



ANALYSIS

<p>Title</p> <ol style="list-style-type: none"> 1. Short Title and commencement 2. Interpretation 3. Transitional committees 4. Power to appoint transitional committee 5. Chairperson and deputy chairperson 6. Membership 7. Change in composition of transitional committee 8. Extraordinary vacancies 9. Powers of transitional committee 10. Powers and duties of councils in relation to transitional committee 11. Execution of contracts and other documents 12. Application of other enactments 13. Right to object to Local Government Commission against decision of transitional committee 14. Power of local authority to reject or vary decision of transitional committee 15. Obligation to act in interests of local authority to be formed 	<ol style="list-style-type: none"> 16. Administration and costs of transitional committees 17. Funding of transitional committees 18. Remuneration of members of transitional committees 19. Provisions relating to constitution and procedure of transitional committees 20. Deputies of members 21. Subcommittees 22. Delegation of functions or powers 23. Revocation of delegations 24. Discharge of transitional committees 25. Special provision in respect of appointment by transitional committee of senior executives of local authority to be formed 26. Continuous service 27. Employment contracts of local authorities 28. Obligation of local authorities to make and levy rates and assessments for full year to 31 March 1990 29. Closing off of accounts 30. Protection for persons acting in relation to transitional matters
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1989, No. 1

An Act to amend the Local Government Act 1974

[6 March 1989]

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

1. Short Title and commencement—(1) This Act may be cited as the Local Government Amendment Act 1989, and shall be read together with and deemed part of the Local Government Act 1974 (hereinafter referred to as the principal Act).

(2) This Act shall be deemed to have come into force on the 19th day of December 1988.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Draft scheme” means a reorganisation scheme which has not been completed but which, for the purposes of the opportunity granted to the local authorities affected by it to meet with and be heard by the Local Government Commission as required by section 15E (2) of the principal Act, is available to those local authorities in draft form:

“Final reorganisation scheme” means a final reorganisation scheme that has been given effect to by an Order in Council made under section 36 of the principal Act as if it were a final scheme:

“Local authority to be formed” means a local authority that, in any draft scheme, is proposed to be formed for the purpose of giving effect to any final reorganisation scheme prepared under section 15B of the principal Act:

“Senior executive position”, in relation to a local authority to be formed, means—

(a) The position of principal administrative officer of that local authority; and

(b) Any other senior position with that local authority to which, in the opinion of a transitional committee, an appointment should be made before that local authority is formed.

3. Transitional committees—Where a draft scheme or a final reorganisation scheme provides for the appointment of a transitional committee, the local authorities affected by that scheme shall unite in appointing that committee as a joint committee.

4. Power to appoint transitional committee—(1) A transitional committee may be appointed—

(a) Only where a draft scheme or a final reorganisation scheme so provides; and

(b) Only in accordance with the provisions of a draft scheme or a final reorganisation scheme and the provisions of this Act.

(2) Where a local authority fails to unite with others in appointing a transitional committee, the other local authorities may unite in appointing that committee under section 3 of this Act; and the validity of the appointment and the validity of the actions of the transitional committee shall not be affected by

the failure of that local authority to unite with the other local authorities for the purpose of the appointment.

(3) Every transitional committee is hereby deemed to be a committee of every local authority that is entitled to appoint a member of it.

5. Chairperson and deputy chairperson—(1) A draft scheme or a final reorganisation scheme may provide for the chairperson of a transitional committee to be elected by the voting members of the transitional committee.

(2) Subject to the draft scheme or the final reorganisation scheme, the voting members of a transitional committee, may—

- (a) From time to time elect one of its members to be the chairperson of the transitional committee; and
- (b) From time to time appoint one of its members to be the deputy chairperson of the transitional committee (which deputy chairperson shall act in the absence of the chairperson).

6. Membership—(1) Notwithstanding anything in sections 3 and 5 of this Act,—

- (a) The chairperson of the transitional committee may, if the draft scheme or the final reorganisation scheme so provides, be an independent person elected by the voting members of the transitional committee; and
- (b) The New Zealand Council of Trade Unions may, if the draft scheme or the final reorganisation scheme so provides, appoint one member of the transitional committee, which member shall be an employee of a local authority that is entitled to appoint a member of the transitional committee.

