

## Before the Electrical Workers Registration Board

CE No. 22454  
Electrical Worker: Gary Rossouw (the Respondent)  
Registration Number: E 253305  
Electrical Worker Number: EW 114517  
Registration Class: Electrician

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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: 18 May 2022

#### Board Members Present:

Mel Orange (Presiding)  
Monica Kershaw, Registered Electrician  
Jane Davel, Lay Member  
Russell Keys, Registered Inspector  
Ashley Yan, Registered Electrical Engineer  
Martin Perry, Registered Electrician

Appearances: Mr J Barlow 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(b)(ii), 143(a)(i) and 143(f) of the Act.

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**Summary of the Board’s Decision**

[1] The Respondent negligently created a risk of serious harm to any person, carried out prescribed electrical work in a negligent and incompetent manner and failed to provide an electrical safety certificate and certificate of compliance. The failings were serious. The Respondent has previously offended. His licence and registration are cancelled for a period of five years. He is ordered to pay costs of \$1,125. The Board will publish its decision and will record the disciplinary outcome on the Public Register for a period of three years.

**Procedure**

[2] On 18 May 2022, the Board issued a Minute detailing the Board’s disciplinary finding and its orders under sections 147M, 147N and 147Z of the Act. The following confirms that Minute.

**Introduction**

[3] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator that the complaint should be considered by the Board.

- [4] The Respondent was served with a Notice of Hearing setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

**First Alleged Disciplinary Offence**

1. On or around 6 February 2021 to 2 June 2021 at [OMITTED], Mr Gary Rossouw 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:
  - a. Failed to properly mount and secure photovoltaic (PV) solar array panels;
  - b. Failed to ensure protective earthing bond to metallic frames of PV solar array panels;
  - c. Used incorrect TPS cables to extend circuits from the PV Array panels to the electrical equipment;
  - d. Failed to provide mechanical protection on string wiring (cables) from the PV array panels to the electrical equipment in the storage boxes;
  - e. Failed to provide signs, labels and emergency shut down procedures as per AS/NZS5033:2012 and AS/NZS4509.1:2009;
  - f. Failed to install a suitable device for main isolating switch as per AS/NZS 60898;
  - g. Installed distribution switchboard without an earthing system in part consisting of an earth electrode as listed in AS/NZS 4059:2011; and/or
  - h. Failed to provide IP rating enclosures for batteries and electrical equipment.

In breach of regulations 20(1), 59, 60(2)(c), 60(2)(d), of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 6 February 2021 to 2 June 2021 at [OMITTED], Mr Gary Rossouw 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:
  - a. Failed to properly mount and secure PV solar array panels;
  - b. Failed to ensure protective earthing bond to metallic frames of PV solar array panels;
  - c. Used incorrect TPS cables to extend circuits from the PV Array panels to the electrical equipment;
  - d. Failed to provide mechanical protection on string wiring (cables) from the PV array panels to the electrical equipment in the storage boxes;

- e. Failed to provide signs, labels and emergency shut down procedures as per AS/NZS5033:2012 and AS/NZS4509.1:2009;
- f. Failed to install a suitable device for main isolating switch as per AS/NZS 60898;
- g. Installed distribution switchboard without an earthing system in part consisting of an earth electrode as listed in AS/NZS 4059:2011; and/or
- h. Failed to provide IP rating enclosures for batteries and electrical equipment.

Or in the Alternative

- 3. On or around 6 February 2021 to 2 June 2021 at [OMITTED], Mr Gary Rossouw 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:
  - a. Failed to ensure protective earthing bond to metallic frames of PV solar array panels;
  - b. Installed distribution switchboard without an earthing system in part consisting of an earth electrode as listed in AS/NZS 4059:2011; and/or
  - c. Failed to provide IP rating enclosures for batteries and electrical equipment.

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

- 4. On or around 6 February 2021 to 2 June 2021 at [OMITTED], Mr Gary Rossouw has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide an Electrical Safety Certificate or Certificate of Compliance within the maximum allowable timeframes for prescribed electrical work undertaken.

