

## Before the Electrical Workers Registration Board

	CE-22130
Electrical Worker:	Wayne Bennett
Registration Number:	EST 6080 & LMD 276230
Electrical Worker Number:	EW040538
Registration Class:	Electrical Service Technician & Distribution Line Mechanic

---

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

---

Decision Date: 12 May 2020

Board Members Present:

Mel Orange (Presiding)  
Michael Macklin, Registered Inspector  
Monica Kershaw, Registered Electrician  
Mac McIntyre, Registered Electrician  
Jane Davel, Lay Member  
Russell Keys, Registered Inspector  
Ashley Yan, Registered Electrical Engineer

**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.

**Draft Board Decision:**

The Respondent **has** committed disciplinary offences under section 143(c) and 143(f) of the Act.

## Contents

<b>Introduction</b> .....	2
<b>Procedure</b> .....	3
<b>Nature of the Charges</b> .....	3
<b>Function of Disciplinary Action</b> .....	4
<b>Evidence</b> .....	4
<b>Board’s Draft Conclusion and Reasoning</b> .....	7
Section 143(c) .....	7
Section 143(f).....	11
<b>Draft Decision on Penalty, Costs and Publication</b> .....	11
Penalty .....	11
Costs.....	12
Publication .....	13
<b>Draft Penalty, Costs and Publication Orders</b> .....	14
<b>Submissions on Draft Decision</b> .....	14
<b>Request for In-Person Hearing</b> .....	15
<b>Right of Appeal</b> .....	15

## Introduction

- [1] The Respondent faces two charges before the Board as a result of a report under section 147G(1) of the Act from the Investigator appointed following a complaint being made about the Respondent.
- [2] The Respondent was served with a Notice of Proceeding dated 15 October 2019 which set out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

### **First Alleged Disciplinary Offence**

On or around 3 January 2019 at [REDACTED] Mr Wayne Bennett has failed to comply with a term or condition of his registration or licence being an offence under section 143(c) of the Act, IN THAT, he carried out prescribed electrical work without a current practising licence.

### **Second Alleged Disciplinary Offence**

On or around 3 January 2019 at [REDACTED] Mr Wayne Bennett has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified prescribed electrical work that he carried out without a practising licence.

- [3] The matter was first set down for a hearing in Auckland on 17 December 2019 following a prehearing conference with the Respondent in which he consented to the hearing date and location.
- [4] On 10 December 2019 the Respondent advised that he would not attend the hearing and that he wanted to be heard by teleconference. The Respondent noted he was making the request due to him being three hours outside of Auckland and the total time the return journey would take him. The request was granted.
- [5] The hearing commenced. The Respondent was not able to adequately engage in the hearing by phone. The Board decided to adjourn the matter and to resume the hearing with the Respondent present. The matter was then set down to be heard in Whangarei on 23 March 2020.
- [6] The new hearing date was vacated due to the Covid 19 alert.

### **Procedure**

- [7] Matters before the Board are, under section 147T of the Act, prosecuted by the Investigator.
- [8] Under section 146 of the Act the Investigator, before making a recommendation to the Board under section 147G(1) of the Act:
- (a) *must send particulars of the complaint to the person complained against; and*
  - (b) *must give the person a reasonable opportunity to make written submissions and be heard on the matter, either personally or by that person's representative.*
- [9] It is noted that the Respondent did not provide a response to the complaint or participate in the investigation.
- [10] The Respondent has proven to be uncooperative throughout. He has, at various times, denied that he has received documentation. The investigation file has had to be served on the Respondent more than once and most recently in person by a process server.
- [11] Notwithstanding that he has denied receiving documentation he did, prior to the first scheduled hearing provide a written response dated 9 December 2019. As such the Board does have on record the Respondent's position as regards the allegations.

### **Nature of the Charges**

- [12] The allegations relate to carrying out prescribed electrical work and certifying the work at a time when the Respondent was not licensed. The charge is a form of strict liability offence in that all that need be proven is that the Respondent was not licensed and that he did carry out and/or certify prescribed electrical work. The

Investigator need not prove, and the Board does not need to find that there was intention, fault or negligence<sup>1</sup>.

- [13] Given the nature of the charge, the events that have transpired in the lead up to this decision and the evidence that is already before the Board, the Board has decided that it will make an on the papers decision and invite submissions and further evidence on that decision prior to making a final decision. The Investigator and the Respondent will be provided with an opportunity to request an in-person hearing. If such a request is made the Board will consider it and may, if it considers it necessary and in the interests of natural justice to do so, set the matter down for a hearing on contested matters.

