner for Fair Trading proceed with plans to establish a roundtable, or other consultation mechanism, to facilitate consultation between stakeholders *inter alia* about the operation of the Act.

Are the policy objectives of the Act still valid?

Yes. This review has demonstrated the value of the policy to have a single regulator in NSW for plumbing and draining work, as well as having a single technical standard for NSW plumbing and drainage work.

Are the terms of the Act appropriate for securing the policy objectives?

Yes. The terms of the Act has proved to be appropriate for securing the policy objectives. This outcome could be attributed to the lengthy gestation of the Act and the extensive consultation which was undertaken prior to the commencement of the legislation.



Recommendations

Recommendation 1

It is recommended that the Commissioner for Fair Trading engage with industry to establish what, if any, amendments are required to the Plumbing and Drainage Regulation 2012 to improve its effectiveness.

Recommendation 2

It is recommended the Commissioner for Fair Trading proceed with plans to establish a roundtable, or other consultation mechanism, to facilitate consultation between stakeholders *inter alia* about the operation of the Act.



Appendix A

NSW PLUMBING ADVISORY COUNCIL

Final Report

October 2013

Introduction

The Plumbing Advisory Council is a consultative reference group which was established to provide the Minister for Fair Trading with advice about issues relating to the implementation of the *Plumbing and Drainage Act 2011* (the Act) and other matters related to the regulation of the NSW plumbing industry.

Functions of the Council

The Council is established as an ad hoc advisory council to:

1. advise the Minister on issues relating to the implementation of the Plumbing and Drainage Act referred to it by the Minister, including:
 - i assessing current qualification requirements for Inspectors under the Act;
 - ii reviewing the regulatory treatment of non-mains connected industrial and commercial plumbing installations;
2. provide a forum for the development of a consolidated NSW industry position on the National Occupational Licensing Scheme consultation documents; and
3. provide advice to the Minister with respect to any other matter referred to it by the Minister.

Out of scope issues

The Council is not to investigate issues that are of a technical nature covered by the Plumbing Code of Australia or relevant standard, or that are solely a business operation matter of NSW Fair Trading.



Membership

The Council consists of 10 representatives from a broad range of key industry organisations and regulatory stakeholders, in addition to a number of delegates of the Commissioner for Fair Trading. A list of members is attached to this report.

The term of appointment of all members commenced on 1 February 2012 and expires two years after the commencement of the Plumbing and Drainage Act, ie on 9 November 2013. In light of this, it is considered timely to report to the Minister on the Committee's conclusions in respect of its deliberations and make recommendations on its future.

Meetings

A total of eight meetings were conducted between 20 March 2012 and 29 October 2013.

In addition, a sub-committee was established to examine the issue of the qualifications held by plumbing inspectors employed by local councils acting as the plumbing and drainage regulator within their area of responsibility (ie all areas of the State except for the Sydney/Illawarra/Blue Mountains and Hunter regions). This sub-committee met twice, on 29 June 2012 and 30 October 2012.

Chair's comments:

The Chair acknowledges the broad amount of discussion that took place was pleasing and noted there was consensus support in general terms for a national licensing system for plumbers. The terms of reference was strictly adhered to in that matters of a technical nature covered by the Plumbing Code of Australia or solely related to business operations of NSW Fair Trading were disallowed from discussion.

Issues dealt with:

Issue 1: Assessing current qualification requirements for Inspectors under the Act

The Inspector Qualifications Sub-Committee examined the issue of the qualifications held by plumbing inspectors employed by local councils acting as the plumbing and



drainage regulator within their area of responsibility (ie all areas of the State except for the Sydney/Illawarra/Blue Mountains and Hunter regions). A major concern was the inconsistent application of the technical standard (the Plumbing Code of Australia).

Under the Act, inspectors are required to have the 'skills, knowledge or experience to carry out plumbing inspections'.

The Sub-Committee noted that the qualifications held by, and experience of, these inspectors varies from one local area to another, and that this role is often undertaken by the same person who undertakes a range building inspection and related functions. It was also noted that any consideration of requiring specialist plumbing qualifications for inspectors of plumbing work had the potential to increase the numbers of inspectors and inspections of work required, and would need to be balanced against the principle of the reforms to reduce red tape and regulatory burden.

A key objective of the plumbing reforms was to attain greater consistency in the application of the technical standard across NSW. To this end, the Plumbing Code of Australia has removed local, council-based variations that applied under the former technical standard established under the NSW Code of Practice for Plumbing and Drainage.

