



Annual Report of the

REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2017

Presented to the House of Representatives pursuant to regulation 17 (b) of the Real Estate Agents (Complaints and Discipline) Regulations 2009

Hon Mark Mitchell
Associate Minister of Justice

Pursuant to regulation 17(b) of the Real Estate Agents (Complaints and Discipline) Regulations 2009, I have pleasure in presenting the annual report of the Real Estate Agents Disciplinary Tribunal for the 12 months ended 30 June 2017.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'P. Andrews', with a period at the end.

Hon. Pamela Andrews CSZM
Chairperson
Real Estate Agents Disciplinary Tribunal

INTRODUCTION

The Real Estate Agents Disciplinary Tribunal (the Tribunal) was established in 2009 under the Real Estate Agents Act 2008. The Tribunal hears and determines charges against licensees laid by a complaints assessment committee of the Real Estate Agents Authority (the Authority), appeals against decisions made by a complaints assessment committee, and reviews of determinations on licensing applications made by the Registrar of the Authority.

MEMBERSHIP

The current membership of the Tribunal is:

Hon. Pamela Andrews CNZM (Chairperson)

Ms Kate Davenport QC (Deputy Chairperson)

Ms Nola Dangen

Mr Garry Denley

Ms Catherine Sandelin

MATTERS ARISING IN THE LAST 12 MONTHS

Judicial matters

There have been two significant changes in the membership of the Tribunal during the past year.

In June 2017 Mr John Gaukrodger retired as a member of the Tribunal. Mr Gaukrodger was one of the original members of the Tribunal when it was established. Mr Gaukrodger's knowledge and experience, and his service as a member over those many years has been extremely valuable to the Tribunal, and to the real estate industry. He is very much missed.

Ms Davenport QC advised me earlier this year that she wishes to resign her position as Deputy Chairperson, but agreed to continue in office until a new Deputy Chairperson is appointed. Ms Davenport has made a significant contribution to the Tribunal with her experience and expertise and will also be very much missed. The Tribunal has advertised for a new Deputy Chairperson, and is considering expressions of interest received from many applicants.

As Chairperson (and particularly as a recent appointee), I very much appreciate the experience and expertise of all Tribunal members. The status of the Tribunal is enhanced by virtue of their membership.

I must also pay particular tribute to the Tribunal's administration team within the Tribunals Unit of the Ministry of Justice, for their commitment, expertise and assistance during the past year. It has not been an easy year, in particular as a result of restructuring within the Unit, but each member of the team has continued to give knowledgeable and enthusiastic support to the Tribunal. Those qualities are very much appreciated.

Caseload

As noted below, the Tribunal received 54 new cases during 2016/2017. This is a substantial decrease (31) from the previous year. As has been noted in previous annual reports, the number of cases received by the Tribunal in the past year has continued the overall decreasing trend since the Tribunal was established. I believe that the decrease is the result of an increasing awareness and understanding by real estate licensees of their duties and obligations under the Real Estate Agents Act 2008 and Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012. It is also the result of the commendable work the Real Estate Agents Authority continues to do in its early resolution process aimed at resolving potential complaints, its mediation processes, and its publication of guidance for consumers and licensees.

However, it must be said that many of the cases that come before the Tribunal involve complex issues of law and/or fact, which require careful consideration.

Decisions of the High Court and Court of Appeal have also added to the case law concerning the meaning and application of the provisions of the Act and the Rules.

Legislative matters

In my last Annual Report, I recommended legislative changes to the Act, as had my predecessor, Judge Barber.

The Tribunals Powers and Procedures Legislation Bill (also referred to as the Courts and Tribunals Enhanced Services Bill) is currently before Parliament.

The Bill is expected to give the Tribunal more extensive powers to award costs; clarify the power to award compensation for "unsatisfactory conduct"; provide for the restriction or cessation of appeals to the Tribunal against the decision of a Complaints Assessment Committee to lay a charge against a licensee; it introduces a fine of up to \$3,000 for breaching of non-publication or suppression orders; and clarifies that retiring members warrants can be extended to complete all extant proceedings.

