



Judicial Review Procedure Act 2016

Public Act 2016 No 50
Date of assent 17 October 2016
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Judicial Review Procedure Act 2016.

2 Commencement

This Act comes into force on 1 March 2017.

Preliminary provisions

3 Purpose of this Act

- (1) The purpose of this Act is to re-enact Part 1 of the Judicature Amendment Act 1972, which sets out procedural provisions for the judicial review of—
- the exercise of a statutory power:
 - the failure to exercise a statutory power:
 - the proposed or purported exercise of a statutory power.
- (2) The reorganisation in this Act of those provisions, and the changes made to their style and language, are not intended to alter the interpretation or effect of those provisions as they appeared in the Judicature Amendment Act 1972.

4 Interpretation

In this Act, unless the context otherwise requires,—

applicant means a person who has filed an application

application for judicial review and **application** mean an application for judicial review in relation to the exercise, refusal to exercise, or proposed or purported exercise by any person of a statutory power

court means the High Court of New Zealand

decision includes a determination or an order

High Court Rules means the High Court Rules 2016

Judge means a Judge of the High Court

licence includes any permit, warrant, authorisation, registration, certificate, approval, or similar form of authority required by law

person includes a corporation sole, and also a body of persons whether incorporated or not and, in relation to the exercise, refusal to exercise, or proposed or purported exercise by any person of a statutory power of decision, includes—

- (a) the District Court:
- (b) the Māori Land Court:
- (c) the Māori Appellate Court

presiding officer includes—

- (a) a Judge:
- (b) a Registrar

statutory power has the meaning given to it by section 5

statutory power of decision means a power or right conferred by or under any Act, or by or under the constitution or other instrument of incorporation, rules, or bylaws of any body corporate, to make a decision deciding or prescribing or affecting—

- (a) the rights, powers, privileges, immunities, duties, or liabilities of any person; or
- (b) the eligibility of any person to receive, or to continue to receive, a benefit or licence, whether that person is legally entitled to it or not.

Compare: 1972 No 130 s 3

5 Meaning of statutory power

- (1) In this Act, **statutory power** means a power or right to do any thing that is specified in subsection (2) and that is conferred by or under—
 - (a) any Act; or
 - (b) the constitution or other instrument of incorporation, rules, or bylaws of any body corporate.
- (2) The things referred to in subsection (1) are—
 - (a) to make any regulation, rule, bylaw, or order, or to give any notice or direction that has effect as subordinate legislation; or
 - (b) to exercise a statutory power of decision; or
 - (c) to require any person to do or refrain from doing anything that, but for such requirement, the person would not be required by law to do or refrain from doing; or
 - (d) to do anything that would, but for such power or right, be a breach of the legal rights of any person; or

- (e) to make any investigation or inquiry into the rights, powers, privileges, immunities, duties, or liabilities of any person.

Compare: 1972 No 130 s 3

6 Act binds the Crown

- (1) This Act binds the Crown.
- (2) However, in its application to the Crown, this Act must be read subject to the Crown Proceedings Act 1950.

Compare: 1972 No 130 ss 13, 14(2)

7 This Act subject to certain provisions of Employment Relations Act 2000

- (1) This Act is subject to the provisions of the Employment Relations Act 2000 relating to the jurisdiction of the Employment Court and High Court in respect of—
 - (a) applications for review; or
 - (b) proceedings for a writ or order of, or in the nature of, mandamus, prohibition, or certiorari; or
 - (c) proceedings for a declaration or injunction against any body constituted by, or any person acting under, the Employment Relations Act 2000.
- (2) In particular, this Act is subject to the following provisions of the Employment Relations Act 2000:
 - (a) section 184 (which restricts review proceedings being brought in respect of any matter before the Employment Relations Authority);
 - (b) section 187(1)(h), (i), (j), and (ka) (which confers on the Employment Court exclusive jurisdiction to hear and determine certain proceedings and applications);
 - (c) section 194A (which provides that review proceedings in relation to an employment relationship problem may not be brought in either the Employment Court or the High Court);
 - (d) section 213 (which confers on the Court of Appeal exclusive jurisdiction in relation to the review of any proceedings before the Employment Court).

Compare: 1972 No 130 s 3A

Judicial review

8 Application for judicial review

- (1) An application must be commenced by filing in the High Court—
 - (a) a statement of claim; and
 - (b) a notice of proceeding.

