



Complaints Against Employer Licence Holders

EWRB Reference Number	O-R-07A Complaints Against Employer Licence Holders
Document Category: Board/Legislative/Operational	Operations
Document Type: Rule/Policy/Procedure/Reference	Rule
Responsible: Board/Registrar/Operations Manager	Board
Publication Status: Public/Private	Public
Board Approval Date	5 February 2014
Gazette Notice Date	N/A
Next Review Date	2016

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1. Purpose/Introduction

- 1.1 The Electrical Workers Registration Board (the Board), from time to time, receives complaints against employer licence holders or persons undertaking prescribed electrical work under an employer licence.
- 1.2 Section 120 of the Electricity Act 1992 (“the Act”) empowers the board in relation to matters raised by a complaint or by its own inquiry to take action against the holder of an employer licence.
- 1.3 To enable a consistent and transparent approach to be taken in relation to the handling of such complaints or inquiries the Board has established the following rules which set out the Board’s procedures.

2. Context

- 2.1 Under Section 120 of the Act the Board may take such action if it is satisfied that an 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.
- 2.2 In the event the Board finds, on a complaint or by its own inquiry, that any of paragraph 2.1 above applies then 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.
- 2.3 Section 142 of the Act states that the disciplinary provision in Part 12 of the Act apply to every registered person and to every provisional licence holder including those who were registered or were a provisional licence holder at the time of the relevant conduct. As such any complaints relating to employer licences which disclose, contain or relate to registered persons or provisional licence holders will be referred to the Registrar to be dealt with under Part 11 of the Act.
- 2.4 The Board may continue to deal with any employer licence holder complaint or matter under inquiry notwithstanding that a registered persons or provisional licence holder may have committed a disciplinary offence.

3. Complaint Receipt

- 3.1 The Board requires that a complaint about the holder of an employer licence be made in writing and be addressed to the Registrar.
- 3.2 The Registrar must as soon as practicable after receiving a complaint acknowledge the complaint and inform the employer licence holder in writing of the general nature of the complaint and seek a response to the complaint from the employer licence holder.
- 3.3 The Registrar will prepare a report for the Board on the complaint received as soon as is practicable and will present that report to the Board at the earliest available opportunity.
- 3.4 The Board may at any time instruct the Registrar to prepare a report in relation to an employer licence holder where the Board has reason to believe that one or more of the matters in Section 120(1) of the Act has or may have occurred without having received a complaint and the Registrar will present that report to the Board at the earliest available opportunity.
- 3.5 In preparing a report for the Board the Registrar will consider whether the complaint involves prescribed electrical work carried out by a registered and/or licenced person.
- 3.6 The Board will consider the complaint along with the Registrar's report and decide whether to:
 - (a) take any of the actions listed in section 120 of the Act; and/or
 - (b) refer any registered and/or licensed person or persons identified in the complaint as having carried out prescribed electrical work back to the Registrar for the matter to be dealt with as a complaint under Part 11 of the Act.
- 3.7 If the Board decides that the complaint or any part of it discloses matters detailed in Section 120(1) of the Act or by its own inquiry decides the same then the Board will conduct a hearing or hearings in relation to the matter prior to deciding whether any of the sanctions laid out in Section 120(2) should be imposed.

4. Board Hearing – Preliminary Matters

- 4.1 Section 121 of the Act requires that the Board must, prior to taking any of the actions in Section 120 of the Act inform an employer licence as to why it may take any of those actions and give the employer licence holder a reasonable opportunity to make written submissions and be heard, either personally or by that person's representative.
- 4.2 The Board may, as part of its processes, appoint an amicus curiae (friend of the Board) to assist the Board in investigating and preparing the complaint or matter under inquiry prior to a hearing and to present the complaint or matter under inquiry at a hearing.
- 4.3 In accordance with Section 121 the Board will provide the employer licence holder with a copy of the complaint together with any other evidence or material obtained by the Board and relating to the complaint or to any matter under inquiry and details of any persons appointed to assist the Board. The Board will include advice as to whether an amicus has been appointed and details of any witnesses the Board intends calling in relation to the complaint or matter under inquiry.
- 4.4 The Board will provide a date and time for the employer licence holder to be heard in relation to the complaint or to make written submissions by and will give the employer licence holder no less than 20 working days' notice of the hearing date. Any notice will be in writing and will be sent to the employer licence holders place of business as specified in their employer licence.

