

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2012] NZIACDT 37

Reference No: IACDT 007/11

IN THE MATTER

of a referral under s 48 of the Immigration
Advisers Licensing Act 2007

BETWEEN

Immigration Advisers Authority

Authority

AND

Johan Hendrik Adriaan Van Zyl

Adviser

DECISION

REPRESENTATION:

Complainant: Mr R J Henshaw, Ministry of Business Innovation and Employment, Auckland.

Adviser: Mr S Laurent, Laurent Law, Auckland

Date Issued: 31 July 2012

DECISION

Introduction

- [1] This matter is an “own motion complaint” presented by the Registrar pursuant to section 46 of the Act. It involves a dispute as to the boundaries of acceptable procedures for a New Zealand-based adviser dealing with potential migrants located outside New Zealand.
- [2] The people seeking immigration advice were migrant workers recruited in the Philippines to work in New Zealand on farms. The complaint involves a particular migrant, Mr K.
- [3] The primary facts are not disputed.
- [4] Mr van Zyl was in New Zealand. He did not personally communicate with Mr K. He received draft papers prepared in the Philippines with the assistance of a person who was not a licensed immigration adviser. He reviewed the papers in New Zealand, stated he was the immigration adviser in the application, and the papers were then filed with Immigration New Zealand.
- [5] There are two components to the complaint.
- [6] The first component is whether Mr van Zyl discharged his professional obligations by checking the papers, and filing them. The questions that arise are:
 - [6.1] Was it lawful for people who were not licensed immigration advisers to gather the information, and interact with Mr K?
 - [6.2] Even if it was lawful, was it an acceptable way of discharging Mr van Zyl’s professional duty to these clients?
- [7] The second ground of complaint is that Mr van Zyl misled Immigration New Zealand, regarding his representation of Mr K. That issue turns on the wording used in the relevant papers.

Facts

- [8] The Tribunal issued a Minute on 29 June 2012 which set out the facts as they appeared from the papers before the Tribunal. The minute invited comment, or further information. The parties took no issue with the following description of the facts on which the complaint is founded.

Background

- [9] Mr van Zyl is a licensed immigration adviser who conducts his practice in New Zealand. He does so in conjunction with Immigration Placement Services Ltd (“the company”), which is incorporated in New Zealand.
- [10] He is not a shareholder or director of the company. He is engaged as an independent contractor under an agreement dated 25 May 2009.
- [11] The agreement has the following material features:
 - [11.1] Mr Bruce Porteous is identified as the director of the company.
 - [11.2] Mr van Zyl is identified as the only person who is a licensed immigration adviser associated with the company.
 - [11.3] Mr Porteous is recorded as working in the Philippines, and Mr van Zyl in New Zealand.
 - [11.4] The agreement contemplates Mr Porteous will refer clients to Mr van Zyl when they require immigration advice.

- [11.5] Mr van Zyl will operate under the identity of the company, but be providing services *for his own profit or loss as a sub-contractor*.
- [12] The company carries out recruitment and job placement services, usually for farm workers recruited to work on New Zealand farms.
- [13] Mr Porteous and staff located in the Philippines match potential applicants there with employment positions in New Zealand. The potential applicants need work visas before they can work in New Zealand.
- [14] The company's staff assist visa applicants in the Philippines. None of them are licensed immigration advisers. They work with the applicants to prepare applications for work visas. There are forms to complete, and other documents required to submit to Immigration New Zealand.
- [15] After the forms are completed, they are emailed to Mr van Zyl, together with the supporting documentation. He checks the material, and "signs it off" when satisfied it complies with Immigration New Zealand's requirements. Generally, Mr van Zyl would not deal directly with the applicants.
- [16] The company is not providing general immigration services; it confines its business to placement of employees for specific positions of employment. Accordingly, the immigration requirements follow a routine pattern, with a specific immigration service required. The service is to apply for a work visa under the Essential Skills work policy for the prospective employee, for a limited duration.
- [17] The company does not provide services related to the migration of families or other circumstances of that kind.

