



ANALYSIS

<p>Title</p> <p>1. Short Title</p> <p style="text-align: center;">PART I</p> <p style="text-align: center;">SINGLE PROCEDURE FOR THE JUDICIAL REVIEW OF THE EXERCISE OF OR FAILURE TO EXERCISE A STATUTORY POWER</p> <p>2. Relation to Part I of principal Act and commencement of this Part</p> <p>3. Interpretation</p> <p>4. Application for review</p> <p>5. Defects in form, or technical irregularities</p> <p>6. Disposal of proceedings for mandamus, prohibition, or certiorari</p> <p>7. Disposal of proceedings for declaration or injunction</p> <p>8. Interim orders</p> <p>9. Sufficiency of application</p>	<p>10. Court may give directions as to filing of record</p> <p>11. Appeals</p> <p>12. Procedure</p> <p>13. This Part to bind the Crown</p> <p>14. Application of Crown Proceedings Act 1950</p> <p>15. Jurisdiction of Administrative Division</p> <p>16. References in enactments</p> <p style="text-align: center;">PART II</p> <p style="text-align: center;">MISCELLANEOUS AMENDMENTS</p> <p>17. Judges of the Supreme Court</p> <p>18. Supreme Court Districts abolished</p> <p>19. Offices of the Supreme Court</p> <p>20. Sheriffs and deputy sheriffs</p> <p>21. Costs where intervener or counsel assisting Court appears</p> <p>Schedules</p>
--	---

1972, No. 130

An Act to amend the Judicature Act 1908

[20 October 1972]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

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 I

SINGLE PROCEDURE FOR THE JUDICIAL REVIEW OF THE EXERCISE OF OR FAILURE TO EXERCISE A STATUTORY POWER

2. Relation to Part I of principal Act and commencement of this Part—(1) This Part of this Act shall be deemed part of Part I 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 Magistrate’s Court, the Court of Arbitration, the Compensation Court, the Maori Land Court, and the Maori Appellate Court:

“Statutory power” means a power or right conferred by or under any Act—

(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:

“Statutory power of decision” means a power or right conferred by or under any Act to make a decision deciding or prescribing—

(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.

4. Application for review—(1) On an application by motion which may be called an application for review, the Supreme 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 invalid, the Court may, instead of making such a declaration, set aside the decision.

(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 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. 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.

(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.

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—On an application for review, the Court may make such interim order as it thinks proper pending the final determination of the application.

9. Sufficiency of application—(1) In an application for review it is sufficient if the applicant sets out in the motion the grounds on which he is seeking relief, and the nature of the relief sought, without specifying the proceedings referred to in subsection (1) of section 4 of this Act in which the claim would have been made before the commencement of this Part of this Act.

(2) In an application for review, the person whose act or omission is the subject-matter of the application shall be cited as a party to the proceedings.

(3) For the purposes of subsection (2) 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.

10. Court may give directions as to filing of record—On an application for review of a decision made in the exercise or purported exercise of a statutory power of decision, the Court may direct that the record of the proceedings in which the decision was made, or any part of the record, be filed in an office of the Court.

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. Procedure—Subject to the provisions of this Part of this Act, the procedure in respect of any application for review shall be in accordance with rules of Court.

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—Section 26 of the principal Act (as inserted by section 2 of the Judicature Amendment Act 1968) is hereby amended by inserting in paragraph (c) of subsection (1), after the word “injunctions”, the words “and such applications or classes of application to the Court for review under Part I of the Judicature Amendment Act 1972.”.

16. References in enactments—Subject to sections 14 and 15 of this Act, every reference in 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 II

MISCELLANEOUS AMENDMENTS

17. Judges of the Supreme Court—(1) Section 4 of the principal Act (as inserted by section 4 (1) of the Judicature Amendment Act 1957 and amended by section 2 (1) of the Judicature Amendment Act 1969) is hereby further amended by omitting from subsection (1) the word “sixteen”, and substituting the expression “17”.

(2) Section 3 of the Judicature Amendment Act 1970 is hereby amended as from the commencement of that Act by omitting from subsection (5) and also from subsection (7) the words “section 2”, and substituting in each case the words “section 3”.

(3) Section 2 of the Judicature Amendment Act 1969 is hereby consequentially repealed.

18. Supreme Court Districts abolished—(1) All Supreme Court districts established pursuant to section 20 of the principal Act or any corresponding former enactment are hereby abolished.

(2) The principal Act is hereby amended in the manner indicated in the First Schedule to this Act.

(3) The Acts specified in the Second Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(4) This section shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council.

