



SAFETY | COMPETENCY | COMPLIANCE

Review of the Electricity Act



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The Electrical Workers Registration Board (EWRB) ("the Board") must carry out a review of the Electricity Act 1992 ("the Act") every five years (s 158 of the Act). The review only covers Part 1 and Parts 9 to 16. The Board must consider whether any amendments to the Act are necessary or desirable and report its findings to the Minister for Building and Construction. Once tabled any legislative changes are the purview of the Minister.

The Board has carried out an initial review and has identified a number of areas it considers may benefit from change. Those areas are detailed in this discussion paper and industry views are sought on the recommendations outlined in this paper and whether any other changes to the Act are necessary or desirable.

Please note that the Act can be viewed at <http://www.legislation.govt.nz/>

Feedback and comments in relation to this paper should be sent to the Registrar by the 27 February 2015 at the following address:

The Registrar
Electrical Workers Registration Board
PO Box 10156
WELLINGTON

Or by e-mail to: info@ewrb.govt.nz

Official Information Act 1992

Please note that any submissions received by the Board may constitute 'official information' under the Official Information Act 1982. That Act is designed to give the people of New Zealand access to information, but with exceptions to preserve the public interest and personal privacy.

The Board will prepare a summary of submissions received, together with the Board's responses. This summary is intended for circulation to parties who have made submissions.

In providing your submission, please advise the Board if you have any objections to the release of your submission and, if you do object, the parts of your submission that you want withheld, and the grounds, under the Official Information Act, for withholding them. The Board will carefully consider your reasons when preparing and releasing any summary, and in considering any formal Official Information Act requests that might be received in the future.

Privacy Act 1993

Any personal information that you supply to the Board in the course of making your submission will be used by the Board only in conjunction with the consideration of matters covered by this discussion paper.

Your name will be included in any summary (see above) unless you inform the Board that you

do not wish your name to be included.

A handwritten signature in black ink, appearing to read 'John Sickels'.

John Sickels,
Registrar
21 January 2015

Background

Since the last Board review of the Act and the implementation of the 2006 amendments the Board has had considerable experience in the operation of the Parts of the Act under review. As a result of its experience and feedback received from various industry participants since the last review, the Board has identified areas of the Act where it, or others, considers changes are necessary and/or desirable.

This paper provides commentary on the areas recommended for change and seeks views on those recommendations. Each section is followed by a table where submitter comment can be inserted and a Word version of this paper has been made available for that purpose.

Part 1 and 14 – Preliminary Provisions and Miscellaneous Provisions

Broadening the Definition of an Infringement Offence

- 1 The Act defines infringement and disciplinary offences. Infringement offences are those offences where action can be taken against any person by way of a charging document in the District Court or an infringement notice issued by either WorkSafe or the Registrar.
- 2 Infringement offences relate 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 The Board sees a large number of other disciplinary offences which it believes may be dealt with more efficiently as infringement offences. These could include matters such as failing to provide a return, providing a false or misleading return and the carrying out of low risk prescribed electrical work in a manner contrary to any enactment. These matters are currently disciplinary offences under the Act. Accordingly the Board's view is that the definition of an infringement offence needs amendment to take into account such matters.
- 4 The Board's view is that the cost to the industry as a whole in bringing a disciplinary case against a practitioner are considerable for what is low level offending. From a practitioner's perspective an enhanced infringement notice process would reduce the time frames involved in dealing with disciplinary offences and would remove the requirement to appear before the Board. Use of an infringement system would therefore be a more effective means of dealing with this type of offending.
- 5 The current legislation, however, imposes minimum fines which are greater than those which the Board would normally impose for disciplinary acts such as failing to provide a return and, should a practitioner want to defend the charge, they must do so in a District Court under the current infringement notice provisions. Accordingly the Board would recommend an appropriate scale of fines and the ability for the practitioner to appear before the Board if they wanted to defend the matter.
- 6 The Act requires that complaints must be referred to an investigator. Therefore complaints are not able to be dealt with under the infringement notice provisions. This internal inconsistency should be rectified.

- 7 The Board is also of the view that the time frame of 14 days within which to issue an infringement notice is impracticable. Prior to issuing a notice the Registrar has to carry out inquiries to verify that an infringement offence has been committed and ascertain whether the matter should be dealt with by way of an infringement notice or a complaint to the Board. Experience to date has been that 14 days is insufficient time to conduct such inquiries.

Please provide your views on whether;

- the infringement notice provisions in the Act should be extended to cover low level disciplinary offences such as failing to provide a return
- a scale of fees should be available for infringement and disciplinary offences
- complaints should be able to be considered by the Registrar rather than having to be referred to an investigator
- the time available to consider a possible infringement should be extended.

ECANZ comment:

ECANZ agrees to greater efficiencies although it notes that clarity is necessary as an **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

and therefore the examples the Board is citing maybe breaches of the regulations as per (b) and therefore infringement offences already.

