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as at 12 April 2022



## Immigration Advisers Licensing Act 2007

Public Act 2007 No 15  
Date of assent 4 May 2007  
Commencement see section 2

### Contents

		Page
1	Title	4
2	Commencement	5

#### Part 1

#### Regulation of immigration advisers

##### *Preliminary provisions*

3	Purpose and scheme of Act	5
4	Act binds the Crown	5
5	Interpretation	5
	<i>Immigration advisers to be licensed, unless exempt</i>	
6	Prohibition on providing immigration advice unless licensed or exempt	8
7	What constitutes immigration advice	8
8	Offshore immigration advice	8
9	No acceptance of immigration applications or requests from unlicensed immigration advisers	9
10	Who may be licensed as immigration adviser	9

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

11	Persons exempt from licensing	10
12	Exemption, or removal of exemption, by Order in Council	10
13	Process for Minister to make recommendation	11
14	Review of exemptions	12
15	Persons prohibited from licensing	13
16	Persons subject to restriction on being licensed	13
17	Other matters relevant to fitness for licensing	14
	<i>Licensing process</i>	
18	Application for licence	14
19	Granting of licence	14
20	Method of determining competence	15
21	Refusal to grant licence	16
22	Duration of licence	16
23	Upgrade of licence	16
24	Renewal of licence	17
25	Licence may not be transferred	17
26	Obligation to notify Registrar of change in circumstances	17
	<i>Cancellation and suspension of licence, etc</i>	
27	Cancellation of licence	17
28	Process for cancellation	18
29	Suspension of licence	18
30	Effective date of cancellation or suspension	19
31	Voluntary surrender of licence	19
32	Registrar must record cancellation, suspension, or surrender of licence	19
33	Expiry of licence	19
	<i>Immigration Advisers Authority and Registrar of Immigration Advisers</i>	
34	Immigration Advisers Authority established	19
35	Functions of Authority	19
36	Registrar to develop competency standards	20
37	Registrar to develop code of conduct	21
38	Publication of code of conduct and competency standards	23
39	Application of Legislation Act 2012 to code and standards	23
	<i>[Repealed]</i>	
	<i>Immigration Advisers Complaints and Disciplinary Tribunal</i>	
40	Immigration Advisers Complaints and Disciplinary Tribunal established	23
41	Functions of Tribunal	23
41A	Orderly and efficient operation	24
41B	Delegation by chair of Tribunal	24
42	Services for Tribunal	25

43	Further provisions in relation to Tribunal and its proceedings	25
	<i>Complaints and disciplinary procedures</i>	
44	Complaints against immigration advisers	25
45	Procedure on receipt of complaint by Registrar	25
46	Registrar may refer complaint to Tribunal of own motion	26
47	Preparation of complaint for referral to Tribunal	26
48	Filing complaint with Tribunal	27
49	Proceedings before Tribunal	27
50	Determination of complaint by Tribunal	27
50A	Suppression orders	28
51	Disciplinary sanctions	28
52	Enforcement of disciplinary sanctions	29
53	Suspension of licence pending outcome of complaint	29
54	Appeal to Tribunal against determination by Registrar to reject complaint	30
55	Appeal to Tribunal against determination by Registrar to cancel licence	30
	<i>Inspection</i>	
56	Purposes of inspection	31
57	Inspection powers	31
58	Inspection powers for investigating offences <i>[Repealed]</i>	32
59	Privilege against self-incrimination	32
60	Entry of dwellinghouses	32
61	Entry warrant	32
61A	Search warrant	33
62	Conditions of authorisation	33
	<i>Offences</i>	
63	Offence to provide immigration advice unless licensed or exempt	33
64	Offence of holding out as immigration adviser unless licensed or exempt	34
65	Offence of holding out as licensed immigration adviser	35
66	Offence to provide false or misleading information	35
67	Offence of asking for or receiving fee or reward for immigration advice when neither licensed nor exempt	35
68	Offence of employing or contracting unlicensed or non-exempt person as immigration adviser	36
69	Offence to obstruct inspection	37
70	Offence to fail to notify change in circumstances	37
70A	Offence of breaching suppression order	37
70B	Offence to fail to comply with summons	38
70C	Contempt of Tribunal	38
71	Reparation	39
72	Additional penalty for offence involving commercial gain	39

73	Offences also apply outside New Zealand	39
74	Presumption as to non-exemption	39
75	Time for filing charging document	39

## Part 2

### Miscellaneous provisions

#### *Independence of persons carrying out functions under Act*

76	Independence of persons carrying out functions under Act	40
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#### *Register of licensed immigration advisers*

77	Register of licensed immigration advisers	40
78	Contents of register	41
79	Alterations to register	41
80	Search of register	41

#### *Appeals against decisions of Registrar and Tribunal*

81	Right of appeal	42
82	District Court may make interim order	42
83	Duties of Registrar if interim order made	43
84	Determination of appeal	43
85	Appeal to High Court on question of law	43

#### *Miscellaneous matters*

86	Annual report on performance of Tribunal's functions	43
87	Power of Registrar to delegate	44
88	Certificate of Registrar	44
89	Licensing fees	44
90	Immigration adviser's levy	45
91	Waiver of further immigration fees in certain cases	45
92	Disclosure of personal information overseas	46
93	Service of notices	48
94	Regulations	49

#### *Amendments to other Acts*

95	Immigration Act 1987 amended	50
96	Privacy Act 1993 amended	50
97	Summary Proceedings Act 1957 amended [ <i>Repealed</i> ]	50

## Schedule

51

### Provisions applying in relation to Tribunal

## 1 Title

This Act is the Immigration Advisers Licensing Act 2007.

## 2 Commencement

- (1) Sections 1 to 5, 7, 12, 13, 34 to 43, 87, 89, 92, and 94 and the Schedule (which relate to the Authority, the Registrar, the Tribunal, the development of competency standards and the code of conduct, and related matters) come into force on the day after the date on which this Act receives the Royal assent.
- (2) Sections 6, 9, 63, 67, and 68 (which impose the requirement to be licensed as an immigration adviser, and provide for related offences) come into force 2 years after the date on which this Act receives the Royal assent.
- (3) The rest of this Act comes into force 1 year after the date on which this Act receives the Royal assent.

## Part 1

### Regulation of immigration advisers

#### *Preliminary provisions*

### 3 Purpose and scheme of Act

The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.

### 4 Act binds the Crown

This Act binds the Crown.

### 5 Interpretation

In this Act, unless the context otherwise requires,—

**Authority** means the Immigration Advisers Authority established by section 34

**category 1 exemptee** means a person exempt from the requirement to be licensed as an immigration adviser under section 12(3)(a)

**category 2 exemptee** means a person exempt from the requirement to be licensed as an immigration adviser under section 12(3)(b)

**chief executive** means the chief executive of the Department

**clerical work** means the provision of services in relation to an immigration matter, or to matters concerning sponsors, employers, and education providers, in which the main tasks involve all or any combination of the following:

- (a) the recording, organising, storing, or retrieving of information:
- (b) computing or data entry:
- (c) recording information on any form, application, request, or claim on behalf and under the direction of another person

**code of conduct** means a code of conduct made under section 37

**company** has the meaning given to it by section 2(1) of the Companies Act 1993; and includes companies or bodies corporate registered or formed outside New Zealand

**competency standards** means the competency standards made under section 36

**Department** means the Department of Labour, or such other department of State that has, with the authority of the Prime Minister, assumed responsibility for the administration of this Act

**former licensed immigration adviser** has the meaning given to it by section 44(1)(b)

**immigration advice** has the meaning given to it by section 7

**immigration adviser** means a person who provides immigration advice

**immigration application or request** means the putting forward of any application, request, claim, appeal, or other approach seeking to have the Minister, the Department, the Immigration and Protection Tribunal, or an immigration officer or a refugee and protection officer deal with an immigration matter

**immigration matter** means any matter arising under or concerning the application of the Immigration Act 2009 (including any regulations or instructions made under that Act); and includes—

- (a) an application or potential application for a residence class visa, temporary entry class visa, or transit visa:
- (b) a request or potential request for a special direction:
- (c) a claim for recognition as a refugee or a protected person, and any related appeal or matter:
- (d) a matter relating to immigration sponsorship:
- (e) a matter relating to an immigration obligation:
- (f) an appeal in relation to an immigration matter

**lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

**licence** means a licence granted under this Act to operate as an immigration adviser

**Minister** means the Minister of Immigration, or such other Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**ordinarily resident**, at any particular time, refers to a person who—

- (a) has been lawfully present in New Zealand for more than 183 days in the immediately preceding 12-month period; and

(b) is not unlawfully in New Zealand

**register** means the register of immigration advisers established and maintained under section 77

**Registrar** means the officer appointed under section 34(2)(a)

**settlement services** means all or any of a range of targeted support services provided for migrants, refugees, protected persons, and their families, including services for the purposes of enabling migrants, refugees, protected persons, and their families to settle into the community, learn the language, and find out how to access essential community services

**Tribunal** means the Immigration Advisers Complaints and Disciplinary Tribunal established by section 40

**visa** means a visa granted under the Immigration Act 2009

**working day** means any day other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (b) the day observed in the appropriate area as the anniversary of the province of which the area forms a part; and
- (c) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year.

Section 5 **code of conduct**: replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 5 **competency standards**: replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 5 **immigration application or request**: substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 5 **immigration matter**: substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 5 **permit**: repealed, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 5 **settlement services**: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 5 **visa**: substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 5 **working day** paragraph (a): replaced, on 12 April 2022, by wehenga 7 o Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/section 7 of the Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14).

Section 5 **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

*Immigration advisers to be licensed, unless exempt*

**6 Prohibition on providing immigration advice unless licensed or exempt**

No person may provide immigration advice unless that person—

- (a) is licensed under this Act to provide that advice; or
- (b) is exempt under section 11 from the requirement to be licensed.

**7 What constitutes immigration advice**

(1) In this Act, **immigration advice**—

- (a) means using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward; but
- (b) does not include—
  - (i) providing information that is publicly available, or that is prepared or made available by the Department; or
  - (ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or
  - (iii) carrying out clerical work, translation or interpreting services, or settlement services.

(2) To avoid doubt, a person is not considered to be providing immigration advice within the meaning of this Act if the person provides the advice in the course of acting under or pursuant to—

- (a) the Ombudsmen Act 1975; or
- (b) any other enactment by which functions are conferred on Ombudsmen holding office under that Act.

Section 7(1)(b)(ii): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 7(2): added, on 7 July 2010, by section 4 of the Immigration Advisers Licensing Amendment Act 2010 (2010 No 67).

**8 Offshore immigration advice**

(1) This Act applies in respect of immigration advice provided by a person outside New Zealand, as well as advice provided by a person within New Zealand, except as provided in this section.

