

Immigration Advisers Licensing Bill

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,	Text struck out unanimously
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New (majority)

Subject to this Act,	Text inserted by a majority
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New (unanimous)

Subject to this Act,	Text inserted unanimously
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<Subject to this Act,> Words struck out by a majority

(Subject to this Act,) Words struck out unanimously

<u>Subject to this Act.> Words inserted by a majority

Subject to this Act. Words inserted unanimously

As reported from the committee of the whole House

New

Subject to this Act,	Text inserted
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Subject to this Act. Words inserted

Hon David Cunliffe

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Immigration Advisers Licensing Act **2005**.

2 Commencement

- (1) **Sections 1 to 5, (11(2)) 7, 11A, 11B, 31 to (38) 36D, 75, 77, 79, and 81 and the Schedule** (which relate to the Authority, the Registrar, the Tribunal, the development of competency standards and the code of conduct, and related matters) come into force on the day after the date on which this Act receives the Royal assent. 5
- (2) **Sections 6, 9, 51, 55, and 56** (which impose the requirement to be licensed as an immigration adviser, and provide for related offences) come into force (on 1 June 2008) 2 years after the date on which this Act receives the Royal assent. 10
- (3) The rest of this Act comes into force (on 1 June 2007) 1 year after the date on which this Act receives the Royal assent. 15

Part 1 Regulation of immigration advisers

Preliminary provisions

- 3 Purpose and scheme of Act** 5
The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.
- 4 Act binds the Crown** 10
This Act binds the Crown.
- 5 Interpretation**
- In this Act, unless the context otherwise requires,—
- Authority** means the Immigration Advisers Authority established by **section 31** 15
- category 1 exemptee** means a person exempt from the requirement to be licensed as an immigration adviser under **section (11(3)(a)) 11A(3)(a)**
- category 2 exemptee** means a person exempt from the requirement to be licensed as an immigration adviser under **section (11(3)(b)) 11A(3)(b)** 20
- chief executive** means the chief executive of the Department
- 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: 25
- (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 30
- code of conduct** means a code of conduct approved by the Minister under **section 34** and published or notified in accordance with **section 35(1)(a)** 35

company has the meaning given to it by section 2(1) of the Companies Act 1993; and includes companies or bodies corporate registered or formed outside New Zealand

competency standards means the competency standards approved by the Minister under **section 33** and published or notified in accordance with **section 35(1)(a)**

5

Struck out (unanimous)

complaints body means a complaints body set up under **section 37**

Department means the Department of Labour, or such other department of *(state)* State that has, with the authority of the Prime Minister *(from time to time)*, assumed responsibility for the administration of this Act

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former licensed immigration adviser has the meaning given it by **section 39(1)(b)**

immigration advice has the meaning given to it by **section 7**

15

immigration adviser means a person who provides immigration advice

immigration application or request means the putting forward of any application, request, claim, appeal, or other approach seeking to have the Minister, the Department, an appeals body, or a visa, immigration, or refugee status officer deal with an immigration matter

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immigration matter means any matter arising under or concerning the application of the Immigration Act 1987 (including any regulations or policy or instructions made under that Act); and includes—

25

(a) applications and potential applications for temporary entry or limited purpose entry to, or transit through or residence in, New Zealand:

(b) requests and potential requests for special directions:

30

(c) refugee status claims and appeals:

(d) immigration sponsorship:

(e) immigration obligations:

(f) appeals in relation to immigration matters

New (unanimous)

lawyer has the meaning given it by section 6 of the Lawyers and Conveyancers Act 2006

licence means a licence granted under this Act to operate as an immigration adviser

Minister means the Minister of Immigration, or such other Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 5

ordinarily resident, at any particular time, refers to a person who— 10

- (a) has been lawfully present in New Zealand for more than 183 days in the immediately preceding 12-month period; and
- (b) is not unlawfully in New Zealand

permit means a permit granted under the Immigration Act 1987 15

register means the register of immigration advisers established and maintained under **section 66**

Registrar means the officer appointed under **section 31(2)(a)**

settlement services means all or any of a range of targeted support services provided for migrants, refugees, and their families, including services for the purposes of enabling migrants, refugees, and their families to settle into the community, learn the language, and find out how to access essential community services 20
25

New (unanimous)

Tribunal means the Immigration Advisers Complaints and Disciplinary Tribunal established by **section 36A**

visa means a visa issued under the Immigration Act 1987

working day means any day other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and 30

- (b) the day observed in the appropriate area as the anniversary of the province of which the area forms a part; and
- (c) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year.

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Immigration advisers to be licensed, unless exempt

6 Prohibition on providing immigration advice unless licensed or exempt

No person may provide immigration advice unless that person—

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- (a) is licensed under this Act to provide that advice; or
- (b) is exempt under **section 11** from the requirement to be licensed.

7 What constitutes immigration advice

In this Act, **immigration advice**—

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- (a) means 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, whether directly or indirectly and whether or not for gain or reward; but
- (b) does not include—
 - (i) providing information that is publicly available, or that is prepared or made available by the Department; or
 - (ii) directing a person to the Minister or the Department, or to an immigration officer, a visa officer, or a refugee status officer (within the meaning of the Immigration Act 1987), or to a list of licensed immigration advisers; or
 - (iii) carrying out clerical work, translation or interpreting services, or settlement services.

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8 Offshore immigration advice

- (1) This Act applies in respect of immigration advice provided by a person outside New Zealand, as well as advice provided by a person within New Zealand, except as provided in this section.
- (2) Despite **subsection (1)**, a person who is not ordinarily resident in New Zealand need not be licensed in respect of immigration

35

advice provided by that person outside New Zealand before **(1 June 2011)** the date that is 3 years after the day on which this Act receives the Royal assent, and—

- (a) **section 9** does not require the Department to refuse to accept an immigration application or request from such a person before that date; and 5
 - (b) such a person will not be treated as committing an offence under this Act by reason only of providing immigration advice outside New Zealand before that date without being licensed. 10
- (3) A person to whom **subsection (2)** applies may however apply for and be granted a licence at any time after **(1 June 2007)** the date that is 1 year after the day on which this Act receives the Royal assent, if the person chooses to apply.

9 No acceptance of immigration applications or requests from unlicensed immigration advisers 15

- (1) No immigration application or request put forward on behalf of another person by an unlicensed immigration adviser may be accepted, unless the adviser is exempt from the requirement to be licensed under **section 11**. 20
- (2) The chief executive of the Department of *(Labour)* State that has, with the authority of the Prime Minister, assumed responsibility for the administration of the Immigration Act 1987 must so far as practicable ensure that immigration forms and information brochures prepared or provided by *(the Department)* that department advise that, in accordance with **subsection (1)**, immigration applications or requests provided or prepared on behalf of another person by persons who are neither licensed immigration advisers nor exempt from the requirement to be licensed will not be accepted. 25 30
- (3) Where an immigration application or request on behalf of another person is not accepted by reason of contravening **subsection (1)**, the relevant person or body must notify that person in writing of that fact, and advise the person as to how the application or request may be relodged or advanced in an acceptable manner. 35

10 Who may be licensed as immigration adviser

A person may be licensed as an immigration adviser only if—

- (a) the person is a natural person who applies for a licence under **section 15**; and
- (b) the Registrar is satisfied that the person meets the competency standards set under **section 33**; and 5
- (c) the person is not prohibited from holding a licence under **section 12**, and, in the case of a person to whom **section 13** or **section 14** applies, is determined by the Registrar to be a fit and appropriate person to hold a licence; and 10
- (d) the person is not a category 2 exemptee or a lawyer.

11 Persons exempt from licensing

- (1) The following persons are exempt from the requirement to be licensed: 15
 - (a) persons who provide immigration advice in an informal or family context only, so long as the advice is not provided systematically or for a fee:

New (unanimous)

- (ab) members of Parliament, and members of their staff who provide immigration advice within the scope of their employment agreement: 20
- (ac) foreign diplomats and consular staff accorded protection as such under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971: 25
- (ad) employees of the public service who provide immigration advice within the scope of their employment agreement:
- (ae) lawyers: 30
- (af) persons employed by or working as volunteers for community law centres (as defined in section 6 of the Lawyers and Conveyancers Act 2006), where at least 1 lawyer— 35
 - (i) is on the employing body of the community law centre; or

New (unanimous)

- (ii) is employed by or working as a volunteer for the community law centre in a supervisory capacity:
- (ag) persons employed by or working as volunteers for citizens advice bureaux:

- (b) persons who provide immigration advice offshore in relation to applications or potential applications for student visas or student permits only, but subject to any regulations made under **section 11A(1)(b)**: 5
- (c) persons exempted by regulations made under (**subsection (2)**)**section 11A**. 10

Struck out (unanimous)

- (2) The Governor-General may, by Order in Council, make regulations exempting any person or class of persons from the requirement to be licensed as immigration advisers.
- (3) Exemptions under **subsection (2)** must be classed as one of 2 categories— 15
- (a) category 1 exemptions, exempted on the basis that—
- (i) there is little consumer benefit to be gained by requiring members of the exempt class to be licensed; and
- (ii) there are sufficient processes in place to ensure competent and ethical conduct; and 20
- (b) category 2 exemptions, for persons in professions or occupations that, under their own statute, have their own disciplinary procedures that could apply to the provision of immigration advice, and prescriptive requirements as to conduct. 25
- (4) An exemption under **subsection (2)** may be subject to any terms and conditions specified in the regulations.
- (5) Despite being exempt, a person exempt under **subsection (1)(b)** or a category 1 exemptee may nevertheless apply for a licence and, if the licence is granted, operate as a licensed immigration adviser. 30
- (6) A category 2 exemptee may neither apply for nor hold a licence.

