



**GOVERNMENT OF THE COOK ISLANDS  
TE TANGO TUTARA O TE TURE  
MINISTRY OF JUSTICE**



**COURT REPORT 2011/2012**

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## FOREWORD



Access to justice is a fundamental human right in any democratic society. This is reflected in Articles 64 and 65 of the Constitution of the Cook Islands.

Despite the challenges of an ever-changing society, and the numerous constraints we face as a small Island nation, the Ministry of Justice has continued to maintain access to justice as one of its main core functions.

In this first report on the operations of the High Court and Court of Appeal, I am pleased that steps are being taken to improve the provision of court services to the people of the Cook Islands. The Government will continue to provide the necessary resources and support to ensure that the right of any individual to access justice is not adversely affected, or denied.

I am also thankful for the Pacific Judicial Development Program, for its continued support in providing training for members of the Judiciary and court staff.

This report is testimony to the valued contributions and professionalism of the staff involved in upholding the priority of Law and Order in our community.

A handwritten signature in black ink, appearing to read 'Henry Puna'. The signature is stylized with a large loop at the top and a horizontal stroke at the bottom.

Kia Manuia  
Hon. Henry Puna  
Prime Minister and Minister of Justice

### Scope of Report

- 1 This is a Report on the operations of the Court of Appeal and High Court of the Cook Islands for the period 1 July 2011-30 June 2012 (corresponding with the Ministry's financial year). It has been prepared by reference to:
  - Ministry of Justice, Business Plan 2011-12, prepared by Claudine Henry-Anguna, Acting Head of Ministry;
  - Pacific Judicial Development Programme (PJDP), 2011 Court Baseline Report.
- 2 This Report does not purport to be prepared on behalf of the Privy Council, the highest appellate Court in the Cook Islands. The Report notes, however, that the first appeal to the Privy Council from the Court of Appeal of the Cook Islands was heard in April 2012 (two appeals dealt with together).
- 3 This Report is a publically available document prepared for the purposes of Government, Court users, the media and funding bodies.
- 4 The intention is that from now on there should be annual reports prepared no later than May in the year following the relevant financial year. As electronic data capture becomes more reliable, it is anticipated that this report will include greater detail than set out below.

### Vision statement for the Ministry of Justice

- 5 The Ministry's Business Plan sets out the following vision statement:

*"To provide accurate, proficient and effective customer services through administering just and equal laws and legislation that continue to promote a safe and fair society within the Cook Islands and to provide a more reliable, accessible and sustainable land administration system and a fair, well organised judicial system working in an electronic environment."*

- 6 It will be immediately apparent that this statement deals also with other aspects of the Ministry's business which are not directly relevant for the purposes of this Report.

### Judges

- 7 The Chief Justice is the Hon Chief Justice Tom Weston.
- 8 During the relevant period there were four Judges of the Court of Appeal:
  - The Hon Justice Sir Ian Barker, President of the Court
  - The Rt Hon Justice Sir Kenneth Keith
  - The Hon Justice David Williams
  - The Hon Justice Robert Fisher
- 9 In addition, the Hon Justice Barry Paterson, although a Judge of the High Court, sat only in the Court of Appeal.
- 10 In late 2011 the Judicature Amendment Act was passed in order to streamline appeal procedures to the Court of Appeal. The corresponding rules were completed in 2012.

- 11 The following were Judges of the High Court during the relevant period:
- The Hon Justice Colin Nicholson
  - The Hon Justice Christine Grice
  - The Hon Justice Sir Hugh Williams
  - The Hon Justice Colin Doherty
- 12 Judges of the Land Division of the High Court during the relevant period were:
- The Hon Justice Pat Savage
  - The Hon Justice Wilson Isaac
  - The Hon Justice Heta Hingston
- 13 During the relevant period the Hon Justice Colin Nicholson retired having served as a Judge from 2000.
- 14 All of the above listed Judges held office on a part-time basis and, with the exception of Sir Kenneth Keith, were based in New Zealand throughout the relevant period. Judges, from time to time, despatched Court business by telephone and email from New Zealand.

