

# IMMIGRATION ADVISER LICENSING –

## a guideline for the education sector

### Giving international students interested in studying in New Zealand good information and advice benefits everyone.

If you are dealing with international students, you probably give them information and advice on a variety of different things. For example, on –

- *Education*: including choices of institution to study at.
- *Employment*: including the job market in New Zealand.
- *Immigration*: including about visa and permit types.

### What's changing?

The Immigration Advisers Licensing Act 2007 (IALA) seeks to protect migrants and enhance New Zealand's reputation as a destination by ensuring that New Zealand immigration advice is given by licensed professionals. It responds to concerns that some migrants were being significantly disadvantaged through receiving bad immigration advice. It also acknowledges that there are over 100 immigration policies. Developing and maintaining knowledge of immigration policies in order to give good immigration advice requires ongoing professional development.

From 4 May 2009, anyone giving immigration advice in New Zealand ("onshore") will have to have a licence (unless they are exempt). From 4 May 2009, Immigration New Zealand (INZ) will not be accepting applications from unlicensed onshore immigration advisers. The same regime will be in effect offshore, after 4 May 2010. People can of course continue to make applications direct to INZ in future without seeking immigration advice.

The Immigration Advisers Authority, located in the Department of Labour, is the body responsible for managing immigration adviser licensing.

### How will immigration adviser licensing affect the education sector?

Generally, most people who provide information and advice to students who are foreign nationals **will not** require a licence. This is because the definition of immigration advice does not include *education information and advice, employment information and advice, or immigration information*. Immigration advice also does not include carrying out clerical work or doing translations. Each of these terms is described below, together with a relevant example.

A person may give information or advice to a foreign national, or information that might lead to a particular immigration outcome, without giving immigration advice.

There is also a specific exemption from licensing in the IALA for people located offshore who provide immigration advice about student visas or permits only.

### What is education information and advice?

Education information and advice could include:

- what courses of study are available in New Zealand;
- the courses that contribute to points for immigration purposes;
- courses that will result in qualifications in a skills shortage area.

This information is not immigration advice as it is about courses of study and is based on publicly available immigration information.

#### *Example question*

- Q. What courses get me to 100 points for immigration purposes?
- A. Needing 100 points to apply for residency in New Zealand under the Skilled Migrant Category is publicly available information. Telling a person

about the courses offered that contribute points is giving education information and advice, not immigration advice, even though it may have an immigration outcome.

## What is employment information and advice?

Employment information and advice could include:

- what the job market is like in New Zealand;
- skills shortages;
- the best way to successfully apply for and secure a job in New Zealand.

This information is not immigration advice as it is about the job market. Also, publicly available information on skills shortages is available on the INZ website.

### *Example question*

Q. What courses will help me get employment in a skills shortage area?

- A. All the skills shortage lists are on the INZ website. However, this isn't a question about immigration. It's a question about what courses may develop a person's skills in an area of skills shortage. It is not immigration advice, even though it might lead to an immigration outcome.

## What is immigration information?

Immigration information includes all publicly available information about the requirements to travel to, enter and stay in New Zealand. All immigration policies are publicly available on the INZ website. Providing information on these policies, even in paraphrased form, is not immigration advice.

### *Example question*

Q. Can you advise me which permit will help me to get residency in New Zealand?

- A. Information about gaining residency is available from the INZ website. Directing a person to this information or relaying the publicly available information, even in paraphrased form, is not giving immigration advice.

If the person asks you for tailored guidance or direction on which residence policy may be best for them, based on your knowledge and experience, they are asking for immigration advice. From 4 May 2009 (onshore), you should:

- be licensed if you want to tailor immigration information into advice; OR
- refer the person to INZ; OR
- refer the person to a licensed immigration adviser (a register of these is on the Immigration Advisers Authority website [www.iaa.govt.nz/Register.htm](http://www.iaa.govt.nz/Register.htm));

OR

- refer the person to someone entitled to give immigration advice (a list of these can be found at [www.iaa.govt.nz/faqs.html#arethere](http://www.iaa.govt.nz/faqs.html#arethere)).

## What is clerical work?

Q. Can you help me to prepare my application by filing in the form for me?

- A. Helping a person to complete a form by recording details they have supplied is clerical work, as is gathering together information that you may have to accompany the form. This is not immigration advice.

