

Report on the review of the
**ELECTRICITY ACT 1992 BY
THE ELECTRICAL WORKERS
REGISTRATION BOARD**

Pursuant to Section 158 of the Electricity Act 1992



**Electrical Workers
Registration Board**

SAFETY | COMPETENCY | COMPLIANCE



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1. Introduction

- 1.1 Section 158 of the Electricity Act 1992 (the Act) requires the Electrical Workers Registration Board (the Board) to complete a review of the occupational regulation parts of the Act¹ every five years and report its findings to the Minister for Building and Housing. As part of the review process, the Act requires the Board to consider whether any amendments to the Act are necessary or desirable.
- 1.2 The Board completed its last review in 2015. The recommendations made in the 2015 report remain valid and are included as an annexure to this report.
- 1.3 Under section 158 of the Act, the Board determines the issues to be covered in the review of the Act, the manner in which the review is carried out, and the contents of the report presented to the Minister. The Board has, in developing this report, drawn on its own experience in administering its functions under the Act as well as consulting with key industry organisations. The Board has also compared the Electricity Act with other construction sector acts and has made recommendations to promote consistency and alignment. The Board has taken into account the Crown's broader objective of implementing and maintaining a system for regulating electrical workers in New Zealand.

2. Executive Summary

- 2.1 The overall finding of the review was that the current occupational regime remains fundamentally sound, but there are areas that can be improved. Specifically, the Board formed the view that the following aspects are not operating as effectively as they could and could benefit from legislative change:
 - (a) Competence and Ethics – consumer confidence and industry standards could be improved through amendments which enable the Board to review the competence of an electrical worker at any time on reasonable grounds, the inclusion of an express requirement for electrical workers to work within their personal competence, expansion of the “fit and proper” registration and licensing provisions to allow the Board to review an electrical worker's fit and proper status at any time on reasonable grounds, and provision for a code of ethics to be established;

¹ Part 1 and Parts 9 to 14 of the Act.



- (b) Power to Subdelegate – an amendment to enable the Registrar to subdelegate the Board’s delegations to the Registrar to allow for the effective operational management of delegated functions;
- (c) Employer Licences – the operation of the employer licence provisions could be improved through an amendment to introduce restrictions on the types of prescribed electrical work that can be carried out under an employer licence to prescribed electrical work that is first, specialist or unique in nature and second, impracticable to use licensed electrical workers;

It is also recommended that “fit and proper entity” restrictions are introduced, similar to the provisions for individual electrical workers, along with clearer disciplinary processes and powers when complaints are made about an employer licence holder;
- (d) Disciplinary Provisions – the disciplinary process in the Act function well but could be enhanced through a provision for the Registrar to make complaints, provision for the suspension of an electrical worker’s licence for non-conformance with a Section 147M or 147N orders (disciplinary penalty and costs orders), the introduction of disrepute or improper conduct charges, and the introduction of guidelines for Investigators to assist them in determining their “should” and “should not” recommendations under section 147G of the Act;
- (e) Audit Provisions – the Board can carry out audits but cannot compel them. An amendment to section 149 of the Act to introduce an express provision allowing the Board to audit electrical workers would improve the Board’s ability to audit and enforce the regulatory provisions of the Act;
- (f) Amendments to Schedule 2 of the Act – minor changes to the provisions which regulate how the Board operates, including a change to the quorum requirements from four to three members, the inclusion of a requirement to have one member who is a lawyer of standing, extension of the maximum term of office from three years to five years, and the inclusion of an express provision that Board members can be insured;
- (g) Electrical Design – the regulatory framework for electrical safety could be improved through an amendment to make electrical design a category of prescribed electrical work. This would mean that a person who carries out electrical design work would have to be licensed by the Board;



- (h) Penalties and Fines – a review of the maximum fines and penalties that can be imposed under the Act; and
- (i) Amendments to the Electricity (Safety) Regulations 2010 – the regulatory framework for electrical safety could be improved through amendments, such as creating an online public certification database, changing the definition of low-risk prescribed electrical work as it relates to high-risk work, and making work on the electrical components of an electric vehicle prescribed electrical work.

3. Competence and Ethics

3.1 The Board recommends that amendments be made to Part 10 of the Act (registration and licensing of electrical workers and employer licences) to provision for:

- (a) the review of the competence of an electrical worker at any time on reasonable grounds;
- (b) an express requirement for electrical workers to work within their personal competence;
- (c) an expansion of the “fit and proper” registration and licensing provisions to allow the Board to review an electrical worker’s fit and proper status at any time on reasonable grounds; and
- (d) the establishment of a code of ethics.

Reviewing competence

3.2 An individual’s competence can change over time. Intervening factors, such as mental or physical capacity, can have an impact on ongoing competence. Notwithstanding, the Board can only consider an individual’s competence at the time of relicensing or when it hears a complaint². The Board has encountered instances when the ongoing competence of an electrical worker has been called into question but has not been able to take proactive action as a result. To alleviate this, provisions similar to those in the Plumbers Gasfitters and Drainlayers Act 2006 (PGDB Act), which allow the PGDB Board to review competence “at any time”, could be incorporated into the Electricity Act. Those provisions provide:

Section 53 PGDB Act: Review of registered person’s competence

² The Board is not able to initiate its own complaints or inquiries into electrical workers. Refer section 144(2) of the Act.



- (1) *The Board may, at any time, review the competence of a registered person to do, or assist in doing, sanitary plumbing, gasfitting, or drainlaying work, whether or not there is reason to believe that the person's competence may be deficient.*
- (2) *In conducting a review under subsection (1), the Board must consider the following matters:*
 - (a) *whether, in the Board's opinion, the registered person meets the current applicable minimum standards for registration; and*
 - (b) *whether, in the Board's opinion, there is any reason to believe that the registered person may endanger the health or safety of members of the public; and*
 - (c) *whether, in the Board's opinion, the registered person has carried out, or caused to be carried out, sanitary plumbing, gasfitting, or drainlaying work to the standard reasonably to be expected of a registered person of the same class of registration as the registered person concerned.*

3.3 The PGDB Act provides for a fair and reasonable process if a review of competence is undertaken. This ensures that natural justice considerations are accommodated:

Section 54 PGDB Act: Procedure on review of competence

- (1) *The form of a review under section 53 is at the Board's discretion.*
- (2) *However, in conducting the review, the Board must give the person concerned—*
 - (a) *the particulars that are reasonably necessary to clearly inform the person of the substance of the grounds (if any) on which the Board has decided to carry out the review; and*
 - (b) *a reasonable opportunity to make written submissions and be heard on the question, either personally or by his or her representative.*
- (3) *If, after conducting a review under section 53, the Board has reason to believe that the competence of a registered person is deficient, the Board may make either or both of the following orders:*
 - (a) *that the registered person undertake a competence programme:*
 - (b) *that 1 or more conditions be placed on the registered person's practising licence.*



- (4) *The Registrar must ensure that, within 5 working days of the making of an order under subsection (3), a copy of the order is given to the person concerned.*
- (5) *An order made under subsection (3) takes effect from the day on which a copy of the order is given to the person concerned or from any date that is specified in the order, whichever is the later.*

Working within an electrical worker's personal competence

3.4 When the Board issues a licence to an electrical worker, the electrical worker is then authorised to carry out all of the prescribed electrical work within that class of licence³. This is because the Act does not contain any express requirements for an electrical worker to work within their own competence. Other licensing regimes, such as that under the Building Act 2004 for Licensed Building Practitioners, do contain such provisions:

314B BA Act Licensed building practitioner must work within competence

A licensed building practitioner must—

- (a) *not misrepresent his or her competence:*
- (b) *carry out or supervise building work only within his or her competence.*

3.5 The Building Act includes a disciplinary offence of working outside of a person's competence⁴.

3.6 Whilst the Board can discipline electrical workers who carry out or supervise prescribed electrical work in an incompetent manner⁵, disciplinary action takes place after the event. The Board considers it is important for electrical safety, and thereby the safety of the public, that electrical workers know and understand the need for them to work within their personal competence, and that there are mechanisms in place to reinforce this. It is therefore recommended that, rather than relying on a post-event complaints process to enforce competency requirements, enforceable mechanisms – similar to those in the Building Act – be included in the Electricity Act.

