

**REAL ESTATE AGENTS LICENSING BOARD**

No. 2007/606

**IN THE MATTER**

of an application under  
s99 of the Real Estate  
Agents Act 1976

**APPLICANT**

**REAL ESTATE  
INSTITUTE OF NEW  
ZEALAND INC.**

**RESPONDENT**

**CHRISTINA KOON**

**HEARING:** 4<sup>th</sup> & 5<sup>th</sup> July 2007

**DECISION:** 27<sup>th</sup> August 2007

**APPEARANCES:** T D Rea for the applicant  
R G Ewen for the respondent

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**INTERIM DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD**

Hon W P Jeffries (Chairperson), P Dudding, M Giera, D Russell, Roger Stark

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**INTRODUCTION**

The Real Estate Institute of New Zealand Incorporated ("the Institute") applies to cancel or to suspend the certificate of approval allowing Christina Koon ["Ms Koon"] to act as a real estate salesperson for Ryan Realty Limited, a member of Ray White Real Estate ["Ray White"], Papatoetoe.

The Institute bases its application on the conduct of Ms Koon in relation to the sale of 13A Kirton Crescent, Manurewa in August 2005 and the related purchase of 6 Sunnyside Crescent, Papatoetoe, both transactions involving Mr Nui Nuimalioa and Niva Tafiti as purchasers of the Papatoetoe property and Mrs Tafiti as the vendor of the Manurewa property. Neither transaction was completed because of the intervention of the principal of Ryan Realty Limited following serious criticisms of the conduct of Ms Koon made by the Tafitis' solicitor, Mr Martin Coogan of Brannigans, Barristers & Solicitors, Manurewa. No monies were lost because the two challenged transactions were aborted. Mr Coogan on 9 September 2005 complained to the Institute, naming the Manager or Principal, Mr Peter Ryan, another approved salesperson a Mr Leon Chhour and Ms Koon.

Following the Institute's investigation into the conduct of these three persons, the Institute has chosen to subject Ms Koon's conduct alone to the examination of the Board and if proven in accordance with the statute, the imposition of penalty.

This particular hearing is confined to the question as to whether Ms Koon's conduct in her position as an "approved salesperson" has been shown in relation to the two real estate transactions to be of such a character that it is in the interests of the public that the certificate of approval be either cancelled or suspended.

The Institute led two witnesses, Mr and Mrs Tafari.

In 1988 under her maiden name of Niva Aupito, Mrs Tafari acquired a long term cross lease of a property at 13A Kirton Crescent, Manurewa. In 1993 Mrs Tafari's future husband Nuimaliua came to live with her and the couple have since married and are raising two children.

In 2005, the couple decided to sell the property and acquire a new home in the South Auckland district. Mr Tafari went to the offices of Ryan Realty Limited a member of Ray White Real Estate in Papatoetoe in early August 2005. Mr Tafari chose Ms Koon to act as salesperson and initial contact was achieved by telephone following the visit to the office.

The Tafari's evidenced their recall of events and sense of being wronged by Ms Koon's conduct. Over a three week period in August 2005, Ms Koon viewed the property, made an assessment as to its likely market value, introduced some potential purchasers, negotiated a sale agreement, introduced Mr and Mrs Tafari to the second property at Papatoetoe and negotiated a purchase agreement for Mr and Mrs Tafari to acquire the new property. Both the Tafari's were cross-examined by Mr R G Ewen, Counsel for Ms Koon.

The Institute adduced a bundle of documents including the 26 August 2005 Agreement for Sale and Purchase of 13A Kirton Crescent and the 25 August 2005 Agreement for Sale and Purchase of 6 Sunnyside Crescent, Papatoetoe.

In reply Ms Koon evidenced her experience in real estate since 1998, that she has not had any other complaints against her and provided four written references which commended her for competency and integrity. Ms Koon was cross examined by Mr T. D. Rae, Counsel for the Institute. Mr Ryan also gave evidence, as did the vendor of the Papatoetoe property, a Miss Dale.

### **NARRATIVE OF EVENTS**

On 5 August 2005, following a telephone call from Mr Tafari, Ms Koon pursuant to an appointment, attended the property at 13A Kirton Crescent for the purpose of an appraisal. As the Tafitis were not at home, Ms Koon left and arrangements were later made for another appointment for Sunday 7 August 2005 at 6.30 p.m. but the Tafitis failed to be at home for this meeting.

