

1 March 2019

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Dear Margaret

### **Immigration New Zealand: Complaints and Feedback Policy and Process**

Thank you for the opportunity to provide feedback on the implementation of Immigration New Zealand's new Complaints Policy and Process, released in September 2018. Comments from the Law Society's Immigration and Refugee Law Committee are provided below.

#### ***Service/process vs merits***

The concerns outlined in the Law Society's earlier submission in October 2017<sup>1</sup> on the proposed draft Complaints Policy and Process regarding the distinction between 'service/process' and 'merits' complaints have not been resolved in the final version of the Complaints Policy and Process. The earlier concerns are reiterated here for ease of reference:

The complaints process is designed to avoid duplication or inconsistency with appeal and review rights provided by Parliament. Section E.2 of the process document makes clear that the focus is on reviewing complaints about process and service issues, rather than arguing the merits of INZ decisions. However, the merits of a decision will occasionally be brought into consideration if a process error has directly impacted the merits in an obvious way (as example 1 in E.2.8 of the Process document illustrates). This has not been adequately clarified in section E.2 and warrants further explanation – namely, that a complaint about the merits of an INZ decision *will* be accepted if a service/process problem (such as those listed in E.1.3) has impacted on the outcome (merits).

There may also be occasions where it is unclear whether a complaint concerns the merits of a decision or a service/process issue. Section E.2 should provide more detail about how the initial assessment and decision about the distinction between service/process vs merits is to be made.

Feedback from immigration practitioners is that genuine cases of poor service are not being properly addressed through the INZ complaints system because they are categorised as 'merits' challenges. Practitioners report that the lack of recognition of genuine service complaints has resulted in a low rate of engagement with the complaints process, and that unless matters are very clear cut (which is often not the case) making a complaint is often not seen as a worthwhile avenue of redress.

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<sup>1</sup> NZLS submission 18.10.17, available at [http://www.lawsociety.org.nz/data/assets/pdf\\_file/0003/116139/I-INZ-Complaints-Policy-feedback-18-10-17.pdf](http://www.lawsociety.org.nz/data/assets/pdf_file/0003/116139/I-INZ-Complaints-Policy-feedback-18-10-17.pdf).

This appears to arise from the combined effect of paragraphs E.2.2 and E.2.7 of the Process document:

- Paragraph E.2.7 states that “If a complaint raises a mixture of service/process and merits issues, the complaint should be accepted by the [Central Feedback Team (CFT)] (*with the caveat described at E.2.2*) and sent to the local office to deal with the service/process issues only” (emphasis added).
- Paragraph E.2.2 says “The CFT should not accept complaints where the customer seeks to have an application decision overturned and where they have (or have had) a legal right of reconsideration or appeal”. A footnote states that “This is to encourage potential complainants to exercise their right of appeal in line with Parliament’s intent. *The CFT will accept for investigation any matters raised which would not have had an impact on the decision outcome.*” (emphasis added)

Clearer guidance is needed to ensure that genuine service/process complaints are properly investigated. In particular, as per our earlier recommendation, the Policy and Process should make clear that where a process error has directly impacted on the outcome (as example 1 in E.2.8 illustrates) the complaint will be accepted for investigation. Deleting the italicised words in both paragraph E.2.7 and the footnote to paragraph E.2.2 would assist.

### **Complaints process**

Other feedback from practitioners is that while the Policy and Process documents promote prompt feedback (e.g. paragraph 2.1.1 and E.4.1 respectively), the emphasis on timeliness seems to prevail over a need to provide a thorough and considered response. Practitioners’ experience is that this has resulted in complex legal arguments being distilled into brief responses which in some instances clearly illustrate that the submissions have not been properly reviewed or understood. Practitioners are concerned that this undermines the value and utility of the process, and results in a longer timeframe to resolve issues, because in these instances the practitioner is then required to escalate the new concerns for review and response.

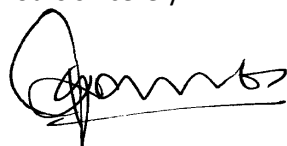
### **Prejudice**

Practitioners have also raised concerns that their clients are often reluctant to lodge a complaint for fear that it may prejudice any current or future visa application. Paragraph 4.2 of the Policy document states: “The fact that someone complains will not adversely affect their immigration status”. The document should confirm that there will be no adverse effect on their current status, any current application, or any future application. This should also be given more prominence in the document because it underpins the likelihood of engagement with the process.

### **Conclusion**

We hope these comments are helpful and if further discussion would assist please do not hesitate to contact the Law Society’s Immigration and Refugee Law Committee convenor Mark Williams through the Committee’s Law Reform Advisor, Dunstan Blay ([dunstan.blay@lawsociety.org.nz](mailto:dunstan.blay@lawsociety.org.nz) / 04 463 2962).

Yours sincerely



Tim Jones  
**Vice President**