

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2021] NZREADT 44

READT 012/2021

IN THE MATTER OF

An application for review of a Registrar's
decision under s 112 of the Real Estate
Agents Act 2008

BETWEEN

PETER LAWRENCE
Applicant

AND

THE REGISTRAR OF THE REAL
ESTATE AUTHORITY
Respondent

Hearing:

15 July 2021, by AVL.

Tribunal:

Hon P J Andrews (Chairperson)
Mr N O'Connor (Member)
Ms F Mathieson (Member)

Appearances:

Mr B Walker, on behalf of Mr Lawrence
Mr M Hodge and Mrs P Appleton, on
behalf of the Registrar

Date of Ruling:

16 August 2021

RULING OF THE TRIBUNAL
(Tribunal's jurisdiction to consider application for review)

Introduction

[1] On 10 November 2020, the Real Estate Authority (“the Authority”) received a complaint from Mr Lawrence against three licensees engaged by Gold Real Estate Group (t/a Harcourts Gold) (“the Agency”). The complaint was in respect of the licensees’ marketing of Mr Lawrence’s property in Christchurch. Mr Lawrence complained that the licensees had not acted in his best interests by failing to present him with all offers on the property, resulting in a loss of \$98,000.

[2] On 19 April 2021 Ms Ramsay, the Regulatory Services Manager of the Authority (acting under delegated authority from the Registrar of the Authority) wrote to Mr Lawrence advising him of her determination that the complaint would not be referred to a Complaints Assessment Committee (“CAC”) for determination but would be dealt with under s 74(3)(a) of the Real Estate Agents Act 2008 Act (“the Act”) (“the Registrar’s determination”). The Registrar gave as her grounds for her determination that “the complaint discloses only an inconsequential matter, and for that reason need not be pursued”.

[3] Section 74 of the Act was amended, by the amendment of s 74(2) and the addition of s 74(3), by the Tribunals Powers and Procedures Legislation Act 2018. Prior to its amendment s 74 provided that any person could complain about a licensee, and that when the Authority received a complaint, it was required to refer the complaint to a CAC and notify the person complained about of the reference. Section 74 now provides:

74 Complaints about licensees

- (1) Any person may, in accordance with regulations made under this Act, complain in writing about the conduct of a licensee.
- (2) When the Authority receives a complaint under this section, the Authority must—
 - (a) refer the complaint to the Registrar of the register of licensees, who must consider whether to deal with the complaint under subsection (3); and
 - (b) if the Registrar decides not to deal with the complaint under that subsection, refer the complaint to a [Complaints Assessment Committee] for determination and notify the person complained about of the reference.
- (3) The Registrar may determine that—

- (a) the complaint discloses only an inconsequential matter, and for that reason need not be pursued:
- (b) the complaint is frivolous or vexatious or not made in good faith, and for that reason need not be pursued:
- (c) the complaint should be referred to another agency, and refer it accordingly:
- (d) the complaint has been resolved to the complainant's satisfaction and no further action is needed.

[4] Section 112 of the Act provides:

112 Application to Tribunal to review determination by Registrar

- (1) An applicant may apply to the Tribunal against a determination¹ of the Registrar that adversely affects the applicant within 20 working days after the date the applicant is notified of the decision.
- (2) The application must be made by way of written notice to the Tribunal of the applicant's intention to apply, accompanied by—
 - (a) a copy of the notification; and
 - (b) any other information that the applicant wishes the Tribunal to consider in relation to the appeal.²
- (3) The review must be conducted on the papers unless the applicant requests to be heard in his or her application.
- (4) After conducting the review, the Tribunal may confirm, reverse, or modify the decision of the Registrar.
- (5) If the Tribunal reverses or modifies a determination of the Registrar, it may exercise any of the powers that the Registrar could have exercised.

[5] On 10 May 2021 the Tribunal received an Application to Review the Registrar's determination, filed by Mr Lawrence.