Ongoing “fit and proper” requirements

3.7 To be registered and licensed, an electrical worker must be a fit and proper person⁶. The Board can only consider whether an electrical worker is a fit and proper person at the time of licensing and relicensing. There are no provisions to suspend or cancel a licence if a person fails to meet

³ The limits of work are set prescribed by Gazette Notices issued under sections 84 and 85 of the Act.

⁴ Section 317(1)(h) of the Building Act.

⁵ Section 413(a)(i) of the Act.

⁶ Sections 91, 99 and 106 of the Act.



the fit and proper person tests in between licensing rounds, which can be for a period of no more than five years⁷. Fit and proper issues can, however, arise at any time. For example, an electrical worker may be convicted of a serious crime that reflects on their fitness to retain a licence between licensing rounds.

- 3.8 Given the above, it is recommended that the Electricity Act be amended so as to provide the Board with the power to suspend or cancel a licence at any time for fit and proper reasons. If a power to review was provided, the Board would recommend the inclusion of a process similar to that in section 54 of PGDB Act outlined above to ensure a fair process.

Creation of a code of ethics

- 3.9 Part 10 of the Electricity Act does not contain or provide for a code of ethics. Other licensing regimes in the construction sector do contain a code of ethics.
- 3.10 A code of ethics provides guidance to workers on what is and what is not acceptable conduct and assists in providing consumer confidence in a licensing regime. It also provides a regulatory board with further tools to manage the conduct of those within the licensing regime.
- 3.11 It is recommended that a provision similar to that in section 314A of the Building Act be introduced to the Electricity Act. This would allow for the introduction of a code of ethics for electrical workers by Order in Council. In conjunction with this, it is recommended that a linked disciplinary provision be introduced to cover instances where the code of ethics has been breached, similar to that in section 317(1)(g) of the Building Act.

4. Power to Subdelegate

- 4.1 The Board is able to delegate certain functions and powers to the Registrar⁸. However, the Registrar cannot, in turn, subdelegate. This can create issues when the Registrar is on leave or otherwise unavailable. By comparison, the Building Act contains a power for the Building Registrar to subdelegate:

312 Power of Registrar to delegate

- (1) *The Registrar may delegate to any person (whether an employee of the State services or not), either generally or particularly, any of the Registrar's functions, duties, and powers except the power of delegation.*

⁷ Section 104(2) of the Act

⁸ The Board maintains a written instrument of delegation with the Registrar.



- (2) *A delegation—*
 - (a) *must be in writing; and*
 - (b) *may be made subject to any restrictions and conditions that the Registrar thinks fit; and*
 - (c) *is revocable at any time, in writing; and*
 - (d) *does not prevent the performance or exercise of a function, duty, or power by the Registrar.*
- (3) *A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.*

4.2 It is recommended that the Electricity Act be amended to include a similar power to sub-delegate.

5. Employer Licences

5.1 Employer licences are an exception to the requirement that all prescribed electrical work be carried out by persons who are registered and licensed by the Board. They allow an employer to obtain the authority to carry out the prescribed electrical work and then hire unlicensed staff to carry out the work.

5.2 Employer licenses must be granted by the Board if the applicant provides a certificate from an approved person⁹. This establishes that they are maintaining a system of operation that ensures the prescribed electrical work carried out will be safe and compliant¹⁰. The Board can impose terms and conditions, but cannot contradict the certification provided. The number of employer licences has been declining over time. There are currently 15 employer licence holders.

5.3 Given the Board's limited scope to regulate employer licence holders, the Board recommends that amendments be made to Part 10 of the Act (registration and licensing of electrical workers and employer licences) to provision for:

- (a) restrictions on the types of prescribed electrical work that can be carried out under an employer licence to prescribed electrical work that is first, specialist or unique in nature and second, impracticable to use licensed electrical workers;

⁹ Regulation 96 of the Electricity (Safety) Regulations 2010 defines approved persons.

¹⁰ Sections 115 and 116 of the Act.



- (b) fit and proper entity requirements similar to the provisions for individual electrical workers; and
- (c) clearer disciplinary processes and powers (also refer to the 2015 Section 158 Review Report).

Restrictions on employer licences

- 5.4 The Board considers employer licensing to be a suitable licensing mechanism for certain types of specialised prescribed electrical work to be carried out. Specifically, an employer licence is suited to prescribed electrical work that is not commonly carried out by electrical workers and which requires a high degree of specialist knowledge or skill not readily available in the market. In such circumstances, the use of a system of operation under an employer licence can be an effective means by which safe and compliant work can be carried out.
- 5.5 The Board's experience has, however, been that employer licences are in some instances used as a substitute for employing or engaging licensed electrical workers to carry out or supervise routine or piecemeal electrical work. In this respect, it is important to note that those who carry out work under an employer licence do so under the authority of that licence. Whilst they might develop knowledge and skills during their employment, they may be limited in their ability to change employers within the electrical industry as they are reliant on the authority to carry out the work, conferred by the employer licence.
- 5.6 Given the above, the Board recommends that employer licences be restricted to areas where the applicant can demonstrate that it is not practicable to use licensed electrical workers. This would promote individual licensing and ensure the proper use of employer licences.

Fit and proper

- 5.7 Individuals who apply for a licence must be fit and proper persons. There is no requirement for an entity that applies for an employer licence to be a fit and proper entity. The only requirement is that they obtain a certificate establishing that the prescribed electrical work carried out under the employer licence will be safe and compliant.
- 5.8 The Board considers there may be a risk that employer licence holders could, as an entity, conduct themselves in a manner that adversely impacts the public's confidence in the safety and compliance of prescribed electrical work being carried out¹¹. In such circumstances, the

¹¹ An example of such conduct could be serious health and safety or employment breaches.



Board's only recourse is through a complaint against the employer licence holder.¹² The scope of matters that can be dealt with as a result of a complaint is, however, limited and does not cover fit and proper issues.

- 5.9 Given these factors, and the divergence in licencing provisions between individuals and employer licence applicants, it is recommended that the Act be amended to ensure alignment between the two.

Complaints and disciplinary process

- 5.10 The disciplinary process for individuals is detailed and effective, and the Act provides the Board with the powers it requires to hold hearings and discipline individuals. The Act does not, however, provide any form of process for employer licence complaints, nor any powers to compel evidence. As noted, this was canvassed in the Board's 2015 Section 158 Report. The Board makes the same recommendations for improved complaints procedures and powers.

6. Disciplinary Provisions

- 6.1 The disciplinary provisions in the Act function well. The Board has, however, noted various areas where the operation of the Act could be improved. It recommends that amendments be made to Part 11 of the Act (disciplinary provisions) to enable:

- (a) the Registrar to make complaints;
- (b) the suspension of an electrical worker's licence for non-conformance with a Section 147M or 147N orders (disciplinary penalty and costs orders);
- (c) the introduction of disrepute or improper conduct charges; and
- (d) guidelines for Investigators to assist them in determining their "should" and "should not" recommendations under section 147G of the Act.

Registrar complaints

- 6.2 Neither the Board nor the Registrar is able to make complaints.¹³ Often, the Board or the Registrar are aware of conduct that needs to be investigated, however the conduct cannot be pursued without a complaint from the public. As a result, known serious disciplinary conduct

¹² Section 120 of the Act.

¹³ Section 144 of the Act.



may go un-investigated, and an electrical worker presenting a safety risk to the public may continue to carry out prescribed electrical work.

