



# Electrical Workers Registration Board

SAFETY | COMPETENCY | COMPLIANCE

## Prosecution Policy

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Signed and dated this 31st day of January 2026

**Russell Keys**  
Presiding Member

## 1 Overview

### The Electrical Workers Registration Board

- 1.1 The Electrical Workers Registration Board (**Board**) is established pursuant to s 148 of the Electricity Act 1992 (**Electricity Act**). The Board is responsible for the regulation and control of electrical workers and others undertaking electrical work.
- 1.2 The Board's role includes to promote, monitor, and review the ongoing competency and safe work practices of electrical workers and others undertaking electrical work in New Zealand.
- 1.3 One of the Board's functions is to institute prosecutions against persons for breaches of the Electricity Act or any associated regulation relating to prescribed electrical work. To perform this function, the Board investigates potential breaches of the Electricity Act or associated regulations and, where appropriate, files charges in the District Court.

### Purpose of this policy

- 1.4 The purpose of this prosecution policy is to:
  - (a) establish the principles to which the Board will adhere to in dealing with potential prosecutions, making prosecution decisions and conducting prosecutions;
  - (b) identify the objectives of the Board's prosecution activity;
  - (c) define the expectations and rules governing prosecution decision making and prosecution proceedings;
  - (d) outline the alternatives to prosecution that the Board will consider before making a prosecution decision; and
  - (e) ensure effective controls are in place over the prosecution decision making process.
- 1.5 This policy should be read alongside the Electricity Act and associated regulations, and should be read alongside the *Solicitor-General's Prosecution Guidelines*, which can be accessed [here](#). This policy builds on the principles in the *Solicitor-General's Prosecution Guidelines* by identifying specific enforcement objectives, priorities and considerations that are relevant to the Board's functions.

### Scope

- 1.6 This policy applies to the Board, the Registrar of Electrical Workers, legal counsel for the Board and to all contractors engaged on any basis by the Board who are involved in the preparation of, decision making about or conduct of prosecutions. It also applies to any employees of MBIE who provide assistance to the Board.
- 1.7 This policy applies to matters involving breaches of the Electricity Act and regulations made under the Electricity Act involving electrical work. This includes, but is not limited to:
  - (a) failure to comply with regulations and safety standards, including carrying out unsafe electrical work;

- (b) carrying out unlicensed prescribed electrical work;
- (c) providing false or misleading documentation in relation to any prescribed electrical work; and/or
- (d) providing false or misleading documentation or representations for the purpose of obtaining any registration, licence, renewal of a licence or certificate.

## Terms

1.8 In this policy, terms are defined as follows:

- (a) **Investigation** means investigation of potential criminal conduct. It does not include investigation of potential disciplinary proceedings before the Board unless the investigation could also lead to a criminal prosecution.
- (b) **Investigator** means a person engaged by the Board to assist with an investigation, including a person appointed as an Investigator by the chief executive of the Ministry of Business, Innovation and Employment.
- (c) **Prosecutor** means the person who is responsible for conducting the prosecution.

## 2 Enforcement objectives

- 2.1 Section 1A of the Electricity Act states that one of the primary purposes of the Electricity Act is to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand. Electricity is inherently dangerous, with a risk of death, serious injury and/or serious property damage. Ensuring public safety is accordingly the Board's primary enforcement objective. Where there is an ongoing risk of harm if prosecution action is not taken, that will weigh heavily in favour of prosecution.
- 2.2 The Board's enforcement objectives also include to deter non-compliance with the Electricity Act and regulations, to denounce breaches and to encourage compliance.
- 2.3 The Board may take prosecution action whether or not harm has eventuated.

## 3 Alternatives to prosecution

- 3.1 Before making a decision to prosecute, the Board will consider whether any alternative to prosecution may be a more appropriate response to identified conduct. A prosecution will only be considered appropriate when the matter is sufficiently serious to warrant the intervention of the criminal law.
- 3.2 Alternatives include:
  - (a) a decision to take no action;
  - (b) an educative approach, working with the person involved to improve compliance;
  - (c) an educative approach, working with the wider industry to lift knowledge about and compliance with the regulatory regime;
  - (d) a formal warning (having regard to the Board's Formal Warning Policy);

- (e) an infringement notice, where the Board or the Investigator determines that an infringement offence against reg 12 of the Regulations has been committed and where the requirements of section 165C of the Electricity Act are met.