#### **Justices of the Peace**

- 15 Justices of the Peace are entitled to sit as judicial officers (Lay Magistrates) in the High Court either as part of a Court of three or individually (the jurisdiction is conferred by statute).
- 16 As a matter of practice, only a limited number of JPs are approved by the Chief Justice to sit in the High Court. During the relevant period those JPs based in Rarotonga with approval to sit were:
- John Kenning JP (Senior Administration JP)
  - Tangi Taoro JP (Senior Training JP/National Co-ordinator)
  - Rima David JP (Senior JP)
  - Carmen Temata JP
  - Bernice Manarangi JP
  - Tuingariki Short JP
  - Taepae Tuteru JP
  - Tauei Solomon JP
  - Tekeu Framhein JP
  - (late) Ina Tautu JP
  - John Whitta JP
  - Gina Keenan-Williams JP

- 17 During the relevant period, those JPs based in Aitutaki with approval to sit were:
- Tamatoa Ariki JP
  - Putangi Mose JP
  - Moyra McBirney JP
  - Dora Harrington JP
- 18 The Chief Justice has not approved any other JP (whether in Rarotonga or the Outer Islands) to sit and determine matters otherwise within jurisdiction. However, all JPs have a limited jurisdiction to deal with preliminary calls of criminal matters.
- 19 During the relevant period, a process of consultation commenced with a view to re-structuring the JP jurisdiction. This ultimately culminated in a discussion paper issued post July 2012 (to be discussed in next year's Report).
- 20 During the relevant period, the Chief Justice negotiated a mentoring programme with the District Court of New Zealand at Manukau. A Memorandum of Understanding was signed on 26 March 2012 (Chief District Court of New Zealand/Chief Justice of the Cook Islands). No JPs travelled to Manukau during the relevant period because funding was in the course of being arranged. JPs have since attended at Manukau and this will be reported on in the next year's Report.

#### Number of hearings

- 21 In any given year there are two scheduled sittings of the Court of Appeal, each for one week duration. During the relevant period, due to a shortage of appeals, the Court of Appeal sat only once and heard 5 appeals.
- 22 During the relevant period there were five scheduled sittings of the High Court of two weeks duration each presided over by Judges. There was an additional sitting of the High Court – Operation Eagle - 1 week pre-trial hearing (Doherty J).
- 23 During the relevant period there were two sittings of three weeks duration each of the Land Division of the High Court presided over by Savage and Isaac JJ.
- 24 Over the relevant period there were numerous hearings of the High Court convened before JPs and in summary:
- (x48) weekly JP criminal call conducted on Thursdays;
  - (x17) 1JP criminal defended court;
  - (x12) monthly civil call conducted on Fridays;
  - (x11) monthly 3JP criminal court conducted on Wednesdays;
  - (x4) 3JP criminal defended court;
  - (x11) monthly Children's Court conducted on Fridays;
  - (x13) Land Court (Of the 18, 13 were conducted in Rarotonga and 5 in Aitutaki with each being a duration of 2-3 days)

- 25 The vast majority of all cases were heard in Rarotonga. There were 38 sittings (1JP Criminal Court – 27; 3JP Criminal Court – 5; Land Court – 6 Note: the additional sitting was for an interim injunction) matters heard and determined in Aitutaki.
- 26 At page 10 of the Strategic Plan there is a reference to a large backlog of cases in the High Court. Due to concerted efforts by the Registry this backlog has now been reduced considerably.

#### **Number of matters filed and/or determined**

- 27 In the Court of Appeal, during the relevant period 12 appeals were filed and 12 were determined. Eight appeals were successful in whole or in part.
- 28 During the relevant period there were 7 appeals from a decision of a JP to a High Court Judge. Of these 5 were successful in whole or part.
- 29 During the relevant period, the following number of matters were filed:
- in the criminal jurisdiction of the Court 857 informations were laid;
  - in the children's jurisdiction of the Court 162 informations were laid;
  - in the land jurisdiction of the Court 1,743 applications were filed; [Note: 1189 Rarotonga, 491 Aitutaki, 63 Atiu]
  - in the civil jurisdiction of the Court 171 applications were filed;
  - there were, in addition, a number of miscellaneous applications.
- 30 The Court currently does not have the facilities to determine accurately the number of matters resolved during the relevant period. It is now working on better methods electronically to capture that data.
- 31 During the relevant period 25 applications were filed under section 390A, Cook Islands Act. This is a special jurisdiction of the Chief Justice designed to identify and correct historic mistake in land matters. It can be a time-consuming jurisdiction involving detailed historic study of relevant complaints. Consequent upon an investigation made by the Chief Justice in September 2012 (shortly after the relevant period) it was ascertained there were a number of historic applications which had been filed but never pursued. New and better systems are now being established to process section 390A applications.

