New Zealand Law Society
Te Kāhui Ture o Aotearoa

Regulatory Systems (Immigration and Workforce) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

3 September 2024

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Regulatory Systems (Immigration and Workforce) Amendment Bill (**Bill**).

1.2 This submission has been prepared with assistance from the Law Society's Public Law Committee, and its Professional Standards Team,[1] and makes recommendations relating to the amendments to the Immigration Advisers Licensing Act 2007 (**IALA**).

1.3 The Law Society does not wish to be heard in relation to this submission.

2 Persons exempt from licensing (amendment to section 11(e) in clause 26)

2.1 Clause 26 of the Bill amends section 11 of the IALA and provides that "employees of lawyers and of incorporated law firms" are also exempt from the Act's licensing requirements. The Law Society supports this exemption.[2] However, we recommend amending this provision to state that "employees of lawyers, ***law firms*** and incorporated law firms" are exempt, in order to more clearly convey that partnerships (which are not incorporated law firms) are also exempt from the licensing requirements in the IALA.

3 Complaints against immigration advisers (new section 44(3)(b)(ii) in clause 32)

3.1 Clause 32 replaces section 44(3)(b)(ii) of the IALA with a new section which requires complaints against immigration advisers to include "an accurate account of the matter or a statement of facts, explaining the circumstances giving rise to the complaint, including relevant dates, places, and times".

3.2 We acknowledge these changes seek to reduce the barriers to making complaints, and to allow complainants to describe their grievances rather than referring to specific sections of the IALA.[3] However, the Law Society is concerned that the proposed new section 44(3)(b)(ii) could be rigidly applied to exclude meritorious complaints where, for example, a complainant is unable to accurately recall any dates, places and times relevant to their complaint. In such circumstances, this proposed amendment could:

(a) impose a significant burden on some complainants (including on migrants, who are most likely to engage the services of an immigration adviser, and for whom English may be a second or foreign language); and

(b) create a further barrier to making a complaint, contrary to the policy intention of the Bill.

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1 More information on the Law Society's law reform committees can be found here: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/.

2 The Law Society has previously supported this exemption – see, for example, the Law Society's submission on MBIE's 2018 consultation on proposed amendments to the IALA (23 March 2018) at [6]. A copy of that submission is available here: https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/Immigration-Advisers-Licensing-Act_2018-submission_.pdf.

3 Ministry of Business, Innovation and Employment "Departmental Disclosure Statement: Regulatory Systems (Immigration and Workforce) Amendment Bill" (8 May 2024) (**DDS**) at page 5.

3.3 We therefore recommend replacing proposed new section 44(3)(b) with a broader provision similar to that in the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008, which requires complainants to "state the subject matter of the complaint", and to provide "any appropriate documentation held by, or available to, the complainant".[4] A broader provision to this effect would remove the requirement for complainants to identify the statutory grounds on which a complaint can be made, while allowing for more flexibility around the information which must be provided in support of a complaint.

4 The power to downgrade licences (new section 51(1)(ca) in clause 33)

4.1 New section 51(1)(ca) will give the Immigration Advisers Complaints and Disciplinary Tribunal (**Tribunal**) the power to downgrade the type of licence a person has (for example, downgrading a full licence to a limited licence or a provisional licence).

4.2 Where a licence is to be downgraded under this new section, the Bill should specify:

(a) whether any, and if so what, conditions apply to a downgraded licence;

(b) the expiry date of the downgraded licence, and, if the downgraded licence is intended to be a substitute for the previous licence, whether it will automatically have the same expiration date as the previous licence; and

(c) whether or not the downgraded licence is to be treated as if it was granted on the date of the Tribunal's decision to downgrade the previous licence, or on a future date.

4.3 We suggest amending the Bill to specify these matters, and to require the Tribunal to identify the expiry date and any conditions which would apply to a licence that is downgraded under new section 51(1)(c). Without such amendments, there is likely to be uncertainty about the validity and effect of downgraded licences.

5 Preventing a person from reapplying for a licence for a "specified period" (new section 51(1)(e)(i) in clause 33)

5.1 New section 51(1)(e)(i) grants the Tribunal the power to impose a stand-down period during which a person is prevented from reapplying for a licence "for a specified period that the Tribunal considers appropriate".

5.2 We acknowledge the wording of this new section is consistent with similar provisions in comparable legislation,[5] which also allow the imposition of stand-down periods as a penalty for non-compliance. However, we note the Departmental Disclosure Statement (**DDS**) for the Bill states this proposed amendment seeks to "increase the duration that a person can be prevented by the Tribunal from applying for a licence from two years to a specified period *or an indefinite ban*" (emphasis added).[6]

[4] Regulation 8(1).

[5] For example, section 66 of the Plumbers, Gasfitters, and Drainlayers Act 2006, section 500 of the Education and Training Act 2020, and section 22 of the Chartered Professional Engineers of New Zealand Act 2002.

[6] DDS, page 6.

5.3 While the wording of new section 51(1)(e)(i) (and in particular, the use of the phrase "specified period") does not suggest the Tribunal will have the power to impose an indefinite ban, the reference to the ability to impose an "indefinite ban" in the DDS raises questions as to whether this is the intended scope of the Tribunal's power.