19. Offices of the Supreme Court—(1) Section 23A of the principal Act (as inserted by section 2 (1) of the Judicature Amendment Act 1952) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Notwithstanding anything in the Chattels Transfer Act 1924, the Governor-General may direct in any notice under subsection (1) of this section that any office of the Court to which the notice relates is not to be an office in which instruments within the meaning of that Act may be filed.”

(2) Section 23A (as so inserted) is hereby further amended by adding to subsection (2) the words “or revoke any direction given pursuant to subsection (1A) of this section”.

(3) Section 5 of the Chattels Transfer Act 1924 (as amended by section 2 of the Chattels Transfer Amendment Act 1969, section 2 of the Chattels Transfer Amendment Act 1970, and section 18 (3) of this Act) is hereby further amended by inserting in subsection (1), after the words "giving thereof", the words "(other than a Supreme Court Office in respect of which a direction under subsection (1A) of section 23A of the Judicature Act 1908 is in force)".

20. Sheriffs and deputy sheriffs—(1) The principal Act is hereby amended by repealing sections 29 to 31, and substituting the following section:

"29. (1) Every Registrar of the Supreme Court for the time being shall be a Sheriff for New Zealand.

"(2) There may be appointed under the State Services Act 1962 in respect of any office of the Court one or more Deputy Sheriffs.

"(3) Every Deputy Sheriff shall, in the absence of the Sheriff or when acting for the Sheriff, have the powers and privileges, duties and responsibilities of the Sheriff under this Act or any other enactment."

(2) Every person who at the commencement of this section holds office as Deputy Sheriff shall continue to hold that office as if he had been appointed pursuant to section 29 of the principal Act (as substituted by this section).

(3) This section shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council.

21. Costs where intervener or counsel assisting Court appears—The principal Act is hereby amended by inserting, after section 99, the following section:

"99A. (1) Where the Attorney-General or Solicitor-General or any other person appears in any action or in any proceedings on any appeal and argues any question of law or of fact arising in the action or proceedings the Court may, subject to the provisions of any other Act, make such order as it thinks just—

"(a) As to the payment by any party to the action or proceedings of the costs incurred by the Attorney-General or the Solicitor-General in so doing; or

"(b) As to the payment by any party to the action or proceedings or out of public funds of the costs incurred by any other person in so doing; or

“(c) As to the payment by the Attorney-General or the Solicitor-General or that other person of any costs incurred by any of those parties by reason of his so doing.

“(2) Where the Court makes an order pursuant to paragraph (b) of subsection (1) of this section the Registrar of the Court shall forward a copy of the order to the Secretary for Justice who shall make the payment out of money appropriated by Parliament for the purpose.”

SCHEDULES

Section 18 (2)

FIRST SCHEDULE

AMENDMENTS OF PRINCIPAL ACT CONSEQUENTIAL ON ABOLITION OF SUPREME COURT DISTRICTS

Section Amended	Amendment
Section 2	By repealing the definition of the term “district”.
Sections 20 to 22	By repealing these sections.
Section 23A (as inserted by section 2 (1) of the Judicature Amendment Act 1952)	By omitting from subsection (1) the words “in any district”.
Section 33	By omitting from subsection (3) the words “in the same district”.
Section 33	By omitting the words “within his district”.
Sections 43 to 46	By repealing these sections.
Section 52	By omitting the words “each district”, and substituting the words “each place where an office of the Supreme Court is established”.
Section 69	By omitting from subsection (1) the words “the judicial district in which the alleged offence was committed or the accused was apprehended, or from the judicial district in which such sitting of the Court of Appeal takes place (or from some other judicial district if sufficient reason is shown to the Court)”, and substituting the words “such jury district as the Court directs”.
Section 72	By omitting from subsection (2) the words “within his district”.

SECOND SCHEDULE

Section 18 (3)

