

Dear Chairman (Bills Committee on Waterworks (Amendment) Bill 2017)

The HKIPDL is very concerned that heavy burden will be imposed on licensed plumbers through the enactment of the Waterworks (Amendment) Bill 2017. In general the HKIPDL is supportive of the new enactment.

The importance of the common law and the rules of equity are all enshrined in Article 8 of the Basic Law, in which the presumption of innocence and that the burden of proof lies with the prosecution are key components.

But now the Bill has this burden of proof reversed to the shoulders of the accused licensed plumbers.

The incident of excessive lead in drinking water was very unfortunate and it was committed only by a small minority of the licensed plumbers. But if the majority of the licensed plumbers were to bear the blunt of the malpractice, then the Government is finding the wrong culprit.

The HKIPDL is one of the providers for WSD's Voluntary Continuing Professional Scheme for Licensed Plumbers. Over the last four months, the HKIPDL has organized over five Nos. CPD events for the licensed plumbers, the response has been overwhelming. Each seminar has had at least 100 licensed plumbers enrolled to attend these seminars or activities. This demonstrated the eagerness and cooperativeness of the licensed plumbers who are willing to improve themselves on a voluntary basis.

At all times, the Government should treat licensed plumbers as friends rather than foes. The HKIPDL has the following stance:

1. When excessive lead was found in drinking water, there must be more than one factors involved rather than to blame the licensed plumbers alone;
2. Other possible contributors to the excessive lead including manufacturers and suppliers should also be counted in the investigation;
3. Since this is a reversed burden of proof, the HKIPDL stresses that before a licensed plumber is to be prosecuted, intentions to commit the offence must be established. In a wider sense the HKIPDL is supportive of the enactment. On page C829 we suggest to show mercy to the licensed plumbers by deleting the words in red and to add those filled in.

(3) A person who fails to comply with a requirement under subsection (2) commits an offence.

(5) It is a defence for a person charged with an offence under subsection (3) if the person establishes that at the time of the alleged offence the person had ~~a reasonable excuse for failing to~~ grounds to believe and did believe that there is no requirement to comply with.

4. Since this is a reversed burden of proof, the HKIPDL stresses that the laws must try to find the positive motive but not to find the negative intentions. On page C831 we suggest to delete the words in red and to add those filled in. We hope to present the positive picture rather than a negative one.

(4) A person who, in purported compliance with a requirement under subsection (2), makes any statement or provides any information that is false or misleading in a material particular commits an offence.

(5) It is a defence for a person charged with an offence under subsection (4) if the person establishes that at the time of the alleged offence the person had reasonable grounds to believe and did believe ~~did not know, had no reason to suspect, and could not with reasonable diligence have ascertained,~~ that the statement or information concerned was ~~false or misleading in a material particular~~ true.

5. The HKIPDL stresses that there are more contributors than just the licensed plumbers, inspection must also include the potential risk caused by manufacturers and suppliers. On page C821, the HKIPDL proposes to add one more category of the “matters”, so as to alert all parties involved.

(6) Without limiting subsection (5)(a), a person mentioned in subsection (4)(a) must not be regarded as having taken all reasonable steps if the person did not, having regard to the matters set out in subsection (7), inspect the carrying out of the construction or installation (the works) as often as was reasonable to ensure that the works were carried out in compliance with this Ordinance.

(7) The matters are—

- (a) the nature of the works;
- (b) the risks involved in the works;
- (c) ~~the potential tampering by other parties;~~ and
- (d) the knowledge and experience of the person carrying out the works.”.

All in all, this enactment will provide a good direction to enforcing the work of the Water Authority. Having said that we do not support to make the licensed plumbers bear all the liabilities, which will not be fair to this party who have been working so hard to make things smooth in Hong Kong.

Regards,

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