IMMIGRATION AND PROTECTION TRIBUNAL

Rōpū Take Manene, Take Whakamaru

PRACTICE NOTE 1/2023

(DEPORTATION – RESIDENT)

(including any appeal by a non-citizen previously recognised as a refugee or a protected person, whose recognition has been cancelled under section 146)

1 July 2023

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PREAMBLE

PRELIMINARY MATTERS

PREPARING FOR THE HEARING

THE HEARING

AFTER THE HEARING

PREAMBLE

This Practice Note is issued pursuant to section 220(2)(a) of the Immigration Act 2009 ("the Act"). It is effective for all appeals against deportation liability by:

(a) residents; or

(b) non-citizens who were previously recognised as refugees or protected persons, whose recognition has been cancelled under section 146. Such persons may not, in fact, be residents, but this Practice Note is extended to include them because (unlike other non-residents) they are entitled to an oral hearing.

The following information on the practice and procedure adopted by the Immigration and Protection Tribunal ("the Tribunal") is designed to provide guidance to members of the legal profession, licensed immigration advisers and those who are representing themselves before the Tribunal. The Tribunal expects compliance with the procedures set out in order to facilitate the Chair's statutory direction to ensure that deportation resident appeals are heard in an orderly and expeditious manner — section 223(1).

The practice and procedure of the Tribunal is subject to the Act and Regulations made under it — section 220(2)(a). References in this Practice Note to the "Schedule" are to Schedule 2 of the Act. References to the "Regulations" are to the Immigration and Protection Tribunal Regulations 2010. Any inconsistency between the Practice Note and the Act or Regulations is to be determined in accordance with the Act and the Regulations.

In this Practice Note:

- "**appellant**" means the appellant, applicant or affected person, as relevant;
- "**chief executive**" means the chief executive of the Ministry of Business, Innovation and Employment;
- "**fraud or the like**" means fraudulent, forged, false or misleading, or any relevant information was concealed;
- "**member**" means "members" where appropriate;
- "**Minister**" means Minister of Immigration;
- "**Ministry**" means the Ministry of Business, Innovation and Employment, within which Immigration New Zealand operates;
- "**resident"** means a residence class visa holder; and
- "**respondent**" means the Minister, the Ministry, Immigration New Zealand or an immigration officer, as appropriate to the context.

1. COMMENCEMENT

[1.1] This Practice Note takes effect from 1 July 2023 and replaces Practice Note 1/2019 (31 October 2019).

PRELIMINARY MATTERS

2. JURISDICTION

[2.1] The Tribunal is an independent, specialist judicial body established under section 217 of the Act.

[2.2] The functions of the Tribunal, in relation to deportation, are:

(a) to determine appeals against liability for deportation — section 217(2)(a)(v); and

(b) to determine applications made by the Minister under section 212(2) as to whether a person has failed to meet their conditions of suspension of liability for deportation — section 217(2)(b)(iii).

[2.3] The Act sets out different categories of residents who may appeal against liability for deportation:

(a) A resident whose visa is granted in error may appeal on the facts and on humanitarian grounds — section 155.

(b) A resident holding a visa under a false identity may appeal:

(i) on humanitarian grounds, if convicted of an offence where the person's identity is established, and it is different from the identity under which they hold a visa; or

(ii) on the facts and on humanitarian grounds, if the Minister determined that the person holds a visa under a false identity — section 156.

(c) A resident whose residence was procured by fraud or the like may appeal:

(i) on humanitarian grounds if convicted of an offence where it is established that the person's residence class visa or entry permission was procured through fraud or the like; or

(ii) on humanitarian grounds if convicted of an offence where it is established that the person's (or any other person's) application for a visa on the basis of which a residence class visa was granted was procured through fraud or the like; or

(iii) on the facts and on humanitarian grounds, if a resident and the Minister determines that the person's residence class visa or entry permission was procured through fraud or the like; or

(iv) on the facts and on humanitarian grounds, if a resident and the Minister determines that the person's (or any other person's) application for a visa on the basis of which a residence class visa was granted was procured through fraud or the like — section 158(1).

(d) A former citizen deprived of citizenship on the ground of fraud or the like may appeal on humanitarian grounds only — section 158(2).

(e) A resident whose visa conditions the Minister considers have been breached or have not been met may appeal on the facts and on humanitarian grounds — section 159.

(f) A resident (for five years or less) in respect of whom new information as to character becomes available may appeal on the facts and on humanitarian grounds — section 160.

(g) A resident convicted of certain criminal offences may appeal:

(i) on humanitarian grounds only; and

(ii) (if a refugee or a protected person) against any decision of a refugee and protection officer that they may be deported — section 161.

(h) A person previously recognised as a refugee or protected person whose recognition is cancelled may appeal:

(i) on humanitarian grounds if the person is not a citizen and is convicted of an offence where it is established that the person acquired recognition as a refugee or a protected person through fraud or the like; or

(ii) on the facts and on humanitarian grounds in any other case — section 162.

(i) A person whose liability for deportation has been suspended with conditions by the Minister and against whom the Minister has served a reactivation notice — section 172.

(j) A person whose liability for deportation has been suspended with conditions by the Tribunal and against whom the Minister applies for a determination that the condition(s) has not been met — section 212.

[2.4] The grounds for allowing an appeal on the facts are set out in section 202. In summary, the appellant must establish, on the balance of probabilities, that the act or omission on which deportation liability is asserted did not occur (**NB**: Where the act or omission is asserted to be fraud or the like, intent is not an ingredient — see *Pal v Minister of Immigration* [2013] NZHC 2070).

[2.5] The grounds for allowing a humanitarian appeal are set out in section 207. In summary, the Tribunal must allow an appeal where it is satisfied that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand, and it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand — section 207(1).

[2.6] A person who is entitled to and wishes to appeal both on the facts and on humanitarian grounds must lodge both appeals together within the relevant time limits. The Tribunal will consider both appeals together, with the appeal on the facts considered first, unless it is not practicable to do so — section 203.

