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July / August 2015



- Living Choice Retirement Village
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Editorial

Apprentices working outside employment conditions

This article is aimed at the plumbing apprentices out there, who think they have reached a certain level of competence and wish to venture into the world by seeking additional work on the side.

I have a case that you may all be interested in as it raises a number of issues that may have not been thought through prior to taking on a "client" for payment.

First of all, the MPA SA does not support or encourage this activity as it has huge risks attached, please refer to my list below;

- Apprentices are covered by insurance whilst working for an employer – they are not covered if they decide to take on work themselves
- Work conducted by apprentices without knowledge by the employer is not covered for any damage to property or damage caused by the installation or work completed
- Apprentices do not hold the relevant license to sign off on completed work (Certificate of Compliance)
- Any work conducted by an apprentice must be signed off by a supervisor / contractor

- A client who finds out that you are actually an apprentice not licensed could withhold payment and possibly sue you for misrepresentation
- You could actually be suspended or have your contract of training cancelled by either the licensing department or another government agency
- You could have your contract of training cancelled by your employer for deceitful misconduct or using company stock or equipment.

These are some examples of what could happen and there is certainly a fine line for using your new skill set for making money.

We hope some of these issues above provide you with the the knowledge and understanding that working in this industry does provide great opportunities, you just need to know when to take those opportunities.

Darwin Expo

The first ever Plumbing Expo held by the Master Plumbers Association of SA was held at the HIA Skills Centre on Wednesday 27th May in Darwin (Berrimah).

The Expo was well supported by 20 Exhibitors and had a turnout of approximately 50 odd plumbers, industry stakeholders and interested parties.



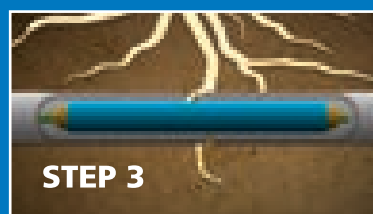
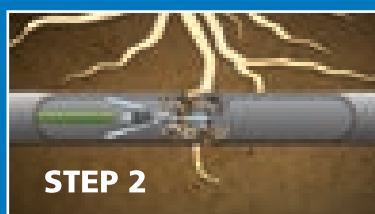
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Editorial

There is more information in the NT section of the magazine, but I would like to personally thank all the exhibitors, the attendees and the wonderful speakers that presented on the day.

We look forward to building bigger and better opportunities for all of the plumbing and gasfitting stakeholders in the Northern Territory and whilst it is a slow process, I believe we have the support mechanisms in place to gain greater traction in the near future.

Government Funding for Training Places Causes major Crisis

The State Government's decision to direct 90% of funded training places to TAFE is creating chaos throughout the private Registered Training Organisations (RTO) sector in SA.

Once again we have the State Government going down a path that involves little or in this case no consultation with industry leading to major dissatisfaction amongst the training sector and putting at risk not only the sustainability of industry training organisations but disrupting the future of the state workforce.

I wonder at times if Government actually realise that there are major side effects from some of the decisions they make.

Have they forgotten that this State usually sits above the Australian average unemployment rate and that Holden's will be closing in the not too distant future, that the current workforce at the ASC could be registering for unemployment benefits if the building of the next Air Warfare Destroyer (AWD) Project shifts overseas.

MPA SA has been in contact with those opposing these changes and strongly supports a decision to reverse or rethink this funding model. At the time of writing this article, I can only hope changes are made and that once again a poorly researched issue with little or no consultation is overturned.

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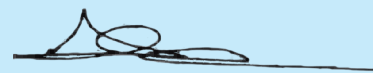
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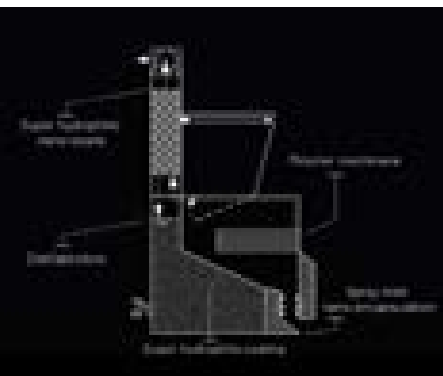


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Toilet to Power Mobile Phones



UK researchers are developing a self-powered toilet which turns human waste into clean water and even energy to charge mobile phones. The "nano membrane toilet", being developed with funding from the Bill and Melinda Gates Foundation, aims to help bring sanitation into the homes of 2.5 billion people, still without it, in developing countries, without needing water supplies or sewage

pipes. The team at Cranfield University, Bedfordshire, say it could also be used in developed countries, for uses ranging from the military to luxury yachts, the construction industry or even as an odour-free alternative to the toilets widely used at music festivals.

PhD student Jake Larsson, one of the team working on the project, said: "The nano membrane toilet is a project that looks to serve the needs of people in developing countries to stop the major spread of disease, which is due to inadequate sanitation. "It is a household scale toilet that produces clean water and manageable, pathogen-free, disposable waste, it's self-standing, it's small enough to fit in someone's home and there's even a little bit of

energy left over to charge a mobile phone. "It is very diverse. Not only is it for developing countries, but it's also useful for developed countries, maybe for the military, they're always in desolate places, or for the construction industry or even for yachts."



The toilet, activated once the lid is closed, rotates the bowl to carry the waste into a holding tank, maintaining an "odour barrier" to prevent smells, and using a sweep mechanism instead of a flush. In the tank a "nano membrane" only allows through water molecules, separating it from solid waste and pathogens which are too large to pass through it.

The water collected is suitable for irrigating fields, washing or cleaning, and could even be made clean enough to drink, while the solid waste is passed into a gasifier which burns it, producing ash which can be used for agriculture. Heat from burning the waste produces enough electricity to power the unit, and could even produce a little extra for mobile phone charging. The Cranfield University team aims to start field testing the toilet in 2016.

Emily Beament



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The Risks of 'Do and Charge' Agreements



I am constantly amazed by the scale and value of work being carried out under so called 'Do and Charge' arrangements. This is a loose arrangement where the work is being on a 'reasonable value' basis. Members will know what I mean. This kind of 'contract' or arrangement is meant to be for small works. In my view, it should be used for work valued at under \$1,500, and everything else ought to be under a proper contract rate or lump sum. Yet I continue to see massive works, well into six figures, being carried out on a 'do-and-charge' basis. Not surprisingly, many customers raise a host of objections once the work is done. There are some yawning gaps to the 'do-and-charge' setup that makes it a very attractive option for the non-payer.

One of the first responses to your claim or invoice will be a challenge to the value of your work. Your client will say that the work is not worth what you are asking. That is because your 'contract' has no agreement as to how your work is to be valued. Even though you have claimed what you think is 'reasonable,' that is a subjective view and your client will offer their own version that may be ludicrously low. For larger works, the client may produce a Quantity Surveyor's report or other report on what your work is worth.

The bottom line is that 'do-and-charge' arrangements do not give you any control over how your completed work is to be valued. The client can advance any theories, valuations, and calculations they like and you'll need to deal with them. Many contractors simply cut a deal and lose some money just to get something for the work. This leads me to the next problem: a loss of leverage

The 'do-and-charge' deal means that most of the time you are often completing work in its entirety before you hold out your hand for payment. This means the client has the benefit of all the work before you get a cent. So the arrangement hands all the leverage to the client who has the work while you need to get your money.

It is all too easy for the client to argue about value or defects at this point because they already have the work! What can you say in response? The 'do-and-charge' deal often has no terms or is an oral arrangement at best. You are left to persuade your client that the work is worth what you are asking, but there is little motivation for the client to agree with you, and this is where most disputes stall.

On almost all occasions there is no written agreement. This means there are no agreed terms that you can rely on if there is a payment dispute. Your client then can insist on conditions and terms for you to meet before anything is paid; conditions which were never agreed upon. But who is to say what was agreed? You have carried out the work under the belief that you could charge reasonable value. Now your client is making you jump through hoops to get paid.

The most common of these is that the client will say that they never authorised the works, or never gave you written consent to do it; even though the client was sipping a cup of tea while watching you carry out the work! Another problem is retrospective quoting. This means your client will wait for your invoice and then show you a few quotes for the work from other contractors that – surprise, surprise – are less than half the price. So now the client is arguing that your work is to be valued on lump sum basis after you've done all the work on a 'reasonable value' basis! Many contractors get stuck in this 'apples and oranges' argument. Yet again the 'do-and-charge' arrangement puts your client in control.

There is also no agreement on the scope of works to be carried out. A classic example of this is when a plumber was called in to do plumbing work on an apartment block. The initial problem was ceiling damage from a leak and, as is often the case that, led down a rabbit hole of problems which was eventually found to be a burst sewer pipe in an upstairs bathroom. The building manager said 'do what you have to do' to fix it, a perfect example of 'do-and-charge'. The plumbers worked for five days and fixed it and presented their invoice for \$19,000.

As you can imagine, all the defences came up as outlined above. But the real problem here is that the plumber did not stop to present the client with the actual scope of what had to be done. In fact, the 'do-and-charge' arrangement never has an agreed scope and so the client can always argue that you either did too much, or not enough. As it is not documented, you are again left to argue what was orally agreed at the time or what 'common sense' suggested was the scope of your work. Both positions are pretty weak and your client knows it.

I think for domestic jobs that fall under \$1,500, 'do-and-charge' is a viable alternative, but it really is **a business risk you'll have to make**. There is a very valid argument to lower that cap a long way. In any case, generally try to avoid 'do-and-charge.' It has too many risks with very little upside other than the time saved to prepare a quote. The 'do-and-charge' also tends to attract clients who like to 'duck and weave.' And who wants clients like that?

Anthony Igra

Editor's Note: This is yet another example of plumbers being price takers not price givers. This article should help reinforce the practices that lead to fewer problems in getting your money. Bottom line has to be, always put everything in writing.

Disrupters to Business

There are two disrupters to business that are becoming serious issues for business:

1. Social Media and Product Rating Sites
2. Digital Technology

Social Media

Two recent cases involving members the first involving a social media campaign on Facebook against a member is a cause for serious concern.

The Social Media campaigner after failing to reach any agreement to resolve the issue came to the Master Plumbers office seeking assistance.

After speaking at length to the person and to our member it was identified that the plumber's hands had been tied by the lack of parts from the manufacturer and their policy of only paying for warranty work that is done within normal business hours.

