

Before the Electrical Workers Registration Board

CE No. 22340
Electrical Worker: Ross Brewster (the Respondent)
Registration Number: E 3316
Electrical Worker Number: EW 048626
Registration Class: Electrician

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: by videoconference
Hearing Type: In Person
Hearing and Decision Date: 8 June 2022

Board Members Present:

Mr M Orange, Barrister (Presiding)
Mr R Keys, Registered Inspector
Ms M Kershaw, Registered Electrician
Mr M Macklin, Registered Inspector
Ms J Davel, Lay Member
Ms A Yan, Registered Electrical Engineer

Appearances: Ms R Denmead for the Investigator

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 disciplinary offences under sections 143(a)(i), 143(d) and 143(f) of the Act.

Contents

Summary of the Board’s Decision..... 2

Introduction..... 2

Function of Disciplinary Action 6

Procedure 6

Evidence..... 6

Board’s Conclusion and Reasoning..... 7

 Negligence..... 8

 Not Licensed..... 10

 False or Misleading Certification 12

Penalty, Costs and Publication..... 13

 Penalty 13

 Costs..... 14

 Publication 15

Penalty, Costs and Publication Orders 16

Right of Appeal..... 16

Appendix One – Agreed Statement of Facts 17

Summary of the Board’s Decision

- [1] The Respondent carried out prescribed electrical work in a negligent manner, carried out prescribed electrical work when not licensed to do so and provided false or misleading certificates of compliance. He is ordered to undertake training and to pay costs of \$250. A record of the disciplinary offences will be recorded on the Public Register for a period of three years. The matter will be reported in the Electron, and the Respondent will be named.

Introduction

- [2] 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.
- [3] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

First Alleged Disciplinary Offence

1. On or around 01 February 2019 to 31 July 2019 at [OMITTED], Mr Ross Brewster has carried out or caused to be carried out prescribed electrical work in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done being an offence under section 143(a)(ii) of the Act, IN THAT, he:

- a. Failed to ensure there were no loose terminations where final sub circuit conductors connected to the main earth and neutral busbars; and/or
- b. Failed to label devices used for the control and protection of installed wiring on the switchboard; and/or
- c. Failed to provide labelling to indicate location for the main earth electrode on the switchboard; and/or
- d. Failed to provide adequate residual current device (RCD) protection for more than three final sub-circuits on the switchboard; and/or
- e. Failure to adequately distribute lighting circuits between RCDs; and/or
- f. Failed to seal free space by ensuring less than 5 mm around cables and conductors entering the switchboard; and/or
- g. Failed to ensure that device used for isolation (HRC fuse) be readily available; and/or
- h. Failed to undertake adequate fundamental electrical testing prior to a connection to the electricity supply leading to transpositions of phase and neutral with regard to the connection of socket outlets; and/or
- i. Failed to correctly identify conductors as required; and/or
- j. Failed to provide adequate support and mechanical protection to cables against damage and/or impact in the ceiling and the underfloor cavity; and/or
- k. Failed to provide adequate covering of live exposed terminals where wiring is connected to luminaires; and/or
- l. Failed to ensure that cable joints within the ceiling cavity were enclosed and insulated to the equivalent of respective sheathed cables; and/or
- m. Failed to provide required warning signage in respect to recessed luminaires at point of access to ceiling cavity.

In breach of regulations 13(1)(a), 20(1)(a), 20(2)(d), 20(2)(g), 59(1), 63(1), of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 01 February 2019 to 31 July 2019 at [OMITTED], Mr Ross Brewster has carried out or caused to be carried out prescribed electrical work in a negligent or incompetent manner being an offence under section 143(a)(i) of the Act, IN THAT, he:
 - a. Failed to ensure there were no loose terminations where final sub circuit conductors connected to main earth and neutral busbar; and/or