(2) Despite subsection (1), a person who is not ordinarily resident in New Zealand need not be licensed in respect of immigration advice provided by the person outside New Zealand before the date that is 3 years after the day on which this Act receives the Royal assent, and—



- (a) section 9 does not require the Department to refuse to accept an immigration application or request from such a person before that date; and
  - (b) such a person will not be treated as committing an offence under this Act by reason only of providing immigration advice outside New Zealand before that date without being licensed.
- (3) A person to whom subsection (2) applies may however apply for, and be granted, a licence at any time after the date that is 1 year after the day on which this Act receives the Royal assent, if the person chooses to apply.

### **9 No acceptance of immigration applications or requests from unlicensed immigration advisers**

- (1) No immigration application or request put forward on behalf of another person by an unlicensed immigration adviser may be accepted, unless the adviser is exempt from the requirement to be licensed under section 11.
- (2) The chief executive of the department of State that has, with the authority of the Prime Minister, assumed responsibility for the administration of the Immigration Act 2009 must, so far as practicable, ensure that immigration forms and information brochures prepared or provided by that department advise that, in accordance with subsection (1), immigration applications or requests provided or prepared on behalf of another person by persons who are neither licensed immigration advisers nor exempt from the requirement to be licensed will not be accepted.
- (3) Where an immigration application or request on behalf of another person is not accepted by reason of contravening subsection (1), the relevant person or body must notify that person in writing of that fact, and advise the person as to how the application or request may be relodged or advanced in an acceptable manner.

Section 9(2): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

### **10 Who may be licensed as immigration adviser**

A person may be licensed as an immigration adviser only if—

- (a) the person is a natural person who applies for a licence under section 18; and
- (b) the Registrar is satisfied that the person meets the competency standards set under section 36; and
- (c) the person is not prohibited from holding a licence under section 15 and, in the case of a person to whom section 16 or 17 applies, is determined by the Registrar to be a fit and appropriate person to hold a licence; and
- (d) the person is not a category 2 exemptee or a lawyer.

## 11 Persons exempt from licensing

The following persons are exempt from the requirement to be licensed:

- (a) persons who provide immigration advice in an informal or family context only, so long as the advice is not provided systematically or for a fee:
- (b) members of Parliament, and members of their staff who provide immigration advice within the scope of their employment agreement:
- (c) foreign diplomats and consular staff accorded protection as such under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971:
- (d) employees of the public service who provide immigration advice within the scope of their employment agreement:
- (e) lawyers:
- (f) persons employed by or working as volunteers for community law centres (as defined in section 6 of the Lawyers and Conveyancers Act 2006), where at least 1 lawyer—
  - (i) is on the employing body of the community law centre; or
  - (ii) is employed by or working as a volunteer for the community law centre in a supervisory capacity:
- (g) persons employed by or working as volunteers for citizens advice bureaux:
- (h) persons who provide—
  - (i) immigration advice offshore; and
  - (ii) advice only in respect of applications made under the Immigration Act 2009 for a temporary entry class visa—temporary visa—student visa:
- (i) persons exempted by regulations made under section 12.

Section 11(h): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 11(h)(ii): substituted, on 25 February 2011, by regulation 3 of the Immigration Advisers Licensing (Partial Removal of Exemption) Regulations 2011 (SR 2011/19).

## 12 Exemption, or removal of exemption, by Order in Council

- (1) The Governor-General may, by Order in Council, make regulations—
  - (a) exempting any person or class of persons from the requirement to be licensed as immigration advisers:
  - (b) removing in whole or in part the exemption provided for in section 11(h).
- (2) Regulations under subsection (1)(a) may be made only on the recommendation of the Minister given in accordance with section 13.

- (3) Exemptions under subsection (1) must be classed as one of 2 categories:
- (a) category 1 exemptions, exempted on the basis that—
    - (i) there is little consumer benefit to be gained by requiring members of the exempt class to be licensed; and
    - (ii) there are sufficient processes in place to ensure competent and ethical conduct; and
  - (b) category 2 exemptions, for persons in professions or occupations that, under their own statute, have their own disciplinary procedures that could apply to the provision of immigration advice, and prescriptive requirements as to conduct.
- (4) An exemption under subsection (1)(a) may be subject to any terms and conditions specified in the regulations.
- (5) Subject to subsection (6), a person exempt under any of paragraphs (a), (b), (c), (d), (f), (g), (h), and (i) of section 11 or a category 1 exemptee may, despite being exempt, apply for a licence and, if the licence is granted, operate as a licensed immigration adviser.
- (6) A lawyer or a category 2 exemptee may neither apply for, nor hold, a licence.
- (7) A removal of the exemption provided for in section 11(h) by regulations made under subsection (1) may be in respect of all or any 1 or more classes of person to whom the exemption relates, and the removal or retention of the exemption may be subject to any terms and conditions specified in the regulations.
- (8) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 12(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### 13 Process for Minister to make recommendation

- (1) The Minister must not make a recommendation under section 12(2) unless the Minister—
- (a) has received a report from the Registrar that assesses the proposed exemption or removal of the exemption; and
  - (b) has provided the Registrar’s assessment to, and has consulted with, such persons and organisations as the Minister considers appropriate; and

- (c) in the case of an exemption, is satisfied that the criteria for an exemption are met (including by considering the matters specified in subsection (2), where appropriate).
- (2) In assessing whether the criterion for exemption specified in section 12(3)(a)(ii) is met, the Minister must, in respect of the person or class of persons being considered for exemption, have regard (where appropriate) to such matters as—
- (a) obligations to clients:
  - (b) the existence or likelihood of conflicts of interest:
  - (c) disclosure requirements:
  - (d) the provision of consumer complaints procedures:
  - (e) membership standards:
  - (f) the monitoring and supervision of the performance of individuals:
  - (g) provision for ongoing training.

#### 14 Review of exemptions

- (1) The Registrar—
- (a) must review each exemption granted by regulations made under section 12(1)(a) at intervals not greater than 3 years:
  - (b) may review any such exemption at any time.
- (2) The Registrar must report to the Minister on the outcome of any review under this section.
- (3) After considering the report provided by the Registrar, the Minister may recommend to the Governor-General that the exemption in question be removed or amended.
- (4) The Governor-General may, by Order in Council made on the recommendation of the Minister under subsection (3), make regulations revoking or amending any exemption granted by regulations made under section 12(1)(a).
- (5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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##### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 14(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## **15 Persons prohibited from licensing**

- (1) A person is prohibited from being licensed if he or she—
- (a) is an undischarged bankrupt; or
  - (b) is prohibited or disqualified under any of the provisions of sections 382, 383, or 385 of the Companies Act 1993 from managing a company; or
  - (c) has been convicted of an offence against the Immigration Act 2009, the Immigration Act 1987, or the Immigration Act 1964; or
  - (d) has been removed or deported from New Zealand under the Immigration Act 2009, the Immigration Act 1987, or the Immigration Act 1964; or
  - (e) is unlawfully in New Zealand.
- (2) Persons who hold or have held any of the following offices or employment are prohibited from being licensed while holding the office or employment or at any time within 12 months after leaving the office or employment:
- (a) Ministers of Immigration and Associate Ministers of Immigration in the New Zealand Government:
  - (b) any immigration officer, visa officer, or refugee status officer (as defined in the Immigration Act 1987):
  - (c) any immigration officer or refugee and protection officer (as defined in the Immigration Act 2009).

Section 15(1)(b): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 15(1)(c): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 15(1)(d): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 15(2)(c): added, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

## **16 Persons subject to restriction on being licensed**

The following persons must not be licensed unless the Registrar is satisfied that the nature of the relevant offence or matter is unlikely to adversely affect the person's fitness to provide immigration advice:

- (a) a person who has been convicted, whether in New Zealand or in another country, of a crime involving dishonesty, an offence resulting in a term of imprisonment, or an offence against the Fair Trading Act 1986 (or any equivalent law of another country); or
- (b) a person who, under the law of another country,—
  - (i) is an undischarged bankrupt; or
  - (ii) has been prohibited or disqualified from managing a company; or
  - (iii) has been convicted of an immigration offence; or

- (iv) has been removed or deported from the country; or
- (c) a person to whom section 15(1)(a) or (b) has applied in the past.

### **17 Other matters relevant to fitness for licensing**

In determining a person's fitness to be licensed, the Registrar may take into account—

- (a) any conviction, whether in New Zealand or in another country, for an offence of a kind other than those referred to in sections 15 and 16:
- (b) any disciplinary proceedings, whether in New Zealand or in another country, and whether in relation to the provision of immigration advice or in relation to the conduct of any other occupation or profession, taken or being taken against the person (including any past cancellation or suspension of a licence under this Act, or any non-compliance with any other sanction imposed under this Act):
- (c) whether or not the person is related by employment or association to a person to whom a licence would be refused under this section or section 15 or 16.

### *Licensing process*

### **18 Application for licence**

An application for licensing as an immigration adviser must—

- (a) be made to the Registrar in a form approved by the Registrar; and
- (b) be accompanied by the prescribed fee (if any); and
- (c) include the following information:
  - (i) the applicant's full name and date of birth; and
  - (ii) a physical address at which documents can be served on the applicant; and
  - (iii) the person's business address (if different from the address referred to in subparagraph (ii)); and
  - (iv) any further information and other material that may be prescribed or required by the Registrar; and
  - (v) if required by the Registrar, a statutory declaration stating that the person is not prohibited from or subject to a restriction on being licensed, and otherwise verifying the matters contained in the application.

### **19 Granting of licence**

- (1) The Registrar must grant a licence to an applicant if satisfied that—
  - (a) the applicant is not prohibited from registration under section 12(6) or 15; and

- (b) having regard to the matters specified in sections 16 and 17 the person is fit to be licensed as an immigration adviser; and
  - (c) the person meets minimum standards of competence set under section 36; and
  - (d) the application complies with section 18 and is properly completed; and
  - (e) the applicant has paid the required amount of immigration adviser's levy (if any).
- (2) When determining to grant a licence, the Registrar must determine whether the applicant is to be granted—
- (a) a full licence; or
  - (b) a limited licence; or
  - (c) a provisional licence.
- (3) The Registrar may grant a full licence if satisfied that the applicant has overall competence in all areas of immigration advice.
- (4) The Registrar may grant a limited licence that authorises the applicant to provide immigration advice only in relation to specified matters, if satisfied that the applicant has competence only in relation to those matters.
- (5) The Registrar may grant a provisional licence that requires the applicant to work under the direct supervision of a fully licensed immigration adviser for 12 months or such other lesser period as may be specified by the Registrar, if satisfied that the applicant is a new entrant to the industry or that for any other reason supervision is required or appropriate.
- (6) The Registrar must notify the applicant in writing of the decision to grant a licence subject to the payment of any levy, and, if the decision is to grant a limited licence or a provisional licence, give reasons for that decision.
- (7) A notification under subsection (6) must also specify the amount of immigration adviser's levy payable (if any) before the licence will be granted.
- (8) An applicant has the right to appeal, under section 81, the Registrar's decision to grant a limited or a provisional licence (including the duration of a provisional licence), rather than a full licence.

