

Judicature Amendment Act 1972

Public Act 1972 No 130
Date of assent 20 October 1972

Contents

		Page
	Title	2
1	Short Title	2
Part 1		
Single procedure for the judicial review of the exercise of or failure to exercise a statutory power		
2	Relation to Part 1 of principal Act and commencement of this Part	2
3	Interpretation	2
3A	Jurisdiction of Employment Court	4
4	Application for review	4
5	Defects in form, or technical irregularities	6
6	Disposal of proceedings for mandamus, prohibition, or certiorari	7
7	Disposal of proceedings for declaration or injunction	7
8	Interim orders	7
9	Procedure	8
10	Powers of Judge to call conference and give directions	9
11	Appeals	11
13	This Part to bind the Crown	11
14	Application of Crown Proceedings Act 1950	11
15	Jurisdiction of Administrative Division	11
16	References in enactments	11

Part 2
Miscellaneous amendments

An Act to amend the Judicature Act 1908

1 Short Title

This Act may be cited as the Judicature Amendment Act 1972, and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as the principal Act).

Part 1
**Single procedure for the judicial review
of the exercise of or failure to exercise a
statutory power**

2 Relation to Part 1 of principal Act and commencement of this Part

- (1) This Part of this Act shall be deemed part of Part 1 of the principal Act.
- (2) This Part of this Act shall come into force on the 1st day of January 1973.

3 Interpretation

In this Part of this Act, unless the context otherwise requires,—
Application for review means an application under subsection (1) of section 4 of this Act

Decision includes a determination or order

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 District

Court,, the Compensation Court, the Maori Land Court, and the Maori Appellate Court

Person: the reference to “a District Court” was substituted for a reference to “a Magistrate’s Court”, as from 1 April 1980, pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125).

Person: amended, as from 8 March 1974, by section 234(1) Industrial Relations Act 1973 (1973 No 19) by substituting the words “the Arbitration Court” for the words “the Industrial Court, the Industrial Commission”. Further amended, as from 1 August 1987, by section 341 Labour Relations Act 1987 (1987 No 77) by omitting the words “the Arbitration Court”.

Statutory power 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—

- (a) To make any regulation, rule, bylaw, or order, or to give any notice or direction having force as subordinate legislation; or
- (b) To exercise a statutory power of decision; or
- (c) To require any person to do or refrain from doing any act or thing that, but for such requirement, he would not be required by law to do or refrain from doing; or
- (d) To do any act or thing 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:

Statutory power: amended, as from 7 October 1977, by section 10(1) Judicature Amendment Act 1977 (1977 No 32) by inserting the words “or by or under the constitution or other instrument of incorporation, rules, or bylaws of any body corporate”.

Statutory power: further amended, as from 7 October 1977, by section 10(2) Judicature Amendment Act 1977 (1977 No 32) by inserting the word “or” and paragraph (e).

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 he is legally entitled to it or not.

Statutory power of decision: amended, as from 7 October 1977, by section 10(3) Judicature Amendment Act 1977 (1977 No 32) by substituting the words “, 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” for the words “to make a decision describing or prescribing”.

3A Jurisdiction of Employment Court

This Part of 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 applications for review or proceedings for a writ or order of, or in the nature of, mandamus, prohibition, certiorari, or for a declaration or injunction against any body constituted by, or any person acting pursuant to, the Employment Relations Act 2000.

Section 3A was inserted, as from 1 August 1987, by section 342 Labour Relations Act 1987 (1987 No 77).

Section 3A was substituted, as from 15 May 1991, by section 163 Employment Contracts Act 1991 (1991 No 22).

Section 3A was further substituted, as from 2 October 2000 by section 240 Employment Relations Act 2000 (2000 No 24).

Section 3A was amended, as from 1 December 2004, by section 72 Employment Relations Amendment Act (No 2) 2004 (2004 No 86) by inserting the words “and High Court” after the words “Employment Court”. See section 73 of that Act for the transitional provisions.

4 Application for review

- (1) On an application which may be called an application for review, the High Court may, notwithstanding any right of appeal possessed by the applicant in relation to the subject-matter of the application, by order grant, in relation to the exercise, refusal to exercise, or proposed or purported exercise by any person of a statutory power, any relief that the applicant would be entitled to, in any one or more of the proceedings for a writ or order of or in the nature of mandamus, prohibition, or certiorari or for a declaration or injunction, against that person in any such proceedings.
- (2) Where on an application for review the applicant is entitled to an order declaring that a decision made in the exercise of a statutory power of decision is unauthorised or otherwise in-

valid, the Court may, instead of making such a declaration, set aside the decision.