On Monday 8 August 2005, Mr Tafari rang Ms Koon explaining that whilst they had missed appointments they were "desperate" to sell and arrangements were made and kept for Ms Koon to view the house that evening.

Although Ms Koon at that time did not formally "list" the property, she began marketing at \$230,000 by bringing potential purchasers to view the house located on a back section. The Tafitis hoped for a sale of \$250,000.

The condition of the property was poor making it a possible attraction for developers willing to expend resources on improvements and able to on-sell with a net gain. The Tafitis themselves were aware of the poor condition.

On 12 August 2005 Ms Koon introduced a Mr Thiagarajah, a developer, to the property. On 15 August 2005 Ms Koon brought fellow members from her employer's real estate firm including another approved salesperson Mr Leon Chhour to the property.

Mr Tafari led the communications with Ms Koon. Ms Koon evidenced that she mentioned to Mr Tafari that.."Leon my colleague is interested" in the property without further elaboration.

The central events in this matter occurred on 24/25/26 August 2005.

Ms Koon's evidence and the Tafitis' evidence concerning the particular steps taken in August 2005 differ in fundamental respects as to the actual date and timing of the various steps taken to achieve two contracts.

According to the Tafitis, they met Ms Koon at the Ray White real estate office in the "evening" of the day before the offer to purchase 6 Sunnyside Crescent was accepted [25 August, 2005] Ms Koon referred to their home as a "do up". She said she had an offer of \$172,000 but that a counter-offer in the sum of \$180,000 may achieve a sale. The Tafitis' evidence is that no documentation was presented at this "stage." This testimony is at variance with a statement made by their solicitor, shortly afterward, that Ms Koon insisted that his clients "sign the sale contract before taking our clients to inspect 6 Sunnyside Crescent".

According to the Tafilis, after the counter-offer to sell to an unnamed purchaser at \$180,000 Ms Koon told the Tafilis that she had another property that they might buy. The Tafilis evidence that Ms Koon told them at this point that a penalty in the sum of \$10,000 would be imposed on them in the event of them using another real estate agent to acquire a new property. Ms Koon denies this allegation. Mr Cooney, the solicitor who first took action challenging the legal validity of the contracts of sales and purchase which were later signed referred to this \$10,000 "penalty" in his first letter dated 9 September 2005 addressed to the Institute.

According to the Tafilis, Ms Koon then took them to 6 Sunnyside Crescent.

*"she drove herself and we followed in our car"*

Following an inspection of the house, which according to the Tafilis occurred at "night time" in the "dark", the Tafilis and Ms Koon "returned" to Ms Koon's office. Ms Koon's evidence on the time of the first inspection was that it occurred "after 5.30 p.m" which is twilight at this time of year assuming that the inspection was just after 5.30 p.m.

According to the Tafilis, Ms Koon claimed that the vendors of Sunnyside Crescent required \$390,000 but that an offer of \$355,000 would be accepted. Infact the property was listed with Ryan Realty Limited at that time for \$369,000. The Tafilis later, back at the offices of the real estate agent, signed a conditional on finance offer to buy 6 Sunnyside Crescent for \$355,000 which was subsequently accepted by the single vendor of this property the following day. This agreement is dated 25 August 2005. As the contract is dated 25 August 2005, it is safe to deduct that the inspection occurred on 24 August 2005. The Tafilis evidence that because their inspection of Sunnyside Crescent occurred in the "dark" they wished to view the property again the following day which they did.

According to the Tafilis, Ms Koon said on the next day, 25 August 2005 that she had a "counter-offer" on 13A Kirton Crescent. It is evident from the document that a first offer of \$172,000 was met with a counter-offer of \$180,000 which in turn was met by a counter-counter offer of \$172,500 which was accepted. This agreement to sell 13A Kirton Crescent is dated 26 August 2005, one day after the acceptance of the offer to acquire Sunnyside Crescent.

Ms Koon's evidence of sequence at critical events is different.

