

WORKFORCE (IMMIGRATION)
INTERNAL ADMINISTRATION CIRCULAR NO: 08/05

To: All Workforce/Immigration New Zealand (INZ) staff
2008

Date: 1 April

Implementation of the Immigration Advisers Licensing Act 2007

Please read this information and ensure all staff who may be affected are aware of what is required of them.

Purpose

1. The purpose of this circular is to provide advice and instructions to staff on the changes arising from the implementation of the Immigration Advisers Licensing Act 2007 (the Act). This circular includes:
 - (a) a background to the Act, and
 - (b) the impact on Immigration New Zealand (INZ) from 4 May 2008 to 3 May 2009, and the process for immigration and visa officers to follow when receiving immigration applications from licensed immigration advisers on behalf of immigration clients.

Background to licensing immigration advisers

2. The Immigration Advisers Licensing Act 2007 was passed on 4 May 2007. This Act creates a new regulatory framework for the regulation of individuals providing immigration advice¹ both onshore and offshore.
3. The Immigration Advisers Authority (the Authority), headed by a Registrar, has been established within the Department of Labour to oversee the licensing of immigration advisers (www.iaa.govt.nz). Competency standards and a code of conduct setting out the ethical standards required of immigration advisers have been developed. A disciplinary tribunal (the Immigration Advisers Complaints and Disciplinary Tribunal) has also been established within the Ministry of Justice.
4. The Authority will begin accepting applications for immigration advisers' licences from 4 May 2008. From 4 May 2009, it will be mandatory for people providing immigration advice in New Zealand to have a licence unless the individual is exempt from the requirement to hold a licence under the Act (section 11). From this time, INZ must refuse applications from unlicensed advisers. Those that do not hold a licence may face prosecution. Offshore

¹ *Immigration advice is:*

- Using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward.

Immigration advice is not:

- Providing information that is publicly available or that is prepared or made available by the Department of Labour
- Directing a person to the Minister or the Department of Labour or an immigration officer, a visa officer, a refugee status officer, or a list of licensed Immigration Advisers
- Carrying out clerical work, translation or interpreting services, or settlement services.

advisers giving advice to people seeking visas or permits have to be licensed from 4 May 2010.

5. Note that the Act focuses on licensing the individual not the company. Substantive changes to AMS are therefore required to enable INZ to capture data on individual licensed immigration advisers and to enable reporting on these individuals.

Impact on INZ from 4 May 2008 to 3 May 2009

6. From 4 May 2008, the Authority will begin to receive applications from immigration advisers seeking licenses. Once licensed, the licensing details of the adviser will be placed on the Authority's public register (www.iaa.govt.nz). The register will include the licensed adviser's:
 - licence number
 - name
 - address (business and service)
 - type of licence (full, provisional or limited)
 - employer (if applicable)
 - date of licensing (licenses are valid for one year)

The register will also show any terms or conditions attached to the licence, and any cancellation, surrender or suspension of the licence (if applicable).

7. As part of the licensing application process, an adviser will be required to request their immigration application history from INZ. The Authority is developing the form for this request and will specify that the requests should be made to Business Information Service (BIS). BIS will supply the adviser with a summary of their application history. If a branch receives a request for an adviser's immigration application history, they should forward the request to BIS.
8. If you receive a query as to whether a person needs to become licensed, please refer them to the Authority (0508 IAA IAA (0508 422 422) or info@iaa.govt.nz). Only the Registrar can determine if an individual will be exempt under the Act.
9. It is likely that frontline staff will receive queries regarding the Act and the Authority from both immigration clients and advisers seeking information on the licensing process. Where an individual is seeking licensing information, the Authority will have application packs for advisers available from the Authority from 4 May 2008. These application packs will also be available through the Authority's website.
10. INZ forms, guides and leaflets will be changed during this period to prepare INZ for 4 May 2009 when applications from unlicensed immigration advisers must be refused.
11. Immigration clients do not have to use an immigration adviser to complete an immigration application, but should they choose to use an adviser, selecting a licensed adviser will give the immigration client the full protection of the Immigration Advisers Licensing Act 2007.

Process for immigration and visa officers from 4 May 2008 until AMS system changes are implemented.