- (2A) Notwithstanding any rule of law to the contrary, it shall not be a bar to the grant of relief in proceedings for a writ or an order of or in the nature of certiorari or prohibition, or to the grant of relief on an application for review, that the person who has exercised, or is proposing to exercise, a statutory power was not under a duty to act judicially; but this subsection shall not be construed to enlarge or modify the grounds on which the Court may treat an applicant as being entitled to an order of or in the nature of certiorari or prohibition under the foregoing provisions of this section.
- (3) Where in any of the proceedings referred to in subsection (1) of this section the Court had, before the commencement of this Part of this Act, a discretion to refuse to grant relief on any grounds, it shall have the like discretion, on like grounds, to refuse to grant any relief on an application for review.
- (4) Subsection (3) of this section shall not apply to the discretion of the Court, before the commencement of this Part of this Act, to refuse to grant relief in any of the said proceedings on the ground that the relief should have been sought in any other of the said proceedings.
- (5) Without limiting the generality of the foregoing provisions of this section, on an application for review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision the Court if it is satisfied that the applicant is entitled to relief under subsection (1) of this section, may, in addition to or instead of granting any other relief under the foregoing provisions of this section, 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. In giving any such direction the Court shall—
- (a) Advise the person of its reasons for so doing; and
 - (b) Give to him 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.

- (5A) If the Court gives a direction under subsection (5) of this section it may make any order that it could make by way of interim order under section 8 of this Act, and that section shall apply accordingly, so far as it is applicable and with all necessary modifications.
- (5B) Where any matter is referred back to any person under subsection (5) of this section, that person shall have jurisdiction to reconsider and determine the matter in accordance with the Court's direction notwithstanding anything in any other enactment.
- (5C) Where any matter is referred back to any person under subsection (5) of this section, the act or omission that is to be reconsidered shall, subject to any interim order made by the Court under subsection (5A) of this section, continue to have effect according to its tenor unless and until it is revoked or amended by that person.
- (6) In reconsidering any matter referred back to him under subsection (5) of this section the person to whom it is so referred shall have regard to the Court's reasons for giving the direction and to the Court's directions.

Subsection (1) was amended, as from 7 October 1977, by section 13(2)(a) Judicature Amendment Act 1977 (1977 No 32) by omitting the words "by motion".

Subsection (2A) was inserted, as from 7 October 1977, by section 11(1) Judicature Amendment Act 1977 (1977 No 32).

Subsection (5) was amended, as from 7 October 1977, by section 11(2) Judicature Amendment Act 1977 (1977 No 32) by substituting the words "if it is satisfied that the applicant is entitled to relief under subsection (1) of this section, may, in addition to or instead of granting any other relief under the foregoing provisions of this section," for the word "may".

Subsections (5A), (5B) and (5C) were inserted, as from 7 October 1977, by section 11(3) Judicature Amendment Act 1977 (1977 No 32).

5 Defects in form, or technical irregularities

On an application for review in relation to a statutory power of decision, where the sole ground of relief established is a defect in form or a technical irregularity, if the Court finds that no substantial wrong or miscarriage of justice has occurred, it may refuse relief and, where the decision has already been made, may make an order validating the decision, notwithstanding

the defect or irregularity, to have effect from such time and on such terms as the Court thinks fit.

6 Disposal of proceedings for mandamus, prohibition, or certiorari

Where proceedings are commenced for a writ or order of or in the nature of mandamus, prohibition, or certiorari, in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statutory power, the proceedings shall be treated and disposed of as if they were an application for review.

7 Disposal of proceedings for declaration or injunction

Where proceedings are commenced for a declaration or injunction, or both, whether with or without a claim for other relief, and the exercise, refusal to exercise, or proposed or purported exercise of a statutory power is an issue in the proceedings, the Court on the application of any party to the proceedings may, if it considers it appropriate, direct that the proceedings be treated and disposed of, so far as they relate to that issue, as if they were an application for review.

8 Interim orders

- (1) Subject to subsection (2) of this section, at any time before the final determination of an application for review, and on the application of any party, the Court may, if in its opinion it is necessary to do so for the purpose of preserving the position of the applicant, make an interim order for all or any of the following purposes:
- (a) Prohibiting any respondent to the application for review 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 for review relates:
 - (c) Declaring any licence that has been revoked or suspended in the exercise of the statutory power, or that will expire by effluxion of time before the final determination of the application for review, to continue and,

where necessary, to be deemed to have continued in force.

- (2) Where the Crown is the respondent (or one of the respondents) to the application for review the Court shall not have power to make any order against the Crown under paragraph (a) or paragraph (b) of this section; but, instead, in any such case the Court may, by interim order,—
 - (a) Declare that the Crown ought not to take any further action that is or would be consequential on the exercise of the statutory power:
 - (b) Declare that the Crown ought not to institute or continue with any proceedings, civil or criminal, in connection with any matter to which the application for review relates.
- (3) Any order under subsection (1) or subsection (2) of this section may be made subject to such terms and conditions as the Court thinks fit, and may be expressed to continue in force until the application for review is finally determined or until such other date, or the happening of such other event, as the Court may specify.

This section was substituted, as from 7 October 1977, by section 12 Judicature Amendment Act 1977 (1977 No 32).