[6] The Registrar contends that the Tribunal has no jurisdiction to accept and hear an application under s 112 of the Act for review of a Registrar's determination made under s 74(3) ("s 74(3) determination"). The Tribunal is required to rule on the issue. The Tribunal notes that although the amendment has been in effect since 14 November 2018, this is the first occasion on which a complainant has applied for review of a s 74(3) determination.

¹ The Tribunal observes that the Act uses the words "determination" and "decision" in s 112, and elsewhere in the Act. In this Ruling, except when quoting from the Act or other sources, the word "determination" is used.

² Section 112 also uses the words "review" and "appeal". In this Ruling, except when quoting from the Act or other sources, the word "review" is used in relation to an application under s 112.

Submissions

Registrar's submissions

[7] Mrs Appleton submitted for the Registrar that s 112 of the Act is not intended to provide a right of review of a s 74(3) determination, and is intended to apply only to Registrar's determinations relating to licensing, such as declining a licence application or cancelling an existing licence. She acknowledged that on its face, the language in s 112 is open to an interpretation that a Tribunal review is available for any Registrar's determination. However, she submitted, a purposive approach is required and in applying a purposive approach, the correct interpretation is that s 112 is not intended to cover non-licensing Registrar determinations. She submitted that "applicant" in s 112 should be interpreted to mean a person who has applied for a licence, as this is consistent with other provisions of the Act, where it refers to an applicant for a licence or relating to a licence.

[8] Mrs Appleton further submitted that the policy intention behind the amendment of s 74 was to allow the Authority to regulate the real estate sector in an effective and efficient way where complaints not disclosing a breach of the professional rules, regulations or Act are not progressed through the CAC formal disciplinary process. She submitted that this was a deliberate change from the prior complaint regime.

[9] She referred to the Departmental Report on the Tribunals Powers and Procedures Bill ("the Departmental Report"), which explained that the law as it stood meant that a CAC "must consider every complaint or allegation against a real estate agent. Consideration of large numbers of meritless complaints delays consideration of other complaints". She referred to the Report's advice that the proposed amendment to s 74 "authorises the REAA Registrar (the REAA Chief Executive) to reject complaints that are frivolous, groundless, trivial or inconsequential, made in bad faith, or that are better dealt with through other channels. These decisions will not be appealable."

[10] Mrs Appleton also submitted that the absence of a requirement to describe the right of review or appeal against a s 74(3) determination must be contrasted with the express requirement to describe the rights of review or appeal in other provisions of

the Act. She referred to s 81(2)(b) (which provides that when a CAC decides to take no action on a complaint it must describe the right of appeal conferred by s 111), s 94 (which similarly requires a CAC to describe the right of appeal following a determination under s 89), and ss 43(3)(c) and 55(2)(b), which expressly require notification of the right of review under s 112. She submitted that in the absence of a requirement to describe a right of review or appeal, s 74 cannot be interpreted as conferring a right of review against a s 74(3) determination.

[11] Mrs Appleton also referred to the appeal provisions under the Health Practitioners Competence Assurance Act 2003 (“the HPCA”). She submitted that under that Act, no appeal right is attached to a Health and Disability Commissioner’s preliminary assessment of a complaint (s 33(1) of the HPCA) or a Commissioner’s decision to take no further action on a complaint (s 38(1)).

[12] Finally, Mrs Appleton submitted that if the Tribunal were to conclude that a “plain words” meaning should be applied to the words of s 112, the resulting impact would be to “massively undermine the intended purpose of s 74 and the disciplinary regime of the Act”. She submitted that it “would create a situation where the Tribunal could be asked to accept and consider around 250 Registrar decisions each year”.

Mr Lawrence’s submissions

[13] Mr Walker submitted that the Act is clear in its meaning and that it would be absurd if s 112 allowed only an unsuccessful applicant for a real estate licence to apply for a review of a Registrar’s determination, to the exclusion of a consumer. He submitted that such an approach would be inconsistent with the purpose of the Act, and plainly unjust.

