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### **Immigration Advisers Licensing Act 2007, proposed amendments – consultation document**

#### *Introduction*

1. The New Zealand Law Society appreciates the opportunity to comment on the *Proposed Amendments to the Immigration Advisers Licensing Act 2007 Consultation Document* (consultation document), which aim to ensure the regulatory framework for immigration advisers is fit for purpose.
2. The proposals have been considered by the Law Society's national Immigration and Refugee Law Committee and Regulatory staff, and brief comments are set out below.

#### *Proposal 1.5 – Extend circumstances in which the Registrar may cancel a licence*

3. Proposal 1.5 relates to sections 16, 17 and 27, Immigration Advisers Licensing Act (IALA). The consultation document states that the proposal would “enable the Registrar to cancel a licence during the currency of the licence, if the adviser is no longer fit to be licensed, according to section 16 and 17 of the IALA, rather than needing to await licence renewal in order to refuse the application”.
4. Section 27 provides that the Registrar must cancel a licence if satisfied that any of the grounds in section 27(1)(a) – (e) is satisfied (for example, that the licence was granted on the basis of a false or fraudulent representation). Sections 16 and 17 set out various grounds relevant to determining fitness for licensing (such as certain convictions, bankruptcy or disciplinary matters).
5. It is not clear from the consultation document what amendments are proposed, but presumably the intention is to add the sections 16 and 17 factors to section 27 as additional grounds for cancellation of licence. The consultation document seems to suggest however that the problem relates only to the *timing* of the licence cancellation (“during the currency of the licence ... rather than needing to await licence renewal”) – although, on its face, section 27 does already appear to

allow cancellation of a licence during its currency. To add to the uncertainty, the consultation question refers to the proposal “to extend *the circumstances* in which the Registrar may cancel a licence” (emphasis added). Given the uncertainty about what amendments are proposed and why, stakeholders are unlikely to be able to comment meaningfully.

*Proposal 1.6 – Employees of lawyers exempt from the IALA*

6. The Law Society supports the Proposal 1.6 amendment clarifying that employees of lawyers/law firms are exempt from the Act’s licensing requirements. This is consistent with a previous submission from the Law Society in 2016 outlining its views on the proposed amendment.<sup>1</sup> The Law Society recommends that the scope of the exemption be clearly stated, namely that *an employee of a lawyer, law firm or incorporated law firm may provide immigration services and advice to their employer’s client.*

*Proposal 3.1 – Increase the Registrar’s discretion as to the contents of the register of licensed immigration advisers*

7. Proposal 3.1 relates to sections 78 and 79. The proposal is to increase the Registrar’s discretion to include further information in the register of licensed immigration advisers. The consultation document gives examples of the further information that might be included, such as sanctions imposed by the Tribunal until they have been complied with. In that regard, the Law Society notes that it would not be appropriate to include on the register information about sanctions imposed where the Tribunal has ordered the suppression of the adviser’s name.

*Proposal 3.3 – Simplify the process for making a complaint*

8. Proposal 3.3 relates to section 44, which specifies that a complaint must be in writing and specify the grounds of the complaint (s 44(3)(a), (b)). The grounds of complaint are set out in section 44(2): negligence, incompetence, incapacity, dishonest or misleading behaviour or a breach of the code of conduct.
9. The proposal is that the process for making a complaint will be simplified, “so that a complainant can set out what happened, rather than having to cite specific legal grounds”.
10. The Law Society supports in principle any reform that makes complaints processes more efficient and effective for complainants and licensees. However, the consultation document does not specify what changes are to be made to section 44, and it is therefore difficult to comment on the specific proposal. The Law Society simply notes that consideration should be given to making the complaint form as simple and clear as possible, and that this may avoid the need for legislative change.

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<sup>1</sup> NZLS letter dated 1.4.16 (Immigration Advisers Licensing Act – employees of lawyers), available at [http://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0004/99787/I-MBIE-IALA-Lawyers-Employee-Exemption-1-4-16.pdf](http://www.lawsociety.org.nz/_data/assets/pdf_file/0004/99787/I-MBIE-IALA-Lawyers-Employee-Exemption-1-4-16.pdf).

*Offshore Advisers*

11. The consultation document states at [5] that “consideration of the exemption of education agents has been deferred until the Minister of Immigration has considered changes to the in-study and post-study work settings for international students, which should reduce opportunities for offshore education agents to exploit New Zealand’s immigration system”, and that the exemption will stay in place for the time being. The exemption of offshore student visa agents represents a risk to the integrity of New Zealand’s immigration system, and a review of the issue is needed. The risk in its current form should be addressed now, rather than being deferred on the basis that it may be limited by a (potential) future reduction in student numbers.

*Conclusion*

12. We hope these brief comments are helpful, and if further discussion would assist please do not hesitate to contact the convenor of the NZLS Immigration and Refugee Law Committee, Mark Williams, through the committee secretary Amanda Frank ([amanda.frank@lawsociety.org.nz](mailto:amanda.frank@lawsociety.org.nz) / 04 463 2962).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kathryn Beck', with a large, sweeping flourish underneath.

Kathryn Beck  
**President**