

**Reprint  
as at 1 January 2018**

**Judicature Amendment Act 2004**

Public Act      2004 No 45  
Date of assent      19 May 2004

Judicature Amendment Act 2004: repealed, on 1 January 2018, pursuant to section 182 of the Senior Courts Act 2016 (2016 No 48).

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

**This Act is administered by the Ministry of Justice.**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Judicature Amendment Act 2004.
- (2) In this Act, the Judicature Act 1908 is called “the principal Act”.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**3 The Judges of the High Court**

- (1) Section 4 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

- (1) The High Court consists of—
  - (a) a Judge called the Chief Justice of New Zealand; and
  - (b) the other Judges, up to a maximum of 55, who are from time to time appointed.
- (1A) For the purposes of subsection (1)(b),—
  - (a) a Judge who is acting on a full-time basis counts as 1;
  - (b) a Judge who is acting on a part-time basis counts as an appropriate fraction of 1;
  - (c) the aggregate number (for example, 54.5) must not exceed the maximum number of Judges that is for the time being permitted.
- (1B) Subsection (1) is subject to subsections (1C) and (1D) and the other provisions of this Act
- (1C) An additional Judge or additional Judges may be appointed whenever the Governor-General thinks it necessary because of the absence or anticipated absence of any of the Judges on leave preliminary to retirement.
- (1D) Every appointment made under subsection (1C) must be a permanent appointment from the time when it is made, and must fill the vacancy next occurring in the office of Judge, not being a vacancy filled by an earlier appointment under subsection (1C).

- (2) Section 4 of the principal Act is amended by inserting, after subsection (2), the following subsection:

(2A) A Judge must not undertake any other paid employment or hold any other office (whether paid or not) unless the Chief High Court Judge is satisfied that the employment or other office is compatible with judicial office.

- (3) Section 181 of the Sentencing Act 2002 is consequentially repealed.

#### **4 New section 4C inserted**

The principal Act is amended by inserting, after section 4B, the following section:

#### **4C Judges of High Court act on full-time basis but may be authorised to act part-time**

- (1) A person acts as a Judge of the High Court on a full-time basis unless he or she is authorised by the Attorney-General to act on a part-time basis.
- (2) The Attorney-General may, in accordance with subsection (4), authorise a Judge appointed under section 4 or section 4A to act on a part-time basis for any specified period.
- (3) To avoid doubt, an authorisation under subsection (2) may take effect as from a Judge's appointment or at any other time, and may be made more than once in respect of the same Judge.
- (4) The Attorney-General may authorise a Judge to act on a part-time basis only—
- (a) on the request of the Judge; and
  - (b) with the concurrence of the Chief High Court Judge.
- (5) In considering whether to concur under subsection (4), the Chief High Court Judge must have regard to the ability of the Court to discharge its obligations in an orderly and expeditious way.
- (6) A Judge who is authorised to act on a part-time basis must resume acting on a full-time basis at the end of the authorised part-time period.
- (7) The basis on which a Judge acts must not be altered during the term of the Judge's appointment without the Judge's consent, but consent under this subsection is not necessary if the alteration is required by subsection (6).
- (8) An authorisation may not be granted under subsection (2) for any person appointed as a Judge of the Court of Appeal or Supreme Court.

#### **5 Salaries and allowances of Judges**

Section 9A of the principal Act is amended by adding the following subsections:

- (4) The salary and allowances payable for a period during which a Judge acts on a part-time basis must be calculated and paid as a pro-rata proportion of the salary and allowances for a full-time equivalent position.

- (5) For the purpose of section 24 of the Constitution Act 1986, the payment of salary and allowances on a pro-rata basis under subsection (4) is not a reduction of salary.

## **6 Masters become Associate Judges**

- (1) Every person who, immediately before the commencement of this section, held office as a Master of the High Court becomes an Associate Judge of the High Court and is deemed to have been appointed as an Associate Judge under section 26C.
- (2) The Acts specified in the Schedule are consequentially amended in the manner set out in that schedule.
- (3) All references to a Master of the High Court in any Act, regulation, order, or other enactment or in any agreement, deed, instrument, application, notice, or other document must, unless the context otherwise requires, be read as references to an Associate Judge of the High Court.

