

Findings and Recommendations from Direction to Report

Immigration New Zealand - Ministry of
Business, Innovation and Employment

December 2022



Te Tari Taiwhenua
Internal Affairs



Te Rua Mahara o te Kāwanatanga

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Executive summary

This report details the findings and recommendations from a direction to report that was issued to Immigration New Zealand, a business unit of the Ministry of Business, Innovation and Employment, under section 31 of the Public Records Act 2005.

The Chief Archivist issued this direction to report to the Ministry of Business, Innovation and Employment in December 2021 after concerns were raised with Archives New Zealand about Immigration New Zealand's recordkeeping and information management practices by Richard Small, Director of Pacific Legal Ltd.

Mr Small's concerns relate to:

- legacy issues he had previously reported
- Immigration New Zealand's recordkeeping practice surrounding his clients' visa application
- recordkeeping practice for managing digital recordings of interviews; and
- Application Management System data entry.

The direction to report was made up of 11 questions seeking information about Mr Small's concerns and requested information relating to current procedures for recordkeeping training and guidance on offer to Immigration New Zealand employees. In response, Immigration New Zealand willingly provided full information that gave a detailed picture of recordkeeping practice as these apply to the issue raised. This information made clear the complex operational and policy environment. The response outlined some changes already underway to address issues and gives assurance that Immigration New Zealand understands the need for effective information management to support operations and accountability.

From the information provided in February 2022 and as comment on a draft of this report, Archives New Zealand makes the following recommendations.

Legacy issues

Immigration New Zealand has acted on some of the legacy issues that had been raised, though an outstanding issue involving the failure to capture 10 business-related emails remains. See recommendation 1.

Recordkeeping practice surrounding Mr Small's clients' visa application

The way Immigration New Zealand in Apia implemented its disposal process in relation to Mr Small's clients' visa application highlights a risk. Upon reopening after COVID-19 lockdown, the Apia office resumed disposal before checks were made to ensure all records met provision 11.44 of its disposal authority. While no unauthorised disposal has occurred in this instance, the disposal process implemented left Immigration New Zealand at risk of unauthorised disposal in the future. The cause of this incident has been identified and procedural recommendations have been provided to mitigate this risk. See recommendation 2.

Recordkeeping practice for managing digital recordings of interviews

Immigration New Zealand acknowledged that currently it lacks the appropriate tools to manage digitally recorded interviews, and informed Archives New Zealand of its planned deployment of a more modern technology which will allow for greater recordkeeping capability. See recommendations 3 and 4.

Application Management System data entry

Immigration New Zealand maintains several forms of guidance available to staff on updating the Application Management System. There are several improvements that can be made to Immigration New Zealand's training approach to ensure that resources are up-to-date, and that staff understand their recordkeeping responsibilities. It is also important that Immigration New Zealand implements tools to monitor the efficacy of its training and guidance resources, and that senior level staff take a greater role in ensuring that correct recordkeeping practice is followed. See recommendations 5, 6, 7, 8 and 9

These recommendations are designed to assist Immigration New Zealand to lift compliance with information management requirements. Progress checks on the recommendations have been set at 6-month and 12-month intervals.

Background

A direction to report to the Chief Archivist was issued to the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE) on 15 December 2021, under section 31 of the Public Records Act 2005 (PRA).

This direction to report was issued after Richard Small, Director of Pacific Legal Ltd, raised concerns with the Chief Archivist regarding recent and legacy recordkeeping issues at Immigration New Zealand (INZ).

