



Annual Report of the

REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2023

Presented to the Minister of Justice

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

I have pleasure in presenting the annual report of the Real Estate Agents Disciplinary Tribunal for the 12 months ended 30 June 2023.



David Plunkett
Chair
Real Estate Agents Disciplinary Tribunal

OVERVIEW

The Real Estate Agents Disciplinary Tribunal is a high performing tribunal producing quality decisions. There were no successful appeals to the High Court from our decisions this financial year.

The Tribunal received 28 cases and disposed of 28 cases. The number of outstanding cases before the Tribunal at the end of the financial year remained the same at 27.

JURISDICTION AND GENERAL INFORMATION

Establishment and Function of the Tribunal

The Tribunal is based in Wellington. It was established in 2009 by s 100 of the Real Estate Agents Act 2008 (the Act). The purpose of the Act is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.¹

The functions of the Tribunal are set out in the Act:²

- (a) to hear and determine any application made by a Complaints Assessment Committee for the suspension of the licence of a licensee pending the determination of a charge that the Committee has laid against the licensee:
- (b) to hear and determine any charge against a licensee brought by the Committee:
- (c) to hear any appeal under section 111 against a determination by the Committee (including a determination to take no action):
- (d) to conduct any review, under section 112, of a decision of the Registrar:
- (e) any other functions conferred by this Act.

A complaint about a licensee is first made to the Real Estate Agents Authority which will refer it to the Registrar of the register of licensees.³ The Registrar may determine that it discloses only an inconsequential matter or is frivolous or vexatious

¹ Real Estate Agents Act 2008, s 3.

² Section 102.

³ Section 74(2)(a).

or not made in good faith, and need not therefore be pursued.⁴ The Registrar will otherwise usually refer the complaint to a Complaints Assessment Committee.⁵

An applicant adversely affected by the decision of the Registrar may apply for review of the decision by the Tribunal.⁶

The various Committees throughout New Zealand assess and determine complaints. If the Committee considers a complaint to be justified, it may find that a licensee has engaged in unsatisfactory conduct; that is that the licensee's conduct falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee, contravenes a provision of the Act or regulations or rules made under the Act, is incompetent or negligent, or would reasonably be regarded by agents of good standard as being unacceptable.⁷ If it makes a finding of unsatisfactory conduct, the Committee can make certain penalty orders.⁸ A Committee might also dismiss a complaint or decide to take no further action.⁹

A person affected by the Committee's determination may appeal to the Tribunal.¹⁰ The Tribunal may confirm, reverse or modify the determination of the Committee.¹¹ If it reverses or modifies the Committee's decision, it may exercise any of the powers that the Committee could have exercised.¹²

One of the powers given to the Committees is to decide that a complaint or allegation should be determined by the Tribunal.¹³ In that case, the Committee lays a charge of misconduct.¹⁴

Misconduct can be considered to be conduct that is more serious than unsatisfactory conduct. It is conduct that would reasonably be regarded by agents of good standing or reasonable members of the public, as disgraceful; conduct that is seriously incompetent or seriously negligent; conduct that constitutes a wilful or reckless contravention of the Act or other legislation or regulations or rules; or criminal conduct for which the licensee has been convicted and which reflects adversely on the licensee's fitness to practice.

⁴ Section 74(3).

⁵ Section 74(2)(b).

⁶ Section 112(1).

⁷ Section 72.

⁸ Section 93.

⁹ Section 79(2), 80, 89(2)(c).

¹⁰ Section 111.

¹¹ Section 111(4).

¹² Section 111(5).

¹³ Section 89(2)(a).

¹⁴ Section 73.

If the Tribunal is satisfied that misconduct is proven, it may make certain penalty orders.¹⁵

The Tribunal may regulate its procedures as it thinks fit.¹⁶ There is a Practice Note for appeals.

The Tribunal's hearings must be held in public.¹⁷ It does though have a discretion to hold hearings in private.¹⁸ The Tribunal also has a discretion to determine a proceeding on the papers without an oral hearing.¹⁹

A penalty order made by the Tribunal may be enforced as if it was an order of the District Court.²⁰

Any person affected by a decision of the Tribunal may appeal to the High Court against the decision.²¹ An appeal must be filed within 20 working days after the day on which notice of the relevant decision is given, though the Court may accept a late appeal no later than 60 working days after such notice.²²

Publication of Tribunal Decisions

The Tribunal has a practice of publishing every decision on its website. However, the chair can prohibit the publication of any part of any proceeding or the name of any person charged or any other person.²³ It is rare for the Tribunal to suppress the name of the licensee against whom a complaint is upheld, given the public interest in knowing the names of those 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/real-estate-agents/. It has been upgraded to provide abstracts of decisions and a limited search function.

