



Electrical Workers Registration Board

SAFETY | COMPETENCY | COMPLIANCE

Own Motion Investigations and Prosecution Policy

EWRB Reference Number	B-PO-19 Own Motion Investigations and Prosecution Policy
Document Category: Board/Legislative/Operational	Board
Document Type: Rule/Policy/Procedure/Reference	Policy
Responsible: Board/Registrar	Board
Publication Status: Public/Private	Public
Board Approval Date	April 2022
Gazette Notice Date	N/A
Next Review Date	2023

Signed and dated this fifteenth day of June 2022

Mel Orange
Presiding Member

MEMORANDUM

To: EWRB

From: David Neild

Date: 13 April 2022

Matter: 46426

OWN-MOTION INVESTIGATIONS AND PROSECUTIONS POLICY

- 1 The Electrical Workers' Registration Board's functions are set out in s 149 of the Electricity Act 1992 (the Act) and include:
 - (m) to institute prosecutions against persons for the breach of this Act or any regulation relating to prescribed work:
 - ...
 - (p) to do any other things as may, in the Board's opinion, be necessary for the effective administration of this Act:
 - (q) to carry out any functions that are incidental and related to, or consequential on, its functions stated in this section.
- 2 In order to carry out its function of prosecuting breaches of the Act, the Board must investigate such breaches. There is nothing preventing such investigations being "own-motivated", however there are some limitations on the investigator's powers during an own-motion investigation.

The process for initiating an own-motion investigation of unsafe electrical work by a registered electrician

- 3 Where the Board becomes aware of unsafe electrical work by a registered electrician, we suggest adopting the following process:
 - (a) an investigator is appointed to investigate and prepare an investigation report summarising the unsafe electrical work;
 - (b) the report is provided to external counsel to advise whether the investigation discloses a criminal offence under the Act;
 - (c) the investigator prepares a recommendation to the Board, informed by the external legal advice but expressed independently without referencing the legal advice;
 - (d) the investigator's report and recommendation, enclosing the external legal advice, are provided to the Board for it to determine whether charges are to be filed.

Investigator's powers during an own-motion investigation

- 4 The Act has disciplinary provisions in Part 2 that apply to registered electricians. However, the disciplinary processes do not apply to own-motion investigations of criminal offending. This means that *an own-motion investigation of unsafe electrical work by a registered electrician cannot rely on the disciplinary sections of the Act when investigating a registered electrician.*
- 5 Accordingly, an investigator cannot utilise the s 147 investigatory powers. An investigator in an own-motion investigation can only do things that anybody can ordinarily do without a specific statutory power. For example, an investigator could ring a witness and ask the witnesses questions, but *they could not compel that person to provide the investigator documents or information.*

Potential charges

- 6 It may be difficult to identify an appropriate offence for unsafe work by a registered electrician, which is why external legal advice is recommended at an early stage. The most likely options are as follows:
 - (a) A charge under s 162 for doing electrical work in breach of s 74. That section requires that prescribed electrical work be done "within the limits prescribed in regulations" (see s 74(2)). If an investigator can identify a breach of the Electricity (Safety) Regulations 2010, there may be an offence under s 162.
 - (b) A charge under s 163C for failing to prevent serious harm or significant property damage where the person knew this was reasonably likely, and "the action is contrary to a provision of this Act". The Board would need to establish (in addition to the fact that the work was in breach of a provision in the Regulations or the Act) that the electrician knew that their action was "reasonably likely to cause serious harm to any person or significant property damage".
 - (c) A charge under s 163D(1)(a) when a defendant intentionally or negligently does or causes or permits to be done any work in a manner that is dangerous to life. There would be some litigation risk in using this provision to prosecute an electrician whose work was inherently unsafe, as opposed to work carried out in an unsafe manner. However, there are policy arguments in favour of a broad interpretation.