



## ANALYSIS

**Contents**

1	Title	2
2	Commencement	2
<b>Part 1</b>		
<b>Preliminary matters</b>		
3	Purpose	2
4	Interpretation	2
5	Act binds the Crown	2
<b>Part 2</b>		
<b>Appointment and functions of JPs</b>		
<i>Appointment of JPs</i>		
6	Who may be recommended for appointment under the Constitution	3
7	Notification of appointment of JPs	3
8	When appointment as JP ceases	3
9	Retirement of JPs	3
<i>Functions, powers, and jurisdiction</i>		
10	Functions, powers, and jurisdiction of JPs	4
11	Only certain JPs may conduct criminal, civil, or land proceedings	4
12	JPs in certain positions debarred from acting as JPs	4
13	Senior JP and seniority generally	4
14	Use of designations “JP” and “JP (retired)”	4
<b>Part 3</b>		
<b>Conducting proceedings</b>		
15	Attendance of JPs at court	5
16	Presiding JPs	5
<b>Part 4</b>		
<b>Disciplinary action against JPs</b>		
17	Grounds for removal or suspension from office	5
18	Removal of JP from office	6
19	Suspension of JP from office	6
20	Other disciplinary action against a JP	6
21	Procedure before removing, suspending, or taking other disciplinary action	7
22	Registrar to notify convictions of JPs	7
<b>Part 5</b>		
<b>Miscellaneous provisions</b>		
23	Legality of acts done by JPs who cease to hold office	7
24	Immunity of JPs	7

25	Onus of proof	7
26	Indemnity of JPs	8
	<i>Regulations</i>	
27	Regulations	8

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**An Act to provide for the functions, powers, and jurisdiction of Justices of the Peace and related matters.**

**(30 November 2017)**

**The Parliament of the Cook Islands enacts as follows—**

**1 Title**

This Act is the Justices of the Peace Act 2017.

**2 Commencement**

This Act comes into force on the day after the day on which it receives the assent of the Queen's Representative.

**Part 1  
Preliminary matters**

**3 Purpose**

The purpose of this Act is to—

- (a) ensure that all JPs have suitable personal attributes, including educational qualifications and familiarity with Cook Islands culture, to hold that office; and
- (b) ensure that JPs who conduct criminal, civil, and land cases in court are adequately trained for that purpose; and
- (c) bring together in a single enactment the general provisions relating to the functions, powers, and jurisdiction of JPs; and
- (d) provide for related matters, including the circumstances in which JPs can be removed from, or otherwise cease to hold, the office of JP.

**4 Interpretation**

In this Act, unless the context otherwise requires,—

**Constitution** means the Constitution of the Cook Islands

**court** means the High Court of the Cook Islands

**JP** means a Justice of the Peace appointed under Article 62 of the Constitution

**Minister** means the Minister responsible for the administration of this Act

**Registrar** means the Registrar of the High Court, and includes a Deputy Registrar

**Secretary** means the Secretary for Justice

**senior JP** means the senior JP appointed under section 13.

**5 Act binds the Crown**

This Act binds the Crown.

## Part 2 Appointment and functions of JPs

### *Appointment of JPs*

- 6 Who may be recommended for appointment under the Constitution**  
The Minister may recommend a person for appointment as a JP under Article 62(1) of the Constitution only if satisfied, on the recommendation of the Secretary, that the person—
- (a) has good standing in the community; and
  - (b) is fluent in Cook Islands Maori and in English; and
  - (c) has a sound knowledge of Cook Islands culture; and
  - (d) has a level of education appropriate for the performance of functions of a JP; and
  - (e) is not of or over the age of 72; and
  - (f) is otherwise a fit and proper person to be a JP.
- 7 Notification of appointment of JPs**
- (1) The Secretary must give public notice, including by notice in the Gazette, of the appointment of a person as a JP.
  - (2) The Secretary must keep a list of the names of JPs and may publish the list and make it available for public inspection.
- 8 When appointment as JP ceases**
- (1) Every JP continues in office until the time specified in their warrant of appointment unless, before that time, the appointment ends because the JP—
    - (a) resigns by notice in writing to the Registrar; or
    - (b) retires or is deemed to retire under section 9; or
    - (c) is removed from office by notice under section 18.
  - (2) This section applies despite anything in any warrant issued to a JP either before or after this Act comes into force.
- 9 Retirement of JPs**
- (1) A JP appointed after this Act comes into force is deemed to retire on reaching the age of 72.
  - (2) A JP of or over the age of 72 on the day this Act comes into force is deemed to retire on the day the Act comes into force.
  - (3) On retirement, a JP ceases to have the functions, powers, and jurisdiction of a JP, but may apply to use the designation “JP (retired)” (see section 14).
  - (4) However, a JP who is deemed to have retired may continue to perform and exercise the functions, powers, and jurisdiction of a JP if—
    - (a) the Chief Justice invites the JP to extend his or her appointment; and
    - (b) the JP agrees to the extension; and
    - (c) notice of the extension is given to the JP in writing.