3.3 The circumstances in which these alternatives to prosecution might be considered appropriate are discussed further below in this prosecution policy.

## **4 The decision to prosecute**

### **Threshold for prosecution**

4.1 The Board will not commence a prosecution unless the circumstances of the case meet the **Test for Prosecution** as set out in the *Solicitor-General's Prosecution Guidelines*:

- (a) The Evidential Test: there is enough available, admissible, credible and reliable evidence to prove the charge beyond reasonable doubt.

- (b) The Public Interest Test: the public interest requires a prosecution to be brought.

4.2 Both of these stages must be met before the Board will decide to commence a prosecution.

4.3 If at any stage the Board becomes aware of any information that may change the application of the Test for Prosecution, the Board will reassess whether the Test for Prosecution is met.

### **Decision maker**

4.4 The decision to prosecute will be made by the Board on the basis of the relevant evidence, as outlined in the investigation report, and legal advice.

4.5 The Board's decision will be recorded in writing.

4.6 If the Board decides to commence a prosecution, then any charging documents will be signed by the Registrar of the Board appointed pursuant to s 151 of the Electricity Act.

4.7 Substantive decisions about the conduct of the prosecution (such as choosing charges, amending charges or withdrawing charges ) will be made by the Board, having received and considered legal advice from the Prosecutor. Other decisions about the conduct of the prosecution (such as the summary of facts, how the case is presented including the witnesses to be called and the exhibits to be produced, and legal submissions on pre-trial or sentencing) will be made by the Prosecutor, having regard to the Board's view where appropriate.

### **Conflict of interest**

4.8 Every person involved in any form of decision-making, including members of the Board and Prosecutors, must act free from any actual, potential or perceived conflict of interest.

4.9 Any person who becomes aware of an actual, potential or perceived conflict of interest must disclose that conflict of interest immediately to the Board. This includes where the potential for a conflict of interest is raised by another person, such as a defendant or their counsel. The details of the conflict or potential conflict will be recorded in writing.

4.10 If the Board is informed of circumstances giving rise to a potential conflict, the Board will decide whether the potential conflict can be appropriately managed or whether the person

will be required to withdraw from any involvement in the prosecution process for that matter. If a person has an actual conflict of interest, the person will not be involved in the decision-making process in relation to that matter.

- 4.11 The independence of a Prosecutor is not compromised merely by the fact that they have provided advice at the investigative stage, unless they are likely to be a witness.

### **Investigation**

- 4.12 Where the Board decides to investigate a matter, it is the Investigator's responsibility to obtain all relevant evidence and prepare the file for referral to a Prosecutor for review.

- 4.13 The file should:

- (a) include copies of all evidence available (including evidence which may support an available defence);
- (b) be accompanied by an investigation report summarising the evidence and identifying any relevant issues, including:
  - (i) any issues that might have the potential to affect the admissibility of any evidence (such as information about how evidence was obtained); and
  - (ii) any issues that may go toward the weight that might be placed on that evidence (including issues relating to credibility or reliability of witnesses).
- (c) include all relevant information about matters that may be relevant to the public interest assessment;
- (d) include confirmed identifying details of the subject of the investigation, including full name and date of birth.

### **Legal review**

- 4.14 Once the relevant evidence has been obtained and the investigation report has been prepared, the matter will be referred to a Prosecutor for legal review on application of the Test for Prosecution.

- 4.15 The Prosecutor will provide written advice to the Board, applying the Test for Prosecution to the evidence and the circumstances of the case. This advice should include:

- (a) an outline of the facts of the case as established by the evidence considered;
- (b) identification of any potential offences arising on the evidence;
- (c) an explanation of how the evidence supports the essential elements of any potential charges;
- (d) identification of any potential statutory defences;
- (e) any possible availability, admissibility, credibility or reliability issues with the evidence; and
- (f) the Prosecutor's advice as to the application of the Test for Prosecution

- 4.16 The legal advice will take into account relevant matters set out in this prosecution policy.
- 4.17 If the legal advice is that the Evidential Test is not met, the Board will not commence a prosecution. The Board will consider whether any alternatives to prosecution might be an appropriate response.
- 4.18 A decision not to prosecute may be revisited if new or additional evidence becomes available, such that the Evidential Test is met.

