

REGULATORY IMPACT STATEMENT

Background

In May 2004, Cabinet agreed in principle to the regulation of immigration advice through a system of licensing administered by an independent governing body [CAB Min (04) 16/4 refers]. A Regulatory Impact Statement (RIS) accompanied that paper, and examined both non-regulatory and regulatory options. The DoL was directed to develop the detail of a licensing model and to report back to Cabinet by 1 December 2004 with further proposals and a framework for legislation. This RIS therefore examines options for implementing a licensing regime only.

Immigration advisors advise, assist or represent applicants or potential applicants regarding all types of immigration applications including residence, temporary entry, appeals, exemptions, and refugee status claims and appeals. They also advise third parties such as sponsors, employers and education providers. An immigration advisor was used in around 9,000 (37 percent) residence applications and around 66,000 (17 percent) temporary entry applications in 2003/04. Around 40 percent of immigration 'transactions' where an immigration advisor was involved were from immigration advisors based offshore. The level of advice provided to potential applicants who did not go on to make an immigration application or to third parties is unknown.

The immigration advice industry is diverse, with advice being provided by a range of occupational groupings, including immigration consultants, lawyers, education agents, citizens advice bureaux and other not-for-profit organisations, as well as family members. The number of active immigration advisors at any time varies in response to immigration policy changes and other external factors. However, the Department of Labour (DoL) estimates that the number of people providing New Zealand immigration advice both on and offshore is around 1,000. This estimate is based on DoL statistics and an October 2004 survey of immigration advisors who had interacted with the DoL from May 2003 to May 2004.

Of the 450 survey respondents, 409 immigration advisors said that were currently actively providing immigration advice. Most respondents had been providing advice for more than five years (57 percent). Ninety percent of respondents had a formal qualification, most in Law or Business. Eighty-four percent of respondents said they provided immigration advice for profit and 16 percent were not-for-profit.

Statement of the nature and magnitude of the problem and the need for government action

No formal statistics are available on the number of complaints about immigration advisors. However, every year complaints are made to the Minister of Immigration and the DoL about both onshore and offshore immigration advisors. The reasons for complaints have included: lodging unfounded or abusive refugees status claims without the knowledge of the client, inaccurate advice about immigration policy leading to poor and costly decisions, theft of money and documents, failing to lodge applications and appeals, failing to pass on information from the DoL to the client, and knowingly submitting false or fraudulent documents to the DoL. The voluntary industry body, the New Zealand Association of Migration and Investment (NZAMI), reports that around half of the complaints it has received in regards to its members relate to failure to provide services for which the member has been paid, or providing misleading advice.

In some cases, applicants have faced serious financial loss due to high fees, relocating to New Zealand (on the basis of poor advice), and lengthy periods of time without employment. Some have also suffered irreparable damage to careers, family dislocation, and significant personal

hardship. Where immigration applications (or refugee status claims) have been declined due to poor or incompetent advice some people have had to leave New Zealand, be removed, or remain here illegally (and face removal in the future where possible). Where a person is removed, they receive a five year ban from the country for overstaying, and are unlikely to be able to re-enter New Zealand as they would be deemed high risk. The cumulative harm caused is significant in many cases and irreversible in others.

The provision of immigration advice is currently unregulated and there are few market incentives for advisors to provide good services. There is limited self-regulation, with two main voluntary industry associations – the NZAMI and the New Zealand Immigration Institute (NZII). Some immigration advisors belong to these or other professional bodies, but membership is voluntary and standards are variable. Of the 409 active immigration advisors who responded to the October 2004 survey, 85 (20 percent) belonged to NZAMI and 4 (1 percent) belonged to NZII.

Immigration applicants often use an advisor's services only once and often have insufficient information to make a well-informed choice of advisor. Immigration applicants are unlikely (and sometimes unable) to make use of New Zealand's consumer protection measures once harm has occurred (such as the Fair Trading Act 1986, the Consumer Guarantees Act 1993 and the Disputes Tribunal) as they may be offshore, in New Zealand unlawfully and/or unaware of existing legal remedies.

Section 142(1)(j) of the Immigration Act 1987 makes it an offence to wilfully mislead, or act negligently or unprofessionally while assisting a person in a visa or permit application or appeal. However, this section has not been tested since its introduction in 1999 as its wording makes proof of an offence problematic.

