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Annual Report of the

# REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

For the 12 months ended 30 June 2022

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*Presented to the Minister of Justice*

Hon Aupito William Sio, Associate Minister of Justice, on behalf of the Minister of Justice.

I have pleasure in presenting the annual report of the Real Estate Agents Disciplinary Tribunal for the 12 months ended 30 June 2022.



David Plunkett  
Chair  
Real Estate Agents Disciplinary Tribunal

## OVERVIEW

The year saw the retirement of the Hon. Pamela Andrews CNZM after more than five years as chair. I pay tribute to Justice Andrews who left the Tribunal in excellent order. The retirement of the previous chair led to my appointment as chair on 3 September 2021.

The number of outstanding matters before the Tribunal increased slightly from 23 (at 1 July 2021) to 27 (at 30 June 2022).

The various COVID-19 lockdowns have had only a limited effect on the work output of the Tribunal as the registry staff, the previous chair, the members and myself worked effectively from home and latterly from both home and the office. Some hearings were delayed. Like many tribunals, we are moving away from predominantly in-person hearings to both in-person and remote hearings using AVL equipment. Many hearings are now a mix of in-person and remote with some parties and/or counsel and/or witnesses appearing remotely, even where most attend in person. The use of AVL technology works well. The Ministry is to be applauded for its response to the pandemic in keeping the Tribunal running smoothly.

## JURISDICTION AND GENERAL INFORMATION

### Establishment and Function of the Tribunal

The Tribunal is based in Wellington. It was established in 2009 by s 100 of the Real Estate Agents Act 2008 (the Act). The purpose of the Act is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.<sup>1</sup>

The functions of the Tribunal are set out in the Act:<sup>2</sup>

- (a) to hear and determine any application made by a Complaints Assessment Committee for the suspension of the licence of a licensee pending the determination of a charge that the Committee has laid against the licensee:
- (b) to hear and determine any charge against a licensee brought by the Committee:

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<sup>1</sup> Real Estate Agents Act 2008, s 3.

<sup>2</sup> Section 102.

- (c) to hear any appeal under section 111 against a determination by the Committee (including a determination to take no action):
- (d) to conduct any review, under section 112, of a decision of the Registrar:
- (e) any other functions conferred by this Act.

A complaint about a licensee is first made to the Real Estate Agents Authority which will refer it to the Registrar of the register of licensees.<sup>3</sup> The Registrar may determine that it discloses only an inconsequential matter or is frivolous or vexatious or not made in good faith, and need not therefore be pursued.<sup>4</sup> The Registrar will otherwise usually refer the complaint to a Complaints Assessment Committee.<sup>5</sup>

An applicant adversely affected by the decision of the Registrar may apply for review of the decision by the Tribunal.<sup>6</sup>

The various Committees throughout New Zealand assess and determine complaints. If the Committee considers a complaint to be justified, it may find that a licensee has engaged in unsatisfactory conduct; that is that the licensee's conduct falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee, contravenes a provision of the Act or regulations or rules made under the Act, is incompetent or negligent, or would reasonably be regarded by agents of good standard as being unacceptable.<sup>7</sup> If it makes a finding of unsatisfactory conduct, the Committee can make certain penalty orders.<sup>8</sup> A Committee might also dismiss a complaint or decide to take no further action.<sup>9</sup>

A person affected by the Committee's determination may appeal to the Tribunal.<sup>10</sup> The Tribunal may confirm, reverse or modify the determination of the Committee.<sup>11</sup> If it reverses or modifies the Committee's decision, it may exercise any of the powers that the Committee could have exercised.<sup>12</sup>

One of the powers given to the Committees is to decide that a complaint or allegation should be determined by the Tribunal.<sup>13</sup> In that case, the Committee lays a charge of misconduct.<sup>14</sup>

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<sup>3</sup> Section 74(2)(a).

<sup>4</sup> Section 74(3).

<sup>5</sup> Section 74(2)(b).