The consumer believed the plumber should have dropped everything on a Sunday and gone out to fix it with no parts and no hope of being compensated by the manufacturer.

The plumber was expecting the part to arrive that day but because of the Facebook campaign was quite rightly saying they needed to find another plumber and that he could pick the parts up from their office as soon as they arrived.

It was pointed out to the customer that the use of Social Media to attack someone is not going to help resolve a problem but in all probability will make it worse. Master Plumbers found a member who was prepared to pick the parts up and go and fix it, which he did the next day. Another member has recently been attacked using old media in the form of the local newspaper to attack him for his charges.

As always there are two sides to a story and there was certainly the omission of a number of facts by the customer. The customer went further and told the member that he was going to conduct a campaign against him via other means.

At this point the member wrote to him that if he continued to make unsubstantiated claims against him that could cause damage to his business, he would take legal action.

Technology Disruption

We have already seen how technological change has:

- Disrupted the newspaper and magazine industry
- Changed the way businesses advertise
- Changed shopping with online sales growing exponentially every year
- The retail automotive impacted
- And the list goes on and on.

Recently on the radio a university research team in America announced that they could take 2mg of a cow's muscle and make approximately 4000Kg of steak in the laboratory. They expect within ten years to be selling stem cell steak for \$80.00/Kg about the price steak is expected to cost in 2030.

This will be a significant disruptor to the cattle industry. How will they deal with this and continue to thrive?

The first reaction will be to try and block it but as Australian shearers tried to block wide combs for shearing in Australia they will fail and it will become accepted. Is your business agile enough to deal with all of the change, including technological change to grow and benefit or will you lack the ability and preparedness to change?

Without doubt the rate of change is expected to accelerate sharply in the next ten years not slow down and certainly not stop. Indeed 50% of the jobs available in 2030 do not exist yet.



A male plumber in a dark blue polo shirt is focused on cutting a copper pipe with a red-handled pipe wrench. He is standing in front of a white van with its rear door open, revealing shelves stocked with blue and red toolboxes and various plumbing supplies. The background shows a clear blue sky with some clouds.

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Fire Rated Foams



The use of so-called 'fire rated' foams for fire stopping of service penetrations or control joints is sadly becoming more prevalent here in Australia. John Rakic believes this trend could lead to deaths if a serious fire happens in a building where they're used. As someone who knows better, I find myself appalled and disappointed that those selling these products continue to do so, knowing full well that these products have very limited fire stopping properties. I truly think it's a case of wishful thinking that sees these products used; they do provide a convenient means of doing the work, but we can effectively say they don't have any fire stopping properties.

What do we mean by 'fire rated foams'?

The fire rated foams we're talking about are those that are delivered by way of an aerosol can or canister, which foam up when they're dispensed – much like canned shaving cream. They're typically polyurethane based, and my understanding is they might all be coming from the same factory overseas, imported under many different product brands. To make it even more problematic, many are now dyed red to signify their suitability for fire stopping applications.

Understanding fire ratings

I often get sick of the sound of my own voice when I do a full day fire training course, I define passive fire protection, fire ratings and so-called Fire Resistance Levels (or FRLs). It never ceases to amaze me how little building practitioners actually know about such an important subject, especially considering that it could easily be a matter of life and death.

I hear myself explain that products don't have fire ratings

I say things like, "There is no such thing as a one hour fire door. Who thinks I'm wrong in making this comment? Surely there are one hour fire doors?" I see confused looks from those attending the fire training courses – and I suspect some readers may be getting a bit interested at this point...

Let me clarify what I mean.

A fire rating applies to an 'as fire tested' system, or an otherwise approved configuration. Only when a particular (and I must add proprietary) brand of product is installed in an identical way to the approved configuration does the entire system or configuration achieve the fire rating. We see in marketing literature the words 'up to four hour fire rating'. What they mean, though, is 'systems with up to 4 hour ratings'. Let's look at the example of the fire door, and also of so-called 4 hour fire rated foams to demonstrate the important distinction I'm making here about products and systems, and of course their fire ratings.

The fire door example

A proprietary fire door leaf – known to many of us in the industry as a one hour door, mini fire door, or unit entry door – can only achieve the nominated one hour fire rating when it's installed into an approved wall type, in the approved door

frame type complete with the necessary fixings. The door frame needs to be backfilled appropriately, and the door needs to be installed correctly, hung on the required hinges and fitted with the required door lock & door closer. On top of all that, the requisite, correct perimeter gaps or clearances have to be in place. Only when all of the above is done properly does the fire doorset or fire door assembly achieve a one hour fire rating (i.e. an FRL of -/60/30). The door leaf on its own can't achieve a fire rating. (Note – AS1905 Part 1 – Fire resistant doorsets uses the terms 'doorset' which it defines as a complete assembly.)

It's even more complicated than this though. There are overall size limitations for each proprietary door leaf, and there are also restrictions on the types of door skins or facings that can be used. Additional items of hardware such as door viewers, secondary locks for security and acoustic seals all need to be considered in terms of the 'as fire tested and approved' configuration which, for fire doorsets, results in an 'as tagged and certified' fire door assembly.

The fire rated foam example

Now let's look at the so-called four hour foam – or the foam with up to a four hour fire rating. This is the generic product this article is about... Again, the foam on its own doesn't have a fire rating of four hours – or any duration. Only when it's installed in the exact manner it was fire tested in, or in other specific, approved configurations will the entire system achieve the so-called fire rating. (Note – AS4072 Part 1 – Fire resistance of service penetrations and control joints clarifies that fire rating apply to the complete assembly, and not the products.)

Foam used in control joints:

For a so-called fire rated foam used in a control joint or a movement joint, the fire rating is dependent on:

- the type of barrier,
- the thickness of the barrier,
- the joint width or size
- the depth of foam used and
- any other items that were installed to assist the foam in achieving the fire rating (e.g. fire rated sealant).

All of the fire test data I've been able to find – and it's scarce, let me tell you – requires as much as 200mm of foam, and in most instances, additional mineral fibre backing materials or the additional use of a fire rated sealant (in conjunction with the foam) to achieve any fire rating. How many 200mm thick joints do we really see in typical buildings? Not many. Have you been using these foams for protection of joints of less than 200mm? If so, were you aware that you probably needed other products to properly achieve the desired fire rating? Probably not. Oops...

Foam used in service penetrations

By service penetrations, we mean fire rated walls or floors where services such as pipes or cables pass through an opening formed in the wall or floor, for which a fire stopping product (or more typically, a combination of several products) is used to maintain the fire rating of the wall or floor. The fire test data for service penetrations is even harder to find for these so-called fire rated foams.

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Fire Rated Foams Cont...

I found one fire test for a small 34mm copper pipe, passing through an 80mm circular aperture or core hole in a 150mm thick block work wall that did not require the use of additional fire rated sealant. This involved 150mm thickness of foam (or foam for the entire depth and width of the opening) – and this particular foam failed integrity at 84 minutes. That is to say, flames and/or hot gases passed through this opening at 84 minutes. I haven't been able to find any other fire testing on service penetrations, and judging by the results of the control joints and this particular copper pipe, any cables or other combustible services will not achieve any fire rating, irrespective of the wall or floor type, or the thickness of the foam being used.

But fire rated foam's everywhere – how can this be?

I know that there are many of you who'll be a bit uncomfortable at this point. Good; that's why I wrote this article. Perhaps you're using some of this so-called fire rated foam in your current project? Perhaps you are installing or have been installing some of it? Perhaps you're selling it? I've seen it used in many buildings, and I continue to be concerned and appalled by its use – and I do think it's a disaster waiting to happen.

So how has it happened?

I think it's a case of wishful thinking. I also think a bit of misleading marketing and product branding is at fault here. Who's to blame – and what can we do to change this practice? I blame those selling these materials primarily in the first instance, as they should know these products have very limited or effectively no practical use as a fire rated product – and they really shouldn't be selling them.

I also blame the contractors who install the material, as they should know more about fire stopping and fire ratings if they want to do this work. If they don't, they should subcontract this work to those who do. I'm being hard when I say this, but when lives are at stake we need to be assertive and serious. I also have to blame the certification process. This should be a last gap measure to pick up these kinds of issues, but it's not easy for building surveyors to know everything; they're partly relying on builders and sub-contractors to provide paperwork to say that they've used fire tested and approved materials for all fire stopping works. Again, I'm being hard but I think it's necessary.

What can I use instead of fire rated foam?

There are many fire tested products which, when installed in correct configurations, can provide a compliant fire rating or FRL. To answer this question properly, we need to ask more questions. For service penetrations, we need to know the following:

- The fire barrier orientation
- The fire barrier construction and requisite FRL
- The opening size
- The service penetration types and quantities passing through the opening
- The proximity of these services to each other and the perimeter of the opening
- The support of these services on either side of the opening
- Movement requirements (building movement)
- Whether further services are likely to be put through the opening at a later date

Relevant conclusions

As I've already mentioned, products don't have fire ratings in their own right; it's the entire 'as installed' system that can be classified as having a fire rating. There's very little or no practical fire test data for so-called fire rated foams, and they really shouldn't be sold in Australia. Collectively, the construction industry has a duty to educate against and eliminate poor practices – especially those that may put lives at risk.

Peak bodies like AIBS, AIRAH and FPA Australia should be advising the people who are buying and using these products that there may be some serious issues for their use as compliant fire stopping products here in Australia.

So how do you do the right thing?

There are many different fire stopping products which have been fire tested and have system approvals to correctly protect openings in fire barriers and maintain the appropriate fire rating / FRL. The bottom line is that most of these products should be installed by specialist fire protection contractors who know about the fire tested and approved configurations, and who can make sure that things are done correctly and provide necessary compliance paperwork.

I don't want to sound like I'm writing this article just to promote my own gear – but we make a product that's gaining acceptance in the market called the Trafalgar Fyreclamp. These Fyreclamps are installed into the wall or floor, and allow for services to be passed through them and allow for additions, moves and changes as services need re-routing due to changes of usage within the building.

Our Fyreclamps are hinged which also allows for them to be put into the opening after the services are already installed. If careful planning is made, for example if a neat core hole is drilled in the wall, a circular fire clamp can be fitted by a plumber or electrician and the fire stopping can be completed correctly.