## **7 New sections 26C and 26D substituted**

The principal Act is amended by repealing sections 26C and 26D, and substituting the following sections:

### **26C Appointment of Associate Judges**

- (1) The Governor-General may from time to time, by warrant, appoint fit and proper persons to be Associate Judges of the High Court.
- (2) The maximum number of Associate Judges is 6.
- (3) For the purposes of subsection (2),—
- (a) an Associate Judge who is acting on a full-time basis counts as 1:
  - (b) an Associate Judge who is acting on a part-time basis counts as an appropriate fraction of 1:
  - (c) the aggregate number (for example, 5.5) must not exceed the maximum number of Associate Judges that is for the time being permitted.
- (4) A person must not be appointed as an Associate Judge unless he or she has held a practising certificate as a barrister or solicitor for at least 7 years.
- (5) An Associate Judge must not undertake any other paid employment or hold any other office (whether paid or not) unless the Chief High Court Judge is satisfied that the employment or other office is compatible with judicial office.
- (6) An Associate Judge holds office until, in accordance with section 26E, he or she retires or resigns or is removed from office.
- (7) Subsection (6) applies to—
- (a) every Associate Judge appointed after the commencement of this section; and

- (b) every person deemed by section 6(1) of the Judicature Amendment Act 2004 to have been appointed as an Associate Judge at the commencement of this section (despite any provision to the contrary in any enactment or warrant of appointment).

**26D Associate Judges act on full-time basis but may be authorised to act part-time**

- (1) A person acts as an Associate Judge on a full-time basis unless he or she is authorised by the Attorney-General to act on a part-time basis.
- (2) The Attorney-General may, in accordance with subsection (4), authorise an Associate Judge appointed under section 26C to act on a part-time basis for a specified period.
- (3) To avoid doubt, an authorisation under subsection (2) may take effect as from an Associate Judge's appointment or at any other time, and may be made more than once in respect of the same Associate Judge.
- (4) The Attorney-General may authorise an Associate Judge to act on a part-time basis only—
  - (a) on the request of the Associate Judge; and
  - (b) with the concurrence of the Chief High Court Judge.
- (5) In considering whether to concur under subsection (4), the Chief High Court Judge must have regard to the ability of the Court to discharge its obligations in an orderly and expeditious way.
- (6) An Associate Judge who is authorised to act on a part-time basis must resume acting on a full-time basis at the end of the authorised part-time period.
- (7) The basis on which an Associate Judge acts must not be altered during the term of the Associate Judge's appointment without the Associate Judge's consent, but consent under this subsection is not necessary if the alteration is required by subsection (6).

**8 Vacation of office**

Section 26E(2) of the principal Act is amended by omitting the words "Minister of Justice", and substituting the words "Attorney-General".

**9 Salaries and allowances of Associate Judges**

Section 26F of the principal Act is amended by repealing subsection (5), and substituting the following subsections:

- (5) The salary and allowances payable for a period during which an Associate Judge acts on a part-time basis must be calculated and paid as a pro-rata proportion of the salary and allowances for a full-time equivalent position.
- (6) For the purpose of subsection (2), the payment of salary and allowances on a pro-rata basis under subsection (5) is not a diminution of salary.

**10 Temporary Associate Judges**

Section 26H(2) of the principal Act is amended by omitting the expression “3”, and substituting the expression “12”.

**11 New section 26Q substituted**

The principal Act is amended by repealing section 26Q, and substituting the following section:

**26Q Immunity of Associate Judges**

Every Associate Judge has the same immunities as a Judge of the High Court.

