

Plumbers, Gasfitters, and Drainlayers Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill validates a disciplinary levy imposed under section 143 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (the **Act**) between 1 April 2007 and 11 January 2012, and an offences fee prescribed under section 142 of the Act since 12 January 2012, by the Plumbers, Gasfitters, and Drainlayers Board (the **Board**).

This Bill also amends the Act to provide the Board with a levy power to fund its function of instituting prosecutions against persons for the breach of any Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying. The Board had been using part of the disciplinary levy (as payable between 31 July 2010 and 11 January 2012, inclusive) and then the offences fee (as payable from 12 January 2012) to fund this function.

In February 2011, the Regulations Review Committee (the **Committee**) concluded that certain clauses of a *Gazette* notice, relating to the disciplinary levy imposed by the Board from 31 July 2010, should be drawn to the special attention of the House of Representatives. The Committee recommended that the clauses be disallowed. The Committee concluded that the Board appeared to have made an unusual or unexpected use of the levy power in section 143 of the Act. This is because section 143 only empowers the Board to impose a discip-

linary levy to fund the costs arising out of complaints and discipline in relation to persons registered under the Act and the Board used the disciplinary levy to fund enforcement action against non-registered persons (and some other costs). On 12 May 2011, the Chair of the Committee moved a motion to disallow the clauses in the *Gazette* notice relating to the disciplinary levy with effect from 31 March 2012. However, the motion was not agreed to.

The Committee is currently considering the validity of the offences fee prescribed by the Board.

It is necessary to validate the disciplinary levy and offences fee charged to date because the Board is funded entirely from fees and levies charged to persons registered under the Act and any other option would put significant financial strain on the Board. This Bill validates the disciplinary levy as imposed from 1 April 2007 to remove any doubt about the validity of the disciplinary levy in the period before it was scrutinised by the Committee.

It is also necessary to extend the Board's power to impose levies so that the Board has funding for all of the functions it is required to carry out under the Act, including prosecution of non-registered persons.

The Board's prosecution function is important to the Board's overall role in protecting the health and safety of members of the public by ensuring the competency of persons engaged in the provision of sanitary plumbing, gasfitting, and drainlaying services and regulating persons who carry out sanitary plumbing, gasfitting, and drainlaying.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill will come into force on the day after the date on which it receives the Royal assent.

Clause 3 states that the Bill amends the Plumbers, Gasfitters, and Drainlayers Act 2006 (the **Act**).

Part 1

Extension of purposes for which Board may impose levy

Clause 4 amends section 143, which currently empowers the Plumbers, Gasfitters, and Drainlayers Board (the **Board**) to impose on registered plumbers, gasfitters, and drainlayers (**registered persons**) a disciplinary levy to fund the costs arising out of—

- investigations into allegations or complaints against registered persons; and
- proceedings concerning discipline under Part 3 of the Act.

As amended, section 143 will empower the Board to impose a disciplinary and prosecution levy to fund, in addition to the costs listed above, the costs of investigations into, and prosecutions against persons for, the breach of any Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying.

Part 2

Validation of disciplinary levy and offences fee

Clause 5 inserts *new sections 171A and 171B*.

New section 171A validates a disciplinary levy imposed by the Board (*see* section 143 of the Act) and payable or purportedly payable between 1 April 2007 and 11 January 2012 (inclusive). The amount of the levy payable or purportedly payable in that period is as follows:

- from 1 April 2007 to 31 March 2008 (inclusive), \$25 (in accordance with the *Gazette* notices specified in *new section 171A(3)(a) and (b)*);
- from 1 April 2008 to 30 July 2010 (inclusive), \$50 (in accordance with the *Gazette* notices specified in *new section 171A(3)(c) and (d)*);
- from 31 July 2010 to 11 January 2012 (inclusive), \$266 (in accordance with the *Gazette* notices specified in *new section 171A(3)(e)*).

New section 171A(2) validates the collection and application of money received by the Board in payment of a validated disciplinary levy.

