

JUSTICES OF THE PEACE BILL 2003

EXPLANATORY MEMORANDUM

This Bill forms part of the legislative package that reforms the lower courts in this State and implements recommendations of the Law Reform Commission Report on Courts of Petty Sessions Constitution, Powers and Procedures 1986 and the 1994 “Report on Justices of the Peace and Commissioners for Declarations in Western Australia” by the Justice of the Peace Review Committee.

Part 1 – Preliminary

This Part contains the title of the Act, the relevant commencement provisions and definitions of terms used within the Act.

Clause 1. Short title

Citation of the Act.

Clause 2. Commencement

Clause 2 makes provision for the commencement of the Act to be on the day on which the *Magistrates Court Act 2003* (WA) comes into operation.

Clause 3. Interpretation

Clause 3 defines the terms in the Act.

Part 2 – Functions of JPs

This Part establishes the functions that a JP can perform, a prohibition on functions for JPs who reach a specific age and provides for functions performed by JPs outside the State.

Clause 4 Functions of JPs

This clause is similar to existing provisions in section 15 of the *Justices Act 1902* (WA) and provides a clearer explanation of the functions of a JP. It sets out the functions a JP may perform and provides for the exercise of those functions anywhere in the State unless the Commission appointing the JP contains restrictions. The clause also provides that a JP is not disqualified merely by being a ratepayer or being interested in common with the public.

Clause 5. JP's functions reduced at age 70 and 75

This clause provides for the cessation of a JP's authority to perform court duties and duties under the *Prisons Act 1981* (WA) at the age of 70 years. It also prescribes that a JP who has reached the age of 75 years cannot perform other judicial functions such as considering bail and sureties or issue warrants for the purpose of the entry or search of a place, vessel or vehicle; the seizure of anything; or the arrest, apprehension or detention of a person.

Clause 6. Validity of JP's acts not affected by JP's death etc.

This clause provides for the continuing validity of warrants, summonses and other documents issued by a JP or acts done by a JP after reaching the ages mentioned in the previous clause or on ceasing to hold office or dying.

Clause 7 Acts done outside WA or limit of jurisdiction, validity of

Clause 7 replaces section 14 of the *Justices Act 1902* (WA). It establishes the validity of an act done by a JP, in the performance of a function of a JP, outside of the State of Western Australia.

The clause also provides that where a JP's commission is limited a summons or warrant issued by that JP may be served or executed anywhere in the State.

Part 3 – Appointing JPs and related matters

This Part sets out the criteria for appointment by the Governor and for oaths or affirmations to be taken before a JP can perform any function. It also provides for the holders of certain judicial offices to be JPs by virtue of their office as well as providing for the resignation and termination of JPs from office.

Division 1 – Appointing JPs**Clause 8. Qualifications for appointment**

This clause provides that to be qualified for appointment as a JP, a person must be either an Australian Citizen or enrolled elector.

Clause 9. Minister may recommend appointment to Governor

This clause sets out strict criteria for appointment as a JP.

The Minister must not recommend an appointment to the Governor unless the person has completed an approved training course or been exempted, given an undertaking to perform all the functions of a JP, if there is a perception of bias or a conflict of interest, if the person's past behaviour and any criminal record does not warrant an appointment and if the person is an insolvent under administration.

This clause will establish a fair, equitable and consistent approach to the appointment of JPs.

Clause 10. Governor may appoint JPs

Subclauses 1 and 2 provide that the Governor may appoint a person as a JP on the recommendation of the Attorney General. As many people necessary to assist in the administration of justice and in the maintenance of peace, order and good government in the State may be appointed as JPs.

Subclause 3 provides that a person who ordinarily resides outside of the State may be appointed as a JP.

Subclauses 4 to 6 provide that the appointment of a JP is by commission issued under the Public Seal of the State and that notice of such an appointment must be published in the *Gazette* after the appointee has taken an oath or affirmation of office. The commission appointing the JP may impose restrictions.

These subclauses are imperative to the appointment of JPs and are an extension of the existing provisions in section 6 of the *Justices Act 1902* (WA).

Clause 11. Oaths or affirmation of office

This clause provides that a JP must take an oath or affirmation of allegiance and of office before being able to perform the functions of a JP. This clause is similar to the existing provisions in section 16 of the *Justices Act 1902* (WA).

Division 2 – People who are JPs by virtue of an office**Clause 12. Judges, magistrates and others to be JPs**

This clause provides that persons who hold certain judicial offices are JPs. It extends to judges, commissioners and magistrates, as well as the State Coroner and Deputy State Coroner. Acting and auxiliary judges and masters of the Supreme Court are also included. The clause is similar to section 12 of the *Justices Act 1902* (WA).

Division 3 – Ceasing to be a JP**Clause 13 JP may resign**

This clause is similar to provisions contained in section 8 of the *Justices Act 1902* (WA).

Clause 14 JPs appointment may be terminated

Section 7 of the *Justices Act 1902* (WA) provides authority for the Governor to remove a JP from office and for such an order to be published in the *Government Gazette*. Clause 14 will replace this section and expand its provisions as follows:

- the Governor may terminate an appointment by recommendation of the Minister;
- by requiring the Minister to make such a recommendation if a JP has been sentenced to a term of imprisonment; and

- by setting out criteria for the Minister to consider when making such a recommendation.

Part 4 – Register of JPs

Clause 15 Register

Clause 15 provides for the establishment of a register of all JPs, the release of public information and the payment of a prescribed fee for such information.

Clause 16 JP to provide information to CEO

This clause requires that JPs must advise the CEO of any change in address, any conviction and if they become insolvent under administration. It also compels a JP, on request from the CEO, to provide any such information. The object of this clause is to ensure that the information maintained in the Register is current.

Part 5 – Miscellaneous

Clause 17 Approved training course

This clause allows the Minister to approve a training course for JPs and direct a JP to undergo such a course.

Clause 18 Titles for JPs

Authorises a JP to use the title “Justice of the Peace” and “JP”.

Clause 19 Signing documents

This clause requires a JP, when signing a document, to provide information to assist in identifying the JP and provides for the validity of a document that does not contain such information.

Clause 20 Evidentiary matters

Sub clause (1) provides that the use of the title JP after a signature is proof that the person who signed the document was a JP unless the contrary is proved.

Sub clauses (2) and (3) provide for the CEO to issue a certificate verifying whether or not a person held the office of JP.

Clause 21 Protection from personal liability

This clause provides that an action in tort does not lie against a JP whilst performing his or her duties in good faith and is similar to existing provisions in section 230 of the *Justices Act 1902* (WA).

Clause 22 Breach of this Act by JP not punishable

Contravention of the Act by a JP is not an offence.

Clause 23 Impersonating a JP

This clause provides an offence is committed if a person who is not JP in any way impersonates a JP and provides a penalty for such an offence.

Clause 24 Regulations

This clause allows the Governor to make regulations.

Schedule 1 – Form of commission

This Schedule provides the wording for the commission.

Schedule 2 – Oath and affirmation of office

This Schedule provides the wording for the Oath of office and Affirmation of office.