Statement of the public policy objectives

In May 2004, Cabinet agreed the objectives of regulating immigration advice should be:

- to enhance the ability of immigration applicants to make a well-informed choice of immigration advisor
- to reduce the risk of serious harm to those who use an immigration advisor by creating effective incentives for advisors to provide competent and ethical services, and
- to provide clear and accessible complaint and redress procedures for those who use an immigration advisor. [CAB Min (04) 16/4 refers]

The underlying principles behind these three objectives are:

- consumer protection, and
- enhancing the reputation of New Zealand as a migration destination.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective

Non-regulatory options

Status quo

People providing advice relating to New Zealand immigration policy are subject to normal business legal requirements and the offence provisions under the Immigration Act 1987, the Crimes Act 1961 and other legislation. Immigration advisors are also subject to consumer protection measures, such as the Fair Trading Act 1986, the Consumer Guarantees Act 1993 and the Disputes Tribunal. Some immigration advisors are members of the NZAMI, the NZII or

voluntary associations of education agents, and are subject to their organisation's standards. Lawyers providing immigration advice are subject to their professional body's disciplinary processes. It is not appropriate to maintain the status quo as it does not meet the policy objectives.

Regulatory options

What and who are to be regulated

Alternative options	Preferred option
<p>Definitions: The definitions of immigration advice are retained as agreed in principle by Cabinet:</p> <p><u>Immigration advice is:</u> advice, assistance or representations, including oral and written submissions and advice given in regard to an immigration application or potential immigration application. These include applications for temporary entry, residence, appeals, exemptions, refugee status claims and appeals, and advice given to third parties such as sponsors, employers and education providers.</p> <p><u>Immigration advice is not:</u> the provision of information prepared by the New Zealand Immigration Service; directing a person to the New Zealand Immigration Service or a list of licensed immigration advisors; clerical work; translation or interpreting services; and settlement services.</p>	<p>Definitions: The definitions of immigration advice are:</p> <p><u>Immigration advice is:</u> using, or purporting to use, in a professional capacity*, knowledge of or experience in immigration to direct, assist or represent whether directly or indirectly another person in regard to an immigration matter* relating to New Zealand.</p> <p><u>Immigration advice is not:</u> providing information that is publicly available and/or prepared by the Department of Labour; directing a person to the Department of Labour or a list of licensed immigration advisors; clerical work;* translation or interpreting services; and settlement services.*</p> <p>*'Professional capacity', 'immigration matter', 'clerical work' and 'settlement services' are separately defined.</p>
<p><i>The alternative is not preferred as it does not distinguish basic practical assistance from immigration advice.</i></p>	
<p>Who holds the licence: Companies or organisations are required to be licensed.</p>	<p>Who holds the licence: Individuals are required to be licensed.</p>
<p><i>The alternative is not preferred as it does not establish clear incentives for the individual to take responsibility for the quality of their advice, or ensure that they can be directly sanctioned in response to a complaint that is upheld.</i></p>	
	<p>Not-for-profit sector: Not-for-profit immigration advisors are required to be licensed, but will not have to bear the full costs of licensing.</p>
<p><i>No alternatives were considered as it was noted in May 2004 that the not-for-profit sector would be subject to regulation on the basis that the potential harm to the applicant is the same, whether or not a fee is paid [EDC (04) 51 refers]. Cabinet also agreed in principle that the annual costs of regulating not-for-profit advisors should be met largely through Crown funding [CAB Min (04) 16/4 refers].</i></p>	
<p>Exemptions/exclusions: Family members, current Members of Parliament and their staff, employees of the public service, foreign diplomats and individuals advising on student permits and visas offshore are exempt from the licensing regime through primary legislation. All exempt persons may also apply to be licensed, if they so choose.</p> <p>In addition, practising New Zealand lawyers are <i>excluded</i> from the licensing regime (i.e. may not apply to be licensed).</p> <p>Further regulations may also be made by Order-</p>	<p>Exemptions/exclusions: The legislation should provide for the responsible Minister to have the discretion to recommend exemption for certain classes of people through Order in Council, by way of two categories:</p> <ul style="list-style-type: none"> • <u>Category 1:</u> Where there is little consumer benefit to be gained by requiring members of these classes to be licensed, and there are sufficient processes in place to ensure competent and ethical conduct (Category 1 exempt persons may opt in). • <u>Category 2:</u> Where members of an occupational group already have appropriate disciplinary procedures and prescriptive