Additional comments

ECANZ agrees that listed low level offences should be incorporated in an extension of the Act but that should the practitioner wish they can contest such an infringement.

ECANZ would also request that anyone practitioner who receives more than three notices in any one year appear before the Board and that firmer action then be taken

ECANZ considers that natural justice be considered in terms of time frames and decision making.

ECANZ would also suggest that if investigators are to be used that they be fit for purpose and have experience in the Industry. Such investigators to be given powers to enable them to issue a notice to rectify that if not complied with will result in disciplinary action being taken.

Part 9 – Restrictions on Electrical Work

Disciplinary Provisions for Limited Certificate Holders

- 1 Section 74 of the Act identifies the restrictions on carrying out or assisting with prescribed electrical work and persons who are exempt from s 74. Included in the exemptions are persons who hold a limited certificate (ss 77 and 78).
- 2 While the limited certification process works satisfactorily in that it authorises trainees to carry out all the work that their supervisor is authorised to undertake, the exemption excludes them from the disciplinary provisions of the Act. The normal course of practice where a limited certificate holder completes prescribed electrical work in a manner that is contrary to the legislative provisions is for a complaint to be brought against his or her supervisor.
- 3 The Board has dealt with complaints in relation to limited certificate holders where the limited certificate holder has either worked without the knowledge of the supervisor or has wilfully not followed the instructions of the supervisor. In such circumstances the supervisor may not be liable and the Board has no recourse against the limited certificate holder other than to cancel that person's certificate or impose conditions on it.
- 4 Given the above the Board is of the view that the Act should be amended to include holders of limited certificates in the disciplinary provisions of the Act. In this respect it should be noted that the Act, prior to the 2006 amendments, included trainees within the disciplinary provisions (s 117 of the Act prior to the 2006 amendments).

Please provide your views on whether limited certificate holders should be brought within the disciplinary provisions of the Act.

ECANZ considers that the Board has powers under point 3 in that it can cancel that person's certificate or impose conditions on it. ECANZ suggests the addition of a financial penalty, as per the infringement regime, be provided as an additional deterrent that the Board could impose

Part 10 – Registration and Licensing of Electrical Workers and Employer Licences

Registration and Licensing

- 1 The Act provides for registration as a prerequisite for the issue of a practising licence. Registration continues until such time as a person is removed from the register whereas a licence is issued for a set period and is linked to competency requirements. The dual registration/licensing system was necessary prior to the 2006 amendments to the Act as registered persons were entitled to carry out prescribed electrical work without a practising licence if it was not done for payment or reward. Those exemptions were removed in the 2006 amendments and as such the dual system is technically no longer required and the Board is seeking views on whether it should continue.
- 2 Under the present Act registered persons are subject to the Board's disciplinary provisions even if they are not licensed. If the registration system ceased, a person who

has the necessary qualifications to be licensed but does not hold a current practising licence at the time of carrying out prescribed electrical work would commit an offence that would be dealt with by the District Court – (i.e. not by the Board).

- 3 The Board notes that under the current dual registration/licensing system there is the potential for the consumer to be confused as to whether a practitioner is authorised to carry out prescribed electrical work. The common inference where a person is registered is that they are authorised to carry out work whereas for prescribed electrical work this is not the case.
- 4 The Board notes there is a certain amount of administration required to run the dual system.

Please provide your views on whether the dual registration/licensing regime should continue.

ECANZ considers the dual system is confusing and that that registration as a term be removed, and that it be replaced with a licenced electrician. The licence would be issued in lieu of registration and would have to be kept current every two years in order to work in the sector.

For those who leave the sector and wish to return they would be recorded as having been licensed and would therefore only be required to refresh in order to obtain a current practicing licence.

ECANZ believes that the public is often confused around the terms registered and licenced electrician and that by removing the term registered much of the confusion can also be removed.

Longer term refresher courses may have to be tailored for the sector of the Industry as there may come a time when a practicing licence matches the sector the practitioner mainly works in. Those who hold the practicing licence or their employers would also be charged with ensuring that only those competent to carry out the PEW in that sector were asked to do so.

A sinking lid policy should be maintained on those who hold current registration but no practising licence

Contractor Licences

- 1 The Board notes that in Australia, which has similar legislative frameworks to New Zealand, there are provisions for contractor licences. These licences are issued to electrical contractors and include matters relating to business practices.
- 2 New Zealand does not have a similar system. The Board notes, however, that a large proportion of complaints that are laid with the Board arise as a result of or as part of commercial disputes. It is considered that issues associated with commercial disputes may be able to be alleviated through the introduction of contractor licensing as any holder of a licence would have had to demonstrate business acumen to the Board.
- 3 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 on the instructions of their employer. The employee, in such circumstances, is placed in the unenviable position of having to protect their employment position or their licence. At the

same time the Board has no jurisdiction over the employer who has instructed them (unless the employer is a registered person or the holder of an employer licence.

