

## Immigration New Zealand's decision to issue Deportation Liability Notice unreasonable in circumstances

<b>Legislation</b>	Ombudsmen Act 1975, Immigration Act 2009
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	462294 (previously unpublished)
<b>Date</b>	2018

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*Immigration New Zealand (INZ)'s decision to issue a Deportation Liability Notice (DLN) was unreasonable—compliance officer inferred situation that complainant was then not given an opportunity to explain—Ombudsman sustained complaint—INZ restored immigration status to complainant with open conditions*

The complainant was issued with a Deportation Liability Notice (DLN) as he was observed 'working' in breach of his visa condition. He was found on a ladder outside a restaurant with a drill in his hand, attaching brackets to the façade. The compliance officer did not have any direct evidence that the complainant had received a 'gain or reward' (pursuant to the immigration instruction defining 'work'), nor had the Officer turned his mind to this point before issuing the DLN.

The Ombudsman considered it unreasonable for the complainant to have been issued with a DLN for 'working' in breaching his visa conditions, particularly before INZ obtained any meaningful comment from him about his situation.

INZ admitted that its officer had inferred from the circumstances that the complainant had been working. The Ombudsman found that it was unclear what weight INZ had given to the evidence provided by the complainant, particularly his information for his 'good reasons' review, pursuant to section 157(2) of the Immigration Act 2009. It also appeared that INZ accepted that another person, who was found 'working' in a similar situation to the complainant, had not been found to have been 'working' in breach of his visa. As the complainant and the other person were both found in the same circumstances, the

Ombudsman found that it was difficult to see how the complainant's liability for deportation could be upheld while the other person's was cancelled.

The Ombudsman recommended to INZ that it restore the complainant's immigration status to that previously held before the DLN was issued. And, given the passage of time, INZ should restore the complainant's work visa with open conditions to allow him to apply for a further work visa supported by an employer of his choosing – and – with instructions to disregard his period of overstaying. The Ombudsman suggested that the visa should be for a period of no less than three months.

INZ accepted the terms of the Ombudsman's possible recommendation and actioned these terms accordingly. The investigation was discontinued on that basis.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*