The recordkeeping issues that Archives New Zealand (Archives) sought information on, through 11 questions, were:

- actions taken by INZ to improve upon legacy recordkeeping issues previously raised in 2013, 2014 and 2015 – question 6;
- clarification around the two explanations about the deletion of a visitor-visa form in July 2020 – questions 1 and 7;
- planned actions INZ is taking regarding managing digital recordings of interviews – questions 2 and 8;
- how INZ monitors the efficacy of its training and guidance to staff regarding recordkeeping practice for phone interviews, voice recording and transcripts. Archives requested a copy of all relevant documentation – questions 5 and 9;
- how INZ monitors the efficacy of its training and guidance to INZ staff regarding the updating of the Application Management System (AMS). Archives requested a copy of all relevant documentation – questions 4 and 9;
- what policy or criteria INZ has in place for recording decisions in AMS to ensure that full and accurate records of decisions are documented – question 10;
- whether recordkeeping issues had contributed to the delay in actioning Mr Small's 2010 concerns about an unlicensed Immigration Advisor, i.e., INZ did not update AMS to reflect Mr Small's concerns until 2016 – questions 3 and 11.

MBIE provided its response to the direction to report regarding recordkeeping issues at INZ on 18 February 2022. This response was assessed by the Advice and Compliance Team, Archives. Their findings and recommendations were presented to an INZ review governance group, who accepted and endorsed the report and its recommendations. MBIE/INZ and Mr Small were given an opportunity to comment on the draft final report. Following feedback received from both parties, Archives has made amendments to recommendations 2, 5 and 9. The Chief Archivist then considered and approved the report. The report groups findings in relation to the 11 questions contained in the direction to report.

Scope

The direction to report was targeted in scope to specific recordkeeping and information management (IM) practices of INZ. It was not an assessment or audit of recordkeeping across INZ or the wider MBIE. It is not intended to comment upon the nature and performance of how INZ undertakes its core business or decision-making. Its purpose was to assess the current recordkeeping environment at INZ in relation to Mr Small's complaints, and to provide INZ with advice on how it could lift its compliance with the PRA and the 2016 Information and records management standard 16/S1 (IRMS) if required. The option of further compliance action remained open.

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Findings

MBIE provided substantial information as part of its response to the Chief Archivist's direction to report under section 31 of the PRA, issued on 15 December 2021. MBIE's response was received 18 February 2022. We would congratulate MBIE on their willingness to engage in this matter with candour and good will.

In each of the recordkeeping issues below, Archives has assessed INZ's compliance with the PRA and IRMS and made recommendations.

Legacy issues - question 6

Mr Small raised concerns about INZ's recordkeeping practices in 2013 - 2015:

- In 2013, the Chief Archivist recommended that INZ train and provide guidance to staff to ensure that they understand the process to update AMS correctly to capture records of their business activity.
- In 2014, the Chief Archivist sent a direction to report to INZ expressing concern regarding a self-reported loss of records covered by INZ's disposal authority OP 00/0078.
- In 2015, Mr Small raised concerns with the Chief Archivist about the failure of INZ staff to capture ten business-related emails in AMS.

In the December 2021 direction to report, Archives asked what improvements INZ has made to its recordkeeping practice regarding the issues raised since 2013.

In response to the 2013 and 2014 recordkeeping issues, INZ noted the actions it took at the time. This included informing Archives about its online training tool (the Toolkit) with the intention that this would be updated as required. INZ's Disposal Authority was amended to clarify and remove any possible misinterpretation by external stakeholders and members of the public. INZ re-issued guidance to staff regarding updating AMS and issued new guidance for the management of paper applications.

The original 2009 guidance Internal Administration Circular (IAC) 10/4 *Guidelines for Standard AMS input* was re-issued in 2013. In 2016, INZ issued new guidance IAC 16/03 *Guidelines for the management, storage and transfer of paper applications*. This was to replace IAC 05/04 *Standard operating procedures for the storage and movement of paper applications*. This guidance was 11 years old at the time of replacement.

Minimum compliance requirement 1.8 of the IRMS clearly sets out the expectation that: *Information and records management must be monitored and reviewed to ensure that it is accurately performed and meets business needs*. The age of the guidance that was in place and re-issued may indicate that a guidance monitoring and review cycle was too slow and not systematic.

In response to the concerns about the failure to capture ten business-related emails in 2015, this is still outstanding and INZ continues to look for this information.

Recommendation 1 - INZ should conclude any matters outstanding from the failure to capture ten business-related emails in 2015.

