

Before the Electrical Workers Registration Board

	CE No. 22422
Electrical Worker:	Rafe Fannin (the Respondent)
Registration Number:	E 283485
Electrical Worker Number:	EW 144461
Registration Class:	Electrician

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

Hearing Location:	Whangarei
Hearing Type:	In Person
Hearing Date:	20 May 2022
Decision Date:	26 May 2022

Board Members Present:

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

Appearances: Mr Hall and Mr Denyer 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 multiple disciplinary offences.

Contents

Summary of the Board’s Decision..... 2

Introduction..... 3

Function of Disciplinary Action 5

Interim Suspension..... 5

Vexatious Complaint and Proceedings 5

Evidence..... 7

 Certification..... 10

 Conductor Terminations 10

 Cable Joints 11

 Earth Electrode 13

 General Evidence 15

Board’s Conclusion and Reasoning..... 15

 First Disciplinary Offence 16

 Certification..... 22

 Second to Fourth Disciplinary Offences..... 22

 Fifth to Seventh Disciplinary Offences 24

 Eighth Disciplinary Offence 25

Penalty, Costs and Publication..... 25

 Penalty 26

 Costs..... 26

 Publication 27

Penalty, Costs and Publication Orders 29

Submissions on Penalty, Costs and Publication 29

Right of Appeal..... 29

Summary of the Board’s Decision

[1] The Respondent carried out prescribed electrical work in a negligent manner contrary to section 143(a)(i) of the Act. He also provided false or misleading certification contrary to section 143(f) of the Act. He is fined \$1,500 and ordered to pay costs of \$2,250. The disciplinary offences will be recorded on the Public Register for electrical workers 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 of Hearing setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were, as specified by the Investigator:

First Alleged Disciplinary Offence

1. On or around March 2021 at [OMITTED], Mr Rafe Fannin has carried out or caused to be carried out prescribed electrical work in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done being an offence under section 143(a)(ii) of the Act, IN THAT, he:
 - a. Installed and/or terminated conductors with unreliable connections; and/or
 - b. Jointing of submain conductors' cables without adequate insulation exposing live parts; and/or
 - c. Installed a protective earth electrode without adequate protection against mechanical damage.

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

Or in the Alternative

2. On or around March 2021 at [OMITTED], Mr Rafe Fannin has carried out or caused to be carried out prescribed electrical work in a negligent or incompetent manner being an offence under section 143(a)(i) of the Act, IN THAT, he;
 - a. Installed and/or terminated conductors with unreliable connections; and/or
 - b. Jointing of submain conductors' cables without adequate insulation exposing live parts; and/or
 - c. Installed a protective earth electrode without adequate protection against mechanical damage.

Or in the Alternative

3. On or around March 2021 at [OMITTED], Mr Rafe Fannin has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he installed and/or terminated conductors with unreliable connections.

Second Alleged Disciplinary Offence

4. On or around 17 March 2021 at [OMITTED], Mr Rafe Fannin has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided an Electrical Safety Certificate stating the work is connected to a power supply and is safe to use when it was not, in breach of section 74A of the Electricity (Safety) Regulations 2010.

Third Alleged Disciplinary Offence

5. On or around 17 March 2021 at [OMITTED], Mr Rafe Fannin has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided an Electrical Safety Certificate stating the work was connected to a power supply and is safe to use when it was not, in breach of section 74A of the Electricity (Safety) Regulations 2010.

Fourth Alleged Disciplinary Offence

6. On or around 17 March 2021 at [OMITTED], Mr Rafe Fannin has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided an Electricity Safety Certificate stating the work was connected to a power supply and safe to use when it was not, in breach of section 74A of the Electricity (Safety) Regulations 2010.

Fifth Alleged Disciplinary Offence

7. On or around 17 March 2021 at [OMITTED], Mr Rafe Fannin has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided a Certificate of Compliance stating the work had been done lawfully and safely, and the information in the certificate was correct when it was not, in breach of section 69 of the Electricity (Safety) Regulations 2010.

Sixth Alleged Disciplinary Offence

8. On or around 17 March 2021 at [OMITTED], Mr Rafe Fannin has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided a Certificate of Compliance stating the work had been done lawfully and safely, and the information in the certificate was correct when it was not, in breach of section 69 of the Electricity (Safety) Regulations 2010.

Seventh Alleged Disciplinary Offence

9. On or around 17 March 2021 at [OMITTED], Mr Rafe Fannin has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided a Certificate of Compliance stating the work had been done lawfully and safely, and the information in the certificate was correct when it was not, in breach of section 69 of the Electricity (Safety) Regulations 2010.

Eighth Alleged Disciplinary Offence

10. On or around 17 March 2021 at [OMITTED], Mr Rafe Fannin has provided a false or misleading return being an offence under section 143(f) of the Act,

IN THAT, he provided a Certificate of Compliance not documenting the work was high risk when in fact it was and the information in the certificate was correct when it was not, in breach of regulation 69 of the Electricity (Safety) Regulations 2010.

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

Function of Disciplinary Action

- [6] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*¹ and in New Zealand in *Dentice v Valuers Registration Board*².
- [7] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*³ Collins J. noted that:

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

- [8] 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.

Interim Suspension

- [9] On 6 May 2021, the Board was informed of a complaint about the Respondent and was provided with the complaint and attachments to it. The Board decided, on an ex parte basis, to suspend the Respondent’s licence pending the completion of the investigation or until such time as a hearing was held. The Respondent sought a hearing into the interim suspension decision, and, on 15 May 2021, the Board decided to revoke the suspension.

