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Annual Report of the

# IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2021

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

Hon Aupito William Sio, Minister for Courts and Tribunals, on behalf of the Minister of Justice

Hon Kris Faafoi, 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 2021.



David Plunkett  
Chair

Immigration Advisers Complaints and Disciplinary Tribunal

## OVERVIEW

It is my pleasure to provide the annual report for the Tribunal for the 2020/2021 financial year.

I am pleased to report that the number of outstanding matters before the Tribunal continues to reduce, from 21 (at 1 July 2020) to 12 (at 30 June 2021). It was 64 at 1 July 2018.

As the backlog reduced, so has the delay in determining complaints. The average period between a matter being referred to the Tribunal and a decision being issued has reduced to just over eight months.

As I mentioned in my last annual report, the maximum financial penalty that can be imposed by the Tribunal is only \$10,000 and it can prohibit renewal of a cancelled licence for only two years. The Ministers are respectfully urged to consider a stiffer sanctions regime.

The various COVID-19 lockdowns had little effect on the work output of the Tribunal as the registry staff and myself worked effectively from home. The Ministry of Justice is to be applauded for its response to the pandemic in keeping the Tribunal running smoothly.

## 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>

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

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

- (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 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>

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<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.

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

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

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

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.

### **Memorandum of Understanding**

There is a Memorandum of Understanding between the Ministry of Justice and the Ministry of Business, Innovation and Employment in regard to the Tribunal and the Immigration Advisers Authority, entered into in 2015. It sets out the respective responsibilities of the Ministries.

### **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 complaints.

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.

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<sup>11</sup> Section 52.

<sup>12</sup> Section 81.

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

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

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, Mr Paul Bleyenga and Ms Stephanie Thomson. 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 provided those services for the Tribunal until April 2021 and then we welcomed the experienced Matt Tumohe.

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.

## 2020/2021 FISCAL YEAR INFORMATION

### 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 does not presently justify the appointment of any other members.

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

<sup>16</sup> Section 42.

## **Tutorial**

Mr Plunkett presented a tutorial by AVL to the class of immigration adviser students at Toi-Ohomai Institute of Technology in March 2021. It concerned the Tribunal's approach to the complaint and disciplinary regime.

## **Complaints and Appeals filed and finalised**

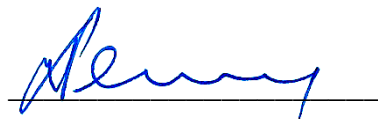
The relevant information is set out in Appendix 1. The annual report is required to include certain information regarding the Tribunal's performance.<sup>17</sup>

## **Appeals and Judicial Reviews of Tribunal Decisions**

The relevant information is set out in Appendix 2.

## **THE YEAR AHEAD**

At the time of writing this report, it has become clear that the ongoing COVID-19 restrictions have become a challenge for the hearing of complaints. This will need to be managed so that a backlog of hearings does not accumulate. It is expected that some complaints will be heard remotely in the coming year.



David Plunkett  
Chair  
16 March 2022

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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 2020</b>	<b>21</b>
Complaints	19
Appeals	2
<b>Total complaints and appeals filed</b>	<b>15</b>
Complaints	10
Appeals	5
<b>Total complaints and appeals finalised</b>	<b>21</b>
Complaints dismissed	1
Complaints upheld but no further action taken	0
Complaints upheld and sanctions imposed	16
Complaints withdrawn	0
Appeals upheld	1
Appeals rejected	3
Appeals withdrawn	0
<b>Complaints and appeals outstanding at 30 June 2021</b>	<b>12</b>
Complaints	9
Appeals	3
<b>Other decisions</b>	<b>2</b>
Complaints upheld but sanctions not yet determined	2
Notices of suspension	0
Interim decisions	0



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

Appeals pending at 1/7/20	Appeals filed 20/21 FY	OUTCOMES			Appeals pending at 30/6/21
		Allowed	Dismissed	Discontinued /Abandoned	
1*	0	0	1*	0	0

Judicial Reviews pending at 1/7/20	Judicial Reviews Filed 20/21 FY	OUTCOMES			Judicial Reviews Pending at 30/6/21
		Allowed	Dismissed	Discontinued /Abandoned	
0	0	0	0	0	0

\* An appeal against a decision of the Tribunal was filed in the District Court in May 2020 by a complainant against an adviser. It is understood the Authority was treated as a party, but it is not known if the Tribunal was a party. It was summarily dismissed by the Court in September 2020.