- b. Failed to label devices used for the control and protection of installed wiring on the switchboard; and/or
- c. Failed to provide labelling to indicate location for the main earth electrode on the switchboard; and/or
- d. Failed to provide adequate RCD protection for more than three final sub-circuits on the switchboard; and/or
- e. Failure to adequately distribute lighting circuits between RCDs; and/or
- f. Failed to seal free space by ensuring less than 5 mm around cables and conductors entering the switchboard; and/or
- g. Failed to ensure that device used for isolation (HRC fuse) be readily available; and/or
- h. Failed to undertake adequate fundamental electrical testing prior to a connection to the electricity supply leading to transpositions of phase and neutral with regard to the connection of socket outlets; and/or
- i. Failed to correctly identify conductors as required; and/or
- j. Failed to provide adequate support and mechanical protection to cables against damage and/or impact in the ceiling and the underfloor cavity; and/or
- k. Failed to provide adequate covering of live exposed terminals where wiring is connected to luminaires; and/or
- l. Failed to ensure that cable joints within the ceiling cavity were enclosed and insulated to the equivalent of respective sheathed cables; and/or
- m. Failed to provide required warning signage in respect to recessed luminaires at point of access to ceiling cavity.

Or in the Alternative

3. On or around 01 February 2019 to 31 July 2019 at [OMITTED], Mr Ross Brewster has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he
- a. Failed to ensure there were no loose terminations where final sub circuit conductors connected to main earth and neutral busbars; and/or
 - b. Failed to label devices used for the control and protection of installed wiring on the switchboard; and/or
 - c. Failed to provide labelling to indicate location for the main earth electrode on the switchboard; and/or

- d. Failed to provide adequate RCD protection for more than three final sub-circuits on the switchboard; and/or
- e. Failure to adequately distribute lighting circuits between RCDs; and/or
- f. Failed to seal free space by ensuring less than 5 mm around cables and conductors entering the switchboard; and/or
- g. Failed to ensure that device used for isolation (HRC fuse) shall be readily available; and/or
- h. Failed to undertake adequate fundamental electrical testing prior to a connection to the electricity supply leading to transpositions of phase and neutral with regard to the connection of socket outlets; and/or
- i. Failed to correctly identify conductors as required; and/or
- j. Failed to provide adequate support and mechanical protection to cables against damage and/or impact in the Ceiling and the underfloor cavity; and/or
- k. Failed to provide adequate covering of live exposed terminals where wiring is connected to luminaires; and/or
- l. Failed to ensure that cable joints within the ceiling cavity were enclosed and insulated to the equivalent of respective sheathed cables; and/or
- m. Failed to provide required warning signage in respect to recessed luminaires at point of access to ceiling cavity.

Second Alleged Disciplinary Offence

On or around 1 July 2019 to 31 July 2019 at [OMITTED], Mr Ross Brewster has done prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under section 143 (d) of the Act, IN THAT, he carried out and certified prescribed electrical work without holding a current practising certificate.

Third Disciplinary Offence

On or around 21 July 2019 to 21 November 2019 at [OMITTED], Mr Ross Brewster has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT,

- a. He provided a Certificate of Compliance dated 21 July 2019 falsely certifying Prescribed Electrical Work that was not compliant; and/or
- b. He provided a Certificate of Compliance dated 29 October 2019 falsely certifying Prescribed Electrical Work that was not compliant; and/or
- c. He provided a Certificate of Compliance dated 29 June 2019 falsely certifying Prescribed Electrical Work that was not compliant.

- [4] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his/her power or possession.
- [5] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

- [6] 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.
- [7] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,³ Collins J. noted that:

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”

- [8] 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. It does not have any jurisdiction over contractual matters.

Procedure

- [9] The matter proceeded on the basis of an Agreed Statement of Facts and, at the request of the Respondent, by videoconference.

Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. 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.

- [11] The Board heard evidence from the Respondent prior to it making a decision.

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 [2016] HZHC 2276 at para 164

