

Before the Electrical Workers Registration Board

CE No. 22932

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Mitchell Davies a registered and licensed electrical worker (E285621, EW122476, Electrician) (the Respondent)

Decision of the Board in Respect of the Conduct of an Electrical Worker Under section 147G and 147M of the Electricity Act 1992

Hearing Location: Auckland
Hearing Type: Audio Visual Link
Hearing Date: 16 July 2025
Decision Date: 16 July 2025

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)
Mr T Wiseman, Registered Inspector
Ms S Cameron, Registered Electrician
Mr J Hutton, Registered Inspector
Mr T Tran, Barrister
Mr S Rogers, Registered Electrician

Appearances: Mr M Denyer, counsel for the Investigator and Mr M Johnson, Investigator
Mr M Davies - self represented

Procedure:

The matter was considered by the Electrical Workers Registration Board (the Board) under the provisions of Part 11 of the Electricity Act 1992 (the Act), the Electricity (Safety) Regulations 2010 (the Regulations) and the Board's Disciplinary Hearing Rules.

Board Decision:

The Respondent **has** committed a disciplinary offence under section 143(f) of the Act.

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Summary of the Board's Decision

- [1] The Board determined the Respondent committed a disciplinary offence under section 143(f) of the Act.
- [2] The Board ordered a censure and costs of \$250. The name of the Respondent will not be published in the Electron but will be named in this decision and recorded on the public register.

Introduction

- [3] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator that the complaint should be considered by the Board.
- [4] The Respondent was engaged to carry out prescribed electrical work (PEW) associated with the installation of electrical systems at a new house at **[Omitted]**, Auckland, during 2023 and 2024.
- [5] The Respondent was served with a Notice of Proceeding dated 14 March 2025 setting out the alleged disciplinary offences the Investigator reported should be considered by the Board.
- [6] The following disciplinary charges were alleged in the Notice of Proceeding as served on the Respondent:

First Alleged Disciplinary Offence:

*On or around May 2023 at **[Omitted]**, Auckland, Mr Mitchell Davies has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide the certificate of compliance issued on 25 November 2024 to the relevant parties within 10 working days following the completion of works.*

Second Alleged Disciplinary Offence:

On or around May 2023 at [Omitted], Auckland, Mr Mitchell Davies has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide the certificate of compliance issued on 5 March 2023 to the relevant parties within 10 working days following the installation of the mains switchboard and cabling.

- [7] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his power or possession.

Function of Disciplinary Action

- [8] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*¹ and in New Zealand in *Dentice v Valuers Registration Board*².
- [9] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. Those grounds relate to carrying out or supervising PEW.

Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.³ The Board notes, as regards evidence in proceedings before it, that the provisions of section 147W of the Act apply. This section states:

In all proceedings under this Part, the Board may, subject to section 156, receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not it would be admissible as evidence in a court of law.

Procedure

- [11] Prior to the hearing, Counsel for the Investigator sought to amend the charges to a single amended offence as set out in an Agreed Statement of Facts (ASOF). The Investigator sought the Board’s leave to amend the offences by consent.
- [12] The amended offence was:

Amended Disciplinary Offence:

On or around June 2024 at [Omitted], Auckland, Mr Mitchell Davies has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide certificates of compliance and electrical safety certificates for installations lived on or around 20 November 2023 and 6 March 2024, within 10 working days

¹ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

² [1992] 1 NZLR 720 at p 724.

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

following the homeowner's request for those documents, in breach of Regulations 74E(4) and 74G(2) of the Electricity Safety Regulations 2010.

- [13] Counsel noted that while there was a requirement under section 147H of the Act for proper notice, the Respondent had already signed the ASOF containing the amended charge, demonstrating his understanding and acceptance of it. The Board granted leave for the amendment, noting that the same offences under section 143(f) were involved, but they had been consolidated into one charge covering the same factual circumstances. The Respondent confirmed he was content to proceed with the amendment and stated he did not wish to drag the proceedings out any longer.
- [14] In summary, the ASOF established that the Respondent carried out PEW at **[Omitted]**, Auckland during 2023 and 2024. The Respondent undertook high-risk PEW (mains work) at the property in approximately November 2023 and March 2024, energising installations on both occasions. The Respondent was required to complete COCs before energising and ESCs within 20 working days of connection.
- [15] From no later than June 2024, **[Omitted]**, the property owner, requested the COCs and ESCs through multiple phone calls, text messages, and emails. The Respondent did not provide the requested documents until January 2025. The COCs and ESCs provided by the Respondent bore dates of 5 March 2023 and 25 November 2024 respectively, however the parties agreed that despite the dates written on these documents, they related to the installations lived in November 2023 and March 2024.
- [16] The Respondent accepts he failed to provide the documents within the required 10 working days as mandated by regulations 74E(4) and 74G(2) of the Electricity Safety Regulations 2010.

