

**Reprint
as at 29 November 2012**



**Immigration and Protection
Tribunal (Transitional Provisions)
Regulations 2010**

(SR 2010/356)

Immigration and Protection Tribunal (Transitional Provisions) Regulations 2010: expired and deemed to be revoked, at 2 am on 29 November 2012, by regulation 3.

Rt Hon Sir Peter Blanchard, Administrator of the Government

Order in Council

At Wellington this 4th day of October 2010

Present:

His Excellency the Administrator of the Government in Council

Pursuant to section 472 of the Immigration Act 2009, His Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Ministry of Justice.

Contents

| | | Page |
|---|----------------|------|
| 1 | Title | 2 |
| 2 | Commencement | 2 |
| 3 | Expiry | 2 |
| 4 | Interpretation | 3 |

Part 1

Appeals to bodies established or continued under 1987 Act

| | | |
|---|--|---|
| | <i>Residence Review Board</i> | |
| 5 | Appeal to Residence Review Board | 3 |
| | <i>Removal Review Authority</i> | |
| 6 | Appeal to Removal Review Authority on humanitarian grounds | 4 |
| | <i>Deportation Review Tribunal</i> | |
| 7 | Appeal to Deportation Review Tribunal | 6 |
| | <i>Refugee Status Appeals Authority</i> | |
| 8 | Appeal to Refugee Status Appeals Authority | 7 |

Part 2

Fees

| | | |
|---|------|---|
| 9 | Fees | 9 |
|---|------|---|

Regulations

- 1 Title**

These regulations are the Immigration and Protection Tribunal (Transitional Provisions) Regulations 2010.
- 2 Commencement**

These regulations come into force at 2 am on 29 November 2010.
- 3 Expiry**
 - (1) These regulations continue in force until 2 am on 29 November 2012, unless they are revoked earlier.
 - (2) These regulations expire and are deemed to be revoked at 2 am on 29 November 2012.

4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—
1987 Act means the Immigration Act 1987
2009 Act means the Immigration Act 2009
Tribunal means the Immigration and Protection Tribunal established by section 217 of the 2009 Act.
- (2) Unless the context otherwise requires, any term that is defined in the 1987 Act and used, but not defined, in these regulations has the same meaning as in that Act.

Part 1 **Appeals to bodies established or continued** **under 1987 Act**

Residence Review Board

5 Appeal to Residence Review Board

- (1) This regulation applies to an appeal to the Residence Review Board (the **Board**) under section 18C of the 1987 Act against a decision of a visa officer or an immigration officer to refuse to grant an application for a residence visa or a residence permit that—
 - (a) is lodged on or after the commencement of section 404 of the 2009 Act by a person to whom section 447 of the 2009 Act applies; and
 - (b) the Tribunal, because of section 447(2)(b) of the 2009 Act, must determine in accordance with the relevant provisions of the 1987 Act.
- (2) An appeal to which this regulation applies must be—
 - (a) made in a form approved for the purpose under section 132 of the 1987 Act (the **notice of appeal**); and
 - (b) signed by the appellant; and
 - (c) accompanied by the prescribed fee.
- (3) The appellant must ensure that, within the time period specified in subclause (4), the Tribunal receives the notice of appeal and the prescribed fee at—
 - (a) the Tribunal's address; or
 - (b) the Board's postal address (which is PO Box 1809, Wellington); or

- (c) the Board's street address.
- (4) The time period referred to in subclause (3) is 42 days after the date on which the appellant was notified under the 1987 Act of the refusal to grant the application for a residence visa or a residence permit.
- (5) A notice of appeal must be accompanied by the following details:
 - (a) a full and complete statement of the grounds and circumstances on which the appeal is based;
 - (b) a current address to which communications relating to the appeal may be sent;
 - (c) any information, evidence, and submissions that the appellant considers demonstrate fully why the appellant's appeal should be allowed.
- (6) An appeal against a refusal to grant an application for a residence visa or a residence permit that related to more than 1 person must be treated as an appeal by all persons included in that application, unless the principal appellant states otherwise in the notice of appeal.
- (7) For the purposes of this regulation,—
 - (a) all references to the Board in the notice of appeal must be read as if they were references to the Tribunal, unless the context otherwise requires; and
 - (b) all payments of the prescribed fee referred to in subclause (2)(c) by cheque (made out to the Board) or by credit card transaction must be treated as if the cheque or credit card transaction was payable to the Ministry of Justice.