- (2) Part 5 of the High Court Rules applies in relation to the commencement and filing of an application as if—
 - (a) references to a plaintiff were references to an applicant; and
 - (b) references to a defendant were references to a respondent.
- (3) The statement of claim need not state that any of the following relief is sought:
 - (a) mandamus:
 - (b) prohibition:
 - (c) certiorari:
 - (d) declaration:
 - (e) injunction.

Compare: 1908 No 89 Schedule 2 r 30.3(1); 1972 No 130 s 9(1), (3), (7)

9 Respondents

- (1) The following persons must be named as a respondent to an application:
 - (a) the person whose act or omission is the subject matter of the application; and
 - (b) if the application relates to any decision made in proceedings, every party to those proceedings.
- (2) If the act or omission is that of 2 or more persons acting together under a collective title, then those persons by their collective title must be named as respondents to the application.
- (3) For the purposes of subsection (1)(a), where the act or omission is that of a presiding officer of any court or tribunal, that court or tribunal, and not the presiding officer, must be named as the respondent to the application.
- (4) Subsection (1)(b) is subject to any direction made by a Judge under section 14.

Compare: 1972 No 130 s 9(4), (4A)(a), (5)

10 Respondent to file statement of defence

- (1) A respondent to an application must file a statement of defence unless otherwise directed by a Judge under section 14.
- (2) Where, in accordance with section 9(3), a court or tribunal is named as a respondent to an application, the presiding officer of that court or tribunal whose act or omission is the subject matter of the application may file a statement of defence on behalf of the court or tribunal.
- (3) Part 5 of the High Court Rules applies in relation to the filing of a statement of defence as if—
 - (a) references to a defendant were references to a respondent; and
 - (b) references to a plaintiff were references to an applicant.

Compare: 1972 No 130 s 9(4A)(b), (6)

11 Proceedings for mandamus, prohibition, or certiorari must be treated as application for review

- (1) This section applies if, in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statutory power, proceedings are commenced for a writ or an order of or in the nature of—
 - (a) mandamus; or
 - (b) prohibition; or
 - (c) certiorari.
- (2) If this section applies, the proceedings must be treated and disposed of as if they were an application for judicial review.

Compare: 1972 No 130 s 6

12 Proceedings for declaration or injunction may be treated as application for review

- (1) This section applies if—
 - (a) proceedings are commenced for a declaration or an injunction, or both, with or without a claim for other relief; and
 - (b) the exercise, refusal to exercise, or proposed or purported exercise of a statutory power is an issue in the proceedings.
- (2) If this section applies, the court on the application of any party may, if it considers it appropriate, direct that the proceedings be treated and disposed of, so far as they relate to the issue in subsection (1)(b), as if they were an application for judicial review.

Compare: 1972 No 130 s 7

13 Case management conference

- (1) A Judge may, at any time, direct that a case management conference (a **conference**) be held for—
 - (a) the parties; or
 - (b) the intended parties; or
 - (c) the lawyers for the parties or intended parties.
- (2) The purpose of a conference is to ensure that—
 - (a) any application or intended application may be determined in a convenient and expeditious manner; and
 - (b) all matters in dispute may be effectively and completely determined.
- (3) A Judge may make a direction under subsection (1) on the Judge's own initiative or on the application of 1 or more parties or intended parties.
- (4) A conference may be held on such terms as the Judge thinks fit.

- (5) At a conference, the presiding Judge may make any of the orders and directions specified in section 14.

Compare: 1972 No 130 s 10(1)

