



# **Complaints regarding three notices issued by the Plumbers, Gasfitters and Drainlayers Board on 25 March 2010 and the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010**

Report of the Regulations Review Committee

---

Forty-ninth Parliament  
(Charles Chauvel, Chairperson)  
February 2011

---

*Presented to the House of Representatives*



## Contents

|  |           |
|--|-----------|
| <b>1 Introduction</b>                                      | <b>5</b>  |
| Summary of recommendations                                 | 5         |
| Background   | 5         |
| Complaint process  | 7         |
| Remedies sought  | 7         |
| <b>2 Unusual or unexpected use of powers</b>               | <b>8</b>  |
| Complainants' views  | 8         |
| The board's view   | 9         |
| Our view   | 10        |
| <b>3 Compliance with particular consultation procedure</b> | <b>14</b> |
| Complainants' views  | 14        |
| The board's view   | 14        |
| Our view   | 15        |
| <b>4 Conclusions</b>                                       | <b>17</b> |
| <br>   |           |
| <b>Appendices</b>  |           |
| Appendix A   | 18        |
| Appendix B   | 19        |
| Appendix C   | 21        |
| Appendix D   | 26        |



# 1 Introduction

## Summary of recommendations

The Regulations Review Committee recommends that the House disallow clauses 3(1), 3(2), 8(1) and 8(2) in the Schedule to the Plumbers, Gasfitters and Drainlayers Board (Plumbing Registration and Licensing) Notice 2010;<sup>1</sup> clauses 3(1), 3(2), 3(3), 3(4), 8(1), 8(2), 8(3) and 8(4) in the Schedule to the Plumbers, Gasfitters and Drainlayers Board (Gasfitting Registration and Licensing) Notice 2010;<sup>2</sup> clauses 3(1), 3(2), 8(1) and 8(2) in the Schedule to the Plumbers, Gasfitters and Drainlayers Board (Drainlaying Registration and Licensing) Notice 2010;<sup>3</sup> and clauses (6) and (7) in the Schedule to the Plumbers, Gasfitters and Drainlayers (Fees) Notice 2010.<sup>4</sup>

The Regulations Review Committee recommends that the Government

- ask the Plumbers, Gasfitters and Drainlayers Board to review the training requirements which are a condition of obtaining an annual practising licence for plumbers, gasfitters, and drainlayers, taking into account the committee's views set out in this report in relation to sections 32 and 33 of the Plumbers, Gasfitters and Drainlayers Act 2006
- ask the Plumbers, Gasfitters and Drainlayers Board to give high priority to its review of those training requirements, so that practitioners will have a reasonable amount of time before March 2012 to comply with them
- ask the Plumbers, Gasfitters and Drainlayers Board to review and set afresh its disciplinary levy, taking into account the committee's views set out in this report in relation to section 143 of the Plumbers, Gasfitters and Drainlayers Act 2006.

---

## Background

In May 2010 the committee received a complaint from Wal Gordon Plumbing Limited about new training requirements for plumbers and drainlayers which will be a condition of obtaining an annual practising licence. Gasfitters have been subject to similar requirements for several years. The training requirements for each of the three groups were prescribed in the Plumbers, Gasfitters and Drainlayers Board (Plumbing Registration and Licensing) Notice 2010, the Plumbers, Gasfitters and Drainlayers Board (Gasfitting Registration and Licensing) Notice 2010, and the Plumbers, Gasfitters and Drainlayers Board (Drainlaying Registration and Licensing) Notice 2010.

---

<sup>1</sup> See Appendix D, *New Zealand Gazette* notice 8197 republished on 21 October 2010.

<sup>2</sup> See Appendix D, *New Zealand Gazette* notice 8194 republished on 21 October 2010.

<sup>3</sup> See Appendix D, *New Zealand Gazette* notice 8195 republished on 21 October 2010.

<sup>4</sup> See Appendix D, *New Zealand Gazette* notice 8196 republished on 21 October 2010.

The new training requirements involve practitioners attending courses in order to obtain a certain number of continual professional development points, as a condition of obtaining a practising licence each year. Points can be obtained only by completing courses that have been accredited by the Plumbers, Gasfitters and Drainlayers Board.

These training requirements will apply to plumbers and drainlayers for the year ending 31 March 2012. Similar requirements apply to gasfitters and have done so for several years.

The complaint alleged that in setting the training requirements the board made an unusual or unexpected use of the power to prescribe competency standards in section 30 of the Plumbers, Gasfitters and Drainlayers Act. The complaint also alleged that the board had not complied with the consultation requirement in section 33 of the Act.

The board is authorised by section 30 to prescribe minimum standards of competence as a condition of obtaining a practising licence. This can involve requiring the completion of competence programmes or courses.

When prescribing these matters the board must be guided by the principles listed in section 32, including the following:

- the matters must be necessary to protect the health or safety of members of the public or to promote the prevention of damage to property; or
- the matters must be necessary to promote the competency of persons who do, or assist in doing, sanitary plumbing, gasfitting, or drainlaying; or
- the matters must be necessary to provide for a matter incidental to, or consequential on, promoting the competency of persons who do, or assist in doing, sanitary plumbing, gasfitting, or drainlaying; and
- the matters may not unnecessarily restrict the registration or licensing of persons as plumbers, gasfitters or drainlayers; and
- the matters may not impose undue costs on plumbers, gasfitters, drainlayers or the public.

Before publishing any notice under section 30 the board is required by section 33 to consult specified persons and organisations about the board's "proposal for the contents of the notice".

A second similar complaint was received from Allan Day in June 2010.

A third complaint was received from Wal Gordon Plumbing Limited in July 2010 concerning the disciplinary levy set in the Plumbers, Gasfitters and Drainlayers (Fees) Notice 2010. The setting of a disciplinary levy by the board is authorised by section 143 of the Act.

The complaint alleged that in setting the levy the board had made an unusual or unexpected use of the power in section 143 by not complying with certain requirements of the section.