New (unanimous)

11A Exemption, or removal of exemption, by Order in Council

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| (1) | The Governor-General may, by Order in Council, make regulations— | 5 |
| (a) | exempting any person or class of persons from the requirement to be licensed as immigration advisers: | |
| (b) | removing in whole or in part the exemption provided for in section 11(1)(b) . | |
| (2) | Regulations under subsection (1)(a) may be made only on the recommendation of the Minister given in accordance with section 11B . | 10 |
| (3) | Exemptions under subsection (1) must be classed as one of 2 categories: | |
| (a) | category 1 exemptions, exempted on the basis that— | |
| (i) | there is little consumer benefit to be gained by requiring members of the exempt class to be licensed; and | 15 |
| (ii) | there are sufficient processes in place to ensure competent and ethical conduct; and | |
| (b) | category 2 exemptions, for persons in professions or occupations that, under their own statute, have their own disciplinary procedures that could apply to the provision of immigration advice, and prescriptive requirements as to conduct. | 20 |
| (4) | An exemption under subsection (1)(a) may be subject to any terms and conditions specified in the regulations. | 25 |
| (5) | Subject to subsection (6) , a person exempt under any of paragraphs (a), (ab), (ac), (ad), (af), (ag), (b), and (c) of section 11(1) or a category 1 exemptee may, despite being exempt, apply for a licence and, if the licence is granted, operate as a licensed immigration adviser. | 30 |
| (6) | A lawyer or a category 2 exemptee may neither apply for nor hold a licence. | |
| (7) | A removal of the exemption provided for in section 11(1)(b) by regulations made under subsection (1) may be in respect of all or any 1 or more classes of person to whom the exemption relates, and the removal or retention of the exemption may be | 35 |

New (unanimous)

subject to any terms and conditions specified in the regulations.

11B Process for Minister to make recommendation

- (1) The Minister must not make a recommendation under **section 11A(2)** unless the Minister— 5
- (a) has received a report from the Registrar that assesses the proposed exemption or removal of the exemption; and
 - (b) has provided the Registrar's assessment to, and has consulted with, such persons and organisations as the Minister considers appropriate; and 10
 - (c) in the case of an exemption, is satisfied that the criteria for an exemption are met (including by considering the matters specified in **subsection (2)**, where appropriate).
- (2) In assessing whether the criterion for exemption specified in **section 11A(3)(a)(ii)** is met, the Minister must, in respect of the person or class of persons being considered for exemption, have regard (where appropriate) to such matters as— 15
- (a) obligations to clients:
 - (b) the existence or likelihood of conflicts of interest: 20
 - (c) disclosure requirements:
 - (d) the provision of consumer complaints procedures:
 - (e) membership standards:
 - (f) the monitoring and supervision of the performance of individuals: 25
 - (g) provision for ongoing training.

11C Review of exemptions

- (1) The Registrar—
- (a) must review each exemption granted by regulations made under **section 11A(1)(a)** at intervals not greater than 3 years: 30
 - (b) may review any such exemption at any time.
- (2) The Registrar must report to the Minister on the outcome of any review under this section.

New (unanimous)

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| (3) | After considering the report provided by the Registrar, the Minister may recommend to the Governor-General that the exemption in question be removed or amended. | |
| (4) | The Governor-General may, by Order in Council made on the recommendation of the Minister under subsection (3) , make regulations revoking or amending any exemption granted by regulations made under section 11A(1)(a) . | 5 |

12 Persons prohibited from licensing

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|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) | A person is prohibited from being licensed if he or she— | |
| (a) | is an undischarged bankrupt; or | 10 |
| (b) | <i><has been></i> <i><is></i> prohibited or disqualified under any of the provisions of sections 382, 383, or 385 of the Companies Act 1993 (or any corresponding provision of the Companies Act 1955) from managing a company; or | |
| (c) | has been convicted of an offence against the Immigration Act 1987 or the Immigration Act 1964; or | 15 |
| (d) | has been removed or deported from New Zealand under the Immigration Act 1987 or the Immigration Act 1964; or | |
| (e) | is unlawfully in New Zealand. | 20 |

New (majority)

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|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (2) | Persons who hold or have held any of the following offices or employment are prohibited from being licensed while holding the office or employment or at any time within 12 months after leaving the office or employment: | |
| (a) | Ministers of Immigration and Associate Ministers of Immigration in the New Zealand Government; | 25 |
| (b) | any immigration officer, visa officer, or refugee status officer (as defined in the Immigration Act 1987). | |

13 Persons subject to restriction on being licensed

The following persons must not be licensed unless the Registrar is satisfied that the nature of the relevant offence or matter is unlikely to adversely affect the person's fitness to provide immigration advice:	30
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- (a) a person who has been convicted, whether in New Zealand or in another country, of a crime involving dishonesty, an offence resulting in a term of imprisonment, or an offence against the Fair Trading Act 1986 (or any equivalent law of another country): 5
- (b) a person who, under the law of another country,—
- (i) is an undischarged bankrupt: or
 - (ii) has been prohibited or disqualified from managing a company; or
 - (iii) has been convicted of an immigration offence: or 10
 - (iv) has been removed or deported from the country; or

New (unanimous)

- (c) a person to whom **section 12(1)(a) or (b)** has applied in the past.

- 14 Other matters relevant to fitness for licensing** 15
- In determining a person's fitness to be licensed, the Registrar may take into account—
- (a) any conviction, whether in New Zealand or in another country, for an offence of a kind other than those referred to in **sections 12 and 13**: 20
- (b) any disciplinary proceedings, whether in New Zealand or in another country, and whether in relation to the provision of immigration advice or in relation to the conduct of any other occupation or profession, taken or being taken against the person (including any past cancellation or suspension of a licence under this Act, or any non-compliance with any other sanction imposed under this Act): 25
- (c) whether or not the person is related by employment or association to a person to whom a licence would be refused under this section or **section 12 or (section) 13**. 30

Licensing process

- 15 Application for licence**
- An application for licensing as an immigration adviser must—
- (a) be made to the Registrar in a form approved by the Registrar; and 35

- (b) be accompanied by the prescribed fee (if any); and
- (c) include the following information:
 - (i) the applicant's full name and date of birth(:); and
 - (ii) a physical address at which documents can be served on the applicant(:); and 5
 - (iii) the person's business address (if different from the address referred to in **subparagraph (ii)**); and
 - (iv) any further information and other material that may be prescribed or required by the Registrar; and 10
 - (v) if required by the Registrar, a statutory declaration stating that the person is not prohibited from or subject to a restriction on being licensed, and otherwise verifying the matters contained in the application. 15

16 Granting of licence

- (1) The Registrar must grant a licence to an applicant if satisfied that—
 - (a) the applicant is not prohibited from registration under **(section 11(6) (as a category 2 exemptee) or section 12 (as a person prohibited from being licensed)) section 11A(6) or 12**; and 20
 - (b) having regard to the matters specified in **sections 13 and 14** the person is fit to be licensed as an immigration adviser; and 25
 - (c) the person meets minimum standards of competence set under **section 33**; and
 - (d) the application complies with **section 15** and is properly completed; and

New

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|----------------------------------------------------------------------------------------|----|
| (e) the applicant has paid the required amount of immigration adviser's levy (if any). | 30 |
|----------------------------------------------------------------------------------------|----|

- (2) When determining to grant a licence, the Registrar must determine whether the applicant is to be granted—
 - (a) a full licence; or
 - (b) a limited licence; or 35
 - (c) a provisional licence.

- (3) The Registrar may grant a full licence if satisfied that the applicant has overall competence in all areas of immigration advice.
- (4) The Registrar may grant a limited licence that authorises the applicant to provide immigration advice only in relation to specified matters, if satisfied that the applicant has competence only in relation to those matters. 5
- (5) The Registrar may grant a provisional licence that requires the applicant to work under the direct supervision of a fully licensed immigration adviser for 12 months or such other lesser period as may be specified by the Registrar, if satisfied that the applicant is a new entrant to the industry or that for any other reason supervision is required or appropriate. 10
- (6) The Registrar must notify the applicant in writing of the decision to grant a licence subject to the payment of any levy, and, if the decision is to grant a limited licence or a provisional licence, give reasons for that decision. 15

New

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (6A) A notification under subsection (6) must also specify the amount of immigration adviser's levy payable (if any) before the licence will be granted. | 20 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
- (7) An applicant has the right to appeal, under **section 70**, the Registrar's decision to grant a limited or a provisional licence (including the duration of a provisional licence), rather than a full licence.
- 17 Method of determining competence** 25
- The Registrar may satisfy himself or herself of an applicant's competence by all or any of the following means:
- (a) consideration of the application material supplied by the applicant:
- (b) an examination: 30
- (c) an interview:
- (d) review of any work carried out by the applicant relevant to the application:
- (e) consideration of information provided by an overseas or international person, body, or agency: 35
- (f) carrying out an inspection under **section 45**:

- (g) consideration of any other matter relevant to the application.

18 Refusal to grant (a) licence

- (1) If the Registrar determines not to grant a licence, he or she must notify the applicant in writing of the decision and the reasons for it within 10 working days after the decision is made. 5
- (2) An applicant has the right to appeal, under **section 70**, the Registrar's decision to refuse to grant a licence.

19 Duration of licence

- (1) A full or limited licence is effective for a period of 12 months commencing on the date it is granted. 10
- (2) A provisional licence is effective for the period or until the expiry date stated in it.
- (3) **Subsections (1) and (2)** apply unless the licence is— 15
- (a) cancelled under **section 24 or 43**; or
 - (b) suspended under (**section 25 or section 43 or 43B**); or
 - (c) surrendered by its holder in accordance with **section 28**.

20 Upgrade of licence

- (1) The holder of a limited licence may at any time apply to the Registrar for the grant of a full licence. 20
- (2) The holder of a provisional licence may at any time apply to the Registrar for the grant of a full licence or a limited licence.
- (3) **Sections 15 to 19** apply, with any necessary modifications, in relation to any such application as if it were an application for a licence under **section 15**. 25

21 Renewal of licence

- (1) An application for renewal of a licence must be made to the Registrar on or before the date on which the licence expires.
- (2) **Sections 15 to 19** apply, with any necessary modifications and subject to any provisions prescribed in regulations, to an application for renewal for a licence as if it were an application for a licence. 30
- (3) If an application for renewal of a licence has been made but not determined before the date on which the licence would 35

otherwise expire, the licence continues in force until the application is determined.

