

Before the Electrical Workers Registration Board

CE No. 22193
Electrical Worker: Martin Walters (the Respondent)
Registration Number: E 248253
Electrical Worker Number: EW 107836
Registration Class: Electrician

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: Auckland
Hearing Type: In Person
Hearing Date: 18 June 2020
Decision Date: 18 June 2020

Board Members Present:

Mel Orange (Presiding)
Michael Macklin, Registered Inspector
Monica Kershaw, Registered Electrician
Mac McIntyre, Registered Electrician
Jane Davel, Lay Member
Russell Keys, Registered Inspector
Ashley Yan, Registered Electrical Engineer

Counsel: Sarah Blick 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 section 143(a)(ii) and 143(f) of the Act.

Contents

Introduction	2
Function of Disciplinary Action	4
Procedure	4
Evidence	4
Board’s Conclusion and Reasoning	7
Contrary to an Enactment.....	7
Certification.....	7
Penalty, Costs and Publication	8
Penalty	8
Costs.....	9
Publication	9
Penalty, Costs and Publication Orders	10
Right of Appeal	11

Introduction

- [1] 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.
- [2] 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 8 July to 3 August 2019, at [REDACTED] [REDACTED] Mr Martin Walters 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. Installed a socket outlet using wiring of a cross sectional area less than 2.5mm²; and/or
 - b. Failed to install signage at the ceiling access hatch warning of down lights; and/or
 - c. Installed insulated non-sheathed conductors that were not enclosed for their entire length; and/or
 - d. Has installed cables for a heat, light fan that were not protected against mechanical strain damage at the point of termination.

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

Or in the Alternative

2. On or around 8 July to 3 August 2019 at [REDACTED]
[REDACTED] Mr Martin Walters 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. Installed a socket outlet using wiring of a cross sectional area less than 2.5mm²; and/or
 - b. Failed to install signage at the ceiling access hatch warning of down lights; and/or
 - c. Installed insulated non-sheathed conductors that were not enclosed for their entire length; and/or
 - d. Has installed cables for a heat, light fan that were not protected against mechanical strain damage at the point of termination.

Or in the Alternative

3. On or around 8 July to 3 August 2019, at [REDACTED]
[REDACTED], Mr Martin Walters 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. Installed a socket outlet using wiring of a cross sectional area less than 2.5mm²; and/or
 - b. Failed to install signage at the ceiling access hatch warning of down lights; and/or
 - c. Installed insulated non-sheathed conductors that were not enclosed for their entire length; and/or
 - d. Has installed cables for a heat, light fan that were not protected against mechanical strain damage at the point of termination.

Second Alleged Disciplinary Offence

4. On or around 8 July to 3 August 2019, at [REDACTED]
[REDACTED], Mr Martin Walters has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has provided a Certificate of Compliance that contains incomplete and incorrect information.

[3] 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.

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

Function of Disciplinary Action

[5] 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.

[6] 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.”

[7] 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

[8] The matter proceeded on the basis of an Agreed Statement of Facts. The Respondent appeared. Counsel for the Investigator’s appearance was excused.

Evidence

[9] 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.

[10] The matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent, the director of Walters Electrical Limited, was engaged to carry out electrical work on a bathroom renovation. Between 25 June 2019 and 8 July 2019 the Respondent and his trainee apprentice installed two LED downlights, a heat light and fan combination unit, and an RCD powerpoint. The work was general risk prescribed electrical work requiring the issue of a Certificate of Compliance (CoC) and Electricity Safety Certificate (ESC).

