

## Before the Electrical Workers Registration Board

CE No. 22794

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Troy Gillespie a registered and licensed electrical worker (E 264382, EW 135455, Electrician) (the Respondent)

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

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Hearing Location:

Auckland

Hearing Type:

In Person

Hearing and Decision Date:

19 September 2024

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Mr M Orange, Barrister

Ms S Cameron, Registered Electrician

Mr T Wiseman, Registered Inspector

Mr J Hutton, Registered Inspector

Ms L Wright, Barrister

Appearances: R Boyd for the Investigator

**Procedure:**

The matter was considered by the Electrical Workers Registration Board (the Board) under the provisions of Part 11 of the Electricity Act 1992 (the Act), the Electricity (Safety) Regulations 2010 (the Regulations) and the Board's Disciplinary Hearing Rules.

**Board Decision:**

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

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**Summary of the Board’s Decision**

[1] The Respondent installed an outdoor pump. He connected the pump conductors to the conductors from the power supply in a junction box. The issue for the Board was whether the junction box would have prevented the penetration of moisture. The Board decided that neither the junction box nor the manner in which it had been installed would have prevented moisture from penetrating and that the Respondent had, therefore, carried out prescribed electrical work in a manner that was contrary to an enactment. The Board also decided that the Respondent had provided false or misleading certification with respect to his prescribed electrical work. The Board censured the Respondent and ordered that he pay costs of \$1,575. The Board also ordered that the matter be published in Electron and that a record of the offending be recorded on the public register for a period of three years.

**Introduction**

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

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

**First Alleged Disciplinary Offence**

1. On or around 25 July 2022 at [Omitted], Mr Troy Gillespie 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 use an appropriate external fitting (junction box) that would prevent the ingress of moisture.

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

*Or in the Alternative*

2. On or around 25 July 2022 at [Omitted], Mr Troy Gillespie 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 failure to use an appropriate external fitting that would prevent the ingress of moisture.

**Second Alleged Disciplinary Offence**

3. On or around 25 July 2022 at [Omitted], Mr Troy Gillespie has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he falsely declared that prescribed electrical work undertaken was lawful when it was not. The Investigator will have sent you all of the materials the Investigator has in his/her power or possession associated with the complaint. This material will also be presented to the Board at the Hearing.

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

**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*

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

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

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

*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 as a defended hearing.

### **Evidence**

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

### **First Offence**

#### The facts

- [10] The issue before the Board was a simple one. Had the Respondent failed to use an appropriate external fitting (junction box) that would prevent the ingress of moisture. The Respondent accepted that he had carried out the work but maintained that the junction box installed was appropriate on the basis that the fitting was suitable given its construction and positioning, which was underneath a fence rail approximately 150 mm from the ground. The Investigator’s position was that the junction box did not meet the requirements set out and AS/NZS 3000. The Investigator produced an expert opinion supporting the allegation. The expert gave evidence at the hearing, which was not challenged by the Respondent. The fundamental difference between the parties was that the Investigator’s expert considered that either an IP-rated fitting should have been used to ensure that moisture would not be able to penetrate the junction box. Conversely, the Respondent’s position was that the junction box and its location, in combination, meant that moisture would not be able to penetrate the junction box.
- [11] The junction box was installed to connect a pump to a power supply. The conductors from the pump were joined to the conductors from the switchboard within the junction box. The circuit supplying the pump had a Residual Current Device (RCD) installed. The junction box, a photograph of which is shown below, was in a location where it would be exposed to weather. It was, therefore, installed in a location where it would be exposed to moisture.

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



[12] Returning to the facts, the pump operated for over a year without incident. The RCD supplying it then tripped. Another electrical worker who investigated to ascertain why the RCD had tripped opened the junction box and noted that it contained moisture. The owner of the property also gave evidence that moisture was present when the junction box was opened. Photographs of the opened junction box were produced. In particular, the following photograph was produced to substantiate that moisture was or had been present. The Respondent's evidence was that the sand that can be seen in the bottom of the junction box accumulated there at the time of installation. He stated that when he attended the property after the tripping event, there was no moisture in the junction box. Further, his evidence was that moisture would not have penetrated the junction box, given its construction and the location where it had been installed.