Vexatious Complaint and Proceedings

- [10] Section 144(4) of the Act allows the Registrar to determine if complaints are frivolous or vexatious at the time of receiving a complaint. The Board is not involved in those considerations. Notwithstanding, the Board retains a discretion to consider

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

² [1992] 1 NZLR 720 at p 724

³ [2016] HZHC 2276 at para 164

submissions that a complaint that proceeds to a hearing is frivolous, vexatious, or not made in good faith as a prehearing matter. The Respondent did not make a prehearing application but did, as part of the hearing, provide evidence and submissions to the effect that the complaint was vexatious.

- [11] The Respondent's position was that the Complainant had, some six months prior to the complaint being made, sent an email to a Ministry of Business, Innovation and Employment investigator making an allegation that the Respondent was not a fit and proper person and that he should not hold an electrical worker licence. The Respondent provided the Board with a copy of the email, which the Board had not previously been aware of. The Respondent confirmed that he had a criminal conviction for fraud and stated that he had disclosed this as part of his licensing application.
- [12] Vexatious proceedings were considered in *Deliu v Hong*⁴ where an applicant had sought, amongst other things, to have proceedings declared to be an abuse of process on the basis that they were frivolous and vexation. Associate judge Osborne noted that there was a heavy burden to establish that a matter was frivolous or vexations⁵. He also noted:

*In my judgment, the Court must be hesitant to dismiss a proceeding either on the "frivolous and vexatious" or the abuse of process jurisdiction where the plaintiff has a reasonable hope of success.*⁶

- [13] Reference was made in the case to a legal text⁷ which summarised frivolous and vexatious as follows:

A frivolous pleading or allegation is something that is not worth serious attention. A vexatious pleading or allegation is for the purpose of harassment. A pleading is therefore vexatious if it cannot succeed, or is put forward simply for the purpose of wasting time or for causing delay. A pleading that is not intended to be taken seriously is frivolous, in the same way as a claim that has no foundation

- [14] In the context of a disciplinary hearing, frivolous complaints are those that do not have any serious purpose or value. Vexatious complaints are those which are improperly motivated, such as where they lack merit or are instituted primarily to distress, annoy, or embarrass.
- [15] There may, in any complaint made about an electrical worker, be elements of the above or of it having those effects. That is not, of itself, enough to make the complaint frivolous, vexatious, or not made in good faith. The Board would need to

⁴ *Deliu v Hong* [2013] NZHC 735

⁵ *Ibid* para 200.

⁶ *Ibid* para 165

⁷ Bernard Cairns, *Australian Civil Procedure* (6th ed., Thomson LawBook Co, Sydney, 2005) at 402.

consider whether the complaint has been made predominately for those purposes and to lack value or merit.

- [16] That was not the case in the present matter. Regardless of the Complainant's motivations, there was prima facie evidence of non-compliant prescribed electrical work, and those allegations were serious enough to warrant the continuation of the hearing.

Evidence

- [17] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁸. The Board notes that as regards evidence in proceedings before it that the provisions of section 147W of the Act apply. This section states:

In all proceedings under this Part, the Board may, subject to section 156, receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not it would be admissible as evidence in a court of law.

- [18] In addition to the documents filed with the Board, it heard evidence at the hearing from:

[OMITTED]	The Complainant, Electrical Inspector
[OMITTED]	Witness for the Investigator, Electrician
Mark Carter	Witness for the Investigator, Electrical Inspector, called as an expert
Rafe Fannin	Respondent
[OMITTED]	Witness for the Respondent, [OMITTED], and the owner of the installation

- [19] The Board also received briefs of evidence from the Investigator's witnesses.

- [20] The property where the work was carried out consisted of three units, [OMITTED], one of which was a café ([OMITTED]). The units were part of a single building on a single title. Each unit had its own installation control point (ICP). Counsel for the Investigator submitted it was a single electrical installation under the definitions in the Electricity Act. The Respondent submitted it was three separate electrical installations. He certified them as such.

- [21] The property was owned by the Respondent's [OMITTED]. He was engaged to carry out prescribed electrical work in relation to moving a revenue meter out of the café to the exterior of the dwelling and the relocation of the other two revenue metres to the same exterior location. In doing so, the point of supply was moved to the new metering location, and a new main earth peg was installed. The submains were

⁸ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

moved to the new point of supply. The Respondent did not dispute that he had carried out the prescribed electrical work.

