



ANALYSIS

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1994, No. 18

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

(9 September 1994)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Declaratory Judgments Act 1994.
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 - (1) Where any person -
 - (a) has done or desires to do any act, the validity, legality, or effect of which depends on the construction or validity of any enactment, 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

- (b) claims to have acquired any right under any such enactment, 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 regulation, bylaw, deed, will, document of title, agreement, memorandum, articles of instrument, or of any part thereof.

(2) For the purposes of this section, "enactment" shall have the same meaning as in Article 1 of the Constitution.

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 Judicature Act 1980-81, any such originating summons shall be subject to the rules of Court which are for the time being in force with respect of an originating summons taken out by trustees for the interpretation of a deed or instrument creating a trust.

7. Removal of summons into Court of Appeal - Any such originating summons may be removed into the Court of Appeal in the same manner as the matters specified in sections 52 and 53 of the Judicature Act 1980-81 are removable, and the provisions of sections 52 and 53 of that Act shall apply to any originating summons so removed accordingly.

8. Appeal to Court of Appeal - An appeal shall lie to the Court of Appeal from any judgement 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 High 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 Privy Council, any decision of the Court of Appeal under this Act shall be binding as a precedent in all other Courts in the Cook Islands.

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.

14. Transitional - Notwithstanding the repeal in the Cook Islands of the Declaratory Judgments Act 1908 of New Zealand, any proceedings instituted in the Cook Islands under that Act before the coming into force of this Act, may be continued under that Act as if this Act had not been passed.

15. Consequential amendments - The New Zealand Laws Act 1979 is amended by deleting from the schedule to that Act, the words "1908 No. 220 The Declaratory Judgments Act 1908".

16. Repeal - The Declaratory Judgments Act 1908 of the Parliament of New Zealand is declared to be no longer in force in the Cook Islands.

This Act is administered in the Justice Department