

24 JUN 2020

John Luke
fyi-request-13033-88deb23f@requests.fyi.org.nz

Dear Mr Luke

Official Information Act 1982 request

Thank you for your Official Information Act 1982 (OIA) request of 5 June 2020 to the Ministry of Justice regarding the Immigration Advisers Complaints and Disciplinary Tribunal (the Tribunal). I am responding as Group Manager, Courts and Tribunals, Regional Service Delivery. Specifically, you have asked:

There are no reports published for the years of 2017, 2018 and 2019, may I request these reports and encourage you to publish them on your website as well.

In response to your request for the 2017 and 2018 Annual Reports, I thank you for bringing this matter to my attention. Please find the 2017 and 2018 Annual Reports attached. These reports are now available online and they can be found at: justice.govt.nz/tribunals/immigration/advisers-complaints-disciplinary/about/

In response to your request for the 2019 Annual Report, this report is due to be presented to the House of Representatives soon. I am therefore refusing this part of your request under section 18(d) of the OIA, as the information will soon be publicly available.

If you require any further information, please contact Jerram Watts, Acting Media Manager at media@justice.govt.nz or call (04) 918 8980.

If you are not satisfied with this response, you have the right to complain to the Ombudsman under section 28(3) of the OIA. You can contact the Office of the Ombudsman by writing to PO Box 10152, Wellington 6143; calling 0800 802 602; or emailing info@ombudsman.parliament.nz

Thank you for taking the time to write.

Yours sincerely



Jacquelyn Shannon
Group Manager, Courts and Tribunals, Regional Service Delivery

Ref: 82214



Annual Report of the

**IMMIGRATION ADVISERS
COMPLAINTS AND
DISCIPLINARY TRIBUNAL**

For the 12 months ended 30 June 2017

*Presented to the House of Representatives pursuant to
s86(3) of the Immigration Advisers Licensing Act 2007*

Hon Aupito William Sio, Associate Minister of Justice
Hon Iain Lees-Galloway, Minister of Immigration

Pursuant to section 86(1) of the Immigration Advisers Licensing Act 2007, I have pleasure in presenting the Annual Report of the Immigration Advisers Complaints and Disciplinary Tribunal for the 12 months ended 30 June 2017.

Yours sincerely



Grant Pearson

Chair

Immigration Advisers Complaints and Disciplinary Tribunal

INTRODUCTION

The Immigration Advisers Complaints and Disciplinary Tribunal (the Tribunal) determines complaints made against licensed immigration advisers, under the Immigration Advisers Licensing Act 2007 (the Act). The Registrar of the Immigration Advisers Authority (IAA) refers complaints to the Tribunal. Any person (including the Registrar on her own motion), can initiate complaints.

The Tribunal also deals with appeals against the Registrar's decision:

- to cancel an immigration adviser's licence; or
- reject a complaint.

MEMBERSHIP

The Tribunal currently consists of the Chair, Grant Pearson, the inaugural Chair of the Tribunal appointed in October 2010. He is also the Customs Appeal Authority, and Chair of the Social Security Appeal Authority.

Grant Pearson is a former member of the Removal Review Authority and the Refugee Status Appeals Authority. He was the Deputy Chair of the Medical Practitioners Disciplinary Tribunal from 1999-2001.

MATTERS ARISING IN THE LAST 12 MONTHS

The matters before the Tribunal

In the year ending 30 June 2017, the Tribunal received 31 cases. This is fewer than in the 2015/16 and 2014/15 years, when the Tribunal received 38 and 75 cases, respectively. The Tribunal anticipates that the number of cases received will continue to reduce and drop below the levels for this year.

At 30 June 2017, the number of complaints on hand was 48, up from 38 at the start of the reporting year. Of the 48 matters on hand, 19 were awaiting information from parties or from higher courts, 12 were awaiting a decision from a higher court, 2 required oral hearings and 15 were reserved decisions.

Legislative matters

At present, the key elements of the regime governing the Tribunal function well. The complaints are now in the context of an aware profession, which seeks to achieve high standards of professional service delivery. In the early years, the profession had practitioners who came to the profession with neither a professional background, nor a mentored entry. Since that time practitioners have generally achieved the standards expected for professional practice, or left the profession.

Inevitably there are well founded complaints, as for any profession. The complaints are typical of those arising for similar professions. In contrast, the early years after the Act came into force often involved practitioners who lacked appreciation of professional standards. An area of concern regarding practitioners with poor awareness of professional standards are licensed immigration advisers providing services offshore. Some achieve high standards, often reflecting the standards required in their local jurisdiction. However, others are professionally isolated, and less aware of New Zealand's professional service delivery expectations.

