

Before the Electrical Workers Registration Board

CE No. 22184

Electrical Worker: [Omitted] (the Respondent)

Registration Number: [Omitted]

Electrical Worker Number: [Omitted]

Registration Class: Inspector

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

This decision is subject to an order under section 153(3)(d) of the Act prohibiting the name or any particulars of the Respondent to be published.

Hearing Location: [Omitted]

Hearing Type: In Person

Hearing and Decision Date: 20 November 2020

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
Martin Perry, Registered Electrician

Appearances: Oscar Upperton 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 a disciplinary offence under section 143(a)(ii) and 143(d) of the Act.

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Summary of the Board’s Decision

- [1] The Respondent has carried out prescribed electrical work in a manner that was contrary to an enactment. In making the finding, the Board has found that carrying out and issuing a warrant of electrical fitness is prescribed electrical work in that it comes within the statutory definition of maintenance.

Introduction

- [2] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator that the complaint should be considered by the Board.
- [3] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were¹:

First Alleged Disciplinary Offence

1. *On 21 May 2018 the Respondent 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)*

¹ The charges have been truncated to remove aspects that could identify the Respondent pursuant to the Board’s order under section 153(3)(d) of the Act.

of the Act, IN THAT, he has failed to carry out an adequate safety verification, prior to the issue of a Warrant of Electrical Fitness (WoEF), on a Caravan resulting in a non-compliant Residual Current Device (RCD) being left installed.

Second Alleged Disciplinary Offence

2. *On or around 21 May 2018 the Respondent has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has failed to carry out an adequate safety verification, prior to the issue of a WoEF, on the Caravan resulting in a non-compliant RCD being left installed.*

[4] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his/her power or possession.

[5] One Member noted that the Respondent was known to him. The Board decided that there were no conflicts of interest arising. No other Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

[6] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*² and in New Zealand in *Dentice v Valuers Registration Board*³.

[7] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*⁴ Collins J. noted that:

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

[8] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. It does not have any jurisdiction over contractual matters.

Procedure

[9] The matter proceeded on the basis of an Agreed Statement of Facts.

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

³ [1992] 1 NZLR 720 at p 724

⁴ [2016] HZHC 2276 at para 164

- [10] The purpose of the hearing was to determine whether the issue of a warrant of electrical fitness was prescribed electrical work.
- [11] The Board received comprehensive legal submissions from Counsel for the Investigator which were of assistance to it in its deliberations.

Evidence

- [12] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. 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.

- [13] The matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was engaged to provide a warrant of electrical fitness for a caravan. He completed a verification check and then issued a warrant of electrical fitness. The caravan was sold, and a new owner engaged an electrician to carry out wiring work on it. The electrician engaged observed that there was an incorrect Type AC RCD that should have been replaced with a Type A RCD.
- [14] A technical review carried out by [Omitted], an Electrical Inspector, found that the RCD did not comply with regulatory requirements. Mr [Omitted] believed it was unlikely that any harm would have resulted in the event of an earth fault and the RCD would still operate under an AC fault.
- [15] The Respondent accepted that, if the work he carried out on the caravan was prescribed electrical work, he had committed the disciplinary offence in that he accepted that he had made an error by failing to identify that the RCD was of an English-style "AC" type which should have been replaced with a New Zealand-compliant type "A" RCD. He has advised that to prevent these errors from re-occurring, alterations will be made to the "Caravan Inspection checklist used by his employer".
- [16] The general rule is that all facts in issue or relevant to the issue in a case must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

Board's Conclusion and Reasoning

- [17] The Board has decided that the Respondent **has** carried out prescribed electrical work in a 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

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

143(a)(ii) of the Act, in that, he failed to carry out an adequate safety verification, prior to the issue of an Electrical Warrant of Fitness, on a caravan resulting in a non-compliant Residual Current Device (RCD) being left installed.

[18] The Board has also decided that the Respondent **has** provided a false or misleading return being an offence under section 143(f) of the Act, in that, he failed to carry out an adequate safety verification, prior to the issue of a warrant of electrical fitness, on a caravan resulting in a non-compliant RCD being left installed.