12. From 4 May 2008, if you are allocated an immigration application from an immigration client with a licensed immigration adviser acting on their behalf, you should process the application as normal. No changes to processing can occur until the AMS system changes are implemented later in the year.
13. Questions and answers have also been prepared to provide additional information on the implementation of the Act and its impact on INZ.

Process for immigration and visa officers once AMS system changes are implemented.

14. AMS system changes will enable the Authority to send regular updates of the Register information to INZ and for INZ to create records associated with the licensed immigration adviser and their licence number.
15. A further IAC will be circulated prior to implementation of the AMS system changes.

Q & A for staff: Implementation of the Immigration Advisers Licensing Act 2007

1. What does the Immigration Advisers Licensing Act 2007 (the Act) do?

The Act aims to protect consumers and enhance the reputation of New Zealand as a migration destination. The Act creates a new regulatory framework for the regulation of individuals providing immigration advice both onshore and offshore.

The Immigration Advisers Authority (the Authority), headed by a Registrar, was established within the Department of Labour in 2007 to oversee the licensing of immigration advisers (www.iaa.govt.nz). Competency standards and a code of conduct setting out the ethical standards required of immigration advisers have been developed. A disciplinary tribunal (the Immigration Advisers Complaints and Disciplinary Tribunal) has also been established within the Ministry of Justice.

The Authority will begin accepting applications on 4 May 2008.

2. What is immigration advice?

Immigration advice is:

- Using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward.

Immigration advice is not:

- Providing information that is publicly available or that is prepared or made available by the Department of Labour, or
- Directing a person to the Minister or the Department of Labour or an immigration officer, a visa officer, a refugee status officer, or a list of licensed immigration advisers, or
- Carrying out clerical work, translation or interpreting services, or settlement services.

3. I have received queries from individuals about becoming licensed. Where can I find more information about the Act, the Immigration Advisers Authority, and how an adviser can become licensed?

If you receive a query as to whether a person needs to become licensed, please refer them to the Authority (0508 IAA IAA (0508 422 422) or info@iaa.govt.nz). Only the Registrar can determine if an individual will be exempt under the Act.

For your own information, the Immigration Advisers Authority website, www.iaa.govt.nz, contains information about the Act, how an adviser can become licensed, and upcoming events.

4. Are all immigration clients required to use an immigration adviser?

No. An immigration client can fill in the application form themselves. If they choose to use the services of an adviser, then they should state this on their application form.

5. Do all advisers have to become licensed from 4 May 2008?

No. From 4 May 2008, immigration advisers can apply for a licence to the Authority. From 4 May 2009, all immigration advisers working in New Zealand must be licensed, unless exempt. INZ must refused applications from unlicensed onshore advisers from this time. From 4 May 2010, all immigration advisers, whether working onshore or offshore, must be licensed unless exempt.

6. Who will be exempt from licensing?

Exemptions under the Act do not come into effect until 4 May 2009. Section 11 of the Act lists the persons who are exempt from licensing. This includes the following:

- People who provide immigration advice in an informal or family context only and not systematically or for a fee
- Offshore advisers on student visas or permits only
- New Zealand Members of Parliament, or members of their staff who provide immigration advice as part of their employment agreement
- Foreign diplomat or consular staff
- New Zealand lawyers
- Community law centre volunteers or workers
- Citizens Advice Bureau volunteers or workers
- New Zealand public service employee who provides immigration advice within the scope of their employment agreement **(This exemption is the one that applies to INZ so that all frontline immigration staff do not have to become licensed)**, and
- People exempted by Regulations.

The schedule of exemptions will be updated and maintained as part of the Authority's Register on their website: www.iaa.govt.nz.

7. What changes will happen to INZ policy and processes on 4 May 2008?

There will be **no change** to existing immigration policy or processes at branches as at 4 May 2008. Service Design will begin implementing changes to forms, guides and leaflets to prepare INZ to refuse applications from unlicensed immigration advisers from 4 May 2009. **An IAC will be sent out in April 2008 with further information.**

8. I am processing an application from an agent who has become a licensed immigration adviser after the date the application was lodged. What should I do with the current application?

Process the application as normal as the application has been accepted by INZ for processing prior to the adviser becoming licensed. Any subsequent applications from the licensed adviser will continue to be processed as normal until AMS systems changes occur later this year.

9. I have received an application from a licensed adviser. Should I prioritise this application and do I capture this information in AMS?

