

Before the Electrical Workers Registration Board

CE No. 22586

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Vishal Nandan a registered and licensed electrical worker (EAS 276742, EW 115551, Electrical Appliance Serviceperson) (the Respondent)

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:

In Person

Hearing Date:

20 September 2023

Decision Date:

18 October 2023

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Mr M Orange, Barrister

Ms S Cameron, Registered Electrician

Mr T Wiseman, Registered Inspector

Appearances:

B Colville and M Denyer for the Investigator
S Kumar for the Respondent

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(c), 143(d) and 143(e)(ii) of the Act.

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Summary of the Board’s Decision

- [1] The Respondent held an Electrical Appliance Serviceperson (EAS) Licence. He carried out prescribed electrical work (PEW) that required, at a minimum, an Electrical Service Technician (EST) License. In doing so, he carried out PEW he was not authorised to carry out, being an offence under section 143(d) of the Act. The Respondent then failed to renew his licence but continued to carry out PEW. In doing so, he committed an offence under section 143(c) of the Act. The Respondent also falsified a licence with the intent of deceiving another registered person by producing a licence which represented that he held an EST licence. The Board found that, in doing so, he had committed an offence under section 143(e)(ii) of the Act.
- [2] The Board, having made those findings, decided that it would fine the Respondent the sum of \$3,000 and order that he pay costs of \$2,250. A record of the offending will be recorded on the public Register for a period of three years. An article summarising the matter will be published in the Electron. The Respondent will be named in that article.

Introduction

[3] 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.

[4] 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 August 2020 – June 2022 at Auckland, Mr Vishal Nandan, did 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 143(d) of the Act, IN THAT, Mr Nandan carried out electrical work outside the limits of his EAS registration which included connecting, disconnecting, electrical testing and replacement of electrical components of three phase equipment exceeding 250V, single phase equipment including testing and replacement of electrical equipment.

Second Alleged Disciplinary Offence

2. Between 31 January 2022 and 30 June 2022 at Auckland, Mr Vishal Nandan has failed to have complied with a term or condition of the person's registration or licence, being an offence under section 143 (c) of the Act, IN THAT, Mr Nandan's Practising Licence to perform PEW had expired on 31 January 2022 and was not renewed until 30 June 2022, therefore, Mr Nandan did not have a current practicing licence while carrying out PEW.

Third Alleged Disciplinary Offence

3. On or around August 2020 – June 2022 at Auckland, Mr Vishal Nandan intentionally deceived or attempted to deceive any registered person who is authorised to test and certify prescribed electrical work by making any false or misleading statement (whether in writing or not) to that person, being an offence under section 143(e)(ii) of the Act IN THAT,

(a) Mr Nandan presented a document which was a falsified copy of a Practising Licence which was false and misleading to his employer Mr Micheal Dolan, a holder of Electrical Service Technician Licence, and thus is a registered person who is authorised to test and certify prescribed electrical work; and/or

(b) Mr Nandan used the falsified document to continue his employment.

[5] 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.

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

Function of Disciplinary Action

[7] 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.

[8] 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.”

[9] 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

[10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.⁴ 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] There were three allegations. They related to the Respondent’s class of licence and to his licence status. The Respondent accepted that he had committed the offences as alleged but put forward a defence of diminished responsibility. His Counsel was asked to provide written legal submissions on how the defence applied to the allegations. The Respondent dismissed his Counsel prior to those submissions being made.

First Offence

[12] The allegation was that the Respondent had carried out electrical work outside the limits of his EAS registration in that he carried out prescribed electrical work (PEW) that required, at a minimum, an Electrical Service Technician (EST) Licence. The

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

difference between the two, for the purposes of this matter, is that an EAS cannot maintain or test appliances that exceed 250V. The Respondent accepted that he had worked outside of the limits of his registration and licence but stated that his employer knew or, alternatively, that he was under the supervision of others. The In Vitro witnesses denied that they knew the Respondent did not hold an EST licence or that they were supervising his PEW.