## **20 Method of determining competence**

The Registrar may satisfy himself or herself of an applicant's competence by all or any of the following means:

- (a) consideration of the application material supplied by the applicant;
- (b) an examination;
- (c) an interview;
- (d) review of any work carried out by the applicant relevant to the application:

- (e) consideration of information provided by an overseas or international person, body, or agency:
- (f) carrying out an inspection under section 57:
- (g) consideration of any other matter relevant to the application.

## **21 Refusal to grant licence**

- (1) If the Registrar determines not to grant a licence, he or she must notify the applicant in writing of the decision and the reasons for it within 10 working days after the decision is made.
- (2) An applicant has the right to appeal, under section 81, the Registrar's decision to refuse to grant a licence.

## **22 Duration of licence**

- (1) A full or limited licence is effective for a period of 12 months commencing on the date it is granted.
- (2) A provisional licence is effective for the period or until the expiry date stated in it.
- (3) Subsections (1) and (2) apply unless the licence is—
  - (a) cancelled under section 27 or 51; or
  - (b) suspended under section 51 or 53; or
  - (c) surrendered by its holder in accordance with section 31.

## **23 Upgrade of licence**

- (1) The holder of a limited licence may at any time apply to the Registrar for the grant of a full licence.
- (2) The holder of a provisional licence may at any time apply to the Registrar for the grant of a full licence or a limited licence.
- (3) Sections 18 to 22 apply, with any necessary modifications, in relation to any such application as if it were an application for a licence under section 18.
- (4) If an application for an upgrade of a licence has been made but not determined before the date on which the licence would otherwise expire, the licence continues in force until the application is determined.
- (5) The grant of an upgrade of a licence takes effect from the date of expiry of the previous licence (as determined before the application of subsection (4)) or the date on which it is granted, whichever occurs first.

Section 23(4): added, on 7 July 2010, by section 5 of the Immigration Advisers Licensing Amendment Act 2010 (2010 No 67).

Section 23(5): added, on 7 July 2010, by section 5 of the Immigration Advisers Licensing Amendment Act 2010 (2010 No 67).



## **24 Renewal of licence**

- (1) An application for renewal of a licence must be made to the Registrar on or before the date on which the licence expires.
- (2) Sections 18 to 22 apply, with any necessary modifications and subject to any provisions prescribed in regulations, to an application for renewal for a licence as if it were an application for a licence.
- (3) If an application for renewal of a licence has been made but not determined before the date on which the licence would otherwise expire, the licence continues in force until the application is determined.
- (4) The grant of a renewal of a licence takes effect from the date of expiry of the previous licence (as determined before the application of subsection (3)).

## **25 Licence may not be transferred**

A licence—

- (a) may not be transferred; and
- (b) may not vest by operation of law in any person other than the person to whom it was granted.

## **26 Obligation to notify Registrar of change in circumstances**

- (1) Any licence holder or applicant for a licence must give written notice to the Registrar of any relevant change in circumstances as soon as practicable, but in any event not later than 10 working days after the change.
- (2) In this section, **relevant change in circumstances**—
  - (a) means—
    - (i) any change in the information that the person has provided under section 18;
    - (ii) any matter that results in the person becoming prohibited from being granted a licence;
    - (iii) any change in circumstances that may affect any of the matters specified in section 16 or 17;
  - (b) includes any change that may be prescribed (if any).

### *Cancellation and suspension of licence, etc*

## **27 Cancellation of licence**

- (1) The Registrar must cancel a licence if he or she is satisfied that—
  - (a) the licensee is prohibited by section 12(6) or 15 from holding a licence; or
  - (b) the licence was granted on the basis of any false or fraudulent representation or declaration, made either orally or in writing; or

- (c) the application for the licence or its renewal was accompanied by payment of an application fee that has subsequently been dishonoured; or
  - (d) the payment of the immigration adviser's levy has subsequently been dishonoured; or
  - (e) the person has died.
- (2) A licence is cancelled if the Tribunal has determined to impose on the licensee the sanction of cancellation of the licence in accordance with section 51(1)(d).

## **28 Process for cancellation**

- (1) The process for cancellation of a licence other than under section 27(1)(e) or by determination of the Tribunal under section 51 is as follows:
- (a) the Registrar must give the licensee written notice of his or her intention to cancel the licence; and
  - (b) the notice must—
    - (i) contain or be accompanied by a statement of the Registrar's reasons for the cancellation; and
    - (ii) state that the licensee has 10 working days within which to make written representations to the Registrar as to why the licence should not be cancelled; and
  - (c) if any written representations are made by the licensee within the 10-working day period referred to in paragraph (b)(ii), the Registrar must take those representations into account in deciding whether or not to cancel the licence; and
  - (d) the Registrar must then decide whether or not to cancel the licence, and notify the licensee accordingly, as soon as practicable.
- (2) If the Registrar decides to cancel the licence,—
- (a) he or she must include in the notice under subsection (1)(d) the grounds for the decision and the date on which the cancellation takes effect; and
  - (b) he or she must also specify in the notice the right of the person to appeal to the Tribunal under section 55.

## **29 Suspension of licence**

- (1) A licence is suspended if the Tribunal has determined—
- (a) to impose on the licensee the sanction of suspension of licence in accordance with section 51(1)(c); or
  - (b) to suspend the licence under section 53.
- (2) A person whose licence has been suspended may not apply for a further licence during the period or duration of the suspension.

### **30 Effective date of cancellation or suspension**

- (1) The cancellation of a licence other than under section 51 takes effect on the date specified by the Registrar in the notice given to the licensee under section 28(1)(d), which must be a date after the date of that notice.
- (2) The cancellation or suspension of a licence under section 51 as a result of disciplinary proceedings, or the suspension of a licence under section 53, takes effect on the date notified in the Tribunal's decision communicated under section 51(2) or 53(2)(d).

### **31 Voluntary surrender of licence**

- (1) The holder of a licence may at any time surrender that licence by written notice to the Registrar.
- (2) A surrender takes effect on the date given in the notice or, if no such date is given, on the day the notice is received by the Registrar.
- (3) Where a licence is surrendered, the Registrar may, as he or she thinks fit, refund all or part of any immigration adviser's levy paid in respect of the licence.

### **32 Registrar must record cancellation, suspension, or surrender of licence**

As soon as possible after a licence is cancelled or suspended under section 27 or 51 or 53, or a licence is surrendered under section 31, the Registrar must record the cancellation, suspension, or surrender on the register.

### **33 Expiry of licence**

If no application for the renewal of a licence is made on or before the date on which the licence would otherwise expire, the Registrar must record the expiry of the licence in the register as soon as practicable after that date.

## *Immigration Advisers Authority and Registrar of Immigration Advisers*

### **34 Immigration Advisers Authority established**

- (1) The Immigration Advisers Authority is established as a body within the Department.
- (2) The Authority consists of—
  - (a) a Registrar of Immigration Advisers, appointed by the chief executive under the Public Service Act 2020; and
  - (b) such number of other persons as the chief executive appoints to the Authority under that Act.

Section 34(2)(a): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

### **35 Functions of Authority**

- (1) The functions of the Authority are—

- (a) to establish and maintain a register of licensed immigration advisers:
  - (b) to administer the licensing regime for immigration advisers:
  - (c) to develop, make, and maintain competency standards and a code of conduct for immigration advisers:
  - (d) to facilitate the education and professional development of immigration advisers:
  - (e) to facilitate public awareness of matters relating to the provision of immigration advice:
  - (f) to investigate and take enforcement action in relation to offences under this Act:
  - (g) to provide procedures for the lodging of complaints, including requiring immigration advisers to set up their own complaints processes:
  - (h) to carry out such other functions as may be conferred on the Authority by this Act or any other enactment:
  - (i) to carry out any functions that are incidental and related to, or consequential on, the functions referred to in paragraphs (a) to (h).
- (2) The Registrar is responsible to the chief executive for carrying out the functions of the Authority.

Section 35(1)(c): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### **36 Registrar to develop competency standards**

- (1) The Registrar must develop, make, and maintain competency standards to be met by licensed immigration advisers.
- (2) The competency standards must set out rules and criteria relating to—
- (a) relevant qualifications:
  - (b) practical experience and knowledge:
  - (c) continuing professional development:
  - (d) communication in English.
- (3) Competency standards may differ according to whether a person holds or is seeking a full licence, a limited licence, or a provisional licence.
- (4) In developing competency standards, the Registrar must consult with—
- (a) the Minister and the Department; and
  - (b) persons or representatives of persons who engage in the provision of immigration advice; and
  - (c) appropriate bodies or persons representing persons seeking or receiving immigration advice.
- (5) The Registrar must not make competency standards unless the Minister—

- (a) is satisfied that appropriate consultation has been carried out under subsection (4); and
  - (b) has approved the proposed competency standards.
- (5A) Competency standards are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (6) The Registrar may at any time amend, revoke, or replace any competency standards in the manner provided for in this section, except that he or she need not carry out consultation on matters involving minor corrections or updating, or otherwise of a minor, technical nature.

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	The maker must: <ul style="list-style-type: none"><li>• either publish it in the <i>Gazette</i> or notify it in the <i>Gazette</i> with a statement of where a copy may be inspected or obtained</li><li>• if practicable, bring it to the attention of the persons likely to be affected by it by notice or publication in any newspaper or trade journal, or by any other practicable means (including electronic means)</li><li>• comply with section 38(2)</li></ul> The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 73, 74(1)(a), Sch 1 cl 14  LA19 ss 74(2), 75
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 36(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 36(5): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 36(5A): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 36(6): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### **37 Registrar to develop code of conduct**

- (1) The Registrar must develop, make, and maintain a code of conduct to be observed by licensed immigration advisers.
- (2) The code of conduct must address standards of professional and ethical conduct for licensed immigration advisers, including rules as to matters such as—
  - (a) obligations to clients:
  - (b) obligations to the Minister and Department handling immigration matters:
  - (c) conflicts of interest:

- (d) disclosure requirements:
- (e) the reasonableness of fees:
- (f) the provision of consumer complaints procedures.
- (3) In developing a code of conduct, the Registrar must consult with—
- (a) the Minister and the Department; and
- (b) persons or representatives of persons who engage in the provision of immigration advice; and
- (c) appropriate bodies or persons representing persons seeking or receiving immigration advice.
- (4) The Registrar must not make a code of conduct unless the Minister—
- (a) is satisfied that appropriate consultation has been carried out under subsection (3); and
- (b) has approved the proposed code.
- (4A) A code of conduct is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (5) The Registrar may at any time amend, revoke, or replace any code of conduct in the manner provided for in this section, except that it need not carry out consultation on matters involving minor corrections or updating, or otherwise of a minor, technical nature.

