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Annual Report of the

# REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2018

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

Hon Aupito William Sio  
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 2018.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Pamela Andrews', with a small flourish at the end.

Hon. Pamela Andrews CNZM  
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)
- Mr Jeremy Doogue (Deputy Chairperson)
- Ms Nola Dangen
- Mr Garry Denley
- Ms Catherine Sandelin
- Mr Neil O'Connor

There have been two significant changes in the membership of the Tribunal during the past year. Following the retirement of Ms Davenport QC, Mr Jeremy Doogue was appointed Deputy Chairperson of the Tribunal on 14 February 2018. Mr Doogue recently retired from his appointment as an Associate Judge of the High Court at Auckland.

Mr Neil O'Connor was also appointed as a member of the Tribunal on 14 February 2018. Mr O'Connor is a long-standing member of the real estate industry.

As Chairperson, I very much appreciate the experience, expertise, and commitment 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. Each member of the team has continued to give knowledgeable and enthusiastic support to the Tribunal. Those qualities are very much appreciated.

## The Tribunal's function

The Tribunal is established pursuant to s 100 of the Real Estate Agents Act 2008. Its functions are set out in s 102 of the Act, and are:

- (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

The major focus of the Tribunal's work is on hearing and determining charges brought by a Complaints Assessment Committee against a licensee (s 102(b)) and on hearing and determining appeals against decisions of Complaints Assessment Committees.

Complaints Assessment Committees consider and determine complaints made to the Real Estate Authority about licensees' conduct in carrying out real estate agency work. If the Committee considers a complaint to be justified, it may find that a licensee has engaged in unsatisfactory conduct, pursuant to s 72 of the Act; 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. If it makes a finding of unsatisfactory conduct, a Complaints Assessment Committee make one or more of the orders set out in s 93 of the Act.

One of the powers given to Complaints Assessment Committees is to determine that a complaint or allegations should be determined by the Tribunal. In that case, the Committee lays an appropriate charge of misconduct, under s 73 of the Act. Misconduct is, in very general terms, 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
- is seriously incompetent or seriously negligent
- constitutes a wilful or reckless contravention of the Act, other Acts that apply to the conduct of licensees regulations or rules made under the Act
- constitutes an offence for which the licensee has been convicted, and which reflects adversely on the licensee's fitness to be a licensee.

It must also 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 added to the case law concerning the meaning and application of the provisions of the Act and the Rules.

## Legislative matters

The Tribunals Powers and Procedures Legislation Bill (also referred to as the Courts and Tribunals Enhanced Services Bill) is currently before Parliament. The Tribunal understands that the Bill (together with certain provisions included in a Supplementary Order) is expected to be enacted by the end of this year. In particular, the Tribunal welcomes the introduction of specific provisions as to Tribunal's procedures, and awards of costs, and a new provision as to contempt of the Tribunal.

## CASES RECEIVED, DISPOSED AND ON HAND

### Caseload

As noted below, the Tribunal received 64 new cases during 2017/18. This is a substantial increase from the previous year, when we received 54 new cases. The 2017/18 increase is in contrast to the decreasing caseload noted in recent Annual Reports. Without extensive research, I am not able to offer any comment as to why this should be, or whether it indicates a trend for the future.

In 2017/18, the Tribunal received 64 new cases and disposed of 59 cases.

### Cases received in 2017/18

The Tribunal receives three types of cases:

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

Table 1 shows the number of cases received by the Tribunal in 2017/18, broken down by case type, and how the case type has changed over time.

**Table 1: Cases received in 2017/18, by case type**

<b>Case type</b>	<b>Number</b>	<b>Percentage of total cases received</b>
Notices of Appeal	44	69%
Charges	15	23%
Applications to Review	5	8%
<b>TOTAL CASES RECEIVED</b>	<b>64</b>	<b>100%</b>

## **Cases disposed in 2017/18**

Table 2 sets out the outcome of the cases disposed by the Tribunal in 2017/18.

**Table 2: Cases disposed in 2017/18, by outcome**

<b>Case outcome</b>	<b>Number</b>	<b>Percentage of total cases disposed</b>
Withdrawn or settled	12	20%
Tribunal made final decision	47	80%
<b>TOTAL CASES DISPOSED</b>	<b>59</b>	<b>100%</b>

The percentage of cases in which the Tribunal made a final decision is consistent with previous years which have been 70-80%

Over the past year, the Tribunal has been able to reduce the average age of cases at disposal. The Tribunal has taken particular care to ensure that all new cases are assigned a date for a Directions Telephone Conference immediately upon receipt by the Tribunal, that a hearing date is set for the earliest available date, and that the Tribunal's decisions are issued within as short a time as is practicable. That said, there will always be cases that present particular difficulties in disposal.

## **Analysis of disposals, by case type**

### **Notices of Appeal**

Cases considered by the Tribunal may relate to a Complaints Assessment Committee's decision concerning one or more appellants and/or respondents. Where that occurs, the outcome of each appeal is recorded separately. 19 of the appeals against decisions of a Complaints Assessment Committee were dismissed and 14 appeals were upheld.

### **Charges**

Similarly, where multiple charges of misconduct are laid against one licensee, the outcome of each charge is recorded separately. In 2017/18, nine charges against licensees were found proved and none were dismissed. One charge was formally withdrawn at the request of the Authority.

### **Penalty decisions**

Penalty decisions 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. In 2017/2018, the Tribunal issued five penalty decisions.

### **Applications to Review**

Three of the Registrar's decisions were overturned by the Tribunal. One application to review was dismissed.

### **Interim Decisions and Rulings**

In any case before it, the Tribunal may be required to issue an interim decision or ruling; for example, an application for interim suppression of name, or as to the admissibility of evidence. In 2017/2018, the Tribunal issued 17 such decisions or rulings.

## **Cases on hand at the end of 2017/18**

At the end of 2017/18, the Tribunal had 44 cases on hand. These cases were either awaiting information from parties (15 cases), scheduled for hearing (23 cases) or reserved decisions (6 cases). There were no cases waiting to be scheduled for hearing.