Clerical work can involve any or all of the following:

- recording, organising, storing, or retrieving information;
- computing or data entry into an electronic form;
- recording information on behalf of and under the direction of another person.

Translating questions that may be on a form, even if paraphrasing them, is also not giving immigration advice.

If the person asks what information they should put in the form in order for the application to be successful, based on your knowledge and experience, they are asking for immigration advice. From 4 May 2009 (onshore), you should:

- be licensed if you want to tailor immigration information into advice; OR
- refer the person to INZ; OR
- refer the person to a licensed immigration adviser; OR
- refer the person to someone entitled to give immigration advice.

## What is immigration advice?

Giving immigration advice is more than providing information. It means giving guidance or direction that is tailored specifically for another person's circumstances, using your knowledge and/or experience of immigration. It involves providing a range of options and evaluating those options based on the person's circumstances. It could include giving the person direction on the best way to fill in forms and answering questions to achieve an immigration outcome.

There may be some education providers and education agents who are giving immigration advice. If this is you, think carefully about whether you should be providing this advice, or if you should only be providing immigration information. Remember that providing information on publicly available immigration policies, even in paraphrased form, is not immigration advice. Otherwise, the options are:

- apply for an immigration adviser licence; OR
- refer the person to INZ; OR
- refer the person to a licensed immigration adviser; OR
- refer the person to someone entitled to give immigration advice.

The type of assistance you are giving determines whether you need to be licensed, rather than your location.

For example, you can give immigration *information* to a student offshore via email from your Christchurch office without needing a licence, but if you give immigration *advice* in this situation, you will need a licence after 4 May 2009.

A person who is providing immigration advice, who is not ordinarily resident in New Zealand (i.e. “offshore”), needs to be licensed by 4 May 2010.

Remember, there is a specific exemption from licensing in the IALA for people located offshore who provide immigration advice about student visas or permits only. If they also provide immigration advice (e.g. about residency), they will need to be licensed after 4 May 2010.

## Offences under the new legislation

The most serious offence in the IALA is for a person to give immigration advice without being licensed or exempt, knowing that they are required to be licensed. If convicted of such an offence, a person is liable for **up to seven years in jail and/or a fine of up to \$100,000.**

The IALA also makes it an offence for a person to provide immigration advice without being licensed or exempt. If convicted, a person is liable for a fine of up to \$100,000. However, the IALA provides that it is a **defence** to this offence if the person *did not know they were providing immigration advice* and had *exercised all reasonable care and due diligence* to ensure that he or she did not provide advice.

## What this means for the education sector

If a person gives immigration advice unknowingly or because they are still confused about whether they need to be licensed, it is unlikely that there will be grounds for prosecution. Similarly, if a person takes all reasonable steps to ensure they are not giving immigration advice and they accidentally ‘step over the line’ and give immigration advice, there is unlikely to be a prosecution.

The IALA was not designed to confuse or penalise people who work with foreign nationals, such as those in the education sector, who are trying to do their best for students. Generally, if there is no ‘malicious intent’

behind a person giving accidental immigration advice and they do not gain from giving the advice, this can be taken into account in a prosecution decision.

The Immigration Advisers Authority recognises the importance of providing information about licensing and support for those people seeking to understand the difference between “immigration information” and “immigration advice”. The Authority will be seeking opportunities to work with people to educate them and to help them stop crossing into the ‘grey area’ where information can start to become advice.

## Complaints about a licensed immigration adviser

People can complain to the Registrar of the Authority about a licensed immigration adviser, though the adviser’s internal complaint process should be pursued before initiating a complaint to the Registrar.

The grounds for complaint may be over negligence, incompetence, incapacity, dishonest or misleading behaviour, and/or breach of the immigration advisers’ Code of Conduct. If a complaint meets certain criteria, the Authority will refer it to the Immigration Advisers Complaints and Disciplinary Tribunal. More detail on the complaints process is available in the booklet *Do you need to make a complaint about your Licensed Immigration Adviser?* This can be downloaded from the Authority’s website [www.iaa.govt.nz/docs/complaint-about-adviser.pdf](http://www.iaa.govt.nz/docs/complaint-about-adviser.pdf)

**To apply for a licence or for further information, contact the Immigration Advisers Authority, freephone 0508 422 422 or email [info@iaa.govt.nz](mailto:info@iaa.govt.nz) or visit our website [www.iaa.govt.nz](http://www.iaa.govt.nz)**