

## Before the Electrical Workers Registration Board

	CE No. 22072
Electrical Worker:	Graham Watkins (the Respondent)
Registration Number:	EST 8868
Electrical Worker Number:	EW 039387
Registration Class:	Electrical Service Technician

---

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

---

Hearing Location:	New Plymouth
Hearing Type:	In Person or On the Papers
Hearing Date:	18 October 2019
Decision Date:	13 November 2019

#### Board Members Present:

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

#### 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.

**Contents**

**Introduction**..... 2

**Function of Disciplinary Action** ..... 6

**Procedure** ..... 6

**Evidence**..... 6

**Board’s Conclusion and Reasoning**..... 7

    First, Fourth, Seventh and Tenth Charges ..... 10

    Second, Fifth, Eighth and Eleventh Charges ..... 11

    Third, Sixth, Ninth and Twelfth Charges ..... 11

**Penalty, Costs and Publication**..... 12

    Penalty ..... 12

    Costs..... 13

    Publication ..... 14

**Penalty, Costs and Publication Orders** ..... 15

**Right of Appeal**..... 15

**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. Between 20 August 2018 and 7 September 2018 at [REDACTED] [REDACTED] Graham Watkins 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 did not seal the external isolating switch to prevent water entry.

Or in the Alternative

2. Between 20 August 2018 and 7 September 2018 at [REDACTED] [REDACTED] Graham Watkins 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 did not seal the external isolating switch to prevent water entry in breach of regulation 59 of the Electricity (Safety) Regulations 2010.

### **Second Alleged Disciplinary Offence**

3. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins has carried out prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under 143(d) of the Act IN THAT, he has carried out prescribed electrical work that is outside the limits of his registration as an Electrical Service Technician.

### **Third Alleged Disciplinary offence**

4. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins has failed to provide a return under any enactment relating to prescribed electrical work being an offence under section 143(f) of the Act, IN THAT, he provided a false or misleading return in the name of [REDACTED].

### **Fourth Alleged Disciplinary Offence**

5. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins 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 has carried out non-compliant prescribed electrical work IN THAT, he;
- a) did not seal the external isolating switch to prevent water entry; and/or
  - b) terminated Earth and Neutral conductors to bus bars tunnel terminal screws combining with other circuits; and/or
  - c) did not ensure the earth test satisfied the requirements of regulation 59 (2) of the Electricity (Safety) Regulations 2010.

Or in the alternative

6. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins 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 has carried out non-compliant prescribed electrical work as follows;
- a) did not seal the external isolating switch to prevent water entry; and/or
  - b) terminated Earth and Neutral conductors to bus bars tunnel terminal screws combining with other circuits; and/or

- c) did not ensure the earth test satisfied the requirements of section 59 (2) of the Electricity (Safety) Regulations 2010

In breach of regulation 59, of the Electricity (Safety) Regulations 2010.

#### **Fifth Alleged Disciplinary Offence**

7. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins has carried out prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under 143 (d) of the Act IN THAT, he has carried out prescribed electrical work that is outside the limits of his registration as an Electrical Service Technician.

#### **Sixth Alleged Disciplinary Offence**

8. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins has failed to provide a return under any enactment relating to prescribed electrical work being an offence under section 143(f) of the Act, IN THAT, he provided a false or misleading return in the name of [REDACTED].

#### **Seventh Alleged Disciplinary Offence**

9. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins 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 did not seal the external isolating switch to prevent water entry.

Or in the Alternative

10. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins 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 did not seal the external isolating switch to prevent water entry in breach of regulation 59 of the Electricity (Safety) Regulations 2010.

#### **Eighth Alleged Disciplinary Offence**

11. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins has carried out prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under 143(d) of the Act IN THAT, he has carried out

prescribed electrical work that is outside the limits of his registration as an Electrical Service Technician.

