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Dear Mr Calder

Best Practice for Immigration Advisers – IAC16/02 — Revised draft

Thank you for your letter of 1 August 2016 inviting the New Zealand Law Society to provide comments on the revised draft Internal Administration Circular No. 16/02, *Best Practice – Immigration Advisers* (revised draft).

The Law Society welcomes the incorporation of changes suggested in its letter of 30 June 2016 into the revised draft.

Further consultation with the Law Society's Regulatory team, national and Wellington branch Immigration and Refugee Law Committees, and practitioners has been carried out. The Law Society makes the following comments and provides suggested wording in relation to the text incorporated from IAC 08/04 (as proposed in its letter of 30 June 2016) and to other aspects of the revised draft. For ease of reference, an updated, tracked version is **attached**.

The role of employees of New Zealand lawyers

The revised draft incorporates updated text from IAC 08/04 at paragraphs 31–35 to clarify that New Zealand lawyers do not need written authority to act when representing their clients.

As indicated in the Law Society's letter of 30 June 2016, the text requires updating to reflect departmental restructuring and the introduction of the Lawyers and Conveyancers Act 2006. The heading should be amended to reflect the included text from IAC 08/04. Paragraphs 36–39 should be included under a separate heading as they relate specifically to employees of lawyers. Suggested wording is provided below (with numbering as proposed in the attached tracked version):

The role of employees of New Zealand lawyers and authority to act

32. New Zealand lawyers are exempt from licensing under section 11(e) of the Act and may provide immigration advice.

~~31-33. New Zealand based lawyers holding a current practising certificate, issued by one of New Zealand's 14 District Law Societies, do not require written authority to act when representing their clients with the Ministry of Business, Innovation and Employment.~~

New Zealand based lawyers are considered to be appropriately authorised to act on behalf of their client, as explained below.

- ~~32.34.~~ ~~In order to practise law in New Zealand, any properly qualified person must hold a practising certificate. The holder of a practising certificate is automatically a member of the New Zealand Law Society (NZLS). All members of the NZLS Lawyers must adhere to a set of ethical rules (NZLS Rules of Professional Conduct for Barristers and Solicitors (Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008) that govern practice generally and they may be disciplined if breaches of law or ethical rules occur.~~
- ~~33.35.~~ There will generally be no need to confirm the representation of New Zealand based lawyers directly with the client. INZ staff should accept the word of the lawyer that they have authority to act and to access information on their client's behalf under the Privacy Act. The lawyer should have access to all of the client's dealings with the Ministry in relation to the areas for which the lawyer claims representation unless the client advises otherwise. This is in accordance with the accepted practice of law in New Zealand. Written authority giving confirmation of representation is **not** required and therefore **should not** be requested.
- ~~34.36.~~ INZ staff should accept in good faith that the lawyer concerned is in fact the person they purport to be and that they do hold a current practising certificate are able to practise law in New Zealand. If there is a good reason to doubt this, such as no existing record of the lawyer on AMS, a check can be undertaken via the New Zealand Law Society website (www.nz-lawsoc.org.nz/hmd/societies.asp) which contains the contact details of the 14 District Law Societies (the Wellington, Auckland, Otago and Waikato/Bay of Plenty District Law Societies have websites from which membership can be checked online) (www.lawsociety.org.nz/for-the-community/search-register-of-lawyers).
- ~~35.37.~~ Note that the authority to act does not extend to New Zealand based lawyers who represent the New Zealand sponsor of the client. The sponsor or sponsor's lawyer can only be considered to be a representative if they have been nominated as agents by the client in the application form.

Employees of New Zealand lawyers and employees/volunteers of community law centres and citizens advice bureaux

Paragraphs 36–39 of the revised draft explain that employees of New Zealand lawyers are included under the exemption of lawyers from licensing under section 11(e) of the Immigration Advisers Licensing Act 2007. The IAC should also make clear that the provisions relating to New Zealand lawyers' authority to act (proposed paragraphs 32–37, above) also apply to employees and volunteers acting under the direction and supervision of lawyers at community law centres and citizens advice bureaux.¹

Given the insertion of proposed paragraphs 32–37 above, the first sentence relating to authority to act in paragraph 39 of the revised draft should be deleted to minimise the risk of confusion (see proposed paragraph 41 below).

Suggested wording to address these points is provided below:

¹ Employees and volunteers of community law centres and citizens advice bureaux are exempt from licensing under sections 11(f) and (g) of the IAL Act respectively.

Employees of New Zealand lawyers

~~36-38.~~ 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 in section 11(e) of the Act and may provide immigration advice.

~~37-39.~~ 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.