[13] The electrical worker who attended the site to fault check rewired the power supply in such a way that the junction box was not required. A new pump was installed. Once the junction box had been removed from the circuit, the RCD did not trip. As a new pump had been installed, it was not possible to determine whether the cause of the tripping was the pump or potential moisture within the junction box.

- [14] The Respondent's evidence was that the work was completed on a Sunday and that the only place he could obtain materials was at a hardware store. He went to one Bunnings store and selected a junction box that was in a section of the hardware store where IP-rated switches were for sale. He did not carry out any investigations to determine whether the junction box would be appropriate for exterior use but did complete his own assessment of the junction box in the location where he was going to install it. That assessment was that the junction box and location would be appropriate. The Respondent did not use any additional means to prevent the ingress of moisture, such as silicone to seal openings or covers.
- [15] The Board was provided with the manufacturer's advice that the junction box was not IP-rated and was not to be used for external purposes.

### The law

- [16] Determining whether or not the junction box was appropriate requires consideration of the legal requirements regarding the junction box. The Prescribed Electrical Work (PEW) was carried out on a low-voltage installation. Under the Safety Regulations, the work had to be carried out in accordance with AS/NZS 3000:2007 because regulation 59 stipulates:

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

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

(a) *80 amperes per phase if single-phase; or*

(b) *50 amperes per phase if multi-phase.*

- [17] AS/NZS 3000:2007 contains a definition for damp situations. The definition is as follows:

**1.4.40 Damp situation**

*A situation in which moisture is either permanently present, or intermittently present to such an extent as would be likely to impair the effectiveness or safety of an electrical installation complies with this Standard for ordinary situations.*

- [18] Given the location of the junction box and the intended use, the Board finds that the junction box was in a damp situation as defined.

[19] AS/NZS 3000:2007 goes on, in Section 3, which deals with the selection and installation of wiring systems, to specify:

**3.1 GENERAL**

**3.1.1 Application**

*The provisions of Section 3 form the minimum standard relation to the selection and installation of wiring systems that must be achieved to satisfy part one of this standard.*

**3.1.2 Selection and installation**

*Wiring systems shall be selected and installed perform the following functions associated with the safe design and construction proper operation of the electrical installation:*

- (f) Protect against mechanical damage, environmental and other external influences by enclosure or other means.*

**3.3 EXTERNAL INFLUENCES**

**3.3.1 General**

*Wiring systems shall be able to operate safely and shall function properly in the conditions to which they are likely to be exposed to the point installation.*

*Characteristics of wiring systems may comprise-*

- (a) Suitable design and construction of the wiring system; or*
- (b) additional means, provided as part of the electrical installation, that do not adversely affect the operation;*

*To effectively protect against the presence and extent of relevant environmental and other influences.*

*Note: AS60529 provides an IP Classification and marking system for electrical equipment and enclosures that provide different degrees of protection against inventory of water and solid objects.*

**3.3.2 Particular situations**

**3.3.2.3 Presence of water or high humidity**

*Wiring systems shall be selected and installed so that high humidity or the entry of water does not cause damage.*

**3.7 ELECTRICAL CONNECTIONS**

**3.7.1 General**

*The method of joining or connecting cables shall be suitable for the application and ensure that the conductivity of the joint or connection is not less than that of the conductor.*

### **3.7.2 Connection methods**

#### *3.7.2.1 General*

##### *3.7.2.1.1 Common requirements*

*The selection of the method of connection shall take into account of the following factors, as appropriate:*

- (f) prevention of entry of moisture and the siphoning of water through any cable or wiring enclosure stop*

[20] Section 4 of AS/NZS 3000:2007, which deals with selection and installation of appliances and accessories, contained similar provisions regarding protection from environmental factors. The Standard defines accessory and electrical equipment as:

#### *1.4.3 Accessory*

*any device, such as a switch, fuse, plug, socket-outlet, lampholder, fitting, adapter or ceiling rose debtors associated with wiring luminaries, switchboards or appliances; but not including the lamps luminaries appliances or switchboards themselves.*

#### *1.4.46 Electrical equipment*

*Wiring systems, switchgear, control gear, accessories, appliances, luminaires and fittings used for such purposes as generation, conversion, storage, transmission, distribution or utilisation of electrical energy.*

[21] The junction box installed by the Respondent comes within those definitions.