- 6.3 By comparison, the Building Act provides the Building Practitioners Board with the power to initiate inquiries.¹⁴ It does so within the context of an inquisitorial disciplinary process. The Electricity Act disciplinary process is a prosecution style system. As such, a Board inquiry jurisdiction may not be appropriate as it could create a conflict. The Registrar is separate from the Board's disciplinary process. Accordingly, if the Registrar could lay complaints about known conduct, then the risks noted above could be effectively addressed.
- 6.4 It is understood that a change to the PGDB Act to allow the PGDB Registrar to make complaints is currently being considered to alleviate the same issue. The PGDB Act disciplinary process is very similar to that in the Electricity Act. It is therefore recommended that a similar power is granted to the Electrical Workers Registrar.

[Suspension for a failure to comply with a section 147M or 147N order](#)

- 6.5 The Board can currently impose a condition on, or suspend a licence when an electrical worker does not complete a training order imposed as part of a disciplinary order following a hearing.¹⁵ No action can be taken if a fine or costs imposed as part of a disciplinary decision, are not paid. This compares to section 319 of the Building Act:

Section 319 Non-payment of fines or costs

If money payable by a person under section 318(1)(f) or (4) remains unpaid for 60 days or more after the date of the order, the Board may—

- (a) cancel the person's licensing and direct the Registrar to remove the person's name from the register; or*
- (b) suspend the person's licensing until the person pays the money and, if he or she does not do so within 12 months, cancel his or her licensing and direct the Registrar to remove his or her name from the register.*

- 6.6 The Board does maintain a debt policy that stipulates that an electrical worker will not be relicensed until they settle any outstanding fines and costs, or make suitable arrangements to pay them. Given that licensing can be for a period of up to five years, an electrical worker can continue to operate for a considerable time without satisfying the disciplinary order made

¹⁴ Section 317 of the Building Act.

¹⁵ Section 147R of the Act.



against them. It is recommended that the Electricity Act be amended to provide a similar power.

Disrepute and improper conduct

6.7 The disciplinary charges that the Board can consider are contained in section 143 of the Act. They are limited to conduct that relates to carrying out or supervising prescribed electrical work. Unlike other schemes, the Board does not have the ability to consider other, more general charges, like disreputable conduct. By comparison, within the Licensed Building Practitioner regime, the Board can consider the fitness of a person who has committed a serious crime (section 317(1)(a) of the Building Act), breached a code of ethics (section 317(1)(g) of the Building Act), or engaged in disreputable conduct (section 317(1)(i) of the Building Act). Similarly, the PGDB Act includes the following charges in section 89:

- (h) to have been convicted of an offence relating to sanitary plumbing, gasfitting, or drainlaying against this Act or the former Act or the Health Act 1956, or against any regulations made under this Act or either of those Acts or under the Gas Act 1992; or*
- (i) to be guilty of improper or incompetent conduct in performing that person's work, or in charging for it, that renders that person unfit to be registered or licensed under Part 2.*

6.8 Within the Licensed Building Practitioner regime, there are also disciplinary provisions that cover working outside of a person's competence, or misrepresenting their competence (section 317(1)(h) of the Building Act). Those charges ensure that practitioners limit themselves to regulated work that they are personally competent to do.

6.9 It is recommended that Part 11 of the Electricity Act be amended to provide the Board with the disciplinary provisions that would allow it to deal with a wider range of conduct.

Investigator decisions

6.10 The Act requires that an Investigator make a determination on whether a complaint "should" or "should not" be considered by the Board.¹⁶ No directions are given for what the Investigator should take into consideration in making such a decision. The matter is entirely within the discretion of the appointed Investigator.

Section ¹⁶ 147G of the Act.



6.11 It is common for guidance on the exercise of a discretion to be provided. For example, in the criminal justice system, the Solicitor General maintains Prosecution Guidelines provide guidance to prosecuting authorities. The Board utilises those guidelines when considering action in the District Court to prosecute non-electrical workers for illegal (unauthorised) prescribed electrical work. In the Licensed Building Practitioner regime, regulation 9 of the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 provides guidance on whether a complaint should or should not continue. It provides:

A complaint does not warrant further investigation if—

- (a) it does not come within the grounds for discipline; or*
- (b) it does not meet the requirements of regulation 5; or*
- (c) it is frivolous, vexatious, or not made in good faith; or*
- (d) its subject matter is minor or trivial, or both; or*
- (e) there is insufficient evidence to warrant the investigation of the complaint;*
or
- (f) the investigation of it is—*
 - (i) not practicable; or*
 - (ii) unnecessary; or*
 - (iii) not possible (for example, because the licensed building practitioner has died or cannot be located); or*
- (g) its subject matter has been considered previously by the Board, and the Board—*
 - (i) considered that the complaint did not warrant further investigation, because 1 or more of paragraphs (a) to (f) applied to it; or*
 - (ii) otherwise made a decision on the complaint.*

6.12 Given the important function that an Investigator performs, and the need for there to be public confidence that the discretion is being exercised appropriately, the Board recommends that the Act be amended to provide similar provisions to those contained in regulation 9 of the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 to provide Investigators with clear guidance on why a complaint should not proceed to a hearing.



7. Audit Provisions

- 7.1 The Board recommends that amendments be made to Part 13 of the Act (administration) to introduce express provisions allowing the Board to audit electrical workers.
- 7.2 The Board's functions, which are set out in section 149 of the Act, include a provision that the Board is to "promote, monitor, and review the ongoing competency and safe work practices of registered persons and licence holders". Under this provision, the Board can audit electrical workers. However, as there are no express audit provisions in section 149, the Board does not consider that it can compel audits. The Board currently relies on voluntary participation in audit programmes which, in turn, limits their effectiveness¹⁷.
- 7.3 The Electricity Act and Electricity (Safety) Regulations create a self-certification environment. Only high-risk work has to be checked by an independent person. Within a self-certification environment, it is important that the competence of electrical workers carrying out the prescribed electrical work is periodically reviewed.
- 7.4 The Board is able to require that electrical workers meet minimum competence requirements when they licence and relicence. It does this by requiring electrical workers to complete and pass a competence programme. Those requirements are not a substitute for random or targeted audits of electrical workers.
- 7.5 The legislative provisions do allow Energy Safety, a division of WorkSafe, to carry out audits. Those audits are conducted for different purposes than those carried out by the Board, which are to promote, monitor, and review the ongoing competency and safe work practices of registered persons and licence holders.
- 7.6 Auditing also allows the Board to obtain statistically meaningful, industry-level data. This can be used to develop competency course material and to provide insight into areas where the Board needs to focus its communications with electrical workers. Audits are also a means by which the Board can review and monitor the safety and compliance of electrical workers it has disciplined to ensure any penalty imposed, including training orders, has been effective.
- 7.7 The Board, therefore, recommends that section 149 of the Act be amended to provide the Board with express audit provisions.

¹⁷ The Board has, in conjunction with Joint Accreditation System of Australia and New Zealand, developed an audit scheme for electrical workers.



8. Amendments to Schedule 2 of the Act

8.1 Schedule 2 of the Act covers provisions that apply to the Board. Some of those provisions are out of step with other licensing regimes or could be amended to provide for more efficacious Board operations. Recommended changes are:

- (a) reducing the quorum requirements. The current requirement is four members. It is recommended that a quorum of three be considered to support business continuity for circumstances where Board members may be unavailable;
- (b) including a requirement to have one member who is a lawyer of standing. This is a requirement in the Building Act, and it aligns with the disciplinary functions the Board carries out;
- (c) extending the maximum term of office from three years to five years as per the Building Act; and
- (d) including an express provision that insurance can be taken out to cover Board members. Insurance for Board members is common within the context of statutory boards, and whilst the Board notes that it is covered by a statutory indemnity,¹⁸ an indemnity has to be pleaded and proved as a defence.

9. Electrical Design

9.1 The Board recommends that amendments be made to Part 1 of the Act (preliminary provisions) and Schedule 1 of the Electricity (Safety) Regulations 2010 to make electrical design work a category of prescribed electrical work.

9.2 The design of prescribed electrical work does not come within the registration, licensing or disciplinary provisions of the Act. As such, unlike other electrical work that has a safety or compliance component, the Board cannot regulate those who carry out the work or discipline those who carry it out in a negligent or incompetent manner.¹⁹

9.3 As the regulation of electrical design work is out of step with other safety-related electrical work, it is proposed that Schedule 1 of the Safety Regulations be amended to make electrical design a category of prescribed electrical work.