The present complaint

- [18] The complaint relates to a specific case. Mr K was one of the company's clients who required a work visa to take up a position in New Zealand.
- [19] Mr K dealt with Mr Porteous in the Philippines; he has never had any direct contact with Mr van Zyl. However, Mr van Zyl was not excluded from contact with Mr K, and there were other clients where Mr van Zyl had corresponded directly with clients.
- [20] This particular work visa application was routine in nature, and of the same pattern as other applications.
- [21] The company's staff in the Philippines provided Mr K with a copy of the Authority's Code of Conduct, and attended to other matters required on commencing the engagement. The original complaint did not challenge that aspect.
- [22] Mr Porteous and one of the company's employees would provide details of the prospective employment, and updates on the progress of the application for a work visa. That occurred in Mr K's case.
- [23] There was an *Immigration Placement Services – Client Agreement*. Mr K and the company (through a staff member) signed it on 12 July 2010, and Mr van Zyl also signed it on 20 July 2010. The agreement prominently states that all immigration advice would be given by Mr Van Zyl. The agreement stated:
- [23.1] The company had taken advice from Mr van Zyl, and the company would prepare and compile information for the application for a work visa.
- [23.2] Preparing and lodging an application for a work visa was one element of the services to be provided. However, there were more wide-ranging services relating to placement, and travel.

- [24] Mr K's application for a work visa was lodged with Immigration New Zealand on 24 July 2010. Material features of the application and its preparation are:
- [24.1] The information in the application form is routine, principally comprising a significant amount of factual information, and the purpose of travelling to New Zealand.
- [24.2] Mr Porteous, through his Philippines address, is identified as the address for communication by Immigration New Zealand, and the form states he had authority to act on Mr K's behalf.
- [24.3] The role of Mr Porteous and the company's staff in the Philippines was confined to indicating to Mr K that he needed to apply for a work visa, gathering information to complete the application form and assisting him to record the information on the form. Mr K was aware of Mr van Zyl's role, and he could have contacted him, but he did not.
- [24.4] The application form records Mr K had *received immigration advice on [the] application*.
- [24.5] The form provides for a licensed immigration adviser to provide their details. Mr van Zyl indicated he was a licensed immigration adviser and give his licence details.
- [24.6] Section S of the form provides for a *Declaration by person assisting the applicant*. In this section Mr van Zyl said he had *provided immigration advice*.
- [24.7] The covering letter from Mr Porteus submitting Mr K's application to Immigration New Zealand said he was waiting to have his licence approved, and *for the meantime we are using the licence of Johan van Zyl*.
- [24.8] Mr Van Zyl had no personal contact with Mr K. He received the application from the company, reviewed it, and returned it to Mr Porteus to file with Immigration New Zealand (with Mr van Zyl identified as the licensed immigration adviser representing Mr K).
- [25] Immigration New Zealand corresponded with Mr van Zyl regarding the application, and copied Mr Porteus into email correspondence.

The Authority's Position

- [26] Central to the Authority's complaint appears to be the concern that Mr van Zyl certified he had provided immigration advice to Mr K, when he had never met him. He intended that Immigration New Zealand would rely on that, and believe Mr K's application was made after he gave advice, when it was not.
- [27] The Authority's submissions in response to the Tribunal's minute clarified the approach:
- [27.1] The Authority did not take a position in relation to the lawfulness of the process of providing advice. However, did contend that it created "a real risk of immigration advice being provided by another unlicensed person". Accordingly, Mr van Zyl "could not be said to be conducting his business professionally, ethically and responsibly as required by the Code." The circumstances breached the Code in the following respects:
- [27.1.1] Clause 1.1(a) – Mr van Zyl failed to perform to the required standard, was not sufficiently in control of the client relationship, and risked unlicensed advice being provided.
- [27.1.2] Clause 1.1(b) – Mr van Zyl could not carry out lawful informed instructions from a client he had never personally communicated with.

[27.1.3] Clause 2.1(f) – the circumstances lacked the control required to ensure no unlicensed advice was provided, and that reliable information would be supplied to Immigration New Zealand.

[27.2] There were two misrepresentations when the applications were lodged with Immigration New Zealand:

[27.2.1] First, Mr van Zyl stating: “I have provided immigration advice (as defined in the Immigration Advisers Licensing Act 2007)” was possibly technically accurate, but still a “half-truth” amounting to a misrepresentation.

[27.2.2] Second:

“I certify that the applicant asked me to help them complete this form and any additional forms. I certify that the applicant agreed that the information provided was correct before signing the declaration.”

Is not consistent with what he did, and accordingly was a misrepresentation. It was in breach of clause 5.2 of the Code.

[27.3] The grounds were developed with reference to clause 1.4(a) of the Code. The Authority contended lack of personal contact between Mr van Zyl and his client demonstrated that he had not provided a copy of the Code of Conduct, before entering into an agreement for the provision of professional services.