**Public interest assessment**

- 4.19 If the legal advice is that the Evidential Test is met, the Board will consider whether the Public Interest Test is met.
- 4.20 This will involve consideration of:
  - (a) the Board’s statutory functions, objectives and priorities;
  - (b) any legal advice given by the Prosecutor;
  - (c) factors relating to the offending, including the seriousness, the level of culpability, the risk to public safety and whether there is a need to generally deter that type of offending;
  - (d) factors relating to the individual, including whether there are any ongoing public safety risks, whether there is a need for particular deterrence and the personal circumstances of the individual.
- 4.21 Specific factors that may be relevant include, but are not limited to:
  - (a) Whether the offending caused harm and, if so, the extent of the harm. Given the inherent risk of death, serious injury or serious property damage arising from electricity, this factor will be given particular importance.
  - (b) Whether the offending created any risk of harm and, if so, the extent of the risk. This factor will also be given particular importance, in accordance with the Board’s primary objective to protect public safety.
  - (c) The nature of the culpability of the individual. This will include consideration of whether the offending was intentional or deliberate, reckless, negligent or inadvertent.
  - (d) Whether the offending involved deceit, dishonesty or attempts to disguise the offending from the Board. Offending can be difficult for regulatory agencies such as the Board to detect, so any attempt to hide offending from the Board will elevate the seriousness of the offending.
  - (e) The duration of the offending, including whether the conduct is repeated or persistent as opposed to one-off.
  - (f) The extent of the non-compliance with the regulatory regime. Major non-compliance will be treated more seriously than minor or inadvertent non-compliance.

- (g) Whether the offending has interfered with the Board’s ability to carry out any of its statutory functions.
- (h) Motivation for offending, such as financial motivation.
- (i) Whether there are any other existing or likely prosecution proceedings or other proceedings involving the individual by any other prosecuting agency (such as WorkSafe New Zealand or the New Zealand Police) and, if so, the likely outcome.
- (j) The wider impact of the offending on public confidence in the electrical industry.
- (k) Whether any remedial action has been taken, including who carried out the remedial work and how it came about.
- (l) Any ongoing risk that the individual poses to the public, including whether they are likely to repeat the act such that there is a specific need for deterrence.
- (m) The likely sentence that would be imposed.
- (n) Personal circumstances of the individual under investigation, including their age and any disabilities, mental health issues or other personal circumstances that might weigh against prosecution.
- (o) The individual’s conduct during the investigation, including the extent of co-operation with the Board’s investigation.
- (p) The individual’s history of compliance or non-compliance with the Act, associated regulations and other relevant statutory provisions.

4.22 Factors that must not be taken into account include:

- (a) ethnicity, race, sex, marital status, religious, ethical or political beliefs of the individual being investigated;
- (b) political advantage or disadvantage to the Board or any person linked to it;
- (c) the possible effect on the personal or professional reputation or prospects of the Board or any person assisting the Board;
- (d) any proposal for payment of money, including compensation.

**Alternatives to prosecution**

4.23 If the Board considers that the Test for Prosecution is met, before making a decision to prosecute the Board will consider whether any alternative to prosecution may be a more appropriate response to the identified conduct.

4.24 Alternatives include (from the least to most severe response):

- (a) A decision to take no action.
- (b) An educative approach, involving working with the individual to improve compliance and/or working with the wider industry to lift knowledge about and compliance with the regulatory regime. This might include:

- (i) A letter to the person under investigation explaining the circumstances known to the Board, why the Board considers there has been non-compliance with the Electricity Act or associated Regulations, the potential consequences of non-compliance and how the individual can achieve compliance in the future.
- (ii) A request that the individual undertake remedial action.
- (c) A formal warning, having regard to the Board’s Formal Warning Policy.
- (d) An infringement notice, if the Board or the Investigator determines that an infringement offence against reg 12 of the Electricity (Safety) Regulations 2010 has been committed and subject to the requirement of section 165C of the Electricity Act. This may be appropriate where an infringement fine, which does not result in a conviction, is sufficient in the public interest to sanction a breach of the Electricity Act or associated Regulations.