- (5) A JP acting under an extension is to be treated as if he or she were not deemed to be retired and may continue in office until the date specified in the notice of extension.

*Functions, powers, and jurisdiction*

**10 Functions, powers, and jurisdiction of JPs**

JPs have all the functions, powers, and jurisdiction of a Justice of Peace under any enactment, subject to this Act.

**11 Only certain JPs may conduct criminal, civil, or land proceedings**

- (1) Only JPs who meet the requirements of subsection (2) may—
- (a) hear, determine, and pass sentence in those criminal proceedings that JPs have jurisdiction to hear, determine, or pass sentence in; and
  - (b) hear and determine those civil proceedings and land proceedings that JPs have jurisdiction to hear and determine.
- (2) The requirements referred to in subsection (1) are—
- (a) that the JP has satisfactorily completed the training, specified by the Secretary, on conducting criminal, civil, and land proceedings; and
  - (b) that the JP has the education and the capacity for analytical thought that is necessary for making judicial decisions.

**12 JPs in certain positions debarred from acting as JPs**

- (1) A JP must not perform or exercise any of the functions or powers, or the jurisdiction of, a JP at any time while the person—
- (a) is a member of Parliament; or
  - (b) holds a practising certificate as a barrister and solicitor, or as a barrister sole; or
  - (c) is in practice as a medical doctor; or
  - (d) is a Crown servant (as defined in the Constitution).
- (2) A JP who does not perform or exercise any function, power, or jurisdiction of JP because of the operation of this section is not liable to removal or suspension on that basis alone.

**13 Senior JP and seniority generally**

- (1) The Chief Justice must, by notice to the Registrar and the JP concerned, designate one JP to be the senior JP.
- (2) The Chief Justice may at any time remove the designation of a person as the senior JP and designate a replacement.
- (3) The senior JP has the functions and duties given by this Act and any others that are assigned to him or her by the Chief Justice.
- (4) Every JP, other than the senior JP, has seniority according to the date of their first appointment as a JP.

**14 Use of designations “JP” and “JP (retired)”**

- (1) Any person who currently holds appointment as a JP may use the designation “JP”.

- (2) A former JP may use the designation “JP (retired)” only if authorised to do so by the Secretary in writing.
- (3) The Secretary may authorise a former JP to use the designation “JP (retired)” if satisfied that the former JP—
  - (a) has served as a JP for at least 10 years; and
  - (b) did not (without reasonable excuse) before retirement or resignation—
    - (i) abandoned the performance of the functions of a JP; or
    - (ii) from time to time failed or refused to perform the functions of a JP; and
  - (c) did not retired or resigned while suspended from office, or to avoid being removed or suspended from office or otherwise disciplined.

### **Part 3**

#### **Conducting proceedings**

##### **15 Attendance of JPs at court**

- (1) The Registrar may summon as many JPs for a sitting of the court as he or she thinks necessary to deal with the business of the court.
- (2) If the business of the court is to hear and determine a civil or land case, or to hear, determine, and if necessary pass sentence in a criminal case, the Registrar may summon only those JPs who are qualified under section 11.
- (3) The Registrar must notify the Secretary if a JP fails or refuses to attend court on 2 successive occasions when summoned, unless the JP satisfies the Registrar that he or she had reasonable cause for the failure or refusal.
- (4) For the purposes of section 17, the Secretary must treat a notification from the Registrar under subsection (3) as evidence of the neglect or refusal by the person to perform the functions of a JP.

##### **16 Presiding JPs**

- (1) In a court comprising 3 JPs sitting together, the senior JP must nominate, in consultation with the Registrar, one of the JPs to preside.
- (2) The nominated JP presides over the court, even if he or she does not have seniority over the other JPs who are members of the court.

### **Part 4**

#### **Disciplinary action against JPs**

##### **17 Grounds for removal or suspension from office**

The grounds on which a JP may be removed or suspended from office are as follows:

- (a) misconduct:
- (b) inability to perform the functions of a JP:
- (c) neglect or refusal to perform the functions of a JP:
- (d) conviction for an offence punishable by imprisonment:
- (e) participating in party politics:
- (f) bringing the office of JP into disrepute:

- (g) acting as a JP while suspended from office, knowing that he or she was suspended from office;
- (h) failure or refusal to comply with a notice under section 21 (relating to other disciplinary actions);
- (i) hearing, determining, or passing sentence in criminal, civil, or land proceedings while not being qualified under section 11 to do so.

**18 Removal of JP from office**

- (1) The Chief Justice may recommend to the Queen's Representative the removal of a JP from office only—
  - (a) on one or more of the grounds in section 17; and
  - (b) on the recommendation of the Secretary, made following the procedure in section 21.
- (2) Removal from office is effected by the publication of a notice in the *Gazette*.

