IMMIGRATION AND PROTECTION TRIBUNAL
Rōpū Take Manene, Take Whakamaru

PRACTICE NOTE 2/2023

(REFUGEE AND PROTECTION)

1 July 2023

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PREAMBLE

1. COMMENCEMENT

PRELIMINARY MATTERS

2. JURISDICTION
3. NOTICE OF APPEAL
4. APPLICATIONS FOR LEAVE TO APPEAL OUT OF TIME
5. DEPORTATION APPEAL ON HUMANITARIAN GROUNDS
6. REPRESENTATION
7. CONTACT ADDRESS
8. FAMILY APPEALS AND CHILDREN
9. SPECIAL NEEDS OF APPELLANTS
10. OFFICIAL INFORMATION ACT AND PRIVACY ACT REQUESTS
11. ORDER OF DETERMINATION AND REQUESTS FOR PRIORITY
12. SUBMISSIONS AND EVIDENCE
    - 12A. SUBMISSIONS AND EVIDENCE PROVIDED BY THE APPELLANT
    - 12B. EVIDENCE GATHERED BY THE TRIBUNAL
    - 12C. SUBMISSIONS AND EVIDENCE PROVIDED BY THE RESPONDENT
13. WITHDRAWAL OF APPEAL OR MATTER

PREPARING FOR THE HEARING

14. HEARINGS TO BE ORAL
15. CASE MANAGEMENT CONFERENCE(S) AND TIMETABLING
16. POWER TO ISSUE A SUMMONS
17. ADJOURNMENTS

THE HEARING

18. SITTING HOURS
19. HEARING *DE NOVO*
20. GENDER ISSUES
21. HEARINGS INFORMAL
22. HEARINGS NOT OPEN TO PUBLIC
23. OBSERVERS

24. INTERPRETERS
25. OATHS AND AFFIRMATIONS
26. HEARINGS PRIMARILY INQUISITORIAL
27. PROCEDURE AT HEARING
28. PERSONS IN CUSTODY – SECURITY
29. FAILURE TO APPEAR

AFTER THE HEARING

30. POST-HEARING EVIDENCE
31. REQUEST FOR RECORDING OF THE HEARING
32. ENQUIRIES ABOUT DELIVERY OF DECISION
33. DECISIONS
34. RETURN OF DOCUMENTS
35. APPEAL TO HIGH COURT AND APPLICATIONS FOR JUDICIAL REVIEW

PREAMBLE

This Practice Note is issued pursuant to section 220(2)(a) of the Immigration Act 2009 ("the Act"). It is effective for all refugee and protection appeals and for deportation (non-resident) appeals lodged simultaneously by the appellants pursuant to section 194(6) or 195(7). Such deportation (non-resident) appeals are also subject to Practice Note 4/2023 (Deportation – Non-resident).

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 appearing in person before the Tribunal. The Tribunal expects compliance with the procedures set out in order to facilitate the Chair's statutory direction to ensure that refugee and protection 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, "Provisions Relating to Tribunal". 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;
- "**claim**" means a claim to be recognised as a refugee or protected person;
- **"deportation (non-resident) appeal"** means an appeal against deportation liability by a person who is not a New Zealand resident or citizen;
- "**fraud or the like**" means fraud, forgery, false or misleading representation, or concealment of relevant information;
- "**humanitarian appeal**" means a deportation (non-resident) appeal brought on humanitarian grounds;
- "**in-person hearing**" means an appeal hearing which takes place at the Tribunal's premises or in another designated venue such as a District Court

where the member, appellant and any counsel or representative and/or interpreter are physically present for the conduct of the hearing.

- "**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;
- "**Refugee Convention**" means 1951 *Convention Relating to the Status of Refugees*;
- "**Refugee Status Unit**" includes the Unit's former name "Refugee Status Branch";
- "**remote hearing**" means an appeal hearing is held using audio-visual (AV) technology at which the member participates from a separate location to that of the appellant and any counsel and/or interpreter;
- "**resident**" means a residence class visa holder; and
- "**respondent**" means the Minister, the Ministry, Immigration New Zealand, an immigration officer or a refugee and protection officer, as appropriate to the context.