4.25 In deciding whether an alternative to prosecution is appropriate, the Board will place particular weight on relevant public interest factors, including but not limited to:

- (a) Whether the offending involved harm to person or property. If harm did result from the offending, it is more likely that a prosecution will be appropriate in the public interest.
- (b) Whether the offending involved a significant risk of harm to person, property or public safety. If the offending did involve a significant risk of harm, it is more likely that a prosecution will be appropriate in the public interest.
- (c) The level of culpability of the individual involved, including whether the offending was deliberate, reckless or negligent.
- (d) The extent of non-compliance with the regulatory regime.
- (e) Whether the offending was persistent or one-off.
- (f) Whether the offending was committed by a licenced electrical worker.
- (g) Whether the offending was motivated by financial gain.
- (h) Whether the offending has interfered with the Board’s ability to carry out its statutory functions.
- (i) Whether an alternative to prosecution can appropriately meet the Board’s objectives and enforcement priorities.
- (j) Whether the individual has a history of non-compliance, such that the need for specific deterrence is heightened.
- (k) Whether particular circumstances of the person make any particular outcome inappropriate or disproportionately severe.
- (l) Any other factor that the Board considers relevant in the particular circumstances of the case.

4.26 If the Board decides to pursue an alternative to prosecution, the Board will record the reasons for this decision in writing.

## Warnings

- 4.27 A formal warning (**warning**) is a warning that is given to a person, recorded in the Board's internal system and capable of having ongoing or future negative consequences for the person (such as consequences for the person's licence status).
- 4.28 A warning will only be given:
- (a) in response to behaviour that the Board believes could amount to a breach of the Electricity Act and/or regulations; and
  - (b) where there is sufficient evidence to prosecute that person, but the Public Interest Test does not warrant prosecution.
- 4.29 The circumstances in which a warning will be given are set out in the Board's Formal Warning Policy, which should be read alongside this prosecution policy.

## 5 Conduct of prosecutions

- 5.1 The provisions in this section apply if the Board decides to commence a prosecution.

### Choice of charges

- 5.2 When making decisions on charges, the Board will decide on the appropriate charges, taking into account the legal advice received.
- 5.3 When deciding which legislation to file a charge under, the Board will have particular regard to the nature of the alleged conduct and the charge that would most appropriately mark that conduct. The selection of charges should take into account the totality of the offending. For example, representative charges should be considered for repeated or ongoing conduct where the criteria under s 20 of the Criminal Procedure Act 2011 is met.
- 5.4 The Board is most likely to file charges under the Electricity Act or regulations.
- 5.5 The Board may also file charges under the Crimes Act 1961 if such a charge is appropriate to address conduct that arises from a breach of the Electricity Act or associated Regulations and relates to the Board's functions to ensure public safety and/or to promote, monitor and review the ongoing competency and safe work practices of registered persons and licence holders.
- 5.6 If the potential offending does not fit within the Board's functions, the Board will refer the matter to the appropriate prosecuting agency, such as the New Zealand Police, WorkSafe New Zealand, the Plumbers, Gasfitters and Drainlayers Board or the Licenced Building Practitioners Board for investigation.

### Ongoing review

- 5.7 Throughout the prosecution, the Prosecutor will reassess the Test for Prosecution if any information relevant to the application of the Test for Prosecution changes or if the Prosecutor becomes aware of new information that was not taken into account when the decision to prosecute was made. If fresh information means that the Prosecutor considers the Test for Prosecution may no longer be met, the Prosecutor will provide advice to the Board and the Board will decide whether to continue or discontinue the prosecution in accordance with the provisions of this prosecution policy.

**Choice of Prosecutor**

- 5.8 All prosecutions must be conducted by a lawyer instructed by the Board for that purpose. In making the decision about who to instruct, the Board will have regard to the lawyer's experience and expertise in criminal prosecution work and familiarity with the provisions of the Electricity Act and associated Regulations.

**Running of the case**

- 5.9 Once the decision to prosecute is made, accountability for legal issues in connection with the prosecution passes to the Prosecutor. The Prosecutor will consult the Investigator or other person in charge of the file as to the conduct of the prosecution and keep them informed as to progress.
- 5.10 The Prosecutor will provide legal advice to and seek views from the Board on any significant developments in the case.
- 5.11 As set out above, substantive decisions about the conduct of the prosecution will be made by the Board having regard to the legal advice. Other decisions about the conduct of the prosecution will be made by the Prosecutor, having regard to the Board's view.

