



**Electrical Workers  
Registration Board**

SAFETY | COMPETENCY | COMPLIANCE

# SECTION 158 REVIEW OF THE ELECTRICITY ACT

# Section 158

## 158 Review of operation of Act

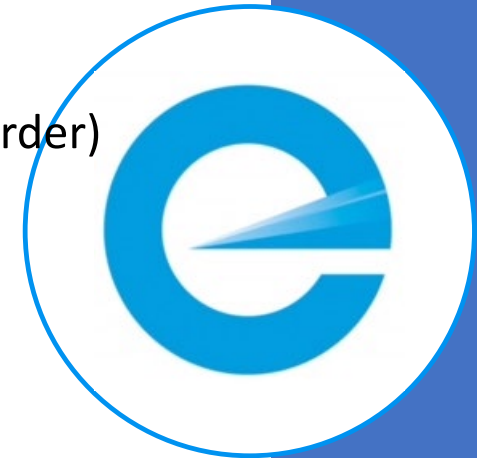
- (1) As soon as practicable after the expiry of the period of 3 years beginning on the commencement of this section, and then at intervals of not more than 5 years, the Board shall—
  - (a) review the operation of this Act (other than Parts 2 to 8) since—
    - (i) the date of the commencement of this section (in the case of the first review carried out under this paragraph); or
    - (ii) the date of the last review carried out under this paragraph (in the case of every subsequent review); and
  - (b) consider whether any amendments to this Act (other than Parts 2 to 8) are necessary or desirable; and
  - (c) report the Board's findings to the Minister.
- (2) As soon as practicable after receiving a report from the Board under subsection (1)(c), the Minister shall lay a copy of that report before the House of Representatives.



**Last report was tabled in 2015 – Next report due 2020**

# Potential Topics for the Review

1. Introduction of new provisions as regards competence and ethics:
  - Ability to review competence at any time on reasonable grounds;
  - Requirement to work within personal competence;
  - Ability to take action if a person does not meet fit and proper person requirements between licencing rounds;
  - Introduction of a code of ethics; and
  - Suspension option for noncompliance with a section 147M order (penalty order)
2. Power for the Registrar to delegate;
3. Employer licences – keep, repeal, modify;
4. Board inquiry jurisdiction for serious misconduct, i.e., no requirement for a complaint to be made;
5. Express provision to audit electrical workers;
6. Risk Matrix changes with regard to high risk work being deemed low risk if it is repair maintenance etc.;
7. Definitions of Safe and Unsafe in the regs – are the thresholds correct;
8. Introduction of a CoC register/database similar to Rol's;
9. Certified design as PEW; and
10. Work on EV's as PEW.



# Competence and Ethics

Ability to review competence at any time on reasonable grounds

Plumbers Gasfitters and Drainlayers Act, in sections 53 and 54, deals with competence reviews. They contain provisions that are not in the Electricity Act:

## Section 53: Review of registered person's competence

- (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.



# Competence and Ethics

## Ability to review competence at any time on reasonable grounds

### Section 54: 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.



**Question: Should similar provisions be introduced into the Electricity Act?**

# Competence and Ethics

Ability to review competence at any time on reasonable grounds

## Issues:

- The Board is currently limited to considering competence at the time of relicensing (currently every two years) or on receipt of a complaint;
- Board cannot make complaints so, even if it is aware of competence issues, it cannot take any action; and
- An individuals competence can change over time, intervening factors can impact on competence.

Question: Should similar provisions be introduced into the Electricity Act?



# Competence and Ethics

## Requirement to work within an Electrical Worker's personal competence

Building Act, in section 314B, contains the following provision:

314B 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.

The Building Act has a disciplinary provision linked to the section. There are no similar provisions within the Electricity Act other than a charge of incompetence.

### Issues:

- It is important for public safety that Electrical Workers know and understand the requirement to work within their competence; and
- There are no current enforceable mechanisms to ensure that they do.