1. COMMENCEMENT

[1.1] This Practice Note takes effect from 1 July 2023 and replaces Practice Note 2/2019 (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 refugee and protection appeals, are to determine appeals against decisions:

(a) in relation to recognition as a refugee or protected person;

(b) to cease to recognise a person as a refugee or protected person; or

(c) to cancel the recognition of a person as a refugee or protected person.

[2.3] More specifically, the functions of the Tribunal are:

(a) To determine any appeal against a decision by a refugee and protection officer:

(i) to decline a claim to be recognised as a refugee or protected person — sections 194(1)(c) and 217(2)(a)(ii);

(ii) to decline to accept for consideration a claim on the grounds that, in light of an international arrangement or agreement, the person may have lodged (or had the opportunity to lodge) a claim for refugee or protected person status in another country — sections 194(1)(a) and 217(2)(a)(ii);

(iii) to decline to accept for consideration a claim on the grounds that, one or more of the circumstances relating to the claim were brought about by the appellant acting otherwise than in good faith; and for a purpose of creating grounds for recognition as a refugee or protected person — sections 194(1)(b) and 217(2)(a)(ii));

(iv) to decline a subsequent claim — sections 195(2) and 217(2)(a)(ii));

(v) to refuse to consider a subsequent claim on the grounds that:

(1) there has not been a significant change in circumstances since the previous claim was determined;

(2) the change in one or more circumstances was brought about by the person not acting in good faith and was for a purpose of creating grounds for recognition as a refugee — sections 195(1)(a) and 217(2)(a)(ii); or

(3) it is manifestly unfounded or clearly abusive or repeats a previous claim (but only where the most recent previous claim was declined under Part 6A of the Immigration Act 1987) — sections 195(1)(b) and 217(2)(a)(ii);

(vi) to cease to recognise a person as a refugee or protected person because either:

(1) the Refugee Convention has ceased to apply to the person in terms of Article 1C; or

(2) there are no longer substantial grounds for believing that they, if deported, would be in danger of (as relevant) being subjected to torture or to arbitrary deprivation of life or cruel treatment — sections 194(1)(d) and 217(2)(a)(iii);

(vii) to cancel recognition of a New Zealand citizen as a refugee or protected person because either:

(1) recognition may have been procured by fraud or the like;

(2) the person has been convicted of an offence where it is established that they acquired recognition as a refugee or a protected person by fraud or the like; or

(3) the matters dealt with in Articles 1D, 1E and 1F of the Refugee Convention may not have been able to be properly considered for any reason (including fraud or the like); and

the person is found not to be a refugee or protected person. — sections 194(1)(e) and 217(2)(a)(iv).

(b) To determine any application made by a refugee and protection officer in relation to:

(i) the cessation of recognition of a person as a refugee, where that recognition was originally determined by the Tribunal or by the Refugee Status Appeals Authority on the grounds that either the Refugee Convention has ceased to apply to the person in terms of Article 1C, or there are no longer substantial grounds for believing that the person, if deported, would be in danger of (as relevant) being subjected to torture or to arbitrary deprivation of life or cruel treatment — sections 144 and 217(2)(b)(i);

(ii) the cancellation of recognition of a New Zealand citizen as a refugee or protected person, where that recognition was originally determined by the Tribunal or by the Refugee Status Appeals Authority on the grounds that either:

(1) recognition may have been procured by fraud or the like;

(2) the person has been convicted of an offence where it is established that the person acquired recognition as a refugee or a protected person by fraud or the like; or

(3) the matters dealt with in Articles 1D, 1E and 1F of the Refugee Convention may not have been able to be properly considered for any reason (including fraud or the like); and

(4) the Tribunal determines that the person is not a refugee or protected person — sections 147 and 217(2)(b)(ii).