- 4 A contractor's licence could therefore provide the opportunity to both introduce an element of business acumen into the licensing regime where a person is contracting to the public and to ensure employers are held responsible for their actions when instructing employees.

Please provide your views on whether there is merit in introducing a contractor licensing system.

ECANZ is happy to work with the Board and explore the possibility of issuing contractor licences.

ECANZ will make separate representations on this topic to the Board.

ECANZ believe that the Board should focus upon working with organisations such as ECANZ who do have internal quality assurance systems.

ECANZ considers employees must always work to protect their licence and that they should not feel pressured into doing work outside of legislative provisions, if indeed this were the case they should be encouraged to ask their employer to sign off the work.

Issuing Employer Licences

- 1 The Act provides for the issuing of employer licences in ss 115 and 116. Employer licences enable the holders to carry out prescribed electrical work using non licensed persons provided they have a system in place which ensures the work is carried out safely and competently and in compliance with the Act and Regulations.
- 2 Under s 116 the Board must issue an employer licence if an approved person (as defined by the Act and Regulations) certifies that the applicant's system of operation complies with the statutory requirements. The Board can impose conditions.
- 3 The provisions are inconsistent with the remainder of the Act in respect of registration and licensing in that the other provisions require the Board to consider applications prior to granting them.
- 4 The Board is of the view that the employer licence provisions should be consistent with the provisions for issuing licences for registered persons.

Please provide your views on whether the Board should have the discretion to consider and issue employer licences

ECANZ supports the notion that the Board can have discretion to consider and issue employer licences only however after it has received from an approved person (as defined by the Act and Regulations) certification that the applicant's system of operation complies with the statutory requirements.

Disciplinary Provisions for Employer Licence Holders

- 1 Employer licence holders are subject to disciplinary provisions and these are contained in s 120 of the Act. The Board can cancel or suspend a licence and imposed a fine of up to \$50,000 (as compared to \$10,000 for a registered person).
- 2 As with the issuing of employer licences the provisions relating to disciplinary action are inconsistent with those for registered persons. In dealing with registered persons there is a set process under the Act that must be followed and the Board has recourse to powers under the Commissions of Inquiry Act 1908 in respect of evidence. The lack of evidentiary powers in particular constrains the Board in its ability to hear complaints about employer licence holders and to make decisions in relation to them. The lack of a set process also appears to be less equitable than the provisions for registered persons.
- 3 The Board is therefore of the view that the disciplinary provisions for employer licence holders should be aligned to those for registered persons.

Please provide your views on whether the disciplinary provisions for employer licence holders should be aligned to those for registered persons.

ECANZ agree with the Board view in regard to point three.

Part 11 – Disciplinary Provisions

Bringing the Scheme into Disrepute

- 1 Various schemes that deal with licensing provide for a disciplinary offence of bringing the scheme into disrepute (eg the Building Act 2004 and the Plumbers Gasfitters and Drainlayers Act 2006). The Electricity Act does not contain any such provision.
- 2 A disciplinary offence of bringing a scheme into disrepute allows a licensing body such as a board to deal with conduct which, whilst not related to the carrying out of licensed work nevertheless reflects badly on the profession as a whole and generally lowers the public's perception of that profession. An example would be disreputable or fraudulent trade practices.
- 3 The Board's view is that this sort of disciplinary offence should be included in the Act.

Please provide your views on whether a disciplinary charge of bringing the scheme into disrepute should be included in the Act.

ECANZ does not have a clear view as the cited examples are vague. In principle ECANZ can see merit in the Board being able to remove the privilege of a licence or imposing conditions on that licence holder for those who deliberately set out to misuse the scheme, however before offering support it would seek more discussion to better understand the circumstances the Board is basing its view upon

Discretion to Review Investigators' Decisions

- 1 The Act sets out an investigation process when a complaint is laid which results in the appointed investigator making a recommendation to the Board as to whether the matter should or should not proceed to a hearing before the Board. The Board must accept that recommendation – (i.e. it has no discretion on the matter and there is no ability to review or question the investigator's decisions).
- 2 Other occupational licensing schemes have a process whereby the recommendation is reviewed and accepted, rejected or modified.
- 3 The Board's concern is that whilst its decisions are subject to appeal (as is appropriate) and thus review by a higher authority, there is no similar provision for the investigator reports. Accordingly the Board is of the view that provision should be made for investigator reports to be reviewed if the Board disagrees with the recommendation made.

Please provide your views on whether there should be a process by which an investigators decision can be reviewed.

ECANZ is of a view that if discretion is offered via Inspectors then the Board should also have that same discretion.

ECANZ however would suggest the following

That the standard of Investigators be raised and they be regularly reviewed and that

An appropriate body such as JAS ANZ or similar are engaged to randomly review investigators decisions and where their recommendation is not followed

Other Matters

Please provide your views on whether there are any other aspects of the operation of Part 1 or Parts 9 to 16 of the Act where change is necessary or desirable.