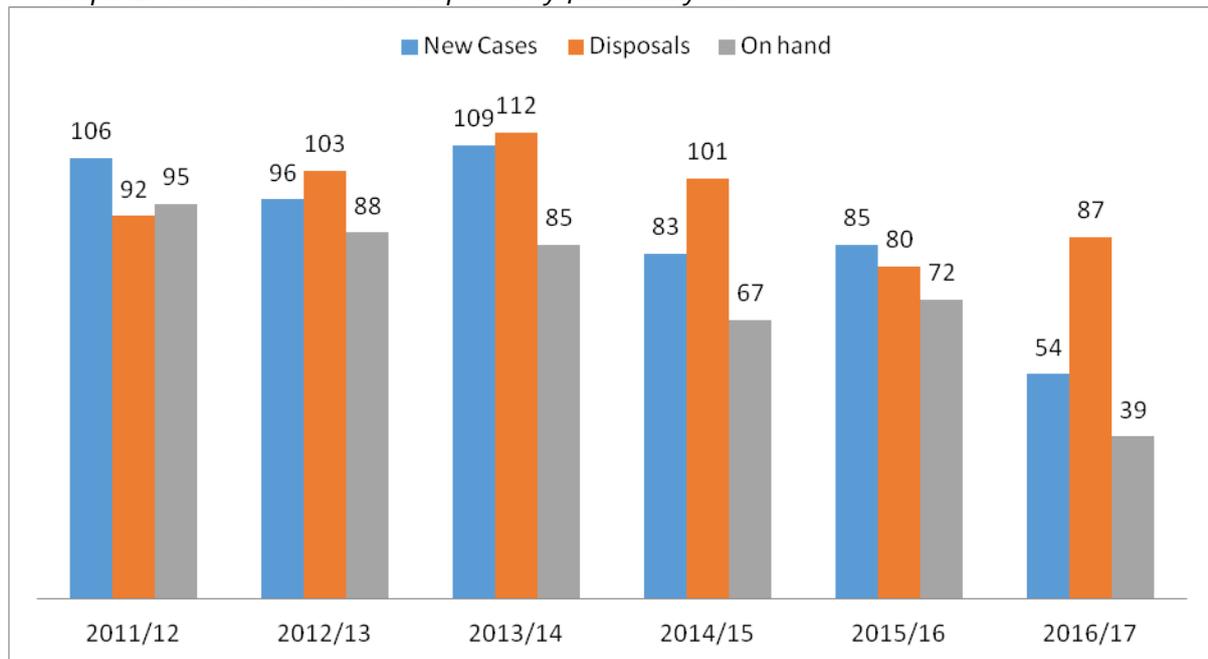
I recommend that the Bill be amended so as to include a provision similar to Rule 20.4 of the High Court Rules, so as to enable the Tribunal to grant special leave to file an appeal against a decision of a Complaints Assessment Committee after expiry of the prescribed 20 working days after the Committee's decision.

STATISTICS

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

The Tribunal received 54 new cases in 2016/17, and disposed of 87. However, as shown in *Graph 1* below, the workload in 2016/17 remained busy and steady.

Graph 1: Cases received and disposed by financial year



Cases on hand

At the end of June 2017, the Tribunal had 39 cases on hand. These cases were either awaiting information from parties (23 cases), scheduled for hearing (9 cases) or reserved decisions (7 cases). There were no cases that were waiting to be scheduled for hearing. Over the past year, the Tribunal has been able to reduce the time period from receipt of a case and its disposal.

Cases received 2016/17

The Tribunal receives three types of cases; Notices of Appeal, Charges, and Applications to Review:

- A **Notice of Appeal** is an appeal to the Tribunal against a determination made by a Complaints Assessment Committee of the Real Estate Agents Authority.
- A **Charge** is a charge of misconduct against a licensee referred to the Tribunal by a Complaints Assessment Committee.