¹⁸ Clause 17 of Schedule 2 of the Act.

¹⁹ Regulations 14 and 58 of the Electrical (Safety) Regulations 2010 do establish level 2 offences in relation to certified designs, but complaints cannot be made about it.



9.4 It should be noted that the Board has designated a class of licence of Electrical Engineer. This class would be ideally suited to a limit of work of carrying out or supervising electrical design. The above recommendation (9.3) would be consistent with proposed changes to the licensing of engineers for safety-critical work. It is also noted that under the Building Act, design work is a type of restricted building work and a Licensed Building Practitioner must be licensed to carry out design work.

10. Penalties and Fines

10.1 The maximum penalties and fines in the Act for disciplinary matters under Part 11²⁰ and for illegal prescribed electrical work under Part 14²¹ have not been reviewed since 2010. Prescribed electrical work carried out in an unsafe manner carries a high public and property safety risk. Given this, and the approach taken to penalties in other legislation regulating safety – such as the Health and Safety at Work Act 2015 – it is recommended that the maximum penalties and fines be reviewed.

11. Electricity (Safety) Regulations 2010

11.1 The Board notes that the section 158 review does not specifically mention a review of the regulations, but section 169 does come within the ambit of the parts of the Act that are to be reviewed.²² As such, and in the interests of promoting electrical safety, it has included the following issues in the consultation document:

- (a) creation of a public database to hold and retain electrical certification;
- (b) amendments to the Risk Matrix in regulation 6A to clarify the limits of maintenance and replacement in relation to high risk prescribed electrical work; and
- (c) amendment to Schedule 1 of the Regulations to make electrical work on electric vehicles prescribed electrical work.

²⁰ The maximum fine under section 147M of the Act for an electrical worker is \$10,000.

²¹ The maximum fines under section 162 of the Act, the most serious offence, in the Act for carrying out unauthorised electrical work, is \$50,000 for an individual and \$250,000 for a body corporate.

²² Part 14.



Certification database

11.2 There is a current requirement that certain information from high-risk work is entered into a public, electronic, searchable database. However, high-risk work is only a small portion of the prescribed electrical work that is carried out in New Zealand.

11.3 There is no similar requirement for certificates of compliance or electrical safety certificates, which cover the bulk of prescribed electrical work carried out, to be entered into any form of database.²³ The consequence is that it can be difficult to trace who was responsible for prescribed electrical work where there are safety or compliance issues. A coronial report into the death of Mr Mathew John Downs criticised the lack of such a register and noted:

The inquest highlights the lack of a comprehensive central register or database, for electrical records for low risk and general electrical work. Lack of this type of information has hampered the police in their investigation of this case and their ability to prosecute a person for an illegal act that has resulted in the death of a person.

Coroner's Recommendation:

That Energy Safety, part of WorkSafe New Zealand, and the Electrical Workers Registration Board consider available options (including the possibility of making online filing of certificates of compliance compulsory) for establishment of a comprehensive central register or database similar to the "Electricity and Gas High Risk Database" for the recording of low risk and general electrical work with a view to enhancing safer outcomes for consumers.

11.4 The inquest findings highlight the issues associated with the lack of a comprehensive, central register or database for prescribed electrical work. The Board's experience with complaints about non-compliant prescribed electrical work has been that whilst certification may have been provided at the time the work was carried out, it has not been retained and, as a result, the electrical worker responsible cannot be identified.

11.5 It is noted that most Australian jurisdictions have a requirement that certification is lodged in a public database. Such a database in New Zealand could have public benefits, including:

- (a) the ability to trace who did what work and when further investigation is required;

²³ Note that territorial authorities do collect a certificate of compliance as part of the building consent process but that this does not cover a large amount of work that is carried out. Currently the requirement is for certification to be provided to, amongst other persons, the person that contracted the work.



- (b) a permanent record for owners and future owners of who did what work and when;
- (c) reduced compliance and record-keeping requirements²⁴ for individual electrical workers. In this respect, the Board would recommend that public database entries would satisfy the electrical worker's certification requirements, and that the databased record would replace the current paper-based certification system; and
- (d) the ability for the Board to carry out analysis of the types of prescribed electrical work that is being carried out and where it is being carried out.

11.6 On the basis of the above, it is recommended that consideration be given to establishing a public database to capture and retain details of general-risk (but not low-risk) prescribed electrical work, in addition to what is currently captured for high-risk work. The Board has not recommended a database for low-risk prescribed electrical work because it is not as safety-critical, and there is a very high volume of low-risk work that is completed, which may make a database for low-risk work impracticable.

Risk matrix

11.7 The Electricity (Safety) Regulations, made under the authority of section 169 of the Act, include provisions in regulation 6A which define the meaning of low-risk, high-risk, and general prescribed electrical work. The level of risk has a direct relationship in the Regulations to the type of certification required and, in the case of high-risk work, a requirement that it is inspected by an independent licensed Electrical Inspector.

11.8 Within regulation 6A, the definition of 'low-risk prescribed electrical work' includes work that comprises the maintenance or replacement of a fitting in an existing installation, even if that work would otherwise be high-risk work (deemed low-risk work). The Board's experience in dealing with complaint matters about electrical work carried out on what would, but for the deeming provision, be high-risk work, has been that the actual risks involved are greater than those recognised in the regulations. The reason is that the repair and replacement of existing fittings has inherent associated risks, given that it often involves interaction with older, compromised conductors, appliances, and fittings. Given this, unacceptable electrical dangers to persons and property from such work can and do arise.

²⁴ Certification must be kept for seven years by electrical workers and supplied on demand to various persons and entities.



11.9 Conversely, if the work was treated as high-risk, then a certificate of compliance would be required along with an inspection and the issue of a record of inspection by the authorised person who carried out that inspection. This provides for a greater degree of assurance that safety and compliance standards have been met.

11.10 The above compares to the regulation 5A(2) in the Gas (Safety and Measurement) Regulations 2010, which provides for the inverse position of low and high-risk work on gas fittings:

In these regulations, high-risk gasfitting means any of the following, unless it is low-risk gasfitting:

(a) gasfitting that comprises the alteration of, or addition to, an existing installation:

11.11 The Board has also observed that there is a degree of uncertainty in the industry about what the limits of maintenance or replacement are. This results, from time to time, in the boundaries being pushed. The result is that high-risk work that should be inspected is treated as low-risk which can, in turn, create electrical safety risks.

11.12 Given the above, the Board recommends that the definition of low-risk, the deeming provisions in regulation 6A(2), and the definitions of maintenance or replacement be reviewed and amended to provide for enhanced electrical safety.

Electric vehicles

11.13 Working on the electric components of an electric vehicle is not prescribed electrical work. Schedule 1, clause 2, provides that the following work is not prescribed electrical work:

(p) any work on electric cars (being road vehicles that use electricity generated within the vehicle, or electricity supplied from a standard low voltage supply, as its motive energy source):

11.14 Electric vehicles are increasing in number and in voltage. With this, the associated risk to persons who work on the electrical components may be increasing. To counter this, the Board considers that Schedule 1 should be amended to remove the exclusion, but only in relation to electric or hybrid vehicles. This would enable the Board to create an associated trade licence²⁵

²⁵ The Board currently has an associated trade licence for plumbers to carry out limited prescribed electrical work related to hot water cylinders.



to register and licence those that work on electric vehicles and, in doing so, would establish what the required competencies of such persons are.

