



## COOK ISLANDS - COUNTRY REPORT 2019

### **1. Major law and justice sector achievements**

The Appropriation Act 2019 saw increased funding to the law and order budget with the Police and Ministry of Justice receiving significant increases to their annual budgets. These organisations having been the subject of serious deficits in their funding and resources. It has also resulted in a new Ministry being created, namely the Ministry of Corrective Services, which will take over the management of the Prison and the Probation Service (both previously managed by the Ministry of Justice).

Parliament has passed the Infrastructure Act 2019. The purpose of the Act is to provide for the planning, delivery, and management of:

- a. Networks providing reticulated service;
- b. Roads and other accessways;
- c. Drainage and land erosion;
- d. Infrastructure construction standards;
- e. Island Governments' infrastructure projects, including maintenance of wharves and airports in the Pa Enua (Rarotonga and Aitutaki airports are managed by the Airport Authority and the wharves in Rarotonga are managed by the Ports Authority);

as well as to set out the rights of owners and occupiers of land on which public infrastructure is or will be constructed.

Parliament has passed the Justice of the Peace Amendment Act 2019 which now allows JPs who are otherwise Crown Servants to preside over Court sittings if the Chief Justice gives approval. This amendment fixed a defect in the principal Act that resulted in some JPs no longer being eligible to preside over Court sittings which in turn lead to availability issues of JPs for Court sittings.

Parliament has also passed the Seabed Minerals Act 2019 which replaces the Seabed Minerals Act 2009, and brings in key changes necessary to improve the regulatory framework for seabed minerals activities. The Act continues the Seabed Minerals Authority as the key regulatory government agency, and introduces two new key bodies: the Advisory Committee,

whose role is to provide community perspectives on seabed minerals policy; and the Licensing Panel, an independent expert panel whose role is to assess licence applications. Key changes brought in by the Act include: streamlining the licensing regime from the previous Act; the explicit incorporation of key environmental principles including the precautionary approach and best environmental practice; specific statutory obligations on licence holders thereby setting minimum statutory standards; and amending the composition of the National Environment Council (under the Environment Act 2003) so that it is fit for purpose.

On 10 July 2019 the Organisation for Economic Co-operation and Development (OECD) graduated the Cook Islands to the category of High Income Country, ending eligibility for Overseas Development Assistance from 1 January 2020. The Cook Islands becomes the first Pacific Island to achieve this status.

The in-country review of the Cook Islands compliance with the United Nations Convention Against Corruption (Chapter II – Preventative Measures, and Chapter V – Asset Recovery) took place in March 2019.

## **2. Significant court decisions**

### *Framhein v Attorney-General* [2018] CKCA 5 – 26 September 2018

The Cook Islands Government made three decisions increasing the potential volume of purse seine catches within the Cook Islands exclusive economic zone. Those decisions were challenged on the basis that the decisions made by the Government were unlawful having regard to the Marine Resources Act 2005, the Constitution (customary law) and the Cook Islands international obligations.

The High Court ultimately dismissed the challenge but was somewhat critical of the Government's decision making process.

The case was appealed to the Court of Appeal. The Court of Appeal found:

- i) In favour of the Government on customary law issues;
- ii) Against the Government on the need to undertake an Environmental Impact Assessment and apply the Precautionary Approach.

Both sides have appealed the Court of Appeal findings and the matter is now before the Privy Council.

### *Browne v Hagai* [2018] CKCA 4 (election petition) – 14 December 2018

Mr Hagai (CIP Party) was elected as a member of parliament for Rakahanga in the 2018 General Election. An election petition alleging treating was dismissed at first instance by the High Court. The petitioner appealed to the Court of Appeal.

At the conclusion of the Court of Appeal hearing arguments the Court reserved its decision. Within the space of a couple of hours Mr Hagai tendered his resignation which prima facie resulted in the Speaker of the House declaring the seat vacant under section 9(4) of the Electoral Act 2004. The declaration of a vacant seat automatically triggers a by-election.