<p>in-Council exempting additional classes of person.</p>	<p>requirements and are regulated by their own governing legislation when providing immigration advice (Category 2 exempt persons may not opt in).</p> <p>Category 1 exempt persons would be family members, current MPs and their staff, employees of the public service, foreign diplomats and individuals advising on student visas and permits offshore.</p> <p>Category 2 exempt persons will be lawyers, who will be subject to a comprehensive and prescriptive regulatory regime under the Lawyers and Conveyancers Bill (when enacted). Other occupational groups may be added.</p>
<p><i>Individuals other than 'immigration advisors' may provide advice on immigration matters. The alternative is not preferred because it limits recognition of occupational groups not considered at the time of drafting legislation, and adds layers of complexity to the licensing regime.</i></p>	

Offshore licensing

Alternative options

Offshore advisors: Voluntary licensing - Offshore advisors can 'opt in' to the regime, or

Negative listing – Offshore advisors are exempt from the licensing regime, but the DoL can refuse to deal with certain offshore advisors.

Preferred option

Offshore advisors: Individuals who are ordinarily resident in New Zealand providing immigration advice offshore must be licensed, and are subject to criminal sanctions and administrative sanctions for their actions, no matter where they occur.

Immigration advisors based offshore are temporarily exempt from having to hold a licence, but are allowed to opt in.

The exemption for offshore advisors expires automatically within three years from the date the Act comes into force, at which time they need to comply.

In addition, the regulator can enter into reciprocal information sharing arrangements with corresponding regulatory agencies in other jurisdictions.

Voluntary licensing is preferred in the short-term, but rejected in the long-term because it would rely heavily on voluntary participation and is therefore unlikely to capture the immigration advisors of most concern. Negative listing was rejected because it would be difficult and controversial for the DoL to place individuals operating legitimately in another country on a 'negative list'.

The licensing framework

Alternative options

Types of licences: The legislation establishes licences that are differentiated according to immigration policy areas and/or levels of

Preferred option

Types of licences: The legislation establishes one broad type of licence covering the provision of all types of immigration advice, with a common set of core requirements. In addition, the regulator has the discretion to establish voluntary differentiated licensing on the basis of established areas of knowledge, such as refugee determination, if appropriate.

Legislation also provides for provisional licences (requiring 12 months

competency.	supervision) for trainees and people seeking to move into the industry.
<i>The alternative is not preferred because immigration advice frequently does not fall into neatly distinguished categories or levels, and consumers often use an immigration advisor for assistance with multiple policies. Also, the size of the industry in New Zealand may not support differentiated licensing.</i>	
	<p>Competency (entry and re-entry) standards: The legislation includes both:</p> <ul style="list-style-type: none"> • a general requirement that licence applicants meet the minimum standards of competence determined by the regulator, and • an explicit requirement that the regulator develop competency standards relating to relevant qualifications, practical experience and knowledge, continuing professional development, and an ability to communicate effectively in English <p>Competency standards are established as formal Rules with the status of secondary legislation, developed in consultation with stakeholders, and will require a further RIS.</p> <p>The regulator is empowered by legislation to carry out inspections as part of the licensing process, if necessary.</p>
<i>No alternatives were identified as these requirements clearly meet the objectives of regulation.</i>	
<p>Fitness standards: Applicants must be aged 18 years or above, and/or</p> <p>Applicants must be New Zealand residents or citizens.</p>	<p>Fitness standards: The legislation prohibits a person from providing immigration advice who:</p> <ul style="list-style-type: none"> • has been removed or deported under the Immigration Act 1987, or is unlawfully in New Zealand, or • is an undischarged bankrupt or has been prohibited from running a company under the Companies Act. <p>The regulator has no discretion in regards to Immigration Act offences, removal or deportation, being unlawfully in New Zealand, or bankruptcy or prohibitions under the Companies Act.</p> <p>The legislation restricts a person from providing immigration advice who:</p> <ul style="list-style-type: none"> • has been convicted of a crime involving dishonesty, an offence resulting in a term of imprisonment, an offence against the Fair Trading Act 1986, or an offence against the Immigration Act 1987. <p>The regulator has discretion to determine whether these restrictions are likely to adversely affect an applicant's fitness to give immigration advice, and may therefore decide to grant a licence.</p> <p>The regulator may also take into account any convictions for other offences, any disciplinary proceedings taken or being taken against the applicant, and whether the applicant is related by employment or association to another restricted person.</p> <p>A person's licence will be deemed automatically suspended if the person fails to meet the fitness standards while licensed, and cancelled if the person is unable to satisfy the regulator that they do meet the fitness criteria.</p>
<i>The alternative options are not preferred because they do not regulate the competence or integrity of the advisor and are potentially contrary to the New Zealand Bill of Rights Act. In addition, it is not appropriate to limit the regime to New Zealand citizens as offshore advisors are to be included.</i>	
	<p>Ongoing standards: The regulator, in consultation with key stakeholders, develops a code of conduct, with the status of secondary legislation. The code of conduct addresses standards of professional and ethical conduct for licensed immigration advisors, including disclosure requirements and reasonableness of fees (details to be decided later and will require a further RIS).</p> <p>Licenses must be renewed on an annual basis.</p>

