

Before the Electrical Workers Registration Board

CE No. 22303
Electrical Worker: Richard Hill (the Respondent)
Registration Number: E 4461
Electrical Worker Number: EW 053483
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: Auckland
Hearing Type: In Person
Hearing Date: 16 February 2022
Decision Date: 21 April 2022

Board Members Present:

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

Appearances: Michelle Brown for the Investigator
Bryce Turner, Industry Representative appearing for the Respondent

Procedure:

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

Board Decision:

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

Contents

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

Introduction..... 3

Function of Disciplinary Action 4

Procedure 4

Evidence and Submissions 5

 Submain fixing and mechanical protection 7

 Extra low voltage cables and low voltage cables segregation or double insulation..... 9

 Cable entry gaps..... 9

 Certificate of Compliance..... 9

 Electrically Safe 10

 General Submissions..... 10

Board’s Conclusion and Reasoning..... 11

 Contrary to an Enactment..... 11

 Negligence..... 15

 Certification..... 19

Penalty, Costs and Publication..... 20

 Penalty 20

 Costs..... 21

 Publication 22

Penalty, Costs and Publication Orders 26

Right of Appeal 26

Summary of the Board’s Decision

[1] The Respondent has carried out prescribed electrical work in a manner that was contrary to an enactment and in a negligent manner. The Respondent provided a false or misleading return. He is fined \$1,000 and is ordered to pay costs of \$500. A record of the disciplinary offending will be recorded on the public register for a period of three years.

Introduction

- [2] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator that the complaint should be considered by the Board.
- [3] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

First disciplinary offence

1. On or around January 2019 at [OMITTED], Mr Richard Hill has carried out or caused to be carried out prescribed electrical work in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done being an offence under section 143(a)(ii) of the Act, IN THAT, he failed to provide the minimum standard that must be achieved to satisfy the safety requirements of part 1 of AS/NZS 3000:2007 in relation to the selection and installation of wiring systems that were run from the roof of the Tech block to the switchboards in classrooms 13 and 14, in that:
 - a. Installed a submain on the roof of the tech block without adequate fixing and mechanical protection; and/or
 - b. Installed extra low voltage cables and low voltage cables within the same wiring enclosure without providing the required segregation or double insulation of the low voltage cables and/or
 - c. He left large gaps for cable entry not sufficient to contain fire spreading in the switchboards of classrooms 13 and 14.

In breach of section 20(2)(g) and 59(2) of the Electricity (Safety) Regulations 2010

Or in the alternative

2. On or around January 2019 at [OMITTED], Mr Richard Hill has carried out or caused to be carried out prescribed electrical work in a negligent or incompetent manner being an offence under section 143(a)(i) of the Act, IN THAT he failed to provide the minimum standard that must be achieved to satisfy the safety requirements of part 1 of AS/NZS 3000:2007 in relation to the selection and installation of wiring systems that were run from the roof of the Tech block to classrooms 13 and 14, in that:
 - a. Installed a submain on the roof of the tech block without adequate fixing and mechanical protection; and/or
 - b. Installed extra low voltage cables and low voltage cables within the same wiring enclosure without providing the required segregation or double insulation of the low voltage cables in classrooms 13 and 14; and/or
 - c. He left large gaps for cable entry not sufficient to contain fire spreading in the switchboard of classrooms 13 and 14.

Second disciplinary offence

3. On or around January 2019 at [OMITTED], Mr Richard Hill has Mr Richard Hill has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT:
 - a. he has certified prescribed electrical work that was carried out between the technical block and classrooms 13 and 14 as being compliant when it was not; and/or
 - b. has failed to provide sufficient information to identify where the work was carried out.

[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.

Procedure

[9] The matter partially proceeded on the basis of an Agreed Statement of Facts. The Respondent denied the allegations made.

[10] Prior to the hearing, Counsel for the Investigator filed a Memorandum submitting that the following issues remain to be determined:

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

- (a) Was the submain on the roof of the tech block installed without adequate fixing and mechanical protection?
 - (b) Were extra-low voltage cables and low voltage cables installed within the same wiring enclosure without providing the required segregation or double insulation of the low voltage cables?
 - (c) Did the Respondent leave large gaps for cable entry insufficient to contain fire spreading in the switchboards of rooms 13 and 14?
 - (d) Did the work carried out meet the minimum safety requirements set out in part 1 of AS/NZS 3000:2007?
 - (e) Was the work carried out contrary to an enactment or, in the alternative, in a negligent or incompetent manner?
 - (f) Was the Certificate of Compliance (“CoC”) provided by the Respondent false or misleading because it certified the work as compliant when it was not?
 - (g) Was the CoC provided by the Respondent false or misleading because it did not contain sufficient information to identify where the work was carried out?
- [11] The hearing proceeded on the basis that technical evidence and expert opinions would be presented on the above matters.
- [12] Oral evidence and submissions were received on 16 February 2022. Directions were issued as regards written submissions from the Respondent and a reply from the Investigator. Due to various covid related issues, the submissions were delayed.
- [13] On 21 April 2022, the Board met and considered the evidence and submissions received at the hearing, and the post-hearing submissions received and made its decision.