I personally believe that Fyreclamps are the closest thing to a reliable do-it-yourself fire stopping, but would encourage anyone tasked with fire stopping to do a little research into the available options. Get detailed installation instructions and check that the wall, floor or ceiling and services in question are approved for the fire rating you need before installing any given product. Whichever product you choose, get the company's field engineers to come out and demonstrate how to do it, or arrange to get a specialist contractor to do it for you.

Contact:

John Rakic is a professional, qualified Fire Safety Engineer with over 25 years of experience working in passive fire protection and associated fields. John has written many guides and articles, and made many presentations on fire stopping at conferences here in Australia and around the world.

John has been the chairman of many committees and sub-committees for Australian Standards relating to fire testing and passive fire protection systems. Since 2009, John has been the Owner and Technical Director of Trafalgar Fire Containment Solutions – a manufacturer and supplier of fire stopping products.

A Double Standard



If you hold a Driver's Licence, you can obtain copies of the Road Traffic Act and free guides on interpreting the rules. Government's do this in the interests of road safety and because it is a reasonable expectation that if you are expected to obey the law, you must have access to the laws you are expected to obey.

So why is it, that government over decades has developed regulations and laws for a myriad of industries and then expects end users to have to pay to buy the regulations and standards? Make no mistake if most of these regulations and standards did not exist the safety and well being of the population could be compromised. Australian Design Rules requiring crumple zones, seat belts and air bags have saved countless lives. The phasing out of Asbestos products in brake linings, and various construction situations have saved many lives.

Building codes and standards have evolved over the years to ensure buildings will withstand earthquakes, cyclones, buildings will not crack and fall apart or create health issues. These codes and standards must constantly evolve to accommodate new materials, methodologies and increased knowledge about the nature of building and how to do it better.

So why do the end users of building codes and standards have to pay? An argument can certainly be made for manufacturers of products paying to have their product tested to establish it is meeting the necessary standards for installation as they will profit from the sale of their goods.

The argument for small businesses and the community paying to be able to follow standards is much weaker. Sub contractors are frequently small businesses competing on price in a highly competitive market. For a plumber to purchase and maintain all of the standards to be completely across plumbing and related trades would cost hundreds of dollars a year. The reality is that most tradies don't bother. Consumers have a right to know that the trades they are employing are carrying the work out to the appropriate standard.

The release of the National Construction Code (NCC) online free, is a good step in the right direction. A member recently rang up to ask what the waterproofing standards were for new homes and who was responsible for the installation of puddle flanges? The requirements for both are set out in the National Construction Code and are the responsibility of the builder. In most instances the tiler will

do this work. A problem seems to be arising where a number of tilers are not waterproofing wet areas. Our member had a minor leak in a second floor toilet suite which made its way downstairs because there was no waterproofing of the bathroom floor. The liability goes back to the builder and presumably the tiler who was tasked to do that work.

We found the expectation for waterproofing in the NCC but then were referred by to AS 3740, for the specifics of how the waterproofing must be done. Cheapest option from SAI Global was \$111.00 for a read only PDF single user licence. How many tilers have bothered to buy a copy? So we have a private company publishing the standards, which are normally formulated by committees of volunteer industry regulators, manufacturers and industry bodies and selling them back to industry.

Is it not a government responsibility to publish the laws and regulations of the land for the protection of the community? Why as industries do we pay for the published copies of laws written to protect the community? It's time to fight this ridiculous situation and demand access, without charge, to the standards and regulations that our legislators require for the good of all.



Above: Tiler waterproofing a bathroom



Above: Waterproofing a shower

In Head Contractors We Trust



construction project (ie, the contract between the head contractor and principal) is over \$20 million. Should post-contract variations push the value above \$20 million, the retention money trust account requirements will come into play.

Retention money trust accounts explained

The new regulation was enacted as a result of the Collins Inquiry, which found that significant numbers of subcontractors do not receive retention money when they become entitled, often because the head contractor uses those funds as working capital or to satisfy debts.

Under the new regulation, head contractors must hold all retention money on trust by establishing a separate trust account for retention money held:

- for a particular contractor; or
- in connection with a particular construction project; or
- in connection with two or more (or all) of the head contractor's construction projects.

The accounts are administered by the head contractor. As such, the head contractor is able to access the funds without needing to prove its entitlement to a third party adjudicator.

The head contractor is not permitted, however, to withdraw retention money except for the purposes of paying the money in accordance with the contract, in circumstances agreed between the subcontractor and head contractor, or by order of a court. Interest earned on retention money is also held on trust, unless the parties agree otherwise. The head contractor is prohibited from using the funds to satisfy its debts.

Head contractors are also required to comply with certain administrative obligations such as notifying the Chief Executive of the Office of Finance and Services when the account is set up or if it is overdrawn or closed, keeping (and retaining) records and submitting an 'annual review report'.

On 1 May 2015, amendments to the NSW Building and Construction Industry Security of Payment Regulation (2008) came into force, requiring head contractors to hold retention monies on trust for subcontractors with an approved authorised deposit-taking institution (ADI), or bank. The new requirement only applies to contracts under which security for the subcontractor's performance takes the form of retention money, rather than bank guarantees, bonds or unconditional undertakings. It also only applies when the value of the

Head contractors face penalties of up to a maximum of \$22,000 for non-compliance with certain of these provisions. Head contractors, subcontractors and banks may also be directed to provide the Chief Executive with certain information about retention money trust accounts. Non-compliance could attract a penalty of up to \$22,000.

How will this affect the industry in NSW?

Head contractors should be aware of the following:

- **Administrative burden:** The regime undoubtedly imposes an administrative burden on head contractors in relation to retention money which did not previously exist. Head contractors should familiarise themselves with these requirements.
- **Reduced cash flow:** Head contractors may prefer to use bank guarantees as security for payment of the balance of the contract sum rather than retention money, which will no longer be available as working capital.
- **Conflict with existing securities:** Head contractors should check the terms of their own secured debt facilities as they may preclude the establishment of a separate trust account or make it difficult to do so.
- **Reduced value of security:** As retention money will not be available to satisfy head contractor debts, lenders may discount the value of the trust account or require security to take an alternative form.

The protections afforded to subcontractors under the regulations are largely subject to what is agreed between the parties. As such, both head contractors and subcontractors should ensure that subcontracts providing for retention monies deal with the circumstances in which the head contractor is able to withdraw retention money from the trust account (for example, in the case of subcontractor default), and which party is entitled to the interest earned.

Despite the threat of penalties under the regulation, the potential also remains for head contractors to misuse the retention money held. In such circumstances, the subcontractor may have to enforce its rights through the courts. Subcontractors may as a result prefer bank guarantees to cover their non-performance over security in the form of retention money.



Rob Buchanan

Editor's Note: A step in the right direction in NSW but will it be enough. Meanwhile in SA the wheels of change continue to move at a snail's pace.

Residential Plumbing

Calling All Failed "Blockheads"

Many people have been inspired to build a new house or renovate their existing house/property by television shows such as "The Block" and "House Rules", but what happens when (true to the drama that is commercial TV) the services of your builder, architect or other tradesmen aren't up to scratch? As a general rule, any claim for building defects (including negligent works and/or breach of a contract) must be commenced within six years. Six years from when? Is it from when building works first commenced? Or is it from when the defect was first discovered? The Queensland Court of Appeal recently found that when there is physical damage from a latent building defect, the limitation period for bringing a claim will not necessarily commence on the appearance of the damage, but rather when the damage can be traced to its source by the application of reasonable diligence.

The facts

In January 2000, Springfield Land Development Corporation ("Springfield") and Melisavon Pty Ltd ("MPL") entered into a contract for the design and development of a residential golf course and club house. MPL (the Builder) obtained a geotechnical report which revealed that the soil beneath the proposed club house was susceptible to ground heave because of varying moisture conditions. To overcome this issue, sufficient separation between the foundation slab of the club house and the ground itself was required. Shortly after construction commenced, a crack in the foundation slab was identified. It was agreed by the parties that the crack was a result of ground heave that was greater than expected, but that the slab was otherwise stable. The parties agreed to apply a concrete seal to disguise the crack. However, at a site inspection some 7 months later extensive cracking was identified as a result of further ground heave. Consequently, a defect liability period expiration inspection notice was issued to the Builder requiring rectification of (amongst other things) the cracks. In response, the Builder alleged that the majority of defects had been rectified and the remaining items were not caused by defective workmanship or materials. In June 2005, the Builder ultimately denied liability for the ground heave and asserted the issue was the result of faulty design and maintenance.

The Supreme Court of Queensland proceedings

Springfield commenced proceedings against MPL in June 2011 seeking damages for negligence in the sum of \$866,258. MPL defended the proceedings on the basis that the damage first occurred in late 2003 or, alternatively, in early 2004

and, consequently, Springfield's claim was "out of time". Springfield argued that it did not discover the defects until 2009 or 2010 when it became aware that the damage was caused by the defective design of the club house and the surrounding area. MPL filed an application for summary judgment against Springfield to dismiss Springfield's claim on the basis that Springfield did not have a reasonable basis for its claim against MPL ("the Application"). In determining the Application, the Supreme Court of Queensland stated that the issue as to when the cause of action arose was not a simple matter of determining when the cracking first appeared in the foundation slab. As the Application was summary in nature, the Supreme Court dismissed the Application on the basis that it was necessary for a factual investigation to occur (and determinations to be made) as to when Springfield first became aware (or ought to have become aware) that it had suffered loss because of the alleged defective design.

The appeal proceedings

MPL appealed the Supreme Court's summary decision to the Queensland Court of Appeal. The Queensland Court of Appeal held that the cause of action arose when Springfield had actual knowledge of MPL's faulty engineering design or when the defective design itself became apparent or could be discovered by reasonable diligence as it is only then that Springfield suffered an actual reduction in the market value of the club house. As a general rule, any claim for building defects (including negligent works and/or breach of a contract) must be commenced within 6 years.