(c) To deal with certain transitional matters arising from the repeal of the Immigration Act 1987 — section 217(2)(c).

[2.4] 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).

[2.5] 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 or affected person has been notified of the decision — clause 17(6), Schedule 2.

3. NOTICE OF APPEAL

[3.1] In the case of a person in detention under Part 9 of the Act, an appeal must be brought within 5 working days after the date on which the person is notified of the decision to which the appeal relates — section 194(2)(a).

[3.2] In any other case, an appeal must be brought within 10 working days after the date on which the person is notified of the decision to which the appeal relates — section 194(2)(b).

[3.3] Where extrinsic evidence establishes when notice was actually given of the Refugee Status Unit decision (or other document), the time for appeal runs from that date — see *Rao v Minister of Immigration* [2015] NZHC 2669. Where notice was given:

(a) by registered letter or courier, the time for appeal runs from delivery of the Refugee Status Unit decision to the person's contact address; or

(b) by email, the time for appeal runs from delivery of the Refugee Status Unit 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 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).

[3.4] An appeal may be filed in person, or by post or courier, or electronically. A notice of appeal must be received by the Tribunal within the relevant time limit. It is not sufficient to have put it in the post or to have given it to a courier by that date.

[3.5] The Tribunal may extend the time for lodging a refugee and protection appeal, if satisfied that special circumstances warrant an extension — section 194(3). See further at [4.1]–[4.4] below.

[3.6] The notice of appeal should be on the approved form — section 381, regulation 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 and be signed by the appellant.

[3.7] A notice of appeal should be accompanied by all or any of the following, to the extent they are applicable:

(a) a copy of the decision appealed against;

(b) two copies of the pages of the appellant's passport showing the biographical details and photograph, and any expired or unexpired visa; 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.

[3.9] Given the statutory requirement for confidentiality as to a claimant's identity and claim (section 151), and the insecurity of email and the like, care must be taken when communicating with the Tribunal through the use of email or other electronic forms of communication in the course of refugee and protection appeals. **When communicating electronically with the Tribunal, only the appeal number is to be used to identify the appeal to which the communication relates. The appellant's name should not routinely be included in the communication, notwithstanding that it may be included in attachments, of necessity.** The Tribunal will not refuse to receive communications made in violation of this direction but, given the objective of compliance with section 151 and the protection of appellants and others, it expects the highest possible level of compliance.

4. APPLICATIONS FOR LEAVE TO APPEAL OUT OF TIME

[4.1] Where an appeal is received out of time, that fact will be communicated to the appellant. If the appellant wishes to seek leave to appeal out of time they must, within 5 working days of being notified that the appeal is out of time, file an application for leave to appeal out of time.

[4.2] The application for leave to appeal out of time must be supported by a cogent explanation of the reasons why the time limit was not complied with and the special circumstances relied upon. The application should also include a copy of the Refugee Status Unit decision appealed against and the reasons why it is considered that they has a *bona fide* claim to refugee status or protected person status.

[4.3] Applications for leave to appeal out of time may be decided by the Tribunal on the papers or by setting the application down for an oral hearing. Where the matter is set down, the Tribunal will usually hear the application for leave and then, if appropriate, proceed immediately with the hearing of the appeal itself. Intending appellants and their representatives must therefore be ready to proceed with the hearing of the full appeal immediately after the hearing of the leave application.

[4.4] Where a refugee and protection appeal is lodged out of time, and the Tribunal exercises its discretion under section 194(3) (or section 195(4)) to extend time for lodgement of the appeal, an accompanying deportation (non-resident) appeal will be accepted only where:

(a) the person has a future liability for deportation (for example, because the person is lawfully in New Zealand at the date of lodgement); or

(b) if the person has a current liability for deportation, the accompanying deportation (non-resident) appeal form is filed within the period of time stipulated in the relevant section of the Act relating to the underlying deportation liability — see *AU (Afghanistan)* [2017] NZIPT 502815.

