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Annual Report of the

# IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2019

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*Presented to the Minister of Justice and the Minister of Immigration*

Hon Aupito William Sio, Associate Minister of Justice

Hon Iain Lees-Galloway, Minister of Immigration

Pursuant to s 86(1) of the Immigration Advisers Licencing 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 2019.

Yours sincerely



David Plunkett

Chair

Immigration Advisers Complaints and Disciplinary Tribunal

## OVERVIEW

This is my first report for the Tribunal, having been appointed to the role of Chair in September 2018.

I record my thanks to the previous and inaugural Chair, Grant Pearson, for the high quality of the Tribunal's jurisprudence which I inherited.

Due to Mr Pearson's other professional commitments, a backlog of complaints had built up in the Tribunal. My priority has been reducing it. I am pleased to report that the number of outstanding complaints has reduced over the financial year from 64 (at 1 July 2018) to 36 (at 30 June 2019).

As the backlog reduced, so has the delay in determining complaints. At the time I was appointed, the maximum period between a complaint being referred to the Tribunal and a sanctions decision being issued, was three years and three months. It has been reduced to just over two years. This positive trend will continue into the next financial year.

I take this opportunity of commending the work of the Immigration Advisers Authority (the Authority) in investigating and preparing complaints for the Tribunal. It is of the highest standard, which has facilitated the Tribunal's ability to reduce the backlog.

There is an unfortunate pattern of serious misconduct by licensed advisers known as 'rubber stamping'. Mr Pearson commented on it in his last annual report. It commonly occurs where an adviser uses offshore agents to recruit the clients and prepare the visa applications for lodging by the adviser. The adviser typically has little or no engagement with the application or the client. It is not just a breach of the Licensed Immigration Advisers Code of Conduct 2014 (Code of Conduct), but is also a criminal offence. It robs the clients of the protection to which they are entitled by dealing directly with advisers who are knowledgeable and subject to a professional code of practice and a disciplinary regime. It is proving difficult to eliminate.

Part of the problem lies in the light sanctions regime. The maximum financial penalty that can be imposed by the Tribunal is only \$10,000 and the Tribunal can prevent renewal of a cancelled licence for only two years. The Ministers are respectfully urged to consider a stiffer sanctions regime.

## JURISDICTION AND GENERAL INFORMATION

### Establishment and Function of the Tribunal

The Tribunal is based in Wellington. It was established in 2007 by s 40 of the Immigration Advisers Licensing Act 2007 (the Act). The purpose of the 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.<sup>1</sup>

The functions of the Tribunal are:<sup>2</sup>

- (1) to make decisions on complaints about immigration advisers;
- (2) to decide whether an adviser's licence should be suspended;
- (3) to hear appeals against decisions of the Registrar of Immigration Advisers (the Registrar) to cancel the licence of an adviser; and
- (4) to hear appeals against decisions of the Registrar to reject a complaint.

The principal grounds of complaint are a breach of the Code of Conduct, negligence and dishonest or misleading behaviour.<sup>3</sup>

The Tribunal hears those complaints referred to it by the Registrar, who is the head of the Authority. Complaints cannot be made by clients or members of the public directly to the Tribunal. It is the Authority which has the primary function of investigating complaints and preparing them for the Tribunal.<sup>4</sup> Complaints can also be initiated by the Registrar. They are usually heard by the Tribunal on the papers, though it retains a discretion to have an oral hearing.<sup>5</sup>

The Tribunal can dismiss or uphold the complaint.<sup>6</sup> If it upholds the complaint, it may decide to take no further action or impose one or more sanctions.<sup>7</sup> These range from caution or censure, or a direction to undertake training, up to suspension or cancellation of the adviser's licence. An adviser can also be prevented from

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<sup>1</sup> Immigration Advisers Licensing Act 2007, s 3.

<sup>2</sup> Sections 41, 54 & 55.

<sup>3</sup> Section 44(2).

<sup>4</sup> Sections 45(4), 47, 48(1).

<sup>5</sup> Section 49(3) & (4).

<sup>6</sup> Section 50.

<sup>7</sup> Sections 50 & 51.

reapplying for a licence for a period not exceeding two years. The Tribunal can additionally impose a financial penalty not exceeding \$10,000, order the repayment of costs and expenses and the payment of reasonable compensation.

The Tribunal may regulate its procedures as it thinks fit.<sup>8</sup> The previous Chair issued Practice Notes (one each for complainants and advisers) and Notes for Guidance.<sup>9</sup>

For most complaints, the Tribunal issues two decisions. The first is a liability or substantive decision (upholding or dismissing the complaint). Where the complaint is upheld, a second decision will usually be issued imposing sanctions. All decisions must be in writing and state reasons.<sup>10</sup>

Decisions of the Tribunal imposing a financial penalty or ordering the payment of any monies can be enforced as if they were orders of the District Court.<sup>11</sup>

Certain decisions of the Tribunal can be appealed to the District Court. A party to a complaint can appeal a sanctions decision or a decision to cancel or suspend an adviser's licence or a decision to reject an appeal against the Registrar's cancellation of a licence.<sup>12</sup> An appeal must be filed within 20 working days of notice of the Tribunal's decision, unless further time is allowed by the District Court. A liability or substantive decision cannot be appealed, but it could be the subject of judicial review in the High Court.