## Complaint process

The committee can receive complaints relating to regulations under Standing Order 311 where these appear, on the face of it, to relate to one or more of the grounds on which it may draw a regulation to the special attention of the House. The grounds are listed in Standing Order 310(2).<sup>5</sup>

The four notices are regulations for the purposes of the Regulations (Disallowance) Act 1989.<sup>6</sup>

The two Standing Order grounds relied on by the complainants are

- 310(2)(c): the three notices setting new training requirements as a condition of obtaining a practising licence, and the notice setting a disciplinary levy, appear to make some unusual or unexpected use of powers conferred by the Act
- 310(2)(h): the three notices setting the new training requirements were not made in compliance with the particular consultation procedure prescribed by the Act.

We received written submissions and heard evidence relating to the complaints on 18 November 2010 from Mr Gordon, Mr Day, and representatives of the board.

## Remedies sought

The complainants asked for the notices to be drawn to the attention of Parliament, and for all four to be disallowed.

---

<sup>5</sup> Appendix B sets out the relevant Standing Orders

<sup>6</sup> See Appendix C, section 35(2) and section 145(2) of the Plumbers, Gasfitters and Drainlayers Act 2006.

## 2 Unusual or unexpected use of powers

### Complainants' views

The complainants argued that the setting of new training requirements, which need to be met as a condition of obtaining a practising licence each year, was an unusual or unexpected use of the power to prescribe standards of competence under section 30 of the Act.

The exercise of the power in section 30 is subject to the guiding principles in section 32. Mr Gordon argued that section 32(a)(iii) allowed the board only to “promote” competency standards and not to impose or force them on the industry, although both complainants agreed that continued professional development is good for the industry and for the health and safety of the public.

Mr Gordon said the training requirements also breached paragraphs (b) and (c) of section 32 by imposing barriers to entry to, or retention in, the trade, and by imposing undue costs on plumbers, gasfitters, drainlayers, and the public.

Mr Gordon estimated the total cost to his company of renewing licences for himself and his employees to be in the vicinity of \$40,000 per year. This included both direct and indirect costs of training. He estimated that the average annual cost will be about \$5,000 per worker or \$2,300 per licence. He argued that these costs were unnecessary and excessive, and that \$119 per productive week for an individual was an undue cost. Mr Gordon also suggested that the high cost of competency training would result in an increase in charges to the public of around \$3 per hour, which he said the market will not stand.

Mr Day agreed that both direct and indirect costs, such as travel to training courses, should be considered when calculating the cost of licensing each year. He estimated the cost of relicensing each year at about \$1,900 per employee.

Mr Gordon said that competence was not defined anywhere and had not been consulted on. He described the content of some of the courses as “nice to know” but argued that they should not be linked to the granting of licences. Examples he gave were consumer law, leadership, demonstrating knowledge of hearing conversations in the workplace, and first aid. He argued that the board had no authority to grant legal standing to courses that were not about the technical aspects of plumbing, gasfitting, or drainlaying.

Mr Gordon also suggested that older members of the industry who wanted to work part-time would not be able to afford the new training costs. He argued that the costs cannot be justified in the light of the evidence that no deaths or major outbreaks of disease could be attributed to the industry. He said that his industry did not have major issues like the leaky building problems. He referred to a statement by the current chairperson of the board that there was no evidence of current problems with the quality of workmanship or significant health and safety issues arising from the work of qualified persons. Mr Gordon also said



that similar professions such as the building industry and the electrical industry do not have this type of regulation.

A second issue raised by Mr Gordon concerned an annual disciplinary levy of \$266. This is payable per person irrespective of the number of licences held by the person. Mr Gordon argued that the setting of the levy was an unusual or unexpected use of the power in section 143(1) of the Act.

Mr Gordon referred to a document he had obtained from the board under the Official Information Act 1982. He said that the document showed costs being paid by the levy which he said were not costs “arising out of investigations” as required by section 143(1).

Mr Gordon also claimed that the board was using the levy to take enforcement action against non-registered persons, contrary to section 143(1).

### **The board’s view**

The board submitted that a purposive approach should be adopted when considering the relevant provisions in the Act. This included giving consideration to other provisions such as section 3, which defines the purposes of the Act as including the protection of the health and safety of members of the public by ensuring the competency of persons engaged in plumbing, gasfitting, and drainlaying; and section 137(e), which states that a function of the board is to prescribe standards or requirements relating to competent and safe work practices and testing of those practices.

The board also submitted that there was a strong emphasis in the Act on competence, it had considerable discretion in determining how to exercise its powers, and it must be mindful of both the health and safety of the public and ensuring the competency of relevant persons. It agreed it also needed to be guided by the principles in section 32 when exercising its power in section 30.

The board said that it had given very careful consideration to, and consulted on, the professional development training programme, which it said would help practitioners to maintain the important statutory obligations that arise under the Act, and to protect the health and safety of the public. It also noted that it had commissioned an independent review of fees. It estimated the direct costs of obtaining the required number of points to renew a plumber’s practising licence at under \$200 each year. The board said that an informal survey it had undertaken, which took into account both direct and indirect costs, indicated that the annual cost per person would be on average \$1,350. However, the board accepted that in some cases the cost could be \$4,000 to \$5,000 per person annually.

The board argued that continuing professional development runs across the majority of occupational licensing sectors such as the electrical, nursing, licensed building, architecture and engineering sectors, and there was no principled reason to exempt plumbers and drainlayers from similar requirements. It said it did not want to rely on initial competency, but wanted practitioners to demonstrate current competency when renewing practising licences. It said that gasfitters with experience of the system overwhelmingly supported it. It also said that the majority of responses in a consultation process undertaken in 2007 had agreed that competency-based licensing should be extended to plumbers and drainlayers.

The board said it had rolled over existing competencies. It argued that the whole process of training would have been affected if it had not taken this pragmatic approach. It said it was now consulting on minimum competency standards, which might result in changes to the courses it offers. The board said it intends to consult widely and in 2011 would reconsider the model which will apply from 2012. It also said it needed to update the currently gazetted competencies to fully align them with the requirements of the Act.

