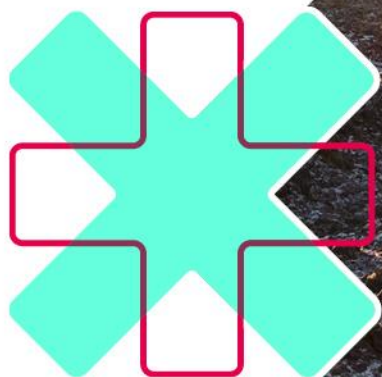
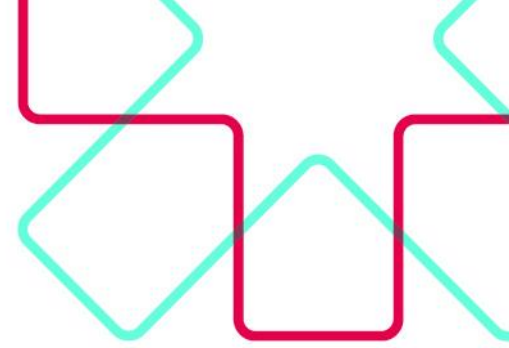


REVIEW OF THE REGULATION OF IMMIGRATION ADVICE

Final Report

July 2014





CONTENTS

Executive summary	8
About the review	15
Terms of Reference	15
Our Approach	16
Structure of this report	18
Part 1: Context for regulation	19
Immigration is important to New Zealand	19
Immigration advice is important to migrants	21
There are public policy reasons for regulating immigration advice	23
Conclusions	25
Part 2: Current approach to regulation	26
The Immigration Advisers Licensing Act 2007 (IALA)	26
The original case for regulation	26
Institutional settings	28
The Immigration Advisers Authority	30
The Immigration Advisers Complaints and Disciplinary Tribunal	31
Immigration New Zealand	32
Costs of regulation	32
Part 3: Changing context for regulation	33
Demand for advice	33
Government initiatives that may impact demand for advice	34
Supply of advice	37
Entry into the profession	37
Structure of the profession	38
Part 4: Issues with the current approach	40
Summary	40
Awareness	43
Competence and ethics	43
Entry into the profession	43
Ongoing knowledge development	45



Ongoing adviser conduct	45
Compliance	49
Unlicensed advice	49
Advice provided offshore	49
Complaints	50
Factors limiting effectiveness	51
Licensing exemptions	51
Delivery	55
Part 5: Proposals for change	58
Proposed objectives for the system	58
Alternatives to the status quo	59
How much regulation is required?	59
Conclusions	61
Proposals to modify the existing system	62
Defining advice	64
Awareness	66
Competence and ethics	66
Compliance	69
Delivery	72
Overview of responses	81
Respondent demographics	81
Has the regime achieved desired outcomes?	82
Advisers' views on the existing regime	83
Areas that are most important to advisers	84
Survey questionnaire	86



APPENDICES

Appendix 1 : Terms of Reference	74
Appendix 2 : MBIE occupational regulation framework	77
Appendix 3 : Overview of comparable overseas approaches to immigration advice	79
Appendix 4 : Online survey	81

TABLES

Table 1: Summary of recommendations	13
Table 2: Course graduates and their transition to licensed advisers	38
Table 3: Outcomes of complaints system	51
Table 4: Rationale for exemptions	52
Table 5: Summary of recommendations	62

FIGURES

Figure 1: Pathway to a Resident visa	20
Figure 2: Use of advisers: licensed/exempt and onshore/offshore	22
Figure 3: Spectrum of immigration advice	22
Figure 4: Summary of licensed immigration adviser activities and their impact	25
Figure 5: Institutional settings	29
Figure 6: Proportion of visa applications made by advisers and exempt advisers	33
Figure 7: Proportion of advised application by main visa categories in 2012/13	34
Figure 8: Impact of changes on immigration advice	36
Figure 9: Number of licensed advisers by licence type at 30 June 2009-2014	38
Figure 10: Harm diagram	42
Figure 11: Breakdown of advisers by role as at February 2014	47



Figure 12: All respondents	81
Figure 13: Breakdown of adviser categories	82
Figure 14: Protecting the interests of consumers	82
Figure 15: Enhancing the reputation of New Zealand as a migrant destination	83
Figure 16: Adviser views on how the existing regime is operating	84
Figure 17: Adviser views on the most important issues for the regulatory regime	85



PREFACE

This report has been prepared for the Ministry of Business, Innovation and Employment by Michael Mills and Hayden Johnston from MartinJenkins (Martin, Jenkins & Associates Limited).

MartinJenkins advises clients in the public, private and not-for-profit sectors, providing services in these areas:

- public policy
- evaluation and research
- strategy and investment
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- organisational improvement
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- economic development
- financial and economic analysis.

Our aim is to provide an integrated and comprehensive response to client needs – connecting our skill sets and applying fresh thinking to lift performance.

MartinJenkins is a privately owned New Zealand limited liability company. We have offices in Wellington and Auckland. The company was established in 1993 and is governed by a Board made up of executive directors Doug Martin, Kevin Jenkins, Michael Mills, Nick Davis and Nick Hill, plus independent directors Peter Taylor (Chair) and Sir John Wells.

We would like to thank all those who contributed to this review via interviews, focus groups, and the online survey.



EXECUTIVE SUMMARY

The Immigration Advisers Licensing Act 2007 (IALA) makes it an offence for a person to provide immigration advice unless either licensed or specifically exempted from the licensing requirement. In April 2014 the Ministry of Business Innovation and Employment (MBIE) engaged MartinJenkins to review the licensing system, and to advise it on:

- 1 the extent to which the regulatory regime has been effective
- 2 whether and how the context for regulation has changed
- 3 what alternative regulatory approaches there are to the current approach
- 4 if the existing regime is retained, what changes could be made to improve it.

Regulatory Context

Immigration is important to New Zealand. Migrants fill skill and labour shortages and supplement 'home grown' talent, they provide capital for investment, and are consumers of export education, tourism and other services important to New Zealand.

In attracting migrants, New Zealand competes with other destination countries such as the USA, Australia, Canada and the United Kingdom. Our ability to attract migrants depends, in part, on the relative efficiency and user-friendliness of our immigration processes and on how potential migrants perceive New Zealand as a country to visit, live, work and do business in.

Licensed immigration advisers support migrants in making migration decisions, and in their interactions with Immigration New Zealand (INZ). While migrants can choose to deal directly with INZ a significant proportion choose to engage advisers as intermediaries for a variety of reasons including that:

- English may not be their main language
- they may be unclear whether they meet relevant visa criteria and may want expert advice and assistance to present their case
- they may lack confidence in dealing with a foreign government institution, may be untrusting of government institutions, or may come from a country where government interaction with citizens is quite different
- they may be applying for a visa in a situation where they consider it unfavourable for the government to be aware of their position (i.e. they are in New Zealand illegally)
- they may be disputing a decision of INZ
- they may believe that their immigration adviser is able to favourably influence the immigration decision making process
- they may be busy and be prepared to pay someone else to prepare and lodge their application.



Immigration advice (whether provided by licensed, exempt or unlicensed individuals) matters from a public policy perspective because of:

- the vulnerability of some persons that may be relying on immigration advice
- the trust that some persons place in their immigration advisers (who may deal directly with INZ on their behalf)
- the irreversible impact that unscrupulous and / or incompetent advice can cause for persons relying on that advice, and
- the effect that unscrupulous and incompetent advice can have on New Zealand's international reputation, both as a migration destination and more generally on its corruption free and ease of doing business status

The Immigration Advisers Licensing Act 2007 (IALA)

The adviser licensing system provides migrants with a means of differentiating between advisers that operate according to competency and ethical standards and with a reliable complaints and dispute system, from others. It does this by:

- reducing information asymmetries by providing a register of licensed advisers, and information about how the immigration system works, and the requirements placed on advisers
- setting initial and ongoing entry and practise standards for advisers
- ensuring professional standards are upheld through the delivery a complaints system and the imposition of sanctions on undesirable behaviour.

The IALA provides the enabling legislative framework for the licensing of immigration advisers. The IALA seeks to protect consumers and New Zealand's international reputation by:

- making it an offence for any person other than a licensed adviser or exempt person to provide immigration advice
- providing for the licensing of immigration advisers, and exempting some groups from those licensing requirements (eg lawyers, citizens advice bureaux, community law centres and people that provide immigration advice offshore on student visas only)
- prohibiting INZ from accepting visa applications where advice has been provided by persons who are not licensed, or exempt from the licensing requirements
- providing for the creation of the Immigration Advisers Authority (IAA), a stand-alone body within MBIE, and outlining its key functions, and
- providing for the creation of the Immigration Advisers Complaints and Disciplinary Tribunal (the Tribunal), a specialist Tribunal administered by the Ministry of Justice to hear complaints.



Changing context for regulation

There are currently 668 licensed immigration advisers. The vast majority of these are self-employed or work in small businesses, with only seven adviser businesses employing five or more advisers.

When first established, the operations and funding of the IAA were predicated on the assumption that there would be 1,000 licensed immigration advisers. The actual take up of licensing has been lower than anticipated and the proportion of visa applications recorded as having been prepared by advisers has fallen since the introduction of the IALA.

Looking forward, there are changes being made to how the immigration system operates that will impact on demand for advisers. These include simplification of the system, the roll out of an online visa processing platform and introduction of a preferred partner scheme, in which particular advisers and organisations (such as education institutions and large employers) will be accredited to perform some administrative processing functions currently performed by INZ.

These changes will make it easier and more straightforward for migrants to deal directly with INZ, potentially reducing future demand for adviser administered applications. They may also create incentives for the 'corporatisation' of adviser activity, meaning larger companies providing adviser services as preferred providers, and fewer sole traders.

Overall though, we expect that there will continue to be demand for immigration advisory services for the reasons outlined earlier on page 8.

On the supply side, the industry itself is relatively young, with an emerging sense of profession. There are currently two industry bodies competing for membership of a relatively large proportion of new advisers, the majority of which are operating as sole practitioners.

The recently developed Graduate Certificate has provided a clear and relatively low-cost entry route into the profession and there has been strong interest in the course since its introduction. The IAA is working with the profession to establish whether the entry requirements to the profession are sufficient.

Issues with the current licensing system

Regulatory systems usually incorporate several approaches to minimise harm (e.g. disclosure requirements, competence standards, compliance systems and sanctions), and the system's overall impact is affected by how well the components work together. Generally, regulatory systems that work well are ones in which:

- legal and regulatory requirements are well-known and generally accepted by consumers and industry as being desirable
- standards are clear and it is relatively straightforward to identify illegal, incompetent or unethical behaviour
- illegal activity is effectively identified and quickly stopped
- complaints and disputes are quickly and effectively resolved, and
- the requirements of the system are administered effectively and efficiently.



We have heard throughout this review that licensing has provided a focal point for the industry to professionalise; it has provided greater protection to consumers through the development of formalised professional competency standards, code of ethics, and development of a disputes process; and it has resulted in improved interactions between the profession and government.

That said, our conclusion is that the outcomes set for the IALA have only partially been met:

- there is considerable anecdotal evidence of ongoing unlicensed adviser activity, especially (but not exclusively) in offshore locations and specifically related to advice to migrants seeking permanent residency in New Zealand through steps involving an initial application for a Student visa
- there is anecdotal, and some documentary, evidence of ongoing competency and ethical issues with immigration advice from unlicensed, licensed and exempt advisers.

Some particular areas for concern have been identified and present opportunities to improve the effectiveness of the licensing system:

- awareness – evidence from surveys of users of advice and discussions with representatives of migrant communities suggest that awareness of the licensing system and access to complaints processes could be improved
- competence – even though there is broad support for an industry qualification, there is significant concern from immigration advisers that the competency standards are not currently set at an appropriate level. Licensing exemptions were raised on a number of occasions as having the potential to negatively impact on the quality of immigration advice received by migrants
- compliance – there are practical and resource constraints which limit the IAA's ability to enforce compliance with the IALA's offence provisions, particularly in offshore jurisdictions. In addition, there is a significant, but reducing, backlog of complaints to be referred to the Tribunal. Delays in considering complaints can mean that advisers that are operating incompetently and/or unethically can continue to cause harm for a period
- delivery – the implementation of the IALA has not resulted in strong ownership of ethical and competency standards by the profession. The respective roles of the regulator and the profession remain a point of contention more generally, as does the relationship between the IAA, INZ and the profession.

It should be noted that the IAA has undertaken a significant amount of work over the last years to address some of these emerging issues. Alongside its active consideration of the entry criteria it has: overhauled the complaints system to provide the Tribunal with better information on which to base its decisions and improve the efficiency of the process more generally; responded to concerns about the cost and resource involved in re-licensing by developing a fast-track process; and taken steps to improve its relationship with the profession.



Our proposals and recommendations

Our conclusion is that some form of regulatory intervention remains desirable given the potential for serious and irreversible harm that can be caused by unethical or incompetent adviser activity.

The overarching purpose of the IALA remains valid, being to promote and protect the interests of persons receiving immigration advice, and (by so doing) to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.

We consider that the following objectives are useful for considering the future design and administration of the licensing system:

- that consumers can be confident that if they choose to use a licensed adviser that their adviser will be competent and will behave ethically
- that there are efficient systems in place to protect consumers from incompetent or unethical advice
- that the profession itself is incentivised to take greater ownership/responsibility for the competency and conduct of its members in order to differentiate itself from other advice providers.

Successfully achieving these objectives should result in:

- a licensed adviser profession held in good esteem, and that can demarcate its services from unlicensed competitors
- less instances of harm for consumers
- less unlicensed activity occurring.

Achieving this requires the regulator and the profession to identify their common interests, and for the profession to take greater ownership of its members' behaviour and conduct in order to differentiate the benefits of licensed from unlicensed adviser activity. It also requires a greater focus by the regulator on: achieving compliance with the licensing requirements; improving the efficiency of licensing and relicensing requirements (including a greater onus on professional experience and CPD); and a more efficient complaint and dispute resolution process.

We considered alternatives to the current system of licensing to achieve these objectives, but concluded that the nature of the harm associated with unethical and incompetent adviser activity is such that a relatively high degree of regulation is justified. We considered the case for a self-regulatory model, but considered that the relative youth, fragmentation and small size of the industry combined with some of the generic disadvantages of self-regulation argue for a continued strong government role, but with more emphasis to working to achieve a co-regulatory approach.

In order to improve the current system of licensing, we make fourteen recommendations. These are summarised in the table below.



Table 1: Summary of recommendations

Recommendation	Priority	Legislative / Regulatory / Operational
1 Definition – clarify the definition of advice to make it clear that information provided by immigration officials on matters related to the nature of legal requirements for visas, and how to access INZ procedures for applying for visas, is not considered immigration advice.	Low	Legislative
2 Exempt advisers – requirements to ensure that exempt advisers maintain a current knowledge of immigration issues and that offshore student agents do not provide advice beyond the scope of student visa applications.	High	Legislative and/or operational
3 Awareness – improve promotion of the purpose of the licensing system, particularly in offshore markets, in close association with INZ and Education New Zealand.	High	Operational
4 Entry to the profession – re-introduce some mechanism for ensuring practical experience prior to receiving full licence. Options include: <ul style="list-style-type: none"> - extension of course syllabus to include a practical component such as a placement, or - provisional licence for a period (subject to supervision and/or additional CPD requirements). 	Medium	Operational
5 Simplified licensing structure – removal of limited licence.	Low	Legislative
6 Clearer separation of individual and organisational responsibilities – provide for business aspects from the code of conduct to be specified in regulation and require all persons in trade (self employed advisers or companies) to abide by these (have a written agreement etc) in their delivery of advisory services. In addition we recommend that the Code be reviewed to ensure that it provides for the adequate management and handover of clients, from one adviser to another, in the case of an adviser ceasing to trade and that consideration also be given to requiring use of a standardised plain language contract.	Medium	Legislative, regulatory and/or operational
7 Greater role for the profession – provide for a greater industry input into, and ownership of, competency standards and the code of conduct and associated training and CPD.	High	Legislative and/or operational
8 Formalising CPD requirements – place an emphasis on more structured CPD requirements. Leverage this structure to support delivery of recommendations 1,4 and 14.	High	Operational
9 Remove the section 8 offshore offence provision – remove the offshore offence provision on the basis that it cannot be implemented effectively. Instead: <ul style="list-style-type: none"> - retain section 9 provision enabling INZ to decline an application received from an adviser who is neither licensed nor exempt - focus on awareness raising in key offshore markets, in close association with INZ and Education New Zealand. 	Medium	Legislative and/or operational
10 Provide the IAA with a wider set of regulatory tools – legislate for the IAA to have a wider set of tools to address both non-compliant licensed immigration adviser activities, and unlicensed immigration advice.	High	Legislative
11 Alternative dispute resolution – provide for an alternative (low level) dispute resolution process to deal with minor complaints and thereby free up Tribunal resource to focus on resolution of advisor behaviours and issues resulting in significant consumer harm.	High	Legislative and operational



Recommendation	Priority	Legislative / Regulatory / Operational
12 Structural relationship between the IAA and the profession – legislate for the profession to play a greater role in the development of competency standards, the code of conduct, advisor industry training and professional development.	High	Legislative and/or operational
13 Operational efficiencies – investigate the potential to consolidate functions across MBIE’s occupational regulation regimes. For example: <ul style="list-style-type: none"> - identifying opportunities for greater information sharing between the IAA and INZ - identifying opportunities to consolidate functions such as registration, communications, and alternative dispute resolution. 	Medium	Operational
14 Licensing renewal – further reduce the compliance costs associated with licensing renewal by focusing the process on two components: <ul style="list-style-type: none"> - negative vetting (e.g. based on identifying relevant criminal offending and complaints about applicant) - completion of more formalised CPD requirements. 	Medium	Operational



ABOUT THE REVIEW

The Immigration Advisers Licensing Act 2007 (IALA) makes it an offence for a person to provide immigration advice unless either licensed or specifically exempted from the licensing requirement. In April 2014 the Ministry of Business Innovation and Employment (MBIE) engaged MartinJenkins to review the licensing system that oversees the provision of immigration advice.

MBIE wishes to ensure that the system operates efficiently and effectively and contributes to the stated outcomes of protecting the interests of consumers receiving immigration advice, and enhancing the reputation of New Zealand as a migration destination. MBIE is also interested in ensuring that the system can, to the extent possible, support desired economic outcomes of: innovation; trust in markets; productivity; and global competitiveness.

Terms of Reference

The terms of reference for the review are attached as Appendix 1. They require us to provide advice to MBIE on whether the regulatory regime for the provision of immigration advice provided by the IALA remains broadly fit for purpose, and what changes to it, if any, would enhance its effectiveness.

The review covers the underlying legislative and policy frameworks that provide for licensed immigration advice, as well as their implementation and administration, including:

- 1 the extent to which the regulatory regime has been effective in achieving what it was intended to achieve
- 2 whether and how the context for regulation has changed since its establishment, including:
 - changes in the nature of immigration advice and the nature and level of demand and projected demand (e.g. the impact of planned Immigration New Zealand (INZ) system changes designed to make it easier for migrants to navigate the system themselves)
 - changes within the licensed immigration adviser industry, and to other providers of information or advice to intending migrants (e.g. offshore education agents)
 - changes to the international context
 - balance of onshore vs. offshore operation of advisers
 - counterpart countries' approaches to regulating advisers
 - organisational changes to the 'host' Ministry, and current opportunities for achieving greater economies of scale in relation to regulatory activities
- 3 what alternative regulatory approaches there are to the current approach, including the case for government intervention, the nature of the service provided, and the potential for harm, covering:
 - governance and monitoring arrangements
 - options for the regulatory entity



- regulatory functions and overall regulatory stance (e.g. level of prescription versus enabling / principles-based regulation)
 - interface with the Tribunal in relation to discipline
 - interface with the skills / training system in relation to licensing requirements (including the pathways to licensing)
- 4 if the existing regime is retained, the policy and legislative changes that could improve it, including changes to the Immigration Advisers Authority (IAA) and the IALA, the potential to combine some functions with other functions administered within MBIE, and the appropriate pathways to licensing.

Our Approach

Our approach to the review is grounded in the principles of good regulatory policy design, informed by MBIE's framework for occupational regulation.¹ Our approach can broadly be described as consisting of three phases:

- Understanding
 - the roles of advisers
 - the immigration industry and the market context in which immigration advisers operate
 - impacts associated with immigration advisers and the implications of these impacts for outcomes that matter to New Zealand
 - the public policy rationale for licensing immigration advisers – what we want out of regulation and for who?.
- Identifying
 - the overall performance of the licensing system as well as issues and opportunities for improvement (in terms of both regulatory design and implementation)
 - the impact of the scheme on desired public policy outcomes
 - if there is an ongoing case for regulation.
- Recommending
 - the objectives that should guide the future design and implementation of the licensing system
 - what could be changed, in terms of both design and implementation, to achieve those objectives?.

¹ See Appendix 2: Guiding structure for the review



Our approach has been interactive and consultative. Many stakeholders, but particularly licensed immigration advisers, have presented strong views about the performance of the licensing system and the development of the profession. We have consulted widely to hear those views. We have also sought to calibrate the views of particular stakeholders, such as immigration advisers, through discussions with other stakeholders and the regulator.

The recommendations contained in this report are based on information and evidence collected through:

- a desk-based review, including
 - policy documents, the IALA and Regulations, annual reports and website material
 - decisions of the Tribunal, adviser and client surveys, and visa processing data.
- interviews, including
 - key stakeholders from the following groups: policymakers, operational policy groups, the IAA, industry bodies, the educational course provider, law societies, the export education sector, recruitment consultants, not-for-profit groups, and the Australian Office of the Migration Agents Registration Authority.
- workshops, with
 - immigration advisers (3 workshops with approximately 30 participants in total)
 - exempt lawyers
 - groups representing the concerns of those receiving immigration advice (one workshop with approximately 15 participants)
 - an MBIE governance group established for this review.
- online survey
 - sent to all licensed advisers, distributed to exempt adviser groups and to representatives of migrant communities².

