

**Thirty-fourth Meeting of  
the Business Facilitation Advisory Committee**

***Agenda Item 2: Business Impact Assessment on  
Amendment of Section 15 of  
Waterworks Ordinance (Cap. 102)***

**Purpose**

This paper briefs the members that the Water Supplies Department (“WSD”) has conducted a Business Impact Assessment (“BIA”) study and will suitably incorporate the study findings and recommendations in the proposed amendment of section 15 of Waterworks Ordinance (Cap. 102) (“WWO”).

**Background**

2. The provision of water supply and regulation of plumbing works in Hong Kong is governed by the WWO, and the Water Authority (“WA”) is empowered to administer and enforce the legislation. Currently, we are conducting a holistic review of the WWO to cater for the latest development of the plumbing trade.

3. The Commission of Inquiry into Excess Lead Found in Drinking Water (“COI”) was appointed to investigate the incident of excess lead found in drinking water in public rental housing estates. In its report of May 2016, the COI recommended, among others, that the WA should define the duties of LP under the WWO, taking into account the relevant provisions of the Construction Workers Registration Ordinance (Cap. 583), which allows workers registered thereunder to perform plumbing installations. Moreover, the current language of section 15(1) of the WWO does not

reflect the policy intent and the industry practice to allow workers other than a licensed plumber (“LP”) to perform plumbing installations.

4. After careful study and review, we consider it prudent to prioritize legislative amendment to the WWO to take forward the recommendations of the COI, as an interim measure before completion of the holistic review. In brief, the proposed amendment aims at including plumbing workers other than LPs and public officers to carry out the plumbing works, requiring an LP to apply for permission to commence plumbing works and his obligation to ensure works comply with the prescribed requirements, and addressing related issues.

5. To assess the impact of the proposed amendment, we commissioned a BIA study in September 2016 to identify the potential impacts on the affected trades and advise on the possible mitigation measures to alleviate their compliance burden.

### **The BIA Study**

6. The key objectives of the BIA study are to:

- (a) assess the business environment associated with the plumbing works, and identify the major business stakeholder groups and segments that may be impacted by the proposed regulatory amendment;
- (b) collate and analyze the views and concerns of the stakeholders on the proposed regulatory amendment;
- (c) assess the potential business impacts to the stakeholders (in particular the small and medium-sized enterprises) with respect to business compliance difficulties and cost; and
- (d) recommend mitigation measures to help ease the compliance difficulties and cost of the stakeholders (if appropriate).

7. We conducted the BIA study through a consultant who collected views from the affected trades through a focus group discussion and face-to-face interviews with the relevant stakeholders. While most interviewed stakeholders considered the proposed regulatory amendment would benefit the industry, they also expressed a few concerns on the regulatory framework. Taking into account the recommendations of the consultant, we have taken / will take measures to alleviate the compliance concerns of the affected trades. For details, please refer to the Executive Summary at **Annex I**. In gist –

- (a) ***Criminal liabilities on persons who work under instruction and supervision***: It is noted that the stakeholders generally misunderstand that there is currently no criminal liability for workers who carried out the non-compliant works (except for LPs and public officers), including that for persons who work under instruction and supervision. They consider that this additional liability under the proposed amendment would deter those persons from joining the plumbing industry.

In fact, under the current WWO, the criminal liability attaches to any person who carried out the non-compliant works including those workers. To ease the concern, we have engaged with the industry, including workers' representatives, to explain the relevant penalty provision under the WWO and the policy intent of the proposed amendment. We also explained to them that the proposed amendment has additionally included a statutory defence provision to protect them from being prosecuted or convicted if they carried out the plumbing works following the instruction and supervision of their supervisors and did not willfully carry out the non-compliant works.

- (b) ***Difficulties in keeping record for a long period of time***: In the proposed regulatory amendment, prosecution under the WWO can be brought within six months from discovery of the offence by the WA, whereas currently, it must be commenced within six months from the time when the offence takes place. Some stakeholders concern whether there can be a definite time limit of criminal liability for contravention of the WWO, so that record keeping (e.g. instruction and supervision records, works and workers

records) to demonstrate compliance can be limited to a certain period of time. In fact, under the proposed amendment, record keeping is not a mandatory requirement and there should be no difficulties imposed on them. It is a business decision of individual stakeholders to keep records.