11.15 Alternatively, the Board considers that electric vehicles could be treated as an appliance. Any prescribed electrical work on them would then require, at the least under the Board's licensing arrangements, an Electrical Appliance Serviceperson licence, and the following Schedule 1 requirements would apply:

- (j) *maintaining appliances, but only if the work is done in accordance with user instructions prepared by the manufacturer and supplied with the appliance to the user:*
- (k) *repairing or reworking an appliance, but only if it is undertaken in accordance with the instructions of the original manufacturer of the appliance*

12. Annexure – Board's 2010 Review of the Electricity Act 1992

Review of the Electricity Act 1992

by the Electrical Workers Registration Board

Presented to the House of Representatives
pursuant to section 158 of the
Electricity Act 1992



Report on the review of the

Electricity Act 1992 by the Electrical Workers Registration Board

Pursuant to Section 158 of the Electricity Act 1992



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1. Introduction

- 1.1 Section 158 of the Electricity Act 1992 (the Act) requires the Electrical Workers Registration Board (the Board) to complete a review of the operation of the occupational regulation parts of the Act¹ every five years and to report its findings to the Minister for Building and Housing. As part of the review process, the Act requires the Board to consider whether any amendments to the Act are necessary or desirable.
- 1.2 The relevant parts of the Act under review came into force on 1 April 2010. This review is therefore timed to be presented five years since that date.
- 1.3 Within the scope of the legislation, it is the Board which has responsibility for determining the issues covered by the review, the manner in which the review is carried out and the contents of the report presented to the Minister.
- 1.4 The Board, in carrying out these statutory functions, has taken into account the Crown's broader objectives in implementing and maintaining a system for regulating electrical workers in New Zealand.
- 1.5 The Board's methodology in conducting the review is dealt with more fully in the annexures. In summary, though, the Board consulted widely, and drew on its own experience in administering its functions over the five years since the occupational amendments came into force.²

¹ Part 1 and Parts 9 to 16 of the Act. Note the Electricity (Safety) Regulations 2010 are not within scope.

² Note the legislative provisions which are referred to in the report are contained in the annexures.

2. Executive Summary

- 2.1 The overall finding of the review was that the current occupational regime is fundamentally sound, but that there are some specific areas which can be improved upon. Specifically the Board formed the view that the following aspects are not operating as effectively as they could and legislative change could be beneficial. The areas for suggested change are noted in the order the Board considers would bring the greatest operational gains:
- (a) Infringement Offences – broadening the definition of an infringement offence to allow for low level disciplinary breaches to be dealt with by way of the infringement offence process and amending the current infringement offence process to remove the conflicting provisions between the complaints process and the infringement offence process and to extend the time frame within which an infringement offence must be dealt with;
 - (b) Issuing Employer Licences – an amendment to allow the Board to have a discretion to issue employer licences to bring consistency to the way that licences are issued, both to individual practitioners and to those who apply for employer licences;
 - (c) Disciplinary Provisions for Employer Licence Holders – an amendment to align the provisions relating to disciplinary action against holders of employer licences to those for registered individuals;
 - (d) Disciplinary Provisions for Limited Certificate Holders – an amendment to bring limited certificates within the disciplinary provisions in Part 11 of the Act;
 - (e) Discretion to Review an Investigator’s Decision – including provisions in the Act that allow the Board to seek an independent third party review of an investigator’s report; and
 - (f) Bringing the Scheme into Disrepute – introducing provisions that allow for a disciplinary charge of bringing the scheme into disrepute.

3. Broadening the Definition of an Infringement Offence

Board's Recommendation

3.1 The Board recommends that:

- (a) an amendment to the Act be considered to allow for low level disciplinary breaches to be dealt with by way of the infringement offence process; and
- (b) the current infringement offence process be amended to remove the conflicting provisions between the complaints process and the infringement offence process and to extend the time frame within which an infringement offence must be dealt with.

Discussion

3.2 Infringement offences under the Act relate to a very narrow category of events. They are restricted to:

- failing to notify an accident;
- carrying out or assisting to carry out prescribed electrical work without authority; and
- employing a person to carry out prescribed electrical work when that person has no authority to undertake such work.

3.3 Since the 2010 amendments came into effect the Board has seen a large number of disciplinary offences which it believes might have been dealt with more efficiently as an infringement offence. These include:

- failing to provide a return (for example a certificate of compliance or an electrical safety certificate);
- providing a false or misleading return; and
- carrying out low risk prescribed electrical work contrary to any enactment.

3.4 The Board is of the view that the cost to the industry in bringing a disciplinary case against a practitioner in some of the above circumstances is disproportionate, given the low level of offending.

3.5 From a practitioner's perspective an infringement notice process for these types of low level offences would reduce the time frames involved in dealing with the breaches and

remove the requirement to deal with the matter before the Board, allowing for a more effective process.

- 3.6 A potential issue, should the current legislative provisions be extended, is that the Act imposes minimum fines for infringement offences which are greater than those which the Board would normally impose for disciplinary breaches of this type. Moreover a practitioner who wants to defend the charge must do so through the District Court, which potentially exposes them to more serious disciplinary outcomes. As such the Board recommends that, if low level offending was dealt with by way of an infringement offence, then the infringement penalties should be reduced. The Board also recommends that there should be an option to have the matter dealt with using the complaints process should the practitioner wish to defend it.
- 3.7 Given the above the Board would recommend that, rather than the current provisions simply being extended, new infringement offence provisions be developed to cover low level breaches of the Act.
- 3.8 It should be noted that the infringement provisions as they stand are not presently being used. There are two reasons for this: the first is that matters which are raised as complaints must be dealt with as a complaint and not as an infringement offence; and the second is the restrictive time frames which apply.
- 3.9 The current infringement provisions in the Act require that all complaints be referred to an investigator on receipt by the Registrar. Once a complaint has been referred it is then locked into the complaints process and is no longer able to be dealt with as an infringement offence. This effectively negates the ability to use the current infringement offence process except for matters which come to the Registrar's attention by means other than a complaint – especially given that nearly all disciplinary matters come to the Registrar's attention by way of complaints. Accordingly the Board recommends that the existing infringement offence process be amended to allow for the infringement path even when the matter is laid as a complaint.
- 3.10 The present time frame of 14 days within which to issue an infringement notice is impracticable (in most instances) when dealing with infringement offences. Prior to issuing the notice, the Registrar is required to carry out inquiries to verify that an offence has been

committed and decide whether an infringement notice is appropriate. A 28 day time frame is considered more appropriate.

Submissions Received

3.11 Submitters generally supported this proposal:

- some noted they required more information as to what would be included in the broadened provisions;
- a submitter in support of the proposal noted that this “would provide a more efficient and cost effective way of dealing with minor matters”;
- another submitted that it “agrees to an extension to low level offences, but should only apply to low level offences that are black and white in nature ... but must have right of reply”;
- other submitters noted that “if minor disciplinary offences were to be added to the current list of infringement offences, there would be a considerable watering down effect”; and
- with regards to the proposal in terms of the time frame, submitters noted that the “time period needs to be balanced with the need to resolve possible infringements in a reasonable time frame”.

4. Issuing Employer Licences

Board's Recommendation

- 4.1 The Board recommends that the Act be amended to allow it to have a discretion to issue employer licences. This would bring a consistency to the way that licences are issued, both to individual practitioners and to those who apply for employer licences.

Discussion

- 4.2 Employer licences enable the holders to carry out prescribed electrical work using any person (as opposed to registered and licensed persons), provided there is a system in place which ensures work is carried out safely and competently.
- 4.3 Under the Act, the Board must issue an employer licence if an approved person certifies that the applicant's system of operation complies with the legislative requirements. The Board can then impose conditions.
- 4.4 This approach is inconsistent with the registration and licensing requirements for individuals, which require the Board to consider applications prior to granting registration or licensing. The Board is of the view that the employer licence provisions should be consistent with the provisions for issuing licences for registered persons.
- 4.5 The Board notes that there are presently 35 employer licence holders. The majority of these held licences prior to the 2010 changes which removed the Board's discretion. Only a small number of new licences have been issued under the new provisions.
- 4.6 The Board's main concern is that whilst the increase in the number of licences has, to date, been minimal there are no restrictions on those numbers increasing dramatically. Nor are there restrictions preventing businesses that carry out or want to carry out prescribed electrical work using it as a means of circumventing the registration, licensing, competency and disciplinary processes which apply to those who are in their employ.
- 4.7 The Board's understanding of why employer licences were originally adopted was to allow organisations which were exempted under the legislation prior to 1992 being able to continue without the need to have registered/licensed persons in their employ and to allow other like organisations to apply. Typically these employers were engaged in "works" (work on transmission and distribution assets) or in specialist areas. The current provisions,

however, allow any organisation that wants to carry out any prescribed electrical work such as work on domestic dwellings to make use of an employer licence.

