

# JUDICATURE AMENDMENT BILL

---

## EXPLANATORY NOTE

THIS Bill amends the Judicature Act 1908.

*Clause 1* relates to the Short Title.

*Clause 2* rewrites section 11 (1) of the principal Act relating to the appointment of temporary Judges of the High Court. The new *subsection (1)* makes it clear that a former Judge may be appointed as a temporary Judge. The new *subsection (1A)* changes the present provisions relating to the salary payable to temporary Judges. Under the existing law, a temporary Judge is to be paid such amount as the Governor-General in Council may direct, not exceeding the salary payable to a permanent Judge. Under the new provision, a temporary Judge will be paid while he acts as a Judge at the same rate as a permanent Judge.

*Clause 3* is consequential upon clause 4, which makes provision for former members of the Court of Appeal to act as additional Judges of that Court. This clause makes it clear that the statutory retirement age of 68 years does not apply to such persons.

*Clause 4* amends section 58 of the principal Act relating to temporary members of the Court of Appeal. Under subsection (4) of that section, a Judge of the High Court may act as an additional Judge of the Court of Appeal whenever the Chief Justice and the President of the Court of Appeal certify that it is necessary for the Court to sit in divisions and that an additional Judge is necessary to enable the Court to do so. Under subsection (5) of that section, a Judge of the High Court may act as an additional Judge of the Court of Appeal for the purpose of any appeal or proceeding whenever the Chief Justice and the President of the Court of Appeal certify that it is expedient that an additional Judge should act in the case.

The proposed *subsection (9)* empowers the Governor-General, with the concurrence of the Chief Justice and the President of the Court of Appeal, to appoint a former Judge of the Court of Appeal to sit as an additional Judge of that Court for the purposes of subsections (4) and (5). The proposed *subsection (10)* gives such an appointee all the powers of a Judge, and the proposed *subsection (11)* provides for his remuneration.

*Clause 5* empowers the making of regulations to prescribe fees and travelling allowances for witnesses and interpreters. While section 56BB makes provision for witnesses, there is some doubt as to whether the position of interpreters is adequately covered.

*Hon. Mr McLay*

## JUDICATURE AMENDMENT

---

### ANALYSIS

Title	3. Age of retirement
1. Short Title	4. Additional Judges of Court of Appeal in certain circumstances
2. Temporary Judges	5. Regulations

---

### 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,  
5 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).

10 2. **Temporary Judges**—(1) Section 11 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

\*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; 1968, No. 18; 1968, No. 59; 1969, No. 86;  
1970, No. 72; 1972, No. 130; 1973, No. 69; 1974, No. 57; 1976, No. 134;  
1977, No. 32; 1978, No. 55; 1979, No. 124; 1980, No. 88

“(1) At any time during the illness or absence of any Judge, or for any other temporary purpose, the Governor-General in Council may, in the name and on behalf of Her Majesty, appoint any person (including a former Judge) to be a Judge to hold office as provided in subsection (3) of this section. 5

“(1A) Every person appointed under subsection (1) of this section shall be paid for each period during which he acts as a Judge a corresponding proportion of the salary for the time being payable to a Judge.” 10

(2) Section 11 (4) of the principal Act (as added by section 6 of the Judicature Amendment Act 1961) is hereby amended by omitting the word “two”, and substituting the expression “4”.

(3) Notwithstanding subsection (1) of this section, every person who, on the passing of this Act, is holding office as a Judge pursuant to section 11 of the principal Act shall, until the expiry of the period for which he has been appointed, be paid the salary payable by law to a Judge other than the Chief Justice. 20

**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 Judge appointed under section 11 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.” 25

(2) 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. 30

**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. 40

“(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  
5 High Court.

“(11) Every person appointed under subsection (9) of this section shall be paid for each period during which he acts as an additional Judge of the Court of Appeal a corresponding proportion of the salary for the time being payable  
10 to a Judge (other than the President) of that Court.”

**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:

15 “(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:

20 (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.