- (c) ***Definitions of key terms in the proposed regulatory amendment need to be further clarified:*** Some stakeholders are of the view that the terms “instruction and supervision” (which is related to how the supervisors can discharge their duties and their criminal liability for non-compliant works) and “non-domestic premises” (which is related to the limit of statutory power of the WA to enforce the WWO) in the proposed amendment are relatively vague concepts. We will review and clarify the meaning of the key statutory terms in the WWO. Besides, issue of guidelines regarding the arrangement of “instruction and supervision” is under consideration.
- (d) ***Plumbing contractor should assume ultimate liability:*** Some stakeholders commented that rather than imposing criminal liability on individuals, criminal liability should be imposed on the plumbing contractor who undertakes to carry out the plumbing works. We are considering the establishment of a Registered Plumbing Contractor system with appropriate sanctions in our holistic review of the WWO.

8. The BIA concluded that, with the concerns from the stakeholders duly addressed, all stakeholders should be able to comply with the requirements of the proposed regulatory amendment without significant compliance difficulties.

### **Way Forward and Advice Sought**

9. We have taken the findings and recommendations of the BIA study into consideration in finalizing the proposed regulatory amendment. We plan to introduce the Waterworks (Amendment) Bill into the Legislative Council in the second quarter of 2017. The amendment is tentatively

targeted to be come into force in the fourth quarter of 2017 to allow sufficient time for the new requirements to be duly publicized to ensure a smooth transition for implementation.

10. Members are invited to note the contents of this paper and offer comments.

**Water Supplies Department**  
**March 2017**

**1**

**INTRODUCTION**

The Water Supplies Department (WSD) has commissioned ERM-Hong Kong, Limited (hereafter referred to as “ERM” or “the Consultant”) to carry out a Business Impact Assessment (BIA) for the Amendment of Section 15 of the *Waterworks Ordinance* (Cap. 102) (WWO) (hereafter referred to as “the Study”) in order to assess the views and concerns of the stakeholders on the proposed regulatory amendment and advise on the possible mitigation measures to alleviate their compliance burden. This *Executive Summary* (ES) presents the key findings and recommendations of the Study.

**1.1**

**STUDY OBJECTIVES**

The objectives of the Study are to:

- (a) assess the business environment associated with the plumbing works, and identify the major business stakeholder groups and segments that may be impacted by the proposed regulatory amendment;
- (b) collate and analyse the views and concerns of the stakeholders on the proposed regulatory amendment;
- (c) assess the potential business impacts to the stakeholders (in particular the small and medium-sized enterprises (SME)) with respect to business compliance difficulties and cost; and
- (d) recommend mitigation measures to help ease the compliance difficulties and cost of the stakeholders, if appropriate.

This section describes the key provisions of the proposed regulatory amendment to the WWO and the associated *Waterworks Regulations* (Cap. 102A) (WWR).

## 2.1 ISSUES IN THE CURRENT PROVISIONS

The current section 15(1) of the WWO does not reflect the policy intent and the current industry practice. Furthermore, the Commission of Inquiry into Excess Lead found in Drinking Water (COI) <sup>(1)</sup> recommended in its report that the Water Authority (WA) should define the duties of licensed plumbers (LPs) under the WWO, taking into account the relevant provisions of the *Construction Workers Registration Ordinance* (Chapter 583) (CWRO), which allows workers registered thereunder <sup>(2)</sup> to perform plumbing installations.

WA has set forth on a holistic review of the WWO and the WWR to revamp the legislation to cater for the latest development of the plumbing trade, technologies and practices. It is proposed to prioritise amendments to address the above-mentioned issues through regulatory amendment to the WWO and WWR in regard to:

- (a) Personnel for carrying out the construction, installation, maintenance, alteration, repair or removal (hereafter referred to as “construction, etc.”) of fire services or inside services (hereafter referred to as “the Services”) under section 15(1) of the WWO;
- (b) Obligations of the LP who has sought the permission to commence plumbing works under section 14(1) of the WWO; and
- (c) Other related issues.

## 2.2 OBJECTIVE AND SCOPE OF COVERAGE

The objectives of the proposed regulatory amendment are to:

- align the language of the WWO with the policy intent and industry practice by allowing the “designated persons” <sup>(3)</sup> to carry out the construction, etc. of the Services; and
- clearly state the obligation of the LPs who sought a section 14(1) permission to monitor and administer the plumbing works in order to

(1) The COI was appointed by the Chief Executive in Council on 13 August 2015 to inquire into the incident of excess lead found in drinking water in Public Rental Housing estates.