To clearly identify concerns and challenges, the Master Plumbers Association (MPA) gathered case studies from members on issues involving local council plumbing inspectors. Separately, Fair Trading surveyed local Councils regarding the training, qualifications and experience of the plumbing inspectors they employ and/or engage. Overall, the MPA report and survey identified a range of qualifications being held by inspectors, with the majority of inspectors with responsibility for plumbing inspection functions being council health and building or environmental inspectors, and 38 per cent reported to hold specific plumbing qualifications. The report and survey also highlighted a generally high rate of inspection of plumbing work and found that a significant percentage of plumbers (82 per cent) reported working across local or State boundaries. There was strong support from respondents to the MPA survey for requiring plumbing inspectors to hold plumbing specific qualifications.

Responses to Fair Trading indicate that approximately two-thirds of council inspectors are reported to be qualified Health and Building or Environmental Inspectors while approximately one-third are qualified/licensed plumbers. Councils in larger towns and regional centres tend to employ or engage plumbers as the volume and diversity of



plumbing work in their area makes it viable. In smaller areas, the inspectors are usually employed to undertake a wider range of regulatory and inspection functions under a range of council powers. Two-thirds of councils also reported sending their Plumbing Inspection staff to a plumbing specific short course.

Fair Trading made enquiries into the learning and development opportunities currently available for plumbing inspectors. It was ascertained that there is no training course or package available under the Australian Qualifications Framework in plumbing inspection. However, some units of competency in plumbing and drainage qualifications are relevant to the performance of an inspection function.

Fair Trading presented to the Council a training package developed and delivered by Mr Allan Rodgers (the material is the work and intellectual property of Mr Rodgers). Mr Rodgers has provided the material to Fair Trading to use as a basis for a training package. The material with some modernising and reformatting will provide the basis of an authoritative training package to be developed by Fair Trading's Plumbing Inspection and Assurance Service. The developmental work will be the subject of consultation and critical review by relevant stakeholders to ensure it meets industry needs and requirements. It was agreed that the inspection technique training is not proposed to provide a full plumbing qualification and will not be mandatory.

The training package is to be made available to registered training organisations that deliver National Qualifications Framework Plumbing training to provide the inspection techniques training.

Recommendation: That the Minister request NSW Fair Trading finalise the plumbing inspection package, in consultation with industry stakeholders, and make it available to registered training organisations.

Issue 2: Reviewing the regulatory treatment of non-mains connected industrial and commercial plumbing installations

There was less discussion on this matter. This issue was originally included in the Council's Terms of Reference because there was an initial view that it may be a significant issue in the transition to the new arrangements, particularly in rural environments. However, no such transition issues were identified and no concerns were raised with, or by, Council members.



Issue 3: Provide a forum for the development of a consolidated NSW industry position on the National Occupational Licensing Scheme (NOLS) consultation documents

The Council of Australian Governments (COAG) agreed to introduce the National Occupational Licensing Scheme in 2008 and the National Licensing Steering Committee has been working on the proposals since that time.

In June 2013, Decision Regulatory Impact Statements (DRIS) were finalised for the first wave of occupations: property services, electrical, refrigeration and air conditioning and plumbing and gas fitting. Previously in April 2013, COAG agreed that jurisdictions could undertake State-based consultation on the four DRISs. Fair Trading published them on its website for four weeks and is analysing the responses received.

At every meeting of the Council, there were discussions on the NOLS. While there is broad consensus in support of the aims of NOLS, concerns were raised about the consultative process that led to reform options being developed and recommended and the timeliness of reforms. The Council noted that New South Wales is still considering its position on the proposals, which are due to be finalised by the Standing Council on Federal Financial Relations (ie Treasurers and Finance Ministers) in November 2013.

The Council also acknowledged that most States and Territories tend to favour their own licensing model as the benchmark for reforms and would prefer it to be the basis of any new national model. It is Council's request that the Minister aim to ensure that greater harmonisation and reduced red tape and costs for industry and the community, to be achieved through the NOLS, is realised while maintaining standards of industry qualifications, skills and conduct.

Recommendation: That the Minister be advised of Council's request that the greater harmonisation and reduced red tape and costs for industry and the community, to be achieved through the NOLS, is realised while maintaining standards of industry qualifications, skills and conduct.

Issue 4: Provide advice to the Minister with respect to any other matter referred to it by the Minister.

