

PRACTICE DIRECTION 19: BIOSECURITY ACT 2019

19.1 OVERVIEW/GENERAL: This Practice Direction is a guide to the processes of appeals and applications through the Appeal Tribunal brought pursuant to the *Biosecurity Act 2019*.

There are two types of proceedings under the *Biosecurity Act 2019*.

19.1.1 Appeals which are identified under *PART 14 - Legal Proceedings Division 5 - Appeals* of the *Biosecurity Act 2019*

19.1.2 Applications pursuant to s207 of the *Biosecurity Act 2019*.

19.2 FILING AN APPEAL UNDER PART 14 DIVISION 5

19.2.1 Use of Tribunal Form:

The Tribunal has produced a form for the filing of appeals under the *Biosecurity Act 2019*. The form is located at <https://www.rmpat.tas.gov.au/forms>. Please ensure that the form is completed with all requested details to assist the Tribunal in processing any appeal.

19.2.2 Payment of a fee

The lodgement of an appeal requires the payment of a fee. Fees that are required to be paid for appeals are set out in the schedule of fees located <https://www.rmpat.tas.gov.au/fees>.

The Tribunal has the power to reduce or vary the fee which is required to file an appeal. Please refer to Tribunal Practice Direction 2.3 for guidance in making an application to waive or reduce a fee.

https://www.rmpat.tas.gov.au/practice_directions

19.3 TIMEFRAMES FOR FILING APPEALS AND SEEKING EXTENSIONS OF TIME.

19.3.1 S256 of the *Biosecurity Act 2019* relevantly provides:

"Appeals generally"

- (1) *Unless otherwise accepted by the Appeal Tribunal, an appeal under this Act may not be made more than 28 days after the day on which written notice of the decision that is the subject of the appeal is served on the person applying for the appeal.*
- (2) *Subject to any order made by the Appeal Tribunal, an appeal does not, of itself, operate to stay or suspend the decision to which the appeal relates.*
- (3) *Unless otherwise specified in this Act, the provisions of the [Resource Management and Planning Appeal Tribunal Act 1993](#) apply to an appeal to the Appeal Tribunal under this Act."*

The timeframe within which an appeal must be filed is **28 days** after the day on which written notice of the decision has been served on the person who wishes to appeal.

S256(1) provides that the Tribunal has the capacity to accept an appeal outside that timeframe.

S256(3) of the *Biosecurity Act* establishes that the provisions of the *Resource Management and Planning Appeal Tribunal Act 1993* apply to an appeal.

As such, when seeking an extension of time for lodgement of an appeal please have regard to Practice Directions [2.7 Extension of Time For Lodgement: A person may apply for an extension of time](#) and [3.10 APPLICATIONS TO EXTEND TIME TO LODGE AN APPEAL: s13\(2\)](#) and for the necessary requirements and information for making an application to extend time.

19.4 GROUNDS OF APPEAL

The Practice Directions of the Tribunal contained in Practice Direction 2 are applicable for the filing of grounds of appeal under the *Biosecurity Act 2019*. In particular please have regard to Practice Direction 2.8, 2.9, 2.14 and 2.15.

19.5 LISTING FOR A DIRECTIONS HEARING

The parties to an appeal will be notified of a listing date for a directions hearing for any appeal. That directions hearing is ordinarily listed between 10 to 14 days from the date of lodgement of the appeal. The Tribunal will also advertise the existence of the proceedings which it is required to do under the *Resource Management and Planning Appeal Tribunal Regulations 2014 SR 4*. The Tribunals Practice Directions with respect to Preliminary Conferences (PD4), Alternative Dispute Resolution (PD5), Consent Agreements (PD6 and PD6A) are all generally applicable to proceedings under the *Biosecurity Act 2019*. Some elements of the Practice Directions which relate to planning appeals will not apply to proceedings under the *Biosecurity Act 2019*.

19.6 HEARING PROCESS

The hearing processes set out in Practice Direction 7 will be applicable to appeals under the *Biosecurity Act 2019*.

The requirements for the filing of materials as contained in Practice Direction 8 will be generally applicable, however, those elements of the Practice Directions which relate to planning appeals will not be required. The requirements for statements of evidence under Practice Direction 8A and 8B are applicable.

The Tribunal will exercise discretion as to whether or not statements of facts and contentions will be required in proceedings under the *Biosecurity Act 2019*. Practice Direction 10 will need to be modified if that process is identified as appropriate and helpful for the purposes of resolving appeals under the Act.

Practice Directions 11, 12, 12A, 13, 15, 16 and 17 are applicable to proceedings under the *Biosecurity Act 2019*.

19.7 APPLICATIONS UNDER S.207

19.7.1 Use of Tribunal Form

The Tribunal has produced a form for the filing of applications under s207 of the *Biosecurity Act 2019*. The form is located at <https://www.rmpat.tas.gov.au/forms> pleasure ensure that that form is completed with all requested details to assist the Tribunal in processing your application.

19.7.2 Additional Information

An application under s207 of the *Biosecurity Act 2019* relates to an alleged contravention of a Biosecurity undertaking. The Tribunal must receive sufficient *prima facie* evidence and information to demonstrate that the proceedings are appropriately brought.

The additional information that needs to be filed with the required form includes:

- (a) A copy of the undertaking which has been executed in accordance with s203 of the *Biosecurity Act 2019*;
- (b) Evidence of the alleged breach. There must be sufficient evidence filed to demonstrate to the Tribunal that there is a *prima facie* breach such that the Tribunal should proceed to hear and determine the application. It is preferable that the evidence be filed in affidavit or statutory declaration form. The information that should be provided should include the date of the alleged contravention of the undertaking, the nature of the contravention and evidence demonstrating the contravention in question.
- (c) It is important that the form which is completed in filing the application clearly identifies the orders that are being sought pursuant to s207(2).

19.7.3 Notification of Application

The Tribunal will forward notification of the application to the respondent in accordance with the contact details provided in the application form. Notification of a directions hearing will be forwarded to the parties to the proceedings.

19.7.4 Directions Hearing

A directions hearing will be listed for any application made under s207. The directions hearing is ordinarily listed between 10 to 14 days from the date of lodgement of the application. The Tribunal will advertise the existence of the proceedings pursuant to SR 4 of the *Resource Management and Planning Appeal Tribunal Regulations 2014*. The Tribunal's Practice Directions with respect to preliminary conferences alternative dispute resolution consent agreements are all generally applicable to an application under s207 of the *Biosecurity Act 2019*. Those elements of the Practice Directions which relate to planning appeals will not apply to proceedings under s207.

19.7.5 Hearing Process

The hearing processes for an application under s207 will follow the process set out under Practice Direction 14.10 which regulate proceedings under civil enforcement provisions of various pieces of legislation. This is because the applicant bears the onus of proof for the purposes of establishing a contravention and secondly to

demonstrate, in the exercise of the Tribunals discretion, that orders should issue in the terms applied for.