



IMMIGRATION NEW ZEALAND
INTERNAL ADMINISTRATION CIRCULAR NO: 16/02

To:	Immigration New Zealand, all Managers	Date: 13 May 2016
	Immigration New Zealand, all Visa Services staff	

Best Practice – Immigration Advisers

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

Purpose

1. The purpose of this Internal Administration Circular (IAC) is to clearly outline, in one document, best practice when dealing with immigration advisers, as well as Immigration New Zealand's (INZ) expectations of staff and immigration advisers.
2. This IAC replaces previous advice related to immigration advisers, specifically:
 - IAC 08/05 – “Implementation of the Immigration Advisers Licensing Act 2007” issued on 1 April 2008.
 - IAC 09/02 – “Implementation of the Immigration Advisers Licensing Act 2007” issued on 1 May 2009.
 - IAC 09/04 – “Status of non-lawyer employees of law firms under the Immigration Advisers Licensing Act 2007 (IAL Act)” issued on 30 June 2009.
 - IAC 09/09 – “Authority to Act and Directing Communications via Authorised Agents ” issued on 23 October 2009.
 - IAC 09/11 – “Managing Information Requests from the Immigration Advisers Authority” issued on 1 December 2009.
 - IAC 10/02 – “Offshore Immigration Adviser Licensing” issued on 28 April 2010.
 - IAC 11/08 – “Complaints Process to the Immigration Advisers Authority” issued on 28 September 2011.
 - IAC 11/05 – “Work Undertaken by Clerical Staff of Lawyers and Licensed Advisers ” issued on 15 July 2011.
 - Visa Pak item “Licenced Immigration Advisers working for multiple companies” in issue 95, issued on 14 December 2012.
 - Visa Pak item “Inability of employers to provide immigration advice” in issue 104, issued on 22 March 2013.
 - Visa Pak item “Contacting customers who are represented by Licensed Advisers” in issue 106, issued on 5 April 2013.

- Visa Pak item *“LIA feedback on complaints about immigration advisers”* in issue 111, issued on 10 May 2013.
 - Visa Pak item *“Audit of Exempt Immigration Advisers”* in issue 129, issued on 20 September 2013.
 - Visa Pak item *“Complaints Process to the IAA”* in issue 141, issued on 13 December 2013.
 - Visa Pak item *“Licensed Immigration Advisers Code of Conduct”* in issue 145, issued on 24 January 2014.
 - Visa Pak item *“Contacting Customers and Immigration Advisers”* in issue 161, issued on 9 May 2014.
 - Visa Pak item *“IAC 09/09 Communicating with Agents”* in issue 168, issued on 27 June 2014.
 - Visa Pak item *“Site visits”* in issue 181, issued on 26 September 2014.
 - Visa Pak item *“Site Visits: Clarification of best practice advice”* in issue 182, issued on 3 October 2014.
 - Visa Pak item *“Multiple Immigration Advisers”* in issue 189, issued on 21 November 2014.
 - Visa Pak item *“Who needs to complete INZ1160 Immigration Adviser Details form”* in issue 234, issued on 30 October 2015.
3. Some of the advice contained in this IAC has been reproduced from Immigration Advisers Authority (IAA) sources, such as its website, to ensure consistent messaging across the IAA and INZ.

Action

4. Please read and follow the advice in this IAC.

The provision of immigration advice

5. Any individual providing New Zealand immigration advice either in New Zealand or offshore must be licensed unless explicitly exempt under the Immigration Advisers Licensing Act 2007 (the Act).
6. A person is providing immigration advice if:
- The person is using or purporting to use knowledge of, or experience in, immigration; and
 - The knowledge or experience is used to advise, direct, assist or represent another person (whether or not for gain or reward); and
 - The advice, direction, assistance or representation (whether directly, or indirectly) is provided in regard to an immigration matter relating to New Zealand.
7. In this document, the term ‘immigration adviser’ refers to any person who provides immigration advice, not just licensed immigration advisers.
8. Employers, recruiters, education providers and travel agents/sellers are not permitted to provide immigration advice, unless licensed or exempt. They may complete an applicant’s form

under the applicant's direction, but cannot use their knowledge or experience to give the applicant advice about any immigration matter, such as:

- What supporting documents they might need.
 - How they should answer a question in the form.
 - How they should answer any follow-up questions from INZ.
 - What type of visa they may be eligible for at a later date.
9. If someone other than the applicant or a licensed or exempt immigration adviser is listed as the contact for communication, that person must not provide immigration advice. This includes situations where a licensed or exempt immigration adviser subsequently loses their licence or exemption, respectively.
10. In order for INZ to meet its obligations under the Act, if INZ has reasonable grounds to believe that a contact for communication who is neither licensed nor exempt is providing immigration advice, INZ will:
- Advise that person that they appear to be providing immigration advice.
 - Advise that person that INZ will cease communication with them, and communicate directly with the client.
 - Communicate directly with the client; and inform the client of the reason for the direct contact.
 - Consider the appropriateness of adding an information warning in accordance with IAC 16/01 to prevent any future provision of immigration advice.
 - Consider referring the matter to the IAA.