(2) These workers include registered skilled workers or semi-skilled workers for relevant designated trade divisions and other registered construction workers working under their instruction and supervision.

(3) See *Section 2.3.1* for definition of designated persons.

ensure compliance with the prescribed requirements in the WWO and WWR.

## 2.3 THE PROPOSED REGULATORY AMENDMENT

### 2.3.1 Amendments <sup>(4)</sup>

- *Inclusion of persons other than LPs and public officers to carry out the plumbing works:* It is proposed to set out clearly in the WWO the qualifications of persons designated to carry out the plumbing works duly taking into account the relevant provisions of the CWRO. These include: (i) an LP; (ii) a registered skilled worker (RSW) or a registered semi-skilled worker (RSSW) in the relevant trades under the CWRO; (iii) an RSW (provisional) or RSSW (provisional) in the relevant trades under the CWRO; (iv) other persons who work under the instruction and supervision <sup>(5)</sup> of (i) or (ii); and (v) a public officer authorised by the WA (hereafter collectively referred to as the “designated persons”).
- *Statutory defence for “persons who work under the instruction and supervision” for non-compliant plumbing works:* For a junior worker who works under the instruction and supervision of an LP, RSW or RSSW in the relevant trades under the CWRO (hereafter referred to as “prescribed supervisor”), if he/she carries out the plumbing work in contravention of section 14(3) of the WWO, he/she commits an offence under section 14(4) of the WWO. In relying on the instruction and supervision of a prescribed supervisor to carry out plumbing works, there is a possibility that the junior worker may *bona fide* carry out the construction, etc. of the Services in contravention of section 14(3) due to wrongful instruction and supervision. It is therefore proposed to make available a statutory defence for the junior worker to prove that he/she has taken reasonable steps and exercised due diligence in carrying out the works <sup>(6)</sup>.
- *Prescribed supervisor’s obligation for non-compliant plumbing works:* A prescribed supervisor who takes on the role of a supervisor is also obliged to ensure the plumbing works being carried out are in accordance with section 14(3) of the WWO. If the junior worker who works under the instruction and supervision of a prescribed supervisor carries out the plumbing works in contravention of section 14(3) of the WWO, the prescribed supervisor also commits an offence. However, there may be occasions where the prescribed supervisor has duly discharged the duty of “instruction and supervision” but the works still fail to comply with section 14(3) due to reasons out of his control. It is therefore proposed to

(4) There have been minor changes to the proposed regulatory amendment after completion of the stakeholder consultation under this Study, as remarked in the following footnotes. Nonetheless, it is considered that the changes have insignificant impact on the findings and assessment thereof for the purpose of this Study.

(5) The definition of “instruction and supervision” will also be specified in the WWO.

(6) At the date of this ES submission, the proposed defence has been revised, such that it is a defence for a junior worker to show that they have no reasonable grounds to believe that the carrying out of the relevant works would contravene section 14(3).



impose the liability on the prescribed supervisor only if there is no reasonable excuse for the works to have been constructed or installed in contravention of section 14(3) of the WWO <sup>(7)</sup>.

- *Prohibition of persons other than designated persons from being deployed to carry out plumbing works:* Any person who employs, (causes) <sup>(8)</sup> or permits a person other than the designated persons to carry out the plumbing works commits an offence. A statutory defence is available for the person charged to prove that he/she believed, and it was reasonable for him/her to believe, that the requirement, i.e. the person he/she employed or permitted to carry out the construction, etc. of the Services was a designated person, was satisfied.
- *Requiring an LP to apply for section 14(1) permission and his obligation to ensure works comply with the requirements in section 14(3):* Application for section 14(1) permissions must be made by an LP and a statutory duty will be imposed on this LP to ensure the plumbing works covered by that section 14(1) permission comply with the requirements of section 14(3) of the WWO. It is proposed to impose liability only on the LP who, without reasonable excuse <sup>(9)</sup>, fails to ensure the construction, etc. of a Service comply with the requirements of section 14(3).
- *Ascertaining whether a person carrying out the plumbing works is a designated person:* It is proposed to empower the WA to enter any non-domestic premises, such as construction sites where plumbing works are being carried out, at any reasonable time and without the need to first obtain consent or a warrant for the purpose of ascertaining whether the persons carrying out the plumbing works are the designated persons.
- *Extension of time limit for enforcement actions:* It is proposed to state in the WWO that prosecution under the WWO or WWR can be brought within six months from discovery of the offence by the WA, whereas currently, it must be commenced within six months from the time when the offence takes place.