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	The maker must: <ul style="list-style-type: none"> <li>• either publish it in the <i>Gazette</i> or notify it in the <i>Gazette</i> with a statement of where a copy may be inspected or obtained</li> <li>• if practicable, bring it to the attention of the persons likely to be affected by it by notice or publication in any newspaper or trade journal, or by any other practicable means (including electronic means)</li> <li>• comply with section 38(2)</li> </ul>	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 37(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 37(4): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 37(4A): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 37(5): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### **38 Publication of code of conduct and competency standards**

- (1) *[Repealed]*
- (2) The Registrar must make copies of the code of conduct and the competency standards available for inspection free of charge (whether electronically or otherwise), and for purchase at a reasonable cost, at the head office of the Authority and at such other places (including overseas places) as the Registrar determines.

- (3) *[Repealed]*

Section 38(1): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 38(2): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 38(3): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### **39 Application of Legislation Act 2012 to code and standards**

*[Repealed]*

Section 39: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### *Immigration Advisers Complaints and Disciplinary Tribunal*

### **40 Immigration Advisers Complaints and Disciplinary Tribunal established**

- (1) This section establishes a body to be known as the Immigration Advisers Complaints and Disciplinary Tribunal.
- (2) The Tribunal consists of—
  - (a) a person to act as chair of the Tribunal, appointed by the Governor-General on the recommendation of the Minister of Justice acting in consultation with the Minister; and
  - (b) such number of other members as the Governor-General appoints on the recommendation of the Minister of Justice acting in consultation with the Minister.
- (3) For the purposes of any matter within its jurisdiction, the Tribunal consists of 1 member of the Tribunal.

### **41 Functions of Tribunal**

The functions of the Tribunal are—

- (a) to make decisions on matters about immigration advisers that are referred to the Tribunal by the Registrar under section 48:

- (b) to make decisions as to whether an immigration adviser's licence should be suspended under section 53 pending a final decision in regard to a matter involving a licensee:
- (c) to hear appeals against—
  - (i) a decision of the Registrar to cancel the licence of an immigration adviser under section 27; or
  - (ii) a determination by the Registrar to reject a complaint under section 45(1)(b) or (c) as not disclosing a ground of complaint, or as being trivial or inconsequential.

#### **41A Orderly and efficient operation**

The chair of the Tribunal is responsible for making such arrangements as are practicable to ensure that he or she and each member performs his or her functions—

- (a) in an orderly and efficient manner; and
- (b) in a way that achieves the purposes of this Act.

Section 41A: inserted, on 14 November 2018, by section 108 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

#### **41B Delegation by chair of Tribunal**

- (1) The chair of the Tribunal may delegate any of the chair's functions, duties, and powers to a member of the Tribunal who he or she is satisfied has the necessary capability, skills, and experience to perform or exercise those functions, duties, and powers.
- (2) A delegation—
  - (a) must be in writing; and
  - (b) must be to a named person; and
  - (c) is revocable at any time, in writing; and
  - (d) does not prevent the performance or exercise of a function, duty, or power by the chair.
- (3) A person to whom any functions, duties, or powers are delegated may perform or exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.
- (5) A person to whom any functions, duties, or powers are delegated must be paid remuneration and expenses (if any) determined in accordance with clause 4 of the Schedule for work undertaken in that capacity.

Section 41B: inserted, on 29 October 2019, by section 109 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).



#### **42 Services for Tribunal**

The Ministry of Justice must furnish such secretarial, recording, and clerical services as may be necessary to enable the Tribunal to discharge its functions.

#### **43 Further provisions in relation to Tribunal and its proceedings**

The provisions of the Schedule have effect in relation to the Tribunal and its proceedings.

#### *Complaints and disciplinary procedures*

#### **44 Complaints against immigration advisers**

- (1) Any person may make a complaint to the Registrar concerning the provision of immigration advice by—
  - (a) a licensed immigration adviser; or
  - (b) a person who, not more than 2 years before the date of the complaint, was a licensed immigration adviser (a **former licensed immigration adviser**).
- (2) The grounds for complaint may be any 1 or more of the following in relation to the immigration adviser or former licensed immigration adviser complained of:
  - (a) negligence:
  - (b) incompetence:
  - (c) incapacity:
  - (d) dishonest or misleading behaviour:
  - (e) a breach of the code of conduct.
- (3) A complaint—
  - (a) must be made in writing; and
  - (b) must specify the ground or grounds that form the basis of the complaint; and
  - (c) must state whether or not the complainant has made attempts to resolve the complaint using the immigration adviser's (or former licensed immigration adviser's) own complaints procedure, and the outcome (if any) of that process; and
  - (d) must be accompanied by copies of any supporting documentation; and
  - (e) may not be made anonymously.

#### **45 Procedure on receipt of complaint by Registrar**

- (1) On receiving a complaint concerning a licensed immigration adviser or former licensed immigration adviser, the Registrar may—
  - (a) determine that the complaint does not meet the criteria set out in section 44(3), and reject it accordingly:

- (b) determine that the complaint does not disclose any of the grounds of complaint listed in section 44(2), and reject it accordingly;
  - (c) determine that the complaint discloses only a trivial or inconsequential matter, and for this reason need not be pursued;
  - (d) request the complainant to consider whether or not the matter could be best settled by the complainant using the immigration adviser's own complaints procedure.
- (2) If the Registrar determines that the complaint should not be dealt with under subsection (1), the Registrar must refer the complaint to the Tribunal for determination.
- (3) The Registrar may refer a complaint to the Tribunal for a determination as to whether the licence of the immigration adviser concerned should be suspended under section 53.
- (4) If the complaint is to be referred to the Tribunal under subsection (2), the Registrar must—
  - (a) prepare the complaint for submission to the Tribunal under section 47; and
  - (b) file the complaint with the Tribunal under section 48.
- (5) If the Registrar makes a determination of any of the kinds referred to in subsection (1)(a) to (c), the Registrar must—
  - (a) notify the complainant of the relevant determination in writing; and
  - (b) in the case of a determination under subsection (1)(b) or (c), notify the complainant of the right to appeal to the Tribunal under section 54.

#### **46 Registrar may refer complaint to Tribunal of own motion**

- (1) The Registrar may, of his or her own motion, make a complaint on one of the grounds set out in section 44(2) and prepare it for referral to the Tribunal.
- (2) The Registrar may refer such a complaint to the Tribunal for a determination as to whether the licence of the immigration adviser concerned should be suspended under section 53.
- (3) The complaint must be determined by the Tribunal in the same manner as any other complaint referred to it under section 45(2).

#### **47 Preparation of complaint for referral to Tribunal**

- (1) For the purpose of preparing a complaint for submission to the Tribunal, the Registrar or a person authorised by the Registrar may gather further information on the complaint, including by exercising the powers of inspection referred to in section 57.
- (2) Before referring a complaint to the Tribunal, the Registrar must—
  - (a) notify the person complained of, in writing, of the complaint; and

- (b) give both the complainant (if any) and the person complained about a reasonable opportunity to make a written statement or explanation in relation to the complaint.
- (3) The notice required by subsection (2)(a) must identify the complainant (if any), unless the Registrar considers that exceptional circumstances justify the withholding of the complainant's identity.

#### **48 Filing complaint with Tribunal**

- (1) After determining to refer a complaint to the Tribunal under section 45(2) or 46(1), the Registrar must, having gathered such further information in relation to the complaint as he or she thinks fit (if any), file the complaint or matter with the Tribunal.
- (2) Upon filing the complaint, the Registrar must—
  - (a) give written notice of the referral, a copy of the complaint, and any further information that has been gathered on the complaint to the person to whom the complaint relates; and
  - (b) give written notice of the referral to the complainant (in the case of a determination under section 45(2)).

#### **49 Proceedings before Tribunal**

- (1) The Tribunal may regulate its procedures as it thinks fit.
- (2) Subsection (1) is subject to this Act, any regulations made under this Act, and any practice notes issued under clause 12 of the Schedule.
- (3) Matters or complaints must be heard on the papers.
- (4) Despite subsection (3), the Tribunal may, if it thinks fit in its absolute discretion,—
  - (a) request further information from any person in relation to a complaint or matter:
  - (b) request that any person appear before the Tribunal to make a statement or an explanation in relation to a complaint or matter.

Section 49(2): amended, on 14 November 2018, by section 110 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

#### **50 Determination of complaint by Tribunal**

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action:
- (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in section 51.

**50A Suppression orders**

- (1) The Tribunal may order that any part of any evidence given or the name of any witness not be published.
- (2) An order may be made subject to any conditions that the Tribunal considers appropriate.

Section 50A: inserted, on 14 November 2018, by section 111 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**51 Disciplinary sanctions**

- (1) The sanctions that the Tribunal may impose are—
  - (a) caution or censure:
  - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
  - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
  - (d) cancellation of licence:
  - (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
  - (f) an order for the payment of a penalty not exceeding \$10,000:
  - (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
  - (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
  - (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.
- (2) The Tribunal must notify its decision to the complainant (if any) and the person complained about in writing, giving reasons for the decision.
- (3) A person subject to a sanction under this section has the right to appeal, under section 81, the Tribunal's decision to impose the sanction.
- (4) If an immigration adviser fails to demonstrate, to the satisfaction of the Registrar, compliance with a requirement imposed under subsection (1)(b), the adviser's licence is deemed to be cancelled at the end of the specified period.
- (5) Any payment ordered by the Tribunal under subsection (1)(f) or (g) may be recovered as a debt due to the Crown.

## **52 Enforcement of disciplinary sanctions**

The following orders for disciplinary sanctions made by the Tribunal under section 51 may be enforced in all respects as if they were an order of the District Court on the filing of a sealed copy in that court by—

- (a) the Crown, in the case of—
  - (i) an order for payment of a penalty under section 51(1)(f); or
  - (ii) an order for payment of costs and expenses of the investigation, inquiry, or hearing, or any related prosecution under section 51(1)(g):
- (b) the person in whose favour the order is made, in the case of—
  - (i) an order for a refund of all or any part of fees or expenses paid by the complainant or another person to the immigration adviser or former licensed immigration adviser under section 51(1)(h); or
  - (ii) an order for the payment of reasonable compensation to the complainant or another person under section 51(1)(i).