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

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

#### **Function of Disciplinary Action**

[7] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.

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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

- [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*,<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.”*

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

### **Interim Suspension**

- [10] On 18 February 2022, the Board was informed of a complaint about the Respondent and was provided with the complaint and attachments to it. The Board decided, on an ex-parte basis, to suspend the Respondent’s licence pending the completion of the investigation or until such time as a hearing was held.

### **Background to the Hearing**

- [11] The Respondent was sent a copy of the complaint and was asked to provide a response. His response was:

*I confirm receipt of the complaint and wish to respond as follows:*

*I strongly refute the allegations that I have committed disciplinary offences as referred to in the MBIE letter dated 06<sup>th</sup> July 2021, items (a), (b) and (f).*

*This complaint is vexatious or at least frivolous. The complainant’s allegations are peppered with lies are unfounded, and defamatory.*

- [12] The Respondent did not provide any evidence or submissions as regards his allegation that the complaint was vexatious and frivolous. The Board did not consider that the complaint was either vexatious or frivolous.
- [13] As noted above, the Respondent was served with a Notice of Proceeding, which set out the allegations the Investigator was pursuing. A prehearing conference was scheduled. The Respondent did not attend. He was sent a copy of the minutes from the conference. He responded on 8 February 2022, attaching what he called a “Notice” and an “Unrebutted affidavit of Truth”. The notice stated:

*i, a living soul, :gary-sydney-charles: of the family Rossouw, has come to learn that the New Zealand Government trades as a corporation known as HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND (the corporation) on the U.S. Securities and Exchange Commission;*

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

*i :gary-sydney-charles: have no recollection of entering into a contract with the corporation and therefore do not consent to the jurisdiction of the Electrical Workers Registration Board, a subsidiary of the corporation;*

*i :gary-sydney-charles: a living soul, do not consent to these proceedings unless proof in the form of a witnessed contract with my wet ink signature can be furnished by signed courier post by 4:00pm on Friday 11<sup>th</sup> February 2022;*

*Please find attached an unrebutted affidavit as notice of my standing, including a fee schedule for any breach of my claims, statements, assertions and facts contained therein;*

[14] The Respondent was then served with a Notice of Hearing. He responded by stating:

*To Mr M Orange acting as Presiding Member of the Electrical Workers Registration Board, Take notice; i, :gary-sydney-charles: of the family Rossouw and a living soul (not a legal fiction or straw man) decline the offer of a hearing of the EWRB;*

*i refer you to my previous email correspondence dated 8th February 2022 and draw your attention to the fee schedule attached to the unrebutted affidavit;*

*i do hereby request the Bond Surety Number of Mr M Orange acting as Presiding Member of the Electrical Workers Registration Board;*

*Yours sincerely,*

*:gary-sydney-charles:*

*All rights reserved*

*Non waived*

[15] A copy of an email to the Respondent from Counsel for the Investigator with “no contract” and “no consent” written over it was also provided.

[16] The Respondent did not appear at the hearing. The Board was satisfied that he had been given and received the notices required under the Act. The matter proceeded.

### **Evidence**

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

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

*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.*

- [18] The Board received signed briefs of evidence from the Investigator, the Complainant, and Mr David Olsen, an Electrical Inspector engaged by the Investigator as an expert.
- [19] The matter before the Board involved the installation of a solar photovoltaic system by the Respondent for the Complainant in a field on a wooden structure, as shown in the following picture taken by the Complainant of the site.