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [12] As noted, the matter proceeded on the basis of an Agreed Statement of Facts. The Respondent confirmed that the Agreed Statement was a fair summary of the facts and that he agreed to them. The full Agreed Statement is set out in Appendix One. More generally, though, the Respondent was engaged as a subcontractor to carry out prescribed electrical work. He was not licensed for all of the period when he carried out the work, and his Energy Certificate (Certificate of Compliance) that was submitted as part of a Building Consent Code Compliance Certificate application was rejected by the Auckland City Council because he was not licensed. Subsequent Certificates of Compliances were then issued. The Complainants also noted issues with the Respondent's work, and another electrical worker had to carry out remedial work. A complaint was made to the Board, and a technical expert was engaged by the Investigator to review the Respondent's prescribed electrical work and certification. That review resulted in the charges that were put before the Board.
- [13] In the Agreed Statement of Facts, the Respondent noted that when he was first advised of the complaint he had recently been released from the Auckland Spinal Unit, having suffered a spinal injury and a stroke. He had little recollection of 2019 and has been undertaking rehabilitation since his hospital release. He stated that, on reflection and review of the report and documentation, he accepted full responsibility for the non-compliant work. He noted there were personal mitigating factors that affected his work, but does not use these as an excuse. He expressed his remorse and apologised for the hurt and stress caused to the Complainants.
- [14] At the hearing, the Respondent noted his long career in the electrical industry. He was not able to provide any explanations for why the prescribed electrical work was carried out in the manner that it was.
- [15] The Investigator and the Respondent agreed that, as regards the First Alleged Disciplinary Offence, the Respondent had breached section 143(a)(i) of the Act in that he had been negligent.
- [16] The general rule is that all facts in issue or relevant to the issue in a case must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

Board's Conclusion and Reasoning

- [17] The Board has decided that the Respondent **has** carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act with respect to the particulars (a) to (m) inclusive, which are set out in paragraph [3] above.
- [18] The Board has also decided that the Respondent has:
- (a) done prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an

offence under section 143 (d) of the Act, IN THAT, he carried out and certified prescribed electrical work without holding a current practicing certificate; and

- (b) provided false or misleading returns being an offence under section 143(f) of the Act.

[19] The Board reached its decision on the basis of the Agreed Statement of Facts and the Respondent's acceptance that he had committed the disciplinary offences as outlined. Further reasoning follows.

Negligence

[20] The charges put before the Board were laid in the alternatives of negligently creating a risk of serious harm to any person, or a risk of significant property damage under section 143(b)(ii) and, as alternatives, negligence or incompetence under section 143(a)(i) and contrary to an enactment under section 143(a)(ii).

[21] The Investigator and the Respondent agreed that negligence was the appropriate charge. The Board generally agreed, although it noted that three of the allegations were more serious than that. They were the loose terminations, failure to identify conductors, and the transposition. Those matters were more serious and a finding under section 143(b)(ii) of the Act may have been appropriate as there was a risk of serious harm or significant property damage. Notwithstanding, the Board accepted the agreement reached and proceeded on that basis.

[22] Negligence is considered to be the departure by an electrical worker whilst carrying out or supervising prescribed electrical work from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁵ test of negligence which has been adopted by the New Zealand Courts⁶.

[23] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test⁷. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[24] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act⁸. The test is an objective one and, in this respect, it has been noted that the purpose

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁶ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁷ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner⁹.

[25] The Board notes that the purposes of the Act are:

1A Purposes

The purposes of this Act are—

- (a) to provide for the regulation, supply, and use of electricity in New Zealand; and*
- (b) Repealed.*
- (c) to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and*
- (d) to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand; and*
- (da) to provide for the regulation of fittings and electrical appliances that are, or may be, exported pursuant to an international trade instrument; and*
- (e) to provide for the regulation of electrical workers.*

[26] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Electricity (Safety) Regulation 2010 and the cited Standards and Codes of Practice in Schedule 2 of the Regulations. As such, when considering what is and is not an acceptable standard, they must be taken into account.

[27] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹⁰ the Court's noted, as regards the threshold for disciplinary matters, that:

[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

[28] The Agreed Statement of Facts and the technical expert report clearly established that there were multiple instances of work that had been carried out in a manner that was contrary to mandated standards in that, under regulation 59(1) of the Safety Regulations, all low voltage installations must be installed, tested and inspected in accordance with AS/NZS 3000:2007. That was not the case with the Respondent's work.

[29] It is also to be noted that under regulation 20(2) of the Safety Regulations, an installation is deemed to be unsafe if conductors are inadequately identified, or incorrect colour coding is used, or if connections are not secure and reliable.

⁹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

¹⁰ [2001] NZAR 74

Furthermore, a transposition comes within the definition of electrically unsafe in regulation 5 of the Safety Regulations.

- [30] Given the extent of the non-compliant work and the serious nature of it, the Board which includes persons with expertise in the electrical industry, considered that the Respondent did not complete its prescribed electrical work to an acceptable standard and that the conduct was serious enough to warrant a disciplinary outcome.
- [31] It was particularly disconcerting to the Board that the Respondent, whilst accepting responsibility, was not able to put forward any reason or explanation for the substandard work. This is a matter that the Board will take into consideration when it deals with penalty.