Mr van Zyl’s Position

[28] Through his counsel, Mr van Zyl challenges the Authority’s view of the events. His position was stated prior to the Tribunal’s minute and not developed further.

[29] Central to Mr van Zyl’s submission is that this case does not involve the usual situation where immigration advice is given in a complex situation where there are a range of options and complexities.

[30] Here, the immigration advice is simply ancillary to services which are primarily recruitment and placement. The only immigration service being provided related to obtaining a work visa under the Essential Skills work policy for the prospective employee.

[31] It follows that the usual initial advice phase of a client consultation is not the same. Here, the client commences with a specific service they seek, not a general review of their immigration status and options presented.

[32] Mr van Zyl’s position is that he has provided the company with advice, which makes this initial phase routine.

[33] The company officers in the Philippines undertake what, for the purposes of the Act, amounts only to *clerical work*.

[34] The file is then presented to Mr van Zyl, he reviews the material, and then takes professional responsibility for the application and dealing with Immigration New Zealand; being the licensed immigration adviser identified in the application.

[35] In terms of the legislative framework to justify this approach, Mr van Zyl’s counsel submits:

[35.1] Advice to clients could be provided by Mr van Zyl indirectly, and advice could be provided to a person other than a client. It appears the point being made is that Mr van Zyl legitimately advised the company as to visa requirements. The company then gathered the necessary information to lodge the application without infringing the legislation.

[35.2] There is an exemption for “clerical work” which may be performed by a person who is not licensed. It is the subject of a statutory definition (section 5 of the Act), and the Authority has published guidelines. Counsel contends that the work the company undertook prior to the documentation being forwarded to Mr van Zyl came within the scope of clerical work.

[35.3] The statutory definition of *Immigration Advice* includes representation, which is the role Mr van Zyl had after receiving the papers, signing them and indicating he was representing Mr K. That was consistent with what he stated on the application form.

Issues

[36] The complaint will be determined by addressing the following issues:

[36.1] On the facts established in relation to Mr K’s circumstances, was immigration advice provided unlawfully? Mr van Zyl was aware of all the circumstances, and if immigration advice was provided unlawfully he was a party to that.

[36.2] Regardless of the lawfulness of using people in the Philippines to undertake the work they performed, could Mr van Zyl nonetheless rely on them to the extent he did, and discharge his professional duties?

[36.3] Did Mr van Zyl misrepresent his role when he completed the relevant sections of the application form for a work visa?

Discussion

The legislative restriction on unlicensed persons providing immigration services

[37] While the Authority has been reluctant to take a position on the lawfulness of Mr van Zyl’s approach, it is a central issue.

[38] In many areas of professional and licensed practice there is extensive use made of people who do not hold the professional qualifications required of the person primarily responsible for providing the service. In some cases those persons hold different and complementary qualifications, such as lawyers and legal executives; surgeons, nurses, and anaesthetists; pilots, and first officers. Often people without formal qualifications provide essential services in these settings too, under delegation from the qualified person who is responsible for the work.

[39] If there was no legislative direction, a licensed immigration adviser could conduct their practice making extensive use of unqualified people, and the case would not be easily made out they acted unreasonably or irresponsibly in doing so. Any complaint would likely require a demonstration of failure to delegate appropriately, or supervise properly if that were the law. Unqualified people successfully provide very important skills in many areas of professional service delivery.

[40] The Act was, among other things, intended to put an end to a history of a small minority of advisers who exploited vulnerable migrants. The background to the Act is discussed in *ZW v Immigration Advisers Authority* [2012] NZHC 1069, and reflected in section 3 of the Act.

[41] It is evident the legislative scheme has been constructed in a manner that is designed to exclude unlicensed people being engaged in the delivery of professional services, to a degree that is far from universal in the regulation of professional service delivery.

[42] It was foreseeable that some people who had formerly provided immigration services, and failed to gain a licence, would seek to have a licensed person “rubber stamp” their continuing activity in the industry. Unfortunately, this Tribunal’s work demonstrates that was a well-founded apprehension, and an area where enforcement action has been necessary.

[43] Against that background, the policy behind the stringent restrictions in the Act on unlicensed persons providing immigration services is evident.