Overall, several hundred individuals participated in the review through interviews, focus groups and workshops and the online survey.

² We received 211 mostly completed responses. 161 of these were from respondents who identified themselves as licensed immigration advisers.



Structure of this report

This report is structured in parts as follows:

- Part 1, discusses the rationale for regulation including the importance of immigration to New Zealand, the roles played by immigration advisers, and why the services and conduct of immigration advisers matter from a public policy perspective
- Part 2, provides an overview of the legislative framework and institutional settings through which the licensing system is currently delivered and discusses the underlying rationale for this current approach
- Part 3, looks at the factors affecting the demand for, and supply of, immigration advice that have implications for the future licensing of advisers
- Part 4, describes the key issues that we have identified with the design and operation of the current licensing system, and
- Part 5, discusses alternatives to the current approach and makes recommendations for changes to improve the effectiveness of the current system if it were to be retained.



PART 1: CONTEXT FOR REGULATION

In this part we discuss why immigration is important to New Zealand, the roles that immigration advisers play in supporting migrants, and the public policy rationale for having a licensing system that regulates the advice that they provide.

Immigration is important to New Zealand

New Zealand has one of the highest per capita inflows of permanent migrants among member countries of the Organisation for Economic Co-operation and Development. Migrants fill skill and labour shortages and supplement 'home grown' talent, they provide capital for investment, and are consumers of export education, tourism and other services important to New Zealand.³ It is estimated that migrants add \$1.9 billion a year to New Zealand's GDP⁴, so attracting, and retaining, temporary and permanent migrants is important to New Zealand's prosperity.

The Immigration Act (2009) provides the legal framework that governs New Zealand's immigration system. The system is administered by Immigration New Zealand (INZ) and in 2012/13, INZ approved 484,935 visa applications out of 520,849 applications, including both permanent and temporary visas.

In attracting migrants, New Zealand competes with other destination countries such as the USA, Australia, Canada and the United Kingdom. Our ability to attract migrants and grow sectors like tourism and international education depends, in part, on the relative efficiency and user-friendliness of our immigration processes. It also depends on how potential migrants perceive New Zealand as a country to visit, live, work and do business. To this end, New Zealand actively competes on the quality of experience provided, the type of migration outcomes available (e.g. permanent residence), as well as our corruption-free status.

Migration pathways

An application for a temporary visa (such as a Visitor or Student visa for instance) is often a first step on a migrant's pathway to permanent residence. Over the last decade, 22 per cent of international students gained permanent residence in New Zealand within five years of being issued their first student visa. In 2012/13, 42 per cent of skilled principal migrants were former international students.⁵

³ Document available online. MBIE (2013). *Briefing to the Incoming Minister of Immigration*. Retrieved from <http://www.mbie.govt.nz/pdf-library/about-us/bims/MBIE%20Immigration%20BIM.pdf>

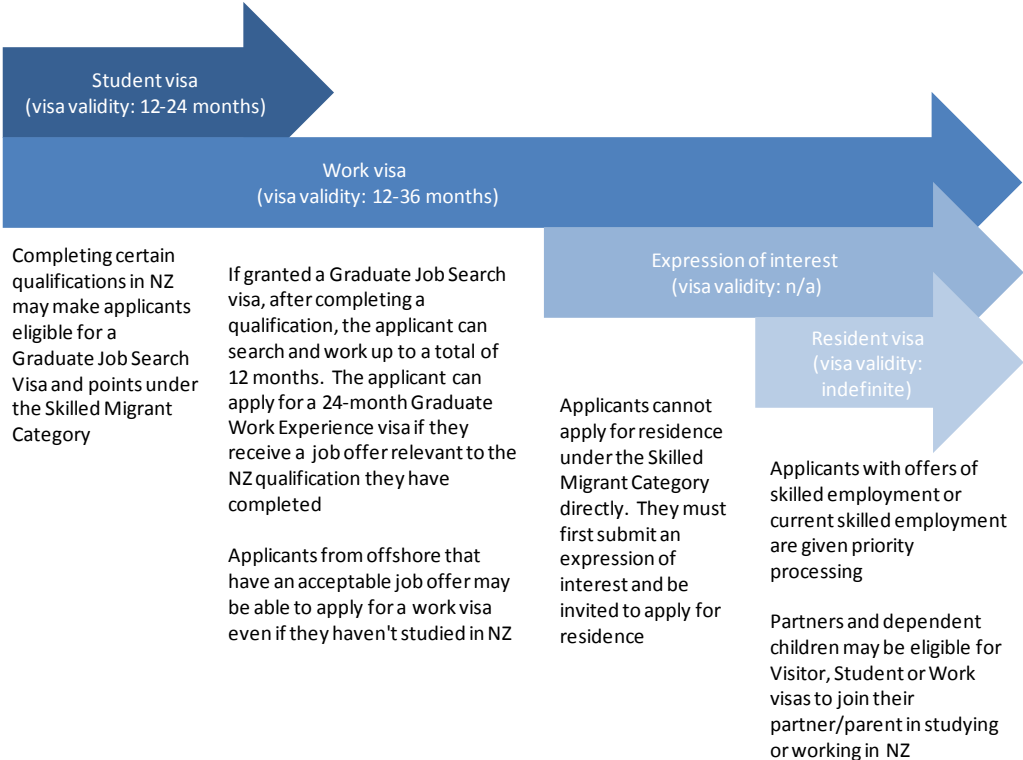
⁴ Document available online. MBIE (n.d.). *Immigration New Zealand's Vision 2015: What it means for you*. Retrieved from <http://www.immigration.govt.nz/NR/rdonlyres/008DBE49-BD9B-4AE7-94C0-341F54656AEA/0/INZ2015factsheet.pdf>

⁵ Document available online. MBIE (2013). *Migration Trends and Outlook 2012/13*. Retrieved from <http://www.dol.govt.nz/publications/research/migration-trends-1213/MigrationTrend-and-Outlook-12-13.pdf>



For some, this progression to residency happens organically based on place and circumstance, while for others it is the result of a carefully planned approach to gaining residence. Access to, and ability to navigate, this pathway may well be a significant factor for migrants when deciding where they want to relocate to.

Figure 1: Pathway to a Resident visa⁶



This review focuses on the roles that advisers play in supporting migrants to identify and apply for appropriate visas so that they can visit and live in New Zealand.

⁶ Diagram adapted from: Immigration New Zealand (n.d.). *Pathway to residence: how to transition from student/work visas to a resident visa*. Retrieved from <http://www.immigration.govt.nz/NR/ronlyres/1D20301F-9DB3-4823-AA3C-2FCCD79B7341/0/PathwaytoResiStudentsandSkilledWorkers.pdf>



Immigration advice is important to migrants

Visa applicants can choose to deal with INZ directly, rather than through an adviser, but there are several reasons why some prefer to engage an intermediary:

- English may not be their main language⁷
- they may be unclear whether they meet relevant visa criteria and may want expert advice and assistance to present their case
- they may lack confidence in dealing with a foreign government institution, may be untrusting of government institutions, or may come from a country where government interaction with citizens is quite different
- they may be applying for a visa in a situation where they consider it unfavourable for the government to be aware of their position (i.e. they are in New Zealand illegally)
- they may be disputing a decision of INZ
- they may believe that their immigration adviser can favourably influence the immigration decision making process, or
- they may be busy and be happy to pay someone else to prepare and lodge their application.

Licensed immigration advisers (together with lawyers, citizens advice bureaux (CAB), community law centres, offshore education agents⁸, and unlicensed advisers (operating illegally both within and outside of New Zealand)), support potential migrants in their migration decisions and act as advisers and intermediaries between migrant applicants and the New Zealand government (represented by INZ). Some also support would-be migrants to seek review or appeal of unfavourable immigration decisions.

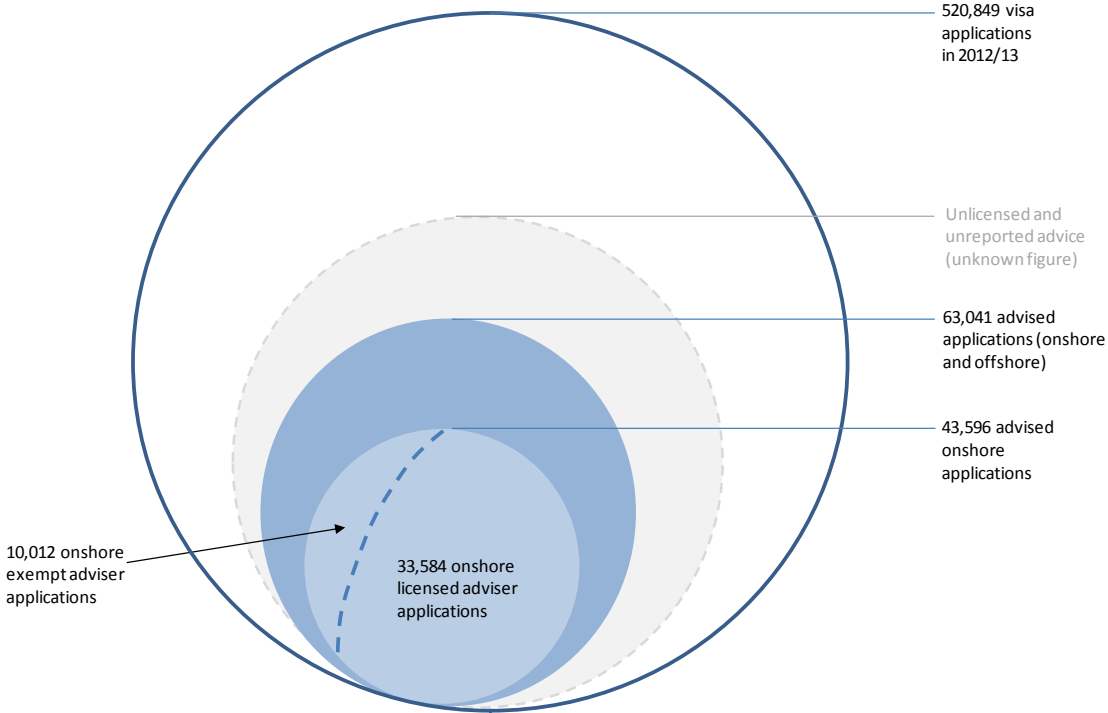
In 2012/13, 12 per cent (63,741 applications) of all visa applications were recorded as being advised (this covers advice received from both licensed and exempt advisers). What we don't know however, is the number of applicants that received advice (but did not disclose this) from unlicensed advisers operating outside of the current licensing framework – the general view from people participating in the review is that the volume of unlicensed advice is significant both onshore and offshore.

⁷ Only 28 per cent of respondents to the *Immigration Advisers Authority Survey 2013/14* (survey of visa applicants that received licensed advice) reported having English as a first language.

⁸ The IALA exempts several groups of persons from the licensing requirements. The full list of exemptions is set out in [section 11](#).



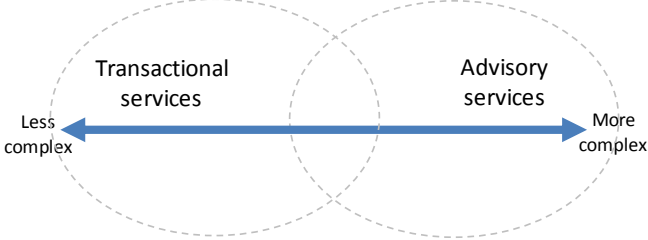
Figure 2: Use of advisers: licensed/exempt and onshore/offshore



As agents, advisers can be involved in providing settlement support, liaising between applicants and employers, and the development of business proposals for business migrants. Immigration advisers support applicants and also advise third parties such as sponsors, employers and education providers.

While we heard that there is no ‘typical’ case or client, our understanding is that client demand for advisers tends to be clustered at either end of a spectrum. At one end are those with complex applications that use advisers to help them identify and navigate appropriate pathways given their objectives. This advice can be closely tailored to an individual’s migration objectives and include a strategic or long-term perspective. At the other end are those applications which are relatively straightforward but come from wealthy people or from corporate clients who do not want to engage in the process directly.

Figure 3: Spectrum of immigration advice



There are public policy reasons for regulating immigration advice

The purpose of the IALA is to promote and protect the interests of consumers who choose to receive immigration advice. By doing so, the IALA can enhance the reputation of New Zealand as a migration destination and as a corrupt free county to live and do business.

Promoting and protecting the interests of consumers

A great deal of trust is placed in immigration advisers by their clients, whose circumstances can make them particularly vulnerable to harms caused by unethical or incompetent immigration advisors, including that:

- there may be a significant emotional and financial commitment attached to an immigration decision. An unfavourable result may have repercussions for not only the applicant, but also their wider family, and applicants may be desperate to achieve a favourable result through any means
- immigration applicants who are in New Zealand unlawfully or whose status is uncertain may feel unable to approach INZ directly, and therefore will be heavily dependent on their adviser. This increases their vulnerability to being charged for something they could do themselves or being charged for services they do not need, and
- advisers interact directly with INZ on behalf of applicants and play a critical role in the sharing and dissemination of information about applications to their clients. There is a risk that applicants can be unwittingly involved in activity that benefits an immigration adviser but disadvantages the applicant.

Licensing provides consumers with a means of easily differentiating between advisers that operate according to competency and ethics standards, from those who do not. It does this by:

- reducing information asymmetries (e.g. by providing a register of licensed advisers, and information about how the immigration system works, and the requirements placed on advisers)
- setting initial and ongoing entry and conduct standards for advisers, and
- ensuring professional standards are upheld (e.g. through the delivery of a complaints system and the imposition of sanctions on undesirable behaviour).

New Zealand's brand

New Zealand competes with other countries to attract migrants to fill skill and labour shortages and to supplement 'home grown' talent and immigration advisers will be the first point of contact for a number of prospective migrants.

Immigration advisers that provide high quality immigration advice support the government's desired outcomes of attracting quality migrants who benefit New Zealand.



- The presence of a licensing system, in itself, also shows a commitment to the protection of prospective migrants. It is a common approach taken in other destination countries that New Zealand competes with.⁹

Wider outcomes that are important

- An advantage of receiving applications from a regulated profession is that the checks and balances have already been established help to support the integrity of the immigration system. As immigration advisers are responsible for a significant proportion of visa applications, any quality or integrity improvements delivered through the licensing system have the potential to significantly support INZ in its processing operations.
- As will be discussed later in this document, INZ may also be able to leverage the licensing system to support its development of services through industry partners.

⁹ See Appendix 3: Overview of comparable overseas approaches to immigration advice



Conclusions

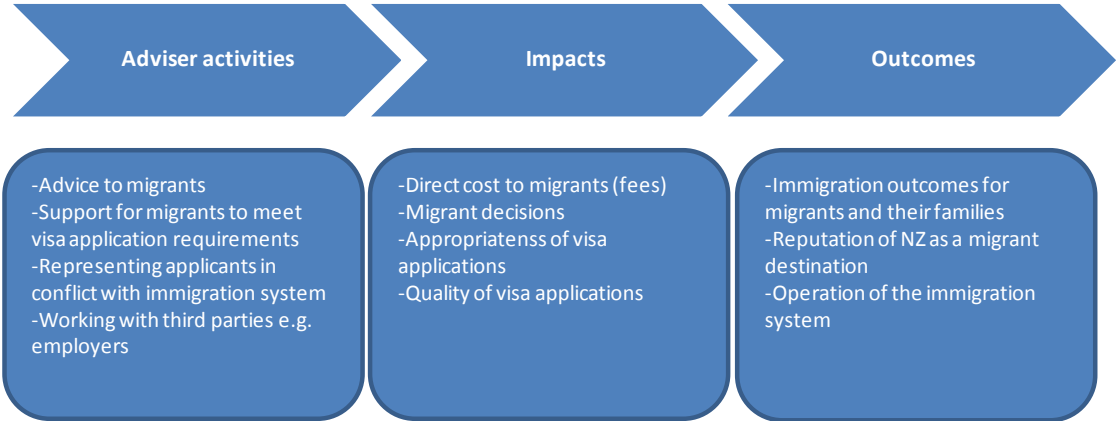
Immigration is a key driver of New Zealand’s prosperity and the government has developed an immigration system to encourage and facilitate the flow of skilled migrants to New Zealand.

The use of a licensed immigration adviser is one of a number of options open to prospective migrants when making a visa application. Advisers (either licensed or exempt under the current system) were used in approximately 12 per cent of visa applications (63,741) in 2012/13 so the conduct of advisers can impact upon a large number of people.

Figure 4 summarises why Immigration advice (whether provided by a licensed or exempt adviser or by an unlicensed adviser acting illegally) matters from a public policy perspective because of:

- the vulnerability of some clients who receive immigration advice
- the trust that clients place in advisers (who deal directly with INZ on behalf of them)
- the irreversible impact that unscrupulous and/or incompetent advice can cause to migrants, and
- the effect that unscrupulous advice can have on New Zealand’s international reputation, both as a migration destination and more generally with regard to New Zealand’s reputation as a country that is corruption free and easy to do business in.

Figure 4: Summary of licensed immigration adviser activities and their impact



PART 2: CURRENT APPROACH TO REGULATION

This section provides an overview of the legislative and regulatory settings in which the licensing system operates. It also provides some detail about the specific roles of key organisations within that structure, and explains how the system is funded.

The Immigration Advisers Licensing Act 2007 (IALA)

The IALA provides the enabling legislative framework for the licensing of immigration advisers. The IALA seeks to protect consumers and New Zealand's international reputation by:

- making it an offence for any person other than a licensed adviser or exempt person to provide immigration advice
- providing for the licensing of immigration advisers, and exempting some groups from those licensing requirements (e.g. lawyers, CAB, community law centres and people that provide immigration advice offshore on Student visas only)
- prohibiting INZ from accepting visa applications where advice has been provided by persons who are not licensed or exempt from the licensing requirements
- providing for the creation of the IAA and outlining its key functions, and
- providing for the creation of the Tribunal.

The original case for regulation

Cabinet first considered enforceable standards for the provision of New Zealand immigration advice in December 2000¹⁰ and noted that the harm caused to many immigration applicants justified government intervention.

In May 2004, Cabinet noted that “due to insufficient market or regulatory incentives for immigration agents to provide adequate standards of services, and considerable reports of serious harm, regulation of immigration agents is required.”¹¹ Examples of harm that were brought to the attention of the Minister of Immigration at that time included:

- lodging unfounded/abusive refugee status claims without client knowledge
- providing inaccurate advice about immigration policy leading to poor and costly decisions

¹⁰ Cabinet Economic Development Committee (2004). *Licensing Immigration advisers – regulatory model* [EDC (04) 51]

¹¹ *ibid*



- theft of money and documents
- failure to lodge applications and appeals
- failing to pass on information from the immigration service to the client, and
- knowingly submitting false information or fraudulent documents to the immigration service.¹²

Significant harm caused by immigration scams

A particularly egregious example of misconduct was the Wat Thai scam, where between 2001 and 2003 a group of agents lodged several hundred abusive refugee claims. All of the claims that were determined were declined forcing the applicants to either: leave New Zealand; be removed; or remain illegally. Those who were removed were banned from returning to New Zealand for five years, but even after five years were unlikely to be allowed to return because they would be deemed high-risk.

In another example, a New Zealand-based immigration agent lodged over 20 refugee status claims on behalf of a group of international students based on the fear of Severe Acute Respiratory Syndrome (SARS). In many cases the applicant was unaware of the refugee claim, believing instead that they were applying for a work or residence permit. In similar cases in 2003, claimants were charged between \$12,000 and \$30,000 by their agents who were unethical or incompetent.¹³

Officials estimated that there were approximately 600 active immigration advisers who were used in 9,000 residence applications (37 per cent of all residence applications), and around 66,000 temporary entry applications (17 per cent of all temporary entry applications).¹⁴ The conclusion drawn was that the role of immigration advisers was significant.

However, standards of practice (where they existed) did not have statutory backing, membership of industry organisations was voluntary, and there were minimal powers to intervene or address poor practice. Although Section 142(1)(j) of the Immigration Act 1987 made it an offence to wilfully mislead, or act negligently or unprofessionally while assisting a person in a visa or permit application or appeal, this section had not been tested since its introduction in 1999.

Licensing was the preferred regulatory option because it created a legislative basis for including all immigration agents and gave consumers the most protection from harm.¹⁵

Less-stringent regulatory options, such as certification and voluntary participation, were discarded because they would not effectively tackle the actions of advisers of most concern. A self-regulating approach was also discarded on the basis that the immigration advice industry was too diverse and lacked the homogenous objectives required for an industry body to function as an effective regulatory body.¹⁶

¹² Document available online. Department of Labour (2001). *The Immigration Consulting Industry in New Zealand (July 2001)*. Retrieved from <http://www.dol.govt.nz/PDFS/The%20Immigration%20Consulting%20Industry%20in%20New%20Zealand.pdf>

¹³ Cabinet Economic Development Committee (2004). *Licensing Immigration advisers – regulatory model* [EDC (04) 51]

¹⁴ *ibid*

¹⁵ *ibid*

¹⁶ Document available online. Department of Labour (2005). *Regulatory Impact Statement – May 2005 Immigration Advisers Licensing Bill*. Retrieved from <http://www.dol.govt.nz/publications/general/ris-immigration-advisors.asp>



The resulting licensing system is one that has a relatively high level of government intervention for a relatively small group of licensed individuals.