5. DEPORTATION APPEAL ON HUMANITARIAN GROUNDS

[5.1] This section must be read in conjunction with Practice Note 1/2023 (Deportation – Resident) and Practice Note 4/2023 (Deportation – Non-resident), which relate to deportation appeals.

[5.2] A person who lodges a refugee and protection appeal may also lodge a deportation (non-resident) appeal (hereafter referred to in this Practice Note as a "humanitarian appeal") if they:

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

(b) would be entitled to a humanitarian appeal if they became liable for deportation — section 194(5).

[5.3] The humanitarian appeal must assert any grounds the person has for considering that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the person to be deported from New Zealand and that it would not in all the circumstances be contrary to the public interest to allow the person to remain — section 207.

[5.4] The person must lodge the humanitarian appeal at the same time as the refugee and protection appeal (that is to say, within 5 working days of notification of the Refugee Status Unit decision, if the appellant is in custody; or 10 working days, if not) — section 194(2) and (6); or section 195(3) and (7).

[5.5] Where a person lodges such an appeal on humanitarian grounds, the Tribunal will consider the refugee and protection appeal first.

[5.6] In the case of a humanitarian appeal under section 194(6) or 195(7), all submissions and evidence should be lodged within 14 days of the lodgement of the appeal. This is in order that:

(a) the Tribunal is fully informed when considering its absolute discretion whether or not to provide an oral hearing; and

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

The Tribunal will still accept and consider submissions and evidence lodged after the 14 days, if received before its decision is notified to the appellant — clause 17(6), Schedule 2.

[5.7] If the person is:

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

(b) unsuccessful on the refugee and protection appeal, the Tribunal must consider the humanitarian appeal — section 194(6) or 195(7). In such a case, after the hearing, the Tribunal will normally notify the appellant of a time period of 14 days (or any further period advised by the Tribunal) 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.

[5.8] The humanitarian appeal may be considered by the same member of the Tribunal who heard the refugee and protection appeal or by a different member. Allocation of appeals to particular members is a matter of the Chair's discretion — section 220(2)(c).

[5.9] In the case of a resident or permanent resident, the person is entitled to an oral hearing for the humanitarian appeal. If the person is not a resident or permanent resident, the humanitarian appeal will normally be decided on the papers. The Tribunal has an absolute discretion to provide an oral hearing in the case of any deportation appeal by a non-resident and an oral hearing may not be applied for — sections 11 and 233(2).

[5.10] If the person could have lodged, but does not lodge, a humanitarian appeal at the same time as lodging a refugee and protection appeal, they are not entitled to a humanitarian appeal whether the liability currently exists or may arise in the future — sections 194(7) and 195(8). If, however, a fresh ground of deportation liability arises, a further humanitarian appeal may be lodged — see *DZ (Sri Lanka)* [2017] NZIPT 502646, 502661 and 502900.

[5.11] If the person withdraws their refugee and protection appeal before it is determined:

(a) if an appellant's eligibility to lodge a humanitarian appeal arises under section 194(5)(a) or 195(6)(a), the Tribunal will continue to have jurisdiction to consider the humanitarian appeal, notwithstanding the withdrawal of the refugee and protection appeal, because the person was, at the time of lodgement of the humanitarian appeal, entitled to lodge an appeal against deportation liability under some other provision of the Act;

(b) if an appellant's eligibility to lodge a humanitarian appeal arises under section 194(5)(b) or 195(6)(b), the Tribunal will have no jurisdiction to consider the humanitarian appeal but they will, at a future date, be entitled to lodge a deportation appeal if and when they later become liable for deportation, in the normal manner and subject to the relevant statutory requirements — see *AN (Sri Lanka)* [2012] NZIPT 500590 (in respect of humanitarian appeals lodged with first refugee and protection appeals) and *AJ (South Africa)* [2012] NZIPT 500298 (in respect of humanitarian appeals lodged with subsequent refugee and protection appeals).

