

## Before the Electrical Workers Registration Board

CE No. 22186  
Electrical Worker: Hilman Solomon (the Respondent)  
Registration Number: EST 12592  
Electrical Worker Number: EW 086750  
Registration Class: Electrical Service Technician (EST)

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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 Type: Video Conference  
Hearing Date: 19 August 2020  
Decision Date: 19 August 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

Appearances: Rebecca Denmead for the Investigator

#### Procedure:

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

#### Board Decision:

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

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## Introduction

- [1] 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.
- [2] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

### First Alleged Disciplinary Offence

1. On or around June and July 2019 at [Omitted], Mr Hilman Solomon 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 has:
  - a) carried out prescribed electrical work outside the limits of his registration being the installation and connection of conductors and fittings to a power supply in the kitchen and bathroom at the property; and/or
  - b) failed to provide Residual Current Device (RCD) protection for the socket outlets that he installed;

In breach of Section 84 of the Electricity Act 1992 and NZ gazette No 2019-no1762 and in breach of regulations 5 and 13 and 20(1)(c) and 59 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around June and July 2019 at [Omitted], Mr Hilman Solomon 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 has:
  - a) carried out prescribed electrical work outside the limits of his registration being the installation and connection of conductors and fittings to a power supply in the kitchen and bathroom at the property; and/or
  - b) failed to provide RCD protection for the fittings that he installed.

Or in the Alternative

3. On or around June and July 2019 at [Omitted], Mr Hilman Solomon 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 has:
  - a) carried out prescribed electrical work outside the limits of his registration being the installation and connection of conductors and fittings to a power supply in the kitchen and bathroom at the property; and/or
  - b) failed to provide RCD protection for the fittings that he installed.

Second Disciplinary Offence

4. On or around June and July 2019 at [Omitted] Mr Hilman Solomon has carried out prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under section 143(d) of the Act, IN THAT, he carried out prescribed electrical work outside the limits of his registration being the installation and connection of conductors and fittings to a power supply in the kitchen and bathroom at the property.

- [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.
- [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.”*

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

### Procedure

[8] The matter proceeded on the basis of an Agreed Statement of Facts.

[9] The hearing was conducted, by consent, by way of a video conference.

### Evidence

[10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>4</sup>. The Board notes, as regards evidence in proceedings before it, that the provisions of section 147W of the Act apply. This section states:

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

[11] The matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent undertook the installation and connection to the power supply of power points and downlights at a property and that, as an EST, he was not permitted to carry out such work.

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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

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

- [12] Another electrical worker [Omitted] attended the property to provide a quote for a kitchen/bathroom renovation. He established that the Respondent had recently completed prescribed electrical work (PEW) in the kitchen and bathroom at the property and observed that it was not up to standard.
- [13] The PEW carried out in the kitchen included the installation and connection of a range hood, a hob and isolator, a dishwasher and isolator, a waste disposal and isolator, three above bench power points and downlights.
- [14] The PEW carried out in the bathroom included the installation of wiring for an RCD power outlet, a heated towel rail, a heater and downlights.
- [15] [Omitted] observed that the power points and light switches were live and only protected by plastic flush boxes in unlined walls. There were no residual current devices (RCD) installed on the switchboard as required in domestic installations.
- [16] Mr Stephen Doust, an Electrical Inspector, was engaged by the Investigator to provide a technical review and report. Mr Doust noted that the installation of the power points required the installation of RCD protection. The Investigator alleged no RCDs were installed on the switchboard in breach of regulation 59 of the Electricity (Safety) Regulations 2010. Mr Doust noted that AS/NZS 3000:2007 2.6.3.1 requires an RCD to be provided for final sub-circuits supplying one or more socket outlets. Mr Doust also found that the Respondent has carried out PEW outside the terms of his registration as an EST.
- [17] The Respondent acknowledged that he committed a serious error in judgement by exceeding the boundaries of his registration as an EST. He noted:
- “In hindsight I should have enlisted the services of a registered electrician from the beginning to oversee the project and perform / approve all electrical work.*
- I have ensured that the work I have done has been checked and that the future work from there has been completed by Registered Electricians. This is something that I had always intended to do.”*
- [18] The Respondent accepted that he:
- (a) *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 PEW being an offence under section 143(b)(ii) of the Act, IN THAT, he has carried out prescribed electrical work outside the limits of his registration being the installation and connection of conductors and fittings to a power supply in the kitchen and bathroom at the property and failed to provide RCD protection to the fittings; and*
- (b) *carried out PEW that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under section 143(d) of the Act, in that*

*he carried out prescribed electrical work outside the limits of his registration being the installation and connection of conductors and fittings to a power supply in the kitchen and bathroom at the property and failed to provide RCD protection to the fittings.*

- [19] 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.

### **Board's Conclusion and Reasoning**

- [20] The Board has decided that the Respondent **has** carried out or caused to be carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act, IN THAT, he has he failed to provide Residual Current Device (RCD) protection for the socket outlets that he installed.
- [21] The Board has also decided that the Respondent has carried out prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under section 143(d) of the Act, IN THAT, he carried out prescribed electrical work outside the limits of his registration being the installation and connection of conductors and fittings to a power supply.

