

Before the Electrical Workers Registration Board

Complaint Numbers: CE No. 22487, CE No. 22488, CE No. 22513

In the matter of: Disciplinary hearings before the Electrical Workers Registration Board

Between: The Ministry of Business Innovation and Employment

And

Allan William West a registered and licensed electrical worker (I 2577, EW 033106, Inspector) (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: New Plymouth

Hearing Type: In Person

Hearing and Decision Date: 6 December 2022

Board Members Present:

Mr M Orange, Barrister (Presiding)
Mr R Keys, Registered Inspector
Ms M Kershaw, Registered Electrician
Mr M Macklin, Registered Inspector
Ms J Davel, Lay Member
Ms A Yan, Registered Electrical Engineer

Appearances: N Self 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 Decisions:

CE22487: The Respondent **has not** committed a disciplinary offence.

CE22488: The Respondent **has not** committed a disciplinary offence.

CE22513: The Respondent **has** committed disciplinary offences under sections 143(a)(i) and 143(f) of the Act.

Contents

Summary of the Board’s Decision	2
The Board	3
Introduction	3
Function of Disciplinary Action	6
Procedure	6
Evidence	7
CE22487	7
CE22488	9
CE22513	10
Board’s Conclusion and Reasoning	10
CE22487	10
CE22488	11
CE22513	11
Penalty, Costs and Publication	16
Penalty	17
Costs.....	17
Publication	19
Penalty, Costs and Publication Orders	20
Right of Appeal	20

Summary of the Board’s Decision

[1] The Board’s findings were:

CE22487: The Respondent has not committed a disciplinary offence

CE22488: The Respondent has not committed a disciplinary offence

CE22513: The Respondent carried out prescribed electrical work in a negligent manner, and he provided a false or misleading return. He is censured and ordered to pay costs of \$750. A record of the disciplinary offending will be recorded on the Public Register for a period of three years. There will not be any further publication of the matter.

The Board

- [2] The Board is a statutory body established under the Electricity Act.¹ Its functions include hearing complaints about and disciplining persons to whom Part 11 of the Act applies.

Introduction

- [3] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator² that the complaint should be considered by the Board. Under section 147T of the Act, the Investigator must prosecute the matter at a Board hearing and may be represented by counsel.
- [4] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

CE No. 22487

First Alleged Disciplinary Offence

1. On or around 14 September 2017 at [OMITTED], New Plymouth, Mr Allan West 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 carry out an adequate safety inspection on a 'Bailey' type caravan registration number W992T and issued a Warrant of Electrical Fitness that had the following non-compliant issues:
 - a. The overcurrent protection fitted for the caravan electricity supply exceeded the rating of the supply lead and the supply lead fitting; and/or
 - b. There was no continuity between the supply lead earth pin and socket outlet earth pin which the microwave as connected to.

In breach of regulations 78 of the Electricity (Safety) Regulations 2010 which required the WoEF to be issued in accordance with AS/NZS 3001:2008.

Or in the Alternative

2. On or around 14 September 2017 at [OMITTED], New Plymouth, Mr Allan West 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 carry out an adequate safety inspection on a 'Bailey' type caravan registration number W992T and

¹ Section 148 of the Act.

² Under section 145 of the Act, an Investigator is appointed by the Chief Executive of the Ministry

issued a Warrant of Electrical Fitness that had the following non-compliant issues:

- a. The overcurrent protection fitted for the caravan electricity supply exceeded the rating of the supply lead and the supply lead fitting; and/or
- b. There was no continuity between the supply lead earth pin and socket outlet earth pin which the microwave as connected too.

Second Alleged Disciplinary Offence

3. On or around 14 September 2017 at [OMITTED], New Plymouth, Mr Allan West has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he issued a Warrant of Electrical Fitness on a 'Bailey' type caravan registration number W992T, that did not meet all the lawful requirements as set out in regulation 78 of Electricity (Safety) Regulations 2010.

