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## IN OTHER NEWS

### The Propaganda Tool

We reported recently that we thought the Board's publication "The Info Brief" was being used as a propaganda tool and this week was proof of that.

When the Board believed that the Regulations Review Committee had thrown out a complaint by the Federation they were quick to send out a special edition for all to read.

We didn't see one when the Ombudsman upheld a complaint last week which resulted in the Board being told to return over \$600,000.00 to the industry.

But yet last Friday they sent out a Special Edition with free advertising for training providers.

As an industry we pay for the Info Brief supposedly as a communication tool between the Board and the industry but more and more it seems to be full of hypocrisy.

It seems advertising CPD courses takes president of decisions from the Ombudsman that affect the entire

### Ombudsman recommends Board repay the industry \$600,000+



Two and a half years of hard work came to fruition last week when the Ombudsman made a formal recommendation that the Plumbers Gasfitters and Drainlayers Board enter into discussions with representatives of persons registered under the Plumbers Gasfitters and Drainlayers Act 2006.

The discussions are to achieve a satisfactory arrangement with persons who have paid excess amounts of levy under the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 in respect of the disciplinary levy.

The amount has been calculated by the Ombudsman as being \$90.00 per person who registered or licensed between 31 July 2010 and 11 January 2012. This is estimated to be around \$600,000.

The Federation is happy with the result and the Ombudsman has restored our faith in the "system", but when we spoke to Federation Committee Members who pushed the complaint they said *"It's a good result but it's not about winning. We would prefer to have a competent Board that listens and operates in a legal manner. This is yet another example of poor leadership and lack of legislative understanding by the PGDB."*

So what was it all about? Back in July 2010 a complaint was laid with the Regulations Review Committee (RRC) regarding the setting of a disciplinary levy by the Plumbers Gasfitters and Drainlayers Board. In May 2011 the House of Representatives considered a motion by the Chairperson of the RRC regarding the disallowance of the fees notice. It was alleged the Disciplinary Levy was being used to prosecute Non Registered persons when the Act did not allow the levy to be used for such activities. The House chose to leave the notice in its original form after lobbying by the Minister of Building and Housing, Master Plumbers, the Board and a couple of suppliers.

The fact that the House did not exercise its power to disallow the Fees Notice did not determine the question of the notices validity. The Board at one stage asserted that the disciplinary levy had *"not been found to be illegal in a court or any other body with jurisdiction to make such a finding."* What resulted was a complaint being laid with the Ombudsman. It's believed that had the House Disallowed the Fees Notice the problems now encountered would have been avoided but it seems the lobbying of the groups above influenced their decision.

The Ombudsman found the fees notice was not legal and that the power to levy did not extend to covering costs of taking proceedings against non-registered persons. He stated that if the notice was not valid when it was made the fact that the house did not disallow it does not make it valid.

The Ombudsman's investigation concluded the Board's action in imposing such a levy and collecting monies under it was "based wholly or partly on a mistake of law" and consequently the complaint was upheld.

The disciplinary levy was challenged when it was imposed and it was not removed until some 18 months later. The Ombudsman stated: *"What is in*

industry.

It is the Boards responsibility to communicate with you regarding official issues which should be in letter form so if you feel the Info Brief is propaganda ask to be taken off the electronic mailing list.

Another option is to do what a lot already do and mark it as spam so your computer rejects it.

Of course you can keep reading it as a bit of a light humour as bad decisions make for the best stories.

#### Letters to the Editor



Dear Editor

I have a question.

Where do we record our CPD self directed points throughout the year?

**Ed:** It seems you just record it on a piece of paper which no doubt most of us will rush around at licensing time trying to find to justify our points we will need to license.

#### Reference Issue 138

Dear Editor

Very true and an accurate description of our sick industry, Keep up the good fight.

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Dear Editor

I think one of the problems we have is that we are too nice and don't stand up for ourselves. We don't want to be seen as

*issue here is an unlawful levy, a tax, that the Board was not authorised to impose. In these circumstances I think Mr Gordon was justified if he felt the matter that he had correctly raised was not dealt with with the expedition that it should have received. It can never be justifiable for a body to continue to levy monies that it has come to realise that it has no legal authority to raise. I take this to be a matter of cardinal importance and I will come back to it later, but at the very least the Board should have acted to stop extracting the full amount of the disciplinary levy set out in the Fees Notice much sooner that it did."*

To achieve the amount to be paid the Ombudsman adopted the difference in the amendment to the Fees Notice that came into effect in January 2012 where the Levy was divided out into a levy of \$175.00 and a fee of \$90.00. He stated: *"On that basis I intend to treat \$90.00 of the previous disciplinary levy operating from 31 July 2010 to 11 January 2012 as having been improperly extracted and thus being potentially refundable. The total amount in issue I understand to be about \$600,000.00."*