**Question: Should similar provisions be introduced into the Electricity Act?**



# Competence and Ethics

## Fit and Proper requirements

The Board can only consider “fit and proper” requirements at the time of relicensing (currently every two years). There is no provision to be able to suspend or cancel if a person fails to meet the fit and proper person tests in between licensing rounds.

Cancellation and suspension of licences, under section 110 of the Act only applies:

- on request
- on death
- if a licence is wrongly obtained
- on a revision of the register
- as a result of a disciplinary matter

**Issue:** Fit and proper person issues can, however, arise at any time. For example an electrical worker may be convicted of a serious crime between licensing rounds.

**Question:** Should the Board have powers to deal with fit and proper issues as and when they arise?





# Competence and Ethics

## Fit and Proper requirements

### Options?

1. Introduce a disciplinary offence relating to the commissions of a serious criminal offence similar to that provided in the Building Act:
  - a practitioner has been convicted, whether before or after he or she is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more; and
  - the commission of the offence reflects adversely on the person's fitness to carry out or supervise prescribed electrical work.
2. Introduce a disciplinary offence relating to disrepute similar to those in the Building Act and the Plumbing Gasfitting and Drainlaying Act:
  - Building Act: a practitioner has conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act into disrepute;
  - Plumbing Act: 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.



# Competence and Ethics

## Code of Ethics

- Most licensing schemes have a code ethics which sits alongside disrepute provisions;
- Codes of ethics set know behavioural standards that workers are expected to meet. They have the potential to raise standards of ethical behaviour; and
- A code of ethics can be reinforced by a disciplinary offence of breaching the code of ethics.

**Question: Should the introduction of a code of ethics be introduced for electrical workers?**



# Board Inquiry Jurisdiction

The Board is not able to make complaints or refer matters to be investigated.

## Section 144 Complaints:

- (1) Any person may complain to the Board about the conduct of a person to whom this Part applies by making the complaint in the prescribed manner to the Registrar.
- (2) However, a complaint may not be made under subsection (1) by the Board, a member of the Board, or the Registrar.

**Issue:** The Board cannot take action with regard to potential disciplinary matters that come to its attention other than by way of a complaint being made. This includes where a matter is already in the public domain such as where it is reported in the Media or where the Board is provided with a report in respect of accidents to which section 16 applies. Section 149 says the Board can “take any action in relation to those reports that the Board thinks fit” but the options are very limited.

Building Act contains a provision that allows that Board to investigate by way of an inquiry – Section 317 of the Building Act - The Board may (in relation to a matter raised by a complaint or by its own inquiries)

**Question:** Should the Electricity Act contain similar a similar power or some other mechanism to allow for the investigation of alleged serious misconduct where no complain has been made?



# Enforcement of Section 147M Orders

The Board can currently impose a condition on a licence or suspend a licence when an electrical worker does not complete a training order (section 147R). No action can be taken if a fines and/or costs are not paid.

The Board has a rule that a person cannot be relicensed if there is are outstanding fines or costs. No action can be taken until relicensing occurs (currently every two years).

**Issue:** It is an important aspect of a disciplinary order that the Board be able to ensure compliance with its orders. A failure to pay fines and/or costs places a financial burden on the licensing scheme which is carried by electrical workers fees.

Consideration could be given to the introduction of a provision similar to section 319 of the Building Act: If money payable by a person 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.

**Question:** Should the Electricity Act contain similar a similar provision?



# Power to Delegate

The Registrar cannot subdelegate. This can create issues when the Registrar is on leave or away from the office:

## **Section 152: Delegation of functions and powers**

- (1) Except as otherwise provided in this Act, the Board may from time to time delegate any of its functions and powers to the Registrar.
- (2) No delegation under this section shall include—
  - (a) the power to delegate under this section:

Compare with the LBP Registrar provisions:

## **Section 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.

The LBP Registrar power to delegate is subject to terms and conditions to control its exercise.