CE No. 22488

First Alleged Disciplinary Offence

1. On or around 21 April 2017 at [OMITTED], New Plymouth Mr William West 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 carry out an adequate safety inspection on a Roller Team T-Line motorhome and issued a Warrant of Electrical Fitness that had the following non-compliant issue:
 - (a) The means of connection of the two protective earthing conductors did not meet the mandatory requirements of Part 1 of section 8 of AS/NZS3000:2007 in breach of regulations 78 of the Electricity (Safety) Regulations 2010 which required the WoEF to be issued in accordance with AS/NZS 3001.2008.

Or in the Alternative

2. On or around 21 April 2017 at [OMITTED], New Plymouth Mr William West 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 carry out an adequate safety inspection on a Roller Team T-Line motorhome and issued a Warrant of Electrical Fitness that had the following non-compliant issue:
 - (a) The means of connection of the two protective earthing conductors did not meet the mandatory requirements of Part 1 of section 8 of AS/NZS3000:2007.

Second Alleged Disciplinary Offence

3. On or around 21 April 2017 at [OMITTED], New Plymouth Mr William West has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he issued a Warrant of Electrical Fitness on a Roller Team T-Line motorhome, that did not meet all the lawful requirements as set out in regulation 78 of Electricity (Safety) Regulations 2010.

CE No. 22513

First Alleged Disciplinary Offence

1. On or around 6 October 2017 at [OMITTED], New Plymouth, Mr William West 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 carry out an adequate safety inspection on a Toyota 'Coaster' motorhome, registration number [OMITTED] and issued a Warrant of Electrical Fitness that had the following non-compliant issue:
 - (a) The overcurrent protection fitted for the Motorhome electricity supply exceeded the rating of the supply lead and the supply lead fitting in breach of regulation 78 of the Electricity (Safety) Regulation 2010 which required the WoEF to be issued in accordance with AS/NZS 3001.2008

Or in the Alternative

2. On or around 6 October 2017 at [OMITTED], New Plymouth, Mr William West 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 carry out an adequate safety inspection on Toyota 'Coaster' motorhome, registration number [OMITTED] and issued a Warrant of Electrical Fitness that had the following non-compliant issue:
 - (a) The overcurrent protection fitted for the Motorhome electricity supply exceeded the rating of the supply lead and the supply lead fitting.

Second Alleged Disciplinary Offence

3. On or around 6 October 2017 at [OMITTED], New Plymouth, Mr William West has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he issued a Warrant of Electrical Fitness on a Toyota 'Coaster' motorhome, registration number [OMITTED], that did not meet all the lawful requirements as set out in regulation 78 of Electricity (Safety) Regulations 2010.

- [5] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his/her power or possession.
- [6] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

- [7] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*³ and in New Zealand in *Dentice v Valuers Registration Board*⁴.
- [8] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,⁵ Collins J. noted that:

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”

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

Procedure

- [10] On 7 October 2022, the Board issued a Minute noting that the complainant in each matter was the same and that each involved prescribed electrical work on a connectable installation. Given those factors, the Board considers that it would be appropriate for the three matters to be consolidated into a single hearing. The Board considers that this would be consistent with the provisions of the District Court Rules 2014 as regards consolidation.⁶ Neither party objected. The matter proceeded as a consolidated hearing.

³ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

⁴ [1992] 1 NZLR 720 at p 724

⁵ [2016] HZHC 2276 at para 164

⁶ Refer rules 10.18 and 10.19 of the District Court Rules.

Evidence

[11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁷. 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.

[12] The Board received and heard from the following witnesses:

- the Respondent;
- [OMITTED], the Investigator;
- [OMITTED], Complainant, Electrical Inspector; and
- Mark Carter, Electrical Inspector, expert witness for the Investigator.

[13] The three complaints were made by Mr [OMITTED], an Electrical inspector. He attended three connectable installations⁸ for the purpose of carrying out warrant of electrical fitness (WoEF) inspections. He noted noncompliance issues. His complaints were made on the basis that the Respondent had carried out WoEF inspections and had failed to identify noncompliance issues and, on the basis of the noncompliance, that he should not have issued the WoEFs that he did.