- [22] The prescribed electrical work had to be inspected by an Electrical Inspector prior to the new point of supply being connected to a power supply. The Complainant was selected by the Respondent to carry out the inspection. At the time, the Respondent was known to the Complainant as a result of the matters noted in paragraph [11] above, but he had not personally met or engaged with the Respondent prior to him carrying out the inspection.
- [23] The Complainant, in his brief of evidence, stated that he called to the site on 15 March 2021 but noted the installation would not have been completed in time for inspection and connection. He stated he discussed the shortcomings of the installation with the Respondent prior to leaving the Property. He stated that he returned the next day, and again on 17 March 2021, but that the installation was still not ready for an inspection.
- [24] The Respondent gave evidence that it was obvious that the installation was not ready for inspection and that he should have cancelled the inspection on 17 March 2021 as the installation was not ready, but that he continued to work on the installation through the evening and that it was completed that night.
- [25] The Respondent gave evidence that, as a result of on-site discussions with the Complainant, he had to change the manner in which the prescribed electrical work had been completed in that he had to install conductors in conduit and that, as a result of this, he had to make multiple connections in the cables to accommodate this. The Complainant maintained that he did not give advice on how the work should be completed but that he may have suggested means of compliance.
- [26] The Complainant returned to the Property on 19 March 2021 on the premise that the installation was ready for inspection. The Complainant considered the prescribed electrical work was unsatisfactory. He noted, over his four site visits, the following non-compliance issues:
- (a) *The Main earth for the café was not secured. The nut that is intended to secure the earth lug was able to be revolved 10-15 revolutions.*
 - (b) *The supply cable (from the network) is a 25mm cable, 6mm cabling was used from the initial main (meter isolation switch) switch to supply the café installation. These cables were only stripped and inserted into the terminal, no twisting or doubling over was attempted to make the connection secure, (6mm cable in a 100A terminal)*
 - (c) *Numerous cable joints had been completed in an unsatisfactory manner, my recollection was that these joints totalled 13 in a run of less than 8 metres.*

Heat shrink had been applied to the junctions and in the process it had been exposed to excessive heat that resulted in the charring of the heat-shrink, an example of which can be seen in photo 22. A number of these junctions had poorly applied heat-shrink which resulted in partially exposed conductors.

- (d) Almost without exception, terminations were loose and were able to be removed without exerting any effort,*
- (e) Penetrations through the meter cabinets did not appear to have been done by a competent person or adhere to manufacturer's instructions,*
- (f) The installation of the conduit work as presented did not represent that of a competent person or adhere to manufacturer's instructions,*

[27] The Complainant provided photographs of the prescribed electrical work that he had compliance concerns about.

[28] As part of the inspection process, the Respondent provided the Complainant with a combined Electrical Safety Certificates and Certificate of Compliances dated 17 March 2021. The Complainant's evidence was that the Respondent completed the certification on 17 March 2021. The Respondent gave evidence that he completed the certification on 19 March 2021 and that he backdated it to 17 March 2021 as the prescribed electrical work had been completed late on 17 March 2021.

[29] The property was not connected to a power supply on 19 March 2021. The Respondent, when asked why he had certified the installation as connected to a power supply in the Electrical Safety Certificate as of 17 March 2021 when it had not been, stated that he was making a statement as to its future state.

[30] The Complainant informed the building owner of his concerns and recommended that another electrical contractor be engaged to complete the prescribed electrical work. [OMITTED] was then engaged.

[31] The brief of evidence for [OMITTED] of [OMITTED] set out that he visited the site on 22 March 2022. He advised removing all of the previous work and starting afresh. [OMITTED] made the following observations:

- (a) The joins within the meter station were poorly fitted.*
- (b) The heat shrink was the incorrect size and had been burnt.*
- (c) Substandard cable joints between the second meter and the enclosure.*
- (d) We were required to install new earth cables to three existing tenancy distribution boards. The original installation was relying on the existing earth pegs.*

[32] [OMITTED] also provided supporting photographs.

- [33] The Investigator sought the opinion of Mr Mark Carter. He carried out a desktop review of the complaint file. He was also sent the cabling that had been removed by [OMITTED] and examined the same. He provided the Investigator with a report. As a result of that report and the complaint made, the charges before the Board were put forward by the Investigator. The report, as regards the charges, set out the following matters.

Certification

- [34] Mr Carter noted that the prescribed electrical work included high risk work, but that the Respondent's Certificate of Compliance did not note that the work was high risk. He also noted that the Electrical Safety Certificate was issued when the installation was not actually connected to a power supply.
- [35] The Respondent submitted that the description of the prescribed electrical work carried out was sufficient to identify the prescribed electrical work as high risk.
- [36] The Respondent further submitted that the certification was not false or misleading as there were no compliance issues and that his certification met industry standards.

Conductor Terminations

- [37] Mr Carter's report set out the following:

From the accounts of [OMITTED], photographs provided by him and video footage provided by third parties it is evident that connections between conductors and other fittings were unsecure and loose.

The submain protective earthing conductor terminated at the switchboard within [OMITTED] was found to be very loose and requiring multiple revolutions of the securing nut to secure the associated lug to the earth busbar stud. Refer Attachment B.

If left undetected, the safe path of fault current in the event of an electrical fault may have been inhibited, thus impacting on the effective operation of circuit protective devices. Such an occurrence would increase the risk of electric shock.

[OMITTED] found that Café supply conductors connected to a circuit protection devices were loose and could easily be removed from connecting terminals by pulling these gently.

Given that these conductors were associated with the electricity supply to [OMITTED], electrical connections will have been subjected to high current flow due to the high electrical demand of cooking and catering equipment used in this setting.

Loose connections in this instance will have very quickly resulted in excessive heat at the point of termination. Prolonged excessive heat would increased

the resistance at the point of connection which will have in turn further exasperated the excessive heat build-up.

This can be likened to a snow ball effect which if not identified could result in the complete breakdown of the electrical connection and in worst case fire.

It is a fundamental requirement that electrical connections are electrically and mechanically secure.

Under Safety Regulation 20 (2) (d) works and installations are deemed to be electrically unsafe if connections between conductors, and between conductors and other fittings, are not secure and reliable.

