**Section 230 Commissioner may extend time limits for delays by Commissioner**

*(1) The Commissioner may extend the time within which anything must be done under this Act or the regulations if that thing is not or will not be done in time because of a delay by the Commissioner.*

*(2) The Commissioner may grant the extension even if the time has expired for doing the thing*.

Compare: 1953 No 64 [s 93(1), (5)](http://www.legislation.govt.nz/act/public/2013/0068/latest/link.aspx?id=DLM280793)

***Scope of section 230***

1. The scope of section 230 is relatively wide and applies to the any matter under the Act or regulations where a time period is not met due to delay by the Commissioner. Generally, delay by the Commissioner arises where IPONZ has failed to take action on a matter in a timely manner and which prejudiced the position of the applicant, patentee or affected third party.
2. Typically, timeliness is assessed against

***Delays during examination of an application***

1. During examination the time to place the application in order and the time to respond to an examination report will be extended by the Commissioner under section 230 if necessary, and toward or beyond the expiry of the period allowed under section 71, if the application has not been put in order because of a delay by the Commissioner. Generally, where a subsequent examination report is issued within the last month of the period remaining under section 71(1), the section 71(1) period (and section 67(1) deadline) will be extended to take account of any delay by the Commissioner.
2. Delay by the Commissioner is considered to be any delay in issuing a subsequent examination report beyond the period of 20 working days following receipt of a response to the preceding examination report. For example, if a subsequent examination report is issued 22 working days after the date of receipt of a response, then the delay by the Commissioner will be 2 days. The section 71(2) period will be extended by 2 days, as will the period for responding to an examination report within the last month of the 71(1) period.
3. Delays by the Commissioner are cumulative and the section 71(1) period may be extended accordingly. Calculating delay by the Commissioner is subject to the rules governing working days (see regulation 3(1)).

***Delays in raising late objections***

1. Delay by the Commissioner may include raising late objections that could reasonably have been raised in an earlier examination report.
2. If a new objection is raised at a late stage in the examination process i.e. within last 20 working days of the section 71 deadline, and the objection could reasonably have been raised at an earlier date in the examination process, then the delay in raising the new objection will be construed as delay by the Commissioner in accordance with section 230(1). The Commissioner may extend the time to place the application in order under section 230 to respond to the new objection.
3. The maximum period of time that will be provided for responding to a late objection is 20 working days from the date of issuance of a report including a late objection where there are less than 20 working days left in the section 71 period.
4. An extension under section 230 is discretionary, and will not be granted to accommodate a response to:
	1. an objection that was previously raised and is being maintained, or
	2. to provide further time to respond to an objection arising from amendments proposed by the applicant in responding to an objection raised in an earlier examination report, or
	3. to address a new objection on a matter that the applicant should reasonably have been aware of previously, such as a citation relating to novelty or inventive step from an overseas IP office on a corresponding or equivalent application for substantially the same claimed subject matter.

***Delays during hearing proceedings***

1. Hearings before the Commissioner follow the various time periods set out in the Act and regulations. However, the administrative complexity of hearing proceedings there may some delays which may be attributable to the Commissioner. These delays may also be addressed under section 230.

 ***Maori advisory committee – delay by the commissioner***

1. Where the Commissioner, under section 15(3), is seeking advice from the Maori advisory committee or any other person and the time taken to receive this advice extends beyond 20 working days, then any delay will be construed as delay by the Commissioner.
2. In practice, it is anticipated that the Commissioner would seek advice from the Maori Advisory Committee before issuance of a first examination report. Where this is the case, then there will not be any delay in the examination process.
3. Where a first (or subsequent) examination report has already been issued and the Commissioner subsequently seeks advice from the Committee, then the section 71 period will be extended by the corresponding number of days beyond the 20 working days where the delay is attributable to the Commissioner.