

18 October 2017

Margaret Cantlon
Manager, Immigration Resolutions
Service Design and Performance
Immigration New Zealand
PO Box 1473
Wellington 6140

By email: inzcomplaintsandfeedback@mbie.govt.nz

Dear Margaret

Immigration New Zealand: Complaints and Feedback Policy and Process

Thank you for giving the New Zealand Law Society the opportunity to provide feedback on Immigration New Zealand's Complaints and Feedback Policy and Process, as outlined in your email of 28 September 2017. The Law Society's Immigration and Refugee Law Committee has considered the policy and process documents.

Background

Immigration New Zealand's (INZ) Client Complaint Resolution Process (CCRP) was reviewed in 2015 and at the time INZ recognised that "a clear definition of a complaint is needed to ensure that the intersection between appeals, reconsideration and the scope of the CCRP is consistent with Parliament's intent expressed in the Immigration Act 2009." A new Complaints and Feedback Policy and Process was introduced in June 2017 and following an initial three-month period of operation, a post-implementation review of the new policy and process is currently being undertaken.

The Law Society supports the creation of a clearly defined policy and process by which clients and their representatives can lodge complaints and feedback with INZ. Brief comments on the new policy and process are set out below.

Policy document

Overview

The statement in clause 1.1.3 of the Overview, that "This Policy does not hold the same status as New Zealand Government policy", is difficult to reconcile with the fact that it is a policy document published by a New Zealand Government department. On its face, the policy document would seem to be New Zealand Government policy. The reasons it may not have that status should be elucidated.

Purpose and principles of the process – 2.1

The aims of the Complaints and Feedback Process include "*resolv[ing] concerns or complaints as fairly and promptly as possible*" (clause 2.1.1). This is entirely appropriate, as a key purpose of complaints processes is to ensure that decision-makers act in accordance with the principles of fairness and natural justice. The process document also makes clear that evaluating the correctness

of INZ processes is within the scope of the complaints process.¹ It would therefore be helpful to reword the first bullet point of clause 2.1.1, so that the aim of the process is to *“resolve concerns or complaints as fairly and promptly as possible, in accordance with the principles of fairness and natural justice, and ensure INZ follows correct decision-making processes.”*

What is accepted into the process – 2.2

Cut-off date

A six-month cut-off for complaints (clause 2.2.2) seems unnecessarily strict. It is reasonable to encourage people to make their complaints promptly but there should be an exemption to the strict cut-off where there are exceptional circumstances justifying the delay in making the complaint.

Consistency with E.2.10 of the process document – which allows complaints within six months of the incident *“or when the complainant first became aware of it”* – is also needed.

Out of time complaints

The six-month cut-off for complaints is also covered in clause 2.3.4, and the same comment about consistency with E.2.10 of the process document applies. It is also noted that the footnote to E.2.10 states that complaints about staff fraud, corruption, or dishonesty are not time bound and should follow the usual process. It would be helpful for the policy document (at 2.2.2 and 2.3.4) to make this clear.

What is not accepted into the process for investigation – 2.3

The Law Society recommends minor restructuring of clause 2.3.3 for clarity and readability. The clause should read *“INZ will transfer to the appropriate agency complaints and feedback about: [list bullet points]”*.

Process Document

It is clear that the complaints and feedback process is not intended to be a forum to revisit the merits of INZ decisions, nor is it an alternative to any rights of appeal, review or reconsideration. However, complainants (particularly those who are self-represented) may not understand this and may have unrealistic expectations of what the complaints process can deliver for them in terms of the merits of their case. It would be helpful for paragraphs B.2.2, D.2.6 and D.3 to be amended, to ensure that the Complaints Feedback Team (CFT) in its triage function takes responsibility for promptly explaining to complainants that their complaint is out of scope but that they may have appeal or reconsideration options. At a minimum, the CFT should advise such complainants that they should seek advice on their alternative options (such as seeking reconsideration of their application). This will need to be done promptly, to avoid prejudicing any applicable time limits for appeal/reconsideration. Further, an expected response time by the CFT to the complainant in the triage scenario should be included in D.3 of the process document.

Deciding whether to accept a complaint for investigation – E.2

Appeal or reconsideration rights

It is not clear why a legal right of reconsideration or appeal should prevent a complaint about process. If the intention of E.2.2 is that a complaint about process will not be accepted while appeal

¹ See process document E.1.1, E1.1.3, E.2.9 and appendix 3.

or reconsideration rights are currently being exercised, it should be drafted more clearly to say so. However, even if that is the intention, the Law Society questions why INZ cannot concurrently consider a complaint about its processes or services.

Service/process vs Merits

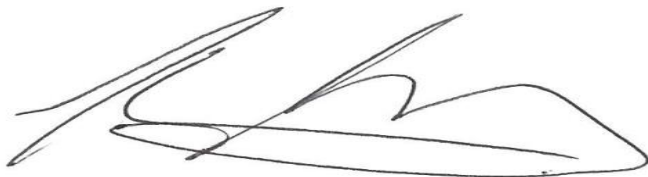
The complaints process is designed to avoid duplication or inconsistency with appeal and review rights provided by Parliament. As section E.2 of the process document makes clear, the focus is on reviewing complaints about process and service issues, rather than arguing the merits of INZ decisions. However, 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 illustrates). This has not been adequately covered in section E.2² 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 if a complaint concerns the merits of a decision or service/process issues. 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.

Conclusion

The Law Society hopes these comments are helpful to INZ. If you have any queries, please do not hesitate to contact the Law Society’s Immigration and Refugee Law Committee convenor Mark Williams through the Committee secretary, Amanda Frank (amanda.frank@lawsociety.org.nz / 04 463 2962).

Yours sincerely



Kathryn Beck
President

² Cf E.2.7, which stipulates that complaints involving a mixture of service/process and merits issues will be accepted, but *only* the service/process issues will be addressed.