

Before the Electrical Workers Registration Board

CE No. 21202
Electrical Worker: Joel Burns (the Respondent)
Registration Number: E 249542
Electrical Worker Number: EW 109758
Registration Class: Electrician

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

Hearing Location: Auckland
Hearing Type: In Person
Hearing Date: 19 September 2019
Decision Date: 19 September 2019

Board Members Present:

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

Appearances: Martin Denyer 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(b)(ii), 143(a)(i), 143(a)(ii) and 143(f) of the Act.

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Introduction

- [1] The hearing resulted from a complaint from 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.
- [2] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. The charges are set out in Appendix A.

First Alleged Disciplinary Offence

1. Between 10 November 2017 and 4 January 2018 at [REDACTED] [REDACTED] Joel Burns 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:

- a) he failed to provide sufficient mechanical protection to cables; and/or;
- b) he failed to provide adequate equipotential bonding of and between photovoltaic (PV) mounting frames; and/or;
- c) he failed to label pathways for direct current (DC) cables in accordance with mandatory requirements; and/or;
- d) he failed to install ultra violet (UV) resistant conduit for DC cables; and/or;
- e) he did not provide an isolator to the inverter main switch that was lockable; and/or
- f) the PV Array (DC) isolator located on the underside of the inverter is not labelled in accordance with mandatory requirements; and/or;
- g) the shutdown procedure provided at the inverter is inaccurate and misleading in that it refers to a “DC isolator next to the inverter” that does not exist; and/or
- h) he did not provide a “Supplier Declaration of Conformity” for the PV Array panels at the time they were installed; and/or;
- i) he enlivened a PV array installation prior to it being inspected.

Or in the Alternative

2. Between 10 November 2017 and 4 January 2018 at [REDACTED] [REDACTED] Joel Burns 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:
- a) he failed to provide sufficient mechanical protection to cables; and/or;
 - b) he failed to provide adequate equipotential bonding of and between PV mounting frames; and/or;
 - c) he failed to label pathways for DC cables in accordance with mandatory requirements; and/or;
 - d) he failed to install UV resistant conduit for DC cables; and/or;
 - e) he did not provide an isolator to the inverter main switch that was lockable; and/or
 - f) the PV Array (DC) isolator located on the underside of the inverter is not labelled in accordance with mandatory requirements; and/or;
 - g) the shutdown procedure provided at the inverter is inaccurate and misleading in that it refers to a “DC isolator next to the inverter” that does not exist; and/or;
 - h) he did not provide a “Supplier Declaration of Conformity” for the PV Array panels at the time they were installed; and/or;
 - i) he enlivened a PV array installation prior to it being inspected.

Or in the Alternative

3. Between 10 November 2017 and 4 January 2018 at [REDACTED] [REDACTED] Joel Burns 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:
- a) he failed to provide sufficient mechanical protection to cables; and/or;
 - b) he failed to provide adequate equipotential bonding of and between PV mounting frames; and/or;
 - c) he failed to label pathways for DC cables in accordance with mandatory requirements; and/or;
 - d) he failed to install UV resistant conduit for DC cables; and/or;
 - e) he did not provide an isolator to the inverter main switch that was lockable; and/or
 - f) the PV Array (DC) isolator located on the underside of the inverter is not labelled in accordance with mandatory requirements; and/or;
 - g) the shutdown procedure provided at the inverter is inaccurate and misleading in that it refers to a “DC isolator next to the inverter” that does not exist; and/or;
 - h) he did not provide a “Supplier Declaration of Conformity” for the PV Array panels at the time they were installed; and/or;
 - i) he enlivened a PV array installation prior to it being inspected. In breach of regulations 59, and 60, of the Electricity (Safety) Regulations 2010.

Second Alleged Disciplinary Offence

4. Between 10 November 2017 and 4 January 2018 at [REDACTED] [REDACTED] Joel Burns has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he provided a false and misleading return.

- [3] 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.
- [4] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

- [5] 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.

- [6] 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.”

- [7] 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.