An emergency sitting of the Court of Appeal was convened by the appellant to stop any declaration/by-election pending the decision by the Court on the petition. The Court of Appeal was guided by three decisions from the Supreme Court of India and ultimately concluded that notwithstanding the resignation of the respondent, there was no vacancy to be filled until the election petition had been determined.

The Court of Appeal subsequently issued their decision overturning the High Court decision. The Court of Appeal found that Mr Hagai (through his electoral agents) had treated a large portion of the Rakahanga constituency. The number of people treated meant that the result went in favour of the petitioner who claimed the seat.

*Marsters v The Crown* [2018] CKCA 3 – 9 November 2018

Mr Marsters appealed his conviction and sentence on various charges of sexual offending against children on the island of Palmerston.

The appeal grounds in respect of the conviction were that the trial Judge made errors in her summing up, namely:

- i) Failed to warn or advise the jury about the 18 year delay in the complaint made by victim A;
- ii) Failed to warn the jury about the circumstances of victim B's complaint and the nature of police questioning;
- iii) Failed to warn the jury about the dangers of children giving evidence;
- iv) Erred in using victims' evidence as cross corroboration; and
- v) Failed to put the defence case adequately.

The Court of Appeal dismissed all grounds with the exception of the delay issue and relied on the English Court of Appeal decision of *R v PS* as conveniently setting out the common law position. This led the Court of Appeal to the view that the jury should have been warned to be cautious about accepting complainant A's evidence. However, the Court of Appeal did not view that there was any miscarriage of justice in the circumstances of the case which was reinforced by post-conviction admissions that defence counsel had made at sentencing.

The Court of Appeal did view the sentence of 14 years' imprisonment that had been imposed as manifestly excessive and reduced the sentence to one of 10 years' imprisonment.

### Goodwin v The Crown [2019] CKCA1 – 3 May 2019

Mr Goodwin appealed his sentence on charges of wounding with intent to cause grievous bodily harm, wounding with intent to injure, and wounding with reckless disregard for safety, relating to the use of a knife to stab three victims outside of a nightclub. Mr Goodwin had been sentenced to a total of 7 years' imprisonment having been convicted by a jury after a three-day trial.

When sentencing, the trial Judge relied upon the guideline judgments of the New Zealand Court of Appeal of *R v Taueki* (2005) 21 CRNZ 769 (setting starting points for sentencing in three bands) and *R v Nuku* [2012] NZCA 584. The Court of Appeal found that although the sentence imposed by the trial Judge may have been appropriate in a New Zealand context (albeit at the upper limits), there are some grounds for differentiating the sentencing regimes in the two jurisdictions and an argument for making the Cook Islands regime slightly more lenient (even though the Cook Islands has the same maximum sentences).

The Court of Appeal allowed the appeal against sentence and reduced the sentence to 5 years' imprisonment. Consistency with other sentences passed in the Cook Islands was one of the reasons for reducing the period, as well as facts specific to the appellant that the Court decided the trial Judge had not taken full account of (initially acting in self-defence and good character).

### **3. PILON strategic priorities**

#### ***Cybercrime***

The Cook Islands is about to become connected to the Manatua undersea cable and is in the process of opening up the telecommunications industry to competition. The Crimes Bill includes a range of new "offences involving computers". The Crimes Bill is now with the select committee who have completed consultations and it is anticipated that they will report to Parliament in the next parliamentary session (possibly December 2019).

The Oceania Cyber Security Centre will be undertaking a cyber-security capacity review of the Cook Islands in 2020.

#### ***SGBV***

As noted above, the convictions obtained in the *Marsters* case were upheld by the Court of Appeal.

In November 2018, the Cook Islands successfully prosecuted an offender for sexually offending against a 4 year old. Whilst the 4 year old was not ultimately competent to give evidence, the offending was witnessed by the victim's 14 year old cousin who successfully gave evidence at trial.

Also in November 2018, an offender was sentenced to 6 years' imprisonment after pleading guilty to the manslaughter of his 9 year old grandchild. Whilst the cause of death was unable to be definitively determined, the conclusion was that repeated hitting of the child's backside and thighs (with both hands and a stick) caused fragmentation of the fat tissue resulting in toxins being released which in turn lead to renal failure.

