



## AIDE MEMOIRE

### Amendments to the Immigration Advisers Licensing Act 2007 in Regulatory Systems Amendment Bill (No.3)

<b>Date:</b>	23 April 2024	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2324-1942

#### Information for Minister(s)

Hon Erica Stanford  
**Minister of Immigration**

#### Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Libby Gerard	Manager, Immigration (Border and Funding) Policy	Privacy of natural persons	✓
Melissa Buckle	Senior Policy Advisor	Privacy of natural persons	

#### The following departments/agencies have been consulted

**Minister's office to complete:**

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

#### Comments



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#### Purpose

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This aide memoire provides:

- an overview of the amendments to the Immigration Advisers Licensing Act 2007 (IALA) being progressed through the Regulatory Systems Amendment Bill (No.3), which is led by the Minister responsible for the Ministry of the Business, Innovation and Employment (MBIE), Hon Melissa Lee, ahead of the Bill being considered by the Cabinet Legislation Committee (LEG) on 9 May 2024; and
- information on the IALA and Immigration Advisers Authority, **Active consideration**

Libby Gerard  
Manager, Immigration (Border and Funding) Policy  
Labour, Science and Enterprise, MBIE

23 / 04 / 2024


## **Regulatory Systems Bills aim to ensure regulatory systems are fit-for-purpose**

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1. Regulatory Systems Bills (RSBs) are omnibus bills progressed periodically by responsible Ministries to maintain the efficiency and effectiveness of their regulatory systems. They allow regulatory agencies (such as MBIE and the Ministry of Education), to progress legislative amendments more efficiently than through subject-specific bills.
2. Amendments in an RSB can:
  - reduce unnecessary compliance burden for businesses and implementation costs for regulatory agencies
  - clarify and update statutory provisions to give effect to their intended purpose or policy intent
  - address duplication, gaps, errors or inconsistencies within and between different pieces of legislation, and
  - contribute to the continuous improvement, or repairs and maintenance, of regulatory systems.

## **The Regulatory Systems Bill (No.3) amends the Immigration Advisers Licensing Act 2007**

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3. The Regulatory Systems Amendment Bill (No.3) (or RSB3) is sponsored by the Minister of Economic Development, Hon Melissa Lee, as the Minister responsible for MBIE. The RSB3 contains approximately 157 amendments to 37 Acts within the Immigration, Workplace Relations and Safety, Commerce and Consumer Affairs, and Building and Construction portfolios.
4. Because of its size and breadth the RSB3 has been split into two smaller Bills, the:
  - Regulatory Systems (Immigration and Workforce) Amendment Bill No 3, (which amends the Immigration Advisers Licensing Act 2007), to be referred to the Education and Workforce Committee, and;
  - Regulatory Systems (Economic Development) Amendment Bill No 3, to be referred to the Economic Development, Science and Innovation Committee.
5. **Active consideration**  


### **Amendments to the Immigration Advisers Licensing Act 2007**

6. There are 18 minor and technical amendments to the Immigration Advisers Licensing Act 2007 (IALA) for inclusion as part of the Immigration and Workforce Bill. The IALA aims to protect the interests of consumers receiving immigration advice and enhance New Zealand's reputation as a destination for migrants through the regulation of persons who give immigration advice. As part of this it establishes an Immigration Advisers Authority (IAA) within MBIE.

7. The amendments to the IALA seek to:
  - improve clarity
  - support efficient operational practice, and
  - remove unnecessary administrative burdens.
8. All policy changes were agreed by Cabinet in 2019 [CAB-19-MIN-0362] with additional amendments receiving Cabinet approval to be included in RSB3 in 2021 [CAB-21-MIN-0151]. In addition, a clarification has been made to section 53 (suspension of a license pending outcome of complaint), to better align the wording with the policy intent. This matter came to light as part of the drafting process and was assessed as not requiring formal ministerial or Cabinet approval because of its minor/technical nature. A summary of the changes is attached at **Annex One**.
9. While the immigration advice industry was consulted during the review of the IALA in 2014, we have not formally consulted on the amendments because the changes are considered minor and non-controversial and support the intent of the IALA. Immigration New Zealand and the IAA has been consulted and border agencies have been informed of the amendments. An overview of the IALA and IAA is attached at **Annex Two**.
10. The Bill will undergo standard Select Committee examination, and MBIE will separately engage with the industry in advance of the Bill coming into force (the day after Royal Assent).

## Next steps

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11. The draft Bills are expected to be circulated for ministerial consultation on 23-30 April, ahead of consideration at LEG on 9 May 2024 and introduction to the House on 22 May.