### Function of Disciplinary Action

- [14] 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*<sup>2</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>3</sup>.

### Evidence

- [15] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>4</sup>. The Board notes that 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.*

- [16] The Investigators case was that the Respondent was engaged by [REDACTED] to install 11KV high voltage (HV) cabling from the point of supply to a privately installed transformer that feeds [REDACTED] property located at [REDACTED]. The installation was carried out on 3 January 2019 and a Certificate of Compliance (CoC) was issued for the prescribed electrical work on the same date. When the service provider for the [REDACTED] went to live the HV cabling they checked the CoC and ascertained, by checking the Register of electrical workers, that the Respondent did not, at the time of the prescribed electrical work, hold a current practicing licence.

---

<sup>1</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>2</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>3</sup> [1992] 1 NZLR 720 at p 724

<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

[17] A sworn affidavit from [REDACTED], a Senior Licensing and Complaints Administrator for the Occupational Licensing Team of the Ministry of Business, Innovation and Employment, who carry out the registration and licensing of electrical workers, accessed the Respondent's licensing record. Her affidavit stated that the Respondent did not hold a practising licence between 1 July 2017 and 27 February 2019. The affidavit set out communication that had been sent to the Respondent as part of the licensing renewal process in 2017 and again in 2019<sup>5</sup>. The Respondent has since renewed his licence.

[18] A signed witness statement from [REDACTED], an Electrical Inspector, was provided. It set out [REDACTED] opinion that the work that was carried was prescribed electrical work as it was "the installation, connection, or maintenance of conductors used in works or installations"<sup>6</sup> and the certification of the work<sup>7</sup>. He noted that the work was within the Respondent's class of registration but that he was not authorised to carry out the work as he did not, at the time, hold a current practising licence. He referred to his report which noted that the cable was installed to allow the connection of the property to the high voltage network owned by [REDACTED].

[19] [REDACTED] of [REDACTED] also provided a signed brief of evidence. It stated:

7. *On or around 12th October 2018 [REDACTED], the service provider for the [REDACTED], were engaged by to install a high voltage (HV) point of supply to connect a private network to the [REDACTED]. [REDACTED] provided [REDACTED] an offer to install a three phase High Voltage point of supply connection to the [REDACTED] via an Omnirupter switch located at [REDACTED]. [REDACTED] then approached [REDACTED] for a 2nd offer which was to connect his private HV cable to the Omnirupter switch. Part of the requirements for the livening of this cable, was that [REDACTED] was to provide [REDACTED] with a CoC for the work undertaken by his contractor to ensure to [REDACTED] that the cable was safe to liven.*
8. *On (or around) 02 February 2019, [REDACTED] approached me and provided me with a certificate of compliance (Coe) that we had received from [REDACTED] was dated 3 January 2019 and signed by Wayne Bennett.*
9. *The CoC had been emailed to [REDACTED] by the property owner [REDACTED]. [REDACTED] was in charge of planning the work and it was explained to [REDACTED] several times that we would not proceed with the livening of the cable until a CoC had been produced.*

---

<sup>5</sup> Electrical worker licences were, at the time of the alleged conduct, issued for a two-year period commencing on 1 July. Relicensing rounds were held in 2017 and again in 2019.

<sup>6</sup> Refer clause 1(1)(a) of Schedule 1 of the Safety Regulations.

<sup>7</sup> Ibid clause 1(1)(f)

10. *The CoC described the work that was carried out by Mr Bennett was the installation of HV cabling from the point of supply to a privately installed transformer that feeds the property.*
11. *The installation that Mr Bennett carried out is deemed to be prescribed electrical work that requires a certificate of compliance.*

[20] The Respondent was contacted by the Investigator in relation to the complaint. he informed the Investigator by telephone that he assumed his practising licence had been renewed by his competency provider when he last attended a competency course.

[21] The statement provided by the Respondent prior to the December 2019 hearing noted issues experienced by the Respondent when he left the employ of a lines company and commenced working for himself. He noted that the licensing process was carried out on his behalf by his employer when he was working for a lines company. The Respondent raised issues and concerns with the registration and licensing process including concern about a change to the licensing classes for those that carry out “works”<sup>8</sup>. He noted that it was not till he was working with another electrical worker who noted that his registration number did not reflect the new licensing classes that he became aware of the changes. It was at that point that he contacted the licensing team. The Respondent implied that the fault lay with the Board for not communicating with him.