Deletion of visitor visa application – question 1 and 7

Mr Small raised concerns regarding the deletion of his client's paper visitor visa application form (visitor visa). The visitor visa had been requested by the INZ Hamilton office on 4 May 2020. The request was to support the verification of a related subsequent application

In a letter to MBIE on 13 April 2021, Archives inquired into the deletion of the paper application form, which occurred between 25 to 31 July 2020. Following correspondence regarding this incident with the Chief Archivist, on 20 May 2021 INZ offered two statements relating to the deletion:

- The deletion was an unfortunate instance of miscommunication; but
- the paper application had been destroyed in accordance with Disposal Authority (Archives ref: DA644).

INZ informed Archives that the complaint regarding the deletion of the visitor visa was made 24 December 2020. At the time of the disposal, the visitor visa met the requirements outlined under subclass 11.44 of DA644¹. Visitor visa applications may be destroyed under DA644 six months after the date of decision but not when they are subject to a complaint (among other exceptions). The visitor visa in question had been requested by INZ Hamilton to support verification, not because of a complaint. The destruction was therefore an authorised disposal. INZ has explained that the emailed request from INZ Hamilton to INZ Apia for the paper application form was made when INZ Apia was closed because of COVID-19. INZ Apia reopened and resumed scheduled records destruction before the email request from INZ Hamilton was accessed. The request was accessed only after the visitor visa had been destroyed.

INZ's staff guidance on disposal action is IAC 16/03 – *Guidelines for the management, storage, and transfer of paper applications*. This guides the retention and disposal of paper applications but does not contain any procedural prompt to staff to check for outstanding file requests before destruction. This would be required to ensure that the conditions of DA644 are met as a matter of course. While authorised disposal occurred in this instance, the manner of disposal implementation was not what would be considered prudent business practice. Without standing or additional instructions to make these checks as offices reopened after COVID-19, INZ staff risked unknowingly destroying records without authorisation.

¹ All files for temporary entry applications which have not been subject to a compliance action, an appeal, judicial review, an Ombudsman's investigation or a complaint, that do not fall into the "work to residence" categories, and that have not been revoked or were not exceptions to instructions [may be destroyed 6 months after the date of decision].

By not having standard procedural checks incorporated into its disposal processes and not issuing instructions specific to the reopening of offices after COVID-19, INZ risked records being disposed of without authorisation. INZ's approach could undermine the minimum compliance requirement 3.7 of the IRMS:

- 3.7 – *Information and records must be systematically disposed of when authorised and legally appropriate to do so.*

Regular authorised disposal is best practice and encouraged, but there is a risk that without appropriate checks or prompts in place, unauthorised disposal could happen.

Recommendation 2 - INZ should consider implementing guidance and system changes to ensure that exceptions to otherwise authorised destruction are identified so that the records are retained as required.

Managing digital recordings of interviews – questions 2 and 8

Concerns were raised by Mr Small that not all interviews by INZ Immigrations Officers (IOs) were digitally recorded. He raised concerns regarding interpretive bias and inaccurate summaries in notes of interviews being entered into AMS, suggesting that digitally recording interviews would mitigate these concerns.

As part of its response to the 2021 information request from Archives, MBIE acknowledged that INZ lacked the appropriate tools for managing digital recordings of interviews. At present, digital recordings are only available through Ezispeak when an interpreter is used. Archives was informed that more modern technology is planned to be deployed in future.

Archives requested further information about this planned deployment in our direction to report. INZ advised it has made some progress in this area. It is currently in the process of scoping a 'Voice and video recording project'. The purpose of this project is to investigate and implement records and retention of calls and meetings for INZ. It is an end-to-end solution for configuring, managing, recording, storing and analysing communications. INZ offered to provide more information regarding this project when scoping is complete.

The project appears to offer a procedural and technological foundation for interview recording management. The question of which records should actually be made is addressed below under *Monitoring of training: phone interviews, voice recordings and transcripts – questions 5 and 9.*

It is best practice to incorporate IM, PRA and IRMS requirements in the design of any new business system, rather than attempting to retrofit after implementation.