### 2.3.2 *Penalty Level of Offences*

The penalty levels of the offences in the proposed regulatory amendment are to be kept in line with those of the current offences under the WWO, i.e. a maximum fine at Level 4 which is currently set at HK\$ 25,000.

(7) At the date of this ES submission, the proposed defence has been revised, such that it is a defence for a prescribed supervisor to show that they have taken reasonable steps to ensure that section 14(3) is not contravened.

(8) At the date of this ES submission, the proposed addition of the term “cause” under section 15(3) has been abandoned.

(9) At the date of this ES submission, the proposed defence has been revised, such that it is a defence for LPs who sought section 14(1) permission to show that they have taken reasonable steps to ensure that section 14(3) is not contravened.

### 2.3.3

#### *Transitional and Saving Provisions*

The proposed regulatory amendments will apply to all plumbing works that are on-going or intended to be commenced after the coming into effect of the proposed regulatory amendment (tentatively the third quarter of 2017) except the following situations:

- (a) Section 14(1) permissions: Permission (i) granted and (ii) applied but pending to be granted before the day on which the proposed regulatory amendment comes into effect will continue to be effective/processed as if no amendments were made.
- (b) The liability on the LP who has sought a section 14(1) permission: For works covered by a permission (i) granted and (ii) applied but pending to be granted before the day on which the proposed regulatory amendment comes into effect, the proposed liability is *not* imposed. For the avoidance of doubt, for works covered by a permission applied after the day on which the proposed regulatory amendment comes into effect, the proposed liability is imposed.
- (c) Time limit for enforcement actions: For offences committed before the commencement date of the proposed regulatory amendment, the proposed time limit will not apply even if the offence is discovered by, or comes into notice of, the WA after the commencement date.

Sufficient time will be allowed for the new requirements to be duly publicised to ensure a smooth transition for implementation of the requirements of the legislative amendments.

### 2.3.4

#### *Amendment on the WSD's Publications*

After the amended WWO and WWR come into effect, the *Handbook on Plumbing Installation for Buildings* (HBonPIB) will be amended to incorporate the proposed regulatory amendments, as appropriate.

Upon a preliminary review, the relevant sections of HBonPIB (including but not limited to Sections 1, 2, 3 and 4) will be amended to cover the proposed regulatory amendment.

The construction industry, LPs and Authorised Persons (APs) will then be notified of the amendments via WSD Circular Letters. Other relevant publications including leaflets, booklets, etc. will be revised and published, if necessary.

### 3.1 BUSINESS STRUCTURE OF THE BUILDING CONSTRUCTION AND PLUMBING SECTORS

With respect to the plumbing works that require the compliance with the requirements of the WWO and/or the CWRO, it can broadly be categorised into three types:

1. Construction and installation of plumbing works for new buildings;
2. Construction and installation of plumbing works for New Territories Exempted Houses; and
3. Alteration, repair, maintenance and removal of plumbing works in the existing buildings.