Removal Review Authority

6 Appeal to Removal Review Authority on humanitarian grounds

- (1) This regulation applies to an appeal to the Removal Review Authority (the **Review Authority**) under section 47(1) of the 1987 Act against the requirement to leave New Zealand that—
 - (a) is lodged on or after the commencement of section 404 of the 2009 Act by a person to whom section 447 of the 2009 Act applies; and

- (b) the Tribunal, because of section 447(2)(b) of the 2009 Act, must determine in accordance with the relevant provisions of the 1987 Act.
- (2) An appeal to which this regulation applies must be—
 - (a) made in a form approved for the purpose under section 132 of the 1987 Act (the **notice of appeal**); and
 - (b) signed by the appellant; and
 - (c) accompanied by the prescribed fee.
- (3) The appellant must ensure that, within the time period specified in subclause (4), the Tribunal receives the notice of appeal and the prescribed fee at—
 - (a) the Tribunal’s address; or
 - (b) the Review Authority’s postal address (which is PO Box 1674, Wellington); or
 - (c) the Review Authority’s street address.
- (4) The time period referred to in subclause (3) is—
 - (a) 42 days after the day on which the appellant became unlawfully within New Zealand; or
 - (b) for an appellant who, while still lawfully in New Zealand, had lodged an application under section 31 of the 1987 Act for reconsideration of a decision to decline another temporary permit, 42 days after the day on which the appellant received notification under section 31 of that Act of confirmation of the decision to decline to issue a permit.
- (5) A notice of appeal must be accompanied by the following details:
 - (a) a full and complete statement of the grounds and circumstances on which the appeal is based;
 - (b) a current address to which communications relating to the appeal may be sent and, if different, the current residential address in New Zealand for the appellant;
 - (c) any other information, evidence, and submissions that the appellant considers demonstrate fully why—
 - (i) there are exceptional circumstances of a humanitarian nature surrounding the appellant’s situation that would make it unjust or unduly harsh for the appellant to be removed from New Zealand; and

- (ii) it would not in all the circumstances be contrary to the public interest to allow the appeal.
- (6) An appeal to which this regulation applies—
 - (a) may relate to—
 - (i) a principal appellant; and
 - (ii) any of the principal appellant's dependent children whose 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; and
 - (b) must 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.
- (7) For the purposes of this regulation,—
 - (a) all references to the Review Authority in the notice of appeal must be read as if they were references to the Tribunal, unless the context otherwise requires; and
 - (b) all payments of the prescribed fee referred to in subclause (2)(c) by cheque (made out to the Review Authority) or by credit card transaction must be treated as if the cheque or credit card transaction was payable to the Ministry of Justice.

Deportation Review Tribunal

7 Appeal to Deportation Review Tribunal

- (1) This regulation applies to an appeal to the Deportation Review Tribunal (the **Review Tribunal**) under section 20A(2), 22(1), or 104(1) of the 1987 Act that—
 - (a) is lodged on or after the commencement of section 404 of the 2009 Act by a person to whom section 447 of the 2009 Act applies; and
 - (b) the Tribunal, because of section 447(2)(b) of the 2009 Act, must determine in accordance with the relevant provisions of the 1987 Act.
- (2) An appeal to which this regulation applies must be—
 - (a) made in a form provided for the purpose by the chief executive referred to in clause 5(2) of Schedule 2 of the 2009 Act (the **notice of appeal**); and

- (b) signed by the appellant.
- (3) The appellant must ensure that, within the time period specified in subclause (4), the Tribunal receives the notice of appeal at—
 - (a) the Tribunal’s address; or
 - (b) the Review Tribunal’s postal address (which is Private Bag 32001, Panama Street, Wellington); or
 - (c) the Review Tribunal’s street address.
- (4) The time period referred to in subclause (3) is 21 days after the appellant is served—
 - (a) written notice of the revocation of—
 - (i) a residence permit under section 20 of the 1987 Act; or
 - (ii) a returning resident’s visa under section 20A of that Act; or
 - (b) a deportation order made under section 91 or 92 of the 1987 Act.
- (5) A notice of appeal must specify a current address in New Zealand at which any communications relating to the appeal may be served on or supplied to the appellant.
- (6) To avoid doubt, nothing in this regulation limits the application of clause 7, 10, or 11 of Schedule 2 of the 1987 Act or of Schedule 3 of that Act to an appeal to which this regulation applies.
- (7) For the purposes of this regulation, all references to the Review Tribunal in the notice of appeal must be read as if they were references to the Tribunal, unless the context otherwise requires.