We have consistently maintained that the levy was unlawful and have been proved to be right. If the concerns had been heeded earlier the matter could have been attended to well before the levy had been collected for 18 months. (That's the reason for consultation listening to Plumbers Gasfitters and Drainlayers point of view, a skill and understanding not yet acquired by the Board)

The Board should have appreciated the problem and acted to correct it much earlier than it did. As it was the direct legal decision maker (with the power to issue fees and levy notices itself), it could be said that it allowed a refund liability to accrue by its own failure to take action. It would appear that the external legal advisers and the four lawyers who are employed by the Board have again been found wanting, it's easy to understand where the term "bush lawyers" arose from "In our opinion the Board have displayed arrogance in this matter – they were alerted to the fact that this charge was unlawful and yet they doggedly continued on – and on and on.

We wonder how the Minister will view this given that this is all under the current Board's watch, the Board in which he has so much faith, the Board that want to be "transparent", the Board that wants so desperately, according to their own spin, to re-gain the trust of industry going forward. This situation certainly has not aided that quest.

The Board and Ministry put forward explanations but the Ombudsman's view was: *"While I am not unsympathetic to the position the Board finds itself in, it is fundamental that statutory bodies act within the law. Indeed such a proposition is an essential element of the rule of law itself. In my view matters can not be permitted to remain in the unsatisfactory state of an unlawful levy to the extent of \$600,000 having been extracted from a section of the population. The matters urged on me by the Board and the Ministry do not alter my view on this."*

The Ombudsman stated: *"In my view the best outcome would be a validation of the levy accompanied by a financial arrangement as to how those who paid the levy were to be recompensed in some way"*

So he is not of the opinion the excess amount of levy should simply be refunded (though that is a possible outcome) rather he believes the matters can't be left as they are and a number of issues need to be dealt with.

There you have it - the condensed version of an 18 page report. The report did address other issues which we will report to you soon.

We asked the Federation Members involved with the complaint why it is that tradesmen are continually proving the Board wrong, when the Board have unlimited resources provided by us, such as lawyers and legal advice. The reply was: *"Good legislation is written in such a way that if an average person looks at it they should be able to understand it so they can abide by it. It's only when people try to stretch the rules to support their way of thinking or activities that the law becomes difficult."*

dobbers but at the end of the day it's either dob in some illegal dude or go hungry.

## The Board

Dear Editor

How do we end up with so many people who are so similar on the Board?

**Ed:** The Minister has made it clear he doesn't want the current system of appointing plumbers, gasfitters and drainlayers as he claims he has trouble filling the positions with suitable people.

Perhaps if the positions were utilised as the Act intended there would be more interest.

Tradespeople representing trades people where the feelings and ideas are put forward prior to the Board consulting on their plans.

It seems at the moment once the Board puts forward its ideas then that's it, the consultation appears to be just a process to be followed.

The system as it currently is doesn't work with the non trade people in charge, so how would it work with ten people who know nothing of the industry?

Remember only two on the Board are legislated to represent the consumer - not ten as everyone seems to think.

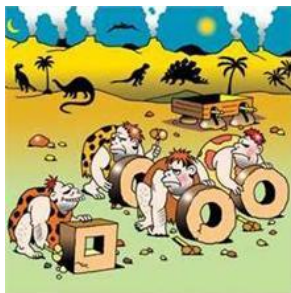
Have you ever looked at the title of the Board – it's the Plumbers Gasfitters and Drainlayers Board not the Plumbers Gasfitters and Drainlayers Consumer Protection Board.?

Give the Industry ownership of the Board and watch the

*Legal opinions can be bought to support your interpretation and in this case the Board's opinion wasn't as good as the interpretation from the tradespeople. The Board needs to get the industry on side instead of trying to beat them into submission and obedience. Wearing a suit or being on a Board doesn't make people any better than a person wearing stubbies, who has a Ute, cellphone and a dog, and in fact it could be argued that the stubby wearing, cellphone using dog owner is the smarter of the two!"*

The Ombudsman has asked the Board and Ministry to advise him by 29 March 2013 what steps (if any) they propose to take to give effect to his recommendations. The Federation is now exploring the Board's legality of collecting fees either side of the period reported on by the Ombudsman.

## A History Lesson



Recently we stated that to get ahead we need to look at the history, but at a meeting the Federation had with the Minister, Building and Housing Group and Board representatives the Board made it quite clear they didn't want to look at the past. They were only concerned with going forward. It was as if they only wanted to take responsibility for issues since they were appointed, yet what they are implementing is nothing original - it's just

add-ons to issues of the past and a lot of those issues are based on decisions that were and still are wrong!