[14] The Investigator engaged Mr Mark Carter to review the complaints and responses and to provide his opinion on the noncompliance issues complained about. Mr Carter did not visit the connectable installations. The Investigator filed the charges that were stipulated in the Notices of Proceeding on the basis of Mr Carter's reports. The Investigator did not pursue all of the matters that were complained about.

CE22487

[15] There were two noncompliance matters that the Investigator was pursuing in addition to an allegation that a false or misleading WoEF had been issued. The latter charge arose out of the noncompliance issues alleged in the first charge. The two issues were that the overcurrent protection fitted for the caravan electricity supply exceeded the rating of the supply lead and the supply lead fitting and that there was no continuity between the supply lead earth pin and socket outlet earth pin a microwave was connected to.

⁷ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁸ Connectable installations are defined in section 2(1) of the Act:

connectable installation, in relation to a vehicle, a relocatable building, or a pleasure vessel, means an electrical installation of that vehicle, relocatable building, or pleasure vessel that is designed or intended for, or capable of, connection to an external power supply that operates at or above such voltage as is prescribed for the purposes of this definition by regulations made under section 169; and includes any electrical appliance that is connected, or intended to be connected, to any such installation

- [16] Overcurrent protection for the caravan was provided by a 25A (ampere) RCBO (residual current circuit breaker with overcurrent protection) device that was installed. In addition to that device, the caravan had two MCBs (miniature circuit breakers) as per the photograph below. One had a current rating of 16A, the other a rating of 6A. If both devices were connected, the total demand on the supply lead, which was rated at 16A, would have been 22A, which would have exceeded its rating. If only the 16A MCB was connected, then the demand on the supply lead would not have exceeded its rating.



- [17] The Respondent's evidence was that only the 16A MCB was in use. The 6A MCB did not have any connections to it. Mr Carter noted that connections could, in the future, be made to the 6A MCB. The Respondent submitted that any such connections would have to be made by an authorised person who would have to take the rating of the supply lead into account when making a connection to the 6A MCB.
- [18] In terms of the earth continuity, the socket outlet complained about supplied a microwave oven. The supply cable had an earth conductor, but it was not connected to the socket outlet, as shown in the photograph below.



- [19] The Respondent's evidence was that when he tested the socket outlet when he issued a WoEF the test results showed that the socket outlet was earthed. He did not remove the socket outlet cover as part of his testing. He noted the means of connection of the other conductors shown in the photograph above and the frayed condition of the end of the earth conductor and submitted that it was possible that the earth conductor had been dislodged in the intervening period. In this respect, the Respondent noted that when he tested for earth continuity, the socket outlet would have passed even if only one strand of the earth conductor was connected. He carried out a demonstration to verify that possibility.

CE22488

- [20] There was one noncompliance matter that the Investigator was pursuing in addition to an allegation that a false or misleading WoEF had been issued. Again, the latter charge arose out of the noncompliance issues alleged in the first charge. The issue was the means of connection of two protective earthing conductors.

- [21] The Investigator alleged that a wood screw had been used to connect two earthing conductors to cabinetry and that this was an unreliable means of connection given the environmental factors the caravan would be exposed to in normal service. Neither the Complainant nor Mr Carter removed the screw to determine what type of screw it was.

- [22] The following photograph shows the position of the connection and screw.



- [23] The Respondent gave evidence that the connection was made with a self-tapping steel screw into an unthreaded earthing terminal on a gas manifold. The Respondent also provided an email from [OMITTED], who carried out work on the connectable installation complained about. It stated:

As per our conversation I can confirm that while rectifying items on the above mentioned motorhome as per Mr [OMITTED]'s failed EWOFF checklist, we checked the screw holding the bond wire to the Gas Manifold and it is most certainly as self tapping steel screw.

[24] Mr Carter noted that there would be issues with earthing if the gas manifold was removed.

CE22513

[25] There was one noncompliance matter that the Investigator was pursuing in addition to an allegation that a false or misleading WoEF had been issued. The latter charge arose out of the noncompliance issues alleged in the first charge. The issue was that the overcurrent protection fitted for the caravan electricity supply exceeded the rating of the supply lead and the supply lead fitting.