Evidence

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

- [9] The Board heard evidence from the Respondent and from Mr Mark Carter, an expert witness called by the Investigator. The Board also received a witness statement from [REDACTED] the owner of the installation where the prescribed electrical work was carried out.

- [10] The Respondent and Counsel for the Investigator had, prior to the hearing, filed a document entitled Facts Admitted by Consent which had been signed by both the Respondent and the Investigator. It included a statement to the effect that the Respondent had read the and accepted the facts. The document set out that the Respondent was engaged to install a 20 panel DC string photovoltaic array solar generation system at the installation. It was installed on 10 November 2017. The work was deemed to be “high risk” prescribed electrical work. The Respondent was assisted by another worker but accepted responsibility for the installation as the licensed electrical worker. A Certificate of Compliance was signed and issued by the Respondent on completion. The completed work was not inspected prior to it being

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

livened. Another electrical worker was called to the site to review the installation. As a result of what he observed he made a complaint to the Board.

- [11] The Investigator sought the opinion of Mr Carter, an Electrical Inspector, on the compliance of the prescribed electrical work carried out. He produced a report on his findings which resulted in the charges as laid by the Investigator.
- [12] The Respondent sought to challenge some of Mr Carter's findings at the hearing. In particular the support and protection of DC cables as being inadequate, the earthing and equipotential bonding of mounting frames being non-compliant, that the flexible conduit used was not UV resistant, and that the switchboard main switch was not lockable.
- [13] The Board heard further evidence at the hearing in respect of those matters.
- [14] With respect to the support and protection of DC cables the Respondent. The Investigator produced photographs of cables resting on the roofing material of the dwelling. Mr Carter's report noted that AS/NZS 5033 expressly prohibits the installation of DC cables and connectors laying directly on a roof. Mr Carter also gave evidence that metal cable ties used were overtight and could have compromised the primary insulation on the cables.
- [15] The Respondent gave evidence that excess cable had been wrapped around the mounting frames of the panels and that stainless-steel ties had to be used. Mr Carter noted that it was the manner in which the ties had been installed and not the type of tie that was at issue. In questioning from the Board, the Respondent accepted that the manner in which the clips had been installed could pose a risk and that the excess cable that was on the roof was not acceptable.
- [16] The Respondent gave evidence that he did not carry out the install of the panels and cables on the roof but that it was done under his supervision. He stated he did not physically check the work on the roof.
- [17] With regard to the bonding of the mounting frames Mr Carter gave evidence that there was a minimum requirement that one frame in each set of two rails be bonded but that there was no bonding on the top set of panels. The Respondent gave evidence that his apprentice, who carried out the install under his supervision, carried out the testing and provided him with the results and that the testing indicated that the frames had all been bonded.
- [18] In terms of UV resistant flexible conduit, the Respondent gave evidence that the conduit used was UV resistant and that he could provide evidence to support his contention. He was given time to produce the evidence but did not provide any further evidence. It was noted by Mr Carter that UV resistant conduit is normally clearly marked as such and that there were no visible markings on the conduit installed.

- [19] The Respondent gave evidence that he left a removable device (that did not require a tool) on site which could be used to lock the main switch and that there was a lockable switch adjacent to the main switch on an AC cable that ran from the inverter to the main switchboard. No instructions were left as to how to lock the main switch. The Respondent submitted that an electrical worker would have known what to do if they attended the site.
- [20] The Respondent also gave evidence that the labelling used was the standard labelling provided. Mr Carter gave evidence that the labelling was not obvious and was not accurate as regards the shutdown procedure.
- [21] With regard to suppliers' declarations of conformity (SDoC) Mr Carter gave evidence that it was good practice to provide an SDoC he accepted it was not mandatory.
- [22] The element of the charge related to the installation being livened prior to it being inspected. The Respondent gave evidence that the AC switch on the cable running from the inverter was locked with a cable tie when he left the installation. He also gave evidence that it was the first install he had done for a new retailer and that it was normally up to the retailer to organise an inspection and a connection with the chosen electricity retailer.
- [23] Mr Carter's opinions were supported with relevant provisions from standards cited in the Electricity (Safety) Regulations 2010.
- [24] Counsel for the Investigator sought to withdraw particular (e) that the Respondent did not provide an isolator to the inverter main switch that was lockable.