### First Offence

- [22] The Board decided that the allegation in the First Disciplinary Charge that the Respondent had breached either section 143(a)(i), 143(a)(ii) or 143(b)(ii) of the Act by having carried out prescribed electrical work outside the limits of his registration was, on the basis of the Board's finding that the offending fell within section 143(a)(i) of the Act, a duplication of the Second Disciplinary Charge. As such, it did not uphold that aspect of the charge.
- [23] Had the Board upheld a charge under section 143(b)(ii) of the Act then the allegation that he worked outside of the limits of his registration would have been a factor in a finding as regards "serious harm" or "significant property damage", which are necessary elements of section 143(b)(ii) of the Act.
- [24] The Board noted that the Respondent had accepted that he had committed an offence under section 143(b)(ii) of the Act. Notwithstanding, the Board considered that the conduct did not come within that provision as the only non-compliant electrical work was the failure to install an RCD. That failure does not, of itself, create a risk of "serious harm" or "significant property damage". An RCD is a fail-safe device. Its absence does not make the installation electrically unsafe. What would have been required to make a finding under section 143(b)(ii) of the Act is PEW that was electrically unsafe. As there was no such PEW a finding under section 143(b)(ii) could not be made.

- [25] The Board’s decision that the Respondent had been negligent under section 143(a)(i) of the Act was made on the basis that the Respondent had departed from an acceptable standard of conduct. The expected standard of conduct is judged against those of the same class of licence as the Respondent. This is described as the *Bolam*<sup>5</sup> test of negligence which has been adopted by the New Zealand Courts<sup>6</sup>.
- [26] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>7</sup>. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [27] 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 Act<sup>8</sup>. The test is an objective one, and in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner<sup>9</sup>.
- [28] 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*
- (e) *to provide for the regulation of electrical workers.]*

- [29] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Electricity (Safety) Regulation 2010 and the cited Standards and Codes of Practice in Schedule 2 of the Regulations. As such, when

<sup>5</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>6</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>7</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>8</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

<sup>9</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

considering what is and is not an acceptable standard they must be taken into account.

- [30] Turning to seriousness in *Collie v Nursing Council of New Zealand*<sup>10</sup> 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.*

- [31] Whilst the failure to install an RCD did not create a risk of serious harm or significant property damage the Board, which includes persons with expertise in the electrical industry, decided that the Respondent had displayed a lack of reasonably expected care when he failed to install one. An RCD is an important safety device. Their use in installations is mandatory and has been for some considerable time. The Board would expect a reasonable practitioner to know of the requirement to install an RCD and to comply with it.

### Second Charge

- [32] The second charge related to the Respondent working outside of the limits of his registration and licence.
- [33] Section 84 of the Act allows the Board to designate classes of registration and to specify for each of those classes the prescribed electrical work that a person is authorised to do. The Board does so by way of Gazette Notices. The applicable Gazette Notice<sup>11</sup> specified the limits for a person holding registration as an EST.
- [34] The PEW carried out by the Respondent included the installation and connection of conductors used in an installation to a power supply. An EST is not authorised by the Gazette Notice to carry out such work. As such, he has worked outside of the limits of his registration and licence.

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

- [35] 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.
- [36] The Respondent made submissions at the hearing as regards penalty, costs and publication.
- [37] The Respondent, in addition to what was set out in the Agreed Statement of Facts, stated that the install was for a friend who had been through a marriage break-up

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

<sup>11</sup> 2017-go1984

and needed some assistance. He stated that he would not ordinarily carry out work outside of his limits. He noted that he was interested in obtaining registration as an electrician and was keen to undertake studies to that end.

### Penalty

- [38] 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>12</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.*

- [39] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>13</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 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.
- [40] The matter was dealt with as an Agreed Statement of Facts. The Respondent accepted his wrongdoing. The Board also noted that the complaint came about as a result of the Respondent getting an authorised person to check the work. The Board accepted that it was a one-off.
- [41] Based on the above, the Board decided that the Respondent will be censured. A censure is a formal expression of disapproval.
- [42] The Board noted the Respondent’s stated intention to undertake further training and to obtain registration as an electrician. It strongly recommends that he follows that course of action.

### Costs

- [43] 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.

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<sup>12</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>13</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

- [44] 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>14</sup>.
- [45] In *Collie v Nursing Council of New Zealand*<sup>15</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.*
- [46] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$225 toward the costs of and incidental to the matter. In setting the amount the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

### Publication

- [47] 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>16</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.
- [48] 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.
- [49] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990<sup>17</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>18</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>19</sup>. The High Court provided

<sup>14</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>15</sup> [2001] NZAR 74

<sup>16</sup> Refer sections 128 of the Act

<sup>17</sup> Section 14 of the Act

<sup>18</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>19</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>20</sup>.

- [50] 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>21</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.
- [51] Based on the above, the Board will publish a general article in the Electron summarising the matter but will not order further publication. The Respondent will not be identified in the Electron.
- [52] 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 the prohibition of publication.

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

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

**Penalty:** Pursuant to section 147M(1)(g) of the Electricity Act 1992, the Respondent is censured.

**Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$225 (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.**

- [54] 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.

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<sup>20</sup> *ibid*

<sup>21</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Right of Appeal

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

Signed and dated this 25<sup>th</sup> day of August 2020



**Mel 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.*

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- (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.*