- [44] Section 63 of the Act provides that a person commits an offence if they provide “immigration advice”, without being either licensed, or exempt from the requirement to be licensed.
- [45] Section 73 provides that a person may be charged with an offence under section 63, whether or not any part of it occurred outside New Zealand.
- [46] The scope of “immigration advice” is defined in section 7 very broadly. It includes:
- “using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand ...”
- [47] The expansive nature of this definition is apparently important for two reasons in relation to this complaint:
- [47.1] There appears to be little doubt the company (and the employee who had contact with Mr K) in the Philippines used knowledge and experience to assist Mr K prepare his application for a work visa. Accordingly, their actions will come within the definition at least to that extent.
- [47.2] It seems likely Mr van Zyl, in checking the application and identifying himself as the representative, was also providing immigration advice as defined.
- [48] However, in relation to the client contact in the Philippines, there are exceptions that must be considered. Section 7 provides that the definition does not include “clerical work, translation or interpreting services”. Accordingly, the question arises as to whether the work the company undertook came within that exception.
- [49] The scope of *clerical work* is important, as otherwise the very wide definition of immigration advice would likely preclude any non-licence holder working in an immigration practice in any capacity.
- [50] *Clerical work* is defined in section 5 of the Act in the following manner:
- “**clerical work** means the provision of services in relation to an immigration matter, or to matters concerning sponsors, employers, and education providers, in which the main tasks involve all or any combination of the following:
- (a) the recording, organising, storing, or retrieving of information:
 - (b) computing or data entry:
 - (c) recording information on any form, application, request, or claim on behalf and under the direction of another person”
- [51] The definition is directed to administrative tasks, such as keeping records, maintaining financial records and the like.
- [52] The definition deals specifically with the role a non-licensed person may have in the process of preparing applications for visas. They may record information “on any form, application, request, or claim on behalf and under the direction of another person”.
- [53] The natural meaning of those words is that the unlicensed person relying on the “clerical work” exception, may type or write out what another person directs.
- [54] That other person may properly be the person who is making the application, a licensed immigration adviser, or a person who is exempt from being licensed. The person typing or writing out the form in those circumstances is not giving immigration advice.
- [55] The definition does not give any authority for the unlicensed person to make inquiries, and determine what is to be recorded on the form. Under “clerical work” they must do nothing more than “record” information as directed.

- [56] The other exception in section 7 is that immigration advice does not include “providing information that is publicly available, or that is prepared or made available by the Department”.

Application to the facts

- [57] Mr van Zyl accepts that he had no involvement with Mr K’s application until after the application had been drafted and presented for his review.

- [58] Further, his role was reviewing the documentation, identifying himself as the licensed adviser, and lodging it with Immigration New Zealand.

- [59] There were two possibilities:

[59.1] The company and its staff initiated the professional relationship, assisted Mr K to complete the documents, and provided any advice he required in relation to immigration issues; and alternatively

[59.2] Mr K prepared the documents with the company and its staff simply recorded the information he directed them to record in the documents.

- [60] Neither possibility is consistent with Mr van Zyl meeting his professional obligations.

- [61] If the documents came to Mr van Zyl having been prepared with the assistance of unlicensed people, outside the scope permitted in the Act, the process was unlawful.

- [62] While the second possibility would not involve the unlawful provision of immigration advice, Mr van Zyl will have failed to discharge his professional obligations to his client, and the public interest obligations placed upon him.

- [63] The company and the employee who dealt with Mr K responded to the complaint contending their actions were lawful. They contended for the construction that Mr K prepared the documents for Mr van Zyl, and they simply assisted with recording the information he submitted.

- [64] The company says it was:

[64.1] Providing “publicly available” information, outside the scope of “immigration advice” in section 7 of the Act. However, they said their role involved:

“Describing to a migrant the eligibility criteria for particular immigration categories as represented on the Immigration New Zealand website or in a Department of Labour publication.”

[64.2] They then “Comple[ed] the required visa or permit application form under the migrant’s direction”.

- [65] That explanation is not consistent with compliance with the Act.

- [66] The “publicly available” information exception allows information to be provided. It is a different matter to describe eligibility criteria.

- [67] Describing eligibility criteria involves giving advice directed to a client’s circumstances; if that were not immigration advice, the Act would be subverted as virtually any immigration advice could be explained as providing publicly available information.

- [68] Immigration law and policy are publicly available. The Act understandably does not make it an offence to provide a copy of legislation, a copy of a webpage, a book or the like to someone. It is an offence to use that information to provide advice, such as describing eligibility criteria unless licensed or exempt.