Evidence and Submissions

- [14] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. The Board notes, as regards evidence in proceedings before it, that the provisions of section 147W of the Act apply. This section states:
- In all proceedings under this Part, the Board may, subject to section 156, receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not it would be admissible as evidence in a court of law.*
- [15] The Board heard evidence from the Respondent and the Investigator’s expert, Mr David Olsen, an Electrical Inspector.

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [16] The Respondent appeared together with Mr Bryce Turner. Mr Turner sought leave to give evidence as an expert and to represent and make submissions on behalf of the Respondent.
- [17] As noted, an Agreed Statement of Facts was filed in advance of the hearing. It set out the essential facts of the case. The Investigator also filed a formal statement from [OMITTED] whose appearance had, by way of a Board Minute, been excused.
- [18] The Agreed Statement of Facts set out that the Respondent was engaged to install services to two temporary, portable classrooms (Rooms 13 and 14) at [OMITTED] (“the Property”). The prescribed electrical work was carried out during December 2018 and completed in January 2019. The Respondent issued a certificate of compliance on 7 January 2019. The prescribed electrical work on the certificate of compliance was described as *“install 16mm 5 core from distribution to 1 x classroom, install subsequent 6mm tw + E to additional classroom. Connect and test”*. The location details were recorded as “[OMITTED]”, and the name of a person supervised was recorded as [OMITTED] (but with the word supervised crossed out).
- [19] In May 2020, a roofing contractor engaged to replace the roof had concerns with the safety and positioning of the cable on the roof of the tech block, and an Electrical Inspector, [OMITTED] from [OMITTED], was engaged to inspect the installation. [OMITTED] found various areas of concern and provided a report and photos of the issues that he found on 22 May 2020 to [OMITTED] of [OMITTED] (“the Complainant”). The Complainant then engaged the services of Torque IP to carry out a further inspection of other areas of the school where the Respondent’s company had carried out work.
- [20] At the hearing, the Respondent noted that the position of the cable on the roof as shown in photographs was not where he had left it and submitted that an unknown person must have moved it. Photographs provided showed the cable was partially in conduit where it went up to and down from the roof but that it was not in conduit over the length of a classroom roof. The cable was earthed. The Respondent had also installed a data cable that was in conduit, and which was affixed to the roof by the use of saddles. The Respondent also noted that he was not allowed to make penetrations in buildings, so the path used for the cable was the only option available.
- [21] [OMITTED]’s formal statement confirmed his engagement to review the installation and his report. He stated that the photographs he provided were taken prior to any remediation work being carried out.
- [22] The general rule is that all facts in issue or relevant to the issue in a case must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement. The Respondent did, however, provide further evidence at the hearing as did experts for both parties.

- [23] The Investigator's expert was Mr David Olsen of Key Electrical Inspections. He had undertaken a technical assessment and reported several breaches of the Electricity (Safety) Regulations 2010. He found that the Respondent had:
- (a) Installed a submain on the roof of the tech block without adequate fixing and mechanical protection; and/or
 - (b) Installed extra-low voltage cables and low voltage cables within the same wiring enclosure without providing the required segregation or double insulation of the low voltage cables; and/or
 - (c) Left large gaps for cable entry not sufficient to contain fire spreading in the switchboards of classrooms 13 and 14; and
 - (d) Certified the work on the CoC as being carried out in accordance with Electrical (Safety) Regulations when it was not.
- [24] The Agreed Statement of Facts recorded that the Respondent disagreed with Mr Olsen's findings.
- [25] At the hearing, the Respondent and Mr Turner made submissions to the effect that the matter should not have proceeded to a hearing. The submissions noted the work was temporary in nature, was compliant, and that no site visit was made by the Investigator or his expert. He submitted that the complaint was commercially motivated, there had been a delay in dealing with the matter, and that, more generally, it was a safe installation.
- [26] Post the hearing, the Respondent filed a personal statement and submission. It echoed the matters outlined in paragraph [23] above and provided further detail and context. The Respondent took issue with the disciplinary process and with him being subjected to it.
- [27] Mr Turner also filed a submission dated 1 March 2022. It mirrored and expanded on the evidence and submissions received at the hearing and responded to the issues set out by Counsel for the Investigator and noted in paragraph [10] above.