- [38] The Board was shown a video clip of the loose earth conductor. [OMITTED] also gave evidence that the conductor to a circuit protection device came loose when he checked the connection. [OMITTED] stated that no excessive force was used when he checked it. The following photograph, taken at the time of [OMITTED] inspection, shows the conductor in question.



- [39] The photo shows a very short tail on the removed conductor.
- [40] The Respondent gave evidence that he did not touch the earthing conductor that was loose but that he did manipulate the conductor elsewhere in the installation. He did not check the terminations following the manipulation but later stated that he did check and that it was tight. [OMITTED] was not aware of any other electrical contractors carrying out any work between the Respondent and [OMITTED] carrying out their work. She did think some work was done on the flat some five years prior.
- [41] The Respondent questioned [OMITTED] as regards whether he removed the protective device connector with excessive force and as part of a campaign against the Respondent. [OMITTED] denied any interference or tampering.

Cable Joints

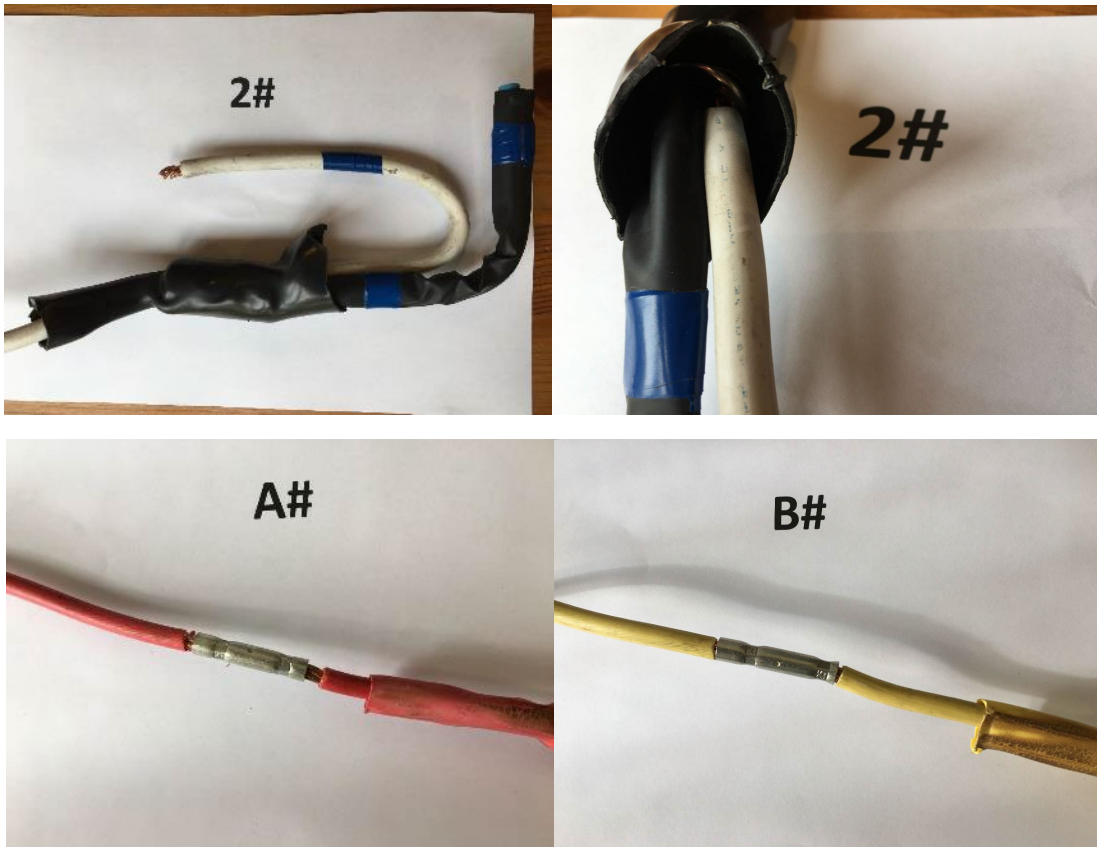
- [42] Mr Carter stated:

For the examples provided, whilst the likelihood of contact with live parts may not have been high, it is the TA opinion that the cable joints installed by Mr Fannin were in some instances not adequately insulated to protect against inadvertent contact with live parts.

Additionally, it is the TA opinion that these components of the wiring system installed by Mr Fannin were not adequately protected against the potential effects caused by an ingress of water or moisture as may occur for external applications.

On this basis it is the TA opinion that in the two examples provided the cable joints breached mandatory installation requirements of AS/NZS 3000 and thus the Safety Regulations.

[43] Mr Carter's report provided photographs of the joints:



[44] A photograph of the same connection as in 2# was also provided to the Board as part of the complaint after its removal from the installation and before it was sent to Mr Carter. It was in the same state as in the photograph above.

[45] The Respondent gave evidence that he had not installed any red or yellow conductors. The witnesses present were not able to identify where the red and yellow cables in photographs labelled A# and B# had come from. An employee of [OMITTED], a registered and licensed electrician who had removed the conductors, was not called to give evidence.

[46] The Respondent also gave evidence, supported by [OMITTED], that his connections were compliant when he had finished the work. The Respondent submitted that someone had forced open the heat shrink in the photographs labelled 2#. He also submitted that only one of some 13 connections had been completed in a satisfactory and compliant manner.

[47] The Respondent also questioned [OMITTED] as to whether [OMITTED] had retained any of his work. [OMITTED] stated that two connections were compliant and were retained.