(2) Every appointed member of a transitional committee shall hold office at the pleasure of the body or bodies by which the member was appointed.

(3) Every chairperson and every deputy chairperson of a transitional committee shall hold office at the pleasure of the voting members of the transitional committee.

7. Change in composition of transitional committee—Where a final reorganisation scheme provides for a change in the composition of a transitional committee, the local authorities affected by that scheme shall vary the membership of the transitional committee accordingly.

8. Extraordinary vacancies—(1) If any member of a transitional committee dies, or resigns, or is removed from office or ceases to hold any qualification necessary for his or her appointment to office as a member of the transitional committee, his or her office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(2) Except where a final reorganisation scheme provides for a change in the composition of a transitional committee, an extraordinary vacancy shall be filled in the manner in which the appointment to the vacant office was originally made.

(3) Notwithstanding subsection (2) of this section, where an extraordinary vacancy is not filled forthwith, the transitional committee may, if it considers it appropriate, appoint a person to fill the vacancy in its membership.

(4) The powers of a transitional committee shall not be affected by any vacancy in its membership.

9. Powers of transitional committee—(1) Subject to section 13 of this Act, a transitional committee has power to decide any transitional matter relating to a local authority to be formed, which power includes the power—

(a) To decide on staffing arrangements and management structures for the local authority to be formed:

(b) Notwithstanding the Public Bodies Contracts Act 1959, but subject to section 25 of this Act, to appoint persons to positions with the local authority to be formed and to fix the conditions of employment of any such persons:

(c) To decide budgeting matters in relation to the local authority to be formed.

(2) Where the transitional committee appoints a person to a position with the local authority to be formed, the transitional committee shall, until that local authority is formed, be deemed to be the employer of that person.

(3) Subject to section 13 of this Act, decisions made under subsection (1) of this section shall be binding on local authorities without the need for any delegation from, or confirmation or ratification by, the local authorities.

10. Powers and duties of councils in relation to transitional committee—(1) Where a draft scheme or a final reorganisation scheme provides for the appointment of a transitional committee, the council of any local authority affected by that scheme—

- (a) May refer to the transitional committee any matters for consideration or inquiry or management or regulation; and
- (b) May delegate to the transitional committee any of the powers and duties conferred or imposed upon the council, except—
 - (i) The power to make a rate:
 - (ii) The power to make a bylaw:
 - (iii) The power to institute an action for the recovery of any amount in excess of \$500:
 - (iv) The power to borrow money:
 - (v) The power to enter into a contract otherwise than in accordance with the provisions of section 4 of the Public Bodies Contracts Act 1959:
 - (vi) The power to declare a regional road or to vary, alter, or revoke any such declaration:
 - (vii) The power to make assessments upon contributing authorities:
 - (viii) The powers and duties conferred or imposed on the council by the Public Works Act 1981; and
- (c) Shall assist the transitional committee to exercise its powers by providing the transitional committee—
 - (i) With such resources as the transitional committee may reasonably request; and
 - (ii) With such information held by the council as the transitional committee may request.

(2) Every transitional committee to which any powers or duties are delegated under subsection (1) (b) of this section may, without confirmation by the council, exercise or perform the same in like manner and with the same effect as the council could itself have exercised or performed the same.

11. Execution of contracts and other documents—Every contract that a transitional committee executes on behalf of a local authority to be formed and every other document requiring execution or authorisation by a transitional committee may be signed on behalf of the transitional committee by any two members of the transitional committee acting with the authority of the transitional committee.

12. Application of other enactments—(1) Nothing in sections 104 to 106 of the principal Act shall apply in respect of a transitional committee or subcommittee of a transitional committee.

(2) Subject to subsection (1) of this section and to the other provisions of this Act,—

- (a) The provisions of the principal Act; and
- (b) The provisions of other enactments (including, without limitation, the Local Authorities (Members' Interests) Act 1968, the Ombudsmen Act 1975, and the Local Government Official Information and Meetings Act 1987),—

shall, with all necessary modifications, apply in respect of every transitional committee and its members as if the transitional committee had been appointed under section 105 of the principal Act.

13. Right to object to Local Government Commission against decision of transitional committee—(1) Two or more members of a transitional committee, being members appointed by different local authorities or different groups of local authorities, may, within 7 days after the making by a transitional committee of a decision under section 9 of this Act, lodge with the Local Government Commission notice in writing objecting to that decision.