[26] The following photograph shows the supply set-up. A 25A RCBO was installed, as was a 16A and a 10A MCB, making the total potential demand 26A. The supply lead was rated at 16A. The photographs and the evidence indicated that both the 16A and the 10A MCBs were connected, making the total potential demand 26A.



Board's Conclusion and Reasoning

CE22487

[27] The Board has decided that the Respondent **has not** committed a disciplinary offence.

[28] The Board reached the decision on the basis that the Investigator had failed to establish, on the balance of probabilities, that the disciplinary offences had been committed.

[29] Firstly, with regard to the overcurrent protection, it was not established that the 6A MCB was in use. As such the demand was limited to that of the 16A MCB and it did not, therefore, exceed the maximum demand rating of the supply lead. In making the decision the Board had to consider what the supply configuration was at the time of the alleged offence, not what it potentially could have been at some future time should the 6A MCB be connected. Further, if the 6A MCB was connected, such connection would have to be carried out by an authorised person who would then be responsible for ensuring that the supply lead was correctly rated for the changed

configuration. The Board does, however, caution the Respondent that, in future, it would be advisable to remove a redundant MCB so as to ensure there is no confusion over the supply configuration.

- [30] Secondly, in terms of the socket outlet, the evidence produced by the Investigator established that the earth conductor was not connected when Mr [OMITTED] inspected the caravan. It did not establish the condition of the socket outlet at the time the Respondent tested it. His evidence was that when he tested, it was earthed. Further, the Board accepted that the connection may have failed during the normal use of the caravan in the intervening period.
- [31] Finally, as the first charge has not been proven, it follows that the allegation that the certification was false or misleading, which relied on the first charge, is also not established.

CE22488

- [32] The Board has decided that the Respondent **has not** committed a disciplinary offence.
- [33] Again, the Board reached the decision on the basis that the Investigator had failed to establish, on the balance of probabilities, that the disciplinary offences had been committed. The Investigator relied on a visual inspection. The screw was not removed to determine what sort of screw it was. Countering this, the Respondent provided evidence that the screw was not a wood screw but was a metal tek screw that would have been fit for purpose.
- [34] As the first charge has not been proven, it follows that the allegation that the certification was false or misleading, which relied on the first charge, is also not established.

CE22513

- [35] The Board has decided that the Respondent **has** carried out or caused to be carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act, IN THAT, he failed to carry out an adequate safety inspection on Toyota 'Coaster' motorhome, registration number [OMITTED] and issued a Warrant of Electrical Fitness that had the following non-compliant issue: The overcurrent protection fitted for the Motorhome electricity supply exceeded the rating of the supply lead and the supply lead fitting.
- [36] 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 issued a Warrant of Electrical Fitness on a Toyota 'Coaster' motorhome, registration number [OMITTED], that did not meet all the lawful requirements as set out in regulation 78 of Electricity (Safety) Regulations 2010.
- [37] The first charge was laid in the alternatives of negligence or incompetence under section 143(a)(i) and contrary to an enactment under section 143(a)(ii) of the Act.

- [38] There is a hierarchy to the disciplinary charge 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.
- [39] 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 negligence⁹.
- [40] There are no statutory definitions of the terms negligence or incompetence. It is noted, however, that they are not the same. In *Beattie v Far North Council*,¹⁰ 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.*
- [41] 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*¹¹ test of negligence which has been adopted by the New Zealand Courts¹².
- [42] 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*¹³ it was stated as “*an inability to do the job*”.
- [43] The New Zealand Courts have stated that an assessment of negligence and/or incompetence in a disciplinary context is a two-stage test¹⁴. 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.
- [44] When considering what an acceptable standard is, the Board must have reference to the conduct of other competent and responsible practitioners and the Board’s own assessment of what is appropriate conduct, bearing in mind the purpose of the Act.¹⁵ 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

⁹ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁰ Judge McElrea, DC Whangarei, CIV-2011-088-313

¹¹ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

¹² *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹³ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

¹⁴ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹⁵ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner.¹⁶

[45] 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.]*

[46] 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.