[5.12] A person who was not eligible to lodge a humanitarian appeal under section 194(6) or 195(7) is sometimes granted a temporary visa at a later date by Immigration New Zealand. That late-acquired lawful status does not then give rise to a right at that time to lodge a humanitarian appeal under section 194(6) or 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.

[5.13] A person who has already had a humanitarian appeal under section 194(6) or 195(7) determined (or who was eligible to lodge such an appeal, but did not), may lodge a further humanitarian appeal only if the eligibility to do so arises from a fresh or different instance of deportation liability — see *DZ (Sri Lanka*) [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

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)*

6. REPRESENTATION

[6.1] 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

[1] In this table, "temp visa" means "temporary visa", "refugee" means refugee and protection appeal" and "hum" means "humanitarian appeal".

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.

[6.2] 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 normally to be represented by one of the minor's parents 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.

[6.3] 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. A hearing will not normally be delayed solely on the ground that a legal aid application has not been determined.

7. CONTACT ADDRESS

[7.1] 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).

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

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

[7.4] 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).

[7.5] 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.

[7.6] 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.

[7.7] 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.

[7.8] 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).

8. FAMILY APPEALS AND CHILDREN

[8.1] A notice of appeal must relate to one person only — regulation 5(1).

[8.2] Where two or more members of the same family lodge refugee and protection appeals, the Tribunal will hear all of the appeals together, unless it is not practicable to do so or there is some other compelling reason not to do so.

[8.3] 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.

[8.4] For the rules relating to the inclusion of spouses, partners and/or dependent children in a humanitarian appeal under section 194(5) or 195(6), see [7] of Practice Note 4/2023.

9. SPECIAL NEEDS OF APPELLANTS

[9.1] 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.

10. OFFICIAL INFORMATION ACT AND PRIVACY ACT REQUESTS

[10.1] 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.

11. ORDER OF DETERMINATION AND REQUESTS FOR PRIORITY

[11.1] 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).

[11.2] 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.

12. SUBMISSIONS AND EVIDENCE

[12.1] In the case of a refugee and protection 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.

12A. SUBMISSIONS AND EVIDENCE PROVIDED BY THE APPELLANT

[12A.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).

[12A.2] Documentary evidence should be provided in an indexed, tabulated bundle. A further indexed, tabulated bundle should be provided for any country information. All bundles filed must be accompanied by a contents page and relevant passages must be 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.

[12A.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.

[12A.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.

[12A.5] The Tribunal does not require parties to file copies of its 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.

[12A.6] Where because of the appeal proceeding by way of a remote hearing, or as an element of an in-person hearing, 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 case manager at the earliest opportunity.

[12A.7] All witnesses (including those giving evidence by telephone, or audio or audio-visual link) must provide a signed statement or, if unavailable, counsel should prepare a written brief of evidence, in advance of the hearing in accordance with [14] below. If giving evidence at a distance, the witness is expected 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 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.

[12A.8] 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 smart phone users can connect. Appellants wishing to access this facility must provide adequate notice and make the necessary arrangements with the case manager. 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.

[12A.9] The Tribunal expects appellants, the respondent, counsel and representatives to exercise judgment as to whether to call overseas witnesses at all and, if so, the number of witnesses to be called, particularly where it will be difficult to obtain a witness statement in accordance with [14] below in advance of the hearing and/or when time zone differences make it onerous for an overseas witness to give the entirety of their evidence in one sitting during the Tribunal's usual sitting hours. The evidence of an overseas witness must be relevant to the issues before the Tribunal. These matters will be discussed in the first case management conference (see [15.2] below).

[12A.10] 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. In all cases, appellants are expected to provide printed screenshots of relevant social media posts. If, in a hearing (whether remote or in-person), the media is to be viewed on the internet, then the appellant may provide their own internet access 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 can 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.

[12A.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.

[12A.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.

12B. EVIDENCE GATHERED BY THE TRIBUNAL

[12B.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.

