

# **Justices of the Peace Amendment Bill**

Government Bill

As reported from the Law and Order Committee

## **Commentary**

### **Recommendation**

The Law and Order Committee has examined the Justices of the Peace Amendment Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The bill amends the Justices of the Peace Act 1957 and contains three main proposals. Firstly, it requires new JPs to undertake training before assuming duties. Secondly, it introduces a new disciplinary regime, which includes a range of sanctions that can be applied when the conduct or behaviour of JPs is considered inappropriate. Thirdly, it allows certain retired JPs to use the designation “JP (retired)”.

### **Training before appointment**

We recommend an amendment to clause 4, new section 3, to clarify that the completion of training will be required before the appointment of a JP. The bill as introduced provides that all new JPs must undertake training once they are appointed. However, the Ministry of Justice, in consultation with the Royal Federation of Justices’ Associations (Inc), has completed a review and recommended a new appointment process for JPs. The new process (among other things) requires that training be completed before the Minister of Justice

approves or declines the appointment of a JP. We agree that this is desirable and our amendment reflects this sequence.

### **Compulsory judicial training**

We recommend amendments to clause 4, new section 3B, to provide that JPs may not exercise a judicial function or power until they have undertaken training to the satisfaction of the Chief District Court Judge. Currently, JPs who exercise judicial functions (other than issuing search warrants) must first have undertaken a judicial training course. Justices of the Peace Associations also provide ongoing judicial training. We recognise the importance of the role of JPs in the courts and therefore consider it vital that they undertake appropriate training. We therefore support the current practice becoming a statutory requirement. Further, our amendment includes a provision that the training must be undertaken to the satisfaction of the Chief District Court Judge.

### **Suspension period**

We recommend amending clause 5 so a JP may be suspended from office for a period of not more than 65 working days. We were concerned that the 90-day period provided for in the bill as introduced might, in rare circumstances, not be sufficient if a court appearance is involved or it includes the Christmas period. Our proposed amendment makes it clear that the suspension period is 65 working days rather than the 90-day total. We note that there is nothing in the bill to prevent the suspension period from being extended.

### **Definition of “Secretary” inserted**

We recommend inserting a definition of “Secretary” in clause 4, new section 2, the interpretation clause. The bill refers several times to the Secretary but does not indicate that this means the Secretary for Justice. We consider this amendment necessary for clarity.

### **Age of exemption**

We recommend amending clause 7 to state that the age at which a JP may apply for an exemption from attendance at court is 70 years. The bill as introduced proposed that the age be lowered from 72 years to 68 years. However, we note that there is currently a proposal that the judicial retirement age be amended to 70 years and we

consider it appropriate that the age of exemption for JPs should reflect this. Our proposed amendment thus would provide consistency with the proposed judicial retirement age.

### **Distinction between retiring and resigning**

We recommend a minor amendment to clause 4, new section 2, to distinguish between the act of resignation and the act of retiring. The bill currently enables a JP to resign, and retire by means of doing so. However, we wish to acknowledge a distinction between the acts of resigning and retiring as a JP, and recommend this amendment accordingly.

### **Limited tenure**

We considered carefully whether to include in the bill provisions limiting the tenure of JPs to a 10-year period, but decided not to recommend this. We explored the issues giving rise to our initial consideration of limited tenure, and concluded that our concerns could be addressed outside of legislation. We were also mindful of the financial implications of establishing and managing a system of limited tenure.

We were primarily concerned about the lack of tracking and monitoring of JPs after their initial appointment, as we fear the current system does not allow the easy recognition of JPs who are not committed to the exercise of the role's powers and functions.

We were told by the Ministry of Justice that it is developing a guideline in conjunction with the Royal Federation of Justices' Associations on JP Association processes and policies, with a view to making practice nationally consistent. The guideline will include aspects of appointing, training, monitoring and communicating with JPs. The Ministry of Justice told us that the implementation of consistent practice, along with the disciplinary regime proposed in this bill, should address many of our concerns.

### **Remuneration**

Some submitters suggested that JPs exercising judicial functions should be paid a daily sitting fee. We greatly appreciate the commitments made by JPs, particularly those exercising judicial functions, and agree that they should be sufficiently recognised and compensated. We do not, however, consider that this bill is the correct avenue for addressing the issue of remuneration, and we note that

the Ministry of Justice is exploring with the Royal Federation of Justices' Associations ways of recognising their contributions to the courts system.