Recommendation 3 - INZ should ensure IM requirements are built into the Voice and video recording project as business requirements from the start.

Monitoring of training: phone interviews, voice recordings and transcripts – questions 5 and 9

Mr Small complained that one of his clients' interviews suffered from interpretive bias and that the interview summary was inaccurate. It is not within Archives' remit to comment upon the operational matters of how INZ staff undertake their functions, we can only direct INZ to report upon the recordkeeping aspects of their roles. Archives sought further information as to how INZ monitors the efficacy of its training and guidance to staff regarding the recordkeeping practice for phone interviews, voice recordings and transcripts. As part of this inquiry Archives requested a copy of relevant documentation.

In its response INZ pointed Archives to its induction programme and managers' ability to monitor completed training by their staff. INZ also outlined the guidance for when to make recordings of interviews, when to create written records of interviews and how to handle this information. Practice is tailored to the information required and generated by INZ's various types of application or compliance activity. Some Quality Assurance (QA), Quality Control (QC) and second person checks (2PC) processes include checks on the creation and capture of interview records. These processes also vary across types of application or compliance activity.

A Visa Pak Issue 495 article *Recording and Documenting Phone Interviews* that was published 28 January 2022 provides guidance on writing interview summaries, when interview recording is appropriate, and capturing records in AMS. This recent guidance would now apply to circumstances such as those of Mr Small's client, as would IAC 17/01 *Guidelines for Standard AMS Input*, which does not appear to have been updated with the advent of *Recording and Documenting Phone Interviews*.

INZ did not offer information on how, or if, they measure whether the contents of a Visa Pak are digested or incorporated into staff development and training. The onus rests upon general staff and their managers to familiarise themselves with the content of these articles.

The Visa Pak article *Recording and Documenting Phone Interviews* was addressed to INZ border and visa operations staff and emphasises the need for accuracy in interview summaries. The article notes that there is no general requirement for the verbatim recording of interviews and gives guidance on when this could be appropriate or necessary. The article specifies that interview content is to be written up in an interview summary. Mr Small's complaint was driven by the risk that visa applicants are disadvantaged when an interview summary that is incorrect or contains interpretive bias is relied upon. Whilst it is outside the remit of Archives to comment upon the effectiveness of interview processes, we can form an opinion on whether records have been maintained of the interviews according to normal prudent business practice.

Implementing checks on the accuracy of interview summaries is an operational matter for INZ. However, INZ must ensure that these operational processes are designed to an extent that the recordkeeping requirements set out in section 17(1) of the PRA are met, i.e.:

- 3.2 of the IRMS: *Information and records must be reliable and trustworthy.*

- PRA section 17(1): records must be created and maintained “in accordance with normal, prudent business practice”.

INZ has outlined its current guidance, training and process assurance. This is both extensive and targeted and will be further enhanced by planned specialist interview training. It outlines how the expectations of the level of detail required and, the recordkeeping technology to be used, varies across different types of application and assessment.

Our recommendation is that these processes, training and quality assurance should adequately comply with the following IRMS minimum compliance requirements:

- 1.2 – *Information and records management must be the responsibility of senior management. Senior management must provide direction and support to meet business requirements as well as relevant laws and regulation.*
- 1.8 – *Information and records management must be monitored and reviewed to ensure that it is accurately performed and meets business needs*

Recommendation 4 - INZ should ensure that processes for recordkeeping for their interview summaries are in accordance with PRA section 17 and the IRMS minimum compliance requirements.

Monitoring of training: updating AMS – questions 4 and 9

Archives sought further information on how INZ monitors the efficacy of its training and guidance for staff on updating information in AMS. As part of this inquiry, Archives requested a copy of relevant documentation.

In its response to Archives, INZ stated that it provides several compulsory online learning modules for staff. As part of induction, new staff must complete a Records Management 101 module. However, INZ states that these learning modules are not specific to AMS.