[14] Mr Walker referred to s 5 of the Interpretation Act 1999, which sets out the approach to interpreting legislation. He submitted that the meaning of the words in s 112 is clear, on its face: an “applicant” (given its natural and ordinary meaning as “any person who has applied”) may apply to the Tribunal to review a determination of the Registrar. He submitted that there is no restriction on the word “applicant”. He submitted that a proper application of the purposive approach involves an examination

of the purpose of the Act against a reading of s 112, and an examination of surrounding headings and the placement of s 112 in the Act, by comparison to where the licensing and complaint provisions appear.

[15] Mr Walker referred to the purpose of the Act, as set out in s 3. He submitted that the overarching purpose of the Act is consumer protection, as evidenced by the opening words of s 3(1): “to promote and protect the interests of consumers in respect of transactions that relate to real estate”. With reference to s 3(2), he submitted that a “one-step triage” simply cannot achieve the Act’s purposes of providing accountability through an independent, transparent and effective disciplinary process as far as consumers are concerned.

[16] Mr Walker submitted that other internal aids to interpretation demonstrate that it must have been Parliament’s intention to enable any person to review a Registrar’s determination. He referred to the fact that s 112 appears in Part 4 of the Act, which is headed “Complaints and Discipline”, and that ss 72 and 73, which govern standards of licensees’ conduct also appear in Part 4, while s 43, which deals with applications for licensing, appears in Part 3 (“Licensing”) of the Act, which has no review or appeal provisions in it.

[17] He submitted that it would have been illogical for Parliament to have intended to exclude complaint reviews in the Part of the Act which deals with complaints, but would instead allow reviews by persons who have unsuccessfully applied for licenses, where those matters are covered in an entirely different part. He also submitted that if s 112 was intended to be read as submitted for by the Authority, it would have been placed in Part 3, and/or the word “applicant” would have been defined in s 4 so as to restrict it to a person who has applied to the Registrar for a licence.

[18] Mr Walker also submitted that s 102 of the Act (which is also in Part 4) is of assistance for the proper interpretation of s 112. Section 102 sets out the functions of the Tribunal, and Mr Walker referred to s 102(d) which provides that one of the functions of the Tribunal is to “conduct any review, under section 112, of a decision of the Registrar”. He submitted that if s 112 were intended to be restricted to licence applications, s 102 would record that restriction.

[19] In relation to the Authority's reference to the Departmental Report, Mr Walker submitted that Mr Lawrence takes no issue with a triage approach: his submission is that s 112 clearly provides a right to apply to the Tribunal for review of triage determinations. He further submitted that notwithstanding the Departmental Report's statement that s 74(3) determinations were not appealable, Parliament did not insert any provision stating that there is no right of appeal or review against s 74(3) determination, and s 112 clearly deals with the issue in an affirmative way.

[20] Finally, Mr Walker submitted that references to the complaint paths under the HPCA are irrelevant as an aid to interpreting the Act, and do not form part of any accepted definition of the purposive approach.

The Authority's reply submissions

[21] Mrs Appleton submitted that Mr Walker's submissions as to the interpretation of ss 74(3) and 112 are flawed and unsupported by the purpose of the Act, application of the Interpretation Act, and the regulatory regime intended by the Act.

[22] She submitted that the purpose of the Act does not require the Registrar or the Authority to progress complaints regardless of merit or where there is no breach of the Act, Rules, or Regulations, nor does the purpose of the Act work to broaden the Tribunal's jurisdiction under s 112 of the Act to hear an application for review not intended by Parliament.

[23] Mrs Appleton also submitted that the fact that s 112 sits within Part 4 does not add a gloss to s 112 so as to imply a right to review the Registrar's non-licensing determinations. She submitted that the location of s 112 in Part 4 is not a strong interpretative tool and that Mr Walker's submission ignores the fact that Part 4 includes provisions relating to the establishment of the Tribunal and how the Tribunal carries out its functions, that it is entirely appropriate that any provisions relating to the Tribunal's functions (whether appeal or review) are grouped together rather than dispersed through the Act, that the word "applicant" appears 40 times in the Act and each one (other than in s 112) expressly relates to licensing applications and determinations by the Registrar, and that s 74 provides no right of appeal or review.