- (4) The grant of a renewal of a licence takes effect from the date of expiry of the previous licence (as determined before the application of **subsection (3)**). 5
- 22 Licence may not be transferred**
A licence—
- (a) may not be transferred; and
- (b) may not vest by operation of law in any person other than the person to who it was granted. 10
- 23 Obligation to notify Registrar of change in circumstances**
- (1) Any licence holder or applicant for a licence must give written notice to the Registrar of any relevant change in circumstances as soon as practicable, but in any event not later than 10 working days after the change. 15
- (2) In this section, **relevant change in circumstances**—
- (a) means—
- (i) any change in the information that the person has provided under **section 15**: 20
- (ii) any matter that results in the person becoming prohibited from being granted a licence;
- (iii) any change in circumstances that may affect any of the matters specified in **section 13** or (**section**) **14**:
- (b) includes any change that may be prescribed (if any). 25

Cancellation and suspension of licence, etc

24 Cancellation of licence

- (1) The Registrar must cancel a licence if—

Struck out (unanimous)

- (a) he or she has determined to impose on a licensee the sanction of cancellation of the licence in accordance with **section 43(1)(d)**; or 30
- (b) he or she is satisfied that—
- (i) the licensee is prohibited by **section (11(6)) 11A(6) or (section) 12** from holding a licence; or

- (ii) the licence was granted on the basis of any false or fraudulent representation or declaration, made either orally or in writing; or
- (iii) the application for the licence or its renewal was accompanied by payment of an application fee that has subsequently been dishonoured; or

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New

(iiia) the payment of the immigration adviser's levy has subsequently been dishonoured; or

(iv) the person has died, *or has ceased to be engaged in providing immigration advice*.

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New (unanimous)

(2) A licence is cancelled if the Tribunal has determined to impose on the licensee the sanction of cancellation of the licence in accordance with **section 43(1)(d)**.

Struck out (unanimous)**25 Suspension of licence**

- (1) The Registrar must suspend a licence if he or she has determined to impose on a licensee the sanction of suspension of the licence in accordance with **section 43(1)(c)**. 15
- (2) The Registrar may suspend a licence where—
 - (a) a matter involving a licensee is being investigated by the Registrar or a complaints body; and 20
 - (b) the Registrar considers the matter of such seriousness that it may result in the cancellation of the licensee's licence.
- (3) In the case of a suspension under **subsection (2)**, the period of suspension may be determined by reference to a period of time, a fixed date, or the happening of a specific event. 25
- (4) A person whose licence has been suspended may not apply for a further licence during the period or duration of the suspension.

26 Process for cancellation (or suspension)

- (1) The process for cancellation (*or suspension*) of a licence other than under **section 24(1)(b)(iv)** or by determination of the Tribunal under **section 43** is as follows:
- (a) the Registrar must give the licensee written notice of his or her intention to cancel (*or suspend*) the licence; and 5
- (b) the notice must—
- (i) contain or be accompanied by a statement of the Registrar's reasons for the cancellation (*or suspension*); and 10
- (ii) state that the (*cancellation or suspension takes effect on a specified date unless the licensee, within 10 working days after receiving the notice, makes*) licensee has 10 working days within which to make written representations to the Registrar as to why the licence should not be cancelled (*or suspended (or suspended for the proposed duration)*); and 15
- Struck out (unanimous)**
- (iii) in the case of a suspension, state the period or otherwise describe the duration of the suspension; and 20
- (c) if any written representations are made by the licensee within the 10-working-day period referred to in **paragraph (b)(ii)**, the Registrar must take those representations into account in deciding whether or not to cancel (*or suspend*) the licence(*, or the period of duration of a suspension*); and 25
- (d) the Registrar must then decide whether or not to cancel (*or suspend*) the licence, and notify the licensee accordingly, as soon as practicable. 30
- (2) If the Registrar decides to cancel (*or suspend*) the licence,—
- (a) he or she must include in the notice under **subsection (1)(d)** the grounds for the decision and the date on which the cancellation (*or suspension*) takes effect(*, and the period or duration of any suspension*); and 35
- (b) he or she must also specify in the notice the right of the person to appeal to the Tribunal under **section (70) 43D**.

New (unanimous)

26A Suspension of licence

- (1) A licence is suspended if the Tribunal has determined—
- (a) to impose on the licensee the sanction of suspension of licence in accordance with **section 43(1)(c)**; or
 - (b) to suspend the licence under **section 43B**.
- (2) A person whose licence has been suspended may not apply for a further licence during the period or duration of the suspension.

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27 Effective date of cancellation or suspension

- (1) The cancellation (*or suspension*) of a licence other than under **section 43** takes effect on the date specified by the Registrar in the (*last*) notice given to the licensee under **section (26) 26(1)(d)**, which must be a date after the date of that notice.
- (2) The cancellation or suspension of a licence under **section 43** as a result of disciplinary proceedings, or the suspension of a licence under **section 43B**, takes effect on the date notified in the (*Registrar's*) Tribunal's decision communicated under **section 43(3) or 43B(2)(d)**.

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28 Voluntary surrender of licence

- (1) The holder of a licence may at any time surrender that licence by written notice to the Registrar.
- (2) A surrender takes effect on the date given in the notice or, if no such date is given, on the day the notice is received by the Registrar.

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New

- (3) Where a licence is surrendered, the Registrar may, as he or she thinks fit, refund all or part of any immigration adviser's levy paid in respect of the licence.

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29 Registrar must record cancellation, suspension, or surrender of licence

As soon as possible after a licence is cancelled or suspended under **section (25 or section 43) 24 or 43 or 43B**, or a licence is

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surrendered under **section 28**, the Registrar must record the cancellation, suspension, or surrender on the register.

30 Expiry of licence

If no application for the renewal of a licence is made on or before the date on which the licence would otherwise expire, the Registrar must record the expiry of the licence in the register as soon as practicable after that date.

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Immigration Advisers Authority and Registrar of Immigration Advisers

31 Immigration Advisers Authority established

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(1) The Immigration Advisers Authority is established as a body within the Department.

(2) The Authority consists of—

- (a) a Registrar of Immigration Advisers, appointed by the chief executive under the State Sector Act 1988; and
- (b) such number of other persons as the chief executive appoints to the Authority under that Act.

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32 Functions of Authority

(1) The functions of the Authority are—

- (a) to establish and maintain a register of licensed immigration advisers: 20
- (b) to administer the licensing regime for immigration advisers:
- (c) to develop and maintain competency standards and a code of conduct for immigration advisers: 25
- (d) to facilitate the education and professional development of immigration advisers:
- (e) to facilitate public awareness of matters relating to the provision of immigration advice:
- (f) to investigate and take enforcement action in relation to offences under this Act: 30
- (g) to provide procedures for the lodging of complaints, including requiring immigration advisers to set up their own complaints processes:
- (h) to carry out such other functions as may be conferred on the Authority by this Act or any other enactment: 35

- (i) to carry out any functions that are incidental and related to, or consequential on, the functions referred to in **paragraphs (a) to (h)**.
- (2) The Registrar is responsible to the chief executive for carrying out the functions of the Authority. 5
- 33 Registrar to develop competency standards**
- (1) The Registrar must develop and maintain competency standards to be met by licensed immigration advisers.
- (2) The competency standards must set out rules and criteria relating to— 10
- (a) relevant qualifications:
 - (b) practical experience and knowledge:
 - (c) continuing professional development:
 - (d) communication in English.
- (3) Competency standards may differ according to whether a person holds or is seeking a full licence, a limited licence, or a provisional licence. 15
- (4) In developing competency standards, the Registrar must consult with— 20
- (a) the Minister and the Department; and
 - (b) persons or representatives of persons who engage in the provision of immigration advice; and
 - (c) appropriate bodies or persons representing persons seeking or receiving immigration advice.
- (5) Competency standards developed under this section do not have any effect for the purposes of this Act until— 25
- (a) they have been submitted to the Minister; and
 - (b) the Minister, after being satisfied that appropriate consultation has been carried out under **subsection (4)**, has approved and signed the competency standards. 30
- (6) The Registrar may at any time amend, revoke, or replace any approved competency standards in the manner provided for in this section and **section 35**, except that he or she need not carry out consultation on matters involving minor corrections or updating, or otherwise of a minor, technical nature. 35
- 34 Registrar to develop code of conduct**
- (1) The Registrar must develop and maintain a code of conduct to be observed by licensed immigration advisers.

- (2) The code of conduct must address standards of professional and ethical conduct for licensed immigration advisers, including rules as to matters such as—
- (a) obligations to clients:
 - (b) obligations to the Minister and Department handling immigration matters: 5
 - (c) conflicts of interest:
 - (d) disclosure requirements:
 - (e) the reasonableness of fees:
 - (f) the provision of consumer complaints procedures. 10
- (3) In developing a code of conduct, the Registrar must consult with—
- (a) the Minister and the Department; and
 - (b) persons or representatives of persons who engage in the provision of immigration advice; and 15
 - (c) appropriate bodies or persons representing persons seeking or receiving immigration advice.
- (5) A code of conduct developed under this section does not have any effect for the purposes of this Act until—
- (a) it has been submitted to the Minister; and 20
 - (b) the Minister, after being satisfied that appropriate consultation has been carried out under **subsection (4)**, has approved and signed the code of conduct.
- (6) The Registrar may at any time amend, revoke, or replace any approved code of conduct in the manner provided for in this section and **section 35**, except that it need not carry out consultation on matters involving minor corrections or updating, or otherwise of a minor, technical nature. 25
- 35 Publication of code of conduct and competency standards** 30
- (1) Once a code of conduct or any competency standards have been approved, the Registrar must, as soon as practicable,—
- (a) either publish the code or standards in the *Gazette*, or notify their approval in the *Gazette*; and
 - (b) where the Registrar considers it practicable, cause them to be brought to the attention of the persons likely to be affected by them by notice or publication in any newspaper or trade journal, or by any other practicable means (including electronic means). 35

- (2) The Registrar must also make copies of the code of conduct and the competency standards available for inspection free of charge (whether electronically or otherwise), and for purchase at a reasonable cost, at the head office of the Authority and at such other places (including overseas places) as the Registrar determines. 5
- (3) If the code of conduct or competency standards are notified only, and not published in the *Gazette*, the *Gazette* notice must specify where a copy may be inspected or obtained.
- 36 Code and standards deemed to be regulations for purposes of disallowance** 10
- The code of conduct and competency standards, and any amendment, revocation, or replacement of the code or standards, are deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989, but are not regulations for the purposes of the Acts and Regulations Publication Act 1989. 15

New (unanimous)

Immigration Advisers Complaints and Disciplinary Tribunal

- 36A Immigration Advisers Complaints and Disciplinary Tribunal established** 20
- (1) This section establishes a body to be known as the Immigration Advisers Complaints and Disciplinary Tribunal.
- (2) The Tribunal consists of—
- (a) a person to act as chair of the Tribunal, appointed by the Governor-General on the recommendation of the Minister of Justice acting in consultation with the Minister; 25
- and
- (b) such number of other members as the Governor-General appoints on the recommendation of the Minister of Justice acting in consultation with the Minister. 30
- (3) For the purposes of any matter within its jurisdiction, the Tribunal consists of 1 member of the Tribunal.

