

## Before the Electrical Workers Registration Board

	CE No. 22197
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Electrical Worker:	Andrew Reekie (the Respondent)
Registration Number:	E 10662
Electrical Worker Number:	EW 061362
Registration Class:	Electrician

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

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Hearing Location:	Auckland
Hearing Type:	In Person
Hearing Date:	19 March 2020
Decision Date:	19 March 2020

#### Board Members Present:

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

Representation:	Sarah Blick for the Investigator
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#### 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.

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**Introduction**

- [1] The hearing resulted from three complaints about the conduct of the Respondent at three separate installations. The Investigator reported, under section 147G(1) of the Act, in respect of each complaint that they should be considered by the Board.
- [2] The Respondent was served with notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board in respect of each complaint. They were:

**CE 22197**

First Alleged Disciplinary Offence

1. Between January and June 2019 at [REDACTED] Mr Andrew Reekie 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 close fitting fire protective measures for cables entering switchboard in breach of regulations 59 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. Between January and June 2019 at [REDACTED] Mr Andrew Reekie 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 close fitting fire protective measures for cables entering switchboard.

Or in the Alternative

3. On or around June 2019 at [REDACTED] Mr Andrew Reekie 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 failed to provide close fitting fire protective measures for cables entering switchboard

Second Alleged Disciplinary Offence

4. On or around 28 June 2019 at [REDACTED] Mr Andrew Reekie has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified prescribed electrical work as being carried out lawfully and safely when it had not.

### **CE 22198**

First Alleged Disciplinary Offence

1. Between January and February 2019 at, [REDACTED] Ruawhai Mr Andrew Reekie 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, failed to provide close fitting fire protective measures for cables entering switchboard.

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

Or in the Alternative

2. Between January and February 2019 at, [REDACTED] Mr Andrew Reekie 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, failed to provide close fitting fire protective measures for cables entering switchboard.

Second Alleged Disciplinary Offence

3. Between January and February 2019, at [REDACTED] Mr Andrew Reekie has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide a Certificate of Compliance and/or Electrical Safety Certificate for prescribed electrical work as required.

### **CE 22199**

First Alleged Disciplinary Offence

1. On or around June 2019 at [REDACTED] Mr Andrew Reekie 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. Failed to protect cables and conductors where passing over sharp metal edges; and/or
- b. Failed to provide close fitting fire protective measures for cables entering switchboard; and/or
- c. Failed to label all devices used for isolation installed on the switchboard; and/or
- d. Has installed fasteners for switchboard in a manner that poses a risk to damage of live conductors; and/or
- e. Failed to configure and label a main isolator in accordance to legal requirements.

In breach of regulations 13,16,20,59 and 66 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around June 2019 at [REDACTED] Mr Andrew Reekie 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. Failed to protect cables and conductors where passing over sharp metal edges; and/or
- b. Failed to provide close fitting fire protective measures for cables entering switchboard; and/or
- c. Failed to label all devices used for isolation installed on the switchboard; and/or
- d. Has installed fasteners for switchboard in a manner that poses a risk to damage of live conductors; and/or
- e. Failed to configure and label a main isolator in accordance to legal requirements.

Or in the Alternative

3. On or around June 2019 at [REDACTED] Mr Andrew Reekie 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:

- a. Failed to protect cables and conductors where passing over sharp metal edges; and/or
- b. Failed to provide close fitting fire protective measures for cables entering switchboard; and/or
- c. Failed to label all devices used for isolation installed on the switchboard; and/or
- d. Has installed fasteners for switchboard in a manner that poses a risk to damage of live conductors; and/or
- e. Failed to configure and label a main isolator in accordance to legal requirements.

#### Second Alleged Disciplinary Offence

4. On or around June 2019 at [REDACTED] Mr Andrew Reekie has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified prescribed electrical work as being carried out lawfully and safely when it had not.

[3] 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 in respect of each matter.

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

#### Function of Disciplinary Action

[5] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.

[6] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*<sup>3</sup> Collins J. noted that:

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

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

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

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

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

### Procedure

- [8] Each of the three matters proceeded on the basis of an Agreed Statement of Facts.
- [9] The Respondent had stated he would appear at the hearing. The Board Officer contacted him at the commencement of the hearing to ascertain his whereabouts. He stated he had been delayed as a result of a traffic incident that he was involved in. As the Board was in receipt of a signed Agreed Statement of Facts the Board decided to proceed with the matter.
- [10] The appearance of Counsel for the Investigator was excused.

### Evidence

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

- [12] The matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent carried out prescribed electrical work at each of the properties and that a technical report dated 28 November 2019 was completed on each by an expert who identified the noncompliant work as noted in the charges in respect of each. The report noted the provisions of AS/NZS 3000:2017, a standard that is cited in the Safety Regulations, that had been breached in respect of each.
- [13] 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 summary.

### Board’s Conclusion and Reasoning

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- [14] The Board has decided that the Respondent **has** 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 close fitting fire protective

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

measures for cables entering a switchboard in breach of regulation 59 of the Electricity (Safety) Regulations 2010.

- [15] The Board has also decided that the Respondent **has** provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified prescribed electrical work as being carried out lawfully and safely when it was not.

