IMMIGRATION AND PROTECTION TRIBUNAL

PRACTICE NOTE 4/2019

(DEPORTATION – NON-RESIDENT)

31 October 2019

PRACTICE NOTE 4/2019
(DEPORTATION – NON-RESIDENT)

PREAMBLE

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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 by non-residents against deportation liability, here called a "deportation (non-resident) appeal". Such appeals relate to persons:

(a) unlawfully in New Zealand – (section 154)
(b) holding a temporary visa granted in error – (section 155)
(c) holding a temporary visa under a false identity – (section 156)
(d) holding a temporary visa for whom the Minister has determined there is sufficient reason to deport – (section 157)
(e) who are non-residents and non-citizens, whose refugee or protected person status has been cancelled under section 146 – (section 162)

This Practice Note also applies to deportation (non-resident) appeals by refugee and protection appellants who have also lodged a deportation (non-resident) appeal. Such appellants should also refer to Practice Note 2/2019 (Refugee and Protection).

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, immigration advisers and those appearing in person before the Tribunal. The Tribunal expects compliance with the procedures set out.

Deportation (non-resident) appeals are normally decided by the Tribunal "on the papers" (that is to say, without an oral hearing).

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 Regulations are to the Immigration and Protection Tribunal Regulations 2010. References to the Schedule are to Schedule 2 of the Act, "Provisions Relating to Tribunal".

Where this Practice Note refers to the Act or the Regulations, readers are expected to consult the section of the Act or regulation referred to, before relying on it. Any inconsistency between the Practice Note and the Act or the Regulations is, of course, 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 fraud, forgery, false or misleading representation, or concealment of relevant information;
- "**humanitarian appeal**" means an appeal against deportation liability on humanitarian grounds;
- "**member**" means "members" where appropriate;
- "**Ministry**" means the Ministry of Business, Innovation and Employment;
- "**temporary visa**" means a temporary entry class visa.

1. COMMENCEMENT

[1.1] This Practice Note takes effect from 31 October 2019 and replaces Practice Note 4/2018 (16 May 2018), which is repealed from that date.

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 (non-resident) appeals, are to determine appeals against liability for deportation:

(a) by persons unlawfully in New Zealand, on humanitarian grounds – (section 154(1) and (2)); and

(b) where a temporary visa or an interim visa was granted in error, on humanitarian grounds – (section 155(4)(b));

(c) where a temporary visa or interim visa is held under a false identity, on humanitarian grounds – (section 156(2)(a));

(d) where the Minister determines there is sufficient cause to deport a temporary visa holder, on humanitarian grounds – (section 157(4));

(e) where the refugee or protected person status of a non-resident and non-citizen person has been cancelled under section 146:

(i) on humanitarian grounds, if the person has been convicted of an offence where it is established that recognition as a refugee or protected person was acquired by fraud or the like; or

(ii) on humanitarian grounds and on the facts in any other case – (section 162(2)).

NB: Where a non-resident and non-citizen former refugee or protected person is liable for deportation under section 162, 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 – (section 204).

(f) to determine appeals against liability for deportation on humanitarian grounds by persons who have simultaneously lodged a refugee and protection appeal and who are either:

(i) liable for deportation and entitled to such an appeal; or

(ii) would be entitled to a deportation (non-resident) appeal, if he or she became liable for deportation – (section 194(6)).

[2.3] 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).

[2.4] 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)).

[2.5] In determining any deportation (non-resident) appeal, the Tribunal may:

(a) Dismiss the appeal.

(b) Dismiss the appeal and, in its absolute discretion, order the reduction, or removal altogether, of the period of prohibition on entry to New Zealand – (section 215(1)).

NB: A reduction or removal of the period of prohibition remains subject to the repayment of any debt to the Crown for the costs of deportation, unless the Tribunal orders otherwise – (sections 215(2) and 180(1)).

(c) Dismiss the appeal and, if it considers it necessary for the appellant to remain in New Zealand for the purposes of getting his or her affairs in order, order:

(i) that deportation be delayed for a period up to 12 months; or

(ii) that a temporary visa, valid for a period not exceeding 12 months, be granted to the appellant – (section 216(1)).

NB: If a temporary visa is granted, no further right of appeal against deportation liability arises as a result of its expiry – (section 216(2)).

(d) Allow the appeal and order that an immigration officer take such steps as it considers necessary to give effect to its decision – (section 209).