- 4.5 If the employer licence holder elects to make written submissions, either personally or by their representative then the employer licence holder is to address the submissions to the Presiding Member of the Board and is to send them care of the Registrar. Submissions must be received no less than seven (7) working days prior to the date of the hearing.
- 4.6 If the employer licence holder elects to appear at the hearing either personally or by their representative then the employer licence holder is required to advise the Registrar that they wish to be heard no less than seven (7) working days prior to the hearing. The employer licence holder must also advise the Registrar of the following:
- (a) the name and capacity of their representative if they are to be represented;
 - (b) the names of any witnesses they want to call;
 - (c) whether they want the complainant to be present to be questioned; and
 - (d) an estimated duration of the time they will require for their evidence and/or submissions.
- 4.7 The employer licence holder may also include written submissions when given notice of an intention to appear and be heard. Any such submissions are to be addressed to the Presiding Member of the Board and are to be sent to the Registrar. Submissions must be received no less than seven (7) working days prior to the date of the hearing.
- 4.8 The Board will inform the complainant of the date and time of the hearing. If the complainant attends the hearing then the complainant's attendance will be as a member of the public and will not have any speaking rights unless the Board or the employer licence holder calls the complainant as a witness. The complainant cannot be compelled to be a witness.

5. Board Hearing – Conduct of Hearing

- 5.1 Evidence given at a Hearing will not be given under oath or affirmation.
- 5.2 The Board does not have any power to subpoena witnesses in relation to employer licence complaints or inquiries.
- 5.3 All evidence and submissions will be electronically recorded.
- 5.4 The employer licence holder will be responsible for arranging, and for the cost of, the attendance of their witnesses.
- 5.5 All board meetings are open to the public. Any request to exclude the public must be made to the Presiding Member of the Board either prior to the hearing in writing or at the commencement of the hearing and must include the reasons for the request.
- 5.6 If the employer licence holder elects to only make written submissions then the matter will be determined on the basis of the materials before the Board.
- 5.7 If the employer licence holder elects to appear and be heard then:
- (a) If an amicus has been appointed then the amicus will outline the complaint or matter under inquiry;
 - (b) the employer licence holder will be given an opportunity to make a brief opening statement;
 - (c) the amicus, if appointed, will present the complaint or matter under inquiry and will lead any evidence to be presented;
 - (d) the employer licence holder will be given the opportunity to question any witnesses called and the Board may question the witnesses;

- (e) the employer licence holder or their representative will then be invited to call such witnesses as they wish and to give evidence on their own behalf. The Board will be entitled to question the employer licence holder and any witnesses they call;
 - (f) the employer licence holder or their representative will be invited to make any submissions in relation to the complaint or matter under inquiry. The Board will be entitled to question the employer licence holder in relation to the submissions made.
 - (g) when the employer licence holder has completed presenting their case and the Board has no further questions the employer licence holder or their representative will be invited to make a closing statement.
- 5.8 The Board will, once all evidence and submissions have been received, move into Committee to consider whether to:
- (a) take any of the actions listed in section 120 of the Act; and/or
 - (b) refer any registered and/or licensed person or persons identified in the complaint as having carried out prescribed electrical work back to the Registrar for the matter to be dealt with as a complaint under Part 11 of the Act.
- 5.9 Proceedings in Committee will not be recorded and are conducted in private.

6. Board Hearing – Decision

- 6.1 Following a hearing the Board will inform the employer licence holder of its decision. The Board may elect to inform the employer licence holder in writing at a time after the hearing.
- 6.2 If the Board decides it should take any of the actions listed in section 120(2) of the Act then the Board will, prior to taking any such action, provide the employer licence holder with detail on the proposed action or actions to be taken under section 120(2) of the Act and the reasons.
- 6.3 The Board will provide a date and time for the employer licence holder to be heard or to make written submissions by in relation to the proposed action to be taken and will give the employer licence holder no less than 20 working days' notice of a hearing date. Any notice will be in writing and will be sent to the employer licence holders place of business as specified in their employer licence.
- 6.4 If the employer licence holder elects to make written submissions, either personally or by their representative then the employer licence holder is to address the submissions to the Presiding Member of the Board and is to send them care of the Registrar. Submissions must be received no less than seven (7) working days prior to the date of the hearing.
- 6.5 If the employer licence holder elects to appear at the hearing either personally or by their representative then the employer licence holder is required to advise the Registrar that they wish to be heard no less than seven (7) working days prior to the hearing.
- 6.6 The employer licence holder may also include written submissions when given notice of an intention to appear and be heard. Any such submissions are to be addressed to the Presiding Member of the Board and are to be sent to the Registrar. Submissions must be received no less than seven (7) working days prior to the date of the hearing.
- 6.7 The hearing in relation to proposed action to be taken under Section 120(2) of the Act is to determine the appropriateness of the proposed action to be taken.
- 6.8 If the employer licence holder elects to attend then they will be invited to make submissions. The Board will be entitled to question the employer licence holder in relation to the submissions made.