[12B.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.

12C. SUBMISSIONS AND EVIDENCE PROVIDED BY THE RESPONDENT

[12C.1] Where a refugee and protection 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 of the Refugee Status Unit, any relevant temporary visa and/or resident visa file, and records and electronic notes held by the respondent, 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 [12B.1] above.

[12C.2] The respondent may, in the time allowed by the Tribunal, lodge evidence and submissions — section 226(3).

[12C.3] The Tribunal will normally provide a copy of the file of the Refugee Status Unit and any other relevant file to the appellant as soon as it is received.

[12C.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.

13. WITHDRAWAL OF APPEAL OR MATTER

[13.1] An appellant or applicant may at any time withdraw an appeal or matter (including any concurrent humanitarian 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 in respect of any humanitarian appeal will not be refunded.

[13.2] Any appeal (including any concurrent humanitarian appeal) is deemed to be withdrawn, if the appellant leaves New Zealand before a determination is made — section 239(1)(b) and (c).

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

PREPARING FOR THE HEARING

14. HEARINGS TO BE ORAL

[14.1] Subject to [14.2] below, the Tribunal must provide an oral hearing for any refugee and protection appeal or matter, unless the person was interviewed by a refugee and protection officer (or failed to take the opportunity of an interview) at first instance and the Tribunal considers the appeal or matter is *prima facie* manifestly unfounded or clearly abusive, or relates to a subsequent claim — section 233(3).

[14.2] The Tribunal has an absolute discretion whether or not to offer an oral hearing in the case of an appeal that relates to a subsequent claim — section 233(4).

[14.3] The Tribunal may determine any refugee and protection appeal on the papers if the person fails, without reasonable excuse, to attend a notified hearing — section 234(1).

[14.4] The respondent (whether the Minister, the chief executive, or a refugee and protection officer) is a party to every appeal — section 227. While the respondent's practice is not to appear at most refugee and protection appeals, it is open to the respondent to appear at any appeal if it deems it appropriate. Appellants and counsel

or representative should anticipate this possibility. The directions herein assume that the respondent intends to appear. In cases where the respondent does not appear, the directions should be read as modified accordingly.

[14.5] 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 first case management conference.

Trauma-informed Practice

[14.6] The Tribunal is aware that many appellants and witnesses have experienced trauma in the past linked to the circumstances of the refugee and protected person status claim. Trauma-informed hearing room practice for in-person hearings includes the adoption of trauma-informed questioning techniques by members. In all hearings, the Tribunal will endeavour to ensure that additional breaks are provided, as required, for appellants and witnesses when experiencing stress which impedes their ability to give their evidence.

[14.7] It is anticipated that any specific needs of an appellant will be discussed with the Tribunal at a Case Management Conference, and the Tribunal will endeavour to accommodate any reasonable adjustments.

15. CASE MANAGEMENT CONFERENCE(S) AND TIMETABLING

[15.1] Prior to the appeal hearing, the Tribunal will convene case management conferences (CMC) with the parties and/or their counsel or representatives. The first CMC will be scheduled by the Tribunal for a date arising 5 to 6 weeks after the date the notice of appeal was received. Ordinarily, as at the date of the first CMC, the appeal will have been set down for hearing.

[15.2] At the first CMC, it is expected that the appellant (and respondent, as required) will be in a position to discuss:

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

(b) whether the appellant or any witness has any particular vulnerability which might affect the taking of their evidence;

(c) whether the appellant has any religious practice (such as prayer times) which needs to be taken into account in the conduct of the appeal;

(d) 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;

(e) whether it is proposed to call expert evidence of any kind and the specific nature of that evidence;

(f) whether any additional days need to be allocated for the hearing; and

(g) any other issue which may affect the hearing proceeding on the scheduled date(s).

[15.3] A second CMC will be scheduled at a date approximately 4 weeks out from the date of hearing. The purpose of the second CMC is to:

(a) give timetabling directions as to the filing of evidence and submissions;

(b) provide the appellant with the name of the interpreter; and

(c) deal with any other matters since the first CMC which may affect the hearing proceeding on the scheduled date(s).

