

Before the Electrical Workers Registration Board

CE No. 22858

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Andrew Hart EW 115765 (the Respondent) a registered and Licensed Electrician (E 252871), and Electrician (Endorsed supervision) (ES 083567)

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

Hearing Location:

Auckland

Hearing Type:

Audio Visual Link

Hearing Date:

19 March 2025

Decision Date:

19 March 2025

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Mr T Wiseman, Registered Inspector

Mr J Hutton, Registered Inspector

Ms S Cameron, Registered Electrician

Ms L Wright, Barrister

Mr T Tran, Barrister

Appearances: R Boyd, counsel for the Investigator, T Wilkinson for the Investigator

A Hart, self-represented

Procedure:

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

Board Decision:

The Respondent **has not** committed a disciplinary offence under sections 143(a)(ii) or 143(a)(i) of the Act.

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

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Summary of the Board's Decision

- [1] The Board determined that the first disciplinary offence alleged against the Respondent under section 143(a)(ii) or 143(a)(i) of the Act was not made out.
- [2] The Board determined that the Respondent committed the second disciplinary offence under section 143(g) of the Act, after the charge was amended to remove reference to **[Omitted]**.
- [3] The key factors in the Board's decision:
 - a. Regarding the first disciplinary offence, the Board found that the Respondent was not recorded as **[Omitted]** supervisor at the time the prescribed electrical work (PEW) was carried out.
 - b. Regarding the Second Disciplinary Offence, the Respondent had employed, directed, or permitted **[Omitted]**, whose Trainee Limited Certificate had expired (and he had not been granted a licence and registration as an Electrician), to carry out PEW.
- [4] The Board ordered:
 - a. A fine of \$750 pursuant to section 147M(1)(f) of the Act;
 - b. Costs of \$250 pursuant to section 147N of the Act;
 - c. Publication of the Board's decision (where the respondent will be named) and an article about the disciplinary proceeding, but without naming the Respondent.

Introduction

- [5] 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.
- [6] The Respondent was served with an Amended Notice of Proceeding dated 20 November 2024 setting out the alleged disciplinary offences the Investigator reported should be considered by the Board.
- [7] The following disciplinary charges were alleged in the Notice of Proceeding:

First Alleged Disciplinary Offence

- a. *On or around 18 October 2022 [Omitted], Mr Andrew Hart has 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 failed to adequately supervise [Omitted], causing [Omitted] failure to ensure reliability and electrical continuity of the termination at the spa pool main isolator. In breach of regulation 59 of the Electricity (Safety) Regulations 2010.*

Or in the Alternative

- b. *On or around 18 October 2022 at [Omitted], Mr Andrew Hart has 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 failed to adequately supervise [Omitted], causing [Omitted] failure to ensure reliability and electrical continuity of the termination at the spa pool main isolator.*

Second Alleged Disciplinary Offence

- a. *On or around 18 October 2022 at [Omitted], Mr Andrew Hart has employed, directed, or permitted unauthorised persons to carry out prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he employed, directed, or permitted [Omitted] and [Omitted] to carry out Prescribed Electrical Work in breach of section 74 of the Act.*

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

Function of Disciplinary Action

- [9] 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 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

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.

- [10] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. Those grounds relate to carrying out or supervising prescribed electrical work (PEW).

Evidence

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

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

Procedure

- [12] The matter proceeded on the basis of an Agreed Statement of Facts (ASOF) signed by both the Respondent and the Investigator on 4 March 2025.

- [13] The ASOF set out that:

- a. The Respondent is a licensed Electrician (EW115765 / E 252871) and at all relevant times was the holder of a current practising licence. He is the sole director of Hart Electrical.
- b. On 18 October 2022, Hart Electrical was engaged to carry out PEW at **[Omitted]**, involving the installation of a spa pool.
- c. The PEW was carried out by **[Omitted]** and **[Omitted]** under **[Omitted]** direction. Both were employees of Hart Electrical. The Respondent was not present on site when the PEW was carried out.
- d. At the time the PEW was undertaken, **[Omitted]** Trainee Limited Certificate had expired, and he had not been granted a licence and registration as an electrician.
- e. The Respondent initially accepted both disciplinary offences as outlined in the Notice of Proceeding.
- f. **[Omitted]** failed to ensure the electrical connections in the main isolator switch for the spa were reliable, which led to the conductor burning out.

- [14] During the hearing, it was established that according to the Board’s records, the Respondent was not recorded as the supervisor of **[Omitted]** at the time of the offence. Records showed that the Respondent’s supervision of **[Omitted]** had ended on 17 February 2021, well before the incident in question.

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

- [15] Further, it was determined that **[Omitted]** did have an active Trainee Limited Certificate at the time of the incident and was therefore authorised to carry out PEW under supervision.
- [16] The Board heard evidence that both Mr Hart and **[Omitted]** believed **[Omitted]** was properly licensed at the time the work was carried out. In his written response, **[Omitted]** stated that he had submitted an application for registration as an electrician and assumed the process had been completed. Due to his recent relocation, he believed his licence card had been sent to his previous address. It was only later, when **[Omitted]** contacted the Board to request a new card, that he discovered his first aid certificate had expired, preventing his application from being processed.
- [17] Based on these findings, counsel for the Investigator sought an amendment to the second disciplinary offence, removing reference to **[Omitted]**. The Respondent did not oppose this amendment.