Institutional settings

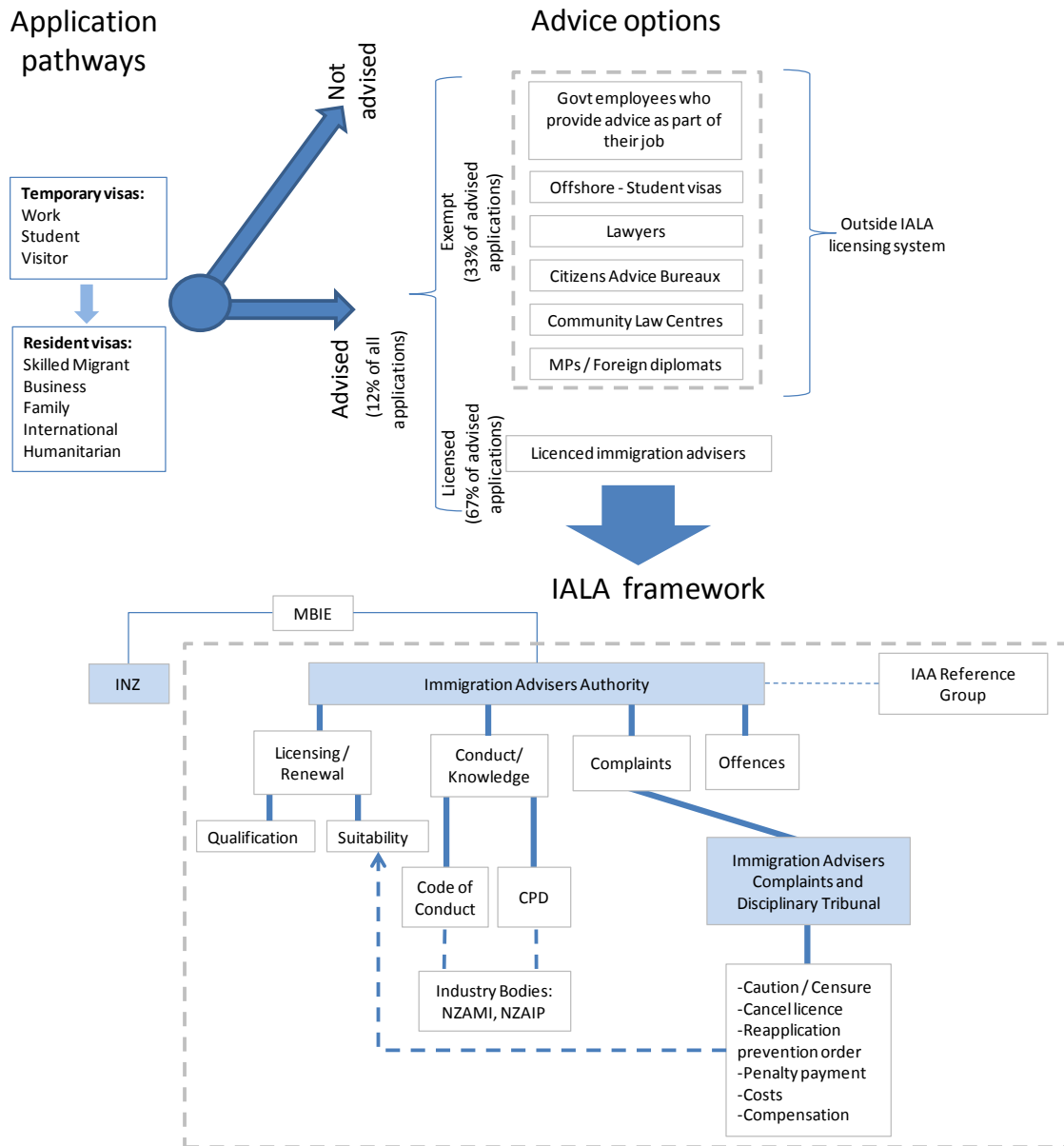
The IALA provides for the licensing of advisers, but also creates exemptions from licensing requirements for specified classes of persons.

As a result, migrant choices determine what if any framework applies to the immigration advice that they receive including: any ethical or competence requirements; the conduct requirements that apply to the adviser; and whether or not they have access to a reliable complaints and disciplinary process. Not all migrants will be aware of this or the potential consequences for them of selecting unregulated advisers.

Figure 5 overleaf outlines the institutional settings as they apply to licensed immigration advisers and various categories of exempt advisers.



Figure 5: Institutional settings



The Immigration Advisers Authority

The IAA was established to administer the licensing requirements and is now hosted within the Market Services group of MBIE. Its Registrar reports to the General Manager, Consumer Protection and Standards.

Both INZ and the IAA now sit within the MBIE organisational structure. However, original policy decisions (when the IAA was formed) provided for separation of the IAA from INZ's visa processing activities for two reasons:

- advisers may legitimately be in dispute with INZ over a visa application. Advisers should have confidence that such circumstances will not influence decisions on licensing or disciplinary actions, and
- migrants may have a tenuous legal status in New Zealand. Separation gives them reassurance that they can report incompetent or unethical adviser behaviour to the IAA without this impacting upon their dealings with INZ.

The IAA delivers its services via 18 FTEs across three work areas: licensing, investigations, and business support (including the Registrar of Immigration Advisers). This includes one temporary licensing assessor during its peak period. The IAA currently has additional temporary assistance to clear the current complaints backlog.

The IAA has had a substantial role implementing the licensing system, it:

- facilitates public awareness of matters relating to the provision of immigration advice
- administers and maintains the register of licensed immigration advisers
- commissioned the qualification (the Graduate Certificate in New Zealand Immigration Advice) which sets the competency threshold for entry into the industry, and works closely with the education provider to calibrate it as necessary
- administers the re-licensing process for immigration advisers
- administers the Code of Conduct for the profession
- sets out requirements for CPD
- receives and investigates complaints and prepares complaint files for the Tribunal, and
- investigates and takes enforcement action in relation to offences under the IALA.



The Immigration Advisers Complaints and Disciplinary Tribunal

The Tribunal was established under the IALA and deals with complaints against licensed immigration advisers. Complaints can be made by anyone and are initially directed to the IAA, which investigates complaints before determining whether they are to be referred to the Tribunal for resolution.¹⁷

After hearing a complaint the Tribunal may: dismiss the complaint; uphold the complaint but take no further action; or uphold the complaint and impose one or more sanctions. If the Tribunal upholds the complaint, it may impose a range of sanctions outlined in section 51(1) of the IALA:

- caution or censure
- a requirement to undertake specified training or otherwise remedy any deficiency within a specified period
- suspension of licence for the unexpired period of the licence, or until the person meets specified conditions
- cancellation of licence
- an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions
- an order for the payment of a penalty not exceeding \$10,000
- an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution
- 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
- an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

The Tribunal also deals with appeals against decisions made by the IAA to cancel a licence, as well as decisions made by the IAA to reject complaints about licensed immigration advisers.

The Chair of the Tribunal is appointed by the Governor-General on the recommendation of the Minister of Justice in consultation with the Minister of Immigration. The Chair is currently the only member of the Tribunal.

¹⁷ The IAA's investigation process has been significantly overhauled recently and it is anticipated that those changes will lead to a lower volume of complaints being forwarded to the Tribunal.



Immigration New Zealand

INZ is part of MBIE and is responsible for the delivery of the visa system, including visa processing and the communication of visa criteria to potential migrants. Its role includes:

- deciding visa applications
- attracting migrant skills and labour
- matching migrant skills with employer needs
- managing border security with regard to the movement of people
- supporting migrant settlement and retention
- implementing the Government's refugee quota programme, and
- enforcing compliance with immigration law and policy.¹⁸

INZ interacts directly with immigration advisers who represent their clients in the visa application process.

Costs of regulation

The licensing system operates under a mixed funding model (part fees and part Crown funding through Vote: Immigration). In June 2007, Cabinet noted that a full cost recovery system would lead to licensing fees higher than the industry in New Zealand could bear. As a consequence, Cabinet agreed to a funding split where licence holders pay for a portion of the ongoing costs of the licensing system. It was agreed that the costs of administering the Tribunal would be fully recovered through levies.¹⁹

Costs to the Crown

Crown funding was \$3.283 million in 2013/14.²⁰ The funding model for the licensing system was based on a projection that there would be 1,000 licensed immigration advisers and there is a shortfall in funding as a result of lower than anticipated licensing numbers. There are 668 licensed advisers at present. The IAA currently expects that this number may increase to reach 800-900 by 2016²¹, though there are factors discussed in the next part of our report that could result in a lower than expected increase.

Costs to the industry

The Immigration Advisers Licensing Regulations came into force in May 2008. The Regulations set out the fees for licences (applications and renewals) and the Immigration Adviser's levy. Immigration advisers are required to renew their licence annually, and at that time pay a renewal fee plus a levy – being a total fee of \$2,039.33 (GST inc.) made up of a renewal fee of \$909.78 (GST inc.) and an immigration adviser's levy of \$1,129.55 (GST inc.).

¹⁸ <http://www.immigration.govt.nz/migrant/general/aboutnzis/>

¹⁹ Cabinet Economic Development Committee (2007). *Immigration Advisers Licensing Act* [EDC Min (07)11/9]

²⁰ Document available online. The Treasury (2014). *Vote Immigration: supplementary estimates of appropriations and supporting information 2013/14*. Retrieved from <http://www.treasury.govt.nz/budget/2014/suppestimates/suppest14immig.pdf>

²¹ Immigration Advisers Authority (2013). *Annual Performance Report for Year Ending 30 June 2013*



PART 3: CHANGING CONTEXT FOR REGULATION

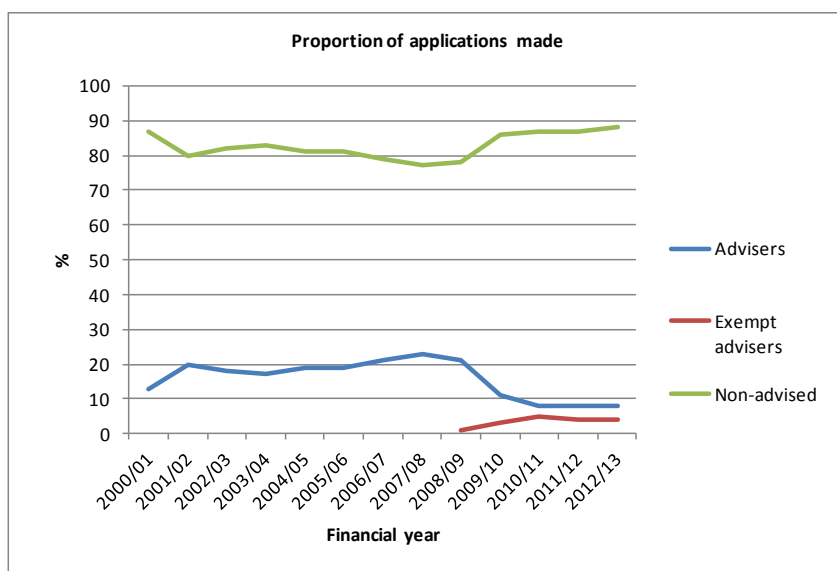
This section reports changes in the context for licensing immigration advice. We look at the key government initiatives that are likely to impact on demand for advice in the future, as well as how the future supply of advice might be impacted by entry requirements to the profession and the profession's ongoing development.

Demand for advice

The proportion of visa applications recorded as having been prepared by an adviser has fallen since the introduction of the IALA. Overall, licensed advisers submitted approximately eight per cent of all visa applications, with exempt advisers submitting a further four per cent of applications in 2012/13.

Although most advised visa applications are submitted by licensed immigration advisers, a significant proportion are recorded as having been submitted by an exempt adviser. One-third (33 per cent) of total advised visa applications were made by exempt advisers in 2012/13 (20,953 applications).

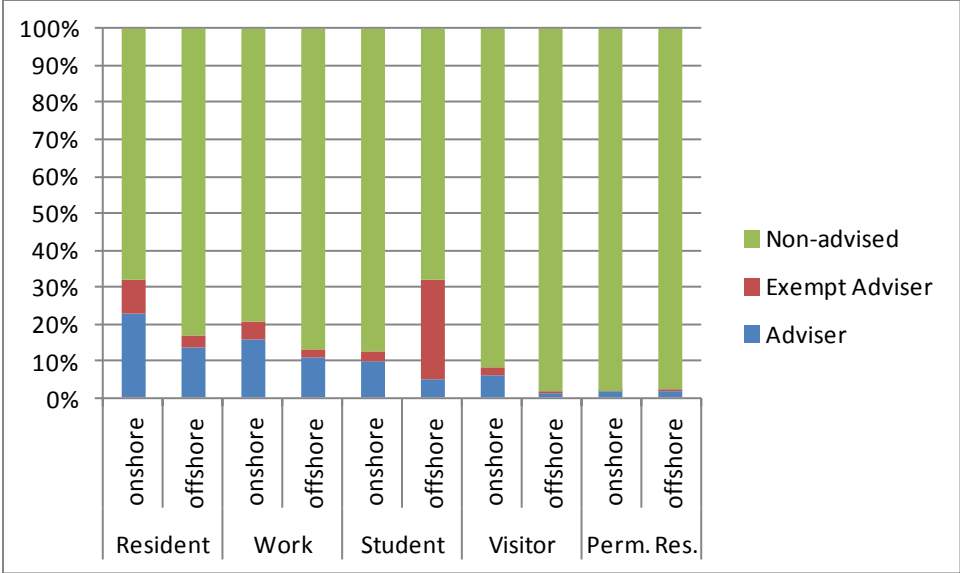
Figure 6: Proportion of visa applications made by advisers and exempt advisers



The Resident visa category has the highest proportion of advised applications, but the bulk of advice is provided in relation to Work visas (30,134 applications, approximately half of all advised applications) and Student visas (17,088 applications, approximately one-quarter of advised applications).



Figure 7: Proportion of advised application by main visa categories in 2012/13



We do not have a breakdown of applications by type of exempt adviser, but make the following observations:

- Two exempt categories of advisers provide advice regularly and for a fee. These are lawyers, and education agents providing advice offshore on student visas.
- Student visas account for a high proportion of visa applications submitted by exempt advisers when compared with the other visa categories. Over half (54 per cent) of advised applications for Student visas were submitted by offshore exempt advisers (9,206 of which most would have been off shore education agents).
- Other advisers such as CAB and Community Law Centres do not compete commercially, and mainly provide advice to those that cannot afford fees. In the 2012/13 financial year the CAB recorded approximately 23,644 enquiries about immigration, of which approximately 12,577 involved in-depth discussions²² that could include the client asking questions about how to extend their visa, how to apply for a different sort of visa, what to expect regarding their interaction with INZ, or how to resolve an issue with a licensed adviser.

Government initiatives that may impact demand for advice

It seems likely that the need for and demand for immigration advice will correlate to the complexity of and amount of discretion in the immigration system. Demand will likely be highest when requirements are vague or unclear, when the system is difficult to engage with and when there is a lot of discretion, Demand for advice will likely be lowest when requirements are clear and easy for applicants to

²² Figures provided by CAB New Zealand to the review team



understand, when the immigration system is easy to access and when there is little opportunity for discretionary decision making.

INZ's vision for 2015 is that it is recognised as a trusted partner that delivers outstanding immigration services and brings the best people New Zealand needs to prosper. INZ has developed a more flexible, customer focused and cost effective model to deliver on this vision. The service delivery model includes greater use of online capabilities and a greater reliance on trusted third parties to achieve service delivery targets.

Online platform for visa processing

Immigration New Zealand is introducing a new visa application platform that should result in improved customer service and better immigration outcomes. By 2015:

- many visas will be able to be applied for by applicants and processed by INZ fully online – from initial application to final decision and delivery
- customers will be able to upload supporting documents and identity information such as photographs
- online processing will allow more consistent and auditable decision making.²³

Greater use of information technology and an online platform for visa processing will make routine visa processing quicker and easier for applicants.

Immigration Online will enable better information sharing with important partners like education providers, immigration advisers and other government agencies. Ultimately, it will allow most visa types to be dealt with online, from initial application to final decision.

Industry Partnerships model

Another component of INZ's Vision 2015 involves moving to an operating model that is, in part, based on INZ partnerships with trusted users of the immigration system such as tertiary institutions, large employers, and immigration advisers. The intent of these partnerships is to improve efficiency, allow for faster and lighter touch visa processing, and improve relations with INZ's industry partners by sharing risk and tasks.

Partners will be incentivised to strive for high-quality standards by enabling them to offer their clients streamlined and prioritised visa processing. INZ has already established partnerships with agencies, institutions and businesses in the export education sector, tourism sector, and with accredited employers.

Employees of INZ partner organisations providing immigration advice will need to be licensed or exempt advisers. The industry partnership model may have some impact on the structure of the immigration advisers profession in the future by placing incentives on advisers that can deal with a high caseload and that have adequate systems in place to ensure quality of advice across that caseload. As a result we may see a greater number of corporate structures in the immigration adviser profession.

²³ Document available online. Immigration New Zealand (n.d.). *Immigration ONLINE – new technology platform*. Retrieved from <http://www.immigration.govt.nz/migrant/general/generalinformation/newitsystems/online-tech-platform.htm>



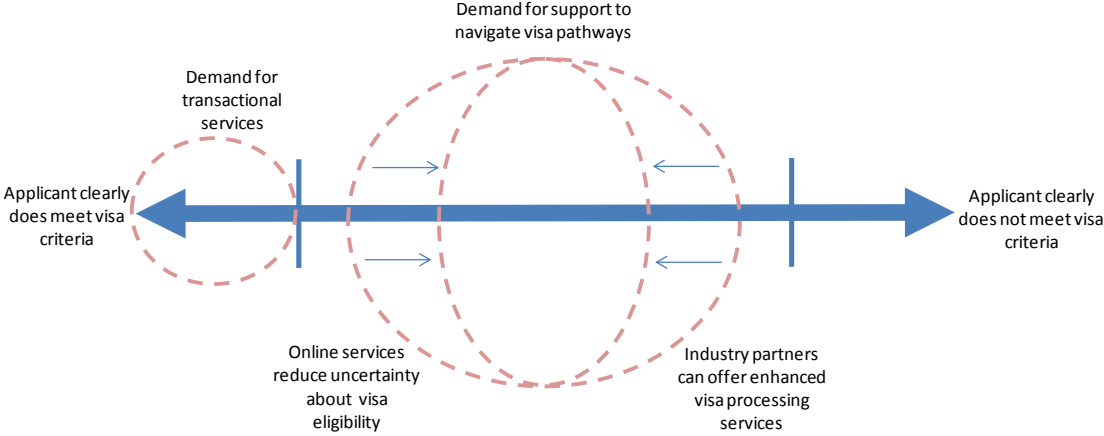
Conclusions

The context in which applicants apply for visas is changing, with INZ seeking to make it easier and more transparent for applicants who are clearly ineligible or clearly eligible for a visa to determine this for themselves.

As a result of systems and process changes, more applicants will be able to interact directly with INZ, or through an INZ partner organisation, and this will impact on the perceived need for advice to a certain extent.

The partnerships model may also have an impact on the structure of the profession in the future if INZ's preference is to work with high-volume service providers with corporate structures in place to ensure consistency of service over time.

Figure 8: Impact of changes on immigration advice



While changes to how INZ operates may result in more migrants applying directly for visas, we expect there to be continuing demand for immigration advisers.

Demand for advice is not solely driven by how easy it is to make a visa application and some migrants will continue to prefer to interact with the government via intermediaries for convenience even where it is relatively clear cut that they are eligible for a visa. Others will continue to seek tailored advisory services to identify and navigate visa pathways.

Just under half (46%) of advisers that responded to our online survey agreed that the demand for immigration advice would increase in the next three years, compared with 17 per cent who disagreed. However, they did acknowledge the impact that the INZ partnerships model could have – 65% agreed that the INZ partnership model would have a significant impact on who provides advice in the future.



Supply of advice

The immigration advice profession has been in existence in New Zealand for approximately 30 years. Prior to the enactment of the IALA, the profession operated under a self-regulatory model led by a main industry body, the New Zealand Association of Migration and Investment.

Only licensed or exempt advisers can provide immigration advice, and there are currently 668 licensed advisers. While demand for licensed advice looks likely to stay reasonably static, the supply of licensed advisers looks likely to increase.

Providing that ethical and competency standards can be maintained or improved and that unlicensed activity can be reduced, this dynamic is good for consumers and should result in increased competition on service quality and downward pressure on fees.

Entry into the profession

An individual is required to meet two tests to become a licensed immigration adviser:

- prohibition/restriction from licensing test (based on character), and
- the competency standards.

Immediately after regulation through to 2013, two pathways existed to demonstrate the competency standards required to become a licensed immigration adviser. Those who had been operating as an adviser prior to licensing could submit four client files for review, and those who were new to the profession were required to find a supervisor and could apply for a provisional licence. We were told that there was considerable frustration from people who wanted to enter the industry but who were unable to find a supervisor.

After consultation, and a development process overseen by a steering committee (including industry representatives) a qualification was developed and introduced. Completion of the Graduate Certificate in New Zealand Immigration Advice is now the competency standard for entry into the profession.

The Graduate Certificate can be completed in one semester of full-time study or on a part-time basis. There is a strict requirement for course applicants to meet literacy and English language competency standards and must also have either an undergraduate degree (or equivalent educational experience) or demonstrate equivalent practical and professional experience.

There has been strong interest in the course since its introduction. The course is offered twice a year and the cohort size has increased from 60 to 75 full-time places and 30 new part-time places from the second semester in 2013.²⁴ Table 2 shows the large number of course graduates that proceed to operate as licensed immigration advisers.

