

Before the Electrical Workers Registration Board

CE No. 22490

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Johan Van Der Merwe a registered and licensed electrical worker (E 277453, EW 145768, Electrician) (the Respondent)

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

Hearing Location: by audio visual link

Hearing Type: In Person

Hearing and Decision Date: 5 December 2022

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Ms M Kershaw, Registered Electrician

Mr M Macklin, Registered Inspector

Ms J Davel, Lay Member

Ms A Yan, Registered Electrical Engineer

Appearances: M Hall 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)(i) and 143(f) of the Act.

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Summary of the Board’s Decision

[1] The Respondent carried out prescribed electrical work in a negligent manner, and he provided a false or misleading return. The matter was dealt with on the basis of an Agreed Statement of Facts. He is fined \$1,000 and ordered to pay costs of \$225. A record of the disciplinary offending will be recorded on the public register for a period of three years.

Introduction

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

[3] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

First Alleged Disciplinary Offence

1. On or around 27 November 2020 – 15 December 2020 at [OMITTED], Taupo, Mr Johan Werner Van Der Merwe 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 supervise prescribed electrical work undertaken by trainees resulting in:

- (a) LED light driver terminals exposed (missing terminal cover); and/or
- (b) Loose wires twisted together (earth wire for a LED light driver) and left out of terminal hanging in the open; and/or
- (c) Loose plug bases used for bathroom extraction fans not mounted down and leaving 230V terminals exposed

In breach of regulations 13, 20 and 59 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 27 November 2020 – 15 December 2020 at [OMITTED], Taupo, Mr Johan Werner Van Der Merwe 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 supervise prescribed electrical work undertaken by trainees resulting in:
 - (a) LED light driver terminals exposed (missing terminal cover); and/or
 - (b) Loose wires twisted together (earth wire for a LED light driver) and left out of terminal hanging in the open; and/or
 - (c) Loose plug bases used for bathroom extraction fans not mounted down and leaving 230V terminals exposed.

Second Alleged Disciplinary Offence

3. On or around 27 November 2020 – 15 December 2020 at [OMITTED], Taupo, Mr Johan Werner Van Der Merwe has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he falsely certified the prescribed electrical work as being lawful, when this work did not comply with mandatory requirements pertaining to visual inspection in breach of regulation 66 of the Electricity (Safety) Regulations 2010.

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

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

Function of Disciplinary Action

[6] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by

the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*¹ and in New Zealand in *Dentice v Valuers Registration Board*².

- [7] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,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.”

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

Procedure

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

Evidence

- [10] 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 section 147W of the Act apply. This section states:

In all proceedings under this Part, the Board may, subject to section 156, receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not it would be admissible as evidence in a court of law.

- [11] The Board heard from the Respondent prior to it making a decision.
- [12] As noted, the matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was engaged to carry out prescribed electrical work on a new residential build. The Respondent was assisted by a trainee and a former trainee. Following its completion, a complaint was made about the quality and compliance of the work. The Investigator engaged the services of Mr Miquel van der Wees, an Electrical Inspector, to review the complaint and the prescribed electrical work the Respondent had carried out. He provided a report in which he noted the Respondent:
- (a) Failure to supervise – the trainees were not adequately supervised resulting in them carrying out non-compliant prescribed electrical work, including leaving live terminals exposed in the roof space in breach of Safety Regulations 13 and 92;

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

- (b) Failure to visually inspect – the non-compliant prescribed electrical work in the roof space was not visually inspected in breach of Safety Regulation 59 and AS/NZS3000:2007 clause 8.2.1; and
- (c) Certification of Prescribed Electrical Work – provided false or misleading information on the Certificate of Compliance and Electrical Safety Certificate in in breach of Safety Regulation 66.

[13] The Respondent accepted that he failed to adequately supervise which resulted in LED light driver terminals being left exposed, loose wiring being twisted together and left hanging out of a terminal, and loose plug bases used for the bathroom extractor fan not mounted down leaving 230V terminals exposed. He further accepted that he had provided false or misleading returns.

[14] The general rule is that all facts in issue, or relevant to the issue in a case, must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

Board's Conclusion and Reasoning

[15] The Board has decided that the Respondent **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 supervise prescribed electrical work undertaken by trainees resulting in:

- (a) LED light driver terminals exposed (missing terminal cover);
- (b) Loose wires twisted together (earth wire for a LED light driver) and left out of terminal hanging in the open; and
- (c) Loose plug bases used for bathroom extraction fans not mounted down and leaving 230V terminals exposed.

[16] The Board has also decided that the Respondent **has** provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he falsely certified the prescribed electrical work as being lawful, when this work did not comply with mandatory requirements pertaining to visual inspection in breach of regulation 66 of the Electricity (Safety) Regulations 2010.

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

First Offence

[18] The charges put before the Board were laid in the alternatives of contrary to an enactment under section 143(a)(ii) of the Act and negligence or incompetence under section 143(a)(i) of the Act.

[19] 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.

