

# Legal Torque

## Appeals Against Decisions Made by the New Zealand Transport Authority

Often we receive calls from operators in regards to decisions made by the New Zealand Transport Authority ("NZTA"), usually decisions to decline applications made by the operator for a transport service licence.

I thought I would in this article explain the powers of the NZTA and what you can do if you are faced with an adverse decision from NZTA.

The Director of the NZTA ("the Director") has broad powers to make decisions which impact on operators. To counter this, and to recognise that those decisions may not always be correct, the Land Transport Act 1998 provides a right of appeal against decisions made by the Director.

Although the right to appeal is broad, it is not absolute. Not all decisions made by the Director can be appealed against. The types of the decisions that have most commonly been appealed involve revocation, suspension or imposition of conditions on licences. However, there have also been appeals on some of the following:

- Decline of application for exemption from driver licence requirements;
- Revocation of approval to act as a vehicle certifier;
- Refusal to grant or revocation of a transport service licence;
- Disqualification of an operator or driver where 200 demerit points have been incurred;
- Disqualification or immediate suspension of a transport service driver.

### How The Appeal Process Works

A right of appeal only arises after a final decision is made. In most circumstances, when the Director is considering making an adverse decision, he or she will issue a "Notice of Intention" providing the grounds for his or her intended decision and will invite you to make submissions as to why it should not make such a decision. It is advisable that you should seek legal advice at this stage. Once submissions are made, the Director then makes a final decision. It is this decision that can be appealed.



### The Application

Once you have received notification of an adverse decision, you have 28 days to lodge an appeal with the closest District Court to where you live. There may be exceptional circumstances where an appeal may be lodged outside of this time frame, however you need specific permission of the Court to allow this.

The method by which you appeal is by filing a document called an Originating Application. You must also file an affidavit in support of your application. This is a sworn document in which you outline the background to the application, why you are appealing the decision and any other relevant factors that you think the Court ought to be aware of.

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The appeal does not suspend the Director's decision pending an outcome. The decision of the Director stays in place until a different decision is made by the Court

### **The Hearing**

The District Court assesses the decision made by the Director by "rehearing" the decision. The Court steps in to the position of the Director and reviews the evidence before it and makes its own decision. The decision of the Director is not relevant as the Court examines the evidence as if the Director's decision had not been made.

The Court has a broad discretion as to what kind of evidence it can take account of. This particular process actually allows the Court further discretion than in other types of proceedings. If new information has come to light since the Director made its decision, this can also be considered by the Court. The main issue that the Court is concerned about when it comes to the evidence presented is whether the evidence is relevant.

Who bears the burden of proof (i.e. who has to try convince they Court they are correct and the other party is wrong), is a decision that seems to vary depending on the

circumstances of the case. The main point here is that you need to ensure that your case is presented as if the burden is on you to prove that the Director was wrong in his or her decision.

It is important for any person faced with an adverse decision from the Director to seek advice immediately. It is always better to put all information before the Director when a "Notice of Intention" is served on you, than to let an adverse decision be made and then go through the appeal process. This process can take months to come to a resolution and any decision made by the Director will be in force while the appeal process is underway. The costs of an appeal are also much higher than when making submissions to the Director.

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