According to Ms Koon following her listing of the Sunnyside property on 23 August 2005, she booked an appointment with the Tafilis for 2.00p.m on 25 August 2005. On 24 August 2005 Ms Koon says that she rang Mr Tafari regarding the Sunnyside property and was surprised to learn that Mr Tafari already knew about the house and the asking price of \$390,000.

Ms Koon further evidences that she met the Tafilis at Sunnyside Crescent at 5.30p.m (after waiting one hour) on 24 August 2005. Following an inspection which Ms Koon claims occupied over one hour ("..it was getting late maybe after 7.00p.m.") Mr Tafari himself offered \$355,000 for the property but Ms Koon suggested that the Tafilis wait and "sleep on it." Ms Koon further evidences that the Tafilis insisted that they go to the real estate office. Although there was on the night of 24 August 2005 no contract for the sale of 13A Kirton Crescent, according to Ms Koon, the Tafilis said that they intended to renovate 13A Kirton Crescent and sell it later and also wished to acquire the Sunnyside property. According to the Tafilis, on this night they had counter-offered to sell at \$180,000.

Ms Koon further evidences that the Tafilis signed the listing authority for 13A Kirton Crescent on 24 August 2005. Ms Koon then prepared an offer to purchase Sunnyside Crescent on the standard Institute form and then arranged for both Mr and Mrs Tafari to sign the offer to buy at \$355,000 Sunnyside Crescent, subject to finance.

As stated in paragraph 51 of her evidence, the following day, 25 August 2005 the registered proprietor of Sunnyside Crescent accepted the Tafilis' offer to buy her property in the sum of \$355,000.

According to Ms Koon's brief of evidence on 25 August 2005, Mr Tafari rang Ms Koon late in the afternoon, pleading urgency for sale of 13A Kirton Crescent and requesting an appointment to see a broker at 6.00p.m

According to Ms Koon, at the meeting in the real estate office on 25 August 2005 in the presence of "a broker", Ms Koon first obtained an offer from Mr Leon Chhour, another "approved salesperson" in her office to buy the property at \$172,000. Ms Koon without disclosing the status ["approved salesperson"] of Mr Chhour submitted the offer to Mrs Tafari. On the suggestion of Mr Tafari, Mrs Tafari signed it at \$180,000. Ms Koon then took the document back to Mr Chhour who "moved up to \$172,500."

According to Ms Koon's diary, on 26 August 2005 Mr Tafari rang at 10.00a.m

*"Any offers yet – only Leon's one but low". Niu [Mr Tafari] said "Just bring it tonight. How much. \$172,000."*

According to Ms Koon, she told the Tafitis that this was the purchasers "best offer" and that they could take their time and sleep on it further,

*"..there will be a consent form which is a declaration of Leon as agent purchasing your property, and it will be sent with this contract to your lawyer. This is before Niva [Ms Tafiti] signed. I went down to the photocopy machine. When I came back Niva said she had signed and Niva moved on to the broker."*

The agreement for the sale and purchase of 13A Kirton Crescent is dated 26 August 2005.

Mr Tafiti's evidence is that they went to see Ms Koon again at her office. *"I am not sure of the exact timing of when this took place but it was close to the time of signing the contract for Sunnyside Crescent"*.

### **ANALYSIS**

Whilst denied by Ms Koon, it is more likely that the Tafitis would only inspect a new property after they had started to sell their own and that on the night of 24 August 2005 Mrs Tafiti had signed the counter-offer of \$180,000. According to the Tafitis, after they had inspected 6 Sunnyside Crescent, Papatoetoe and had made their offer to buy at \$355,000 and after this offer had been accepted, that is 25 August 2005, Ms Koon told them

*"that she had a counter-offer from the buyer for our property, and Niva and I went to see Ms Koon again at her office. Ms Koon told us that she had managed to get the buyer to increase the offer for our house by \$500, so the buyer was prepared to pay \$172,500."*

This statement demonstrates the sequential nature of the sale process of 13A Kirton Crescent over three days. Both the Tafitis state that the contract did not show the name of the buyer. Mr Cooney in his first response to these matters on 9 September 2005 alleged that the contract of sale was incomplete: paras. 9 and 10 of his letter of 9 September 2005.