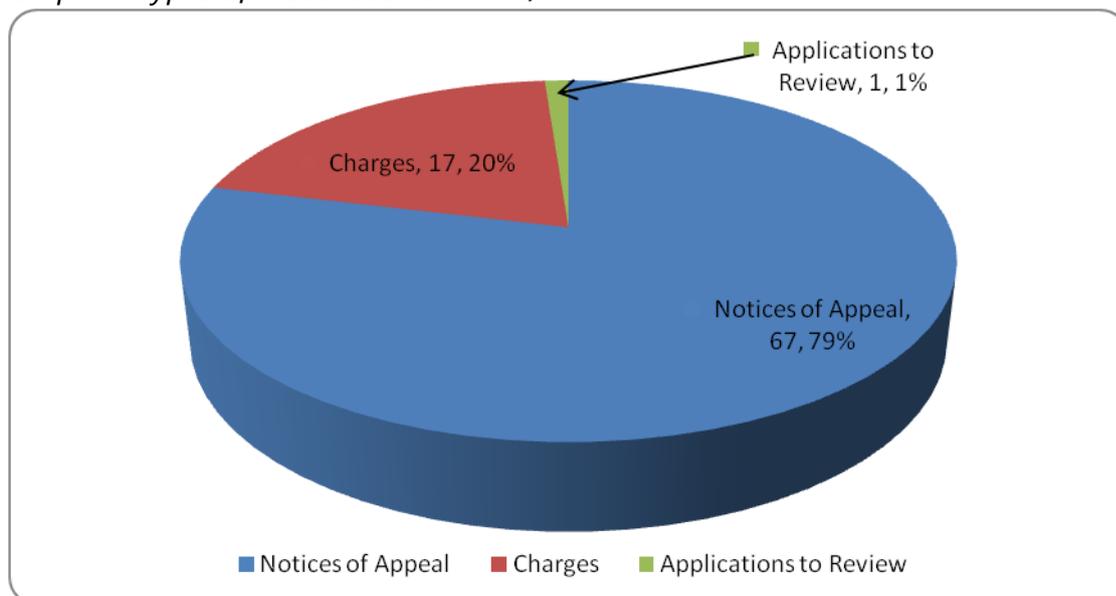
- An **Application to Review** is an application to the Tribunal to review a licensing application determination made by the Registrar of the Real Estate Agents Authority.

Table 1 and Graph 2 below show the number of cases received by the Tribunal for the 2016/17 financial year, broken down by the three case types.

Table 1: Types of cases received 2016/17

| | |
|--|----|
| Notices of Appeal against decisions of a complaints assessment committee | 42 |
| Charges of misconduct | 8 |
| Applications to Review determination of Registrar declining a licensing application | 4 |
| TOTAL | 54 |

Graph 2: Types of cases received 2016/17



Cases disposed 2016/17

Table 2 below shows a breakdown of the cases disposed by the Tribunal in the 2016/17 financial year.

Table 2: Cases disposed 2016/17

| | |
|----------------------------|-----------|
| Cases withdrawn or settled | 25 |
| Cases with final decisions | 62 |
| TOTAL DISPOSALS | 87 |

Analysis of the disposal of cases, by type

Appeals

In the following analysis where a Complaints Assessment Committee's decision related to one or more appellants and/or respondents, the outcome of each appeal is recorded separately. 24 appeals against decisions of a Complaints Assessment Committee were dismissed, one appeal was deemed abandoned, and 16 appeals were allowed.

Charges

In the following analysis, where multiple charges of misconduct were laid against one licensee, the outcome of each charge is recorded separately. 15 charges against licensees were found proved and three were dismissed.

Applications to review a Registrar's decision

Two decisions were overturned. One was withdrawn.

Additional decisions

| | |
|-------------------------------|-----------|
| Interim decisions and rulings | 18 |
| Separate penalty decisions | 14 |
| TOTAL | 32 |

Penalty orders were made by the Tribunal against licensees both following charges of misconduct being found proved against a licensee, and on appeals against findings of unsatisfactory conduct made by a Complaints Assessment Committee. All penalty orders included an order for the licensee to be censured. Three orders included an order for the licensee's licence to be suspended, and four orders included an order for the licensee's licence to be cancelled.