[2.7] In determining whether deportation would be unjust or unduly harsh and whether it would be contrary to the public interest, to deport a person liable for deportation under section 161 (a residence class visa holder convicted of a criminal offence), the Tribunal must have regard to any submissions of a victim — sections 207(2) and 208; see [8] below.

[2.8] There are special processes where a current or former refugee or protected person is liable for deportation under sections 161 and 162 — sections 204 and 205. In brief, the Tribunal must, in addition to considering any appeal on the facts or on humanitarian grounds, determine whether the person is currently a refugee or a protected person.

[2.9] In determining any deportation (resident) appeal, the Tribunal may order:

(a) that the appeal is allowed;

(b) that the appeal is allowed, and an immigration officer is to take such steps as it considers necessary to give effect to its decision — section 209;

(c) that the appeal is allowed, and order that the appellant's liability for deportation be suspended for a period not exceeding five years, subject to such conditions as the Tribunal determines — section 212(1);

(d) that the appeal be declined;

(e) that the appeal be declined but the period of any prohibition on entry to New Zealand be reduced or removed altogether — section 215;

(f) that the appeal be declined but, where it is considered necessary to allow the person to get their affairs in order, that the deportation of the appellant be delayed for a period not exceeding 12 months, or that a temporary entry class visa be granted for a period not exceeding 12 months — section 216;

(g) the imposition of any condition on the grant of a resident visa that it thinks fit — section 210(3);

(h) the reactivation of a person's liability for deportation by causing an immigration officer to serve a deportation liability notice — section 212(3);

(i) certain matters in respect of a person whose liability for deportation has been suspended by the Minister and who has appealed to the Tribunal — section 214.

[2.10] The procedures of the Tribunal are as it sees fit, subject to the Act and Regulations — section 222(4). The proceedings of the Tribunal in any particular case may be, as the Tribunal thinks fit, of an inquisitorial, adversarial or mixed nature — section 218. However, the appellant has a statutory responsibility to establish their case and to ensure that all information, evidence or submissions they wish to have considered are provided to the Tribunal — section 226(1).

[2.11] Subject to the right of appeal to the High Court on a question of law (see section 245), or judicial review, the decision of the Tribunal on an appeal is final. Except where a court otherwise directs, the Tribunal has no jurisdiction to reconsider an appeal after the appellant has been notified of the decision — clause 17(6), Schedule 2.

3. NOTICE OF APPEAL

[3.1] In most cases (other than an application by the Minister for a determination that a resident has failed to meet a condition imposed by the Tribunal), a resident's right to appeal is triggered by the service of a deportation liability notice.

[3.2] Where extrinsic evidence establishes when a deportation liability notice was served, the time for appeal runs from that date — see *Rao v Minister of Immigration* [2015] NZHC 2669. Where service occurred, or notice was given:

(a) by registered letter or courier, the time for appeal runs from delivery of the deportation liability notice to the person's contact address; or

(b) by email, the time for appeal runs from delivery of the deportation notice to the recipient's server — see *LJ (Skilled Migrant)* [2018] NZIPT 204512.

If there is no extrinsic evidence of delivery, it is deemed to have been received by the appellant 3 working days after the date on which it was sent (if sent by email), or 7 days after the date on which it was sent (if sent by registered letter or courier to an address in New Zealand), or 14 days after the date on which it was sent (if sent by registered letter or courier to an address outside New Zealand) — section 386A(4) and (5).

[3.3] A deportation (resident) appeal must be brought within the period of time following service of the deportation liability notice specified in the Act. The periods specified are:

Type of appeal	Appeal on the facts, within	Appeal on humanitarian grounds, within
Where a visa was granted due to an **administrative error**. sections 201(1)(a)(b), 206(1)(c), and 155.	28 days	28 days
Where the person held a visa under a **false identity**. Note: if appealing on both grounds, the appeal must be lodged within 28 days after service of the Deportation Liability Notice. sections 201(1)(a)(b), 206(1)(c), and 156.	28 days	42 days after becoming unlawful
Where the person obtained a residence class visa or entry permission through **fraud, forgery, false or misleading representation, or concealment of relevant information**. sections 201(1)(a)(b), 206(1)(c), and 158(1).	28 days	28 days
Where a former New Zealand citizen was **deprived of New Zealand citizenship** under section 17 of the Citizenship Act 1977 because it was obtained by fraud, false representation, or wilful concealment of relevant information. sections 206(1)(c) and 158(2).	N/A	28 days
Where the person **did not meet or materially breached the conditions of a visa**. sections 201(1)(a), 206(1)(c), and 159.	28 days	28 days
Where **new information relating to character** became available, and the person would not have been eligible for the visa if it had been available at the time the visa was granted. sections 201(1)(a)(b), 206(1)(c), and 160.	28 days	28 days
Where the person has been **convicted of a criminal offence**. sections 206(1)(c) and 161.	N/A	28 days
Where **recognition as a refugee or protected person was cancelled** and the person **has not been convicted** of an offence establishing that such recognition was procured by fraud or the like. sections 162(1), 162(2)(b), 201(1)(c), 206(1)(d).	28 days	28 days
Where **recognition as a refugee or protected person was cancelled** and the person **has been convicted** of an offence establishing that such recognition was procured by fraud or the like. sections 162(1), 162(2)(a), and 206(1)(d).	N/A	28 days

[3.4] The Tribunal does not have jurisdiction to accept an appeal out of time. The Tribunal's staff cannot calculate the time for lodgement of an appeal for intending appellants. Intending appellants are responsible for making any such calculation for themselves. Any intending appellant should consult section 6 of the Act, which addresses how periods of time are calculated.