No alternatives were identified as these requirements clearly meet the objectives of regulation. Annual renewal is consistent with other models of occupational regulation in New Zealand and overseas, and provides a mechanism to ensure that immigration advisors keep informed of frequent changes to immigration policy.

Governance arrangements

Alternative options Preferred option

Form: The regulator takes the form of a new Crown agent.	Form: A regulator called the Immigration Advisors Authority (IAA) is established as a statutory body within a government department. A Registrar and staff are appointed under the State Sector Act 1988 by the chief executive of the department.
<i>A Crown agent is not preferred as it is not cost-efficient. Operating costs of a Crown agent are estimated to be \$2.945 million (GST inclusive) in year one and around \$3.043 million (GST inclusive) in out-years.</i>	
Location: The IAA sits within the Ministry of Economic Development, Justice or the Department of Internal Affairs.	Location: The IAA sits within the DoL (but independent of immigration policy and operations). The Minister of Immigration is the responsible Minister.
<i>The alternative options are not preferred because it is important that the IAA is not too far removed from the development of immigration policy and operational policy.</i>	
	Functions: The broad functions of the IAA to be set out in legislation are: <ul style="list-style-type: none"> • development and maintenance of rules (competency standards) and a code of conduct • administration of the licensing system • education and professional development • communications and public awareness • enforcement (complaints, disciplinary procedures, offences and penalties). The regulator maintains a public register of licensed immigration advisors.
<i>No alternatives were identified as these functions clearly meet the objectives of regulation.</i>	

Administrative sanctions

Alternative options Preferred option

	DoL sanctions: The DoL must refuse to accept immigration applications from unlicensed immigration advisors. The DoL puts in place administrative responses to minimise adverse impacts on applicants whose immigration applications are refused because they have unknowingly used the services of an unlicensed advisor, set out in legislation.
<i>No alternatives were identified as these requirements clearly meet the objectives of regulation.</i>	

Complaint and disciplinary procedures

Alternative options Preferred option

Who hears complaints: An independent tribunal is established with responsibility for making disciplinary decisions.	Who hears complaints: The complaints and disciplinary body is a subset of the IAA, brought together at regular intervals or when a complaint is received.
<i>The alternative is not preferred as it is not cost-efficient. Operating costs of an independent tribunal</i>	