The fact that the contract document for 13A Kirton Crescent was added to outside the presence of the Tafitis is proven by the following fact: in the document provided to the Institute's counsel, Mr Rea, the initial "A.N." is shown next to the amendment of price from \$180,000 to \$172,500 in relation to the sale of 13A Kirton Crescent. The document faxed by "Ray White" real estate at 18:38 on 29 August 2005 to the solicitors Mr Cooney, this initial "A.N" is not shown. Mrs Tafiti's maiden name, as shown on the certificate of title to the property is Niva Auptio, Mrs Tafiti signs and initials her correct legal married name of Niva Tafiti ("N.T."), as Niva Tafiti: Therefore, these initials were added by someone else at a time the Tafitis were not present.

Therefore, the Tafitis found themselves as having sold 13A Kirton Crescent for \$172,500 on 26 August 2005 and had purchased a property for \$335,000 on 25 August 2005. As they had

a mortgage in the sum of \$94,000 the available equity is \$78,500 to purchase the new property at Papatoetoe, a mortgage in the sum of \$256,500 would be needed. Mr Tafiti works in a factory in South Auckland on wages.

### **SUBSEQUENT EVENTS**

The Tafitis took their legal problems to Mr Martin Cooney of Brannigans, Solicitors, Manurewa. With Mr Cooney's assistance both contracts were eventually cancelled.

Prior to cancellation, Mr Chhour provided an independent valuation, assessing the market value of 13A Kirton Crescent at \$215,000. The property was sold for \$210,000 privately. Mr Chhour also provided a mistakenly completed (by him, not Mrs Tafiti), Form 15, First Schedule, Real Estate Agents Regulations 1977.

The Papatoetoe property was later sold for \$345,000

### **LAW**

Members of the public commission licensed real estate agents who may engage approved salespersons, such as Ms Koon, to sell their properties. A fiduciary relationship between a vendor and a licensed real estate agent is created at the point of the vendor granting selling authority to the real estate agent. This fiduciary relationship imposes an obligation to act in utmost good faith in the interests of the vendor without undisclosed interest on the part of the agent or his/her employees.

Should a licensed agent or an employee of the agent seek to purchase a property the subject of a commission to sell, the statute sets a standard of timely and objective disclosure.

s.63 :

*"No real estate agent shall, without the consent on the prescribed form of his or her principal, [the vendor] directly or indirectly and whether by himself or by any partner or sub-agent.....*

*(a) Purchase or take on lease, or be in any way concerned or interested, legally or beneficially, in the purchase or taking on lease of any land."*

s.64: *Real estate agent to provide a valuation –*

(b) *"With the agreement of the principal, [the vendor] within 14 days after obtaining that consent -*

*Supply, at his[[or her]] own expense to that principal, [the vendor] a valuation made by an independent registered valuer of the land or business in question".*

The language of s63 means "consent on the prescribed form..." before the vendor/principal signs an offer to purchase. Unless the vendor signs the consent in prescribed form, the contract to sell is unenforceable should the vendor decide to refuse to complete the transaction.

The "prescribed form" is either, Form 14 First Schedule, Real Estate Agents Regulations 1977 in respect of the licensed real estate agent himself/herself or Form 15, in respect of partners, employees or directors of a real estate agency.

The terms of Form 15 require clear, objective disclosure and are as follows:

## FORM 15

### **Consent for Partner or Employee of Real Estate Agent or Director of a Company that is a Real Estate Agent to Take Interest in Property** (Real Estate Agents Act 1976 sections 63(2) and 64)

I, *[Full name and address]* as principal *[the vendor]* in the contract of agency with *[Full name and address of the real estate agent]* in respect of the sale or lease of *[Describe property in relation to which the contract of agency exists]* hereby consent to *[Full name of the partner or employee or officer of the real estate agent or spouse or civil union partner or de facto partner or child of any such person]* acquiring the following interest in the said property:

*[Describe the nature of the interest to be acquired by the partner or employee or officer of the real estate agent or spouse or civil union partner or de facto partner or child of any such person].*

I hereby declare that I have, before signing this consent, -

(a) Been supplied with a valuation of the said property made by a registered and independent valuer at the expense of *[the above real estate agent or partner or employee or officer]*.

or

(b) Given my agreement to the above *[Real estate agent or partner or employee or officer]* supplying, within 14 days after the date of this consent, a valuation of the said property made by a registered and independent valuer at the expense of *[The real estate agent or partner or employee or officer]*. The property is provisionally valued at \$.....