[3.5] An appeal (and the filing fee) may be filed in person, or by post or courier, or electronically. If filed in person, the filing fee may be paid at the counter by cash, EFTPOS or by payment to the Courts of New Zealand 'file and pay' website (note that Internet Explorer will not access this website). If filed electronically, the filing fee must be paid to the 'file and pay' website. A notice of appeal must be received by the Tribunal within the time limit. It is not sufficient to have put it in the post or to have given it to a courier by that date.

[3.6] The notice of appeal must be on the approved form — section 381, regulations 4(1)(a) and 8(1)(a). The form may be obtained from the Tribunal and from the Tribunal's website. It must be completed in English, signed by the appellant and accompanied by any prescribed fee — regulations 4(1) and 15. The Tribunal has no ability to accept an appeal as validly lodged without payment of the prescribed fee (**NB**: the fee is **not** refundable, unless the appeal has accompanied a refugee and protection appeal and is being dispensed with under section 194(6)(a)).

[3.7] The notice of appeal and the fee should be accompanied by:

(a) the deportation liability notice served on the appellant;

(b) two copies of any submissions the appellant wishes to make; and

(c) two copies of any further information the appellant wishes to file.

[3.8] An appeal must be filed with the Tribunal in Auckland in one of the following ways:

in person or by courier, deliver to:

Immigration and Protection Tribunal
Specialist Courts and Tribunals Centre
Level 1, 41 Federal Street
Auckland 1010 (Monday to Friday between 8.30am and 4.30pm)

by post to:

Immigration and Protection Tribunal
EX 11086
Auckland 1010
New Zealand

or by email to:

IPT@justice.govt.nz (the original, hard copies must follow).

If delivering by courier or sending by post, the sender must allow enough time for the appeal documents to reach the Tribunal within the time for lodgement. It is the sender's responsibility to ensure that an appeal is received by the Tribunal in time.

4. REPRESENTATION

[4.1] An appellant may represent themselves or be represented by a lawyer or licensed immigration adviser or person exempt from licensing under the Immigration Advisers Licensing Act 2007, either at their own expense or, if they qualify, on legal aid — clause 13, Schedule 2. A person acting in an informal capacity (as defined in the Immigration Advisers Licensing Act 2007) must not receive any money or gift or other remuneration in kind in exchange for assisting the appellant with their appeal — section 11(a) of that Act. Where an appeal is filed by a person who does not come within the categories recognised by the Immigration Advisers Licensing Act 2007, the Tribunal is unable to accept the appeal — see section 9 of that Act.

[4.2] Where proceedings before the Tribunal relate to a minor (being a person under 18 years of age who is not married or in a civil union), the minor's interests are to be represented by the minor's parent and the parent is the responsible adult for the minor for the purposes of the proceedings — section 375(1). In the absence of a parent (including where a parent cannot perform the role because of a conflict of interest), the Tribunal will nominate a responsible adult — section 375(3). Before doing so, the Tribunal will, where practicable, consult the minor, any representative and adult relatives of the minor known to the Tribunal.

[4.3] Appellants who have applied for legal aid, but whose applications have not been granted, stand in the same position as all other persons before the Tribunal. The hearing will not normally be delayed solely on the ground that a legal aid application has not been determined.

5. CONTACT ADDRESS

[5.1] The appellant must provide the Tribunal with a contact address and an address for service — sections 225(2)(a), 387 and 387A. **The contact address must be a postal address (not a Post Office box) and/or an email address**. If the person's contact address is, or includes, an email address, the person is taken to have agreed to receive all notices and documents at that address — section 387A(5).

[5.2] The appellant may change their contact address at any time, by giving notice in writing to the Tribunal — section 387A(6).

[5.3] The appellant must notify the Tribunal in a timely manner, of a change in either of those addresses — section 225(2)(b).

[5.4] If a person is in custody or is required to reside at a particular address, the person's contact address is the postal address of the place where the person is detained or required to reside — section 387A(4).

[5.5] Any notice or other document required to be served must comply with the provisions of sections 386 to 387A, as relevant — section 387B. This is unless any other sections of the Act or any regulations provide for specific situations or circumstances that deal with the manner of service or giving of notices — section 387B.

[5.6] A summons to a witness must be served by personal service at least 24 hours before the attendance of the witness — clause 12, Schedule 2.

[5.7] Any documents relating to proceedings may be served outside New Zealand by leave of the Tribunal and in accordance with the regulations — clause 14, Schedule 2 and regulation 10.

[5.8] A matter lodged with the Tribunal by the Minister must be served by or on behalf of the Minister on the affected person either personally or by sending by registered post to the person's address for service, which may or may not be the last known address notified to the Tribunal, in accordance with section 386(3) — sections 386A(2) and 387, and regulation 8(3).

6. FAMILY APPEALS AND CHILDREN

[6.1] Where more than one member of a family has been served with a deportation liability notice, separate appeals must be lodged by each member of the family.

[6.2] In the case of a dependent child who has been served with a deportation liability notice, if the child's liability for deportation is linked or connected to that of the principal appellant and arises from the same facts or circumstances as those of the principal appellant, then only one filing fee is payable.

NB: A dependent child is a child under 18 years of age who is not married or in a civil union and who is dependent on that person, whether or not the child is a child of that person — section 4.

[6.3] A deportation (resident) appeal may **not** include the appellant's spouse or partner or any children who are not dependent children as defined by section 4 of the Act. Those persons must file separate appeals and a separate fee is required for each such appeal — regulation 7(1).

[6.4] Where two or more members of the same family each lodge deportation (resident) appeals, the Tribunal will hear the appeals together, unless it is not practicable to do so or there is some other compelling reason not to do so.

[6.5] Where multiple family members have appeals pending or where representatives represent appellants whose proceedings are based on the same or substantially similar grounds, they should advise the Tribunal as early as possible of any objections they may have to the appeals being heard together.

7. SPECIAL NEEDS OF APPELLANTS

[7.1] The Tribunal endeavours to accommodate the special needs of appellants or witnesses, such as those with a disability, and expects to be assisted by advance notice of any such needs.