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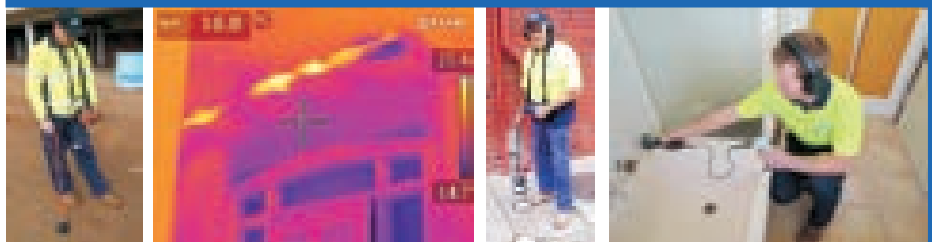
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Above: PVC stormwater drain suspended within the slab

Construction of the \$112 million, six-storey Living Choice retirement village commenced in September 2013 and opened in December 2014. The original building on the site was formerly part of the Julia Farr Centre but was abandoned 28 years ago amid concerns about asbestos. Living Choice developed Adelaide's newest retirement village which has already earned a reputation for offering Adelaide's finest retirement living. The village has a superb location in Fisher Street, in the upmarket, leafy suburb of Fullarton.

The stunning leisure centre looks more like a 5-star hotel, with concierge style service, a fabulous 120 seat restaurant "Damien on Fisher", incorporating Hudsons Coffee, which is open to the public. There are also numerous facilities and activities for residents, including a Seniors' Health & Fitness Hub, a Gold Class movie theatre, Bowling Green, indoor heated pool, and hair and beauty salon at the village.

Peace of mind is assured with 24-hour on-site care, emergency response buttons and Silver Service Supported Living services. Apartments at Fullarton's new luxury retirement village are in hot demand, with 100 of the 140 one, two and three-bedroom apartments, ranging in price from \$470,000 to \$1.5 million already sold.



Above: Basement carpark



Above: Village cinema

Living Choice is not only the operator of the village but also the developer with its own team of architects and project managers running each project. Advanced Commercial Plumbing (ACP) won the project which was overseen by Managing Director Jason Majder and managed by on site project manager Peter Sharp, site supervisor Colin Williams and their team of up to 18 plumbers.

Work commenced with the removal of 90,000 tonnes of fill to create the undercroft parking and access ramps. A 600mm thick concrete slab was poured within the basement carpark with a PVC storm water drain suspended within the slab.

Peter was personally on site when the concrete pour began at 4:00am to ensure the integrity of their plumbing was maintained throughout the pour. The underground car park stretches under and between both multi storey buildings. The under croft car park also has its own car washing facilities with a Hydro Tech oil plate separator installed by ACP.

ACP installed strip drains 100x20mm in all balconies and all the downpipes. The stormwater is piped to Two Ausdrain Enviro Module Underground storage tanks. The 88,000L retention tank water is used for irrigation of the grounds while the 55,000L detention tank is and a dual stage stormwater pump station is employed to pump from the detention tank, to slowly release stormwater to the street table. Xylem Pumps were used throughout the project.

One Xylem stormwater pump station picks up any basement car park stormwater. Two 4.8metre deep Agricultural drain pump stations harvest subsoil water from over 200



Above: One of the apartment bathrooms



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Commercial Plumbing Cont...

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Above: Alternative communal laundry

metres of pipework to remove water at basement level. Xylem pumps are also used to feed the irrigation rainwater and mains water through testable double check valves for backflow prevention. Sewer drainage within the undercroft car park is installed in PVC and all internal drainage is installed using Raupiano sound insulating pipe.

There are two 150mm connections to SA Water for sewer and the commercial area drains are all in HDPE going to a 2400L Cooke Precast grease arrestor to service the restaurant kitchen and cafe. A Xylem sewer pump station, in the basement, with twin pumps delivers waste from the laundry, bin rooms and HWS units to sewer.

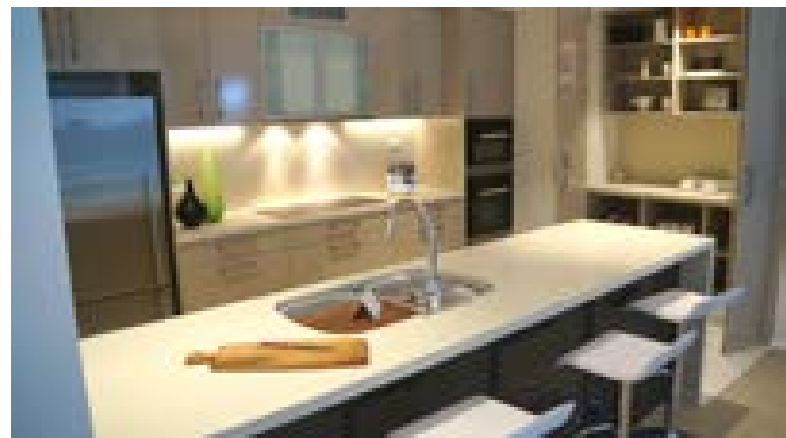
The entire suspended hot water flow and return system, cold water reticulation and gas reticulation was installed using copper tube while all inwall reticulation was installed using Rehau. Each wet area is protected by an Aquablend 1500 thermostatic mixing valve and water meters, both of which are, located within the ceiling space to monitor water usage to each apartment.

The complex consists of three individual towers which each having its own hot water plant room consisting of Rheem heavy duty hot water units manifolded together and fed via dual Grundfos circulating pumps.

Grohe Tapware, Argent toilet suites and Posh stainless steel under mount sinks were used throughout the village. Without doubt the Living Choice Retirement village at Fullarton is one of the best, if not the best retirement village Plumbing SA has seen in the last ten years. It sets a new standard of finish, scale and services for residents. Jason, Peter, Colin and the team at Advanced Commercial Plumbing can rightly feel extremely proud of their work on this project.



Above: Rheem manifolded HWS



Above: Kitchen in one of the apartments



Above: Bathroom looking through to the master bedroom in an apartment



Above: Underground retention tank under construction

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Darwin Plumbing & Gasfitting Expo

The first Plumbing and Gasfitting Expo was held on Wednesday 27th May and although we had some stiff competition with the State of Origin (NSW V QLD) being telecast live on television around the time of our speakers we managed to pull off a very successful event.

I would like to thank the following exhibitors; All Tools NT, Arafura Catering Equipment, Bridge Toyota, BUPA, CAPS Hire, Dux Hot Water, Forecast Machinery, Galvins Plumbing Supplies, GWA Bathrooms & Kitchens (Caroma), HD Pumps, Keefer Bros, KSB Australia, NT WorkSafe, Power & Water Corporation, Reece, Rinnai Australia, Solahart Industries, Think Water Winnellie & Virginia, The Gordon, Quantum Energy Technologies and Wigg Plumbing Specialists for their outstanding support and assistance in providing information to the industry.

I would also like to thank our guest speakers who included;

- Joe Disani (NT WorkSafe) talking about "the safe use of LP Gas from Cylinders"
- John Clancy (Keefer Bros) on "How to set up an OPSO Regulator"
- Chantal Bramley (Power & Water) discussing the "Living Water Smart" initiative.

The speakers provided some great information (both technical and practical) to widen the plumber's knowledge as well as learning about a new initiative for plumbers to increase their work opportunities. The event attracted around 50 guests from the industry including plumbers, gasfitters, merchants, RTO's and government agencies. MPA SA gave away a number prizes as well as a few of the exhibitors holding business card draws. I would finally like to thank Tim Shaw from Selter Shaw Plumbing, Peter Rintel and Neilia (HIA) for their support in making this event a success.

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Northern Territory



Above: Some of the plumbers attending the NT Expo



Above: Two of the exhibitors preparing their stand at the NT Expo

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HD Pumps have been supplying efficient pumps, pumping systems and high pressure drain cleaning equipment for over 30 years in the Northern Territory and has recently established a mobile operation in Adelaide.

Phone: 0439 864 288

Member Profile



Q1. How long have you been in business? Since 1975 (40 years)

Q2. How did you start your business? Leon and Jenny Ridley (of Ridley's Plumbing) have owned and operated a plumbing business in Murray Bridge and the surrounding area since 1975, completing all aspects of domestic, industrial and commercial plumbing projects. We have in fact carried out plumbing to most of the largest factories, shops, motels and hotels in the area. Our son Jason, a registered plumber, has become a driving force into the civil and drainage side of the business and as a result of our expansion into earthmoving and civil work we felt our trading name would be more appropriate as RIDLEYS SA.

Q3. What does your company specialise in? Along with all domestic and commercial work, we also specialise in all aspects of civil work, plumbing and drainage, general plumbing and maintenance, roof plumbing and bathroom renovations.

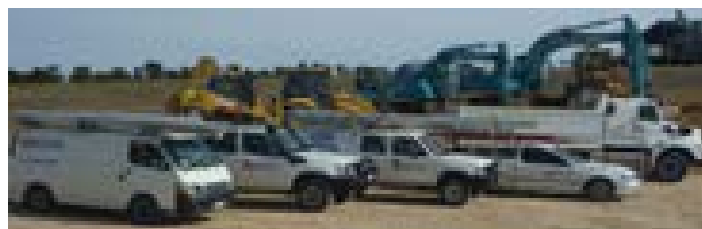
Q4. What project have you completed that you are the most proud of? Springton (182 connection points) (Barossa Council / Maunsell AECOM) 2007 -2008. Won the tendering process and negotiations with Maunsell Australia Pty Ltd and the Barossa Council for the construction of a communal waste water management scheme (CWMS). Works included approx 6000m of gravity drains, 182 gravity connections, 2 effluent pumping stations, road reinstatement, 2 creek crossings, approx 1000m of rising main, construction of 1 lined storage lagoon, a WWTP Pad (WWTP done by others), security fencing and associated works. An extensive quantity of rock excavation was required to complete this project well, exceeding any expectations. This, along with wet weather, underground water and trenches exceeding 3m in depth made this project particularly challenging, but rewarding for the Ridley's team.

Q5. How do you think the industry has changed over the years or what do you think are the biggest challenges in the industry?

When I started my apprenticeship we were laying earthenware drains under strict scrutiny of E&WS (SA Water) Plumbing and Drainage Inspectors, and cutting and threading galv water pipe. We now work in an industry full of gluing and pressing joints that is self-regulated with an emphasis on speed rather than quality and workmanship. The biggest challenges we face now is finding the perfect balance between WHS, safety, quality and competitiveness with price.

Q6. How has being a member of the Master Plumbers Association helped with the business over the years?

Being a member of an association, that is like minded to our business only a phone call away for technical and administrative advice. This is a great assistance.