## **53 Suspension of licence pending outcome of complaint**

- (1) The Tribunal may suspend a licence where—
  - (a) a complaint has been made about the licensed immigration adviser; and
  - (b) the complaint has been referred to the Tribunal by the Registrar under section 45(3) or 46(2); and
  - (c) the complaint is being prepared for submission to the Tribunal; and
  - (d) the Tribunal considers that it is necessary or desirable to suspend the licence having regard to the interests of the public.
- (2) The process for suspending a licence under this section is as follows:
  - (a) the Tribunal must give the licensee written notice of its intention to suspend the licence; and
  - (b) the notice must—
    - (i) contain or be accompanied by a statement of the Tribunal’s reasons for the intended suspension; and
    - (ii) state that the licensee has 10 working days within which to make written representations to the Tribunal as to why the licence should not be suspended; and
    - (iii) state the proposed period or otherwise describe the proposed duration of the suspension; and
  - (c) if any written representations are made by the licensee within the 10-working day period referred to in paragraph (b)(ii), the Tribunal must take those representations into account in deciding whether or not to suspend the licence, or the period or duration of the suspension; and

- (d) the Tribunal must then decide whether or not to suspend the licence, and notify the licensee accordingly, as soon as practicable.
- (3) If the Tribunal decides to suspend the licence, the Tribunal must—
  - (a) include in the notice under subsection (2)(d) the grounds for the decision, the date on which the suspension takes effect, and the period or duration of the suspension; and
  - (b) specify in the notice the right of the licensee to appeal to the District Court under section 81.

Section 53(3)(a): amended, on 24 October 2019, by section 71 of the Statutes Amendment Act 2019 (2019 No 56).

#### **54 Appeal to Tribunal against determination by Registrar to reject complaint**

- (1) A complainant may appeal to the Tribunal against a determination of the Registrar to reject or not pursue a complaint under section 45(1)(b) or (c) within 20 working days after the date of the notice given under section 45(5).
- (2) The appeal is by way of written notice to the Tribunal of the complainant's intention to appeal, accompanied by—
  - (a) a copy of the notice given to the complainant under section 45(5); and
  - (b) such other information as the complainant wishes the Tribunal to consider in relation to the appeal.
- (3) After considering the appeal, the Tribunal may—
  - (a) reject the appeal; or
  - (b) determine that the decision of the Registrar was incorrect, but nevertheless reject the complaint upon another ground; or
  - (c) determine that it should hear the complaint, and direct the Registrar to prepare the complaint for filing with the Tribunal; or
  - (d) determine that the Registrar should make a request under section 45(1)(d).
- (4) A decision on an appeal under this section is final.

#### **55 Appeal to Tribunal against determination by Registrar to cancel licence**

- (1) A person may appeal to the Tribunal against a decision of the Registrar to cancel that person's licence within 20 working days after the date of the notice given under section 28(1)(d).
- (2) The appeal is by way of written notice to the Tribunal of the person's intention to appeal, accompanied by—
  - (a) a copy of the notice given to the person under section 28(1)(d); and
  - (b) such other information as the person wishes the Tribunal to consider in relation to the appeal.
- (3) After considering the appeal, the Tribunal may—

- (a) reject the appeal; or
  - (b) uphold the appeal, and give the Registrar any appropriate directions in relation to the licence.
- (4) A person may appeal to the District Court under section 81 against a decision of the Tribunal to reject an appeal under subsection (3)(a).

### *Inspection*

#### **56 Purposes of inspection**

The powers in section 57 may be used for 1 or more of the following purposes:

- (a) administering the licensing regime:
- (b) obtaining information in relation to complaints in respect of persons who are or have formerly been licensed to provide immigration advice:
- (c) obtaining information in respect of persons who have applied to be licensed:
- (d) investigating offences under this Act.

Section 56: replaced, on 1 October 2012, by section 261 of the Search and Surveillance Act 2012 (2012 No 24).

#### **57 Inspection powers**

- (1) Any person authorised by the Registrar may, for a purpose set out in section 56,—
- (a) at any reasonable time, enter any premises where the person has good cause to suspect that—
    - (i) any licensed immigration adviser or former licensed immigration adviser works or has worked in the past 2 years; or
    - (ii) any person who has applied to be licensed as an immigration adviser works; or
    - (iii) a person provides immigration advice or contracts or employs a person to provide immigration advice:
  - (b) question any licensed immigration adviser, former licensed immigration adviser, or other person at any premises of a kind described in paragraph (a):
  - (c) require a person of a kind described in paragraph (a) to produce for inspection relevant documents in that person's possession or under that person's control:
  - (d) inspect and take copies of documents referred to in paragraph (c):
  - (e) retain documents referred to in paragraph (c), if there are grounds for believing that they are evidence of the commission of an offence.

- (2) If a requirement is made of a person under subsection (1)(c), the person must immediately comply with that requirement.
- (3) The provisions of subparts 1, 5, 6, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply.

Section 57: replaced, on 1 October 2012, by section 261 of the Search and Surveillance Act 2012 (2012 No 24).

## **58 Inspection powers for investigating offences**

*[Repealed]*

Section 58: repealed, on 1 October 2012, by section 262(1) of the Search and Surveillance Act 2012 (2012 No 24).

## **59 Privilege against self-incrimination**

No person is, on examination or inquiry under section 57, required to give to any question any answer tending to incriminate that person.

Section 59: amended, on 1 October 2012, by section 262(2) of the Search and Surveillance Act 2012 (2012 No 24).

## **60 Entry of dwellinghouses**

No person may, under section 57, enter or be in any dwellinghouse unless he or she either—

- (a) has the consent of an occupier of that dwellinghouse; or
- (b) is authorised to do so by a warrant issued under section 61.

Section 60: amended, on 1 October 2012, by section 262(3) of the Search and Surveillance Act 2012 (2012 No 24).

## **61 Entry warrant**

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who, on an application made in the manner provided for an application for a search warrant in subpart 3 of Part 4 of that Act, is satisfied that there is reasonable ground for believing that a dwellinghouse—

- (a) is a place in which—
  - (i) a licensed immigration adviser, a former licensed immigration adviser, or a person who has applied for a licence, works; or
  - (ii) a person provides immigration advice, or employs or contracts another person to provide immigration advice; or
- (b) is the only practicable means through which a place of the type referred to in paragraph (a) may be entered,—

may issue a warrant authorising the person named in it to enter that dwellinghouse or any part of that dwellinghouse that is, or is the only practicable means through which the person may enter, a place of a kind referred to in paragraph (a).



- (2) The provisions of subparts 1, 3, and 9 of Part 4 of the Search and Surveillance Act 2012 apply in respect of an entry warrant.

Section 61(1): amended, on 1 October 2012, by section 262(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 61(2): replaced, on 1 October 2012, by section 262(5) of the Search and Surveillance Act 2012 (2012 No 24).

#### **61A Search warrant**

- (1) For the purposes of section 97 of the Search and Surveillance Act 2012, the Registrar is a person authorised to apply for a search warrant.
- (2) The Registrar may exercise the powers of a constable to apply for a search warrant under section 6 of the Search and Surveillance Act 2012 in relation to an offence under this Act.

Section 61A: inserted, on 1 October 2012, by section 263 of the Search and Surveillance Act 2012 (2012 No 24).

#### **62 Conditions of authorisation**

- (1) The Registrar must not authorise a person to carry out an inspection unless satisfied that the person is suitably qualified or trained, or the person is a member of a class of persons who are suitably qualified or trained, to carry out an inspection.
- (2) A person authorised by the Registrar to carry out an inspection must, on entering any premises, and when requested at any subsequent time, produce—
- (a) the authorisation referred to in subsection (3); and
  - (b) evidence of that person's identity.
- (3) An authorisation must be in writing and must contain—
- (a) a reference to this section; and
  - (b) the full name of the authorised person; and
  - (c) a statement of the powers conferred on the authorised person by section 57; and
  - (d) the purpose for which those powers may be exercised.

Section 62(3)(c): amended, on 1 October 2012, by section 264(1) of the Search and Surveillance Act 2012 (2012 No 24).

### *Offences*

#### **63 Offence to provide immigration advice unless licensed or exempt**

- (1) A person commits an offence if the person—
- (a) provides immigration advice without being licensed to do so under this Act or exempt from the requirement to be so licensed, knowing that he or she is required to be licensed or exempt; or

- (b) provides immigration advice without being licensed to do so under this Act or exempt from the requirement to be so licensed.
- (2) For the purposes of subsection (1)(a), a person is deemed to know that he or she is required to be licensed or exempt if, at any time within the 12 months preceding the date of the alleged offence, that person had been informed of that fact in writing by the Registrar or a person appointed to the Authority.
- (3) It is a defence to a charge under subsection (1)(b) that the person to whom the charge relates—
  - (a) did not know that he or she was providing immigration advice and had exercised all reasonable care and due diligence to ensure he or she did not provide immigration advice; or
  - (b) did not know that he or she was not licensed to provide immigration advice and had exercised all reasonable care and due diligence to ensure that he or she did have a licence.
- (4) A person convicted of an offence under subsection (1)(a) is liable to—
  - (a) imprisonment for a term not exceeding 7 years or a fine not exceeding \$100,000, or both; and
  - (b) any additional amount imposed by the court under section 71 or 72.
- (5) A person convicted of an offence under subsection (1)(b) is liable to—
  - (a) a fine not exceeding \$100,000; and
  - (b) any additional amount imposed by the court under section 71 or 72.

#### **64 Offence of holding out as immigration adviser unless licensed or exempt**

- (1) A person commits an offence who holds out that any person (including the person himself or herself) who is neither licensed under this Act to provide immigration advice, nor exempt from the requirement to be licensed to do so, provides immigration advice, knowing that the person is neither licensed nor exempt.
- (2) For the purposes of subsection (1), a person charged with an offence under this section is deemed to know that the person held out as providing immigration advice was neither licensed nor exempt if, at any time within the 12 months preceding the date of the alleged offence, the person charged had been informed of that fact in writing by the Registrar or a person appointed to the Authority.
- (3) A person does not commit an offence under subsection (1) by holding out that the person provides immigration advice if the person is a body corporate or other entity that is in the business of providing immigration advice through persons who are licensed or exempt from the requirement to be licensed.
- (4) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both.

**65 Offence of holding out as licensed immigration adviser**

- (1) A person commits an offence who holds out that any person (including the person himself or herself) who is not a licensed immigration adviser is a licensed immigration adviser, knowing that the person does not hold a licence.
- (2) For the purposes of subsection (1), a person charged with an offence under this section is deemed to know that the person held out as being a licensed immigration adviser was not licensed if, at any time within the 12 months preceding the date of the alleged offence, the person charged had been informed of that fact in writing by the Registrar or a person appointed to the Authority.
- (3) A person convicted of an offence under subsection (1) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both.

**66 Offence to provide false or misleading information**

- (1) A person commits an offence who, for the purposes of any application for a licence or for renewal of a licence under this Act,—
  - (a) supplies to the Authority any false or misleading information, knowing it to be false or misleading; or
  - (b) supplies to the Authority any false or misleading information.
- (2) It is a defence to a charge under subsection (1)(b) that the person to whom the charge relates did not know that he or she was providing false or misleading information and had exercised all reasonable care and due diligence to ensure that the information provided was not false or misleading.
- (3) A person convicted of an offence under subsection (1)(a) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both.
- (4) A person convicted of an offence under subsection (1)(b) is liable to a fine not exceeding \$10,000.