AMENDMENTS OF OTHER ACTS CONSEQUENTIAL ON ABOLITION OF
SUPREME COURT DISTRICTS

Enactment Amended	Amendment
1908, No. 47—The District and Replevin Act 1908 (1957 Reprint, Vol. 4, p. 225)	<p>By omitting from subsection (1) of section 15 the words “Sheriff’s district in which”, and substituting the words “Court whose office is nearest by the most convenient route to the place where”.</p> <p>By omitting from subsection (1) of section 17 the words “of the Sheriff’s district in which”, and substituting the words “by whom”.</p> <p>By omitting from the form in the Fifth Schedule the words “in your bailiwick”, and substituting the words “by you”.</p>
1908, No. 90—The Juries Act 1908 (Reprinted 1965, Vol. 3, p. 1429)	<p>By omitting from section 31 the words “Sheriff’s district shall procure and keep in his office, for every Court town at which sittings of the Supreme Court are held within such district”, and substituting the words “jury district shall procure and keep in his office”.</p> <p>By repealing sections 44 and 45.</p> <p>By omitting from section 86 the words “of every Sheriff’s district”.</p> <p>By omitting from section 88 the words “of the Sheriff’s district within which”, and substituting the words “at the place where”.</p>
1910, No. 27—The Judicature Amendment Act 1910 (1957 Reprint, Vol. 6, p. 738)	By repealing section 2.
1912, No. 26—The Aged an Infirm Persons Protection Act 1912 (1957 Reprint, Vol. 1, p. 115)	By omitting from the form in the First Schedule and the form in the Second Schedule the word “District”, and substituting in each case the word “at . . .”.
1924, No. 49—The Chattels Transfer Act 1924 (Reprinted 1968, Vol. 2, p. 1447)	By repealing the third proviso to subsection (1) of section 5 (as amended by section 2 of the Chattels Transfer Amendment Act 1969 and section 2 of the Chattels Transfer Amendment Act 1970), and substituting the following proviso:

SECOND SCHEDULE—*continued*AMENDMENTS OF OTHER ACTS CONSEQUENTIAL ON ABOLITION OF
SUPREME COURT DISTRICTS—*continued*

Enactment Amended	Amendment												
1924, No. 49—The Chattels Transfer Act 1924— <i>continued</i>	<p>“Provided further that for the purpose of registration that part of New Zealand included in the Judicial District of Gisborne at the time of the abolition of that district by section 18 (1) of the Judicature Amendment Act 1972 shall be deemed to be a separate provincial district:”.</p>												
1947, No. 16—The Magistrates’ Courts Act 1947 (1957 Reprint, Vol. 8, p. 647)	<p>By repealing the proviso added to section 5 by section 2 of the Chattels Transfer Amendment Act 1969, and substituting the following proviso:</p> <p>“Provided further that for the purpose of registration that part of New Zealand included in the Judicial District of Westland at the time of the abolition of that district by section 18 (1) of the Judicature Amendment Act 1972 shall be deemed to be a separate provincial district:”.</p>												
1950, No. 54—The Crown Proceedings Act 1950 (1957 Reprint, Vol. 3, p. 517)	<p>By omitting from subsection (4) of section 66 the words “in the district or registry of which the Magistrate’s Court aforesaid is situated”, and substituting the words “nearest to that Magistrate’s Court by the most convenient route or any such other office as may be prescribed”.</p> <p>By repealing subsection (1) of section 72, and substituting the following subsection:</p> <p>“(1) Every appeal to the Supreme Court shall be brought by notice of motion lodged with the Registrar of the Supreme Court whose office is nearest by the most convenient route to the Magistrate’s Court from which the appeal is made or with such other Registrar of the Supreme Court as may be prescribed.”</p> <p>By omitting from the forms numbered (2), (4), and (5) in the Third Schedule the words</p> <table style="margin-left: 40px;"> <tr> <td style="padding-right: 10px;">“In the Supreme Court of New Zealand,</td> <td style="border-left: 1px solid black; padding-left: 10px;">land,</td> <td rowspan="3" style="font-size: 3em; vertical-align: middle; padding-left: 10px;">}</td> </tr> <tr> <td></td> <td style="padding-left: 10px;">District,</td> </tr> <tr> <td></td> <td style="padding-left: 10px;">Registry.</td> </tr> </table> <p>and substituting the words</p> <table style="margin-left: 40px;"> <tr> <td style="padding-right: 10px;">“In the Supreme Court of New Zealand,</td> <td style="border-left: 1px solid black; padding-left: 10px;">land at</td> <td rowspan="2" style="font-size: 3em; vertical-align: middle; padding-left: 10px;">}</td> </tr> <tr> <td></td> <td style="padding-left: 10px;">.</td> </tr> </table>	“In the Supreme Court of New Zealand,	land,	}		District,		Registry.	“In the Supreme Court of New Zealand,	land at	}		.
“In the Supreme Court of New Zealand,	land,	}											
	District,												
	Registry.												
“In the Supreme Court of New Zealand,	land at	}											
	.												

SECOND SCHEDULE—*continued*AMENDMENTS OF OTHER ACTS CONSEQUENTIAL ON ABOLITION OF
SUPREME COURT DISTRICTS—*continued*

Enactment Amended	Amendment
1969, No. 52—The Administration Act 1969	By omitting from subsection (1) of section 60 the words “the district of the Court”, and substituting the words “New Zealand”. By omitting from the form of <i>Certificate of Administration</i> in the First Schedule the word “District”, and substituting the word “at”.
1969, No. 71—The Chattels Transfer Amendment Act 1969	By repealing section 2.

This Act is administered in the Department of Justice.