Not Licensed

- [32] Section 74 of the Act places restrictions on who can carry out PEW. It states:

74 Restrictions on doing or assisting with prescribed electrical work

- (1) *A person must not do any prescribed electrical work, or assist in doing any prescribed electrical work, unless that person is authorised to do so under this section.*
- (2) *The following persons may do prescribed electrical work, or assist in doing prescribed electrical work, within the limits prescribed in regulations (if any):*
- (a) *a registered person who is authorised to do, or assist in doing, the work under a current practising licence:*
- (b) *a person who is authorised to do, or assist in doing, the work under a provisional licence:*
- (c) *a person who is authorised to do, or assist in doing, the work under an employer licence.*
- (3) *A person does not do any prescribed electrical work, or assist in doing any prescribed electrical work, in breach of this section if that work is done in accordance with any of sections 75 to 80.*
- (4) *A body corporate that is responsible for any prescribed electrical work does not do any prescribed electrical work, or assist in doing any prescribed electrical work, in breach of this section if the natural person or natural persons who actually do, or assist in doing, that work are authorised to do so under this Act.*
- (5) *Subsection (1) is subject to subsections (3) and (4) and sections 75 to 81.*
- (6) *For the purposes of this Part and Part 10, regulations means regulations made under section 169.*

- [33] Under section 98 of the Act, a registered person cannot carry out prescribed electrical work without a practising licence:

98 Practising licence required

- (1) *A registered person is not authorised to do, or assist in doing, prescribed electrical work that the person is otherwise authorised to do by virtue of that person's registration unless that person is the holder of a current practising licence issued under this subpart that authorises the person to do, or assist in doing, the work.*
- (2) *Subsection (1) is subject to sections 75 to 80.*
- (3) *Any authority given under a practising licence issued under this subpart to a registered person to do, or assist in doing, any prescribed electrical work is sufficient authority for the person so authorised to do or, as the case may be, assist in doing that work.*
- (4) *Subsection (3) is subject to the terms and conditions imposed under section 103 and to any regulations.*

- [34] Sections 75 to 80 of the Act provide for various exemptions. Section 75 covers exemptions granted by the Board, section 76 an exemption for work carried out under supervision and sections 77 and 78 exemptions for trainees. Sections 79 and 80 cover exemptions for domestic wiring work and the maintenance of domestic appliances. None of those exemptions applied.
- [35] Practising licenses are issued for a period of two years. Electrical workers are responsible for maintaining the currency of their practising licences but are given renewal notices. In order to renew, an electrical worker must meet the requirements in section 106 of the Act. Included is the requirement to complete a competency programme under section 108 of the Act. Competence programmes provide confidence that an electrical worker retains the required competencies for the reissue of a licence.
- [36] The Respondent had been given notice that his licence was expiring and that he had to renew it. He did not do so and, during periods when he carried out the prescribed electrical work, he was not licensed.
- [37] Turning to the offence itself, under section 143(d) of the Act it is an offence to carry out prescribed electrical work when not authorised to. Given the facts before the Board and the legislative requirements as outlined above, respect, the Respondent has not complied with sections 74(2) and 98(1) of the Act.
- [38] The disciplinary offence is a strict liability one. The Investigator does not have to prove any intention. It is enough that the elements of the offence have been committed. The Board does not need to find that there was intention, fault or negligence¹¹ to make a decision. Accordingly, the Board found that the offence had been committed.

¹¹ *Blewman v Wilkinson* [1979] 2 NZLR 208

[39] The Respondent should note that unauthorised persons carrying out prescribed electrical work is a serious matter. The restrictions created in the Act are put in place so as to ensure that prescribed electrical work is only carried out or supervised by competent persons. This ensures that the purposes of the Act are promoted. Those purposes include¹²:

- (c) *to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and*
- (d) *to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand*

[40] Also, the Respondent should also note that his conduct came within the provisions of section 162 of the Act, which states:

162 Offence to engage in prescribed electrical work in breach of section 74

Every person who does, or assists in doing, any prescribed electrical work in breach of section 74 commits an offence and is liable on conviction to a fine not exceeding \$50,000 in the case of an individual, or \$250,000 in the case of a body corporate.

