Electricity Engineers' Association

Ground Floor, Engineers House
158 The Terrace
PO Box 5324
Wellington, New Zealand
Telephone: (04) 473 8600
Facsimile: (04) 473 8601
Web: www.eea.co.nz

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John Sickels
Registrar
Electrical Workers Registration Board
P O Box 10-156
WELLINGTON 6143

Dear John

Proposed Employer Licence Rules to be issued by the Electrical Workers Registration Board

The Electricity Engineers' Association (EEA) acknowledges receipt of your letter of 3rd March 2011 accompanying a copy of revised proposed Rules under which the Electrical Workers Registration Board (EWRB) would issue Employer Licences. The EEA has considered the revised proposed Rules and acknowledges that many amendments requested by the EEA in its submission of 10th Sept 2010 have been made; however it has identified two issues with the proposed Rules and wishes to take up your invitation for further comment.

1. Proposed Rules 1(d) and 2(d) - (Application of HSE Act)

Proposed Rules 1(d) and 2(d) are identical and propose that holders of an Employer Licence must ensure that the employer's responsibilities under the Health and Safety in Employment Act (HSE Act) are satisfied.

The EEA considers that this Rule is not appropriate and must be removed. The reasons for removal include;

- Employers are required to comply with the HSE Act under the obligations of the Act, and it is therefore unnecessary to restate the obligation in rules for Employer Licences.
- In making compliance with the HSE Act a rule for Employer Licences a breach of the employer's obligations under the HSE Act becomes a breach of an Employer Licence rule. The breach would therefore enable the EWRB to take action against the Employer Licence holder under s120 of the Electricity Act, irrespective of whether action had also been taken by the Department of Labour or another regulator. The EWRB should not be putting itself in a position to be a judge of

HSE Act compliance and potentially exposing Employer Licence holders to a double jeopardy situation.
- The purpose of the Electricity Act (under which the EWRB operates) includes provisions that relate to the protection of the health and safety of the public and the prevention of damage to property of the public. As the emphasis of the Electricity Act is on public safety and not on workplace safety the EEA submits that Rules for Employer Licences must focus on public safety only.
- There is no equivalent provision in the criteria for individuals seeking registration; hence a critical transparency test is not met.

2. Proposed Rule 4 – Approved Persons

Proposed Rule 4 states only that the EWRB will maintain a list of 'approved persons' and make the list available on its website. The requirement to maintain a list is already a requirement of the Electricity (Safety) Regulations 2010 (ESRs).

However, the EWRB has not provided any parameters around how it will identify 'approved persons' within the parameters provided for in the ESRs and the EEA considers that it is important that the EWRB does so.

The EEA submits that the EWRB must be transparent in how it will select 'approved persons' including how the EWRB will consider the 'approved person' capable of certifying the 'system of operation' as compliant with s115 of the Electricity Act. The EEA submits that the auditing and certification of Employer Licence 'systems of operation' must be at a level that ensures that the integrity of the Employer Licence system is maintained, and that recognises that Employer Licences are intended for companies that have established and documented management systems and controls.

<u>Use of Conformity Assessment Bodies for Employer Licence Auditing</u>

The EEA believes that if employees of Conformity Assessment Bodies (CABs) are the only acceptable 'class of persons' for carrying out Employer Licence audits then the intent and quality of the certification of the 'system of operation' will be met. CABs are subject to regular and systematic audit by the body that accredits them, e.g. JAS-ANZ, and must meet specified criteria to maintain their accreditation. One of the criteria that CABs must meet is that they exercise specific control over the determination of competency of their audit staff, and this is specifically reviewed by the accreditation body. CABs ensure that their employees hold appropriate audit qualifications, and that, in addition to the qualification, they are competent to perform the audits to which they are assigned.

The EEA therefore submits that the EWRB should recognise CABs for auditing Employer Licence 'systems of operation' on the basis that they will in turn ensure that their employees hold the appropriate audit qualification and that the CAB will ensure that the certification of the system complies with s115(1)(a) and (b) of the Electricity Act.

As the CAB is the entity that holds the accreditation, it must issue the Employer Licence audit certification.

Suggested Rules

The EEA would like to suggest the following Rules for the EWRB to consider. Should this set of rules be adopted the EEA believes that the intent of the Electricity Act and ESRs will be met.

a. The class of persons who may be ‘approved persons’ are Conformity Assessment Bodies accredited by one of the bodies specified in ESR 96(1)(a), and their employees who hold a ‘Lead Auditor’ qualification and are deemed competent by the CAB employing them to audit Employer Licence ‘systems of operation’.

b. A CAB recognised under (a) above may certify whether a ‘system of operation’ complies with section 115(1)(a) and (b) of the Electricity Act.

c. The EWRB reserves the right to approve or reject applications for inclusion on the list of “approved persons”.

Conclusion

Given the statutory powers that the EWRB has under the Electricity Act, the EEA wishes to see the EWRB demonstrate that its decision making processes are transparent and subject to scrutiny.

The EEA therefore submits that proposed parameters for ‘approved persons’ must be prepared and consulted before the rules are promulgated, and the EEA looks forward to receiving a draft of the parameters.

The EEA is available to discuss the matters raised in this letter at any time convenient to the EWRB as it sees the matters raised as critical and is also recognisant of the imminent need to resolve these issues.

Yours sincerely

Pete Berry

Peter Berry
Executive Director