[22] ██████ in her affidavit, noted that the Respondent was not communicated with when licence classes were changed as he had not, for two consecutive licencing periods, renewed his licence. In essence, from a licensing perspective, he was not an active electrical worker. The detail provided in the affidavit as regards re-licensing, however, noted the Respondent was, in respect of the 2017 licensing round, communicated with on:

- 4 April 2017 by email and letter;
- 19 June 2017 by email and letter;
- 26 June 2017 by email and text; and
- 3 July 2017 by email advising that his practising licence had expired and that if he intends to carry out prescribed electrical work then he must hold a current practising licence.

[23] The Respondent subsequently renewed his licence on 28 February 2019 with an expiry date of 30 June 2019. With respect to the 2019 licensing round the Respondent was communicated with on:

- 1 April 2019 by email;
- 7 June 2019 by email; and

---

<sup>8</sup> Works is a defined term the Act.

- 5 July 2019 by email advising that his practising licence had expired and that if he intends to carry out prescribed electrical work then he must hold a current practising licence.

[24] The Respondent then renewed his licence on 15 November 2019 valid till 30 April 2020.

[25] The Respondent did not renew his licence on 30 April 2020. He is, at the time this decision was made, not licensed.

### **Board's Draft Conclusion and Reasoning**

[26] The Board has decided that the Respondent **has**:

- (a) failed to comply with a term or condition of his registration or licence being an offence under section 143(c) of the Act, in that, he carried out prescribed electrical work without a current practising licence; and
- (b) provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified prescribed electrical work that he carried out without a practising licence.

[27] The reasons for the Board's draft decisions follows.

#### Section 143(c)

[28] There are two elements to the charge. The first that the Respondent has carried out prescribed electrical work. The second is that he did so without a current practising licence.

[29] Dealing with the first element prescribed electrical work is defined in the section 2 of the Act as

***prescribed electrical work** means electrical work prescribed in regulations made under section 169, being work that falls into any of the following categories:*

- (a) *the design or construction or maintenance of electrical installations:*
- (b) *the maintenance of electrical appliances:*
- (c) *the connection or disconnection of works, electrical installations, and electrical appliances to or from a power supply, other than by means of—*
  - (i) *a plug; or*
  - (ii) *an appliance inlet; or*
  - (iii) *a pin—*  
*that is inserted into a socket outlet:*
- (d) *the design or construction or maintenance of works:*
- (e) *the testing or certification or inspection or supervision of the work described in paragraphs (a) to (d)*

- [30] Clause 1 of Schedule 1 of the Safety Regulations provides further definitions of what is and is not prescribed electrical work. ██████████ opinion was that the work fell within clause 1(1)(a) and (f) of Schedule 1 being “the installation, connection, or maintenance of conductors used in works or installations” and the “the certification of work described in paragraphs (a)” and was therefore prescribed.
- [31] ██████████ also described and considered the work to be prescribed noting that it was part of a private network.
- [32] On this basis the work appears to be prescribed. Consideration has to be given, however, to whether the work fell into any of the exceptions provided for in clause 2 of Schedule 1. Clause 2 states that certain work is not prescribed. Included is:

***Electric lines***

- (g) *constructing overhead electric lines as part of any works, but only if the lines are being installed on poles or other supports that do not carry fittings that are already connected to a power supply:*
- (h) *constructing underground electric lines as part of any works, but only if the lines are being connected to fittings or installations that are not already connected to a power supply:*

- [33] To apply the installation of the cable would have to come within the definition of “works”:

***works—***

- (a) *means any fittings that are used, or designed or intended for use, in or in connection with the generation, conversion, transformation, or conveyance of electricity; but*
- (b) *does not include any part of an electrical installation*

- [34] In short the cable could only be “works” if it was not part of an “electrical installation”:

***electrical installation—***

- (a) *means—*
- (i) *in relation to a property with a point of supply, all fittings beyond the point of supply that form part of a system that is used to convey electricity to a point of consumption, or used to generate or store electricity; and*
- (ii) *in relation to a property without a point of supply, all fittings that form part of a system that is used to convey electricity to a point of consumption, or used to generate or store electricity; but*
- (b) *does not include any of the following:*
- (i) *an electrical appliance:*



- (ii) *any fittings that are owned or operated by an electricity generator and that are used, designed, or intended for use in or in association with the generation of electricity, or used to convey electricity from a source of generation to distribution or transmission lines:*
- (iii) *any fittings that are used, designed, or intended for use in or in association with the conversion, transformation, or conveyance of electricity by distribution or transmission lines*

[35] The property in question had, on the basis of the evidence provided by [REDACTED], a “point of supply”:

*In this Act, **point of supply**, in relation to a property, means the point or points on the boundary of the property at which exclusive fittings enter that property, except that,—*