[41] As such, it would have been open to the Board to pursue the matter in the courts.

False or Misleading Certification

[42] The charge under section 143(f) of the Act related 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 irrelevant¹³.

[43] The returns referred to are issued under the 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. That was not the case. The three Certificates of Compliance that were issued did not attest to the true state and nature of the installation and one of them represented that the Respondent was an authorised person when he was not. It follows that he has committed the disciplinary offence.

¹² Refer section 1A of the Act.

¹³ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

Penalty, Costs and Publication

- [44] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [45] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [46] 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*¹⁴ 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.

- [47] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,¹⁵ 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 a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.
- [48] The matters were serious. As noted above, the Board was concerned at the Respondent’s inability to explain his failings. That raised a question of the Respondent’s competence, and, whilst incompetence was not a finding that has been made, the Board did consider that training to affirm his competency was in order. Accordingly, the Board orders that the Respondent is to complete and pass the Board’s Practical One, Two and Three assessments by no later than 30 September 2022 and at his own cost. Successful completion of the assessments is to be verified by the Registrar.
- [49] If the Respondent fails to complete the training ordered within the specified time frame, then the Board may, under section 147R of the Act, may impose a condition on the Respondent’s licence or suspend it until such time as he does.
- [50] Finally, the Respondent should note that if it was not for the Respondent’s acceptance of wrongdoing, the Board would have considered imposing a more

¹⁴ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁵ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

serious penalty which may have included a suspension or cancellation of the Respondent's licence.

Costs

[51] 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.

[52] 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 case¹⁶.

[53] In *Collie v Nursing Council of New Zealand*¹⁷ 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.

[54] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,¹⁸ 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.

[55] 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 moderate. Adjustments based on the High Court decisions above are then made.

[56] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$250 toward the costs of and incidental to the matter. In setting the amount of

¹⁶ *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.

¹⁷ [2001] NZAR 74

¹⁸ CIV-2011-485-000227 8 August 2011

costs the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

Publication

- [57] 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 Act¹⁹. 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.
- [58] 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.
- [59] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²⁰. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²¹. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²². 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*²³.
- [60] 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 interest²⁴. 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.
- [61] 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 Electron.

¹⁹ Refer sections 128 of the Act

²⁰ Section 14 of the Act

²¹ Refer sections 200 and 202 of the Criminal Procedure Act

²² *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²³ *ibid*

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

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(e) of the Electricity Act 1992, the Respondent is ordered to undertake specified training under to section 147(2) of the Act.

The specified training is the Board's Practical One, Two, and Three Assessments. The Respondent is to complete and pass the assessments at his own cost by no later than 30 September 2022. He is to provide evidence of his successful completion to the Registrar.

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.

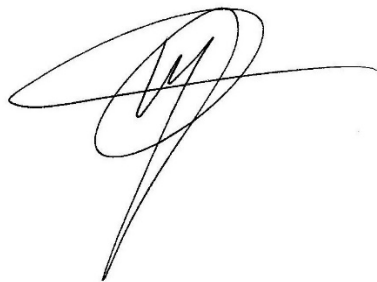
A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will be named in the publication.

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

Right of Appeal

[64] The right to appeal Board decisions is provided for in section 147ZA and 147ZB of the Actⁱⁱ.

Signed and dated this twentieth day of June 2022.

A handwritten signature in black ink, appearing to be 'M Orange', with a long horizontal stroke extending to the right.

Mr M Orange
Presiding Member

Appendix One – Agreed Statement of Facts

DISCIPLINARY OFFENCES – OVERVIEW

1. Mr Ross Brewster faces three disciplinary offences as set out in the Notice of Proceeding.
2. The first disciplinary offence is laid in the alternative under sections 143(a)(ii) (contrary to any enactment) and 143(a)(i) (negligence or incompetence) and 143(b)(ii) (Serious Harm carrying out PEW) of the Electricity Act 1992 (**the Act**).
3. The second disciplinary offence is laid under section 143(d) of the Act.
4. The third disciplinary offence is laid under section 143(f) of the Act.
5. The disciplinary offences relate to prescribed electrical work (**PEW**) carried out by the Respondent at 5 La Veta Avenue Mount Albert Auckland (**the Property**) between 01 February 2019 and 31 July 2019. The complainants and owners of the property are Mr and Mrs Rod & Sheryl Amundsen.