Dated at ..... this ..... day of ..... 20.....

.....  
Signature of Principal



## NOTE-

1. No partner or employee of a real estate agent, and no officer of a company that is a real estate agent, or the spouse or civil union partner or de facto partner or child of any such person, shall, without the consent of the principal of the real estate agent, purchase or take on lease or acquire any legal or beneficial interest directly or indirectly in the property that the real estate agent is commissioned to sell or lease.
2. Any contract made in contravention of this requirement may be set aside at the option of the principal.
3. The person seeking to acquire an interest in the property offered for sale or lease must either –
  - (a) Before seeking the consent of the principal; or
  - (b) With the agreement of the principal, within 14 days after obtaining that consent –
 obtain, at his or her own expense, an independent valuation of the property and deliver it to the principal.
4. Where the consent is given before the valuation is supplied, the form of consent must specify the provisional valuation of the property. If the valuation, when supplied, is greater than the provisional valuation, any contract to which the principal is a party and to which the consent relates may be set aside at the option of the principal.

Because real estate services are founded upon the law of agency, the legal terms “principal” and “agent” are used in the statute and regulations. The “principal” in the contract of agency is the member of the selling public who commissions the licensed real estate agent to sell his/her property, not the owner or employee of the real estate agency. In this case, Mr Leon Chhour who had only recommenced employment in real estate (after a five year absence) some six months before these transactions, signed the “prescribed form” himself, albeit after Mrs Tafiti had accepted his offer. Ms Koon states in her evidence at para.55 in describing the statutory step fundamental to a sale to an employee of an agent: “... there will be a consent form which is a declaration of Leon as agent purchasing your property”. The ignorance of relevant law of both these “approved salespersons” is unsatisfactory.

**FINDINGS**

The Board makes the following findings.

**13A Kirton Crescent**

1. Ms Koon failed to observe her statutory obligations as an “approved salesperson” when she supervised the process of offer and counter-offer in respect of the 26 August 2005 contract to buy the subject property by Mr Leon Chhour, another “approved salesperson” employed by Ryan Realty Limited, a member of Ray White

Real Estate at 376 Great South Road, Papatoetoe, Auckland between 24 and 26 August 2005, resulting in the vendor Niva Tafari signing a contract to sell.

2. Ms Koon failed to provide to the vendor Mrs Tafari a consent in the prescribed form to enable the vendor to decide on an informed basis whether or not to accept the offer of Mr Leon Chhour.
3. Simultaneously, Ms Koon failed to provide in accordance with s.64 of the Real Estate Agents Act 1976, an independent valuation paid by Mr Leon Chhour informing the vendor of a separate assessment of the market value of the property before the vendor accepted the offer. Without such a valuation, Mrs Tafari accepted Mr Chhour's offer of \$172,500. The independent valuation later obtained by Mr Chhour assessed the property at \$215,000. Eventually, the property was sold for \$210,000. Therefore, the vendor could have sustained a potential loss of \$37,500 caused by Ms Koon, if Mrs Tafari had not received, as she did, competent legal advice from Mr Cooney.
4. Ms Koon failed to observe her legal obligations of performing her duties as an approved salesperson with utmost good faith and without preference for her own interest at the expense of the proper interest of the vendor when she told the Tafaris on 24 August 2005 at the offices of Ryan Realty Limited – a member of Ray White Real Estate that the Tafaris would incur a "penalty" of \$10,000 if they did not acquire a new property through her employing real estate agency.

#### 6 Sunnyside Crescent

5. Ms Koon failed to observe her legal obligations of performing her duties as an approved salesperson with care when she mis-informed the Tafaris as to the actual listing of the above property at \$390,000 instead of \$369,000, resulting in the Tafaris making an offer in a mis-informed bases.

**CONCLUSION**

The Board is satisfied that the impugned conduct of Ms Koon, is of such a character that it is of the opinion of the Board, in the public interest that the certificate of approval of Christina Koon be cancelled or suspended. The Board observes that the disciplinary matter comes before the Board some two years after the controversial transactions of August 2005.

There will be a separate hearing as to penalty. The parties are to communicate with the Registrar to arrange a date and time.