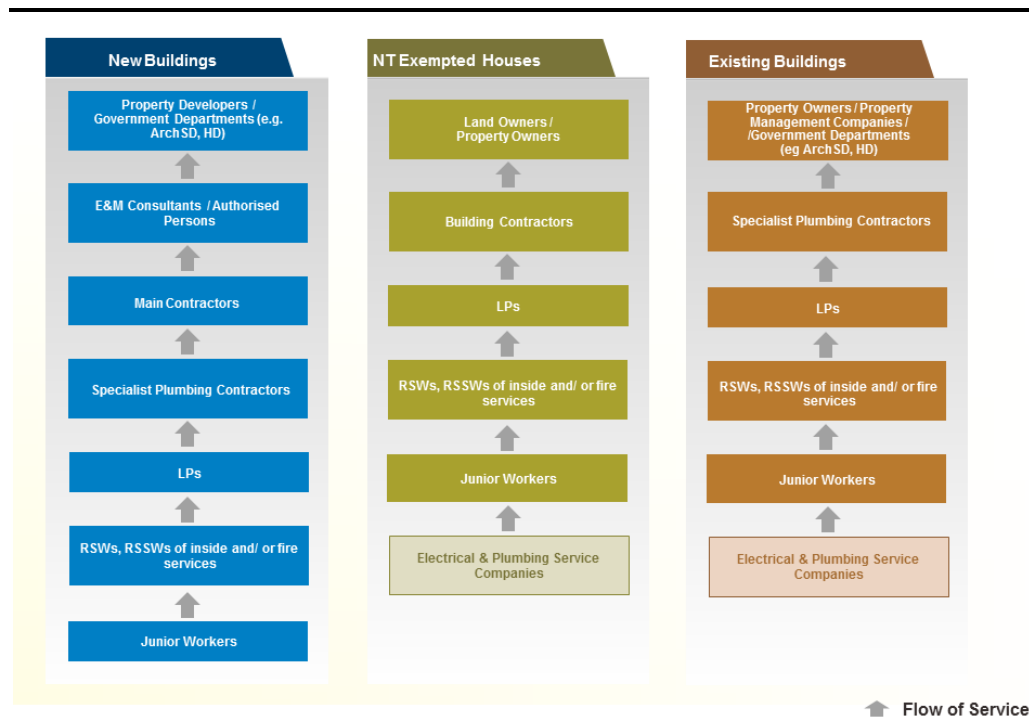
In the current regulatory regime, for Type 1 works, the plumbing works require the compliance with both the WWO, hence require, among other things, the submission of form WWO 46 for the application of water supply; and employment of registered workers of relevant trade divisions when section 4 of the CWRO comes into effect on 1 April 2017.

For Type 2 works, the plumbing works does not require employment of registered workers of relevant trade divisions under CWRO but it still requires the compliance of relevant requirements under the WWO.

For Type 3 works, it may require the compliance with either the WWO or the CWRO, or both depending on the scale and nature of works.

The key stakeholder groups for the plumbing works in the project market and their interactions are presented in *Figure 3.1*.

**Figure 3.1 Structure of the Plumbing Works in the Project Market in Hong Kong**



### 3.2 BUSINESS ENVIRONMENT OF THE PLUMBING WORKS IN THE HONG KONG PROJECT MARKET

The key segments illustrated in *Figure 3.1* are further elaborated below:

#### 3.2.1 Project Proponents

The project market includes the construction and renovation of buildings and also New Territories Exempted Houses. This segment refers to different types of project proponents, including the private property developers, Government departments, land owners in the New Territories, and property owners, who would engage a plumbing contractor(s) who in turn employs the LPs, RSW(s), RSSW(s) and/or junior workers to carry out plumbing works.

#### 3.2.2 Service Providers

The segment refers to contractors, LPs responsible for the plumbing works and other designated persons, property management companies, electrical and mechanical (E&M) engineering consultants, APs and electrical and plumbing (E&P) service companies.

Many of the contractors would procure the plumbing materials and products on behalf of the client (e.g. property developers), and hire the required professionals (e.g. LPs) for the supervision, installation and retrofitting of plumbing equipment. Both the main contractors for leading the building construction and specialist contractors for providing specific services (e.g. plumbing installation, fire service installation) are included in this segment.

### 3.2.3 *Professional Bodies / Trade Associations*

This segment includes relevant plumbing professional bodies/trade associations in Hong Kong. These organisations are generally established and managed by the plumbing professionals, and aimed to safeguard the public interest and to represent the interest of the professional practitioners.

### 3.2.4 *Training Institutes*

This segment refers to training institutes which offer trainings to the plumbing professionals and workers in Hong Kong, for example the Construction Industry Council (CIC) and Vocational Training Council (VTC).

The Consultant conducted one focus group discussion (FGD) and a total of 30 face-to-face (F2F) interviews (see *Table 4.1*) with various stakeholders. The segmentation of the F2F interviews was based on the business environment of the plumbing services, the broad function (e.g. service provider or project proponent) in the project market and size of the company (e.g. Large or SME) of various stakeholder groups.