**Disclosure**

- 5.12 Disclosure in criminal prosecutions is governed by the Criminal Disclosure Act 2008 (**CDA**). Under the CDA, the Prosecutor is the person for the time being in charge of the file or files relating to a criminal prosecution.
- 5.13 Disclosure obligations in a criminal prosecution are fundamentally important to ensure that the proceeding is fair and the defendant receives a fair trial. Disclosure ensures that a defendant is able to review all relevant information relating to the prosecution, with the exception of information that is able to be withheld.
- 5.14 Under the CDA, the Prosecutor must disclose certain information to the defendant (initial disclosure) within 15 working days of the commencement of proceedings. If requested by the defendant in writing, the Prosecutor must provide additional information from the investigation file, as soon as is reasonably practicable. A list of the information that a defendant can request at this time is set out in section 12(2) of the CDA. The remaining information (full disclosure) must be disclosed as soon as is reasonably practicable after a defendant has pleaded not guilty.
- 5.15 The Prosecutor will prepare and provide disclosure to the defendant. The Investigator is responsible for ensuring that all relevant information obtained during the investigation is provided to the Prosecutor for this purpose.

**Victims**

- 5.16 The Victims Rights Act 2002 (**VRA**) imposes certain obligations in respect of prosecutions where there is an identifiable victim or victims as defined in the VRA:
- (a) The overarching principles are that victims must be treated with respect, courtesy and compassion, and their dignity and privacy must be respected.
  - (b) It is the responsibility of the Investigator to keep victims informed of progress of the investigation and prosecutions in accordance with s 12 of the VRA.

- (c) Where it is appropriate for a victim to provide a victim impact statement to the Court, the Investigator will work with the victim to prepare that statement in consultation with the Prosecutor.

5.17 Investigators and Prosecutors should have regard to the matters set out in the *Solicitor-General's Prosecution Guideline on Victims* when interacting with victims during a prosecution.

### **Witnesses**

5.18 A person engaged by the Board, including any employee of MBIE, who can give relevant evidence in a prosecution is expected to give that evidence. The evidence will be given in a fair, impartial and objective manner.

5.19 The Board will from time to time brief expert witnesses to give expert opinion evidence. An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise. An expert witness is not an advocate for the party who engages the witness. Any person who is briefed by the Board to give expert evidence will be given a copy of the Code of Conduct for Expert Witnesses contained in Schedule 4 of the High Court Rules 2016 and asked to confirm that they understand its contents and agree to abide by it.

### **Report on prosecution**

5.20 The Prosecutor will, within five days of the completion of the prosecution, provide a prosecution report to the Investigator on the result.

## **6 Appeals**

6.1 The defendant or the Board may appeal:

- (a) a pre-trial ruling;
- (b) a sentence imposed;
- (c) a ruling by the trial court on a question of law;
- (d) a decision regarding bail;
- (e) orders relating to name suppression;
- (f) costs orders.

6.2 The Board will obtain legal advice on the merits of an appeal before deciding whether to file an appeal or to oppose an appeal.

## **7 Media**

7.1 Publishing information about the nature and outcome of enforcement action draws attention to the consequences of violating the law. It is a valuable tool that serves the important purpose of educating the public about non-compliance with the regulatory regime and deterring the defendant and others from engaging in non-compliance.

- 7.2 However, public statements concerning prosecutions must be treated with care, having regard to privacy and reputational interests of all relevant individuals.
- 7.3 In any public communication, the Board will have regard to the principles in the *Solicitor-General's Prosecution Guideline on Media*. In particular, the Board will act in a way that:
- (a) does not prejudice the defendant's right to a fair trial, which will always take precedence over open justice principles;
  - (b) supports the administration of justice and the integrity of the criminal justice system;
  - (c) respects the principle of open justice; and
  - (d) treats the victims of crime with courtesy and compassion, and respects their privacy.
- 7.4 Individual Board members will not comment on or personally publicise information about prosecutions while they are underway.
- 7.5 Once a prosecution has been completed, if there are no orders suppressing information, the Board will publish a summary of the outcome of the prosecution in the Electron Magazine. This publication will include:
- (a) a summary of the charges;
  - (b) the relevant facts that were proved or accepted; and
  - (c) the outcome of the case, including if relevant any sentence imposed.
- 7.6 The Board will ensure that any information that is published is accurate and is not misleading.