8. VICTIMS' SUBMISSIONS

[8.1] In determining a deportation (resident) appeal on humanitarian grounds in respect of a person liable for deportation under section 161 (criminal offending), the Tribunal must have regard to any written submissions to the Tribunal or the Minister of Immigration by a victim (as defined in section 208(7)) of the offence from which the liability for deportation arose — sections 207(2) and 208(1). With the leave of the Tribunal, the victim may make oral submissions at the hearing — section 208(2).

[8.2] Any victim wishing to lodge a written submission should do so by forwarding hard copies to the Tribunal not later than 14 days prior to the hearing date. That time limit may be varied by the Tribunal on application.

[8.3] The Tribunal will notify the appellant and the respondent of the receipt of any written submission from a victim.

[8.4] On request, the Tribunal will provide the appellant's representative with a copy of any written submission by a victim and the representative (or the Tribunal) must show the same to the appellant, if requested, but the appellant is not entitled to retain a copy — section 208(3) and (4).

[8.5] Notwithstanding the above, the Tribunal may withhold part or all of a submission if, in its opinion, it is necessary to do so to protect the physical safety or security of the victim. Any withheld submission will not be relied upon by the Tribunal — section 208(5) and (6).

[8.6] Any victim wishing to appear in person to make an oral submission at the hearing should notify the Tribunal not later than 14 days prior to the hearing date, advising:

(a) the reason why they wish to appear in person and make submissions orally, whether any evidence is intended to be given and the nature of that evidence;

(b) an estimate of how much time will be needed in order to make the oral submission (including giving any evidence); and

(c) whether the oral and any written submissions and evidence should be received in private (see [21] below).

The Tribunal will advise the victim promptly whether or not leave to make an oral submission is granted.

[8.7] No victim making any submission, whether in writing or orally, is subject to cross-examination by any party. Any victim who gives evidence as a witness may be questioned by the Tribunal and, with the leave of the Tribunal, cross-examined by any party.

9. OFFICIAL INFORMATION ACT AND PRIVACY ACT REQUESTS

[9.1] In relation to its judicial functions, the Tribunal is not subject to the provisions of:

(a) the Official Information Act 1982 — section 2(6)(b) of that Act; or

(b) the Privacy Act 2020 — sections 4(1)(a), 7(1) and 8(a)(iv) of that Act.

[9.2] Where an appellant wishes to obtain access to documents in relation to a deportation resident appeal, such a request is appropriately made to Immigration New Zealand as copies of all relevant documents which were before the Tribunal are included in the Immigration New Zealand file.

10. ORDER OF DETERMINATION AND REQUESTS FOR PRIORITY

[10.1] The Chair of the Tribunal may decide the order in which appeals are heard. No decision may be called into question on the basis that the appeal ought to have been heard or decided earlier or later than any other appeal, matter, or category of appeal or matter — section 222(2) and (3).

[10.2] The Tribunal will consider requests that an appeal be considered as a matter of priority. Such a request must be accompanied by full and cogent reasons justifying the request and supported by any relevant evidence. The request should be addressed to the Chair of the Tribunal.

11. SUBMISSIONS AND EVIDENCE

[11.1] In the case of a deportation (resident) appeal, the Tribunal may receive as evidence any document, information or matter that in its opinion may assist it, whether or not it would be admissible in a court of law and, subject to certain exceptions, the Evidence Act 2006 applies as if the Tribunal was a court — clause 8, Schedule 2.

11A. SUBMISSIONS AND EVIDENCE PROVIDED BY THE APPELLANT

[11A.1] It is the responsibility of an appellant to establish their case or claim and to ensure that all evidence and submissions are provided to the Tribunal before it makes its decision — section 226(1).

[11A.2] Documentary evidence should be provided in an indexed, tabulated bundle. All bundles must be accompanied by a contents page and relevant passages highlighted. See [7A.4] of the Practice Note 3/2023 for guidance. Two hard copies of all submissions and accompanying documents must be filed. Copies must also be sent to counsel for the Minister and to any other party.

[11A.3] The appellant (or representative) may make submissions in writing. Submissions and any evidence may accompany the appeal form, or be lodged prior to the hearing in accordance with timetabling directions from the Tribunal.

[11A.4] Submissions which are filed electronically must be in the form of a MS Word document or searchable PDF (ie, not scanned). Where internet-sourced material is relied on, printed copies, including the URL, must be provided. A functioning hyperlink to the documents should be included in the contents page. Where hyperlinks to

material have been provided to the Refugee Status Unit, it will be necessary to provide fresh hyperlinks to the Tribunal.

[11A.5] The Tribunal does not require parties to provide copies of its own decisions or New Zealand court authorities on established jurisprudence. It does require a hard copy of foreign court decisions and New Zealand court authorities on novel points of law.

[11A.6] In any appeal involving a prisoner or former prisoner, the appellant shall obtain and submit the following reports from the Department of Corrections and/or the Parole Board:

(a) all psychological, psychiatric, counselling and criminogenic reports; and

(b) all Parole Board determinations.

These documents must be filed at least 14 days before the hearing (with a copy to the respondent).

[11A.7] Where an appellant seeks to adduce social media evidence (ie, video clips, websites posts on social media etc), they are expected to advise the Tribunal in advance of the intention to do so, and to bring a personal laptop or computer to the hearing. If the media is to be viewed on the internet, then the appellant may provide their own internet access (whether by satellite link or via a mobile telephone 'hotspot' or by other means) or may use the Ministry of Justice Wi-Fi, the password for which will be available at the Tribunal's reception. The appellant's laptop or computer will be linked to a monitor (supplied by the Tribunal) so that both the appellant and the member can view the evidence. Where there is any doubt as to the compatibility of the appellant's equipment, they are expected to resolve this with the Tribunal before the day of the hearing, so as to avoid delays.