(2) Every notice under subsection (1) of this section—

(a) Shall specify—

- (i) The decision to which the objection relates; and
- (ii) The grounds of the objection, which grounds shall be specified with such reasonable particularity as to give full advice to the Local Government Commission of the issues involved; and

(b) May be accompanied by copies of any relevant documents.

(3) A decision of a transitional committee under section 9 (1) (b) or section 25 of this Act may not be the subject of an objection under subsection (1) of this section.

(4) The Local Government Commission shall, after conducting such investigation and consultation (if any) as it considers desirable, issue a written determination upholding or dismissing the objection and that determination shall be final.

(5) Without limiting the grounds on which the Local Government Commission may uphold an objection, it is hereby declared that the Commission shall uphold an objection where it is satisfied that the decision objected to is not in the best interests of the local authority to be formed.

(6) A decision in respect of which an objection is lodged under subsection (1) of this section shall remain in full force pending the determination of the objection.

14. Power of local authority to reject or vary decision of transitional committee—(1) Nothing in sections 3 to 13 of this Act prevents a local authority to be formed from rejecting or varying any decision of a transitional committee or the Commission once the local authority is formed; but any such decision shall, until rejected or varied, be binding on that local authority as from the date of its formation, as if it were a decision of that local authority.

(2) The rejection or variation by a local authority of any decision of a transitional committee shall not affect the validity of anything done pursuant to the decision before its rejection or variation.

15. Obligation to act in interests of local authority to be formed—Every member of a transitional committee and every member of any local authority considering any recommendation or decision of a transitional committee shall act in the interests of the local authority to be formed, and no such member shall, in so doing, be in breach of any declaration made by that member under section 103 of the principal Act.

16. Administration and costs of transitional committees—(1) Where a draft scheme or a final reorganisation scheme provides for the appointment or continuance of a transitional committee, that scheme shall designate a principal local authority in respect of the committee, and that local authority shall be responsible for providing administrative services to the transitional committee.

(2) Subject to section 18 of this Act, the costs of a transitional committee shall be borne and paid by the local authorities affected by the scheme in accordance with a formula agreed to by the transitional committee or, if there is no such agreement, in accordance with the formula prescribed by the draft scheme or the final reorganisation scheme.

(3) The costs of a transitional committee include, among other costs,—

(a) The costs of providing administrative services to the transitional committee:

(b) The costs of the appointment and employment of staff by the transitional committee:

- (c) The costs of loans raised pursuant to section 17 (1) of this Act:
- (d) The costs of any remuneration paid to the chairperson of the transitional committee pursuant to section 18 (2) of this Act and of any travelling allowances and expenses paid to that chairperson pursuant to section 18 (4) of this Act:
- (e) Any costs incurred before the commencement of this Act by any committee acting as a transitional committee in relation to an indicative scheme (being a scheme of that name which was provided for in a document issued by the Local Government Commission and which would have affected any of the local authorities affected by the draft scheme or the final reorganisation scheme).

(4) Where a dispute arises between two or more transitional committees concerning the amount to be included, under subsection (3)(e) of this section, as costs of any of those transitional committees, that dispute shall be determined by the Local Government Commission, whose decision shall be final.

17. Funding of transitional committees—(1) A transitional committee may from time to time direct its principal authority to raise a loan, of such amount as the transitional committee shall specify, for the purpose of obtaining money with which to meet transitional costs (including those of the transitional committee) and the principal authority shall comply with any direction so given by the transitional committee.

(2) Money borrowed pursuant to a direction under subsection (1) of this section shall, if not repaid by the principal authority, be repayable not later than the 31st day of December 1992 by the local authority to be formed.

(3) Any local authority may make advances to a transitional committee for the purpose of enabling the transitional committee to meet transitional costs.

(4) Advances made pursuant to subsection (3) of this section shall be made on such terms and conditions as may be agreed between that local authority and the transitional committee, which terms and conditions may include a condition that the advance be free of interest.

(5) The Local Authorities Loans Act 1956 shall not apply in relation to any loan raised by a principal authority pursuant to a direction under subsection (1) of this section.

18. Remuneration of members of transitional committees—(1) Each transitional committee shall have power to set the remuneration of its members.