In my view, regulation of immigration services delivered outside New Zealand is currently the most problematic aspect of the Act. While the Act generally applies to immigration services, wherever provided, it appears unlawfully providing New Zealand immigration services without a licence is common outside New Zealand. The mechanism usually involves unlicensed people providing services and having the applicant sign a visa application certifying they did not receive immigration advice. Persons providing services relating to student visas offshore are not required to hold a licence, they too are the source of concerning lapses.

Unlicensed immigration advice provided offshore is not generally an issue the Tribunal deals with directly. However, many complaints have concerned New Zealand-based licenced immigration advisers working with unlicensed persons offshore. These cases have brought the issues into the scope of the Tribunal's work. For example, people seeking student visas may seek advice regarding the potential for other visas in the future, or visas for family members. At that point, a licensed immigration adviser may assist. However, unlicensed persons may have procured the student visa using forged documents. It is difficult for a licensed immigration adviser to review this work performed by a person who is exempt from licensing. They cannot be expected to audit this work, but have been blamed for dishonest applications which was not directly part of the work they performed. This issue raises supervision of unlicensed personnel by licensed immigration advisers.

The Act has the pragmatic approach of requiring all immigration services (generally apart from offshore student visa services, and clerical support), to be provided personally by

licensed immigration advisers. This is intended to exclude "rubber stamping", where unlicensed persons provide services and a licensee "signs off" the applications. Unfortunately, there have been many cases where licensed immigration advisers have been subject to complaints of rubber stamping applications prepared offshore.

Given the maturity of the profession, it may be appropriate to consider a change of policy. Rather than prohibition on using unlicensed personnel, making licensed immigration advisers supervise the work, and take responsibility for it may be a better approach. In New Zealand, other professions operate in that way. The supervision is more or less direct, depending on the profession and the service.

For licensed immigration advisers supervising offshore personnel, there is more complexity. Offshore personnel will often be providing professional services beyond regulated immigration services. For example, some countries require a local licensee to vet offshore employment offered to their nationals; and, those persons may also provide offshore job-search services. The scope of supervision and responsibility for services provided through it needs definition.

Allowing unlicensed personnel to provide services under the supervision of a licensed immigration adviser who is personally responsible for the work is likely desirable. It is potentially a mechanism to achieve higher standards in relation to student visa standards, without overwhelming the capacity of the limited number of licensed immigration advisers.

Any policy change regarding supervision would follow a familiar pattern for onshore service delivery, licensed immigration advisers appear to be like other professions. Allowing the supervision of offshore service providers carries potential benefits for maintaining standards. However, supervision at a distance is difficult, and regulating services in a foreign jurisdiction where New Zealand law does not apply is also difficult. The capacity to supervise and to investigate complaints in New Zealand is far easier than offshore.

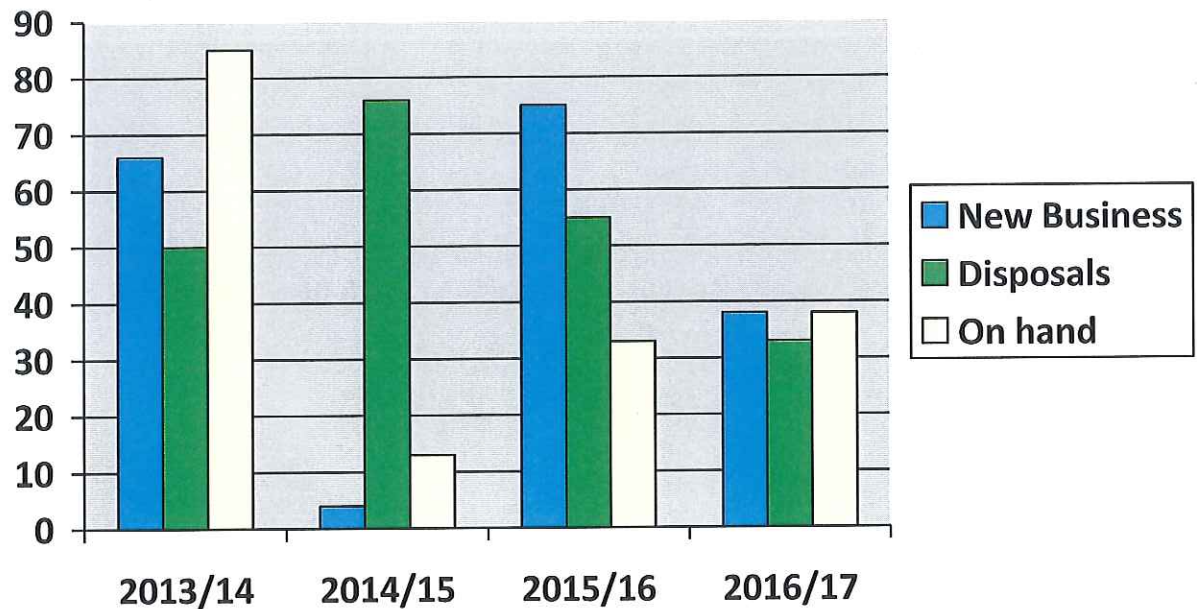
STATISTICS

This section analyses the matters considered and determined by the Tribunal.

