

12 April 2018

Minja Pesic
Service Manager, Tribunals
Ministry of Justice
DX EX 11086
Auckland

By email: minja.pesic@justice.govt.nz

Dear Minja

Immigration Protection Tribunal – draft Practice Notes 1 – 4, 2018

The New Zealand Law Society welcomes the opportunity to comment on the Immigration and Protection Tribunal’s draft Practice Notes for 2018. The Law Society notes the draft Practice Notes are in a substantially similar form to the existing 2017 versions, with minor updates intended to clarify:

- the time for filing appeals, both to the Tribunal and to the High Court;
- the ability to have a second humanitarian appeal;
- the issue whether an extension of time to lodge a refugee and protection appeal can include an extension for lodgement of an accompanying humanitarian appeal; and
- the ability of appellants to adduce electronic evidence and the mechanisms for doing so.

The Law Society recommends a few amendments, as noted below, to assist with clarity and consistency.

Preamble (Practice Notes 1 – 4)

The Preamble outlines the purpose of each Practice Note to provide guidance to users, including the following paragraph:

“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.”

The Practice Notes subsequently refer to “Schedule 2”; it would be helpful for the Preamble to specify that this is Schedule 2 of the Immigration Act 2009. The Law Society suggests the following sentence is added:

*“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”.***

Notice of appeal (Practice Notes 1 – 4)

Each of the Practice Notes contains a “Notice of Appeal” section. Currently only Practice Notes 2 – 4 include information on when the time to appeal begins (depending on whether notice is given by registered letter or courier, or by email). For consistency and clarity, the same “time to appeal” provision should be in all Practice Notes. This recommendation has been included as a tracked change to Practice Note 1.

Sitting hours (Practice Notes 1 – 2)

Practice Notes 1 (Deportation-Resident) and 2 (Refugee/Protection) contain relevant information about the hearing including the applicable sitting hours.¹ These Practice Notes provide for 15 – 20 minute breaks at approximately 11.30am and 3.30pm to allow appropriate rest for witnesses and interpreters, but there is no mention of a lunch adjournment. The Tribunal may wish to consider specifying approximate times for the lunch adjournment.

Delivery of decisions (Practice Notes 1 – 4)

Practice Notes 1 – 4 include relevant information regarding the decision of the Tribunal,² including that each decision will be delivered to the appellant through their representative (if any) and to the other party. It would be helpful, particularly to self-represented appellants, for the standard method of delivery to be specified (for example, by registered post). This would bring certainty to the calculation of time for filing appeals.

Minor drafting

Further minor drafting recommendations have been included as tracked changes to each Practice Note. These include:

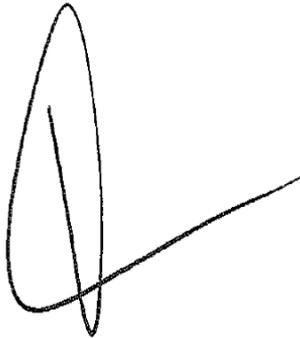
- a) Paragraph 6.3 in Practice Note 1 should refer to Regulation 7(1), rather than regulation 6(1).
- b) Paragraph 9.2 in Practice Note 1 should refer to Deportation (*Resident*), not non-resident.
- c) Paragraph 11.1 in Practice Note 1 should refer to *clause* 8.
- d) The reference in paragraph 17.2 in Practice Note 1 should be to *section 239(1)*.
- e) There is a duplication in Practice Note 1 at [27.1] and [31.1].
- f) Paragraph 34 in Practice Note 1 should also reference paragraph 3.1.
- g) Paragraph 9.4(b) of Practice Note 4 should read “*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))*”.

¹ Practice Note 1/2018 (Deportation – Resident) [18] and Practice Note 2/2018 (Refugee and Protection) [18].

² Practice Note 1/2018 (Deportation – Resident) [32.3]; Practice Note 2/2018 (Refugee and Protection) [32.2]; Practice Note 3/2018 (Residence) [17.4]; and Practice Note 4/2018 (Deportation – Non-resident) [18.5].

We hope you find these brief comments from the Law Society's Immigration and Refugee Law Committee helpful. If you have any questions, please do not hesitate to contact the committee convenor, Mark Williams, through the committee secretary Amanda Frank (04 463 2962, amanda.frank@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Andrew Logan
Vice President

Encl (4): draft Practice Notes 1 – 4 (tracked changes)