A sexual offence that was committed by an NZ tourist on another NZ tourist whilst both holidaying in Rarotonga was successfully prosecuted in the New Zealand jurisdiction by New Zealand after a referral from the Cook Islands under section 155 of the Cook Islands Act 1915 (in force in both New Zealand and the Cook Islands).

Three care and protection matters under the Family Protection and Support Act 2017 have been brought before the Court by the Ministry of Internal Affairs.

The Regional Rights Resource Team (RRRT) has recently conducted in-country consultations with the view of assisting the Cook Islands implement (or improve its mechanisms under) the Family Protection and Support Act 2017. That implementation plan is expected in the first part of 2020.

### ***Corruption***

As noted above, the Court of Appeal allowed an election petition appeal concluding that Mr Hagai (through his electoral agents) had treated a large portion of the Rakahanga constituency in the lead up to the 2018 general election. This decision automatically resulted in a referral to the police for a criminal investigation.

## **4. Significant issues affecting the law and justice sector, and options to address these issues**

### **Resources/staffing**

The Crown Law Office receives a significant amount of work (advice and litigation) from across all of Government, which is presently being handled by 5 lawyers, who also manage and oversee the drafting of numerous Bills and regulations (with the assistance of the Pacific desk at NZPCO). Recruitment of lawyers is an ongoing issue.

## **5. Significant initiatives/projects involving the member country and its law and justice sector**

### **Consolidation of laws**

The last consolidation of Cook Islands law took place in 1994. The tender process has been completed for the first phase of the Consolidation of Laws project. It is anticipated that actual consolidation will commence in 2020 (and take approximately 2 years).

### Immigration law reform

A new Immigration Bill and regulations have been drafted and are undergoing final review. The immigration system of the Cook Islands will be completely overhauled. It is expected that a new immigration system will be in place in July 2020.

### Telecommunications

Telecommunications services (fixed line, mobile and internet services) have been provided in the Cook Islands by a single operator since 1989 pursuant to a statutory monopoly. The Government is in the process of opening up the telecommunications market (which aligns with the arrival of the Manatua cable into the Cook Islands). The Telecommunications Bill 2019 has now been released for public consultation. A Competition and Regulatory Authority is also being established at the same time (under a separate Bill) to regulate telecommunications, and other sectors in due course.

## **6. Technical legal assistance**

### Training undertaken by Crown Law Office staff

The majority of training undertaken by staff has been internal.

The Crown Law Office had a representative at the SGBV conference in Samoa, as well as a Crown Counsel attending an International Air Law programme, and another Crown Counsel undertaking legislative drafting training and also leadership development training. One of the Crown Counsel will be attending the PILON Litigation Skills Programme in November/December 2019.

The Crown Law Office has also provided domestic workshops on legislation as well as presenting at the Cook Islands Law Society lecture series.

### Training needs

There are capacity building and training needs across all aspects of Government legal work.

## 7. Contact information for key law and justice agencies

Agency	Key responsibilities	Contact person and position	Phone number and email
Crown Law Office	Advice, Litigation and Legislation drafting for the Crown. Mutual Legal Assistance	Stuart Baker – Solicitor - General	+682 29337 <a href="mailto:stuart.baker@cookislands.gov.ck">stuart.baker@cookislands.gov.ck</a>
Police	Investigation and Enforcement	Maara Tetava – Commissioner of Police	+682 22449 <a href="mailto:maara.tetava@cookislands.gov.ck">maara.tetava@cookislands.gov.ck</a>
Ministry of Justice	Registry and Enforcement	Tamatoa Jonassen – Secretary of Justice	+682 29410 <a href="mailto:tamatoa.jonassen@cookislands.gov.ck">tamatoa.jonassen@cookislands.gov.ck</a>
Ministry of Corrective Services	Prisons and probation	Teokotai Joseph – Secretary of Corrective Services	+682 29452 <a href="mailto:teokotai.joseph@cookislands.gov.ck">teokotai.joseph@cookislands.gov.ck</a>
Financial Intelligence Unit	Investigation and Enforcement	Presently being advertised – Head of FIU	+682 29182