²⁴ Immigration Advisers Authority (2013). *Annual Performance Report for Year Ending 30 June 2013*



Table 2: Course graduates and their transition to licensed advisers

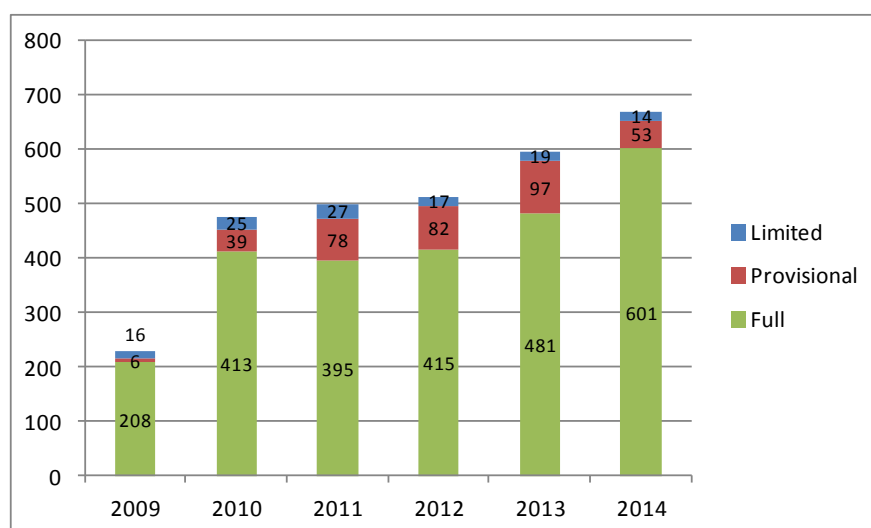
Graduate type	Numbers
Total graduates to date	141
Licensed graduates	113
Applications in progress	4
Graduates who have not applied	24

Structure of the profession

Three categories of licence exist – full, provisional and limited. The type of licence dictates what matters advice can be provided on, and whether or not the licence holder needs to be supervised.²⁵

Of a current total of 668 licensed immigration advisers, 14 (2%) hold limited licences and 53 (8%) hold provisional licences, the rest hold full licences²⁶. It is still possible to apply for a limited licence, but this is uncommon – two applications were received last year for limited licenses.

Figure 9: Number of licensed advisers by licence type at 30 June 2009-2014²⁷



The majority of licensed advisers are located onshore (478 advisers, 72%), and in Auckland (70% of all onshore advisers). Of the 190 licensed offshore advisers, over half are based in Australia and qualify for licensing as a result of the Trans-Tasman Mutual Recognition Agreement. The UK, India and China are the only other countries with more than 10 licensed advisers operating.

²⁵ Full licence – can provide advice on all immigration matters. Provisional licence – can provide advice on all immigration matters but must be supervised by a full licence holder. Limited licence – can only provide advice on certain immigration matters.

²⁶ As at 20 June 2014

²⁷ Immigration Advisers Authority (2013). *Annual Performance Report for Year Ending 30 June 2013*. 2014 figures supplied separately as at 20 June 2014



The industry is dominated by self-employed operators and small businesses. There are 86 organisations with more than one licensed adviser but only five of these have five or more advisers, and 432 have only one adviser.

The profession can also be considered relatively young based on the experience of its practitioners:

- only one-quarter of advisers indicate that they have been licensed for five years or more, and almost half have been licensed as advisers for less than three years
- just under 20 per cent of advisers have become licensed through the Graduate Certificate, and a high proportion of these have chosen to set up their own business – according to information from license applications 24 graduates identified themselves as self-employed and 62 as directors, and
- the expectation is that there will be approximately 250-300 graduates from the course by the end of 2015, representing potentially one-third of the profession based on IAA projections that the number of advisers could increase to 800-900 by 2016).²⁸

Conclusions

The profession has been in existence for approximately 30 years, and it is relatively immature when compared with other professions such as lawyers and accountants. It is characterised by a large number of relatively new participants, the majority of which are operating as sole practitioners.

The Graduate Certificate has provided a clearer and universal pathway for entry into the profession. Supply of licensed immigration advisers has increased since its inception and the size of the profession is expected to continue to increase given the demand for the course and the number of spaces available.

²⁸ Immigration Advisers Authority (2013). *Annual Performance Report for Year Ending 30 June 2013*



PART 4: ISSUES WITH THE CURRENT APPROACH

In this part we report on the issues identified during our review of the licensing framework and its implementation. We discuss whether the licensing system has achieved its objectives and provide a more detailed assessment of our finding that it has been only partially effective under the following headings:

- awareness
- competence
- compliance and
- delivery.

Summary

Regulatory systems usually incorporate several approaches to minimise harm (e.g. disclosure requirements, competence standards, compliance systems and sanctions), and the overall impact of a regulatory system is likely to be affected by all of these. Generally, regulatory systems that work well are ones in which:

- legal and regulatory requirements are well-known and accepted
- standards are clear and competent and ethical behaviour is easy to identify
- illegal activity is identified and stopped
- complaints and disputes are quickly and effectively resolved, and
- the requirements of the system are administered efficiently.

We have heard throughout this review that licensing has provided a focal point for the industry to professionalise; that it has provided greater protection to consumers through the development of formalised professional competency standards, a code of conduct, and development of a disputes process; and it has resulted in improved interactions between the profession and government (both the IAA and INZ).

Surveys of visa applicants that have used advisers present a positive picture about their experience. Applicants identified that when using an adviser they felt that their interests as a consumer were protected (85 per cent) and that they had a better chance of a successful application (81 per cent).²⁹

A significant majority of respondents to the same survey expected to receive good service from their immigration adviser (86 per cent), and 81 per cent viewed the service they had received as “better than what they had expected”.

²⁹ Immigration Advisers Authority (2014). *Immigration Advisers Authority Survey 2013/14 – wave 3*



87 per cent of consumers agreed that a benefit of using a licensed adviser was that their impression of New Zealand as a migration destination was positive. Given that word of mouth is an important information channel, a positive experience with an adviser may have a significant impact on New Zealand's reputation.³⁰

A high proportion of immigration advisers also see value in the licensing system:

- 77 per cent of advisers agree that the immigration adviser licensing scheme has improved the perception of New Zealand as a migration destination, and
- 83 per cent of advisers agree that licensing has added value to the New Zealand immigration industry.³¹

While the system has introduced mechanisms to protect consumers, it is difficult to determine whether ultimately it has been effective.

During the review we heard that the licensing system had been effective in removing the worst operators from the profession, but there are clearly ongoing issues with regard to licensed adviser behaviour. In 2013, 301 issues were reported to the IAA, of which 71 are being investigated as complaints and 70 are being investigated as offences.

There is also evidence of continued unlicensed adviser activity (especially, but not exclusively, in offshore locations) and concern particularly about the advice given to migrants seeking permanent residency in New Zealand through Student visa pathways.

The cumulative harm of incompetent and/or unethical advice can be significant in some cases, and irreversible in others. Some applicants have faced serious financial loss due to exorbitant fees; others have suffered irreparable damage to careers, family dislocation, and significant personal hardship; some people have had to leave New Zealand, be removed, or remain here illegally (and face removal in the future). At the very extreme, we were also told during this review of cases of suicide.

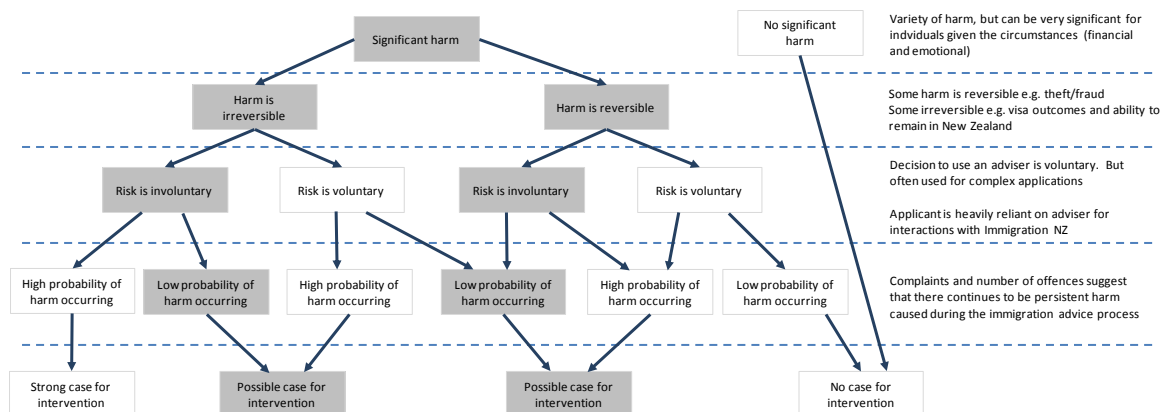
This all points to an ongoing rationale for government intervention, as outlined in the figure below.

³⁰ Immigration Advisers Authority (2014). *Immigration Advisers Authority Survey 2013/14 – wave 3*

³¹ Immigration Advisers Authority (2014). *Adviser Satisfaction Survey 2014*



Figure 10: Harm diagram



Overall, our conclusion is that the desired outcomes of the IALA have only partially been met. Several issues have been identified as opportunities to improve the effectiveness of the licensing system:

- awareness
 - evidence from surveys of users of advice and discussions with representatives of migrant communities suggest that awareness of the licensing system and access to complaints processes could be improved
- competence
 - even though there is broad support for an industry qualification, there is significant concern from immigration advisers that the competency standards are not currently set at an appropriate level, and
 - licensing exemptions were raised on a number of occasions as having the potential to negatively impact on the quality of immigration advice received by migrants
- compliance
 - there are practical and resource constraints which limit the IAA's ability to enforce compliance with the IALA offence provisions, particularly in offshore jurisdictions, and
 - there is a significant, but reducing, backlog of complaints to be referred to the Tribunal. Delays in considering complaints can mean that advisers that are operating incompetently and/or unethically can continue to cause harm for a period
- delivery
 - the implementation of the IALA has not resulted in strong ownership of ethical and competency standards and CPD by the profession reducing overall effectiveness, and
 - the respective roles of the regulator and the profession remain a point of contention more generally, as does the relationship between the IAA, INZ and the profession.



Awareness

The IAA was required to establish licensing and provide a publicly available register of licensed immigration advisers. The purpose of the publicly available register is to provide prospective migrants with a bone fide channel through which to select a licensed immigration adviser should they choose one.

In order for the system to be successful, prospective migrants should be able to distinguish between licensed (and exempt) advice and unlicensed advice. They should also be aware that when receiving advice there are advantages in receiving that advice from an adviser that is required to meet competency and conduct standards and is subject to a complaints and disciplinary system.

Among users of licensed advisers, there is good awareness that they are receiving licensed advice, but limited awareness of the licensing system in which the licensed adviser is required to operate:

- 34 per cent had heard of the IAA
- 45 per cent were aware of the online register of licensed immigration advisers
- 45 per cent knew how to make a complaint.³²

These proportions are relatively static across four survey cohorts over the last two years, with the exception of “knowledge of how to make a complaint” which has declined between surveys.

It is likely that awareness of the system among this group (migrants that have used advisers) is higher than the population at large and we have heard from representatives of migrant groups that awareness about the licensing system and the requirements imposed on licensed advisers remains low.

The problem with lack of awareness is that it creates space for unlicensed advisers to operate and may reduce the likelihood, or prevent complaints from being made about incompetent or unethical behaviour.

We consider raising awareness to be an important tool in combating unlicensed activity. It should be an area of focus for the immigration system more generally, in order to preserve New Zealand’s reputation internationally.

Competence and ethics

Entry into the profession

There are two components to entry into the licensed immigration adviser profession:

- Fit- to-practice (or good character) – fitness to practice is prescribed in legislation, and the IAA is required to consider previous convictions, bankruptcy, or other charges laid, and the applicant’s legal status when considering a licence application or renewal. Once licensed, an adviser is required to meet the requirements of the code of conduct which includes a mix of requirements

³² Immigration Advisers Authority (2014). *The Immigration Advisers Authority Survey 2013/14 – wave 3*



associated with how an adviser delivers advice as well as with the commercial aspects of selling advice.

- Competent to practice – under the IALA, the regulator is required to administer licensing and develop and maintain competency standards. The current method for demonstrating competence for entry into the profession is successful completion of the Graduate certificate. Advisers, once licensed, are required to renew their licence annually and this process consists of completion of the renewal form (which includes disclosure of any disciplinary issues and outlining CPD undertaken) and submitting a client file.³³

Relying on a standard qualification as a requirement for entry helps to create a universal standard against which applicants can be assessed. However, it is essential to ensure that new licence holders are competent, while not setting the bar so high that it restricts competition or creates an undue barrier to entry. If the settings are too high they can impose an entry barrier and reduce competition, which ultimately impacts negatively on consumers.

Participants in the review have been positive about the introduction of a course as a means of providing for entry into the profession. However, strong views were expressed, especially by existing advisers, that practical experience is a necessary requirement to be able to operate competently in a profession with such a high-level of reliance on the adviser.

A number of occupations require a period of supervision before a person may practise on their own, and it is our view that some form of practical requirement before attaining a full licence is aligned with the desire of licensed immigration advisers to be considered a profession in their own right.

That said, we have not seen any evidence that those entering the industry (having completed the course only) are operating at a sub-par level. Feedback from both the IAA and INZ has been that there have not been any complaints raised about the activities of course graduates, and that the quality of applications submitted by course graduates has been good. In addition, there is no discernible difference in visa approval rates between recent graduates and more experienced advisers.³⁴

We agree that there is a 'craft' element to the provision of immigration advice, particularly where that advice involves identifying specific visa pathways based on long-term client objectives. We also agree that without practical experience, it would be difficult to provide this advice.

However, there are practical constraints imposed by the industry structure that make the re-introduction of a supervisory component difficult to implement. Of the 668 licensed advisers, only 148 non-TTMRA advisers have been licensed for five years or more. The supply of new entrants to the industry could amount to more than 100 in any given year, placing significant pressure on the small resource of advisers with experience in the industry. In addition, the industry is dominated by sole operators who may not have the structures in place to support a formal supervisory role and may not have the desire to take on employees.

³³ Licensed immigration advisers can become eligible for fast-track renewal after they have completed two standard licence renewals. The fast-track process does not require the adviser to outline CPD undertaken or provide a client file

³⁴ Some caution needs to be taken when interpreting success rates, as these will be dependent on the type of clients that the adviser provides services to.



Ongoing knowledge development

Advisers who are renewing their licence through the standard renewal process, or are upgrading their licence, must provide proof of at least 20 hours of professional development activities over the previous 12 months. Any professional development activities undertaken must:

- be relevant to any aspect of the immigration adviser competency standards and/or the code of conduct
- include active learning, and may include self-directed learning.

The Registrar does not recommend particular providers or guarantee the quality of activities in respect of CPD requirements.

While advisers must explain the connection between the CPD activities they have undertaken, and the aspect of the competency standards and/or the code of conduct that the activities relate to, we are concerned that the criteria for qualifying CPD activities is too broad to effectively ensure ongoing skills development. For instance, we were told by some advisers that the time they spent discussing their views on the regulatory system with us would be claimed as CPD, although the IAA informed us that this would not be accepted as CPD.

Our views on the importance of CPD and our concerns with current CPD requirements are heightened by there being no practical experience requirement at initial licensing and exacerbated by the challenges to advisers of keeping up with changing immigration requirements and evolving case law. For these reasons we consider it appropriate that CPD requirements should be formalised to support ongoing adviser competence. A more formalised CPD programme may also support efficiencies in other aspects of the system (for example licensing renewals) and potentially provide an assurance mechanism with regard to the competence of exempt advice providers.

Ongoing adviser conduct

Adviser responsibilities

The IALA requires the IAA to develop and maintain a code of conduct to be observed by members of the profession. It is developed by the Registrar of Immigration Advisers and approved by the Minister of Immigration.

The code of conduct sets out the required standards of professional and ethical conduct for licensed immigration advisers and covers: professional responsibilities; supervision; professional practise; and misrepresentation.

As well as providing the rules by which advisers are required to act, it also provides that advisers must make clients aware of those rules. Before entering into a written agreement with the client, a licensed immigration adviser must:

- provide the client with the summary of licensed immigration advisers' professional responsibilities, as published by the Registrar
- explain the summary of licensed immigration advisers' professional responsibilities to the client and advise them how to access a full copy of this code of conduct, and



- advise the client that they have an internal complaints procedure and provide them with a copy of it.

Responses from migrants that have used advisers suggest that advisers are ensuring awareness of the code of conduct and its requirements. 84 per cent responded that they had received a written agreement and 91 per cent felt that the adviser had performed well or very well in explaining the terms of the agreement to them. Only 60 per cent of migrants reported receiving a copy of the code of conduct.³⁵³⁶

The licensing system applies to individuals only, not to organisations. The rationale for focusing the system on individuals was that it is the competence and behaviour of the individual that is important, rather than the standing and practices of the employing company or organisation. Regulating individuals establishes clear incentives for the individual to take responsibility for the quality of their advice and ensures that they can be directly sanctioned.

Advisers who are employees of a company are still responsible for adhering to the code of conduct. However, in some business models, some practices and standards associated with the provision of advice are applied at the corporate level (such as client engagement and invoicing procedures), and may be difficult for a licensed adviser to influence. Looking forward, we think that this may become more of a concern if more immigration advice is provided through group or corporate practices.

Although both can impact on the experience received by a migrant, only one is regulated, and this potentially creates a regulatory loophole. This issue was tested in the recent IAA v Yap court case.³⁷ In that case the High Court confirmed the individual responsibility placed upon licensed immigration advisers when providing professional services, even when elements of that service are directed by the corporate entity rather than the adviser.

Concerns over relative roles and responsibilities are likely to be most acute for those who do not have direct control over business operations. That would be those operating as employees or as contractors. As at February 2014, there were 193 individuals that identified themselves as either an employee or contractor. Some of these will be working in an organisation that is run by licensed advisers who will also be subject to the Code and therefore responsible for meeting the Code's requirements.

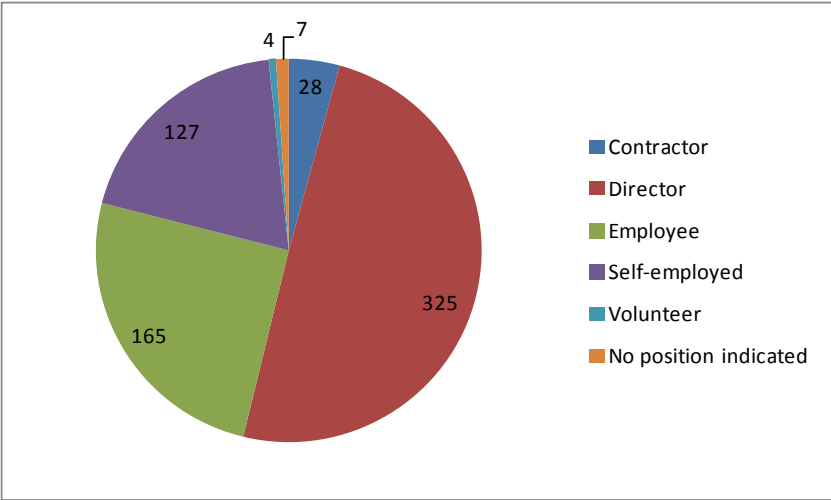
³⁵ Immigration Advisers Authority (2014). *The Immigration Advisers Authority Survey 2013/14 – wave 3*

³⁶ Note that as of January 2014, the requirement to provide a copy of the Code was replaced by a requirement to provide a summary as approved by the Registrar

³⁷ Immigration Advisers Authority v Yap [2014] NZHC 1215



Figure 11: Breakdown of advisers by role as at February 2014



Both individuals and organisations that provide immigration advice are regulated under the UK regulatory model³⁸. But the profession is small in New Zealand and our view is that adding additional complexity to the licensing system is not desirable.

We believe that a distinction can be made between the various aspects covered by the code of conduct. Some apply to the provision of advisory services and the adviser’s direct relationship with a client (e.g. working within their knowledge and skill limits), while others apply to the sale and trade of advisory services (e.g. fee setting and invoicing).

Instead of regulating organisations as well as individuals, we suggest that a more efficient solution may be to adopt the model applied in the Licensed Building Practitioners and Building Act regulatory regimes. Under that model:

- individual builders are licensed, and licensed builders are required to undertake or supervise some critical building work, and
- companies providing building services are required to meet certain specific business practices including providing written contracts.

We think that the code of conduct is deficient in that it does not contain adequate provision for the management and handover of clients, from one adviser to another, in the case that an adviser ceases to trade or becomes unlicensed. Because of the vulnerable circumstances of some clients, we think that it is important that such arrangements are provided for. For the same reason, we think that consideration should be given to the value of developing and requiring the use of a plain language standardised contract.

³⁸ <http://oisc.homeoffice.gov.uk/>



Adviser fees

Fees charged by advisers were raised on several occasions during the review. Some respondents told us that exorbitant fees are being charged by some advisers for relatively transactional and low cost activities and that this is made possible because of the situations of some clients. We were, for instance, told that some migrants come from countries where they expect to pay large fees for favourable outcomes by government administrators. We also heard that there are significant variations in the fees being charged for similar services, that fees are often demanded prior to services being provided, and that fee issues are a factor in many complaints.

The Code requires advisers to charge fair and reasonable fees and to transparently inform clients of the fees that they will charge. A licensed immigration adviser must:

- ensure that any fees charged are fair and reasonable in the circumstances
- work in a manner that does not unnecessarily increase fees, and
- inform the client of any additional fees, or changes to previously agreed fees, and ensure these are recorded and agreed to in writing.