Submain fixing and mechanical protection

- [28] The Respondent's position, as submitted by him and Mr Turner, was that the installation was temporary and that this had implications on how the work was carried out. It was acknowledged by them that a temporary installation should not be carried out in a sub-standard manner simply because it has a short, expected service life, but the submission was that, especially in the education sector, there were commercial realities at play when carrying out temporary work and that those may validly be reflected in the manner in which the work is carried out. In essence, the submission was that economic factors impacted what could be and what was done. Various reasons were given as to why the buildings were temporary with reference to the nature of their annexation to the ground and to the definitions of "connectable Installation" and "relocatable building" in the Act.

- [29] Mr Turner acknowledged that there is no definition of “temporary” in electrical legislative instruments and that the prescribed electrical work must still be compliant. However, he pointed out that the buildings were not permanently installed and were referred to by the [OMITTED] as relocatable, and he drew a comparison to “connectable installations”. Mr Turner reasoned that the relocatable buildings were most likely connectable installations and that, on that basis, the electrical supply could have been by way of a flexible cord set with plug and socket.
- [30] As the buildings were temporary, it was submitted that the chosen cable path was the best option, that it was fully supported at both sides of the building, and that it was partially run in conduit.
- [31] The Respondent also:
- (a) noted the difficulty to obtain [OMITTED] permission to make any kind of roof penetration for fastenings or support systems due to a heightened awareness of leaky buildings;
 - (b) submitted that the roof was not accessible by persons, including a caretaker whom he submitted could not lawfully access the roof, as it was two stories up and required the use of two ladders and the only access to the roof in question would be by tradespersons who, by law, must have appropriate safety measures in place before accessing the roof;
 - (c) that regulation 20(2)(g) of the Safety Regulations had not been breached as there was no reasonable risk of damage; and
 - (d) as regards mechanical protection of the cable, he acted in good faith and in compliance with the relevant legislation. The submission was supported with references to various clauses in AS/NZS 3000:2007.
- [32] Counsel for the Investigator’s response to the Respondent’s submissions was supported by submissions from Mr Olsen who stated that, in his opinion, the building was not a “connectable installation” and that the Respondent had issued a Certificate of Compliance on the basis that it was an “installation”.
- [33] Counsel noted that the Respondent had conceded at the hearing that the submain cable had been moved since he had conducted his work and that it followed that if the cable had been moved since its installation, then it had not been adequately fixed and that if the cable was able to be moved the mechanical protection provided was unlikely to have been sufficient.
- [34] Counsel also submitted that, even if the building were temporary (and the Respondent had no means of knowing how long they may have been in place for and therefore how temporary they were), or there were commercial realities, those factors did not have a bearing on the required standards. The essence of Counsel’s submission was that the compliance requirements were the same regardless of whether the work was temporary or permanent.

- [35] On the question of access, Counsel submitted that it should have been evident to the Respondent that access to the roof could have been achieved by those requiring access such as tradespersons and that it would have been necessary over time to carry out maintenance and other tasks.

Extra low voltage cables and low voltage cables segregation or double insulation

- [36] It was accepted that extra low and low voltage cables had been in the same conduit and that it was not the correct method of installation but submitted it was “extremely low risk”. Mr Turner put forward the Respondent’s perception of the risk that could have been presented and argued that there was no potential for a 400V fault.

Cable entry gaps

- [37] The Respondent’s position was that the cable entry gaps were pre-existing and that he, therefore, should not be held accountable for the gaps as he was entitled to rely on prior certification. Mr Turner submitted that AS/NZS 3000 was not “particularly prescriptive” as regards a 5mm maximum gap.
- [38] Counsel submitted that whilst the Respondent may have been entitled to rely on the previous certification, where there is work that is clearly non-compliant and the practitioner’s new work would be unsafe by virtue of being connected in proximity to the non-compliant work, the Respondent would not have been in a position to certify his own work as safe. Counsel submitted it would have been apparent that there were large gaps for cable entry in the switchboards that would have been insufficient to prevent fire from spreading.
- [39] Mr Olsen noted that, on the basis of the Respondent’s submission, the Respondent either chose not to remedy the noncompliance or he did not meet his obligation to carry out a visual inspection prior to certification as a visual inspection should have identified the noncompliance.

Certificate of Compliance

- [40] There were two issues. The first, whether the work was compliant or not, depends on the Board’s findings in relation to the First Alleged Disciplinary Offence. The second was whether sufficient detail had been provided to identify the location of the installation.
- [41] With regard to the second, Mr Turner argued that the location details meet accepted industry practices and that there was no ambiguity in the description. He noted, the two classrooms were the only two on the school site that had any work even remotely matching the description on the Certificate of Compliance, and that, at the time, the two classrooms in question did not have numbers, names, identifying features and that those details were not added until months later when they were handed over to the school to commence using.

