

Justices of the Peace Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill contains three main proposals, relating to the training, discipline, and retirement of Justices of the Peace.

First, it requires all newly-appointed Justices undertake training before taking the oath. The intent is to standardise the initial training of all new Justices to support them in their role. The training proposals relate to the administrative functions undertaken by Justices rather than judicial functions.

Secondly, it introduces a new disciplinary regime to enable a Justice to be removed or suspended from office on serious grounds. Specifying these grounds in legislation would detail a consistent and transparent procedure in decision-making, and indicate the high standard of behaviour that is expected of Justices as respected members of the community. It also provides for disciplinary action other than removal or suspension to be taken against Justices (in relation to the exercise of their administrative functions). This measure will ensure that behavioural issues that do not warrant removal, but require some sort of remedial action, can be dealt with appropriately.

Thirdly, it enables Justices who have served the community as a Justice but now wish to withdraw their services and retire be allowed to use the designation “JP (retired)”. This designation will be available to appointed Justices who have held office for a period of at least 10 years (including Justices who have already retired).

Clause by clause analysis

Clause 1 relates to the Bill's Title.

Clause 2 provides that the Bill comes into force on the day after assent.

Clause 3 provides that the Bill amends the Justices of the Peace Act 1957.

Part 1 Miscellaneous amendments

Clause 4 replaces sections 2 and 3 of the Justices of the Peace Act 1957 with 6 new sections.

New section 2 defines **Justice** (which is already defined in the present section 2), and also defines **judicial power or function**, **Minister**, and **working day**. A **judicial power or function** is a power or function involving discharging responsibilities of a judicial nature or issuing a warrant.

New section 2A provides that the Act binds the Crown.

New section 3 is to the same effect as subsections (1) to (3) of the present section 3 (which provide for the appointment of Justices).

New section 3A is to the same effect as the present section 3(4) (which provides that, once appointed, Justices continue in office until—

- they die or resign; or
- are removed from office, or otherwise cease to be Justices, under the principal Act).

New section 3B requires a newly appointed Justice—

- to take the required oaths before exercising or performing any of the powers or functions of a Justice; and
- to complete the training provided by the Secretary for Justice in the exercise and performance of the powers and functions of a Justice before taking the required oaths.

New section 3C empowers the Secretary for Justice to authorise retired appointed Justices who have served for 10 years or more to use the designation “JP (retired)”.

A former Justice who wishes to use the designation must apply to the Secretary for authority; and the Secretary must give authority unless satisfied that the former Justice—

- before retiring, without reasonable excuse,—

- had abandoned performing the functions of a Justice; or
- had failed to perform the functions of a Justice; or
- retired while suspended; or
- retired to avoid being removed or suspended, or otherwise disciplined.

The section also—

- forbids the use of the designation “JP (retired)” by any person (whether or not a retired Justice) not authorised by the Secretary for Justice to use it; and
- forbids the use of any designation similar to “JP (retired)” by any person.

Part 2

Amendments to provisions relating to discipline and retirement

Clause 5 replaces section 5 of the Justices of the Peace Act 1957 (which relates to the removal of Justices from office) with 7 new sections.

New section 5 empowers the Governor-General, on the recommendation of the Minister, to remove a Justice from office, or suspend a Justice from office for a period of up to 90 days for misconduct or if—

- the Justice—
 - is unable to perform his or her functions; or
 - has neglected his or her duties; or
 - has been convicted of an offence punishable by imprisonment; or
 - has been adjudged bankrupt; or
 - has failed or refused to comply with a requirement under *section 5D(1)*; or
- in the case of a removal, the Justice has knowingly purported to exercise or perform a power or function of a Justice while suspended.

New section 5A provides that the Minister must not recommend the removal or suspension of a Justice who exercises or performs judicial powers or functions unless the Chief District Court Judge has been consulted, and has recommended the removal or suspension.