are estimated to be \$2.850 million (GST inclusive) in year one and around \$3.140 million (GST inclusive) in out-years.	
Who may lay a complaint: Only a person to whom immigration advice is given may lay a complaint.	Who may lay a complaint: Any person may lay a complaint with the complaints body.
<i>The alternative option is not preferred as there is no clear rationale for limiting the ability of any third party to lay complaints.</i>	
	<p>Complaints procedures: The regulator develops minimum requirements for lodging a complaint, including:</p> <ul style="list-style-type: none"> • a tiered complaints system, so that complaints are resolved at the lowest level possible (with licensed immigration advisors required to maintain clear procedures for handling complaints in the first instance) • screening mechanisms, for assessing complaints efficiently (such as publicly available checklists for persons seeking to make a complaint and/or a basic information check when a complaint is first received) • the rights and duties of licensed immigration advisors in the complaints process, including an offence to refuse or fail without reasonable excuse to comply with a request to cooperate from the complaints body in the course of its investigation of a complaint, punishable by a maximum fine of \$10,000 • that the complaints body has the power to undertake inspections as part of the complaints process • that the complaints body has the authority to hear complaints about the actions of former licensed immigration advisors, with a limitation of two years, and • that the grounds for complaint will be negligence, incompetence, incapacity or any breach of the code of conduct or Rules.
<i>No alternatives were considered as these provisions are consistent with overseas jurisdictions and other examples of occupational regulation in New Zealand.</i>	
Disciplinary sanctions: Disciplinary sanctions against licensed advisors are not compensatory.	<p>Disciplinary sanctions: Disciplinary sanctions against licensed advisors <u>are</u> punitive:</p> <ul style="list-style-type: none"> • caution or censure • requirement to remedy or undertake specified training • suspension of licence for no more than two years, or until the person meets specified conditions (and an order that the IAA record the suspension in the public register) • cancellation of licence (and an order that the person may not re-apply for a licence before the expiry of a specified period, if any) • payment of penalties or fines, not exceeding \$10,000 • payment of costs or expenses of investigation, inquiry, hearing and/or prosecution <p><u>and compensatory:</u></p> <ul style="list-style-type: none"> • refund of any or part fees paid by the consumer • payment in compensation to the consumer.
<i>The alternative is not preferred as it does not effectively address the serious harm to consumers and therefore does not meet the objectives of regulation.</i>	
	<p>Appeals: Appeals and review may be made to the District Court by way of rehearing (with the right to provide further evidence if the court grants leave), and any party to an appeal to the District Court is entitled to appeal to the High Court on questions of law.</p>
<i>No alternatives were identified as the preferred option meets the objectives of regulation and is cost effective.</i>	

Offences and penalties

Alternative options Preferred option

<p>Offences and penalties: As in Australia, the provision of immigration advice is a strict liability offence only. There is no distinction in the offence/penalty based on whether or not they knew that they were providing immigration advice.</p> <p>A range of penalties were considered.</p>	<p>Offences and penalties: Section 142(1)(j) of the Immigration Act is repealed.</p> <p>New offences and penalties are as follows:</p>		
	Offence	Knowledge offence	Strict liability
	Providing immigration advice without a licence (unless exempt)	Maximum imprisonment: 7 years Maximum fine: \$100,000, or both Court may order that any commercial gain be forfeited to the Crown Court may order reparation	Maximum fine: \$100,000 Court may order that any commercial gain be forfeited to the Crown Court may order reparation
	Holding out or advertising that any person, including the person him or herself, provides immigration advice, when that person does not hold a licence (unless exempt)	Maximum imprisonment: 2 years Maximum fine: \$10,000 or both	N/A
	Holding out or advertising that any person, including the person him or herself, holds a licence, when that person does not hold a licence (unless exempt)	Maximum imprisonment: 2 years Maximum fine: \$10,000 or both	N/A
	Providing false or misleading information in support of an application for a licence to provide immigration advice	Maximum imprisonment: 2 months Maximum fine: \$10,000 or both	Maximum fine: \$10,000
	Asking for or receiving a fee or reward for the provision of immigration advice by an unlicensed person (unless exempt)	Maximum imprisonment: 7 years Maximum fine: \$100,000, or both Court may order that any commercial gain be forfeited to the Crown Court may order reparation	Maximum fine: \$100,000 Court may order that any commercial gain be forfeited to the Crown Court may order reparation
	Employing an unlicensed person as an immigration advisor.	Maximum imprisonment: 2 years Maximum fine: \$10,000 or both Court may order that any commercial gain be forfeited to the Crown Court may order reparation	Maximum fine: \$10,000 Court may order that any commercial gain be forfeited to the Crown Court may order reparation
<p>Offences punishable solely by fine are summary offences, and offences punishable by over three months' imprisonment are summary indictable offences tried summarily.</p> <p>Information about a summary offence must be laid within two years of the offence being committed.</p>			
<p><i>The alternatives are not preferred. The preferred provisions are based on offence provisions in comparable legislation (both in New Zealand and overseas), in particular, the Immigration Act 1987. These provisions are required to uphold the integrity of the licensing requirements and prevent</i></p>			

potential harm to consumers arising from individuals operating outside of the regulatory framework.