- [20] The system included the installation of:
- (a) 150 watt solar panels;
  - (b) deep cycle batteries;
  - (c) solar chargers;
  - (d) generator and connection;
  - (e) distribution switchboard; and
  - (f) inverters supplying 230 volts to three 16amp outlets for connectable installations on-site.
- [21] The Respondent did not issue an Electrical Safety Certificate (“ESC”) or a Certificate of Compliance (“COC”) for the prescribed electrical work.
- [22] The Complainant reported trouble with the system, which only worked intermittently. The Complainant reported the issues to the Respondent, who did not engage with him. The system eventually failed when it was affected by strong winds and after it had been soaked in water.
- [23] The Complainant engaged an Electrical Inspector to inspect the Respondent’s work via video call. The Inspector concluded that the electrical work was unsafe and did not comply with the required regulations and standards. The Complainant proceeded to make a complaint to the Board.

[24] The Investigator engaged Mr Olsen to carry out a review of the Respondent’s prescribed electrical work and to provide a report and his opinion on the compliance of the work. He reported:

- (a) the Respondent had failed to properly mount the photovoltaic solar array panels (the “Panels”) securely to a structure only using plastic cable ties;
- (b) the Panels were not electrically connected with a protective earthing bond to metallic frames creating the potential for serious harm;
- (c) the Respondent used incorrect string circuit cables to extend the Panels to the electrical equipment;
- (d) there was a failure to provide mechanical protection on the cables;
- (e) the electrical equipment installed did not have specific signs, labels, and emergency shutdown procedures;
- (f) the Respondent did not install a suitable device for the main isolating switch for the electrical distribution switchboard;
- (g) the Respondent installed a distribution switchboard without an earthing system or, alternatively, failed to include the correct protective devices for an isolated supply creating the potential for serious harm; and
- (h) the Respondent did not provide an adequate enclosure for batteries and electrical equipment, which failed to avoid water ingress creating a risk of serious harm.

[25] In summary, Mr Olsen found the system was not properly installed and that the prescribed electrical work was carried out in a way that exposed people to the risk of electrical shock or electrocution and which endangered surrounding buildings.

[26] Mr Olsen, in his report, identified the various provisions of AS/NZS 3000:2007 and AS/NZS 5033:2012 that had been breached. He provided the following table with his report:

Electrical Report Item reference	Description of work	Detail of non-compliance	Wiring rules AS/NZS 3000:2007, Companion AS/NZS Standards	Electricity Act 1992, Electricity (Safety) Regulations 2010	Consequences	Risk Rating 1) contrary to an enactment 2) negligence/incompetence, 3) a risk of serious harm,
Item 5.3.1.1 Photo 1	PV Solar Array Panels	Not mounted securely to structure	AS/NZS5033:2012 2.2.1,  AS/NZS5033:2012 4.4.2.1	ESR 60 (2)(d)	Broken electrical wiring and connections, persons or animals being hit by flying panels in storm conditions	1, 2

