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IN OTHER NEWS

TO RECAP

The main column outlines what the Regulation Review Committee does and the normal process that is followed.

In May 2019 the Federation submitted a complaint about the Plumbers, Gasfitters, and Drainlayers Board (Registration and Licencing) Notice 2016 to the Regulations Review Committee.

The Regulations Review Committee accepted the complaint regarding these regulations and invited Wal Gordon, who submitted the complaint on behalf of the Plumbers Gasfitters and Drainlayers

REGULATION REVIEW COMMITTEE



In the last issue of the Fellow Practitioner we mentioned our complaint laid with the Regulation Review Committee (RRC). Since then we have had a few people ask what the RRC does. This is what the RRC homepage states:

Did you know that most of the legislation created each year is not made directly by Parliament? This is because Parliament can delegate its law-making power to other persons or bodies by authorising the making of delegated legislation usually known as "regulations" (Acts of Parliament (or statutes) are known as primary legislation). Regulations are usually developed by the government department responsible for administering the Act of Parliament that delegates the power to make the regulations.

The Regulations Review Committee acts on the Parliament's behalf to ensure that the delegated law-making powers are being used appropriately. It examines all regulations, investigates complaints about regulations, and examines proposed regulation-making powers in bills for consistency with good legislative practice. The committee reports to the House and other committees on any issues it identifies. The House can "disallow" a regulation, meaning it no longer has force.

In our case delegated authority has been given to the Plumbers Gasfitters and Drainlayers Board. Laying a complaint with the RRC is generally a last resort when all other avenues to resolve issues have been exhausted.

THE COMPLAINT PROCESS

All complaints must be made in writing and clearly identify the regulation that there is concern about. The complaint should also identify one or more of the grounds listed in the Standing Orders (see below) as the basis of the complaint.

It is helpful to indicate what action you would like the Regulations Review Committee to take in response to the complaint. Complaints are addressed to the Chairperson of the Regulations Review Committee.

Federation, to attend a hearing on 19 June 2019 at Parliament.

The hearing was open to the public and its purpose was to clarify the complaint and to give the RRC members the opportunity to ask preliminary questions and for Wal to explain aspects of the complaint.

Since then the RRC has loaded the entire 21 page complaint and 29 pages of supporting documents onto the Parliament website so the public have access to it.

As can be seen in the main column there are a number of sections in the standing orders that a complaint can be laid under and the Federation has carefully considered them all and has chosen those which it feels are most appropriate.

Over the next few issues of the Fellow Practitioner we will supply the entire complaint to you but will not make any additional comments over and above the written complaint as the complaint now belongs to the RRC.

We will accept any comment you may have or any additional information which you feel may be relevant. This information will be compiled and submitted to the RRC when appropriate. It won't be put in an issue of the Fellow Practitioner until

STANDING ORDERS GROUNDS

The Standing Orders are the rules of the House of Representatives. Standing Order 319 lists nine grounds on which the Regulations Review Committee may draw the House's attention to a regulation. The complaint should identify one or more of these grounds as the basis for the committee's consideration of your complaint.

319(2)(a) The regulation is not in accordance with the general objects and intentions of the enactment under which it is made.

This ground is about whether a regulation is consistent with the intentions of the Act under which it was made. This is a general consideration about what Parliament intended the Act to achieve and not explicitly about the wording of the power under which the regulation purports to be made.

319(2)(b) The regulation trespasses unduly on personal rights and liberties.

In considering this ground, the committee looks at (1) whether a right or liberty is infringed and (2) if so, whether that infringement is "undue". The second question is about balancing the interests of a group or individual affected by a regulation with the public benefit that that regulation seeks to achieve.

319(2)(c) The regulation appears to make some unusual or unexpected use of the powers conferred by the enactment under which it is made.

This ground is about regulations that are authorised by a regulation-making power, but do not use the power appropriately. In considering whether the use of a regulation-making power is appropriate under this ground, the committee will consider whether the regulation sits comfortably with the policy behind the principal legislation.

319(2)(d) The regulation unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal.

This ground seeks to ensure that where a regulation authorises the making of administrative decisions that can affect a person's rights or liberties there is an appropriate right of appeal to or review by an independent person or body.

319(2)(e) The regulation excludes the jurisdiction of the courts without explicit authorisation in the enactment under which it is made.

This ground is about protecting the jurisdiction of the courts to review administrative decisions. Generally, if the jurisdiction of the courts is to be limited by regulation then it must be explicitly

the RRC makes it public.

The following is the start of the complaint submitted to the RRC. The first part details which regulations we are complaining about and then moves on to the Executive Summary.

In the next few issues of the Fellow Practitioner we will detail the specific arguments regarding each section.