[19] The reasons for the Board's decisions follow.

Contrary to an Enactment

[20] The charge before the Board was that the Respondent had carried out prescribed electrical work in a manner that was contrary to an enactment. Contrary to an enactment 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 negligence⁶. 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.*

[21] As a preliminary, however, the Board has to determine whether the issue of a warrant of electrical fitness was prescribed electrical work.

Legal Definitions of Prescribed Electrical Work

[22] Section 2(1) of the Act contains the primary definition of prescribed electrical work. it states:

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

- (a) *the design or construction or maintenance of electrical installations:*
- (b) *the maintenance of electrical appliances:*

⁶ *Blewman v Wilkinson* [1979] 2 NZLR 208

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

[23] The regulations referred to are the Electrical (Safety) Regulations 2010. Its definition states that “prescribed electrical work has the meaning given in regulation 6 (which refers to the detailed description in Schedule 1)”. Regulation 6 simply points to Schedule 1.

[24] The provisions of Schedule 1 that are relevant to the question under consideration are

- 1(1) *The following electrical work is prescribed electrical work, unless it is work described in clause 2:*
 - (a) *the installation, connection, or maintenance of conductors used in works or installations:*
 - (b) *the installation, connection, or maintenance of fittings where the fittings are connected, or intended to be connected, to conductors used in works or installations:*
 - (c) *the connection or disconnection of fittings to or from a power supply, other than by means of a plug or pin inserted into a socket, or an appliance connector inserted into an appliance inlet:*
 - (d) *the maintenance of appliances:*
 - (e) *the testing of work described in paragraphs (a) to (d) that—*
 - (i) *is not work described in clause (2); and*
 - (ii) *is required by these regulations; and*
 - (iii) *is carried out for the purpose of compliance with these regulations:*
 - (f) *the certification of work described in paragraphs (a) to (d) that is not work described in clause 2:*

Warrant of Electrical Fitness Provisions

- [25] A caravan is a “connectable installation” as it comes within the definition in section 2(1) of the Act, which defines a connectable installation as:

connectable installation, in relation to a vehicle, a relocatable building, or a pleasure vessel, means an electrical installation of that vehicle, relocatable building, or pleasure vessel that is designed or intended for, or capable of, connection to an external power supply that operates at or above such voltage as is prescribed for the purposes of this definition by regulations made under section 169; and includes any electrical appliance that is connected, or intended to be connected, to any such installation

- [26] Regulations 76 to 78 of the Regulations create requirements for connectable installations.:

76 No supply without warrant of electrical fitness

- (1) *Before permitting or authorising a connection for the supply of electricity to a connectable installation in a vehicle, relocatable building, or pleasure vessel, the person supplying electricity must verify that the connectable installation has a current warrant of electrical fitness.*
- (2) *A person who supplies electricity commits an offence and is liable on conviction to a level 1 penalty if he or she fails to comply with subclause (1).*

77 Restrictions on use of connectable installations

- (1) *A person must not hire or lease out, or offer to hire or lease out, a vehicle, relocatable building, or pleasure vessel that contains a connectable installation unless the connectable installation has a current warrant of electrical fitness.*
- (2) *A person who hires or leases out, or offers to hire or lease out, a vehicle, relocatable building, or pleasure vessel commits an offence and is liable on conviction to a level 1 penalty if he or she fails to comply with subclause (1).*

78 Issue of warrants of electrical fitness for connectable installations

- (1) *The following people may issue warrants of electrical fitness for connectable installations:*
- (a) *a person who is authorised to inspect mains work:*
- (b) *a person who, immediately before these regulations come into force, is authorised by the Secretary to issue warrants of*

electrical fitness, but only in respect of the same class of connectable installations that the authorisation relates to:

- (c) *in relation to a connectable installation that has been certified under regulation 66, the person who did the certification (and, to avoid doubt, the warrant may be issued at the same time that the certification is done).*
- (2) *Every warrant of electrical fitness for a connectable installation must be issued in accordance with AS/NZS 3001, except that a warrant of electrical fitness for a connectable installation—*

