

## The Form and Effect of Declaratory Relief and the Negative Declaration

*The Hon DR Williams AM QC*

### Introduction

A declaration is an order made by a court which declares with finality the nature of the legal rights and obligations of the parties in the dispute before it.<sup>1</sup> The purposes of this chapter are to discuss the form and effect of declarations, and negative declarations.

The jurisdiction to make a declaration is “a very wide one”.<sup>2</sup> It is neither possible nor desirable to fetter the broad discretion to make a declaration by laying down rules as to the manner of its exercise.<sup>3</sup> However, before a court exercises its discretion in favour of making a declaration, it should be satisfied, first, that the question before it is a real, and not a theoretical, question; secondly, that the person raising it has a real interest to raise it; and, thirdly, that that person is able to secure a proper contradictor, that is, someone presently existing who has a true interest to oppose the declaration sought.<sup>4</sup> As a general rule, the power to

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1 The Rt Hon The Lord Woolf and J Woolf, *The Declaratory Judgment* (Sweet & Maxwell, 2nd ed, 1993) [1.01].

2 *Forster v Jododex Australia Pty Limited* (1972) 127 CLR 421 at 435 per Gibbs J.

3 (1972) 127 CLR 421 at 437 per Gibbs J.

4 *Ibid* at 437-438 per Gibbs J, citing *Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd* [1927] 2 AC 438 at 448 per Lord Dunedin.

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