



Annual Report of the

REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2016

Presented to the House of Representatives pursuant to regulation 17 (b) of the Real Estate Agents (Complaints and Discipline) Regulations 2009

Hon Amy Adams
Minister of Justice

Pursuant to regulation 17(b) of the Real Estate Agents (Complaints and Discipline) Regulations 2009, I have pleasure in presenting the Annual Report of the Real Estate Agents Disciplinary Tribunal for the 12 months ended 30 June 2016.

Yours sincerely



Hon. Pamela Andrews CNZM
Chairperson
Real Estate Agents Disciplinary Tribunal

INTRODUCTION

The Real Estate Agents Disciplinary Tribunal (the Tribunal) was established in 2009 under the Real Estate Agents Act 2008. The Tribunal hears and determines charges against licensees laid by a complaints assessment committee of the Real Estate Agents Authority (the Authority), appeals against decisions made by a complaints assessment committee, and reviews of determinations on licensing applications made by the Registrar of the Authority.

MEMBERSHIP

The current membership of the Tribunal is:

Hon. Pamela Andrews CNZM (Chairperson)
Kate Davenport QC (Deputy Chairperson)
Nola Dangen
Garry Denley
John Gaukrodger
Catherine Sandelin

MATTERS ARISING IN THE LAST 12 MONTHS

Judicial matters

In February 2016, Judge Barber announced his resignation from his role as Chairperson of the Tribunal, effective 30 April 2016. The Honourable Pamela Andrews has been appointed as the new Chairperson. Ms Andrews was appointed as a Judge of the High Court at Auckland in June 2006, and served until her retirement in September 2015. Ms Andrews was made a Companion of the New Zealand Order of Merit in January 2016.

Judge Barber served as Chairperson for four and a half years. His contribution to the Tribunal's jurisprudence must be recognised. During Judge Barber's time as Chairperson the Tribunal developed a substantial body of case law which has clarified the application of the Real Estate Agents Act 2008 and the rules regulating professional conduct and client care. This assists consumers, and those engaged in work as real estate agents in understanding and complying with their obligations, and also assists those responsible for considering alleged breaches of the Act and the Rules.

The Tribunal pays tribute to the administration team within the Tribunals Unit of the Ministry of Justice, for their commitment, expertise and assistance during the past year. Those qualities have been particularly appreciated by the incoming Chairperson.

Caseload

As noted below, the Tribunal received 85 new cases during 2015/2016. This is an increase of two from the previous year. However, the Tribunal notes that the number of cases received by the Tribunal in 2015/2016 has continued the overall decreasing trend since the Tribunal was established. This is in very large part as a result of the work the Real Estate Agents Authority continues to do in its early resolution process aimed at resolving potential complaints, its mediation processes, and its publication of guidance for consumers and licensees. The Authority is to be commended for its continuing work in these areas.

Decisions of the High Court and Court of Appeal have also added to the case law concerning the meaning and application of the provisions of the Act and the Rules.

Legislative matters

As it did in the 2014/2015 and 2013/2014 Annual Reports, the Tribunal recommends legislative changes to the Act to include provisions which would provide the Tribunal more extensive powers to award costs; clarify the power to award compensation for "unsatisfactory conduct" as well as for "misconduct"; provide for the restriction or cessation of appeals to the Tribunal against the decision of a Complaints Assessment Committee to lay a charge against a licensee; provide for the enforcement of non-publication or suppression orders; and provide for the extension of the expiring warrant for Tribunal members for the limited purpose of completing extant proceedings.

The Tribunal also suggests amending the Act to widen the power of the Tribunal so that the order against a licensee to make their business available for inspection or to take management advice can also be ordered against licensee companies (s93(1)(h)); to establish timeframes for lodging appeals to the High court from decisions of the Tribunal; and to allow a Complaints Assessment Committee and the Tribunal to dismiss complaints and appeals that are frivolous or vexatious or an abuse of process.

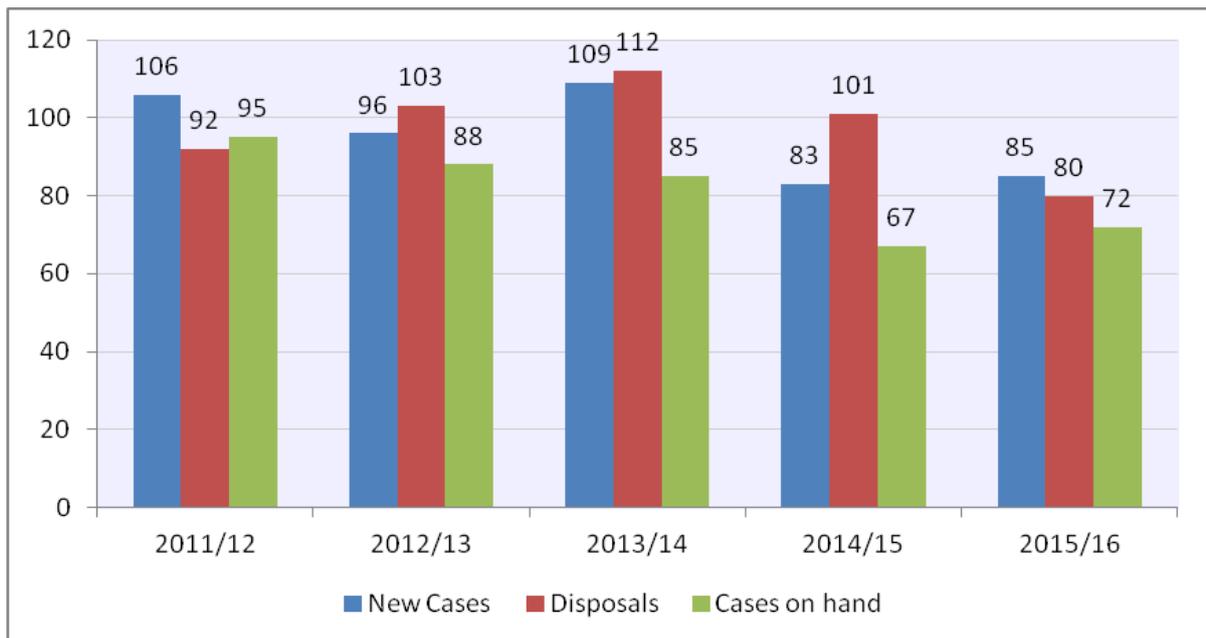
The Tribunal also suggests that legislative changes be made to standardise powers and procedures for statutory tribunals.

