



Immigration
Advisers Authority

New Zealand G

Licensed professionals = Protected migrants.

**Policies and Procedures for Licensed Immigration
Advisers Manual
Part B: Enforcement Policy**

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Purpose

This part sets out the Registrar of Immigration Advisers' (the Registrar's) policy on addressing non-compliance with the Immigration Advisers Licensing Act 2007 (the Act), including the principles which will be used by the Immigration Advisers Authority (the Authority) when making judgments and choices about enforcement.

The Immigration Advisers Authority updated this part on 28 February 2012.

Enforcement policy and principles

Purpose

As per section 3 of the Act, the Authority aims to maximize compliance with the Act in an effective and resource efficient way in order to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migrant destination.

To maximize compliance with the Act, the Authority aims to target specific problems and use the most effective enforcement tools required to achieve ongoing compliance.

Compliance is most effective when it is voluntary. For this to happen, the Authority aims to help people understand why the law is important, what they need to do to comply and how and when enforcement action may occur.

Enforcement principles

When considering an enforcement response, the Authority must decide which enforcement option to use, where the focus of enforcement will be, and the intensity of the enforcement response. In making judgments and choices about enforcement responses, the Authority uses the degree of harm and principles set out below.

Degree of harm

When considering the degree of harm, the Authority will take into account the following criteria:

- the number of complainants/ victims;
- the financial gain or reward to the offender;
- the intention to commit an offence;
- any previous warnings;
- the size of the operation;
- the immigration consequences for the consumer; and
- whether the person is a licensed immigration adviser.

Consistency

The Authority will respond consistently when dealing with similar cases but its approach will also reflect the specific circumstances of each case. Consistency does not mean uniformity. Consistency means taking a similar approach in similar circumstances, at a similar point in time to achieve similar ends.

Proportionality

The enforcement responses by the Authority will be proportionate to the breach of the law. This means the enforcement response will reflect factors such as the severity, scale, repetitive nature or economic cost of the breach, and whether the risk of or actual harm to migrants and New Zealand's reputation is significant.

Public accountability

The interest of the public and media in certain cases may heighten the expectation of accountability. Public opinion may inform the enforcement approach taken, but will not drive it. Where a breach causes significant risk of or actual harm to consumers of immigration advice or to New Zealand's migration reputation, the Authority is likely to consider prosecution.

Fairness

The Authority aims to be fair and impartial and to act with the highest integrity in our enforcement responses. The Authority aims to ensure that its decision-making is reasonable (given the circumstances of a particular case), unbiased, and conforms to the principles of natural justice.

Prioritisation

The Authority may focus its resources on particular activities or sectors. This may be due to the specific nature of a problem; or where the Authority considers that it can change non-compliant behaviour using cost effective enforcement tools.

Openness and accountability

The Authority will assist people to understand our approach to enforcement and provide opportunities for them to understand how to comply. The Authority aims to make its expectations clear in our enforcement responses.

Innovation

The Authority will look to use new and innovative tools or methods to achieve compliance with the Act.