INZ maintains several forms of guidance for staff assessing applications and updating AMS. These include Standard Operating Procedures set out in INZ’s Global Process Manual and INZ’s Verification Toolkit, the AMS Manual, Visa Pak articles and IACs. INZ provided several copies of the guidance it offers staff. Archives notes that in most cases the guidance was over five years old and generally did not feature a review or creation date.

INZ monitors the updating of AMS across its teams and functional areas as a component of QC, QA and 2PC. These assess procedural and decision-making quality in particular processes, for example assessing visa applications, and include some checks on records being captured in AMS. Overall QA scores are reported to the Immigration Leadership Team and Practice Lead network quarterly.

INZ informed Archives that it has a well-established process in place to investigate complaints made by members of the public and their representatives regarding the updating of AMS. Staff can also raise concerns or propose new ideas regarding guidance, including IM guidance, through an MBIE portal.

The training processes and resources about updating AMS fall under the following IRMS minimum compliance requirements:

- 1.2 – *Information and records management must be the responsibility of senior management. Senior management must provide direction and support to meet business requirements as well as relevant laws and regulation.*
- 1.6 – *Staff and contractors must understand the information and records management responsibilities of their role. They must understand the relevant policies and procedures.*
- 1.8 – *Information and records management must be monitored and reviewed to ensure that it is accurately performed and meets business needs.*

Without consistent and correct core resources or monitoring of AMS-specific training, there is a gap in INZ's governance of its IM and recordkeeping practice for compliance with minimum compliance requirements 1.6 and 1.8.

Minimum compliance requirement 1.2 states that information and records management must be the responsibility of senior management, i.e. there should be 'top-down' responsibility to complement training. Having an IM governance group in place would help to ensure the effectiveness of all aspects of information management, ranging from strategy through to monitoring performance against standards and the quality of supporting systems and advice. Executive sponsors are expected to champion this work, in this case, the Executive sponsor for the wider department – MBIE.

Archives notes the age of some of the guidance provided on updating AMS. Without review or creation dates, it is difficult to determine if the guidance was still current or warrants review.

Following feedback received on the draft report, Archives was notified that MBIE would be transitioning away from using AMS for recordkeeping to a new technology in the Enhanced Immigration Online system. Archives has therefore expanded recommendation 5 to encompass specific recordkeeping training for this new system.

Recommendation 5 - INZ should consider developing specific recordkeeping training resources for AMS and any other system INZ uses for recordkeeping purposes.

Recommendation 6 - INZ should establish dedicated IM governance arrangements, working with the MBIE Executive Sponsor.

Recommendation 7 - INZ should ensure that its guidance in relation to information management requirements is monitored and maintained systematically, with an explicit review cycle.

Updating AMS: recording of advice – question 10

As a part of the complaint to Archives, Mr Small also expressed concern that there appeared to be a lack of recordkeeping in AMS regarding advice provided to IOs when processing visa applications. Mr Small argued that the advice being provided was influential in the decision-making process for visa applications and therefore should be recorded in AMS.

Archives sought information from INZ around what policies or criteria they have in place for circumstances when advice passes the threshold of ‘guidance, feedback and support’, and therefore should be recorded in AMS to ensure that full and accurate records of the rationale behind decisions are documented.

INZ responded to this inquiry stating that it was aware that Mr Small had raised concerns about ‘guidance, feedback and support’ being provided by Technical Advisors (TAs) and other Managers in decision-making and it not being appropriately recorded. INZ informed Archives that the policy for what should be recorded in AMS is contained in IAC 17/01, the AMS Manual and in several Visa Paks.

INZ stated that decision-makers are fully aware that the ultimate decision and the record of that decision made in AMS (or other relevant system) is theirs and theirs alone. There is a clear statement in IAC20/01 of where decision making authority lies. Archives’ role is not to assess the efficacy of the decision-making process. Archives sole focus is on the recordkeeping aspect of whether records are captured and maintained according to normal prudent business practice which are “full and accurate” as described in section 17(1) of the PRA, along with following IRMS minimum compliance requirement:

- 3.1 – *Information and records must be routinely created and managed as part of normal business practice.*

Recommendation 8 - INZ should consider amending its guidance to direct decision-makers to record evidence that the records of their decision-making practices are full, are accurate, and enable accountability.

