



Electrical Workers Registration Board

SAFETY | COMPETENCY | COMPLIANCE

Board Practice Note: Witness Briefs and Agreed Statements of Fact

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Signed and dated this 10th day of April 2019.

Mel Orange
Presiding Member

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1. Introduction

- 1.1 The Board deals with disciplinary matters under Part 11 of the Electricity Act 1992 (the Act). Under section 147T of the Act the Investigator is to prosecute disciplinary matters before the Board and may be represented by counsel. An electrical worker appearing before the Board may also be represented by legal counsel.
- 1.2 The purpose of this Practice Note is to provide directions when:
 - (a) a matter will proceed before the Board by way of an agreed statement of facts; or
 - (b) evidence to be presented by way of briefs of evidence.
- 1.3 This Practice Note is subject to the provisions in the Act and the Electricity (Safety) Regulations 2010 (the Regulations) and to the Board's Disciplinary Rules (B-R-01).

2. Agreed Statements of Fact

- 2.1 An agreed statement of facts sets out relevant factual information that both an Investigator and a respondent have agreed is true. It is put before the Board so that the Board can make a decision on whether or not a disciplinary offence has been committed.
- 2.2 The presentation and use of agreed summaries of fact have a significant value for the administration of Part 11 of the Act (Disciplinary Provisions), including:
 - (a) relieving complainants and other witnesses of the burden of the hearing process; and
 - (b) saving costs, Board time and resources.
- 2.3 Agreed statements of fact can also provide a structured environment in which a respondent may accept appropriate responsibility for his or her disciplinary offending which can then be reflected in any penalty imposed.
- 2.4 The Board has a policy of taking a respondent's approach to the disciplinary matter into account including whether the matter has been dealt with by way of an agreed statement of facts as a mitigating factor when deciding the appropriate penalty and/or costs for a disciplinary charge that is upheld.
- 2.5 A respondent is encouraged to appear before the Board where a matter proceeds by way of an agreed statement of facts.

3. Briefs of Evidence

- 3.1 Where witnesses will appear before the Board to give oral evidence it is of assistance to the Board for the evidence that they will give to be detailed in a written brief of evidence. Briefs of evidence also assist the parties to the proceedings to prepare for the hearings and for cross examination

4. Agreed Statements of Fact and Briefs of Evidence Directions

- 4.1 The Board views it as appropriate for an Investigator to engage with a Respondent (or their legal counsel if they are represented) in a process concerning disposition of disciplinary charges by way of agreed statements of fact. Discussions should be held as early as is possible.
- 4.2 The Board's Presiding Member will discuss agreed statements of fact and briefs of evidence at any prehearing conference held and will issue directions as and where appropriate.
- 4.3 An agreed statement of facts:
- (a) should contain a full account of the charges filed on the basis of those facts that could have been proved by admissible evidence if the matter went to a hearing;
 - (b) should not omit any material facts;
 - (c) should not outline facts to the Board which are misleading or, when measured against the essential elements of the offence; and
 - (d) should not omit any facts relating to the extent of injury or damage suffered by a complainant or any other person as a result of the disciplinary offending.
- 4.4 The Investigator and/or the respondent may adduce evidence in addition to the agreed statement of facts as regards evidence that has not been agreed and/ or as to the seriousness of any disciplinary charge offence where it has been laid with alternatives.
- 4.5 The Investigator and/or the respondent may adduce evidence to prove on the balance of probabilities any mitigating or aggravating fact that is relied on by them when making submissions as regards penalty.
- 4.6 An agreed statement of facts should be signed by both the Investigator (or Counsel for the Investigator) and the respondent. Signatures may be done electronically and in counterparts. Confirmation of an acceptance of an agreed statement of facts that is signed electronically is also to be obtained.
- 4.7 Briefs of evidence are to be signed by the witness giving the evidence.
- 4.8 The party calling a witness who has provided a brief of evidence may seek leave from the Presiding Member to have the witness excused from attending the hearing.