Legal Provisions

First Charge

- [25] 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).
- [26] There is a hierarchy to the disciplinary charges in that the Board needs to first consider whether the prescribed electrical work each of the particulars in the charges was carried out or caused to be carried out in a manner that was contrary to an enactment. If the Board finds in the affirmative it then needs to consider whether the conduct reaches the threshold for a finding of negligence or incompetence. If that threshold is met the Board then needs to consider whether a risk of serious harm or significant property damage was created.
- [27] Contrary is a form of strict liability offence in that all that need be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010 or any of the cited standards within Schedule 2 of the Regulations.

The Board does not need to find that there was intention, fault or negligence⁵. In this respect the provisions of Regulation 11 are noted:

11 Strict liability offences

- (1) *Subclauses (2) and (3) apply to every offence in these regulations except those that specifically refer to a defendant's state of knowledge or intention regarding the facts constituting the offence.*
- (2) *In a prosecution for an offence to which this subclause applies, it is not necessary for the prosecution to prove that the defendant knew or intended the facts that constitute the offence.*

[28] Turning to negligence and/or incompetence there are no statutory definitions of the terms. It is noted however, that they are not the same. In *Beattie v Far North Council*⁶ Judge McElrea noted:

[43] Section 317 of the Act uses the phrase "in a negligent or incompetent manner", so it is clear that those adjectives cannot be treated as synonymous.

[29] 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*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.

[30] Incompetence is a lack of ability, skill or knowledge to carry out or supervise prescribed electrical work to an acceptable standard. *Beattie* put it as "*a demonstrated lack of the reasonably expected ability or skill level*". In *Ali v Kumar and Others*⁹ it was stated as "*an inability to do the job*".

[31] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test¹⁰. 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.

[32] 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 Act¹¹.

⁵ *Blewman v Wilkinson* [1979] 2 NZLR 208

⁶ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁹ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

¹⁰ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹¹ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

The test is an objective one and in this respect it has been noted that the purpose 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 practitioner¹².

[33] 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.]*

[34] 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.

[35] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹³ 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.

Second Charge

[36] 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 irrelevant¹⁴.

[37] The returns referred to are issued under the Regulations. There is a requirement that an Electrical Safety Certificate be issued for all prescribed electrical work. It must contain a statement to the effect that the installation or part installation is

¹² *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

¹³ [2001] NZAR 74

¹⁴ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

connected to a power supply and is safe to use. There is also 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.

Board's Conclusion

First Charge

- [38] The Board has decided, in respect of the First Charge, that the Respondent **has**:
- (a) 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:
 - (i) failed to provide sufficient mechanical protection to cables; and
 - (ii) failed to provide adequate equipotential bonding of and between PV mounting frames; and
 - (b) carried out or caused to be carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act in that he:
 - (i) he failed to label pathways for DC cables in accordance with mandatory requirements; and
 - (ii) he failed to install UV resistant flexible conduit for DC cables; and
 - (c) 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:
 - (i) the PV Array (DC) isolator located on the underside of the inverter is not labelled in accordance with mandatory requirements; and
 - (ii) the shutdown procedure provided at the inverter is inaccurate and misleading in that it refers to a "DC isolator next to the inverter" that does not exist.
- [39] The Board has decided, in respect of the First Charge, that the Respondent **has not** committed a disciplinary offence in respect of:
- (a) not providing an isolator to the inverter main switch that was lockable on the basis that the Investigator withdrew the allegation; or
 - (b) not providing a "Supplier Declaration of Conformity" for the PV Array panels at the time they were installed on the basis that there was no mandatory requirement to provide one; or
 - (c) livening a PV array installation prior to it being inspected on the basis that there was insufficient evidence to prove the charge. In this respect the Board

noted that there was no evidence before it of who had livened the installation by removing the lock on the AC isolation switch.