STATISTICS

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

The Tribunal received 85 new cases in 2015/16, and disposed of 80. As shown in *Graph 1* below, the workload in 2015/16 remained busy and steady.

Graph 1: Cases received and disposed by financial year



Cases on hand

At the end of the 2015/16 financial year the Tribunal had 72 cases on hand. These cases were either awaiting information from parties (32 cases), waiting to be scheduled for hearing (8 cases), scheduled for hearing (25 cases) or reserved decisions (7 cases).

Cases received 2015/16

The Tribunal receives three types of cases; Notices of Appeal, Charges, and Applications to Review:

- A **Notice of Appeal** is an appeal to the Tribunal against a determination made by a complaints assessment committee of the Real Estate Agents Authority.
- A **Charge** is a complaint of misconduct against a licensee referred to the Tribunal by a complaints assessment committee.

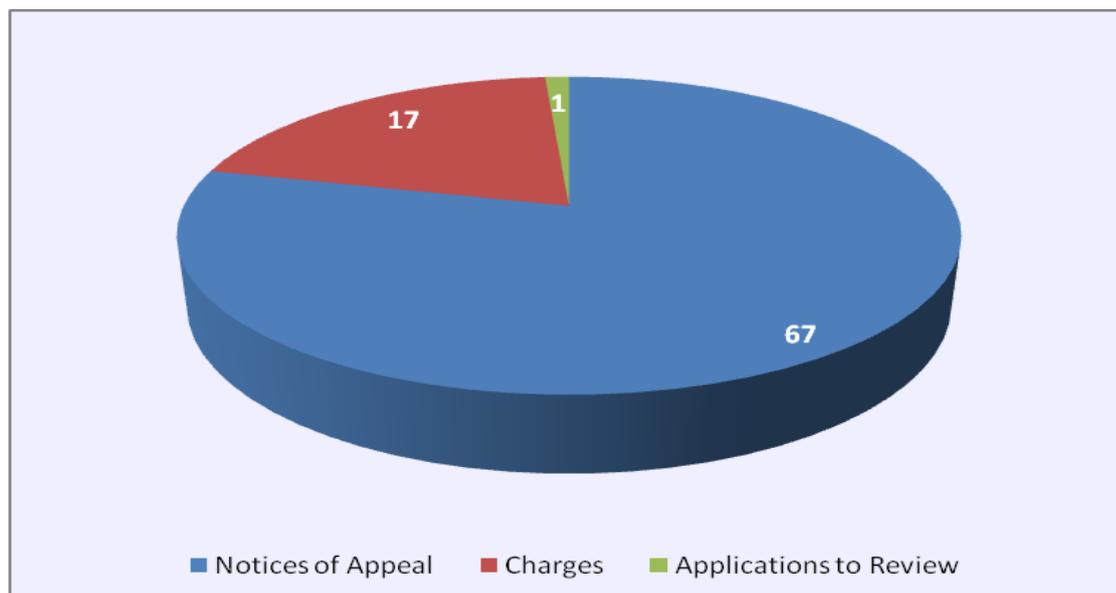
- An **Application to Review** is an application to the Tribunal to review a licensing application determination made by the Registrar of the Real Estate Agents Authority.

Table 1 and Graph 2 below show the number of cases received by the Tribunal for the 2015/16 financial year, broken down by the three case types.

Table 1: Types of cases received 2015/16

Notices of Appeal against decisions of a complaints assessment committee	67
Charges of misconduct	17
Applications to Review determination of Registrar declining a licensing application	1
TOTAL	85

Graph 2: Types of cases received 2015/16



Cases disposed 2015/16

Table 2 below shows a breakdown of the cases disposed by the Tribunal in the 2015/16 financial year.

Table 2: Cases disposed 2015/16

Cases withdrawn or settled	19
Cases with final decisions	61
TOTAL DISPOSALS	80

In its final decisions, the Tribunal imposed penalties ranging from fines to suspensions to cancellation of licences. It has power to award compensation up to \$100,000 for findings of misconduct.

Additional decisions

Interim decisions	17
Separate penalty decisions	12
TOTAL	29