Earth Electrode

[48] Mr Carter noted:

Under AS/NZS 3000 5.5.1.2 (c), the connection of the main earthing conductor to the main earth electrode shall provide protection against mechanical damage likely to occur to the main earthing conductor or the connection to the electrode at the location.

It is evident from the photographs provided that the installation of the earth electrode and the associated connection to the main earthing conductor was provided with no protection at all

The location of the earth electrode was such that it will have been subjected to potential mechanical damage during the mowing of the visible strip of grass. Additionally it was noted that the area will have been subject to school students in transit to and from school as a result of the two nearby schools.

[49] [OMITTED] gave evidence that curls could have been put into the earth conductor to give it some flex and that the conduit in which the earth conductor ran for some of its length should have been more made more secure with additional saddles. The following photograph shows the earth electrode as installed by the Respondent:



- [50] The Respondent gave evidence that the original earth electrode was installed in the same manner and in a similar location as the new installation and that it had not, at any time of the 30 odd years that it had been in service, been damaged and that it was not beside the school. [OMITTED] also gave evidence to this effect. The Respondent also provided a video clip of the area where the main earth peg was installed taken at the end of the school day to demonstrate that it was not a heavy traffic area. The video, taken on a wet day, showed the peg beside the building with a short grass strip and a public footpath. There was minimal foot traffic beside it. A wheelie bin was moved from the side of the curb to the vicinity of the earth electrode during the clip but was moved back to the curb by whoever was making the clip.
- [51] The Respondent further submitted that the manner in which he had installed the earth electrode was in accordance with industry standards.
- [52] The Respondent and [OMITTED] also gave evidence that the intention was to put a garden around the earth peg to protect it. [OMITTED] gave evidence that she was given the option of a toby box or a garden. She chose a garden as a toby box would have been unsightly. They both gave evidence that there was insufficient time to install a garden as there was time pressure to connect the power. [OMITTED] installed the earth peg in a toby box.
- [53] The Respondent also submitted that even if the garden had not been installed, the manner in which the earth electrode was installed met the provisions of AS/NZS 3000:2007 in that the single clamp that connected the conductor to the earth peg was the mechanical protection.

General Evidence

- [54] The Respondent made general submissions as to the credibility of [OMITTED] as a witness on the basis of the earlier fit and proper complaint made and that he had a conflict of interest as a result of it.
- [55] Evidence was also given in relation to matters that were not before the Board and were, therefore, not relevant to the Board's deliberations. The evidence included issues with regard to a post livening event following the work completed by [OMITTED]. The Respondent noted that other electrical workers had not been complained about and questioned why the Complainant had not complained about others.

Board's Conclusion and Reasoning

- [56] The Board's disciplinary finding in respect of each of the charges is as follows:

First Disciplinary Offence

On or around March 2021 at [OMITTED], Mr Rafe Fannin **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:

- (a) Installed and/or terminated conductors with unreliable connections; and/or
- (b) Jointing of submain conductors' cables without adequate insulation exposing live parts; and/or
- (c) Installed a protective earth electrode without adequate protection against mechanical damage.

Second Disciplinary Offence

On or around 17 March 2021 at [OMITTED], Mr Rafe Fannin **has** provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided an Electrical Safety Certificate stating the work is connected to a power supply and is safe to use when it was not, in breach of regulation 74A of the Electricity (Safety) Regulations 2010.

Third Disciplinary Offence

On or around 17 March 2021 at [OMITTED], Mr Rafe Fannin **has** provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided an Electrical Safety Certificate stating the work was connected to a power supply and is safe to use when it was not, in breach of regulation section 74A of the Electricity (Safety) Regulations 2010.

Fourth Disciplinary Offence

On or around 17 March 2021 at [OMITTED], Mr Rafe Fannin **has** provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided an Electricity Safety Certificate stating the work was connected to a power supply and safe to use when it was not, in breach of regulation 74A of the Electricity (Safety) Regulations 2010.

Fifth Disciplinary Offence

The Board decided that the Respondent **had not** committed the disciplinary charge.

Sixth Disciplinary Offence

The Board decided that the Respondent **had not** committed the disciplinary charge.

Seventh Disciplinary Offence

The Board decided that the Respondent **had not** committed the disciplinary charge.

Eighth Disciplinary Offence

The Board decided that the Respondent **had not** committed the disciplinary charge.

[57] The reasons for the Board's decisions follow.

First Disciplinary Offence

[58] The first offence was laid in the alternatives of negligently creating a risk of serious harm to any person (but only in relation to unreliable connections), 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).

[59] 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, it must consider whether a risk of serious harm or significant property damage was created.

[60] Contrary to an enactment is a form of strict liability offence in that all that needs 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 negligence⁹. In this respect, the provisions of Regulation 11 are noted:

11 Strict liability offences

- (1) *Subclauses (2) and (3) apply to every offence in these regulations except those that specifically refer to a defendant's state of knowledge or intention regarding the facts constituting the offence.*
- (2) *In a prosecution for an offence to which this subclause applies, it is not necessary for the prosecution to prove that the defendant knew or intended the facts that constitute the offence.*

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

[61] 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*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.

[62] 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.

[63] 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*”.

[64] The New Zealand Courts have stated that the 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.

[65] 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 Act¹⁵. 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 practitioner¹⁶.

[66] 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.*

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

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

- (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.]*

[67] 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.

[68] 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.