Cases received, disposed and on hand

The graph at the top of page 6 shows the number of cases the Tribunal received, disposed, and had on hand in 2015/17 compared with the previous three financial years. Of the 31 cases the Tribunal received in 2016/17, 1 was an appeal against a determination of the IAA Registrar, and the other 30 were complaints.

Graph: Number of cases the Tribunal received, disposed and had on hand at the end of the financial year (2012/13 – 2015/17)



Note: The IAA was going through a transitional period in 2013/14, which is why only 4 complaints were filed in that year.

Case outcomes

After hearing a complaint, the Tribunal may:

- dismiss the complaint;
- uphold the complaint but take no further action; or
- uphold the complaint and impose sanctions.

The table below shows the number of cases dismissed or upheld by the Tribunal for the past three financial years.

Table: Number of complaints and appeals the Tribunal dismissed or upheld (2014/15 – 2016/17)

	2014/15	2015/16	2016/17
Complaints dismissed	3	5	8
Complaints upheld but no further action taken	0	0	1
Complaints upheld and sanctions imposed	*49	27	8
Appeals upheld	1	1	1
Appeals dismissed	2	0	3
TOTAL	55	33	21

* Three complaints for rehearing.

Complaints upheld

The sanctions available to the Tribunal are:

- caution or censure;
- requirement to undertake further training or remedy any deficiency;
- order to pay penalty;
- order to pay costs or expenses;
- order to refund fees;
- order to pay compensation; and
- order restriction, suspension or cancellation of licence.

Out of the 16 penalty decisions issued, the Tribunal*:

- Cancelled 3 licences, imposed stand down periods on 2 other advisers to regain their licence and stood down another licenced adviser until they had complied with the Tribunal monetary orders.
- Censured 7 advisers and cautioned 2 more.
- Fined 7 advisers
- Ordered costs to 6 complainants and ordered refund of fees to 7 more

- Ordered further education for 4 advisers with one adviser stood down until training completed.
- Ordered no further action for 4 advisers

* An adviser can have multiple sanctions against them so this list may refer to an adviser multiple times

Other decisions

Separate penalty decisions	19
Interim decisions	3
TOTAL other decisions	22

In addition, the Tribunal issued 54 directions relating to the conduct of proceedings, covering the identification of issues and other matters.



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MATTERS ARISING IN THE LAST 12 MONTHS

The matters before the Tribunal

In the year ending 30 June 2018, the Tribunal received 42 cases. This is more cases than in the 2016/17 and 2015/16 years, when the Tribunal received 31 and 38 cases, respectively. The Tribunal anticipates that the number of cases received will continue to reduce and drop below the levels for this year.

At 30 June 2018, the number of complaints on hand was 52, up from 38 at the start of the reporting year. Of the 52 matters on hand, 6 were awaiting information from parties or from higher courts and 46 were reserved decisions.

Legislative matters

At present, the key elements of the regime governing the Tribunal function well. The complaints are now in the context of an aware profession, which seeks to achieve high standards of professional service delivery. In the early years, the profession had practitioners who came to the profession with neither a professional background, nor a mentored entry. Since that time practitioners have generally achieved the standards expected for professional practice, or left the profession.

Inevitably there are well founded complaints, as for any profession. The complaints are typical of those arising for similar professions. In contrast, the early years after the Act came into force often involved practitioners who lacked appreciation of professional standards. An area of concern regarding practitioners with poor awareness of professional standards are licensed immigration advisers providing services offshore. Some achieve high standards, often reflecting the standards required in their local jurisdiction. However, others are professionally isolated, and less aware of New Zealand's professional service delivery expectations.

In my view, regulation of immigration services delivered outside New Zealand is currently the most problematic aspect of the Act. While the Act generally applies to immigration services, wherever provided, it appears unlawfully providing New Zealand immigration services without a licence is common outside New Zealand. The mechanism usually involves unlicensed people providing services and having the applicant sign a visa application certifying they did not receive immigration advice. Persons providing services relating to student visas offshore are not required to hold a licence, they too are the source of concerning lapses.

Unlicensed immigration advice provided offshore is not generally an issue the Tribunal deals with directly. However, many complaints have concerned New Zealand-based licenced immigration advisers working with unlicensed persons offshore. These cases have brought the issues into the scope of the Tribunal's work. For example, people seeking student visas may seek advice regarding the potential for other visas in the future, or visas for family members. At that point, a licensed immigration adviser may assist. However, unlicensed persons may have procured the student visa using forged documents. It is difficult for a licensed immigration adviser to review this work performed by a person who is exempt from licensing. They cannot be expected to audit this work, but have been blamed for dishonest applications which was not directly part of the work they performed. This issue raises supervision of unlicensed personnel by licensed immigration advisers.