[47] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹⁷ 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.

[48] Looking at the matters under consideration, the allegation was that the Respondent had failed to adequately inspect the motorhome, a connectable installation.

[49] Regulations 76 to 78 of the Regulations create requirements for connectable installations.:

76 No supply without warrant of electrical fitness

- (1) Before permitting or authorising a connection for the supply of electricity to a connectable installation in a vehicle, relocatable building, or pleasure vessel, the person supplying electricity must verify*

¹⁶ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

¹⁷ [2001] NZAR 74

that the connectable installation has a current warrant of electrical fitness.

- (2) *A person who supplies electricity commits an offence and is liable on conviction to a level 1 penalty if he or she fails to comply with subclause (1).*

77 Restrictions on use of connectable installations

- (1) *A person must not hire or lease out, or offer to hire or lease out, a vehicle, relocatable building, or pleasure vessel that contains a connectable installation unless the connectable installation has a current warrant of electrical fitness.*

- (2) *A person who hires or leases out, or offers to hire or lease out, a vehicle, relocatable building, or pleasure vessel commits an offence and is liable on conviction to a level 1 penalty if he or she fails to comply with subclause (1).*

78 Issue of warrants of electrical fitness for connectable installations

- (1) *The following people may issue warrants of electrical fitness for connectable installations:*

- (a) *a person who is authorised to inspect mains work:*
- (b) *a person who, immediately before these regulations come into force, is authorised by the Secretary to issue warrants of electrical fitness, but only in respect of the same class of connectable installations that the authorisation relates to:*
- (c) *in relation to a connectable installation that has been certified under regulation 66, the person who did the certification (and, to avoid doubt, the warrant may be issued at the same time that the certification is done).*

- (2) *Every warrant of electrical fitness for a connectable installation must be issued in accordance with AS/NZS 3001, except that a warrant of electrical fitness for a connectable installation—*

- (a) *in a pleasure vessel must be issued in accordance with AS/NZS 3004.2; and*
- (b) *in a mobile medical facility must be issued in accordance with NZS 6115; and*
- (c) *that has been imported must be issued in accordance with AS/NZS 3001, but only after an assessment for compliance with Part 1 of AS/NZS 3000.*

- (3) *A person who issues a warrant of electrical fitness must—*

- (a) *give it to the person who requests the warrant; and*
 - (b) *keep a copy of the completed warrant for at least 3 years, or send a copy to WorkSafe; and*
 - (c) *complete a warrant of electrical fitness sticker that is in the form prescribed or approved by WorkSafe; and*
 - (d) *affix the sticker in a prominent place on the connectable installation.*
- (4) *A warrant of electrical fitness for a connectable installation expires on the earlier of—*
- (a) *the date on which a new warrant of electrical fitness is issued for the connectable installation; or*
 - (b) *the date that is 4 years from its date of issue or, in the case of a mobile medical facility, 1 year from its date of issue.*
- (5) *Every warrant of electrical fitness must be in a form that is either—*
- (a) *the form prescribed by the relevant standard referred to in subclause (2); or*
 - (b) *a form approved by WorkSafe.*
- (6) *If WorkSafe charges a fee to supply forms of warrants of electrical fitness, the fee must be the fee set out in Schedule 5.*
- (7) *A person commits an offence and is liable on conviction to a level 1 penalty if he or she—*
- (a) *issues a warrant of electrical fitness otherwise than in accordance with this regulation; or*
 - (b) *issues a warrant of electrical fitness for a connectable installation that is electrically unsafe; or*
 - (c) *is not authorised to issue a warrant of electrical fitness.*

[50] The persons who can inspect and issue a warrant of electrical fitness are, pursuant to regulation 78(1)(a), persons who are registered and licensed by the Board as Electrical Inspectors. The Board has previously found that carrying out a warrant of electrical fitness on a connectable installation is prescribed electrical work.¹⁸ That position was not challenged.