<sup>6</sup> Section 112(1).

<sup>7</sup> Section 72.

<sup>8</sup> Section 93.

<sup>9</sup> Section 79(2), 80, 89(2)(c).

<sup>10</sup> Section 111.

<sup>11</sup> Section 111(4).

<sup>12</sup> Section 111(5).

<sup>13</sup> Section 89(2)(a).

Misconduct can be considered to be conduct that is more serious than unsatisfactory conduct. It is conduct that would reasonably be regarded by agents of good standing or reasonable members of the public, as disgraceful; conduct that is seriously incompetent or seriously negligent; conduct that constitutes a wilful or reckless contravention of the Act or other legislation or regulations or rules; or criminal conduct for which the licensee has been convicted and which reflects adversely on the licensee's fitness to practice.

If the Tribunal is satisfied that misconduct is proven, it may make certain penalty orders.<sup>15</sup>

The Tribunal may regulate its procedures as it thinks fit.<sup>16</sup> There is a Practice Note for appeals.

The Tribunal's hearings must be held in public.<sup>17</sup> It does though have a discretion to hold hearings in private.<sup>18</sup> The Tribunal also has a discretion to determine a proceeding on the papers without an oral hearing.<sup>19</sup>

A penalty order made by the Tribunal may be enforced as if it was an order of the District Court.<sup>20</sup>

Any person affected by a decision of the Tribunal may appeal to the High Court against the decision.<sup>21</sup> An appeal must be filed within 20 working days after the day on which notice of the relevant decision is given, though the Court may accept a late appeal no later than 60 working days after such notice.<sup>22</sup>

### **Publication of Tribunal Decisions**

The Tribunal has a practice of publishing every decision on its website. However, the chair can prohibit the publication of any part of any proceeding or the name of any person charged or any other person.<sup>23</sup> It is rare for the Tribunal to suppress the name of the licensee against whom a complaint is upheld, given the public interest in knowing the names of those who misconduct themselves. The Tribunal does,

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<sup>14</sup> Section 73.

<sup>15</sup> Section 110.

<sup>16</sup> Section 105(1).

<sup>17</sup> Section 107(1).

<sup>18</sup> Section 107(3).

<sup>19</sup> Section 107A.

<sup>20</sup> Section 114.

<sup>21</sup> Section 116.

<sup>22</sup> Section 116A.

<sup>23</sup> Section 108(1).

however, have a practice of suppressing the names of complainants, in order to encourage complaints.

The Tribunal's decisions may be accessed on its website page, which is part of the website of the Ministry of Justice. It is to be found at [www.justice.govt.nz/tribunals/real-estate-agents/](http://www.justice.govt.nz/tribunals/real-estate-agents/). It has been upgraded to provide abstracts of decisions and a limited search function.

## **Membership**

The Tribunal comprises the Chair (who must be a lawyer) and at least three other members (at least one of whom must be a licensee).<sup>24</sup> One person must be designated as the deputy chair.<sup>25</sup>

The chair and members are appointed by the Minister of Justice.<sup>26</sup> The Minister must consult with the Real Estate Institute of New Zealand when making the first appointment of a licensee.<sup>27</sup>

Members may be appointed for up to five years.<sup>28</sup>

## **Registry**

The administrative and financial support of the Tribunal is provided by the Courts and Tribunals division of the Ministry of Justice.

The Ministry provides such staff as are necessary to enable the Tribunal to discharge its functions.<sup>29</sup>

The day to day administration of the Tribunal is headed by Mr Ricardo Rebuelta, service manager. The Tribunal's case managers are Ms Victoria Chao and Ms Ella Coles. Ms Dianne Turner, judicial personal assistant, provides secretarial services.

There is a legal research team available for tribunals. This team also provides proof reading services and produces abstracts of the decisions for the website. It is managed by Ms Jacqui Lee. Mr Matt Tumohe provides those services for the Tribunal.

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<sup>24</sup> Section 100(2).

