

## Before the Electrical Workers Registration Board

	CE No. 22183
Electrical Worker:	Brian Williams (the Respondent)
Registration Number:	E 14384
Electrical Worker Number:	EW 020913
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 Type:	On the Papers
Hearing Date:	23 April 2020
Decision Date:	23 April 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

#### 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 section 143(a)(ii) and 143(b)(ii) 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 27 June 2019 at [REDACTED], Mr Brian Williams 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 control switches for a heat, light and fan unit within the shower zone; and/or
  - b. Did not install an earth continuity conductor into the heat, light and fan unit; and/or
  - c. Used a red sleeve over a green wire as an active conductor.

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

Or in the Alternative

2. On or around 27 June 2019 at [REDACTED] Mr Brian Williams has carried out or caused to be carried out prescribed electrical work in a negligent or incompetent manner being an offence under section 143(a)(i) of the Act, IN THAT, he:

- a. Installed control switches for a heat, light and fan unit within the shower zone; and/or
- b. Did not install an earth continuity conductor into the heat, light and fan unit; and/or
- c. Used a red sleeve over a green wire as an active conductor.

#### Second Alleged Disciplinary Offence

3. On or around 27 June 2019 at [REDACTED] Mr Brian Williams has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he installed control switches for a heat, light and fan unit within the shower zone.

#### Third Alleged Disciplinary Offence

4. On or around 27 June 2019 at [REDACTED] Mr Brian Williams has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to issue a Certificate of Compliance for General prescribed electrical work as required by Electricity (Safety) Regulations 2010, regulation 65.

- [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.”*

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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] The matter proceeded on the papers and on the basis of the Respondent’s acceptance of responsibility as set out in correspondence from the Respondent’s Legal Counsel to the Investigator dated 6 April 2020 and submissions from Counsel to the Board dated 16 April 2020.
- [9] Counsel for the Investigator filed an opening submission. It noted the first disciplinary offence was charged in the alternative; that the conduct was negligent or incompetent or in the alternative that the conduct was contrary to an enactment and that the investigator did not wish to pursue the disciplinary offence as being negligent or incompetent; rather that it be considered as contrary to an enactment.
- [10] Counsel for the Investigator also advised that the investigator no longer sought to pursue the third disciplinary offence on the basis that the Certificate of Compliance has subsequently been provided.
- [11] The appearance of the Investigator and Counsel for the Investigator was excused.

### **Evidence**

- [12] 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.*

- [13] The matter proceeded on the basis of the papers before the Board.
- [14] The Investigator’s Report set out the relevant background to the matter. It noted that, the Respondent was engaged by a builder to carry out the electrical installation for a bathroom renovation. The work included the installation a new heat/light/fan unit in the bathroom, replacement of the existing light and installing control switches. The switches for the heat/light/fan unit were installed where the existing light switch was which was within the wet zone of a new shower unit. It was likely it would become wet in that position and was within easy touch while standing in the shower. The switch that was installed was not IP (ingress protection) rated and would not provide protection against water ingress. There was no earth continuity conductor installed on the heat/fan/light unit. A red coloured sleeve was placed on a

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

green conductor within the switches and was used as an active conductor. No Certificate of Compliance was issued but an Electricity Safety Certificate was.

- [15] The Report noted that the Respondent had made an assumption that a glass barrier would have been installed between the light switch and the shower unit after installing the switches (a shower curtain was used instead) but admitted he did not make any enquiries to confirm this. The following photograph provided to the Board which shows the position of the switches casts doubt on this submission:



- [16] When notified of the complaint the Respondent relocated the switches to the outside hallway.
- [17] The Investigator engaged Mr Peter MacMillan, an Electrical Inspector, to review the prescribed electrical work. He noted:
- (a) the switch for the heat/light/fan units was within the wet zone of the shower fittings;
  - (b) the switches were not IP rated;
  - (c) the switches are within the bath edge and are likely to get wet (Zone1);
  - (d) there was no RCD (residual current device) on the circuit so therefore a high risk of electric shock;
  - (e) the installation did not comply with the manufacturer's instruction which note the installer must comply with AS/NZS 3000 2007 and the switch cannot be reached from the bath or shower;
  - (f) there was no earth continuity wire connected to the heat /light/fan unit;
  - (g) the earth wire at the heat/light/fan unit has been sleeved at the switch and connected to the phase conductor when the switch is activated. The earth conductor is colour coded red; and
  - (h) No certificate of Compliance (CoC) was supplied to the homeowner or tenant for the electrical work. The Electricity Safety Certificate (ESC) supplied is for maintenance, not for the installation of electrical fittings.
- [18] The letter dated 6 April 2020 from the Respondent's Counsel noted:
- Mr Williams accepts responsibility for his actions and does not dispute that he committed the disciplinary offences as set out in your report dated 7 November 2019, and in the notice of proceeding and hearing from the Board dated 9 March 2020.*
- [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 Respondent has agreed to the facts as outlined in the Investigator's Report it was not necessary to call any further evidence or to test the evidence as outlined.

### 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 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 control switches for a heat, light and fan unit within the shower zone; and
- (b) did not install an earth continuity conductor into the heat, light and fan unit; and
- (c) used a red sleeve over a green wire as an active conductor

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

[21] The Board has also decided that the Respondent **has** negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, in that, he installed control switches for a heat, light and fan unit within the shower zone.

[22] The Board reached its decision on the basis of the Respondent's acceptance that he did commit the disciplinary offences and, as regards the First Disciplinary Offence, on the basis that the alternative of negligence or incompetence was not being pursued by the Investigator.