### **Publication of Tribunal Decisions**

The Tribunal has a practice of publishing every decision on its website. However, the Chair can order that any part of the evidence or the name of any witness not be published.<sup>13</sup> It is rare for the Tribunal to suppress the name of the adviser, given the public interest in knowing the names of advisers who misconduct themselves. The Tribunal does, however, have a practice of suppressing the names of complainants, in order to encourage them to make complaints.

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<sup>8</sup> Section 49(1).

<sup>9</sup> Schedule to Act, cl 12.

<sup>10</sup> Schedule to Act, cl 8B.

<sup>11</sup> Section 52.

<sup>12</sup> Section 81.

<sup>13</sup> Section 50A.

The Tribunal's decisions may be accessed on its website page, which is part of the website of the Ministry of Justice. It is to be found at [www.justice.govt.nz/tribunals/immigration/immigration-advisers-complaints-and-disciplinary-tribunal/](http://www.justice.govt.nz/tribunals/immigration/immigration-advisers-complaints-and-disciplinary-tribunal/) It has been upgraded to provide abstracts of decisions and a limited search function.

## **Membership**

The Tribunal comprises the Chair and such other members as are appointed.<sup>14</sup>

The appointments are by the Governor-General on the recommendation of the Minister of Justice, after consultation with the Ministry of Immigration.

Members may be appointed for up to five years.<sup>15</sup>

## **Registry**

The administrative and financial support of the Tribunal is provided by the Courts and Tribunals division of the Ministry of Justice.

The Ministry provides such staff as are necessary to enable the Tribunal to discharge its functions.<sup>16</sup>

The day to day administration of the Tribunal is headed by Mr Ricardo Rebuelta, service manager. The Tribunal's case managers are Ms Victoria Chao and Mr Paul Bleyenga. Ms Dianne Turner, judicial personal assistant, provides secretarial services.

I have access to a legal research team. This team also provides proof reading services and produces abstracts of the decisions for the website. It is managed by Ms Susan O'Connor. Ms Sarah Jenkison provides those services for the Tribunal.

I thank these officers for their excellent support of the Tribunal. The day to day operational support and research services are in the hands of a high performing and professional team.

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<sup>14</sup> Section 40(2).

<sup>15</sup> Schedule to Act, cl 2(1).

<sup>16</sup> Section 42.

## 2018/2019 FISCAL YEAR ACTIVITIES

### Membership

The Tribunal comprises the Chair only:

	<i>Date of first appointment</i>	<i>Date of expiry of warrant</i>
David Plunkett (Chair)	20 September 2018	20 September 2021

The case load, while full, does not presently justify the appointment of any other members.

### Complaints and Appeals filed and finalised

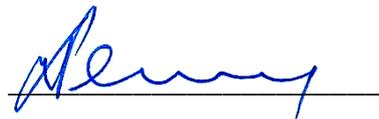
The relevant information is set out in Appendix 1. The annual report is required to include certain information regarding the Tribunal's performance.<sup>17</sup>

### Appeals and Judicial Reviews of Tribunal Decisions

The relevant information is set out in Appendix 2.

## THE YEAR AHEAD

The priority remains further reduction of the backlog of outstanding complaints. It is my goal to reduce to 12 months the maximum period between receipt of a complaint and its final determination (usually the sanctions decision).



David Plunkett  
Chair  
23 March 2020

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<sup>17</sup> Section 86(2).

## Appendix 1 – Complaints and Appeals Filed and Finalised

<b>Complaints and appeals outstanding at 1 July 2018</b>	<b>64*</b>
Complaints	62
Appeals	2
<b>Total complaints and appeals filed</b>	<b>18</b>
Complaints	17
Appeals	1
<b>Total complaints and appeals finalised</b>	<b>46</b>
Complaints dismissed	2
Complaints upheld but no further action taken	1
Complaints upheld and sanctions imposed	40
Complaints withdrawn	0
Appeals upheld	0
Appeals rejected	3
Appeals withdrawn	0
<b>Complaints and appeals outstanding at 30 June 2019</b>	<b>36</b>
Complaints	36
Appeals	0
<b>Other decisions</b>	<b>6</b>
Complaints upheld but sanctions not yet determined	5
Notices of suspension	1
Interim decisions	0

\*The annual report of 2017/2018 recorded that 52 matters were on hand at 30 June 2018. That figure excluded 12 complaints awaiting sanctions, in accordance with the practice regarding the compilation of statistics at the time.

## Appendix 2 – Appeals and Judicial Reviews of Tribunal Decisions

Appeals pending at 1/7/18	Appeals filed 18/19 FY	OUTCOMES			Appeals pending at 30/6/19
		Allowed	Dismissed	Discontinued /Abandoned	
4	0	0	0	1	3*

Judicial Reviews pending at 1/7/18	Judicial Reviews Filed 18/19 FY	OUTCOMES			Judicial Reviews Pending at 30/6/19
		Allowed	Dismissed	Discontinued /Abandoned	
1	0	1	0	0	0

\*The appeals all relate to three decisions of the Tribunal made in 2016 concerning one adviser who is no longer licensed.