14 Orders and directions

- (1) A Judge may make any of the orders and directions specified in subsection (2)—
- (a) at a case management conference held under section 13; or
 - (b) at any other time before the hearing of the application.
- (2) The orders and directions referred to in subsection (1) are orders and directions to—
- (a) settle the issues to be determined at the hearing:
 - (b) direct that—
 - (i) a person be named, or not named, as a respondent; or
 - (ii) the name of any party be added or struck out:
 - (c) direct which parties are to be served:
 - (d) direct a person to file a statement of defence within a specified time:
 - (e) require a party to make an admission in respect of a question of fact and, if the party refuses or fails to make an admission of that kind, require that the party bear the costs of proving that question at the hearing (unless the Judge who finally determines the application is satisfied that the party's refusal was reasonable in all of the circumstances, and accordingly orders otherwise in respect of those costs):
 - (f) fix a time by which any affidavits or other documents must be filed:
 - (g) require the provision of further or better particulars of—
 - (i) any facts; or
 - (ii) the grounds for relief; or
 - (iii) the relief sought; or
 - (iv) the grounds of defence; or
 - (v) any other circumstances connected with the application:
 - (h) require a party to make discovery, produce documents, or both:
 - (i) permit a party to administer interrogatories:
 - (j) in the case of an application for review of a decision made in the exercise of a statutory power of decision, determine whether the whole or any part of the record of the proceedings in which the decision was made should be filed, and give any directions as to its filing:
 - (k) exercise any powers of direction or appointment vested in the court or a Judge by the High Court Rules in respect of originating applications:

- (l) fix a time and a place for the hearing of the application:
- (m) give any consequential directions that the Judge considers necessary.

Compare: 1972 No 130 s 10(2), (3)

15 Interim orders

- (1) At any time before the final determination of an application, the court may, on the application of a party, make an interim order of the kind specified in subsection (2) if, in its opinion, it is necessary to do so to preserve the position of the applicant.
- (2) The interim orders referred to in subsection (1) are interim orders—
 - (a) prohibiting a respondent from taking any further action that is, or would be, consequential on the exercise of the statutory power:
 - (b) prohibiting or staying any proceedings, civil or criminal, in connection with any matter to which the application relates:
 - (c) declaring that any licence that has been revoked or suspended in the exercise of the statutory power, or that will expire by the passing of time before the final determination of the application, continues and, where necessary, that it be deemed to have continued in force.
- (3) However, if the Crown is a respondent,—
 - (a) the court may not make an order against the Crown under subsection (2)(a) or (b); but
 - (b) the court may, instead, make an interim order—
 - (i) declaring that the Crown ought not to take any further action that is, or would be, consequential on the exercise of the statutory power:
 - (ii) declaring that the Crown ought not to institute or continue any proceedings, civil or criminal, in connection with any matter to which the application relates.
- (4) An order under subsection (2) or (3) may—
 - (a) be made subject to such terms and conditions as the court thinks fit; and
 - (b) be expressed to continue in force until the application is finally determined or until such other date, or the happening of such other event, as the court may specify.

Compare: 1972 No 130 s 8

16 Relief that court may grant

- (1) The High Court may, by order, grant an applicant any relief that the applicant would be entitled to in proceedings for—
 - (a) a writ or an order of, or in the nature of,—
 - (i) mandamus; or

- (ii) prohibition; or
 - (iii) certiorari; or
- (b) a declaration or an injunction.
- (2) If an applicant is entitled to an order declaring that a decision made in the exercise of a statutory power of decision is unauthorised or otherwise invalid, the court may, instead of making that order, set aside the decision.
- (3) This section applies even if—
 - (a) the applicant has a right of appeal in relation to the subject matter of the application:
 - (b) the person who has exercised, or is proposing to exercise, a statutory power to which the application relates was not under any duty to act judicially.

Compare: 1972 No 130 s 4(1)–(2A)

17 Court may direct reconsideration of matter to which statutory power of decision relates

- (1) This section applies if the court is satisfied that an applicant who has filed an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision is entitled to relief under section 16.
- (2) The court may make a direction under subsection (3) in addition to or instead of granting any relief under section 16.
- (3) The court may direct any person whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of any specified matters, the whole or any part of any matter to which the application relates.
- (4) In giving a direction to any person under subsection (3), the court must—
 - (a) advise the person of the reasons for the direction; and
 - (b) give the person such directions as it thinks just as to the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.
- (5) If the court makes a direction under subsection (3), it may make an interim order under section 15, and that section applies so far as it is applicable and with all necessary modifications.
- (6) If a matter is referred back to any person under subsection (3),—
 - (a) the act or omission that is to be reconsidered continues to have effect (subject to any interim order) unless and until it is revoked or amended by that person:

- (b) the person has jurisdiction to reconsider and determine the matter in accordance with the court's directions despite anything in any other enactment;
- (c) the person must have regard to—
 - (i) the court's reasons for giving the direction; and
 - (ii) the court's directions.

