



## ANALYSIS

<p>Title</p> <p>1. Short Title</p> <p>2. Three new sections (relating to temporary Judges) substituted in principal Act</p> <p>    11. Temporary Judges</p> <p>    11A. Former Judges</p>	<p>11B. Certificate by Chief Justice and 3 other Judges prerequisite</p> <p>3. Age of retirement</p> <p>4. Additional Judges of Court of Appeal in certain circumstances</p> <p>5. Regulations</p>
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1981, No. 40

**An Act to amend the Judicature Act 1908**

[14 October 1981]

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 1981, and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as the principal Act).

**2. Three new sections (relating to temporary Judges) substituted in principal Act**—(1) The principal Act is hereby amended by repealing section 11, and substituting the following sections:

“**11. Temporary Judges**—(1) Subject to section 11B of this Act, at any time during the illness or absence of any Judge, or for any other temporary purpose, the Governor-General may, in the name and on behalf of Her Majesty, appoint any person (including a former Judge) to be a Judge for such term, not exceeding 12 months, as the Governor-General may specify.

“(2) Any person appointed a Judge under this section may be re-appointed, but no Judge shall hold office under this section for more than 2 years in the aggregate.

“(3) Every person appointed a Judge under this section shall, during the term of his appointment, be paid the salary and allowances payable by law to a Judge other than the Chief Justice.

“11A. **Former Judges**—(1) Subject to section 11B of this Act, the Governor-General may, in the name and on behalf of Her Majesty, appoint any former Judge to be an acting Judge for such term not exceeding 2 years or, if the former Judge has attained the age of 72 years, not exceeding 1 year, as the Governor-General may specify.

“(2) During the term of his appointment, the former Judge may act as a Judge during such period or periods only and in such place or places only as the Chief Justice may determine.

“(3) Every former Judge appointed under this section shall, during each period when he acts as a Judge, but not otherwise, be paid a salary at the rate for the time being payable by law to a Judge other than the Chief Justice, and shall also be paid such travelling allowances or other incidental or minor allowances as may be fixed from time to time by the Governor-General.

“(4) Every former Judge appointed under this section shall, during each period when he acts as a judge, have all the jurisdiction, powers, protections, privileges, and immunities of a Judge.

“11B. **Certificate by Chief Justice and 3 other Judges prerequisite**—No appointment may be made under section 11 or section 11A of this Act otherwise than on a certificate signed by the Chief Justice and not less than 3 other permanent Judges to the effect that, in their opinion, it is necessary for the due conduct of the business of the Court that 1 or more temporary Judges, or (as the case may require) 1 or more acting Judges, be appointed.”

(2) The following enactments are hereby repealed:

- (a) Section 2 of the *Judicature Amendment Act 1923*;
- (b) Section 6 of the *Judicature Amendment Act 1961*.

**3. Age of retirement**—(1) The principal Act is hereby amended by repealing section 13, and substituting the following section:

“13. Every Judge, other than a former Judge appointed under section 11 or section 11A of this Act or a person who is deemed by section 58 (10) of this Act to be a Judge, shall retire from office on attaining the age of 68 years.”

(2) Notwithstanding subsection (1) of this section, any Judge who was in office on the 1st day of January 1981 (being the date of the commencement of section 2 of the Judicature Amendment Act 1980) and is still in office at the commencement of this Act may, at his option, continue in office until he attains the age of 72.

(3) Section 2 (3) of the Judicature Amendment Act 1980 is hereby amended by omitting the words “subsection (1) or”.

(4) The following enactments are hereby repealed:

(a) Section 7 of the Judicature Amendment Act 1961:

(b) Section 2 (1) of the Judicature Amendment Act 1980.

**4. Additional Judges of Court of Appeal in certain circumstances**—Section 58 of the principal Act (as substituted by section 8 (1) of the Judicature Amendment Act 1979) is hereby amended by adding the following subsections:

“(9) Without limiting subsection (4) or subsection (5) of this section, whenever the Chief Justice and the President of the Court of Appeal give a certificate under either of those subsections, the Governor-General in Council may, with the concurrence of the Chief Justice and the President of the Court of Appeal, appoint any former member of the Court of Appeal (with that former member’s consent) to act as an additional Judge of that Court in accordance with and for the purposes of that subsection.

“(10) Every person appointed under subsection (9) of this section shall, while he is acting as an additional Judge of the Court of Appeal in accordance with that appointment, be deemed to be, and to have all the powers of, a Judge of the High Court.

“(11) Every person appointed under subsection (9) of this section shall, during each period when he acts as an additional Judge of the Court of Appeal, but not otherwise, be paid a salary at the rate for the time being payable by law to a Judge (other than the President) of that Court, and shall also be paid such travelling allowances or other incidental or minor allowances as may be fixed from time to time by the Governor-General.”

**5. Regulations—**(1) Section 100A of the principal Act (as inserted by section 3 (1) of the Judicature Amendment Act (No. 2) 1968) is hereby amended by inserting, after paragraph (b), the following paragraph:

“(ba) Prescribing the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings to which this Act applies:”.

(2) The following enactments are hereby repealed:

(a) Section 56BB of the principal Act (as inserted by section 11 of the Judicature Amendment Act 1961):

(b) Section 11 of the Judicature Amendment Act 1961:

(c) Section 4 (3) of the Judicature Amendment Act 1977.

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This Act is administered in the Department of Justice.

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