Electrical Report Item reference	Description of work	Detail of non-compliance	Wiring rules AS/NZS 3000:2007, Companion AS/NZS Standards	Electricity Act 1992, Electricity (Safety) Regulations 2010	Consequences	Risk Rating 1) contrary to an enactment 2) negligence/incompetence, 3) a risk of serious harm,
Item 5.3.1.2 Photos 2 & 3	PV Solar Array Panels	No protective earthing bond to metallic frames	AS/NZS5033:2012 4.4.2.1	ESR 60 (2) (d)	Potential for voltages to be applied to metal not bonded under fault conditions resulting in electric shocks or electrocution	1, 2, 3
Item 5.6.1.3 Photo 4 & 5	PV Solar Array Panels	String circuit cables incorrect for use	AS/NZS5033:2012 4.1, AS/NZS5033:2012 4.3.6.2	ESR 60 (2)(d)		1, 2
Item 5.3.1.4 Photo 6	PV Solar Array Panels	String wiring (cables) not mechanically protected	AS/NZS5033:2012	ESR 60 (2)(d)	Damage to cables causing short circuits	1, 2
Item 5.3.2.1 Photos 7, 8 & 9	Electrical Equipment	No Specific Labelling of equipment	AS/NZS5033:2012 5.3, AS/NZS4509.1:200 9.2.3	ESR 60 (2)(c) & (d)	Persons not having shutdown procedures and signage to isolate in an emergency	1, 2
Item 5.3.2.2 Photo 7	Distribution Switchboard	Switchboard suitable device for Main Switch	AS/NZS3000:2007 2.3.2.2.2,	ESR 59		1, 2
Item 5.3.2.3	Distribution Switchboard	No earth electrode located for the earthing system, alternatively, not having correct protective devices for an isolated supply	AS/NZS4509.1:200 9 4.4.2.1 AS/NZS4509.1:200 9 4.4.2.2 AS/NZS3000:2007 7.3.6 alternatively, AS/NZS4509.1:200 9 4.4.3.2	ESR 20 (1) ESR 60 (2)(c) alternatively, ESR 20 (1) ESR 60 (2)(c)	Potential for an electrically unsafe installation to persons resulting in electric shocks or electrocution or danger to buildings under electrical fault conditions.	1, 2, 3
Item 5.3.2.4 Photo 8 & 9	Enclosures for electrical equipment	Not having fixings to lock and correct IP rating for water ingress.	AS/NZS3000:2007 1.5.4.4 (a) & (b) AS/NZS3000:2007 1.5.14 AS/NZS3000:2007 3.3.1 AS/NZS3000:2007 3.10.2.3	ESR 20 (1) ESR 59 ESR 60(2)(d)	Enclosure lid/cover not fixed to avoid water ingress & restriction to access direct or indirect contact to live parts for persons.	1, 2, 3

[27] The Complainant, who was present at the hearing, gave evidence as to the impacts of the Respondent’s work and his unwillingness to acknowledge the issues or remediate them. He stated that they were without power for two months as a result, and he lost some \$23,000 as a consequence.

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

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

- (a) Failed to ensure protective earthing bond to metallic frames of PV solar array panels;
- (b) Installed distribution switchboard without an earthing system in part consisting of an earth electrode as listed in AS/NZS 4059:2011; and
- (c) Failed to provide IP rating enclosures for batteries and electrical equipment.

[29] The Board has also decided that the Respondent **has** carried out prescribed electrical work in a negligent and incompetent manner being an offence under section 143(a)(i) of the Act, in that he:

- (a) Failed to properly mount and secure PV solar array panels;
- (b) Used incorrect TPS cables to extend circuits from the PV Array panels to the electrical equipment;
- (c) Failed to provide mechanical protection on string wiring (cables) from the PV array panels to the electrical equipment in the storage boxes;
- (d) Failed to provide signs, labels and emergency shut down procedures as per AS/NZS5033:2012 and AS/NZS4509.1:2009; and
- (e) Failed to install a suitable device for main isolating switch as per AS/NZS 60898.

[30] Finally, the Board has also decided that the Respondent failed to provide a return being an offence under section 143(f) of the Act, in that he failed to provide an Electrical Safety Certificate or Certificate of Compliance within the maximum allowable timeframes for prescribed electrical work undertaken.

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

#### Jurisdiction

[32] The Respondent, in his correspondence to the Board, has claimed the Board has no jurisdiction.

[33] The Respondent was first registered as an electrical worker on 18 June 2009. To become an electrical worker, the Respondent would have had to make an application and have met registration requirements set out in the Act.

[34] The Respondent's first licence authorising him to carry out prescribed electrical work as an Electrician was granted on 19 June 2009. He re-licensed on 1 July 2010 and has re-licensed every two years since. His most recent licence was granted for a further two years on 1 July 2021. In order to re-license, the Respondent has to make an

application, pay a fee and have met the statutory requirements to be issued with a new license, including the requirement to complete a Board directed Competency Programme every two years.