## Annexes

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Annex One: Summary of changes to the Immigration Advisers Licensing Act 2007

Annex Two: Overview of Immigration Advisers Licensing Act 2007 and Immigration Advisers Authority

## **Annex One: Summary of proposed changes to the Immigration Advisers Licensing Act 2007**

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Following a review of the Immigration Advisers Licensing Act 2007 (IALA) in 2014, Cabinet agreed to a set of changes in 2016, which aimed to remove existing barriers to the effectiveness of the IALA and improve efficiency as well as clarifying legislative provisions to align with the intent of the IALA.

The changes that have been incorporated into the current draft Regulatory Systems Bill (No.3) are:

- ensuring that Immigration New Zealand (INZ) can refuse to accept, or can decline, an application prepared by an unlicensed or non-exempt immigration adviser;
- clarifying that employees of a lawyer or a law firm are exempt from the requirement to be licensed;
- strengthening the Immigration Advisers Authority (IAA) Registrar's discretion to take into account wider matters relevant to determining a person's fitness to be licensed;
- clarifying that IAA may bring a complaint to the Immigration Advisers Complaints and Disciplinary Tribunal (Tribunal);
- simplifying how complaints against advisers can be made;
- giving a power to the Tribunal to vary a full licence to a limited or provisional licence;
- removing the two-year stand down period preventing former INZ staff from being employed by the IAA;
- enabling the Registrar to curate information on the public register of licensed advisers;
- extending the grounds on which an adviser can appeal a decision to the District Court; and
- making technical changes to the conditions around interim orders made by the District Court where an adviser has appealed a decision.

Table One below sets out the changes to the IALA against the summary above.

**Table One: Summary of IALA amendments**

Proposed amendments to Principal Act	Relationship to the main changes
<p><i>Clause 23</i> states that Part 5 amends the Immigration Advisers Licensing Act 2007.</p>	<p>N/A</p>
<p><i>Clause 24</i> replaces section 9, which prohibits an immigration application or request put forward by an unlicensed immigration adviser from being accepted (unless the adviser is exempt from the requirement to be licensed) with <i>new section 9</i>, as follows:</p> <ul style="list-style-type: none"> <li>• The new section provides that immigration applications or requests provided on behalf of an applicant by their agent must not be accepted unless the agent is a licensed immigration adviser or is exempt from the requirement to be licensed</li> <li>• If an application or request is accepted automatically, in error, or for any other reason, the application must be refused</li> <li>• If an application or request is not accepted or is refused, the chief executive must notify the applicant in writing, including how the application or request may be resubmitted</li> <li>• The chief executive is required to ensure immigration forms and information brochures prepared by MBIE contain advice about how applications may not be accepted or may be refused.</li> </ul>	<p>Ensuring that INZ can refuse to accept, or can decline, an application prepared by an unlicensed or non-exempt immigration adviser (including when it has been automatically accepted by the system).</p> <p>This change means that INZ can stop processing an application if it detects that an unlicensed advisor has been used, rather than only allowing INZ to refuse to accept an application (which requires INZ to have up front knowledge).</p>
<p><i>Clause 25</i> amends section 11(e), which describes persons exempt from licensing, by providing that, as well as lawyers, employees of lawyers and of incorporated law firms are exempt.</p> <p><i>Clause 26</i> replaces section 15(2), which describes persons prohibited from being licensed, with new sections 15(2) and (2A). New section 15(2) prohibits the Minister of Immigration or an Associate Minister of Immigration from being licensed while holding that office and for the 12 months after leaving office. New section 15(2A) prohibits an immigration officer or refugee and protection officer from being licensed while employed in that role.</p>	<p>Clarifying that employees of a lawyer or a law firm are exempt from the requirement to be licensed for the avoidance of doubt.</p>
<p><i>Clause 27</i> amends section 16, which describes persons who may be restricted from being licensed, by adding <i>new section 16(ab)</i>. The new section prohibits persons convicted of an offence under the Act from being licensed unless the Registrar is satisfied that the nature of the offence is unlikely to adversely affect the person's fitness to provide immigration advice.</p> <p><i>Clause 28</i> amends section 17(c), which describes other matters relevant to a person's fitness to be licensed, by adding new section 17(c). The new section allows the Registrar to take into account matters other than those in section 17(a) to (c) that the Registrar considers relevant when determining a person's fitness to be licensed.</p>	<p>Strengthening the Registrar's discretion to take into account wider matters relevant to determining a person's fitness to be licensed.</p> <p>This reflects actual situations that have been faced by the Registrar and sensibly extends their powers.</p>