[11A.8] Whether because of the appeal proceeding by way of a remote hearing, or as an element of an in-person hearing, where a party seeks to adduce evidence by telephone, or other audio or audio-visual link, any toll or other charges must be borne by the party calling the witness. Where it is necessary to take evidence by telephone, for in-person hearings at its own premises, the Tribunal will normally provide a telephone able to be heard by all in the hearing room. Any toll or other charges may be met by the appellant providing a calling card pre-charged with sufficient funds to enable the evidence to be taken in one sitting. Other proposed methods of meeting the cost should be discussed with the Tribunal at the earliest opportunity.

[11A.9] All witnesses (including those giving evidence by telephone, or other audio or audio-visual link) are required to provide a written brief of evidence in advance of the hearing. If giving evidence at a distance, the witness is expected to be in a position to confirm:

(a) their identity;

(b) they are alone (or that all others present are identified);

(c) they do not have in front of them any notes or copies of statements (unless approved by the Tribunal);

(d) they have no other telephone, or other audio or audio-visual link operating; and

(e) they are not receiving advice or assistance from any other person or source, unless otherwise approved by the Tribunal.

[11A.10] Where an appellant seeks to adduce evidence from a witness by audio, or audio-visual link, the Tribunal is able to provide a Microsoft (MS) Teams Link or audio-visual link to which computer or smartphone users can connect. Appellants wishing to access this facility must provide adequate notice and make the necessary arrangements with the Tribunal. It is the responsibility of the appellant to ensure that any witness whose evidence is being adduced using the MS Teams link provided by the Tribunal has sufficient connectivity and data allowance to enable their evidence to be taken. Save in exceptional circumstances, a hearing will not be adjourned to allow a witness to try reconnecting at a later date.

[11A.11] Where an appellant intends to adduce evidence of an 'expert report' nature (including reports by psychiatrists, psychologists or medical practitioners), regard should be had to the time it takes to produce such reports. Appellants are expected to take steps to obtain such reports well in advance of the hearing, so that they are completed in good time. Appellants should **not** wait until receiving notice of the hearing date because time may then be insufficient.

[11A.12] In all cases, appellants are expected to provide copies of electronic records (in order to protect the Tribunal's network from exposure to viruses, these may not be provided on a flash drive) for the Tribunal's file. Information in electronic format should not be submitted without first ascertaining whether the Tribunal is able to view or read such material.

11B. EVIDENCE GATHERED BY THE TRIBUNAL

[11B.1] The Tribunal may seek information from any source, but it is not obliged to do so, and it may determine the appeal or matter on the basis of the information provided — section 228.

[11B.2] The Tribunal, or any person authorised by it, may:

(a) inspect any papers, documents, records or things; and

(b) require any person to produce any documents or things in that person's possession or control and allow copies to be made; and

(c) require a person to provide, in an approved form, any information specified and copies of any documents — clause 10, Schedule 2; and

(d) require the appellant to allow biometric information to be collected from them — section 232.

11C. SUBMISSIONS AND EVIDENCE PROVIDED BY THE RESPONDENT

[11C.1] Where an appeal is lodged, the respondent must, in the time allowed by the Tribunal, lodge with the Tribunal any relevant files — section 226(2)(b). The relevant files include the file prepared for the Minister and any relevant temporary visa and/or resident visa file, and (to the extent they are disclosable) records and electronic notes held by the respondent concerning the appellant. If the Tribunal requires other files or documents, including those held in the name of other family members, it will seek such files or documents, pursuant to [11C.4].

[11C.2] The respondent may also, in the time allowed by the Tribunal, lodge with the Tribunal any other evidence or submissions — section 226(3).

[11C.3] Prior to the hearing, the respondent is to provide the Tribunal with an updated record from the New Zealand Police of the appellant's criminal convictions (if any), together with such record as it may have of any convictions in other countries.

[11C.4] The Tribunal may require the respondent to seek and provide information, but no party may request the Tribunal to exercise this power — section 229.

12. WITHDRAWAL OF APPEAL

[12.1] An appellant may at any time withdraw an appeal — section 238. Notice of withdrawal should be in writing and signed by the appellant — regulation 9. A form for this purpose may be obtained from the Tribunal or the Tribunal's website, or an appellant can write (and sign) a letter indicating withdrawal of their appeal. The filing fee will **not** be refunded.

[12.2] If the appellant leaves New Zealand before a determination is made, any appeal in respect of deportation liability may be deemed to be withdrawn, depending on the grounds for deportation liability — section 239(1). Appellants are strongly recommended to obtain legal advice before leaving the country while liable for deportation.

[12.3] If an appeal is withdrawn (or deemed to be withdrawn), the decision appealed against stands — section 238(4).

PREPARING FOR THE HEARING

13. HEARINGS TO BE ORAL

[13.1] The Tribunal must provide an oral hearing for an appeal against liability for deportation brought by a resident or permanent resident — section 233(1).

14. PERSONS SERVING PRISON SENTENCE

[14.1] An oral hearing for a person who is serving a sentence of imprisonment must be heard and determined as close as is practicable to the date of the person's parole eligibility date or (in the case of a person serving a short-term sentence) before the person's statutory release date — section 236(1).

[14.2] An oral hearing may take place by way of an in-person or remote hearing in accordance with any Immigration and Protection Tribunal Operations with COVID-19 in the Community protocol in force at the time the appeal is scheduled for a hearing. The mode of hearing will be discussed at the case management conference.

15. CASE MANAGEMENT CONFERENCE(S) AND TIMETABLING

[15.1] Prior to the appeal hearing, the Tribunal will convene a case management conference (CMC) (or more than one) with the parties and/or their counsel or

representatives. The purpose of CMCs is to discuss (along with anything else relevant):

(a) whether the hearing will be remote or in-person;

(b) whether the appellant or any witness has any particular vulnerability or needs in the taking of their evidence;

(c) the number of witnesses expected to be called, including the names of witnesses, their location, the mode of their attendance and an indication of the relevance of the evidence they will be giving;

(d) determine whether an interpreter is required; and

(e) confirm timetabling directions as to the filing of evidence and submissions.