9 Procedure

- (1) An application for review shall be made by motion accompanied by a statement of claim.
- (2) The statement of claim shall—
 - (a) State the facts on which the applicant bases his claim to relief:
 - (b) State the grounds on which the applicant seeks relief:
 - (c) State the relief sought.
- (3) It shall not be necessary for the statement of claim to specify the proceedings referred to in section 4(1) of this Act in which the claim would have been made before the commencement of this Part of this Act.
- (4) The person whose act or omission is the subject-matter of the application for review, and, subject to any direction given by a Judge under section 10 of this Act, every party to the proceed-

ings (if any) in which any decision to which the application relates was made, shall be cited as a respondent.

- (4A) For the purposes of subsection (4) of this section, where the act or omission is that of a Judge, Registrar, or presiding officer of any Court or tribunal,—
- (a) That Court or tribunal, and not that Judge, Registrar, or presiding officer, shall be cited as a respondent; but
 - (b) That Judge, Registrar, or presiding officer may file, on behalf of that Court or tribunal, a statement of defence to the statement of claim.
- (5) For the purposes of subsection (4) of this section, where the act or omission is that of any 2 or more persons acting together under a collective title, they shall be cited by their collective title.
- (6) Subject to any direction given by a Judge under section 10 of this Act, every respondent to the application for review shall file a statement of his defence to the statement of claim.
- (7) Subject to this Part of this Act, the procedure in respect of any application for review shall be in accordance with rules of Court.

This section was substituted, as from 7 October 1977, by section 13(1) Judicature Amendment Act 1977 (1977 No 32).

Subsection (4A) was inserted, as from 15 August 1991, by section 7 Judicature Amendment Act 1991 (1991 No 60).

10 Powers of Judge to call conference and give directions

- (1) For the purpose of ensuring that any application or intended application for review may be determined in a convenient and expeditious manner, and that all matters in dispute may be effectively and completely determined, a Judge may at any time, either on the application of any party or intended party or without any such application, and on such terms as he thinks fit, direct the holding of a conference of parties or intended parties or their counsel presided over by a Judge.
- (2) At any such conference the Judge presiding may—
- (a) Settle the issues to be determined;
 - (b) Direct what persons shall be cited, or need not be cited, as respondents to the application for review, or direct that the name of any party be added or struck out:

- (c) Direct what parties shall be served:
 - (d) Direct by whom and within what time any statement of defence shall be filed:
 - (e) Require any party to make admissions in respect of questions of fact; and, if that party refuses to make an admission in respect of any such question, that party shall be liable to bear the costs of proving that question, unless the Judge by whom the application for review is finally determined is satisfied that the party's refusal was reasonable in all the circumstances, and accordingly orders otherwise in respect of those costs:
 - (f) Fix a time by which any affidavits or other documents shall be filed:
 - (g) Fix a time and place for the hearing of the application for review:
 - (h) Require further or better particulars of any facts, or of the grounds for relief, or of the relief sought, or of the grounds of defence, or of any other circumstances connected with the application for review:
 - (i) Require any party to make discovery of documents, or permit any 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 in Court, and give such directions as he thinks fit as to its filing:
 - (k) Exercise any powers of direction or appointment vested in the Court or a Judge by its rules of Court in respect of originating applications:
 - (l) Give such consequential directions as may be necessary.
- (3) Notwithstanding any of the foregoing provisions of this section, a Judge may, at any time before the hearing of an application for review has been commenced, exercise any of the powers specified in subsection (2) of this section without holding a conference under subsection (1) of this section.

This section was substituted, as from 7 October 1977, by section 14 Judicature Amendment Act 1977 (1977 No 32).

11 Appeals

Any party to an application for review who is dissatisfied with any final or interlocutory order in respect of the application may appeal to the Court of Appeal; and section 66 of the principal Act shall apply to any such appeal.

12

Section 12 was repealed, as from 7 October 1977, by section 13(2)(b) Judicature Amendment Act 1977 (1977 No 32).

13 This Part to bind the Crown

Subject to section 14 of this Act, this Part of this Act shall bind the Crown.

14 Application of Crown Proceedings Act 1950

- (1) Section 2 of the Crown Proceedings Act 1950 is hereby amended by adding to the definition of the term **civil proceedings**, in subsection (1), the words “or proceedings by way of an application for review under Part I of the Judicature Amendment Act 1972 to the extent that any relief sought in the application is in the nature of mandamus, prohibition, or certiorari”.
- (2) In its application to the Crown, this Part of this Act shall be read subject to the Crown Proceedings Act 1950, as amended by subsection (1) of this section.

15 Jurisdiction of Administrative Division

This section amended s 26(1)(c) of the principal Act.

16 References in enactments

Subject to sections 14 and 15 of this Act, every reference to any enactment (other than this Act), or in any regulation, to any of the proceedings referred to in subsection (1) of section 4 of this Act shall hereafter, unless the context otherwise requires, be read as including a reference to an application for review.

Part 2

Miscellaneous amendments

17
18
19
20
21