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

- [11] The property owner had issues with the work and made a complaint. Mr Mark Carter, an Electrical Inspector, reviewed the work and provided a technical report. He noted that the Respondent had:
- a. *Removed the previous shaver outlet and replaced this with a new RCD protected socket outlet utilising the existing wiring, a section of 1mm² 2C + E cabling that was connected to the lighting circuit and was protected at the switchboard via 10A rated plug in miniature circuit breaker. This section of cabling as with all electrical wiring located within the ceiling cavity, was completely covered in thermal insulation. Section 3.5.1 and Table 3.3 of AS/NZS 3000 indicate that conductors supplying a socket outlet shall have a cross sectional area of not less than 2.5mm². Connecting the new RCD socket outlet to a conductor less than 2.5mm² was in breach of AS/NZS 3000:2007 3.5.1, Table 3 and therefore ESR 59(1)(a);*
 - b. *Failed to install a warning sign adjacent to the ceiling hatch access for the recessed lights in breach of AS/NZS 3000:2007 4.5.2.3.2, and therefore ESR 59(1)(a);*
 - c. *In the installation of the HLF, installed insulated non-sheathed conductors that were not enclosed for their entire length. The sheath of TPS wiring had been removed to a point that approximately 40–50mm of the internal (primary) insulated conductors were exposed to touch beyond a plastic cover used to cover the connection terminals. Mr Walters failed to ensure that the conductors were enclosed for their entire length, in breach of AS/NZS 3000:2007 3.10.1.1 which states “Insulated, unsheathed cables shall be enclosed in a wiring enclosure throughout their entire length”. This was also in breach of ESR 59(1)(a);*
 - d. *In the installation of the HLF, no form of strain relief had been provided at the point of termination of installed cables, impacting on the integrity of electrical terminations. The HLF unit had featured the means to provide strain relief in the form of a cable clamp fastened by two screws. This clamp had however been removed. Further, insulated unsheathed conductors were squashed beneath the edge of a plastic cover used to cover the connection terminals, resulting in compression marks on the 1mm² conductors. For electrical terminations, AS/NZS 3000 mandates the use of “suitable connections for the cable size and type that reduce mechanical strain at joints and terminations” and “suitable connections for the cable size and type that hold the cable in place without damage”. This installation was in breach of AS/NZS 3000:2007 3.1.2 (c), 3.3.2.8 (b), 3.3.2.8 (c), and 3.7.1, and ESR 20(2)(d) and 59 (1) (a).*
- [12] The Respondent issued two combined CoC/ESCs, an original and an amended. Both CoCs omitted certain information or contained certain incorrect information, namely the Respondent:

- a. *has indicated reliance on supplier declarations of conformity however these were not provided with either CoC, nor was a reference provided as to where these may be located, in breach of ESR 66(1)(d) and ESR 66(3);*
- b. *has indicated reliance on manufacturer's instructions however these were not provided with the amended CoC, nor was a reference provided as to where these may be located, in breach of ESR 66(1)(d) and ESR 66(3);*
- c. *has not indicated (that he supervised a trainee) this on either CoC, in breach of ESR 67(2)(ca);*
- d. *has, on the original ESC, stated the date of connection of the PEW as being 3 August 2019. The PEW was in fact connected on 8 July 2019. No further ESC was provided with the amended CoC.*

[13] The Respondent accepted that he carried out the PEW and the breaches of the relevant requirements as described above and that he had:

- a. *Installed a socket outlet using wiring of a cross sectional area less than 2.5mm² (as described at paragraph;*
- b. *Failed to install signage at the ceiling access hatch warning of down lights;*
- c. *Installed insulated non-sheathed conductors that were not enclosed for their entire length;*
- d. *Installed cables for the HLF that were not protected against mechanical strain damage at the point of termination.*
- e. *accepts he issued a false or misleading return in that he issued two CoC containing incomplete and incorrect information as described at paragraph 12.*

[14] The Respondent also submitted:

"I agree with the facts from the inspector (Technical Advisor) and have learnt a lot from this matter. But with being caught up in a disagreement between the owner and the bathroom company hasn't helped the issues either. I couldn't get back into the house to finish certain works and without a clear work order in the first place didn't help".

"I was asked to provide a CoC by shower solutions so payment could be made by the owner which I rushed, and as a result got details of the CoC wrong".

"I also rewired the shaver point free of charge as this was outside of the allowed works."

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

Board's Conclusion and Reasoning

- [16] The Board has decided that the Respondent **has** carried out or caused to be carried out prescribed electrical work in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done being an offence under section 143(a)(ii) of the Act, in that, he;
- (a) failed to install signage at the ceiling access hatch warning of downlights;
 - (b) installed insulated non-sheathed conductors that were not enclosed for their entire length; and
 - (c) installed cables for a heat, light fan that were not protected against mechanical strain damage at the point of termination.
- [17] The Board found that the Respondent had not committed a disciplinary offence with regard to installing a socket outlet using wiring of a cross sectional area less than 2.5mm² as it noted there was appropriate protection and, as such, the socket was compliant.
- [18] The Board has also decided that the Respondent **has** provided a false or misleading return being an offence under section 143(f) of the Act.
- [19] The Board reached its decision on the basis of the Respondent's acceptance of responsibility and on the following reasoning.