- [13] The background to the charge was that the Respondent, when he was employed by In Vitro Technologies Limited (In Vitro), held an EAS registration and licence. The Investigator's evidence was that at his pre-employment interview, the Respondent stated he was booked onto the EST course and had stated he would have that class of licence by the time he was employed. The Respondent maintained that he had told In Vitro that he only held an EAS licence and that he could not do PEW that was outside of it. He further contended that In Vitro had a history of allowing persons with an EAS licence to carry out PEW requiring an EST licence. Neither of those assertions were put to the witnesses from In Vitro.
- [14] The Board, throughout the hearing, heard conflicting evidence. It heard from the person from In Vitro who conducted the Respondent's initial employment interview (the In Vitro in-country technical lead), the in-country manager, a co-worker and the In Vitro manager in Australia who had overall responsibility for operations in New Zealand. Other than the witness who interviewed the Respondent, they were all called by the Respondent in support of his defence. However, those witnesses did not support or corroborate the Respondent's defence or the evidence he put forward. The Board generally found that the Respondent was not credible and preferred the evidence of the In Vitro witnesses. Unlike the Respondent's evidence, their evidence was consistent and substantiated by documentation admitted at and after the hearing.
- [15] The offence under section 143(d) of the Act is strict liability. Either the Respondent held the appropriate class of licence, or he did not. The Respondent's intention is not relevant.⁵
- [16] Section 84 of the Act allows the Board to designate classes of registration and to specify for each of those classes the prescribed electrical work that a person is authorised to do. The Board does so by way of Gazette Notices. The applicable Gazette Notice⁶ specified the limits for a person holding registration as an EAS.
- [17] The PEW carried out by the Respondent included the maintenance and testing of appliances that exceeded 250V. The Respondent, as the holder of an EAS licence, was not authorised by the Gazette Notice to carry out such work. He required, at the least, an EST licence, which he did not hold. As such, he did carry out PEW that was outside of the limits of his registration and licence.

⁵ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

⁶ 2017-go1984

[18] Turning to the Respondent's defences, there was no evidence, other than the Respondent's assertions, that he was working under the supervision of others and, in this respect, the in-country technical lead stated he would have provided supervision had he known that the Respondent was not an EST. Nor was there any evidence supporting the assertion that his employer knew he did not hold an EST licence and that it had consented to him working outside his limits. Further, even if the employer had consented, it would not have created a defence. Working within an electrical worker's limits is an individual responsibility. It is based on statutory provisions in the Electricity Act. An employer cannot provide an exemption to those provisions.

[19] Counsel for the Respondent also submitted:

58. *The Nandan's conducts of – working outside of his Practising Licence, and his working for a period without renewing his Licence and his falsification of his Licence – must be viewed within his predicaments, circumstances and context at the material time. He was faced with a controlling employer who was well-aware of License status but elected to use and abuse its employment relationship with him for its commercial and operational demands. Mr Nandan was new to the very specialised and technical medical equipment industry. He was suffering from undue stress and pressure at work, exacerbated with anxiety of losing his employment in the middle of Covid-19 pandemic.*

59. *Mr Nandan was not in a position to properly comprehend the consequences of his conduct. This is especially evident by his conduct of falsification of his licence. No reasonable person and fair-minded person would have seriously contemplated that he/she will be able to get away by the conduct when the registration details are publicly available on the online register.*

[20] At the hearing, Counsel for the Respondent described the Respondent's defence as diminished responsibility. Counsel for the Investigator submitted:

There is no defence of diminished responsibility in criminal law in New Zealand. No comparable defence was identified in the civil jurisdiction either.

[21] The Board agrees. Diminished responsibility is not a defence in New Zealand. It can be a mitigating factor. It applies where a person's state of mind is such that it impairs their mental responsibility.