Concerning the disciplinary levy, the board said that the volume of complaints and level of disciplinary activity continues to increase, which has made setting a disciplinary levy difficult. In the 2009/2010 year it had received approximately 1,400 enquiries which resulted in 103 written complaints, which in turn resulted in 26 investigations and 23 disciplinary hearings. It had also undertaken in excess of 50 prosecutions of non-registered persons in the past year. The board said that the overall cost of dealing with complaints was nearly 50 per cent of the board's running costs, and that the levy was set on a cost-recovery basis.

The board argued that it could use the levy to pay the costs of taking enforcement action against unregistered persons. It appeared to rely on section 137(p) as its authority to do so, which provides that a function of the board is to institute prosecutions against persons generally, rather than being limited to registered persons. The board also said that including the costs of action against non-registered persons in the disciplinary levy provided transparency.

## **Our view**

### **Training requirements as a condition of practising licence**

We do not accept the complainants' argument that the board has a role only to "promote" competency amongst plumbers, gasfitters, and drainlayers, or their suggestion that simply doing the job can be sufficient to keep up to date. The board clearly has a power under section 30 to prescribe training requirements relating to competency and other matters such as public safety. We also do not accept the complainants' argument that the board necessarily placed too much emphasis on the 2007 consultation. We consider that the board is correct when it says the 2006 Act places a strong emphasis on competence and anticipates the board imposing some training requirements. We also agree with the board that this is common practice for many professional groups, and see no reason why plumbers, gasfitters, and drainlayers should not be subject to similar requirements.

However, we are not satisfied that the board met the statutory requirements of the Act when prescribing the new training requirements as a condition on licensing.

The exercise of the power in section 30 is subject to the guiding principles in section 32. Section 32(a) says that matters the board prescribes under section 30 must be "necessary" to protect the health and safety of the public, or to promote the prevention of damage to property, or to promote competency. In addition, section 32(a)(iv) allows the board to prescribe matters that are incidental to, or consequential on, the other matters listed in section 32(a), including the promotion of competency. We do not therefore agree with the complainants that training courses must relate solely to the core or technical skills needed for plumbing, gasfitting, and drainlaying, although in our view any other courses would need to have a reasonably strong link to core skills.

The board said it had rolled over existing competencies (which we understand include particular courses) to apply to plumbers and drainlayers. It is currently undertaking consultation on minimum competency standards, which may result in changes to the courses it offers.

Section 32 requires the board to make an assessment of the matters listed in the section before prescribing training requirements as a condition on licensing. It does not appear to have done so, but rather rolled over an existing system as an interim measure, which must however be complied with by practitioners by March 2012. There does not appear to be any statutory authority for this transitional arrangement.

We note that section 32(a) does not prevent the board offering other courses to practitioners which it considers would be useful for them. However, in our view, such courses cannot be included in a system that is compulsory as a condition on licensing.

The board said practitioners had some choice about which courses to take to obtain the required number of points. It also accepted that costs per annum could be as high as \$4,000 to \$5,000 per person. In our view, having a choice of courses available does not fully answer the question of whether the statutory criteria in section 32(b) and (c) have been met. The board agreed that it must consider whether training requirements unnecessarily restrict licensing or impose undue costs on practitioners or on the public. However, we were not convinced that it did give due consideration to these factors.

We understand that consultation is now being undertaken to assess the skills necessary to be considered competent as a plumber, gasfitter, or drainlayer. We recommend that this include a review of both the points system and the courses which will be offered, giving careful consideration to the requirements of section 32(a). We also recommend that this work be given a high priority by the board.

We consider that the board must also consult widely on the likely costs associated with whatever training requirements it decides meet the criteria in section 32(a). It should then consider carefully whether, in view of the likely costs, the training requirements it proposes to prescribe for practitioners also meet the guiding principles in section 32(b) and (c).

We do not have sufficient information ourselves to assess whether the estimated costs we have been given by the parties are reasonable or are undue costs. We note that other professional groups must pay training costs, and this can include absorbing indirect costs such as travel to courses and down-time while staff attend them. These matters should be explored with practitioners by the board before it makes the assessments required of it by section 32(b) and (c).

Once the board has decided how it will proceed with assessing competency, after the current consultation and duly considering all the factors in section 32(a), (b) and (c), we recommend (in line with our recommendation in the next section of this report) that it consult a final time specifically about its decisions and recommendations before imposing any requirements by way of a *Gazette* notice.

The board will need to plan carefully the process of prescribing competency standards to meet all the requirements in the Act, including those discussed above, to allow practitioners a reasonable time to meet the new training requirements by March 2012.

**Disciplinary levy**

The power to levy is a power to tax a specified group, and must be exercised strictly in terms of its statutory authority. Section 143(1) authorises the imposition of a disciplinary levy to fund the costs arising out of investigations relating to registered persons and disciplinary proceedings under Part 3 of the Act relating to registered persons.

Mr Gordon argued that the disciplinary levy was being used to fund enforcement action against non-registered persons. The board appeared to believe it could do this. In our view section 143 does not permit it to do so.

Section 143(1) specifies the things that can be funded by the levy. Paragraph (a) specifies investigations relating to registered persons. Paragraph (b) specifies “proceedings concerning discipline under Part 3”. Part 3 of the Act is divided into two subparts. Subpart 1 relates to discipline of registered persons. Subpart 2 relates to offences against persons more generally, rather than being limited to registered persons. In our view the words “proceedings concerning discipline under Part 3” in section 143(1)(b) include only disciplinary proceedings under subpart 1 of Part 3 and not proceedings relating to the offences provisions in subpart 2 of Part 3.

Although the board has a function to prosecute non-registered persons under section 137(p), in our view the disciplinary levy cannot be used to fund this work. We agree with the board that transparency is important, but this cannot override statutory authority.