- [35] The fact that the Respondent has obtained registration and licencing under the Act so that he could legally carry out prescribed electrical work shows that, since 2009, he has, of his own volition, agreed to come within the provisions of the Act. He sought to take advantage of and enjoy a legal authority to carry out presented electrical work. In doing so, he also made himself the subject of the disciplinary provisions in the Act. He cannot, now that he has been complained about, simply state that the Board has no jurisdiction on the basis of what is a legal nonsense and a fiction. The Sovereign Citizen claims and statements put forward by the Respondent have no bearing on the Board's functions or its legal jurisdiction to hear and determine a complaint about him. The Respondent is a registered electrical worker and, as such, he comes within the Board's jurisdiction.

### Serious Harm

- [36] The charges put before the Board were laid in the alternatives of negligently creating a risk of serious harm to any person, or a risk of significant property damage under section 143(b)(ii) and, as alternatives, negligence or incompetence under section 143(a)(i) and contrary to an enactment under section 143(a)(ii).
- [37] There is a hierarchy to the disciplinary charges in that the Board needs to first consider whether the prescribed electrical work was carried out or caused to be carried out in a manner that was contrary to an enactment. If the Board finds in the affirmative, it then needs to consider whether the conduct reaches the threshold for a finding of negligence or incompetence. If that threshold is met, the Board then needs to consider whether a risk of serious harm or significant property damage was created.
- [38] Contrary to an enactment is a form of strict liability offence in that all that has to be proven is that the relevant enactment has been breached – in this 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>5</sup>. 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.*

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<sup>5</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

(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.*

[39] Turning to negligence and/or incompetence, there are no statutory definitions of the terms. It is noted, however, that they are not the same. In *Beattie v Far North Council*<sup>6</sup> Judge McElrea noted:

*[43] Section 317 of the Act uses the phrase “in a negligent or incompetent manner”, so it is clear that those adjectives cannot be treated as synonymous.*

[40] 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 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>.

[41] 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*”.

[42] The New Zealand Courts have stated that an assessment of negligence and/or incompetence 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 of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[43] 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<sup>11</sup>. 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<sup>12</sup>.

[44] The Board notes that the purposes of the Act are:

### **1A Purposes**

*The purposes of this Act are—*

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<sup>6</sup> Judge McElrea, DC Whangarei, CIV-2011-088-313

<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]

<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> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

<sup>12</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

- (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.]*

[45] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Electricity (Safety) Regulation 2010 and, in turn, with the Standards and Codes of Practice listed in Schedule 2 of the Regulations. As such, when considering what is and is not an acceptable standard, they must be taken into account.

[46] Turning to seriousness in *Collie v Nursing Council of New Zealand*,<sup>13</sup> the Court's noted, as regards the threshold for disciplinary matters, that:

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

[47] With respect to a risk of serious harm or significant property damage, serious harm is defined in section 2 of the Act. It means:

*death; or*

*injury that consists of or includes loss of consciousness; or*

*a notifiable injury or illness as defined in section 23 of the Health and Safety at Work Act 2015.*

[48] The relevant parts of Section 23 of the Health and Safety at Work Act 2015 are:

**23 Meaning of notifiable injury or illness**

(1) *In this Act, unless the context otherwise requires, a notifiable injury or illness, in relation to a person, means—*

(a) *any of the following injuries or illnesses that require the person to have immediate treatment (other than first aid):*

(i) *the amputation of any part of his or her body:*

(ii) *a serious head injury:*

(iii) *a serious eye injury:*

(iv) *a serious burn:*

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

- (v) *the separation of his or her skin from an underlying tissue (such as degloving or scalping):*
- (vi) *a spinal injury:*
- (vii) *the loss of a bodily function:*
- (viii) *serious lacerations:*
- (b) *an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment:*
- (c) *an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance:*

[49] Significant property damage is not defined in the Act. Section 16(1)(b)(ii) of the Act, which relates to notification of accidents, also refers to serious harm and to property damage. In respect of damage, it requires notification where there is:

*damage to any place or part of a place that renders that place or that part of that place unusable for any purpose for which it was used or designed to be used before that accident.*

[50] As section 16 refers to both serious harm and to damage, the Board considers significant property damage in section 143(b)(ii) should be interpreted in line with the definition in section 16(1)(b)(ii).