Refugee Status Appeals Authority

8 Appeal to Refugee Status Appeals Authority

- (1) This regulation applies to an appeal to the Refugee Status Appeals Authority (the **Appeals Authority**) under section 1290 of the 1987 Act that—
 - (a) is lodged on or after the commencement of section 404 of the 2009 Act by a person to whom section 449 of the 2009 Act applies; and

- (b) the Tribunal, because of section 449(2)(b) of the 2009 Act, must determine as if it were an appeal to the Tribunal under section 194(1) or 195 of the 2009 Act.
- (2) An appeal to which this regulation applies must be—
 - (a) made in writing; and
 - (b) signed by the appellant.
- (3) The appellant must ensure that, within the time period specified in subclause (4), the Tribunal receives notice of the appeal at—
 - (a) the Tribunal’s address; or
 - (b) the Appeals Authority’s postal address (which is PO Box 90251, Auckland); or
 - (c) the Appeals Authority’s street address.
- (4) The time period referred to in subclause (3) is—
 - (a) 5 working days after the appellant is notified under section 129I of the 1987 Act of the refugee status officer’s decision or any further time that may be allowed under subclause (5), if the person is detained in custody at the time of notification; or
 - (b) 10 working days after receiving notification of the decision under that section or any further time that may be allowed under subclause (5), in any other case.
- (5) The Tribunal may extend the time for lodging an appeal if it is satisfied that special circumstances warrant an extension.
- (6) A notice of appeal must be accompanied by the following details:
 - (a) a current residential address for the appellant;
 - (b) a current address in New Zealand to which communications relating to the appeal may be sent.
- (7) If an address for communications is not provided with the notice of appeal, the Tribunal may rely on the latest address provided to the Department of Labour.
- (8) If the appellant uses a form provided for the notice of appeal, then, for the purposes of this regulation, all references to the Appeals Authority in the notice of appeal must be read as if they were references to the Tribunal, unless the context otherwise requires.

Part 2

Fees

9 Fees

- (1) A fee of \$715.56 is payable to the Tribunal for an appeal to which regulation 5 or 6 applies.
- (2) Only 1 fee is payable for an appeal to which regulation 5 or 6 applies even if it relates to more than 1 person, so long as regulation 5(6) or, as the case may be, regulation 6(6) is complied with.
- (3) Only 1 fee is payable if any 2 persons who are married or in a civil union or de facto relationship lodge separate appeals to which regulation 6 applies, so long as the relevant notices of appeal are lodged at the same time.
- (4) Subclause (3) applies whether or not the appeals referred to in that subclause also name and include any dependent children.
- (5) The fee payable under this regulation—
 - (a) must be paid in New Zealand dollars; and
 - (b) includes goods and services tax.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force at 2 am on 29 November 2010, relate to appeals to appellate bodies established or continued under the Immigration Act 1987 (**transitional appeals**) that have not yet been lodged before the repeal of that Act by section 404 of the Immigration Act 2009.

These regulations specify the manner in which the transitional appeals are to be made to the Immigration and Protection Tribunal (**the Tribunal**), which is a specialist body established by section 217 of the Immigration Act 2009. The Tribunal has, among other things, the role of determining the transitional appeals in accordance with

the relevant provisions of the Immigration Act 1987 or, as the case may be, the Immigration Act 2009.

In prescribing the manner in which the transitional appeals are to be made, these regulations largely carry over, with minor modifications, the relevant provisions of the Immigration Act 1987, the Immigration Regulations 1999, and the Immigration (Refugee Processing) Regulations 1999.

These regulations also set out the fee payable to the Tribunal for certain transitional appeals and provide that a payment of the prescribed fee by cheque made out to a former appellate body or by credit card transaction is to be treated as if the cheque or credit card transaction was payable to the Ministry of Justice.

These regulations will expire, or will be deemed to have been revoked, at 2 am on 29 November 2012.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 7 October 2010.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes

1 *General*

This is a reprint of the Immigration and Protection Tribunal (Transitional Provisions) Regulations 2010. The reprint incorporates all the amendments to the regulations as at 29 November 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not

included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Immigration and Protection Tribunal (Transitional Provisions) Regulations 2010 (SR 2010/356): regulation 3