[15.2] Subject to any ruling by the member:

(a) Any evidence which the appellant (or other party) wishes to produce on appeal (including statements by the appellant and all witnesses) is to be filed with the Tribunal at least 14 days before the hearing date (with a copy to any other party appearing). The statement of the appellant should provide full details of all immediate family members (partner, children, parents and/or siblings), state whether the person is resident in New Zealand or elsewhere and identify their current immigration status. It should also describe any relevant health issues of the appellant or immediate family members. Statements must be in English or accompanied by an accurate translation.

(b) Opening submissions by both parties are to be filed at least 3 working days before the hearing (with a copy to the other party). Such submissions should not include evidence which must be tendered earlier as per (a) above.

(c) Evidence not filed by either party within this timeframe will only be accepted with the leave of the Tribunal (see [28.1] below concerning evidence sought to be filed following the oral hearing).

16. POWER TO ISSUE A SUMMONS

[16.1] The Tribunal may, either of its own motion or on application, issue in writing a summons requiring any person to attend and to give evidence, and to produce any relevant papers, documents, records or things in that person's possession or control — clause 11, Schedule 2.

[16.2] An application for the issue of a witness summons must be in writing and, unless the Tribunal otherwise directs, be filed no less than 21 days before the hearing date, supported by submissions as to the nature of the evidence intended to be given, its relevance to the appeal, and any communications with the intended witness, including the grounds of any refusal to attend. The Tribunal must also be provided with the full name, residential and work address, and other relevant details of the person sought to be summoned. Where it is intended that the witness produce any papers, documents, records or things in their possession or control, full particulars must also be given.

[16.3] A witness appearing before the Tribunal under a summons is entitled to be paid witnesses' fees, allowances and expenses in accordance with the scales prescribed by regulations under the Criminal Procedure Act 2011 — clause 16(1), Schedule 2. The relevant regulations are the Witnesses and Interpreters Fees Regulations 1974. The person requiring the attendance must pay or tender the fees, allowances and expenses at the time the summons is served, or at some other reasonable time before the hearing — clause 16(2), Schedule 2.

[16.4] As the Tribunal is under a duty to act fairly, it may, in appropriate cases, direct that the intended witness be heard on the application for the witness summons.

[16.5] The Tribunal has a duty to prevent the abuse of its own processes, therefore it will refuse to issue or will set aside a summons where it is satisfied that it is proper to do so. Without limiting the circumstances, the Tribunal will do so where the evidence does not establish that the intended witness is able to give relevant or probative evidence; where there has been an abuse of process; where the summons was irregularly obtained or issued; and where the summons was taken out for a collateral motive or is oppressive.

17. ADJOURNMENTS

[17.1] The granting of an adjournment of a fixed hearing is a matter involving the exercise of the Tribunal's discretion. An adjournment will not be granted without

strong and cogently presented grounds. An adjournment will not normally be granted pending the outcome of a legal aid application (see [4.3] above).

[17.2] A request for an adjournment, which should be made as early as possible, must be given in writing to the Tribunal, along with the earliest possible suggested alternative fixture date. It must also be copied to the other party who has given notice of intention to appear.

[17.3] A medical certificate presented as the basis for an adjournment request must be from a registered medical practitioner and specify the following:

(a) the date the appellant or witness was examined;

(b) the illness or disability;

(c) the expected duration of the illness or disability;

(d) the reason why, in the opinion of the medical practitioner, the person is unable to attend the scheduled hearing; and

(e) the medical practitioner's professional opinion as to when the person will be fit to attend a hearing.

THE HEARING

18. SITTING HOURS

[18.1] The sitting hours of the Tribunal at its own premises will normally start at either 9am, 9.30am or 10am and conclude at approximately 5pm, subject to adjustment by the member. The lunch break will normally occur at 12pm, 12.30pm or 1pm, accordingly. Breaks of 15–20 minutes will be taken at approximately 11am or 11.30am and 3pm or 3.30pm to allow appropriate rest for witnesses and interpreters. The notice of hearing will provide final confirmation of the start time.

[18.2] The start times are to be strictly adhered to. Counsel and appellants are expected to arrive at least 15 minutes prior to the hearing and to be in the hearing room, ready to start, at the prescribed times.

19. HEARING *DE NOVO*

[19.1] All deportation (resident) appeals before the Tribunal (whether by oral hearing or on the papers) proceed by way of hearing *de novo*, and all issues of law,

credibility and fact relevant to the Tribunal's statutory test are at large, except that the Tribunal may rely on any finding of credibility or fact by it or any of its predecessor appeal bodies in any previous appeal or matter involving the appellant — section 231.

[19.2] The Tribunal will make a decision on the facts as they stand at the date of determination of the appeal. It is not appropriate for appellants or counsel to seek assurances or undertakings during the course of the hearing as to whether any part of the evidence is accepted and no conduct or assertion on the part of the member should be taken as negating the general premise that all issues remain at large until all of the evidence has been heard and considered.

20. HEARINGS INFORMAL

[20.1] Tribunal hearings are procedurally informal. The Tribunal may be addressed as "Chair and members of the Tribunal". Individual members may be addressed by their surname. Appellants, witnesses and representatives may remain seated during the taking of evidence and while addressing the Tribunal.

21. HEARINGS OPEN TO PUBLIC

[21.1] Appeal hearings are normally open to the public, unless the Tribunal determines otherwise, either of its own volition or on application by any party, in relation to the whole or any part of a hearing — clause 18, Schedule 2. An appeal brought by a refugee or protected person (or claimant, or person formerly recognised as such) must be conducted in private — section 151 and clause 18(3), Schedule 2.