[22] The evidence received did not substantiate the Counsel for the Respondent's submissions noted above. At the hearing, the Respondent and his Counsel based the defence on a submission that he was not provided with support or training, was unable to take concerns about his licence status to his employer because of intimidation at the workplace, and that there was a power imbalance. He took the position that he had no other option but to work outside of the limits of his licence. The submission was at odds with the submission that he was being supervised and

that In Vitro knew that he did not hold an EST licence. It was not supported by the evidence heard. The Respondent did not produce any evidence from an expert that attested to his statement of mind. To the extent that there may have been factors that influenced his conduct, the Board can only take it into account as a mitigating factor.

Second Offence

[23] The second offence was laid under section 143(c) of the Act. It was that Respondent's licence expired on 31 January 2022 and was not renewed until 30 June 2022. On that basis, it was alleged that he carried out PEW without a current practising licence.

[24] Again, the Respondent accepted that he had carried out PEW when he was not licensed, and the Board received evidence that established the dates on which his licence had expired and had been renewed.

[25] Section 74 of the Act places restrictions on who can carry out PEW to authorised persons, which includes a registered and licensed person:

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.*

[26] Also, 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.*

[27] 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.

[28] Turning to the Second Offence, as with the First, it is a strict liability offence, and the Investigator does not have to prove any intention. It is enough that the elements of the offence have been committed, which they have.

[29] Carrying out PEW when not authorised 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 include⁷:

(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*

[30] Also the Respondent should also note that his conduct most likely 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.

[31] The Respondent put forward the same defence of diminished responsibility. Again, diminished responsibility is not available as a defence, but it may go to mitigation.

Third Offence

[32] The final allegation was that the Respondent created and produced a falsified licence in an attempt to deceive. The specific elements of an offence under section 143(e)(ii) of the Act are that there must be an intention to deceive a registered person who is authorised to test and certify prescribed electrical work by making any false or misleading statement.

[33] The Respondent accepted that he had falsified a licence. He was asked by his employer to provide a copy of his EST licence for their records. He did not hold one. Instead, he manufactured an EST licence and provided it to his employer on 22 November 2021. In June 2022, updated details were requested. It was at this point that the Respondent admitted he had not renewed his licence, which had expired in January 2022, and, as a result of further investigations, it was established that he

⁷ Refer section 1A of the Act.

had held an EAS Licence and that the EST licence he had provided contained another electrical workers registration number.

- [34] There was a clear intention to deceive and clear evidence of a false or misleading statement by way of the falsified licence. The Respondent's employer, however, was not a registered person. Provision of a falsified licence to In Vitro would not constitute an offence. The in-country technical lead was a registered person. He was provided with the details and relied on them. On that basis, the elements of the offence have been satisfied.
- [35] The Respondent again sought to rely on diminished responsibility to excuse his actions. As with the other allegations, there was no legal basis for the defence nor any evidence to substantiate it as a mitigating factor.
- [36] The Respondent should note that, as with the Second Offence, the Respondent's actions could also have constituted an offence under section 161 of the Act:

161 *Unlicensed or unregistered person must not claim to be licensed or registered*

Every person commits an offence and is liable on conviction to a fine not exceeding \$10,000 who,—

- (a) *not being registered or licensed under Part 10 in respect of a particular class of prescribed electrical work,—*
- (i) *does any act that is intended to cause or may reasonably cause any other person to believe that the person is so registered or licensed; or*
 - (ii) *uses, or causes or permits to be used, in connection with any business, trade, or calling any written words, titles, or initials, or any abbreviation of any words, titles, or initials, that are intended to cause or may reasonably cause any other person to believe that the person using them is so registered or licensed; or*
 - (iii) *in any way holds himself or herself or itself out as being so registered or licensed; or*
- (b) *knowing that some other person is not registered or licensed under Part 10 in respect of a particular class of prescribed electrical work, and with intent to deceive, makes any statement or does any act calculated to suggest that the other person is so registered or licensed; or*
- (c) *with intent to deceive, makes use of any certificate of registration or licence issued to that person or any other person under Part 10; or*

- (d) allows a certificate of registration or a licence to be used by any other person for the purpose of enabling that other person to do any prescribed electrical work in breach of Part 9.