If you would like to be included in our member profile section please email Frances McCaffer:
frances.mccaffer@mpasa.com.au

2015

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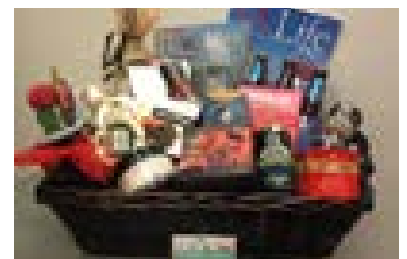
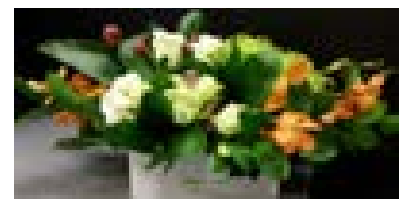
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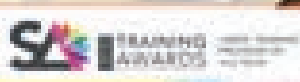
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The difference between concentrations and loadings...

How are trade waste loadings calculated? Are there charges for concentrations or the actual loadings?

The answer is both. Trade waste charges are for the total volume and contaminant load discharged to sewer. These charges are referred to as Volume and Load Based Charges and apply to customers whose trade waste discharges exceed 10 tonnes of Biochemical Oxygen Demand (BOD) or Suspended Solids (SS), or 20 tonnes of Total Dissolved Solids (TDS) or 10,000 kilolitres (kL) in volume per year.

In this article we give a general overview of how the volume and load of trade waste discharged to sewer is determined. Determining the discharged volume is straight forward because this is usually metered as required under a Trade Waste Authorisation. If an effluent meter doesn't exist the trade waste volume will be calculated as a percentage of total site water use. Every kL of trade waste volume discharged to sewer is charged at a set rate detailed in SA Water's Trade Waste fees and charges fact sheet. Determining the total contaminant loading is slightly more complex. Loadings for the different contaminants are charged per kilogram. The charges for each individual contaminant, such as Total Dissolved Solids (TDS) and Suspended Solids (SS) are also detailed in the Trade Waste fees and charges fact sheet.

The loading is calculated based on the concentration of a trade waste sample. For example, if a site discharges 12,000kL of trade waste and the average for a particular contaminant concentration is 700mg/L, the total loading is equal to 8,400kg. The equation to determine the loading is relatively simple and is detailed below:

Total loading = 12,000 kL x 700 mg/L 1000 (kg)

Total loading = 8,400 kg

SA Water has developed a Microsoft Excel based calculator that can help you understand how these charges are calculated. This is a useful tool to begin assessing what impact potential improvements on a site can have on your client's trade waste bill. This calculator is available on the SA Water website. For further detail customers can refer to SA Water's Restricted Wastewater Acceptance Framework which is available on SA Water's website. The Framework establishes SA Water's policies and procedures relating to authorising, accepting and managing the specific wastewater types into the sewerage system. Alternatively you can contact a Business Relations Consultant.

Screening – how they can help improve trade waste quality

Screens and strainer baskets (which are a form of screen) are used to separate solids in wastewater. Screening is a physical wastewater treatment processes that relies on good design and the screens require regular maintenance. Strainer baskets and channel screens covering drains are typically installed in factory floors to trap solids that can otherwise be washed to sewer drains. Strainer baskets should also be used in sinks and troughs. Larger screening devices can be implemented such as bow screens, rotating drum screens, and baleen filters to treat excessive suspended solids.

Waste strainer baskets should be emptied at least daily or more frequently, depending on individual load, to solid waste disposal. As strainer baskets fill with solids, the wastewater flowing through will collect suspended solids and hence become more contaminated. The strainer baskets act like a 'tea bag' when this occurs. If strainer baskets are not emptied there is a risk of blockages, odours and higher trade waste treatment costs. It is important to remember that screens will not intercept fat, oil and grease (FOG's), soluble biochemical oxygen demand (BOD), dissolved nutrients

and total dissolved solids (TDS). As with any pre-treatment planning, it is also worth considering future plans before committing any capital. Determining the types of screening devices to implement will be impacted by the characteristics of the wastewater you are attempting to treat.

Discussing this with the manufacturer and SA Water will be beneficial. All screening devices will be more effective if they don't become overloaded. Therefore, implementing good cleaner production practices such as dry cleaning, minimising spillages and controlling wastewater at its source are all beneficial. This will reduce the load placed on the screens and reduce cleaning and disposal requirements of the solid waste that is collected. For more information there are a number of detailed information sheets on the Trade Waste Guidelines and Fact Sheets webpage.



Figure 1: Screens in a factory floor

These larger screens are often found on the exterior of a factory and take up a larger area. Larger screening devices are suitable for treating suspended solids at higher flow where there is a high concentration of suspended solids. These can be more complicated to maintain as many of these devices have moving parts. It is important that a maintenance program is in place. Screening inside the factory is important because you are controlling suspended solids closer to their source.

Therefore the suspended solids have less time to break up into smaller particles. The first set of screens (primary screens) are often the first barriers to protect against suspended solids contaminating trade waste. Primary screening on the factory floor should be designed to a minimum of 2mm and secondary screening should be permanently installed where practical. In some circumstances this may not be practical as screens may become blocked too frequently. In these cases larger screens should be implemented on the exterior of the factory and improving source control should be considered.

Figure 1 illustrates screening intercepting food scraps from the drain. If the screens are not permanently installed there is potential that cleaning staff will remove the screens allowing for a greater percentage of suspended solids to enter drains.

Apprentices



Name: Michael Fenwick
Year Level: Completed 05/03/2015
Start Date: 12/11/2010
Host: Jordan Plumbing, Intelligent Plumbing and SA Plumbing and Hot Water

Q1. What have you done prior to starting with Master Plumbers Group Training?

After completing school I was able to get into a TAFE Pre Vocational Course. I also worked part time while doing the course.

Q2. Why did you choose plumbing as your preferred trade?

Wanted to do hands on work and fix things for people. I have always wanted to work in a trade and plumbing looked like it had more variety.

Q3. How did you gain your apprenticeship?

Applied to the Master Plumbers Group Training (then PIA Group Training) while doing Pre Voc.

Completed 4 weeks work experience and with a month to go on my Pre Voc course I was offered an apprenticeship.

Q4. What do you intend to do once you complete your apprenticeship?

Continue working as a plumber and complete Cert 4 in plumbing to gain more experience.

Q5. What do you do after work hours?

Play and coach Basketball for Sturt Basketball Club.
Going to watch the Crows play football.

Q6. What are your goals for the coming year?

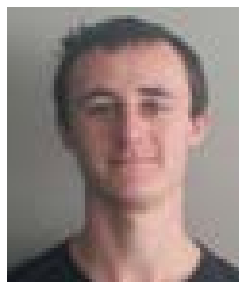
Getting settled as a qualified plumber and learn more about the industry.

Q7. Anything you've created gained or learnt you'd like to share?

I'm happy with how my apprenticeship has given me a broad knowledge.

I commenced with a small family owned company who mainly did hot water services and maintenance. Unfortunately due to a personal tragedy they closed the business.

I then was able to gain experience in multi storey construction on the commercial side of plumbing. I then finished off my apprenticeship in control of bathroom builds.



Name: Matthew Pozzebon
Year Level: 1st Year
Start Date: 21/05/2015
Host: Resolve Plumbing and Gas

Q1. What have you done prior to starting with Master Plumbers Group Training?

Plumbing Plus Course at Hallett Cove High School and Doorways to Construction Cert 1 at Tatchilla Lutheran College.

Q2. Why did you choose plumbing as your preferred trade?

Variety of work on a daily basis, liked working with hands and being outdoors.

Q3. How did you gain your apprenticeship?

Through the Plumbing Plus course Marilyn helped me get work experience with Resolve Plumbing. With the training in Cert 1 and Plumbing Plus I was able to show I could work, I had some knowledge and I worked hard.

Q4. What do you intend to do once you complete your apprenticeship?

Continue learning about plumbing with my employer, do my Certificate IV and maybe well into the future run my own plumbing business.

Q5. What do you do after work hours?

Walk dog or motorbike riding around trails and tracks.

Q6. What are your goals for the coming year?

Gain as much knowledge as I can this year to be able to work more independently next year.

Q7. Anything you've created, gained or learnt you'd like to share?

To anyone trying to get an apprenticeship do a VET course or some form of trade training. I feel that doing Plumbing Plus helped me gain more experience to use towards getting an apprenticeship.

APPRENTICES

RECENTLY COMMENCED

Jacom Lovegrove
Lachlan Connelly
Dylan Barnett
Shaun Apps

Mitchell Stevens
Daniel Forte
Matthew Pozzebon
Jesse Mccauley-Hall

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Plumbing Centres

Plumbers need to avoid damage to underground infrastructure

Dial Before You Dig is a national community service designed to prevent damage and disruption to the vast underground pipe and cable networks around Australia. The free Dial Before You Dig service should always be a plumbers first point of call when excavating. Damaging these networks can result in large financial penalties, injury and in the worst-case scenario, death. Even the simplest domestic excavation work carried out by a plumber can lead to damage.

Lodging an enquiry is simple. All excavators should advise Dial Before You Dig of their intended worksite by lodging an enquiry online at www.1100.com.au. They can also lodge the enquiry by calling 1100 during business hours or by accessing our mobile web service on any mobile device. There is also an iPhone app for iPhone users. Details of the enquiry are then sent to infrastructure owners with assets in the vicinity of the project.

These asset owners respond directly to the excavator with information on the location of underground assets – normally in the form of plans. Excavators then take these plans onsite to ensure they have the best information at their fingertips. When digging around underground pipes and cables everyone has a Duty of Care to protect Australia's vital underground infrastructure. In observing this duty of care, the following points are worth noting (and promoting to your team!):

- Underground network information should be sought well in advance of excavation activities
- It is important that all plans are received and understood before any project commences
- If the scope of works change or plan validity dates expire, you must submit a new Dial Before You Dig enquiry
- Always perform an onsite inspection for the presence of assets. Should you require an onsite location or further assistance from an underground asset owner, contact them directly using the numbers provided on the plans
- You must dig by hand (potholing) when excavating or working close to underground networks to locate those networks
- If you find any underground pipes and cables by potholing, protect them before excavation begins
- Ensure all workers onsite communicate about the excavation process
- If damage to an underground asset occurs, you must advise the asset owner immediately

On the Dial Before You Dig website you will find the Safe Excavation page which contains training resources, our Best Practice documents and links to a range of other useful information. If you would like further details about our service or how we can help, please visit www.1100.com.au.