**12 New section 57A inserted**

The principal Act is amended by inserting, after section 57, the following section:

**57A Judges of Court of Appeal act on full-time basis but may be authorised to act part-time**

- (1) A person acts as a Judge of the Court of Appeal on a full-time basis unless he or she is authorised by the Attorney-General to act on a part-time basis.
- (2) The Attorney-General may, in accordance with subsection (4), authorise a Judge to act on a part-time basis for any specified period.
- (3) To avoid doubt, an authorisation under subsection (2) may take effect as from a Judge’s appointment or at any other time, and may be made more than once in respect of the same Judge.
- (4) The Attorney-General may authorise a Judge to act on a part-time basis only—
  - (a) on the request of the Judge; and
  - (b) with the concurrence of the President of the Court of Appeal.
- (5) In considering whether to concur under subsection (4), the President of the Court of Appeal must have regard to the ability of the Court to discharge its obligations in an orderly and expeditious way.
- (6) A Judge who is authorised to act on a part-time basis must resume acting on a full-time basis at the end of the authorised part-time period.
- (7) The basis on which a Judge acts must not be altered during the term of the Judge’s appointment without the Judge’s consent, but consent under this subsection is not necessary if the alteration is required by subsection (6).
- (8) This section applies only to Judges who are appointed as Judges of the Court of Appeal.

## Schedule

### Amendments consequential upon change of title of Master of the High Court

s 6(2)

#### **Courts Security Act 1999 (1999 No 115)**

Omit from the paragraph (n) of the definition of **Judge** in section 2 the word “Master” and substitute the words “Associate Judge”.

#### **Government Superannuation Fund Act 1956 (1956 No 47)**

Omit from the heading to Part 5B the word “**Masters**” and substitute the words “**Associate Judges**”.

Insert in, section 81X, before the definition of **Judge**:

**Associate Judge** means an Associate Judge of the High Court appointed or deemed to have been appointed under section 26C of the Judicature Act 1908

Repeal the definition of **Master** in section 81X.

Omit from section 81XA the words “a Master” wherever they appear and substitute in each case the words “an Associate Judge”.

Omit from the heading to section 81Y the word “Masters” and substitute the words “Associate Judges”.

Omit from section 81Y the words “a Master” wherever they appear and substitute in each case the words “an Associate Judge”.

Omit from the heading to section 81Z the word “Masters” and substitute the words “Associate Judges”.

Omit from section 81Z the words “a Master” wherever they appear and substitute in each case the words “an Associate Judge”.

Omit from the heading to section 81ZA the word “Masters” and substitute the words “Associate Judges”.

Omit from section 81ZA the words “any Master” wherever they appear and substitute in each case the words “any Associate Judge”.

Omit from section 81ZA the words “a Master” wherever they appear and substitute in each case the words “an Associate Judge”.

Omit from section 81ZA the words “that Master” wherever they appear and substitute in each case the words “that Associate Judge”.

Omit from section 81ZA the words “that Master’s” wherever they appear and substitute in each case the words “that Associate Judge’s”.

Omit from section 81ZA the words “a Master’s” and substitute the words “an Associate Judge’s”.

Omit from the heading to section 81ZB the word “Masters” and substitute the words “Associate Judges”.

Omit from section 81ZB the words “a Master” wherever they appear and substitute in each case the words “an Associate Judge”.

Omit from the heading to section 81ZC the word “Master” and substitute the words “Associate Judges”.

Omit from section 81ZC the words “a Master” wherever they appear and substitute in each case the words “an Associate Judge”.

Omit from section 81ZC the words “any Master” and substitute the words “any Associate Judge”.

Omit from section 81ZC the words “that Master’s” and substitute the words “that Associate Judge’s”.

Omit from section 81ZC the words “that Master” in both places where they appear and substitute in each case the words “that Associate Judge”.

#### **Judicature Act 1908 (1908 No 89)**

Omit from the heading above section 26C the word “Masters” and substitute the words “Associate Judges”.

Omit from section 26E(1) the words “a Master” and substitute the words “an Associate Judge”.

Omit from section 26E(2) the words “A Master” and substitute the words “An Associate Judge”.