 - (a) *in a pleasure vessel must be issued in accordance with AS/NZS 3004.2; and*
 - (b) *in a mobile medical facility must be issued in accordance with NZS 6115; and*
 - (c) *that has been imported must be issued in accordance with AS/NZS 3001, but only after an assessment for compliance with Part 1 of AS/NZS 3000.*
- (3) *A person who issues a warrant of electrical fitness must—*

 - (a) *give it to the person who requests the warrant; and*
 - (b) *keep a copy of the completed warrant for at least 3 years, or send a copy to WorkSafe; and*
 - (c) *complete a warrant of electrical fitness sticker that is in the form prescribed or approved by WorkSafe; and*
 - (d) *affix the sticker in a prominent place on the connectable installation.*
- (4) *A warrant of electrical fitness for a connectable installation expires on the earlier of—*

 - (a) *the date on which a new warrant of electrical fitness is issued for the connectable installation; or*
 - (b) *the date that is 4 years from its date of issue or, in the case of a mobile medical facility, 1 year from its date of issue.*
- (5) *Every warrant of electrical fitness must be in a form that is either—*

 - (a) *the form prescribed by the relevant standard referred to in subclause (2); or*
 - (b) *a form approved by WorkSafe.*

- (6) *If WorkSafe charges a fee to supply forms of warrants of electrical fitness, the fee must be the fee set out in Schedule 5.*
- (7) *A person commits an offence and is liable on conviction to a level 1 penalty if he or she—*
 - (a) *issues a warrant of electrical fitness otherwise than in accordance with this regulation; or*
 - (b) *issues a warrant of electrical fitness for a connectable installation that is electrically unsafe; or*
 - (c) *is not authorised to issue a warrant of electrical fitness.*

[27] The persons who can issue a warrant of electrical fitness are, pursuant to regulation 78(1)(a), persons who are registered and licensed by the Board as Electrical Inspectors. As such, they are persons who come within the Board’s disciplinary jurisdiction. There is also an infringement regime that attaches to the issue of warrants of electrical fitness. The same infringement regime applies to other aspects of electrical work, including to prescribed electrical work.

[28] The regulations require that electrical warrants of fitness be issued on the basis of, and in accordance with, cited standards. With respect to a caravan, the standard is AS/NZS 3001. In this instance, the caravan was an imported caravan, so Part 1 of AS/NZS 3000 also applied. AS/NZS 3001, in Appendix C, provides for the Inspection of Connectable Installations (C6), Testing of Connectable Installations (C7), and Certification of Verification and Warrant of Electrical Fitness Form (C8). The provisions contain detailed, specific provisions and requirements that must be followed and complied with.

Statutory Interpretation

[29] The leading case on the interpretation of a statutory provision is *Commerce Commission v Fonterra Co-Operative Group Ltd*.⁷ It establishes the following principles:

- (a) The statutory text must be considered in isolation of purpose to determine its plain and ordinary meaning(s).
- (b) The meaning(s) of the text must then be cross-checked against the purpose of the legislation.
- (c) In determining the purpose, regard must be had to both the immediate and general legislative context; it may also be relevant to consider the social, commercial or other objective of the legislation.

[30] The text under consideration is that in Schedule 1 of the Regulations. In particular the installation, connection or maintenance.

⁷ *Commerce Commission v Fonterra Co-Operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767.