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- [16] 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 failed to provide close fitting fire protective measures for cables entering a switchboard in breach of regulations 59 of the Electricity (Safety) Regulations 2010.

- [17] The Board has also decided that the Respondent **has** provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he failed to provide a Certificate of Compliance and/or Electrical Safety Certificate for prescribed electrical work as required.

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- [18] 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. Failed to protect cables and conductors where passing over sharp metal edges; and
- b. Failed to provide close fitting fire protective measures for cables entering a switchboard; and
- c. Failed to label all devices used for isolation installed on the switchboard; and
- d. Has installed fasteners for switchboard in a manner that poses a risk to damage of live conductors.

In breach of regulations 13,16,20,59 and 66 of the Electricity (Safety) Regulations 2010.

- [19] The Board has decided that the Respondent **has not** committed a disciplinary offence in respect of the particular that the Respondent had failed to configure and label a main isolator in accordance to legal requirements on the basis that the finding under particular "c" was substantially similar and, as such, a further finding was not required.

- [20] The Board has also decided that the Respondent **has** provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified prescribed electrical work as being carried out lawfully and safely when it was not.
- [21] The Board reached its decision on the basis of the agreed statement of facts and the Respondent's acceptance of responsibility as disclosed within it.
- [22] It is to be noted that the Board's decision in respect of each complaint is that the prescribed electrical work had been carried out in a manner contrary to an enactment. Contrary to an enactment is a form of strict liability offence in that all that need be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010 or any of the cited standards within Schedule 2 of the Regulations – in this case AS/NZS 3000:2017. The Board does not need to find that there was intention, fault or negligence<sup>5</sup>. 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.*
- [23] With regard to certification the charge, in respect one complaint the allegation was that it was not provided and in respect of the other two, that the Respondent had provided a false or misleading return. Determining whether a return has not been provided or whether it is false or misleading is a question of fact to be decided objectively. The intention of the issuer is irrelevant<sup>6</sup>.
- [24] 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.
- [25] In each case there was sufficient evidence before the Board that the certification was either not provided or was false or misleading.

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

<sup>6</sup> *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1



## Penalty, Costs and Publication

- [26] Having found that one or more of the grounds in section 143 applies the Board must, under section 147M of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [27] The matter was, in essence, dealt with on the papers. Included was information relevant to penalty, costs and publication. The matters before the Board were at the lower end of the scale and, given that the Board has an Agreed Statement of Facts before it, the Board decided to proceed and make orders.

### Penalty

- [28] 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*<sup>7</sup> 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.*

- [29] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>8</sup> 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.
- [30] The disciplinary offending is at the lower end of the scale. The Respondent has accepted responsibility and has cooperated with the investigation and the Board's hearing. He is entitled to reduced penalties on the basis that he has pleaded guilty. Based on this the Board's penalty decision in respect of each is as follows:

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- [31] The Board adopted a starting point of a fine of \$300 and reduced this to \$150 on the basis of the Respondent's acceptance of responsibility.

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- [32] The Board adopted a starting point of a fine of \$300 and reduced this to \$150 on the basis of the Respondent's acceptance of responsibility.

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<sup>7</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>8</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

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- [33] The Board adopted a starting point of a fine of \$500 to reflect that there were multiple matters and that the overall offending was slightly more serious. It reduced the fine to \$250 on the basis of the Respondent's acceptance of responsibility.

Costs

- [34] 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.
- [35] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case<sup>9</sup>.
- [36] In *Collie v Nursing Council of New Zealand*<sup>10</sup> where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

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

- [37] Based on the above the Board's costs order is that the Respondent is pay the sum of \$150 toward the costs of and incidental to each of the matters. The total costs for all three matters is the sum of \$450. In setting the amount of costs the Board took into account that the Respondent had agreed to the matters proceeding by way of an Agreed Statement of Facts.

Publication

- [38] As a consequence of its decision the Respondent's name and the disciplinary outcomes will be recorded in the public register as required by the Act<sup>11</sup>. The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z the Board may, if no appeal is brought within 20 working days of its decision, direct the Registrar to cause a notice stating the effect of the decision or order, the reasons for the decision or order, and (unless the Board directs otherwise) the name of the person in respect of whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.
- [39] 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

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<sup>9</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

<sup>10</sup> [2001] NZAR 74

<sup>11</sup> Refer sections 128 of the Act

of a disciplinary hearing. This is in addition to the Respondent being named in this decision.

- [40] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>12</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>13</sup>. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>14</sup>. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>15</sup>.
- [41] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest<sup>16</sup>. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [42] Based on the above the Board will order further publication in way of the Electron. The Respondent will not be named.
- [43] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act which allows for prohibition of publication.

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

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

**Penalty:** CE 22197: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$150.

CE 22198: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$150.

CE 22199: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$250.

**Costs:** CE 22197: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$150 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

CE 22198: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$150 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

CE 22199: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$150 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

<sup>12</sup> Section 14 of the Act

<sup>13</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>14</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>15</sup> *ibid*

<sup>16</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

**Publication:** The Registrar shall record the Board's action in respect of each matter 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.

In terms of section 147Z of the Act, there will not be action taken to publicly notify the Board's action.

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

### Right of Appeal

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

Signed and dated this 30<sup>th</sup> day of March 2020



**M. J. Orange**  
Presiding Member

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

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