[15.4] The second CMC may be dispensed with by the Tribunal in cases where it has been possible to deal with matters (a) and (b) above at the first CMC and where the appellant has confirmed in writing that there are no matters which might affect the hearing proceeding on the scheduled date(s).

[15.5] In some circumstances, it may be necessary to hold the second CMC prior to this date, or for there to be more than one CMC. Where necessary, this will be discussed at the first CMC.

[15.6] Subject to any ruling by the Tribunal:

(a) The original plus one copy of all evidence (accompanied by an accurate translation if necessary), including statements by the appellant and all witnesses, which the appellant or the respondent wishes to produce are to be filed with the Tribunal at least 14 days before the hearing date (with a copy to the other party). The statement of the appellant should update the Tribunal on any relevant changes in their circumstances since the Refugee Status Unit decision. All statements shall include the declaration set out at [25.1] below.

(b) Two copies of any submissions are to be filed at least 3 working days before the hearing (with a copy to any 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 these timeframes will only be accepted with the leave of the Tribunal (see also [30.1] concerning evidence sought to be filed following an oral hearing).

In the case of an urgent hearing for persons in custody, the Tribunal may abridge the time between the CMC and the hearing or dispense with the CMC altogether.

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 for 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 any relevant or probative evidence; where there has been an abuse of process; where the summons was irregularly obtained or issued; 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 [6.3] 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 should also be copied to any 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. Counsel should advise the Tribunal at the first CMC of any vulnerability of an appellant or witness which needs to be taken into account. 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 variable start time will depend on the number and type of hearings on the day. The Tribunal will use its best endeavours to ensure that start times on any day promote confidentiality. 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. Any lack of adherence to the timetable risks compromising confidentiality.

19. HEARING *DE NOVO*

[19.1] All refugee and protection 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 are relevant to the Tribunal's statutory test 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); and rely on any conviction relied upon by a refugee and protection officer pursuant to section 145(b)(ii) or 147(2)(ii).

[19.2] The Tribunal will make a decision on the facts as found 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. GENDER ISSUES

[20.1] The appellant, counsel or representative should alert the Tribunal, well in advance of the hearing, to any specific gender-related factors so that appropriate arrangements can be made where possible.

[20.2] An interpreter of the appropriate gender will, where possible, be engaged where a claim involves allegations of sexual violence or abuse or similarly sensitive issues.

[20.3] When requested, the Tribunal will endeavour to ensure where possible that an appeal or matter is heard by a member of the gender requested by the appellant or a panel of members comprising at least one of the requested gender.

21. HEARINGS INFORMAL

[21.1] 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.

22. HEARINGS NOT OPEN TO PUBLIC

[22.1] Refugee and protection appeal hearings are not open to the public and must be conducted in private — section 151 and clause 18(3), Schedule 2. No person other than the appellant (and any accompanying custody officers), their counsel or representative and the interpreter is entitled to be present at a hearing without the permission of the member, who will ascertain the views of the appellant before any decision is made.

[22.2] The obligation of confidentiality imposed by the Act extends to all persons attending a hearing and those involved in the administration of the Act.

23. OBSERVERS

[23.1] An appellant may, with the leave of the member, have a friend or relative attend the hearing in support. Such person will not, without leave, be allowed to take part in the proceedings.

[23.2] United Nations High Commissioner for Refugees (UNHCR) is an *ex officio* (by virtue of holding another office) member of the Tribunal and may sit as a member in any hearing — section 219(1)(c). However, even if not sitting as a member, a UNHCR representative may, with the leave of the Tribunal, attend to observe any hearing at any time.

[23.3] A refugee and protection officer or other officers of the Ministry who wish to observe a hearing may do so with the leave of the Tribunal. Such person will not, without leave, be allowed to take part in the proceedings.