Omit from section 26E(2) the words “office of Master” and substitute the words “office of Associate Judge”.

Omit from section 26E(3) the words “every Master” and substitute the words “every Associate Judge”.

Omit from the heading to section 26F the word “Masters” and substitute the words “Associate Judges”.

Omit from section 26F(1) the words “every Master” and substitute the words “every Associate Judge”.

Omit from section 26F(2) the words “a Master” and substitute the words “an Associate Judge”.

Omit from section 26F(2) the words “the Master’s” and substitute the words “the Associate Judge’s”.

Omit from the heading to section 26G the word “Masters” and substitute the words “Associate Judges”.

Omit from section 26G the word “Masters” and substitute the words “Associate Judges”.

Omit from the heading to section 26H the word “Masters” and substitute the words “Associate Judges”.



Omit from section 26H the words “a Master” wherever they appear and substitute in each case the words “an Associate Judge”.

Omit from section 26H(1) the words “former Master” and substitute the words “former Associate Judge”.

Omit from section 26H(5) the words “that Master’s” and substitute the words “that Associate Judge’s”.

Omit from section 26H(6) the words “temporary Master” and substitute the words “temporary Associate Judge”.

Omit from the heading to section 26I the word “Master” and substitute the words “Associate Judge”.

Omit from section 26I the words “A Master” wherever they appear and substitute in each case the words “An Associate Judge”.

Omit from section 26I the words “a Master” wherever they appear and substitute in each case the words “an Associate Judge”.

Omit from section 26I(4)(a) and (b) the word “Masters” and substitute in each case the words “Associate Judges”.

Omit from the heading to section 26IA the word “Master” and substitute the words “Associate Judge”.

Omit from section 26IA the words “a Master” in both places where they appear and substitute in each case the words “an Associate Judge”.

Omit from section 26IA(1) the words “the Master” and substitute the words “the Associate Judge”.

Omit from the heading to section 26J the word “Masters” and substitute the words “Associate Judges”.

Omit from section 26J the words “on Masters” wherever they appear and substitute in each case the words “on Associate Judges”.

Omit from section 26J(2)(a) the words “by Masters” and substitute the words “by Associate Judges”.

Omit from section 26J(2) the words “a Master” and substitute the words “an Associate Judge”.

Omit from the heading to section 26K the word “Master” and substitute the words “Associate Judge”.

Omit from section 26K the words “a Master” in both places where they appear and substitute in each case the words “an Associate Judge”.

Omit from the heading to section 26L the word “Master” and substitute the words “Associate Judge”.

Omit from section 26L the words “a Master” and substitute the words “an Associate Judge”.

Omit from the heading to section 26M the word “Master” and substitute the words “Associate Judge”.

Omit from section 26M the words “A Master” and substitute the words “An Associate Judge”.

Omit from the heading to section 26N the word “Master” and substitute the words “Associate Judge”.

Omit from section 26N the words “a Master” wherever they appear and substitute in each case the words “an Associate Judge”.

Omit from section 26N(1) the words “the Master’s” and substitute the words “the Associate Judge’s”.

Omit from section 26N(1) and (3)(b) the words “the Master” and substitute in each case the words “the Associate Judge”.

Omit from the heading to section 26O the word “Master” and substitute the words “Associate Judge”.

Omit from section 26O the words “A Master” and substitute the words “An Associate Judge”.

Omit from section 26O the words “a Master” and substitute the words “an Associate Judge”.

Omit from the heading to section 26P the word “Masters” and substitute the words “Associate Judges”.

Omit from section 26P(1) and (2) the words “a Master” and substitute in each case the words “an Associate Judge”.

Omit from section 26R the words “a Master” and substitute the words “an Associate Judge”.

## **Eprint notes**

### ***1 General***

This is an eprint of the Judicature Amendment Act 2004 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### ***2 About this eprint***

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

### ***3 Amendments incorporated in this eprint***

Senior Courts Act 2016 (2016 No 48): section 182