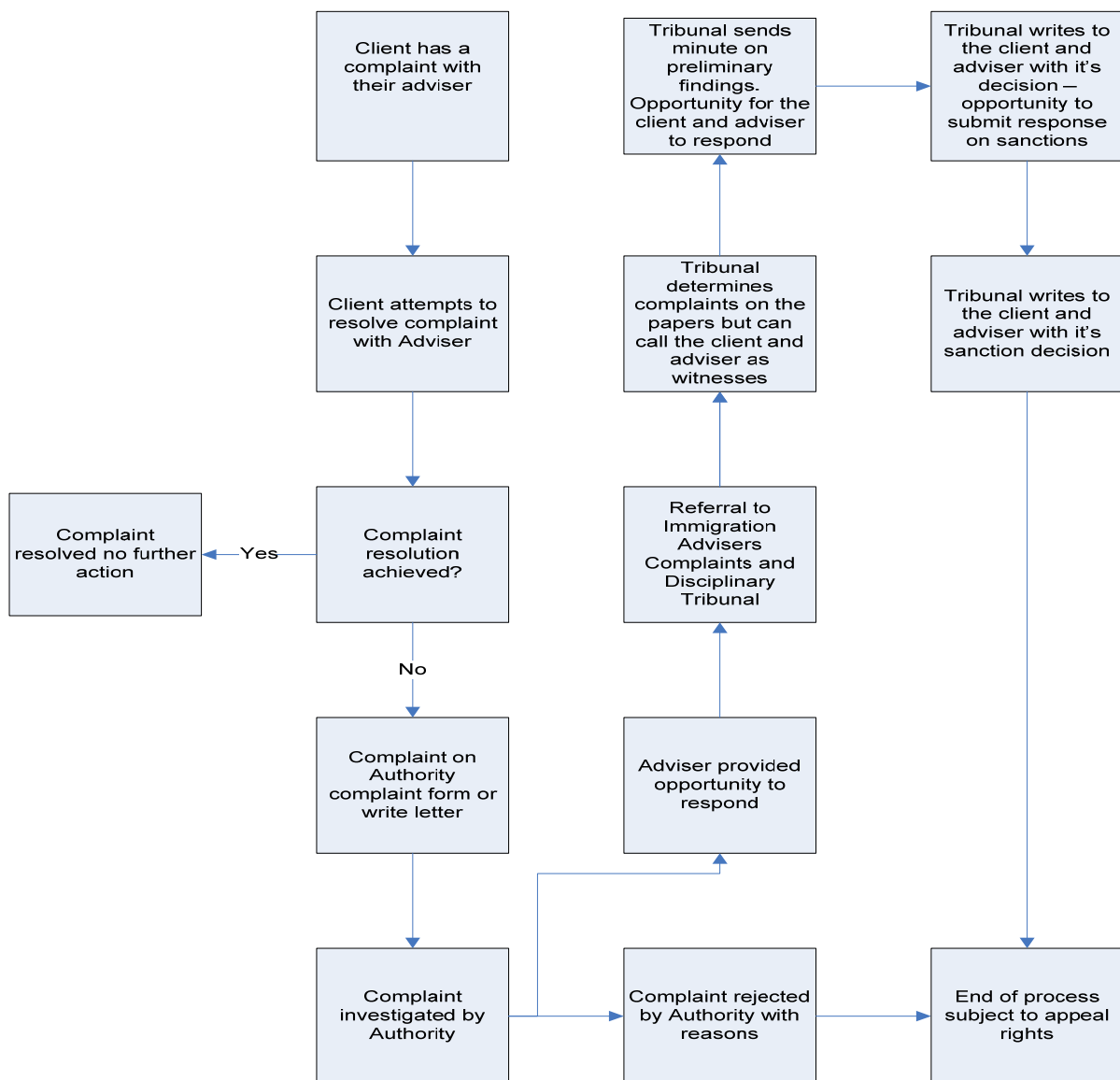
Complaints and offences

Complaints

Any person may make a complaint to the Authority concerning the provision of immigration advice by a licensed immigration adviser (adviser). The Authority investigates all complaints and can send complaints to the Immigration Advisers Complaints and Disciplinary Tribunal (the Tribunal) for determination.

The Tribunal has a number of different sanctions, which it may impose on a licensed adviser if it upholds a complaint, section 51 of the Act outline these. Sanctions include caution, training, suspension of licence, cancellation of licence, an order preventing an adviser reapplying for up to two years, fine, payment of costs, and payment of refund or compensation to client.

The table below sets out the complaints process.



Offences

The Authority may prosecute individuals who may be in breach of the Act.

The Authority will work with and negotiate with those who are genuinely willing to comply yet may have been unaware of their obligations.

The Authority may use stronger enforcement action with those who are knowingly in breach of the Act. Where appropriate, the Authority may publicise its enforcement actions to act as a deterrent to others in similar situations.

The Authority seeks to concentrate its efforts on real problems that are causing real harm to change non-compliant behaviour. The Authority will be flexible and dynamic in its use of enforcement tools and will consider any lawful means possible to achieve the desired public outcome.

Enforcement tools

Purpose

The Authority assesses and reviews each compliance issue and decides what enforcement tools to use. The decision takes into account the degree of harm associated with the non-compliance and principles outlined above. The enforcement tools available are set out below.

Website and publications

The Authority uses its website, www.iaa.govt.nz, and publications to make advisers aware of their obligations so that they understand better how to comply. Some publications are for migrants, so they understand the need to seek immigration advice only from those lawfully able to give it, and to raise awareness of what to expect from an adviser.

Workshops

Where the Authority is aware of specific non-compliance issues, it may hold targeted workshops to encourage compliance and clarify expectations. For example, the Authority has run workshops to encourage unlicensed employees to apply for provisional licences and to help advisers better understand the code of conduct.

Licence renewal process

The Authority may refuse to renew an adviser's licence if the adviser does not meet the required competency standards. The Authority uses the renewals assessment process used to target specific problems, which are emerging or where there is a known compliance issue.

Registrar own-motion complaint

Where the Registrar believes there are grounds for complaint against a licensed adviser he may refer an own motion complaint to the Tribunal as per Section 46 of the Act. The Authority will investigate an own-motion complaint and the Tribunal will hear it in the same way as all other complaints.

Phone/email

The Authority will directly contact individuals in breach of the Act to give them an opportunity to explain their situation and to gain an understanding of how to comply with the Act before deciding whether to take stronger enforcement action.

Warning or information letter

The Authority uses warning or information letters to inform, change behaviour and/or deter individuals from repeat or new non-compliant behaviour.

Inspection

Where there is reason to suspect non-compliance, any person authorized by the Registrar may enter premises and obtain information. See sections 56-62 of the Act for more detail.

Prosecution

Anyone who has committed an offence under the Act may be liable for prosecution. The Authority will initiate prosecutions against those who seriously breach the Act with a high degree of harm. Taking prosecutions may deter others from similar non-compliant behaviour.