(2) The remuneration payable to the chairperson of the transitional committee shall, as the transitional committee determines, be either—

- (a) An honorarium at such rate as the transitional committee shall determine; or
- (b) A sum in respect of each day on which the chairperson attends a meeting in his or her capacity as the chairperson of the transitional committee, which sum shall not exceed \$150 a day.

(3) The remuneration payable to each member of a transitional committee (other than the chairperson) and to each deputy of such a member shall be a sum in respect of each day on which the member or deputy attends a meeting in his or her capacity as a member, or deputy of a member, of the transitional committee, which sum shall not exceed \$100 a day.

(4) Where any member of a transitional committee or any deputy of such a member attends any meeting of that committee or, with the authority of the committee, travels in the service of the committee, that member or deputy shall be entitled to receive travelling allowances and expenses as if that member or deputy were a member of the local authority that appointed that member or deputy, and the provisions of the Fees and Travelling Allowances Act 1951 shall apply accordingly.

(5) Subject to section 16 (3) (d) of this Act, the remuneration and the travelling allowances and expenses payable under this section—

- (a) Shall be payable by the body or bodies that appointed or were entitled to appoint the person as a member of the transitional committee or as a deputy of such a member; and
- (b) Shall be payable irrespective of any other remuneration or allowances or expenses payable to any member of the transitional committee or any deputy of any such member in any other capacity; and
- (c) Shall not affect the entitlement of any member of the transitional committee or any deputy of any such

member to remuneration or allowances or expenses as members of any local authority or any other committee of a local authority.

(6) No ex officio member of a transitional committee and no member of a transitional committee who is not entitled to vote shall be entitled, under or by virtue of this section, to any remuneration.

19. Provisions relating to constitution and procedure of transitional committees—(1) A draft scheme or final reorganisation scheme may provide, in respect of a transitional committee,—

(a) For the appointment of ex officio members:

(b) That, notwithstanding section 108 (5) of the principal Act, a member may have more than one vote or a member (including an ex officio member) may not have a vote:

(c) That, notwithstanding section 108 (6) of the principal Act, the chairperson shall not have a casting vote in the event of an equality of votes:

(d) That any or all of the ex officio members and any or all of the members who are not entitled to a vote may be excluded from any meeting or part of a meeting.

(2) An ex officio member of a transitional committee or a member of a transitional committee who is not entitled to vote may move or second a motion at any meeting of the transitional committee at which the member is present.

(3) Subject to this Act and the principal Act, every transitional committee may regulate its own procedure.

20. Deputies of members—(1) The body or bodies by which any member of a transitional committee is appointed may from time by time by resolution appoint any other person to act as the deputy of that member at any meeting of the committee or of any subcommittee of the transitional committee.

(2) The deputy of any member of a transitional committee shall have authority to act as a member in the event of the absence of the member from any meeting of the transitional committee or of any subcommittee of the transitional committee.

(3) Every such deputy shall hold office during the pleasure of the body or bodies by which the deputy was appointed.

(4) No act done by any deputy appointed under this section in that capacity and no act done by the transitional committee

or by any subcommittee of the transitional committee while any such deputy is so acting, shall in any proceedings be questioned on the ground that the occasion for so acting had not arisen or had ceased.

21. Subcommittees—A transitional committee may from time to time appoint subcommittees consisting of 2 or more members of the transitional committee, and every such subcommittee may—

- (a) Inquire into such matters as are referred to it by the transitional committee:
- (b) Report on any such matter to the transitional committee.

22. Delegation of functions or powers—(1) A transitional committee may delegate to any person or to any subcommittee appointed by it any of its functions, duties, or powers, including functions, duties, or powers delegated to the transitional committee:

Provided that a transitional committee shall not delegate any functions, duties, or powers delegated to it by a local authority without the written consent of the local authority.

- (2) Every delegation under this section shall be in writing.
- (3) No delegation under this section shall include the power to delegate under this section.
- (4) Subject to any general or special directions given or conditions imposed by the transitional committee, the person to whom or the subcommittee to which any functions, duties, or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person or subcommittee directly by this Act and not by delegation.
- (5) Every person or subcommittee purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (6) Any delegation under this section may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices.

(7) No such delegation shall affect or prevent the exercise of any function, duty, or power by the transitional committee, nor shall any such delegation affect the responsibility of the transitional committee for the actions of any person or subcommittee acting under the delegation.