[23.4] From time to time, other persons (for example, judges or members from similar overseas tribunals, staff undergoing training and law students) may be invited

to observe a hearing. In these cases, the appellant's consent will be sought prior to the commencement of the hearing. Such persons will not be allowed to take part in the proceedings.

[23.5] In all cases, observers are bound by the obligation of confidentiality as per [22.2] above and will be required to give a written undertaking to that effect. The member may withdraw leave for an observer at any time.

24. INTERPRETERS

[24.1] 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 CMC, 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.

[24.2] 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.

25. OATHS AND AFFIRMATIONS

[25.1] Whether the witness intends to give evidence in person or not, every 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]
> ……"

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

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

26. HEARINGS PRIMARILY INQUISITORIAL

[26.1] Hearings before the Tribunal will, unless otherwise directed by the member, be conducted in an investigative or inquisitorial manner, in the order set out at [27.2] below — section 218(2).

27. PROCEDURE AT HEARING

[27.1] 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.

[27.2] 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.

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

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

(ii) the Tribunal to ask questions;

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

(iv) examination by the 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 the appellant's witnesses.

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

(g) Closing submissions for the appellant.

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

[27.4] 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.

[27.5] 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.

28. PERSONS IN CUSTODY — SECURITY

[28.1] Refugee and protection appeal hearings for persons in custody will normally be held in the District Court because of the security requirements.

[28.2] Where an appellant is serving a term of imprisonment or is in the custody of the Department of Corrections for any other reason 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.

[28.3] Matters such as where the appellant sits and whether they are 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.

[28.4] 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 [24.1], in the course of the interpreter's duties; and

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

29. FAILURE TO APPEAR

[29.1] 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

30. POST-HEARING EVIDENCE

[30.1] Appellants and counsel should come to all hearings ready to present all evidence to be relied upon. No evidence may be filed following the 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 any other party who has appeared.

31. REQUEST FOR RECORDING OF THE HEARING

[31.1] 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.

[31.2] The Tribunal will not normally 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.

32. ENQUIRIES ABOUT DELIVERY OF DECISION

[32.1] 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 (unless the enquiry is made by means of electronic communication as per [3.9] above), the appeal number and a cogent reason why the advice is being sought.

[32.2] 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.

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

33. DECISIONS

[33.1] A refugee and protection appeal is normally decided by one member of the Tribunal, unless the Chair directs otherwise because of exceptional circumstances — section 221.

[33.2] 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.

[33.3] 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.

[33.4] Notice of a decision on a refugee and protection 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.

[33.5] Decisions of the Tribunal are normally publicly available, unless the Tribunal determines otherwise. Research copies of decisions in relation to refugee and protection appeals are, however, edited to remove the name of the appellant and any particulars likely to lead to the identification of the appellant — section 151 and clause 18(4), Schedule 2. In some circumstances, it may be necessary to withhold publication of parts or all of the decision in the research copy in order to comply with the Tribunal's confidentiality obligations under the Act. Any application for the Tribunal to withhold some or all parts of a decisions from the research copy must be made either at the hearing or in writing as soon as practicable thereafter and be supported by cogent reasons. See Practice Note No 5/2018 on Publication.

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

[33.7] 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.

34. RETURN OF DOCUMENTS

[34.1] 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.

[34.2] When the Tribunal has determined an appeal, original documents on the Refugee Status Unit file (and any Immigration New Zealand file) will be returned with the file to the Refugee Status Unit (and to Immigration New Zealand). Appellants should direct any request for their return to that body, not the Tribunal.

35. APPEAL TO HIGH COURT AND APPLICATIONS FOR JUDICIAL REVIEW

[35.1] 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).

[35.2] Where extrinsic evidence establishes when notice was given of the Tribunal's decision, time for appeal runs from that date — see *Rao v Minister of Immigration* [2015] NZHC 2669. 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 post 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).

[35.3] 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).

[35.4] 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).

[35.5] 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.

[35.6] 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