Concerns relating to unlicensed immigration advisor – questions 3 and 11

Mr Small raised concerns with Archives regarding an unlicensed immigration advisor. He sent information relaying his concerns to INZ in 2010, however no action was taken by INZ regarding this until late 2016. Mr Small expressed concerns that the delay in action was because of poor recordkeeping by INZ. Archives sought greater clarity around this incident specifically to identify if poor recordkeeping practices were a reason for the delay in action.

In response, INZ informed Archives that it contacted the Immigration Advisors Authority (IAA) in 2010 and 2011 regarding Mr Small’s concerns about the unlicensed immigration advisor. AMS was not updated with an alert to warn INZ staff about this unlicensed immigration advisor until 2016. INZ advised that it has acknowledged to Mr Small that this alert could have been raised earlier.

Archives considers that the delay could be seen as not meeting the IRMS under 3.1 – *Information and records must be routinely created and managed as part of normal business practice*. It would also appear to fall short of the PRA section 17(1) requirement for INZ to “create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice”. In 2017 INZ established a Complaints and Feedback System, providing a central point for the receipt of all complaints.

MBIE confirmed in their feedback on the draft report that, since the establishment of the Complaints and Feedback system, a complaint warning is always raised in AMS where a record exists and a complaint is accepted for investigation. Should the complaint be about an immigration advisor (or unlicensed immigration advisor) then that matter will be redirected to the IAA. Information sharing between INZ, and the IAA will help to ensure that AMS is accurately updated when the IAA is investigating an immigration advisor (or unlicensed immigration advisor). Archives therefore makes the following recommendation.

Recommendation 9 - INZ should work with the IAA to ensure that appropriate procedures regarding the use of warnings in AMS are in place when a complaint involving immigration advisors (including unlicensed immigration advisors) is under investigation by the IAA.

Summary and Recommendations

The INZ response to Archives' direction to report provided substantial and relevant information that gave a detailed picture of current recordkeeping processes and expectations as they apply to issues raised by Mr Small. Viewing just the guidance related to information management indicates INZ's very complex operational and policy environment. The material and responses provided by INZ assure Archives that the organisation understands the need for effective IM to manage immigration and to be accountable. However, the issues raised by Mr Small point to deficiencies that should, and can, be addressed.

The following recommendations are made by Archives to INZ. These recommendations are designed to lift INZ's compliance with its obligations under the PRA and meet the minimum requirements laid out in the PRA and IRMS. Archives considers that this approach will be more useful than pursuing more detailed compliance actions.

Archives recommends:

Recommendation 1 - INZ should conclude any matters outstanding from the failure to capture ten business-related emails in 2015.

Recommendation 2 - INZ should consider implementing guidance and system changes to ensure that exceptions to otherwise authorised destruction are identified so that the records are retained as required.

Recommendation 3 - INZ should ensure IM requirements are built into the Voice and video recording project as business requirements from the start.

Recommendation 4 - INZ should ensure that processes for recordkeeping for their interview summaries are in accordance with PRA section 17 and the IRMS minimum compliance requirements.

Recommendation 5 - INZ should consider developing specific recordkeeping training resources for AMS and any other system INZ uses for recordkeeping purposes.

Recommendation 6 - INZ should establish dedicated IM governance arrangements, working with the MBIE Executive Sponsor.

Recommendation 7 - INZ should ensure that its guidance in relation to information management requirements is monitored and maintained systematically, with an explicit review cycle.

Recommendation 8 - INZ should consider amending its guidance to direct decision-makers to record evidence that the records of their decision-making practices are full, are accurate, and enable accountability.

Recommendation 9 - INZ should work with the IAA to ensure that appropriate procedures regarding the use of warnings in AMS are in place when a complaint involving immigration advisors (including unlicensed immigration advisors) is under investigation by the IAA.

The timeframe for INZ to report back its progress on actioning the recommendations to the Chief Archivist will be at 6-month and 12-month intervals.

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