[51] Actual serious harm or significant property damage need not occur. There need only be a risk that either might occur. The risk must be real in that there needs to be a material or substantial possibility, chance or likelihood that serious harm or significant property damage will occur. A real risk has also been described as one that a reasonable person would not brush aside as being far-fetched or fanciful<sup>14</sup>.

[52] The Board received evidence of prescribed electrical work that was not compliant. The evidence was not challenged.

[53] Under regulation 59 of the Safety Regulations, all prescribed electrical work on a low voltage domestic installation must be installed, tested, inspected, and connected so as to comply with Part 2 of AS/NZS 3000. As the Respondent's prescribed electrical work had not been completed in accordance with provisions of AS/NZS 3000, it follows that he has completed the prescribed electrical work in a manner that was contrary to an enactment.

[54] Additionally, as the prescribed electrical work involved work on a photovoltaic system and on a stand alone generator, under regulation 60 of the Safety Regulations, additional mandatory standards applied:

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<sup>14</sup> Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2) [1967] 1 AC 617

**60 Certain installations must comply with Part 2 of AS/NZS 3000**

(2) *If any of the following are installed so as to comply with Part 2 of AS/NZS 3000, they must also comply with the standards indicated:*

(c) *a stand-alone power system: AS/NZS 4509.1:*

(d) *a photovoltaic array: AS/NZS 5033:*

[55] Again, on the basis of the unchallenged evidence, there was a clear failure to carry out prescribed electrical work in accordance with an enactment.

[56] It is further noted that under regulation 20 of the Safety Regulations below, the prescribed electrical work may have been deemed to be unsafe, because there was a failure to earth, and whilst there was overload protection it may not have operated under all fault conditions in the absence of an earth.

**20 Electrically unsafe works and installations**

(1) *Works and installations are deemed to be electrically unsafe if there are not measures in place that do at least 1 of the following:*

(a) *prevent accidental direct or indirect contact with exposed fittings or exposed conductive parts of the works or installations:*

(b) *provide for the automatic interruption of the power supply to the works or installations on the occurrence of a fault that would cause injury or damage to any person or property:*

(c) *prevent an electric current passing through the body of a person on contact with any part of the works or installations, or limit that current so that the magnitude and duration of the shock current cannot exceed the IEC shock current standards.*

[57] And, in respect of the manner in which the install was carried out:

(2) *Works and installations are also deemed to be electrically unsafe if—*

(a) *the characteristics of any fittings used in the works or installations are impaired; or*

(g) *cables (including underground cables) are inadequately protected against the risk of damage by the nature of their covering or their method of installation*

[58] Further, the manner in which the installation was completed was such that the definition of “electrically unsafe” would have applied.

**5 Meanings of electrically safe and electrically unsafe**

*In these regulations, unless the context otherwise requires—*

*electrically unsafe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is a significant risk that a person may suffer serious harm, or that property may suffer significant damage, as a result of dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment.*

- [59] The Respondent's failings were fundamental to the point where his competence was called into question. There was scant regard for compliance requirements to the point where the Board questioned whether the Respondent retained the knowledge or skill required to carry out the prescribed electrical work. The Board considers that he was not only negligent in how he carried out the installation but that he was also incompetent in respect of the failure to properly mount and secure photovoltaic (PV) solar array panels, the use of incorrect TPS cables to extend circuits from the PV array panels to the electrical equipment, the failure to provide mechanical protection on string wiring, to provide signs, labels and emergency shut down procedures, and to install a suitable device for a main isolating switch.
- [60] Given the fundamental nature of the failings, the number of them, and the incompetence shown, the Board also decided that the conduct was serious enough to warrant a disciplinary outcome.
- [61] As noted, however, the failings went beyond that. The prescribed electrical work was electrically unsafe. Mr Olsen reported multiple instances where, in his opinion, the compliance failings created a risk of serious harm to persons. Those were the failure to provide an earth bond to metallic frames, the failure to provide an earth and to protect against water ingress. The Board, which includes Members with extensive industry knowledge and experience, agreed. The manner in which the installation had been completed created a risk of serious harm, and, as such, a finding with respect to the above aspects under section 143(b)(ii) of the Act is appropriate.

