



Annual Report of the

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2014

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

Hon Amy Adams
Minister of Justice

Pursuant to section 86(1) of the Immigration Advisers Licensing Act 2007, I have pleasure in presenting the Annual Report of the Immigration Advisers Complaints and Disciplinary Tribunal for the 12 months ended 30 June 2014.

Yours sincerely



Grant Pearson
Chair

Immigration Advisers Complaints and Disciplinary Tribunal

INTRODUCTION

The Immigration Advisers Licensing Act 2007 (the Act) established the Immigration Advisers Complaints and Disciplinary Tribunal in 2010. The Tribunal considers and determines complaints made against licensed immigration advisers referred to it by the Registrar of the Immigration Advisers Authority (IAA). This includes whether or not to suspend an immigration adviser's licence pending the outcome of a matter.

Any person, including the Registrar on her own motion, can initiate complaints. The Tribunal also deals with appeals against the Registrar's decision:

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

MEMBERSHIP

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

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

MATTERS ARISING IN THE LAST 12 MONTHS

Caseload

During the preceding year, the Tribunal addressed procedural issues that were a barrier to efficiently processing complaints. This created an increased burden on the IAA, which had to file complaints in a more structured form, and undertake further investigation of some existing complaints. The IAA has addressed those issues; however, the workload reduced the IAA's capacity to process current complaints. The number of new cases received by the Tribunal in the year ending 30 June 2014 was four. For the immediately preceding two years, the Registrar respectively filed 62 and 66 complaints.

It appears the new procedures will result in the IAA filing fewer complaints; a more rigorous process now weighs the merits before filing. However, the very low numbers in the 12 months preceding 30 June was a temporary reduction due to the IAA's processing capacity. The longer-term numbers are likely to be in the order of two thirds the number filed under the original procedures (approximately 40-50). The Tribunal's work to process the complaints under the new system will be substantially less than what it was under the former system.

At 30 June 2014, the number of complaints on hand was 13, down from 85 at the start of the reporting year. The reduction is the result of revised procedures the Tribunal implemented. The 13 matters on hand at that date generally required oral hearings, and either parties or witnesses had successfully applied for adjournments due to their personal circumstances. The Tribunal will be in a position to dispose of complaints and appeals in a timely and efficient manner under its revised processes, which are now fully in effect.

Legislative matters

As at the end of the current year MartinJenkins were undertaking a review of the Immigration Advisers licensing regime. In July 2014, the reviewers presented their report *Review of the Regulation of Immigration Advice* to the Ministry of Business, Innovation and Employment, which commissioned the report. The report may lead to administrative and legislative changes to the regime created under the Act, and may directly or indirectly affect the Tribunal. Accordingly, any reconsideration of the legislation should be in that wider context.

Many complaints concern serious consequences arising from allegations advisers have acted unethically, as a failure to adequately and properly represent clients may lead to deportation, failure to gain residence and other serious consequences. There is one issue, which justifies consideration independent of the MartinJenkins' report, as it involves issues of basic fairness in complainants' access to justice.

The IAA has taken a considered view that the Act does not authorise it and its Registrar to prosecute complaints. The Registrar does investigate complaints, and provide information for the Tribunal in a non-partisan way. The Tribunal hears most complaints *on the papers*, as the Act requires. Under that process, the role the IAA and its Registrar take is appropriate and satisfactory. A small number of complaints require oral hearings, as the Tribunal must make credibility findings, usually in respect of contested accounts given by the complainant and the adviser.

Oral hearings have become a concern. Advisers generally engage lawyers to represent them, and certainly have the option of doing so. Advisers have accessed legal aid for such hearings. However, complainants usually have no legal representation. That is almost invariably so for the most vulnerable complainants, despite that the Act's objective is to protect them. The Registrar's view of her role as a neutral party, who is not authorised to prosecute a complaint, has led to concerning situations for vulnerable complainants. Complainants in a professional disciplinary prosecution are in a similar position to an alleged victim of crime in a criminal prosecution, a potential witness who may be cross-examined by defence counsel.

As the IAA does not prosecute complaints, complainants have attended oral hearing where they are left to prosecute their complaint, present their evidence, and face cross-examination, without any professional assistance.

Examples of unsatisfactory situations include complainants whose complaints included inappropriate sexual conduct by the adviser, for some of them English was a second language. Complainants with limited English language skills, have been subject to technical challenges to their conduct of the case. In some cases from adviser's lawyer, appointed under legal aid.

The Registrar has never briefed the evidence of a complainant nor called a witness at any oral hearing. The Tribunal understands the Registrar is of the view the Act provides no authority for her to do so. The matter is of more than incidental concern, as cases involving oral hearings are typically for the most serious complaints.

