

VISA PAK ISSUE 374 — 8 OCTOBER 2018

COMPLAINTS AND FEEDBACK – REVISED VERSION OF INZ COMPLAINTS AND FEEDBACK POLICY AND PROCESS

Immigration New Zealand (INZ) is publishing a revised version of the Complaints and Feedback Policy and Process.

They will be available on the website here:

www.immigration.govt.nz/documents/complaints-and-feedback/inz_complaints_and_feedback_policy.docx

www.immigration.govt.nz/documents/complaints-and-feedback/inz_complaints_and_feedback_process.docx

A number of changes have been made, including some requested by the New Zealand Law Society (NZLS) and/or The New Zealand Association of Migration and Investment (NZAMI). The changes have been communicated to these stakeholders, along with the Auckland District Law Society.

Matters that have been updated

- a) New foreword message to INZ staff from Greg Patchell
- b) Clarification that the Policy does not arise from a Parliamentary or Cabinet decision but arises from INZ's own commitment to providing a professional service (as suggested by the NZLS and NZAMI)
- c) Exemption to the six-month cut-off date for accepting complaints to allow for exceptional circumstances (as suggested by the NZLS and NZAMI and is already in practice)
- d) Amendment of levels of triage in accordance with changes in Visa Services management structure i.e. amendment of Area Manager to Head of Operations (as suggested by the NZLS, NZAMI and the Complaints and Feedback Team (CFT))
- e) Addition of the expected timeframe for the CFT to engage with a complainant as three working days
- f) Clarification of why an Authority to Act is required when submitting feedback on another person's behalf
- g) Clarification of when a manager may refer a concern that cannot be addressed quickly or easily to the CFT to log as a complaint
- h) Clarification that complaints seeking to overturn an application or compliance decision or where they have a legal right of reconsideration or appeal will not be accepted for investigation (as a result of suggestions made by the NZLS and NZAMI)
- i) Expansion of the Remedies section
- j) Additional examples and explanations regarding "merits" have been provided in the Process document (as a result of suggestions made by the NZLS and NZAMI)
- k) A new version of the standard complaint response letter that provides more instructions to the signing manager in writing the response.

Matters that have not been updated

- a) **That the CFT should advise on alternative options regarding appeal or reconsideration options**

This information is clearly explained and provided to clients through their decision letters. Any further communication on these options may cause confusion regarding timeframes for making an appeal or reconsideration. The feedback page on INZ's website does clearly note a person's appeal or reconsideration options for cases where a complaint is not accepted for investigation, and where necessary the CFT will refer complainants to this link.

b) Query as to why INZ cannot concurrently consider a complaint about services or processes when there is an appeal or reconsideration right

INZ has historic concerns that complainants have tried to use the complaints process as a substitute for an appeal in order to have their decision overturned, when that is not the purpose of the Process, and when the Immigration Act clearly indicates Parliament's intent that applicants utilise their legal rights in appropriate cases where they believe INZ's decision was incorrect. As such, no significant adjustments to the Policy or Process documents on this matter have been made.

c) Request to include investigation of the merits of a decision in particular where it has impacted the outcome

While it could be argued that a visa or other decision affecting one's immigration status is a "service" matter, INZ's position is that looking at the merits of a decision is equivalent to a review or appeal of the decision. Parliament, in passing the Immigration Act, stipulated that certain types of applications do have a right of review or appeal attached to them, while others (such as a temporary visa application lodged offshore) do not. Therefore, including a merits review of INZ decisions in the Process would be at cross purposes with what Parliament intended and may create an avenue of appeal or review when one does not exist under the legislation or an alternative/duplicate right of appeal/review in other instances.

INZ's position has been supported in a recent judgment of Woodhouse J in the High Court that stated: "there is no ability to overturn a visa decision through the complaint process ... a process designed simply to enable clients to lodge complaints cannot override an enactment, or any subordinate legislation".

INZ agrees that a process error can impact the *outcome* of the decision (in which case INZ would offer a remedy such as a refund or fee waiver of the next application), however this does not mean the *merits* of the decision, which (in INZ's view) has to do with the mental reasoning and judgment of the immigration officer, is necessarily faulty. Additional examples and explanations regarding merits have been provided in the Process document given this feedback.

d) Concern about a lack of independence and proper investigation where the Process refers a complaint to the area office where the matter occurred for response

The Client Complaint Resolution Process review found that other New Zealand government agencies had a focus on dealing with concerns "on the spot" and with complaints at a local level where possible. This is consistent with the October 2012 Ombudsman guidance ("Effective complaint handling").

The triage process allows for a complaint to be investigated and responded to at a higher level in the first instance where identified as appropriate to do so by the CFT, as per section E.3 of the Process document. A number of teams based in National Office have been allocated and provided responses to complaints, including Operations Support; Operational Policy; Settlement, Protection and Attraction; and the Immigration Health Team. All high level complaints are quality assured at National Office.

e) Concern about the lack of tier two escalation

The INZ Complaints and Feedback process does provide for situations where a complainant is not satisfied with a complaint response and requests further investigation. In this situation a complainant can submit a further complaint. Such complaints can be triaged at a medium level where the CFT has determined that the low level response did not sufficiently address the complainant's concerns. In this situation the complaint assessor and signing manager who dealt with the first response must not be involved in preparing the second response.

A medium level complaint requires a response by Visa Operations Manager, Branch Manager (SPA) or Compliance/Investigations Area Manager.