[24] She further submitted that if Parliament had intended that s 112 was to cover complaint-related determinations there would be no need to have both ss 111 (which relates to appeals against CAC determinations) and 112 (as to review of the Registrar's determinations) in the Act. She submitted that the correct interpretation is that Parliament did not intend for decisions of both CACs and the Registrar on matters of complaint or discipline to be appealable to the Tribunal.

[25] Mrs Appleton submitted that Mr Walker's submission "that the power of the Registrar to determine whether a complaint should progress through the complaints and disciplinary regime does not achieve the purpose of the Act" was incorrect and unsupported by the wording of s 74(3) or its legislative history. She submitted that the amendment by which subs (3) was inserted expressly changed the intention of the Act's regime in addressing complaints: whereas prior to the amendment the Authority was required to refer *all* complaints to a CAC, Parliament clearly intended that the regulatory regime should include a triage process at the Registrar level.

[26] She submitted that regulatory regimes cannot be required to progress any and all complaints regardless of any indication of a breach of the Act, Rules, or Regulations, and it cannot be the case that an Act that aims for the Authority to perform its functions efficiently and effectively would allow all meritless or inconsequential complaints to then be referred to the Tribunal. She submitted that the purpose of the Act is neither undermined, nor is it unjust, if s 112 is limited to reviewing licensing determinations, because that was Parliament's intention.

[27] Mrs Appleton submitted that the triage of complaints at the Registrar level and the absence of a right of review does not mean that complainants such as Mr Lawrence are without a remedy and that this is unjust and inconsistent with the purpose of the Act. She submitted that s 74(3) determinations are "public law decisions"³ and as such can be the subject of judicial review proceedings.

³ That is, involving the exercise of a statutory power of decision.

Oral submissions

[28] Mr Hodge acknowledged that if s 112 is looked at in isolation, a “plain words” interpretation is available that a complainant could apply for review under that section for review of a s 74(3) determination. However, he submitted, the proper interpretation is that s 112 does not allow such a review. He submitted that this is demonstrated by the absence of any requirement in s 74 to give notice of the right of review.

[29] Mr Hodge referred to s 43 (as to the granting or declining of applications for licenses), in which s 43(3) provides that if a Registrar is not satisfied that an applicant is entitled to be licensed, the Registrar must (among other things) “notify the applicant of his or her right of review by the Tribunal against the decision”. He also referred to s 52 (as to renewal of licenses) where s 52(2) provides that the provisions of s 43 apply to applications for renewal.

[30] Mr Hodge then referred to s 55 (as to cancellation of licenses), where pursuant to s 55(2) if the Registrar determines to cancel a licence the Registrar must give notice of that determination and (among other things) “specify in the notice that the licensee has a right of appeal to the Tribunal under s 112”.

[31] Mr Hodge submitted that the presence of a right of review under s 112 is determined by the presence of a notice requirement in those sections of the Act where it is intended that there be a right of review. He submitted that the fact that there is no requirement to notify a complainant of a right of review in s 74 establishes that no such right exists. In this respect he referred to ss 20 to 22 (which provide that the Authority may prescribe or impose fees and levies) and noted that s 23 (as to notices given of fees and levies) does not include a requirement to notify a right of review, and to s 68 (which provides that the Registrar may make amendments to the Register), which also does not include a requirement to notify a right of review.