Mr Gordon also argued that the levy was being used to fund general running costs, which is not authorised by section 143(1). We do not agree entirely with this argument. A proportion of such costs appear to us to be necessary for supporting the board’s investigative and disciplinary functions, and as such they are arguably costs arising out of investigations or disciplinary proceedings relating to registered persons. However, a document supplied by Mr Gordon which he obtained under the Official Information Act indicates that costs for “collection costs and bad debts”, a “practitioner road show”, a “fees review”, an “infringement notices project”, and a “debt collection project” were also allocated to complaints and discipline. These costs appear to have been used to calculate the disciplinary levy. The board did not dispute the claims made by Mr Gordon concerning this document. We are not satisfied that all of these costs can be fairly described as costs arising out of investigations, or disciplinary proceedings, relating to registered persons.

We are not satisfied that when setting the disciplinary levy the board met the requirements of section 143(1). The board appears to believe it can use the levy to fund enforcement action against non-registered persons and to fund some costs that do not appear to arise from investigations, or disciplinary proceedings, relating to registered persons. We do not agree.

We recommend that the board take steps to reassess the amount it will set as a disciplinary levy, paying careful attention to the requirements of section 143. We cannot say what an appropriate amount might be as we do not have all the relevant information, but it seems to us likely that this process will result in setting a new amount as a disciplinary levy.

**Conclusion**

We recommend that the board review both the training requirements which will apply as a condition of a practising licence from March 2012 and the setting of a disciplinary levy, taking into account our views relating to the requirements of the Act.

### 3 Compliance with particular consultation procedure

#### Complainants' views

The power in section 30 to prescribe competency standards or training requirements as a condition on licensing is also subject to a consultation requirement in section 33. The complainants argued that the consultation which was undertaken before the three notices containing these new training requirements were published in the *Gazette* was not sufficient because section 33(1) requires consultation about the “proposal for the contents of the notice” and this did not happen.

Mr Gordon said that an earlier consultation on competency standards in 2007 received responses from only 7 per cent of the industry. He therefore questioned the current board's reliance on this information.

Mr Gordon also said that more recent consultation on the issue consisted of just one question in a consultation document in May 2009, a “road show” around that same time, and three more questions in a questionnaire in January 2010. He suggested that the way the question in the consultation document in May 2009 was worded indicated that the system was to be implemented no matter what. He said this was not consultation, but a statement of action and merely a matter of following the process to say it had been done.

Mr Day said that on 10 July 2009 he had emailed the board's chairperson informing her of similar concerns he had about the wording of the question on professional development in the consultation document. He said he received no reply.

Mr Day also referred to a job advertisement which had appeared in the *Dominion Post* in July 2009 before the closing date for submissions on the consultation document. The advertisement was for the position of a continuing professional development manager, which was described as a “brand new job”. Mr Day argued that this showed that the board knew what the outcome of consultation would be, and therefore that the consultation was a “charade”.

Neither of the complainants was aware of any further consultation about decisions or recommendations made by the board about the new training requirements before these were published in the *Gazette*.

#### The board's view

The board said that competency training had been the subject of consultation in 2007 which had received 769 responses. It said in 2009 it consulted widely to ensure that the changes were well understood by all affected parties. This included two workshops with relevant stakeholders, publishing a detailed background paper on its website, publishing and distributing 12,000 consultation documents to practitioners with current licences, and 14 “roadshow” workshops around New Zealand.

The board said the period of four weeks for consultation had been required by the Department of Building and Housing. It said it had sent a text message to all practitioners advising them of a “road show” in their area, and that every practitioner had been sent a consultation document. The board also said it had received 1,646 responses to the consultation document, the vast majority of which supported the options favoured by the board.

The board produced papers which showed that it sent out a further consultation document in December 2009 with a closing date for submissions of 26 January 2010.

The board said it made recommendations to the Minister in January 2010, which were later approved by Cabinet. The three notices which are the subject of the complaint were then published in the *Gazette* to notify all parties of the new requirements.

### **Our view**

The consultation requirement in section 33(1) is for the board to consult “about its proposal for the contents of the notice”. The board argued that it had consulted on the content, which was then drafted into a *Gazette* notice in consultation with the Department of Building and Housing and the Minister.

In our view, consultation using an options paper does not meet the requirements of section 33(1). In the decision in *Wellington International Airport v Air New Zealand* [1993] 1 NZLR 671, 676 the Court of Appeal said that for consultation to be meaningful, there must be made available to the other party sufficient information to enable it to be adequately informed to make intelligent and useful responses. An options paper cannot be said to amount to meaningful consultation about the “proposal for the contents of the notice”.

The document which was consulted on in December 2009 and January 2010 also does not appear to outline specific proposals for the training requirements and still sets out options in some areas for comment.

An options paper is a good first step in consultation, but in our view section 33(1) requires the board to consult certain persons and bodies again about the decisions it has made about what it proposes to do, before publishing a notice under section 30. This does not require a draft *Gazette* notice to be prepared and consulted on; however, in our view the board was required to consult again about its specific recommendations for training requirements as a condition on licensing before going to the Minister with them.

We note that the consultation papers provided by the board include a summary of submissions dated January 2010. This document also includes some detail of the board’s decisions on issues including competency-based renewal of licensing. We believe that a document of this nature should have been the subject of further consultation.

The Court of Appeal said in the *Wellington Airport* decision that consultation cannot be equated with negotiation, although we note that consultation must be approached with an open mind. Therefore, in our view, a final round of consultation about the board’s particular proposals for training requirements as a condition on licensing could have been achieved reasonably quickly.

Lastly, we note that although we are not entirely satisfied with the answers we received from the board about the job advertisement in July 2009 for a continuing professional development manager, we do not agree with the complainants that this necessarily shows predetermination of the matters being consulted on at the time. As we have said above, we agree with the board that the 2006 Act places a strong emphasis on competence and anticipates the board imposing some training requirements. The board may have justifiably considered in July 2009, that it would need someone in such a role, despite consultation about the detail of its competency programme being under way.

We recommend that any future consultation process under section 33 include a final round of consultation on the board's decisions and recommendations about the detail of new training requirements, before these are included in any *Gazette* notices.