### **Minor amendments**

We recommend a small number of minor amendments to modernise the language used, make clarifications, and to correct drafting errors.

## **Appendix**

### **Committee process**

The Justices of the Peace Amendment Bill was referred to the committee on 19 July 2006. The closing date for submissions was 6 September 2006. We received and considered five submissions from interested groups and individuals, three of which were heard orally. We received advice from Ministry of Justice.

### **Committee membership**

Martin Gallagher (Chairperson)

Chester Borrows

Hon Luamanuvao Winnie Laban

Ron Mark

Jill Pettis

Simon Power

Kate Wilkinson

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

<b>Subject to this Act,</b>	Text struck out unanimously
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**New (unanimous)**

<b>Subject to this Act,</b>	Text inserted unanimously
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*(Subject to this Act,)* Words struck out unanimously

Subject to this Act, Words inserted unanimously

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*Hon Clayton Cosgrove*

## **Justices of the Peace Amendment Bill**

Government Bill

### **Contents**

		Page
1	Title	2
2	Commencement	2
3	Principal Act amended	2
<b>Part 1</b>		
<b>Miscellaneous amendments</b>		
4	New sections 2 to 3C substituted	2
	2 Interpretation	2
	2A Act binds the Crown	3
	3 Appointment of Justices of the Peace	3
	3A Appointed Justices continue in office	3
	3B Justices to undertake training before exercising judicial power or function	4
	3C Use of designation 'JP (retired)'	5
<b>Part 2</b>		
<b>Amendments to provisions relating to discipline and retirement</b>		
5	New sections 5 to 5F substituted	5
	5 Removal or suspension of Justice from office	5
	5A Minister to consult Chief District Court Judge before recommending removal or suspension of Justice exercising or performing judicial powers or functions	6
	5B Effect of removal	7
	5C Effect of suspension	8
	5D Other action in respect of Justices	8
	5E Justices to be given particulars and opportunity to respond	9
	5F Registrars and Official Assignees to notify con- victions and bankruptcies	10
6	Attendance of Justices at Court	10
7	Justices exempt from attendance	10
8	New section 8 substituted	10
	8 Failure to attend	11

**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**

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**4 New sections 2 to 3C substituted**

Sections 2 and 3 are repealed and the following sections (*are*) substituted:

**“2 Interpretation**

In this Act, unless the context otherwise requires,— 15

“**judicial power or function** means a power or function 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 20

“(b) issuing, or failing or refusing to issue, a warrant

“**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 25

“(b) by virtue of being a District Court Judge, a Judge of the 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

**New (unanimous)**

“ <b>Secretary</b> means the Secretary for Justice
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“**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

**New (unanimous)**

- “(1A) A person may not be appointed as a Justice unless he or she has completed training, approved by the Secretary, in the exercise and performance of the powers and functions of a Justice. 15

“(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. 20

- “(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. 25

**“3A Appointed Justices continue in office**

- “(1) Every Justice appointed under **(subsection (1)) section 3(1)** continues in office until he or she—
  - “(a) dies; or
  - “(b) retires or resigns, by notice in writing to the Secretary; 30
  - or
  - “(c) ceases to be a Justice (by virtue of) by the operation of section (5(1)(a)) 5B(1)(a) or (section 8) 8.

**Struck out (unanimous)**

“(2) **Subsection (1)** is subject to **section 5B(2)**.”

**“3B Justices to undertake training before (*taking up duties*)  
exercising judicial power or function**

**Struck out (unanimous)**

“(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. 5

“(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. 10

**New (unanimous)**

“(1) A Justice (other than a District Court Judge or a Judge of the Maori Land Court) must not exercise or perform any judicial power or function unless he or she has completed training in the exercise and performance of judicial powers and functions to the satisfaction of the Chief District Court Judge. 15

**Struck out (unanimous)**

“(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. 20

“(5) **(Subsection (2)) Subsection (1)** 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)’**

- “(1) On or after retiring or resigning 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 satisfied that the former Justice—
- “(a) had served as a Justice for less than 10 years; or
- “(b) before retiring or resigning as a Justice, without reasonable excuse,—
- “(i) had abandoned the performance of the functions of a Justice; or
- “(ii) had from time to time failed or refused to perform the functions of a Justice; or
- “(c) retired or resigned while suspended from office; or
- “(d) retired or resigned to avoid being removed or suspended from 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 ‘JP (retired)’ or a similar designation unless he or she is a former Justice.