New section 5B deals with the effect of removals. A person removed from the office of Justice—

- ceases to be a Justice on the day after the publication of the notice removing him or her from office; and
- in the case of a chairperson of a regional council or a mayor of a territorial authority, is no longer a Justice by virtue of being chairperson or mayor; and
- does not become a Justice again if later elected or appointed chairperson of a regional council or mayor of a territorial authority.

New section 5C deals with the effect of suspensions.

A suspension of a Justice begins on the day after the publication of the notice suspending him or her.

While a Justice is suspended, every enactment other than the principal Act applies as if he or she has ceased to be a Justice, and he or she must not purport to exercise or perform any of the powers or functions of a Justice.

A suspended Justice continues to be suspended even if, during his or her suspension, he or she is elected or appointed chairperson of a regional council or mayor of a territorial authority.

New section 5D enables other disciplinary action to be taken in respect of a Justice.

The Governor-General may direct the Minister to—

- give the Justice an official written rebuke;
- require the Justice to apologise to a particular person or people for behaviour notified to the Justice;
- require the Justice to undertake training in an aspect of the performance of the Justice's functions as a Justice;
- require the Justice to receive counselling of a particular kind.

The Governor-General acts only on the recommendation of the Minister; and the Minister must not recommend disciplinary action unless satisfied that the Justice—

- has behaved in a way that is inappropriate or undesirable for a Justice (otherwise than in relation to the exercise or performance of judicial powers or functions) ; or
- has performed a function of a Justice while suspended from office under *new section 5*; or
- has neglected his or her duties as a Justice.

New section 5E requires a Justice to be consulted before disciplinary action against him or her is recommended.

The Minister must have reached a preliminary view that grounds may exist for recommending disciplinary action against the Justice, and must be satisfied that the Secretary has given the Justice written notice stating—

- that grounds may exist for recommending disciplinary action; and
- the grounds on which the Minister reached his or her preliminary view; and
- that the Justice may comment to the Secretary on the matters contained in the notice within 20 working days of receiving it.

Then either—

- the Secretary must have received comments from the Justice, and the Minister must have considered the comments and any written comments on them from the Secretary; or
- the Minister must be satisfied that Secretary has not received comments from the Justice within 20 working days of the Justice's receiving the Secretary's notice.

New section 5F—

- requires court Registrars to notify the Secretary whenever a person known to be a Justice is convicted of an offence punishable by imprisonment; and
- requires Official Assignees to notify the Secretary whenever a person known to be a Justice is adjudged bankrupt.

Clause 6 amends section 6 of the Act so make clear that the list of Justices kept under it does not include people who are Justices by virtue of being a District Court Judge or a Judge of the Maori Land Court.

Clause 7 amends section 7 of the Act so as to lower from 72 to 68 the age at which a Justice is able to notify the Registrar of a District Court that he or she no longer wishes to attend the Court.

Clause 8 replaces section 8 of the Act (which relates to the consequences if a Justice fails to attend court on 2 consecutive occasions when summoned). It is to the same effect as the present section, but drafted in language similar to that used in *new sections 5 to 5B*.

Its effect is that, unless within one month after the second failure the Justice (or some other person on the Justice's behalf) satisfies the Minister that he or she had reasonable cause for the failures, the Justice ceases to be a Justice on a date fixed by notice in the *Gazette*.

The section applies to a person who is a Justice by virtue of being chairperson of a regional council or mayor of a territorial authority; and, if he or she ceases to be a Justice under the section, he or she—

- is not a Justice by virtue of being chairperson or mayor; but
 - becomes a Justice again if later elected or appointed chairperson of a regional council or mayor of a territorial authority.
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Hon Clayton Cosgrove

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Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Justices of the Peace Amendment Act **2006**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Principal Act amended**
This Act amends the Justices of the Peace Act 1957.