- [42] Counsel submitted that a Certificate of Compliance must provide sufficient information to persons “other than the author” to identify what work was done, by who and where and that this was particularly important where work is done at a school where it was likely that other persons will need to reference that Certificate of Compliance in the future. It was noted that additional information could have been provided to further identify the buildings, such as a map or plan.

Electrically Safe

- [43] Mr Turner made reference to the definition of safe and unsafe in regulation 5 of the Safety Regulations. He submitted that the Respondent had “acted in good faith, in a sound application of the regulations and wiring rules” and that there was no “significant risk” as required under the regulations.
- [44] Mr Olsen submitted “electrically unsafe” has to be interpreted in light of the wording “as a result of dangers arising ...”. The tenor was that a future event or circumstance resulting from the manner in which the prescribed electrical work was carried out could arise which met the significant risk requirement.

General Submissions

- [45] Mr Turner submitted that none of the offences had been made out:

In summary, this witness finds no evidence of Mr Hill having carried out electrical work contrary to enactment. Further there is no evidence to suggest that Mr Hill has acted in a negligent or incompetent manner whilst carrying out this electrical work. If the Board was to find that Mr Hill’s interpretation of the regulations and rules was not preferred, then discussion about that interpretation could well take place. This witness does not find, however, that such discussion over interpretation constitutes grounds for disciplinary action. In this case the principle of ‘balance of probabilities’ is less relevant as Mr Hill has not challenged the evidence submitted, in particular by the Mr Olsen. Mr Hill’s position is simply one of disagreement with the conclusions drawn, and he has provided evidence to support his position. Mr Hill has shown, and this witness has provided elaboration, ‘chapter and verse’ from the relevant regulations and rules that support the decisions he reasonably made in this installation.

[46] Counsel for the Investigator submitted:

It is submitted that the work carried out was clearly contrary to any enactment under section 143(1)(a)(ii) of the Act. The Investigator leaves it for the Board, having heard the evidence, to determine whether any of or all the conduct reaches the threshold of negligence or incompetence under section 143(a)(i) of the Act.

Board's Conclusion and Reasoning

[47] The Board has decided that the Respondent **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 a submain on the roof of the tech block without adequate fixing and mechanical protection; and
- (b) installed extra-low voltage cables and low voltage cables within the same wiring enclosure without providing the required segregation or double insulation of the low voltage cables.

[48] The Board has further decided that the Respondent has carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act in that he left large gaps for cable entry not sufficient to contain fire spreading in the switchboards.

[49] The Respondent also provided a false or misleading return being an offence under section 143(f) of the Act when he certified prescribed electrical work as being compliant when it was not and when he failed to provide sufficient information to identify where the work was carried out.

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

Contrary to an Enactment

[51] The First Alleged Offence was laid in the alternatives of carrying out or causing to be carried out in a negligent or incompetent manner or in a manner contrary to an enactment.

[52] Contrary to an enactment is the least serious of the two alternatives. All that has to be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010 or any of the cited standards within Schedule 2 of the Regulations, which includes AS/NZS 3000:2007. The Board does not need to find that there was intention, fault, or negligence⁵. In this respect, the provisions of Regulation 11 are noted:

⁵ *Blewman v Wilkinson* [1979] 2 NZLR 208

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.*

[53] The offence the Respondent has been charged with was laid under the Act, not the Safety Regulations. Notwithstanding, the principles are the same.

[54] It must also be noted that a finding that an electrical worker has committed a disciplinary offence under section 143(a)(ii) of the Act does not turn on whether the prescribed electrical work was deemed to be “electrically safe” or “electrically unsafe” under the regulation 5 definitions.

[55] On the Respondent's own admission, as regards the failure to segregate low and extra-low voltage conductors within a conduit. Clause 3.9.8.3 of AS/NZS 3007:2007 segregation of different voltage levels stipulates:

Cables of low voltage circuits and cables of extra low voltage circuits may be enclosed in the same wiring system only where one of the following arrangement is employed:

- (a) *The low voltage circuits and cables shall be of the type of the equivalent of double insulation.*

[56] Regulation 59(2) of the Safety Regulations states:

Every other low or extra-low voltage installation or part installation must be installed, tested, inspected, or connected so as to comply with either—

- (a) *Part 2 of AS/NZS 3000; or*
- (b) *a certified design prepared in accordance with Part 1 of AS/NZS 3000.*

[57] The cables did not meet the insulation requirements in clause 3.9.8.3 above. Clause 3.9.8.3 comes within Part 2 of AS/NZS 3000:2007. As such, the prescribed electrical work was carried out in a manner that was contrary to an enactment.

[58] Turning to the allegation as regards the installation of a submain on a roof without adequate fixing and mechanical protection, the Board did not accept that the prescribed electrical work was carried out on a “connectable installation” or that the buildings were temporary. Moreover, even if they were, the Board finds that the compliance requirements for a temporary building are the same as those in a permanent building and that compliance requirements cannot be changed or varied by commercial arrangements.