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Legal Advice

Do you deal with small businesses?
If so, changes to unfair contract provisions may impact you!



The Australian Consumer Law (under the Competition and Consumer Act (ACL) and the Australian Securities and Investments Commission Act (ASIC Act) deal with the provisions of unfair terms in 'standard form' 'consumer contracts' across a range of industries including telecommunications, utilities, travel, domestic building, motor vehicle and finance.

Currently the unfair contract provisions do not apply to small business contracts.

However, the Government is in the process of finalising amendments to the ACL and ASIC Act to extend the existing provisions to include protection for small businesses.

To understand how the proposed changes may affect you, you need to consider whether you deal with small businesses by way of standard form contracts and whether those contracts contain any unfair terms.

What is a standard form contract?

While this term is not defined in the unfair contracts law, in simple terms, a standard form contract is a contract prepared by one party to the contract where there is no opportunity for negotiation between the parties.

It is on a 'take it or leave it' basis. For example, a contract is likely to be a standard form contract where:

- one of the parties has all or most of the bargaining power;
- the contract was prepared by one party before any discussion between the parties; or
- another party was, in effect, required to either accept or reject the terms of the contract without negotiation;

What is a Consumer Contract?

The provisions currently only catch consumer contracts. A consumer contract under the ACL is a contract for:

- the supply of goods or services; or
- the sale or grant of an interest in land to an individual who acquires it wholly or predominantly for personal, domestic or household use or consumption.

This definition is extended under the ASIC Act to apply to financial products and services.

What is an unfair contract term?

Under the ACL, a contract term is 'unfair' if it:

- causes a significant imbalance in the parties' rights and obligations under the contract;
- would cause detriment to a party if it were relied on; and
- is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term

The unfair contract terms provisions do not apply to standard form consumer contract terms that:

- define the product or service being supplied;
- set the up-front price payable under the contract; or
- are required, or expressly permitted, by a law of the Commonwealth or a State or Territory.

There are also other consumer contracts and terms that are exempt.¹

What will change?

Under the proposed changes, the unfair contract terms will be extended to apply to small business contracts.

A contract will be a small business contract if, at the time it is entered into if:

- at least one party the contract is a small business; and
- the upfront price payable under the contract does not exceed either \$100,000 or \$250,000 if its duration is more than 12 months (excluding interest).

To be a small business for the purposes of the amended provisions, the business will employ less than 20 people (excluding casuals).

Legal Advice Cont...

Do you deal with small businesses?

If so, changes to unfair contract provisions may impact you!

What you should do?

Contracts are not just multi page complex documents. A contract can be written (like terms and conditions on the back of your quotation) or oral and can be entered into in a number of ways including:

- signing the document;
- exchanging emails;
- agreeing in conversation or over the telephone;
- by handshake; or
- clicking the 'I agree' button on a web page.

Because the draft legislation places no obligation on a small business to identify itself as such during contract negotiations, the onus will be on those entering into a contract with small business to review all of their standard form contracts for unfair terms.

This is important because each small business contract will be different and what may be unfair to one small business may not be to another.

The Australian Competition and Consumer Commission, ASIC or a party to a standard form consumer contract can apply to the court for a declaration that a term of the contract is an unfair term.

The consequences of a Court finding that a term is unfair are significant. The term will be 'void' which means it is treated as if it never existed.

The remainder of the contract however, continues to bind the parties (unless the contract cannot operate without the clause).

The Court also has the power to declare an unfair term void in all of your standard form contracts, not just the contract that has been challenged.

If passed, the amendments to include small business contracts will commence operation in 2016 and will apply to contracts that:

- vary terms; and
- are entered into or renewed on or after the day the legislation comes into effect.

There is scope for the Minister to exempt the application of the provisions where there is existing equivalent industry specific legislation covering the same matters.

If you need assistance reviewing your standard form contracts please contact Lynch Meyer Lawyers.

¹. Some shipping contracts, contracts that are constitutions of companies, managed investment schemes or other kinds of bodies, some contracts covered by the Insurance Contracts Act and terms permitted as a matter of public policy.

Kathryn Walker
Partner

Lynch Meyer Lawyers
T > 8236 7632
E > kwalker@lynchmeyer.com.au



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Lynch Meyer Lawyers is pleased to be listed in Doyles Guide as a Leading South Australian Construction Law Firm for 2015.

We are also very proud to announce that three of our construction partners, Michael Hutton, Nathan Adcock and Cathy Mayfield have also been listed as Leading South Australian Construction Lawyers in Doyles Guide for 2015.

Doyle's Guide is compiled on the back of extensive telephone and face-to-face interviews with clients, peers and relevant industry bodies.

Our listing in Doyles Guide reinforces our firm's strong expertise in the construction industry, particularly in South Australia.

For more information please contact:

Lynch Meyer Lawyers

Ashleigh Windsor - Marketing Manager

Phone 08 8236 7642, Email awindsor@lynchmeyer.com.au



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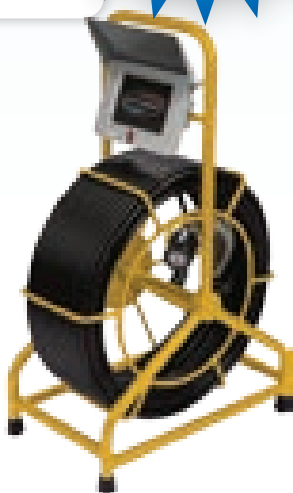


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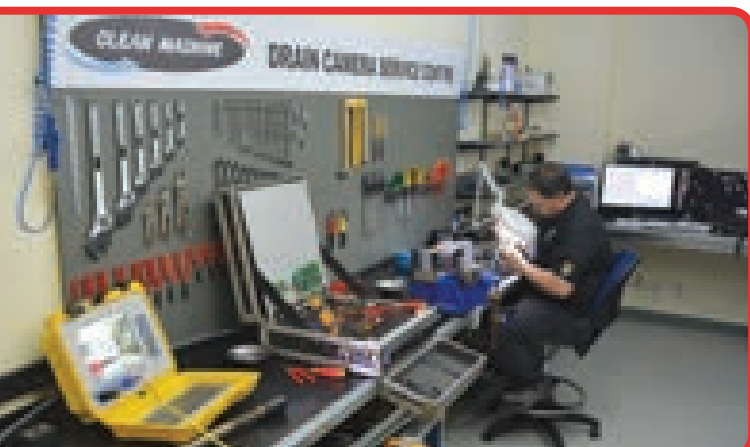
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Legal Advice Cont...

Security Of Payment (SA) Update



The State Government is currently reviewing the effectiveness and operation of the Security of Payment legislation and regulations. The outcome of that review is probably still a few months away. In the meantime, the decision in *Tagara v AP&L Services* [2015] SASC 30 (27 February 2015) is worth having a look at.

Facts

- An adjudicator made a determination in favour of a subcontractor in the sum of \$42,963.79.
- The contractor then found out that the subcontractor was unlicensed.
- The contractor sought Court orders to quash the adjudicator's determination on the basis that section 6(2) of the Building Work Contractors Act (BWCA) meant that the adjudicator had no jurisdiction to make a determination.

Decision

The Court held that section 6(2) of the BWCA acted as a condition precedent, negating the right to a contract payment unless and until a Court determined that the failure to be licensed was a result of inadvertence, and therefore, that unless a Court had determined that a failure to be licensed was inadvertent, the contractor had no right to a progress payment and therefore the adjudicator had no jurisdiction to make a determination.

Comments

With the greatest of respect to the Court, I don't think that the decision is entirely correct. I agree that section 6(2) of the BWCA acts as a condition precedent, negating the right to a contract payment unless and until a Court determines that a failure to be licensed was a result of inadvertence, but, in my view, the lack of a right to a contract payment goes to what determination an adjudicator should make, not to whether an adjudicator has jurisdiction to make a determination.

- The entitlement to make a claim and the jurisdiction of an adjudicator are specifically set out in the SOP Act (2009).
- The SOP Act clearly contemplates claimants being entitled to make a claim other than contract claims (refer definition of "construction contract" in the SOP Act).

- The issue of licensing is specifically dealt with in the BWCA (1995).
- The issue of licensing is simply not raised in the SOP Act (2009).
- If the SOP legislation had intended that SOP claims were only able to be made by licenced contractors then it could easily have said so.
- Adjudicators do not have any jurisdiction to enforce their determinations. There is no reason why Section 6(2) of the BWCA cannot be given full effect if or when a Court is asked to enforce an adjudicator's determination.

In my view:

- Section 6(2) of the BWCA is important to what decision an adjudicator should make when confronted with a SOP claim based on a contract. If the claimant is unlicensed but should be, the adjudicator ought to make a determination that no payment is due.
- section 6(2) of the BWCA shouldn't relate to an adjudicator's jurisdiction but should be given effect to if a Court is asked to enforce an adjudicator's determination.
- An adjudicator's jurisdiction should be found by reference to the SOP Act and not by reference to the BWCA Act.
- An unlicensed claimant should be able to make an SOP claim, especially an SOP claim based on an "other arrangement".

Summary

Whatever my thoughts, as at 27 February 2015 the law is that adjudicators do not have jurisdiction under the SOP Act [in respect of contract claims] if the claimant should be licensed under the BWCA but is not.

- Unlicensed contractors should think very carefully before making any SOP claim.
- Adjudicators and Nominating Authorities ought to think very carefully before accepting any SOP claim from an unlicensed contractor.
- The State Government should amend the SOP and/or the BWCA to make the law clearer for everyone.

For further information contact

Nick Anderson nanderson@oloughlins.com.au

Mobile: 0400 367 618

Have you checked the retest dates on
those tags on your electrical equipment?

Let me assist you in meeting your WH&S obligations regarding your testing and tagging.
I will call you before your retest is due and book the next test.

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John Jones 0419001224
john@assettestandtag.com.au
assettestandtag.com.au



Financial Advice

Who is looking out for the icebergs in your business? We found 21!

If you are too young to remember the story of the iceberg that sank the Titanic, let me give you the 'Executive Summary' of what went wrong (courtesy of Wikipedia.org).

"RMS Titanic was a British passenger liner that sank in the North Atlantic Ocean in the early morning of 15th April 1912, after colliding with an iceberg, during her maiden voyage from Southampton, UK to New York City, US. The sinking resulted in the loss of more than 1,500 passengers and crew, making it one of the deadliest commercial peacetime maritime disasters in modern history.