New (unanimous)**36B Functions of Tribunal**

The functions of the Tribunal are—

- (a) to make decisions on matters about immigration advisers that are referred to the Tribunal by the Registrar under **section 41B**: 5
- (b) to make decisions as to whether an immigration adviser's licence should be suspended under **section 43B** pending a final decision in regard to a matter involving a licensee:
- (c) to hear appeals against— 10
 - (i) a decision of the Registrar to cancel the licence of an immigration adviser under **section 24**; or
 - (ii) a determination by the Registrar to reject a complaint under **section 40(1)(b) or (c)** as not disclosing a ground of complaint, or as being trivial or inconsequential. 15

36C Services for Tribunal

The Ministry of Justice must furnish such secretarial, recording, and clerical services as may be necessary to enable the Tribunal to discharge its functions. 20

36D Further provisions in relation to Tribunal and its proceedings

The provisions of the Schedule have effect in relation to the Tribunal and its proceedings.

Complaints and disciplinary procedures 25**Struck out (unanimous)****37 Registrar to set up complaints body**

- (1) The Registrar must from time to time designate 1 or more persons to act as a complaints body for the purpose of hearing complaints concerning licensed immigration advisers or former licensed immigration advisers. 30
- (2) A complaints body may regulate its procedures as it thinks fit.
- (3) **Subsection (2)** is subject to—

Struck out (unanimous)

- (a) the rules of natural justice; and
- (b) this Act and any regulations made under this Act.

38 Independence of complaints body

- (1) The Registrar must ensure that any person employed or engaged to act as a complaints body under **section 37**— 5
 - (a) is, in deciding how to handle or deal with any complaint, able to act independently; and
 - (b) is independent of any of the parties to the complaint.
- (2) Where the Registrar or an employee of the Authority is a party to a complaint, that fact in itself is not a ground for challenging the independence of the complaints body. 10

39 Complaints against immigration advisers

- (1) Any person may make a complaint to the Registrar concerning the provision of immigration advice by— 15
 - (a) a licensed immigration adviser; or
 - (b) a person who, not more than 2 years before the date of the complaint, was a licensed immigration adviser (a **former licensed immigration adviser**).
- (2) The grounds for complaint may be any 1 or more of the following in relation to the immigration adviser or former licensed immigration adviser complained of: 20
 - (a) negligence:
 - (b) incompetence:
 - (c) incapacity:
 - (d) dishonest or misleading behaviour: 25
 - (e) a breach of the code of conduct.
- (3) A complaint—
 - (a) must be made in writing; and

New (unanimous)

- (ab) must specify the ground or grounds that form the basis of the complaint; and 30

New (unanimous)

- (ac) must state whether or not the complainant has made attempts to resolve the complaint using the immigration adviser's (or former licensed immigration adviser's) own complaints procedure, and the outcome (if any) of that process; and

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- (b) must be accompanied by copies of any supporting documentation; and
 (c) may not be made anonymously.

40 Procedure on receipt of complaint by Registrar

- (1) On receiving a complaint concerning a licensed immigration adviser or former licensed immigration adviser, the Registrar may—

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- (a) determine that the complaint does not meet the criteria set out in **section 39(3)**, and reject it accordingly:
 (b) determine that the complaint does not disclose any of the grounds of complaint listed in **section 39(2)**, and reject it accordingly:
 (c) determine that the complaint discloses only a trivial or inconsequential matter, and for this reason need not be pursued:
 (d) request the complainant to consider whether or not the matter could be best settled by the complainant using the immigration adviser's own complaints procedure.

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Struck out (unanimous)

- (e) determine to refer the complaint to a complaints body set up under **section 37** for determination:
 (f) if the Registrar refers the complaint to a complaints body, determine the priority the complaints body should accord the complaint in hearing it.
- (2) If the Registrar determines to refer a complaint to a complaints body, he or she must as soon as practicable notify the person complained of, in writing, of—
- (a) the complaint; and

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Struck out (unanimous)

- (b) the identity of the complainant, unless the Registrar considers that exceptional circumstances justify the withholding of the complainant's identity.

New (unanimous)

- (2) If the Registrar determines that the complaint should not be dealt with under **subsection (1)**, the Registrar must refer the complaint to the Tribunal for determination. 5
- (3) The Registrar may refer a complaint to the Tribunal for a determination as to whether the licence of the immigration adviser concerned should be suspended under **section 43B**.
- (4) If the complaint is to be referred to the Tribunal under **subsection (2)**, the Registrar must— 10
- (a) prepare the complaint for submission to the Tribunal under **section 41A**; and
- (b) file the complaint with the Tribunal under **section 41B**.
- (5) If the Registrar makes a determination of any of the kinds referred to in **paragraphs (a) to (c) of subsection (1)**, the Registrar must— 15
- (a) notify the complainant of the relevant determination in writing; and
- (b) in the case of a determination under **subsection (1)(b) or (c)**, notify the complainant of the right to appeal to the Tribunal under **section 43C**. 20

41 Registrar may (refer matter to complaints body) refer complaint to Tribunal of own motion

- (1) The Registrar may, of his or her own motion, make a complaint on one of the grounds set out in **section 39(2)** (*to the complaints body, and may determine the priority the complaints body should accord the complaint in hearing it*) and prepare it for referral to the Tribunal. 25
- (2) The Registrar (*must notify the person complained of in writing of the complaint*) may refer such a complaint to the Tribunal for a determination as to whether the licence of the immigration adviser concerned should be suspended under **section 43B**. 30

- (3) The complaint must (*then*) be determined by the (*complaints body*) Tribunal in the same manner as any other complaint (*made*) referred to it under **section (39) 40(2)**.

New (unanimous)

41A Preparation of complaint for referral to Tribunal

- (1) For the purpose of preparing a complaint for submission to the Tribunal, the Registrar or a person authorised by the Registrar may gather further information on the complaint, including by exercising the powers of inspection referred to in **section 45**. 5
- (2) Before referring a complaint to the Tribunal, the Registrar must— 10
- (a) notify the person complained of in writing of the complaint; and
- (b) give both the complainant (if any) and the person complained about a reasonable opportunity to make a written statement or explanation in relation to the complaint. 15
- (3) The notice required by **subsection (2)(a)** must identify the complainant (if any), unless the Registrar considers that exceptional circumstances justify the withholding of the complainant's identity. 20

41B Filing complaint with Tribunal

- (1) After determining to refer a complaint to the Tribunal under **section 40(2) or 41(1)**, the Registrar must, having gathered such further information in relation to the complaint as he or she thinks fit (if any), file the complaint or matter with the Tribunal. 25
- (2) Upon filing the complaint, the Registrar must—
- (a) give written notice of the referral, a copy of the complaint, and any further information that has been gathered on the complaint to the person to whom the complaint relates; and 30
- (b) give written notice of the referral to the complainant (in the case of a determination under **section 40(2)**).

Struck out (unanimous)**42 Determination of complaint by complaints body**

- (1) A complaints body must determine a complaint referred to it in accordance with **section 37(2) and (3)**.
- (2) For the purposes of determining a complaint, the complaints body, or a person authorised by the Registrar on behalf of the complaints body, may exercise the powers of inspection referred to in **section 45**. 5
- (3) The complaints body must give both the complainant and the person complained about—
- (a) a reasonable opportunity to make a written statement or explanation in relation to the complaint; and 10
- (b) if it thinks fit, on its own motion or at the request of either party to the complaint, a reasonable opportunity to appear before it to make a statement or an explanation. 15
- (4) Upon completing its consideration of a complaint, the complaints body must—
- (a) provide to the Registrar a summary of the case and its conclusions; and
- (b) recommend that the Registrar dismiss the complaint or impose any 1 or more of the sanctions set out in **section 43**. 20

New (unanimous)**42 Proceedings before Tribunal**

- (1) The Tribunal may regulate its procedures as it thinks fit.
- (2) **Subsection (1)** is subject to this Act and any regulations made under this Act. 25
- (3) Matters or complaints must be heard on the papers.
- (4) Despite **subsection (3)**, the Tribunal may, if it thinks fit in its absolute discretion,—
- (a) request further information from any person in relation to a complaint or matter: 30
- (b) request that any person appear before the Tribunal to make a statement or an explanation in relation to a complaint or matter.

New (unanimous)**42A Determination of complaint by Tribunal**

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action: 5
- (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in **section 43**.

43 Disciplinary sanctions

- (1) *(On receipt of a recommendation of a complaints body under **section 42(4)** the Registrar, after reviewing the summary of the case, the complaints body's conclusions, and its recommendations, may determine to dismiss the complaint or impose any 1 or more of the following sanctions on the immigration adviser concerned)* The sanctions that the Tribunal may impose are: 15
- (a) caution or censure:
 - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
 - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions: 20
 - (d) cancellation of licence, *(with or without an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions):*

New (unanimous)

- (da) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions: 25

- (e) an order for the payment of a penalty not exceeding \$10,000:
- (f) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution: 30
- (g) (a refund of) an order directing the licensed immigration adviser or former licensed immigration adviser to

refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:

- (h) *(the payment of)* an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person. 5

Struck out (unanimous)

- (2) If the Registrar proposes to impose a sanction, the Registrar must notify his or her proposed determination to the immigration adviser concerned, and afford the immigration adviser the opportunity within 10 working days to make submissions to the Registrar as to the proposed sanction. 10

- (3) *(The Registrar must, after considering any submissions made under **subsection (2)**, notify his or her decision to both parties to the complaint)* The Tribunal must notify its decision to the complainant (if any) and the person complained about in writing, giving reasons for the decision. 15

Struck out (unanimous)

- (4) **Subsection (1)** does not require the Registrar to afford either party to a complaint a further opportunity to be heard, except as provided in **subsection (2)**. 20

- (5) A person subject to a sanction under this section has the right to appeal, under **section 70**, the *(Registrar's)* Tribunal's decision to impose the sanction.
- (6) If an immigration adviser fails to *(comply)* demonstrate, to the satisfaction of the Registrar, compliance with a requirement imposed under **subsection (1)(b)**, the adviser's licence is deemed to be cancelled at the end of the specified period. 25

Struck out (unanimous)

- (7) If an immigration adviser fails to pay an amount referred to in paragraphs (e) to (h) of subsection (1), the unpaid amount may be recovered as a debt due to the Crown. 30

New (unanimous)

- (7) Any payment ordered by the Tribunal under **subsection (1)(e) or (f)** may be recovered as a debt due to the Crown.