Contrary to an Enactment

- [20] 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).
- [21] The Board decided that the necessary elements for the more serious charges had not been satisfied. Contrary to an enactment was the least serious of the alternatives. Unlike the other alternatives, all that need be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010. The charge is a form of strict liability offence in that it is liability without fault. Negligence need not be proved⁵. On that basis, the Board decided that the offence had been committed.

Certification

- [22] The second charge relates to the provision of a false or misleading return. In determining whether a return is false or misleading is a question of fact to be decided objectively and the intention of the issuer is irrelevant⁶.

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

⁶ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

- [23] The returns referred to is issued under the Regulations. There is 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 prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct. The information was not correct. On that basis, the offence has been committed.

Penalty, Costs and Publication

- [24] Having found that one or more of the grounds in section 143 applies the Board must, under section 147M of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [25] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [26] 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*⁷ 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.*
- [27] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*⁸ 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.
- [28] The Respondent noted that he had learnt from the complaint. He also noted that the contractor that he was working for had created on site issues and that he has severed business ties with that entity, and that the certificate of compliance was rushed resulting in the errors. The Respondent suffered a financial loss of \$3,000 as a result of the matter.
- [29] The offending was at the lower end of the scale. The Board decided based on the above and the mitigation heard that a censure would be appropriate. A censure is a

⁷ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

formal expression of disapproval. The Respondent should note that future contraventions would be treated so lightly.

Costs

- [30] 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.
- [31] 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 case⁹.
- [32] In *Collie v Nursing Council of New Zealand*¹⁰ 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.*
- [33] Based on the above the Board's costs order is that the Respondent is pay the sum of \$225 toward the costs of and incidental to the matter. In setting the amount of costs the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

Publication

- [34] 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 Act¹¹. 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.
- [35] 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.
- [36] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹². The Criminal Procedure Act 2011 sets out

⁹ *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.

¹⁰ [2001] NZAR 74

¹¹ Refer sections 128 of the Act

¹² Section 14 of the Act

grounds for suppression within the criminal jurisdiction¹³. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁴. 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*¹⁵.

- [37] 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 interest¹⁶. 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.
- [38] 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*.
- [39] 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

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

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

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$225 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

The Respondent will 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.

- [41] 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.

¹³ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁴ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350


¹⁵ *ibid*

¹⁶ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Right of Appeal

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

Signed and dated this 29th day of June 2020



Mel Orange
Presiding Member

ⁱ Section 147M of the Act

- (1) *If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—*
- (a) *do 1 or more of the following things:*
 - (i) *order that the person's registration or practising licence (or both) be cancelled:*
 - (ii) *order that the person's provisional licence be cancelled:*
 - (iii) *order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:*
 - (b) *order that the person's registration or practising licence (or both), or the person's provisional licence, be suspended—*
 - (i) *for any period that the Board thinks fit; or*
 - (ii) *until that person does 1 or more of the things specified in subsection (2):*
 - (c) *order that the person's registration or practising licence (or both), or the person's provisional licence, be restricted for any period that the Board thinks fit, in either or both of the following ways:*
 - (i) *by limiting the person to the work that the Board may specify:*
 - (ii) *by limiting the person to doing, or assisting in doing, work in certain circumstances (for example, by limiting the person to work only on approved premises or only in the employ of an approved employer):*
 - (d) *order that the person be disqualified from doing or assisting in doing prescribed electrical work that the person would otherwise be authorised to do in that person's capacity as a person to whom this Part applies—*
 - (i) *permanently, or for any period that the Board thinks fit; or*
 - (ii) *until that person does 1 or more of the things specified in subsection (2):*
 - (e) *order the person to do 1 or more of the things specified in subsection [\(2\)](#) within the period specified in the order:*
 - (f) *order the person to pay a fine not exceeding \$10,000:*
 - (g) *order that the person be censured:*
 - (h) *make no order under this subsection.*
- (2) *The things that the person can be required to do for the purposes of subsection (1)(b), (d), and (e) are to—*
- (a) *pass any specified examination:*
 - (b) *complete any competence programme or specified period of training:*

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- (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.