Board's Decision

- [17] Based on the ASOF and having considered all relevant factors, the Board finds that the Respondent has committed the disciplinary offence under section 143(f) of the Act.
- [18] The Respondent was a licensed electrician at all relevant times and was required to provide copies of the certificates of compliance and electrical safety certificates to the property owner within 10 working days of being requested to do so under regulations 74E(4) and 74G(2) of the Electricity Safety Regulations 2010.
- [19] The evidence clearly establishes that **[Omitted]** made multiple requests for the required documentation from June 2024 onwards, but the Respondent did not provide the documents until January 2025, well outside the required timeframe.

Penalty, Costs and Publication

- [20] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Act,ⁱ consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay a fine, any costs and whether the decision should be published.

- [21] The Board received submissions from the parties at the hearing regarding penalty, costs, and publication.

Penalty

- [22] The Board has the discretion to impose a range of penalties, which are set out in section 147M of the Act. Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.⁴ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:⁵
- (a) protection of the public and consideration of the purposes of the Act;
 - (b) deterring Respondent and other Electrical Workers from similar offending;⁶
 - (c) setting and enforcing a high standard of conduct for the industry;⁷
 - (d) penalising wrongdoing;⁸ and
 - (e) rehabilitation (where appropriate).⁹
- [23] Overall, the Board should assess the conduct against the range of penalty options available in section 147M of the Act, reserving the maximum penalty for the worst cases¹⁰ and applying the least restrictive penalty available for the particular offending.¹¹ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty¹² that is consistent with other penalties imposed by the Board for comparable offending.¹³
- [24] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.¹⁴
- [25] Counsel for the Investigator submitted that while the Respondent had been cooperative and the matter proceeded on an ASOF and he had not previously appeared before the Board, there was a somewhat prolonged nature to the failure with a number of requests from the complainant showing some level of seriousness. Counsel submitted that a sanction in the form of a fine might be the most appropriate.

⁴ *Ellis v Auckland Standards Committee 5* [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

⁵ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

⁷ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

¹⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

¹² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁴ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

- [26] The Respondent provided submissions explaining the difficult circumstances he faced during the relevant period. He described the project as extremely challenging, with most other trades leaving before completion due to commercial difficulties. He stated that he was owed over \$10,000 from the job and that the project had caused significant financial harm to his business.
- [27] Most significantly, the Respondent explained that he had experienced a very difficult period towards the end of 2023, involving serious personal relationship issues that had severely impacted his mental state and ability to focus on work obligations. He stated that his head was not focused on work during this very tumultuous time in his life, and he could not adequately explain why he did not complete the required documentation during this period.
- [28] The Respondent assured the Board that he now completely understood the severity of the certification requirements and would not repeat such failures in the future.
- [29] The Board considered that generally in such matters a fine would be the appropriate penalty. However, the Board decided to take an unusual step and issue the Respondent with a censure, which is a strong disapproval of his actions by the Board. The Board took into consideration that the Respondent was under considerable stress at that time and it appeared that he did not withhold the documentation for financial gain. The Board noted that he was already suffering significant financial hurt from the project. The Board acknowledged this was not their normal standard, but considered it appropriate in these particular circumstances given the exceptional personal situation the Respondent found himself in.
- [30] Accordingly, a censure is imposed.

Costs

- [31] Under section 147N of the Act, the Board may require the Respondent to pay the Board any sum that it considers just and reasonable towards the costs and expenses of and incidental to the investigation, the prosecution and the hearing.
- [32] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case.¹⁵
- [33] In *Collie v Nursing Council of New Zealand*,¹⁶ where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:

But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.

¹⁵ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

¹⁶ [2001] NZAR 74

- [34] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,¹⁷ the High Court noted:

[46] All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.

[47] Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.

- [35] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was simple. Adjustments based on the High Court decisions above are then made.
- [36] The Board noted the Respondent's cooperation through the ASOF process, which significantly reduced the time and costs associated with the hearing. The Board imposed costs of \$250, which represented the minimum costs order available, in recognition of the Respondent's cooperation in working with the investigator to reach an ASOF.