Compare: 1972 No 130 s 4(5), (6)

18 Discretion of court to refuse to grant relief

- (1) The court may refuse to grant relief to an applicant on any ground if, before 1 January 1973, the court had discretion to refuse to grant relief on that ground in any of the proceedings specified in section 16(1).
- (2) However, the court may not exercise its discretion in subsection (1) to refuse to grant relief on the ground that the relief sought in any of the proceedings specified in section 16(1) should have been sought in any other of those proceedings.

Compare: 1972 No 130 s 4(3), (4)

19 Discretion of court to refuse to grant relief for defect in form or technical irregularity

- (1) This section applies if, in any application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision,—
 - (a) the sole ground of relief established is a defect in form or a technical irregularity; and
 - (b) the court finds that no substantial wrong or miscarriage of justice has occurred.
- (2) If this section applies, the court may—
 - (a) refuse to grant relief; and
 - (b) where a decision has already been made, make an order validating the decision despite the defect or irregularity.
- (3) An order made under subsection (2)(b) has effect from such time and on such terms as the court thinks fit.

Compare: 1972 No 130 s 5

20 Appeals

Any party who is dissatisfied with any interlocutory or final order made in respect of an application may appeal to the Court of Appeal in accordance with section 56 of the Senior Courts Act 2016.

Compare: 1972 No 130 s 11

21 References in enactments

Every reference in an enactment to proceedings for a writ or an order of, or in the nature of, mandamus, prohibition, or certiorari, or for a declaration or an injunction, must, unless the context otherwise requires, be read as including a reference to an application for review.

Compare: 1972 No 130 s 16

Repeal, transitional provision, and consequential amendments

22 Repeal

The Judicature Amendment Act 1972 (1972 No 130) is repealed.

23 Transitional provision

- (1) This section applies to all judicial review proceedings commenced under the Judicature Amendment Act 1972 that are pending or in progress immediately before the commencement date.
- (2) Despite the repeal of the Judicature Amendment Act 1972, judicial review proceedings to which this section applies are to be continued and completed under that Act as if that Act had not been repealed.
- (3) If any question arises as to the continuation or completion of a proceeding under subsection (2), the court may, either on the application of a party to the proceeding or on its own initiative, determine the question and give any directions that it thinks fit in the interests of justice.
- (4) In this section, **commencement date** means the date on which this Act comes into force.

24 Consequential amendments

The enactments specified in the Schedule are consequentially amended in the manner indicated in that schedule.

Schedule
**Consequential amendments to other enactments: judicial review
procedure**

s 24

Part 1
Amendments to Acts

Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 (2004 No 109)

In section 25A(12), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In section 26A(12), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In section 43, replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In section 50A(12), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Canterbury Earthquake Recovery Act 2011 (2011 No 12)

In section 71(6)(c), replace “Judicature Amendment Act 1972” with “Part 3 of the Judicature Modernisation Act 2013”.

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

In section 207B, definition of **review proceedings**, paragraph (a), replace “Judicature Amendment Act 1972” with “Judicial Review Procedure Act 2016”.

Court Martial Act 2007 (2007 No 101)

In section 69(c), replace “Judicature Amendment Act 1972” with “Judicial Review Procedure Act 2016”.

Criminal Proceeds (Recovery) Act 2009 (2009 No 8)

In section 93(4), replace “section 8 of the Judicature Amendment Act 1972” with “section 15 of the Judicial Review Procedure Act 2016”.

Crown Proceedings Act 1950 (1950 No 54)

In section 2(1), definition of **civil proceedings**, replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Employment Relations Act 2000 (2000 No 24)

In section 194(1), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Employment Relations Act 2000 (2000 No 24)—*continued*

In section 194(1), replace “section 3 of the Judicature Amendment Act 1972” with “section 4 of the Judicial Review Procedure Act 2016”.

In section 213(1), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Epidemic Preparedness Act 2006 (2006 No 85)

In section 12(3)(c), replace “Judicature Amendment Act 1972” with “Judicial Review Procedure Act 2016”.

In section 15(3)(c), replace “Judicature Amendment Act 1972” with “Judicial Review Procedure Act 2016”.