Board's Decision

First Disciplinary Offence (section 143(a)(i) or 143(a)(ii))

- [18] The Board has carefully considered the first charge and the evidence presented. The crux of this charge was that the Respondent failed to adequately supervise **[Omitted]**, causing **[Omitted]** failure to ensure reliable electrical connections at the spa pool main isolator.
- [19] However, the Board's records clearly show that the Respondent was not registered as **[Omitted]** supervisor at the time the work was carried out. The supervision relationship had formally ended on 17 February 2021, approximately 20 months before the incident.
- [20] While the Respondent may have believed himself responsible in his capacity as **[Omitted]** employer, the statutory responsibility for supervision under the Act requires a supervisory relationship, which did not exist at the relevant time.
- [21] Given these findings, the Board determines that the first disciplinary offence under section 143(a)(i) or 143(a)(ii) is not made out.

Second Disciplinary Offence (section 143(g))

- [22] The second charge, as amended during the hearing, alleges that the Respondent employed, directed, or permitted **[Omitted]** to carry out PEW when **[Omitted]** was not authorised to do so.
- [23] The evidence clearly establishes that **[Omitted]** Trainee Limited Certificate had expired at the time he carried out the PEW at the property, rendering him unauthorised to perform such work independently or even supervised.
- [24] The Respondent, as **[Omitted]** employer and the director of Hart Electrical, was responsible for ensuring that employees carrying out PEW were properly authorised to do so.

- [25] The Board accepts that both the Respondent and **[Omitted]** genuinely believed **[Omitted]** was properly licensed. **[Omitted]** had submitted his application for registration as an electrician, and both parties assumed this process had been completed. The oversight was discovered only when **[Omitted]** contacted the Board and learned that his application had not been processed due to an expired first aid certificate.
- [26] While this misunderstanding provides context for how the situation arose, it does not absolve the Respondent of his responsibility as an employer to verify the current licensing and registration status of employees carrying out PEW. The Respondent could have easily verified **[Omitted]** status by checking the public register on the Board's website, which is a simple and standard practice that employers should follow. A system should have been in place to confirm licensing and registration status before assigning employees to independent PEW.
- [27] The Board therefore finds that the second disciplinary offence under section 143(g) is established.

Penalty, Costs and Publication

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

Penalty

- [30] The Board has the discretion to impose a range of penalties, which are set out in section 147M of the Act. Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.⁴ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:⁵
- (a) protection of the public and consideration of the purposes of the Act;
 - (b) deterring Respondent and other Electrical Workers from similar offending;⁶
 - (c) setting and enforcing a high standard of conduct for the industry;⁷
 - (d) penalising wrongdoing;⁸ and

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

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

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

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

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

(e) rehabilitation (where appropriate).⁹

- [31] Overall, the Board should assess the conduct against the range of penalty options available in section 147M of the Act, reserving the maximum penalty for the worst cases¹⁰ and applying the least restrictive penalty available for the particular offending.¹¹ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty¹² that is consistent with other penalties imposed by the Board for comparable offending.¹³
- [32] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.¹⁴
- [33] In terms of penalty, the Board considered a fine is warranted in the circumstances.
- [34] The Board adopted a starting point of \$1,500 for a fine. This is reduced by 50% to \$750 taking into account:
- a. The Respondent's guilty plea;
 - b. His co-operation with the investigation;
 - c. This being his first offence.
- [35] Accordingly, a fine of \$750 is imposed.

Costs

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

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

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

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

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

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

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

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

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

¹⁶ [2001] NZAR 74

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

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

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

- [40] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was simple. Adjustments based on the High Court decisions above are then made.
- [41] Based on the above, the Respondent is to pay costs of \$250, which is significantly less than actual costs in recognition of his co-operation through the ASOF process.

Publication

- [42] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register as required by the Act.¹⁸ The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z the Board may, if no appeal is brought within 20 working days of its decision, direct the Registrar to cause a notice stating the effect of the decision or order, the reasons for the decision or order, and (unless the Board directs otherwise) the name of the person in respect of whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.
- [43] 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.
- [44] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.¹⁹ The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction.²⁰ Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal

¹⁷ CIV-2011-485-000227 8 August 2011

¹⁸ Refer sections 128 of the Act

¹⁹ Section 14 of the Act

²⁰ Refer sections 200 and 202 of the Criminal Procedure Act

Procedure Act do not apply but can be instructive.²¹ The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²².

- [45] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest.²³ It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [46] Based on the above, the Board will publish a general article in the Electron summarising the matter. The Respondent will not be identified in the Electron. However, a copy of the decision will be available on the EWRB website and the Respondent will be named.

Penalty, Costs and Publication Orders

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

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

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$250 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Electrical Workers in accordance with section 128(1)(c)(viii) of the Act.

The Respondent will be named in this decision, which will be publicly available on the Board's website.

A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will not be named in the publication.

Right of Appeal

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

Signed and dated this 16th day of April 2025

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

²² *ibid*

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



R Keys
Presiding Member

ⁱ Section 147M of the Act

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

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- 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.*