(e) Allow the appeal and order an immigration officer to grant the appellant:

(i) a resident visa subject to such conditions as the Tribunal determines; or

NB: 1. In imposing any condition on the grant of a resident visa the Tribunal must have regard to the reasons why the appellant was able to demonstrate exceptional circumstances of a humanitarian nature or why it was not contrary to the public interest to allow the appellant to remain in New Zealand, whether or not the condition is of a kind authorised by residence instructions – (section 210(3)).

2. A resident visa may be granted even though the person would normally be prohibited from being granted a visa under section 15 or 16 (essentially, convicted or deported persons and persons who pose a risk to public order, safety or security) – (section 210(4)).

(ii) a temporary visa for a period not exceeding 12 months, subject to such conditions as the Tribunal determines – (section 210(1)).

NB: 1. If a temporary visa is granted, no further right of appeal against deportation liability arises as a result of its expiry – (section 210(2)).

2. A temporary visa may be granted even though the person would normally be prohibited from being granted a visa under section 15 or 16 (essentially, convicted or deported persons and persons who pose a risk to public order, safety or security) – (section 210(4)).

[2.6] If the Tribunal allows an appeal, the appellant's deportation liability is cancelled and:

(a) if the appellant is in custody under the Act, he or she must be immediately released;

(b) if the appellant is subject to residence or reporting requirements under section 315 of the Act, he or she ceases to be subject to those requirements; or

(c) if the appellant has been released on conditions under section 320, the appellant ceases to be subject to those conditions – (section 211).

[2.7] 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 of an inquisitorial, adversarial or mixed nature, as the Tribunal thinks fit – (section 218). In relation to deportation (non-resident) appeals, the Tribunal normally proceeds in an inquisitorial manner.

[2.8] 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] An appeal must be brought:

(a) In the case of a person unlawfully in New Zealand) not later than 42 days after the day on which the person became unlawfully in New Zealand – (section 154(2)).

(b) In the case of a person unlawfully in New Zealand following an unsuccessful reconsideration of the decline of his or her visa application, not later than 42 days after the later of:

(i) the day on which the person became unlawfully in New Zealand; or

(ii) the day on which the person received confirmation of the decision to decline his or her visa application – (section 154(4)(a)).

(c) In the case of a person holding a temporary visa granted in error, not later than 28 days after the date of service of a deportation liability notice – (section 155(4))

(d) In the case of a person holding a temporary visa under a false identity, not later than 42 days after first becoming unlawfully in New Zealand. Such a person is deemed to have been unlawfully in New Zealand since:

(i) the date the person arrived in New Zealand, if he or she has held a visa in a false identity since that date; or

(ii) the day after the date on which a visa granted in the person's actual identity expired, or was cancelled without another visa being granted, if he or she has held a visa in his or her actual identity after arriving in New Zealand – (section 156(3) and (4)).

(e) In the case of a person holding a temporary visa for whom the Minister has determined there is sufficient reason to deport, not later than 28 days after the date of service of a deportation liability notice – (section 157(4))

[3.2] Where deportation liability arises from service of a deportation liability notice (or notice being given by Immigration New Zealand of confirmation of the decision to decline his or her visa application on an application for reconsideration) and extrinsic evidence establishes when that occurred, 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 Immigration New Zealand decision to the person's contact address; or

(b) by email, the time for appeal runs from delivery of the Immigration New Zealand decision 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 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) – (section 386A(4) and (5)).

[3.3] A notice of appeal must be physically 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.

[3.4] 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] The Tribunal does not have jurisdiction to accept an appeal out of time.

[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 at www.justice.govt.nz/tribunals/IPT. It must be completed in English, be signed by the appellant and be accompanied by any prescribed fee – (regulations 4(1) and 15). The Tribunal has no ability to accept an appeal without payment of the prescribed fee.

[3.7] An appeal is not properly made until it has been received by the Tribunal, signed, with the prescribed fee, within the time for lodgement. It must be filed in the office of the Tribunal in Auckland (in person or by courier) at:

Specialist Courts and Tribunals Centre
Level 1, Chorus House
41 Federal Street
Auckland 1010 (Monday to Friday between 9am–4.30pm)

or be sent by post to:

Immigration and Protection Tribunal
DX EX 11086
Auckland 1010
New Zealand

or:

Fax: (09) 914-5263 (the original hard copy must follow).

or:

Email: IPT@justice.govt.nz (the original hard copy must follow).