## 4 Conclusions

As a result of our consideration of the matters raised in this complaint, we have reached the following conclusions:

- We are not satisfied that when prescribing training requirements for plumbers, gasfitters, and drainlayers as a condition of obtaining a practising licence, the board took into account whether the requirements were necessary to achieve any of the matters listed in section 32(a) of the Plumbers, Gasfitters and Drainlayers Act, and whether they did not unnecessarily restrict licensing or impose undue costs as required by section 32(b) and (c) of the Act. Therefore, it appears to have made an unusual or unexpected use of the power in section 30 of the Act.
- We are also not satisfied that when prescribing those training requirements the board met the statutory requirement for consultation of its “proposal for the contents of the notice” under section 33(1) of the Plumbers, Gasfitters and Drainlayers Act.
- We believe it is appropriate to draw the clauses in the three notices relating to training requirements as a condition on licensing to the special attention of the House and to recommend that they be disallowed.
- We are not satisfied that when setting the disciplinary levy the board met the requirements of section 143(1) of the Plumbers, Gasfitters and Drainlayers Act in two respects: by intending to use the levy to fund enforcement action against non-registered persons, and to fund some costs that do not appear to arise from investigations, or disciplinary proceedings, relating to registered persons. Therefore, it appears to have made an unusual or unexpected use of the power in section 143(1) of the Act.
- We believe it is appropriate to draw the relevant clauses in the fees notice relating to the disciplinary levy to the special attention of the House and to recommend that they be disallowed.

We conclude by noting, in relation to the matters we have looked at, we share some of the concerns raised in the recent report by the Auditor-General.<sup>7</sup> As that report observes, it appears that the board does not yet have an adequate appreciation of the legal environment in which it operates, its legislative powers, and the general administrative law disciplines that govern their interpretation and operation. Further, there appears to be a need for the board to pay careful and conscious attention to the legal basis for its policies and actions.

---

<sup>7</sup> Controller and Auditor-General, *Inquiry into the Plumbers, Gasfitters and Drainlayers Board*, July 2010, at paragraph 4.74.

## Appendix A

### Committee members

Charles Chauvel (Chairperson)

Amy Adams

Jacinda Ardern (until 22 July 2010)

Kris Faafoi (from 9 February 2011)

Aaron Gilmore

Chris Hipkins (from 22 July 2010)

Rahui Katene

Tim Macindoe

Moana Mackey (until 9 February 2011)

## Appendix B

### Relevant Standing Orders

#### 309 Functions of Regulations Review Committee

- (1) The Regulations Review Committee examines all regulations.
- (2) A Minister may refer draft regulations to the committee for consideration and the committee may report on the draft regulations to the Minister.
- (3) In respect of a bill before another committee, the committee may consider—
  - (a) any regulation-making power,
  - (b) any provision that contains a delegated power to make instruments of a legislative character, and
  - (c) any matter relating to regulations,—

and report on it to the committee that is considering the bill.

- (4) The committee may consider any matter relating to regulations and report on it to the House.

#### 310 Drawing attention to a regulation

- (1) In examining a regulation, the committee considers whether it ought to be drawn to the special attention of the House on one or more of the grounds set out in paragraph (2).
- (2) The grounds are, that the regulation—
  - (a) is not in accordance with the general objects and intentions of the statute under which it is made:
  - (b) trespasses unduly on personal rights and liberties:
  - (c) appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made:
  - (d) 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:
  - (e) excludes the jurisdiction of the courts without explicit authorisation in the enabling statute:
  - (f) contains matter more appropriate for parliamentary enactment:

- (g) is retrospective where this is not expressly authorised by the empowering statute:
- (h) was not made in compliance with particular notice and consultation procedures prescribed by statute:
- (i) for any other reason concerning its form or purport, calls for elucidation.

### **311 Procedure where complaint made concerning regulation**

(1) Where a complaint is made to the committee or to the chairperson of the committee by a person or organisation aggrieved at the operation of a regulation, the complaint must be placed before the committee at its next meeting for the committee to consider whether, on the face of it, the complaint relates to one of the grounds on which the committee may draw a regulation to the special attention of the House.

(2) The person or organisation making the complaint is given an opportunity to address the committee on the regulation unless the committee agrees by unanimous resolution not to proceed with the complaint.

## Appendix C

### Relevant provisions of the Plumbers, Gasfitters and Drainlayers Act 2006

#### 3 Purposes of this Act

The purposes of this Act are—

- (a) to protect 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
- (b) to regulate persons who carry out sanitary plumbing, gasfitting, and drainlaying.

#### 30 Board may prescribe other registration and licensing matters

- (1) The Board may, by notice in the Gazette,—
  - (a) prescribe for each class of registration the minimum standards for registration (including standards relating to required competence, qualifications, and experience) that persons must meet in order to be registered as registered persons and to be issued with practising licences; and
  - (b) prescribe for each class of registration the terms and conditions subject to which persons are registered as registered persons; and
  - (c) prescribe for each class of registration the terms and conditions subject to which practising licences are issued; and
  - (d) prescribe requirements relating to competent and safe work practices and the testing of those practices; and
  - (e) prescribe requirements relating to the completion of competence programmes in respect of persons who—
    - (i) apply for practising licences or provisional licences; or
    - (ii) hold practising licences or provisional licences; or
    - (iii) apply for renewals of practising licences or provisional licences; and
  - (f) recognise any overseas qualification, certificate, registration, or licence as satisfying a particular minimum standard for registration (in whole or in part) if, in the opinion of the Board, that overseas qualification, certificate, registration, or licence is equivalent to, or as satisfactory as, the standard, or part of the standard, that is treated as being satisfied.

- (2) The terms and conditions referred to in subsection (1)(c) may include, for example,—
- (a) a term that authorises the person to test or certify work or to supervise work:
  - (b) a condition that requires compliance with the requirements referred to in subsection (1)(d):
  - (c) a condition that requires the person to complete a competence programme:
  - (d) a condition that imposes limitations on the circumstances in which the person may do, or assist in doing, work:
  - (e) a condition that imposes limits on the work that the person may do, or assist in doing, under the practising licence.
- (3) The Board may make arrangements with the appropriate authorities controlling the registration, licensing, or recognition of sanitary plumbers, gasfitters, or drainlayers outside New Zealand for the reciprocal recognition of registration, licences, certificates, or other evidence of proficiency in sanitary plumbing, gasfitting, or drainlaying.

