



Annual Report of the

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2013

*Presented to the House of Representatives pursuant to
s86(3) of the Immigration Advisers Licensing Act 2007*

Hon Judith Collins
Minister of Justice

Pursuant to section 86(1) of the Immigration Advisers Licensing 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 2013.

Yours sincerely



Grant Pearson
Chair

Immigration Advisers Complaints and Disciplinary Tribunal

INTRODUCTION

The Immigration Advisers Complaints and Disciplinary Tribunal was established in 2010 under the Immigration Advisers Licensing Act 2007.

The Tribunal considers and determines complaints made against licensed immigration advisers referred to it by the Registrar of the Immigration Advisers Authority (IAA). Complaints may be initiated by any person, or on the Registrar's own motion.

After considering a complaint the Tribunal may:

- dismiss the complaint;
- uphold the complaint but take no further action; or
- uphold the complaint and impose one or more sanctions.

The Tribunal also deals with appeals against decisions made by the IAA. These may relate to:

- a decision of the Registrar to cancel the licence of an immigration adviser; or
- a determination of the Registrar to reject a complaint against a licensed immigration adviser.

MEMBERSHIP

The Tribunal currently consists of the Chair, Grant Pearson. Mr Pearson is the inaugural Chair of the Tribunal and was appointed in October 2010.

Mr Pearson is a former member of the Removal Review Authority and the Refugee Status Appeals Authority. He was the Deputy Chair of the Medical Practitioners Disciplinary Tribunal from 1999-2001.

MATTERS ARISING IN THE LAST 12 MONTHS

Caseload

The caseload of the Tribunal was expected to be limited, and the Tribunal's demand for resources low. The volume of complaints received by the Tribunal has been higher than anticipated.

The Tribunal did not have a Chair when first established, so there was no prescribed form for the filing of complaints. The IAA commenced filing complaints as a "raw file".

The number of cases received in 2011/12 was more than double the number received in 2010/11, and the number of cases on hand rose to 69 as at 30 June 2012.

As a first response, the Tribunal allocated additional resources to address complaints in a timely manner. The Chair has increased the time he allocates to the Tribunal and the Ministry of Justice appointed a Legal and Research Advisor to assist.

The allocation of time and resources was not a complete response, and it became evident that the form in which the Registrar of the IAA filed complaints greatly affected the work required to determine complaints.

Ministry officials met frequently with the Registrar of the IAA to discuss the workload of the Tribunal, and the IAA's role in referring complaints.

During the current year, the Tribunal issued a Practice Note, which required the IAA to lodge complaints in a form that enables the Tribunal to act as a decision-making body, not an investigative and decision-making body. In essence, the effect is that the Registrar is required to set out the grounds on which he referred the complaint. The parties are then fully and fairly informed about the complaint and have an opportunity to respond. The Tribunal then decides the complaint, having provided all parties with an opportunity to be heard. Previously, the Tribunal had to analyse complete files and give notice to parties of potential findings before determining the complaint.

The Tribunal has taken steps to ensure all current and new files are processed under the new procedure. The Tribunal expects, as from the first part of the coming year, it will process all complaints without resourcing-related delays.

At 30 June 2013 the number of complaints on hand had increased further, to 85. However, following the implementation of the Practice Note in May 2013, this is trending downwards.

Legislative matters

The Tribunal has not identified aspects of the legislation it would like to see reviewed.

The Tribunal does have concerns that the legislation relating to complaints is not well understood, and important powers within it are not being fully exercised.

The legislative regime is a conventional professional licensing and disciplinary regime, in a form similar to others successfully operating in New Zealand.

The regime has conventional mechanisms that allow the IAA and the Tribunal, in their respective roles, to ensure misconduct is punished, clients can be compensated, and unsuitable persons are excluded from the profession without any realistic prospect of ever qualifying for the grant of a licence in the future.

The Tribunal's experience is that significant aspects of the legislation are not being applied in relation to complaints it deals with.

One issue of concern is the IAA's role in making determinations as to whether complaints are referred to the Tribunal. Some complaints that have come before the Tribunal should have been resolved by the IAA determining they should not be referred to the Tribunal.

The IAA's powers of investigation, intervention, and its discretions relating to licensing operate as the primary mechanism for maintaining professional standards.