[3.8] A notice of appeal should be accompanied by:

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

(b) two copies of any further information the appellant wishes to file; and

(c) the appropriate fee (NOTE: 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)).

[3.9] The Tribunal does not have jurisdiction to accept an appeal lodged out of 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, at their own expense. A minor (a person who is under 18 years of age and who is not married or in a civil union) must be represented by a responsible adult – (section 375).

5. SUBMISSIONS

[5.1] All submissions and evidence must be lodged within 21 days of the lodgement of the appeal. This is in order that:

(a) the Tribunal is fully informed when considering its absolute discretion to provide an oral hearing – (section 233(2)); and

(b) the Tribunal is able to consider and determine the appeal at the earliest opportunity – (section 223(1)).

[5.2] After the expiry of the 21-day period, the Tribunal has no obligation to delay making a decision to enable information or evidence to be lodged and will only do so in compelling circumstances. If an appellant wishes to apply for an extension of time to lodge submissions or evidence after the expiry of the 21-day period, the leave of the Tribunal must be sought, together with an explanation of why these could not have been lodged in time and when the submissions or evidence will be received by the Tribunal.

6. INFORMATION AND EVIDENCE

[6.1] As a general rule, 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).

[6.2] Two copies of all submissions, documents and other evidence must be filed.

6A. INFORMATION AND EVIDENCE SUBMITTED BY THE APPELLANT

[6A.1] It is the responsibility of an appellant to establish his or her case or claim and to ensure that all evidence and submissions are provided to the Tribunal before it makes its decision – (section 226(1)).

[6A.2] All statements must be signed and dated. Documentary evidence should be provided in an indexed, tabulated bundle. All documents should be single-sided.

[6A.3] All written evidence which is not in English must be accompanied by an accurate translation from a suitably qualified independent translator – (regulation 11).

[6A.4] The Tribunal does not require appellants to provide copies of its own decisions or New Zealand court authorities on established jurisprudence. It does require two copies of foreign court decisions and New Zealand court authorities on novel points of law.

[6A.5] Where an appellant seeks to adduce evidence in electronic format (ie, video clips, websites etc), he/she is normally expected to provide such information on a flash drive, CD or DVD and should check with the case manager in advance as to the compatibility of the file type and format with the Tribunal's systems.

6B. INFORMATION AND EVIDENCE GATHERED BY THE TRIBUNAL

[6B.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).

[6B.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).

[6B.3] To assist it to determine an appeal or matter, the Tribunal may require the appellant to allow biometric information to be collected from him or her – (section 232).

6C. INFORMATION AND EVIDENCE PROVIDED BY IMMIGRATION NEW ZEALAND

[6C.1] The Minister or chief executive may also, in the time allowed by the Tribunal, lodge with the Tribunal any other evidence or submissions – (section 226(3)).

[6C.2] Where an appeal is lodged, the chief executive must, in the time allowed by the Tribunal, lodge with the Tribunal any relevant files – (section 226(2)(b)). The relevant files include any temporary visa file and/or residence file, and records and electronic notes held by Immigration New Zealand concerning the appellant, where they are disclosable. 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 [6C.3].

[6C.3] The Tribunal may require the chief executive to seek and provide information, but no party may request the Tribunal to exercise this power – (section 229).

7. HUMANITARIAN APPEALS LODGED WITH REFUGEE AND PROTECTION APPEALS

[7.1] This section must be read in conjunction with Practice Note 2/2019 (Refugee and Protection).

[7.2] A person who lodges a refugee and protection appeal may also lodge a humanitarian appeal if he or she:

(a) is liable for deportation and entitled to a humanitarian appeal in respect of that liability; or

(b) would be entitled to a humanitarian appeal if he or she became liable for deportation– (section 194(5)).

[7.3] The person must lodge the humanitarian appeal at the same time as the refugee and protection appeal (that is to say, within the 10 days within which the refugee and protection appeal must be filed) – (section 194(6)).

[7.4] Where a person lodges such a humanitarian appeal, the Tribunal will consider the refugee and protection appeal first. Where the refugee and protection appeal is successful, the humanitarian appeal will be dispensed with. Where the refugee and protection appeal is unsuccessful, the Tribunal will then proceed to consider the humanitarian appeal – (sections 194(6) and 195(7)). The humanitarian appeal may be considered by the same member of the Tribunal or it may be considered by a different member. Allocation of appeals to members is a matter of the Chair's discretion – (section 220(2)(c)).

