

Queensland



Subordinate Legislation 1991 No. 114

Justices of the Peace and Commisisoners for Declarations Act 1991

JUSTICES OF THE PEACE AND COMMISSIONERS FOR DECLARATIONS REGULATION 1991

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Short title

1. This regulation may be cited as the *Justices of the Peace and Commissioners for Declarations Regulation 1991*.

Repeal

2. The Justices of the Peace Regulations 1986 made under the repealed Act are repealed.

Definitions

3. In this regulation—

“**approved**” means approved by the Minister;

“**offence**” does not include an offence in relation to regulated parking under Part VIA of the *Traffic Act 1949*;

“**the Act**” means the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Applications for appointment

4. A person seeking appointment as a justice of the peace or commissioner for declarations is to—

- (a) give to the registrar an application in writing in the approved form; and
- (b) comply with any instructions set out in the approved form or given by the registrar relating to the manner of application, for example to complete the approved form or to provide specified documents.

Inquiries by registrar

5. The registrar is to make enquiries and seek character references concerning an applicant for appointment as a justice of the peace or as a commissioner for declarations reasonably necessary to ascertain whether the applicant is a fit and proper person.

Training course qualification

6. (1) This section applies if the Minister has approved a training course that a person is required to complete before being appointed to office as a justice of the peace or as a commissioner for declarations.

(2) If one or more examinations are set for the training course, the person is taken to have completed the training course when the person has successfully completed the final examination.

(3) The person is not qualified to be appointed to the office until the registrar has been provided with satisfactory evidence that the person has successfully completed the training course.

Citizenship qualification

7. A person is not qualified to be appointed as a justice of the peace or as a commissioner for declarations unless the person is an Australian citizen.

Qualification of justice of the peace (magistrates court)

8. (1) Except where subsection (2) applies, a person is not qualified to be appointed as a justice of the peace (magistrates court) unless, immediately before being appointed, the person holds office as a justice of the peace (qualified) pursuant to an appointment under section 3.01 (1) of the Act.

(2) If the appointment of a person as a justice of the peace (magistrates court) is desirable to serve the needs of a remote area or a community of Aborigines or Torres Strait Islanders, prior appointment as a justice of the peace (qualified) is not necessary.

Disqualification of offenders generally

9. A person—

- (a)** who has been convicted of more than two offences other than an offence under the *Traffic Act 1949*; or
- (b)** who, within 5 years before appointment, has been convicted of an offence other than an offence under the *Traffic Act 1949*;

is not qualified to be appointed as a justice of the peace or as a commissioner for declarations.

Disqualification of Traffic Act offenders**10. (1)** A person—

- (a) who, within 5 years before appointment, has been convicted of an offence under section 16 or 16A of the *Traffic Act 1949*; or
- (b) who, within 4 years before appointment, has been convicted of more than 2 offences under the *Traffic Act 1949*; or
- (c) who, within 5 years before appointment, has been given a notice under subsection (3);

is not qualified to be appointed as a justice of the peace or as a commissioner for declarations.

(2) For the purpose of subsection (1)(b), a person who pays an amount by way of penalty for an offence without court proceedings being involved in compliance with a notice affixed to a vehicle or given to the person under the *Traffic Act 1949* is taken to have been convicted under the *Traffic Act 1949* of that offence on the day the amount is paid.

(3) If on consideration of an application by a person for appointment as a justice of the peace or as a commissioner for declarations, the registrar determines that the applicant has been convicted, for the purposes of subsection (1)(b), of more than 6 offences under the *Traffic Act 1949* within 4 years before the determination, the registrar is to give notice to the applicant that the applicant is disqualified from appointment as a justice of the peace or as a commissioner for declarations for a period of 5 years after the notice is given.

(4) The Minister may exempt an applicant for appointment as a commissioner for declarations from a disqualification mentioned in subsection (1)(b) or (c) if the Minister considers special circumstances exist.

Disqualification of legal practitioner

11. (1) A person who practises as a barrister or solicitor is not qualified to be appointed to, or to continue in, office as a justice of the peace.

