



---

# LAW·COMMISSION

## TE·AKA·MATUA·O·TE·TURE

---

### **Declaratory Judgments - Terms of Reference**

The declaratory judgment is an important judicial remedy in modern New Zealand. It provides parties with a convenient means for the efficient and effective resolution of a range of disputes, without the need for further remedies. Examples under the Declaratory Judgments Act 1908 include disputes relating to the interpretation of public statutes and regulations as well as private agreements and other documents. A court's jurisdiction to issue a declaratory judgment is, however, much broader than under the 1908 Act. The declaratory judgment is regularly relied upon as a remedy in relation to judicial review of administrative action, as well as being used in tort, in relation to Treaty of Waitangi settlements and Māori land law, and all manner of legal contexts in between.

Despite the importance of the declaratory judgment, there is disagreement as to its current and potential scope, and there exists significant crossover in its jurisdictional sources, between the Declaratory Judgments Act 1908, the Judicature Amendment Act 1972, the High Court's inherent jurisdiction, and various other statutes. The Declaratory Judgments Act 1908 is also outdated in its language and form: its principal provision (section 3) is a single sentence of 172 words.

The Law Commission will undertake a first principles review of declaratory judgments in New Zealand law, with a particular focus on modernising and simplifying the expression and content of the law in this area, to the extent practicable. The review will include (but not be limited to) the following matters:

1. The scope of the declaratory judgment across all its jurisdictional sources and the relationships between those different sources;
2. Whether the scope of the declaratory judgment is appropriate or ought to be widened to include, for instance:
  - 2.1 determination of disputed facts; and
  - 2.2 the issue of advisory opinions;

3. Whether the crossover between the various jurisdictional sources for declaratory judgments is appropriate, or requires clearer delineation, harmonisation or codification;
4. Whether the High Court is exercising its broad declaratory jurisdiction appropriately in relation to matters for which a specialist court or tribunal has otherwise exclusive jurisdiction, and whether a general declaratory jurisdiction ought to be extended to a broader range of courts and tribunals;
5. The delineation of the boundary between matters of jurisdiction and matters of discretion;
6. The grounds on which courts have exercised discretion in granting, or refusing to grant declaratory judgments, whether these remain appropriate, and whether there should be statutory guidelines;
7. The value of the declaratory judgment to Māori in terms of both its current and potential scope;
8. The appointment and role of contradictors;
9. The relationship between declaratory relief and limitation provisions;
10. A review of the procedure applying to applications for declaratory judgments, both in the Judicature Amendment Act 1972 and the High Court Rules.

The review will not consider the constitutional status of the New Zealand Bill of Rights Act 1990, nor whether the High Court can issue a declaration of inconsistency under that Act.

The Law Commission will consult with experts, interested parties, and the general public over 2016 and 2017. As part of this, the Commission will establish an expert advisory group to provide advice and a range of perspectives throughout the project. The Commission expects to report to the Minister with its recommendations by April 2018.