[69] With respect to a risk of serious harm or significant property damage, serious harm is defined in section 2 of the Act. It means:

*death; or
injury that consists of or includes loss of consciousness; or
a notifiable injury or illness as defined in section 23 of the Health and Safety at Work Act 2015.*

[70] The relevant parts of Section 23 of the Health and Safety at Work Act 2015 are:

23 Meaning of notifiable injury or illness

- (1) *In this Act, unless the context otherwise requires, a notifiable injury or illness, in relation to a person, means—*
 - (a) *any of the following injuries or illnesses that require the person to have immediate treatment (other than first aid):*
 - (i) *the amputation of any part of his or her body:*
 - (ii) *a serious head injury:*
 - (iii) *a serious eye injury:*
 - (iv) *a serious burn:*
 - (v) *the separation of his or her skin from an underlying tissue (such as degloving or scalping):*
 - (vi) *a spinal injury:*

¹⁷ [2001] NZAR 74

(vii) *the loss of a bodily function:*

(viii) *serious lacerations:*

- (b) *an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment:*
- (c) *an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance:*

[71] Significant property damage is not defined in the Act. Section 16(1)(b)(ii) of the Act, which relates to notification of accidents, also refers to serious harm and to property damage. In respect of damage, it requires notification where there is:

damage to any place or part of a place that renders that place or that part of that place unusable for any purpose for which it was used or designed to be used before that accident.

[72] As section 16 refers to both serious harm and to damage, the Board considers significant property damage in section 143(b)(ii) should be interpreted in line with the definition in section 16(1)(b)(ii).

[73] Actual serious harm or significant property damage need not occur. There need only be a risk that either might occur. The risk must be real in that there needs to be a material or substantial possibility, chance, or likelihood that serious harm or significant property damage will occur. A real risk has also been described as one that a reasonable person would not brush aside as being far-fetched or fanciful¹⁸.

[74] The Board did not consider that the thresholds for serious harm or significant property damage had been met. It did find that the Respondent's prescribed electrical work had been carried out in a negligent manner in respect of:

- (a) the termination to a protective device which was unreliable;
- (b) the jointing of a conductor shown in identified as 2# which did not have adequate insulation; and
- (c) the installation of a protective earth electrode without adequate protection against mechanical damage.

[75] The Board has not made a disciplinary finding in respect of an unreliable connection to an earthing conductor or inadequate insulation on the jointing of conductors identified as A# and B# as there was insufficient evidence to establish, on the balance of probabilities, that the Respondent had caused the unreliable connection or had carried out the prescribed electrical work on conductors A# or B#.

¹⁸ Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2) [1967] 1 AC 617

Unreliable connection

[76] There was competing evidence as regards the unreliable connection to a protective device. The Complainant's evidence was that the conductor came away from the device with minimal force. The Respondent submitted the complaint was motivated by malice and the evidence was fabricated. The Board did note that the Complainant did have an issue with the Respondent and that this may have coloured his opinion of the Respondent and his attitude toward him. At the same time, the Board found the Complainant to be a credible witness. His evidence on the connection was also supported by the picture of the conductor. The exposed tail on the conductor was extremely short. There was barely enough tail to make a connection within the protective device, let alone a reliable connection. As such, the Board found that the Respondent had failed to ensure a reliable connection.

[77] It should be noted that an unreliable connection could compromise its operation and that it can result in heat build-up from resonance which creates a risk of fire. Moreover, regulation 20(2)(d) of the Safety Regulations provides:

- (2) *Works and installations are also deemed to be electrically unsafe if—*
- (d) *connections between conductors, and between conductors and other fittings, are not secure and reliable*

[78] Given those factors, the Board finds that the prescribed electrical work had been completed in a manner that was contrary to an enactment and that, as regards negligence, that the Respondent has departed from an accepted standard of conduct.

Jointing of Conductors

[79] The Respondent submitted that the insulation around the conductor had been interfered with and that what was seen in photograph #2 was not as he had left it. The Complainant's evidence was:

Heat shrink had been applied to the junctions and in the process it had been exposed to excessive heat that resulted in the charring of the heat-shrink, an example of which can be seen in photo 22. A number of these junctions had poorly applied heat-shrink which resulted in partially exposed conductors.

[80] The Respondent also submitted that even if #2 was not compliant, it was not representative of his work and, by implication, a disciplinary finding should not, therefore, be made. Again, the Board found that Complainant to be credible and that there was a chain of evidence from the issue being noted on site through to Mr Carter when the issue on at least one joint was confirmed.

[81] The connection was jointed in a manner whereby access could be gained to live parts and whereby moisture could enter into the joint and cause damage and compromise its operation. Again, regulation 20 of the Safety Regulations deems it as unsafe:

- (2) *Works and installations are also deemed to be electrically unsafe if—*
- (g) *cables (including underground cables) are inadequately protected against the risk of damage by the nature of their covering or their method of installation*

[82] Once more, the Board finds that the prescribed electrical work had been completed in a manner that was contrary to an enactment and that, as regards negligence, that the Respondent has departed from an accepted standard of conduct.