**Hon W P Jeffries**  
Chairperson

**REAL ESTATE AGENTS LICENSING BOARD**

No. 2007/619

**IN THE MATTER**

of an application under  
s99 of the Real Estate  
Agents Act 1976

**APPLICANT**

**REAL ESTATE  
INSTITUTE OF NEW  
ZEALAND INC.**

**RESPONDENT**

**CHRISTINA KOON**

**HEARING:** 4 December 2007

**DECISION:** 19<sup>th</sup> December 2007

**APPEARANCES:** T D Rea for the applicant  
R G Ewen for the respondent

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**DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD**

Hon W P Jeffries (Chairperson), P Dudding, M Giera, D Russell and Roger Stark

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The question is what penalty ought to be imposed on Mrs Koon, an approved salesperson in relation to the findings of her conduct and character in the substantive decision dated 27 August 2007?

The Board applies the test determined by the High Court in *Sime v. The Real Estate Institute of New Zealand Incorporated*.

Submissions of Counsel for the Real Estate Institute of New Zealand [the "Institute"] have systematically set out the five findings of the Real Estate Agents Licensing Board [the "Board"] decision of 27 August 2007, analysed each of these findings and referred to both aggravating and mitigating factors. In addition, Counsel, Mr T D Rea has identified relevant decisions and concluded that the appropriate penalty is a period of suspension of between eight to twelve months.

Mr. Rea pointed out that the fifth finding of the Board assumed that the actual listing of 6 Sunnyside Crescent was at \$390,000 when in fact the vendor Mrs Dale evidenced that the listing agreement altered the proposed sale price to \$359,000. For this reason, the Institute withdrew the allegation relating to this aspect of the proceedings at the conclusion of the hearing.

The Board will not take into account the fifth finding in assessing the appropriate penalty.

For Mrs Koon, Counsel, Mr R G Ewen has provided the Board with comprehensive submissions which have helped the Board in its endeavour to both uphold the laws governing the practice of real estate and to assess fairly the predicament of Mrs Koon completing a sale to a real estate colleague in the absence of her principal. Mr Ewen identified the facts of Mrs Koon's formerly unblemished record of community service.

Some ten testimonials as to Mrs Koon's character are before the Board. These recommendations include the vendor in the controversial 6 Sunnyside Crescent sale, Mrs Dale, the existing employer, Peter Hayward-Ryan, the New Zealand Chief Executive of Ray White Real Estate franchise, Mrs Koon's parish priest and other influential persons. A picture of an energetic community leader, generous with her own time and money emerges.

In the balancing process of imposition of penalty, the Board must recognise the fact that the complainants, prior to the successful intervention of a competent solicitor, were liable under contract for the unconditional sale of a property at a below market price to a real estate approved salesperson (Mr Chhoul) and for the conditional purchase of a property at a price requiring substantial mortgage debt. Mrs Koon was responsible for both contracts.

Fortunately, both contracts were cancelled and no economic damage was sustained by the complainants.

The Board is aware that a fine of \$2,000 imposed on the employing real estate agency by the Institute was reimbursed by Mrs Koon. Such private arrangements are outside the scope of the Board's consideration in this disciplinary matter and cannot be used as a double jeopardy argument.

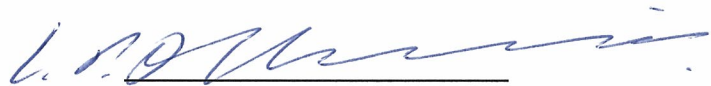
### **PENALTY**

Mrs Koon may well have a satisfactory future in real estate if she absorbs the painful lesson of this episode. The Board is bound to uphold standards to protect the purchasing public.

The Board imposes a suspension of six months commencing from the date of this decision and a fine of \$750.00 being the maximum.

**COSTS**

Pursuant to s105 of the Act, the Institute is entitled to costs on the application. If the parties cannot agree, then the Institute is to file and serve a memorandum as to costs within 42 days of the date of service of this decision. Any memorandum in reply is to be filed 14 days after service of the Institute's memorandum.

A handwritten signature in blue ink, appearing to read 'W P Jeffries', is written over a horizontal line.

**Hon W P Jeffries**  
Chairperson