

# Electrical Licensing Disciplinary Panels

## Annual Report 1998-99

Prepared: October 1999

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## *Introduction*

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This is the first annual report on the operation of the Electrical Licensing Disciplinary Panels since they were established under the *Electricity Industry Safety and Administration Act 1997* (the Act). While there is no statutory requirement for the Disciplinary Panels to prepare an annual report, it was considered to be of value to record their establishment and subsequent operation. Being the first report, the period covered is slightly more than the usual 12 month reporting period, as it commences when the first Panel was appointed in March 1998 and ends on 30 June 1999.

Prior to the commencement of the Act, concerns regarding instances of work performed by a licensed electrical contractor or technician which were considered unsafe, unsatisfactory or contrary to the Regulations were brought to the attention of the Electrical Licensing Board. However, the Board at that stage had been established as an advisory body to the Minister for Energy, and was not backed by legislation. Consequently, while unsafe or unsatisfactory electrical work should not be ignored and allowed to continue, the Board itself did not have formal powers to take or recommend action.

The commencement of the Act, however, enabled the Regulator to establish Disciplinary Panels, and to refer disciplinary matters regarding certain conduct by licence holders to those Panels<sup>1</sup>. When a matter has been referred to a Panel for consideration, the Panel must then recommend to the Regulator whether disciplinary action should be taken and, if so, what action should be taken. Any recommendations must be based on the powers given to the Regulator under the Act to take disciplinary action. The Regulator is required to consider the Panel's recommendation.

The Regulator appointed a Disciplinary Panel on 19 March 1998 for a period of three months. These appointments were subsequently renewed for the period to 30 June 1999. The members of this Disciplinary Panel are :

Chair: Sonia Weidenbach

Members: Wim de Puit  
Bill Eldridge  
Allan Kenny

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<sup>1</sup> The commencement of the Act also formalised the Electrical Licensing Board. Section 7(1) enables the Minister to establish the Board to 'assist the Regulator in the administration of the licensing scheme for electrical contractors and electrical technicians'.

All the members of this Panel have made themselves available for a further 3 year appointment.

In June 1999, the Regulator appointed members of a second Disciplinary Panel to hear a matter regarding an electrical contractor who had already appeared before the first Panel. These appointments will reduce the opportunity for a claim of prejudice against the initial Panel in such circumstances. Furthermore, there may well be other matters requiring the attention of a Panel, where individual members of that Panel will have to disqualify themselves for that hearing. The availability of other Panel members should overcome any difficulty this situation may pose.

The members of the second Disciplinary Panel are:

Chair: Merrin MacKay

Members: Brian Aherne  
Greg Luck  
Arnold Sierink

The Panels receive support from officers of the Office of Electricity Standards and Safety, in particular John Hammersley, Robert Steedman and Charles Woodhouse. Their assistance has been particularly valuable in the early stages of developing and implementing appropriate procedures and operations for the Disciplinary Panels.

## ***Disciplinary Panel Process and General Procedures***

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From April 1998, disciplinary action followed the revised procedures defined in the new Act. These procedures were expanded upon by the inaugural Disciplinary Panel to provide the necessary level of detail to ensure a consistent and equitable disciplinary process. The process set out in the Act is outlined below.

### **Overview of Disciplinary Process under the *Electricity Industry Safety and Administration Act 1997***

#### **Cause for Disciplinary Action - Section 41**

Under Section 41 of Act there is proper cause for disciplinary action if :

- the holder is guilty of improper conduct as defined in Section 41(3) (meaning a contravention of the Act or being responsible for defective electrical work); or
- the holder is not a fit and proper person to hold the licence (covers corporations and their officers as well); or
- for an electrical contractor only, the holder has failed to ensure, or is not in a position to ensure, that the work carried out under the licence is properly managed or supervised.

#### **Show Cause - Section 42**

Where the Regulator is satisfied there is reason to believe there may be proper cause for disciplinary action, the Regulator may give the holder a show cause notice.

A show cause notice must :

- state that the Regulator believes there is proper cause for disciplinary action for reasons specified in the notice; and
- allow the holder a reasonable opportunity to show why disciplinary action should not be taken.

#### **Disciplinary Panel - Section 43**

Following the expiry of the deadline on the show cause notice or the receipt of any responses, the Regulator may decide to take disciplinary action against a licence holder. However, before taking action, the Regulator must refer the matter to a Disciplinary Panel, established by the Regulator, for its recommendation.

The duties of a Panel are to :

- consider the matters in the show cause notice and any response to the notice;
- consider oral representations made by or on behalf of the Regulator and the licence holder (but the Panel is not obliged to accept them); and
- recommend to the Regulator what disciplinary action should be taken, if any.

The Regulator must consider the Panel's recommendation.

#### **Disciplinary Action - Section 44**

After considering the recommendation of the Disciplinary Panel, the Regulator may take one or more of the actions specified in section 44.