Fisheries Act 1996 (1996 No 88)

In section 186J(1), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In section 186ZJ(2), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In section 293(4), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Gambling Act 2003 (2003 No 51)

In section 235A(3)(a), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Harmful Digital Communications Act 2015 (2015 No 63)

In section 10(3), replace “section 4 of the Judicature Amendment Act 1972” with “section 8 of the Judicial Review Procedure Act 2016”.

Housing Accords and Special Housing Areas Act 2013 (2013 No 72)

In section 80(2)(a), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Immigration Act 2009 (2009 No 51)

In section 4, definition of **review proceedings**, paragraph (a), replace “Judicature Amendment Act 1972” with “Judicial Review Procedure Act 2016”.

In section 247(3), replace “section 3 of the Judicature Amendment Act 1972” with “section 4 of the Judicial Review Procedure Act 2016”.

International Crimes and International Criminal Court Act 2000 (2000 No 26)

In section 170, replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

International War Crimes Tribunals Act 1995 (1995 No 27)

In section 39, replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Local Government Official Information and Meetings Act 1987 (1987 No 174)

In section 9(1)(b), replace “section 4(1) of the Judicature Amendment Act 1972” with “section 8 of the Judicial Review Procedure Act 2016”.

In section 32(4)(a), replace “section 8 of the Judicature Amendment Act 1972” with “section 15 of the Judicial Review Procedure Act 2016”.

In section 32(4)(b), replace “section 8 of the Judicature Amendment Act 1972” with “section 15 of the Judicial Review Procedure Act 2016”.

In section 37(a), replace “section 4(1) of the Judicature Amendment Act 1972” with “section 8 of the Judicial Review Procedure Act 2016”.

Major Events Management Act 2007 (2007 No 35)

In section 29(2), replace “Judicature Amendment Act 1972” with “Judicial Review Procedure Act 2016”.

Maori Commercial Aquaculture Claims Settlement Act 2004 (2004 No 107)

In section 55(2)(a), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Maori Fisheries Act 2004 (2004 No 78)

In section 183(2)(a), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In section 183(3)(a), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

New Zealand Security Intelligence Service Act 1969 (1969 No 24)

In section 4A(6)(b), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Official Information Act 1982 (1982 No 156)

In section 11(1)(b), replace “section 4(1) of the Judicature Amendment Act 1972” with “section 8 of the Judicial Review Procedure Act 2016”.

In section 32(5)(a), replace “section 8 of the Judicature Amendment Act 1972” with “section 15 of the Judicial Review Procedure Act 2016”.

In section 32(5)(b), replace “section 8 of the Judicature Amendment Act 1972” with “section 15 of the Judicial Review Procedure Act 2016”.

In section 34(a), replace “section 4(1) of the Judicature Amendment Act 1972” with “section 8 of the Judicial Review Procedure Act 2016”.

Pitcairn Trials Act 2002 (2002 No 83)

In section 18(2)(a), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Privacy Act 1993 (1993 No 28)

In section 119(1)(b), replace “section 4(1) of the Judicature Amendment Act 1972” with “section 8 of the Judicial Review Procedure Act 2016”.

Resource Management Act 1991 (1991 No 69)

In section 296(a), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In section 384A(8), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Resource Management Amendment Act 2005 (2005 No 87)

In section 108(2), new section 296(2)(a), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Sale and Supply of Alcohol Act 2012 (2012 No 120)

In section 83(5), replace “Judicature Amendment Act 1972” with “Judicial Review Procedure Act 2016”.

In section 167(a), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Serious Fraud Office Act 1990 (1990 No 51)

In section 21(3), replace “section 8 of the Judicature Amendment Act 1972” with “section 15 of the Judicial Review Procedure Act 2016”.

Terrorism Suppression Act 2002 (2002 No 34)

In section 21(f), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In section 23(h), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In section 33, replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In section 42(1), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Part 2

Amendments to other enactments

Employment Court Regulations 2000 (SR 2000/250)

In regulation 10(1), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

High Court Fee Regulations 2013 (SR 2013/226)

In the Schedule, item 3(a), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Trans-Tasman Proceedings Regulations and Rules 2013 (SR 2013/350)

In rule 16(4)(b), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

Legislative history

14 September 2016

Divided from Judicature Modernisation Bill (Bill 178–2) as
Bill 178–3C

11 October 2016

Third reading

17 October 2016

Royal assent

This Act is administered by the Ministry of Justice.