[7.5] In the case of a humanitarian appeal under section 194(6) or section 195(7), all submissions and evidence should be lodged within 21 days of the lodgement of the appeal. This is in order that:

(a) the Tribunal is fully informed when considering its absolute discretion to provide an oral hearing; and

(b) the Tribunal is able to consider and determine the appeal at the earliest opportunity – (section 223(1)).

[7.6] If the person is:

(a) successful on the refugee and protection appeal, the humanitarian appeal will be dispensed with: or

(b) unsuccessful on the refugee and protection appeal, the Tribunal must consider the humanitarian appeal – (section 194(6)). In such a case, the Tribunal will normally notify the person of a further time period for lodging any additional submissions or documents relevant to the humanitarian appeal, at the time the person is notified that the refugee and protection appeal is dismissed.

[7.7] If the person does not lodge a humanitarian appeal at the same time as the refugee and protection appeal, he or she is not entitled to a humanitarian appeal, whether the liability currently exists or may arise in the future – (section 194(7)). If, however, the appeal arises from a fresh ground of deportation liability, a further appeal against deportation liability may be lodged – see *DZ (Sri Lanka) (Decision on jurisdiction)* [2017] NZIPT 502646, 502661 and 502900.

[7.8] If the person withdraws his or her refugee and protection appeal before it is determined:

(a) If eligibility to lodge a humanitarian appeal arose under section 194(5)(a) or section 195(6)(a), the Tribunal will continue to have jurisdiction to consider the humanitarian appeal, because the person was, at the time of lodgement, entitled to lodge an appeal against deportation liability under some other provision of the Act.

(b) If eligibility to lodge a humanitarian appeal arose under section 194(5)(b) or section 195(6)(b), the Tribunal will have no jurisdiction to consider the humanitarian appeal but he or she will be entitled to lodge a deportation appeal at that later time, in the normal manner and subject to the relevant statutory requirements – see *AN (Sri Lanka)* [2012] NZIPT 500590 (in respect of first appeals) and *AJ (South Africa)* [2012] NZIPT 500298(M) (in respect of subsequent appeals).

[7.9] A person who was not eligible to lodge a humanitarian appeal under section 194(6) or section 195(7) is sometimes given a temporary visa at a later date by Immigration New Zealand. That late-acquired lawful status does not then give rise to a right to lodge a humanitarian appeal under section 194(6) or section 195(7) – see *AD (Pakistan)* [2011] NZIPT 500644. The right to later lodge a humanitarian appeal under section 154, after becoming unlawfully in New Zealand, is not affected.

[7.10] A person who has already had a humanitarian appeal under section 194(6) or section 195(7) determined (or who was eligible to lodge such an appeal, but did not), may lodge a further humanitarian appeal if, and only if, the eligibility to do so arises from a fresh or different instance of deportation liability – see *DZ (Sri Lanka*) *(Decision on jurisdiction)* [2017] NZIPT 502646, 502661 and 502900.

Examples:[1]

Lawful →				Unlawful →				
Refugee and Hum 1 lodged (eligible because lawful)	Refugee declined	Hum 1 declined			Hum 2 lodged			No jurisdiction to accept Hum 2

Lawful →				Unlawful →				
Refugee lodged (eligible because lawful but did not lodge a Hum)	Refugee declined				Hum lodged			No jurisdiction to accept Hum

[1] In this table, "temp visa" means "temporary visa" "refugee" means refugee and protection appeal" and "Hum" means "humanitarian appeal against deportation liability".

Unlawful →								
Refugee and Hum 1 lodged (eligible because became unlawful within 42 days)	Refugee declined	Hum 1 declined			Hum 2 lodged			No jurisdiction to accept Hum 2

Unlawful →								
Refugee lodged (eligible because within 42 days but did not lodge a Hum)	Refugee declined				Hum lodged			No jurisdiction to accept Hum

Unlawful →								
Refugee lodged (not eligible to lodge Hum as became unlawful more than 42 days ago)	Refugee declined				Hum lodged			No jurisdiction to accept Hum