- [31] Install is defined as “install, in relation to an installation, includes to construct, alter, relocate, or add to the whole or any part of the installation. It is clear, on the “natural and ordinary meaning” of that definition that the issue of a warrant of electrical fitness, when considering what must be done to issue one under AS/NZS 3001, does not come within that definition.
- [32] Connection is not defined. Looking at the Act and Regulations as a whole, it is clear that connection means the act of linking conductors or fitting together so as to allow electricity to flow. Again, the issue of a warrant of electrical fitness does not come within the term.
- [33] Maintenance is not defined in the Act or Regulations other than in section 2(1) of the Act which states that “maintain includes to repair; and maintenance has a corresponding meaning”. Regulation 4(1) also states that “maintenance includes repair”. The use of the term “includes” does not limit the term maintenance to repair. Rather it extends its meaning beyond maintenance so as to include repair.
- [34] The Regulations do, however, include a provision in regulation 4(3) that:
- A term used in these regulations and not defined in the Act or these regulations, and to which subclause (2) does not apply, has the meaning given (if any),—*
- (a) *in the case of installations, in AS/NZS 3000; and*
- (b) *in all other cases, in IEC 60050⁸.*
- [35] Maintenance is not defined in AS/NZS3000. It is defined in IEC 60050 which defines maintenance as the “combination of all technical and management actions intended to retain an item in, or restore it to, a state in which it can perform as required”⁹.
- [36] Notably, from the definition, the Board considers that actions required under AS/NZS 3001 to issue a warrant of electrical fitness come within the management actions intended to retain an item in the state in which it can perform as required. In particular, the testing requirements in C7 require that the person issuing the warrant of electrical fitness carry out tests to ensure electrical fittings in a caravan can perform as required. In the Board’s view, testing is the equivalent of “a management action”.
- [37] The Board is also of the view that the issue of a warrant of electrical fitness comes within the plain and ordinary meaning of the term “maintenance” and that such a finding is in accordance with the purpose of the Electricity Act.
- [38] The common dictionary meaning of the term maintenance is the process of preserving a condition or the process of keeping something in good condition.

⁸ Schedule 2 further defines it as IEC 60050-826 Ed 2: International electrotechnical vocabulary—Part 826: Electrical installations

⁹ IEV reference 192-06-01

Maintain is causing or enabling a condition to continue and to keep in good condition by regularly checking or repairing. Again, looking at the requirements in AS/NZS 3001, it is clear that the actions required to issue a warrant of electrical fitness come within these definitions. The Electrical Inspector is, by inspecting and testing a caravan, checking the good condition of the connectable installation.

[39] Turning to the purpose of the Electricity Act section 1A states:

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.*

[40] Section 1A includes the regulation of electrical workers. The Act goes on, in Part 11, to provide a disciplinary regime for electrical workers. Section 143 of the Act sets out the disciplinary provisions that the Board may consider. Most, but not all, of the charges that can be laid against an electrical worker, require that prescribed electrical work was carried out.

[41] Looking at the conduct in question, if issuing a warrant of electrical fitness was not prescribed electrical work then the Board would have no jurisdiction except for offences under section 143(c) of the Act – failing to comply with a term or condition of a licence, or 143(f) in respect of returns required under an enactment. That, in turn, would mean that in the event an Electrical Inspector negligently or incompetently carried out a warrant of electrical fitness, that the Board would not be able to take any disciplinary action. The counter-position is that if the Board does have jurisdiction, it can take steps to protect the public through the penalties available to it under section 147M of the Act including by suspending or cancelling a licence or ordering training. In this respect, it is to be noted that the infringement regime that also applies does not and cannot prevent an electrical worker from continuing to issue warrants of electrical fitness, no matter how negligent or incompetent they may have been, whereas the Board, through disciplinary action, can. Accordingly, the Board considers that interpreting the issue of a warrant of electrical fitness to come within the term maintenance promotes the purpose of the Act.

- [42] Given the above, the Board finds that the issue of a warrant of electrical fitness was prescribed electrical work in that it was maintenance. On this basis the Board further finds that the prescribed electrical work was carried out in a manner that was contrary to an enactment as per the charge before it.