Second Charge

[40] The Board has decided, in respect of the Second Charge, that the Respondent **has** provided a false or misleading return being an offence under section 143(f) of the Act.

[41] The reasons for the Board's decisions upholding disciplinary charges follows.

Board's Reasoning

Serious Harm

[42] The Board decided that there was a risk of serious harm or significant property damage in respect of the failure to provide sufficient mechanical protection to cables and to provide adequate equipotential bonding of and between PV mounting frames on the basis of the evidence put forward by Mr Carter and the further evidence received from the Respondent which conceded that the installation may not have been compliant. The Board found that the prescribed electrical work was not completed in accordance with the required standards and that Respondent had been negligent in that his work had fallen below acceptable standards.

[43] With respect to the failure to provide sufficient mechanical protection to cables the Board considered that there was a risk, over time, that the insulation could be compromised creating a danger to persons by way of an electric shock or to property by way of a fire as a consequence of arcing. The Board considered the risk from the failure to adequately bond was more immediate in that bonding is part of the fundamental safety systems employed in electrical installations. The failure to provide the bonding would mean that, in fault conditions, a person could receive an electric shock.

Negligence

[44] The findings of negligence related to the failure to label pathways for DC cables in accordance with mandatory requirements and the failure to install UV resistant flexible conduit for DC cables. The Board found that the prescribed electrical work was not completed in accordance with the required standards, that Respondent had been negligent in that his work had fallen below acceptable standards. The Board noted that the failings were serious in that labelling is necessary to ensure that persons are aware that potentially high voltage DC conductors are present, and that non-UV resistant conduit can deteriorate over time meaning the protection it affords is compromised.

Contrary to an Enactment

[45] The findings that the Respondent carried out or caused to be carried out prescribed electrical work in a manner contrary to any enactment were made on the basis that the Respondent accepted that the matters as set out in the charges.

Certification

- [46] The Respondent certified the installation as having been carried out lawfully and that it was safe to connect when it was not.

Penalty, Costs and Publication

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

Penalty

- [49] 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*¹⁵ 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.

- [50] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁶ 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 to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.
- [51] The Board noted that there had been multiple contraventions and that two of them were at the most serious level. It also noted that there had been no acceptance of responsibility and that there had been poor or inadequate supervision of an apprentice. At the same time it was noted that no harm came to persons or property.
- [52] The Respondent gave evidence that there had been significant recent personal events in his life and that he was in a strained financial position.

¹⁵ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

- [53] Based on the above the Board's penalty decision was that the Respondent pay a fine of \$2,000.
- [54] The Respondent is cautioned that, in the future, he needs to take more care in his supervision of prescribed electrical work. In this instance the work was deemed to be high risk and the Board would expect that he would carry out actual checks of the electrical work prior to it being completed rather than relying on his apprentice.

Costs

- [55] 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.
- [56] 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 case¹⁷.
- [57] In *Collie v Nursing Council of New Zealand*¹⁸ 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.

- [58] Based on the above, the Board orders that the Respondent pay the sum of \$1,000 toward the costs of and incidental to the matter. The Board noted that there was only very limited cooperation and as such no discounts are available. Notwithstanding the costs are still significantly less than 50% of actual.

Publication

- [59] 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.
- [60] 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

¹⁷ *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.

¹⁸ [2001] NZAR 74

¹⁹ Refer sections 128 of the Act

of a disciplinary hearing. This is in addition to the Respondent being named in this decision.

- [61] 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.
- [62] 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.
- [63] Based on the above the Board will not order further publication.
- [64] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act which allows for prohibition of publication.

Penalty, Costs and Publication Orders

- [65] 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 \$2,000.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$1,000 (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.

In terms of section 147Z of the Act, there will not be action taken to publicly notify the Board's action.

- [66] 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.

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

Right of Appeal

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

Signed and dated this 3rd day of October 2019



Mel Orange
Presiding Member

ⁱ Section 147M of the Act

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

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- (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.*