23. Revocation of delegations—(1) Every delegation under section 22 of this Act shall be revocable in writing at will.

(2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding any changes in the membership of the transitional committee.

24. Discharge of transitional committees—A transitional committee, unless sooner discharged, shall be deemed to be discharged as from the commencement of the first meeting of the council of the new local authority in respect of which the transitional committee was established.

25. Special provision in respect of appointment by transitional committee of senior executives of local authority to be formed—(1) Notwithstanding the Public Bodies Contracts Act 1959 and the fact that a local authority to be formed is not yet a legal entity, where any draft scheme or final reorganisation scheme provides for the constitution of a new local authority, the transitional committee may enter into contracts appointing persons to senior executive positions with the local authority to be formed, and fixing the conditions of employment of those persons.

(2) The transitional committee shall not enter into a contract under subsection (1) of this section appointing a person to the position of principal administrative officer of the local authority to be formed unless the Higher Salaries Commission has first agreed in writing to the conditions of that contract which fix the remuneration of that person. In this subsection “remuneration” has the meaning given to that term by section 2 of the Higher Salaries Commission Act 1977.

(3) If the local authority is not formed on terms substantially the same as those set out in the draft scheme, the local authorities that appointed the members of a transitional committee and any other local authorities that were entitled to appoint a member of that committee shall be liable in proportions specified by the transitional committee for the obligations expressed in any such contract to be those of the local authority to be formed.

(4) Where a contract is entered into under this section and the local authority to be formed is formed on terms substantially the same as those set out in the draft scheme, the local authority so formed shall decide, before the 30th day of June 1990, whether or not to ratify the contract.

(5) Where a local authority, being a local authority formed on terms substantially the same as those set out in a draft scheme, decides, before the 30th day of June 1990, not to ratify a contract entered into under this section,—

- (a) The contract shall be cancelled as from the close of that day; and
- (b) Compensation shall be payable to the person appointed to a senior executive position with the new local authority, which compensation shall be an amount equal to 12 months' salary of that person or such lesser amount as may be specified in the contract.

(6) Every contract entered into under this section shall contain a condition that, if the local authority is not formed on terms substantially the same as those set out in the draft scheme, the contract shall be capable of being cancelled—

- (a) By the senior executive concerned; or

- (b) By the transitional committee;—

and, if the contract is so cancelled, the compensation payable to the person appointed as a senior executive of the local authority shall be an amount equal to 12 months' salary of that person or such lesser amount as may be specified in the contract.

(7) Subject to subsection (2) of this section, nothing in the Local Authorities (Employment Protection) Act 1963 or the Higher Salaries Commission Act 1977 shall apply in respect of any person employed under any contract entered into under this section.

(8) Nothing in this section limits the right of any transitional committee or local authority to dismiss for good cause or in accordance with any contract any person appointed under this section.

26. Continuous service—For the purposes of section 6 of the Finance Act (No. 2) 1941 and for the purposes of the Local Authorities (Employment Protection) Act 1963, where any employee's period of service with a local authority is immediately preceded by a period of service with a transitional committee, that employee's period of service with that local authority shall be deemed to include—

- (a) That employee's period of service with the transitional committee; and
- (b) Where that employee was employed by a local authority immediately before that employee's period of service

with the transitional committee, that employee's period of service with that local authority.

27. Employment contracts of local authorities—(1) No local authority that is affected by any draft scheme or final reorganisation scheme shall enter into any contract for the employment of any person as a senior executive employee of, or consultant to, that local authority or any other local authority (whether or not then in existence) unless that contract—

- (a) Does not bind or purport to bind any local authority beyond the 30th day of June 1990; or
- (b) Contains express provisions that the contract may be reviewed before the 30th day of June 1990 by any local authority to be formed that assumes any liability under it and may be cancelled by that local authority without penalty before that date.

(2) Except as provided in subsections (3), (4), and (6) of this section, subsection (1) of this section shall apply in respect of every contract entered into on or after the 18th day of November 1988.

(3) Nothing in subsection (1) of this section shall affect the rights of any person under sections 3 to 6 of the Local Authorities (Employment Protection) Act 1963, but section 9 of that Act shall apply subject to this section.