**Ninth Alleged Disciplinary Offence**

12. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins has failed to provide a return under any enactment relating to prescribed electrical work being an offence under section 143(f) of the Act, IN THAT, he provided a false or misleading return in the name of [REDACTED].

**Tenth Alleged Disciplinary Offence**

13. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins 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 did not seal the external isolating switch to prevent water entry.

Or in the alternative

14. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins 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 has carried out non-compliant prescribed electrical work that did not seal the external isolating switch to prevent water entry in breach of regulation 59 of the Electricity (Safety) Regulations 2010.

**Eleventh Alleged Disciplinary Offence**

15. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins has carried out prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under 143 (d) of the Act IN THAT, he has carried out prescribed electrical work that is outside the limits of his registration as an Electrical Service Technician.

**Twelfth Alleged Disciplinary Offence**

16. Between 20 August 2018 and 7 September 2018 at [REDACTED]  
[REDACTED] Graham Watkins has failed to provide a return under any enactment relating to prescribed electrical work being an offence under section 143(f) of the Act, IN THAT, he provided a false or misleading return in the name of [REDACTED].

- [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*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.
- [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*<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.”*

- [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.
- [9] The appearance of the Investigator and Counsel for the investigator was excused.

### **Evidence**

- [10] 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 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 evidence from the Respondent prior to it making a decision.

---

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

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

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

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

- [12] The Agreed Statement of Facts set out that the Respondent was the director of Taranaki Refrigeration Limited. Between 20 August and 5 September 2018 he installed new Fujitsu (ASTG18LVCC) heat pumps at four separate addresses. The work was prescribed electrical work under (PEW) Schedule 1 of the Electricity (Safety) Regulations 2010 in that it involved the connection of new cables into existing socket outlet circuits and/or the running of new circuits from the switchboard and the connection to outdoor isolators in each of the properties. The PEW was carried out by the Respondent who then falsely certified that the work was had been carried out by his electrician employee.
- [13] Following completion of the PEW the Investigator engaged Mr David Olsen to carry out an inspection at each property and to provide a report of his findings. For all properties (offences 1, 4, 7 and 10), Mr Olsen determined that the Respondent did not seal the external isolating switch to prevent water entry (with reference to standards AS/NZS 3000:2007 3.3.2.3, AS/NZS 3000:2007 3.7.2.1(f) and AS/NZS 3000:2007 3.10.2.3).
- [14] For the [REDACTED] property (offence 4), Mr Olsen determined that in addition to the failure to seal the external isolating switch to prevent water entry, the Respondent also terminated earth and neutral conductors to bus bars tunnel terminal screws combining with other circuits<sup>2</sup> (with reference to standard AS/NZS 3000:2007 2.9.4.3(d)(ii)); and did not ensure the earth test satisfied the requirements of regulation 59(2) of the Electricity (Safety) Regulations 2010.
- [15] The Respondent also accepted in the Agreed Statement of Facts that he had carried out PEW that was outside of the limitations of his licence and registration as an Electrical Service Technician. He further accepted that he had completed combined Certificates of Compliance and Electrical Safety Certificates for each installation, providing another electrical worker's details without his knowledge or authorisation.
- [16] The Agreed Statement of Facts also set out that the Respondent carried out the installations and certified the documents as he did, as his authorised employee was away at the time and he had pressure from his clients. He noted that he had intended to raise the matter with his employee but what he had done was discovered before he had a chance to do so.
- [17] 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**

- [18] The Board's findings in respect of each of the charges is as follows:

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

The Respondent has, at [REDACTED] 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 did not seal the external isolating switch to prevent water entry in breach of regulation 59 of the Electricity (Safety) Regulations 2010.

### **Second Alleged Disciplinary Offence**

The Respondent has, at [REDACTED] carried out prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under 143(d) of the Act IN THAT, he has carried out prescribed electrical work that is outside the limits of his registration as an Electrical Service Technician.