#### **Registry/administration**

- 32 The Registry, during the relevant period had the following staff dedicated to Court matters:
- Registrar (1);
  - Deputy Registrars (2);
  - Court Officers (4)
  - Court Administrators (2)
  - Stenographers (2)

- 33 The court staff are generally over-worked and under-resourced. As identified in the Business Plan, staff are generally underpaid relative to other Government servants.
- 34 During the relevant period there were some complaints that staff did not reply to emails or other communications. These complaints were handled by the HOM (in conjunction with the Chief Justice as appropriate).
- 35 The Land jurisdiction of the Court is particularly burdensome for staff. In part, this reflects the poor quality of land records and the need to undertake manual searching in many instances.
- 36 Public information on Court services is available:
- Case lists are published via email to parties and media as well as on public notice board;
  - Relevant pamphlets are published and made available;
  - Website [www.justice.gov.ck](http://www.justice.gov.ck)
- 37 The Registry has a practice of preparing relevant Judgments for the electronic data base known as PacLII. This process is not yet complete and there are outstanding Judgments yet to be processed and sent.

#### Complaints process

- 38 Any complaints against juridical officers (Judges or JPs) are made to the Registrar in writing and forwarded to the Chief Justice for determination. During the relevant period:
- there were no complaints about Judges;
  - there were two complaints about JPs which were investigated by the Chief Justice and dealt with administratively.
- 39 In addition, there was one complaint concerning a JP which was dealt with by the HOM (in conjunction with the Chief Justice).
- 40 In addition to the formal complaints process above, there is an informal process whereby practitioners and/or parties can inquire of the Registrar if Judgments are thought to be outstanding and delayed. The general practice is that the Registrar forwards these to the Chief Justice who will make inquiries of the relevant Judge as to the progress of a particular Judgment. During the relevant period there were three such inquiries. It is sometimes the case that Judgments are delayed because all Judges are part-time with other commitments in New Zealand.

#### Legal aid

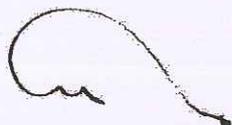
- 41 There is a small sum (\$40,000) made available each year by way of criminal legal aid. There were 12 applications filed. Of these, 10 were approved and 2 declined.
- 42 There is no civil legal aid available.
- 43 The Court does not have a formal Court fee waiver policy and there were no Court fee waivers during the relevant period.

### Law Practitioners

- 44 The Chief Justice is responsible for admissions to the Bar. This includes temporary admissions. During the relevant period there were:
- 7 admissions;
  - nil temporary admissions.
- 45 The Chief Justice is responsible for investigating complaints against practitioners. These complaints are made via the Registrar. During the relevant period there was one such complaint resolved by the Chief Justice.
- 46 During the relevant period, there was frequent communication between the Law Society and the Chief Justice in relation to matters of common interest such as training of practitioners.

### Concluding remarks

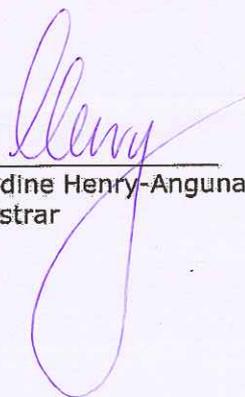
- 47 The Court handles a very large volume of business with part-time Judges and Lay Magistrate supported by staff who are under-resourced for the task expected of them.
- 48 It is hoped, and expected, that this Report will become an annual event. As systems improve, the detail of the information provided is expected to expand.
- 49 The Court is reliant, in part, on external funding and it is the expectation of such bodies that a Court should provide an annual report. The PJDP, in particular, has been assisting Pacific Courts to provide appropriate reporting details and their assistance is gratefully acknowledged.
- 50 A high priority for the Court is the development of new rules of procedure. This is a very large task. Preliminary scoping has been undertaken but, at this stage, nothing more. Regrettably, coping with the daily business of the Court absorbs virtually all the available time of Judges, staff and practitioners.



Tom Weston  
Chief Justice



Tingika Elikana  
Head of Ministry



Claudine Henry-Anguna  
Registrar