



Annual Report of the

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2023

Presented to the Minister of Justice and the Minister of Immigration

Hon Dr Deborah Russell, Associate Minister of Justice, on behalf of the Minister of Justice

Hon Andrew Little, 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 2023.



David Plunkett

Chair

Immigration Advisers Complaints and Disciplinary Tribunal

OVERVIEW

It is my pleasure to provide the annual report for the Tribunal for the 2022/2023 financial year.

There has been a significant decrease in the number of outstanding matters before the Tribunal from 16 (at 1 July 2022) to 4 (at 30 June 2023). This reflects a drop in the number of cases filed.

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.¹

The functions of the Tribunal are:²

- (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.³

¹ Immigration Advisers Licensing Act 2007, s 3.

² Sections 41, 54 & 55.

³ Section 44(2).

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.⁴ 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.⁵

The Tribunal can dismiss or uphold the complaint.⁶ If it upholds the complaint, it may decide to take no further action or impose one or more sanctions.⁷ 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.⁸ The previous Chair issued Practice Notes (one each for complainants and advisers) and Notes for Guidance.⁹

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.¹⁰

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.¹¹

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.¹² 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.

⁴ Sections 45(4), 47, 48(1).

⁵ Section 49(3) & (4).

⁶ Section 50.

⁷ Sections 50 & 51.

⁸ Section 49(1).

⁹ Schedule to Act, cl 12.

¹⁰ Schedule to Act, cl 8B.

¹¹ Section 52.

¹² Section 81.

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.¹³ 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/advisers-complaints-disciplinary/iacadt-decisions/ 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.¹⁴

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.¹⁵

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.¹⁶

¹³ Section 50A.

¹⁴ Section 40(2).

¹⁵ Schedule to Act, cl 2(1).

¹⁶ Section 42.

The day to day administration of the Tribunal is headed by Mr Ricardo Rebuelta, service manager. The Tribunal's longstanding case manager, Ms Victoria Chao, left during the financial year. The case managers are now Mr Alex Fraser and Ms Annalise Penhey. 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 Mr Matt Tumohe. Mr Gene Park 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.

2022/2023 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	22 May 2026

The case load 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.¹⁷

¹⁷ Section 86(2).

Appeals and Judicial Reviews of Tribunal Decisions

The relevant information is set out in Appendix 2.



David Plunkett

Chair

7 September 2023

Appendix 1 – Complaints and Appeals Filed and Finalised

Complaints and appeals outstanding at 1 July 2022	16
Complaints	15
Appeals	1
Total complaints and appeals filed	8
Complaints	8
Appeals	0
Total complaints and appeals finalised	20
Complaints dismissed	1
Complaints upheld but no further action taken	0
Complaints upheld and sanctions imposed	18
Complaints withdrawn	0
Appeals upheld	0
Appeals rejected	1
Appeals withdrawn	0
Complaints and appeals outstanding at 30 June 2023	4
Complaints	4
Appeals	0
Other decisions	1
Complaints upheld but sanctions not yet determined	1
Notices of suspension	0
Interim decisions	0

Appendix 2 – Appeals and Judicial Reviews of Tribunal Decisions

Appeals pending at 1/7/22	Appeals filed 22/23 FY	OUTCOMES			Appeals pending at 30/6/23
		Allowed	Dismissed	Discontinued /Abandoned	
0	1	0	0	0	1

Judicial Reviews pending at 1/7/22	Judicial Reviews Filed 22/23 FY	OUTCOMES			Judicial Reviews Pending at 30/6/23
		Allowed	Dismissed	Discontinued /Abandoned	
0	0	0	0	0	0