5.4 If the intention is for new section 51(1)(e)(i) to give the Tribunal the power to impose an indefinite ban, this proposed amendment raises some of concerns:

(a) Indefinite stand-down periods will have a significantly more punitive effect on those seeking to reapply for a licence, and the Bill and accompanying materials[7] do not offer any explanation as to when, and why, an indefinite ban would be considered an appropriate and proportionate response to non-compliance with the requirements in the IALA.

(b) Such a broad-brush approach is unnecessary, as individuals reapplying for a licence would be expected to meet the requirements prescribed in the IALA (including in relation to competence and fitness to provide immigration advice), or be refused a licence.[8]

5.5 However, we again acknowledge that the wording of new section 51(1)(e)(i) does not expressly grant such a power to the Tribunal, and accept that the description of this power in the DDS may simply be incorrect. In any case, we invite the select committee to seek advice from officials on this point, and to clarify the intended scope of this power.

6 Preventing a person from reapplying for a licence (new sections 51(1)(e)(ii) and (iii) in clause 33)

6.1 New section 51(1)(e)(iii) empowers the Tribunal to make an order preventing a person from reapplying for a licence until the person applies to have that order lifted or varied.

6.2 The clarity of the Bill could be improved by deleting new subsection (iii), and including a new standalone section which provides a person can apply to the Tribunal to lift or vary an order prohibiting their reapplication for a licence if they can satisfy the Tribunal the initial order is no longer necessary. These changes would bring the proposed amendments in step with how Court orders can be challenged in the civil jurisdiction, and more clearly convey that those who are subject to an order can seek to have those orders lifted or varied.

6.3 We also note new section 51(1)(e)(ii) empowers the Tribunal to make an order preventing a person from reapplying for a licence until that person meets "specified conditions". While a similar provision currently exists in the IALA, it is unclear if this provision requires the Tribunal or the Registrar of Immigration Advisers (**Registrar**) to determine whether relevant specified conditions have been met.

6.4 We therefore suggest inserting a provision into the Bill to clarify this point. Such a provision could, for example, be modelled on section 18 of the Health Practitioners Competence Assurance Act 2003, which similarly allows the Health Practitioners Disciplinary Tribunal to require a person to satisfy specified conditions before they can

[7] DDS and Martin Jenkins "Review of the Regulation of Immigration Advice" (July 2014).
[8] IALA, s 21.

reapply for registration, and clarifies that the authorities which are empowered to register applicants under that Act are responsible for assessing (on reapplication) whether those conditions have been satisfied.

6.5 If the policy intention is for the Tribunal to make these determinations under the IALA (rather than the Registrar), we also suggest combining new subsections (ii) and (iii) (ideally, as a new standalone provision, as recommended at [6.2] above) in order to:

(a) enable prospective applicants to apply to the Tribunal for a determination about whether they have met any specified conditions; and

(b) enable the Tribunal to determine whether specified conditions have been met, and if so, lift the order preventing the person from reapplying for a licence.

7 Contents of the register (new sections 78(3) and 79(2) in clauses 36 and 37)

7.1 New section 78(3) provides that the register of licensed immigration advisers (**Register**) may also contain "any other information that the Registrar considers relevant, taking into account the purposes of the Register as set out in section 77(2)". New section 79(2) applies despite section 78, and enables the Registrar to remove information from the Register that is no longer required to be retained.

7.2 These provisions could be amended to provide greater clarity about:

(a) when information can be removed from the register (for example, whether information should only be removed after the passage of a certain period of time);

(b) whether information which is relevant to the purposes of the IALA and the Register, but which:

(i) poses a risk to the privacy or personal safety of an immigration adviser (for example, where the adviser's address for service is also their residential address); or

(ii) should not be included in the Register for good reasons (for example, information about sanctions which have been imposed in circumstances where the Tribunal has ordered suppression of the adviser's name),

could be removed from the Register (either at the request of the immigration adviser or their employer, or at the Registrar's discretion).[9]

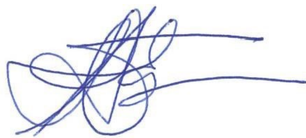
[9] We note the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 were amended in 2023 to allow lawyers to request the Law Society to prevent or restrict public access to their work address and/or work phone number on the register, where access to such information could result in physical or mental harm to the lawyer or a person the lawyer lives with (reflecting the fact that many lawyers now work from home). More information about this amendment can be found on the Law Society's website: https://www.lawsociety.org.nz/professional-practice/legal-practice/amendments-to-practice-rules/requests-to-prevent-or-restrict-public-access-to-a-lawyers-work-address-andor-work-phone-number-from-the-register-of-lawyers/.

7.3 It appears unlikely that new section 79(2), as currently drafted, will allow the Registrar to remove such information if that information is deemed to be relevant to the purposes of the IALA and the Register.

8 Applications for renewal (new section 83(3)(b) in clause 39)

8.1 New section 83(3)(b) requires those who are subject to an interim order from the District Court to apply for a renewal of their licence in accordance with section 24 "at the applicable time". Section 24(1) states such applications must be made to the Registrar "on or before the date on which the licence expires".

8.2 In order to improve the clarity and accessibility of the Bill, we suggest amending subclause (b) to expressly state that applications for renewal "must be made to the Registrar on or before the date on which the licence expires".



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