

## Before the Electrical Workers Registration Board

CE No. 22638

**In the matter of:** A disciplinary hearing before the Electrical Workers Registration Board

**Between:** The Ministry of Business Innovation and Employment

### And

[OMITTED] a registered and licensed electrical worker (E [OMITTED], EW [OMITTED], Electrician) (the Respondent)

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### Decision of the Board in Respect of the Conduct of an Electrical Worker

#### Under section 147G and 147M of the Electricity Act 1992

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Hearing Location: Auckland  
Hearing Type: In Person  
Hearing and Decision Date: 19 October 2023

#### Board Members Present:

Mr R Keys, Registered Inspector (Presiding)  
Mr M Orange, Barrister  
Mr T Wiseman, Registered Inspector  
Ms E Mogford, Lawyer

Appearances: B Collville for the Investigator

#### Procedure:

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

#### Board Decision:

The Respondent **has** committed disciplinary offences under sections 143(a)(ii) and 143(g) of the Act.

#### Suppression Order:

The Respondent's name, details and any information which could identify the Respondent or his business are suppressed. The Respondent's name and details will be redacted from the published version of this decision.

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### Summary of the Board’s Decision

- [1] The Respondent supervised prescribed electrical work (PEW) that was not carried out in a compliant manner. The persons who carried out the work were not trainees as their licences had lapsed.
- [2] The Board had to consider whether the failure to provide adequate supervision was serious enough to warrant a finding of negligence. The Board noted that the person who carried out the PEW was experienced, had sought registration and licensing as an electrician, and had worked with the Respondent for an extended period. As the Respondent was confident in the person’s competence and the level of non-compliance of the PEW was low, the Board decided that the Respondent had supervised in a manner that was contrary to an enactment. The Board also decided that the Respondent had employed, directed, or permitted unauthorised persons to carry out prescribed electrical work.
- [3] As the transgressions were not overly serious and he had accepted responsibility, the Board decided that it would censure the Respondent and order that he pay costs of \$225 on the basis that the matter was dealt with on the basis of an agreed statement of fact.
- [4] The Respondent sought an order under section 153 of the Act that the details of the matter be suppressed. The Board accepted that there were grounds in that the

employment of persons engaged by the Respondent's company might have been put at risk.

### **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 a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

#### **First Alleged Disciplinary Offence**

1. Between 23 and 30 April 2022 at [OMITTED], Wellington, Mr [OMITTED] has carried out or caused to be carried out prescribed electrical work in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done being an offence under section 143(a)(ii) of the Act, IN THAT, he carried out inadequate supervision of trainees and unlicensed persons, resulting in a failure to ensure that lighting subcircuit protective earthing conductors were directly connected to the main earthing conductor or to another point on an earthing system that was connected to the main earthing conductor in breach of regulations 59 of the Electricity (Safety) Regulations 2010. Or in the Alternative
2. Between 23 and 30 April 2022 at [OMITTED], Wellington, Mr [OMITTED] has carried out or caused to be carried out prescribed electrical work in a negligent or incompetent manner being an offence under section 143(a)(i) of the Act, IN THAT, he carried out inadequate supervision of trainees and unlicensed persons, resulting in a failure to ensure that lighting subcircuit protective earthing conductors were directly connected to the main earthing conductor or to another point on an earthing system that was connected to the main earthing conductor

#### **Second Alleged Disciplinary Offence**

3. Between 23 and 30 April 2022 at [OMITTED], Wellington, Mr [OMITTED] 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 [OMITTED], [OMITTED], and [OMITTED] to carry out Prescribed Electrical Work in breach of section 74 of the Act.
- [7] 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.

- [8] Prior to the hearing, two members declared conflicts of interest. They took no part in the proceedings.