**67 Offence of asking for or receiving fee or reward for immigration advice when neither licensed nor exempt**

- (1) A person commits an offence who—
  - (a) asks for or receives a fee or reward for the provision of immigration advice by a person who is neither licensed under this Act to provide immigration advice nor exempt from the requirement to be licensed, knowing that the person is neither licensed nor exempt; or
  - (b) asks for or receives a fee or reward for the provision of immigration advice by a person who is neither licensed under this Act to provide immigration advice nor exempt from the requirement to be licensed.
- (2) For the purposes of subsection (1)(a), a person charged with an offence under subsection (1)(a) is deemed to know that the person providing immigration advice was neither licensed nor exempt if, at any time within the 12 months preceding the date of the alleged offence, the person charged had been

informed of that fact in writing by the Registrar or a person appointed to the Authority.

- (3) It is a defence to a charge under subsection (1)(b) that the person to whom the charge relates—
  - (a) did not know that immigration advice was being provided and had exercised all reasonable care and due diligence to ensure that such advice was not provided; or
  - (b) did not know that the person concerned was not licensed to provide immigration advice and had exercised all reasonable care and due diligence to ensure that the person did have a licence.
- (4) A person convicted of an offence under subsection (1)(a) is liable to—
  - (a) imprisonment for a term not exceeding 7 years or a fine not exceeding \$100,000, or both; and
  - (b) any additional amount imposed by the court under section 71 or 72.
- (5) A person convicted of an offence under subsection (1)(b) is liable to—
  - (a) a fine not exceeding \$100,000; and
  - (b) any additional amount imposed by the court under section 71 or 72.

**68 Offence of employing or contracting unlicensed or non-exempt person as immigration adviser**

- (1) A person commits an offence who—
  - (a) employs or contracts, or continues to employ or contract, as an immigration adviser any person who is neither licensed to be an immigration adviser nor exempt from the requirement to be licensed, knowing that the person is neither licensed nor exempt; or
  - (b) employs or contracts, or continues to employ or contract, as an immigration adviser any person who is neither licensed to be an immigration adviser nor exempt from the requirement to be licensed.
- (2) For the purposes of subsection (1)(a), a person charged with an offence under subsection (1)(a) is deemed to know that the person employed or contracted as an immigration adviser was neither licensed nor exempt if, at any time within the 12 months preceding the date of the alleged offence, the person charged had been informed of that fact in writing by the Registrar or a person appointed to the Authority.
- (3) It is a defence to a charge under subsection (1)(b) that the person to whom the charge relates—
  - (a) did not know that immigration advice was being provided and had exercised all reasonable care and due diligence to ensure that such advice was not provided; or

- (b) did not know that the person concerned was not licensed to provide immigration advice and had exercised all reasonable care and due diligence to ensure that the person did have a licence.
- (4) A person convicted of an offence under subsection (1)(a) is liable to—
  - (a) imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both; and
  - (b) any additional amount imposed by the court under section 71 or 72.
- (5) A person convicted of an offence under subsection (1)(b) is liable to—
  - (a) a fine not exceeding \$10,000; and
  - (b) any additional amount imposed by the court under section 71 or 72.

### **69 Offence to obstruct inspection**

- (1) A person commits an offence if the person, without reasonable excuse,—
  - (a) resists, obstructs, deceives, or attempts to deceive any person who is exercising or attempting to exercise any power or function under section 57; or
  - (b) fails to comply in any respect with any requirement under section 57; or
  - (c) gives to any person who is exercising or attempting to exercise any power or function under section 57 any particulars that are false or misleading in any material respect.
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$10,000.

Section 69(1)(a): amended, on 1 October 2012, by section 264(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 69(1)(b): amended, on 1 October 2012, by section 264(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 69(1)(c): amended, on 1 October 2012, by section 264(2) of the Search and Surveillance Act 2012 (2012 No 24).

### **70 Offence to fail to notify change in circumstances**

- (1) A person commits an offence who, without reasonable excuse, fails to notify the Authority of any change of circumstances as required by section 26.
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding \$10,000.

### **70A Offence of breaching suppression order**

A person who breaches an order made under section 50A is liable on conviction to a fine not exceeding \$3,000.

Section 70A: inserted, on 14 November 2018, by section 112 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**70B Offence to fail to comply with summons**

- (1) A person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to it any books, papers, documents, records, or things, without sufficient cause,—
  - (a) fails to attend in accordance with the summons; or
  - (b) refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the subject of the inquiry; or
  - (c) fails to produce any such paper, document, record, or thing.
- (2) A person commits an offence if the person—
  - (a) wilfully obstructs or hinders the Tribunal or any member of it or any authorised person in any inspection or examination of papers, documents, records, or things; or
  - (b) without sufficient cause, fails to comply with any requirement of the Tribunal or any authorised person made under clause 6(3) of the Schedule.
- (3) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$1,000.
- (4) No person summoned to attend the inquiry may be convicted of an offence against subsection (1) unless at the time of the service of the summons, or at some other reasonable time before the date on which that person was required to attend, there was made to that person a payment or tender of the amount fixed in accordance with clause 7 of the Schedule.

Section 70B: inserted, on 14 November 2018, by section 112 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**70C Contempt of Tribunal**

- (1) A person commits an offence if the person—
  - (a) wilfully insults or obstructs the Tribunal or any member of it, a witness, or an officer of the Tribunal during a sitting of the Tribunal or while a member, a witness, or an officer is going to, or returning from, a sitting of the Tribunal; or
  - (b) wilfully insults or obstructs any person in attendance at a sitting of the Tribunal; or
  - (c) wilfully interrupts, or otherwise misbehaves, at a sitting of the Tribunal; or
  - (d) wilfully and without lawful excuse disobeys any order or direction of the Tribunal in the course of the hearing of any proceedings.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$1,000.

- (3) The Tribunal may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in the opinion of the Tribunal, constitutes an offence against subsection (1), whether or not the person is charged with the offence; and any officer of the Tribunal or a constable may take any steps that are reasonably necessary to enforce the exclusion.

Section 70C: inserted, on 14 November 2018, by section 112 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

## **71 Reparation**

In addition to any penalty imposed on a person convicted under any of sections 63, 67, and 68, the court may require payment of reparation to a victim in accordance with section 12 and Part 2 of the Sentencing Act 2002.

## **72 Additional penalty for offence involving commercial gain**

- (1) In addition to any penalty imposed on a person convicted under any of sections 63, 67, and 68, the court may, if satisfied that the offence occurred in the course of producing a commercial gain, order that person to pay an amount not exceeding the value of the commercial gain.
- (2) The value of any gain must be assessed by the court.
- (3) The standard of proof for the purposes of this section is the standard of proof that applies in civil proceedings.

## **73 Offences also apply outside New Zealand**

A person may be charged with an offence under any of sections 63 to 70 whether or not the offence or any part of it occurred within New Zealand.

## **74 Presumption as to non-exemption**

- (1) In proceedings for an offence under any of sections 63(1)(a), 64(1), 67(1)(a), and 68(1)(a), it is presumed, in the absence of evidence to the contrary, that the person alleged to be neither licensed nor exempt is not in fact exempt from the requirement to be licensed.
- (2) In proceedings for an offence under section 63(1)(b), 67(1)(b), or 68(1)(b), it is presumed, in the absence of proof to the contrary to the standard of the balance of probabilities, that the person alleged to be neither licensed nor exempt from the requirement to be licensed is not in fact exempt.

## **75 Time for filing charging document**

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011,—

- (a) a charging document may be filed at any time in respect of an offence against any of sections 63(1)(a), 64(1), 65(1), 67(1)(a), and 68(1)(a); and
- (b) the limitation period in respect of an offence against any other offence against this Act ends on the date that is 2 years after the earlier of—

- (i) the date when the incident, situation, or set of circumstances to which the offence relates first became known to an employee of the Department responsible for the enforcement of this Act; or
- (ii) the date when the incident, situation, or set of circumstances to which the offence relates should reasonably have become known to such an employee.

Section 75: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## Part 2 Miscellaneous provisions

### *Independence of persons carrying out functions under Act*

#### **76 Independence of persons carrying out functions under Act**

No person who exercises any power of decision in relation to an immigration matter, or who has exercised any such power in the previous 2 years, may be employed or engaged to—

- (a) consider or decide applications for licences or for renewals of licences; or
- (b) carry out inspections under this Act.

### *Register of licensed immigration advisers*

#### **77 Register of licensed immigration advisers**

- (1) The Registrar must keep and maintain a register of licensed immigration advisers.
- (2) The purpose of the register is—
  - (a) to enable members of the public to know—
    - (i) how to contact a licensed immigration adviser; and
    - (ii) whether or not a person is licensed as an immigration adviser under this Act and, if so, the type of licence the person holds; and
    - (iii) whether or not a person's licence has been cancelled or suspended, or whether a person's application for a licence has been refused; and
  - (b) to facilitate the ability of the Registrar or the Commerce Commission to enforce the provisions of this Act or of any consumer protection legislation; and
  - (c) to facilitate the compliance, audit, and other supporting and administrative functions of the Registrar under this Act.
- (3) The register may be kept—



- (a) as an electronic register (for example, on the Authority's or the Department's website); or
- (b) in any other manner that the Registrar thinks fit.

## **78 Contents of register**

- (1) The register must contain all of the following information:
  - (a) the full name and business address of every person licensed under this Act to give immigration advice:
  - (b) the licence number or other unique identifier provided to a licensed immigration adviser on being granted a licence under section 19:
  - (c) the address for service of each licensed immigration adviser:
  - (d) the licensed immigration adviser's employer, if applicable:
  - (e) the date of each registration of each licensed immigration adviser:
  - (f) whether a person's licence is a full licence, a limited licence, or a provisional licence:
  - (g) any terms or conditions attached to a person's licence:
  - (h) if applicable, the date on which any cancellation, surrender, or suspension of a person's registration took effect:
  - (i) a list of the categories of persons who are exempt under section 11 or under regulations made under section 12 from the requirement to be licensed to give immigration advice:
  - (j) any other particulars that may be prescribed.
- (2) The register must also list the name and details of any person—
  - (a) whose licence has been cancelled or suspended at any time; or
  - (b) whose application for a licence has been refused.

## **79 Alterations to register**

The Registrar may at any time make any amendments to the register that are necessary to—

- (a) reflect any changes in the information referred to in section 18; or
- (b) correct a mistake caused by any error or omission on the part of the Registrar or any person to whom the Registrar has delegated his or her functions, duties, or powers; or
- (c) accurately reflect the status of immigration advisers as licensed or not and, if licensed, the type of licence held.

