

Declaratory Judgments Act 1908

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An Act to enable the High Court to give declaratory judgments or orders

1 Short Title

This Act may be cited as the Declaratory Judgments Act 1908.

2 Declaratory judgments

No action or proceeding in the High Court shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the said Court may make binding declarations of right, whether any consequential relief is or could be claimed or not.

Note

This Act is administered in the Ministry of Justice

3 Declaratory orders on originating summons

Where any person has done or desires to do any act the validity, legality, or effect of which depends on the construction or validity of any statute, or any regulation made by the Governor-General in Council under statutory authority, or any bylaw made by a local authority, or any deed, will, or document of title, or any agreement made or evidenced by writing, or any memorandum or articles of association of any company or body corporate, or any instrument prescribing the powers of any company or body corporate; or

Where any person claims to have acquired any right under any such statute, regulation, bylaw, deed, will, document of title, agreement, memorandum, articles, or instrument, or to be in any other manner interested in the construction or validity thereof,—

such person may apply to the High Court by originating summons for a declaratory order determining any question as to the construction or validity of such statute, regulation, bylaw, deed, will, document of title, agreement, memorandum, articles, or instrument, or of any part thereof.

The words “returnable in the said Court” were omitted by section 2 Declaratory Judgments Amendment Act 1966 (1966 No 57).

4 Effect of declaratory orders

Any declaration so made on any such originating summons shall have the same effect as the like declaration in a judgment in an action, and shall be binding on the person making the application and on all persons on whom the summons has been served, and on all other persons who would have been bound by the said declaration if the proceedings wherein the declaration is made had been an action.

5 Service of originating summons

The High Court or a Judge thereof may direct that any such originating summons shall be served on such persons as the said Court or Judge thinks fit, and such direction may be given at the time when the summons is issued or subsequently.

6 Summons to be subject to rules of Court

Subject to the provisions of this Act and to any rules of Court hereafter made in accordance with the Judicature Act 1908, any such originating summons shall be subject to the rules of Court which are for the time being in force with respect to an originating summons taken out by trustees for the interpretation of a deed or instrument creating a trust.

7 Removal of summons into Court of Appeal

Any such originating summons may be removed into the Court of Appeal in the same manner as the matters specified in section 64 of the Judicature Act 1908 are removable, and the provisions of sections 64 and 65 of the said Act shall apply to any originating summons so removed accordingly.

8 Appeal to Court of Appeal

An appeal shall lie to the Court of Appeal from any judgment or order given or made in pursuance of this Act, in the same manner as in the case of a final judgment of the High Court.

9 Judgment or order in anticipation of any act or event

Any declaratory judgment or order given or made in pursuance of this Act may be given or made by way of anticipation with respect to any act not yet done or any event which has not yet happened, and in such case the said judgment or order shall have the same binding effect with respect to that future act or event, and the rights or liabilities to arise therefrom, as if that act or event had already been done or had already happened before the said judgment or order was given or made.

10 Jurisdiction discretionary

The jurisdiction hereby conferred upon the High Court to give or make a declaratory judgment or order shall be discretionary, and the said Court may, on any grounds which it deems sufficient, refuse to give or make any such judgment or order.

11 Declaratory judgments or orders in cases where Court cannot give relief

The jurisdiction hereby conferred upon the High Court to give or make any declaratory judgment or order shall not be excluded by the fact that the said Court has no power to give relief in the matter to which the judgment or order relates, or that such matter would, independently of this Act, be within the exclusive jurisdiction of any other Court.

12 Decisions of Court of Appeal to bind all other Courts

Subject to any decision of the Supreme Court, any decision of the Court of Appeal under this Act shall be binding as a precedent in all other Courts in New Zealand.

Section 12 was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the words “Supreme Court” for the words “Privy Council”. See sections 50 to 55 of that Act for the transitional and savings provisions.

13 Costs

The costs of any action, summons, or appeal under this Act shall be in the discretion of the Court, and the Court may in the exercise of that discretion order the whole or any part of those costs to be paid by any party, although successful in the action, summons, or appeal, and may in any case direct that costs awarded to any party shall be taxed either as between party and party or as between solicitor and party.