- [20] Contrary to an enactment is a form of strict liability offence in that all that need be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010 or any of the cited standards within Schedule 2 of the Regulations. The Board does not need to find that there was intention, fault or negligence⁵.
- [21] 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*⁶ 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.*
- [22] 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*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.
- [23] 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*,⁹ it was stated as “an inability to do the job”.
- [24] The New Zealand Courts have stated that an assessment of negligence and/or incompetence in a disciplinary context is a two-stage test¹⁰. 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.
- [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 Act¹¹. 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 practitioner¹².

⁵ *Blewman v Wilkinson* [1979] 2 NZLR 208

⁶ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

⁹ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

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

¹¹ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

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

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

1A Purposes

The purposes of this Act are—

- (a) *to provide for the regulation, supply, and use of electricity in New Zealand; and*
- (b) *Repealed.*
- (c) *to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and*
- (d) *to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand; and*
- (da) *to provide for the regulation of fittings and electrical appliances that are, or may be, exported pursuant to an international trade instrument; and*
- (e) *to provide for the regulation of electrical workers.]*

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

[28] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹³ 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.

Contrary to an Enactment

[29] The prescribed electrical work was carried out on a low voltage installation. Under the Safety Regulations, the work had to be carried out in accordance with AS/NZS 3000. This is because regulation 59 stipulates:

59 Low and extra-low voltage installations to comply with AS/NZS 3000

(1) *Every low or extra-low voltage domestic installation, or part of a domestic installation, must be installed, tested, inspected, and connected so as to comply with Part 2 of AS/NZS 3000 if it has a maximum demand at or below—*

- (a) *80 amperes per phase if single-phase; or*
- (b) *50 amperes per phase if multi-phase.*

[30] The Board received evidence that the prescribed electrical work had not been completed in accordance with AS/NZS 3000, and the Respondent accepted that

¹³ [2001] NZAR 74

evidence and agreed that the work was not in accordance with it. As such, the prescribed electrical work set out in the First Offence was carried out in a manner that was contrary to an enactment.

Negligence

- [31] The non-compliant prescribed electrical work was, however, serious and a finding that the Respondent carried out prescribed electrical work in a negligent manner is appropriate. The finding relates to the Respondent's supervision, which was not carried out to an acceptable standard.
- [32] Section 74 of the Act restricts the carrying out of prescribed electrical work to certain authorised persons. The Act also creates various exemptions including a general exemption in section 76 of the Act and an exemption under section 77(1) for trainees¹⁴. The exemptions require that the persons are supervised by a register and licensed electrical worker who is authorised to carry out the prescribed electrical work.

- [33] Supervision in turn 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:*

- [34] The definition was considered in *Electrical Workers Registration Board v Gallagher*¹⁵. 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.

¹⁴ 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.

¹⁵ *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

- [35] Finally, the Board maintains Supervision Procedures for Trainees¹⁶. These provide guidance as to the responsibilities of the supervisor and supervisee.
- [36] Given the requirements of the Act and Regulations and noting the Boards Supervision Procedures the Board considers the level of supervision required will depend on the circumstances under which the prescribed electrical work is being undertaken and the abilities of the trainee being supervised. A supervisor needs to assess each situation and determine the level of supervision which is appropriate. Consideration should be given to factors including but not limited to:
- (a) the type and complexity of the prescribed electrical work to be supervised;
 - (b) the experience of the person being supervised;
 - (c) the supervisor's experience in working with the person being supervised and their confidence in their abilities;
 - (d) the number of persons or projects being supervised; and
 - (e) the geographic spread of the prescribed electrical work being supervised.
- [37] The Board will also look at and take into consideration the standard and compliance of the prescribed electrical work completed under supervision when considering the adequacy of the supervision provided.
- [38] In this instance, there were three significant non-compliance issues: LED light driver terminals exposed (missing terminal cover); loose wires twisted together (earth wire for a LED light driver) and left out of terminal hanging in the open; and loose plug bases used for bathroom extraction fans not mounted down and leaving 230V terminals exposed. Those were serious non-conventions. The prescribed electrical work was not safe.
- [39] In this respect, regulation 13 of the Safety Regulations states:
- 13 *Doing work on works, installations, fittings, and appliances***
- (1) *A person who does work on any works or installation, or on any part of any works or installation, must ensure—*
- (a) *that the resulting works or installation, or part of the works or installation, is electrically safe; and*
 - (b) *if the work is on only part of any works or installation, that the work has not adversely affected the electrical safety of the rest of the works or installation.*
- [40] The terms electrically safe and unsafe are defined in regulation 5 of the Safety Regulations:
- 5 *Meanings of electrically safe and electrically unsafe***
- In these regulations, unless the context otherwise requires—*

¹⁶ Dated October 2010

electrically safe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is no significant risk that a person or property will be injured or damaged by dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment

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.

[41] Further, regulation 20(1) deems certain installations to be unsafe:

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:

[42] The compliance failings accepted by the Respondent created a risk of direct or indirect contact with exposed fittings or exposed conductive parts.

[43] If the Respondent had supervised as per the Board's guidelines and the directives in *Gallagher*, then the compliance issues either would not have occurred or would have been identified prior to the installation being connected to a power supply.

