

**Version
as at 28 October 2021**

Declaratory Judgments Act 1908

Public Act 1908 No 220
Date of assent 25 September 1908

Contents

	Page
Title	1
1 Short Title	2
2 Declaratory judgments	2
3 Declaratory orders on originating summons	2
4 Effect of declaratory orders	2
5 Service of originating summons	2
6 Summons to be subject to rules of Court	3
7 Removal of summons into Court of Appeal	3
8 Appeal to Court of Appeal	3
9 Judgment or order in anticipation of any act or event	3
10 Jurisdiction discretionary	3
11 Declaratory judgments or orders in cases where Court cannot give relief	3
12 Decisions of Court of Appeal to bind all other Courts	4
13 Costs	4

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

Note

Changes authorised by subpart 2 of Part 3 of the Legislation Act 2019 have been made in this consolidation. See the notes at the end of this consolidation for further details.

This Act is administered by the Ministry of Justice.

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.

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 legislation, 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 legislation, 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 legislation, deed, will, document of title, agreement, memorandum, articles, or instrument, or of any part thereof.

Section 3: amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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 Senior Courts Act 2016, 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.

Section 6: amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

7 Removal of summons into Court of Appeal

An originating summons under section 3 may be removed into the Court of Appeal in the same manner as the matters specified in section 59 of the Senior Courts Act 2016 are removable, and section 59 of that Act applies to any originating summons removed into the court.

Section 7: replaced, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

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.

Consolidation notes

1 General

This is a consolidation of the Declaratory Judgments Act 1908 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 About this consolidation

This consolidation is not an official version of the legislation under section 78 of the Legislation Act 2019.

3 Amendments incorporated in this consolidation

Secondary Legislation Act 2021 (2021 No 7): section 3

Senior Courts Act 2016 (2016 No 48): section 183(b)

Supreme Court Act 2003 (2003 No 53): section 48(1)

Declaratory Judgments Amendment Act 1966 (1966 No 57): section 2