[59] The Respondent's argument that the classrooms should be treated as connectable installations fails for two reasons. The first is that he certified the work as an "installation". At no time did he believe he was carrying out work on a connectable installation. The second is that if he had been carrying out work on a "connectable installation", then other legislative provisions would have applied, and he would have been in breach of them, including the requirement for an electrical warrant of fitness to be issued under regulation 76:

76 No supply without warrant of electrical fitness

(1) *Before permitting or authorising a connection for the supply of electricity to a connectable installation in a vehicle, relocatable building, or pleasure vessel, the person supplying electricity must verify that the connectable installation has a current warrant of electrical fitness.*

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

[60] The Respondent cannot certify that he carried out work on an "installation" and then argue, after the fact, that it was actually more like a "connectable installation" and so different requirements apply so as to avoid responsibility for the manner in which he completed the prescribed electrical work.

[61] With regard to the submission that the work was done in the manner it was because of commercial realities, the answer is simple. An electrical worker cannot contract out compliance requirements or claim that their obligations are in some way reduced because of commercial pressures. The work has to be done to the required compliance standards. The Board also doubts that the [OMITTED] would condone or accept non-compliant work. Commercial matters are for the Respondent to address in his commercial negotiations, not in the manner that he carries out prescribed electrical work.

[62] Similarly, the argument that the roof was not accessible is rejected. The compliance requirements are the same, whether the roof is accessible or not. Moreover, it was clearly accessible by persons and was accessed by roofing contractors. Just because it may have been somewhat difficult to access does not make it inaccessible.

[63] Mr Olsen's evidence in the report that he provided to the Investigator and his brief of evidence filed for the hearing is accepted. He noted breaches of 3.1.2 and 3.3.2.8(b) of AS/NZS 3000:2007.

[64] Clause 3.1.1 Application states:

The provisions of Section 3 form the minimum standard in relation to the selection and installation of wiring systems that must be achieved to satisfy Part 1 of this Standard.

[65] Clause 3.1.2 covers the selection and installation of wiring systems. It states:

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

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

Characteristics of wiring systems that are to be considered include conductor materials, core identification, insulation properties, temperature rise, bending and tension limitations.

[66] Clause 3.3.2.8(b) deals with “Other mechanical stresses”. It states:

Wiring systems shall be selected and installed so as to minimise damage to the cable insulation, sheathing and connections during installation, operation and maintenance.

Measures undertaken to minimise damage may include the following:

(b) Use of suitable fixings for the cable size and type that hold the cable in position without damage.

[67] Clause 3.9.3.1 provides:

Wiring systems shall be supported by suitable means, in accordance with Clause 3.3.2.8.

Wiring systems shall be fixed in position, in accordance with this Standard, by suitable clips, saddles or clamps or by means that will not damage the wiring system and that will not be affected by the wiring system material or any external influences.

[68] The submain cable in question was laid across a metal roof and was not fastened to prevent its movement. It was able to be moved by persons or environmental conditions. That movement could result in mechanical damage. It did not comply with multiple clauses within Part 2 of AS/NZS 3000:2007.

[69] As the submain had not been installed in accordance with Part 2 of AS/NZS 3000:2007 regulation 59(2) has been breached.

[70] Regulation 20(2)(g) of the Safety Regulations also states:

cables (including underground cables) are inadequately protected against the risk of damage by the nature of their covering or their method of installation

[71] There was a risk of damage. Precautions had not been taken to prevent such damage. Again, a regulatory provision has not been complied with.

[72] Given those factors, the Respondent has carried out prescribed electrical work in a manner that was contrary to an enactment.

Negligence

[73] The Second Alternative relates to negligence and/or incompetence. There is no statutory definition of the terms negligence or incompetence. Negligence and incompetence are not the same. In *Beattie v Far North Council*⁶ 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.

[74] Negligence is the departure by an electrical worker whilst carrying out or supervising prescribed electrical work from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.

[75] 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*⁹ it was stated as "*an inability to do the job*".

[76] The New Zealand Courts have stated that the assessment of negligence and/or incompetence in a disciplinary context is a two-stage test¹⁰. 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.

[77] 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 Act¹¹.

⁶ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

⁹ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

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

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

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 practitioner¹².

[78] The Board notes that the purposes of the Act are:

1A Purposes

The purposes of this Act are—

- (a) *to provide for the regulation, supply, and use of electricity in New Zealand; and*
- (b) *Repealed.*
- (c) *to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and*
- (d) *to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand; and*
- (da) *to provide for the regulation of fittings and electrical appliances that are, or may be, exported pursuant to an international trade instrument; and*
- (a) *to provide for the regulation of electrical workers.]*

[79] The Board also notes, as regards acceptable standards, that all building 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.

