

JUDICATURE AMENDMENT BILL

EXPLANATORY NOTE

General Explanation

This Bill—

- (a) Validates the appointment of officers of the High Court and officers of the Court of Appeal (including Registrars and Deputy Registrars) who have been appointed since the State Sector Act 1988 came into force on 1 April 1988; and
- (b) Provides that the actions taken by those officers, in their official capacity, in the period beginning on 1 April 1988 and ending with the commencement of this Bill are as valid as they would have been if those officers had been validly appointed; and
- (c) Provides for future appointments of such officers to be made under the State Sector Act 1988.

Although sections 27 and 72 of the Judicature Act 1908 provide for such officers to be appointed by the Governor-General, all such appointments were, under the State Services Act 1962, made by the State Services Commission. Section 22 (3) of that Act provided that wherever, in any Act in force before 1 April 1913, such as the Judicature Act 1908, it was provided that any appointment to any department of the Public Service might be made by the Governor-General, that appointment was required to be made by the State Services Commission in accordance with the State Services Act 1962. This was a continuation of the situation that had applied under section 60 (3) of the Public Service Act 1912.

No corresponding provision was included in the State Sector Act 1988 (which repealed the State Services Act 1962).

Nevertheless, after the commencement of the State Sector Act 1988 on 1 April 1988, appointments of such officers were made in accordance with that Act and not in accordance with sections 27 and 72 of the Judicature Act 1908.

This Bill corrects the situation.

Clause by Clause Analysis

This Bill amends the Judicature Act 1908.

Clause 1 relates to the Short Title and commencement of the Bill. The Bill comes into force on the date on which it receives the Royal assent.

Clause 2 repeals section 27 of the Judicature Act 1908, and substitutes a new section. The new section provides authority for the appointment under the State Sector Act 1988 of Registrars, Deputy Registrars, and other officers of the High Court.

Clause 3 repeals section 72 of the Judicature Act 1908, and substitutes a new section. The new section provides similar authority for the appointment of Registrars, Deputy Registrars, and other officers of the Court of Appeal.

Clause 4 validates appointments made by the Secretary for Justice and the chief executive of the Department for Courts since the coming into force on 1 April 1988 of the State Sector Act 1988. Any actions taken, in the period beginning on 1 April 1988 and ending with the commencement of this Bill, by such officers are also deemed to be, and to have always been, valid.

Clause 5 makes it clear that the Bill does not prevent any appointment made before the commencement of this Bill by the Department of Justice or the Department for Courts from being reviewed under the procedure put into place by the Department under section 65 of the State Sector Act 1988.

Hon D A M Graham

JUDICATURE AMENDMENT

ANALYSIS

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| Title | 3. Appointment of officers |
| 1. Short Title | 4. Validations |
| 2. Appointment of officers | 5. Saving |

A BILL INTITULED

An Act to amend the Judicature Act 1908

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title**—(1) This Act may be cited as the Judicature Amendment Act 1997, and is part of the Judicature Act 1908* (“the principal Act”).

(2) This Act comes into force on the date on which it receives the Royal assent.

10 **2. Appointment of officers**—The principal Act is amended by repealing section 27, and substituting the following section:

15 “27. There may from time to time be appointed under the State Sector Act 1988 such Registrars, Deputy Registrars, and other officers as may be required for the conduct of the business of the Court.”

3. Appointment of officers—The principal Act is amended by repealing section 72, and substituting the following section:

20 “72. There may from time to time be appointed under the State Sector Act 1988 such Registrars, Deputy Registrars, and other officers as may be required for the conduct of the business of the Court of Appeal.”

*R.S. Vol. 22, p. 107

Amendments: 1990, No. 44; 1991, No. 60; 1993, No. 117; 1994, No. 42; 1995, No. 70

4. Validations—(1) All persons who have, in the period beginning on 1 April 1988 and ending with the commencement of this Act, been appointed under the State Sector Act 1988 as Registrars, Deputy Registrars, ushers, Clerks, criers, or other officers of the High Court or the Court of Appeal are deemed to be, and to have always been, validly appointed to their respective offices. 5

(2) Where any person is deemed, by subsection (1), to have been validly appointed as an officer of the High Court, any action taken by that person, in his or her capacity as an officer of the High Court, in the period beginning on 1 April 1988 and ending with the commencement of this Act, is deemed to be, and to have always been, as valid as it would have been if that person had been validly appointed to the office in accordance with section 27 of the principal Act (in the form in which that section stood at the time of that person's appointment). 10 15

(3) Where any person is deemed, by subsection (1), to have been validly appointed as an officer of the Court of Appeal, any action taken by that person in his or her capacity as an officer of the Court of Appeal, in the period beginning on 1 April 1988 and ending with the commencement of this Act, is deemed to be, and to have always been, as valid as it would have been if that person had been validly appointed to the office in accordance with section 72 of the principal Act (in the form in which that section stood at the time of that person's appointment). 20 25

5. Saving—Nothing in this Act prevents any appointment made before the commencement of this Act by the Department of Justice or the Department for Courts from being reviewed under the procedure put in place by either Department under section 65 of the State Sector Act 1988. 30