[51] As noted above, the regulations require that electrical warrants of fitness be issued on the basis of and in accordance with cited standards. With respect to a caravan,

¹⁸ Graham [2020] EWRB 22184

the standard is AS/NZS 3001:2008. Within that standard there is a provision which states:

C6.4 Over-current protection

Connectable installations, excepting caravans incorporating a neutral/earth link or connection, shall have overcurrent protection fitted to ensure that the maximum demand does not exceed the rating of the supply lead and supply lead fittings.

- [52] The evidence before the Board established that the overcurrent protection exceeded the supply lead. As such, the inspection failed to establish that there was noncompliance with a mandatory standard. Accordingly, the inspection was carried out in a manner that was contrary to the provisions of regulation 78 of the Safety Regulations and was, therefore, contrary an enactment. The question for the Board was whether the conduct reached the threshold for a finding of negligence.
- [53] When overcurrent protection exceeds the rating of a supply lead, there is the potential for the supply lead to deteriorate and/or overheat and for fire to result. Seriousness, however, goes to the degree of departure from an acceptable standard. The Board would expect an Electrical Inspector to know the overcurrent requirements and to ensure that they are complied with. Moreover, the noncompliance was, on a visual inspection, apparent and should have been identified. As it was not, the Board found that the Respondent had carried out prescribed electrical work in a negligent manner.
- [54] The second charge related to the provision of a false or misleading return, in this instance a warrant of electrical fitness. 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 irrelevant¹⁹.
- [55] To make a finding, all that is required is for the Board to determine whether the Respondent's warrant of electrical fitness issued under regulations 76 to 78 of the Regulations was false or misleading. The evidence before the Board established that connectable installation did not meet the requirements of AS/NZS 3001. As such, the disciplinary offence has been committed.

Penalty, Costs and Publication

- [56] 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.
- [57] The Respondent made submissions at the hearing as regards penalty, costs and publication.

¹⁹ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

Penalty

[58] 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*²⁰ 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.

[59] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,²¹ 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.

[60] The Respondent provided evidence of and spoke to the impact the complaints had on his health, noting it had resulted in long-term health repercussions. The Respondent also noted that he did not intend to renew his licence when his current licence lapsed and that he would cease working at Christmas, although, after the hearing, he advised that he would be retaining his licence for long enough to pay the Board’s costs order.

[61] Ordinarily, the Board would impose a fine for a matter such as this, and it adopted that as a starting point. The Board then took the Respondent’s age and previous clean history into consideration. It also accepted that the complaints had impacted the Respondent’s health. Taking those factors into account, the Board decided it would reduce the penalty to a censure. A censure is a public expression of disapproval.

Costs

[62] 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 of the matter.

[63] 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

²⁰ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

that the percentage can then be adjusted up or down having regard to the particular circumstances of each case²².

- [64] In *Collie v Nursing Council of New Zealand*,²³ where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:

But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.

- [65] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁴ the High Court noted:

[46] *All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.*

[47] *Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.*

- [66] 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 moderately complex. Adjustments based on the High Court decisions above are then made.
- [67] The Board's scale for a defended matter of moderate complexity is \$2,250. The Board noted, however, that the hearing proceeded as part of a consolidated hearing with two other matters. The Respondent defended those matters and was successful in those defences. In those circumstances, the Board considered it would not be fair to order the normal costs of a defended hearing. It decided to reduce the amount.
- [68] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$750 toward the costs of and incidental to the matter.

²² *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

²³ [2001] NZAR 74

²⁴ CIV-2011-485-000227 8 August 2011

Publication

- [69] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register as required by the Act²⁵. The Board can, pursuant to 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.
- [70] 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.
- [71] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²⁶. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁷. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁸. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²⁹.
- [72] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest³⁰. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [73] Based on the above, the Board will not carry out any further publication.
- [74] 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.

²⁵ Refer sections 128 of the Act

²⁶ Section 14 of the Act

²⁷ Refer sections 200 and 202 of the Criminal Procedure Act

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

²⁹ *ibid*

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

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(g) 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 \$750 (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.

[76] 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

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

Signed and dated this 12th day of January 2023



M 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—

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- (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.