- 4.8 Should the Board be granted a discretion then it could ensure that employer licences are granted to appropriate organisations for appropriate reasons.

Submissions

- 4.9 The majority of submitters think this scheme should be abolished. Organisations working within the employer licence regime submitted that no changes were required. Submissions included:

- a submitter noted that (“the scheme”) has led to unskilled people doing shoddy non-compliant work, to save costs”;
- other submitters noted that they also see the scheme as a “form of restrictive trade”, and they “don’t agree with non-licensed persons carrying out electrical work”; and
- another submitter however noted that, in their opinion, “they are only aware of a few employer licensed locations and that they operate well without the interference of the Board”. Because of this view, they do not agree to a possible change to the clause and wish for it to be retained.

5. Disciplinary Provisions for Employer Licence Holders

Board's Recommendation

- 5.1 The Board recommends that the provisions relating to disciplinary action that apply to employer licences be aligned to those that apply to registered individuals.

Discussion

- 5.2 The process for dealing with registered individuals is set out in detail in the Act, and the Board has recourse to powers under the Commissions of Inquiry Act 1908 in respect of evidence and process. With regard to employer licence holders, however, the same provisions do not apply. This means the Board is fettered in dealing with complaints against employer licence holders by, for example, not being able to compel evidence or take evidence on oath, notwithstanding that the Board is able to fine an employer licence holder up to \$50,000 or cancel their licence. From the employer licence holder perspective there is little certainty as to the process they will face as it is not prescribed in the Act.
- 5.3 The Board is of the view that there is no clear policy justification for the difference in procedural requirements between the two types of licence holders and that the lack of process creates a risk of a breach of natural justice.

Submissions Received

- 5.4 Most submitters strongly supported introducing disciplinary provisions for employer licence holders. It was noted that through introducing these provisions consistency will be brought in for enforcing discipline throughout the regime. Those within the employer licence regime did not support the changes.

6. Disciplinary Provisions for Limited Certificate Holders

Board's Recommendation

- 6.1 The Board recommends that limited certificate holders should come within the disciplinary provisions in Part 11 of the Act.

Discussion

- 6.2 The Act outlines the restrictions on carrying out or assisting with prescribed electrical work and the persons who are exempt from this. Limited certificate holders (including trainees) are exempt.
- 6.3 The limited certification process has worked satisfactorily in authorising trainees to carry out all work that their supervisor is authorised to undertake. The exemption, however, excludes them from the disciplinary processes of the Act. It is the supervisor of a limited certificate holder that completes prescribed electrical work who is held responsible for the actions of the limited certificate holder.
- 6.4 Whilst this is appropriate in many cases the Board has experienced a number of complaints in relation to limited certificate holders where prescribed electrical work has been carried out without the knowledge of the supervisor, or the instructions of the supervisor have been wilfully ignored. In such circumstances the Board considers it would be more appropriate for the limited certificate holder to be held responsible. As the Act currently stands, however, the Board has no recourse against the limited certificate holder in such circumstances other than to cancel their certificate or to impose conditions on it. Cancellation would often be a disproportionate penalty and it is already a condition of all limited certificates that the holder only work under supervision³. As such an ability to have recourse to other disciplinary measures would be an effective way to ensure the correct person is held accountable whilst also ensuring a limited certificate holder is not lost to the industry as a result of their limited certificate being cancelled.

³ The Board has comprehensive supervision guidelines for limited certificate holders and their supervisors.

Submissions Received

6.5 This proposal had strong support from all those that submitted on it:

- one submitter noted that “limited certificate holders can bear responsibility for their wrong actions to the extent that the wrongs are done wilfully”;
- others noted that all persons (working under the Act) should be able to be disciplined;
- questions were raised as to why limited certificate holders were originally excluded from disciplinary provisions; and
- it was also noted that the Board would need to make it clear that the ability to take action against the trainee does not absolve a supervisor of their responsibilities.

7. Discretion to Review an Investigator's Decision

Board's Recommendation

- 7.1 The Board recommends that provisions be included in the Act to allow the Board to seek an independent third party review of an investigator's report.

Discussion

- 7.2 The Act provides that an investigation process must be followed when a complaint is laid. This results in an investigator being appointed who then makes a recommendation to the Board as to whether the matter should or should not proceed to a hearing. Currently, the Board must accept that recommendation. The Board has no discretion to review or overturn the investigator's report, which is appropriate in a prosecutorial model where the Board is the arbiter.
- 7.3 Other occupational licensing schemes do have a process whereby the recommendation of an investigator can be reviewed and accepted, rejected or modified. One example is the Building Practitioners Board, where the Registrar provides an informed opinion as to whether to proceed to a hearing but the decision ultimately lies with the Board. The building practitioner model is, however, an inquisitorial process.
- 7.4 Given the prosecutorial nature of the disciplinary provisions in Part 11 of the Act a review by the Board is not appropriate. Whilst noting that the new disciplinary process brought about by the 2010 changes has been a considerable improvement over the complaints assessment committee process, there have been instances when the Board has had cause to question an investigator's recommendation, but nevertheless has had to accept it. It is also noted that there is no recourse to question a recommendation where there is evidence of a potential bias or conflict (although this has not been the case to date).
- 7.5 Given the implications of a prosecution for the practitioner and the costs involved it is considered that an ability to review would be beneficial.

Submissions Received

7.6 This proposal received split opinions from submitters:

- one submitter noted that, given that the investigator has intimate knowledge of a case, they would hope that the Board was able to trust the person who has been appointed to that position;
- the same submitter suggested having “two investigators allocated to each case and have a joint opinion”;
- further to this, one submitter suggested that the findings of an investigator who has made diligent inquiry and ascertained all relevant facts should not be able to be rejected by the Board, but instead referred back to the investigator for further consideration;
- one party that supported the proposal noted that it would bring the Electricity Act in line with other legislation and regulations; and
- another also supported the inclusion of a provision for discretion for the Board on all complaints and investigation processes.

8. Bringing the Scheme into Disrepute

Board's Recommendation

- 8.1 The Board recommends that provisions be introduced to allow for a disciplinary charge of bringing the scheme into disrepute.

Discussion

- 8.2 Various occupational licensing schemes provide for a disciplinary offence of bringing a scheme into disrepute. Examples include the Building Act 2004 and the Plumbers, Gasfitters, and Drainlayers Act 2006.
- 8.3 Such an offence allows a licensing body to deal with conduct which, whilst not related to carrying out licensed work, reflects badly on the profession as a whole and could lower public perception of the profession. An example of such conduct would be disreputable or fraudulent trade practices.
- 8.4 The Board does note that the Act provides for consideration as to whether a person is “Fit and Proper”. Under these provisions the Board can refuse to license or to re-license if the criteria are not met. Action can only be taken at the time of licensing or re-licensing as opposed to at the time of any related conduct.
- 8.5 The Board also notes that refusal to license someone on the grounds that they are not a fit and proper person may not be the appropriate sanction in all cases. By comparison under the disciplinary provisions there are a range of disciplinary options which are open to the Board.

Submissions Received

- 8.6 Mixed opinions were given on this topic:
- a number of submitters noted that more information was needed before they could make an informed decision as to whether to support this idea;
 - one submitter agreed that there is a need for the industry to be seen in a professional light by the public;
 - it was noted that submitters see merit in the Board being able to uphold the privilege of being licensed; and
 - one organisation submitted that it “should not be the duty of a government body to be the watchdog of industry reputation”.

9. Contractor Licences

Board's Recommendation

- 9.1 The Board recommends that further investigation into the merits of contractor licences be undertaken as part of a wider review of occupational licensing.