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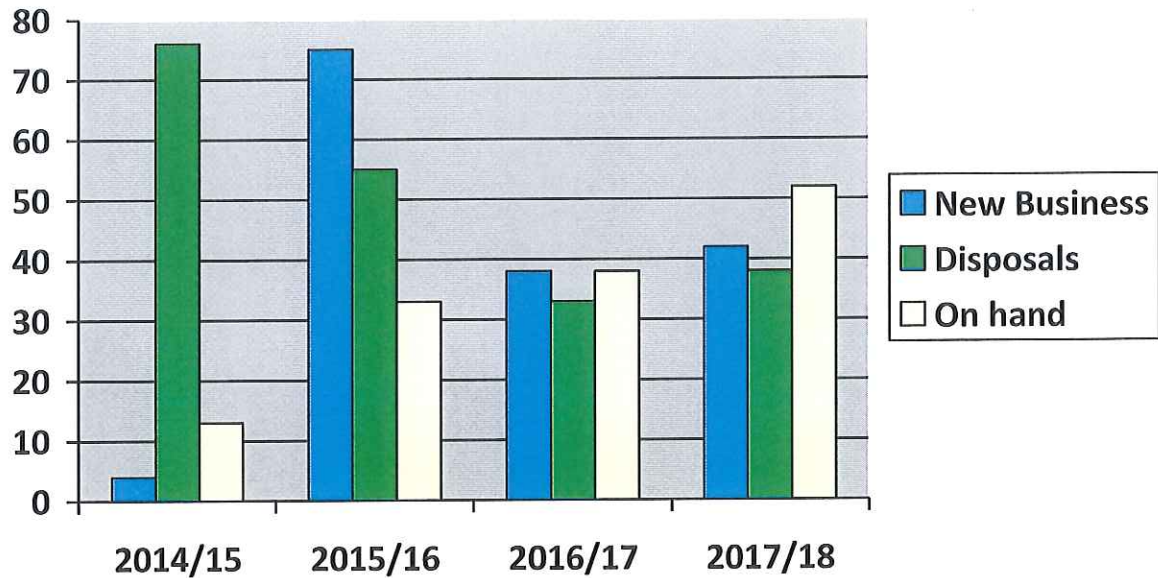
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This section analyses the matters considered and determined by the Tribunal.

Cases received, disposed and on hand

The graph at the top of page 6 shows the number of cases the Tribunal received, disposed, and had on hand in 2015/17 compared with the previous three financial years. Of the 42 cases the Tribunal received in 2017/18, 2 were appeals against a determination of the IAA Registrar, and the other 40 were complaints.

Graph: Number of cases the Tribunal received, disposed and had on hand at the end of the financial year (2012/13 – 2015/17)



Case outcomes

After hearing a complaint, the Tribunal may:

- dismiss the complaint;
- uphold the complaint but take no further action; or
- uphold the complaint and impose sanctions.

The table below shows the number of cases dismissed or upheld by the Tribunal for the past three financial years.

**Table: Number of complaints and appeals the Tribunal dismissed or upheld
(2016/17 – 2017/18)**

	2014/15	2015/16	2016/17	2017/18
Complaints dismissed	3	5	8	0
Complaints upheld but no further action taken	0	0	1	0
Complaints upheld and sanctions imposed	*49	27	8	24
Appeals upheld	1	1	1	0
Appeals dismissed	2	0	3	1
TOTAL	55	33	21	25

* Three complaints for rehearing.

Complaints upheld

The sanctions available to the Tribunal are:

- caution or censure;
- requirement to undertake further training or remedy any deficiency;
- order to pay penalty;
- order to pay costs or expenses;
- order to refund fees;
- order to pay compensation; and
- order restriction, suspension or cancellation of licence.

Out of the 19 penalty decisions issued, the Tribunal*:

- Cancelled 2 licences, imposed stand down periods on 4 other advisers to regain their licence and stood down 4 licenced advisers until they had complied with the Tribunal monetary orders.
- Censured 10 advisers and cautioned 1 more.
- Fined 8 advisers
- Ordered costs to 7 complainants and ordered refund of fees to 6 more

- Ordered further education for 6 advisers with 2 adviser stood down until training completed.
- Ordered no further action for 1 advisers

* An adviser can have multiple sanctions against them so this list may refer to an adviser, multiple times

Other decisions

Notice of Suspension	2
Separate penalty decisions	19
Interim decisions and Second Interim Decision	5
Other Decisions	1
TOTAL other decisions	27

In addition, the Tribunal issued 6 Minutes and 17 Directions relating to the conduct of proceedings, covering the identification of issues and other matters.