**19 Suspension of JP from office**

- (1) The Chief Justice may suspend a JP from office for a period of up to 65 working days only—
  - (a) on one or more of the grounds in section 17; and
  - (b) on the recommendation of the Secretary, made following the procedure in section 21.
- (2) The suspension takes effect on the date on which written notice of it is given to the JP.
- (3) While a JP is suspended, the JP must not perform or exercise, or purport to perform or exercise, any function, power, or jurisdiction of a JP.

**20 Other disciplinary action against a JP**

- (1) The Chief Justice may, on the recommendation of the Secretary made following the procedure in section 21, do any of the things listed in subsection (2) if the Chief Justice is satisfied that—
  - (a) one or more of the grounds listed in section 17 applies; or
  - (b) the JP has, while in office as a JP, behaved in a way that is inappropriate or undesirable (other than in relation to the making of a judicial decision).
- (2) The disciplinary actions that the Chief Justice may take against a JP are any one or more of the following:
  - (a) give the JP an official rebuke;
  - (b) by written notice to the JP, require him or her to apologise to a person or persons stated in the notice, in writing, for behaviour stated in the notice;
  - (c) by written notice to the JP, require him or her to undertake training or further training in a specified aspect of the performance of the JP's functions by a specified provider;
  - (d) by written notice to the JP, require him or her to receive counselling or further counselling of a specified kind by a specified provider.

**21 Procedure before removing, suspending, or taking other disciplinary action**

The Secretary must not recommend the removal, suspension, or taking of other disciplinary action against a JP unless he or she—

- (a) considers that grounds may exist for recommending disciplinary action against the JP; and
- (b) has given the JP written notice—
  - (i) stating that the Secretary considers that grounds may exist for recommending disciplinary action; and
  - (ii) identifying those grounds; and
  - (iii) giving the JP 20 working days from receipt of the notice to respond to the Secretary in writing in respect of the matters contained in the notice; and
- (c) has either—
  - (i) received and considered a written response from the JP in respect of the matters contained in the notice; or
  - (ii) not received a written response from the JP within 20 working days of the JP receiving the notice.

**22 Registrar to notify convictions of JPs**

The Registrar must notify the Secretary whenever the Registrar learns that a JP has been convicted of an offence punishable by imprisonment.

## **Part 5 Miscellaneous provisions**

**23 Legality of acts done by JPs who cease to hold office**

The fact that a person is no longer appointed as a JP does not affect the legality of anything done by him or her while serving as a JP; but anything done by the person after he or she has ceased to be a JP, if he or she purported to perform or exercise a function, power, or jurisdiction of a JP, is void.

**24 Immunity of JPs**

- (1) No action may be brought against a JP in respect of any act or omission of the JP unless he or she exceeded his or her jurisdiction or acted without jurisdiction.
- (2) If a JP or JPs enter a conviction or make an order, and issue a warrant of distress or of commitment or a warrant to collect any sum adjudged to be paid, no action may be brought against the JP or JPs who issued the warrant just because there is any defect in the conviction or order or any want of jurisdiction on the part of the JP or JPs who entered or made it.

**25 Onus of proof**

A person who brings an action against a JP or JPs, claiming to have been injured by any act or omission of the JP or JPs in excess of jurisdiction or without jurisdiction, has the onus of proving the excess or want of jurisdiction.

**26 Indemnity of JPs**

- (1) The Crown must indemnify a JP for the full amount of any judgment awarded against him or her for damages or costs to any person injured by any act or omission of the JP in excess of jurisdiction or without jurisdiction if—
  - (a) a Judge signs a certificate stating that, in his or her opinion, the JP acted in good faith in the belief that the JP in fact had jurisdiction and in all the circumstances it is fair and reasonable to excuse the JP; and
  - (b) the certificate is produced to the Registrar.
- (2) The Crown must indemnify a JP for the full amount of any damages or costs that the JP has paid or agreed to pay to any person injured by any act or omission of the JP in excess of jurisdiction or without jurisdiction if—
  - (a) a Judge signs a certificate stating that, in his or her opinion, the amount paid or agreed to be paid is fair and reasonable; and
  - (b) the certificate is produced to the Registrar.
- (3) However, the Judge may issue a certificate under subsection (2) for a lesser amount that, in the Judge's opinion, would have been or would be adequate to settle the plaintiff's claim and, in that case, the Crown must indemnify the JP only for the amount stated in the certificate.
- (4) A JP may apply for a certificate under this section to a Judge in Chambers, and the Judge may issue the certificate after considering any evidence given before the Judge orally or by affidavit.
- (5) A JP must serve a copy of an application under subsection (4) on the Attorney-General, who may appear and oppose the application.

*Regulations***27 Regulations**

- (1) The Queen's Representative may, by Order in Executive Council, make regulations providing for the following—
  - (a) the payment of remuneration to JPs;
  - (b) any other matter contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.
- (2) Regulations providing for the remuneration of JPs—
  - (a) may be made only on the recommendation of the Minister following advice from the Secretary; and
  - (b) may not subsequently be replaced or amended in a manner that reduces the remuneration payable to any JP.

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This Act is administered by the Ministry of Justice.  
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