**Question: Should section 152 of the Electricity Act include a power to subdelegate?**



# Employer Licenses

Employer licenses must be granted by the Board. Section 115 of the Electricity Act provides:

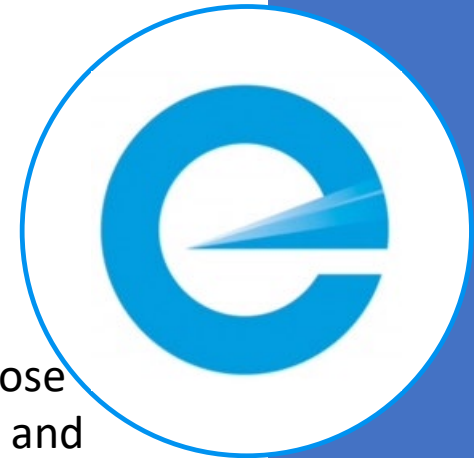
- (1) A person is, on application in the prescribed form (if any) and on payment of the prescribed fee (if any), **entitled to be issued** with an employer licence by the Board if the person satisfies the Board that the person will at all times maintain a system of operation.

## Issues:

- Employer licences may be used for improper purposes as there are no restrictions on:
  - who can apply for an Employer Licence; or
  - the types of PEW that can be carried out under an employer licence;
- There are no fit and proper requirements as per other licensing applications;
- There is no Board discretion to decline as per other licensing applications;
- An employer licence can lead to limited development of the skills and knowledge of those who work under its authority – not necessarily a pathway to registration and licensing; and
- There can be confusion over the status and responsibilities of registered/licensed persons working for an employer licence holder.

## Questions: Should there be:

- **limits on who can apply and the types of PEW that can be carried out;**
- **additional application requirements similar to those imposed on registered persons;**
- **a discretion to not issue on reasonable grounds?**



# Employer Licenses

Section 120 of the Act deals with complaints about employer licence holders. It does not provide the Board with any powers with which to manage hearings.

## Issues:

- There is no prescribed investigation or hearing processes;
- The Board cannot summons witnesses;
- There are only limited penalty provisions – fine or censure; and
- There are no costs or publication provisions.

**Question: Should the Act contain similar disciplinary processes and provisions for employer licence holders as it does for registered electrical workers.**



# Auditing Electrical Workers

The Board's functions are contained in section 149 of the Act. It includes a provision that the Board "promote, monitor, and review the ongoing competency and safe work practices of registered persons and licence holders". There are no express audit provisions.

The Board has interpreted that provision together with the provisions that Board may "do any other things as may, in the Board's opinion, be necessary for the effective administration of this Act" and may "carry out any functions that are incidental and related to, or consequential on, its functions stated in this section" as authorising it to carry out audits of electrical workers.

**Issue:** Without an express audit provision the Board is limited to voluntary participation in audit programmes which can limit the effectiveness of any such programme.

Auditing is one means by which the Board can assess an individuals competency.

Auditing also allows the Board to obtain statistically meaningful industry level data which can be used to develop competency course material, Electron articles, Meet and Greet presentation topics and general stakeholder engagement material.

**Question: Should the Electricity Act contain an express provision to enable it to carry out audits of electrical workers?**





# ESR Risk Matrix

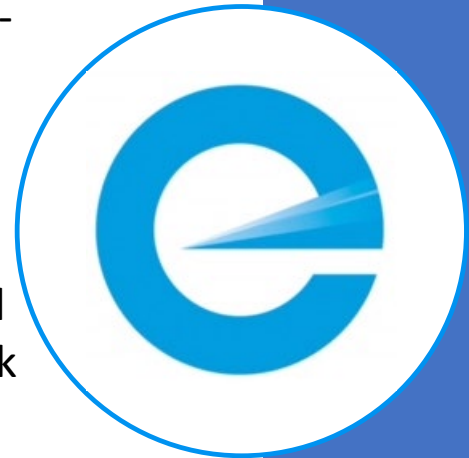
Regulation 6A sets out what is high, general and low risk. It includes a provision that maintenance or replacement or relocation of what would otherwise be high risk work is low risk. This compares to the regulation 5A(2) Gas (Safety and Measurement) Regulations 2010:

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:

**Issue:** The Board's experience, through complaints, has been that repair, maintenance and replacement of what would, if it were not for the exclusion in regulation 6A(2), be high risk PEW, carries with it a greater risk than the regulations acknowledge or apportion.