***exclusive fittings means** fittings used or intended to be used for the purpose of supplying electricity exclusively to that property*

***property—***

- (a) *means the land within the boundary where the electricity is consumed:*
- (b) *includes the whole of the property, if the property is occupied wholly or partially by tenants or licensees of the owner or occupier:*
- (c) *includes the whole of any property that has been subdivided under the Unit Titles Act 2010*

- [36] Applying those definitions, the work carried out by the Respondent did not come within the exception as it was part of an installation. The Board finds that it was prescribed electrical work.
- [37] In this respect it should also be noted that the Respondent provided a certificate of compliance which is only required for prescribed electrical work on installations, and has, in doing so, specified that it was prescribed electrical work.
- [38] Turning to the second element of the offence section 74 of the Act restricts the doing or assisting with prescribed electrical work to authorised person. A class of authorised persons are registered persons those that hold a current practising licence<sup>9</sup>. The Respondent was registered but not licensed at the time he carried out prescribed electrical work. He was not, therefore, an authorised person.
- [39] Section 162 of the Act makes it an offence to engage in prescribed electrical work in breach of section 74 of the Act punishable by a maximum fine for an individual of \$50,000.
- [40] A registered but not licensed person can be dealt with under the provision of Part 11 of the Act (disciplinary provisions) instead of being prosecuted under section 162 of the Act in the District Court. This is because of section 142 of the Act which states

---

<sup>9</sup> Section 74(2)(a) of the Act.

that Part 11 applies to every registered person. The Respondent, whilst not licensed, was registered.

- [41] The disciplinary provision the Respondent was charged with was failing to comply with a term or condition of his registration. Specially the term and condition that he only carry out prescribed electrical work when licensed to do so. That term or condition is imposed by section 74 of the Act. It is a strict prohibition from carrying out prescribed electrical work unless authorised to do so.
- [42] There are other statutory means by which a person can be authorised. None of those provisions apply to the Respondent. As noted in paragraph [12] above the Investigator need not prove, and the Board does not need to find, that there was intention, fault or negligence<sup>10</sup>. It is enough that the Respondent carried out prescribe electrical work when not authorised to do so.
- [43] The Respondent has submitted that his failure to relicense is the fault of others including the Board. In this respect it is noted that the Respondent was communicated with on numerous occasions with regard to relicensing and that the pattern of failing to relicense and then relicensing late was repeated over two licensing rounds. It should also be noted that whilst the Respondent's former employer may have carried out the relicensing process for him it is a personal obligation, he would have received a licence card on previous renewals, and should have known from the communications sent to him what the requirements for licensing were.
- [44] The Respondent may say that he did not receive the communications sent to him. That would not constitute a defence as the provisions of the Act make it clear that a registered person has an obligation to maintain up to date records<sup>11</sup> and that service of notices is deemed to have occurred when communications are sent to the address maintained by the registered person in the Register<sup>12</sup>.
- [45] Finally, whilst changes to registration classes were made it was as a result of the Respondent's failure to maintain his licence that he was not informed of those changes. To all intents and purposes, on the basis that he had not relicensed, he was not carrying out prescribed electrical work and did not need to be informed. If and when he applied to be relicensed, he would have been informed of the changes.
- [46] Given the above the Board finds that the Respondent was not licensed and that he did breach a condition of his registration. The Respondent has committed the disciplinary offence.

---

<sup>10</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>11</sup> Sections 130 and 131 of the Act which also makes it an offence to fail to update records

<sup>12</sup> Section 156B of the Act

### Section 143(f)

- [47] The second charge relates to the provision of a false or misleading return. In determining whether a return is false or misleading is a question of fact to be decided objectively and the intention of the issuer is irrelevant<sup>13</sup>.
- [48] The return referred to, a certificate of compliance, is issued under the Safety Regulations. There is a requirement that a Certificate of Compliance is issued for high and general risk prescribed electrical work. A Certificate of Compliance must state that the prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct. The Respondent was not licensed. It follows that the certification was not lawful as he was not, at the time, an authorised person.

### **Draft Decision on Penalty, Costs and Publication**

- [49] Having found that one or more of the grounds in section 143 applies the Board must, under section 147M of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [50] The matter was dealt with on the papers. Included was information relevant to penalty, costs and publication and the Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

### Penalty

- [51] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*<sup>14</sup> commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

*[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.*

- [52] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>15</sup> the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act they have the advantage of simplicity and transparency. The court recommended adopting a starting point for penalty based on the seriousness of the disciplinary offending prior

---

<sup>13</sup> *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

<sup>14</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>15</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.