Note: Reasonable grounds may include instances where:

- *The contact for communication makes a substantial request or submission on behalf of a client, such as requesting an extension to a deadline or responding to concerns around Potentially Prejudicial Information (PPI).*
 - *The contact for communication has previously provided immigration advice.*
 - *The contact for communication's website/advertising contains immigration advice, or claims that the contact for communication is an immigration adviser.*
 - *The client or a third party informs INZ that the contact for communication has provided immigration advice.*
 - *Media reports, websites or other sources claim the contact for communication is an immigration adviser.*
 - *A travel agent is unable to produce evidence of having arranged flights and/or accommodation.*
 - *An unlicensed offshore student visa immigration adviser submits an application for a visa other than a student visa.*
11. For more information on the provision of immigration advice (including information about those who are exempt from licensing), please refer to the [IAA's website](#).

Visa Services and the IAA

12. The relationship between Visa Services and the IAA is managed by Operations Support.

13. All communication between Visa Services staff and the IAA should be made through Operations Support.

Communicating with immigration advisers

14. Where clients have received immigration advice, they will usually authorise their immigration adviser(s) to act on their behalf in the context of a visa application.
15. If a client has authorised an immigration adviser(s) to act on their behalf, INZ will usually address all correspondence to the nominated immigration adviser(s), not the client, in the first instance.
16. If a client stops using the services of an immigration adviser, the client should advise INZ of this in writing.
17. Where a client has authorised an immigration adviser to act on their behalf in the context of a visa application, INZ requires a written authority to act. An acceptable authority to act is any one of:
- A visa application form; or
 - *INZ 1160*; or
 - Confirmation in writing from a New Zealand lawyer on his or her letterhead that the lawyer is acting for the client(s).
18. Each authority to act applies to a single visa application, and it is not transferrable to other immigration matters.

Note: *the above two paragraphs do not limit immigration instruction A7.10(c), which allows New Zealand lawyers and licensed immigration advisers to request information under the Privacy Act 1993 without written authority to act.*

19. INZ may contact clients directly in some situations, such as when:
- An immigration adviser is unlicensed and not exempt.
 - An applicant makes unsolicited contact directly with INZ.
 - An immigration adviser who is not listed on the application form or *INZ 1160* attempts to act on behalf of the client.
 - An immigration adviser fails to respond to INZ's communication within a given timeframe.
 - Undertaking general verification functions where input from an immigration adviser is not necessary, and may in fact undermine the purpose of verification; such as:
 - Phoning a client to verify that they are at a certain location, such as their place of employment.
 - Phoning a client to verify English language ability.
 - Conducting site visits.

Note: *If an immigration adviser happens to be present while INZ is conducting a site visit, that immigration adviser must not unreasonably or unlawfully obstruct INZ's verification process. INZ may, at its own discretion, invite comments from the immigration adviser before and/or after the site visit.*

20. Visa applications may be declined if INZ is unable to verify that immigration instructions are met. INZ may make a complaint to the IAA or the Law Society where:
- An immigration adviser interferes with the verification process to the extent that INZ has been unable to verify whether or not immigration instructions are met; and
 - An application is declined on that basis.

Note: Examples of interference with the verification process include:

- *Unreasonably or unlawfully obstructing INZ during a site visit or an interview.*
- *Discouraging clients and third parties from being forthcoming with accurate information without the immigration adviser's involvement.*

21. INZ may contact third parties directly without involving the applicant's immigration adviser.

Immigration advisers and medical certificates

22. Clients should submit a completed *INZ 1160* at the time they undergo a medical examination if they want to enable their adviser(s) to:
- Obtain a copy of their medical certificate; and/or
 - Liaise directly with their panel physician.

Authorising multiple immigration advisers

23. A client may authorise multiple immigration advisers from the same organisation to act on their behalf.
24. On an application form or *INZ 1160*, an applicant can authorise a specific immigration adviser to act on their behalf. That immigration adviser is considered the principal point of contact (PPC) for the application.
25. The applicant may also authorise other immigration advisers from the same organisation to act on their behalf by selecting the relevant box on the form. This allows the other immigration advisers to act occasionally on behalf of the applicant, or to become the PPC.
26. The PPC will be listed in the contacts tab in AMS, and will receive all communications from INZ about the application. Where an applicant has authorised other immigration advisers to act on their behalf, this should be clearly stated in AMS notes.
27. If the PPC changes, the new PPC must inform INZ to ensure all communications are redirected to the new PPC. Once informed of the change in PPC, INZ will update the contacts tab.
28. A change in PPC may occur for a number of reasons, including situations where the original PPC:
- Terminates their employment at a company.
 - Takes extended leave from employment.
 - Loses their licence or exemption.

The role of employees of licensed immigration advisers

29. Unlicensed and not exempt employees of licensed immigration advisers can only undertake clerical work, such as asking for updates on an application, confirming receipt of documents or submitting passports.

30. Unlicensed and not exempt employees of licensed immigration advisers cannot perform other actions on behalf of the applicant that fall within the definition of immigration advice. Such actions include requesting extensions to deadlines and responding to concerns around PPI.