### **Third Alleged Disciplinary offence**

The Respondent has, at [REDACTED] provided a false or misleading a return under relating to prescribed electrical work being an offence under section 143(f) of the Act, IN THAT, he provided a return in the name of [REDACTED]

### **Fourth Alleged Disciplinary Offence**

The Respondent has, at [REDACTED] 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 has carried out non-compliant prescribed electrical work as follows;

- a) did not seal the external isolating switch to prevent water entry; and/or
- b) terminated Earth and Neutral conductors to bus bars tunnel terminal screws combining with other circuits; and/or
- c) did not ensure the earth test satisfied the requirements of section 59 (2) of the Electricity (Safety) Regulations 2010

In breach of regulation 59, of the Electricity (Safety) Regulations 2010.

### **Fifth Alleged Disciplinary Offence**

The Respondent has, at [REDACTED] carried out prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under 143 (d) of the Act IN THAT, he has carried out prescribed electrical work that is outside the limits of his registration as an Electrical Service Technician.



#### **Sixth Alleged Disciplinary Offence**

The Respondent has, at [REDACTED] provide a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided a return in the name of [REDACTED].

#### **Seventh Alleged Disciplinary Offence**

The Respondent has, at [REDACTED] 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 did not seal the external isolating switch to prevent water entry in breach of regulation 59 of the Electricity (Safety) Regulations 2010.

#### **Eighth Alleged Disciplinary Offence**

The Respondent has, at [REDACTED] carried out prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under 143(d) of the Act IN THAT, he has carried out prescribed electrical work that is outside the limits of his registration as an Electrical Service Technician.

#### **Ninth Alleged Disciplinary Offence**

The Respondent has, at [REDACTED] provide a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided a return in the name of [REDACTED]

#### **Tenth Alleged Disciplinary Offence**

The Respondent has, at [REDACTED] 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 has carried out non-compliant prescribed electrical work that did not seal the external isolating switch to prevent water entry in breach of regulation 59 of the Electricity (Safety) Regulations 2010.

#### **Eleventh Alleged Disciplinary Offence**

The Respondent has, at [REDACTED] carried out prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under 143 (d) of the Act IN THAT, he has carried out prescribed electrical work that is outside the limits of his registration as an Electrical Service Technician.

## Twelfth Alleged Disciplinary Offence

The Respondent has, at [REDACTED] provided a false or misleading a return under being an offence under section 143(f) of the Act, IN THAT, he provided a return in the name of [REDACTED].

[19] The Board made it decisions on the basis of the Agreed Statement of Facts and the Respondent's acceptance of responsibility and on the basis of the following.

### First, Fourth, Seventh and Tenth Charges

[20] The Board noted that the First, Fourth, Seventh and Tenth charges were laid in the alternatives of negligence or incompetence under section 143(a)(i) and contrary to an enactment under section 143(a)(ii).

[21] Contrary 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 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.*

(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.*

[22] There was clear evidence that breaches of the Electricity (Safety) Regulations 2010 and of AS/NZS 3000:2017 which is cited, in the Regulations, as a standard that must be complied with. As such the necessary elements of the disciplinary offence had been established.

[23] The Board decided, however, that the conduct was not sufficiently serious enough for a finding of negligence or incompetence.

[24] Negligence is the departure by an electrical worker, whilst carrying out or supervising prescribed electrical work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*<sup>6</sup> test of negligence which has been adopted by the New Zealand Courts<sup>7</sup>.

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

<sup>6</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

- [25] 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>8</sup> it was stated as “an inability to do the job”.
- [26] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>9</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.
- [27] With regard to seriousness in *Collie v Nursing Council of New Zealand*<sup>10</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.*

- [28] It is on the basis of the above that the Board has decided that the Respondent’s conduct did not reach the threshold for it to have been considered negligent or incompetent.