Part 1
Miscellaneous amendments

- 4 New sections 2 to 3C substituted** 10
Sections 2 and 3 are repealed and the following sections are substituted:
- “2 Interpretation**
In this Act, unless the context otherwise requires,—
- “**judicial power or function** means a power or function 15
involving—
- “(a) discharging or purporting to discharge (or failing, refusing, or purporting to refuse, to discharge) responsibilities of a judicial nature vested in Justices; or
- “(b) issuing, or failing or refusing to issue, a warrant. 20
- “**Justice** means a person who is a Justice of the Peace for New Zealand—
- “(a) by virtue of being appointed a Justice of the Peace for New Zealand under **section 3(1)**; or
- “(b) by virtue of being a District Court Judge, a Judge of the 25
Maori Land Court, the chairperson of a regional council, or the mayor of a territorial authority
- “**Minister** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act 30
- “**working day** means a day that—

- “(a) is not Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, Labour Day, or the Sovereign’s birthday; and
- “(b) does not fall in a period commencing on 20 December in one year and ending with 15 January in the next year. 5

“2A Act binds the Crown

This Act binds the Crown.

“3 Appointment of Justices of the Peace

- “(1) The Governor-General may, by Warrant under his or her hand, appoint any person to be a Justice of the Peace for New Zealand. 10
- “(2) The Secretary—
- “(a) must publish in the *Gazette* notice of every appointment under **subsection (1)**; and
- “(b) may publish in the *Gazette* a list of the names of Justices holding office (by virtue of appointment under **subsection (1)**) on a day stated in the notice. 15
- “(3) Publication in the *Gazette* of a notice of appointment or list of names is evidence of the appointment as a Justice of every person whose name appears in the notice or list. 20

“3A Appointed Justices continue in office

- “(1) Every Justice appointed under **subsection (1)** continues in office until he or she—
- “(a) dies; or
- “(b) resigns by notice in writing to the Secretary; or 25
- “(c) ceases to be a Justice by virtue of **section 5(1)(a)** or section 8.
- “(2) **Subsection (1)** is subject to **section 5B(2)**.

“3B Justices to undertake training before taking up duties

- “(1) A Justice (other than a District Court Judge or a Judge of the Maori Land Court) must not exercise or perform any of the powers or functions of a Justice before taking the required oaths. 30
- “(2) A Justice must not take the required oaths before completing the training in the exercise and performance of the powers and functions of a Justice provided by the Secretary. 35

- “(3) Even if a Justice exercises or performs a power or function of a Justice before taking the required oaths, the exercise or performance of the power or function is valid and effectual.
- “(4) In this section, **required oaths** means the oaths required for Justices of the Peace by section 22(1) of the Oaths and Declarations Act 1957. 5
- “(5) **Subsection (2)** does not apply to a Justice appointed before the commencement of the Justices of the Peace Amendment Act **2006**.
- “**3C Use of designation ‘JP (retired)’** 10
- “(1) On or after retiring as a Justice, a former Justice appointed under **section 3(1)** may apply to the Secretary in writing for authority to use the designation ‘JP (retired)’.
- “(2) The Secretary must publish in the *Gazette* a notice authorising the former Justice to use the designation ‘JP (retired)’, unless 15 satisfied that the former Justice—
- “(a) had served as a Justice for less than 10 years; or
- “(b) before retiring as a Justice, without reasonable excuse,—
- “(i) had abandoned the performance of the functions 20 of a Justice; or
- “(ii) had from time to time failed or refused to perform the functions of a Justice; or
- “(c) retired while suspended from office; or
- “(d) retired to avoid being removed or suspended from 25 office, or otherwise disciplined.
- “(3) No former Justice may use the designation ‘JP (retired)’ unless the Secretary has published in the *Gazette* a notice authorising him or her to do so.
- “(4) No person who is not a former Justice may use the designation 30 ‘JP (retired)’.
- “(5) No person may use a designation similar to ‘JP (retired)’.
- “(6) **Subsection (1)** applies to former Justices (appointed under **section 3(1)**) who retired before the commencement of the Justices of the Peace Amendment Act **2006**.” 35