The Tribunal has addressed the situations as they have arisen; however, to the extent the Tribunal intervenes to ensure it hears the complainant's case, the adviser likely sees the Tribunal as partisan. If the Tribunal fails to assist the complainant to put their case, they are likely to have a justified perception the Tribunal's process is weighted against them.

The Tribunal understands this difficulty is unique in professional disciplinary regimes in New Zealand. Other professional disciplinary regimes either constitute a body as an evaluator and prosecutor of complaints; or a body like the IAA appoints and funds counsel to represent complainants at oral hearings. Either approach is satisfactory. The former may require legislation, such as adding the following words to section 48(1) of the Act: *; and to the extent the interests of justice require, prosecute the complaint before the Tribunal.*

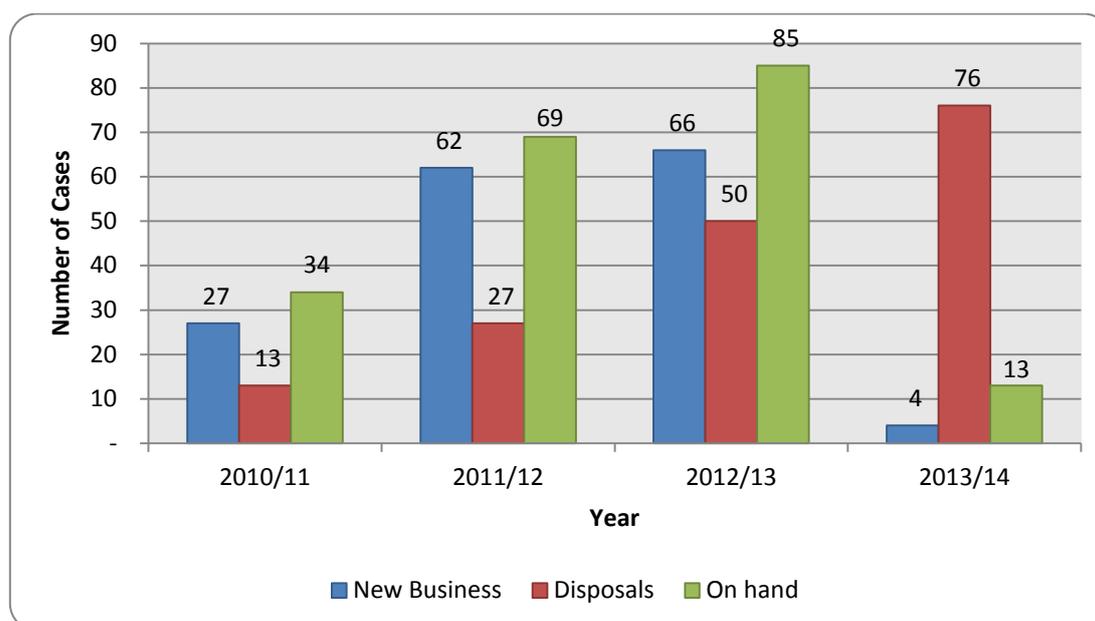
STATISTICS

This section outlines the number of matters considered and disposed by the Tribunal.

Cases received and disposed

The graph below shows the number of cases received, disposed, and on hand in 2013/14, compared with the previous three financial years.

IACDT cases received, disposed and on hand



In the reporting year, the Tribunal did not receive any appeals against a determination of the Registrar of the IAA, all cases were complaints referred by the Registrar of the IAA.

The Tribunal has not received any complaints initiated by the Registrar's own motion in the reporting year; clients or their representatives initiated all complaints.

The Tribunal did not receive any applications from the Registrar for suspension of licence pending outcome of complaints.

Disposition of cases

After hearing a complaint, the Tribunal may:

- dismiss the complaint;
- uphold the complaint but take no further action; or

- uphold the complaint and impose a sanction.

The table below shows the disposition of cases for the past three financial years.

Complaints dismissed and upheld

	2011/12	2012/13	2013/14
Complaints dismissed	9	12	25
Complaints upheld but no further action taken	2	1	0
Complaints upheld and sanctions imposed	16	37	49
TOTAL	27	50	74

Complaints upheld

Each of the 49 complaints upheld in 2013/14 resulted in sanctions. The sanctions available to the Tribunal are:

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

In addition to final decisions, in 2013/14 the Tribunal issued:

- 115 directions relating to the conduct of proceedings, covering the identification of issues, and other matters; and
- 48 penalty, or interim decisions

Complainants, with the Tribunal’s consent, withdrew two matters.