[44] Given the above, the Board found, on the basis of the Agreed Statement of Facts, that the Respondent had supervised prescribed electrical work in a manner that was not in accordance with the standards to be expected of an electrical worker and that the transgressions were sufficiently serious enough to warrant a disciplinary finding of negligence.

False or Misleading Certification

[45] The charge under section 143(f) of the Act related to the provision of a false or misleading return. Determining whether a return is false or misleading is a question of fact to be decided objectively, and the intention of the issuer is irrelevant¹⁷.

[46] The returns referred to are issued under the Safety Regulations. There is a requirement that an Electrical Safety Certificate be issued for all prescribed electrical work. It must contain a statement to the effect that the installation or part installation is connected to a power supply and is safe to use. There is also a requirement that a Certificate of Compliance is issued for high and general risk prescribed electrical work. A Certificate of Compliance must state that the

¹⁷ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct.

- [47] The specific allegations were that the Respondent falsely certified that the prescribed electrical work was not safe or lawfully completed because of the matters determined in relation to the First Offence. The Respondent accepted those allegations. Accordingly, the offence has been committed.

Penalty, Costs and Publication

- [48] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [49] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [50] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹⁸ commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [51] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,¹⁹ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act, they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.
- [52] The Board adopted a starting point of a fine of \$2,000, an amount that was consistent with other penalties imposed by the Board for similar offending. The Board took into account that the Respondent had accepted responsibility for the disciplinary offending and that the matter was dealt with on the basis of an agreed statement of facts. Taking those factors into account, the Board decided to reduce the fine by 50% to \$1,000.

¹⁸ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

Costs

- [53] 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.
- [54] 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 case²⁰.
- [55] In *Collie v Nursing Council of New Zealand*,²¹ where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:
- But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*
- [56] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²² the High Court noted:
- [46] *All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.*
- [47] *Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.*
- [57] 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.
- [58] 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.

²⁰ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

²¹ [2001] NZAR 74

²² CIV-2011-485-000227 8 August 2011

Publication

- [59] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register as required by the Act²³. The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z the Board may, if no appeal is brought 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.
- [60] 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.
- [61] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²⁴. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁵. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁶. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²⁷.
- [62] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²⁸. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [63] 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 article will focus on the supervision elements of the offending.
- [64] 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.

²³ Refer sections 128 of the Act

²⁴ Section 14 of the Act

²⁵ Refer sections 200 and 202 of the Criminal Procedure Act

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

²⁷ *ibid*

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

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$1,000.

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 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 not be named in the publication.

[66] 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

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

Signed and dated this 5th day of January 2023



R Keys

Presiding Member

ⁱ Section 147M of the Act

(1) If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—

(a) do 1 or more of the following things:

(i) order that the person's registration or practising licence (or both) be cancelled:

(ii) order that the person's provisional licence be cancelled:

(iii) order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:

(b) order that the person's registration or practising licence (or both), or the person's provisional licence, be suspended—

(i) for any period that the Board thinks fit; or

(ii) until that person does 1 or more of the things specified in subsection (2):

-
- (c) order that the person's registration or practising licence (or both), or the person's provisional licence, be restricted for any period that the Board thinks fit, in either or both of the following ways:
 - (i) by limiting the person to the work that the Board may specify:
 - (ii) by limiting the person to doing, or assisting in doing, work in certain circumstances (for example, by limiting the person to work only on approved premises or only in the employ of an approved employer):
 - (d) order that the person be disqualified from doing or assisting in doing prescribed electrical work that the person would otherwise be authorised to do in that person's capacity as a person to whom this Part applies—
 - (i) permanently, or for any period that the Board thinks fit; or
 - (ii) until that person does 1 or more of the things specified in subsection (2):
 - (e) order the person to do 1 or more of the things specified in subsection (2) within the period specified in the order:
 - (f) order the person to pay a fine not exceeding \$10,000:
 - (g) order that the person be censured:
 - (h) make no order under this subsection.
- (2) The things that the person can be required to do for the purposes of subsection (1)(b), (d), and (e) are to—
- (a) pass any specified examination:
 - (b) complete any competence programme or specified period of training:
 - (c) attend any specified course of instruction.
- (3) The Board may take only 1 type of action in subsection (1) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b), (c), (e) or (g).
- (4) No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an—
- (a) offence for which the person has been convicted by a court; or
 - (b) infringement offence for which the person has been issued with an infringement notice and has paid an infringement fee.
- (5) The Board must not exercise any authority conferred by this section in respect of any offence committed by any person before the date of that person's registration or, as the case may be, the date on which that person's provisional licence was issued if at that date the Board was aware of that person's conviction for that offence.
- (6) If a person is registered under Part 10 in respect of more than 1 class of registration, the Board may exercise its powers under subsection (1)(a) to (e) in respect of each of those classes or 1 or more of those classes as the Board thinks fit.]

ii Section 147ZA Appeals

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

Section 147ZB Time for lodging appeal

An appeal under section 147ZA must be brought within—

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