~~38-40.~~ Only direct employees of law firms or sole practitioner lawyers are covered by the exemption in section 11(e) of the Act. Employees in any other organisation who are supervised by a lawyer with a practising certificate are not covered under this exemption.

~~39-41.~~ ~~Visa applicants must give authority to a New Zealand lawyer to act on their behalf.~~ Once a New Zealand lawyer is responsible for ~~the~~ a visa application, his or her employee(s) may ~~act in lieu of~~ continue to act under the supervision of their employer lawyer.

Employees and volunteers of community law centres and citizens advice bureaux

42. Employees and volunteers working for community law centres — where at least one lawyer is on the employing body of the community law centre or is employed by/ working as a volunteer in a supervisory capacity — are exempt from licensing under section 11(f) of the Act and may provide immigration advice.

43. Employees or volunteers for citizens advice bureaux are exempt from licensing under section 11(g) of the Act and may provide immigration advice.

44. Employees and volunteers acting under the direction and supervision of lawyers at community law centres and citizens advice bureaux do not need written authority to act when representing their clients with the Ministry of Business, Innovation and Employment and paragraphs 32–37 apply accordingly.

Authorising multiple immigration advisers — New Zealand lawyers

Paragraphs 23–28 of the revised draft enable multiple immigration advisers from the same organisation to act on a client's behalf where the client so authorises. New Zealand lawyers who are employed in the same law practice are entitled to act on behalf of the client of the law practice and specific authorisation from the client is not required. Employees and volunteers acting under a lawyer's supervision (as stated in proposed paragraphs 38 to 44) also do not require specific authorisation from the client.²

We have suggested some minor rewording to make this clear:

Authorising multiple immigration advisers

23. ~~A client may authorise m-~~ Multiple immigration advisers from the same organisation may ~~to~~ act on ~~their~~ behalf of a client.

² The visa application forms and section B6 of INZ 1160 ask for authorisation to act for all other advisers or persons exempt from licensing who work for the named organisation, **if applicable** (emphasis added). As the requirement to obtain authorisation for other lawyers in the same law practice is not applicable, the forms will not require amendment.

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. Paragraph 25 does not apply to New Zealand lawyers who work in the same law practice as a lawyer who is specifically authorised by the client on an application form or *INZ 1160*. New Zealand lawyers who work in the same law practice are entitled to act on the client's behalf and further authorisation from the client is not required. See also paragraphs 38 to 44 regarding employees and volunteers acting under a lawyer's supervision.
- ~~26.~~27. The PPC will be listed in the contacts tab in AMS, and will receive all communications from INZ about the application. When an applicant has authorised other immigration advisers to act on their behalf, this should be clearly stated in AMS notes.
- ~~27.~~28. 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.~~29. 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.

Definition of Immigration Adviser

Paragraph 7 of the revised draft defines “immigration adviser” as “any person who provides immigration advice, not just licensed immigration advisers”. The revised draft could make it clearer that the definition also includes lawyers and other exempt advisers. Suggested wording is provided below:

7. In this document, the term “immigration adviser” refers to any person who provides immigration advice, not just licensed immigration advisers, and includes lawyers and other exempt advisers.

Immigration advisers and medical certificates

Paragraph 22 of the revised draft enables immigration advisers to obtain a copy of their client’s medical certificate and/or liaise directly with their panel physician. The revised draft should make clear that the completed *INZ 1160* should be submitted to their panel physician. Suggested wording is provided below:

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

Complaints about licensed immigration advisers — standard of care — negligence

Paragraph 45 of the revised draft describes the grounds for complaint about a licensed immigration adviser to the Immigration Advisors Authority (IAA). The first bullet point states:

- 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.

The standard of care owed by a licensed immigration adviser is not what a “reasonable person” would do but what a “reasonable professional” owing a duty of care would do. There may be cases from the Immigration Advisers Complaints and Disciplinary Tribunal that address the standard of care owed by licensed immigration advisers and the wording of the revised draft should reflect these authorities.

Complaints about lawyers

The notes following paragraph 52 of the revised draft provide direction about complaints made about lawyers. To avoid the risk of inviting complaints about lawyers to be made to the IAA, the revised draft could be clearer about how these complaints should be dealt with. Suggested wording is provided below:

52.57. 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 IAC11/07, 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 New Zealand Law Society (see below), as appropriate. INZ will avoid making complaints about immigration advisers on behalf of individuals.*

Complaints about lawyers

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

Conclusion

We would be happy to discuss these issues and the proposed rewording with you, if this would assist further. Contact can be made in the first instance with the secretary of the Immigration and Refugee Law Committee, Karen Yates (karen.yates@lawsociety.org.nz / 04 463 2962).

Yours faithfully,



Kathryn Beck
President