43A Enforcement of disciplinary sanctions

The following orders for disciplinary sanctions made by the Tribunal under **section 43** may be enforced in all respects as if they were an order of the District Court on the filing of a sealed copy in that Court by—

- (a) the Crown, in the case of—
- (i) an order for payment of a penalty under **section 43(1)(e)**; or
 - (ii) an order for payment of costs and expenses of the investigation, inquiry, or hearing, or any related prosecution under **section 43(1)(f)**;
- (b) the person in whose favour the order is made, in the case of—
- (i) an order for a refund of all or any part of fees or expenses paid by the complainant or another person to the immigration adviser or former licensed immigration adviser under **section 43(1)(g)**; or
 - (ii) an order for the payment of reasonable compensation to the complainant or another person under **section 43(1)(h)**.

43B Suspension of licence pending outcome of complaint

- (1) The Tribunal may suspend a licence where—
- (a) a complaint has been made about the licensed immigration adviser; and
 - (b) the complaint has been referred to the Tribunal by the Registrar under **section 40(3) or 41(2)**; and
 - (c) the complaint is being prepared for submission to the Tribunal; and
 - (d) the Tribunal considers that it is necessary or desirable to suspend the licence having regard to the interests of the public.
- (2) The process for suspending a licence under this section is as follows:
- (a) the Tribunal must give the licensee written notice of its intention to suspend the licence: and

New (unanimous)

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|---------------------|
| <p>(b) the notice must—</p> <p>(i) contain or be accompanied by a statement of the Tribunal's reasons for the intended suspension; and</p> <p>(ii) state that the licensee has 10 working days within which to make written representations to the Tribunal as to why the licence should not be suspended; and</p> <p>(iii) state the proposed period or otherwise describe the proposed duration of the suspension; and</p> <p>(c) if any written representations are made by the licensee within the 10-working-day period referred to in paragraph (b)(ii), the Tribunal must take those representations into account in deciding whether or not to suspend the licence, or the period or duration of the suspension; and</p> <p>(d) the Tribunal must then decide whether or not to suspend the licence, and notify the licensee accordingly, as soon as practicable.</p> <p>(2) If the Tribunal decides to suspend the licence, the Tribunal must—</p> <p>(a) include in the notice under subsection (1)(d) the grounds for the decision, the date on which the suspension takes effect, and the period or duration of the suspension; and</p> <p>(b) specify in the notice the right of the licensee to appeal to the District Court under section 70.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> | |
| <p>43C Appeal to Tribunal against determination by Registrar to reject complaint</p> <p>(1) A complainant may appeal to the Tribunal against a determination of the Registrar to reject or not pursue a complaint under section 40(1)(b) or (c) within 20 working days after the date of the notice given under section 40(5).</p> <p>(2) The appeal is by way of written notice to the Tribunal of the complainant's intention to appeal, accompanied by—</p> <p>(a) a copy of the notice given to the complainant under section 40(5); and</p> <p>(b) such other information as the complainant wishes the Tribunal to consider in relation to the appeal.</p> | | <p>30</p> <p>35</p> |

New (unanimous)

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|-------------------------------------------------------------------------------------------------------------------------------------|----|
| (3) After considering the appeal, the Tribunal may— | |
| (a) reject the appeal; or | |
| (b) determine that the decision of the Registrar was incorrect, but nevertheless reject the complaint upon another ground; or | 5 |
| (c) determine that it should hear the complaint, and direct the Registrar to prepare the complaint for filing with the Tribunal; or | |
| (d) determine that the Registrar should make a request under section 40(1)(d) . | 10 |
| (4) A decision on an appeal under this section is final. | |

43D Appeal to Tribunal against determination by Registrar to cancel licence

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) A person may appeal to the Tribunal against a decision of the Registrar to cancel that person's licence within 20 working days after the date of the notice given under section 26(1)(d) . | 15 |
| (2) The appeal is by way of written notice to the Tribunal of the person's intention to appeal, accompanied by— | |
| (a) a copy of the notice given to the person under section 26(1)(d) ; and | 20 |
| (b) such other information as the person wishes the Tribunal to consider in relation to the appeal. | |
| (3) After considering the appeal, the Tribunal may— | |
| (a) reject the appeal; or | |
| (b) uphold the appeal, and give the Registrar any appropriate directions in relation to the licence. | 25 |
| (4) A person may appeal to the District Court under section 70 against a decision of the Tribunal to reject an appeal under subsection (3)(a) . | |

Inspection

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44 Purpose of inspection

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) The powers in section 45 may be used for the purpose of administering the licensing regime and obtaining information in relation to complaints in respect of persons who are or have formerly been licensed to provide immigration advice or who have applied to be licensed. | 35 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|

- (2) The powers in **section 46** may be used for the purposes of investigating offences under this Act.

45 Inspection powers for administration of licensing regime and obtaining information in relation to complaints

- (1) Any person authorised by the Registrar may, for the purpose set out in **section 44(1)**,— 5
- (a) at any reasonable time, enter any premises where the person has reasonable grounds for believing that—
- (i) any licensed immigration adviser or former licensed immigration adviser works or has worked in the last 2 years, *or where the person has reasonable grounds for believing that a licensed immigration adviser is working or has worked in the last 2 years*; or 10
- (ii) any person who has applied to be licensed as an immigration adviser works: 15
- (b) question any licensed immigration adviser *(or any)*, former licensed immigration adviser, or other person at any premises of the kind described in **paragraph (a)**: 20
- (c) require a licensed immigration adviser or former licensed immigration adviser or person who has applied to be licensed as an immigration adviser to produce for inspection relevant documents within that person's possession or control, and inspect and take copies of those documents. 25
- (2) Where any requirement is made of a person under **subsection (1)(c)**, the person must forthwith comply with that requirement.

46 Inspection powers for investigating offences

- If the Registrar has good cause to suspect that a person is committing or has committed an offence under this Act, a person authorised by the Registrar may, for the purpose set out in **section 44(2)**,— 30
- (a) enter any premises in which the person authorised by the Registrar has good cause to suspect that a person provides immigration advice or contracts or employs a person to provide immigration advice: 35
- (b) after informing the person of the suspicion,—

- (i) require a person to produce for inspection relevant documents within that person's possession or control:
 - (ii) inspect and take copies of documents referred to in **subparagraph (i)**: 5
 - (iii) retain documents referred to in **subparagraph (i)** for a period that is in all the circumstances reasonable, if there are grounds for believing that they are evidence of the commission of an offence:
 - (iv) question a person who the person authorised by the Registrar has good cause to suspect provides immigration advice or (who) contracts or employs a person to provide immigration advice. 10
- 47 Privilege against self-incrimination** 15
No person is, on examination or inquiry under **section 45 or (section) 46**, required to give to any question any answer tending to incriminate that person.
- 48 Entry of dwellinghouses** 20
No person may, under **section 45 or (section) 46**, enter or be in any dwellinghouse unless he or she either—
- (a) has the consent of an occupier of that dwellinghouse; or
 - (b) is authorised to do so by a warrant issued under **section 49**.
- 49 Entry warrant** 25
- (1) A Judge who, on written application made on oath, is satisfied that there is reasonable ground for believing that a dwellinghouse— 25
- (a) is a place in which—
 - (i) a licensed immigration adviser, a former licensed immigration adviser, or a person who has applied for a licence, works; or 30
 - (ii) a person provides immigration advice, or employs or contracts another person to provide immigration advice; or
 - (b) is the only practicable means through which a place of the type referred to in **paragraph (a)** may be entered,— 35
may issue a warrant authorising the person named in it to enter that dwellinghouse or any part of that dwellinghouse that is, or

is the only practicable means through which the person may enter, a place of a kind referred to in **paragraph (a)**.

New (unanimous)

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| (2) | A person applying for a warrant under subsection (1) must disclose in the application any previous application made in respect of the same matter. | 5 |
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50 Conditions of authorisation

- | | | |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) | The Registrar must not authorise a person to carry out an inspection unless satisfied that the person is suitably qualified or trained, or the person is a member of a class of persons who are suitably qualified or trained, to carry out an inspection. | 10 |
| (2) | A person authorised by the Registrar to carry out an inspection must, on entering any premises, and when requested at any subsequent time, produce— | |
| | (a) the authorisation referred to in subsection (3) ; and | |
| | (b) evidence of that person's identity. | 15 |
| (3) | An authorisation must be in writing and must contain— | |
| | (a) a reference to this section; and | |
| | (b) the full name of the authorised person; and | |
| | (c) a statement of the powers conferred on the authorised person by section 45 or section 46 ; and | 20 |
| | (d) the purpose for which those powers may be exercised. | |

Offences

51 Offence to provide immigration advice unless licensed or exempt

- | | | |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) | A person commits an offence if the person— | 25 |
| | (a) <i>{knowingly}</i> provides immigration advice without being licensed to do so under this Act or exempt from the requirement to be so licensed, <u>knowing that he or she is required to be licensed or exempt</u> ; or | |
| | (b) <i>{without reasonable excuse}</i> provides immigration advice without being licensed to do so under this Act or exempt from the requirement to be so licensed. | 30 |

New (unanimous)