[23] The Board noted, as regards the First Disciplinary Offence, that whilst the Investigator abandoned the alternative negligent or incompetent the facts, as noted in the Investigator's report, would have met the tests for that charge. This was especially the case in terms of the sleeving of a green wire which, had an allegation that the prescribed electrical work had created a risk of serious harm been pursued, the Board would most likely have upheld it. Sleeving a green wire at its termination creates a very real risk that person may be harmed. There have been recent deaths from persons cutting what they believed was an earth conductor (but which was an active conductor) at points along the conductor's length where the wire was still green.

[24] The Respondent accepted, as regards the Second Alleged Disciplinary Offence, that he had negligently created a risk of serious harm which is defined in section 2 of the Act as:

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

[25] The definition denotes how serious a matter is when a risk of serious harm is created. The photograph above illustrates just how dangerous this particular installation was.

### 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 Respondent made written submissions as regards penalty, costs and publication.

[28] Counsel for the Respondent noted that the Respondent sought to cancel his licence and to obtain a partial refund of licence fees after the event and prior to the hearing. Counsel submitted:

5 *We consider that no further action, or censure is the appropriate sanction, for the following reasons:*

5.1 *Mr Williams accepts responsibility for and is remorseful of his actions. He has worked in the industry for over 60 years and has no previous transgressions.*

5.2 *Mr Williams promptly returned to the property and fixed the defective work.*

5.3 *Mr Williams is 78 years old and no longer wishes to continue practicing.*

5.4 *Mr Williams has requested that his electrical workers license be cancelled. Refer enclosed emails. We note that the Board has authority to cancel a person's license under s110(a) of the Electricity Act 1992 where requested in writing to do so and request that the Board exercise that power.*

5.5 *Cancellation of his license, being one of the sanctions available to the Board, is a significant step and eliminates any further risk.*

6. *In light of the above circumstances, we submit that in conjunction with Mr Williams' voluntary cancellation of his licence, no further order is necessary, or at the most censure would be the appropriate sanction, and request that the need for a formal hearing is dispensed with.*

[29] Counsel for the Investigator noted that the Respondent had been cooperative and shown remorse throughout.

### Penalty

[30] 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>5</sup> commented on the role of "punishment"

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<sup>5</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27



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.*

- [31] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*<sup>6</sup>. The High Court when discussing penalty stated:

*[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner's offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.*

- [32] Cancellation of a license is the equivalent of striking off within the electrical worker licensing regime.
- [33] The licensing regime exists to ensure the public can have confidence in those who carry out prescribed electrical. It is integral to the purposes of Act<sup>7</sup> which include the protection of the health and safety of members of the public in connection with the supply and use of electricity and the promotion of the prevention of damage to property in connection with the supply and use of electricity.
- [34] 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.
- [35] Counsel for the Respondent has submitted that the Respondent's request for his licence to be cancelled by the Board under section 110(1)(a) of the Act would be

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<sup>6</sup> [2012] NZAR 481

<sup>7</sup> Section 1A of the Act.

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

sufficient action for the Board to take. The Board does not agree. Nor does it agree that a censure would be sufficient for the disciplinary offending.

- [36] Offending under section 143(b)(ii) of the Act is serious. The manner in which the work was carried out was very dangerous and it created a very real risk of serious harm. Water and electricity simply do not mix. The Board would normally, in such circumstances, consider cancellation, suspension and training, or a significant fine as a starting point.
- [37] The Board has noted the Respondent's statement that he will no longer be carrying out prescribed electrical work and his request for his licence to be cancelled. Given this it has adopted a starting point of cancellation under section 147M(1)(a)(i) of the Act. It considers that this is appropriate as opposed to the course of action proposed by the Counsel as the Board can, in conjunction such an order also impose a minimum period of cancellation under section 147M(1)(a)(iii). The distinction between the two forms of cancellation is important and that distinction is why an order under section 147M is important. Cancellation following a request does not prevent the disciplined person from reapplying shortly thereafter for a new licence whereas an order under section 147M does.
- [38] Taking all of the above factors into account the Board considers that a cancellation of the Respondent's licence is not only warranted to punish the Respondent and to protect the public by ensuring that he is no longer able to carry out prescribed electrical work but also to deter others from such conduct.
- [39] Accordingly, the Board will cancel the Respondent's licence and order that he may not apply to be relicensed for a period of five (5) years.

#### Costs

- [40] 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.
- [41] 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>.
- [42] 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.*

<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

- [43] Counsel has submitted that there should be no order for costs. Reference was made to other cases where no costs were ordered.
- [44] It is unusual for the board not to order costs and it is only done when there are unusual or extenuating circumstances. That is not the case in this instance. Notwithstanding that a formal hearing was not required substantial costs has been incurred, especially as regards the investigation of the matter.
- [45] Based on the above the Board's costs order is that the Respondent is pay the sum of \$1,000 toward the costs of and incidental to the matter. In setting the amount of costs the Board took into account that the Respondent had agreed to the matter proceeding without the need for a hearing.

#### Publication

- [46] 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.
- [47] 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.
- [48] 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>.
- [49] 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.

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

<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

- [50] 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.
- [51] 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**

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

**Penalty:** Pursuant to section 147M(1)(a)(i) of the Electricity Act 1992, the Respondent's licence is cancelled and pursuant to section 147M(a)(a)(iii) the Board orders that he may not reapply to be licensed for a period of five (5) years.

**Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$1,000 (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.**

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

- [53] 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**

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

Signed and dated this 29<sup>th</sup> day of April 2020



**Mel Orange**  
Presiding Member

**<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.]

**<sup>ii</sup> Section 147ZA Appeals**

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- (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.*