[80] The Board did not consider that the Respondent had been incompetent. It did decide that he had been negligent with regard to the failure to ensure that cable entry gaps in a switchboard were reduced in size so as to prevent the spread of fire.

[81] Fire is a very real risk associated with prescribed electrical work and with electrical fittings and equipment. AS/NZS3000:2007 contains multiple references to protection against the spread of fire. Clause 1.5.12 states:

Protection shall be provided against fire initiated or propagated by components of the electrical installation.

Electrical equipment shall be selected, installed and protected such that the equipment will not –

- (b) *contribute to, or propagate a fire*

NOTES:

- 2 *Clauses 2.9.7, 3.9.9 and Appendix E contain requirements dealing with the prevention of the spread of fire.*

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

[82] Clause 2.9.7 of AS/NZS3000:2007 deals with “fire protective measures”. It stipulates:

Wiring associated with switchboards shall be installed in such a manner that, in the event of fire originating at a switchboard, the spread of fire will be kept to a minimum.

Where a switchboard is enclosed in a case or surround, any wiring systems entering the switchboard enclosure shall pass through openings that provide a close fit.

Notes:

3 *An opening with less than 5mm diameter of free space is considered to be a close fit. Therefore, any opening of 5mm diameter or greater requires sealing with a fire-retardant sealant.*

[83] There were gaps greater than 5mm in the switchboard and the Board was not swayed by Mr Turner’s argument that it was open to interpretation. AS/NZS 3000:2007 is clear in its requirements.

[84] The Respondent’s position was that he had not created the oversized holes and was not, therefore, responsible for them. The Board noted Mr Olsen’s submission that the Respondent either chose not to remedy the noncompliance or he did not meet his obligation to carry out a visual inspection prior to certification as a visual inspection should have identified the noncompliance.

[85] The Respondent was, in essence, asking the Board to take the position that where noted noncompliance is pre-existing it does not have to be attended to. In this respect, regulation 73A(4) of the Safety Regulations does provide that:

A person who undertakes the connection of an installation or part installation is entitled (if acting in good faith) to rely on the veracity of any certificates of compliance relating to prescribed electrical work done on the installation or part installation, and on the veracity of any equivalent certificate issued under these regulations before 1 July 2013.

[86] The question for the Board is whether this negates a duty to take steps to deal with known non-compliance issues. The Board considers that would be a dangerous position to take and not one that would promote the purposes of the Act. An electrical worker has a duty to ensure that those who will use an installation will not be exposed to risks or dangers that may arise from the electrical system. That duty does not extend to testing and verifying non-compliant work that an electrical worker did not carry out or supervise and which is not reasonably discoverable. It does extend to known or reasonably identifiable risks and dangers.

[87] This also accords with the provisions of regulation 73A(1)(a) of the Safety Regulations:

73A Before connecting installations to power supply

(1) *Before connecting to a power supply a low or extra-low voltage installation or part installation on which prescribed electrical work has been done, the person doing the connection must—*

(a) *be satisfied that the installation or part installation is safe to connect;*

[88] The Board does not consider that an electrical worker could be satisfied that an installation is “safe to connect” if there is a known noncompliance issue that has not been addressed. As such, the provision in regulation 73A(4) must be read in light of 73A(1) and so as to give effect to it. This accords with the proviso in 73A(4) that the electrical worker is “acting in good faith”. To proceed to certify an installation with a known non-compliance issue is not “acting in good faith”.

[89] It must also be borne in mind that Section 8 of AS/NZS 3000:2007 requires that an electrical worker carry out a visual inspection to verify that the work complies with the requirements of the Standard. Included in a checklist in clause 8.2.2(a)(iv) “protection against spread of fire”. The Respondent connected cables to the switchboard and, in doing so, he utilised the cable entry points. In doing so, he must take responsibility for the state of and compliance of those entry points. As he did not, the Board found that he had departed from what the Board considers to be an accepted standard of conduct.

[90] The Respondent also submitted that a finding could not be made as the prescribed electrical work was not electrically unsafe as per regulation 5 of the Safety Regulations.

[91] The terms electrically safe and unsafe are defined in regulation 5 of the Safety Regulations:

5 Meanings of electrically safe and electrically unsafe

In these regulations, unless the context otherwise requires—

electrically safe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is no significant risk that a person or property will be injured or damaged by dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment

electrically unsafe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is a significant risk that a person may suffer serious harm, or that property may suffer significant damage, as a result of dangers arising, directly or indirectly, from the use of,

or passage of electricity through, the works, installations, fittings, appliances, or associated equipment.