The Regulations

- Plumbers, Gasfitters and Drainlayers Board (Plumbing Registration and Licensing) Notice 2016 New Zealand Gazette Notice 2016-gs6011 dated 6 December 2016

- Plumbers, Gasfitters and Drainlayers Board (Gasfitting Registration and Licensing) Notice 2016 New Zealand Gazette Notice 2016-gs6012 dated 6 December 2016

- Plumbers, Gasfitters and Drainlayers Board (Drainlaying Registration and Licensing) Notice 2016 New Zealand Gazette Notice 2016-gs6013 dated 6 December 2016

Executive Summary

1. The Federation is making this complaint about the regulations detailed above (the notices), which came into force on 6 December 2016, under the following grounds of Standing Orders of the House of Representatives, 2017,

authorised by the Act containing the regulation-making power.

319(2)(f) The regulation contains matter more appropriate for parliamentary enactment.

This ground recognises that Acts should set out the policy and substance of the law, whereas regulations should be limited to technicalities and detail. Where a regulation contains matters of broad policy, principle or substance, it may be more appropriate for parliamentary enactment.

319(2)(g) The regulation is retrospective where this is not expressly authorised by the enactment under which it is made.

This ground acts as a restraint on the creation of retrospective regulations. Regulations that change the legal status of things that occurred in the past are said to have a retrospective effect. This ground seeks to ensure that any retrospectivity is expressly authorised by the empowering Act.

319(2)(h) The regulation was not made in compliance with particular notice and consultation procedures prescribed by applicable enactments.

This ground recognises the importance of notification and consultation procedures. This ground addresses regulations that do not meet the notice or consultation requirements set out in the Act under which the regulations are made.

319(2)(i) The regulation for any other reason concerning its form or purport, calls for elucidation.

This ground recognises that regulations should be expressed clearly and precisely, so that people can understand what is required to comply with the law. This ground addresses regulations that are ambiguous, not clear in English, require clarification, or fail to contain a necessary component such as criteria upon which decisions are made.

WHAT HAPPENS TO A COMPLAINT?

Step One: initial decision by Regulations Review Committee

At its next meeting following receipt of a complaint, the Regulations Review Committee will consider whether the complaint appears to relate to any of the Standing Orders grounds. If the committee determines that it does, the committee will investigate the complaint.

Alternatively, the committee may unanimously agree not to progress the complaint. The committee may seek further information from the complainant before making its initial decision.

Step Two: Consideration

Chapter 5, section 319(2):

Section 319(2) (a): is not in accordance with the general objects and intentions of the statute under which it is made: *in that section 32 (b) and (c) Plumbers Gasfitters and Drainlayers Act 2006 have not been adhered to where the notices unnecessarily restrict the registration or licensing of persons as plumbers, gasfitters, or drainlayers; and the matters impose undue costs on plumbers, gasfitters, or drainlayers, or on the public.*

Section 319(2) (b) trespasses unduly on personal rights and liberties: *in that the notices restrict the rights of Tradesman Registered practitioners to apply their chosen trade, which they have been deemed competent in, by imposing an unnecessary period of supervision which restricts their progression in the industry and business by imposing barriers to the unsupervised application of their trades.*

Section 319(2) (c) appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made: *The manner in which the Act has been implemented and interpreted is an abuse of the powers inferred on the Board and as a result industry practitioners will incur barriers to registration and licensing and exorbitant unnecessary*

When the committee decides to consider the complaint an investigative process begins. The committee will usually ask for a response to the complaint from the government department that administers the regulation that is the subject of your complaint. The committee may ask the complainant and the government department for additional written information.

The committee also conducts an oral hearing and will want to hear from the complainant in person unless they do not wish to appear. The committee will consider all of the information provided to it and reach a conclusion.

Step Three: Report

After the committee has concluded its investigation it may report its findings to the House of Representatives.

In its report the committee draws the House's attention to any matters it sees fit, including whether the regulation breaches one or more of the Standing Orders grounds. It may make recommendations to the Government.

The committee's report is made public, and the complainant will be notified by the committee secretariat when this occurs.

Step Four: Government response

If the committee makes recommendations to the Government in its report to the House, the Government is obliged to issue its response to the recommendations within 60 working days of the committee's report.

It is up to the Government to decide whether or not to agree with and act on the recommendations of the Regulations Review Committee. Like the committee's report, the Government response is made public.

WHAT TO EXPECT AT AN ORAL HEARING?

Oral hearings provide an opportunity for the Regulations Review Committee to hear from the complainant and ask questions about the complaint.

At the first oral hearing the complainant can expect to give an overview of the complaint and answer any questions the committee has, either on the day orally or in writing at a later date.

The committee will usually hear from the government department responsible for the regulations at the same hearing, and will often give the complainant a short right of reply to comments made by the department.

DISALLOWANCE

costs.

Section 319(2) (d) The Regulation unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal: *In that the examination criteria is detailed however the process and resulting policies do not allow for a right of appeal to, or review by and independent body or person should an issue be identified with exam questions or the answer schedule.*

Next week we will move on to the specific arguments under each section and we welcome your feedback and ideas as the battle has only just begun.

Please make the time to read this and consider it. It's been a long time coming and has involved many hours of work.

Under the Legislation Act 2012, the House of Representatives may resolve to disallow a regulation in whole or part.

A regulation that is disallowed is treated as revoked.

Any legislation that was amended, repealed or revoked by a disallowed regulations is restored from the time that disallowance takes effect.

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