**Table 4.1** *Segmentation for F2F Interviews*

Stakeholder Groups	Number of Completed Interviews	
<b>Project Proponents</b>		
• Private Property Developers		1
• Housing Authority		1
• Land Owners in the New Territories		1
• Property Owners		1
• Property Management Offices (PMO)		1
<i>Sub-total</i>		<b>5</b>
<b>Contractors</b>	<b>Large</b>	<b>SME</b>
• Main Contractors	1	1 <sup>(a)</sup>
• Plumbing Contractors	1	4 <sup>(b)</sup>
• Fire Services Installation Contractors	1	2
• E&P Service Companies		2
<i>Sub-total</i>		<b>12</b>
<b>Designated Persons</b>		
• Plumbing Workers		
○ RSW		2
○ RSSW		1
• Fire Services Installation Workers		
○ RSW		2 <sup>(c)</sup>
○ RSSW		/ <sup>(c)</sup>
• Licensed Plumbers		2
• Junior Workers		2
<i>Sub-total</i>		<b>9</b>
<b>Professional Bodies/Trade Associations</b>		3
<b>Training Institutes</b>		1
<b>Total</b>		<b>30</b>
<b>Notes:</b>		
(a)	An SME Main Contractor who is/was engaged in NT exempted houses construction was interviewed.	
(b)	Interviews with SME Plumbing Contractors included one engaged in NT exempted houses construction, one employed by PMO for repair and maintenance in existing buildings, and two engaged by main contractors in new building construction.	
(c)	Despite contacting relevant FSI companies and associations extensively, the Consultant was not able to contact any RSSW specialised in FSI works and therefore an additional RSW specialised in FSI works was interviewed instead.	

## 5.1

*OVERVIEW*

Overall, most interviewed stakeholders considered the proposed regulatory amendment would benefit the industry as it could align the language of the WWO with the policy intent and industry practice by allowing designated persons to carry out the plumbing works. It would also reconcile the inconsistency between the WWO and CWRO (which the latest amendment will come into force in April 2017) regarding the designated persons in carrying plumbing works at the construction sites. Moreover, some specialist contractors indicated that the proposed regulatory amendment would provide greater clarity on the responsibilities of each party involved in carrying out plumbing works to minimise the confusion between different parties' roles and duties. Giving WA the power to enter non-domestic premises for inspection can also create a deterrent effect to the contractors who try to "cut corners" in plumbing works by not employing the competent persons to undertake and supervise the plumbing works.

However, the stakeholders also showed concerns on whether there would be sufficient competent prescribed supervisors to take up the instruction and supervision role on junior workers, and the potential impact of the criminal liability on designated persons, in particular general/junior workers for the plumbing works on attracting talents to join the plumbing industry.

Regarding the unintended consequences, many stakeholders showed concerns on the criminal liability on junior workers for non-compliant plumbing works that they have been involved, and were worried about being dragged into the prosecution cases and have to defend themselves in the court. Furthermore, some plumbing contractors opined that they would keep "instruction and supervision" records and/or works and workers record (e.g. which worker responsible for which part of works on each day) even though it is not required in the proposed regulatory amendment.

Several stakeholders noted that plumbing contractors may need to employ additional prescribed supervisors to instruct and supervise the plumbing works and clerical staff to handle the additional administrative duties (e.g. preparation and keeping of daily or weekly job records for prescribed supervisors and workers) due to the proposed regulatory amendment.

In brief, there should be no major compliance difficulties induced by the proposed regulatory amendment but the stakeholders expressed concerns in some aspects of complying with the regulatory framework as it is. Those concerns are elaborated below.

## 5.2

*KEY COMPLIANCE CONCERNS AND RECOMMENDATIONS*

The following are the key compliance concerns raised by the stakeholders and the Consultant's recommendations to alleviate the concerns.

*Concern*

Some stakeholders considered that it would be unreasonable to impose criminal liability on inexperienced workers, in particular the general/junior workers, who work under the instruction and supervision of the prescribed supervisors for the non-compliant plumbing works undertaken. The industry views it as something additional to the industry, in particular on general / junior workers. It would make it difficult to recruit general / junior workers to join the plumbing industry and carry out the plumbing works.

*Assessment*

WSD's current policy intent is to prosecute those who intentionally commit an offence, subject to sufficiency of evidence and in view of public interest (e.g. the nature, circumstances and seriousness of the offence) to prosecute. The proposed regulatory amendment has additionally included a statutory defence provision for those persons who work under the instruction and supervision (e.g. general / junior workers) to defend themselves when enquired by WSD and in court if they have undertaken the plumbing works in accordance with the instruction and supervision of the prescribed supervisors. This is a measure to protect the general /junior workers from being prosecuted or convicted if they carried out the plumbing works following the instruction of the prescribed supervisor(s) and did not wilfully carry out the non-compliant works.

