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History of Declaratory Relief – A Distinct Remedy Beyond Equitable Affiliations

The Hon EM Heenan[*]

> The rigidity of both law and equity is also due to the fact that neither perceived the necessity of relief against insecurity and peril which is afforded to obligors and defendants, not to mention plaintiffs, by the declaratory action. That has not only escaped the limitations historically associated with writs and is a judicial remedy capable of unlimited expansion, which it was hoped equity could administer alone, but it affords relief in situations where law or equity fail completely.[1]

Utility of the remedy

In the preface to the first edition of his famous work, *The Declaratory Judgment*,[2] Dr I Zamir acknowledged "the pioneering treatise on this subject" by the late EM Borchard, Professor of Law, Yale University, who wrote extensively on the American jurisprudence on this remedy in the 1930s and 1940s.[3] In the

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* I gratefully acknowledge the assistance of my Associate, Mr Steffen Etherton BSc (Hons) LLB (Hons) (UWA), in the preparation of this chapter.

1 E Borchard, "The Next Step Beyond Equity – The Declaratory Action" (1945-1946) 13 *University of Chicago Law Review* 145 at 148 (citations omitted).

2 Stevens & Sons Ltd, 1962.

3 E Borchard, *Declaratory Judgments* (2nd ed, 1941, Repr 2000, William S Hein & Co Inc); E Borchard, "The Declaratory Judgment in the United States" (1930-1931) 37 *West Virginia Law Quarterly* 127; Borchard, above n 1.

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