Implementation

Preferred option

The legislation allows 12 months from enactment for initial set-up of the IAA, and development of:

- entry standards (through formal rules and a code of conduct)
- any additional exemptions
- licence application and renewal processes
- a register of licences (which may be an electronic register)
- a complaints and disciplinary process, and
- any other supporting processes and documentation.

The legislation comes into force 12 months from the finalisation of the above, to allow for immigration advisors to apply to become licensed.

Shorter timeframes were considered but are not preferred as comparable regimes have taken at least this long to implement.

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Government

[Information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]

The costs to the Crown of regulation are considered to be offset by the benefits. Improved consumer protection for those using the services of an immigration advisor will enhance New Zealand's reputation as an attractive destination for both temporary and permanent migrants. By progressively extending the regime offshore, New Zealand's international relations and reputation as a safe, reliable destination could also improve. The attraction of skilled migrants, skilled temporary workers, international students and visitors to New Zealand is likely to contribute to growing an inclusive, innovative economy and improving New Zealand's skills base.

Government is also likely to make efficiency gains in its immigration operations due to fewer poor quality immigration applications and appeals being lodged by immigration advisors. Efficiency gains may result in reprioritisation within baselines or actual savings to the Crown, but these will be difficult to attribute directly to the new regulation. By introducing clear new incentives for immigration advisors to provide acceptable standards of immigration advice, and disincentives to drop below these standards, the proposal may also result in reduced immigration fraud over time. Reduced immigration fraud (regarding health status, job offers, and criminal records among other things) may lead to savings in the health, welfare and justice systems.

Immigration applicants/consumers

The cost to migrants and potential migrants of using the services of a for-profit immigration advisor could increase, as it is likely that advisors will pass on the increased costs associated with obtaining a licence and complying with the code of conduct. The cost of using a not-for-profit immigration advisor should not increase as their costs are to be met through Crown funding. (Crown funding for the not-for-profit sector will ensure that this continues to be a robust and accessible avenue for some consumers to obtain immigration advice and information).

However, minimum competence standards and a code of conduct will increase the likelihood that services are conducted in a competent and ethical manner, and thus reduce the risk of harm to consumers. Some consumers may remain vulnerable in the short term, as licensing will be initially optional for offshore advisors. After three years, however, offshore immigration advisors will also have to meet the same standards as onshore advisors.

A public register of licensed immigration advisors will improve an immigration applicant's ability to make a well-informed choice of immigration advisor. Consumers will also have a clear and accessible avenue for complaint and redress if necessary. The independence of the regulator from industry and its inclusion in the DoL will provide immigration applicants with confidence in the standards set and maintained for the industry, and in the administration of the complaints procedure.

Immigration advisors

The proposal is expected to result in increased costs to immigration advisors through licence application fees, and compliance costs associated with applying for and renewing licences, meeting minimum competence standards and complying with a code of conduct (details yet to be decided). Application fees will be prescribed in regulations after the enactment of new legislation and a new RIS will be prepared at that stage.

[Information withheld under Section 9(2)(f)(iv) of the Official Information Act 1982]

Not-for-profit immigration advisors will not have to bear the full costs of licensing, but may incur some compliance costs, which are likely to be similar in time to those set out in the BCCS below, but not in dollar value.

[Information withheld under Section 9(2)(f)(iv) of the Official Information Act 1982] in Australia and in the United Kingdom. In Australia and the United Kingdom, the costs of licensing have not adversely affected the immigration advice industry; rather the introduction of licensing regimes has been followed by an increase in the number of advisors. Given the similarity of New Zealand's proposed licensing regime, it is expected that the effect will be the same in New Zealand.

Some exemptions from the licensing regime are proposed. Offshore immigration advisors, current MPs and their staff, employees of the public service, foreign diplomats, family members and individuals providing advice on student visas and permits offshore will be *exempt* from the licensing requirements. However, they may obtain a licence voluntarily for marketing advantage or in the interests of their consumers. Lawyers will be *excluded* from the regime, that is, they can still provide advice but may not be licensed. Similarly, members of other occupational groups may also be *excluded* from the regime. Offshore advisors will bear the costs of the proposals after three years when offshore licensing will become compulsory. The proposals will also affect those who may not consider themselves to be immigration advisors but who nonetheless provide immigration advice in the course of their work (for example, recruitment agents and education agents). It is likely that some will choose to either discontinue providing immigration advice or some organisations may choose to nominate particular individuals to be licensed.