It is noted that some stakeholders concern that the proposed regulatory amendment may create difficulties for the plumbing industry in recruiting general / junior workers for carrying out the plumbing works as there are few young talents in the industry already. However, under the current section 14(4), the criminal liability for non-compliant plumbing works attaches to "any person", which means in reality the proposed regulatory amendment does not add any criminal liability to the general /junior workers who work under instruction and supervision.

With the proposed regulatory amendment, the role and responsibilities of various parties involved in the plumbing works are more clearly defined and specified that the general/junior workers who involved in the plumbing works have to work under the instruction and supervision of the prescribed supervisor(s). If the general/junior workers follow the instruction of the prescribed supervisor to carry out the works and it still leads to non-compliance with the WWO, the proposed statutory defence provision will protect the workers from being prosecuted. The risk of the general/ junior workers being prosecuted or convicted under the WWO will be low.

*Recommendation*

It is recommended that WSD should further engage with the relevant stakeholders to explain the penalty provision under the existing WWO



already included criminal liability, the policy intent of the proposed regulatory amendment, and the added provision of the statutory defence. This should resolve most of the misunderstanding of the proposed regulatory amendment. In the long run, the market force will regulate the supply and demand of the general/junior workers for plumbing works.

## 5.2.2 *Difficulties in Keeping Record for a Long Period of Time*

### *Concern*

With regard to the proposed regulatory amendment on extension of time limit for enforcement actions (i.e. prosecution under the WWO or WWR can be brought within 6 months from discovery of the offence by the WA), some SME specialist plumbing contractors who did not keep working records in the past may have difficulties in keeping records (e.g. job record) for a long period of time (say >20 years) so as to provide evidence for statutory defence in case they are prosecuted in future.

### *Assessment*

The stakeholders' concern is mainly on whether there can be an ultimate time limit of prosecution under the WWO. Reference has been made to section 57 of the *Electricity Ordinance* where "A prosecution under this Ordinance shall be commenced within six months after the offence becomes known to the Director of Electrical and Mechanical Services". However, the proposed regulatory amendment does not require the stakeholders to keep record and it would be the business decision of individual stakeholders to keep "instruction and supervision" records and/or works and workers records for an extended period of time.

### *Recommendation*

It is recommended that WSD shall maintain the proposed regulatory amendment with respect to the prosecution period in its current form but need to convey a clear message to the industry that record-keeping is not a mandatory requirement.

## 5.2.3 *Definitions of Key Terms in the Proposed Regulatory Amendment Need to be Further Clarified*

### *Concern*

In the proposed regulatory amendment, the important key terms "instruction and supervision", ("employ, cause or permit")<sup>(10)</sup> and "non-domestic premises" are considered relatively vague from the perspective of interviewed stakeholders. This could create confusion to the plumbing industry if the understanding of these key terms is different between the Government and the industry.

(10) At the date of this ES submission, the proposed addition of the term "cause" under Section 15(3) has been abandoned.

### *Assessment*

The Consultant agreed with the stakeholders that there are key terms that should be clarified as far as practicable to minimise unnecessary disputes in the future simply due to different understanding of these key terms. This clarification would potentially minimise the administrative efforts from both WSD and the industry. With regard to the meaning of “instruction and supervision”, reference can be made to the Guidelines on Arrangement of “Instruction and Supervision” and Code of Practice for Reasonable Measures of “Instruction and Supervision” published by the CIC where the meanings of “instruction and supervision” are explained in details and examples are given on how to determine if a person is under “instruction and supervision”. However, there will be a need to decide if further guidelines or a Code of Practice (CoP) for the amended WWO should be provided to address particularly “instruction and supervision” in relation to plumbing works.

### *Recommendation*

WSD should consider clarifying the meaning of key terms of the proposed regulatory amendment in the WWO or providing further guidelines or a CoP regarding the arrangement for “instruction and supervision” prior to the implementation of the proposed regulatory amendment.

## **5.2.4 Plumbing Contractor Should Assume Ultimate Liability**

### *Concern*

Several stakeholders commented that rather than imposing criminal liability on individuals, the criminal liability should be imposed on the plumbing contractor who undertakes to carry out the plumbing works. This is because in many cases, the LPs, RSWs, RSSWs and other general/junior workers are just employees or casual workers following the orders from the plumbing contractor or its representative(s) but they will be subjected to the consequences of any non-compliant plumbing works.