In February 2013, the matter of issuing formal instruments of delegation to local councils was brought to the Council's attention. The Act established a single scheme of



regulation of on-site plumbing and drainage work in NSW and, from 1 January 2013, Fair Trading became the single regulator across NSW. However, it was always intended that Fair Trading would delegate certain functions back to local and county councils, in order that those councils could continue the important regulatory role of on-site plumbing and drainage works in their local areas.

Section 21 of the Act allows the plumbing regulator, Fair Trading, to delegate any of the plumbing regulator's functions to a council, or any other person the regulator considers has the necessary skills, knowledge or experience to exercise the function.

Councils previously had the power and responsibility for undertaking this activity (in areas not regulated by Sydney Water Corporation or the Hunter Water Corporation) and the power to set fees and charges for undertaking the activity.

Acceptance of the delegation is required to enable a council to continue to have the power to undertake activities in the regulation of on-site plumbing and drainage work for plumbing and drainage work that is not connected to the services or assets of the Sydney Water Corporation or the Hunter Water Corporation. It should be noted that it remains the discretion of council to determine what work is required to be inspected and what regime of inspections is implemented.

The Council noted that 110 of 138 councils across NSW have accepted the delegation and a response is awaited from further 22 councils. Six councils have formally declined to accept the delegation and they are: Blue Mountains, Penrith, Fairfield, Warringah, The Hills and Newcastle. Fair Trading reports that there is diversity amongst the councils on the fringe of the Sydney metropolitan area as to whether they conducted these types of inspections previously. Fair Trading hosted a roundtable meeting of fringe councils on 14 July 2013. It has been explained that Fair Trading is undertaking inspections previously conducted by Sydney Water and Hunter Water, which only covers plumbing and drainage that connects to those entities' assets and services. In localities on the fringe of those areas, where communities have services that are not connected to utility services, inspections are currently, and were previously, undertaken by councils. Fair Trading does not have the resources and has not assumed responsibility for inspecting services in those areas.

It has been pointed out that if councils are still performing these inspections and have not accepted the instrument of delegation, they no longer have the legislative authority to perform these functions.



Fair Trading is continuing to work in assisting councils to understand the repercussions of declining to accept the instrument of delegation and has brought the issue to the attention of the Minister for Fair Trading.

Recommendation: That the Minister be advised that the Council supports NSW Fair Trading in its endeavours to finalise the instruments of delegation to councils.

CONCLUSION:

Notwithstanding that the Council has now completed its work in relation to the implementation of the plumbing reforms, a proportion of the membership is supportive of there being an ongoing forum for communication and discussion between industry stakeholders and Fair Trading on major plumbing technical and operational issues, and which can also provide advice to the Minister on these issues for consideration if required. The Chair is supportive of this recommendation.

Recommendation: That the Minister consider endorsing Fair Trading convening a forum for communication and discussion between industry stakeholders and Fair Trading on major plumbing technical and operational issues, which can also provide advice to the Minister on these issues for consideration if required.

SUMMARY OF RECOMMENDATIONS

Recommendation 1: That the Minister request NSW Fair Trading to finalise the plumbing inspection package, in consultation with industry stakeholders, and make it available to registered training organisations.

Recommendation 2: That the Minister be advised of Council's request that the greater harmonisation and reduced red tape and costs for industry and the community, to be achieved through the NOLS, is realised while maintaining standards of industry qualifications, skills and conduct.

Recommendation 3: That the Minister be advised that the Council supports NSW Fair Trading in its endeavours to finalise the instruments of delegation to councils.

Recommendation 4: That the Minister consider endorsing Fair Trading convening an forum for communication and discussion between industry stakeholders and Fair



Trading on major plumbing technical and operational issues, which can also provide advice to the Minister on these issues for consideration if required.

Plumbing Advisory Council Membership

- Nominee of the Minister for Fair Trading – Mr David Elliott MP (Chair);
- Commissioner for Fair Trading (or nominee) Mr John Tansey; and
- Ms Nancy Gangi, NSW Fair Trading

Representatives from the following bodies/groups:

- Sydney Water Corporation – Mr Craig Crawley;
- Hunter Water Corporation – Mr Victor Prasad;
- Master Plumbers Association – Mr Paul Naylor;
- Master Builders Association – Mr Brad Garrad;
- Housing Industry Association - Ms Melissa Adler;
- Sydney cottage plumbing industry – Mr Damian Moon;
- Association of Hydraulic Services Consultants Australia – Mr David Wood;
- Metal Roofing and Cladding Association of Australia – Mr Raymond Jones;
- Local Government NSW – Mr Sascha Moege; and
- NSW Farmers Association – Mr Derek Schoen.



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