Earth Electrode

[83] The issue as regards the earth electrode was more technical in nature. The question was whether the installation met the requirements of AS/NZS 3000:2007 or not. The key provisions were:

5.5.1.2 Connection to earth electrode

The connection of the main earthing conductor to the earth electrode shall –

- (c) *provide protection against mechanical damage likely to occur to the main earthing conductor or the connection to the electrode at the location, in accordance with Clause 5.5.5.2;*

5.5.5.2 Protection against mechanical damage

Earthing conductors shall be protected against becoming displaced, damaged or cut by means of one or a combination of the following methods appropriate to the expected conditions of mechanical damage at the point of installation:

- (a) *Fixing by means of clamps, clips, saddles, clouts or similar devices that shall not pass between the strands of the conductor or damage the conductor.*
- (b) *Guarding by metallic barriers or other suitable robust material.*
- (c) *Installing in a wiring enclosure, in accordance with Clause 3.10.2.*

[84] There was no dispute about the manner in which the earth electrode had been installed. Rather, there were different positions as regards whether the manner in which it was installed met the above regulatory requirements. The Respondent submitted that the single clamp which secured the earth conductor to the peg, and which made the electrical connection, was sufficient mechanical protection.

[85] The Board, which includes persons with expertise in the electrical industry, considered that a single clamp, given the location of the earth electrode, did not provide adequate protection against mechanical damage. The earth electrode was beside a public footpath, and whilst it may not have been damaged in the past, there was still a risk, given the manner that it had been installed, that the earthing conductor could have been caught and pulled compromising the quality of the

earthing connection and thereby the operation of a fundamental electrical safety mechanism. Additional mechanical protection in line with AS/NZS 3000:2007 clause 5.5.5.2 was required.

[86] In terms of the compliance of the work, other than it not being in accordance with AS/NZS 3000:2007¹⁹, it was also deemed unsafe under regulation 20(2)(a) of the Safety Regulations:

- (2) *Works and installations are also deemed to be electrically unsafe if—*
- (g) *cables (including underground cables) are inadequately protected against the risk of damage by the nature of their covering or their method of installation*

[87] Again, the Board finds that the prescribed electrical work had been completed in a manner that was contrary to an enactment and that, as regards negligence, that the Respondent has departed from an accepted standard of conduct.

Seriousness

[88] As noted, the conduct needs to be serious enough for the Board to make a disciplinary finding. There was more than one contravention and the contraventions found were not only serious in nature but showed a lack of care and adherence to standards. It was not a case of an inadvertent error, oversight, or carelessness. It was a case of a failure to carry out prescribed electrical work in accordance with accepted industry standards.

Certification

[89] The remaining charges were laid under section 143(f) of the Act. They related to the provision of a false or misleading returns. The determination of whether a return is false or misleading is a question of fact to be decided objectively, and the intention of the issuer is irrelevant²⁰.

[90] 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.

Second to Fourth Disciplinary Offences

[91] The Second, Third and Fourth Offences related to the provision of Electrical Safety Certificates for [OMITTED]. The allegation was that they were issued in breach of

¹⁹ Under regulation 59(1) of the Safety Regulations, all prescribed electrical work on a low voltage installation must be carried out in accordance with Part 2 of AS/NZS 3000.

²⁰ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

section 74A of the Electricity (Safety) Regulations 2010. The reference should have been to regulation 74A, not section 74A. That error was not fatal for the charges.

[92] Regulation 74A of the Safety Regulations applies to installations. It provides

74A Electrical safety certification

(1AA) This regulation applies to prescribed electrical work on—

- (a) an installation; or*
- (b) a part installation; or*
- (c) any fitting that supplies an installation or a part installation with electricity.*

(1) After the work referred to in subclause (1AA) is complete, the person who completed the work must issue an electrical safety certificate for the installation or part installation if the person is satisfied that—

- (a) the installation or part installation is safe to use, on the grounds that it is electrically safe and complies with these regulations; and*
- (b) where the prescribed electrical work comprised the maintenance or alteration of, or the addition to, the installation or part installation, the work has not adversely affected any other part of the installation.*

(2) For the purposes of subclause (1), if an installation or part installation was disconnected from a power supply while the prescribed electrical work was done, the work is complete only once the installation or part installation is connected or reconnected to a power supply.

(3) An electrical safety certificate must—

- (a) include a statement that the person issuing it is satisfied that the installation or part installation is connected to a power supply and is safe to use; and*

[93] Mr Carter's evidence was that the Electrical Safety Certificates were issued even though the installations were not connected to a power supply.

[94] The evidence before the Board was that the certification was completed on 19 March 2021 but backdated to 17 March 2021, the date on which the Respondent stated he had completed the prescribed electrical work. The Electrical Safety Certificates each stated:

By signing this document I certify that the installation, or part installation, to which this Electrical Safety Certificate applies is connected to a power supply and is safe to use.

- [95] The installation was not connected to a power supply on 17 March 2021. Nor was it connected on 19 March 2021. It was not connected until [OMITTED] had completed its work. As such, the statement made by the Respondent in his Electrical Safety Certificate was false or misleading, and the disciplinary offences have been committed.
- [96] The Respondent submitted that the statement was one as to the future state and was intended to represent the state of the installation following its connection to a power supply by an Electrical Inspector. He also submitted that it was completed in accordance with normal industry practices.
- [97] There was nothing in the certification that indicated that it was a statement as to the future. The normal procedure is for the Electrical Safety Certificate to be completed following a connection to a power supply being made and by the person who completes the connection or by an electrical worker present when the connection is made.