FACTS

6. Mr Brewster is a licensed Electrician (EW048626) and was the holder of a current practicing licence at the time the work was carried out for the period 01 February 2019 to 30 June 2019.
7. The PEW was carried out between 01 February 2019 and 31 July 2019.
8. Mr Brewster was not the holder of a practicing licence between 01 July 2019 and 31 July 2019.
9. Mr Brewster made contact with the EWRB Service Centre on 10 August 2020 requesting renewal of his practising licence.
10. He advised that he had been carrying out PEW under supervision.
11. Mr Brewster was re-licensed from 21 December 2020 and is currently the holder of a practicing licence.
12. Mr Brewster is the sole Director of RAB Electrical Limited.
13. RAB Electrical Ltd was engaged by Trade Guys Ltd as a sub-contractor to fully rewire Mr and Mrs Amundsen's Property.
14. The work involved a complete electrical re-wire of the property, as the electrical wiring at the property was old and required replacement.
15. The work required to be carried out included:
 - a. The complete replacement of the electrical installation wiring.
 - b. The installation of luminaires.
 - c. The replacement including light switches and socket of electrical fittings outlets.
 - d. The relocation of the combined MEN switchboard & revenue meter from the kitchen into the laundry.
 - e. The replacement of the MEN switchboard and circuit protective devices.
 - f. The replacement of the consumer's mains between the point of entry and the MEN switchboard.
 - g. The installation of a new main earthing conductor and electrode.

Mr Brewster left the work incomplete and did not return to the property.

16. On 21 July 2019, Mr Brewster issued a CoC/ESC for the above PEW to Trade Guys. The description of

- work was stated as: “Wire New Addition Replace S/W & P/Ps, Add Ltg to Old Part of House”.
17. The CoC document had been issued incorrectly and did not align with the requirements of the Electricity (Safety) Regulations (regulations 66 & 67) as set out in the Technical Assessor’s report (Mr Mark Carter).
 18. On 17 October 2019 the CoC was rejected by the Auckland City Council as it had been issued by Mr Brewster at a time when he was not licensed, it did not contain a description of the PEW carried out and it did not contain a valid ESC.
 19. On 29 October 2019, Mr Brewster issued a second CoC/ESC for the above PEW to Trade Guys. The description of work was stated as: “Wire New Extension P/P & Ltg. Replace S/W & Wire New Lt. Old Part of House & Replace P/Ps”.
 20. The CoC document had been issued incorrectly and did not align with the requirements of the Electricity (Safety) Regulations (regulations 66 & 67) as set out in the Technical Assessor’s report (Mr Mark Carter).
 21. This CoC was also rejected by the Auckland City Council as it has been issued by Mr Brewster at a time when he was not licensed to carry out PEW.
 22. A third CoC dated 29 June 2019 was issued by Mr Brewster to Mrs Amundsen on 21 November 2019. The description of work was stated as: “Wire New Extension P/P & Ltg. Replace S/W & Wire New Lt. Old Part of House & Replace P/Ps”.
 23. The CoC document had been issued incorrectly and did not align with the requirements of the Electricity (Safety) Regulations (regulations 66 & 67) as set out in the Technical Assessor’s report (Mr Mark Carter).
 24. The CoC recorded the work had been carried out between 1 November and July 2018. The ESC recorded the date of connection as 31 June 2018.
 25. Mr and Mrs Amundsen became aware that the work completed by Mr Brewster was sub standard on two separate occasions. On the first occasion they were advised by a range hood specialist that the ducting in the ceiling for the range hood had not been connected to the ducting it should have been connected to in order to vent out into the soffit.
 26. On the second occasion Mr and Mrs Amundsen had arranged for Garry Dean Electrical to put three new power points into their house. The electrician had to go into the ceiling space and advised:
 - 26.1. The total house had not been rewired, possibly only half had been;
 - 26.2. New wiring appeared to have been joined to old wiring;
 - 26.3. The switchboard had not been labelled;
 - 26.4. Power points and lights were on the same circuit breaker; and
 - 26.5. There was no earth bonding on one of the bathroom switches.
 27. Mr and Mrs Amundsen sought the assistance of Trade Guys, main contractor, to resolve the electrical issues encountered as a result of Mr Brewster’s incomplete and non-compliant work.
 28. Trade Guys were unwilling, at that time, to resolve and remediate the issues caused by Mr Brewster.
 29. Mr and Mrs Amundsen lodged a complaint with EWRB on 14 August 2020.