**Struck out (unanimous)**

“(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 or resigned before the commencement of the Justices of the Peace Amendment Act **2006**.”

**Part 2****Amendments to provisions relating to discipline and retirement****5 New sections 5 to 5F substituted**

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) 65 working days—
- “(a) for misconduct; or
- “(b) if the Justice—
- “(i) is unable to perform his or her functions as a Justice; or 5
- “(ii) has neglected or refused to perform his or her (*duties*) functions as a Justice; or
- “(iii) has, while a Justice, been convicted of an offence punishable by imprisonment; or 10
- “(iv) has, while a Justice, been adjudged bankrupt; or
- “(v) has failed or refused to comply with a requirement under **section 5D(1)**; or
- “(c) in the case of a removal, if the Justice has purported to exercise or perform a power or function of a Justice, 15 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.
- “**5A Minister to consult Chief District Court Judge before recommending removal or suspension of Justice exercising or performing judicial powers or functions** 20
- “(1) The Minister must not recommend the removal or suspension from office of a Justice who exercises or performs judicial powers or functions unless— 25
- “(a) he or she has consulted the Chief District Court Judge about the Justice’s proposed removal or suspension from office; and
- “(b) the Chief District Court Judge has recommended to the Minister the Justice’s removal or suspension (as the case may be) from office. 30
- “(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— 35
- “(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 5
  - “(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 10
    - “(ii) has not, within 20 working days of the *(Justice’s)* Justice receiving the notice, received from the Justice a written response in respect of the matters contained in the notice.
- “5B Effect of removal 15

**Struck out (unanimous)**

- “(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 20
  - “(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. 25

**New (unanimous)**

- “(1) A person removed from the office of Justice 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.
- “(1A) If a person to whom **subsection (1)** applies is or becomes a chairperson of a regional council or a mayor of a territorial authority, that person— 30
  - “(a) on ceasing to be a Justice, is no longer a Justice by virtue of being a chairperson or mayor; and

**New (unanimous)**

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|--|--|
| “(b) 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. |  |
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- “(2) **(Subsection (1) overrides) Subsections (1) and (1A)** override section 41(4) of the Local Government Act 2002. 5
- “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,— 10
- “(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.
- “(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. 15
- “(4) **Subsections (2) and (3)** override section 41(4) of the Local Government Act 2002. 20
- “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: 25
- “(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: 30
- “(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: 35

- “(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.
- “(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— 5
- “(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 10
- “(b) has performed a function of a Justice while suspended from office; or
- “(c) has neglected his or her (*duties*) functions as a Justice.
- “(3) The Minister may take 2 or more of the actions stated in **subsection (1)** by means of a single notice. 15
- “**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. 20
- “(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 25
- “(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 30
- “(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 35
- “(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 40

- response and any written comments on *(them)* it from the Secretary; or
- “(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. 5
- “5F Registrars and Official Assignees to notify convictions and bankruptcies**
- For the purposes of **section 5**,— 10
- “(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:
- “(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.” 15
- 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”.)* repealing subsection (1) and substituting the following subsection: 20
- New (unanimous)**
- “(1) The Registrar of every District Court must keep and maintain a list of Justices (excluding any person who is a Justice by virtue of being a District Court Judge or a Judge of the Maori Land Court) who reside within 20 kilometres of the court-house and are not exempted from attendance under section 7.” 25
- 7 Justices exempt from attendance**
- Section 7(1)(a) is amended by omitting “72” and substituting (“68”) “70”. 30
- 8 New section 8 substituted**
- Section 8 is *(repealing)* repealed and the following section *(is)* substituted:



**“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 5
- “(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 10 to be a Justice on a date fixed for the purpose by the Minister and notified in the *Gazette*.
- “(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)**,— 15
- “(a) is no longer a Justice by virtue of being chairperson or mayor; but
- “(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. 20
- “(3) **Subsection (2)(a)** overrides section 41(4) of the Local Government Act 2002.
- “(4) **Subsection (2)(b)** is subject to **section 5B(1)(c)**.
- “(5) In this section, **fail** includes refuse.”

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**Legislative history**

31 May 2006  
19 July 2006

Introduction (Bill 53–1)  
First reading and referral to Law and Order  
Committee

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