- [92] As noted, the definitions refer to a significant risk but within the context of a significant risk to persons or property. To be significant, the risk must be real in that there needs to be a material or substantial possibility, chance, or likelihood. A real risk has also been described as one that a reasonable person would not brush aside as being far-fetched or fanciful¹³.
- [93] In this instance, there was a significant risk of the propagation of fire through increased air supply and the spread of fire out of the switchboard as a result of the overly large cable access holes in it. Fires are known to start in switchboards. It is important that they are not fuelled and are contained. If a fire is fuelled or spreads, there is a very real risk of serious harm or significant property damage.
- [94] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹⁴ 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.

- [95] The conduct was deliberate. The Respondent chose to ignore known noncompliance issue. As such, the Board, which includes persons with extensive experience and expertise in carrying out and supervising prescribed electrical work, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

Certification

- [96] The charge under section 143(f) of the Act is related to the provision of a false or misleading return. When determining whether a return is false or misleading is a question of fact to be decided objectively, and the intention of the issuer is irrelevant¹⁵.
- [97] 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

¹³ *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2)* [1967] 1 AC 617

¹⁴ [2001] NZAR 74

¹⁵ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

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.

- [98] The Board has found that the prescribed electrical work had been carried out in a manner that was contrary to the legislative requirements. It follows, on the basis of the findings under sections 143(a)(i) and (a)(ii) of the Act, that the certification issued by the Respondent was false and misleading.
- [99] The Board also found that the certification failed to provide sufficient information to identify where the work was carried out. In this respect, both regulations 67 in respect of certificates of compliance and 74A in respect of electrical safety certificates contain requirements that the certification identifies the location of the installation or part installation on which prescribed electrical work was done.
- [100] The Respondent's certification noted the location as "[OMITTED]" and an address was given. The school, however, is a collection of buildings. It would not be immediately clear to an independent reader of the certification which buildings it related to.
- [101] One of the purposes of certification is to provide assurance to future electrical workers that prescribed electrical work is safe and compliant. This is evident from the provisions of 73A(4) noted above. To fulfil that purpose, the certification needs to be able to be read and interpreted without the need for further investigation. That was not the case in the present situation. As such, the Respondent did not meet the requirements of regulations 67 or 74A of the Safety Regulations and was, therefore, false, or misleading.

Penalty, Costs and Publication

- [102] 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.
- [103] The Respondent made submissions that contained matters that were relevant to penalty, costs, and publication. The Board has taken those submissions into account in reaching a decision.

Penalty

- [104] 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*¹⁶ 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:

¹⁶ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

[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.

- [105] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,¹⁷ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act, they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.
- [106] The Respondent has previously appeared before the Board. The findings in that matter did not, however, predate the present conduct. As such, the present matter has been dealt with as if it was a first offence.
- [107] The conduct was in the lower to middle band of seriousness. Based on previous matters that have come before the Board, a starting point of a fine of \$1,500 was adopted. The Respondent has put forward some mitigating factors that are of relevance to the penalty. At the same time, the Respondent's attitude toward compliance is disconcerting. He appears to put money before compliance. Notwithstanding, he states he has made changes to his business practices. In all the circumstances, the Board has decided that it will reduce the fine to \$1,000.

Costs

- [108] 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.
- [109] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case¹⁸.

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

¹⁸ *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.

[110] In *Collie v Nursing Council of New Zealand*,¹⁹ 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.

[111] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁰ 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.*

[112] 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.

[113] The Respondent was somewhat cooperative. There was an Agreed Statement of Facts, but the Respondent did defend the matter. Taking those factors into account and based on the above, the Board's costs order is that the Respondent is to pay the sum of \$500 toward the costs of and incidental to the matter. The Board has reduced the amount of costs by \$250 from a starting point of \$750 on the basis that the Respondent did agree to the facts that the Board would consider in making a decision.

Publication

[114] 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 Act²¹. 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 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

¹⁹ [2001] NZAR 74

²⁰ CIV-2011-485-000227 8 August 2011

²¹ Refer sections 128 of the Act

whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.

- [115] 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.
- [116] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²². The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²³. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁴. 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*²⁵.
- [117] The Respondent, in his post-hearing submissions, sought suppression. Under section 153(3) of the Act, the Board may:
- (3) *If the Board is of the opinion that it is proper to do so, having regard to the interests of any person and to the public interest, it may, of its own motion or on the application of any party to the proceedings,—*
 - (a) *Order that the whole or any part of a hearing shall be held in private:*
 - (b) *Make an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:*
 - (c) *Make an order prohibiting the publication of the whole or any part of any documents produced at any hearing:*
 - (d) *Make an order prohibiting the publication of the name or any particulars of the affairs of—*
 - (i) *Any person who is the subject of proceedings before it:*
 - (ii) *Any other person.*
- [118] As noted above, in New Zealand, there is a principle of open justice and open reporting, and this is enshrined in the Bill of Rights Act²⁶. As such good grounds have to be shown as to why a matter or details should be suppressed. In the Criminal Procedure Act, the grounds are²⁷:

²² Section 14 of the Act

²³ Refer sections 200 and 202 of the Criminal Procedure Act

²⁴ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁵ *ibid*

²⁶ Section 14

²⁷ Refer ss 200 and 202 of the Criminal Procedure Act

Publication would be likely to:

- (a) *cause extreme hardship to the person charged, a witness or a person connected to those persons or the matters; or*
- (b) *cast suspicion on another person that may cause undue hardship to those persons; or*
- (c) *cause undue hardship to any victim of the offence; or*
- (d) *create a real risk of prejudice to a fair trial; or*
- (e) *endanger the safety of any person; or*
- (f) *lead to the identification of another person whose name is suppressed by order or by law; or*
- (g) *prejudice the maintenance of the law, including the prevention, investigation, and detection of offences; or*
- (h) *prejudice the security or defence of New Zealand.*

[119] In *Robertson v Police*²⁸ the Court of Appeal confirmed the position it took in *Fagan v Serious Fraud Office*²⁹ that the section contemplates a two-stage approach as regards the Criminal Procedure Act:

[40] *At the first stage, the judge must consider whether he or she is satisfied that any of the threshold grounds listed in 200(2) has been established. That is to say, whether publication would be likely to lead to one of the outcomes listed in subs (2). The listed outcomes are prerequisites to a court having jurisdiction to suppress the name of a defendant. It is "only if" one of the threshold grounds has been established that the judge is able to go on to the second stage.*

[41] *At the second stage, the judge weighs the competing interests of the applicant and the public, taking into account such matters as whether the applicant has been convicted, the seriousness of the offending, the views of the victims and the public interest in knowing the character of the offender.*

[120] As regards the word "likely" in *H v R*³⁰ the Court stated:

[17] *The meaning of the word "likely" was considered by the Court of Appeal in R v W, where the case concerned automatic name suppressions under the Criminal Justice Act 1985. The Court held that the phrase "likely to lead to the identification" of the victim meant there had to be an "appreciable risk" that this would occur.*

²⁸ [2015] NZHC 1501

²⁹ [2013] NZCA 367

³⁰ [2015] NZHC 1501

I conclude that the word “likely” in s 202 means more than “may” so that a mere possibility would not suffice. However, it is not necessary for an applicant for an order under s 202 to show that the risk of harm is such that it is more likely than not to occur. In my view, the word “likely” in s 202 means a real risk that cannot be readily discounted.

[121] Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive³¹. In *N v Professional Conduct Committee of Medical Council*,³² the High Court pointed to the following factors:

The tribunal must be satisfied that suppression is desirable having regard to the public and private interests and consideration can be given to factors such as:

- *issues around the identity of other persons such as family and employers;*
- *identity of persons involved and their privacy and the impact of publication on them; and*
- *the risk of unfairly impugning the name of other practitioners if the responsible person is not named.*

[122] 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 interest³³. 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.

[123] Accordingly, the Respondent’s application must be considered in light of the above.

[124] The Respondent’s application was based on the potential damage being named could cause his business. That, in itself, is not a sufficient ground for suppression. It is a natural consequence of any disciplinary finding, and there is nothing unusual about the case and no indications that the Respondent would suffer extreme hardship. As such, an order under section 153 will not be made.

[125] On the basis of the above, the Respondent will be named in this decision, and the Board will publish a general article in the Electron summarising the matter but will not order further publication over and above that article. Notwithstanding that the Board declined to suppress, the Respondent will not be identified in the Electron.

³¹ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

³² *ibid*

³³ *Kewene v Professional Conduct Committee of the Dental Council* - [2013] NZAR 1055

[126] Also, the disciplinary outcome will, as a consequence of this decision, be recorded in the public register as required by the Act³⁴. This is because section 128 of the Act stipulates:

128 Matters to be contained in register

- (1) *The register must contain all of the following information, to the extent that the information is relevant, for each registered person:*
- (c) *the following information about the status and history of the person's registration and practising licence (if any):*
- (viii) *any action taken under section 127 (as in force immediately before the commencement of this section) or section 147M on a disciplinary matter in respect of the person in the last 3 years*

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$1,000.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$500 (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 not be named in the publication.

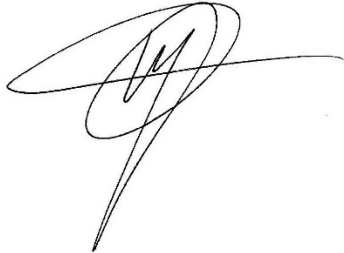
[128] The Respondent should note that the Board may refuse to relicence an electrical worker who has not paid any fine or costs imposed on them.

Right of Appeal

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

³⁴ Refer sections 128 of the Act

Signed and dated this seventeenth day of May 2022.



Mel 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.*