Prescribed Electrical Work

30. The work undertaken by the Respondent at the property was PEW pursuant to Schedule 1 of the Electricity (Safety) Regulations 2010 (**the Regulations**) as it involved:
- (a) The installation, connection, or maintenance of conductors used in works or installations.
 - (b) The installation, connection, or maintenance of fittings where the fittings are connected, or intended to be connected, to conductors used in works or installations.
 - (e) The testing of work described in paragraphs(a) to (d).
 - (f) The certification of work described in paragraphs (a) to (d).

Technical Advisor Report

31. The Investigator engaged Mr Mark Carter of Torque IP to carry out a review of the complaint documentation and the work that was undertaken to determine if there had been any breaches of the Regulations.
32. Mr Carter provided a technical report of his findings and found that the following breaches had occurred:
- a. Installation Switchboard - Loose Terminations.

Failure to ensure there were no loose terminations where final sub circuit to conductors connected to main earth and neutral busbars.

Electricity (Safety) Regulations 2010 13 (1) (a), 20 (2) (d), 59(1)
AS/NZS 3000:2007 3.7.2.3.1
 - b. Switchboard – Arrangement of Residual Current Devices (RCD's).

Failure to comply with the mandatory requirement that not more than 3 final sub circuits are protected by any one RCD.

Electricity (Safety) Regulations 2010 59 (1)
AS/NZS 3000:2007 2.6.2.4 b) (i)
 - c. Switchboard – Arrangement of Residual Current Devices (RCD's).

Failure to distribute lighting circuits between RCDs.

Electricity (Safety) Regulations 2010: 59 (1)
AS/NZS 3000:2007 2.6.2.4 a)
 - d. Switchboard – Identification of Circuit Protective Devices.

Failure to identify or label circuit protective devices and isolators.

Electricity (Safety) Regulations 2010 59 (1)
AS/NZS 3000:2007 2.3.2.2.2, 2.3.3.4
 - e. Switchboard – Identification of Main Earth Location.

Failure to identify or indicate location of main earth electrode.

Electricity (Safety) Regulations 2010 59 (1)

AS/NZS 3000:2007 5.3.6.4

- f. Switchboard – Protection against spread of fire.

Failure to seal free space by ensuring less than 5 mm around cables and conductors.

Electricity (Safety) Regulations 2010 59 (1)

AS/NZS 3000:2007 2.9.7

- g. Switchboard – Accessibility of devices for isolation.

Failure to ensure that that all devices (HRC fuse) used for isolation shall be readily available. HRC fuse found to be hidden behind switchboard cover.

Electricity (Safety) Regulations 2010 59 (1)

AS/NZS 3000:2007 2.3.2.2.1 (f)

- h. Socket outlets – Failure to test (Transposition of polarity).

Failure to undertake adequate fundamental electrical testing prior to a connection to the electricity supply.

Incorrect connections made (multiple socket outlets connected incorrectly and transposition of phase and neutral conductors).

Electricity (Safety) Regulations 2010 63 (1)

AS/NZS 3000:2007 8.3.3 (c), 8.3.7.1, 8.3.7.2 (a), 8.3.8.2 (b)

- i. Light switches – Identification of conductors.

Failure to correctly identify conductors as required. Used conductors with green/yellow coloured insulation as active conductors in installation wiring, when prohibited and is deemed electrically unsafe.

Electricity (Safety) Regulations 2010 13 (1) (a), 20 (2) (b), 59 (1)

AS/NZS 3000:2007 3.8.1

- j. Ceiling and underfloor cavity – Support of installation wiring.

Failure to support cabling and to provide protection against mechanical damage.

Electricity (Safety) Regulations 2010 20 (2) (g), 59 (1)

AS/NZS 3000:2007 3.1.2 (f), 3.3.2.6, 3.9.3.3

- k. Ceiling cavity – Exposure to live parts.

Failure to provide protection when installing recessed luminaires; did not ensure electrical connections were enclosed and protected against risk of damage, as required. There were live exposed terminals where the wiring is connected to the luminaires and live parts exposed of respective luminaires under normal operation.