Proposed amendments to Principal Act	Relationship to the main changes
<p><i>Clause 29</i> replaces section 27(1)(d), which sets out when the Registrar must cancel a licence, with new section 27(1)(d). The new section provides for the Registrar to cancel a licence if satisfied, having regard to the matters specified in section 16 and 17, that the licensee is no longer fit to be licensed.</p>	
<p><i>Clause 30</i> amends section 35, which describes the functions of the Authority, by adding new section 35(1)(g). The new section provides that it is a function of the Authority to bring complaints against immigration advisers before the Tribunal.</p>	<p>Clarifying that the IAA may bring a complaint to the Tribunal.</p> <p>This means the Registrar can pursue a complaint against a negligent or incompetent adviser even where the original complainant does not wish to proceed.</p>
<p><i>Clause 31</i> replaces section 44(3)(b), which provides for complaints against immigration advisers, with new section 44(3)(b). The new section requires complaints against immigration advisors to include the name and contact details of the complainant and an accurate account of the matter, explaining the circumstances of the complaint, including relevant dates, places and times. Section 44(3)(e), which prohibits complaints being made anonymously, is repealed.</p>	<p>This replaces the prohibition of anonymous complaints with a requirement that complaints be accompanied by identifying information and removes the requirement that complainants cite the relevant section(s) of the Act, replacing it with the requirement to describe the complaint.</p>
<p><i>Clause 32</i> amends section 51, which describes disciplinary actions the Tribunal may impose, by adding new section 51(1)(ca). The new section provides that the Tribunal may downgrade the type of licence (for example, downgrading a full licence to a limited licence or a provisional licence). The clause is also amended by replacing section 51(1)(e) with new section 51(1)(e). The new section provides that the Tribunal may prevent the person from reapplying for a licence for a specified period until the person meets specified conditions, or until the person applies to the Tribunal for the order to be lifted or varied, and the Tribunal is satisfied the order is no longer necessary.</p> <p><i>Clause 33</i> replaces section 53(1), which describes when the Tribunal may suspend a licence, with new section 53(1). The new section provides that the Tribunal may suspend a licence if a complaint has been made about the licensed immigration adviser, and has been referred to the Tribunal or is being prepared for submission to the Tribunal. The Tribunal may do so only if it considers it necessary or desirable having regard to the interests of the public.</p>	<p>Giving a power to the Tribunal to vary a full licence to a limited or provisional licence.</p> <p>This expands the Tribunal's powers regarding the sanctions and supervision it can impose on advisers who have been or are the subject of complaints.</p>

Proposed amendments to Principal Act	Relationship to the main changes
<p><i>Clause 34</i> replaces section 76, which provides for the independence of persons carry out functions under the Act, with new section 76. The new section prohibits specified persons from being employed or engaged to consider or decide licence applications, or renewals of licences, or to carry out inspections. Those persons include an immigration officer or refugee and protection officer or any other person who exercises a power of decision in relation to an immigration matter. Also included is any person, other than a former immigration officer or refugee and protection officer, who has exercised a power of decision in relation to an immigration matter in the previous two years.</p>	<p>Removing the two-year stand down period preventing former INZ staff from being employed by the IAA. This means that the IAA will be able to recruit staff who have worked immediately prior as Immigration Officers or Refugee and Protection Officers (the original stand down period reflected industry concerns at the time).</p>
<p><i>Clause 35</i> amends section 78, which specifies the contents of the register of licensed immigration advisers, by adding new section 78(3). The new section permits the register to contain other information, in addition to the information specified in section 78(1) and (2), if the Registrar considers the information is relevant, taking into account the purposes of the register.</p> <p><i>Clause 36</i> amends section 79, which provides for alterations to the register, by adding new section 79(2). The new section allows the Registrar to remove information from the register that they consider is no longer required to be retained for the purposes of the register.</p>	<p>Enabling the Registrar to curate information on the public register of licensed advisers. This means that information published for the information of intending migrants will be able to be more flexible and up to date.</p>
<p><i>Clause 37</i> amends section 81, which provides for the right of appeal to the District Court against specified decisions, by adding new section 81(1)(ca). The new section provides for a person to appeal to the District Court against a decision of the Tribunal under section 50.</p>	<p>Extending the grounds on which an adviser can appeal a decision to the District Court.</p>
<p><i>Clause 38</i> amends the title of section 83 to Effect of interim order. It adds new section 83(1A) which provides that an interim order must be treated as the type of licence the person applied for, granted on the date of the interim order, and subject to the conditions imposed by the court in the interim order, if an interim order applies to a person appealing a decision of the Registrar to licence the person. It also adds new section 83(3) and (4). New section 83(3) provides that a person subject to an interim order must pay any fees or levies relating to their licence and, at the applicable time, apply for a renewal of their licence. New section 83(4) provides that if a person applying for renewal of their licence fails to do so on or before the date it would otherwise expire, the interim order is treated as rescinded. The Registrar must record the expiry of the licence in the register.</p>	<p>Making technical changes to the conditions around interim orders made by the District Court where an adviser has appealed a decision. This clarifies responsibilities around making applications to renew a licence and paying the application fees and levies, even if an order made by the Court means that they are able to practice in the interim.</p>