Two enquiries reached broadly similar conclusions, the regulations on the number of lifeboats that ships had to carry were out of date and inadequate, Captain Smith had failed to take proper heed of ice warnings, the lifeboats had not been properly filled or crewed, and the collision was the direct result of steaming into a dangerous area at too high a speed."

This is a useful story to remember and one that all of us in business can probably relate to. The question is though, who is looking out for the iceberg in your business? Here are some examples of icebergs we've encountered in our time with our clients:

1. Superannuation calculated on the wrong staff pay items, resulting in overpayment.
2. Ignorance of Work Health and Safety compliance laws, risking potential fines of hundreds of thousands of dollars and jail term for directors.
3. Growth plans with no consideration of the cash required to fund growth.
4. GST claimed on expenses with no GST included. If this goes on for a long time it can result in large amounts due, plus fines, plus interest and risk putting your business being on a black list for future audits.
5. Similarly GST not claimed on items containing GST – risking potential input credits not claimed, adding up to large amounts, causing unnecessary and unexplained cash flow problems.
6. PAYG and superannuation not paid, which resulted in a personal liability for the directors of the business (even after liquidation).
7. Plans to purchase a competitor's business without consideration of the extra working capital required to fund the extra sales, risking potential cash flow problems and insolvency.
8. Incorrect rates paid to staff resulting in retrospective recompense, potential prosecution under the Fair Work Act, wasted time dealing with Industrial Relations claims.
9. Long service leave liabilities not accounted for and expected, resulting in potential large payments, unless you have a particularly good relationship with staff to enable negotiation.
10. Lease on premises not renewed, resulting in landlord giving notice to vacate, causing immediate and unexpected closure of business.

11. Payments to suppliers with no ABN or lapsed ABNs, resulting in liability for business to pay PAYG tax on their behalf.
12. Inadequate business insurance resulting in unnecessary hardship after fire.
13. Unresolved contractual issues resulting in unnecessary money and time spent in litigation.
14. Lack of data backups, resulting in unnecessarily long time to recover after technology breakdown.
15. Fraud by staff resulting in financial loss.
16. Issues not allowed for in supply chain, resulting in lack of supply and reduction in revenue.
17. Failure to make payment for redundancies, including resignations as required under the Plumbing & Fire Sprinklers Award 2010
18. Lack of credit checks of major customers resulting in bad debt, which severely impacted businesses ability to continue.
19. Poorly implemented systems, causing interruption to business's ability to deliver to customers and reduced revenues.
20. Goods not registered with PPSR, causing inability to recover them in the event of customer liquidation.
21. Errors in accounting, resulting in underpayment of tax and penalties and interest on underpayment.

These are just some of the issues uncovered, some before the disaster occurred and some unfortunately after the event (which occurred before we got there). It's tempting to think that lots of sales will make up for any little issues that occur.

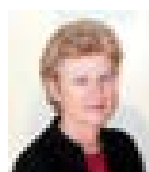
Unfortunately these issues can 'rear their ugly heads' when times aren't so good and the funds aren't available to cover them. It's called 'Murphy's Law'!

The old saying 'Prevention is better than cure' is appropriate here. An iceberg can create not just financial hardship, but cause severe stress on business owners and staff morale.

The issue with risk management can be 'we don't know what we don't know' and it can be a very worthwhile exercise to have someone with experience to do a 'risk management' review of your business.

To develop your very own plan for growth visit: <http://www.cfooncall.com.au/growth-planning-session>

Written by



Sue Hirst

SAFE WORK

Emerging Issues in Work Health Safety

The Work Health Safety (WHS) Act has been in operation in SA for two years now and longer in other states, who have adopted the harmonised legislation. Some interesting data is beginning to emerge.

In SA prosecutions have fallen from 40 in 2010 to 17 in 2014. This in itself appears to be good news but if you compare SA with NSW you will see that they launched 82 prosecutions in 2014 which on a pro rata population basis means we still have a high number of prosecutions relative to our population.

One of the important matters to take on board is the need for an Incident Procedure, which is a plan for managing an incident when it occurs. This is something that Safework agencies are looking at when they commence an investigation.

It is important to understand the regulator and the inspector(s) conducting an investigation and the fact that WHS offences can lead to criminal convictions.

Investigations are taking much longer because they have become very legalistic and the inspectors are conducting much broader inquiries and are staying onsite for longer because under the legislation that gives them more power, that means you need legal advice sooner rather than later.

The legislation is not clear on what constitutes incrimination. If you are interviewed by the police the legislation is quite clear in that all you are required by law is to provide your name and address.

Under Section 155 they can seek answers upon written notice and under Section 171 can require production of documents and answers to questions their powers can demand questions are answered unless you may incriminate yourself or your company or it is subject to legal professional privilege.

In NSW they are actually requiring evidence of when legal professional privilege was activated.

The Master Plumbers believes that, if you have an incident that will result in an investigation by SafeworkSA, you should preferably engage legal representation before you are interviewed.

It is your legal right to defer being interviewed until your solicitor arrives or if persons involved in the incident are in shock or too emotionally stressed to be interviewed immediately.

BusinessMate incorporates immediate legal advice 24/7 for its user. If you opt not to contact a solicitor, do not allow anyone to be interviewed on their own and keep an accurate record of the interviews.

Ensure workers cooperate with the inspectors but make sure they are aware of their right not to self incriminate and that they do not have authority to speak on behalf of the company.

Be aware that inspectors are asking for documents right back to the contract stage to determine if safety has been planned and assigned appropriately.

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They are also seeking email records, text records etc. Employees need to be made aware that they should not use emails and social media to speculate what happened and who if anyone is at fault.

A good part of any investigation revolves around due diligence and consideration of what is reasonably practicable.

Attention is also being given to the training, incident reporting, Standard Operating Procedures (SOP's) and application of the Codes of Practice compliance, PCBU's are undertaking with their employees. Working at Heights and electrical safety are other areas of particular focus.

Another emerging trend has been termed "Long arm fines" This is where inspectors are going back and fining companies for failing to implement remedial action for an enforceable undertaking.

Don't think an enforceable undertaking is going to be cheap. Four companies in NSW each paid out between \$385,000 and \$625,000 in meeting the undertakings which included doing things like 12 weeks of English classes for employees of a non English speaking background to improve communication.

They also paid to get safety training for all employees, GPS tracking of all vehicles entering the site, advertising in the media, running public awareness campaigns about electrical safety in the general community and the list goes on because the legislation puts an obligation on a PCBU to not just improve safety in the workplace but to raise awareness in the general community.

The take home message is not to shut the doors and go and lie on a beach or become an ostrich and hope it won't happen to you.

Good planning, sound policies and procedures, good communication with staff and a pro active approach to safety when planning your work will give you peace of mind, that you planned not to have an accident or incident but if you do, you did everything you could to prevent one happening.

Many small businesses don't know where to start and that is why the Master Plumbers built BusinessMate, to give you a system to implement into your business, specifically designed and regularly maintained for plumbers. We're just a phone call away.

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- Jaws for copper pressing: 15, 20, 25 & 32mm
- Head rotation: 270 barrel/jaw swivel
- Hydraulic Ram Output: 24kN
- Operating temperature range: -10°C to 60°
- Approximate cycle time: 5 seconds
- Power source: 18V Li-Ion battery or AC adaptor
- Weight: 2.5kg (without battery)



RP 340 Press Tool

- Jaws for copper pressing: 15, 20, 25, 32, 40 & 50mm
- Head rotation: 270 barrel/jaw swivel
- Hydraulic Ram Output: 32kN
- Operating temperature range: -10°C to 60°
- Approximate cycle time: 4-5 seconds
- LED-light for continued operation in no or low light environments
- Power source: 18V Li-Ion battery or AC adaptor
- Longest service interval in the industry: 42,000 cycles
- Weight: 3.4kg (without battery)



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In Brief

WaterMark Compliance

Watermark compliance is now under the responsibility of the Australian Building and Construction Board (ABCB). A member recently raised a complaint to the Master Plumbers about the appalling installation instructions for a toilet pan a builder had supplied him to fit. The matter was raised with the ABCB and the importer is now being directed to produce adequate instructions in English as is required under Australian Standards.

If you come across a non WaterMarked product or poor installation instructions on Watermarked products with the unit please provide the brand, model number, the Watermark number, if you have it and a copy of the poor instructions, if that is the issue and we will forward the matter to the ABCB, who will act to resolve the issue. As an industry it is important to make those ignoring the requirements accountable for their failure to meet standards.

Australian Government Treasury Submission

The Master Plumbers Association has made a submission to the draft legislation for the, Extension of Unfair Contract Term Protections to Small Businesses. The main flaw the association saw in the legislation is that the financial limits were set too low for the construction industry. It is also unclear if the construction industry will be included in this legislation. The legislation is expected to pass by the end of the year.

Beware Ransomware

Almost \$1 million was lost to these scams last year. Ransomware is a type of malware that infects a computer system by restricting access unless a ransom is paid to a scammer for the restriction to be removed. "The ACCC received over 2,500 ransomware and malware complaints last year with over \$970,000

reported lost by small businesses and consumers. Several people reported losing over \$10,000 to these scams, which can have a devastating effect on a small business," ACCC Deputy Chair Dr Michael Schaper said.

"Ransomware can also see your business losing all of its business and financial records, which may be catastrophic." Victims reported receiving an email purportedly from a reputable sender such as Australia Post or FedEx, with a file attached that will install ransomware on your computer once opened.

"Many small businesses and consumers have reported that their computer has been frozen, with a pop-up alert that claims to be from the Australian Federal Police stating the computer has been locked because they have visited an illegal website or breached various laws," Dr Schaper said.

"Scammers claim that they will unlock the computer if a fee is paid. However, even if you pay the ransom, there is no guarantee your computer will be unlocked and you're likely to be up for expensive repairs to your computer and the loss of your invaluable data." "Scams like this often succeed because they look like messages from a government agency or reliable large corporation. It's important that small businesses are aware that government agencies will not send these demands and they're dealing with a scammer," Dr Schaper said.

SCAMwatch tips

Ensure your computer has a firewall and up-to-date anti-virus and anti-spyware software. Do not click on links or download files in emails you receive out of the blue; especially if they are executable (.exe) files or zip files. These files are likely to contain malware. Use a pop-up blocker as a lot of ransomware is delivered after following links in pop-up alerts.