[32] He also referred to the provisions relating to complaints considered by CACs. Section 80 provides that a CAC may decide to take no action on a complaint and s 81(2)(b) provides that when giving notice of the decision the CAC must “describe the right of appeal conferred by section 111”. Section 89 provides that a CAC may

determine that a complaint or allegation be referred to the Tribunal (s 89(2)(a)), that it is proved that the licensee has engaged in unsatisfactory conduct (s 89(2)(b)), or to take no further action on the complaint (s 89(2)(c)). Section 94(2)(c) provides that when giving notice of the determination the CAC must “describe the right of appeal conferred by section 111”.⁴

[33] Mr Hodge submitted that the scheme of the Act is that if there is a right of appeal or review of a Registrar’s or CAC’s determination, Parliament has required that the right is notified to the affected persons. He submitted that the absence of a requirement to notify a right of review in s 74 was a deliberate choice by Parliament, following the issue of appeal rights having been specifically considered in the Departmental Report. He submitted that if s 112 is interpreted as allowing a review of a s 74(3) determination, it will open up avenues for litigation on “preliminary points”, which is not an effective use of the disciplinary process and distracts from the proper use of resources. He submitted that reviews of decisions as to fees and levies, and amendments to the Register would also be available under s 112.

[34] Mr Hodge submitted that the absence of a right of review by the Tribunal does not mean that the Registrar has a “free hand”. He acknowledged that in making a determination under s 74(3) the Registrar is dismissing a complainant’s complaint, but submitted that the Registrar is subject to judicial review in the High Court. He submitted that it is not inconsistent with the purpose of the Act that the only recourse available to a complainant whose complaint is dismissed in a s 74(3) determination is to apply for judicial review in the High Court.

[35] Mr Walker reiterated that his client does not object to the triage system itself, and sees it as a good initiative, but submitted that it has introduced a risk to consumer-complainants with such an important decision, at an early stage, being left to the Registrar. He asked if it could be said that Parliament really intended that judicial review proceedings would be the only remedy.

⁴ The Tribunal records that s 111(1) of the Act was amended as from 14 November 2018 to provide that there is no right of appeal against a determination under s 89(2)(a) that a complaint or allegation be considered by the Tribunal.

[36] Mr Walker accepted that Mr Lawrence could seek judicial review in the High Court but submitted that he ought not to be put to this expense. He submitted that it is unjust if a complainant is required to undertake the very onerous step of filing proceedings in the High Court at the first hurdle, when there is an available specialist jurisdiction in the Tribunal on a natural and ordinary reading of s 112. He submitted that the Act is consumer-protection legislation, as is clear from the wording of s 3. He submitted that to not allow consumers such as Mr Lawrence to apply to the Tribunal to review a s 74(3) determination is contrary to the purpose of the Act.

[37] In relation to the Authority's submissions focussing on notification, Mr Walker submitted that it is significant that s 74 does not say that a s 74(3) determination may not be reviewed. He submitted that if Parliament had intended that the right of review under s 112 was not to apply to s 74(3) determinations, it would have been worded accordingly. He referred to s 111 (as to appeals against CAC determinations), where the 2018 amendments included the introduction of a provision that there could be no appeal against a determination to refer a matter to the Tribunal on a charge of misconduct, and submitted that it would be expected that if Parliament had intended that the newly-introduced Registrar's power under s 74(3) was not to be subject to review, similar wording could have been inserted into s 112.

Discussion

[38] For convenience, we set out the opening words of s 112 of the Act again:

112 Application to Tribunal to review determination by Registrar

- (1) An applicant may apply to the Tribunal against a determination of the Registrar that adversely affects the applicant within 20 working days after the date the applicant is notified of the determination.

[39] Section 74(3) determinations are unquestionably "determinations of the Registrar". Further, there cannot be any doubt that a determination that a complaint should not be pursued is capable of adversely affecting the complainant concerned. In the present case, Mr Lawrence's complaint was that the licensees against whom he complained had caused him to lose \$98,000. He was notified of the Registrar's determination that his complaint need not be pursued. The effect of the Registrar's determination was that Mr Lawrence's complaint will not be considered by a CAC,

and none of the consequences of a CAC's finding (including the right of appeal to the Tribunal) will be available to him. The Tribunal accepts that the Registrar's determination was capable of adversely affecting Mr Lawrence.