Part 2

Amendments to provisions relating to discipline and retirement

- 5 New sections 5 to 5F substituted** 5
Section 5 is repealed and the following sections are substituted:
- “5 Removal or suspension of Justice from office**
- “(1) The Governor-General may, on the recommendation of the Minister, by notice in the *Gazette*, remove a Justice from office or suspend a Justice from office for a period, stated in the notice, of not more than 90 days— 10
- “(a) for misconduct; or
- “(b) if the Justice— 15
- “(i) is unable to perform his or her functions as a Justice; or
- “(ii) has neglected his or her duties as a Justice; or
- “(iii) has, while a Justice, been convicted of an offence punishable by imprisonment; or
- “(iv) has, while a Justice, been adjudged bankrupt; or
- “(v) has failed or refused to comply with a requirement under **section 5D(1)**; or 20
- “(c) in the case of a removal, if the Justice has purported to exercise or perform a power or function of a Justice, knowing that he or she was suspended from office.
- “(2) **Subsection (1)** does not apply to a person who is a Justice by virtue of being a District Court Judge or a Judge of the Maori Land Court. 25
- “5A Minister to consult Chief District Court Judge before recommending removal or suspension of Justice exercising or performing judicial powers or functions** 30
- “(1) The Minister must not recommend the removal or suspension from office of a Justice who exercises or performs judicial powers or functions unless—
- “(a) he or she has consulted the Chief District Court Judge about the Justice’s proposed removal or suspension from office; and 35
- “(b) the Chief District Court Judge has recommended to the Minister the Justice’s removal or suspension (as the case may be) from office.

- “(2) The Chief District Court Judge must not recommend a Justice’s removal or suspension from office, unless—
- “(a) the Chief District Court Judge has earlier reached a preliminary view that grounds may exist for recommending disciplinary action against the Justice, and has given the Justice written notice—
- “(i) stating that grounds may exist for recommending disciplinary action; and
- “(ii) stating the grounds on which the Chief District Court Judge reached that preliminary view; and
- “(iii) stating that the Justice may within 20 working days of receiving the notice respond to the Chief District Court Judge in writing in respect of the matters contained in the notice; and
- “(b) either the Chief District Court Judge—
- “(i) has received and considered a written response from the Justice in respect of the matters contained in the notice; or
- “(ii) has not, within 20 working days of the Justice’s receiving the notice, received from the Justice a written response in respect of the matters contained in the notice.

“5B Effect of removal

- “(1) A person removed from the office of Justice—
- “(a) ceases to be a Justice on the day after the date of the publication of the notice under **section 5(1)** removing him or her from that office; and
- “(b) in the case of a chairperson of a regional council or a mayor of a territorial authority, is no longer a Justice by virtue of being chairperson or mayor; and
- “(c) does not become a Justice again if later elected or appointed (or re-elected or reappointed) chairperson of a regional council or mayor of a territorial authority.
- “(2) **Subsection (1)** overrides section 41(4) of the Local Government Act 2002.

“5C Effect of suspension

- “(1) The suspension of a Justice begins on the day after the date of the publication of the notice under **section 5(1)** suspending him or her from office.

- “(2) While a Justice is suspended,—
- “(a) every enactment other than this Act applies as if he or she is not a Justice; and
- “(b) he or she must not purport to exercise or perform any of the powers or functions of a Justice. 5
- “(3) **Subsection (2)** continues to apply to a suspended Justice even if, during his or her suspension, he or she is elected or appointed (or re-elected or reappointed) chairperson of a regional council or mayor of a territorial authority.
- “(4) **Subsections (2) and (3)** override section 41(4) of the Local Government Act 2002. 10
- “**5D Other action in respect of Justices**
- “(1) The Governor-General may, on the recommendation of the Minister, direct the Minister to take in respect of a Justice (other than a person who is a Justice by virtue of being a District Court Judge or a Judge of the Maori Land Court) one or more of the following actions: 15
- “(a) give the Justice an official written rebuke:
- “(b) by written notice to the Justice, require the Justice to apologise to a person or people stated in the notice, in writing, for behaviour stated in the notice: 20
- “(c) by written notice to the Justice, require the Justice to undertake training (or further training), provided by a provider stated in the notice, in an aspect of the performance of the Justice’s functions as a Justice stated in the notice: 25
- “(d) by written notice to the Justice, require the Justice to receive counselling (or further counselling), provided by a provider stated in the notice, of a kind stated in the notice. 30
- “(2) The Minister must not recommend the giving of a direction under **subsection (1)** in respect of a Justice unless the Minister is satisfied that the Justice—
- “(a) has, since appointment as a Justice, behaved in a way that is inappropriate or undesirable for a Justice (otherwise than in relation to the exercise or performance of judicial powers or functions); or 35
- “(b) has performed a function of a Justice while suspended from office; or
- “(c) has neglected his or her duties as a Justice. 40