These are to :

- administer a caution or reprimand;
- reduce the rating of a licence;
- require the holder of a licence to undergo a course of training stipulated by the Regulator;
- add to, or alter, the conditions of a licence;
- suspend the licence for a period of not more than three months;
- cancel the licence and disqualify the former holder from holding a licence for a specified period; or
- any combination of the above.

If a licence holder fails to comply with a requirement to undergo a course of training stipulated by the Regulator (under section 44), the Regulator may then suspend the licence until this requirement is complied with.

## **Appeals - Sections 77 to 82**

A person who is directly affected by a decision of the Regulator may appeal to the Electrical Appeals Board within 30 days after receiving notice of the decision. Appeals need to be in writing, addressed to the Appeals Board, and forwarded to the Regulator together with the prescribed fee.

## **General Hearing Procedures**

The opportunity is available for the licence holder concerned with a matter before a Disciplinary Panel to attend the Panel meeting and make representations to the Panel regarding the matter in consideration. Consequently, the licence holder is notified of the details of any hearing before it is held.

The licence holder may have the opportunity to have an advocate or representative attend on their behalf. However, this would be at the discretion and with the permission of the particular Panel considering that matter.

The hearings are taped, and one of the tapes is made available to the licence holder or their representative at the end of the hearing.

All information, documentation and photographic evidence is made available to the licence holder or their representatives either prior to or at the hearing.

## *Record of Hearings*

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The Disciplinary Panels met on 6 occasions in the period to 30 June 1999, and considered 11 matters referred to it by the Regulator.

Following each hearing, the responsible Panel would consider the information raised in the hearing and formulate specific recommendations for disciplinary action regarding the show cause matters. These were then forwarded to the Regulator. In all cases the recommendations were accepted by the Regulator, with only minor amendments to include details which were not necessary to the Panels' considerations.

The following provides an outline of some of the issues that were considered by the Panels, and the approach taken by the Panels in formulating their recommendations regarding these issues :

### *Unsatisfactory electrical work; Incomplete Electrical Installation Notice (EIN)*

Suspend licence for 3 months. Endorse licence. Formal caution regarding the requirements for the correct completion of an EIN.

### *Unsafe and unsatisfactory electrical work*

Formal reprimand. Require licence holder to notify the appropriate Regional Inspector prior to the commencement of any electrical work over the next 12 months. All electrical work performed over the next 2 years must be safe and satisfactory. Further training recommended.

### *Improper conduct in the performance of electrical work*

Formal reprimand. Require licence holder to demonstrate competency in the relevant TAFE modules, or undertake the modules. Require licence holder to notify the appropriate Regional Inspector prior to the commencement of any electrical work over the next 12 months.

### *Improper conduct in the performance of electrical work; carrying out electrical work without the appropriate licence; infringement of the Licensing Regulations*

Suspend licence for 3 months. Require licence holder to carry out all electrical work under the supervision of an appropriate licence holder for the next 12 months.

### *Advertising in the Yellow Pages as an electrical contractor without holding an electrical contractor's licence*

Formal caution.

*Failing to produce documents for examination in compliance with a written notice of the Regulator's delegate; failing to make a specific requested document available for inspection by an authorised officer upon the officer's written request; allowing an employee to perform electrical work while the employee does not have an electrical technician's licence nor is undergoing the appropriate training.*

Formal caution regarding the obligation to respond to official requests for information. Require licence holder to present a specified document and progress report on the employee's training at the Regulator's office every 3 months for a period of 12 months. Formal caution regarding the correct supervision and oversight of electrical work.

## *Conclusion*

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There has been an initial spate of activity for the Disciplinary Panels, which is consistent with the commencement of any new regulatory scheme and usually indicates the start of compliance activities. It is anticipated that activity required by the Panels will decrease, as the industry players familiarise themselves with the new legislation and act upon the requirements.

Nevertheless, even in this short period of operation there are a number of issues that have come to the Panels' notice on more than one occasion during the hearings. This should serve as an early warning sign to contractors and technicians in the electrical industry to resist complacency and to keep up to date with information and necessary skills or requirements in these areas. Areas of particular concern were :

- Allowing business pressures and client's demands to compromise safety. In some instances facing the Panels, the incident could have involved a fatality if events had taken a slightly different direction. Electricity is inherently dangerous, and safety procedures and requirements have been developed for a good reason.
- Allowing skills and knowledge to become out of date. Ignorance is no excuse, especially where the consequences may be serious. It is the individual's responsibility to keep up to date with the regulatory requirements of their industry, especially where information about those requirements is readily available, and to ensure that their skills are current. There are very few industries these days where retraining or refresher training is not required on a regular basis.
- Taking responsibility for their own and their employee's work. Licence holders should know what is going on at all times and not presume that certain things have been done - particularly where they have to sign for them.

The Panels are only one part of a whole system aimed at promoting best practice and safety in the electricity industry. While the Panels cannot act outside their legislative functions, it is hoped that any observations developed from their activities may assist the industry players in achieving these aims.