- (1A) For the purposes of **subsection (1)(a)**, a person is deemed to know that he or she is required to be licensed or exempt if, at any time within the 12 months preceding the date of the alleged offence, that person had been informed of that fact in writing by the Registrar or a person appointed to the Authority. 5
- (1B) It is a defence to a charge under **subsection (1)(b)** that the person to whom the charge relates—
- (a) did not know that he or she was providing immigration advice and had exercised all reasonable care and due diligence to ensure he or she did not provide immigration advice; or 10
- (b) did not know that he or she was not licensed to provide immigration advice and had exercised all reasonable care and due diligence to ensure that he or she did have a licence. 15
- (2) A person convicted of an offence under **subsection (1)(a)** is liable to—
- (a) imprisonment for a term not exceeding 7 years or a fine not exceeding \$100,000, or both; and 20
- (b) any additional amount imposed by the Court under **section 59 or (section) 60**.
- (3) A person convicted of an offence under **subsection (1)(b)** is liable to—
- (a) a fine not exceeding \$100,000; and 25
- (b) any additional amount imposed by the Court under **section 59 or (section) 60**.
- 52 Offence of holding out as immigration adviser unless licensed or exempt**
- (1) A person commits an offence who (*knowingly*) holds out that any person (including the person himself or herself) (*provides immigration advice, when that person*) who is neither licensed under this Act to provide immigration advice, nor exempt from the requirement to be licensed to do so, provides immigration advice, knowing that the person is neither licensed nor exempt. 30
35

New (unanimous)

- (1A) For the purposes of **subsection (1)**, a person charged with an offence under this section is deemed to know that the person held out as providing immigration advice was neither licensed nor exempt if, at any time within the 12 months preceding the date of the alleged offence, the person charged had been informed of that fact in writing by the Registrar or a person appointed to the Authority. 5
- (1B) A person does not commit an offence under **subsection (1)** by holding out that the person provides immigration advice if the person is a body corporate or other entity that is in the business of providing immigration advice through persons who are licensed or exempt from the requirement to be licensed. 10
- (2) A person convicted of an offence under **subsection (1)** is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both. 15

53 Offence of holding out as licensed immigration adviser

- (1) A person commits an offence who holds out that any person (including the person himself or herself) who is not a licensed immigration adviser is a licensed immigration adviser, knowing that the person does not hold a licence. 20

New (unanimous)

- (1A) For the purposes of **subsection (1)**, a person charged with an offence under this section is deemed to know that the person held out as being a licensed immigration adviser was not licensed if, at any time within the 12 months preceding the date of the alleged offence, the person charged had been informed of that fact in writing by the Registrar or a person appointed to the Authority. 25
- (2) A person convicted of an offence under **subsection (1)** is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both. 30

- 54 Offence to provide false or misleading information**
- (1) A person commits an offence who, for the purposes of any application for a licence or for renewal of a licence under this Act,—
- (a) supplies to the Authority any false or misleading information, knowing it to be false or misleading; or
- (b) (*without reasonable excuse*) supplies to the Authority any false or misleading information. 5
- New (unanimous)**
- (1A) It is a defence to a charge under **subsection (1)(b)** that the person to whom the charge relates did not know that he or she was providing false or misleading information and had exercised all reasonable care and due diligence to ensure that the information provided was not false or misleading. 10
- (2) A person convicted of an offence under **subsection (1)(a)** is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both. 15
- (3) A person convicted of an offence under **subsection (1)(b)** is liable to a fine not exceeding \$10,000.
- 55 Offence of asking for or receiving fee or reward for immigration advice when neither licensed nor exempt** 20
- (1) A person commits an offence who—
- (a) (*knowingly*) asks for or receives a fee or reward for the provision of immigration advice by a person who is neither licensed under this Act to provide immigration advice nor exempt from the requirement to be licensed, knowing that the person is neither licensed nor exempt; 25
or
- (b) (*without reasonable excuse*) asks for or receives a fee or reward for the provision of immigration advice by a person who is neither licensed under this Act to provide immigration advice nor exempt from the requirement to be licensed. 30

New (unanimous)

- (1A) For the purposes of **subsection (1)(a)**, a person charged with an offence under **subsection (1)(a)** is deemed to know that the person providing immigration advice was neither licensed nor exempt if, at any time within the 12 months preceding the date of the alleged offence, the person charged had been informed of that fact in writing by the Registrar or a person appointed to the Authority. 5
- (1B) It is a defence to a charge under **subsection (1)(b)** that the person to whom the charge relates—
- (a) did not know that immigration advice was being provided and had exercised all reasonable care and due diligence to ensure that such advice was not provided; or 10
- (b) did not know that the person concerned was not licensed to provide immigration advice and had exercised all reasonable care and due diligence to ensure that the person did have a licence. 15
- (2) A person convicted of an offence under **section (1)(a)** is liable to—
- (a) imprisonment for a term not exceeding 7 years or a fine not exceeding \$100,000, or both; and 20
- (b) any additional amount imposed by the Court under **section 59 or (section) 60**.
- (3) A person convicted of an offence under **subsection (1)(b)** is liable to— 25
- (a) a fine not exceeding \$100,000; and
- (b) any additional amount imposed by the Court under **section 59 or (section) 60**.
- 56 Offence of employing or contracting unlicensed or non-exempt person as immigration adviser 30**
- (1) A person commits an offence who—
- (a) employs or contracts, or continues to employ or contract, as an immigration adviser any person who is neither licensed to be an immigration adviser nor exempt from the requirement to be licensed, knowing that the person is neither licensed nor exempt; or 35

- (b) (*without reasonable excuse*) employs or contracts, or continues to employ or contract, as an immigration adviser any person who is neither licensed to be an immigration adviser nor exempt from the requirement to be licensed.

5

New (unanimous)

- (1A) For the purposes of **subsection (1)(a)**, a person charged with an offence under **subsection (1)(a)** is deemed to know that the person employed or contracted as an immigration adviser was neither licensed nor exempt if, at any time within the 12 months preceding the date of the alleged offence, the person charged had been informed of that fact in writing by the Registrar or a person appointed to the Authority. 10
- (1B) It is a defence to a charge under **subsection (1)(b)** that the person to whom the charge relates—
- (a) did not know that immigration advice was being provided and had exercised all reasonable care and due diligence to ensure that such advice was not provided; or 15
- (b) did not know that the person concerned was not licensed to provide immigration advice and had exercised all reasonable care and due diligence to ensure that the person did have a licence. 20
- (2) A person convicted of an offence under **subsection (1)(a)** is liable to—
- (a) imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both; and 25
- (b) any additional amount imposed by the Court under **section 59 or (section) 60.**
- (3) A person convicted of an offence under **subsection (1)(b)** is liable to— 30
- (a) a fine not exceeding \$10,000; and
- (b) any additional amount imposed by the Court under **section 59 or (section) 60.**

57 Offence to obstruct inspection

- (1) A person commits an offence if the person, without reasonable excuse,— 35

- (a) resists, obstructs, deceives, or attempts to deceive any person who is exercising or attempting to exercise any power or function under **section 45 or (section) 46**; or
- (b) fails to comply in any respect with any requirement under **section 45 or (section) 46**; or 5
- (c) gives to any person who is exercising or attempting to exercise any power or function under **section 45 or (section) 46** any particulars that are false or misleading in any material respect, *knowing that those particulars are false or misleading or being reckless as to whether those particulars are so false or misleading*. 10
- (2) A person convicted of an offence under **subsection (1)** is liable to a fine not exceeding \$10,000.
- 58 Offence to fail to notify change in circumstances**
- (1) A person commits an offence who, without reasonable excuse, fails to notify the Authority of any change of circumstances as required by **section 23**. 15
- (2) A person convicted of an offence under **subsection (1)** is liable to a fine not exceeding \$10,000.
- 59 Reparation** 20
- In addition to any penalty imposed on a person convicted under any of **sections 51, 55, and 56**, the Court may require payment of reparation to a victim in accordance with section 12 and Part 2 of the Sentencing Act 2002.
- 60 Additional penalty for offence involving commercial gain** 25
- (1) In addition to any penalty imposed on a person convicted under any of **sections 51, 55, and 56**, the Court may, if satisfied that the offence occurred in the course of producing a commercial gain, order that person to pay an amount not exceeding the value of the commercial gain. 30
- (2) The value of any gain must be assessed by the Court.
- (3) The standard of proof for the purposes of this section is the standard of proof that applies in civil proceedings.

- 61 Offences also apply outside New Zealand**
A person may be charged with an offence under any of **sections 51 to 58** whether or not the offence or any part of it occurred within New Zealand.
- 62 Presumption as to non-exemption** 5
- (1) In proceedings for an offence under any of **sections 51(1)(a), 52(1), (and) 55(1)(a), and 56(1)(a)**, it is presumed, in the absence of evidence to the contrary, that the person alleged to be neither licensed nor exempt is not in fact exempt from the requirement to be licensed. 10
- (2) In proceedings for an offence under **section 51(1)(b) (or section), 55(1)(b), or 56(1)(b)**, it is presumed, in the absence of proof to the contrary to the standard of the balance of probabilities, that the person alleged to be neither licensed nor exempt from the requirement to be licensed is not in fact (*licensed or*) exempt. 15
- Struck out (unanimous)**
- (3) In proceedings for an offence under **section 57(1)(c)**, it is presumed, in the absence of proof to the contrary to the standard of the balance of probabilities, that the person alleged to have provided particulars being reckless as to whether the particulars are false or misleading was in fact so reckless. 20
- 63 Defence of reasonable excuse**
- For the purposes of **sections 51(1)(b), 54(1)(b) and 55(1)(b)**, it is not a reasonable excuse that the person did not know that they or the relevant person was not licensed or exempt from the requirement to be licensed. 25
- 64 Proceedings for offences generally**
- (1) Except as provided in **subsection (2)**, every offence against this Act is punishable on summary conviction.
- (2) An offence against any of **sections 51(1)(a), 52(1), 53(1), 55(1)(a), and 56(1)(a)** is punishable on conviction on indictment. 30
- (3) Despite section 14 of the Summary Proceedings Act 1957, an information for an offence against this Act punishable on

summary conviction may be laid at any time within 2 years after the earlier of—

- (a) the date when the incident, situation, or set of circumstances to which the offence relates first became known to an employee of the Department responsible for the enforcement of this Act; or 5
- (b) the date when the incident, situation, or set of circumstances to which the offence relates should reasonably have become known to such an employee.

Part 2 10

Miscellaneous provisions

Independence of persons carrying out functions under Act

65 Independence of persons carrying out functions under Act

No person who exercises any power of decision in relation to an immigration matter, or who has exercised any such power in the previous 2 years, may be employed or engaged to— 15

- (a) consider or decide applications for licences or for renewals of licences; or

Struck out (unanimous)

- (b) act as a complaints body; or 20
- (c) carry out inspections under this Act.