[40] Further, applications for review by the Tribunal are initiated by way of an "application" to the Tribunal. Having filed an application to the Tribunal under s 112 Mr Lawrence is an "applicant". While the Tribunal accepts that the word "applicant" appears elsewhere in the Act in relation to applications for licenses, "applicant" is not defined in the Act so as to be restricted to licence applications.

[41] On the face of s 112, there is no barrier to Mr Lawrence applying to the Tribunal for review of the Registrar's determination that his complaint need not be pursued. We record that there was no suggestion that Mr Lawrence's application was not made within time, or not accompanied by the prescribed fee. On a "plain words" reading of s 112, Mr Lawrence has a right to apply to the Tribunal for review of the Registrar's determination not to pursue his complaint. However, the Authority contends that the "plain words" interpretation (which it does not challenge) is not the correct interpretation.

[42] Section 5 of the Interpretation Act 1999 sets out the governing principles as to the interpretation of statutes:

5 Ascertaining meaning of legislation

- (1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.
- (2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.
- (3) Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

[43] The purpose of the Act is set out in s 3:

3 Purpose of Act

- (1) 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.
- (2) The Act achieves its purpose by—

- (a) regulating agents, branch managers, and salespersons:
- (b) raising industry standards:
- (c) providing accountability through a disciplinary process that is independent, transparent, and effective.

[44] In accordance with s 5 of the Interpretation Act, s 112 of the Act must be interpreted by reference to its text and purpose in such a way as will further the achievement of its purpose of promoting and protecting the interests of consumers and promoting public confidence in the performance of real estate agency work by way of providing accountability through a disciplinary process that is independent, transparent, and effective.

[45] Section 112 is to be contrasted to s 111, as to appeals against determinations of CAC's. As noted earlier,⁵ s 111(1) was amended as from 14 November 2018 to provide that there is no right of appeal against a determination under s 89(2)(a) that a complaint or allegation be considered by the Tribunal. The Tribunal observes that it would have been open to Parliament to amend s 112 in a similar manner, to provide that there is no right of review against a Registrar's s 74(3) determination. It did not do so.

[46] In order to interpret the right of review under s 112 as being restricted to Registrar's determinations on licensing matters (despite its plain words) it will be necessary to read words into the section that are not there (that would restrict the application of s 112), or to find a legislative mistake, for example a drafting error, such as a failure to include an express restriction to the application of s 112. Before a Court or Tribunal will read additional words into a statute or "correct" a drafting error, it must be clear that there was a drafting error, it must be clear as to what Parliament's intention was, and the necessary correction or addition must not involve too great a re-writing of the defective language.⁶

[47] In the case before the Tribunal, s 74(3) gave the Registrar a new power to make a determination as to a complaint. Section 112 provides a clear right of review against

⁵ See fn 4, above.

⁶ See *Air New Zealand Ltd v Macalister* [2009] NZSC 78, [2010] 1 NZLR 153 (per Tipping J at [95]–[97], and *Davidson v Auckland Standards Committee* 3 [2013] NZHC 2315, [2013] NZAR 1519, at [116]–[118].

“a determination of the Registrar that adversely affects the applicant”. The terms of each provision are clear and they are not on their face inconsistent. It is difficult to see any drafting error. Further, it cannot be said that it is “clear” that Parliament intended to restrict s 112 reviews to licensing matters, and did not intend that they should include reviews against s 74(3) decisions. It can equally be said that Parliament was aware of the s 112 right of review against Registrar’s determinations, and thus saw no need to make further provision on the matter.

[48] The Tribunal acknowledges that Parliament omitted to include a “notification” provision in s 74. The absence of a “notification” provision takes Registrar’s s 74(3) determinations out of step with other provisions in the Act (as referred to by Mr Hodge, set out in paragraphs [29], [30] and [32], above) where notice of a review or appeal right is required to be given. However, the Tribunal is not persuaded that the absence of a notification provision is sufficient to be determinative of the matter, particularly in the absence of any provision to the effect that a Registrar’s s 74(3) determination is final and not subject to review.