## **80 Search of register**

- (1) A person may search the register for a purpose set out in section 77(2).
- (2) The Registrar must—

- (a) make the register available for public inspection, without fee, at reasonable hours at the head office of the Authority; and
- (b) supply to any person, on request and on payment of a reasonable charge, a copy of the register or any extract from it.

*Appeals against decisions of Registrar and Tribunal*

## **81 Right of appeal**

- (1) A person may appeal to the District Court against any of the following decisions:
  - (a) a decision of the Registrar to refuse to license the person as an immigration adviser:
  - (b) a decision of the Registrar to grant the person a limited or a provisional licence only, rather than a full licence:
  - (c) a decision of the Tribunal to cancel or suspend the person's licence:
  - (d) any other decision of the Tribunal imposing on the person a sanction of a kind referred to in section 51(1)(a) to (i):
  - (e) a decision of the Tribunal to reject an appeal under section 55.
- (2) An appeal under this section must be made by giving notice of appeal within—
  - (a) 20 working days after the date on which notice of the decision was communicated to the person concerned; or
  - (b) any further time that the District Court may allow on application made before or after the expiration of that period.

Section 81(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 81(2)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **82 District Court may make interim order**

- (1) At any time before the final determination of an appeal, the District Court may make an interim order allowing the appellant to engage in providing immigration advice.
- (2) An interim order may be subject to any conditions that the District Court thinks fit.
- (3) If the District Court refuses to make an interim order, the person who applied for the order may, within 1 month after the date of the refusal, appeal to the High Court against the decision.

Section 82(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 82(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**83 Duties of Registrar if interim order made**

- (1) If an interim order is made allowing the appellant to engage in providing immigration advice,—
  - (a) that person is to be treated for the purposes of this Act as if they were licensed; and
  - (b) the Registrar must, as appropriate, enter, retain, or restore the person’s name on the register.
- (2) To enable the Registrar to fulfil the duties imposed by this section, the Registrar of the court in which the interim order is made must send a copy of the order to the Registrar as soon as practicable.

**84 Determination of appeal**

- (1) In determining an appeal, the District Court may confirm, vary, or reverse the decision of the Registrar or the Tribunal.
- (2) The District Court’s decision in the determination of an appeal is final.
- (3) To avoid doubt, nothing in this section affects the right of any person—
  - (a) to apply, in accordance with law, for judicial review; or
  - (b) to appeal to the High Court on a question of law under section 85.

Section 84(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**85 Appeal to High Court on question of law**

- (1) If dissatisfied with a decision of the District Court as being erroneous in law, a party to an appeal under this Part may appeal to the High Court on a question of law only.
- (2) The appeal must be heard and determined in accordance with rules of court.
- (3) Part 6 of the Criminal Procedure Act 2011 applies to the appeal—
  - (a) so far as is applicable and with all necessary modifications; but
  - (b) only so far as it relates to appeals on questions of law.
- (4) Subsection (3) overrides subsection (2).

Section 85(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Miscellaneous matters*

**86 Annual report on performance of Tribunal’s functions**

- (1) The chair of the Tribunal must, in each year, furnish to the Minister of Justice and the Minister a report on the performance of the Tribunal’s functions under this Act in respect of the financial year ending in that year.

- (2) The report must include details of both the number of determinations and the nature of the determinations made by the Tribunal in the period to which the report relates.
- (3) The Minister of Justice must present a copy of the report to the House of Representatives as soon as practicable after it is furnished to that Minister.

### **87 Power of Registrar to delegate**

The Registrar may, under clauses 2 and 3 of Schedule 6 of the Public Service Act 2020, delegate to any employee, in the same manner and to the same extent as if the Registrar were the chief executive, any of the Registrar's functions, duties, and powers, except this power of delegation.

Section 87: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

### **88 Certificate of Registrar**

- (1) A certificate signed by the Registrar in relation to the matters referred to in subsection (2) is for all purposes sufficient evidence, in the absence of proof to the contrary, of those matters specified in the certificate.
- (2) The matters are—
  - (a) that any person was or was not licensed at any particular time or during any period specified in the certificate; or
  - (b) the type of licence that a person held at any specified time or during any specified period; or
  - (c) that any entry in the register is as stated in the certificate.

### **89 Licensing fees**

- (1) The Governor-General may, by Order in Council, make regulations setting fees, or prescribing a method for determining fees, for licence applications, the granting and renewal of licences, and other associated matters.
- (2) Fees, or the method for determining fees, may differ for different classes of applicant or licensee, and may take account of whether or not the person concerned charges or proposes to charge for the provision of immigration advice.
- (3) The regulations may provide for the waiver of, or exemption from, fees, in whole or in part.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 89(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 90 Immigration adviser's levy

- (1) For the purpose of funding the functions of the Authority under section 35(1) and the costs of operation and administration of the Tribunal (to the extent they are otherwise unfunded), the Governor-General may, by Order in Council, make regulations prescribing a levy, or a method or methods for determining levies, payable by licensed immigration advisers (or payable as a prerequisite for the granting or renewal of a licence).
- (2) Levies, or the method or methods for determining levies, may differ for different classes of licence holder, and may take account of whether or not the person concerned charges or proposes to charge for the provision of immigration advice.
- (3) Regulations imposing levies may—
  - (a) specify when and how any levy is to be paid:
  - (b) provide for the waiver of, or exemption from, levies, in whole or in part.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 90(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 91 Waiver of further immigration fees in certain cases

The chief executive of the department of State that has, with the authority of the Prime Minister, assumed responsibility for the administration of the Immigration Act 2009 may, in whole or in part, waive any fee payable on a further immigration application or request by a person whose earlier application or request has not been accepted because it contravened section 9.

Section 91: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

**92 Disclosure of personal information overseas**

- (1) The Registrar may disclose any personal information specified in subsection (10) to an overseas or international agency, body, or person whose functions include the regulation of immigration advisers.
- (2) The disclosure of personal information under subsection (1) must be—
  - (a) in accordance with an agreement between the Registrar and the agency, body, or person concerned that complies with subsections (3) and (4); or
  - (b) in accordance with subsection (8).
- (3) The Registrar must not enter into an agreement under subsection (2)(a) unless satisfied that its purpose is to help the Authority carry out its functions under this Act, or to help the person, agency, or body carry out its functions relating to—
  - (a) the registration or regulation of immigration advisers; or
  - (b) the taking of any investigative, disciplinary, or enforcement action against immigration advisers.
- (4) An agreement under subsection (2)(a)—
  - (a) must be in writing; and
  - (b) must state the purpose of the agreement; and
  - (c) must state the personal information that can be disclosed; and
  - (d) must state, in respect of personal information to be disclosed, the use the agency, body, or person may make of it and either—
    - (i) that the agency, body, or person must not disclose it to any other agency, body, or person; or
    - (ii) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which and conditions subject to which the agency, body, or person may do so; and
  - (e) may state—
    - (i) the form in which personal information may be disclosed;
    - (ii) the method by which personal information may be disclosed; and
  - (f) may be varied from time to time.
- (5) The Registrar—
  - (a) must consult the Privacy Commissioner before entering into an agreement under this section, or varying such an agreement; and
  - (b) must provide the Privacy Commissioner with a copy of any agreement or variation promptly after it has been entered into; and

- (c) if the Privacy Commissioner so requires, must undertake a review of the agreement under this section, and the arrangements for disclosure under it; and
  - (d) as soon as practicable after conducting a review required to be undertaken under paragraph (c), must report the result to the Privacy Commissioner.
- (6) The Privacy Commissioner must not require the Registrar to undertake a review of an agreement under subsection (5)(c) within 12 months of last doing so.
- (7) This section does not limit the general powers of the Registrar or the Authority to enter into agreements not related to the disclosure of personal information with any overseas agency, body, or person.
- (8) The Registrar may disclose personal information to an overseas agency, body, or person without a written agreement under subsection (2)(a) if—
  - (a) the functions of the agency, body, or person include the regulation of immigration advisers; and
  - (b) the personal information is disclosed subject to conditions stating the use the agency, body, or person may make of it and either—
    - (i) that the agency, body, or person must not disclose it to any other agency, body, or person; or
    - (ii) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which and conditions subject to which the agency, body, or person may do so; and
  - (c) the Registrar makes and keeps record of—
    - (i) the personal information that was disclosed; and
    - (ii) the agency, body, or person to which it was disclosed; and
    - (iii) the conditions subject to which it was disclosed.
- (9) The Registrar must not disclose any personal information under subsection (8) unless satisfied that it relates to—
  - (a) any application, request, or other action taken by the person to whom the personal information relates, to undertake functions or be formally recognised as an immigration adviser; or
  - (b) any investigation, or any disciplinary or enforcement action that is proposed to be taken, or being taken, by the agency, body, or person in relation to the person to whom the personal information relates (where that investigation or that disciplinary or enforcement action relates to the person's actions or alleged actions as an immigration adviser).
- (10) The personal information that may be disclosed under this section is—

- (a) whether a person is licensed, or has applied to be licensed, as an immigration adviser:
  - (b) if a person is licensed, whether the person has been granted a full licence, a limited licence, or a provisional licence, and the details of the licence:
  - (c) if a person is not licensed,—
    - (i) whether the person is prohibited from being licensed and the reason for any such prohibition:
    - (ii) whether the person is restricted from being licensed and the reasons for such restriction:
    - (iii) information about matters otherwise relevant to the person's fitness for licensing in New Zealand:
  - (d) whether the person has been, or is currently, subject to an inspection by the Registrar:
  - (e) if the person has been, or is currently, subject to an inspection by the Registrar,—
    - (i) the reason for the inspection; and
    - (ii) the results of the inspection, if completed:
  - (f) the details of any disciplinary proceedings taken or being taken against the person, and any disciplinary sanctions imposed on the person:
  - (g) the details of any convictions against the person (whether under this Act or any other enactment).
- (11) In this section,—

**immigration adviser** means a person who provides, or purports to provide (whether lawfully or unlawfully), immigration advice, whether or not that advice concerns an immigration matter under New Zealand law and whether or not relating to New Zealand

**personal information** means information about an identifiable person.

### 93 Service of notices

- (1) Any notice or any other document required to be served on, or given to, any person under this Act, or any regulation made under this Act, is sufficiently served if,—
- (a) in the case of an applicant for a licence or a licensed immigration adviser, the notice or document is—
    - (i) delivered to the person at the person's address for service stated in accordance with section 18(c)(ii); or
    - (ii) sent by fax or email to the person's fax number or email address, as the case may be, provided for the purpose by the applicant or licensed immigration adviser; or



- (iii) posted in a letter addressed to the person at the person's address for service stated in accordance with section 18(c)(ii); or
  - (b) in any other case, the notice or document is—
    - (i) delivered to the person; or
    - (ii) left at the person's usual or last known place of residence or business in New Zealand; or
    - (iii) posted in a letter addressed to the person at the person's place of residence or business in New Zealand.
- (2) A notice or document that is sent to a person at a fax number or an email address must be treated as received by that person not later than 2 days after the date on which it is sent.
- (3) A notice or document that is posted to a person must be treated as received by that person not later than 9 days after the date on which it is posted.
- (4) However, a notice or document must not be treated as received if the person to whom it is posted or sent proves that it was not received, otherwise than through fault on the person's part.