If there is any doubt about the legitimacy of an email supposedly from a legitimate business, do not rely on contact details or links provided or open any attachments - contact the organisation using the number in the telephone directory or on their official website to verify. Regularly back-up your computer's data on a separate hard drive so this can be easily re-installed if your computer is infected by malware or ransomware. You can report scams to the ACCC via the SCAMwatch page or by calling 1300 795 995.

Senate Inquiry Finally Looking at the Construction industry

A Senate Inquiry is considering how to address the issue of construction related insolvencies at a national level. Submissions to that inquiry talked of a range of problems and challenges including phoenix companies, low margins and contractors being forced to take on excessive risk, challenges in business and cash flow management, late payments to subcontractors and poor productivity.

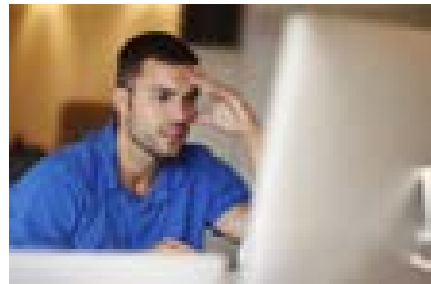
As many as 764 construction businesses went into external administration in the last six months of last year, ASIC data shows - almost twice as many as any other sector except for 'Other' (business and personal services). In August, Opposition Senator Doug Cameron told the Senate creditors were losing \$2.64 billion annually due to construction insolvencies.

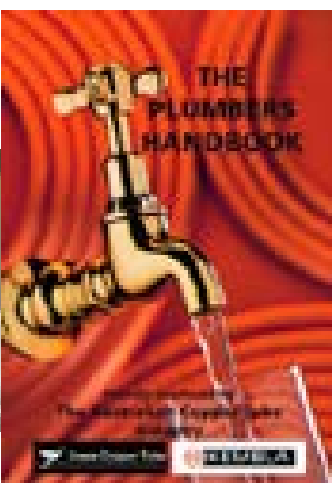
The latest reports also follow anger over revelations earlier this year that the previously failed Walton Constructions continued to secure government contracts worth more than \$64 million over a three month period to September 2012 despite the then Queensland Building Services Authority being aware from at least mid-2012 that the company had failed to meet financial reporting deadlines. Walton went into liquidation owing \$72 million in 2013.

Thoughtful Installation

The plumber called to service this HWS really appreciated the thoughtful location and orientation of this HWS. Lazy or inept plumbing yet again.

A little thought and a little more care would have been quite easy to achieve.





Copper Regulations Made Easy

The recently launched Hydraulic Services Design Guide developed by the International Copper Association Australia (ICAA) with the support of MM Kembla, Crane Copper Tube and the Association of Hydraulic Services Consultants Australia has been released online. The comprehensive Hydraulic Services Design Guide has everything to keep the modern plumber using copper up to speed, — an online resource that will be reviewed and updated each year to make sure designers, contractors and students have the absolute latest reference material in the palm of their hand (especially if using the smartphone app). It covers every aspect of contemporary

copper plumbing. It's important that everyone in the industry is aware of changes and some of the emerging topics that are currently being discussed and that will be of interest to all in the future:

- Clarification and recommendation for the design velocity of hot and cold water.
- Improvements in the insulation requirements for hot water piping to provide better thermal efficiency.
- Regulation of the temperature of hot water from all outlets to prevent scalding. Planned for 45°C maximum for child care, health and aged care facilities.



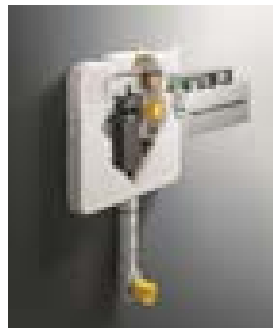
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Viega launches new concealed cisterns in Australia



Viega has released a new range of concealed cisterns in Australia — the Mono Slim. The focus is on providing a slim-line, dual-flush cistern that's easy to install and use. And the cisterns can be fitted with a comprehensive range of architectural flush plates from Viega.

The Mono system has an installation depth of only 8cm. It also has a WELS 4-star rating based on a 3 and 4.5 litre flush, with the capability to increase it up to 6L for a large flush. Another key feature is the insulation of the cistern, which is designed to stop condensation as a result of cooler than room temperature water refilling the cistern. The cisterns have been created with a single piece flush valve which has a dual benefit — i.e. there is a short travel distance, plus less 'force' is required to flush the cistern.

Additionally, if maintenance work is required, it can be removed in one piece, so that no parts can fall into the cistern by mistake. A one piece inspection shaft also ensures the cistern is sealed, so during construction it prevents plaster, tile work mortar, water, dust or other contaminants getting into the cistern. Another of the cistern's features is a translucent rubber washer with higher chlorine resistance for the Australian market.

Designer flush plates

The Mono cisterns can also be combined with Viega's flush plate designs, which come in a choice of short or long, chrome, stainless steel, plastic or glass.

For further information: www.viega.com.au

New Rheem electric products with 10-year cylinder warranty

These products come in 250L, 315L and 400L capacities. In extending the warranted life of the products, Rheem has incorporated a range of new and enhanced features including:

- Redesigned cylinder dome top: This has been re-profiled, resulting in an even stronger, more robust design.

- Large anode: Rheem has introduced larger sacrificial anodes to support the new electric range of products. The diameter of the standard black anode has been increased from 21mm to 27mm, providing physically more material to help protect and prolong the life of the cylinder. Specialty blue anode models have also had their anode size increase from 17mm to 21mm. These are located into an anode support, which supports the increased weight of the larger anode, preventing it from swinging in the tank and potentially causing damage to the cylinder or anode itself during transport and installation.



Hot Products Cont...

- Enamel specification: The new range will feature a commercial grade, proprietary blend Class Y enamel. This special blend enamel is both stronger and more durable than domestic grade Class X enamels. Less soluble and more resistant to high temperatures, this enamel coating will last for longer, ultimately prolonging the life of the water heater.

Embossed pipe-seals have also been introduced. These now nominate fitting types for the relief valve, inlet and outlet to identify the fitting type more clearly and give a cleaner appearance by eliminating the need for individual labelling.

The 250L to 400L models also receive enhanced packaging livery, clearly displaying that the range has a 10-year cylinder warranty, is Australian made and has dual handed fittings. There are also QR codes that refer plumbers and consumers back to dedicated product landing pages on www.rheem.com.au.

AUSTRALIAN MADE

Another key differentiator is the fact that Rheem's 250L, 315L and 400L electric water heaters are made in Australia, at Rheem's Rydalmere NSW manufacturing facility.

For more information on the new 491/492 series range, contact 132 552.

www.rheem.com.au

Rheem 491/492 Series Electric Water Heaters

Rheem has introduced its new range of 250L – 400L electric water heaters, featuring a 10yr cylinder warranty.

The '491/492' series products use a commercial grade Class Y enamel and thicker 27mm anode to deliver maximum durability.

A redesigned dome top provides even greater strength, these elements combined equate to 'the REAL Difference'.

Built to last, these products continue to be manufactured in Australia, with know how gained from over 75 years of local manufacturing excellence.



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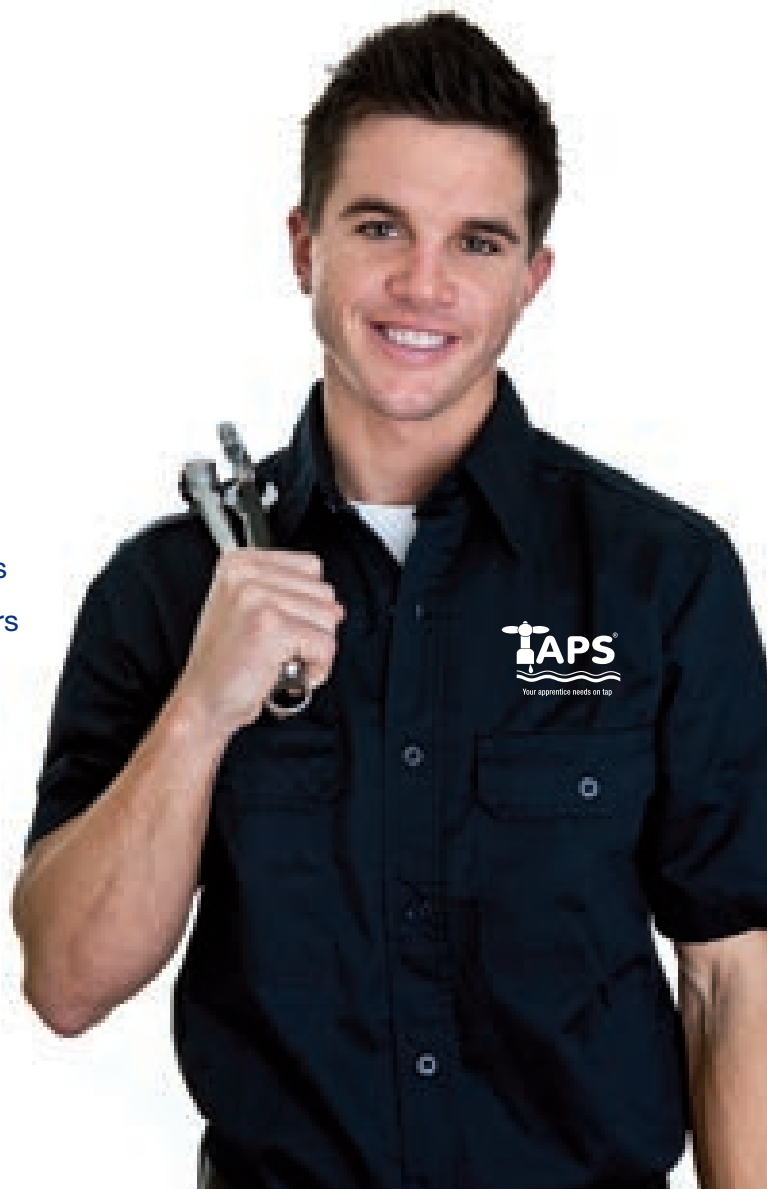
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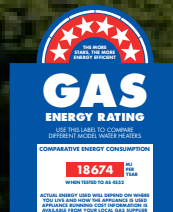
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