### **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 recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.

- [10] 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*,<sup>3</sup> 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.”*

- [11] 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**

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

### **Evidence**

- [13] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>4</sup>. 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.*

- [14] The Board heard from the Respondent prior to making a decision.
- [15] 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

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

<sup>2</sup> [1992] 1 NZLR 720 at p 724

<sup>3</sup> [2016] HZHC 2276 at para 164

<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

### First Alleged Offence

- [16] The allegation was that the Respondent failed to adequately supervise prescribed electrical work (PEW). The Respondent accepted that his inadequate supervision had resulted in a failure to ensure that lighting subcircuit protective earthing conductors were directly connected to the main earthing conductor or to another point on an earthing system that was connected to the main earthing conductor. The Investigator sought the opinion of an expert whose opinion was that the PEW was not compliant as it did not comply with clause 5.5.2.1 of AS/NZS 3000:2007. Given that PEW on low-voltage domestic installations must be carried out in accordance with AS/NZS 3000,<sup>5</sup> it follows that the work was carried out in a manner that was contrary to an enactment. The work was not, however, carried out by the Respondent. As such, it is his supervision that has to be considered.
- [17] The charge was put before the Board in the alternatives of negligence or incompetence under section 143(a)(i) of the Act and contrary to an enactment under section 143(a)(ii).
- [18] Contrary to an enactment is a form of strict liability offence in that all that needs to 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 negligence.<sup>6</sup>
- [19] Negligence is considered to be the departure by an electrical worker, whilst carrying out or supervising prescribed electrical work, from an accepted standard of conduct. It is judged against those of the same class of licence<sup>7</sup> as the person whose conduct is being inquired into. This is described as the *Bolam*<sup>7</sup> test of negligence which has been adopted by the New Zealand Courts.<sup>8</sup>
- [20] Incompetence is a lack of ability, skill or knowledge to carry out or supervise prescribed electrical work to an acceptable standard. *Beattie* put it as “*a demonstrated lack of the reasonably expected ability or skill level*”. In *Ali v Kumar and Others*,<sup>9</sup> it was stated as “*an inability to do the job*”. The Board did not hear any evidence that indicated the Respondent was incompetent. As such, it did not consider incompetence any further. There was evidence that the conduct may have come within the definition of negligence.

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<sup>5</sup> Regulation 59 of the Safety Regulations.

<sup>6</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>7</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

<sup>9</sup> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

- [21] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test.<sup>10</sup> The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [22] As noted, the charge related to the Respondent's supervision. As such, the conduct needs to be considered within the context of supervisory requirements.

### Supervision

- [23] Section 74 of the Act restricts the carrying out of prescribed electrical work to certain authorised persons. Sections 76 and 77 of the Act create exemptions, but those exemptions require that the exempt persons are supervised. Supervision is defined in section 2 of the Act as:

*Supervision, in relation to any work, means that the work is undertaken under such control and direction of a person authorised under this Act to do the work [or, in the case of section 76, a person authorised to supervise work under that section] as is sufficient to ensure—*

- (a) That the work is performed competently; and*
- (b) That while the work is being undertaken, appropriate safety measures are adopted; and*
- (c) That the completed work complies with the requirements of any regulations made under section 169 of this Act:*

- [24] The definition was considered in *Electrical Workers Registration Board v Gallagher*.<sup>11</sup> Judge Tompkins stated, at paragraph 24:

*As is made apparent by the definition of "supervision" in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.*

- [25] Finally, the Board maintains supervision guidelines.<sup>12</sup> These provide guidance as to the responsibilities of the supervisor and supervisee. There are varying types of supervision. The Board's guidance notes the different types of supervision: direct,

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

<sup>11</sup> *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

<sup>12</sup> Dated October 2010

indirect and remote. It also provides a matrix to assist in determining the appropriate form of supervision to be used. Generally, the greater the complexity of the work, the higher the need for direct supervision. Considerations as to the skill level of the person being supervised also need to be taken into consideration.