### *Assessment*

In many cases, plumbing contractors are the employers of the LPs, RSWs, RSSWs and other general workers and are also responsible for the procurement of the plumbing materials. Making the plumbing contractors legally liable for their works is reasonable and would strengthen WSD’s policy intent of ensuring compliance with the requirements in the WWO and WWR. This will also be seen by the LPs, RSWs, RSSWs and other general/junior workers the system is fair to all parties who are involved in the plumbing works.

### *Recommendation*

It is proposed that WSD should consider setting up a Registered Plumbing Contractor (RPC) system in the long run to have plumbing contractors to bear the responsibility for ensuring the plumbing works are in compliance with the

WWO and WWR. This would make the system fairer where both companies and individuals that take part in the construction and installation of the plumbing works would be accountable. The RPC will also have the incentive to appoint the suitably experienced designated persons to carry out the works and suitable number of prescribed supervisors to instruct and supervise the junior worker to carry out the works. It will also ensure that the RPC who is responsible for purchasing the plumbing materials to comply with the WWO. This would ultimately improve the quality of plumbing works.

### 5.3

#### *IMPACT ON SMES*

As the proposed regulatory amendment mainly concerns the individuals who will carry out plumbing works, this Study concluded that the potential business impacts on SMEs and large companies would be broadly the same. However, it is understood that most SME plumbing contractors did not have a system to keep record related to “instruction and supervision” and which worker responsible for which part of plumbing works. Even though the proposed regulatory amendment does not mandatorily require such record-keeping, some plumbing contractors may feel the need to set up a system to keep such records in case relevant persons are prosecuted due to their involvement in the non-compliant plumbing works. Record-keeping is in particular more challenging for sub-contractors of plumbing contractors where turnover of workers are high as they are usually paid on a daily basis.

SME plumbing contractors were also worried that the criminal liability on general/junior workers would discourage new talents from joining the plumbing industry and would make it more difficult to recruit general /junior workers to support the LPs / RSW/RSSW in carrying out plumbing works. However, the proposed regulatory amendment focuses mainly on the individuals with regards to who can carry out plumbing works with or without supervision, and under the current section 14(4), the criminal liability for non-compliant plumbing works attaches to “any person”, which means in reality the proposed regulatory amendment does not add any criminal liability as compared to before the amendment.

Based on the information collected from the interviewed stakeholders, there were only two compliance concerns that might potentially incur administrative or manpower costs to plumbing contractors or other employers of plumbing workers, which are the *'keeping records of "instruction and supervision"'* and *"hiring of additional prescribed supervisors and/or clerical staff"*. However, the Consultant assessed that they cannot be quantified due to the following reasons:

- The proposed regulatory amendment does not require the keeping of instruction and supervision records and/or works and workers records. The record keeping will be a business decision of the stakeholders if they consider that it will be beneficial for future statutory defence for non-compliant plumbing works; and
- The extent of the site supervision required by the prescribed supervisors will depend on the experience of the general/junior workers that the plumbing contractor employed. It is also the business decision of individual company to decide how to do the supervision and how many prescribed supervisors will be required to supervise the work so that the plumbing works will comply with the WWO. It is also the business decision of individual company to decide whether additional clerical staff or manpower is needed to handle the record-keeping duties.

Therefore, it is assessed that the compliance concerns identified could not be quantified. Broadly speaking, the impact on compliance cost is unlikely to be significant as the proposed amendment is in line with the prevailing industry practice.

This Study has carried out a comprehensive assessment of the potential business impacts resulting from the proposed regulatory amendment. A list of recommendations to alleviate the business compliance concerns of the stakeholders have been proposed by the Consultant. The key to effective implementation of the proposed regulatory amendment is to be able to communicate the policy intent and enforcement mechanism well to all relevant stakeholders, clarifying the definitions and meanings of key terms and to show the industry that WSD would continue to enhance the comprehensiveness of the legislation. The recommendations proposed in the *Section 5* are based on in-depth consultation and discussion with the Government, stakeholders and industry advisors. All stakeholders should be able to comply with the requirements of the proposed regulatory amendment without significant compliance difficulties.