[22] Clause 4.1.2 of AS/NZS 3000:2007 provides:

#### *4.1.2 Selection and installation*

*Electrical equipment shall be selected and installed to perform the following functions, or to have the following features, associated with proper design, correct construction and safe operation of the electrical installation:*

- (a) Enable electrical equipment to function properly under external influences to which it is expected to be exposed.*

[23] Section 6 of AS/NZS 3000:2007 deals with damp situations. It stipulates:

### **6.1 General**

#### **6.1.1 Application**

*The provisions of section 6 form the minimum standard, in relation to the selection and installation of electrical equipment in locations subject to the effects of water or high humidity (damp situations), that must be achieved to satisfy Part 1 of this Standard.*



6.1.2 *Selection and installation*

*In addition to the requirements of Sections 2 to 5 of the standard, electrical equipment used in damp situations shall be selected and installed to perform the following functions associated with the proper design, correct construction and safe operation of the electrical installation:*

- (a) provide enhanced protection against electric shock locations with the presence of water or high humidity present an increased risk.*
- (b) Provide adequate protection against damage that might reasonably be expected from the presence of water or high humidity.*

- [24] It is clear from the above provisions in AS/NZS 3000:2007 that the junction box or its manner of installation had to be completed in such a way as to prevent moisture or dampness within it.
- [25] The junction box used by the Respondent was not an IP-rated electrical accessory.
- [26] The junction box was installed in a location where there was a risk that moisture could penetrate or dampness could accumulate.
- [27] To prove the charge, the Investigator does not have to establish that moisture or dampness had penetrated. Rather, what had to be established was that the fitting used was not appropriate in that it did not meet the requirements of AS/NZS 3000:2007. If moisture was present when the junction box was opened, then that would tend towards proving the charge. In this respect, the Board preferred the evidence of the witnesses who noted the presence of moisture when the junction box was opened. The evidence was clear and was not challenged by the Respondent.
- [28] That said, even if moisture was not present, the Board finds that the junction box used was not appropriate and that neither it nor its means of installation would have prevented the ingress of moisture. In coming to that decision, the Board notes that satisfying the provisions of AS/NZS 3000:2007 could have been achieved by various methods. The most straightforward would have been using an IP-rated fitting. That did not occur. An alternative could have been a combination of the type of non-IP-rated fitting used and its method and location. The fitting would have been exposed to, at the least, rain, including rainwater running down the surface of the fence and around the fence rail. Added to this would have been the potential for wicking to occur from airflow around the fitting, especially in wet and windy conditions. As the Respondent did no more than install a non-IP-rated fitting under a fence rail, the Board finds that he did not take sufficient steps to prevent the ingress of moisture.

Contrary to an enactment or negligence or incompetence?

- [29] 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).

- [30] There is a hierarchy to the disciplinary charges in that the Board needs to first consider whether the prescribed electrical work was carried out or caused to be carried out in a manner that was contrary to an enactment. If the Board finds in the affirmative, it then needs to consider whether the conduct reaches the threshold for a finding of negligence or incompetence. If that threshold is met, the Board then needs to consider whether a risk of serious harm or significant property damage was created.
- [31] Contrary to an enactment is a form of strict liability offence in that all that has to be proven is that the relevant enactment has been breached – in 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>.
- [32] Turning to negligence and/or incompetence, there are no statutory definitions of the terms. It is noted, however, that they are not the same. In *Beattie v Far North Council*<sup>6</sup> Judge McElrea noted:
- [43] Section 317 of the Act uses the phrase “in a negligent or incompetent manner”, so it is clear that those adjectives cannot be treated as synonymous.*
- [33] 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>7</sup> test of negligence which has been adopted by the New Zealand Courts<sup>8</sup>.
- [34] Incompetence is a lack of ability, skill or knowledge to carry out or supervise prescribed electrical work to an acceptable standard. *Beattie* put it as “a demonstrated lack of the reasonably expected ability or skill level”. In *Ali v Kumar and Others*,<sup>9</sup> it was stated as “an inability to do the job”.
- [35] The New Zealand Courts have stated that an assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>10</sup>. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [36] 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

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

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

<sup>7</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

<sup>9</sup> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

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

assessment of what is appropriate conduct, bearing in mind the purpose of the Act,<sup>11</sup> which includes protecting the health and safety of members of the public in connection with the supply and use of electricity, and promoting the prevention of damage to property in connection with the supply and use of electricity. The test is an objective one and, in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner<sup>12</sup>.