#### The Respondent's conduct

- [26] The person who was in charge of the PEW had been an apprentice for 11 years, and he became a registered and licensed electrician soon after the PEW in question was carried out. His registration was held up because his photograph did not meet the specified requirements, not because he did not meet the other requirements. His trainee limited certificate had lapsed at the time the work was carried out.
- [27] The Respondent was familiar with and confident in the person's work and capabilities. The type of supervision that was utilised was remote. He was in Auckland. The work was carried out in Wellington.
- [28] The Respondent accepted that the work under his supervision was not compliant. He also accepted that he had failed in his supervision duties.
- [29] The question for the Board was whether, in the context of the supervisory relationship, the Respondent had been negligent or whether the supervision failures were less serious and a finding of supervising contrary to an enactment would be more appropriate.
- [30] Looking at the supervision, as the person who carried out the PEW was well known to the Respondent and was at a point in his training where he would soon be registered and licensed, remote supervision was appropriate. Remote supervision still requires compliance checks. Those checks did not occur, and the Board found that the Respondent's supervision did not meet the legislative requirements as defined in *Gallagher* set out above.
- [31] The Board also finds that the Respondent's conduct did not meet an acceptable standard. A competent electrical worker would ensure that, prior to PEW being connected to a power supply, the mandated tests in AS/NZS 3000 are carried out and reviewed by an authorised person. They were not. The Board decided, however, that as the non-compliance was at the less serious end of the scale and given that the person who carried out the work was skilled, the Board decided that the conduct was not serious enough to warrant a finding of negligence. Rather, it was conduct that could be described as inadvertence or oversight and, as such, did not meet the test sets out in *Collie v Nursing Council of New Zealand*,<sup>13</sup> in which the court stated:

*[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour*

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<sup>13</sup> [2001] NZAR 74

*which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

[32] On that basis, the Board decided that contrary to an enactment was the appropriate finding as regards the failure to supervise.

### **Second Alleged Offence**

[33] The second allegation was that the Respondent directed or permitted unauthorised persons to carry out PEW. Again, the Respondent accepted that he had committed the alleged offence.

[34] The Agreed Statement of Facts stated that various persons had carried out PEW when they were not authorised in that they did not hold trainee limited certificates. The persons had, at various times prior to the PEW being carried out, held trainee limited certificates, but they had for administrative reasons, lapsed.

[35] Within the Safety Regulations, a distinction is made between what a trainee<sup>14</sup> can do under supervision and what a person who is not a trainee can do. The material difference, as regards this matter, is that a person who is not a trainee and who is under supervision may not connect or disconnect a supply of electricity to works or an installation or appliance. As that occurred, it follows that the Respondent allowed unauthorised persons to carry out PEW, contrary to the provisions of section 74 of the Act.

### **Board's Conclusion and Reasoning**

[36] The Board has decided that the Respondent **has:**

- (a) supervised prescribed electrical work in a manner that was contrary to an enactment and has breached section 143(a)(ii) of the Act; and
- (b) employed, directed, or permitted unauthorised persons to do any prescribed electrical work and has breached section 143(g) of the Act.

### **Penalty, Costs and Publication**

[37] Having found that one or more of the grounds in section 143 applies the Board must, under section 147M of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

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

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<sup>14</sup> Under s 77(2) a trainee is defined as:

- (2) In this section, trainee—
  - (a) means a person who is undergoing instruction or training in any class of prescribed electrical work for the purpose of obtaining registration as a registered person; and
  - (b) includes an apprentice who is working in the electricity industry.



## Penalty

- [39] 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.<sup>15</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>16</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>17</sup>
  - (b) deterring other Electrical Workers from similar offending;<sup>18</sup>
  - (c) setting and enforcing a high standard of conduct for the industry;<sup>19</sup>
  - (d) penalising wrongdoing;<sup>20</sup> and
  - (e) rehabilitation (where appropriate).<sup>21</sup>
- [40] 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 cases<sup>22</sup> and applying the least restrictive penalty available for the particular offending.<sup>23</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>24</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>25</sup>
- [41] 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.<sup>26</sup>
- [42] The Board adopted a starting point of a modest fine on the basis that the offending was at the lower end of the disciplinary scale and there was an element of administrative oversight with regard to the offending. The Respondent cooperated, had not previously appeared before the Board, and accepted responsibility for his failings. He was remorseful and had made changes to the office process that track persons licensing status. He is entitled to reductions from the starting point. The

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<sup>15</sup> *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]

<sup>16</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>17</sup> Section 3 Building Act

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

<sup>19</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>20</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>21</sup> *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

<sup>22</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>23</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>24</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>25</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>26</sup> 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.