## **Annex Two: Overview of Immigration Advisers Licensing Act 2007 and Immigration Advisers Authority**

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### **Immigration Advisers Licensing Act 2007**

The [Immigration Advisers Licensing Act 2007](#) (IALA) regulated a previously unlicensed occupation, for the twin purposes of individual consumer protection, and to safeguard New Zealand's reputation as a migrant destination.

The IALA:

- has as its purpose the promotion and protection of the interests of consumers;
- defines immigration advice, noting that people offshore providing education-related advice to foreign students are not required to be licensed to carry out that function, as it is explicitly carved out from the definition of immigration advice;
- requires people providing immigration advice anywhere in the world to be either licensed, or exempt from licensing (lawyers are exempt, as are relevant MBIE staff, Citizens Advice Bureau staff, and Members of Parliament and their staff);
- provides for the licensing requirements for those who provide immigration advice;
- establishes (within MBIE) the Registrar of Immigration Advisers and the Immigration Advisers Authority (IAA) to administer licensing and investigate complaints against immigration advisers and unlicensed persons, as well as facilitating other matters such as continued professional development;
- provides for the IAA to consult you on the development of competency standards and the code of conduct, and seeks your approval and sign off; and
- establishes (served by the Ministry of Justice) the Immigration Advisers Complaints and Disciplinary Tribunal (IACDT), which is a specialist tribunal to make determinations on complaints against immigration advisers and to make some consumer redress orders.

The IALA requires the Registrar to establish standards for advisers' professional behaviour and competency. It establishes that it is an offence for a person to provide immigration advice unless they are licensed or exempt, although anyone can direct migrants or other interested people to publicly-available information (such as the INZ website at [www.immigration.govt.nz](http://www.immigration.govt.nz)).

The IALA sets out how complaints against advisers are handled (initially by the IAA, which may refer them to the IACDT). A range of sanctions are available, from (least) censure, to the paying of reasonable compensation to the complainant.

The IALA is supported by the:

- *Immigration Advisers Licensing Regulations 2008*, which provide for fees and levies payable by immigration advisers
- *Licensed Immigration Advisers Code of Conduct 2014*, which sets out the required standards of professional and ethical conduct for licensed immigration advisers. It is developed by the Registrar of Immigration Advisers and approved by the Minister of Immigration in accordance with section 37(4) of the Immigration Advisers Licensing Act 2007.

- *Immigration Advisers Competency Standards 2016* set out the minimum standards of competence for licences, and are developed by the Registrar of Immigration Advisers and approved by the Minister of Immigration in accordance with section 36(5) of the Immigration Advisers Licensing Act 2007.

Regulations made under the IALA provide for the fees and levies payable by licensed immigration advisers and for other minor aspects of licensing. Application costs are \$2,039.33 for those normally resident in New Zealand (consisting of \$909.78 fee and \$1,129.55 levy).

### **Immigration Advisers Authority (IAA)**

The IAA is a statutory body housed in MBIE's Market Integrity Branch, in the Te Whakatairanga Service Delivery (TWSD) Group.

The IAA is established under the IALA to licence people who provide New Zealand immigration advice, onshore or offshore. As noted above, any person who provides New Zealand immigration advice must be licensed unless they are exempt under the Act; lawyers, Members of Parliament and their staff, and staff and volunteers of Community Law Centres and Citizens Advice Bureau are among those exempt.

The IAA's primary functions include administering the licensing regime, maintaining a public register of licensed advisers, and maintaining competency standards and a code of conduct for licensed advisers.

The IAA also receives complaints about licensed immigration advisers and investigates complaints against people providing advice without a licence.

The Registrar is Duncan Connor, National Manager Occupational Regulation, who is based in Wellington. Frontline staff (who carry out licensing, complaints administration, and investigations, and provide information and guidance to industry members) are largely based in TWSD's office in Auckland.

People who wish to become licensed immigration advisers must either complete the Graduate Diploma in New Zealand Immigration Advice, delivered by Toi Ohomoi Institute of Technology in the Bay of Plenty, or be registered as a migration agent in Australia. Completion of the qualification, with an approved supervision arrangement, enables an individual to apply for and be granted a provisional immigration adviser licence.

As at 31 March 2024 there were a total of 1,358 licensed immigration advisers: 1,107 onshore and 251 offshore.