¹⁵ Section 110.

¹⁶ Section 105(1).

¹⁷ Section 107(1).

¹⁸ Section 107(3).

¹⁹ Section 107A.

²⁰ Section 114.

²¹ Section 116.

²² Section 116A.

²³ Section 108(1).

Membership

The Tribunal comprises the chair (who must be a lawyer) and at least three other members (at least one of whom must be a licensee).²⁴ One person must be designated as the deputy chair.²⁵

The chair and members are appointed by the Minister of Justice.²⁶ The Minister must consult with the Real Estate Institute of New Zealand when making the first appointment of a licensee.²⁷

Members may be appointed for up to five years.²⁸

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.²⁹

The day to day administration of the Tribunal is headed by Mr Ricardo Reuelta, service manager. The Tribunal's case managers, Ms Victoria Chao and Ms Ella Coles, left during the year and were replaced by Mr Alex Fraser and Ms Annalise Penhey. Ms Dianne Turner, judicial personal assistant, provides secretarial services.

There is a legal research team available for tribunals. This team also provides proof reading services and produces abstracts of the decisions for the website. It was managed by Ms Jacqui Lee, but is now managed by Mr Matt Tumohe. Mr Gene Park joined the team and now provides those services for the Tribunal.

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

²⁴ Section 100(2).

²⁵ Section 100(5).

²⁶ Section 100(3).

²⁷ Section 100(4).

²⁸ Schedule 1, cl 2(1).

²⁹ Section 103.

2022/2023 FISCAL YEAR INFORMATION

Membership

The Tribunal comprises:

	<i>Date of first appointment</i>	<i>Date of expiry of warrant</i>
David James Plunkett (chair)	3 September 2021	2 September 2026
Catherine Ann Sandelin (deputy chair)*	6 June 2013	15 February 2027
Garry James Denley, JP, FREINZ	3 November 2009	2 September 2025
Patrick Neil O'Connor, AREINZ	14 February 2018	2 September 2025
Fiona Jane Mathieson, Notary Public	21 April 2020	20 April 2025

I thank the members for their dedication and excellent work.

Cases 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.³⁰

The Tribunal receives four types of cases:

- An appeal against a determination made by a Committee.
- A charge of misconduct against a licensee referred by a Committee.
- An application to review a determination made by the Registrar.
- A referral from a Committee as to whether to make a compensation order.

During the financial year, the Tribunal received the first referral from a Committee for consideration of a compensation order under the new statutory provision.³¹ Following a Ruling on the powers and procedures of the Tribunal, the complainants withdrew from the proceedings which concluded the referral.³²

* Appointed deputy chair on 16 February 2022.

³⁰ Real Estate Agents (Complaints and Discipline) Regulations 2009, reg 17(b).

³¹ Real Estate Agents Act, ss 93(1)(ha), 110(4)(b) and (5).

³² *KD v Donaldson* [2023] NZREADT 12.

On 18 October 2022, the Court of Appeal reinstated a decision of the Tribunal which had been overturned on 3 July 2020 by the High Court.³³ The Supreme Court on 11 May 2023 dismissed an application for leave to appeal the Court of Appeal's decision.³⁴

On 20 October 2022, the Court of Appeal dismissed an appeal against a decision of the High Court which had dismissed an appeal against a decision of the Tribunal.³⁵



David Plunkett
Chair
17 August 2023

³³ *Nottingham v Real Estate Agents Authority* [2022] NZCA 488.

³⁴ *Nottingham v Real Estate Agents Authority* [2023] NZSC 51.

³⁵ *Harvey v Real Estate Agents Authority* [2022] NZCA 498.

Appendix 1 – Cases Filed and Finalised

Cases outstanding at 1 July 2022	27
Charges	9
Appeals	12
Reviews	5
Recall of Tribunal decision	1
Cases filed	28
Charges	8
Appeals	7
Reviews	12
Compensation referral	1
Recall of Tribunal decision	0
Cases finalised	28
Charges ¹	6
Appeals ²	13
Reviews ³	8
Compensation referral	0
Recall of Tribunal decision ⁴	1
Cases outstanding at 30 June 2023	27
Charges	11
Appeals	11
Reviews	4
Compensation referral	1
Recall of Tribunal decision	0

¹ Includes 1 withdrawn.

² Includes 4 withdrawn.

³ Includes 2 withdrawn.

⁴ Includes 1 withdrawn.