Electricity (Safety) Regulations 2010 20 (2) (g), 59 (1)

AS/NZS 3000:2007 3.1.2 (f), 3.3.2.6, 3.9.3.3

- l. Ceiling cavity – Jointing of consumers mains.

Failure to ensure that cable joints were enclosed and insulated to the equivalent of respective sheathed cables (jointing of consumers mains).

Electricity (Safety) Regulations 2010 59 (1)

AS/NZS 3000:2007 3.7.3, 3.10.1.1

- m. Ceiling cavity – Warning signs for recessed luminaires.

Failure to provide required warning signage in respect to recessed luminaires at point of access to ceiling cavity.

Electricity (Safety) Regulations 2010 59 (1)

AS/NZS 3000:2007 4.5.2.3.2

- n. Certificates of compliance.

Failure to meet the regulatory requirements for certification of PEW:

- a) false certification
- b) incorrect information
- c) certification of the PEW when not holding a valid and current licence

CoC dated 21 July 2019

CoC dated 29 June 2019

CoC dated 29 October 2019

Electricity (Safety) Regulations 2010 66, 67, 69(a) (c) (d)

33. In summary, Mr Carter determined that Mr Brewster failed to meet fundamental AS/NZ Standards and the requirements of the Regulations as set out in his report.

34. Mr Brewster acknowledges that he carried out the above outlined PEW, and Mr Carter's findings as correct.

SUMMARY

35. Mr Brewster accepts:

- a) That he has carried out the PEW as set out in the notice of proceeding in a negligent and incompetent manner, being an offence under section 143(a)(i) and of the Act, IN THAT, he:
 - Failed to ensure there were no loose terminations where final sub circuit conductors connected to the main earth and neutral busbars.
 - Failed to label devices used for the control and protection of installed
 - Failed to provide labelling to indicate location for the main earth electrode on the switchboard.
 - Failed to provide adequate RCD protection for more than three final sub-circuits on the switchboard.
 - Failed to adequately distribute lighting circuits between RCDs.

- Failed to seal free space by ensuring less than 5 mm around cables and conductors entering the switchboard.
 - Failed to ensure that device used for isolation (HRC fuse) shall be readily available.
 - Failed to undertake adequate fundamental electrical testing prior to a connection to the electricity supply leading to transpositions of phase and neutral with regard to the connection of socket outlets.
 - Failed to correctly identify conductors as required.
 - Failed to provide adequate support and mechanical protection to cables against damage and/or impact in the Ceiling and the underfloor cavity.
 - Failed to provide adequate covering of live exposed terminals where wiring is connected to luminaires.
 - Failed to ensure that cable joints within the ceiling cavity were enclosed and insulated to the equivalent of respective sheathed cables.
 - Failed to provide required warning signage in respect to recessed luminaires at point of access to ceiling cavity.
- b) That he has done prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do, being an offence under section 143(d) of the Act, IN THAT, he carried out and certified prescribed electrical work without holding a current practicing certificate.
- c) That he has provided a false or failed to provide a return being an offence under section 143(f) of the Act, IN THAT,
- He provided a Certificate of Compliance dated 21 July 2019 falsely certifying Prescribed Electrical Work that was not compliant.
 - He provided a Certificate of Compliance dated 29 October 2019 falsely certifying Prescribed Electrical Work that was not compliant.
 - He provided a Certificate of Compliance dated 29 June 2019 falsely certifying Prescribed Electrical Work that was not compliant.
36. Mr Brewster has cooperated with the investigator in reaching agreed facts and has not previously appeared before the Electrical Workers Registration Board.
37. Mr Brewster has provided the following explanation for his work and subsequent lack of engagement in the investigation process:
- a. When he was first advised of the complaint he had recently been released from the Auckland Spinal Unit after suffering a spinal injury and a stroke.
 - b. Initially he had little recollection of the year 2019 and was undertaking rehabilitation since his hospital release in July 2020.
 - c. He has continued rehabilitation for his injuries since then.
 - d. On reflection and review of the report and documentation he has now accepted full responsibility for the non-compliant work that he did, at the Property.

- e. In 2019 there were personal mitigating factors that affected his work, but does not use these as an excuse.
- f. He is remorseful for his actions and apologises for the hurt and stress caused to Mr and Mrs Amundsen.

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):*
 - (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.*