Discussion

- 9.2 Contractor licences are required in all Australian states and territories but not in New Zealand. They are issued to electrical contractors (i.e. the individual or business entity who enters into the contract to undertake work), rather than to the practitioner carrying out the prescribed electrical work. They include requirements which are aimed at ensuring good business practices.
- 9.3 The Board's experience is that a large proportion of complaints are laid as a result of, or as part of, commercial disputes. The introduction of contractor licences could potentially alleviate this issue by requiring an increased business acumen and the demonstration of good business practices.
- 9.4 The Board also hears a number of complaints where licensed persons have knowingly carried out prescribed electrical work which is contrary to the legislative provisions, under the instructions of their employer. This places undue stress on an individual practitioner as to whether to protect their employment position or breach the terms of their licence. The Board has no jurisdiction over the employer who has issued the instructions, unless the employer is a registered person or a holder of an employer licence and the work was done under the employer's supervision. A contractor licence could provide the opportunity to hold the employer responsible in such circumstances.

Submissions Received

- 9.5 The proposal of introducing contractor licences had low-level interest among submitters:
- most of those who made submissions on this proposal noted that employees ideally need to stand up for themselves and allow employers to take responsibility; and
 - one submitter noted the introduction of contractor licences would be outside the scope of the Board's function and role.

10. Registration and Licensing

Board's Recommendation

- 10.1 The Board does not recommend any changes to the dual registration/licensing regime but notes that it could be considered as part of a wider review of occupational licensing.

Discussion

- 10.2 The Act provides for registration as a prerequisite for issuing a practising licence. Registration continues until the person's name is removed from the register. This contrasts with a licence, which is issued for a set period or until the licence is cancelled, suspended or not renewed by the holder.
- 10.3 Prior to the 2006 amendments the dual system was required as there were exemptions for registered persons to carry out prescribed electrical work. Those exemptions were removed with the amendments which came into effect in 2010 and, as such, the dual system is no longer necessary from a statutory stand point.
- 10.4 It is noted that registered persons are subject to the Board's disciplinary provisions even if they are not licensed. If the dual system ceased to exist, a person who is eligible for licensing but does not hold a current licence at the time of carrying out prescribed electrical work would commit a criminal offence that would be dealt with by the District Court as opposed to a disciplinary offence which is the present situation.
- 10.5 The Board also notes that under the present system there is a potential risk for consumer confusion as to whether a practitioner is authorised to carry out work if registered but not licensed. Anecdotal evidence suggests that it is not unusual for the public to not appreciate the difference between a registered electrician and a licensed electrician, and to believe that a registered person is authorised to carry out prescribed electrical work, which may not be the case.

Submissions

10.6 There was very little support amongst submitters for changing the dual registration and licensing system:

- concerns were raised by a number of submitters that older electricians would lose their status in that these practitioners were led to believe that registration was lifelong, unless removed for misconduct;
- submitters noted that “registration must continue as it is the most efficient way to ascertain electrical qualifications”;
- submitters felt the confusion amongst consumers arises from the lack of publicity on how the system works and where to get advice;
- they also noted that there is a reluctance on the part of consumers to take a due diligence approach when engaging the trades; and
- one submitter gave the opinion that if the dual system was to be discontinued, that a ‘sinking lid’ policy be put in place. This would allow for the gradual phasing out of the dual system and would ensure that new practitioners follow the one system.

11. Other Matters

11.1 Within the discussion document released by the Board, there was also a section entitled Other Matters. These were limited to aspects of the operation of Part 1 or Parts 9 to 16 of the Act, where the submitter considers that change is necessary or desirable. The majority of submitters did not have further comments to be considered in the review. Of those that did so, a wide range of issues were raised which included⁴:

- a submission was made in relation to the Board's Fit and Proper Person Policy, which was taken into consideration as part of a review of the policy;
- support for the Board for encouraging discussions with key stakeholders, and a suggestion that the Board should be looking at ways to future-proof the profession through expanding the knowledge base of practitioners in the new technologies that are being introduced; and
- submissions showing support for and raising implementation issues around the introducing of photographs on identification cards, which were addressed by the Board as part of the current licensing round.

⁴ Submissions received which did not relate to the Review of the Act or to the operation of the Act have not been included.

Annexures

Board's Review Process

Terms of Reference were drafted and agreed to by the Board. These set out the parts of the Act which were within scope and provided guidelines for the approach to be taken and resources required. The document also referred to the enabling legislation, noting the obligations of the Board whilst carrying out the review.

Time frames were set out and agreed to, with major milestones and stakeholders noted. Key stakeholders were grouped into five categories; industry stakeholders, training stakeholders, internal stakeholders, government stakeholders and consumer stakeholders.

At an early stage of the review, 40 practitioners were rung and asked a number of basic, open-ended questions about the operation of the occupational regulation parts of the Act, and about the Board's role and performance in regulating electrical workers. The aim was not to provide a statistically relevant survey of the licensed electrical worker population. Rather, it was to gain an insight into the experiences of a sample of electrical workers drawn from a full range of ages, licence classes and locations throughout New Zealand, and to help form a picture of the current state from a practitioner's point of view.

Responses from the practitioners helped the Board in identifying the main areas of interest to practitioners. Although there were a number of comments and suggestions for improvement, the responses reinforced the Board's preliminary view that, in general, the regime is fundamentally a sound one, which would benefit from some adjustments, but does not require a full overhaul.

A literature review was undertaken, which involved an environmental scan of other similar jurisdictions. The review looked at schemes relating to electrical workers in Australia, Canada, and the United Kingdom, and noted any features within the legislation, the identity of the relevant regulator (whether within government, or via an independent body), and outlined the relevant licensing and registration requirements.

Domestic industry discipline models within bodies similar to the Board were included within the review. Regimes that were researched included the New Zealand Health Practitioners Disciplinary Tribunal, New Zealand Institute of Chartered Accountants Disciplinary Tribunal, Institution of Professional Engineers New Zealand and the New Zealand Teachers Council.

Taking into the consideration the previous work done through the phone calls to practitioners and calling on the Board's collective knowledge and experience in working with the legislation, a section-by-section analysis of the Act was undertaken. This analysis allowed for the identification of key issues, which were then agreed to by the Board.

The Board, with help from Ministry officials and the Registrar, drafted and released an issues document for consultation. A targeted release took place, with key stakeholders previously identified in the terms of reference being sent a copy directly. Following this, a wider release was carried out via the Electrical Workers website and through the *Electron* newsletter which is sent to approximately 40,000 registered persons.

Following the release of the issues document, the Board held a workshop in Wellington prior to the closing date for oral submissions to be heard. Key stakeholders were involved, allowing for discussions to be held with the Board for clarification purposes, prior to submitting written submissions.

After the closing date for submissions, the Ministry collated submissions in a table format, which was then presented to the Board for the purpose of consideration of the submissions received. This was to allow the Board to develop a view on the submissions.

Throughout the process, the Board has been provided with technical assistance from the Registrar and Ministry officials. That assistance has in no way influenced the Board in identifying and making recommendations on the issues. The Ministry has been kept informed of the progress of the review throughout the process.

The Board has formed its own views from the intimate knowledge and experience of its members in working with the Act.

Consultation Process

The consultation process was designed to be deep and wide, in order to solicit as many submissions as possible from key stakeholders and practitioners. For ease of use issues were laid out in the order in which they appeared within the Act.

The workshops held by the Board for oral submissions were attended by five key stakeholders and their representatives (listed below). The workshops were held prior to the deadline for written submissions to allow attendees to discuss issues with Board representatives for clarification prior to making their written submissions. Written submissions were received from 18 interested parties (listed below).

Stakeholder Meetings	Submitters	
Electricity Engineers Association Electrical Contractors Association New Zealand Electrical Training Company Electro-Tech Education Centre Energy Safety	Cameron Electrical	The Skills Organisation
	Electrical Contractors Association New Zealand	Unison
	Robert King	New Zealand Defence Force
	Electricity Engineers Association	WEL Networks
	Alan McArdle	MNZ Electrical Inspectors
	Peter MacMillan	Inspection Services
	Warwick Ferguson	Waikato
	Alan Minty	Homersham Ltd
	Greg Silcock	Anonymous
	Simon Thomas	

Electricity Act 1992 Act Provisions Referred to

Note the provisions appear in the order they are dealt with in the report.

