

# IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

## PRACTICE NOTE NO. 1

Complaints referred to the Disciplinary Tribunal by the Registrar  
of the Immigration Advisers Authority

Effective: 23 May 2013

### 1. INTRODUCTION

- 1.1. This practice note is made in accordance with the Tribunal's power to regulate its own procedure under s 49(1) of the Immigration Advisers Licensing Act 2007 ("the Act").
- 1.2. When the Authority refers a complaint to the Tribunal under s 48 of the Act, the parties to the matter shall comply with any relevant provision contained in the Act and, subject to that, the procedure described in this practice note.

### 2. HOW COMPLAINTS ARE REFERRED TO THE TRIBUNAL

- 2.1. Before referring a complaint to the Tribunal, the Registrar must pursuant to section 47(2) have:
  - 2.1.1. notified the person complained of in writing of the complaint; and
  - 2.1.2. given the parties a reasonable opportunity to make a written statement or explanation in relation to the complaint.
- 2.2. After determining to refer a complaint to the Tribunal under sections 45(2) or 46(1), the Registrar must, having gathered such information in relation to the complaint as he or she thinks fit (if any), file the complaint or matter with the Tribunal. The Authority will make that referral in the form of a "Statement of Complaint".
- 2.3. The Statement of Complaint, lodged with the Tribunal shall be divided into parts, and contain the following information:

#### **Part A – Parties**

- 2.3.1. Clearly identify the licensed immigration adviser/s (whether currently or formerly licensed) to whom the complaint relates, and the party making the complaint (unless the power to withhold under section 47(3) has been exercised).

#### **Part B – Facts alleged in support of the complaint**

- 2.3.2. Set out the material facts alleged to support the complaint (in chronological order to the extent that is reasonable and practicable), and with references by page number to the written material in Part H.

### **Part C – Particulars of the alleged infringements**

- 2.3.3. Particularise each ground of the complaint, and identify the relevant part of the Code of Conduct and/or the Act.

### **Part D – Arguments in support of the complaint**

- 2.3.4. Identify the legal and factual arguments (if any) provided by the party making the complaint.

### **Part E – Immigration adviser's response to complaint**

- 2.3.5. Set out the response made by or on behalf of the licensed immigration adviser/s to whom the complaint relates, in a form that identifies:
- 2.3.5.1. The extent to which the material facts which are alleged to support the complaint are disputed.
  - 2.3.5.2. The written material responding to the complaint, which disputes the material facts and/or provides evidence of other material facts. That written material shall be attached to the Statement of Complaint, and referenced by page number.
  - 2.3.5.3. Whether the licensed immigration adviser/s admits or denies each ground of complaint.
  - 2.3.5.4. The legal and factual arguments provided by the licensed immigration adviser/s as to why each ground of complaint should be dismissed.

### **Part F – Information gathered by the Registrar**

- 2.3.6. Set out the further information, if any, gathered by the Registrar pursuant to section 47(1), including a description of any material information gathered pursuant to section 57, and an explanation of the extent to which it supports or challenges the complaint, and the Adviser's response. There are to be references by page number to the written material in Part I.

### **Part G – Issues for determination by Tribunal**

- 2.3.7. The issues to be determined by the Tribunal, without limiting or confining the Tribunal if it considers other issues arise.

### **Part H – Written material supporting the complaint**

- 2.3.8. The written material supporting the complaint; presented, to the extent it is appropriate and practicable, in chronological order.

### **Part I – Written material responding to the complaint**

- 2.3.9. The written material responding to the complaint; presented, to the extent it is appropriate and practicable, in chronological order.

## **Part J – Written material obtained by the Registrar**

2.3.10. The written material (including transcripts of interviews) obtained in the course of gathering information, and exercising powers of inspection.

2.4. Each page, after the first page, of the Statement of Complaint shall be numbered consecutively.

### **3. SERVING COPIES OF THE STATEMENT OF COMPLAINT ON EACH PARTY**

3.1. Upon filing the Statement of Complaint pursuant to s 48(2), the Registrar of the Authority must:

3.1.1. send a copy of the Statement of Complaint to the person/s subject to the complaint; and

3.1.2. send a copy of the Statement of Complaint to the person who has made the complaint.

3.2. Upon receiving the Statement of Complaint, the Tribunal will confirm with the parties that a complaint has been referred by the Authority and received by the Tribunal.

### **4. RESPONDING TO A STATEMENT OF COMPLAINT**

4.1. The party that made the complaint and the licensed immigration adviser subject to the complaint may respond to a Statement of Complaint by filing a Statement of Reply with the Tribunal.

4.2. Parties are not required to file a Statement of Reply, and should endeavour to ensure that the Registrar has all the information required to present their evidence and views in the Statement of Complaint.

4.3. A Statement of Reply must be filed in the prescribed form, which is available on the Tribunal's website. Parties will be given written notification of the date by which the statement of reply must be received by the Tribunal.

4.4. The Statement of Reply will require the party filing it to:

4.4.1. identify aspects of the Statement of Complaint which the party agrees with; and

4.4.2. identify aspects of the Statement of Complaint, which the party disputes.

4.5. The parties may send additional information to support any claim they may have made in the Statement of Reply.

4.6. A copy of the Statement of Reply must be:

4.6.1. Filed with the Tribunal, and

4.6.2. Sent to the Authority, and any other party to the complaint within the timeframe allowed for filing the reply.

4.7. The Authority and the other parties have an additional 10 working days to respond to the material contained in the Statement of Reply from another party.

4.8. The Tribunal will accept documents by email, but hard copies of those documents must also be sent to the Tribunal.

## 5. PRE-HEARING ISSUES AND MATTERS

- 5.1. When the Authority has filed a Statement of Complaint; and the time has expired for Statements of Reply and any response to them, the Tribunal will decide the complaint on the papers without further notice pursuant to section 49(3).
- 5.2. In exceptional cases, before the Tribunal hears and determines a complaint, the Chairperson, or any Member of the Tribunal, may at his or her discretion issue a minute or convene a teleconference to discuss any procedural or other matter requiring consideration. That process will apply if the Tribunal exercises its power to request further information, or requests a party or witness to appear in person before the Tribunal.

  
Grant Pearson  
Chairperson  
Immigration Advisers Complaints and Disciplinary Tribunal