We believe this Board has been found at fault for more issues than any other Board before it - possibly because they are not learning from the mistakes of the past and are not creating anything new. We think they are either acting in bad faith or without reasonable care. Lets look at a few of their activities where a knowledge of the past would have helped them:

**Charities Commission:** Mr Bickers stated: *"The historical background to the Board being a charity is unknown to the current Board members but the status has been beneficial to all tradespeople as it shielded them from some costs that would otherwise be collected through licence fees."*

So that implies the Board haven't looked at the historical background and yet they have spent tens of thousands of dollars trying to defend their status as a charity and - even in the face of a decision by professionals - they are still prepared to spend tens of thousands of dollars to appeal the decision. A look to the past may have saved the industry an estimated \$50,000 plus in costs to appeal the decision.

**Continuing Professional Development (CPD):** Investigations by Government departments and independent Queens Counsel have confirmed the CPD scheme was without statutory authority from the time it was started in about 2004 until the 2006 Act was implemented in 2010. The men with the dog, the cellphone and the Ute have told the Board, repeatedly, that this was the case – and been ignored.

The Regulations Review Committee (RRC) recommended the disallowance of the regulations implementing one scheme. The Board and Master Plumbers cried until the regulation was left in place. The industry rejected the Board's proposals twice, but the Board went ahead with a compromise and implemented the Master Plumbers recommendation. It was also believed in 2010 the scheme was still without statutory authority but yet the Board pushed on with it Gazetting new notices in 2012. That notice is again the subject of a complaint to the RRC.

Nothing new, just add-ons, so a look to the past may have saved a lot of trouble. Listening to what industry had to say may also have helped. The scheme will never work without industry support and currently it has the support of Master Plumbers who are possibly the biggest CPD supplier

productivity increase.

Leave it as it is and watch the industry fail.

The Minister has proved his way doesn't work so why not change - after all he's the one who said the industry should take responsibility.

The Prime Minister even said the industry knows what's best for it.

## CPD

Dear Editor

This exemption the Board is going on about that requires us to get double CPD points – is it legal?

**Ed:** We don't believe it's legal and will have more on this next week.

## Careful with your money:

The Board are being very careful with your money.

This week they wrote to the Federation advising they wanted \$664.20 for documents pertaining to the 2011 review of the Boards Disciplinary Process which the Federation had requested as an Official Information Act request.

To cap it all off they asked for \$1,155.20 for the documents pertaining to the 2012 Fees Review that was Gazetted in December.

You would have thought their openness policy would have provided the information to the industry free of charge. (or they could take it out of our \$600,000)

in the country. It's quite ironic the Board is stacked with Master Plumber's members and people in the training industry. The conflict of interest is questionable and is yet to be responded to by the Minister. This conflict was brought to his attention three months ago and we are still waiting on his reply.

**Fees:** The Regulations Review Committee (RRC) recommended the disallowance of the regulations implementing a disciplinary levy. The Board and Master Plumbers cried until the regulation was left in place. It has now been found to have been an illegal levy.

The Board amended the Fees Notice with a smaller disciplinary levy and a new offences fee. This was rejected by the industry but supported by Master Plumbers. This is the subject of a complaint to the RRC where Master Plumbers have stated it should stay in place whether right or wrong. (We do wonder if they consulted their membership about their views on this one – we doubt it as the tradespeople we talk to around the country are pretty much all in agreement that they shouldn't be having to pay illegal fees to the PGDB.)

The Office of the Auditor General agreed with the complainants that the offences fee was more akin to a levy and the Board had no authority to charge such a levy. A decision from the RRC is pending. The Board have now snubbed all logic and opinions and have gazetted a new notice which is basically the same as the last with regard to the offences fee. They have put themselves in the same situation as the Ombudsman has just reported on – they are continuing to collect a levy which they know is illegal. This is the subject of a complaint to the RRC so hopefully it will be stopped before the Board incurs a refund liability to accrue by its own failure to take action.

Remember the Minister has signed off on all these activities so perhaps the people providing him with advice should be looking at historical events so the same mistakes don't happen again. So history is repeating itself, because the mistakes of the past are being repeated. It's all just add-ons with nothing new. We believe the industry is being driven into the ground by the Board through lack of real understanding of the legislation, poor leadership and agendas that are getting in the way of common sense.

All the lawyers on the payroll don't seem to be helping the Board at all – that or the Board simply ignore the advice they are given. As Ralph Waldo Emerson once said "Common sense is genius dressed in its working clothes." Not a wig, nor lawyers gown amongst them!

Maurice Williamson, the Minister of Building and Construction seems to have faith in what we believe is an incompetent Board that is lacking leadership, and he is signing off on their illegal activities. Does this put him in the same boat as the Ministers that signed off the Novapay deal for the Ministry of Education?

The Federation is currently collecting and documenting material for the investigation of the Office of the Auditor General this year.

What do you think about the \$600,000.00 that the Board had no business charging industry? What would you like to see done with it? Let us know your views. We will print a selection of them in upcoming newsletters.

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