Unlawful →				Lawful →				
Refugee lodged (not eligible to lodge Hum as became unlawful more than 42 days ago)	Refugee declined			Temp visa granted	Hum lodged			No jurisdiction to accept Hum <u>at this time</u> *- AD (Pakistan)*

Unlawful →				Lawful →		Unlawful →		
Refugee lodged (no Hum - not eligible as became unlawful more than 42 days ago)	Refugee declined			Temp visa granted		Hum lodged		Jurisdiction to accept Hum (if within 42 days of becoming unlawful) *- AD (Pakistan)*

Lawful →				Unlawful→	Lawful →	Unlawful →		
Refugee and Hum 1 lodged (eligible because lawful)	Refugee declined	Hum 1 declined			Temp visa granted	Hum 2 lodged		Jurisdiction to accept Hum 2 (if within 42 days of becoming unlawful again) *- DZ (Sri Lanka)*

Unlawful →					Lawful →	Unlawful →		
Refugee and Hum 1 lodged (eligible because became unlawful within 42 days)	Refugee declined	Hum 1 declined			Temp visa granted	Hum 2 lodged		Jurisdiction to accept Hum 2 (if within 42 days of becoming unlawful again) *- DZ (Sri Lanka)*

8. SPECIAL NEEDS OF APPELLANTS

[8.1] The Tribunal endeavours to accommodate the special needs of appellants, such as those with a disability, and expects to receive advance notice of any such needs.

9. FAMILY APPEALS AND CHILDREN

[9.1] In the case of a person unlawfully in New Zealand, a deportation (non-resident) appeal may include any of the appellant's dependent children, if:

(a) 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 – (regulation 7(1)); and

(b) the child is also unlawfully in New Zealand and is entitled to lodge a deportation (non-resident) appeal.

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).

[9.2] In the case of a temporary visa holder who has been served with a deportation liability notice, separate appeals must be lodged by any of the appellant's dependent children who have also been served with a deportation liability notice. However, if a 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.

[9.3] A deportation (non-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 6(1)).

[9.4] If a notice of appeal relates to more than one person:

(a) the principal appellant must sign the notice of appeal; and

(b) the appeal will be treated as an appeal by all of the persons specified in the notice of appeal, unless the principal appellant states otherwise in that notice – (regulation 6(2)).

[9.5] Where two or more members from the same family each lodge an appeal and the claims relate to substantially the same set of circumstances, the Chair of the Tribunal may direct that the appeals be determined by the same member and/or that they be determined together – (section 223(2) and (3)).

[9.6] Where multiple family members have appeals pending, they should advise the Tribunal as early as possible of any objections they may have to the appeals being considered together.

[9.7] Where proceedings before the Tribunal relate to a minor (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 and adult relatives of the minor known to the Tribunal.

10. CONTACT ADDRESS

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

[10.2] The appellant, affected person or applicant may substitute a different contact address at any time, by giving notice in writing to the Tribunal – (section 387A(6)).

[10.3] The appellant, affected person or applicant must notify the Tribunal in a timely manner, of a change in either of those addresses – (section 225(2)(b)).

[10.4] 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)).

[10.5] 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).

[10.6] 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).

[10.7] 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).

11. OFFICIAL INFORMATION ACT AND PRIVACY ACT REQUESTS

[11.1] 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 1993 – (section 2(1)(b)(viii) of that Act).

[11.2] Where an appellant wishes to obtain access to documents in relation to a deportation (non-resident) appeal, after the decision has been delivered, such a request is appropriately made to the Ministry, to whom the Immigration New Zealand file will have been returned. Copies of all documents which were before the Tribunal are included on the Immigration New Zealand file.

STEPS PENDING DETERMINATION

12. TIME LIMITS SET BY THE TRIBUNAL

[12.1] Where the Tribunal allows time for the filing of any submissions, documents or other evidence, any request for an extension of the time allowed must be made in writing, within the period of time allowed, and must provide cogent reasons for the extension sought. An indication of the time within which the Tribunal's direction will be complied with must also be given.

13. MULTIPLE APPEALS BY ONE PERSON

[13.1] Where a person has more than one appeal with the Tribunal (whether at the same time or at different times) they must inform the Tribunal at the earliest opportunity.

14. POWER TO ISSUE A SUMMONS

[14.1] While deportation (non-resident) appeals are normally determined on the papers, and there is therefore no need for a witness to be summonsed, the Tribunal may, either of its own motion or on application, issue in writing a summons requiring any person to give evidence by statement, and to produce any relevant papers, documents, records or things in that person's possession or control – (clause 11, Schedule 2).