### **32 Principles guiding prescribing of registration and licensing matters**

In prescribing matters under sections 28 and 30, the Board must be guided by the following principles:

- (a) the matters must be necessary to—
  - (i) protect the health or safety of members of the public; or
  - (ii) promote the prevention of damage to property; or
  - (iii) promote the competency of persons who do, or assist in doing, sanitary plumbing, gasfitting, or drainlaying; or
  - (iv) carry out, give effect to, or provide for a matter that is incidental to, or consequential on, the matters relating to subparagraph (i), (ii), or (iii); and
- (b) the matters may not unnecessarily restrict the registration or licensing of persons as plumbers, gasfitters, or drainlayers; and
- (c) the matters may not impose undue costs on plumbers, gasfitters, or drainlayers, or on the public.

### **33 Board must consult before publishing notices**

- (1) Before the Board publishes a notice under section 28 or 30(1)(a) to (e), the Board must have consulted about its proposal for the contents of the notice—
- (a) with persons who the Board considers are able to represent the views of plumbers, gasfitters, or drainlayers, or of classes of plumbers, gasfitters, or drainlayers, registered under this Part or the former Act; and

- (b) with organisations—
  - (i) that the Board considers will be substantially affected by the proposal; or
  - (ii) whose members the Board considers will be substantially affected by the proposal.

(2) A failure to comply with subsection (1) does not affect the validity of any notice published under section 28 or 30(1)(a) to (e).

### **35 Other provisions relating to notices under sections 28 and 30**

(1) The Board must ensure that an up-to-date version of each notice that the Board has published under section 28 or 30 is—

- (a) available at all reasonable times on an Internet website maintained by or on behalf of the Board; and
- (b) available at the office of the Board during business hours, so that members of the public may—
  - (i) inspect the notice free of charge; or
  - (ii) obtain a copy of the notice for a reasonable fee.

(2) Each notice published under section 28 or 30 is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

### **137 Functions of Board**

The functions of the Board are—

- (a) to designate classes of registration for the purposes of Part 2:
- (b) to specify for each of those classes the work that persons are authorised to do, or assist in doing, by virtue of being a registered person of a particular class and holding a current practising licence:
- (c) to prescribe the minimum standards for registration for each of those classes that persons must meet in order to be registered as registered persons and to be issued with practising licences:
- (d) to prescribe the terms and conditions subject to which persons are registered and licences are issued:
- (e) to prescribe standards or requirements relating to competent and safe work practices and the testing of those practices:
- (f) to recognise appropriate overseas qualifications, certificates, registration, or licences for the purposes of registering persons and issuing licences under Part 2:

- (g) to consider applications for registration and licences under Part 2, and to register persons and issue licences in proper cases:
- (h) to establish criteria for granting, and to grant, exemptions from registration and licensing requirements to persons and classes of persons:
- (i) to authorise persons to do certain things in accordance with Part 1 and to issue limited certificates in proper cases under that Part:
- (j) to renew licences for subsequent terms in proper cases:
- (k) to promote, monitor, and review the ongoing competency and safe work practices of registered persons, provisional licence holders, and employer licence holders:
- (l) to make arrangements for the examination of persons practising or intending to practise the sanitary plumbing or gasfitting or drainlaying trades:
- (m) to present or issue, either independently or in conjunction with any other examining body, diplomas or certificates to persons in recognition of their proficiency in any of those trades:
- (n) to make recommendations to any person or body concerned with the education or training of any person wishing to enter the sanitary plumbing, gasfitting, or drainlaying trades, or with regard to any other matter affecting those trades:
- (o) to hear complaints about, and discipline, persons to whom subpart 1 of Part 3 applies:
- (p) to institute prosecutions against persons for the breach of any Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying:
- (q) to make recommendations to the Minister with respect to the making of regulations, or the making of regulations controlling sanitary plumbing or drainlaying under the Health Act 1956:
- (r) to exercise and perform any other functions, duties, and powers as are conferred or imposed on the Board by or under this Act or by or under any other enactment:
- (s) to do any other things as may, in the Board's opinion, be necessary for the effective administration of this Act:
- (t) to carry out any functions that are incidental and related to, or consequential on, its functions stated in this section.

### **143 Disciplinary levy**

- (1) The Board may, by notice in the Gazette, impose on every registered person a disciplinary levy of any amount it thinks fit for the purpose of funding the costs arising out of—
  - (a) investigations into allegations or complaints against registered persons; and



(b) proceedings concerning discipline under Part 3.

(2) Any notice imposing any levy under this section may exempt from liability to pay the levy any class or classes of registered person, and may provide for the waiver or refund of any levy.

**145 Further provisions relating to fees, levy, and forms**

(1) Every notice under sections 142 to 144 comes into force on a date specified in the notice, being not less than 28 days after the date of publication of the notice in the Gazette.

(2) Every notice under sections 142 to 144 is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

(3) Every fee prescribed under section 142, and every levy imposed under section 143, is payable, and recoverable as a debt due, to the Board.

(4) All levies collected under section 14B of the former Act may—

(a) continue to be used for the purposes referred to in section 14B of the former Act; or

(b) be used for the purposes referred to in section 143.

## Appendix D

### Relevant clauses from the notices

#### Plumbers, Gasfitters and Drainlayers Board (Plumbing Registration and Licensing) Notice 2010

Pursuant to sections 28 and 30 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (“the Act”), the following notice is given.

#### Schedule

##### Part A—Certifying Plumbers

#### 3. Terms and conditions of licence

(1) Certifying plumbers must hold a current certifying plumber practising licence to undertake sanitary plumbing work, as follows:

(a) To be eligible to obtain a licence, certifying plumbers must, in the year ending 31 March 2012, and each year thereafter, obtain a minimum of 12 continual professional development (“CPD”) points. A minimum of 8 CPD points must be technical plumbing points and a maximum of 4 may be non-technical.

