

31 May 2023

Minja Pesic  
Service Manager | Immigration & Protection Tribunal  
Ministry of Justice

By email: [Minja.Pesic@justice.govt.nz](mailto:Minja.Pesic@justice.govt.nz)

Tēnā koe Minja,

**Re: Immigration and Protection Tribunal – draft Practice Notes**

**1. Introduction**

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the following draft Practice Notes:

- a. Practice Note 1/2023 (Deportation – resident);
- b. Practice Note 2/2023 (Refugee and protection);
- c. Practice Note 3/2023 (Residence); and
- d. Practice Note 4/2023 (Deportation – non-resident).

1.2 This submission has been prepared with input from the Law Society’s Immigration & Refugee Law Committee.<sup>1</sup>

**2. Revised timeframes for filing submissions and evidence (Practice Notes 3 and 4)**

2.1 We appreciate that it may be helpful to reconcile the timeframes in the Residence Practice Note, and the Deportation (Non-Resident) Practice Note, to provide clarity and certainty to appellants and their representatives.

2.2 However, we are concerned the changes to the Residence Practice Note will result in shorter timeframes for filing submissions and evidence for residence appeals. We acknowledge that, in theory, the proposed changes appear to lengthen the timeframe for filing submissions and evidence from 42 days to 63 days. However, practitioners have informed us that the current practice is for the timetable (which includes deadlines for filing submissions and evidence) to be set when a matter is allocated to a Tribunal Member, rather than within the 42 days allowed for lodgement of the appeal.<sup>2</sup>

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<sup>1</sup> More information about this Committee can be found on the Law Society’s website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/immigration-and/>.

<sup>2</sup> Practice Note 3/2019 (Residence) at [5.1].

- 2.3 This practice gives appellants and their representatives the opportunity to:
- a. inform the Tribunal Member if they need more time to prepare submissions and evidence;
  - b. update the submissions and evidence to refer to any recent developments which may have occurred while the matter was awaiting allocation; and
  - c. agree on a realistic timetable which allows the appellant to present their case and all available supporting evidence.
- 2.4 In addition to impacting the preparation of submissions and supporting documentation, the feedback we have received suggests a shorter timeframe may also impact access to justice and the wellbeing of practitioners (particularly where a lawyer has a number of cases before the Tribunal with concurrent deadlines). Shorter timeframes, especially in the current environment, may lead to experienced practitioners leaving this practice area, or practitioners who were being trained up choosing not to continue with this work. This will likely lead to more unrepresented appellants, with real consequences for access to justice.
- 2.5 Therefore, our preference would be to retain the current practice of setting the timetable when a matter is allocated to a Tribunal Member. To ensure the just, speedy and efficient determination of matters, the Tribunal could consider imposing a timeframe for filing submissions and evidence *after* a matter is allocated to a Tribunal Member (e.g. of 12 working days).

### **3. Filing by email (Practice Note 2)**

- 3.1 We welcome the changes to clarify that an appeal may be filed by email. The proposed changes appropriately balance the requirement to ensure confidentiality of the appellant's identity and claim, against the need for efficient filing procedures in an electronic environment.
- 3.2 We also acknowledge that the revised Practice Notes no longer provide for filing by fax – we presume this omission is intentional. While we have no objections to this change, we would welcome any communications advising the public and the legal profession of this change (and note we are happy to assist with communicating this change to the profession when this Practice Note is finalised).

### **4. Provisions relating to Case Management Conferences (Practice Notes 1 and 2)**

- 4.1 We are pleased to see these Practice Notes now include provisions relating to case management conferences (**CMCs**). These provisions will help improve clarity and certainty regarding the Tribunal processes for these appeal streams.
- 4.2 We note that new clause [15.2(d)] of Practice Note 2 states the Tribunal expects the appellant (and respondent, as required) to be in a position to discuss the "details of witnesses to be called". It would be helpful to clarify what "details" the Tribunal expects the appellant to discuss on a CMC, and whether, for example, these details include the names of the witnesses, and the evidence that will likely be given by each witness.

**5. Requirements relating to bundles and hyperlinks (Practice Notes 3 and 4)**

5.1 We do not have any concerns regarding these changes. They are consistent with the procedural rules in other jurisdictions and will be familiar to all practitioners.

5.2 However, it is important to note our comments below regarding bundle sizes (as these new requirements will likely affect the size of electronic bundles, and therefore, the ability to upload bundles via to the Tribunal's electronic filing system).

**6. Electronic filing – size limit**

6.1 Practitioners have informed us that the Tribunal's electronic filing system only allows documents to be filed electronically if they are below a certain size limit (which we understand to be between 20 – 24MB). However, most bundles far exceed this limit (even when compressed into a smaller file). This often leads to difficulties in filing documents electronically, and requires documents to be split into multiple, smaller files.

6.2 We acknowledge the Practice Notes do not set requirements relating to file sizes. However, we raise this issue here because the new requirement for bundles to be tabulated, paginated and hyperlinked will likely result in larger bundles, and lead to further difficulties in uploading and filing documents electronically. Hyperlinks may also fail to work if a bundle is split into multiple files after it is finalised, and it may be difficult to subsequently create new hyperlinks to documents located in a separate, smaller bundle.

6.3 Therefore, we invite the Tribunal to consider increasing the file size limit to ensure bundles can be uploaded as a single document that is tabulated, paginated and hyperlinked, as required.

**7. Next steps**

7.1 We hope this feedback is helpful. If the Tribunal has any questions, or if further discussion would assist, please feel free to contact me via Law Society Law Reform & Advocacy Advisor, Nilu Ariyaratne ([Nilu.Ariyaratne@lawsociety.org.nz](mailto:Nilu.Ariyaratne@lawsociety.org.nz)).

7.2 As mentioned above, we are also happy to communicate these changes to the legal profession once the Practice Notes are finalised.

Nāku noa, nā



Mark Williams

**Convenor, Immigration and Refugee Law Committee**