[49] The Tribunal accepts that the Departmental Report stated that s 74(3) determinations were not intended to be able to be appealed. It does not accept that the statement in the Departmental Report is determinative as to Parliament’s intentions in enacting the amendment. The Departmental Report indicates the intent of the government department responsible for the amending Act, but we were not referred to any *Hansard* record of discussion of the Registrar’s s 74(3) determinations in Parliament or any relevant right to review. Without such evidence, the best approach to the interpretation of the right of review in s 112 against Registrar’s s 74(3) determinations is by way of the text of s 112 in the light of the purpose of the Act.⁷

[50] The Act is designed to promote and protect consumers’ interests in real estate transactions, and to promote public confidence in the performance of real estate agency work. One of the means of achieving this purpose is by providing a complaints and disciplinary system that is transparent, independent, and accountable.

⁷ See *Burrows and Cater Statute Law in New Zealand* (6th ed, LexisNexis, online, 2021) at Chapter 6 (The Need for Interpretation), (e) The intention of Parliament; and Chapter 9 (Context), (b) Internal context, (iii) The Act as a whole: the scheme of the Act.

[51] While that purpose may still be achieved when there is a triage process in place for a preliminary examination of complaints (and the triage process was not challenged) the Tribunal is not persuaded that it is consistent with achieving the Act's purpose that a consumer whose complaint is dismissed by way of a Registrar's s 74(3) determination at the very first hurdle has no ability to apply to the Tribunal for review. That has the effect of the complainant being left with no ability for scrutiny of the Registrar's decision other than by way of the more expensive and less accessible process of an application for judicial review in the High Court. A restriction on the cost-effective, simple and specialist review right under s 112 cuts across the purpose of Act of the promotion and protection of consumers' interests and the promotion of public confidence in the industry.

[52] The Tribunal is not persuaded that the interpretation it favours will open the floodgates to applications for review of s 74(3) decisions. The Registrar's submission to that effect does not appear to be supported by the evidence: the Tribunal was advised by counsel for the Authority that some 250 Registrar's s 74(3) decisions have been issued since the amendment took effect in November 2018, yet this is the first application for review to be filed in the Tribunal.

[53] The Tribunal must observe that the submissions for the Registrar mischaracterised the issue raised by Mr Lawrence's application. The issue is not as to the introduction of the triage process at Registrar level, nor is it whether the disciplinary process under the Act must refer any or all complaints to the Committee, regardless of whether they are meritless or inconsequential. There was no challenge to the introduction of a triage process at the Registrar level. Mr Lawrence's concern is that the purpose of the Act of consumer-protection by way of a disciplinary process that is independent, transparent and effective is not met if the Registrar's restricted interpretation of 112 were to be accepted.

[54] The Registrar's submission as to the need for the triage process misses the point. It was not contended that there should not be a triage process, or that in that process the Registrar will be making decisions as to whether a complaint is "inconsequential", "frivolous or vexatious or not made in good faith", "should be referred to another agency", or "has been resolved" and "need not be pursued". The Registrar's

submission in support of the triage process begs the question as to whether the Registrar’s decision that a complaint “need not be pursued” is to be immune from review by the Tribunal.

Decision

[55] The Tribunal rules that the right of review under s 112 is not restricted to Registrar’s licensing decision. The Tribunal has jurisdiction to hear and determine Mr Lawrence’s application to the Tribunal for review of the Registrar’s decision under s 74(3) that his complaint was “an inconsequential matter” and need not be pursued.

[56] Pursuant to s 113 of the Act, the Tribunal draws the parties’ attention to s 116 of the Act, which sets out the right of appeal to the High Court. The procedure to be followed is set out in part 20 of the High Court Rules.

Hon P J Andrews
Chairperson

Mr N O’Connor
Member

Ms F Mathieson
Member