**Question:** Should the “low risk” exemption in the Electricity (Safety) Regulations be reversed so that the maintenance or replacement of high risk items remains high risk?



# ESR Definition of Safe and Unsafe

Regulation 13 provides:

electrically safe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is **no significant risk** that a person or property will be injured or damaged by dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment

electrically unsafe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is a **significant risk that a person may suffer serious harm, or that property may suffer significant damage**, as a result of dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment.

**Issue:** The threshold for work to be “safe” is low and “unsafe” is high. This links to various provisions in the Regulations including regulation 13 which requires that work on installations and appliances is “electrically safe”. Does this establish the right mind set for electrical workers carrying out PEW?

**Question:** Should the settings for “safe” and “unsafe” be reviewed?



# CoC Database

There is a register for RoI documentation but not CoC documentation. A Coronial report into the death of Mr Mathew John Downs criticised the lack of 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.



# CoC Database

Some CoC's end up in the public domain as part of a Code Compliance Certificate process which but this only applies if a building consent for the building work has been issued.

Most Australian jurisdictions have a requirement that CoC be lodged in a database.

**Question: Should a public register be established for CoCs? Potential benefits include:**

- Ability to trace who did what and when further investigation is required;
- Permanent record for owners and future owners of who did what and when.

Note that there is provision in regulation 112A for WorkSafe to create a database for CoCs:

## **Database for recording certificate details on Internet site**

WorkSafe must ensure that there is included on an Internet site, maintained by or on behalf of WorkSafe, a database that records details of the following, in a manner that enables the information to be accessible in accordance with regulation 112B:

- (a) all certificates of compliance (including records of inspection) given for high-risk prescribed electrical work;
- (b) any other certificates as determined by WorkSafe.

**Question: Is there any other documentation (CoV, EWof) where a database would be beneficial?**



# CoC Database

## Proscribed Forms

**Issue:** CoC's used to be a form that were sold by the Board. This created consistency and aided understanding by both the person completing it and the person receiving it.

## Questions:

- In conjunction with creating a database should the form of a CoC be standardised with the ability to complete it online?
- If a CoC is completed online and submitted to a database should it still be provided it to the customer who could get it directly off the web?
- Should a revised form of CoC make it mandatory to record test results.



# Certified Design or Design as PEW

Design does not come within Schedule 1 of the Regulations which specifies what is and is not PEW.

**Issue:** There is currently no logical place in the licensing scheme for Electrical Engineers as, on qualification, they tend to have knowledge but no skills.

Regulation 14 and Regulation 58 of the ESRs establish “Level 2 Offences” for unsafe design but there is no disciplinary action that can follow as it is not PEW.

Building Act deems an engineer to be a Design LBP. The same sort of provisions could apply.

**Question: Should design be PEW?**



# Electric Vehicles

Working on an EV is not PEW if low voltage. Schedule 1 provides:

- (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):

Low voltage means any voltage exceeding 50 volts AC or 120 volts ripple-free DC but not exceeding 1 000 volts AC or 1 500 volts ripple-free DC

**Issue:** EVs are increasing in number and voltage. With this the associated risk may be increasing.

## Questions:

- Should the voltage limits be reduced to ELV or some other level?
- Should an associated trade type licence be introduced? (an associated trade licence could be based on a person having a MITO Level 5 EV qualification)
- Should an EV be treated like an appliance (requiring at least an EAS licence). The ESRs provide, for appliances, that it is PEW except if:
  - (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