Register of licensed immigration advisers

66 Register of licensed immigration advisers

- (1) The Registrar must keep and maintain a register of licensed immigration advisers. 25
- (2) The purpose of the register is—
 - (a) to enable members of the public to know—
 - (i) how to contact a licensed immigration adviser; and
 - (ii) whether or not a person is licensed as an immigration adviser under this Act and, if so, the type of licence the person holds; and 30
 - (iii) whether or not a person's licence has been cancelled or suspended, or whether a person's application for a licence has been refused; and 35

- (b) to facilitate the ability of the Registrar or the Commerce Commission to enforce the provisions of this Act or of any consumer protection legislation; and
- (c) to facilitate the compliance, audit, and other supporting and administrative functions of the Registrar under this Act. 5
- (3) The register may be kept—
- (a) as an electronic register (for example, on the Authority's or the Department's website); or
- (b) in any other manner that the Registrar thinks fit. 10
- 67 Contents of register**
- (1) The register must contain all of the following information:
- (a) the full name and business address of every person licensed under this Act to give immigration advice:
- (b) the licence number or other unique identifier provided to a licensed immigration adviser on being granted a licence under **section 16**: 15
- (c) the address for service of each licensed immigration adviser:
- (d) the licensed immigration adviser's employer, if applicable: 20
- (e) the date of each registration of each licensed immigration adviser:
- (f) whether a person's licence is a full licence, a limited licence, or a provisional licence: 25
- (g) any terms or conditions attached to a person's licence:
- (h) if applicable, the date on which any cancellation, surrender, or suspension of a person's registration took effect:
- (i) a list of the categories of persons who are exempt under **section 11** or under regulations made under **section 11A** from the requirement to be licensed to give immigration advice: 30
- (j) any other particulars that may be prescribed.
- (2) The register must also list the name and details of any person— 35
- (a) whose licence has been cancelled or suspended at any time; or
- (b) whose application for a licence has been refused.

68 Alterations to register

The Registrar may at any time make any amendments to the register that are necessary to—

- (a) reflect any changes in the information referred to in **section 15**; or 5
- (b) correct a mistake caused by any error or omission on the part of the Registrar or any person to whom the Registrar has delegated his or her functions, duties, or powers; or
- (c) accurately reflect the status of immigration advisers as licensed or not, and, if licensed, the type of licence held. 10

69 Search of register

(1) A person may search the register for a purpose set out in **section 66(2)**.

- (2) The Registrar must— 15
 - (a) make the register available for public inspection, without fee, at reasonable hours at the head office of the Authority; and
 - (b) supply to any person, on request and on payment of a reasonable charge, a copy of the register or any extract from it. 20

*Appeals against decisions of (Authority) Registrar
and Tribunal*

70 Right of appeal

- (1) A person may appeal to a District Court against any of the following decisions: 25
 - (a) a decision of the Registrar to refuse to license the person as an immigration adviser:
 - (b) a decision of the Registrar to grant the person a limited or a provisional licence only, rather than a full licence: 30
 - (c) a decision of the *(Registrar) Tribunal* to cancel or suspend the person's licence:
 - (d) any other decision of the Tribunal imposing on the person a sanction of a kind referred to in **section (43) 43(1)(a) to (h)**: 35

New (unanimous)

- (e) a decision of the Tribunal to reject an appeal under **section 43D**.

- (2) An appeal under this section must be made by giving notice of appeal within—
- (a) 20 working days after the date on which notice of the decision was communicated to the *(applicant)* person concerned; or 5
- (b) any further time that a District Court may allow on application made before or after the expiration of that period. 10

71 District Court may make interim order

- (1) At any time before the final determination of an appeal, a District Court may make an interim order allowing the appellant to engage in providing immigration advice.
- (2) An interim order may be subject to any conditions that the District Court thinks fit. 15
- (3) If a District Court refuses to make an interim order, the person who applied for the order may, within 1 month after the date of the refusal, appeal to the High Court against the decision.

72 Duties of Registrar if interim order made 20

- (1) If an interim order is made allowing the appellant to engage in providing immigration advice,—
- (a) that person is to be treated for the purposes of this Act as if they were licensed; and
- (b) the Registrar must, as appropriate, enter, retain, or restore the person's name on the register. 25
- (2) To enable the Registrar to fulfil the duties imposed by this section, the Registrar of the Court in which the interim order is made must send a copy of the order to the Registrar as soon as practicable. 30

73 Determination of appeal

- (1) In determining an appeal, a District Court may confirm, vary, or reverse the decision of the Registrar or the Tribunal.

- (2) The District Court's decision in the determination of an appeal is final.
- (3) To avoid doubt, nothing in this section affects the right of any person—
- (a) to apply, in accordance with law, for judicial review; or
 - (b) to appeal to the High Court on a question of law under **section 74**.
- 74 Appeal to High Court on question of law**
- (1) If dissatisfied with a decision of the District Court as being erroneous in law, a party to an appeal under this Part may appeal to the High Court on a question of law only.
- (2) The appeal must be heard and determined in accordance with rules of court.
- (3) Part 4 of the Summary Proceedings Act 1957 (together with other provisions of that Act that are applied in that Part) applies to the appeal—
- (a) so far as is applicable and with all necessary modifications; but
 - (b) only so far as it relates to appeals on questions of law.
- (4) **Subsection (3)** overrides **subsection (2)**.

Miscellaneous matters

New (unanimous)

- 74A Annual report on performance of Tribunal's functions**
- (1) The chair of the Tribunal must, in each year, furnish to the Minister of Justice and the Minister a report on the performance of the Tribunal's functions under this Act in respect of the financial year ending in that year.
- (2) The report must include details of both the number of determinations and the nature of the determinations made by the Tribunal in the period to which the report relates.
- (3) The Minister of Justice must present a copy of the report to the House of Representatives as soon as practicable after it is furnished to that Minister.

- 75 Power of Registrar to delegate**
 The Registrar may, under section 41 of the State Sector Act 1988, delegate to any employee, in the same manner and to the same extent as if the Registrar were the chief executive, any of the Registrar's functions, duties, and powers, except this power of delegation. 5
- 76 Certificate of Registrar**
- (1) A certificate signed by the Registrar in relation to the matters referred to in **subsection (2)** is for all purposes sufficient evidence, in the absence of proof to the contrary, of those matters specified in the certificate. 10
- (2) The matters are—
- (a) that any person was or was not licensed at any particular time or during any period specified in the certificate; or
- (b) the type of licence that a person held at any specified time or during any specified period; or 15
- (c) that any entry in the register is as stated in the certificate.
- 77 Licensing fees**
- (1) The Governor-General may, by Order in Council, (*set*) make regulations setting fees, or (*prescribe*) prescribing a method for determining fees, for licence applications, the granting and renewal of licences, and other associated matters. 20
- (2) Fees, or the method for determining fees, may differ for different classes of applicant or licensee, and may take account of whether or not the person concerned charges or proposes to charge for the provision of immigration advice. 25

New (unanimous)

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| <p>(3) The regulations may provide for the waiver of or exemption from fees, in whole or in part.</p> |
|-------------------------------------------------------------------------------------------------------|

New

77A Immigration adviser's levy

- (1) For the purpose of funding the functions of the Authority under **section 32(1)** and the costs of operation and administration of the Tribunal (to the extent they are otherwise unfunded), the Governor-General may, by Order in Council, make regulations prescribing a levy, or a method or methods for determining levies, payable by licensed immigration advisers (or payable as a prerequisite for the granting or renewal of a licence.) 5
- (2) Levies, or the method or methods for determining levies, may differ for different classes of licence holder, and may take account of whether or not the person concerned charges or proposes to charge for the provision of immigration advice. 10
- (3) Regulations imposing levies may— 15
- (a) specify when and how any levy is to be paid:
 - (b) provide for the waiver of or exemption from levies, in whole or in part.

78 Waiver of further immigration fees in certain cases

The chief executive of the (*Department of Labour*) department of State that has, with the authority of the Prime Minister, assumed responsibility for the administration of the Immigration Act 1987 may, in whole or in part, waive any fee payable on a further immigration application or request by a person whose earlier application or request has not been accepted because it contravened **section 9**. 20 25

79 Disclosure of personal information overseas

- (1) The Registrar may disclose any personal information specified in **subsection (10)** to an overseas or international agency, body, or person whose functions include the regulation of immigration advisers. 30
- (2) The disclosure of personal information under **subsection (1)** must be— 35
- (a) in accordance with an agreement between the Registrar and the agency, body, or person concerned that complies with **subsections (3) and (4)**; or
 - (b) in accordance with **subsection (8)**.

- (3) The Registrar must not enter into an agreement under **subsection (2)(a)** unless satisfied that its purpose is to help the Authority carry out its functions under this Act, or to help the person, agency, or body carry out its functions relating to—
- (a) the registration or regulation of immigration advisers; 5
or
 - (b) the taking of any investigative, disciplinary, or enforcement action against immigration advisers.
- (4) An agreement under **subsection (2)(a)**—
- (a) must be in writing; and 10
 - (b) must state the purpose of the agreement; and
 - (c) must state the personal information that can be disclosed; and
 - (d) must state, in respect of personal information to be disclosed, the use the agency, body, or person may make of it and either— 15
 - (i) that the agency, body, or person must not disclose it to any other agency, body, or person; or
 - (ii) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which and conditions subject to which the agency, body, or person may do so; and 20
 - (e) may state— 25
 - (i) the form in which personal information may be disclosed:
 - (ii) the method by which personal information may be disclosed; and
 - (f) may be varied from time to time.
- (5) The Registrar— 30
- (a) must consult the Privacy Commissioner before entering into an agreement under this section, or varying such an agreement; and
 - (b) must provide the Privacy Commissioner with a copy of any agreement or variation promptly after it has been entered into; and 35
 - (c) if the Privacy Commissioner so requires, must undertake a review of the agreement under this section, and the arrangements for disclosure under it; and

- (d) as soon as practicable after conducting a review required to be undertaken under **paragraph (c)**, must report the result to the Privacy Commissioner.
- (6) The Privacy Commissioner must not require the Registrar to undertake a review of an agreement under **subsection (5)(c)** within 12 months of last doing so. 5
- (7) This section does not limit the general powers of the Registrar or the Authority to enter into agreements not related to the disclosure of personal information with any overseas agency, body, or person. 10
- (8) The Registrar may disclose personal information to an overseas agency, body, or person without a written agreement under **subsection (2)(a)** if—
- (a) the functions of the agency, body, or person include the regulation of immigration advisers; and 15
- (b) the personal information is disclosed subject to conditions stating the use the agency, body, or person may make of it and either—
- (i) that the agency, body, or person must not disclose it to any other agency, body or person; or 20
- (ii) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which and conditions subject to which the agency, body, or person may do so; and 25
- (c) the Registrar makes and keeps record of—
- (i) the personal information that was disclosed; and
- (ii) the agency, body, or person to which it was disclosed; and
- (iii) the conditions subject to which it was disclosed. 30
- (9) The Registrar must not disclose any personal information under **subsection (8)** unless satisfied that it relates to—
- (a) any application, request, or other action taken by the person to whom the personal information relates, to undertake functions or be formally recognised as an immigration adviser; or 35
- (b) any investigation, or any disciplinary or enforcement action that is proposed to be taken, or being taken, by the agency, body, or person in relation to the person to whom the personal information relates (where that investigation or that disciplinary or enforcement action 40

relates to the person's actions or alleged actions as an immigration adviser).