New section 171B validates an offences fee prescribed by the Board (*see* section 142 of the Act) and payable or purportedly payable on and from 12 January 2012. The amount of the offences fee payable or purportedly payable in that period is as follows:

- from 12 January 2012 to 16 January 2013 (inclusive), \$90 (in accordance with the *Gazette* notices specified in *new section 171B(4)(a)*);
- on and from 17 January 2013, \$86 (in accordance with the *Gazette* notice specified in *new section 171B(4)(b)*).

The validation provided by *new section 171B* does not limit the Board's ability to amend a *Gazette* notice specified in *new section 171B(4)*. However, *new section 171B(2)* provides that if a validated offences fee is amended after the enactment of this Bill, the validation ceases to apply on and from the date on which the amendment takes effect. After the enactment of this Bill, changes to the Board's funding of its prosecution function will need to be made in accordance with section 143 as amended by *clause 4*.

New section 171B(3) validates the collection and application of money received by the Board in payment of a validated offences fee.

Hon Maurice Williamson

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Plumbers, Gasfitters, and Drainlayers Amendment Act **2013**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Plumbers, Gasfitters, and Drainlayers Act 2006 (the **principal Act**). 5

Part 1**Extension of purposes for which Board
may impose levy****4 Section 143 amended (Disciplinary levy) 10**

(1) In the heading to section 143, after “**Disciplinary**”, insert “**and prosecution**”.

(2) Replace section 143(1) with:

“(1) The Board may, by notice in the *Gazette*, impose on every registered person a disciplinary and prosecution levy of any amount it thinks fit for the purpose of funding the costs arising out of— 15

“(a) investigations into allegations or complaints against registered persons; and

“(b) proceedings concerning discipline under Part 3; and 20

“(c) investigations into, and prosecutions against persons for, the breach of any Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying.”

Part 2**Validation of disciplinary levy and
offences fee 25****5 New sections 171A and 171B inserted**

After section 171, insert:

“171A Validation of disciplinary levy

“(1) A disciplinary levy payable during the period beginning on 1 April 2007 and ending on the close of 11 January 2012 is and always has been validly imposed by the Board. 30

- “(2) Money received by the Board in payment of a disciplinary levy validated by **subsection (1)** is and always has been lawfully collected and applied.
- “(3) In this section, **disciplinary levy payable** means a disciplinary levy payable or purportedly payable in accordance with the following: 5
- “(a) Plumbers, Gasfitters and Drainlayers Board (Fees) Amendment Notice 2007 (*Gazette* 2007, p 414):
- “(b) Plumbers, Gasfitters and Drainlayers Board (Fees) Amendment Notice (No 2) 2007 (*Gazette* 2007, p 575) 10 as amended by the Corrigendum to the Plumbers, Gasfitters and Drainlayers Board (Fees) Amendment Notice (No 2) 2007 (*Gazette* 2007, p 721):
- “(c) Plumbers, Gasfitters and Drainlayers Board (Fees) Amendment Notice (No 3) 2007 (*Gazette* 2007, 15 p 3635):
- “(d) Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 (*Gazette* 2010, p 936) as amended by the Amendment to the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 (*Gazette* 2010, p 1675): 20
- “(e) Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 (*Gazette* 2010, p 2140) as amended by the Amendment to the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 (*Gazette* 2010, p 2213) and republished as the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 (*Gazette* 2010, p 3604). 25
- “**171B Validation of offences fee**
- “(1) An offences fee payable on and from 12 January 2012 is and always has been validly prescribed by the Board.
- “(2) If an offences fee validated by **subsection (1)** is amended on 30 or after the date on which this section comes into force, the validation ceases to apply on and from the date on which the amendment takes effect.
- “(3) Money received by the Board in payment of an offences fee validated by **subsection (1)** is and always has been lawfully collected and applied. 35

- “(4) In this section, **offences fee payable** means an offences fee payable or purportedly payable in accordance with the following:
- “(a) Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 (*Gazette* 2010, p 3604) as amended by the Amendment to the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 (*Gazette* 2011, p 5677): 5
 - “(b) Plumbers, Gasfitters and Drainlayers (Fees and Disciplinary Levy) Notice 2013 (*Gazette* 2012, p 4495).”
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