The above concerns are not borne out in survey responses from migrants that have used licensed advisers, or at least the responses do not suggest that over-charging is a widespread issue:

- 89 per cent thought their adviser had performed well or very well in making it clear at the outset how much services were likely to cost.
- 76 per cent thought their adviser had performed well or very well in providing services for a reasonable cost.
- 20 per cent of advisers charged nothing upfront, and a further 43 per cent charged half their fee or less upfront. Of some concern is that 25 per cent of respondents to this question did not know the proportion of fees they paid in advance.³⁹

In our view, the Graduate Certificate provides a steady supply of new entrants to the profession and there is a competitive market for immigration advice services. There also appears to be good awareness among users of advice regarding the fees being charged. On this basis, we do not consider that there is a case to directly regulate adviser fees. Instead, we propose that the sections of the code that apply to the disclosure and charging of fees should be reviewed to ensure that there is adequate transparency and that these requirements are applied to corporate and group practices as well as self-employed advisers. We also propose that consideration be given to the introduction of infringement notices, and their application to licensed advisers that fail to adequately disclose fee information.

It should be noted that the profession would be likely to strongly oppose such an approach. We received strong feedback throughout the review that advisers felt that the regulator had been too focused on how advisers were conducting their business, rather than on the outcomes they were achieving for their clients.

³⁹ Immigration Advisers Authority (2014). *The Immigration Advisers Authority Survey 2013/14 – wave 3*



Compliance

Unlicensed advice

A person commits an offence under the IALA if the person:

- (a) provides immigration advice without being licensed to do so under this Act or exempt from the requirement to be so licensed, knowing that he or she is required to be licensed or exempt, or
- (b) provides immigration advice without being licensed to do so under this Act or exempt from the requirement to be so licensed.

Penalties that can be imposed are significant – a person convicted of an offence under the IALA is liable to imprisonment for a term not exceeding seven years, or a fine not exceeding \$100,000, or both.

Despite this, we heard frequent accounts of immigration advice that has been provided by unlicensed advisers, in New Zealand but particularly offshore in markets characterised by large number of student visa applications. This is a major issues of concern for licensed immigration advisers.

Visible enforcement activity against serious misconduct is important for the reputation of the profession. It is a function of the IAA to investigate and take enforcement action in relation to offences under the IALA, but taking a prosecution is resource-intensive and can take a long time. It is even more difficult where the alleged activity occurs outside New Zealand's jurisdiction.

The IAA has laid charges against 10 people. Seven people have been convicted, one had the charges dismissed and three people remain before the courts⁴⁰. The IAA has also issued 201 warning letters.

An observable compliance function assists in deterring unlawful and unethical behaviour. Immigration advisers expressed frustration that much of the compliance effort had been focused inwardly on the regulated profession, and not on taking action against those operating outside the licensing system. The IAA's counter-points to this claim are that:

- the only tools available to the IAA (outside of the complaints process) to take enforcement action against offences, are prosecutions and warning letters
- taking prosecutions is costly and resource-intensive and it does not have sufficient resource to act on all leads, and
- there has been a high volume of complaints about the activities of licensed advisers, which it has necessarily had to focus on.

Advice provided offshore

The licensing system can exert the most control over onshore advice provided by licensed advisers. It can address competence and ethical issues related to offshore licensed advisers through the regime,

⁴⁰ One of the ten people before the court is also one of the seven already convicted.



but there are practical limitations with regard to taking enforcement action against offshore unlicensed advice.

Offshore, an existing tool to deter unlicensed advice is that INZ must decline a visa application where it has been prepared by an unlicensed adviser. However, it would seem to be relatively easy to avoid this outcome by not declaring that advice has been provided.

Section 8 of the IALA extends the offence provisions to advice provided offshore. Retaining this provision may act as a mild deterrent to some offshore operators, but is very difficult to enforce. Generally we consider that it is undesirable to retain a provision in legislation that cannot be enforced. We consider that there are three practical approaches to deterring offshore unlicensed adviser activity:

- ensure that all visa applicants are aware of the legal requirement to only use licensed or exempt advisers
- raise awareness of the adviser licensing system in key offshore markets and the risks of using unlicensed advisers
- ensuring that the incentives in place where advisers do have a connection to New Zealand (for example offshore student agents working on behalf of New Zealand educational institutes) are adequate to incentivise ethical behaviour. In the case of Student visas this would include looking at the incentives for educational institutes as well as their agents, and we are aware that Education New Zealand and the New Zealand Qualifications Authority (NZQA) have made significant changes to the system in the last couple of years that will go some way to addressing this concern.

Complaints

Any person may make a complaint to the IAA concerning the provision of immigration advice by a licensed immigration adviser. The IAA investigates all complaints and can send complaints to the Tribunal for determination.

The number of complaints and prosecutions recorded suggests that serious misconduct can, and still does, occur. This misconduct can have serious consequences for consumers.

A well-functioning complaints process protects consumers, as well as those in the industry, but requires both awareness and efficient operational practice.

In the latest survey of adviser clients, less than half (45 per cent) knew how to make a complaint, but even so, the volume of complaints received by the Tribunal has been higher than anticipated.⁴¹

⁴¹ Document available online. Immigration Advisers Complaints and Disciplinary Tribunal (n.d.). *Annual report of the Immigration Advisers Complaints and Disciplinary Tribunal for the 12 months ended 30 June 2013*. Retrieved from <http://www.justice.govt.nz/tribunals/immigration-advisors-disciplinary-tribunal/documents/iacdt-annual-report-2013>



Table 3: Outcomes of complaints system

Calendar year	No. issues received	No. of those issues investigated as complaints	No. of those complaints sent to Tribunal	No. of those complaints upheld
2010	265	42	42	31
2011	245	49	49	35
2012	273	88	83	40
2013 ⁴²	301			
2014 (to date)	97			

We were told that complaints can take a long time to be resolved, and that it can take over a year before a decision is issued by the Tribunal. We were told that at present, almost all issues that are assessed as valid complaints by the IAA are passed on to the Tribunal for resolution. A number of stakeholders expressed frustration with this process and suggested the need for a more efficient mechanism that would allow low level complaints to be addressed more swiftly. Some expressed concern that delays in processing complaints mean that incompetent and unethical advisers can continue to operate for long periods before a complaint is resolved, or action is taken.

In response to these concerns, the IAA informed us that it has undertaken significant work in the last year to ensure that the complaint file prepared for the Tribunal is of a high standard. That this has resulted in some re-work of complaints files and some processing delays but that its changes should ultimately improve the efficiency of the Tribunal. The IAA has also advised that it is working on a new complaints process that will mean that not all issues are passed to the Tribunal for resolution.

We do not have evidence on the number of minor complaints that are entered into the system, but we would note that at present there is no low-level alternative dispute mechanism in place. Alternate dispute resolution models in other professions (e.g. the legal profession) have been effective in reducing the volume of complaints needing to be considered by a tribunal or other formal complaints body. Our conclusion is that implementation of an alternative dispute resolution process could further free up Tribunal and IAA resources to focus on resolving more serious complaints more quickly.

Factors limiting effectiveness

Licensing exemptions

Exempt advisers process four per cent of all visa applications (one-third of all advised visa applications). Exempt advisers operate outside the IALA framework but essentially provide migrants with the same sorts of advisory services. In theory, this means the same level of harm can occur, and therefore sufficient incentives need to be in place to ensure those operating under an exemption are competent and act ethically.

⁴² The significant changes made to the complaints system mean that data available for 2013 and 2014 is not complete.



There are four categories of exemption that have been prominent during this review – two of these groups provide advice for a fee and are in direct competition with licensed advisers. Strong concerns have been expressed by licensed immigration advisers, by lawyers and by the IAA, about the potential for harm created by limited oversight of the activities of offshore student agents. The general view is that many are providing a wider range of advice than their exemption currently allows for.

Table 4 provides a summary of the frameworks surrounding the four key exempt groups.

Table 4: Rationale for exemptions

Exemption	Rationale for exemption	Regulatory system
Lawyers	Duplicates regulation. Maintaining client privilege is not aligned with inspection powers available to the IAA under the IALA.	<p>Competence: high threshold – law degree, practising certificate, requirements when practising on own, and recently introduced CPD requirements.</p> <p>Ethics: Lawyers are required to act at all times in accordance with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. The Rules outline the obligations lawyers owe to their clients.</p> <p>Compliance: lawyers are subject to a complaints process managed by Law Societies. In addition, all lawyers must have procedures for resolving complaints and must tell their clients about those procedures before commencing work.</p>
Offshore student agents providing advice in respect of Student visas	Extending licensing requirements to offshore agents could pose risks to the international education industry, be considered unacceptable by countries in which agents are legitimately operating, create serious liability issues for the New Zealand government, and create incentives for agents not to declare their involvement in an immigration application. ⁴³	<p>Competence: No competency requirements in place. However, Education New Zealand has developed free training for education agents.</p> <p>Ethics: Contractual arrangements exist between the education agent and education providers.</p> <p>The Education New Zealand Agent Programme introduces three tiers of recognised agents. There are incentives for agents to participate in the Programme (e.g. being able to demarcate themselves as recognised by the New Zealand government) and agents can be removed from the Programme if they are not operating appropriately.</p> <p>In addition, education providers have a duty of care towards their students (Code of Practice for the Pastoral Care of International Students). The Code requires education providers to have written contracts with their agent, and ensure that their agents abide by the code.</p> <p>Compliance: No overarching complaints process for complaints about agents. However, the onus is on education providers to ensure that their agents adhere to laws and regulations.</p>
CAB and Community Law Centres	Providing low-level and free advice mainly to those who cannot afford to pay for it	<p>Competence: CAB has an induction programme for all of its volunteers and has a nationwide distribution network and IT infrastructure to ensure up-to-date information is available.</p> <p>Community law centres are required to have a lawyer on the employing body of the community law centre or a lawyer working in a supervisory capacity.</p> <p>Ethics: As these are free services, the incentive to act unethically is low.</p> <p>Compliance: All CABs have a procedure for responding to complaints or concerns. If a complaint is about the service provided by a</p>

⁴³ Cabinet Economic Development Committee (2004). *Licensing Immigration advisers – regulatory model* [EDC (04) 51]



Exemption	Rationale for exemption	Regulatory system
		<p>volunteer then the complaint will be dealt with by the bureau manager. If the complaint relates to a manager, or how their complaint has been dealt with, then the Chairperson will deal with it. If after this the complainant is still not satisfied then they can complain to the CABNZ National Board.</p> <p>Complaints about advice received from lawyers at community law centres will be investigated by law societies through their complaints process.</p>
INZ officials (as employees of the public service who provide immigration advice within the scope of their employment agreement)	Visa applicants should expect to be able to go to the government and receive the necessary information to complete a visa application.	<p><u>Competence:</u> INZ officials must keep abreast of changes to operational policy as a matter of course. It is the role of INZ to ensure its staff can adequately deliver their functions.</p> <p><u>Ethics:</u> INZ officials are not contracted by migrants to provide them with services. There is no incentive for them to act unethically.</p> <p><u>Compliance:</u> INZ has a complaints process in place for dealing with complaints about INZ officials.</p>

We do not believe that removing exemptions, per se, would address concerns about poor advice. In most cases, our view is that the exempt categories maintain a sufficient level of oversight which is commensurate with the level of risk posed to consumers. That said, the number of exemptions makes explanation of the licensing regime to consumers difficult and may make compliance more difficult to achieve, especially in offshore markets.

In summary we:

- are not concerned about the exemption for lawyers, which seems practical given the existing regulatory structure surrounding the profession
- consider that CAB and Community Law Centres have low incentives to act in an unethical manner, but acknowledge that migrants seeking advice should be able to expect that that advice is provided competently, and
- have heard that the type of advice provided by INZ staff is not the advisory type of advice provided by advisers (i.e. providing strategies to navigate pathways) and that it is appropriate for visa processing staff to be able to discuss how to make an application where that request is made via the INZ call centre.

However we consider there to be merit in ensuring that even exempt advisers are maintaining an adequate level of competence in relation to immigration-specific subject matter. The regime does not enable this at present.

Offshore student agents

We have heard that the area of most risk is in the student visa advice market and it seems widely accepted that some offshore student agents stray beyond providing advice in relation to Student visas only.



We have been provided with several anecdotal examples of serious harm caused by unethical (mostly) or incompetent advice provided by offshore student agents. In particular this relates to setting residency expectations that are not achievable. For example, we have heard of cases where applicants have been advised to enrol in specific educational courses, then apply for specific jobs, which will fulfil the criteria for residence. Families have invested their savings to gain entry for their children into New Zealand on the expectation that this will eventually enable the wider family to gain residence – they have found that this pathway does not exist.

This issue is of particular concern given:

- the volume of applicants made (9,206 Student visa applications were made offshore by exempt advisers in 2012/13)
- that no competency standards are in place for offshore student agents
- the significant financial incentives available for offshore student agents when placing a student
- that there is limited ability to act on undesired behaviour, and
- that Student visas are a common pathway to long-term residency.

The government has indicated its desire to grow the export education sector in New Zealand and has implemented policies to make New Zealand competitive in the international market (for example by removing barriers to entry for students, ensuring a quality education experience and providing greater work opportunities).

In order to grow the export education sector, New Zealand education providers are relatively more reliant on offshore agents than other countries marketing themselves to prospective students, and there appears to be an inherent tension between growing the market and potentially exposing students (and the New Zealand brand) to greater risks.

The export education sector is aware of the importance of agent behaviour. In order to encourage good behaviour, Education New Zealand has developed a voluntary accreditation programme that aims to recognise agents that act professionally and ethically. It is important that the effects of this programme on agent behaviour are assessed to determine whether it is a sufficient response given the examples of direct harm to migrants identified and the potential harm to the New Zealand brand.

In addition, the Code of Practice for the Pastoral Care of International Students requires signatories (education providers) to have written contracts with their agents, to ensure that their agents comply with the Code, and to cease working with any agent who does not abide by the Code.

Providers are required by the Code to assess the appropriateness of accepting a student to a particular programme, considering the student's academic and/or career intentions and background. The Code is being updated at present.

The New Zealand Qualifications Authority (NZQA) has also obtained new legal powers to strengthen its monitoring of providers' quality, including imposing conditions on registration, cancelling registration of non-compliant providers, and requiring New Zealand-based agents to have fees paid to them by students to be protected in trust accounts.



Proposal for recruitment agents to have access to limited licenses

It was proposed during our review that there is merit in considering providing recruitment agents with the ability to offer limited advice to prospective migrants. We would observe that, as outlined above, there are practical difficulties in managing the boundaries or advice tied to a limited licence. We also note that the requirements for becoming a licensed adviser are relatively easy to meet, and that there would appear no substantial barriers to recruitment advisers gaining access to the services of licensed advisers, either as employees or as consultant advisers.

An alternative approach would be to consider extending the list of exemptions. Any consideration of further exempt categories should, in our view, be undertaken with extreme caution. Policymakers should satisfy themselves that any future exempt groups have adequate structures in place to ensure that their members act competently and ethically, and can be effectively held to account in the event that they do behave unethically or incompetently.

Delivery

Relative role of the regulator and the profession

We have heard that the relationship between the regulator and the industry has at times been strained. Based on the most recent adviser survey results, it appears that there is ongoing concern about the role of the regulator. In 2014:

- 64 per cent of advisers were satisfied with the overall quality of service provided by the IAA.
- Less than half (43 per cent) of licensed advisers agreed with the statement that the IAA “is an example of good value for tax dollars spent”⁴⁴.
- In the online survey run as part of this review, only one-third (32 per cent) of advisers agreed with the statement that “the regulator is focused on the right issues in the industry at the moment”. 42 per cent disagreed with that statement and the remainder neither agreed nor disagreed, or did not offer an opinion.

It is the strong view of the profession that the regulator should be focused on supporting licensed advisers to give good advice, and should be taking action against unlicensed advisers who are doing harm to consumers and to the reputation of the profession. Their view is that the regulator has been too focused on the activities of licensed advisers.

The IALA provides for the regulator to have a central role in the development of the profession. We consider that the heavy reliance on the regulator is inefficient because it results in weak incentives on advisers to take ownership of their professional ethics, competency standards, training and resolution of customer complaints.

⁴⁴ Immigration Advisers Authority (2014). *Adviser Satisfaction Survey Report 2014*.



Our view is that the IALA provisions, and the way they are implemented, are likely to continue to result in the regulator assuming responsibility for these core professional roles leaving little role for the profession but to complain about the regulator's conduct. We consider that greater emphasis needs to be placed on achieving increased industry ownership of core aspects of practise such as competency and ethics, and that providing for a more formalised advisory role for the profession would support that.

Efficiencies through the creation of MBIE

As a result of the formation of MBIE, one agency is now responsible for a large number of occupational regulation regimes (approximately 40). The delivery of the immigration adviser licensing scheme shares common characteristics with other licensing and regulatory regimes, such as: raising awareness; maintenance of a register; administration of negative vetting and other licensing functions, compliance and enforcement activities, and the provision of dispute resolution services.

The IAA has been configured as a standalone entity and undertakes a lot of its operations in relative isolation from MBIE. We recognise that the rationale for functional separation of visa processing and the regulation of immigration advisers remains, but we consider there to be potential to achieve operational efficiencies by consolidating some key regulatory activities across occupational regulation regimes and through greater information sharing between the IAA and INZ.

Our view is that there is merit in:

- INZ being able to provide direct feedback to IAA (or a law society or educational institute) on patterns it is observing in the quality or source of applications it receives, and
- exploring the potential for administrative cost savings from pooling specialist regulatory resource across MBIE, for example the operation of a register of licensed practitioners, the design and implementation of compliance strategies, communications support, back office licensing and other functions, and the provision or procurement of dispute resolution services.

An approach that brings the IAA and INZ closer together may well raise concerns amongst advisers that an appropriate level of separation is not being achieved. We consider that such concerns can be effectively countered through protocols, the development of approved information sharing agreements between INZ and the IAA and by providing greater transparency to advisers about the details of any information sharing arrangements between the IAA and INZ. The IAA reference group⁴⁵, or a more formalised version of it, could also have a role in monitoring and providing industry with assurances that appropriate levels of separation are being maintained.

⁴⁵ Each year licensed immigration advisers volunteer to become part of a reference group to help improve immigration adviser licensing. The reference group meets four times a year to discuss a broad range of issues and policy matters affecting the immigration advice profession. Members of the reference group may also be consulted on draft policy at other times during the year. The reference group is made up of 10 licensed immigration advisers, a consumer representative and an Immigration New Zealand manager.



Regulatory efficiency – re-licensing

Licence renewals are valid for 12 months and it is the responsibility of licensed immigration advisers to ensure that their licence remains up to date. The Registrar will approve a renewal application if they are satisfied that the applicant:

- is not prohibited from licensing
- is fit to be licensed as an immigration adviser
- meets the minimum standards of competence, and
- has properly completed an application in accordance with the Act.

Very few renewals are declined by the IAA – three license renewals were declined in 2013 and two have been declined in 2014. All the renewals were refused on fitness rather than competency grounds.

The renewal process has been criticised as cumbersome, without effectively determining competence, but it has recently been modified to improve efficiency. It is acknowledged that the feedback provided during this review is likely to be from people who have not yet experienced the new process.

There are three renewal application streams: standard, fast-track and inspections. The standard renewal stream requires assessment by the regulator of a client file selected and supplied by the licensed advisor. The fast-track stream provides a more streamlined renewal process.

Even with the fast-track stream, we consider the renewal process relatively resource-intensive for the outcomes delivered (almost all license renewals are approved).

Our conclusion is that a more formalised CPD process, combined with a risk-assessment (complaints, years in industry, number of applications processed) could provide a more proportionate approach to re-licensing without jeopardising the integrity of the licensing system. This is similar to the approach taken by the Australian regulator⁴⁶.

⁴⁶ Office of the Migration Agents Registration Authority <https://www.mara.gov.au/>



PART 5: PROPOSALS FOR CHANGE

In this part we discuss our proposals and recommendations for changes to the design and administration of the immigration adviser licensing system. We discuss objectives for improving the design and delivery of the licensing system, alternative regulatory models and assess the potential for them to be successfully applied given the current operational context. We conclude by making recommendations to improve the effectiveness of the current system.

Proposed objectives for the system

The overarching purpose of the IALA is to promote and protect the interests of persons receiving immigration advice by providing for the regulation of persons who give immigration advice. As a result, it also aims to enhance the reputation of New Zealand as a migration destination.

We believe that the intended purpose of the IALA remains valid. But we also propose the following objectives to guide the future design and operation of the system:

- consumers of immigration advice express high levels of satisfaction with the quality of services they receive from licensed and exempt advisers
- consumers of immigration advice are able to easily identify licensed and exempt advisers and place a premium on their advice
- unlicensed adviser activity is effectively deterred
- the licensed adviser industry takes ownership and responsibility for the professional conduct of its members.

Our view is that the observable impacts of achieving these objectives will be:

- that the licensed adviser industry and its members are held in good esteem and are able to clearly demarcate their services from any unlicensed competitors
- less unlicensed activity occurring
- less instances of harm to consumers of immigration advice, and
- maintenance of New Zealand's high reputation as being a place that is easy to busy free of corruption

Achieving this will require changes to the regulatory framework that result in incentives for advisers to operate within the licensing system, for the profession to take greater ownership of members' behaviour and conduct, an increased focus on taking action against those who are operating illegally outside the licensing system in New Zealand, and more efficient delivery of a process to deal with undesirable activity.