The costs are considered to be offset for immigration advisors by the benefits of licensing. Requiring immigration advisors to meet minimum competence standards and comply with a code of conduct is likely to enhance the overall quality of advice provided by immigration advisors, both for-profit and not-for-profit. Together with removing unethical and incompetent advisors from the industry, this will enhance the credibility and reputation of the industry as a whole. The proposals will particularly benefit those advisors who already provide competent and ethical services and will obtain a practical and marketing advantage over those who do not.

In the longer term, minimum competence standards will give rise to education and training opportunities for all licensed immigration advisors, which are likely to provide them with marketing advantages and to improve their relationships with the DoL. The requirement for the regulator to develop the competency standards and code of conduct in consultation with stakeholders will help the licensing regime to be developed in a way that supports the industry.

New Zealand society

New Zealand society as a whole could benefit from savings to the immigration, health, welfare and justice systems due to reduced immigration fraud. Reduced fraud relating to health and character requirements (such as declarations of diseases and criminal offences) could increase the general safety and security of New Zealanders. Moreover, New Zealand as a whole benefits both economically and culturally when migrants, temporary workers, international students and visitors are attracted to and settle well in New Zealand.

Consultation undertaken

The Ministries of Consumer Affairs, Economic Development, Education, Foreign Affairs and Trade, Justice, Pacific Island Affairs, Social Development, and Tourism and the Department of Internal Affairs, the State Services Commission, the Treasury, New Zealand Trade and Enterprise, and the Offices of the Community and Voluntary Sector, Ethnic Affairs, and the Police Commissioner were consulted in the development of these proposals. The Department of the Prime Minister and Cabinet was informed.

The Ministry of Justice's strong view that practising lawyers should be excluded from the licensing regime, rather than simply exempted, is reflected in the preferred option. In addition, the proposal to create new offences whereby the defendant is required to disprove or raise doubt as to one of the elements of the offence gives rise to issues with section 25(c) of the Bill of Rights Act (the right to be presumed innocent until proven guilty). The Ministry of Justice's view that it currently has insufficient information to assess whether such an infringement on the right can be justified is reflected in the preferred option. A final view as to whether the proposed provisions are consistent with the Bill of Rights Act will be dependent on the manner in which the legislation is drafted and will be provided at that time.

The Office of Ethnic Affairs is concerned about the compliance costs on the not-for-profit sector. This view has also been reflected in the preferred option. The not-for-profit sector's inclusion in the proposed regulation will be supported by the proposed education and public awareness functions as the regulation is implemented.

In addition, stakeholders (including immigration advisors, community groups, lawyers, education agents, recruitment agents and regional development agencies) have had an opportunity to feed into the development of the proposals. In September 2003, stakeholders were sent the discussion document *Regulation of the Immigration Advice Industry*, and feedback was gathered via focus group meetings held throughout the country in October 2003 and 12 written submissions were received. The focus of discussions at that point was the need for regulation and the form that regulation should take. Participants supported the regulation of immigration advice via licensing by an independent regulator but expressed concern that the costs should not be prohibitive. These concerns have been taken into account in the development of the detailed proposals.

Further dialogues were held with stakeholders in Auckland, Christchurch, Hamilton and Wellington in July 2004 to discuss the detail of the licensing framework. Cabinet decisions and proposals were made publicly available on the immigration website. Participants were also

provided with the opportunity to provide written feedback and 11 submissions were received. (The low number of submissions is likely due to stakeholder perception that their views were already adequately recorded, and anticipation of select committee consultation). While some stakeholders had differing views on the detail of how regulation should work, there was general support for the proposals.

The proposals have been discussed with the Office of the Immigration Services Commissioner in the United Kingdom. The Australian Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) has also been consulted in light of New Zealand's obligations under the Trans-Tasman Mutual Recognition Arrangement (TTMRA). Under the TTMRA, both countries need to be confident that the outcome of each other's regulatory system jointly meets our respective objectives because anyone registered to practise in Australia will be entitled to register in New Zealand, and vice versa. DIMIA indicated support for the proposals and is confident that they will fit well with TTMRA requirements. The new regulator will need to consult further with Australia's Migration Agents Registration Authority when developing competency standards and the code of conduct to ensure TTMRA obligations are met.