### **Second Offence**

- [37] The charge under section 143(f) of the Act related 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 irrelevant<sup>13</sup>.
- [38] 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.
- [39] The specific allegations were that the Respondent had certified non-compliant PEW as having been done lawfully and safely, when it was not. As the Board has made a finding that the PEW had been carried out in a manner that was contrary to an enactment, it follows that the Respondent's certification that the PEW had been done lawfully and safely was false or misleading.

### **Board's Decision**

- [40] The Board has decided that the Respondent **has** committed to disciplinary offences under sections 143(a)(ii) and 143(f) of the Act and should be disciplined.

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

- [41] 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.
- [42] The Respondent made submissions at the hearing as regards penalty, costs and publication.

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

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

<sup>13</sup> *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

Penalty

- [43] The Board has the discretion to impose a range of penalties, which are set out in section 147M of the Act. Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.<sup>14</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>15</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>16</sup>
  - (b) deterring the Respondent and other Electrical Workers from similar offending;<sup>17</sup>
  - (c) setting and enforcing a high standard of conduct for the industry;<sup>18</sup>
  - (d) penalising wrongdoing;<sup>19</sup> and
  - (e) rehabilitation (where appropriate).<sup>20</sup>
- [44] Overall, the Board should assess the conduct against the range of penalty options available in section 147M of the Act, reserving the maximum penalty for the worst cases<sup>21</sup> and applying the least restrictive penalty available for the particular offending.<sup>22</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>23</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>24</sup>
- [45] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.<sup>25</sup>
- [46] The conduct was at the lower end of the disciplinary scale. It was not a situation where there was a significant or serious risk to the safety of the public. The work was done outside of ordinary hours, and whilst the Respondent's work did not meet compliance requirements, he made some efforts to mitigate the potential risk of moisture ingress into the junction box. The Respondent has not previously appeared before the Board, and the Board hopes he has learnt from the complaint. Given

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<sup>14</sup> *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

<sup>15</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>16</sup> Section 3 Building Act

<sup>17</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>18</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>19</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>20</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

<sup>21</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>22</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>23</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>24</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>25</sup> In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

those factors, the Board decided that it would censure the Respondent. A censure is a public expression of disapproval of conduct.

### Costs

- [47] 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.
- [48] 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>26</sup>
- [49] In *Collie v Nursing Council of New Zealand*,<sup>27</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.*
- [50] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>28</sup> the High Court noted:
- [46] *All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.*
- [47] *Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.*
- [51] 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, and it was dealt with at a defended hearing. Adjustments based on the High Court decisions above are then made.
- [52] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$1,575 toward the costs of and incidental to the matter. The amount is the Board's scale costs for a hearing of this nature, and it is less than 50% of actual costs.

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<sup>26</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>27</sup> [2001] NZAR 74

<sup>28</sup> CIV-2011-485-000227 8 August 2011

## Publication

- [53] 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>29</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.
- [54] 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.
- [55] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>30</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>31</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>32</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>33</sup>.
- [56] 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>34</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.
- [57] Based on the above, the Board will publish a general article in the Electron summarising the matter. The Respondent will be identified in the Electron.

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<sup>29</sup> Refer sections 128 of the Act

<sup>30</sup> Section 14 of the Act

<sup>31</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>32</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>33</sup> *ibid*

<sup>34</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Penalty, Costs and Publication Orders

[58] 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 \$1,575 (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, which will be publicly available on the Board's website.

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

[59] The Respondent should note that the Board may refuse to relicense an electrical worker who has not paid any fine or costs imposed on them.

## Right of Appeal

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

Signed and dated this 3<sup>rd</sup> day of October 2024



R Keys  
Presiding Member

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### <sup>i</sup> Section 147M of the Act

- (1) If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—
- (a) do 1 or more of the following things:
- (i) order that the person's registration or practising licence (or both) be cancelled;
  - (ii) order that the person's provisional licence be cancelled;
  - (iii) order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:

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- (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.*