

## JUDICATURE AMENDMENT BILL

### EXPLANATORY NOTE

THIS Bill amends the Judicature Act 1908 by providing for an Administrative Division of the Supreme Court. The main purpose of the Bill is that appeals from certain administrative tribunals, in cases where the relevant statutes so provide, and certain other proceedings in the field of public law, should be heard in future by the Division. The establishment of such a Division was the main recommendation in the first report of the Public and Administrative Law Reform Committee (*Appeals from Administrative Tribunals*; January 1968).

*Clause 1* relates to the Short Title.

*Clause 2* repeals two spent sections of the principal Act, and substitutes four new sections 25, 26, 26A, and 26B.

The new section 25 provides that there shall be in the Supreme Court an Administrative Division consisting of not more than five Judges of the Supreme Court assigned to it from time to time by the Chief Justice. The fact that a Judge is a member of the Division is not to prevent his exercising any other powers as a Judge of the Supreme Court.

The new section 26 (1) provides, in paragraphs (a) and (b), that the Division is to hear such appeals and other proceedings as are, under the provisions of any enactment, to be heard by the Division. The Division will also, under subsection (1) (c), hear such applications or classes of applications for writs of certiorari, prohibition, or mandamus, and such applications or classes of applications for declaratory judgments or orders or injunctions, as are referred to it by the Chief Justice.

Subsection (2) is in similar terms to section 19 of the principal Act (which relates to the powers of Judges of the Supreme Court). It provides that any one or more of the Judges of the Division may exercise all the powers of the Division, except such powers as are required by some other enactment to be exercised by any specified number of Judges of the Division.

Subsection (3) allows the Chief Justice in his discretion to direct that any proceedings otherwise required to be dealt with by the Administrative Division be heard and determined by some other Judge of the Supreme Court if in the Chief Justice's opinion, having regard to the special nature of the subject-matter and the circumstances of the case, it is one that would more appropriately be dealt with by that Judge.

The effect of subsection (4) is that no further appeal to the Court of Appeal will lie in cases required by statute to be heard by the Division under paragraphs (a) and (b) of subsection (1), whether or not any such case has been assigned to another Judge under subsection (3).

The new section 26A provides that sections 25 and 26 are to be read subject to any enactment that provides for the appointment of persons other than Judges to sit as members of or assessors with the Division in any specified proceedings.

The new section 26B provides that rules may be made (by the Rules Committee) regulating the practice and procedure of the Division, prescribing the form and manner of proceedings, and fixing scales of costs.

*Hon. Mr Hanan*

## JUDICATURE AMENDMENT

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### ANALYSIS

Title	
1. Short Title	ADMINISTRATIVE DIVISION OF THE COURT
2. New heading and sections inserted in principal Act	25. Administrative Division of the Supreme Court 26. Jurisdiction of Administrative Division 26A. Lay members or assessors in certain cases 26B. Rules relating to Administrative Division

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### A BILL INTITULED

#### An Act to amend the Judicature Act 1908

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 1968, and shall be read together with and deemed part of the Judicature Act 1908\* (hereinafter referred to as the principal Act).

**10 2. New heading and sections inserted in principal Act**—The principal Act is hereby amended by repealing sections 25 and 26, and substituting the following heading and sections:

\*1957 Reprint, Vol. 6, p. 699

Amendments: 1958, No. 40; 1960, No. 109; 1961, No. 11; 1963, No. 133; 1965, No. 62; 1966, No. 67; 1967, No. 85

“ADMINISTRATIVE DIVISION OF THE COURT

“25. **Administrative Division of the Supreme Court—**  
 (1) There shall be in the Supreme Court an Administrative  
 Division.

“(2) The Division shall consist of not more than five Judges 5  
 of the Supreme Court, being Judges assigned to the Division  
 from time to time by the Chief Justice.

“(3) Nothing in this section shall prevent any Judge of the  
 Administrative Division from exercising any of the powers of  
 a Judge of the Supreme Court, whether or not in his capacity 10  
 as a Judge of the Division.

“26. **Jurisdiction of Administrative Division—**(1) Notwith-  
 standing anything in section 19 of this Act, the Administrative  
 Division shall hear and determine—

“(a) Such appeals as are, under or by virtue of any enact- 15  
 ment for the time being in force, to be heard and  
 determined by the Division:

“(b) Such proceedings, other than appeals, as are, under or  
 by virtue of any enactment for the time being in  
 force, to be heard and determined by the Division: 20

“(c) Such applications or classes of applications to the  
 Supreme Court for writs of certiorari, prohibition,  
 or mandamus, and such applications or classes of  
 applications to the Court for declaratory judgments  
 or orders or injunctions, as may from time to time 25  
 be referred to the Division by the Chief Justice.

“(2) Any one or more of the Judges of the Division may  
 exercise all the powers of the Division, except such powers as  
 may by any enactment be required to be exercised by any 30  
 specified number of Judges of the Division.

“(3) Notwithstanding anything in paragraphs (a) and (b)  
of subsection (1) of this section, the Chief Justice may in his  
 discretion direct that any particular appeal or proceeding, not  
 being one that is required by any enactment to be heard by 35  
 a specified number of Judges of the Division, be heard and  
 determined by a Judge who is not a member of the Adminis-  
 trative Division if in the Chief Justice’s opinion, having regard  
 to the special nature of the subject-matter of the appeal or  
 proceeding and the circumstances of the case, it is one that 40  
 would more appropriately be dealt with by that Judge.

“(4) Except as otherwise expressly provided in any enactment, nothing in sections 64 to 66 of this Act shall apply in respect of any proceedings required by paragraphs (a) and (b) of subsection (1) of this section to be heard by the  
5 Administrative Division, whether or not they are heard by the Division.

“26A. **Lay members or assessors in certain cases**—Sections 25 and 26 of this Act shall be read subject to the provisions of any enactment that provides for the appointment of persons  
10 other than Judges to sit as members of or assessors with the Administrative Division in respect of any specified proceedings or class of proceedings.

“26B. **Rules relating to Administrative Division**—(1) Rules may from time to time be made, in the manner prescribed by  
15 this Act,—

“(a) Regulating the practice and procedure of the Administrative Division:

“(b) Prescribing the form and manner in which appeals, applications, and other proceedings shall be made  
20 to or brought before the Division:

“(c) Fixing scales of costs in respect of matters within the jurisdiction of the Division.

(2) Any such rules may modify the provisions of any enactment relating to any matters to which subsection (1) of this  
25 section applies; and so far as any such enactment is inconsistent with or repugnant to the rules it shall be read subject to the rules.”