

Before the Electrical Workers Registration Board

CE No. 22862

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Allan Perry a registered and licensed electrical worker (EW034902), (electrical inspector I1919) (the Respondent)

Decision of the Board in Respect of the Conduct of an Electrical Worker Under s147G and s147M of the Electricity Act 1992

Hearing Location:

Auckland

Hearing Type:

In person

Hearing Date:

19 March 2025

Decision Date:

19 March 2025

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Mr T Wiseman, Registered Inspector

Ms S Cameron, Registered Electrician

Mr J Hutton, Registered Inspector

Ms L Wright, Barrister

Mr T Tan, Barrister

Appearances: No appearances by parties.

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 s143 (a) (i) and s 143(f) of the Electricity Act 1992 (Act).

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Summary of the Board's Decision

- [1] The Respondent was charged with an offence related to carrying out prescribed electrical work, in contravention of s 143 of the Act relating to his failure to adequately carry out a high-risk inspection on a photovoltaic (PV) Array system. In breach of regulations 60(2) and 70(3) of the Electricity (Safety) Regulations 2010.
- [2] The Respondent was also charged with providing a false or misleading return in contravention of s 143(f) of the Act.
- [3] The Respondent accepted that he had committed the disciplinary offences as charged. The Board determined that he would be fined pursuant s147M(f) of the Act. The penalty was reduced from starting point of \$1000.00 to a final fine of \$500.00, taking into account the mitigating factors present. The Respondent was also ordered to pay costs of \$250. A record of the offending will be recorded on the public Register for a period of three years.

Introduction

- [4] The hearing resulted from a complaint about the conduct of the Respondent and a report under s147G(1) of the Act from the Investigator that the complaint should be considered by the Board.
- [5] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board.
- [6] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his power or possession.

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 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 s143 of the Act. It does not have any jurisdiction over contractual matters.

Procedure

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

Evidence

- [11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. The Board notes, as regards evidence in proceedings before it, that the provisions of s147W 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.*
- [12] 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.
- [13] The alleged disciplinary offences are set out below.

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

First Alleged Disciplinary Offence

- [14] On or around 2 September 2022 at **[Omitted]** Mr Allan Perry 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 failed to adequately carry out a high-risk inspection on a PV Array system. In breach of regulations 60(2) and 70(3) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

- [15] On or around 2 September 2022 at **[Omitted]** Mr Allan Perry 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 failed to adequately carry out a high-risk inspection on a PV Array system.

Or in the Alternative

- [16] On or around 2 September 2022 at **[Omitted]** Mr Allan Perry has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he failed to adequately carry out a high-risk inspection on a PV Array system.

- [17] These charges are laid in the alternative.

Second Alleged Disciplinary Offence

- [18] On or around 2 September 2022 at **[Omitted]** Mr Allan Perry has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided a Record of Inspection certifying a PV Array installation as compliant and safe, when it was not.

- [19] The Respondent accepts that he has committed both offences and has signed an agreed statement of facts. At the time of the offending the respondent was a licenced electrical inspector with a current practicing certificate.

Board's Decision

- [20] Based on the ASOF and having considered all the evidence, the Board finds that the Respondent has committed disciplinary offences under sections 143(a)(i) and 143(f) of the Act.

- [21] While the charge was laid in the alternative, the Board finds that the conduct is most appropriately dealt with under section 143(a)(i).

- [22] In order to make a finding under section 143(a)(i), the Board has to be satisfied that the Respondent had conducted himself in a negligent manner.