#### Second, Fifth, Eighth and Eleventh Charges

- [29] The Second, Fifth, Eighth and Eleventh charges were that the Respondent had carried out prescribed electrical work (PEW) that was outside of the limits of his licence and registration.
- [30] Section 84 of the Act allows the Board to designate classes of registration and to specify for each of those classes the prescribed electrical work that a person is authorised to do. The Board does so by way of Gazette Notices. The applicable Gazette Notice<sup>11</sup> specified the limits for a person holding registration as an Electrical Service Technician.
- [31] The PEW carried out by the Respondent included the installation and connection of conductors used in an installation. An EST is not authorised by the Gazette Notice to carry out such work. As such he has worked outside of the limits of his registration and licence.

#### Third, Sixth, Ninth and Twelfth Charges

- [32] The Third, Sixth, Ninth and Twelfth charges were that the Respondent had provided a false or misleading return.

<sup>8</sup> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

<sup>9</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>10</sup> [2001] NZAR 74

<sup>11</sup> 2017-go1984

- [33] The returns referred to are issued under the 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 prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct.
- [34] The returns falsely stated that an authorised electrician had carried out the work when, in fact, he had not. Given these factors the Board found that the disciplinary offending had been committed.
- [35] The Board can only deal with the matters before it and that its jurisdiction is only in relation to disciplinary matters. It did note, however, that the Respondent's conduct as regards providing certification that used another person's name and licence details was conduct that could have come within the provisions of regulations 69 (offences relating to certificates of compliance), 74D (offences relating to electrical safety certificates) and 74H (offences relating to record-keeping) all of which can incur a Level 2 which, in the case of an individual is a fine not exceeding \$10,000. It may have also amounted to a criminal act in that it could have been construed as being fraudulent behaviour.

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

- [36] 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.
- [37] The Respondent made submissions at the hearing as regards penalty, costs and publication. The Agreed Statement of Facts also contained relevant information.

### Penalty

- [38] 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>12</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.*

---

<sup>12</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

- [39] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>13</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 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.
- [40] The Board notes that offending related to four properties and that the offending in respect of each was the same. In essence that the Respondent had breached section 143(a)(ii), 143(d) and 143(f) of the Act in respect of each.
- [41] The Board adopted a starting point of a fine of \$2,000. It noted the submission that the Respondent was under work pressure. It did not accept this as mitigation. The Respondent is, however, entitled to a reduction in the fine on the basis that he immediately accepted responsibility and took steps to ensure the noncompliance issues were dealt with promptly. The Board also noted that the Respondent now outsources the connection of heat pumps to a properly authorised person.
- [42] On the basis of the early acceptance of responsibility and the matter being dealt with on an Agreed Statement of Facts the Board decide to reduce the fine by 50% to \$1,000.

#### Costs

- [43] Under section 147N of the Act the Board may require the Respondent to pay the Board any sum that it considers just and reasonable towards the costs and expenses of, and incidental to the investigation, prosecution and the hearing.
- [44] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case<sup>14</sup>.
- [45] In *Collie v Nursing Council of New Zealand*<sup>15</sup> where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:
- But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*
- [46] Based on the above the Board's costs order is that the Respondent is pay the sum of \$250 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.

<sup>13</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

<sup>14</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>15</sup> [2001] NZAR 74

## Publication

- [47] 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>16</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.
- [48] 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.
- [49] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>17</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>18</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>19</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>20</sup>.
- [50] 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>21</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.
- [51] Based on the above the Board will not order further publication.
- [52] 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.

---

<sup>16</sup> Refer sections 128 of the Act

<sup>17</sup> Section 14 of the Act

<sup>18</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>19</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>20</sup> *ibid*

<sup>21</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Penalty, Costs and Publication Orders

[53] 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 \$250 (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.**

**In terms of section 147Z of the Act, there will not be action taken to publicly notify the Board's action.**

[54] 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

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

Signed and dated this 13<sup>th</sup> day of November 2019



**Mel Orange**  
Presiding Member

---

### <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—
    - (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.