Board decided that a reduction to a penalty of a formal censure would be appropriate, and the Respondent is so censured. A censure is a public expression of the Board's disapproval of the Respondent's conduct.

### Costs

[43] 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.

[44] 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.<sup>27</sup>

[45] In *Collie v Nursing Council of New Zealand*,<sup>28</sup> 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.*

[46] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>29</sup> 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.*

[47] 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.

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<sup>27</sup> *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.

<sup>28</sup> [2001] NZAR 74

<sup>29</sup> CIV-2011-485-000227 8 August 2011

[48] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$225 toward the costs of and incidental to the matter. In setting the amount of costs the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

#### Publication

[49] 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<sup>30</sup>. The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z of the Act, 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.

[50] 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.

[51] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>31</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>32</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>33</sup>. 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*<sup>34</sup>.

[52] 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<sup>35</sup>. 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.

[53] The Respondent sought a suppression order on the basis that publication could impact current contracts his company has with entities that have a public profile and, thereby, on those that he employs. Under section 153(3) of the Act, the Board may:

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<sup>30</sup> Refer sections 128 of the Act

<sup>31</sup> Section 14 of the Act

<sup>32</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>33</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>34</sup> *ibid*

<sup>35</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- (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.*

[54] Ordinarily, good grounds need to be shown as to why a matter or details should be suppressed. The Criminal Procedure Act provides details on various grounds in respect of criminal matters.<sup>36</sup> Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>37</sup>. In *N v Professional Conduct Committee of Medical Council*,<sup>38</sup> the High Court stated the tribunal must be satisfied that suppression is desirable having regard to the public and private interests, and consideration can be given to factors such as:

- (a) issues around the identity of other persons such as family and employers;
- (b) identity of persons involved and their privacy and the impact of publication on them; and
- (c) the risk of unfairly impugning the name of other practitioners if the responsible person is not named.

[55] Looking at the grounds that have been advanced, the Board is satisfied that there are grounds to grant a suppression order, which will, in effect, be a non-publication order. It will apply to the decision and the Respondent's details in it and not to the publication on the Register. In making the order, the Board has taken into account that publication may have a detrimental impact on contacts held, which may, in turn, impact those who are employed by the Respondent's company. The Board also

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<sup>36</sup> Refer ss 200 and 202 of the Criminal Procedure Act

<sup>37</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>38</sup> *ibid*

considered that the impact of publication may be disproportionate to the Respondent's conduct.

- [56] Whilst a suppression order has been issued, other electrical workers need to learn from the complaint and the Board's finding. Therefore, the Board will order that an article be published. The Respondent is not to be named or identified in the article.

#### **Penalty, Costs and Publication Orders**

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

**Penalty:** Pursuant to section 147M(1)(g) of the Electricity Act 1992, the Respondent is censured.

**Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$225 (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 not be named in this decision.**

**A redacted version of this decision is to be published on the Board's website.**

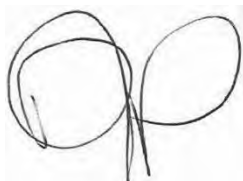
**A summary of the matter will be published by way of an article in the Electron, which will focus on the lessons to be learnt from the case. The Respondent will not be named or identified in the publication.**

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

#### **Right of Appeal**

- [59] The right to appeal Board decisions is provided for in sections 147ZA and 147ZB of the Act<sup>ii</sup>.

Signed and dated this 2<sup>nd</sup> day of November 2023



R Keys  
Presiding Member

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<sup>i</sup> Section 147M of the Act

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- (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.]*

**<sup>ii</sup> 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.*