- 6.9 The Board will, once submissions have been received, move into Committee to decide what if any consider what if any the actions in Section 120(2) of the Act to take.
- 6.10 Proceedings in Committee will not be recorded and are conducted in private.
- 6.11 The Board will inform the employer licence holder of its decision. The Board may elect to inform the employer licence holder at the hearing or in writing at a time after the hearing.
- 6.12 The employer licence holder will be advised in writing of their rights of appeal under Sections 147ZA, the time for lodging an appeal under Section 147ZB and of the procedure for appeals under 147ZC of the Act.

7. Procedural Matters

- 7.1 A hearing before the Board will be focused on arriving at a fair and just decision in relation to the complaint or matter under inquiry.
- 7.2 If the employer licence holder has concerns about the hearing or the procedure to be used then those concerns should be addressed to the Presiding Member of the Board.
- 7.3 The Board may, at any time on the request of the employer licence holder or of its own account, adjourn the hearing.
- 7.4 The Board may adjourn the hearing to enable it to obtain further evidence or to make further inquiries.
- 7.5 The Board may, at any time, exercise any of the powers of inspection contained in Section 123 of the Act.
- 7.6 The Board does not have the power to subpoena witnesses or take evidence on oath or affirmation.

Appendices

Schedules

Legislation: Electricity Act 1992

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.

121 Board must give employer licence holder reasonable opportunity to be heard

The Board must not take any of the actions referred to in section 120 unless it has first—

- (a) informed the employer licence holder concerned as to why it may take any of those actions; and
- (b) given that person a reasonable opportunity to make written submissions and be heard on the question, either personally or by that person's representative.

122 Miscellaneous provisions concerning actions under section 120

- (1) Every fine imposed under section 120 is recoverable in any court of competent jurisdiction as a debt due to the Board.
- (2) An order under section 120 takes effect on the day of the making of the order; but that fact does not make any person concerned liable to prosecution or disciplinary proceedings for any act done or omitted during any part of that day before the order was made.
- (3) If a person's employer licence is suspended, the person is not authorised under section 117 for the period for which the licence is suspended.
- (4) At the end of a period of suspension, the person's employer licence is immediately revived (unless there is some other ground to suspend or cancel that person's employer licence).

123 Powers of inspection

- (1) Every employer licence is subject to a condition that—
 - (a) any person authorised by the Board for the purpose may, for an authorised purpose, at any reasonable time, inspect any premises (not being a dwellinghouse) occupied by the employer licence holder, and for that purpose may enter and re-enter any place;
 - (b) the Board may, for an authorised purpose,—
 - (i) require the employer licence holder to produce for inspection, within any reasonable period that the Board may specify, any document or class of document in the possession or under the control of the employer licence holder, and may take copies of, or extracts from, any of those documents;
 - (ii) require the employer licence holder to provide, within any reasonable period that the Board may specify, any information or class of information that the Board may require.
- (2) If the employer licence holder breaches a condition expressed in subsection (1), the Board may

act under section 120.

- (3) A person must give to the employer licence holder reasonable notice of that person's intention to enter any premises under subsection (1)(a), unless the giving of the notice would defeat the purpose of the entry.
- (4) Every person must, on entering any premises under subsection (1)(a), and when requested at any subsequent time, produce—
 - (a) evidence of that person's authority to enter the premises; and
 - (b) evidence of that person's identity.
- (5) The following are **authorised purposes** for the purposes of this section:
 - (a) the purpose of ensuring compliance with the terms and conditions of the employer licence:
 - (b) the purpose of ensuring that the prescribed electrical work done by employees of the employer licence holder—
 - (i) is at all times carried out safely and competently; and
 - (ii) complies with the requirements of this Act and any regulations.

142 Persons to whom this Part applies

This Part applies to the following persons:

- (a) every registered person:
- (b) every provisional licence holder:
- (c) every person who is no longer a registered person but who was a registered person at the time of the relevant conduct:
- (d) every person who is no longer a provisional licence holder but who was a provisional licence holder at the time of the relevant conduct:
- (e) every person who is the subject of an order of the Board under this Part.