Alternatives to the status quo

Overarching government objectives are to support the competitive operation of industries, reduce compliance costs associated with government actions, and to support positive outcomes for consumers. In this regard, government needs to consider three high-level questions with regard to regulation:

- is regulation necessary?
- is intervention by government is justified?
- what is the most effective form of intervention?

Our conclusion is that some form of regulatory intervention remains desirable given the potential for serious and irreversible harm that can be caused by incompetent advice or unethical behaviour. This harm is exacerbated because those seeking immigration advice sometimes find themselves in circumstances that can make them vulnerable to unscrupulous behaviour.

Poor advice, and the setting of unrealistic migration expectations, can also impact negatively on New Zealand's reputation internationally and, given the potential seriousness of harm we conclude that at the present time, some form of government intervention remains justified.

Although occupational regulation can impose costs (in terms of entry barriers, reduced competition and administrative costs), there are benefits from it that accrue to all three key stakeholder groups:

- consumers, who find it easier to identify people that are competent to provide immigration advice and are incentivised to act ethically
- licensed immigration advisers, who are able to demarcate themselves from other providers of immigration advice, and
- the government, who is able to rely on the integrity of visa applications prepared by licensed and exempt advisers and better compete globally for the migrants that New Zealand needs.

How much regulation is required?

The strength of the case for government, rather than industry, intervention depends upon a combination of the nature of the harm that could occur from incompetent, reckless, or incomplete provision of a good or service from an occupational group, and the availability of means other than government intervention to avert or remedy that harm.

The literature says that regulating an occupation is likely to increase costs for applicants and for those regulated, and reduce employment rates. It is important therefore that the costs imposed by regulation are appropriately balanced against the potential benefits.

Low-level regulatory approach

A low-level approach could include the introduction of minimum standards to become registered (e.g. requirements related to character such as not having previous convictions), and to rely on taking prosecutions against offences as a deterrent to undesired behaviour.



We have formed the view that giving appropriate immigration advice can be complex and should be governed by some form of competency standards; we note that instances of consumer harm can be significant and irreversible (regardless of whether caused by unethical behaviour or incompetence); and we note that applying the current IALA offence provisions (which would be the main sanction available under a low-level regulatory approach) has proven difficult.

It appears to us that harm to consumers continues to result from both 'dodgy' operators and from licensed advisers not meeting competency standards. A low-level approach would be more focused on removing 'dodgy' operators from the system, rather than on improving competence. Our view therefore, is that a low-level regulatory approach is not desirable.

Self-regulation

Self-regulation allows the regulated industry to exert control over its membership. It relies on an active industry body being in place to set standards and provide a mechanism for disputes to be heard fairly. Prior to the IALA, this role was undertaken by the NZAMI.

Advantages of self-regulation

The advantages of self-regulating models are that they can result in lower compliance costs for business (and as a result, improved cost outcomes for consumers), they can avoid overly-prescriptive regulation and allow the industry to be more responsive to changing consumer expectations.⁴⁷ Successful self-regulatory schemes can also achieve high level of professional buy in for regulatory objectives and compliance.

However, it is necessary to ensure that self-regulation is the appropriate form of intervention given the particular industry environment and market circumstances.⁴⁸

Disadvantages of self-regulation

There are three key risks associated with self-regulation, being regulatory capture, reduced competition, and reduced consumer confidence.

- Regulatory capture is where a regulator is supposed to be acting in the public interest, but instead operates in the commercial interests of the industry or special interests within that industry. Regulatory capture is most likely to occur within self-regulated bodies.
- Self-regulation can increase incentives to tighten entry criteria into the profession, thereby reducing competition for incumbents, and ultimately resulting in negative outcomes for consumers such as reduced choice and increased prices.
- Community cynicism regarding an industry regulating itself may lead to a distrust of self-regulatory schemes unless schemes operate effectively and consumers have confidence in them.⁴⁹

⁴⁷ Document available online. The Australian Government Treasury (n.d.). *Industry self-regulation in consumer markets*. Retrieved from: http://archive.treasury.gov.au/documents/1131/HTML/docshell.asp?URL=01_executive_summary.asp

⁴⁸ *ibid*

⁴⁹ *ibid*



Direct government regulation

- This is the current regulatory model, which involves direct government control of outcomes through a regulatory body established within MBIE. Government (rather than industry) intervention is generally required when:
- significant harm to consumers or third parties is possible
- existing means of protection from harm for consumers and third parties are insufficient
- intervention by government is likely to improve the outcomes

or:

- there is market failure which industry cannot remedy
- when the industry is unable to regulate itself because of the costs involved.

Conclusions

There are potential advantages and disadvantages from having an industry body control entry and other aspects of occupational regulation:

- An industry body would have expert knowledge, but potentially stands to benefit incumbent advisers by restricting entry to the occupation.
- A government agency may lack the relevant industry knowledge and may not be able to deliver a regulatory system as efficiently as an industry body. However, it may have advantages in terms of impartiality, and be able to achieve economies of scale where it has oversight of several regulatory regimes.

Self-regulation is most appropriate in a context where the industry acts cohesively and there is broad support to form a governing body.⁵⁰ A self-regulating model also benefits from having a mature industry that is relatively homogenous in terms of objectives and culture⁵¹ as industry participants are more likely to have sufficient resources and are prepared to commit them for a common goal.

Our view is that the profession is fractured, to a certain extent, by the competition between licensed and exempt advisers, and with two industry associations representing industry viewpoints, and a history of tension between the industry and the regulator. In addition, the profession is characterised by a very high proportion of sole operators and very few organisations with more than a handful of licensed immigration advisers working for them. A significant portion of the profession are relative newcomers to the provision of immigration advice.

⁵⁰ Cabinet Economic Development Committee (2004). *Licensing Immigration advisers – regulatory model* [EDC (04) 51]

⁵¹ *ibid*



On balance, our view is that self-regulation is not feasible at this time and that ongoing and irreversible harm, as well as reputational impacts on New Zealand’s brand, justify continued government involvement. We conclude:

- that there is a public policy case (and widespread support) for ongoing regulation
- that the industry is too small, immature and fragmented for self-regulation, and that the risks and costs of self-regulation would likely outweigh the benefits, but
- that a change to the status quo is desirable with a view to achieving, over time, greater industry ownership of professional conduct and development.

We recommend that a more formalised role for the profession be achieved through co-regulation. The benefits of co-regulation are considered to be greater industry buy-in, and therefore greater voluntary compliance, while continuing to provide independent oversight. Co-regulation usually involves government oversight or ratification of self-regulatory instruments and an example is the Building Practitioners Board.

Proposals to modify the existing system

Our review has identified several areas where modifications to the existing system could be made to increase the likelihood of it achieving the desired outcomes – several modifications can be achieved through operational means, rather than requiring legislative change. Table 5 below summarises our recommendations, which are outlined in more detail in the following section.

Table 5: Summary of recommendations

Recommendation	Priority	Legislative / Regulatory / Operational
1 Definition – clarifying the definition to make it clear that information provided by immigration officials on matters related to the nature of legal requirements for visas, and how to access INZ procedures for applying for visas, is not considered immigration advice.	Low	Legislative
2 Exempt advisers – introduce new requirements to ensure that exempt advisers maintain a current knowledge of immigration issues and that offshore student agents do not provide advice beyond the scope of student visa applications.	High	Legislative and/or operational
3 Awareness – better promote the purpose of the licensing system, particularly in offshore markets, in close association with INZ, Education New Zealand and the licensed and exempt adviser industries.	High	Operational
4 Entry to the profession – re-introduce some mechanism for ensuring practical experience prior to receiving full licence. Options include: <ul style="list-style-type: none"> – extension of course syllabus to include a practical component such as a placement, or – provisional licence for a period (subject to supervision and/or additional CPD requirements). 	Medium	Operational
5 Simplified licensing structure – removal of limited licence.	Low	Legislative



Recommendation	Priority	Legislative / Regulatory / Operational
<p>6 Clearer separation of individual and organisational responsibilities – provide for business aspects from the code of conduct to be specified in regulation and require all persons in trade (self-employed advisers or companies) to abide by these (have a written agreement etc.) in their delivery of advisory services.</p> <p>In addition we recommend that the Code be reviewed to ensure that it provides for the adequate management and handover of clients, from one adviser to another, in the case of an adviser ceasing to trade and that consideration also be given to requiring use of a standardised plain language contract.</p>	Medium	Legislative, regulatory and/or operational
<p>7 Greater role for the profession – provide for greater industry input into, and ownership of, competency standards, the code of conduct, training and CPD.</p>	High	Legislative and/or operational
<p>8 Formalising CPD requirements – place an emphasis on more structured CPD requirements. Leverage this structure to support delivery of recommendations 1,4 and 14.</p>	High	Operational
<p>9 Remove the section 8 offshore offence provision – remove the offshore offence provision on the basis that it cannot be implemented effectively. Instead:</p> <ul style="list-style-type: none"> – retain section 9 provision enabling INZ to decline an application received from an adviser who is neither licensed nor exempt – focus on awareness raising in key offshore markets, in close association with INZ, Education New Zealand and the licensed and exempt adviser industries to raise awareness of the licensing regime, the advantages of using licensed and exempt advisers, and the risks of using unlicensed advisers. 	Medium	Legislative and/or operational
<p>10 Provide the IAA with a wider set of regulatory tools – legislate for the IAA to have a wider set of tools to address both non-compliant licensed immigration adviser activities, and unlicensed immigration advice.</p>	High	Legislative
<p>11 Alternative dispute resolution – provide for an alternative dispute resolution process to deal with minor complaints and thereby free up Tribunal resource to focus on resolution of issues resulting in significant consumer harm.</p>	High	Legislative and operational
<p>12 Structural relationship between the IAA and the profession – legislate for the profession to play a greater role in the development of competency standards, the code of conduct, training and CPD.</p>	High	Legislative and/or operational
<p>13 Operational efficiencies – investigate the potential to consolidate functions across MBIE's occupational regulation regimes. For example:</p> <ul style="list-style-type: none"> – identifying opportunities for greater information sharing between the IAA and INZ – identifying opportunities to consolidate functions such as registration, communications, and alternative dispute resolution. 	Medium	Operational
<p>14 Licensing renewal – seek to reduce the compliance costs associated with licensing renewal by focusing the process on two components:</p> <ul style="list-style-type: none"> – negative vetting (e.g. based on complaints about applicant) – completion of more formalised CPD requirements. 	Medium	Operational



Overall, we consider the package of recommendations will support greater effectiveness of the system. While some recommendations may re-direct resource to higher priority areas, we do not consider that implementing the package of recommendations would result in financial savings. Without additional resource, the existing funding shortfall will remain.

Defining advice

Recommendation 1: Definition of advice

The definition of advice, provided in Section 7 of the IALA is relatively broad. It includes assisting someone in regard to an immigration matter and does not make a distinction about whether or not it is provided for gain or reward.

It was identified during the review that a tighter, or more prescriptive, definition of advice would not only support understanding of the distinction between regulated and unregulated advice, but would also assist in the delivery of the compliance function.

Concerns about the services provided by INZ employees, in particular, were raised on several occasions by licensed immigration advisers. We have formed the view that it is appropriate for INZ employees to provide information and guidance to visa applicants about how to interact with INZ and visa application requirements. We are of the view that the IALA should be clarified to ensure that there is no confusion that such advice by INZ officials is considered immigration advice for the purposes of immigration licensing or exemption requirements.

We would also note that regardless of how tightly advice is defined, there is likely to be ongoing interpretation issues at the margin. A clear distinction is made challenging because prospective migrants:

- may be eligible for several visa categories, but some will be more suitable than others – they want to explore opportunities through visa pathways
- for providers of free advice (such as the CAB and community law centres), immigration advice may form only a small part of the needs of their clients.

We recommend that consideration be given to clarifying how the legislation applies in respect of INZ employees.

Recommendation 2: Requirements imposed on exempt adviser categories

Given the seriousness of harm, it is important that advice provided is both competent and provided by someone acting ethically. A broad definition is consistent with this, however we consider there to be potential to be more prescriptive about the definition with specific reference to exempt persons.

Exempt advisers submit a significant proportion of visa applications in their own right (4% of all advised visa applications in 2012/13), and provide a great deal of free support to those who cannot afford to pay for it (CAB received close to 24,000 immigration-related enquiries in 2012/13).



The different exempt adviser categories each have different incentives/systems in place to ensure appropriate behaviour. These systems are separate from the immigration advisers licensing system, even though the same sorts of advice and activities are being undertaken.

Clients receiving advice are entitled to receive competent and ethical advice, regardless of whether this advice is provided by a licensed or an exempt immigration adviser.

We consider there to be scope for greater coordination of CPD requirements across the different groups providing immigration advice. A more formalised CPD process within the licensed immigration adviser profession would better facilitate this.

We recommend consideration be given to placing requirements on exempt adviser categories to undertake immigration-related CPD. This could include:

- Lawyers – now that the Law Societies have introduced CPD requirements, a formal agreement with Law Societies could be made regarding immigration lawyer CPD (i.e. to encourage immigration-specific CPD provided in the licensing system).
- CAB –
 - providing free or subsidised access to CPD events for CAB volunteers dealing with a significant number of immigration related enquiries
 - re-drafting the exemption so that it is subject to the adviser undertaking a certain amount of immigration-related CPD each year.
- Community law centres – re-drafting the exemption to make it subject to the lawyer on the employing body or supervising having completed a certain amount of immigration-related CPD each year.
- Offshore student agents –
 - work with Education New Zealand to ensure that free training for education agents remains up-to-date, and give consideration to requiring that training should be refreshed every year by agents in order to qualify for higher tiers of education advice system
 - requiring education agents working for New Zealand providers to disclose to their clients that they are not licensed immigration advisers and are prohibited from providing immigration advice on matters other than Student visa applications.
- Public sector employees – be more explicit about the scope of activities that can be undertaken by public sector employees, and potentially tightening the definition to include only those who are processing visa applications.

If exemptions were tied to completion of a certain amount of immigration-related CPD, it would be an offence for an exempt adviser to provide immigration advice if they had not undertaken the requisite CPD.

One approach to achieving compliance with CPD requirements would be for the IAA to establish agreements with other industry bodies or national organisations that require their members to undertake a certain proportion of immigration-related CPD among their ongoing competence obligations. The role of ensuring that appropriate CPD was completed would fall to the appropriate regulator or national body. This is our preferred approach.



An alternative approach would be to require all providers of immigration advice (licensed and exempt) to be registered. Only registered advisers would be exempt, and the criteria for registration would relate to completion of a certain number of hours of accredited CPD. Registration is not our favoured approach given the additional operational costs it would impose.

Awareness

Recommendation 3: Continued focus by IAA on improving awareness

A licensing system is most likely to be effective where there is a high level of consumer awareness and broad acceptance of the reasons for and benefits of licensing. This enables consumers to make educated choices when deciding whether or not to seek advice, and to better decide who to seek advice from. If there is broad understanding amongst consumers of the benefits of using licensed advisers (over unlicensed advisers) then this will help drive incentives all advisers to participate in the system (rather than outside as unlicensed advisers).

Improving awareness of the IALA and licensing system would support the objective of reducing unlicensed activity. In raising awareness, the following factors need to be considered:

- Respective roles of the profession and the regulator. It is role of the regulator to raise awareness about the regulatory system and its requirements. It is the role of industry to promote the benefits of using licensed immigration advisers over other advisers.
- Role of INZ. INZ can play an important role in ensuring that all visa applicants are aware of the licensing scheme and its requirements and of the risks of using unlicensed immigration advisers.
- Offshore student agents act as representatives of New Zealand institutions. They are an important gateway into the New Zealand immigration system and should be required to provide prospective migrants with information about the regulatory system including licensing requirements and the limits on the advice that they are legally allowed to provide.
- Many of those that choose to use advisers have chosen their adviser based on hearing about the adviser through friends and family (44 per cent) and a further 25 per cent through work/employer.⁵² Community groups and employers are likely to be important conduits of information about the regulatory system.

Competence and ethics

Recommendation 4: Entry to the profession

The entry criteria for the profession has moved away from a supervision model to completion of a course. No practical experience is required to become a licensed immigration adviser, yet we have heard throughout this review that there is a significant 'craft' component to providing immigration advice.

⁵² Immigration Advisers Authority Survey 2013/14 W2



Care needs to be taken when setting entry standards for the profession. Setting the bar too high could create an artificial skill shortage and increase costs for applicants, it would also do nothing to deter unlicensed advice, and would place those who are exempt from the licensing system in a stronger position.

However, setting the bar too low runs the risk of de-valuing the licensing system and increasing the risk of harm from incompetent advice, by diluting the controls over quality that can be applied in licensing. In such a scenario, you may end up with more advisers 'endorsed' by the government, but insufficient benefits in terms of quality for the consumer.

The current model is unusual, to an extent, in that a newcomer to the profession can be fully licensed and operating as a sole trader directly after successfully completing the entrance course.

Our view is that a period of practical experience is desirable before a full license is issued. Previous problems with access to supervision are likely to continue because of the structure of the industry and the dominance of self-employed advisers, but three potential approaches to introducing a practical element would be:

- Make completion of the course the criteria for receiving a provisional licence, with an assessment of competence at a later point as the criteria for receiving a full licence.
- Include a practical component to the entry course, such as work experience.
- In the absence of available supervisors, potentially require a higher amount, or specifically targeted, CPD to be undertaken as part of continued licensing requirements in the first one to two years after course completion.

Recommendation 5: Simplifying licence types

It is not clear that the limited licence is fulfilling a valuable purpose. There are currently only 14 advisers operating with a limited licence⁵³, and it introduces further risk that advice is provided beyond licence boundaries.

We recommend removing the section 19 provision for a limited licence, but retaining the provisional licence as a mechanism for demarcating new entrants to the industry and those with a track record of practise.

Recommendation 6: How organisations should be treated in the licensing system

Section 6 of the IALA requires individuals to be licensed. Section 37(1) requires licensed immigration advisers to observe a code of conduct.

The code of conduct covers both individual ethical standards as well as business practices. This is appropriate where the licensed individual has control over both aspects. However, under some corporate structures there will be limited ability for the adviser to influence business practices (for example fee setting or the contents of written agreements).

⁵³ As at 20 June 2014



The recent Court case *Yap v IAA* brings the relative responsibilities of licensed individuals and the organisations they work for into sharp relief. The licensing system places the onus on the licensed individual, and we question whether that is appropriate in all circumstances.

We want to avoid two situations:

- A licensed adviser is sanctioned for activities outside their control
- A consumer is let down because neither a licensed adviser, nor the organisation they work for, can be brought to account when there are breaches of the Code of Conduct.

The regulatory system in the UK⁵⁴ encompasses both individuals and corporate entities providing immigration advice. Before posing that as an option consideration needs to be given to the size of the problem and the size of the profession. We consider that a licensing regime that regulates organisations as well as individuals is unnecessarily complex and would introduce significant costs to regulate a relatively small profession.

An alternative model applied in New Zealand to establish accountabilities between individuals who are licensed and the corporate entities they work for is that adopted under the Licensed Building Practitioners and Building Act regulatory regimes. Under that model:

- individual builders are licensed, and licensed builders are required to undertake or supervise specific building work
- companies, providing building services are required to meet certain specific business practices including written contracts.

Rather than introducing a new licensing category for companies providing immigration advice services, we recommend that the commercial provisions currently contained in the code of conduct, such as requirements for a written agreement and disclosure of information related to charges, be separated from the code of conduct and applied, as a legally enforceable obligation to any legal person (individual or company) that is engaged in the transaction and sale of immigration advisory services.

Recommendation 7: Industry involvement in the development of competency standards and the code of conduct

We recommend that the requirement for the Registrar to develop and maintain competency standards and a code of conduct (sections 36 and 37 of the IALA) be amended to allow for the industry to develop competency standards and the code of conduct, and for these to be submitted to the IAA for approval subject to their meeting statutory criteria.

We consider this would provide the opportunity for the profession to demonstrate its ability to take ownership of a wider range of functions. The profession is keen to have a greater role and perceives the IAA to be too focused on how it conducts its business, rather than on the outcomes it achieves. Such an approach supports the industry's desire to have greater ownership of the direction of the profession and could lead to administrative efficiencies for the regulator.

⁵⁴ <http://oisc.homeoffice.gov.uk/>



This could be achieved through:

- the establishment of a Committee or Board that is required to develop draft competency standards and a code of conduct (and review these from time to time), and submit them to the IAA for approval. This is the approach applied for financial advisers under the Financial Advisers Act 2008.

Initially, we propose that this committee or board be charged with reviewing the Code to ensure that it provides for the adequate management and handover of clients, from one adviser to another, in a case that an adviser ceases to trade. We also think that it should give consideration to the development and required use of a standardised plain language contract. Both, we believe, are important for the protection of migrants in sometimes vulnerable circumstances.

Recommendation 8: Formalising CPD for licensed immigration advisers

The current CPD requirements are relatively informal. Competency standard 7 of the Immigration Advisers Competency Standards requires advisers who are renewing or upgrading their licence to have evidence of at least 20 hours of professional development activities, undertaken in the last 12 months.⁵⁵

Section 7.1 of the Competency Standards requires CPD to include active learning, and it may include self-directed learning. We consider that more structured CPD requirements would support a more streamlined licensing renewal process and could support a requirement for exempt advisers to undertake immigration-specific development activities, thereby supporting efforts to ensure competent immigration advice is provided regardless of whether that advice is provided by a licensed or exempt adviser. More structured requirements would also help ensure that advisers' knowledge stays current as immigration requirements change and associated case law evolves.

In our view, formalisation of CPD requirements is pivotal to achieving efficiencies in relicensing and in supporting the competence of advice provided by licensed and exempt advisers. Accreditation of valid CPD activities should be considered as part of this.