Negligence

- [23] Negligence, in a disciplinary context, is the departure by an electrical worker whilst carrying out or supervising prescribed electrical work from an accepted standard of

conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁵ test of negligence which has been adopted by the New Zealand Courts.⁶

- [24] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test⁷. 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.
- [25] When considering what an acceptable standard is, the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act,⁸ which includes protecting the health and safety of members of the public in connection with the supply and use of electricity, and promoting the prevention of damage to property in connection with the supply and use of electricity. The test is an objective one and, in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner.⁹
- [26] The Respondent was instructed to carry out an inspection of a photovoltaic (PV) array system. He failed to complete the inspection on the roof or in the roof space due to a back injury. He did not return to the site to complete this work. He failed to identify poor workmanship, and non-compliant installation methods. The PV array system was in breach of the regulations and standards. As a result of this conduct, the Respondent is guilty of an offence pursuant to s 143(a)(i) in that inspection was done in a negligent or incompetent manner. The return falsely stated that the work was complaint and safe when it was not.
- [27] The Board has determined that the Respondent failed to comply with s143(a) (i) and s143(f) of the Act.

Penalty, Costs and Publication

- [28] Having found that one or more of the grounds in section 143 applies the Board must, under s147M of the Act, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁶ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁷ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁸ See s1A Electricity Act 1992

⁹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

Penalty

- [29] The Board has the discretion to impose a range of penalties, which are set out in s147M 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.¹⁰ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹¹
- (a) protection of the public and consideration of the purposes of the Act;¹²
 - (b) deterring the Respondent and other Electrical Workers from similar offending;¹³
 - (c) setting and enforcing a high standard of conduct for the industry;¹⁴
 - (d) penalising wrongdoing;¹⁵ and
 - (e) rehabilitation (where appropriate).¹⁶
- [30] Overall, the Board should assess the conduct against the range of penalty options available in s147M of the Act, reserving the maximum penalty for the worst cases¹⁷ and applying the least restrictive penalty available for the particular offending.¹⁸ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty¹⁹ that is consistent with other penalties imposed by the Board for comparable offending.²⁰
- [31] 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.²¹
- [32] Based on the above, the Board's penalty decision is that the starting point for the offending is fine of \$1000.00. Taking into account the Respondent's guilty plea, the circumstances of the offence, previous good character, co-operation and the fact that the Respondent is retired and has voluntarily cancelled his practicing licence, the fine will be reduced to \$500.00.

¹⁰ *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]

¹¹ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹² Section 1A Electricity Act 1992

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

¹⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁶ *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

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

¹⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

¹⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²¹ 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.

Costs

- [33] Under s147N 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.
- [34] 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.²²
- [35] In *Collie v Nursing Council of New Zealand*,²³ 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.*
- [36] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁴ 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.
- [37] 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.
- [38] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$250.00 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.

²² *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.

²³ [2001] NZAR 74

²⁴ CIV-2011-485-000227 8 August 2011

Publication

- [39] 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 Act²⁵. The Board can, pursuant to s147Z of the Act, also order publication over and above the public register notation. Under s147Z 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.
- [40] 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.
- [41] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²⁶. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁷. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁸. 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*²⁹.
- [42] 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 interest³⁰. 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.
- [43] 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 not be identified in the Electron. The Registrar will record the Board's action in the Register of Electrical Workers in accordance with section 128(1)(c)(viii) of the Act. The Respondent will be named in this decision, which will be publicly available on the Board's website.
- [44] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act which allows for prohibition of publication.

Penalty, Costs and Publication Orders

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

²⁵ Refer sections 128 of the Act

²⁶ Section 14 of the Act

²⁷ Refer sections 200 and 202 of the Criminal Procedure Act

²⁸ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁹ *ibid*

³⁰ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- Penalty:** Pursuant to s147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$500.00
- Costs:** Pursuant to s147N of the Act, the Respondent is ordered to pay costs of \$250.00 (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 s128(1)(c)(viii) of the Act.
- The Respondent will be named in this decision, which will be publicly available on the Board's website.
- A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case lessons. The Respondent will not be named in the publication.
- In terms of s147Z of the Act, there will not be action taken to publicly notify the Board's action.

- [46] 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

- [47] The right to appeal Board decisions is provided for in s147ZA and s147ZB of the Actⁱ.

Signed and dated this 24th day of April 2025



R Keys
Presiding Member

ⁱ 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—

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- (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.*