(4) A transitional committee may, in writing, exempt any local authority affected by the draft scheme or the final reorganisation scheme in respect of which the transitional committee is established from the application of subsection (1) of this section in respect of any particular contract where the transitional committee is satisfied—

- (a) That the exemption is necessary to ensure the proper administration and functioning of the local authority entering into the contract; and
- (b) That there will not be significant disadvantage to any other local authority (whether or not then in existence); and
- (c) That, in the particular circumstances of the case, it is reasonable to do so.

(5) No exemption shall be granted under subsection (4) of this section after the contract to which it relates has been entered into by a local authority.

(6) This section shall not apply in respect of any contract entered into by a local authority after the 14th day of October 1989.

28. Obligation of local authorities to make and levy rates and assessments for full year to 31 March 1990—

(1) Every local authority to which a draft scheme or a final reorganisation scheme relates shall, in respect of the period of 12 months ending with the 31st day of March 1990,—

(a) Cause estimates to be prepared; and

(b) If it ordinarily makes and levies rates, make and levy rates,—

as if the local authority were going to continue to perform all its functions and duties and exercise its powers for the whole of that period.

(2) Notwithstanding anything in sections 121 and 126 of the principal Act, every united council to which a draft scheme or a final reorganisation scheme relates shall, in respect of the period of 13 months ending with the 31st day of March 1990,—

(a) Cause estimates to be prepared under section 121 of the principal Act; and

(b) Assess, under section 126 of the principal Act, the contributions payable for that period by constituent authorities and other territorial authorities,—

as if the united council were going to perform all its functions and duties and exercise its powers for the whole of that period.

(3) The Auckland Regional Authority shall, in respect of the financial year ending on the 31st day of March 1990,—

(a) Prepare, under section 58 of the Auckland Regional Authority Act 1963, an estimate of the estimated expenditure and estimated income of the Auckland Regional Authority; and

(b) Assess, under section 60 of the Auckland Regional Authority Act 1960, the contributions payable for that financial year by contributing authorities,—

as if the Auckland Regional Authority were going to continue to perform all its functions and duties and exercise its powers for the whole of that financial year.

(4) Every harbour board shall, in respect of the period beginning on the 1st day of October 1989 and ending with the 31st day of March 1990, plan the management of its financial affairs and collect revenue as if the harbour board were going

to continue to perform all its functions and duties and exercise its powers for the whole of that period.

(5) No local authority to which a draft scheme or a final reorganisation scheme applies (including a body to which subsection (1) or subsection (2) or subsection (3) or subsection (4) of this section applies) shall, on the grounds that it is likely to go out of existence before the 31st day of March 1990, reduce the financial provision usually made by it.

29. Closing off of accounts—A transitional committee may, with the agreement of every local authority that is entitled to appoint a member of the transitional committee, recommend to the new local authority that it close off the accounts of the abolished local authorities as from the close of the 31st day of October 1989.

30. Protection for persons acting in relation to transitional matters—(1) A person who does any act, whether before or after the commencement of this Act, in pursuance or intended pursuance of—

- (a) Any of the provisions of this Act; or
- (b) Any direction or proposal contained in a draft scheme; or
- (c) Any document issued by the Local Government Commission, whether before or after the commencement of this Act, for the purposes of section 15E (2) of the principal Act (as enacted by section 6 of the Local Government Amendment Act (No. 3) 1988); or
- (d) Any document which was issued by the Local Government Commission before the commencement of this Act and which provided for a scheme called an indicative scheme,—

shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless that person has acted in bad faith or without reasonable care.

(2) No proceedings, civil or criminal, shall be brought against any person in any Court in respect of any such act except by leave of a Judge of the High Court and such leave shall not be granted unless the Judge is satisfied that there is substantial ground for the contention that the person against whom it is sought to bring the proceedings has acted in bad faith or without reasonable care.

(3) Notice of any application under subsection (2) of this section shall be given to the person against whom it is sought to bring the proceedings, and that person shall be entitled to be heard against the application.

(4) Leave to bring such proceedings shall not be granted unless application for such leave is made within 12 months after the act complained of, or, in the case of a continuance of injury or damage, within 12 months after the ceasing of the injury or damage.

(5) In granting leave to bring any such proceedings as aforesaid, the Judge may limit the time within which such leave may be exercised.

This Act is administered in the Department of Internal Affairs.
