



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



**COURT REPORT 2012/2013**

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### 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 2012-30 June 2013 (corresponding with the Ministry's financial year).
- 2 This Report follows a previous Courts Report issued in May 2013 for the 2011-2012 year which was the first such Report prepared on behalf of the Courts of the Cook Islands.
- 3 In August 2013 the Ministry of Justice, building on the base of the above-mentioned Courts Report, prepared and publicised its Annual Report for the 2012-2013 financial year. In a number of respects, this incorporated and superseded the need for a separate report on behalf of the Courts. There are, nevertheless, a number of issues peculiar to the Courts which need to be separately reported upon, hence the need for this supplementary report.
- 4 The purpose of a Report such as this is to address a range of audiences which include the Government and the public of the Cook Islands. It is also about defining the interests and perspectives of the Courts themselves. This is particularly important where there is a lay magistracy (the Justice of the Peace who sit in the High Court) and they, too, are an important audience for this Report.
- 5 The Court reports separately because it is independent of the Government. While the Courts are administered by the Ministry of Justice, the judiciary is independent of the Ministry and has its own separate identity.

### Judges and Justices of the Peace

- 6 A full list of the current Judges and Justices of the Peace in the reporting period can be found in the Ministry's Report and is not repeated here.
- 7 As reported in the previous Courts' Report, the Chief Justice has made various proposals to restructure the JP jurisdiction. The responsibility to advance these proposals lies with Government. It is understood that no steps have been taken.
- 8 During the relevant period, the Manukau Mentoring Programme referred to in the previous Report was implemented and six JPs have been to the District Court sitting at Manukau for a week at a time. Further JPs are set to travel to Manukau.
- 9 Steps have been taken to develop a Pasifika Court modelled on the equivalent operating in New Zealand.
- 10 Almost all sittings of the Court are conducted in the Court rooms located at Avarua, Rarotonga. In addition, the Court sits in Aitutaki from time to time and, during the reporting period, there were 24 JP sittings of the High Court in Aitutaki. Justices of the Peace in the other Outer Islands sometimes perform judicial functions in relation to arrests but, during the reporting period, there were no formal sittings of the High Court in any of the Outer Islands other than Aitutaki.

### **Workload pressures**

- 11 During the reporting period, the Court conducted extra sittings in order to dispose of the various criminal charges arising out of the Operation Eagle (drugs) investigation by the Police. These hearings were conducted by Doherty J and resulted in a number of convictions. In addition, there were additional sittings of the Land Court to accommodate several discrete cases.
- 12 The resources devoted to resolving the Operation Eagle cases meant that other criminal cases did not necessarily receive the priority they otherwise required. There is now a significant backlog of criminal cases requiring a jury trial. Within the current structure of the Court year, it is difficult to dispose of more than five jury trials a year although, depending on length, it may be possible to accommodate up to seven or eight jury trials a year.
- 13 The Judges of the High Court are endeavouring to take control over the disposal of criminal cases by conducting regular call-throughs and controlling the number of adjournments allowed.
- 14 In addition, there is now a substantial backlog of land matters including section 390A applications due for hearing by Land Division Judges. With the introduction of land agents, and a subsequent boom in land applications made to the Court, the existing sitting arrangements are simply inadequate to dispose of land cases. It is understood there are similar problems in other Pacific jurisdictions and so the Cook Islands is not alone in facing this problem. Nevertheless, there needs to be extra resourcing provided for Land Division hearings.
- 15 During the reporting period there were 9 staff members in the Registry including the Registrar and Deputy Registrars.

### **Court fee waivers?**

- 16 There is no formal policy in relation to fee waivers and, during the reporting period, no fees were waived.

### **Complaints**


- 17 The existing procedures of the Court to address complaints against Judges and Justices of the Peace has been reduced to writing and are now placed on the Government website. During the relevant period there was a potential complaint raised against the Chief Justice referred to the President of the Court of Appeal. This arose out of a section 390A application. The President considered there was no formal complaint raised in the letter. Furthermore, the section 390A application was subsequently found to be without jurisdiction and dismissed.
- 18 There were no complaints against Judges or Justices of the Peace.
- 19 There were some inquiries made in relation to delays in Judgments by Land Division Judges. These were followed up. In most instances these delays were beyond the responsibility of the Judges who were awaiting further materials from the Registry including transcripts of hearings. As noted above, the Land Division is under intense pressure due to the large volume of work to be disposed of. The limited resources (both Judge and administrative) inevitably will have consequences for the timeliness of Judgment delivery.
- 20 No formal complaints were made against Registry staff during the reporting period.

### **Law Practitioners**

- 21 The Chief Justice is responsible for admissions to the Bar. This includes temporary admissions. During the relevant period there were:
- 6 ordinary admissions;
  - 3 temporary admissions.
- 22 The Chief Justice is responsible for investigating complaints against practitioners. Three complaints were made to the Chief Justice via the Registrar. One complaint was dismissed, and one complaint was upheld with limited disclosure made to practitioners. A third complaint made during the reporting period (in reality, a group of complaints) against Norman George was resolved after the reporting period and publicised to the public at large.
- 23 During the relevant period, there was frequent communication between the Law Society and Chief Justice in relation to matters of common interest such as training of practitioners and admissions.

### **Concluding remarks**

- 24 The Cook Islands is heavily dependent on upon the goodwill of Judges of the Court of Appeal and the High Court to undertake their duties. Such work is frequently undertaken free of charge. Where remunerated, the remuneration is comparatively low by New Zealand standards. The allowances paid to Judges are not sufficient to cover the full cost of travelling to and residing in the Cook Islands during Court hearings. That needs to be addressed. Judges should not be out of pocket in undertaking their judicial functions.
- 25 Notwithstanding the difficulty of running a busy Registry with a small number of staff, and with part-time Judges, the Courts continue to dispose of a large volume of business fairly and impartially.

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Tom Weston  
Chief Justice

  
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Tingike Elikana  
Head of Ministry

  
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Claudine Henry-Anguna  
Registrar