Certification

- [43] The second charge related to the provision of a false or misleading return. In determining whether a return is false or misleading is a question of fact to be decided objectively and the intention of the issuer is irrelevant¹⁰.
- [44] Submissions were received to the effect that if the work was not prescribed electrical work, then the Board would not have any jurisdiction in respect of section 143(f) of the Act. The Board does not accept that submission.
- [45] Section 143(f) contains two provisions.

to have failed to provide any return required under any enactment relating to prescribed electrical work or to have provided a false or misleading return (emphasis added)

- [46] The first is “to have failed to provide any return required under any enactment relating to prescribed electrical work” requires that the electrical worker have carried out or supervised prescribed electrical work. The second “to have provided a false or misleading return” can stand alone and does not require a link to prescribed electrical work. The section uses the term “or” between the two provisions. As such they are not linked, and each can be considered separate from the other.
- [47] The charge before the Board is in respect of the second provision; “to have provided a false or misleading return”. All that is required of the Board is to determine whether a return, a warrant of electrical fitness required under regulations 76 to 78 of the Regulations, was false or misleading. The evidence before the Board established that it was false or misleading as the connectable installation did not meet the requirements of AS/NZS 3000. The Respondent also accepted that, if the work was prescribed electrical work, then the warrant of electrical fitness was false or misleading. Accordingly, the charge is upheld.

Penalty, Costs and Publication

- [48] 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.
- [49] The Respondent made submissions at the hearing as regards penalty, costs and publication.

¹⁰ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

Penalty

[50] 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*¹¹ 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.

[51] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹² the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.

[52] The Board noted that the Respondent had accepted responsibility and that the matters were at the lower end of the disciplinary scale, the breach being very technical in nature. The Board also noted, and took into consideration, that prior to the Board considering the matter there was some confusion as to whether the issue of a warrant of electrical fitness was prescribed electrical work.

[53] Based on the above, the Board decided that it would, pursuant to section 147M(1)(h) of the Act “make no order”. The Board considered that this was appropriate as the matter was, in essence, a test case, and there were no significant electrical risks or dangers posed by the Respondent’s conduct.

Costs

[54] 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.

[55] 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 case¹³.

¹¹ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

¹³ *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.

[56] In *Collie v Nursing Council of New Zealand*¹⁴ 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.

[57] In a similar vein to the decision on penalty, the Board decided that it would not impose any costs. It considered that this was appropriate given the nature of the hearing and the matters that were before the Board.

Publication

[58] As a consequence of its decision, the Respondent's name and the disciplinary outcomes would, ordinarily be recorded in the public register as required by the Act¹⁵. 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.

[59] 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.

[60] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁶. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁷. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁸. 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*¹⁹.

[61] 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 interest²⁰. 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.

¹⁴ [2001] NZAR 74

¹⁵ Refer sections 128 of the Act

¹⁶ Section 14 of the Act

¹⁷ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁸ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁹ *ibid*

²⁰ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

[62] The findings in this case, are of importance to other electrical workers. They need to be disseminated so that others are aware of the Board's decision and so that they can take it into account when carrying out warrants of electrical fitness of other prescribed electrical work that may fall into the "maintenance" category.

[63] Under section 153(3) of the Act the Board may:

(3) *If the Board is of the opinion that it is proper to do so, having regard to the interests of any person and to the public interest, it may, of its own motion or on the application of any party to the proceedings,—*

(a) *Order that the whole or any part of a hearing shall be held in private:*

(b) *Make an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:*

(c) *Make an order prohibiting the publication of the whole or any part of any documents produced at any hearing:*

(d) *Make an order prohibiting the publication of the name or any particulars of the affairs of—*

(i) *Any person who is the subject of proceedings before it:*

(ii) *Any other person.*

[64] In this matter, given the nature of the hearing and the Board's wish to inform other electrical workers of its decision, the Board has decided to make an order under Section 153(3)(d) of the Act prohibiting the publication of the name or any particulars of the affairs of the Respondent, the Complainant and any other witness in the matter.

[65] The Board will, notwithstanding the order under section 153(3)(d), publish educative articles about the matter and this decision. The articles and the decision will conform to the requirements of the 153(3)(d) order.

[66] As the Board has not made any orders under section 147M of the Act, the matter will not be recorded on the Register. The Respondent will not be named in this decision.

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 4th day of December 2020



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;
 - (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**

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- (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.*