(b) In the year ending 31 March 2012, and each year thereafter, those certifying plumbers who wish also to apply for a licence as a gasfitter or drainlayer, and are required to attain CPD points in order to uplift the additional licence, must obtain a minimum of 20 CPD points, with a minimum of 8 technical points for plumbing and 8 technical points for the additional licence type.

(c) In the year ending 31 March 2012, and each year thereafter, those certifying plumbers who wish also to apply for licences as a gasfitter and drainlayer, and are required to attain CPD points in order to uplift the additional two licences, must obtain a minimum of 24 CPD points, with a minimum of 8 technical points for each of the three licence types.

(2) CPD points can only be obtained by completing programmes of learning that are accredited by the board prior to the course being undertaken. CPD points will not be allocated for courses that have not been accredited by the board except in exceptional circumstances and at the discretion of the Registrar of the board. Carry over of excess points from a previous year may be allowed at the discretion of the board.

##### Part B—Licensed Plumbers

#### 8. Terms and conditions of licence

(1) Licensed plumbers must hold a current licensed plumber practising licence to undertake sanitary plumbing work, as follows:

- (a) To be eligible to obtain a licence, licensed plumbers must, in the year ending 31 March 2012, and each year thereafter, obtain a minimum of 12 continual professional development (“CPD”) points. A minimum of 8 CPD points must be technical plumbing points and a maximum of 4 may be non-technical.
- (b) In the year ending 31 March 2012, and each year thereafter, those licensed plumbers who wish also to apply for a licence as a gasfitter or drainlayer, and are required to attain CPD points in order to uplift the additional licence, must obtain a minimum of 20 CPD points, with a minimum of 8 technical points for plumbing and 8 technical points for the additional licence type.
- (c) In the year ending 31 March 2012, and each year thereafter, those licensed plumbers who wish also to apply for licences as a gasfitter and drainlayer, and are required to attain CPD points in order to uplift the additional two licences, must obtain a minimum of 24 CPD points, with a minimum of 8 technical points for each of the three licence types.
- (2) CPD points can only be obtained by completing programmes of learning that are accredited by the board prior to the course being undertaken. CPD points will not be allocated for courses that have not been accredited by the board except in exceptional circumstances and at the discretion of the Registrar of the board. Carry over of excess points from a previous year may be allowed at the discretion of the board.

#### **Plumbers, Gasfitters and Drainlayers Board (Gasfitting Registration and Licensing) Notice 2010**

Pursuant to sections 28 and 30 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (“the Act”), the following notice is given.

#### **Schedule**

#### **Part A—Certifying Gasfitters**

#### **3. Terms and conditions of licence**

- (1) Certifying gasfitters must hold a current certifying gasfitter practising licence to undertake gasfitting work, as follows:
- (a) To be eligible to obtain a licence, certifying gasfitters must obtain:
- (i) in the year ending 31 March 2011, a minimum of 16 continual professional development (“CPD”) points. A minimum of 8 CPD points must be technical gasfitting points and a maximum of 8 may be non-technical.
- (ii) in the year ending 31 March 2012, and each year thereafter, a minimum of 12 continual professional development (“CPD”) points. A minimum of 8 CPD points must be technical gasfitting points and a maximum of 4 may be non-technical.
- (2) In the year ending 31 March 2012, and each year thereafter, those certifying gasfitters who wish also to apply for a licence as a drainlayer or plumber, and are required to attain

CPD points in order to uplift the additional licence, must obtain a minimum of 20 CPD points, with a minimum of 8 technical points for gasfitting and 8 technical points for the additional licence type.

(3) In the year ending 31 March 2012, and each year thereafter, those certifying gasfitters who wish also to apply for licences as a drainlayer and plumber, and are required to attain CPD points in order to uplift the additional two licences, must obtain a minimum of 24 CPD points, with a minimum of 8 technical points for each of the three licence types.

(4) CPD points can only be obtained by completing programmes of learning that are accredited by the board prior to the course being undertaken. CPD points will not be allocated for courses that have not been accredited by the board, except in exceptional circumstances and at the discretion of the Registrar of the board. Carry over of excess points from a previous year may be allowed at the discretion of the board.

## **Part B—Licensed Gasfitters**

### **8. Terms and conditions of licence**

(1) Licensed gasfitters must hold a current licensed gasfitter practising licence to undertake gasfitting work, as follows:

(a) To be eligible to obtain a licence, licensed gasfitters must obtain:

(i) in the year ending 31 March 2011, a minimum of 16 continual professional development (“CPD”) points. A minimum of 8 CPD points must be technical gasfitting points and a maximum of 8 may be non-technical.

(ii) in the year ending 31 March 2012, and each year thereafter, a minimum of 12 continual professional development (“CPD”) points. A minimum of 8 CPD points must be technical gasfitting points and a maximum of 4 may be non-technical.

(2) In the year ending 31 March 2012, and each year thereafter, those licensed gasfitters who wish also to apply for a licence as a drainlayer or plumber, and are required to attain CPD points in order to uplift the additional licence, must complete a minimum of 20 CPD points, with a minimum of 8 technical points for gasfitting and 8 technical points for the additional licence type.

(3) In the year ending 31 March 2012, and each year thereafter, those licensed gasfitters who wish also to apply for licences as a drainlayer and plumber, and are required to attain CPD points in order to uplift the additional two licences, must obtain a minimum of 24 CPD points, with a minimum of 8 technical points for each of the three licence types.

(4) CPD points can only be obtained by completing programmes of learning that are accredited by the board prior to the course being undertaken. CPD points will not be allocated for courses that have not been accredited by the board except in exceptional circumstances and at the discretion of the Registrar of the board. Carry over of excess points from a previous year may be allowed at the discretion of the board.

---

**Plumbers, Gasfitters and Drainlayers Board (Drainlaying Registration and Licensing)  
Notice 2010****Schedule****Part A—Certifying Plumbers****3. Terms and conditions of licence**

(1) Certifying drainlayers must hold a current certifying drainlayer practising licence to undertake drainlaying work, as follows:

(a) To be eligible to obtain a licence, certifying drainlayers must, in the year ending 31 March 2012, and each year thereafter, obtain a minimum of 12 continual professional development (“CPD”) points. A minimum of 8 CPD points must be technical drainlaying points and a maximum of 4 may be non-technical.