BUSINESS COMPLIANCE COST STATEMENT

Compliance costs

Source of compliance costs	Parties potentially affected	Estimated costs per advisor (Based on an estimated hourly rate of \$112)
Learning new requirements stemming from primary legislation. Compliance costs arising from the licensing application process, rules, and code of conduct that are to be developed by the regulator, will be estimated in a further BCCS.	All immigration advisors will be required to learn the new legislative requirements.	\$56 (one-off) Based on 30 minutes taken.

Potential compliance costs

Source of compliance costs	Parties potentially affected	Estimated costs per advisor (Based on an estimated hourly rate of \$112)
Spending time with an inspector as part of the licensing application process.	This a potential cost to licence applicants, but most licence applicants would not incur this cost because it is anticipated that application processing will be primarily paper-based and inspections discretionary.	\$205 (one-off) Based on 110 minutes taken.
Establishing internal complaints procedures to comply with the 'tiered complaints system' and processing any complaints received.	This is a potential cost to licensed individuals. However, many are likely to have existing internal complaints procedures.	\$784 (one-off establishment costs) Based on seven hours taken. \$448 (cost of processing a complaint) Based on four hours taken.

Compliance costs if subject to investigation

Source of compliance costs	Parties potentially affected	Estimated costs per advisor (Based on an estimated hourly rate of \$112)
Spending time with an inspector as part of the complaints process.	This is a potential cost to licensed individuals.	\$336 (one-off) Based on 180 minutes taken.
Cooperating with the regulator in any investigation to establish whether, as an unlicensed advisor, they should be required to hold a licence.	This a potential cost to individuals that are unlicensed but may provide immigration advice.	\$280 (one-off) Based on 150 minutes taken.

Compliance costs for businesses will also arise from the licensing application process, rules, and code of conduct that are to be developed by the regulator. These costs are unable to be quantified at this time because the operational processes, competence standards and code of conduct will only be developed once the legislation is enacted and the regulator is established. As the rules and code of conduct developed are to have the status of secondary legislation, a new BCCS will be required before they are approved. Further compliance costs will be estimated at that stage.

Compliance costs will reduce over time as businesses become more familiar with the regulatory requirements and the application, complaints and appeals processes.

The proposals will affect businesses involved in the provision of immigration advice. Based on the DoL survey of immigration advisors undertaken in October 2004, table one below sets out the number of active for-profit immigration advisors, by primary occupation and organisation size. Groups exempt or excluded are not included in the table. Offshore advisors have been included on the basis that the proposed legislation will require them to hold a licence three years after coming into force.

Table One: For-Profit Advisors by Primary Occupation and Organisation Size

Primary occupation	Organisation Size											
	Sole Trader			2 – 19 Employees			20 – 49 Employees			50+ Employees		
	Total	NZ	Off-shore	Total	NZ	Off-shore	Total	NZ	Off-shore	Total	NZ	Off-shore
Immigration Consultant	31	27	4	92	62	30	6	1	5	1	1	0
Administration	4	4	0	6	4	2	1	1	0	1	0	1
Travel Agent	1	1	0	3	1	2	1	0	1	0	0	0
Accountant	1	1	0	10	9	1	2	0	2	0	0	0
Education Agent	7	5	2	34	26	8	1	0	1	0	0	0
Education Provider	1	1	0	4	2	2	0	0	0	0	0	0
Recruitment Agent	2	2	0	3	2	1	0	0	0	0	0	0
Other	6	5	1	12	9	3	0	0	0	4	2	2
Total	53	46	7	164	115	49	11	2	9	6	3	3

Compliance costs will be minimised by widely publicising the regulatory requirements (and supporting processes) within the immigration advice industry, allowing a 12-month period for advisors to meet the requirements, and providing for consultation with stakeholders in the development of the rules and code of conduct. It is anticipated that the regulator will have a website and will develop resources for advisors over time, including standard forms and contracts.

It is also anticipated that the regulator will reduce compliance costs for small businesses by describing procedures that would be deemed to meet the regulatory requirements. In particular, acceptable procedures for establishing internal complaints procedures, and processing any complaints could be set out by the regulator.