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.

147ZB Time for lodging appeal

An appeal under section 147ZA must be brought within—

- (a) 20 working days after notice of the decision, direction, or order was given to, or served on, the appellant; or
- (b) any further time that a District Court may allow on application made before or after the expiration of that period.

147ZC Procedure on appeal

- (1) Every appeal under section 147ZA must be heard as soon as practicable after the appeal is lodged.
- (2) On the hearing of an appeal under section 147ZA, the District Court may—
 - (a) confirm, reverse, or modify the decision, direction, or order of the Board; or
 - (b) give any decision, or make any direction or order, that the Board could have given or made in respect of the matter.
- (3) Nothing in this section gives a District Court power to review any part of the decision, direction, or order of the Board other than the part against which the appellant has appealed.
- (4) Subject to section 147ZH, the decision of a District Court on any appeal under section 147ZA is final.

147ZD Court may refer appeals back for reconsideration

- (1) A District Court may in any case, instead of determining any appeal under section 147ZA, direct the Board to reconsider, either generally or in respect of any specified matters, the whole or any part of the matter to which the appeal relates.
- (2) In giving any direction under subsection (1), the District Court must—
 - (a) advise the Board of its reasons for so doing; and
 - (b) give to the Board any directions it thinks just as to the whole or any part of the matter that is referred back for reconsideration.
- (3) In reconsidering any matter referred back to the Board under subsection (1), the Board must have regard to the District Court's reasons for giving a direction under that subsection, and to the Court's directions under subsection (2).

147ZE Costs

On any appeal under section 147ZA, a District Court may make an order for the payment, by the Board or the appellant, of the costs incurred in respect of the appeal by the other party to the appeal.

147ZF Power of Court to prohibit publication of person's name or affairs

- (1) On any appeal under section 147ZA, a District Court may, if in the Court's opinion it is proper to do so having regard to the interests of any person and to the public interest, make an order

prohibiting the publication of the name or particulars of the affairs of any person.

- (2) Every person commits an offence and is liable on... conviction to a fine not exceeding \$5,000 who commits a breach of any order made under subsection (1) or evades or attempts to evade the order.

147ZG Decision to continue in force pending appeal

Subject to any order of the Court, every decision, direction, or order of the Board against which an appeal is lodged under section 147ZA continues in force and has effect according to its tenor pending the determination of the appeal.

147ZH Appeal on question of law

- (1) If, in respect of any appeal under section 147ZA, the Board or the appellant is dissatisfied with any decision of the District Court as being erroneous in point of law, the Board or the appellant may appeal to the High Court... on the question of law only.
- (2) Every appeal under this section must be heard and determined in accordance with rules of court.
- (3) Subpart 8 of Part 6 of the Criminal Procedure Act 2011 applies as far as applicable with the necessary modifications to every appeal under this section.

153 Meetings to be held in public

- (1) Except as provided in this section, every meeting of the Board shall be in public.
- (2) The Board may deliberate in private as to its decision in any matter or as to any question arising in the course of any proceedings before it.
- (3) If the Board is of the opinion that it is proper to do so, having regard to the interests of any person and to the public interest, it may, of its own motion or on the application of any party to the proceedings,—
 - (a) Order that the whole or any part of a hearing shall be held in private:
 - (b) Make an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:
 - (c) Make an order prohibiting the publication of the whole or any part of any documents produced at any hearing:
 - (d) Make an order prohibiting the publication of the name or any particulars of the affairs of—
 - (i) Any person who is the subject of proceedings before it:
 - (ii) Any other person.
- (4) Every application to the Board under subsection (3) of this section shall be heard in private, but the other parties to the proceedings shall be entitled to be present and to make submissions with regard to the application.
- (5) In any case where a hearing of the Board is held in private, the Board may allow any particular person to attend the private hearing if it is satisfied that the person has a special and proper interest in the matter to be heard.
- (6) Unless reversed or modified in respect of its currency by the Court on an appeal under [Part 12]

of this Act, an order made under any of paragraphs (b)to(d) of subsection (3) of this section shall continue in force until such time as may be specified in the order, or, if no time is specified, until the Board, in its discretion, revokes it on the application of any party to the proceedings in which the order was made.

- (7) Every person commits an offence and is liable on... conviction to a fine not exceeding [\$5,000] who, without lawful excuse, acts in contravention of any order made by the Board under any of paragraphs (b)to(d) of subsection (3) of this section.