Publication

- [37] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the Public Register as required by the Act.¹⁸ The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z the Board may, if no appeal is brought within 20 working days of its decision, direct the Registrar to cause a notice stating the effect of the decision or order, the reasons for the decision or order, and (unless the Board directs otherwise) the name of the person in respect of whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.
- [38] As a general principle, such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.
- [39] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.¹⁹ The Criminal Procedure Act 2011 sets out

¹⁷ CIV-2011-485-000227 8 August 2011

¹⁸ Refer sections 128 of the Act

¹⁹ Section 14 of the Act

grounds for suppression within the criminal jurisdiction.²⁰ Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive.²¹ The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*.²²

- [40] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest.²³ It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [41] This written decision will be on the Board's website and the Respondent will be named in this decision. As far as publication in the Electron goes, the Board decided to put a general article in the Electron about this case, but the Respondent will not be named in the article that goes into the Electron. This approach recognises the importance of educating the profession about certification obligations while taking into account the particular circumstances of this case.

Penalty, Costs and Publication Orders

- [42] For the reasons set out above, the Board directs that:

- Penalty:** Pursuant to section 147M(1)(g) of the Act, the Respondent is censured for his failure to provide required certification documents within the mandated timeframes.
- Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$250 (GST included) towards the costs of, and incidental to, the inquiry of the Board.
- Publication:** The Registrar shall record the Board's action in the Register of Electrical Workers in accordance with section 128(1)(c)(viii) of the Act.
- The Respondent will be named in this decision, which will be publicly available on the Board's website.
- A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will not be named in the publication.

²⁰ Refer sections 200 and 202 of the Criminal Procedure Act

²¹ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²² *ibid*

²³ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Right of Appeal

- [43] The right to appeal Board decisions is provided for in sections 147ZA and 147ZB of the Act.ⁱⁱ

Signed and dated this 30th day of July 2025



R Keys
Presiding Member

ⁱ **Section 147M of the Act**

- (1) *If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—*
- (a) *do 1 or more of the following things:*
 - (i) *order that the person's registration or practising licence (or both) be cancelled:*
 - (ii) *order that the person's provisional licence be cancelled:*
 - (iii) *order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:*
 - (b) *order that the person's registration or practising licence (or both), or the person's provisional licence, be suspended—*
 - (i) *for any period that the Board thinks fit; or*
 - (ii) *until that person does 1 or more of the things specified in subsection (2):*
 - (c) *order that the person's registration or practising licence (or both), or the person's provisional licence, be restricted for any period that the Board thinks fit, in either or both of the following ways:*
 - (i) *by limiting the person to the work that the Board may specify:*
 - (ii) *by limiting the person to doing, or assisting in doing, work in certain circumstances (for example, by limiting the person to work only on approved premises or only in the employ of an approved employer):*
 - (d) *order that the person be disqualified from doing or assisting in doing prescribed electrical work that the person would otherwise be authorised to do in that person's capacity as a person to whom this Part applies—*
 - (i) *permanently, or for any period that the Board thinks fit; or*
 - (ii) *until that person does 1 or more of the things specified in subsection (2):*

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- (e) order the person to do 1 or more of the things specified in subsection (2) within the period specified in the order:
 - (f) order the person to pay a fine not exceeding \$10,000:
 - (g) order that the person be censured:
 - (h) make no order under this subsection.
 - (2) The things that the person can be required to do for the purposes of subsection (1)(b), (d), and (e) are to—
 - (a) pass any specified examination:
 - (b) complete any competence programme or specified period of training:
 - (c) attend any specified course of instruction.
 - (3) The Board may take only 1 type of action in subsection (1) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b), (c), (e) or (g).
 - (4) No fine may be imposed under subsection (1)(f) 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 must not exercise any authority conferred by this section in respect of any offence committed by any person before the date of that person's registration or, as the case may be, the date on which that person's provisional licence was issued if at that date the Board was aware of that person's conviction for that offence.
 - (6) If a person is registered under Part 10 in respect of more than 1 class of registration, the Board may exercise its powers under subsection (1)(a) to (e) in respect of each of those classes or 1 or more of those classes as the Board thinks fit.]

ⁱⁱ Section 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 the District Court against the decision, direction, or order:
 - (e) any decision, direction, or order under any of sections 108, 109, 120, 133, 137, and 153 or Part 11 (except section 147C).

Section 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 the District Court may allow on application made before or after the expiration of that period.