#### Certification

- [62] The allegation was that the Respondent had failed to provide returns required under an enactment, in this instance an Electrical Safety Certificate (ESC) and a Certificate of Compliance (CoC).
- [63] An ESC must, under regulation 74A of the Safety Regulations, be issued for all prescribed electrical work on installations, part installations or any fitting that supplies an installation or a part installation with electricity. Under regulation 74C an ESC must be issued within 20 days after connection.
- [64] Under regulation 65, a CoC must be issued for all general and high risk prescribed electrical work on installations or part installations. Under regulation 65(3) general prescribed electrical work may not be treated as complete until a CoC is issued for it. At the same time, under regulation 73A(1)(c) a CoC must have been issued or sighted before a power supply is connected to an installation or part installation on which

prescribed electrical work has been carried out. Under regulation 74E(2) of the Safety Regulations, a CoC must be issued within 20 days of completion.

- [65] The installation was connected and was providing power. The Respondent did not provide any certification. The disciplinary offence under section 143(f) of the Act of failing to provide a return has been committed.

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

- [66] 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.
- [67] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make a decision on the appropriate orders to be made.

### Penalty

- [68] 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*<sup>15</sup> 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.*

- [69] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*<sup>16</sup>. The High Court, when discussing penalty, stated:

*[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner’s conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner’s offending. Wilful and calculated dishonesty*

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<sup>15</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>16</sup> [2012] NZAR 481

*normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.*

- [70] Cancellation of a license is the equivalent of striking off within the electrical worker licensing regime.
- [71] The licensing regime exists to ensure the public can have confidence in those who carry out prescribed electrical. It is integral to the purposes of Act,<sup>17</sup> which include the protection of the health and safety of members of the public in connection with the supply and use of electricity and the promotion of the prevention of damage to property in connection with the supply and use of electricity.
- [72] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,<sup>18</sup> 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.
- [73] The disciplinary offending was at the upper end in terms of seriousness and in respect of the Respondent's failings. The manner in which the Respondent carried out the prescribed electrical work put lives at risk. This is the Respondent's second disciplinary offence, and it comes at a time when the Board is considering the conduct of the Respondent in respect of a complaint made prior to this one. Whilst that matter was not as serious, it does show a pattern of non-complaint prescribed electrical work. The Board disciplined the Respondent in 2018.<sup>19</sup> In that matter, the Board fined the Respondent \$1,500. The fact that this is his second offence is an aggravating factor. A more serious penalty is required.
- [74] The Respondent's approach to the matters under inquiry is also an aggravating feature as the manner in which a licensed person responds to a disciplinary complaint and conducts their defence can be taken into consideration by the Board. In *Daniels v Complaints Committee*<sup>20</sup> the High Court held that it was permissible to take into account as an adverse factor when determining penalty that the practitioner had responded to the complaints and discipline process in a belligerent way.
- [75] Taking all of the above factors into account, the Board considers that a cancellation of the Respondent's registration and licence is not only warranted to punish the Respondent but also required to deter others from such conduct and to protect the

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<sup>17</sup> Section 1A of the Act.

<sup>18</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

<sup>19</sup> *Rossouw* [2018] EWRB 1934

<sup>20</sup> [2011] 3 NZLR 850.

public. Cancellation will also ensure that the Respondent's competence is re-evaluated if and when he seeks to obtain a new licence.

- [76] Accordingly, the Board will cancel the Respondent's registration and licence and order that he may not apply to be re-registered or re-licensed for a period of five (5) years.

### Costs

- [77] 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.

- [78] 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>21</sup>.