(2) Subsection (1) does not affect the office held by a justice of the peace—

- (a) who, immediately before the commencement of the subsection, practises as a barrister or solicitor; or
- (b) who holds office under sections 6.01 or 6.02 of the Act.

Oath or affirmation for commissioner for declarations

12. Before a person performs any of the functions of office as a commissioner for declarations, the person is to—

- (a) take an oath of office in the following form—

“I, _____ do swear that I will truly and honestly discharge all the duties of a commissioner for declarations according to the best of my knowledge and ability.

So help me God!”; or

- (b) make an affirmation of office in the following form—

“I, _____ do solemnly, sincerely, declare, and affirm that I will truly and honestly discharge all the duties of a commissioner for declarations according to the best of my knowledge and ability”.

Certificate of oath or affirmation taken

13. (1) The person before whom is taken or made an oath or affirmation mentioned in section 3.05(1) or (5) of the Act is to complete a certificate in the approved form.

(2) The certificate is to be delivered to the registrar in accordance with directions specified in the approved form.

Completion of course in office

14. (1) The Minister, in relation to a course approved under section 4.01 of the act to be completed by a person or class of person while holding office as an appointed justice of the peace or as an appointed commissioner for declarations, may require—

- (a) that the course be completed within a specified period; and
- (b) that a person who completes the course is to give notice in a

specified form and within a specified period to the registrar.

(2) If the registrar does not receive a notice required under subsection (1) (b) from a person required to complete a training course, the registrar may give the person a notice to show cause to the registrar as specified why the person's appointment under the Act should not be revoked.

(3) If the person fails to show cause or sufficient cause the registrar is to report the matter to the Minister.

Application by transitional justice of the peace to change office to commissioner for declarations

15. (1) This section applies to a person who applies to be registered as a commissioner for declarations under section 6.04(1) of the Act.

(2) Sections 4 to 7 and 9 to 11, to the extent they apply to the appointment of a commissioner for declarations, do not apply to the appointment of a commissioner for declarations pursuant to an application under this section.

(3) The applicant is to—

- (a) give to the registrar an application in writing in the form mentioned in subsection (4); and
- (b) comply with any instructions set out in the form or given by the registrar relating to the manner of application, for example to complete the form or to provide specified documents.

(4) The form is to be an approved document requiring supply of approved details in relation to the applicant including, at least—

- (a) full name and residential address; and
- (b) date and place of birth; and
- (c) date of appointment as a justice of the peace.

Application fees

16. (1) An applicant for appointment as a justice of the peace or as a commissioner for declarations is to pay to the registrar the fee set out opposite the mention of the applicant in the table following this section.

(2) In the case of an applicant other than an applicant mentioned in subsection (3), the fee is to be paid on request by the registrar before the applicant's appointment is registered under section 3.06(1) of the Act.

(3) In the case of a person who applies to be registered as a commissioner for declarations under section 6.04 of the Act, the applicant is to pay the fee when making the application.

| Applicant | Fee |
|--|------|
| 1. An applicant currently holding office— | \$21 |
| (a) as an appointed justice of the peace other than one mentioned in item 2; or | |
| (b) as an appointed commissioner for declarations | |
| 2. An applicant currently holding office— | \$29 |
| (a) as an appointed justice of the peace preserved in office under section 6.01 of the Act; or | |
| (b) as a justice of the peace (commissioner for declarations) under section 6.02 of the Act | |
| 3. An applicant not currently holding office as either an appointed justice of the peace or appointed commissioner for declarations | \$80 |

Miscellaneous fees

17. The fees payable for the issue of things mentioned in the following table are set out in the table.

| thing to be issued | fee |
|--|------|
| a certificate of registration under section 3.06(6) of the Act | \$8 |
| a replacement seal of office | \$15 |
| a replacement manual for a commissioner (qualified) or a justice of for declarations, a justice of the peace the peace (magistrates | |

court)

\$6
plus \$3 postage and
handling

Exemptions

18. The Minister may exempt a person or class of person from payment of a fee under section 16 or 17.

ENDNOTES

1. Made by the Governor in Council on 24 October 1991.
2. Published in the Gazette on 26 October 1991.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of the Attorney-General.