Section 93(3): amended, on 14 November 2018, by section 113 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

#### **94 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing the matters to be included in the register of licensed immigration advisers:
  - (b) prescribing information or material that must be included in licence applications:
  - (c) providing for exemptions from the requirement to be licensed, or the removal or amendment of exemptions, under section 12 or 14:
  - (d) providing for matters in respect of the renewal of licences (including the non-application of any of the provisions of sections 18 to 22):
  - (e) prescribing what constitutes a relevant change of circumstances for the purposes of section 26:
  - (f) prescribing fees, or a method or methods for determining fees, in respect of licence applications, the granting and renewal of licences, and other associated matters:
  - (g) prescribing levies, or a method or methods for determining levies, payable by licensed immigration advisers (or payable as a prerequisite for the granting or renewal of a licence):
  - (h) prescribing matters in respect of the proceedings of the Tribunal:

- (i) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 94(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

*Amendments to other Acts*

**95 Immigration Act 1987 amended**

Section 142(1)(j) of the Immigration Act 1987 is repealed.

**96 Privacy Act 1993 amended**

Part 1 of Schedule 2 of the Privacy Act 1993 is amended by inserting the following item in its appropriate alphabetical order:

Immigration Advisers Licensing Act 2007 section 77.

**97 Summary Proceedings Act 1957 amended**

*[Repealed]*

Section 97: repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## Schedule

### Provisions applying in relation to Tribunal

s 43

#### 1 Oath of office

Each member of the Tribunal must, before entering on the performance of his or her functions as a member of the Tribunal, swear or affirm before a Judge of the High Court that he or she will faithfully and impartially perform his or her duties as a member of the Tribunal.

#### 2 Term of office

- (1) Every member of the Tribunal is to be appointed for a term of up to 5 years.
- (2) A member of the Tribunal is eligible for reappointment from time to time.
- (3) Where the term of office of a member of the Tribunal has expired, that member, unless he or she sooner dies or vacates office under clause 3, continues to hold office, by virtue of the appointment for the term that has expired, until—
  - (a) that member is reappointed; or
  - (b) a successor to that member is appointed; or
  - (c) that member is informed in writing by the Minister of Justice, acting in consultation with the Minister, that he or she is not to be reappointed and is not to hold office until a successor is appointed.
- (4) A member who continues in office for any period under subclause (3) may act as a member during that period for the purpose of—
  - (a) completing any proceedings partly or wholly heard by the Tribunal before the expiry of his or her term of office:
  - (b) hearing any other proceedings.
- (5) A member who has resigned, or whose successor is appointed or who will not be replaced (unless he or she was removed from office), may continue in office for the purpose of completing any proceedings that are partly or wholly heard.

Schedule clause 2(1): amended, on 14 November 2018, by section 114(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Schedule clause 2(4): inserted, on 14 November 2018, by section 114(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Schedule clause 2(5): inserted, on 14 November 2018, by section 114(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

#### 3 Vacation of office

- (1) A member of the Tribunal may at any time be removed from office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

- (2) A member of the Tribunal is deemed to have vacated his or her office if he or she is, under the Insolvency Act 1967, adjudged bankrupt.
- (3) A member of the Tribunal may at any time resign his or her office by giving notice in writing to that effect to the Minister.

### **3A Appointment of temporary acting chair or member**

- (1) If the chair or a member of the Tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if the chair or a member considers it is not proper or not desirable that he or she should adjudicate on a specified matter, the Governor-General, on the recommendation of the Minister of Justice acting in consultation with the Minister, may appoint a suitable person as the acting chair or an acting member for the period or purpose stated in the appointment.
- (2) No person may be appointed as the acting chair or an acting member unless he or she is eligible for appointment to the relevant position.
- (3) The acting chair or acting member is, while acting in the position, to be treated as the chair or a member of the Tribunal.
- (4) No appointment of an acting chair or acting member, no act done by an acting chair or acting member, and no act done by the Tribunal may be questioned in any proceedings on the ground that the occasion for the appointment had not arisen or had ceased.

Schedule clause 3A: inserted, on 14 November 2018, by section 114(3) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

## **4 Remuneration**

The chair and other members of the Tribunal are to be paid, out of public money, remuneration by way of fees, salary, or allowances and travelling allowances in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly as if the chair or any other member were a member of a statutory board within the meaning of that Act.

## **5 Members of Tribunal**

No person holding office as a member of the Tribunal is deemed by reason of his or her holding of that office to be employed in the Government service for the purposes of the Government Superannuation Fund Act 1956 or in the State services for the purposes of the Public Service Act 2020.

Schedule clause 5: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

## **6 Witness summons**

- (1) For the purposes of any matter before the Tribunal, the Tribunal may, on its own initiative or at the request of a party, issue a summons to any person requiring that person to attend before the Tribunal and give evidence.

- (2) The summons must be in a form approved by the chief executive of the Ministry of Justice after consultation with the chair of the Tribunal, and may require the person to produce before the Tribunal any books, papers, documents, records, or things in that person's possession or under that person's control in any way relating to the matter.
- (3) The power to issue a summons under this clause may be exercised by the Tribunal or the chair of the Tribunal or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal or the chair of the Tribunal.

Schedule clause 6(1): replaced, on 14 November 2018, by section 114(4) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Schedule clause 6(2): amended, on 29 October 2019, by section 114(5) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Schedule clause 6(3): amended, on 14 November 2018, by section 114(6) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Schedule clause 6(3): amended, on 14 November 2018, by section 114(7) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

## **7 Witnesses' expenses**

- (1) Every person attending the Tribunal on a summons, and every other person giving evidence before the Tribunal, is entitled, subject to subclause (2), to be paid, by the party calling that person, witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Criminal Procedure Act 2011, and those regulations apply accordingly.
- (2) The Tribunal may disallow the whole or any part of any sum payable under subclause (1).

Schedule clause 7(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **8 Power to take evidence**

- (1) The Tribunal may take evidence on oath or affirmation and, for that purpose, the Tribunal or any other person acting under the express or implied direction of the Tribunal may administer the oath or affirmation.
- (2) The Tribunal may require that any documents or information be verified by oath, affirmation, statutory declaration, affidavit, or another means.
- (3) On any charge of perjury, it is sufficient to prove that the oath or affirmation was administered, or the documents or information were verified, in accordance with this clause.

Schedule clause 8: replaced, on 14 November 2018, by section 114(8) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**8A Use of electronic facilities to hear matters**

The hearing of a matter or any part of it may be conducted by telephone, audio-visual link, or other remote access facility if the Tribunal or the chair of the Tribunal considers it appropriate and the necessary facilities are available.

Schedule clause 8A: inserted, on 14 November 2018, by section 114(8) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**8B Decisions to be in writing and state reasons**

Every decision of the Tribunal must be in writing and must state the reasons for the decision.

Schedule clause 8B: inserted, on 14 November 2018, by section 114(8) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**9 Protection and privileges of witnesses**

Every person has the same privileges in relation to—

- (a) the giving of information to the Tribunal; and
- (b) the giving of evidence to, or the answering of questions put by, the Tribunal; and
- (c) the production of papers, documents, records, or things to the Tribunal,—

as witnesses have in a court of law.

**10 Tribunal and members, etc, not personally liable**

Neither the Tribunal, nor any member, officer, or agent of the Tribunal, is under any criminal or civil liability in respect of—

- (a) any act done or omitted to be done in the course of performing or exercising any of their functions, duties, or powers under this Act or any regulations made under this Act; or
- (b) any words spoken or written at, for the purposes of, the hearing or any inquiry or other proceedings under this Act or any regulations made under this Act; or
- (c) anything contained in any notice given under this Act or any regulations made under this Act,—

unless the Tribunal or person has acted in bad faith.

Schedule clause 10(a): amended, on 14 November 2018, by section 114(9) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Schedule clause 10(b): amended, on 14 November 2018, by section 114(9) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Schedule clause 10(c): amended, on 14 November 2018, by section 114(9) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**11 Tribunal to have seal**

The Tribunal must have a seal, which must be judicially noticed in all courts and for all purposes.

**12 Practice notes**

- (1) The chair of the Tribunal may issue practice notes as he or she thinks fit.
- (2) The practice notes must not be inconsistent with this Act or any regulations made under it, and are for the guidance of members of the Tribunal, officers of the Tribunal, and parties before the Tribunal.

Schedule clause 12: inserted, on 14 November 2018, by section 114(10) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**13 Online publication of information about procedures, time frames, and progress of decisions**

The following information must be published on an Internet site maintained by or on behalf of the chief executive of the Ministry of Justice:

- (a) information about the purpose of the Tribunal and how to commence proceedings:
- (b) any requirements that must be met to bring proceedings:
- (c) guidelines on how and when parties may obtain information on the progress of their case and when a decision may be expected.

Schedule clause 13: inserted, on 29 October 2019, by section 114(11) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

**14 Online publication of final written decisions**

- (1) Every final written decision of the Tribunal must be published on an Internet site as soon as practicable unless there is good reason not to publish it.
- (2) A final written decision may be published in part if there is good reason for not publishing the full decision.
- (3) Subclauses (1) and (2) are subject to section 50A.
- (4) Good reason not to publish a decision, or part of it, includes the following:
  - (a) non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication:
  - (b) the decision falls into a category of decisions that are of limited public value:
  - (c) taking into account the presumption in subclause (1) in favour of publication, the Tribunal nevertheless determines that the decision or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice.

- (5) In this clause, **final written decision** means a written decision that determines, or substantially determines, the outcome of proceedings in the Tribunal and is either of the following:
- (a) a written reserved decision following an oral hearing;
  - (b) a written decision in any case considered on the papers.

Schedule clause 14: inserted, on 29 October 2019, by section 114(11) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).



## Notes

### 1 *General*

This is a consolidation of the Immigration Advisers Licensing Act 2007 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### 2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### 3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### 4 *Amendments incorporated in this consolidation*

Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14): wehenga 7/section 7

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Statutes Amendment Act 2019 (2019 No 56): Part 21

Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51): Part 1 subpart 9

District Court Act 2016 (2016 No 49): section 261

Companies Amendment Act 2013 (2013 No 111): section 14

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Search and Surveillance Act 2012 (2012 No 24): sections 261–264

Criminal Procedure Act 2011 (2011 No 81): section 413

Immigration Advisers Licensing (Partial Removal of Exemption) Regulations 2011 (SR 2011/29): regulation 3

Immigration Advisers Licensing Amendment Act 2010 (2010 No 67)

Immigration Act 2009 (2009 No 51): section 406(1)