[21.2] Because hearings can involve the disclosure of personal information, no recording is to be made of the hearing in any form, except that accredited members of the press, who have made their presence known to the Tribunal before the commencement of the hearing, may make written notes and may make a film or video recording if granted leave by the Tribunal in accordance with [21.4] below.

[21.3] No use of electronic media or communication is permitted in the course of a hearing, save that mobile telephones may be used to send and receive text messages, so long as the telephone is switched to 'silent' and does not otherwise disrupt proceedings.

[21.4] No filming or video recording is to be made by any person, except that accredited members of the press may be granted leave to film or make a video recording of all or part of a hearing, in accordance with the *Media Guide for Reporting*

the Courts and Tribunals (Edition 4.1, September 2019), published by the Ministry of Justice. The Tribunal applies the principles set out in respect of the District Court's summary jurisdiction, except that all applications for media coverage will be determined on the papers. The *Media Guide* is available at www.justice.govt.nz/about/news-and-media.

22. INTERPRETERS

[22.1] Where needed, an independent interpreter will be provided for the hearing, at the cost of the Tribunal — regulation 14. Representatives and the parties must ensure that, at the time of receiving notice of hearing, the Tribunal is advised of the interpreting needs of the appellant and any witnesses, including language, dialect and, where appropriate, gender. The Tribunal will endeavour to meet those needs.

[22.2] Appellants and witnesses shall not make direct or indirect contact with the interpreter at any time outside the hearing except with the consent of the member.

23. OATHS AND AFFIRMATIONS

[23.1] Whether a witness intends to give evidence in person or not, every witness statement is to be signed by the deponent and is to include the following statement:

> "I acknowledge that this statement is intended to be adduced as evidence before the Immigration and Protection Tribunal, and on signing it I declare the truth of its contents.
>
> [signed]
>
> ……"

[23.2] Parties and witnesses will be required to take an oath or make an affirmation prior to giving oral evidence before the Tribunal.

[23.3] An interpreter will be required to take an oath or make an affirmation prior to commencing their duties.

24. HEARINGS PRIMARILY INQUISITORIAL

[24.1] Hearings before the Tribunal will, unless otherwise directed by the member, be conducted in a mixed inquisitorial and adversarial manner, in the order set out at [25.2] below — section 218(2).

25. PROCEDURE AT HEARING

[25.1] Oral hearings are recorded by the Tribunal. Recordings are made for the purpose of providing the member with the means to cross-check later what was said. As such, it forms part of the judicial functions of the Tribunal and is not subject to the Official Information Act 1982 or the Privacy Act 2020.

[25.2] Subject to the direction of the member, and the needs of the particular hearing, all hearings will proceed as follows:

(a) Introduction by member.

(b) Opening submissions for the appellant (if any).

(c) Unless the Tribunal decides to take evidence as read, the appellant is called first, followed by the appellant's witnesses, and will be questioned in the following order:

(i) the identity of the person and administration of the oath or affirmation, which may also include veracity of their statement to be established (by either counsel or the Tribunal);

(ii) counsel may lead any evidence which could not have been included in the person's statement;

(iii) the Tribunal to ask questions;

(iv) examination by counsel for the respondent (if any); and

(v) examination by counsel for the appellant.

(d) Opening submissions for the respondent (if any).

(e) The respondent's witnesses, if any, called to give evidence, and to be questioned in the same manner as for the appellant's witnesses.

(f) Closing submissions for the respondent (if any).

(g) Closing submissions for the appellant.

[25.3] In the case of any application brought by the respondent, the order of presentation of cases may be varied by the Tribunal as appropriate.

[25.4] Unless the Tribunal decides otherwise, closing submissions are to be made orally at the conclusion of the hearing and counsel should be prepared for this. A direction that submissions may be put in writing will only be made where it is in the interests of fairness to do so.

[25.5] The Tribunal will not issue an immediate oral decision but will deliver a written decision with reasons as soon as practicable — clause 17(3), Schedule 2.

26. PERSONS IN CUSTODY — SECURITY

[26.1] Deportation (resident) appeal hearings for persons in custody will normally be held in the District Court because of the security requirements.

[26.2] Where an appellant is serving a term of imprisonment at the time of hearing, their security, welfare and custody during the hearing (and in transit to and from it) are the responsibility of the Department of Corrections, not the Tribunal.

[26.3] Matters such as where the appellant sits and whether they restrained (whether by handcuffs or otherwise) during a hearing are for the Department of Corrections prison officers to determine. The appellant, an affected person or the Tribunal may request that an appellant sit in a particular place or that restraints be removed, but the decision is solely that of the prison officers.

[26.4] An appellant in custody is not to communicate with (or receive from or give any item to) any person while attending the hearing, including family, friends and witnesses, except for:

(a) members of the Tribunal;

(b) the registrar at the hearing;

(c) Department of Corrections prison officers;

(d) their representative;

(e) the interpreter engaged in accordance with [22.1], in the course of the interpreter's duties; and

(f) any other person with whom the Tribunal directs that the appellant may communicate.

27. FAILURE TO APPEAR

[27.1] The Tribunal may determine an appeal or matter without an oral hearing if the appellant fails without reasonable excuse to attend a hearing — section 234(1).

AFTER THE HEARING

28. POST-HEARING EVIDENCE

[28.1] Appellants and counsel should come to all hearings ready to present all evidence to be relied upon. No evidence may be filed following an oral hearing except by leave of the Tribunal. Leave may be sought for the filing of new evidence at any time prior to the date of the Tribunal's decision. A copy of the request should be sent to the other party.