- [69] The employee who assisted Mr K made it clear her role went far beyond simply being a recorder of information under his direction. She:

- [69.1] briefed him on the right to take independent legal advice about the contents of the client agreement;
- [69.2] briefed him on the role of the immigration adviser; and
- [69.3] provided a copy of the Code of Conduct.
- [70] She was essentially saying she was initiating a client relationship in accordance with the Code. It involved using knowledge of, or experience in, immigration; to advise, assist and represent another person in regard to an immigration matter. It does not come within any of the exceptions.
- [71] In a letter to Immigration New Zealand accompanying Mr K's application, Mr Porteous said "I am waiting for the final approval of my license. Please note that for the meantime we are using the license of [Mr van Zyl] ... for this application."
- [72] As it transpired Mr Porteous was not granted a licence, and his letter appears to frankly describe the approach taken. It is not one permitted by the Act. The Act requires that a licensed immigration adviser personally take responsibility for engagement with their client, initiate the client relationship, and personally provide all immigration advice. The exceptions to personal professional service delivery are limited to genuine clerical processes, and narrowly defined.
- [73] Accordingly, I am satisfied
- [73.1] The process of assisting Mr K to complete the documents amounted to "using ..., knowledge of or experience in immigration to advise, direct, assist, ... another person in regard to an immigration matter relating to New Zealand". So too did the process of initiating the professional relationship.
- [73.2] That work did not come within the "clerical work" exception. First, the process necessarily involved more than "recording information", and second the recording process was not under either Mr K or Mr Van Zyl's direction. Mr K was receiving assistance to complete the forms, and Mr Van Zyl had no involvement until he receive the completed forms.
- [73.3] Mr Van Zyl was fully aware of how his clients were being assisted; he was a party to the process being used.
- [74] I have considered Mr Laurent's submission for Mr Van Zyl that the initial phase of the work was within the "clerical" exception. The argument advanced was that Mr van Zyl provided his professional input indirectly, by providing general advice to the company; it then gathered information on Mr van Zyl's behalf, and he would check it.
- [75] I do not accept that contention for two reasons. First in the context of professional service delivery the process was not under Mr van Zyl's "direction". He had no personal involvement, and no process for controlling it. Second, it does not avoid the process being unlawful for the reasons already discussed.
- [76] I have considered Mr van Zyl's contention that the circumstances were routine, and clients could be adequately served with generic advice related by a third party. I do not accept that, as it is essential to make proper inquiries when completing any immigration application. Immigration history, passport status, health and character issues inevitably need to be considered. Importantly, the adviser must also put clients on notice of the importance of ensuring information supplied to Immigration New Zealand is accurate.
- [77] However, my view that Mr van Zyl's actions fell short of meeting his professional obligations is not dependent on the the unlawfulness of the company and its staff undertaking the initial part of the professional engagement.
- [78] If Mr K had drafted his own immigration application, with nothing more than clerical assistance, and forwarded it to Mr van Zyl, that would be lawful. However, for Mr van Zyl to simply check

the document, put his name on it, and submit it to Immigration New Zealand, as he did; this could not discharge his professional obligations.