Fifth to Seventh Disciplinary Offences

- [98] The Fifth, Sixth and Seventh Offences related to the provision of Certificates of Compliance for [OMITTED]. The allegation was that they were issued in breach of section 69 of the Electricity (Safety) Regulations 2010. The reference should have been to regulation 69, not section 69. Again, the error was not fatal for the charges.
- [99] Regulation 69 of the Safety Regulations stipulates:

69 Offences relating to certificates of compliance

A person commits an offence and is liable on conviction to a level 2 penalty if he or she—

- (a) falsely certifies any prescribed electrical work; or*
- (b) purports to certify prescribed electrical work when the certificate of compliance does not comply with the requirements of regulation 66(1); or*
- (c) issues a certificate of compliance that contains incorrect information; or*
- (d) issues a certificate of compliance in relation to particular prescribed electrical work when not authorised to certify that work.*

- [100] Regulation 69 is an infringement offence provision. Proceedings before the Board are not infringement proceedings. As such, the charges fail. Furthermore, the charges before Board did not provide particulars of how the Certificates of Compliance were false or misleading. Simply stating that they are is not enough. It needs to be clear to both the Board and the Respondent what it is about the certification that is false or misleading so that the Board can make a finding, and the

Respondent can defend the allegation. This applies regardless of the evidence that is put before the Board. As it was not clear, the Board could not make a finding.

- [101] It should be noted that if the charge specified what aspects or aspects of the Certificate of Compliance were false or misleading, then the Board may have been able to make a finding. Alternatively, if the charge referenced regulation 66 of the Safety Regulations, then the Board, once again, could have made a finding as the prescribed electrical work had not been done lawfully or safely. The Respondent is cautioned as regards his future certification.

Eighth Disciplinary Offence

- [102] The Board also found, as regards the eighth charge, that the Respondent had not committed a disciplinary offence. The allegation was that the certification did not document the work as high risk when it was. The prescribed electrical work was high risk pursuant to regulation 6A(2)(b) of the Safety Regulations as it involved mains work on an installation.
- [103] Also, as with the fifth to seventh charges, the charge was that the Respondent had breached regulation 69. Unlike the other charges, it did adequately particularise the allegations.
- [104] There is no prescribed form of certification. All that is required is that certification is completed in accordance with the Safety Regulations. In this respect, regulations 66 and 67 apply and, with regard to the latter, 67(1)(a) states:

67 Information recorded on certificate of compliance

(1) *Every certificate of compliance must record the following:*

(a) *if the work is high-risk work on a low or extra-low voltage installation or part installation, whether the work has been done in accordance with Part 1 of AS/NZS 3000 or in accordance with Part 2 of AS/NZS 3000:*

- [105] The form of certification used by the Respondent had a tick box to denote high risk. It had not been ticked. The certificate did note it had been done in accordance with Part 2 as per the regulation 67(1)(a) requirement. It was also evident from the description of the work in the certificate that it was high risk. As such, another electrical worker placing reliance on the certificate should have been able to ascertain that it was for high-risk work.

Penalty, Costs and Publication

- [106] 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.

- [107] The matter was dealt with on the papers. Included was information relevant to penalty, costs and publication and the Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [108] 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*²¹ 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.

- [109] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,²² the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act, they have the advantage of simplicity and transparency. The court recommended adopting a starting point for penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.
- [110] The Board has found that the Respondent has carried out prescribed electrical work in a negligent manner and that he has provided false or misleading certification. Not all of the charges have been upheld, but the most serious of them have been. The offending was in the mid-range of offending. The Respondent did not accept any failings, and he defended the charges. He was partially successful but only because of the way in which the charges were filed. On the basis of those factors, the Board adopted a starting point of a fine of \$1,500. The amount is consistent with penalties imposed by the Board for similar disciplinary offending. The Board does not consider that there are any mitigating or aggravating factors that warrant the penalty being increased or decreased.

Costs

- [111] 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.
- [112] 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

²¹ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²² 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 case²³.

[113] In *Collie v Nursing Council of New Zealand*,²⁴ 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.

[114] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁵ 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.

[115] 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.

[116] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,250 toward the costs of and incidental to the matter. This is less than the Board's scale of costs for a full day hearing following a moderately complex investigation of \$3,150. The amount was reduced on the basis that the Respondent was partially successful in defending the matter.

Publication

[117] 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 Act²⁶. The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z of the Act, the Board may, if no appeal

²³ *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.

²⁴ [2001] NZAR 74

²⁵ CIV-2011-485-000227 8 August 2011

²⁶ Refer sections 128 of the Act

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.

- [118] 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.
- [119] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²⁷. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁸. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁹. 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*³⁰.
- [120] 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 interest³¹. 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.
- [121] Based on the above, the Board will order further publication. The publication will be in the form of an article in the Electron in which the Respondent will be named.

²⁷ Section 14 of the Act

²⁸ Refer sections 200 and 202 of the Criminal Procedure Act

²⁹ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

³⁰ *ibid*

³¹ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$1,500.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$2,250 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

The Respondent will be named in this decision.

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.

[123] 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.

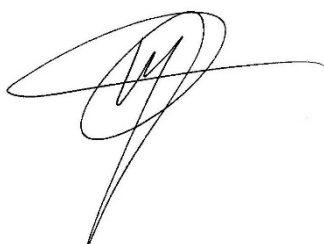
Submissions on Penalty, Costs and Publication

[124] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs, and publication up until close of business on **15 July 2022**. The submissions should focus on mitigating matters as they relate to the penalty, costs, and publication orders. If no submissions are received, then this decision will become final. If submissions are received then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs, and publication.

Right of Appeal

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

Signed and dated this sixteenth day of June 2022.



Mr 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—*
 - (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.*