“(3) The Minister may take 2 or more of the actions stated in **subsection (1)** by means of a single notice.

“5E Justices to be given particulars and opportunity to respond

- “(1) In this section, **disciplinary action**, in relation to a Justice, means the giving of a direction under **section 5D(1)** in respect of the Justice. 5
- “(2) The Minister must not recommend disciplinary action against a Justice, unless—
- “(a) the Minister has earlier reached a preliminary view that grounds may exist for recommending disciplinary action against the Justice; and 10
- “(b) the Minister is satisfied that the Secretary has given the Justice written notice—
- “(i) stating that grounds may exist for recommending disciplinary action; and 15
- “(ii) stating the grounds on which the Minister reached his or her preliminary view; and
- “(iii) stating that the Justice may within 20 working days of receiving the notice respond to the Secretary in writing in respect of the matters contained in the notice; and 20
- “(c) either—
- “(i) the Secretary has received from the Justice a written response in respect of the matters contained in the notice, and the Minister has considered the response and any written comments on them from the Secretary; or 25
- “(ii) the Minister is satisfied that the Secretary has not, within 20 working days of the Justice’s receiving the notice, received from the Justice a written response in respect of the matters contained in the notice. 30

- “5F Registrars and Official Assignees to notify convictions and bankruptcies**
 For the purposes of **section 5**,—
 “(a) a Registrar of the High Court or a District Court must notify the Secretary whenever a person whom the Registrar knows to be a Justice is convicted of an offence punishable by imprisonment: 5
 “(b) an Official Assignee (within the meaning of the Insolvency Act 1967) must notify the Secretary whenever a person whom the Official Assignee knows to be a Justice is adjudged bankrupt.” 10
- 6 Attendance of Justices at Court**
 Section 6(1) is amended by inserting “(other than people who are Justices by virtue of being a District Court Judge or a Judge of the Maori Land Court)” after “Justices”. 15
- 7 Justices exempt from attendance**
 Section 7(1)(a) is amended by omitting “72” and substituting “68”.
- 8 New section 8 substituted**
 Section 8 is repealing and the following section is substituted: 20
- “8 Failure to attend**
 “(1) If a Justice fails to attend a District Court on 2 successive occasions when summoned under section 6(2),—
 “(a) the Registrar concerned must notify the Secretary of the second failure; and 25
 “(b) unless within 20 working days after the date of the second failure the Justice (or some other person on the Justice’s behalf) satisfies the Minister that the Justice had reasonable cause for the failures, the Justice ceases to be a Justice on a date fixed for the purpose by the Minister and notified in the *Gazette*. 30
- “(2) A chairperson of a regional council or a mayor of a territorial authority who ceases to be a Justice by virtue of **subsection (1)(b)**,—
 “(a) is no longer a Justice by virtue of being chairperson or mayor; but 35

“(b) becomes a Justice again if later elected or appointed (or re-elected or reappointed) chairperson of a regional council or mayor of a territorial authority.

“(3) **Subsection (2)(a)** overrides section 41(4) of the Local Government Act 2002. 5

“(4) **Subsection (2)(b)** is subject to **section 5B(1)(c)**.

“(5) In this section, **fail** includes refuse.”