[14.2] A witness under a summons is entitled to be paid witnesses' fees, allowances and expenses in accordance with the scales prescribed by regulations under the Summary Proceedings Act 1957 – (clause 16(1), Schedule 2). The relevant regulations are the Witnesses and Interpreters Fees Regulations 1974 (SR 1974/124). 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).

[14.3] An application for the issue of a witness summons must be in writing and supported by submissions as to the nature of the evidence intended to be given, its relevance, and any communications with the intended witness. 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 his or her possession or control, full particulars must also be given.

[14.4] 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.

[14.5] 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 it is not established that the intended witness is able to give relevant and probative evidence, where there has been an abuse of process, where the summons was irregularly obtained or issued, or where the summons was taken out for a collateral motive or is oppressive.

15. WITHDRAWAL OF APPEAL

[15.1] A deportation (non-resident) appeal may be withdrawn by the appellant at any time – (section 238(1)). Following a withdrawal, the person may be served with a deportation order and the person's deportation may be executed – (section 238(3)).

[15.2] A deportation (non-resident) appeal is deemed to be withdrawn when the person leaves New Zealand – (section 239(1)). In determining whether a person has left New Zealand, the Tribunal may rely on a certificate made under section 366(2)(17) – (section 239(3)).

[15.3] If an appeal is withdrawn (or deemed to be withdrawn), the decision appealed against stands – (section 238(4)) and the filing fee will not be refunded.

DETERMINATION

16. ORDER OF DETERMINATION AND REQUESTS FOR PRIORITY

[16.1] 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)).

[16.2] 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 by any relevant evidence in support. The request should be addressed to the Chair of the Tribunal.

17. ENQUIRIES ABOUT DELIVERY OF DECISION

[17.1] The Tribunal's website provides updated information as to the current estimated timeframe for determining deportation (non-resident) appeals. This information is provided to assist appellants in working out broadly when to expect a decision. It is kept as accurate as possible but is subject to exceptions and should be treated as a 'best endeavours' guide.

[17.2] 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, the appeal number and a cogent reason why the advice is being sought. Only one such enquiry in relation to any appeal is permitted.

[17.3] The Tribunal will respond to the enquiry in writing and not by telephone. The response will be a "best estimate" only. No information as to outcome will be given.

18. DECISIONS

[18.1] The Tribunal normally determines a deportation (non-resident) appeal on the papers – (section 234(2)). However, it has an absolute discretion to provide an oral hearing, if it determines to do so – (section 233(2)).

[18.2] If the Tribunal exercises its absolute discretion to provide an oral hearing, the procedures set out in Practice Note 1/2019 – Deportation (Resident) will apply, with any necessary modifications.

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

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

[18.5] Every decision of the Tribunal must be given in writing and contain reasons – (clause 17(3), Schedule 2).

[18.6] Notice of a decision on a deportation (non-resident) appeal may be given by courier (sections 4 and 386A) or, where the person has designated an electronic address as his or her contact address, by email – (section 387A). It will be sent to a lawyer or agent where the lawyer or agent has signed a memorandum stating that he or she accepts 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;

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

AFTER THE DECISION

19. PUBLICATION OF DECISIONS

[19.1] Decisions of the Tribunal are normally publicly available, unless the Tribunal makes an order prohibiting the publication of the same – (clause 18(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.

[19.2] Research copies of decisions on deportation (non-resident) appeals are not normally depersonalised by the Tribunal.

20. RETURN OF EVIDENCE

[20.1] Any person who has provided original documents to the Tribunal in the course of the appeal will have them returned with or after the decision. Original documents on the Immigration New Zealand file will be returned with the file to Immigration New Zealand and appellants should direct any requests for their return to that body.

21. APPEAL TO HIGH COURT AND APPLICATIONS FOR JUDICIAL REVIEW

[21.1] A decision by the Tribunal is final, once notified – (clause 17(6), Schedule 2).

[21.2] Where extrinsic evidence establishes when notice was actually 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 [18.6] above). If there is no such extrinsic evidence, it is deemed to have been received 3 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) – (section 386A(4)).

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

[21.4] 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)).

[21.5] 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)).

[21.6] 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).

[21.7] 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 P Spiller
Chair
Immigration and Protection Tribunal