- [79] In *Collie v Nursing Council of New Zealand*,<sup>22</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.*

- [80] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>23</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.*

- [81] 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

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<sup>21</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>22</sup> [2001] NZAR 74

<sup>23</sup> CIV-2011-485-000227 8 August 2011

current matter was moderately complex. Adjustments based on the High Court decisions above are then made.

- [82] The manner in which a licensed person responds to a disciplinary complaint and conducts their defence can also be taken into consideration by the Board. In *Daniels v Complaints Committee*<sup>24</sup> the High Court held that it was permissible to take into account as an adverse factor when determining penalty, that the practitioner had responded to the complaints and discipline process in a belligerent way. The Respondent has not cooperated and has put forward spurious defences, which he has not substantiated. Notwithstanding, the Board has not imposed a higher than usual order for costs.
- [83] The Board's scale of costs for a matter of this nature is greater than \$1,125. Notwithstanding, given that the Respondent did not appear and the hearing was straightforward, the costs are set at \$1,125.

### Publication

- [84] 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>25</sup>. 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.
- [85] 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.
- [86] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>26</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>27</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>28</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>29</sup>.

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<sup>24</sup> [2011] 3 NZLR 850.

<sup>25</sup> Refer sections 128 of the Act

<sup>26</sup> Section 14 of the Act

<sup>27</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>28</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>29</sup> *ibid*

[87] 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>30</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.

[88] Based on the above, the Board will order further publication. A summary of the matter will be published in the Electron. The Respondent will be named in that publication. The Board will also carry out general publication so that the public is aware of the cancellation of the Respondent's registration and licence.

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

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

**Penalty:** Pursuant to section 147M(1)(a)(i) of the Electricity Act 1992, the Respondent's registration and licence is cancelled and pursuant to section 147M(1)(a)(iii) of the Act the Respondent may not apply to be re-registered or re-licensed before the expiry of a period of five (5) years.

**Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$1,125 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

**The Respondent will be named in this decision.**

**A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will be named in the publication.**

**Under section 147Z of the Act, there will be action taken to publicly notify the Board's action.**

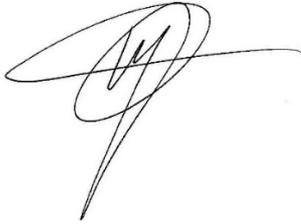
### **Right of Appeal**

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

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<sup>30</sup> Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Signed and dated this sixteenth day of June 2022.



**Mr M Orange**  
Presiding Member

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**<sup>i</sup> 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—*

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- (a) *pass any specified examination:*
  - (b) *complete any competence programme or specified period of training:*
  - (c) *attend any specified course of instruction.*
  - (3) *The Board may take only 1 type of action in subsection (1) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b), (c), (e) or (g).*
  - (4) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an—*
    - (a) *offence for which the person has been convicted by a court; or*
    - (b) *infringement offence for which the person has been issued with an infringement notice and has paid an infringement fee.*
  - (5) *The Board must not exercise any authority conferred by this section in respect of any offence committed by any person before the date of that person's registration or, as the case may be, the date on which that person's provisional licence was issued if at that date the Board was aware of that person's conviction for that offence.*
  - (6) *If a person is registered under Part 10 in respect of more than 1 class of registration, the Board may exercise its powers under subsection (1)(a) to (e) in respect of each of those classes or 1 or more of those classes as the Board thinks fit.]*

**ii Section 147ZA Appeals**

- (1) *A person who is dissatisfied with the whole or any part of any of the following decisions, directions, or orders may appeal to the District Court against the decision, direction, or order:*
  - (e) *any decision, direction, or order under any of sections 108, 109, 120, 133, 137, and 153 or Part 11 (except section 147C).*

**Section 147ZB Time for lodging appeal**

*An appeal under section 147ZA must be brought within—*

- (a) *20 working days after notice of the decision, direction, or order was given to, or served on, the appellant; or*
- (b) *any further time that the District Court may allow on application made before or after the expiration of that period.*