Board's Conclusion and Reasoning

[37] The Board has decided that the Respondent **has** committed offences under sections 143(c), 143(d) and 143(e)(ii) of the Act.

Penalty, Costs and Publication

[38] 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 any costs and whether the decision should be published.

[39] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

[40] 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.⁸ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:⁹

- (a) protection of the public and consideration of the purposes of the Act;¹⁰
- (b) deterring other Electrical Workers from similar offending;¹¹
- (c) setting and enforcing a high standard of conduct for the industry;¹²
- (d) penalising wrongdoing;¹³ and
- (e) rehabilitation (where appropriate).¹⁴

[41] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst

⁸ *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]

⁹ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁰ Section 3 Building Act

¹¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹² *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

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

¹⁴ *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

cases¹⁵ and applying the least restrictive penalty available for the particular offending.¹⁶ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty¹⁷ that is consistent with other penalties imposed by the Board for comparable offending.¹⁸

- [42] 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.¹⁹
- [43] The Respondent knew what he was doing. His conduct was deliberate and calculated. He started his employment under a lie, which he perpetuated by falsifying a licence. That conduct bordered on criminal conduct. It was serious. The conduct was compounded by the Respondent's failure to renew his licence. The conduct was serious.
- [44] Throughout the hearing, there was a pattern of the Respondent failing to take responsibility for his actions. He sought to blame others and claimed an intolerable employment environment to explain his actions. Those claims were not substantiated by the evidence.
- [45] As the Respondent knew what he was doing, training is not a viable penalty option. The Board also discarded suspension or cancellation as suitable penalties on the basis that, whilst it would provide a deterrence to others, the quality and compliance of the Respondent's PEW were not in question. The Board, therefore, decided that a fine was the appropriate form of penalty. It adopted a starting point of \$4,000, an amount that reflects the seriousness of the Respondent's offending.
- [46] The Respondent has advanced reduced responsibility as mitigation. The Board found that there was no evidence to support reduced responsibility, and it makes the same finding as regards it amounting to mitigation. As stated, the Respondent knew what he was doing and now has to take responsibility for it.
- [47] The Respondent did accept that he had committed the acts that led to the charges. The hearing was, in essence, to determine whether any of the offences advanced were supported by evidence, which they were not. The Respondent is presently facing difficult circumstances. On the basis of those factors, the Board decided that it would reduce the fine to \$3,000.

Costs

- [48] 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.

¹⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁶ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

¹⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁸ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁹ 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.

[49] 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.²⁰

[50] In *Collie v Nursing Council of New Zealand*,²¹ 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.

[51] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²² 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.*

[52] 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 moderately complex, and it was unsuccessfully defended. Adjustments based on the High Court decisions above are then made.

[53] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,250 toward the costs of and incidental to the matter. The amount is the Board's scale amount for a half-day defended hearing.

Publication

[54] 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 Act²³. 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

²⁰ *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.

²¹ [2001] NZAR 74

²² CIV-2011-485-000227 8 August 2011

²³ Refer sections 128 of the Act

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.

- [55] 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.
- [56] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²⁴. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁵. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁶. 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*²⁷.
- [57] 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 interest²⁸. 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.
- [58] 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.

Penalty, Costs and Publication Orders

- [59] 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 \$3,000.
Costs:	Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$2,250 (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.

²⁴ Section 14 of the Act

²⁵ Refer sections 200 and 202 of the Criminal Procedure Act

²⁶ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁷ *ibid*

²⁸ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

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.

- [60] The Respondent should note that the Board may refuse to relicense an electrical worker who has not paid any fine or costs imposed on them. If the Respondent is not in a position to pay the fine and costs, he can apply to the Registrar for time to pay.

Submissions on Penalty, Costs and Publication

- [61] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on Date. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

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

Signed and dated this

6th day of November 2023



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 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.