- [79] The Authority has submitted the professional relationship was managed in a way that caused:
- [79.1] A risk of unlicensed advice being provided (clause 1.1(a));
 - [79.2] A lack of informed instructions (clause 1.1(b));
 - [79.3] Failure to protect against false or misleading information being supplied to Immigration New Zealand (clause 2.1(f));
 - [79.4] Failure to initiate the client relationship in accordance with the Code (clause 1.4(a)).
- [80] Mr van Zyl could not rely on unlicensed persons to meet those aspects of his service delivery, due to the legislative scheme.
- [81] Accordingly, on any view, when Mr van Zyl received documents which had been prepared, he had to ensure personally that his client received the professional service required by the Code.
- [82] It is difficult to imagine how a licensed immigration adviser could discharge their obligations under the Code without interacting with their client, unless providing limited input where another licensed immigration adviser had primary responsibility for the client relationship.
- [83] The Code is prescriptive in requiring actions to occur at the commencement of the client engagement. As a minimum:
- [83.1] Before commencing work the basis for costs and fees must be established (clause 8).
 - [83.2] A written agreement is required (clause 1.5).
 - [83.3] Clients must be made aware of the terms and significant matters relating to that agreement (almost inevitably including their immigration options, and processes that apply) (clause 1.5).
 - [83.4] They must receive a copy of the Code, and have it explained to them; and receive a copy of the adviser's complaints procedure (clauses 1.4 and 9).
- [84] The engagement will necessarily involve taking instructions, explaining to the client what their options are, the risks, and the processes involved. Only then can an adviser meet the obligation to act with professionalism, and have lawful informed instructions (clause 1.1).
- [85] When the licensed immigration adviser is preparing material to submit to Immigration New Zealand, that step is crucial. If a person submits information that is not accurate, there are potentially grave adverse consequences for that person's ability to advance that, or any other, immigration application. The precision that is expected is a matter a licensed immigration adviser must impress upon clients. A form that looks to be in order may well contain inaccurate information, and have irreparable consequences for a client. It is a obligation of care and professionalism to ensure a client understands these obligations and consequences (clause 1.1)
- [86] Mr van Zyl simply checked forms that were presented to him. He had no contact with Mr K. He could not, and did not, discharge any of these fundamental professional obligations without engaging with Mr K.
- [87] Mr van Zyl allowed unlicensed persons to initiate the professional relationship and undertake key parts of the work reserved to licensed immigration advisers, and then simply adopted the work as his own. To act in that manner, he had to misrepresent to Immigration New Zealand how he was working.

Misrepresentation

[88] Immigration New Zealand has included sections in its forms to record when licensed immigration advisers have prepared applications. Immigration New Zealand is entitled to take account of the fact a licensed immigration adviser has supervised the submission of an application. Their professional input carries the expectation the application is proper, and the applicant understands the importance of the accuracy of the information relied on.

[89] One representation on the form was:

“I have provided immigration advice (as defined in the Immigration Advisers Licensing Act 2007)”

[90] The Authority contends this is a “convenient half-truth”. I do not accept that contention. The evident effect of that statement is that the person making it records that they have performed a role subject to the statutory restrictions identified. They are required to explain the grounds on which they lawfully gave immigration advice.

[91] This statement is an admission of responsibility, and there can be little doubt Mr van Zyl did provide immigration advice as defined. Had he not done so, this complaint is not likely to have been made against him.

[92] The second representation is quite different; it is a certificate to the effect that Mr van Zyl, identified as a licensed immigration adviser, discharged his professional duties in relation to the material submitted.

[93] The representation is:

“I certify that the applicant asked me to help them complete this form and any additional forms. I certify that the applicant agreed that the information provided was correct before signing the declaration.”

[94] Mr van Zyl could not provide that certificate as a true description of his role:

[94.1] First, he had no contact with Mr K. So Mr K had not asked him for his assistance. A contention that could occur under delegation fails to account for the words “asked me”.

[94.2] Second, the form was complete before Mr van Zyl had any knowledge of, or involvement with, the form.

[94.3] Third, certifying that the applicant agreed the information was correct was a key representation, for the reasons identified earlier; it was essential to be able to personally make that representation.

Conclusion

[95] The Tribunal upholds the complaint in the respects identified, and finds each ground involves a breach of the Code. Section 44(2)(e) provides that a breach of the Code is grounds for upholding a complaint.

[96] In addition, section 44(2)(d) is a ground for upholding the complaint as it relates to submitting the certificate to Immigration New Zealand. The certificate was not accurate, and submitting it was misleading behaviour.

Submissions on Sanctions

[97] Given the findings, section 50 allows the Tribunal to impose one or more of the disciplinary sanctions under section 51 of the Act.

[98] The parties have the opportunity to present submissions.

[99] The timetable for submissions will be as follows:

[99.1] The Authority is to make any submissions within 10 working days of the issue of this decision.

[99.2] Mr van Zyl is to make any submissions (whether or not the Authority makes any submissions) within 15 working days of the issue of this decision.

Conclusion

[100] The parties are notified this decision will be published after five working days unless any party applies for orders not to publish any aspect.

[101] Mr K, through the Authority, has requested privacy. Mr K did not initiate the complaint, and there is no evident public interest in publishing his identity, the Tribunal directs that Mr K's name will not be published.

[102] The direction prohibiting publication of Mr K's name and identity will remain in effect pending any further order of the Tribunal. The parties are directed to make any application to alter the order relating to publication of Mr K's name and identity within 10 working days.

DATED at WELLINGTON this 31st day of July 2012

G D Pearson
Chair