(b) In the year ending 31 March 2012, and each year thereafter, those certifying drainlayers who wish also to apply for a licence as a gasfitter or plumber, and are required to attain CPD points in order to uplift the additional licence, must obtain a minimum of 20 CPD points, with a minimum of 8 technical points for drainlaying and 8 technical points for the additional licence type.

(c) In the year ending 31 March 2012, and each year thereafter, those certifying drainlayers who wish also to apply for licences as a gasfitter and plumber, and are required to attain CPD points in order to uplift the additional two licences, must obtain a minimum of 24 CPD points, with a minimum of 8 technical points for each of the three licence types.

(2) CPD points can only be obtained by completing programmes of learning that are accredited by the board prior to the course being undertaken. CPD points will not be allocated for courses that have not been accredited by the board except in exceptional circumstances and at the discretion of the Registrar of the board. Carry over of excess points from a previous year may be allowed at the discretion of the board.

**Part B—Licensed Drainlayers****8. Terms and conditions of licence**

(1) Licensed drainlayers must hold a licensed drainlayer practising licence to undertake drainlaying work, as follows:

(a) To be eligible to obtain a current licence, licensed drainlayers must, in the year ending 31 March 2012, and each year thereafter, obtain a minimum of 12 continual professional development (“CPD”) points. A minimum of 8 CPD points must be technical drainlaying points and a maximum of 4 may be non-technical.

(b) In the year ending 31 March 2012, and each year thereafter, those licensed drainlayers who wish also to apply for a licence as a gasfitter or plumber, and are required to attain CPD points in order to uplift the additional licence, must obtain a

minimum of 20 CPD points, with a minimum of 8 technical points for drainlaying and 8 technical points for the additional licence type.

(c) In the year ending 31 March 2012, and each year thereafter, those licensed drainlayers who wish also to apply for licences as a gasfitter and plumber, and are required to attain CPD points in order to uplift the additional two licences, must obtain a minimum of 24 CPD points, with a minimum of 8 technical points for each of the three licence types.

(2) CPD points can only be obtained by completing programmes of learning that are accredited by the board prior to the course being undertaken. CPD points will not be allocated for courses that have not been accredited by the board except in exceptional circumstances and at the discretion of the Registrar of the board. Carry over of excess points from a previous year may be allowed at the discretion of the board.

### **Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010**

#### **Notice**

1. **Title**—This notice is the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010.
2. **Commencement**—This notice comes into force on 1 August 2010.
3. **Fees**—The Plumbers, Gasfitters and Drainlayers Board ("the board") sets the following fees, payable to the board, specified in the attached Schedule.
4. **Tax**—The fees are inclusive of goods and services tax.

#### **Schedule**

### **Fees Payable to the Plumbers, Gasfitters and Drainlayers Board**

#### *A. Registration Fees<sup>8</sup>*

|  |        |
|--|--------|
| (1) Fees to accompany applications for registration: | \$     |
| Registration as a licensed plumber                   | 500.00 |
| Registration as a certifying plumber                 | 500.00 |
| Registration as a licensed gasfitter                 | 500.00 |
| Registration as a certifying gasfitter               | 500.00 |
| Registration as a licensed drainlayer                | 500.00 |
| Registration as a certifying drainlayer              | 500.00 |

---

<sup>8</sup> Each registration fee includes the relevant licence fee for the first year the registered person would be licensed, and includes the fee for the issue of a certificate of registration.

|   |          |
|---|----------|
| Fee for the issue of a certificate of registration  | 50.00    |
| Fee for an addition or alteration to the Register   | 50.00    |
| Fee for the restoration of a person's name to the Register  | 85.00    |
| Assessment of application from person under Trans-Tasman Mutual Recognition Act 1997 ("T <sup>T</sup> MRA")                 | 85.00    |
| Assessment for registration from overseas applicant other than under T <sup>T</sup> MRA                                     | 400.00   |
| Practical Test of Workmanship for registration  | 3,200.00 |
| (2) Registration fees are not refundable if an application is declined.   |          |
| <i>B. Licence and Notification Fees</i>   |          |
| (4) Fees for issue of an annual licence, except when the licence fee is included in a registration fee under A(1):          | \$       |
| Licensed plumber  | 100.00   |
| Certifying plumber  | 100.00   |
| Licensed gasfitter  | 100.00   |
| Certifying gasfitter  | 100.00   |
| Licensed drainlayer   | 100.00   |
| Certifying drainlayer   | 100.00   |
| Fee for issue of provisional licence  | 100.00   |
| Fee for issue or renewal of limited certificate for each trade for a trainee  | NIL      |
| Fee for application for an exemption (fixing of water heaters by gasfitters)  | NIL      |
| Fee for application for an exemption (installing and maintaining particular sanitary plumbing equipment)                    | 100.00   |
| Fee for application for an exemption (person authorised to carry out or supervise gasfitting)                               | 100.00   |
| Fee for notification of an exemption for plumbing, gasfitting or drainlaying under supervision under sections 19, 21 and 25 | 100.00   |
| Fee for an employer licence or renewal of an employer licence   | 500.00   |

(5) Fees for notification of exemption holders under supervision are payable by the certifying gasfitter, plumber or drainlayer supervising that person.

|  |        |
|--|--------|
| <i>C. Disciplinary Levy</i>  | \$     |
| (6) Disciplinary levy for each licensed plumber, gasfitter or drainlayer in 12-month period (one payment per person per year irrespective of the number of licences held by an individual) | 266.00 |
| (7) A disciplinary levy is collected when the licensed person uplifts a licence or licences.   |        |
| <i>D. Examination Fees</i>   | \$     |
| (8) Examination fee for examinations 9192, 9193, 9194, 9195, 9196 and 9197 for each examination  | 300.00 |
| (9) Fee for reconsideration of an examination paper  | 100.00 |
| <i>E. Re-audit Fees</i>  | 135.00 |