No. Applications from licensed advisers are to be treated the same as any other application. When the system changes occur, information relating to the status of the adviser will be captured. Until then an application from an adviser is processed as normal using the existing AMS business client records and contacts.

10. What is the 'INZ immigration activity requirements document' that immigration advisers need to supply to the Authority?

To help demonstrate the competency of a potential adviser to provide immigration advice, the Registrar of the Authority requires the applicant to

supply a summary of their immigration activity history. The adviser can make a request to our Business Information Service for a summary of their immigration application history over the previous two years. The format and content of this summary is currently being discussed between the Authority and INZ but is likely to contain summary information relating to the number of applications returned failed lodgement, withdrawn, approved and declined over the previous two years.

When an adviser seeks to renew their licence after 12 months, they will have to request a subsequent immigration activity record.

11. When will I see changes to current INZ policy and processes?

AMS systems changes are proposed for late 2008 to capture information on immigration advisers from the Authority's register (www.iaa.govt.nz). There will be changes to immigration processes at this time. Service Design will be working closely with Service Delivery to develop an IAC for circulation before these changes go live.

Immigration policy changes will be implemented in the March 2009 quarterly release. These changes will enable INZ to:

- accept and process applications from immigration advisers
- accept and process applications from exempt individuals
- refuse applications from unlicensed onshore advisers, and
- monitor of these applications.

At this time, immigration advisers will be able to check the progress of their applications.

Further immigration policy changes will be implemented in the March 2010 quarterly release to enable INZ to refuse applications from unlicensed advisers based offshore.

12. I have had problems with the competency of a particular adviser in terms of submitting incomplete immigration applications or immigration applications that do not meet policy requirements. How could this adviser be licensed as competent to provide immigration advice by the Authority?

The Registrar of the Authority is required to consider the fitness and competency of the adviser before a licence is granted. Immigration New Zealand provides the adviser with a summary of their immigration history outlining the number and type of applications they are associated with, and the outcomes of those applications. This summary is provided to the Registrar to consider when deciding to licence an adviser, along with other information the adviser must supply to demonstrate their competency.

In addition, advisers are required to supply a Criminal Record Histories as part of the fitness requirements (effective a character check). Further information on the competency standard requirements can be located on the Authority website: www.iaa.govt.nz.

The Act enables complaints to be made against licensed advisers. From INZ's perspective, these complaints could relate to professional conduct and competency. A subsequent IAC will outline the process for INZ to make a formal complaint to the Authority concerning a licensed adviser.

13. Do education providers need to hold a licence?

Refer any queries regarding whether an individual requires a licence to the Registrar of the Authority.

For your information, individuals hold an immigration adviser's licence - institutions or organisations themselves cannot hold a licence (and therefore cannot be exempt). Individuals working or volunteering at education providers do not require a licence if the immigration information they are providing is not considered to be immigration advice (refer question 2 above).

The Act sets out an exemption for persons giving immigration advice in regards to student visas or permits **offshore** only. People assisting international students with immigration matters in New Zealand should be required to abide by the same standards and rules as any other industry, when giving immigration advice. Persons giving immigration advice – whether within an education provider or as an "education agent" – must therefore hold a licence to continue to do so. "Education agents" both onshore and offshore are also bound by the Ministry of Education's *Code of Practice for the Pastoral Care of International Students*, but this does not override the immigration adviser licensing scheme.

The requirement to hold an immigration adviser's licence extends to individuals in both public and private education providers. People employed by the public service are exempt, but this exemption uses the statutory definition of the "public service" (Schedule 1 of the State Sector Act 1988). This list primarily includes ministries and departments. It does not cover the broader category of persons that might be defined as "state servants", such as nurses, teachers and school careers advisers.

14. Do persons who act on behalf of the Department have to hold a licence?

No. Immigration New Zealand (INZ) has memoranda of understanding with a range of education providers to deliver some of the immigration services that INZ might otherwise provide to international students. This includes processing some applications, and advising on next steps, and is usually done electronically and securely. In this sense, that education provider is acting under "contract" or an "agent relationship" with INZ, as part of the Department. They are, in a sense, the Department. Employees acting under this contractual arrangement would therefore not be providing "immigration advice", because section 7 of the Act defines information prepared or made available by the Department out of scope.

A parallel example is INZ's contractual relationships with private call centres offshore. Again, these companies "stand in the shoes" of the Department, so section 7 applies.