Compliance

Recommendation 9: Offshore immigration advice

There is little ability to police and enforce licensing requirements in offshore jurisdictions. Under the IALA, the main tools available for incentivising compliance are awareness raising and the provision (Section 9 of the IALA) that INZ cannot accept an immigration application or request put forward on behalf of another person by an unlicensed immigration adviser, unless the adviser is exempt.

It is our view that offence provision associated with the provision of unlicensed immigration advice should only apply to advice provided by New Zealand resident or domiciled advisers. In our view, retaining an offence provision that cannot be practically enforced risks bring the legislative framework into disrepute, may inadvertently encourage unlicensed activity because it is widely known that it is not

⁵⁵ <http://iaa.govt.nz/adviser/professional-development/>



enforced in overseas jurisdictions and should be removed. There are some practical responses that should be applied in its place:

- Raise awareness in target migrant communities about the existence of the licensing system, and the benefits in using a licensed adviser (as opposed to receiving unlicensed advice). This could be facilitated through INZ's existing offshore networks and presence.
- Retain the section 9 provision to encourage applicants to use licensed or exempt advisers when making visa applications.
- The IAA to work closely with Education New Zealand and NZQA to ensure newly developed incentives are effective in achieving desired behaviour for offshore student agents.

Persons in other countries that do choose to obtain advice from unlicensed advisers and suffer harm will be able to pursue remedies under the laws that apply in those countries.

Recommendation 10: Additional powers for the IAA to tackle undesirable behaviour in New Zealand

Compliance activities have been focused on licensed immigration advisers, with limited focus on unlicensed activity due to resource constraints. It is clear that consumer harm continues to occur as a result of unlicensed advice.

The IAA has laid charges against 10 people. Seven people have been convicted, one had the charges dismissed and three people remain before the courts. (One of the people before the court is also one of the seven already convicted). The IAA has also issued 201 warning letters.

Despite significant penalties for committing an offence under the IALA (up to \$100,000 fine and/or a jail term of up to seven years) there is ongoing evidence of unlicensed advisers operating in New Zealand. Investigating and taking a prosecution is a resource-intensive activity that can take years to complete, and the IAA has limited resource to pursue the leads it receives. Aside from prosecutions, the only other tool it has is to issue a warning letter.

Three potential responses are available:

- Continue to raise awareness.
- Allocate additional resource to prosecutions to visibly demonstrate that the compliance system work.
- Provide the IAA with a wider range of tools to tackle undesirable behaviour.

Potentially a case could be made for time limited additional funding to underpin a campaign to address existing unlicensed adviser activity.

Licensed advice

There are limited circumstances in which the IAA can refuse or cancel a license and these circumstances are not linked to the performance of an adviser.

We recommend that the IALA be amended to enable the IAA to impose conditions on licenses (e.g. around training or supervision), with a further ability to suspend a licence if these conditions are not met.



We also recommend that the use of infringement notices be considered as a means to address and deter failures to provide required written agreements, necessary information on fees or other clear cut matters covered by the code conduct.

Unlicensed advice

Consumers and licensed immigration advisers are likely to have increased trust in the licensing system if it is clear that people operating illegally outside the parameters of the system are identified and dealt with in an appropriate manner.

We recommend that consideration be given to providing the IAA with the ability to issue infringement notices, where sufficient evidence is available to take action. Infringement notices would only be able to be applied to relatively clear-cut illegal activity, where the level of harm is not severe.

Recommendation 11: Alternative dispute resolution process

Historically, a large proportion of issues that are investigated and become complaints have been transferred to the Tribunal for resolution and this has resulted in increased resource pressure on the Tribunal and ongoing concerns that the length of time taken to address complaints can result in incompetent or unethical advisers continuing to practise without any remediation occurring for some time.

The Tribunal has been receiving a large proportion of complaints because the IALA only provides the IAA with the following alternatives: to reject a complaint, to deem the matter to be trivial and not need to be pursued; or to request that the adviser settle the complaint through their own complaints procedures.

Significant work has been undertaken to improve the complaints process over the last year, resulting in a more robust assessment of complaints prior to them being forwarded to the Tribunal for resolution. The new complaints process provides more opportunities for the IAA to consider whether a complaint should be rejected as it collects more evidence.

It is expected that fewer complaints will reach the Tribunal for resolution, however we consider the range of alternatives available to the IAA for low-level complaints (reject the complaint, reject it as trivial, or ask the adviser to settle it through their complaints system) is too limited.

Other professions successfully use an alternative dispute process to speed up resolution of low-level disputes (for example in the first year of the Law Society's Early Resolution Service (ERS) just under half of complaints were accepted into the ERS process). We consider that by speeding up resolution of low-level complaints, and reducing the flow of cases to the Tribunal, that the complaints system will be more effective. An alternative dispute resolution process also provides an independent process for dealing with low-level complaints, rather than through an adviser's own complaint system.



We recommend that legislation be re-drafted to place greater emphasis on the use of alternative dispute resolution prior to a dispute being directed to the Tribunal. Operationally, the alternative dispute resolution system could be delivered by:

- the profession itself
- the IAA
- MBIE, as part of a wider service for the occupational regulation regimes it is responsible for, or
- a specialist disputes resolution service provider.

Delivery

Recommendation 12: Structural relationship – IAA and the profession

The IALA provides a major role for the regulator in the development of the licensed immigration advice profession. The current approach means that there is little ownership of licensing, competency and ethical standards by the industry itself.

Our view is that a move towards increased industry ownership of competency and ethical standards is required. Although the IAA already has an established reference group, we consider that a more formalised process, and recognition of the role of the profession, would support a transition to a co-regulatory model of licensing.

We recommend that an industry representative committee or board be established under the IALA. This committee or board would consist of members of the profession as well as consumer representatives and would initially be responsible for reviewing the competency standards, the code of conduct and the development of a more formalised approach to CPD.

Over time, the role of this body could be extended to include management of the complaints system and potentially other aspects of the scheme. This would be similar to the Building Practitioners Board, which hears appeals against licensing decisions of the Registrar of Licensed Building Practitioners (LBPs), investigates and hears complaints about LBPs, approves rules for LBPs and reviews and reports to the Minister of Building and Construction (the Minister) each year on its operations.

Recommendation 13: Efficiencies from MBIE creation

The location of the IAA within MBIE provides opportunities to improve its efficiency and effectiveness by leveraging off the capabilities, knowledge and intelligence of other regulatory systems operated by MBIE.

We acknowledge that operational decisions about the licensing of immigration advisers and complaints against licensed immigration advisers need to be considered separately from visa processing decisions. We also acknowledge that the roles played by immigration advisers mean that from time to time they may be in conflict or dispute with INZ officers. That said, we are also convinced that there are benefits to be had from a closer relationship between the IAA and INZ that would arise from greater information sharing between agencies to support compliance activities and the promotion of licensing requirements.



Central delivery

We also propose that MBIE explore opportunities to improve the efficiency and effectiveness of the administration of the scheme by looking for synergies with other occupational licensing and regulatory schemes that it operates. In the first instance, we propose that efficiencies and improvements to effectiveness be sought by looking to exploit back office synergies and efficiencies that could be associated with:

- management and maintenance of the register of licensed advisers
- the administration of negative vetting and other licensing activities
- the preparation and delivery of communication materials, strategies and initiatives
- the development and operation of compliance strategies and activities
- the provision and administration of dispute resolution procedures and processes.

Recommendation 14: Licensing renewal process

We note that significant work has been done to streamline the re-licensing process over the last year, but the feedback received during the review has been that the process is still time consuming and does not actually measure competence. It is rare for a licence not to be re-issued.

More formalised CPD requirements would give the regulator greater comfort that advisers were continuing to develop their competence. A combination of a more formalised CPD process, alongside a risk-based assessment (e.g. based on whether complaints had been made about an adviser, the number of years of experience and the volume of applications they submit in a year) could result in a more efficient process that would not negatively impact upon adviser quality.

We note that the IAA's ongoing inspection powers, provided for under section 57 of the IALA, would provide an additional incentive for advisers to conduct themselves appropriately.



APPENDIX 1: TERMS OF REFERENCE

Review of the regulation of immigration advice (November 2013)

Background

The Immigration Advisers Licensing Act (the IALA) 2007 provides for the regulation of immigration advice through the compulsory licensing of immigration advisers while exempting some groups that provide immigration advice e.g. New Zealand lawyers and persons who provide immigration advice offshore on student visas only. The IALA also created the Immigration Advisers Authority (IAA) and the Immigration Advisers Complaints and Disciplinary Tribunal (The Tribunal). The purpose of the IALA 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”.

Objective

To provide advice to the Ministry of Business, Innovation and Employment (MBIE) on whether the licensing system for the provision of immigration advice provided by the IALA remains broadly fit for purpose, and what changes to the IALA, if any, would enhance its effectiveness.

Scope

The scope of the review comprises the following areas:

- 1 To what extent has the regulatory regime achieved what it set out to do? Evaluate achievements and performance of the IALA regime relative to initial policy intent, and the MBIE draft framework for occupational regulation (attached).
- 2 How has the context and requirements changed since the IALA was introduced? Review the current context for the operation of the IAA, particularly key aspects of the context which have changed, or are changing, relative to the context at the establishment of the scheme:
 - a changes in the nature of immigration advice and the nature and level of demand – and projected demand (e.g. impact of planned INZ system changes, which should make it easier for migrants to navigate the system themselves)
 - b changes within the adviser industry, and to other agents who are providing information to intending migrants (e.g. human resource departments; industry peak bodies, such as Federated Farmers; immigration industry partners)
 - c changes to the international context
 - balance of on-shore vs. off-shore operation of advisers
 - trends in counterpart countries' approaches to regulating advisers



- d organisational changes to the 'host' Ministry, and current opportunities for achieving greater economies of scale in relation to regulatory activities.
- 3 What alternatives are there to the current approach? Review the case for government intervention, given the scale of the sector, the nature of the service, and the potential for harm. Identify alternative regulatory approaches (e.g. from similar regulated professions) and assess their applicability to the regulation of immigration advice, covering:
- a governance and monitoring arrangements
 - b options for the regulatory entity
 - c regulatory functions and overall regulatory stance (e.g. level of prescription versus enabling / principles-based regulation)
 - d interface with the Tribunal in relation to discipline
 - e interface with the skills / training system in relation to licensing requirements (including the pathways to licensing).
- 4 If we maintain the same regime, what policy and legislative changes would improve it? Identification of policy and legislative changes to improve the effectiveness and efficiency of the current IAA and IALA regime, including the potential to combine some functions with other functions administered within MBIE, and the appropriate pathways to licensing.

Out of scope (because they are being worked on separately) are:

- Implementation of the Immigration Advisers Code of Conduct 2014.
- Changes to IAA operational policies and practices.
- Recommendations on funding of the IAA (including fees charged to advisers).

Related work

- Implementation of the Immigration Advisers Code of Conduct (in effect from January 2014).
- Changes to IAA operational policies and practices.
- The independent review by Barry Jordan (Forensic Partner, Deloitte) and Jane Meares (Barrister) of the collection of fee data from advisers between May 2009 and May 2010 and subsequent publication of licensed immigration adviser fees on the IAA website on 1 July 2010.
- Recommendations on the rates to charge for the new Immigration Levy, and licence fees for immigration advisers.
- MBIE's Occupational Regulation work programme.
- A package of targeted operational and legislative changes to improve the user experience and efficiency of tribunals administered by the Ministry of Justice.



Timeframes⁵⁶

- November 2013 – agree terms of reference with Minister of Immigration
- December 2013 – call for tenders to undertake project
- January 2014 – appoint successful tenderer
- January 2014 – contractor provides MBIE with project plan, MBIE provides background material
- March/April 2014 – recommendations to MBIE Stakeholders

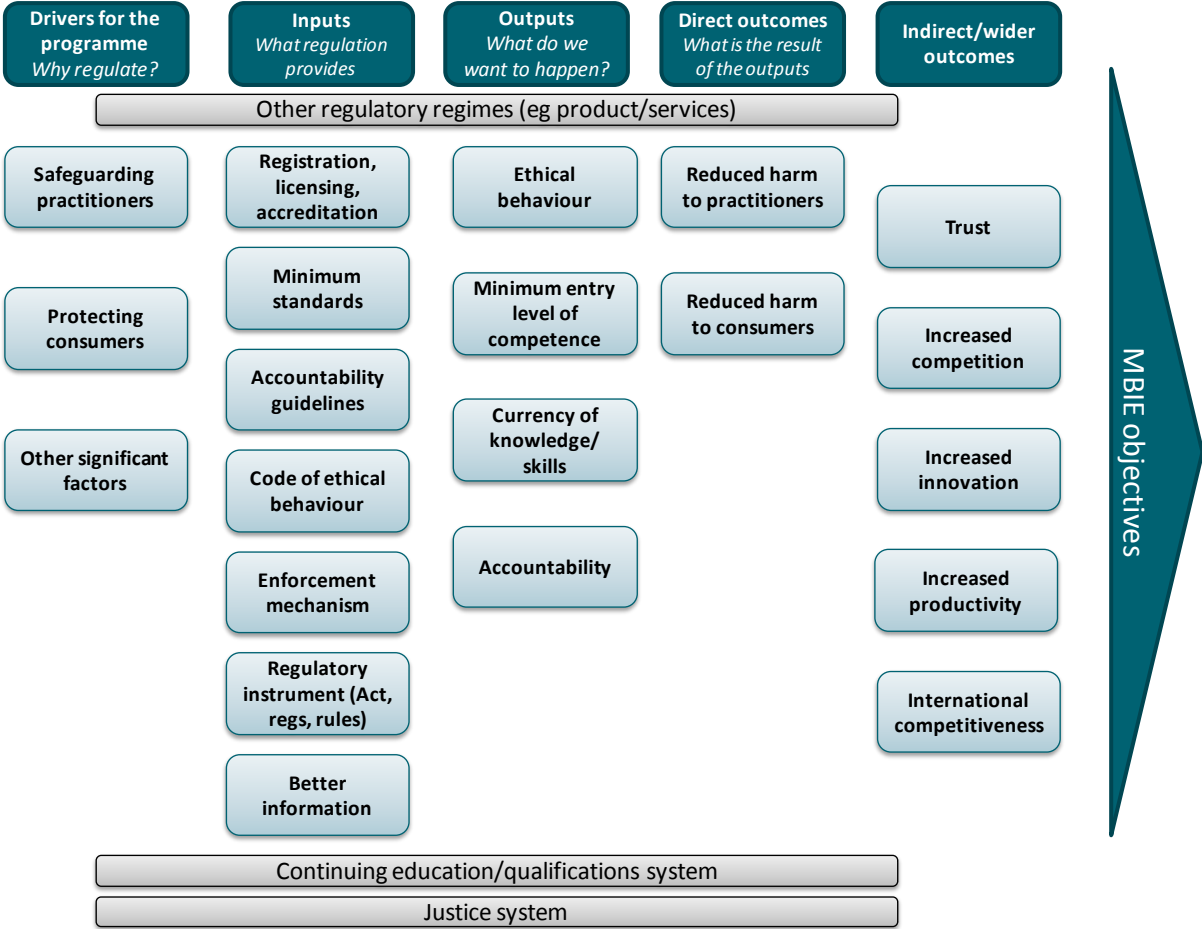
It is expected that key stakeholders (particularly immigration advisers and those representing the interests of migrants) will be actively and regularly engaged in the project, including in identifying issues and commenting on possible solutions. Key stakeholders are:

- Immigration advisers and their peak bodies (New Zealand Association for Migration and Investment, New Zealand Association of Immigration Professionals)
- Law Societies
- Immigration Industry Partners
- Employer organisations
- Bay of Plenty Polytechnic
- MBIE internal stakeholders – IAA, Market Services, Immigration New Zealand
- Ministry of Justice, Immigration Advisers Complaints and Disciplinary Tribunal
- Other similar regulators
- The Treasury
- Ministry of Pacific Island Affairs
- Department of Internal Affairs (Office of Ethnic Affairs)
- Representatives of migrants and ethnic communities

⁵⁶ These timelines were adjusted by MBIE, with the project commencing in late April 2014.



APPENDIX 2: MBIE OCCUPATIONAL REGULATION FRAMEWORK



APPENDIX 3: OVERVIEW OF COMPARABLE OVERSEAS APPROACHES TO IMMIGRATION ADVICE

	Australia (information from www.mara.gov.au)	Canada (information from www.iccrc-crcic.ca)	UK (information from www.oisc.homeoffice.gov.uk)
Regulate immigration advice	Yes – Office of the Migration Agents Registration Authority	Yes – Immigration Consultants of Canada Regulatory Council	Yes – The Office of the Immigration Services Regulatory Commissioner
Size of sector	4,899 registered migration agents as at 30 June 2013. A company or business cannot be registered, only an individual migration agent can.	2,587 members in good standing as at 30 June 2013.	1,971 regulated organisations as at 31 March 2013 (1,106 registered and 865 exempt). 3,966 regulated advisers (including CAB) as at 31 March 2013 (2,595 Registered, 842 Exempt, 23 Registered and Exempted).
Regulatory model	Government regulator. Before 1 July 2009 the Authority was a division of the Migration Institute of Australia Limited (a professional association of migration agents in Australia). The Institute was appointed by the Australian Government under a statutory self-regulation scheme from March 1998 to June 2009.	A self-governed regulator with a Board of Directors. The Regulatory Council is a national regulatory authority appointed by the government of Canada.	The Office of the Immigration Services Commissioner is an independent non-departmental public body set up under the Immigration and Asylum Act 1999. The Commissioner is directly accountable to the Home Secretary.
Advisory or Governance Board	Yes – the CEO is supported by an advisory board appointed by the Minister for Immigration and Border Protection. The board provides advice to the CEO in relation to: office procedures, policies and strategies; the setting of organisational directions, priorities and plans; emerging issues within the sector of relevance to the regulation of migration agents.	Yes – the Council's Board of Directors brings experience and immigration knowledge to the Council. The Board consists of fifteen directors, including three Public Interest Directors.	Yes – the Commissioners' Adviser Panel acts as a sounding board on regulatory issues and developments. The Panel consists of a small number of advisers who reflect the different elements of the regulated adviser community.
Core activities	<p>Registration and Client Services</p> <ul style="list-style-type: none"> assesses the suitability of applicants to be registered as migration agents maintains the official register of migration agents monitors registered migration agents' compliance with the code of conduct. <p>Professional Standards and Integrity</p> <ul style="list-style-type: none"> addresses consumer concerns relating to registered migration agents investigates complaints and, where appropriate, issues warnings and sanctions advises registered migration agents on their compliance with the code of conduct and makes recommendations to improve business practices. <p>Professional Development</p> <ul style="list-style-type: none"> assesses CPD providers and activity applications applies quality assurance to CPD providers and activities reviews the CPD activity framework to address emerging needs contributes to the development of entry-level standards. <p>Business and Communications</p> <ul style="list-style-type: none"> ensures responsible financial management, business planning and implementation of probity arrangements and provides other corporate governance functions provides secretariat and support services to the executive and advisory board develops and implements the communications strategy contributes to the development and coordination of policy initiatives. 	<p>ICCRC protects consumers by:</p> <ul style="list-style-type: none"> maintaining a searchable database of all RCICs managing a rigorous complaints and discipline process offering a confidential whistleblowing initiative to report suspected unauthorised immigration representatives educating the public through awareness campaigns on the importance of retaining RCICs and the dangers of using unauthorised immigration consultants. <p>ICCRC regulates RCICs by:</p> <ul style="list-style-type: none"> enforcing a Code of Professional Ethics accrediting and auditing the Immigration Practitioner Programs offered by post-secondary institutions across Canada administering the entry-to-practice Full Skills Exam delivering Practice Management Education courses in order for RCICs to maintain their competent practice conducting a Compliance Audit to make certain that RCICs practice and documentation comply with ICCRC Regulations crediting hours of CPD, which ensure that RCICs immigration knowledge is current actively investigating complaints against unauthorised representatives referred to them by the ICCRC. 	<p>Compliance and Complaints</p> <ul style="list-style-type: none"> the main focus is ensuring continued compliance with the Commissioner's Code and Rules conducts premises audits and investigates complaints made against regulated advisers. <p>Applications and first contact</p> <ul style="list-style-type: none"> provides help with queries on various aspects of OISC regulation and can assist those looking for a regulated immigration adviser processes and, where possible, makes decisions on all applications for regulation. <p>Investigations and intelligence</p> <ul style="list-style-type: none"> seeks out and investigates alone (or jointly with other UK investigative bodies) allegations of unregulated activity relating to immigration advice or services investigates and leads on the prosecution of specific offences before the criminal courts.
Regulate onshore and offshore advice	No – migration agents operating outside Australia do not have to be registered with the MARA. MARA may issue offshore agents with an identification number for administrative purposes only, this does not mean that the agent is registered.	Yes – Federal law requires that immigration consultants, in Canada or abroad, who provide Canadian immigration services for a fee, must be registered with the ICCRC and accredited as a Regulated Canadian Immigration Consultant (RCIC).	No – it is a criminal offence for a person to provide immigration advice or services in the UK unless their organisation is regulated by OISC or is otherwise covered by the Act.