- [53] The Board notes that the Respondent has not been overly cooperative in the investigation and hearing process. The manner in which a licensed person responds to a disciplinary complaint and conducts their defence can also be taken into consideration by the Board. In *Daniels v Complaints Committee*<sup>16</sup> the High Court held that it was permissible to take into account as an adverse factor when determining penalty that the practitioner had responded to the complaints and discipline process in a belligerent way.
- [54] The Board also notes that there has been a pattern of the Respondent failing to relicense and of him tending to blame others for his failure to do so. This is an aggravating factor. The Respondent is part of a regulated industry. Only persons that are licensed can carry out or supervise prescribed electrical work. Regulation of the industry and the protection of the public is achieved, in part, through licensing and as such adherence to the licensing requirements is important.
- [55] The Board does recognise that the Respondent did have technical difficulties relicensing online. This is, however, somewhat offset by his failure to pursue other options to relicense such as using a manual process or to take other action to ensure he relicensed. The Board has taken the Respondent's age into account together with the fact that he has not previously appeared before the Board and that there were no safety concerns with the work.
- [56] Taking the above factors into account the Board adopted a starting point of a fine of \$1,500. The amount is consistent with fines imposed by the Board for similar offending. The Board decided, however, to reduce this amount to \$750 on the basis that the Board has dealt with this matter by way of a draft decision process. If the matter goes to a hearing then the Board would review any penalty imposed.

### Costs

- [57] 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, prosecution and the hearing.
- [58] 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<sup>17</sup>.
- [59] In *Collie v Nursing Council of New Zealand*<sup>18</sup> where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

---

<sup>16</sup> [2011] 3 NZLR 850.

<sup>17</sup> *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.

<sup>18</sup> [2001] NZAR 74

*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.*

- [60] Based on the above the Board's costs order is that the Respondent is pay the sum of \$675 toward the costs of and incidental to the matter. In setting the amount of costs the Board took into account that the matter has been dealt with on the papers. The amount ordered is significantly less than 50% of actual costs. The Respondent should note that if the matter goes to a hearing then the Board can reconsider its costs order.

#### Publication

- [61] 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<sup>19</sup>. 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.
- [62] 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.
- [63] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>20</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>21</sup>. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>22</sup>. 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*<sup>23</sup>.
- [64] 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<sup>24</sup>. 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.

---

<sup>19</sup> Refer sections 128 of the Act

<sup>20</sup> Section 14 of the Act

<sup>21</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>22</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>23</sup> *ibid*

<sup>24</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- [65] Based on the above the Board will publish a general article in the Electron summarising the matter but will not order further publication. The Respondent will be identified in the article.
- [66] Based on the above the Board will order further publication. This will be by way of an article in the Electron which will focus on the lessons to be learnt from the case including that electrical workers have a responsibility to ensure they are licensed if they wish to carry out prescribed electrical work and that if they encounter difficulties with relicensing that they must take action to resolve them and to become licensed.

### **Draft Penalty, Costs and Publication Orders**

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

**Penalty:** Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$750.

**Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$675 (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.**

**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 be named in the publication.**

- [68] The Respondent should note that the Board may refuse to relicense an electrical worker who has not paid any fine or costs imposed on them.

### **Submissions on Draft Decision**

- [69] The Board invites the Respondent and the Investigator to:

- (a) provide further evidence for the Board to consider; and/or
- (b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

- [70] Submissions and/or further evidence must be filed with the Board by no later than 10 working days from the date on which this draft decision is served on the Respondent.

- [71] If submissions are received, then the Board will meet and consider those submissions. It may allow for the filing of cross submissions.

- [72] The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision which will be issued in writing.
- [73] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

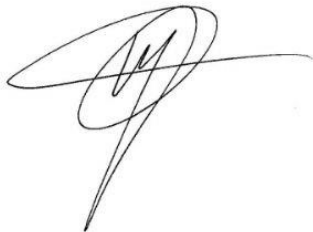
### **Request for In-Person Hearing**

- [74] Either party may, having received and considered the Board's Draft Decision, request that an in-person hearing is conducted. Any such request is to be made within 10 working days of the Respondent being served with this draft decision. If a request is made the Board will consider it and will set the matter down for a hearing if the Board considers that it would be in the interests of natural justice to do so.

### **Right of Appeal**

- [75] The right to appeal Board decisions is provided for in section 147ZA and 147ZB of the Act<sup>ii</sup>.

Signed and dated this 14<sup>th</sup> day of May 2020



**M. J. Orange**  
Presiding Member

---

#### **<sup>i</sup> 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):*
  - (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.]*

## **<sup>ii</sup> 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.*