The role of employees of New Zealand lawyers

31. Because unlicensed employees of New Zealand lawyers act under the direction and supervision of their lawyer employer, their actions are not considered distinct from their lawyer employer. Employees of lawyers therefore fall under their lawyer employer's exemption from licensing, and may provide immigration advice.
32. However, the lawyer employer remains responsible for all immigration advice given, and must ensure that the unlicensed employee has the appropriate competency and is adequately supervised.
33. Only direct employees of law firms or sole practitioner lawyers are covered by the exemption. Employees in any other organisation who are supervised by a lawyer with a practising certificate are not covered.
34. Visa applicants must give authority to a New Zealand lawyer to act on their behalf, and this must be indicated on an acceptable authority to act (see paragraph 17). Once a New Zealand lawyer has provided an acceptable authority to act, that lawyer is responsible for the visa application, and his or her employee(s) may act in lieu of their lawyer employer.
35. If an application is submitted by a law firm and is not signed by a New Zealand lawyer, INZ will contact the law firm and advise that a lawyer needs to provide written confirmation to INZ that they are responsible for the application before the application will be accepted (an email will suffice for written confirmation).
36. Until a response is received, the application will be treated as if there is no immigration adviser.

Licensed immigration Advisers working for multiple companies

37. Licensed immigration advisers are permitted to work for more than one business, but must inform the IAA of every business they intend to work for.
38. The public register of licensed immigration advisers only provides an immigration adviser's primary business; it does not display any secondary businesses the immigration adviser may work for.
39. However, Operations Support maintains a record of immigration advisers' primary and secondary businesses, and can advise staff of any secondary businesses an immigration adviser may work for.
40. AMS cannot link an immigration adviser to multiple businesses. So, in order to accurately record that an immigration adviser is working for a secondary business, staff need to follow the process below:
 - Go to the Contacts Tab.
 - Add a new contact 'Adviser – Licensed' using the immigration adviser's primary business.
 - Add a new contact 'Contact – Other' using the immigration adviser's secondary business.
 - Add AMS notes confirming that the immigration adviser is licensed and is representing the applicant.

Complaints about licensed immigration advisers and unlicensed immigration advisers who are not exempt from licensing

41. Licensed immigration advisers who do not meet their legal and professional obligations bring the profession into disrepute, and put the integrity of the immigration system at risk.
42. A complaint about a licensed immigration adviser can be made to the IAA under one or more of the five following grounds:
 - Negligence – A person who behaves negligently is a person who is not doing what a reasonable person would do in a situation where that person owes a duty of care.
 - Incompetence – When a licence is granted, the immigration adviser is assessed against the Immigration Advisers Competency Standards and must maintain them. An immigration adviser who is incompetent is not meeting those standards.
 - Incapacity – A person who is incapable is a person who is not able to deal with something properly. In this context, incapacity relates to the licensed immigration adviser's conduct in providing immigration advice.
 - Dishonest and misleading behaviour – A person who is dishonest is a person who does not tell the truth or does not tell the complete truth. A person who behaves in a misleading way is a person that leads another person to have an incorrect impression or belief.
 - A breach of the Code of Conduct – The Licensed Immigration Advisers Code of Conduct.
43. A referral can also be made to the IAA about any person who is neither licensed nor exempt if they breach the Act.
44. To help determine whether or not a complaint to the IAA might be appropriate, advice may be sought from Operations Support.
45. To initiate a complaint, Head of Operations or Visa Operations Managers should email a completed *Immigration Adviser Complaint Form* and supporting evidence to Operations Support.
46. Any allegation or statement made by INZ must be supported by evidence: bare assertions of fact or mere suspicions are generally unhelpful. Evidence submitted must also give the IAA the full story on any particular issue, so complaints should include:
 - A complete summary of events relating to the complaint.
 - Application forms (if applicable) and any relevant supporting documents.
 - Any relevant correspondence with the immigration adviser, such as PPI letters and any responses to these.
 - AMS notes and assessments.
 - Any relevant immigration instructions or policy documents.
 - Any information relating to INZ's final decision on the application, such as the decision letter sent to the immigration adviser.
47. Operations Support will provide a quality check of any complaints to the IAA, and will decide whether or not they merit referral to the IAA.
48. All complaints made by Visa Services are made in the name of the person who holds the position of Manager, Operations Support.

49. If a complaint does not merit referral to the IAA, Operations Support may suggest an alternative option for managing the situation.

Note: *Complaints about lawyers must be referred to the Law Society, not the IAA. In doing so, staff should follow the process outlined in IAC 11/07, which remains current advice.*

Note: *If a client makes a complaint to INZ about an immigration adviser, the client should be referred to the IAA or the Law Society. INZ will avoid making complaints about immigration advisers on behalf of individuals.*



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Disclaimer

Every care has been taken to ensure the information in this circular is accurate and current as at the date of this circular. The information on this circular is to assist you; however applications will be assessed by Immigration New Zealand according to the published Operational Manual. This circular is not a substitute for the Operational Manual.