- (10) The personal information that may be disclosed under this section is—
- (a) whether a person is licensed, or has applied to be licensed, as an immigration adviser: 5
 - (b) if a person is licensed, whether the person has been granted a full licence, a limited licence, or a provisional licence, and the details of the licence:
 - (c) if a person is not licensed— 10
 - (i) whether the person is prohibited from being licensed and the reason for any such prohibition:
 - (ii) whether the person is restricted from being licensed and the reasons for such restriction:
 - (iii) information about matters otherwise relevant to the person's fitness for licensing in New Zealand: 15
 - (d) whether the person has been, or is currently, subject to an inspection by the Registrar (*or a complaints body*):
 - (e) if the person has been, or is currently, subject to an inspection by the Registrar (*or complaints body*),— 20
 - (i) the reason for the inspection; and
 - (ii) the results of the inspection, if completed:
 - (f) the details of any disciplinary proceedings taken or being taken against the person, and any disciplinary sanctions imposed on the person: 25
 - (g) the details of any convictions against the person (whether under this Act or any other enactment).
- (11) In this section,—
- immigration adviser** means a person who provides, or purports to provide (whether lawfully or unlawfully), immigration advice, whether or not that advice concerns an immigration matter under New Zealand law and whether or not relating to New Zealand 30
- personal information** means information about an identifiable person. 35

80 Service of notices

- (1) Any notice or any other document required to be served on, or given to, any person under this Act, or any regulation made under this Act, is sufficiently served if,—

- (a) in the case of an applicant for a licence or a licensed immigration adviser, the notice or document is—
- (i) delivered to the person at the person's address for service stated in accordance with **section 15(c)(ii)**; or 5
 - (ii) sent by fax or email to the person's fax number or email address, as the case may be, provided for the purpose by the applicant or licensed immigration adviser; or
 - (iii) posted in a letter addressed to the person at the person's address for service stated in accordance with **section 15(c)(ii)**; or 10
- (b) in any other case, the notice or document is—
- (i) delivered to the person; or
 - (ii) left at the person's usual or last known place of residence or business in New Zealand; or 15
 - (iii) posted in a letter addressed to the person at the person's place of residence or business in New Zealand.
- (2) A notice or document that is sent to a person at a fax number or an email address must be treated as received by that person not later than 2 days after the date on which it is sent. 20
- (3) A notice or document that is posted to a person must be treated as received by that person not later than 7 days after the date on which it is posted. 25
- (4) However, a notice or document must not be treated as received if the person to whom it is posted or sent proves that it was not received, otherwise than through fault on the person's part.
- 81 Regulations** 30
- The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing the matters to be included in the register of licensed immigration advisers: 35
 - (b) prescribing information or material that must be included in licence applications:

New (unanimous)

- (ba) providing for exemptions from the requirement to be licensed, or the removal or amendment of exemptions, under **section 11A or 11C**:
- (c) providing for matters in respect of the renewal of licences (including the non-application of any of the provisions of **sections 15 to 19**): 5
- (d) prescribing what constitutes a relevant change of circumstances for the purposes of **section 23**:
- (e) prescribing fees, or a method or methods for determining fees, in respect of licence applications, the granting and renewal of licences, and other associated matters: 10

New

- (eaa) prescribing levies, or a method or methods for determining levies, payable by licensed immigration advisers (or payable as a prerequisite for the granting or renewal of a licence): 15

New (unanimous)

- (ea) prescribing matters in respect of the proceedings of the Tribunal:
- (f) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration. 20

*Amendments to other Acts***82 Immigration Act 1987 amended**

Section 142(1)(j) of the Immigration Act 1987 is repealed.

83 Privacy Act 1993 amended

Part 1 of Schedule 2 of the Privacy Act 1993 is amended by inserting the following item in its appropriate alphabetical order: 25

Immigration Advisers Licensing
Act 2005

section 66.

84 Summary Proceedings Act 1957 amended

Part 2 of Schedule 1 of the Summary Proceedings Act 1957 is amended by inserting the following item in its appropriate alphabetical order:

<i>(The) Immigration Advisers Licensing Act 2005</i>	51(1)(a)	Provision of immigration advice unless licensed or exempt	5
	52(1)	Holding out as immigration adviser unless licensed or exempt	
	53(1)	Holding out as <u>licensed</u> immigration adviser	10
	55(1)(a)	Asking for or receiving fee or reward for immigration advice when neither licensed nor exempt	
	56(1)(a)	Employing or contracting unlicensed or non-exempt person as immigration adviser.	15

New (unanimous)

Schedule

s 360

Provisions applying in relation to Tribunal

- 1 Oath of office** 5
- Each member of the Tribunal must, before entering on the performance of his or her functions as a member of the Tribunal, swear or affirm before a Judge of the High Court that he or she will faithfully and impartially perform his or her duties as a member of the Tribunal.
- 2 Term of office** 10
- (1) Every member of the Tribunal is to be appointed for a term not exceeding 3 years.
- (2) A member of the Tribunal is eligible for reappointment from time to time.
- (3) Where the term of office of a member of the Tribunal has expired, that member, unless he or she sooner dies or vacates office under **clause 3**, continues to hold office, by virtue of the appointment for the term that has expired, until— 15
- (a) that member is reappointed; or
- (b) a successor to that member is appointed; or
- (c) that member is informed in writing by the Minister of Justice, acting in consultation with the Minister, that he or she is not to be reappointed and is not to hold office until a successor is appointed. 20
- 3 Vacation of office** 25
- (1) A member of the Tribunal may at any time be removed from office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.
- (2) A member of the Tribunal is deemed to have vacated his or her office if he or she is, under the Insolvency Act 1967, adjudged bankrupt. 30
- (3) A member of the Tribunal may at any time resign his or her office by giving notice in writing to that effect to the Minister.

New (unanimous)

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| 4 | Remuneration
The chair and other members of the Tribunal are to be paid, out of public money, remuneration by way of fees, salary, or allowances and travelling allowances in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly as if the chair or any other member were a member of a statutory board within the meaning of that Act. | 5 |
| 5 | Members of Tribunal
No person holding office as a member of the Tribunal is deemed by reason of his or her holding of that office to be employed in the Government service for the purposes of the Government Superannuation Fund Act 1956 or in the State services for the purposes of the State Sector Act 1988. | 10 |
| 6 | Witness summons | 15 |
| (1) | For the purposes of any matter before the Tribunal, the Tribunal may, of its own volition, issue a summons to any person requiring that person to attend before the Authority and give evidence. | |
| (2) | The summons must be in the prescribed form, and may require the person to produce before the Tribunal any books, papers, documents, records, or things in that person's possession or under that person's control in any way relating to the matter. | 20 |
| (3) | The power to issue a summons under this clause may be exercised by the Tribunal or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal. | 25 |
| 7 | Witnesses' expenses | |
| (1) | Every person attending the Tribunal on a summons, and every other person giving evidence before the Tribunal, is entitled, subject to subclause (2) , to be paid, by the party calling that person, witnesses' fees, allowances, and travelling expenses | 30 |

New (unanimous)

according to the scales for the time being prescribed by regulations made under the Summary Proceedings Act 1957, and those regulations apply accordingly.

- (2) The Tribunal may disallow the whole or any part of any sum payable under **subclause (1)**. 5
- 8 Power to take evidence on oath**
- (1) The Tribunal may take evidence on oath and, for that purpose, the Tribunal or any other person acting under the express or implied direction of the Tribunal may administer the oath.
- (2) On any indictment for perjury it is sufficient to prove that the oath was administered in accordance with **subclause (1)**. 10
- 9 Protection and privileges of witnesses**
- Every person has the same privileges in relation to—
- (a) the giving of information to the Tribunal; and
- (b) the giving of evidence to, or the answering of questions put by, the Tribunal; and 15
- (c) the production of papers, documents, records, or things to the Tribunal,—
- as witnesses have in a court of law.
- 10 Tribunal and members, etc, not personally liable** 20
- Neither the Tribunal, nor any member, officer, or agent of the Tribunal, is under any criminal or civil liability in respect of—
- (a) any act done or omitted to be done in the course of performing or exercising any of their functions, duties, or powers under this Act or any rules made under this Act; or 25
- (b) any words spoken or written at, for the purposes of, the hearing or any inquiry or other proceedings under this Act or any rules made under this Act; or
- (c) anything contained in any notice given under this Act or any rules made under this Act,— 30
- unless the Tribunal or person has acted in bad faith.

New (unanimous)**11 Tribunal to have seal**

The Tribunal must have a seal, which must be judicially noticed in all courts and for all purposes.

Legislative history

14 June 2005	Introduction (Bill 270-1)
13 December 2005	First reading and referral to Transport and Industrial Relations Committee
5 September 2006	Reported from Transport and Industrial Relations Committee (Bill 270-2)
27 March 2007	Second reading
3, 4 April 2007	Committee of the whole House (Bill 270-3)