Broadening the Definition of an Infringement Offence

Part 1 – Preliminary Provisions

2 Interpretation

infringement offence means—

- (a) an offence against section 20(d), 162, or 163:
- (b) a breach of any regulation made under this Act that is prescribed as an infringement offence

Part 14 – Miscellaneous Provisions

165A **infringement offence** means—

- (a) an offence against section 20(d), 162, or 163:
- (b) a breach of any regulation made under this Act that is prescribed as an infringement offence

Disciplinary provisions for Limited Certificate Holders

Part 9 – Restrictions on electrical work

74 **Restrictions on doing or assisting with prescribed electrical work**

- (1) A person must not do any prescribed electrical work, or assist in doing any prescribed electrical work, unless that person is authorised to do so under this section.
- (2) The following persons may do prescribed electrical work, or assist in doing prescribed electrical work, within the limits prescribed in regulations (if any):
 - (a) A registered person who is authorised to do, or assist in doing, the work under a current practising licence:
 - (b) A person who is authorised to do, or assist in doing, the work under a provisional licence:
 - (c) A person who is authorised to do, or assist in doing, the work under an employer licence.
- (3) A person does not do any prescribed electrical work, or assist in doing any prescribed electrical work, in breach of this section if that work is done in accordance with any of sections 75 to 80.
- (4) A body corporate that is responsible for any prescribed electrical work does not do any prescribed electrical work, or assist in doing any prescribed electrical work, in breach of this section if the natural person or natural persons who actually do, or assist in doing, that work are authorised to do so under this Act.
- (5) Subsection (1) is subject to subsections (3) and (4) and sections 75 to 81.
- (6) For the purposes of this Part and Part 10, **regulations** means regulations made under section 169.

Issuing Employer Licences

Part 10 – Subpart 2 – Employer Licences

115 **Employer licence**

- (1) A person is, on application in the prescribed form (if any) and on payment of the prescribed fee (if any), entitled to be issued with an employer licence by the Board if the person satisfies the Board that the person will at all times maintain a system of operation—

- (a) that complies with the requirements that are prescribed by regulations; and
- (b) that is sufficient to ensure that employees of that person who do, or assist in doing, prescribed electrical work—
 - (i) are competent to carry out the range of work for which they are employed; and
 - (ii) receive the supervision and training that is necessary to ensure that the work—
 - (A) is carried out safely and competently; and
 - (B) complies with the requirements of this Act and any regulations.
- (2) However, a person is not entitled to be issued with an employer licence if the person is precluded from holding an employer licence because of any action taken by the Board under section 120.
- (3) The Board may impose in respect of any employer licence issued under this section any terms and conditions that the Board thinks fit (for example, by restricting the types of prescribed electrical work that may otherwise be done under the licence).

Disciplinary Provisions for Employer Licence Holders

Part 10 – Subpart 2 – Employer Licences

120 Cancellation, suspension, and other actions in relation to employer licences

- (1) The Board may (in relation to a matter raised by a complaint or by its own inquiries) take any of the actions referred to in subsection (2) in relation to an employer licence if it is satisfied that the employer licence holder—
 - (a) Obtained the licence by making a false or misleading representation or declaration (whether oral or written); or
 - (b) Was not entitled to be issued with an employer licence; or
 - (c) No longer meets all the requirements for the issue of an employer licence; or
 - (d) Has failed to comply with any term or condition imposed by the Board in respect of that licence; or
 - (e) Has failed to ensure that the prescribed electrical work done by employees of that person—
 - (i) Is at all times carried out safely and competently; and
 - (ii) Complies with the requirements of this Act and any regulations.
- (2) In any case to which subsection (1) applies, the Board may—
 - (a) Do both of the following things:
 - (i) Order that the employer licence be cancelled; and
 - (ii) Order that the employer licence holder may not apply to be issued with an employer licence before the expiry of a specified period:
 - (b) order that the employer licence be suspended—
 - (i) For any period that the Board thinks fit; or
 - (ii) Until the employer licence holder does any things that the Board may specify (for example, reviewing and improving safety procedures):
 - (c) order that the employer licence be restricted, for any period that the Board thinks fit, by limiting the prescribed electrical work that the employer licence holder may authorise an employee to do, or assist in doing, to the work that the Board may specify, and in imposing a limitation of this type

the Board may also impose limitations on the circumstances in which an employee may do, or assist in doing, that work:

- (d) Order the employer licence holder to pay a fine not exceeding \$50,000:
- (e) Order that the employer licence holder be censured:
- (f) Make no order under this subsection.
- (3) The Board may take only 1 type of action in subsection (2) in relation to a case, except that it may impose a fine under subsection (2)(d) in addition to taking the action under subsection (2)(b), (c), or (e).
- (4) No fine may be imposed under subsection (2) (d) in relation to an act or omission that constitutes an—
 - (a) Offence for which the person has been convicted by a court; or
 - (b) Infringement offence for which the person has been issued with an infringement notice and has paid an infringement fee.
- (5) The Board may take an action under this section whether or not the person is still an employer licence holder.

Discretion to Review Investigators' Decisions

Part 12 – Appeals

147ZA Appeals

- (1) A person who is dissatisfied with the whole or any part of any of the following decisions, directions, or orders may appeal to a District Court against the decision, direction, or order:
 - (a) Any decision of the Board to decline to register the person or to decline to issue a licence to the person or to decline to renew the licence of the person:
 - (b) Any decision of the Board to decline to issue a limited certificate under section 78 to the person or to decline to renew the limited certificate of the person:
 - (c) Any decision of the Board to suspend or cancel the person's registration or licence:
 - (d) Any decision of the Board to impose any term or condition in relation to the person's registration or licence or to vary any of those terms or conditions:
 - (e) any decision, direction, or order under any of sections 108, 109, 120, 133, 137, and 153 or Part 11 (except section 147C).
- (2) For the purposes of this Part, any decision of the Plumbers, Gasfitters, and Drainlayers Board acting under this Act must be treated as a decision of the Board.
- (3) Subsection (1) does not confer a right to appeal against a decision under any of sections 84 to 90.

Bringing the Scheme into Disrepute

Part 11 – Disciplinary Provisions

143 Disciplinary offence

For the purposes of this Part, a person to whom this Part applies is guilty of a disciplinary offence if that person is found, in any proceedings under this Part, or in any appeal under Part 12,—

- (a) To have carried out or caused to be carried out prescribed electrical work—
 - (i) In a negligent or incompetent manner; or

- (ii) in a manner contrary to any enactment relating to electrical supply or prescribed electrical work that was in force at the time the work was done; or
- (b) to have intentionally or negligently created a risk of serious harm to any person, or a risk of significant property damage, through—
 - (i) Having used or caused to be used faulty or improper fittings; or
 - (ii) Having carried out or caused to be carried out any prescribed electrical work; or
- (c) To have failed to have complied with a term or condition of the person's registration or licence; or
- (d) to have done prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do; or
- (e) To have intentionally deceived or attempted to deceive any registered person who is authorised to test and certify prescribed electrical work by—
 - (i) Purposely concealing inferior work or inferior fittings used as part of any works or electrical installation; or
 - (ii) Making any false or misleading statement (whether in writing or not) to that person; or
- (f) to have failed to provide any return required under any enactment relating to prescribed electrical work or to have provided a false or misleading return; or
- (g) To have employed, directed, or permitted any unauthorised person to do any prescribed electrical work.

Registration and Licensing

Part 10 – Registration and Licensing of electrical workers and employer licences

87 Principles guiding prescribing of registration and licensing matters

In prescribing matters under section 84 or 85, 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, prescribed electrical work; 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 electrical workers; and
- (c) the matters may not impose undue costs on electrical workers or on the public.



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