	Australia (information from www.mara.gov.au)	Canada (information from www.iccrc-crcic.ca)	UK (information from www.oisc.homeoffice.gov.uk)
Entry criteria	<p>Knowledge requirements for initial registration:</p> <ul style="list-style-type: none"> holding a current legal practising certificate issued by an Australian body authorised by law to issue it, or having completed the Graduate Certificate in Australian Migration Law and Practice and passed the 'common assessment items relating to registration', which forms part of the certificate agents must hold professional indemnity insurance for the period they are registered additional English language, fit-and-proper, and residency requirements. 	<p>There are six conditions that determine if a candidate can become an authorised consultant or not.</p> <ul style="list-style-type: none"> knowledge of Canadian Immigration and Refugee Law – a course of at least 180 class hours (including online option) must be taken through an accredited post-secondary institution practice management skills – being developed at present good character language skills – proficiency in English or French at a high level post-secondary education – a College Diploma / University Degree / Certificate or relevant work experience is required to fulfil the post-secondary education requirement status as a Citizen of Canada, Permanent Resident or Status Indian. 	<ul style="list-style-type: none"> There are three OISC Levels of immigration advice and services: <ul style="list-style-type: none"> Level 1 Advice and Assistance Level 2 Casework Level 3 Advocacy and Representation <p>Competence requirements:</p> <ul style="list-style-type: none"> applicants are required to undergo a Disclosure and Barring Service check applicants must submit a Competence Statement demonstrating how they meet the competence requirements. The statement can indicate the number of years experience they have, the professional development they have undertaken and what access they have had to information on changes in law and procedures each new adviser must sit a level 1 competence assessment as part of an overall assessment of competence. Advisers may also be asked to sit an assessment at levels 2 and 3. all OISC-regulated organisations must have current and adequate Professional Indemnity Insurance.
CPD requirements	<p>To apply for re-registration an agent must complete at least 10 points of approved CPD in the 12 months before applying to renew registration.</p> <p>One mandatory CPD activity must be included in the 10 points. Mandatory CPD activities cover:</p> <ul style="list-style-type: none"> accounts management business management ethics and professional practice file management practice ready programme. 	<p>A Member is required to earn 16 CPD hours each calendar year. Only Canadian immigration related programmes count towards credits. CPD activities are approved by ICCRC, which provides a range of CPD opportunities:</p> <ul style="list-style-type: none"> attending an educational seminar, workshop, conference, or academic immigration course participating in online "real time" courses where there is an opportunity to ask and answer questions reviewing a recorded version of an accredited CPD event teaching in an accredited immigration practitioner program at a post-secondary institution, facilitating a CPD event, moderating or speaking at conferences, or facilitating group case study discussions relating to Canadian immigration writing articles for publication with immigration content publishing or editing books relating to the study or practice of immigration participating in group case study discussions relating to immigration. <p>CPD hours do not include practice management education.</p>	<p>It is necessary for advisers to complete the required number of core and non-core hours related to their level of immigration advice:</p> <ul style="list-style-type: none"> Level 1, 8 Hours made up of 6 core knowledge and 2 non-core knowledge Level 2, 12 Hours made up of 9 core knowledge and 3 non-core knowledge Level 3, 16 Hours made up of 12 core knowledge and 4 non-core knowledge <p>Core knowledge refers to knowledge specifically related to UK and EEA immigration and asylum law</p> <p>Non-core knowledge refers to professional development, management skills and personal skills (such as computer skills, administration, communication). Also immigration and asylum law of other nations and other speciality knowledge required by the adviser's organisation (such as welfare benefits).</p>
Enforcement	<p>Investigates complaints about migration advice and assistance, including the quality of the service or agent's fees:</p> <ul style="list-style-type: none"> a case officer is allocated to investigate a complaint agents are contacted to see how the complaint can be resolved the case officer decides if the Code of Conduct has been breached by an agent and, if so, what action is needed disciplinary action can include: caution, suspension, cancellation or barring an agent. <p>Criminal matters and migration fraud reported to other relevant agencies.</p>	<p>Investigates complaints and other matters where a regulated consultant:</p> <ul style="list-style-type: none"> may have, or has broken the law in a manner that is related to or impacts his/her profession, has failed to uphold other legal or civil obligations, or has failed to meet the standards of the Code of Professional Ethics <p>The ICCRC disciplinary committee considers complaints and can apply sanctions.</p> <p>Unauthorised providers of immigration services are not regulated and cannot be disciplined by the Council. In these cases, ICCRC will investigate the situation and, where necessary, pass the information along to the relevant Authority.</p>	<p>Hears complaints about competence and alleged breaches of the Code of Standards or Rules:</p> <ul style="list-style-type: none"> the Commissioner considers all the evidence and determines if the complaint is upheld the Commissioner can apply sanctions the Commissioner can refer complaints, and their decision, to other relevant regulatory bodies (e.g. law societies).



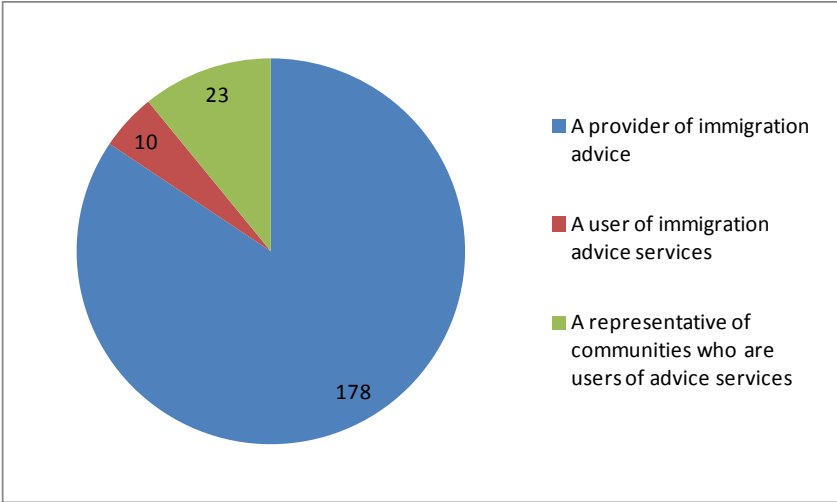
APPENDIX 4: ONLINE SURVEY

Overview of responses

Respondent demographics

We received 211 complete, or mostly complete, responses to the online survey. The majority of responses were received from providers of advice (84 per cent). Three-quarters of all responses were from licensed advisers (76 per cent).

Figure 12: All respondents

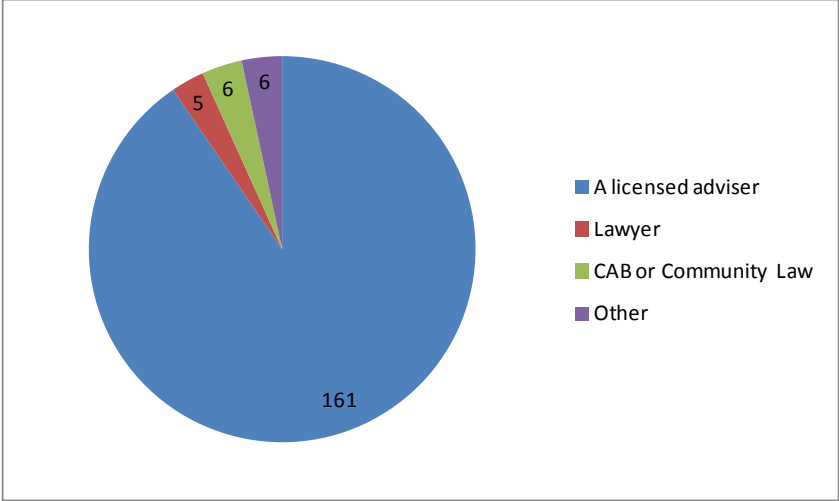


Among licensed adviser respondents, 11 held partial licenses, three held limited licenses, and the remaining 147 held full licenses.

100 licensed advisers reported being sole operators, 61 reported being part of an organisation with more than one adviser.



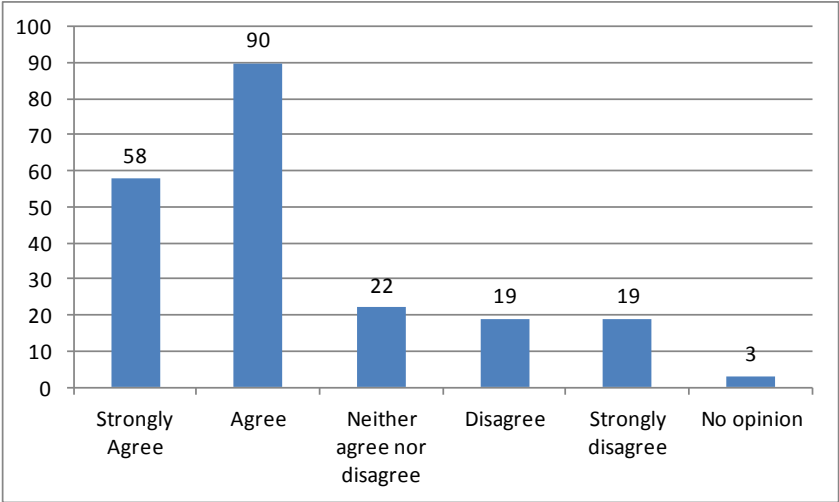
Figure 13: Breakdown of adviser categories



Has the regime achieved desired outcomes?

One-quarter (27 per cent) of all respondents “strongly agreed” that the licensing regime had promoted and protected the interests of consumers. A further 42 per cent “agreed with that statement.

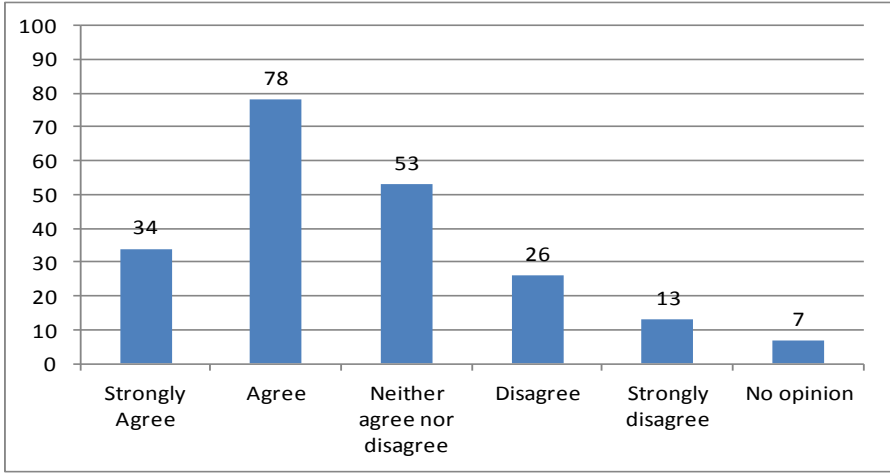
Figure 14: Protecting the interests of consumers



By comparison, a smaller proportion (16 per cent) “strongly agreed” that the regime had enhanced the reputation of New Zealand as a migrant destination. A further 37 per cent agreed with that statement.



Figure 15: Enhancing the reputation of New Zealand as a migrant destination



Advisers' views on the existing regime

Generally advisers agreed that:

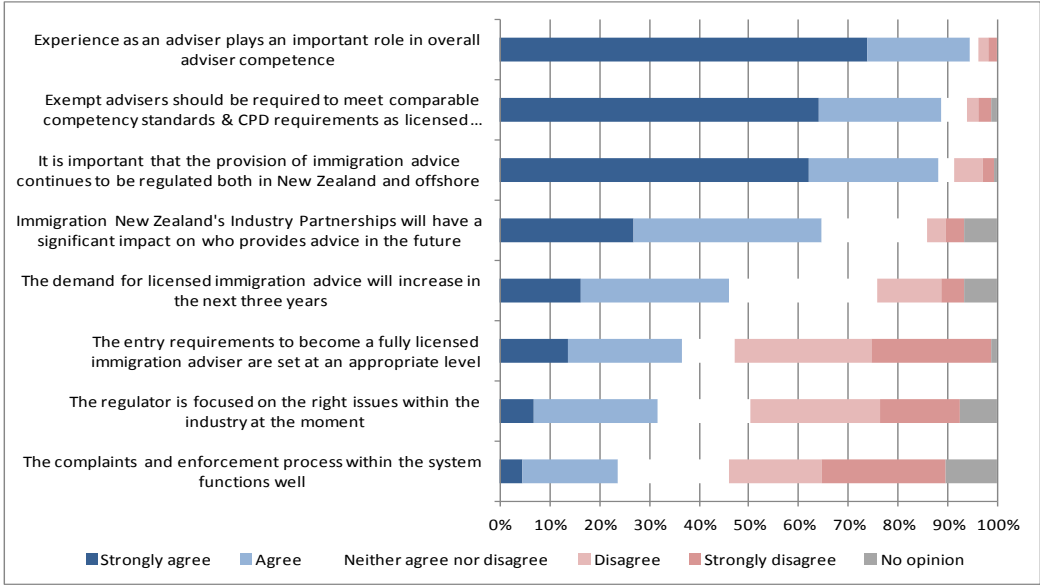
- experience plays an important role in overall competence
- exempt advisers should be required to meet competency standards
- immigration advice should continue to be regulated.

They generally disagreed that:

- the complaints and enforcement process functions well
- the regulator is focused on the right issues at the moment
- the entry requirements to become a licensed immigration adviser are set at the right level.



Figure 16: Adviser views on how the existing regime is operating



Areas that are most important to advisers

The issues identified by advisers as being most important (either “extremely” or “very”) to them were:

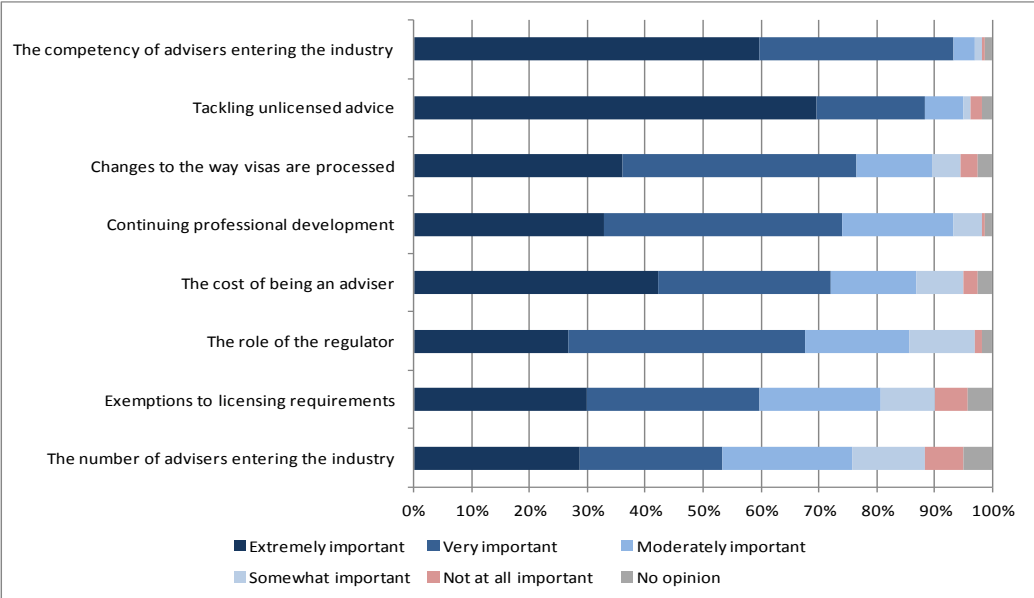
- the competency of advisers entering the industry, and
- tackling unlicensed advice.

Second order issues were:

- changes to the way visas are processed
- continuing professional development, and
- the cost of being an adviser.



Figure 17: Adviser views on the most important issues for the regulatory regime



Survey questionnaire

Introduction

Welcome to this survey for providers and users of immigration advice.

The Ministry of Business, Innovation and Employment has commissioned MartinJenkins to undertake an independent review of the regulatory regime that applies to people who provide immigration advice. The review is being undertaken to understand whether the regime is achieving desired outcomes and what changes, if any, could be made to improve it.

This survey provides an opportunity for you to share your views of the system with us. Your individual responses will be kept confidential. No personally identifiable information will be associated with your responses in any reports of this data.

Thank you for taking the time to provide your feedback.

Your role

Please tell us whether you are:

- A provider of immigration advice
- A user of immigration advice services
- A representative of communities who are users of advice services

If **“A provider of immigration advice”** Are you:

- A licensed adviser?
- An exempt adviser?
- Other _____

If **“A licensed adviser”**

Do you hold a:

- Full licence?
- Partial licence?
- Limited licence?

Are you:

- A sole operator?
- Part of an organisation with more than one adviser?



If “An exempt adviser”

Which of the following best describes your role, in relation to providing immigration advice?

- Lawyer
- Provide immigration advice offshore on student visas
- Citizens Advice Bureau or Community Law Centre
- MP/Diplomat/Public service
- Other _____

If “A representative of communities who are users of advice services”

Please describe the community you represent _____

Immigration advice and the licensing regime

The purpose of Immigration Advisers Licensing Act 2007 is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migrant destination by providing for the regulation of persons who give immigration advice.

Please indicate how strongly you agree or disagree with the following statements about immigration advice and the licensing regime.

The licensing regime has promoted and protected the interests of consumers receiving immigration advice

- | | | |
|--|---|---|
| <input type="checkbox"/> Strongly disagree | <input type="checkbox"/> Disagree | <input type="checkbox"/> Neither agree nor disagree |
| <input type="checkbox"/> Agree | <input type="checkbox"/> Strongly Agree | <input type="checkbox"/> No opinion |

Please explain your answer _____

The licensing regime has enhanced the reputation of New Zealand as a migrant destination

- | | | |
|--|---|---|
| <input type="checkbox"/> Strongly disagree | <input type="checkbox"/> Disagree | <input type="checkbox"/> Neither agree nor disagree |
| <input type="checkbox"/> Agree | <input type="checkbox"/> Strongly Agree | <input type="checkbox"/> No opinion |

Please explain your answer _____



Licensed advisers only

Immigration advice and the licensing regime

Please indicate how strongly you agree or disagree with the following statements about immigration advice and the licensing regime

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	No opinion
It is important that the provision of immigration advice continues to be regulated both in New Zealand and offshore	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The demand for licensed immigration advice will increase in the next three years	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Immigration New Zealand's Industry Partnerships will have a significant impact on who provides advice in the future	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The entry requirements to become a fully licensed immigration adviser are set at an appropriate level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Experience as an adviser plays an important role in overall adviser competence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exempt advisers should be required to meet comparable competency standards & CPD requirements as licensed advisers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The regulator is focused on the right issues within the industry at the moment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The complaints and enforcement process within the system functions well	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please add any comments you wish to make _____



Issues facing the industry

Please indicate how important you think the following issues facing the industry are at the moment:

	Not at all important	Somewhat important	Moderately important	Very important	Extremely important	No opinion
The role of the regulator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Changes to the way visas are processed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The number of advisers entering the industry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The competency of advisers entering the industry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Continuing professional development	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exemptions to licensing requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tackling unlicensed advice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The cost of being an adviser	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please add any comments you wish to make _____



Exempt advisers only

Please indicate how strongly you agree or disagree with the following statements about immigration advice and the licensing regime

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	No opinion
It is important that the provision of immigration advice continues to be regulated both in New Zealand and offshore	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The demand for licensed immigration advice (generally) will increase in the next three years	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Immigration New Zealand's Industry Partnerships will have a significant impact on who provides advice in the future	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The introduction of the licensing regime has had an impact on how I provide my advice services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The entry requirements to become a fully licensed immigration adviser are set at an appropriate level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exempt advisers should be required to meet comparable competency standards & CPD requirements as licensed advisers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I am interested in undertaking units in the Graduate Certificate in New Zealand Immigration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
It is easy for me to keep up-to-date with changes that are occurring in the licensed adviser industry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
It is important to retain the exemptions as provided for under the Immigration Advisers Licensing Act	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please add any comments you wish to make _____



Users of immigration advice only

Getting immigration advice

When seeking immigration advice, I met:

- A licensed immigration adviser
- An exempt immigration adviser (eg Lawyer, volunteer for Citizens Advice Bureau)
- An offshore education agent regarding a student visa
- An unlicensed immigration adviser
- I don't know

When choosing an adviser I was aware that:

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	No opinion
People who provide immigration advice for a fee need to be licensed or exempt	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
There is a regulatory body (the Immigration Advisers Authority) who licenses advisers and investigates complaints	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
People who provide immigration advice for a fee need to be licensed or exempt	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please add any comments you wish to make _____



Experience of getting immigration advice

Please indicate how strongly you agree or disagree with the following statements about your experience getting immigration advice

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	No opinion
I am satisfied with the quality of the immigration advice I received	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My immigration adviser gave me a written contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My immigration adviser gave me a code of conduct	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My immigration adviser explained the complaints process to me	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please add any comments you wish to make _____

Please rate the following in terms of how important they were for you when selecting an immigration adviser

	Not at all important	Somewhat important	Moderately important	Very Important	Extremely important	No opinion
Is a licensed adviser	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cost	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has a good standing within the community	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was recommended	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have used before	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is known for getting good results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please specify any other things that were important to you when selecting an immigration adviser

Do you have any suggestions about how your experience receiving immigration advice could have been improved?



Representative of communities who are users of advice services only

The community (or communities) I represent are generally aware that:

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	No opinion
People who provide immigration advice for a fee need to be licensed or be a lawyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
There is a regulatory body (the Immigration Advisers Authority) who licences advisers and investigates complaints	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please add any comments you wish to make _____

There have generally been positive outcomes for my community (or communities) as a result of the licensing of immigration advisers

- Strongly disagree
 Disagree
 Neither agree nor disagree
 Agree
 Strongly Agree
 No opinion

Please explain your answer _____

Please rate the following in terms of how important they are likely to be for your community when selecting an immigration adviser:

	Not at all important	Somewhat important	Moderately important	Very Important	Extremely important	No opinion
Is a licensed adviser	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cost	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has a good standing within the community	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was recommended	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have used before	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is known for getting good results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please specify any other things that are likely to be important to your community when selecting an immigration adviser _____