<sup>25</sup> Section 100(5).

<sup>26</sup> Section 100(3).

<sup>27</sup> Section 100(4).

<sup>28</sup> Schedule 1, cl 2(1).

<sup>29</sup> Section 103.

I thank these officers for their outstanding support of the Tribunal. The day to day operational support and research services are in the hands of a high performing and professional team.

## 2021/2022 FISCAL YEAR INFORMATION

### Membership

As reported by the previous chair in her last report, Mr Jeremy Doogue resigned as deputy chair of the Tribunal. I am delighted to record that the Minister appointed Catherine Sandelin, a member, as deputy chair on 16 February 2022.

The Tribunal comprises:

	<i>Date of first appointment</i>	<i>Date of expiry of warrant</i>
David James Plunkett (chair)	3 September 2021	2 September 2026
Catherine Ann Sandelin (deputy chair)	6 June 2013	15 February 2027
Garry James Denley, JP, FREINZ	3 November 2009	2 September 2025
Patrick Neil O'Connor, AREINZ	14 February 2018	2 September 2025
Fiona Jane Mathieson, Notary Public	21 April 2020	20 April 2025

I thank the members for their dedication and excellent work.

### Cases filed and finalised

The relevant information is set out in Appendix 1. The annual report is required to include certain information regarding the Tribunal's performance.<sup>30</sup>

The Tribunal receives three types of cases:

- A Notice of Appeal is an appeal to the Tribunal against a determination made by a Committee.
- A Charge is a charge of misconduct against a licensee referred to the Tribunal by a Committee.

<sup>30</sup> Real Estate Agents (Complaints and Discipline) Regulations 2009, reg 17(b).

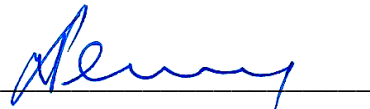
- An Application to Review is an application to the Tribunal to review a determination made by the Registrar.

In the previous financial year, the Tribunal received its first application seeking review of a decision of the Registrar not to refer a complaint to a Committee. On 16 August 2021, the Tribunal ruled that it had jurisdiction to consider such a decision of the Registrar.<sup>31</sup> That application was eventually withdrawn by the applicant.

## THE YEAR AHEAD

As tribunals move away from travelling to hearings being held remotely, the demand on the Ministry's limited AVL resources is becoming acute. It will be necessary for the Ministry to continue augmenting such resources.

I record my agreement with the observation of Hon. Pamela Andrews in her last report concerning licensees' mandatory continuing professional development. Ms Andrews suggested that it would be useful for Parliament to consider whether the Registrar should be given a statutory discretion as to whether a licence should be cancelled or, if cancelled, to regrant it before the expiry of the current mandatory ban of five years. An automatic ban for such a prolonged period can be very harsh in some circumstances of inadvertent or excusable non-compliance. The exercise of any such discretion would be subject to review by the Tribunal under s 112 of the Act.



David Plunkett  
Chair

28 September 2022

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<sup>31</sup> *Lawrence v Registrar of the Real Estate Authority* [2021] NZREADT 44.



## Appendix 1 – Cases Filed and Finalised

<b>Cases outstanding at 1 July 2021</b>	<b>23</b>
Charges	7
Appeals	15
Reviews	1
Recall of Tribunal decision	0
<b>Cases filed</b>	<b>38</b>
Charges	6
Appeals	22
Reviews	9
Recall of Tribunal decision	1
<b>Cases finalised</b>	<b>34</b>
Charges <sup>1</sup>	4
Appeals <sup>2</sup>	25
Reviews <sup>3</sup>	5
Recall of Tribunal decision	0
<b>Cases outstanding at 30 June 2022</b>	<b>27</b>
Charges	9
Appeals	12
Reviews	5
Recall of Tribunal decision	1

<sup>1</sup> Includes 0 withdrawn.

<sup>2</sup> Includes 8 withdrawn.

<sup>3</sup> Includes 3 withdrawn.