A complaint lodged by the client of a licensed immigration adviser usually illuminates an isolated example of conduct, and will not identify widespread competence or dishonesty issues that may exist in an adviser's practice. For that reason, the IAA has extensive powers of inspection, the ability to bring own motion complaints, the right to apply for suspension of licences while complaints are addressed, and the ability to seek recovery of the costs of those processes. The Tribunal notes that these powers have been applied rarely, or not at all, which limits the effectiveness of the regime.

The Tribunal in its decisions has drawn attention to some of these elements of the legislation.

It is important these powers are understood and applied. The protection of consumers and the efficient determination of complaints requires they are exercised. The Tribunal has found some of the powers, which are routine rather than exceptional powers, have never been exercised in any of the complaints lodged with it.

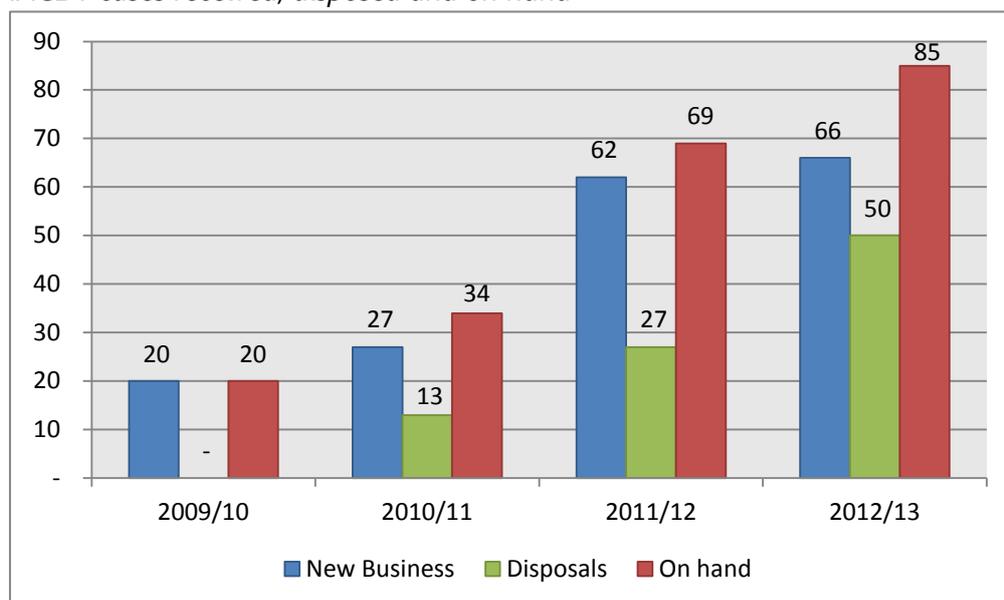
STATISTICS

This section outlines the number of matters considered and disposed by the Tribunal.

Cases received and disposed

The graph below shows the number of cases received, disposed, and on hand in 2012/13, compared with the previous three financial years.

IACDT cases received, disposed and on hand



*No cases were disposed in 2009/10 as the Chair was not appointed until October 2010

In the reporting year the Tribunal received one (1) appeal against a determination of the Registrar of the IAA.

All other cases lodged with the Tribunal were complaints referred by the Registrar of the IAA.

The Tribunal has not received any complaints initiated by the Registrar's "own motion" in the reporting year; clients or their representatives initiated all complaints.

The Tribunal has not received any applications from the Registrar for suspension of licence pending outcome of complaints.

Disposition of cases

After hearing a complaint, the Tribunal may:

- dismiss the complaint;
- uphold the complaint but take no further action; or
- uphold the complaint and impose a sanction.

The table below shows the disposition of cases for past three financial years.

Complaints dismissed and upheld

	2010/11	2011/12	2012/13
Complaints dismissed	5	9	12
Complaints upheld but no further action taken	0	2	1
Complaints upheld and sanctions imposed	8	16	37
TOTAL	13	27	50

Complaints upheld

As noted above, 38 complaints were upheld in 2012/13, 37 of which resulted in sanctions being imposed.

The sanctions available to the Tribunal are:

- caution or censure;
- requirement to undertake further training or remedy any deficiency;
- order preventing a person from reapplying for a specified period;
- order to pay penalty;
- order to pay costs or expenses;
- order to refund fees;
- order to pay compensation; and
- restriction, suspension or cancellation of licence.

In addition to final decisions, in 2012/13 the Tribunal issued:

- **95** directions/minutes relating to the conduct of proceedings, covering the identification of issues, publication and other matters; and
- **38** penalty or interim decisions.