29. REQUEST FOR RECORDING OF THE HEARING

[29.1] The Tribunal recognises that the recording of the hearing may be the most accurate record of the evidence and may make a copy of the recording available on CD to:

(a) The representative for any party, on application supported by:

(i) cogent reasons which justify the provision of a copy (representatives are expected to take adequate notes during the hearing and a failure to do so will not normally constitute cogent reasons); and

(ii) an undertaking to keep the copy of the recording in their possession and not to release it in any form (whether by playing it or by providing the original or a copy thereof) to any person save for the party for whom they act (and/or other person previously authorised by the Tribunal in writing) to whom it may be played, and to use the recording only for the purpose for which it was sought in the application.

(b) The appellant in person, but the appellant will need to attend at the Tribunal’s offices, where facilities will be made available to listen to the recording. An appellant in person will not be permitted to retain a copy of the recording and the CD must not be removed from the Tribunal’s premises. No recording or copying of the CD is permitted.

(c) The High Court, Court of Appeal or Supreme Court, on request by the relevant court for its production.

[29.2] The Tribunal will not provide a written transcript to a party or representative. It will provide the High Court, Court of Appeal or Supreme Court with a written transcript of the recording, on request by the relevant court. The time taken to prepare a transcript varies but can be expected to be not less than 6 weeks.

30. ENQUIRIES ABOUT DELIVERY OF DECISION

[30.1] From time to time, parties and other persons approach the Tribunal with an enquiry as to the likely date of delivery of a decision. All such requests must be in writing and must set out the appellant's name and the appeal number and a cogent reason why the advice is being sought.

[30.2] The Tribunal will respond to the enquiry in writing and not by telephone. The response will be a "best estimate" only. The timing of delivery of the decision is at the discretion of the member involved. No information as to outcome will be given.

[30.3] The response to an enquiry will, in all cases, be sent to all parties at the same time.

31. DECISIONS

[31.1] A deportation (resident) appeal is normally decided by one member of the Tribunal, unless the Chair directs otherwise because of exceptional circumstances — section 221.

[31.2] Where a decision of the Tribunal is made by more than one member, but is not unanimous, the decision of the majority shall prevail. If the members are evenly divided, the appeal or matter will be decided in favour of the appellant — clause 17(1) and (2), Schedule 2.

[31.3] Every decision of the Tribunal must be given in writing and contain reasons. A decision will be delivered to the appellant through their counsel or representative (if any) and to the other party — clause 17(3) and (5), Schedule 2.

[31.4] Notice of a decision on a deportation (resident) appeal may be given by courier (sections 4 and 386A), or by email where the person has designated an email address as their contact address (section 387A). It will be sent by email to a lawyer or agent where the lawyer or agent has signed a memorandum stating that they

accept service of the notice or document on behalf of the person — section 386A(2)(b). Where the decision is sent:

(a) by registered letter or courier, notice is given on delivery of the decision to the person's contact address; or

(b) by email, notice is given on delivery of the decision to the recipient's server — see *LJ (Skilled Migrant)* [2018] NZIPT 204512.

[31.5] Decisions of the Tribunal are normally publicly available, unless the Tribunal determines otherwise, either of its own volition or on application by any party, in relation to the whole or any part of a decision and the Tribunal may make an order prohibiting the publication of the same — clauses 18(4) and 19(4), Schedule 2. In such circumstances, a research copy of the Tribunal's decision (with the prohibited part deleted) will be published instead of the full version of the decision released to the parties.

[31.6] A decision by the Tribunal is final, once notified to the appellant — clause 17(6), Schedule 2.

[31.7] In certain circumstances, the Tribunal can recall a decision. A correction may be made on application by a party, or on the Tribunal's own motion — clause 20, Schedule 2. Beyond these limited powers of recall, a decision by the Tribunal is final once notified to the appellant or affected person — clause 17(6), Schedule 2.

32. RETURN OF DOCUMENTS

[32.1] Normally, the Tribunal will copy and return passports to the appellant, if provided. If a party lodges other important original documents, such as birth certificates, and qualifications, they should advise the Tribunal at the time they lodge them if they wish them to be returned. Any original documents which were lodged with the Tribunal during the course of the appeal will remain on the Tribunal's file. Appellants seeking the return of those documents should address such a request to the Tribunal.

33. APPEAL TO HIGH COURT AND APPLICATIONS FOR JUDICIAL REVIEW

[33.1] Where any party to an appeal is dissatisfied with the determination of the Tribunal as being erroneous in point of law, they may, with the leave of the High Court, appeal to the High Court on that question of law — section 245(1).

[33.2] Where extrinsic evidence establishes when notice was given of the Tribunal's decision (or other document), time for appeal runs from that date — see *Rao v Minister of Immigration* [2015] NZHC 2669 (as to when notice is given, see [31.4] above). If there is no such extrinsic evidence, it is deemed to have been received 3 working days after the date on which it was sent (if sent by email) or 7 days after the date on which it was sent (if sent by registered letter or courier to an address in New Zealand), or 14 days after the date on which it was sent (if sent by registered letter or courier to an address outside New Zealand) — section 386A(4).

[33.3] An application to the High Court for leave to appeal must be brought:

(a) not later than 28 days after the date on which the decision of the Tribunal was notified to the party appealing; or

(b) within such further time as the High Court may allow on application made before the expiry of that 28-day period — section 245(2).

[33.4] Any application for judicial review of a decision of the Tribunal must be commenced not later than 28 days after the date on which the person concerned is notified of the decision, unless the High Court decides that, by reason of special circumstances, further time should be allowed or unless leave to commence proceedings is required — sections 247(1), 249(3) and (4).

[33.5] Where a person both appeals against a decision of the Tribunal and brings review proceedings in respect of that same decision:

(a) the person must lodge both together; and

(b) the High Court must endeavour to hear both matters together, unless it considers it impracticable to do so — section 249A.

[33.6] Neither the Tribunal nor its staff can give advice to appellants concerning any appeal to the High Court or application for judicial review. Self-represented appellants are advised to seek legal advice or assistance in that regard.

"Judge M Treadwell"

Judge M Treadwell
Chair
Immigration and Protection Tribunal