

Queensland



# JUSTICES OF THE PEACE AND COMMISSIONERS FOR DECLARATIONS ACT 1991

Reprinted as in force on 25 June 1996  
(includes amendments up to Act No. 58 of 1995)

Reprint No. 2A

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# Information about this reprint

This Act is reprinted as at 25 June 1996. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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**JUSTICES OF THE PEACE AND  
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ACT 1991**

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# JUSTICES OF THE PEACE AND COMMISSIONERS FOR DECLARATIONS ACT 1991

[as amended by all amendments that commenced on or before 25 June 1996]

**An Act to provide for the appointment, registration and functions of  
justices of the peace and commissioners for declarations and for  
related purposes**

## PART 1—PRELIMINARY

### Short title

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

### Commencement

**2.(1)** Section 1, this section and section 45 commence on the day this Act receives the Royal Assent.

**(2)** The remaining provisions of this Act commence on a day to be fixed by proclamation.

### Interpretation

**3.** In this Act—

“**affidavit**” includes a statutory declaration;

“**appointed commissioner for declarations**” means a person who holds office as a commissioner for declarations—

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- (a) pursuant to an appointment made under section 15(3); or
- (b) under section 44(4);

**“appointed justice of the peace”** means a person who holds office—

- (a) as a justice of the peace under section 41(a); or
- (b) as a justice of the peace (commissioner for declarations) under section 42(1); or
- (c) as a justice of the peace (qualified) pursuant to an appointment made under section 15(1); or
- (d) as a justice of the peace (magistrates court) pursuant to an appointment made under section 15(1);

**“commissioner for declarations”** means—

- (a) a person who holds office as a commissioner for declarations under section 19(3); or
- (b) a person who is an appointed commissioner for declarations;

**“Council”** means the Justices of the Peace Council established under section 4;

**“court”** includes a justice of the peace conducting an examination of witnesses in relation to an indictable offence under the *Justices Act 1886*;

**“criminal history”** of a person—

- (a) means the person’s criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
- (b) despite section 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, includes a conviction to which the section applies;

**“justice of the peace”** means—

- (a) a person who holds office as a justice of the peace, including 1 of any category, under section 19; or
- (b) a person who is an appointed justice of the peace;

**“legal practitioner”** means—

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- (a) a person duly admitted as a barrister of the Supreme Court whose name is currently enrolled on the Roll of Barristers of that court; or
- (b) a person duly admitted as a solicitor of the Supreme Court whose name is currently enrolled on the Roll of Solicitors of that court;

**“possession”** includes control;

**“prescribed mark of office”** means a prescribed mark of office within the meaning of section 31(4);

**“procedural action or order”** means an action taken or order made for, or incidental to, proceedings not constituting a hearing and determination on the merits of the matter to which the proceedings relate, for example the charging of a defendant, the issue of a warrant, the granting of bail, the remand of a defendant or the adjournment of proceedings;

**“register”** means the register kept under section 13;

**“registrar”** means the registrar of justices of the peace and commissioners for declarations;

**“repealed Act”** means the *Justices of the Peace Act 1975*;

**“simple offence”** means a simple offence or breach of duty within the meaning given to those terms by section 4 of the *Justices Act 1886*;

**“training course”** includes—

- (a) a training course with or without an examination; or
- (b) an examination only.

## PART 2—ADMINISTRATION

### Establishment of Council

4. There is to be a Council called the Justices of the Peace Council having functions to provide advice to the Minister in relation to—

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- (a) the operation of this Act; and
- (b) selection criteria and procedures for selection of persons for appointment to office under this Act as justices of the peace or commissioners for declarations; and
- (c) training courses that should be undertaken by persons appointed to office under this Act as justices of the peace or commissioners for declarations; and
- (d) manuals and other publications that should be produced for the purposes of this Act; and
- (e) special needs of justices of the peace situated in remote areas or within communities of Aborigines and Torres Strait Islanders.

### **Membership**

**5.** The Council is to consist of not more than 10 members appointed in writing by the Minister of whom—

- (a) 1 is to be a justice of the peace selected by the Minister as a representative of justices of the peace; and
- (b) 1 is to be an officer of the public service in the department in which the *Vocational Education, Training and Employment Act 1991* is administered; and
- (c) 1 is to be an officer of the public service in the department in which the *Community Services (Aborigines) Act 1984* and *Community Services (Torres Strait) Act 1984* are administered; and
- (d) 1 is to be a police officer; and
- (e) 1 is to be an officer of the department selected by the Minister; and
- (f) not more than 5 are to be persons selected by the Minister because they have such special interest or experience as the Minister considers to be of assistance in the administration of this Act.

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## **President**

**6.(1)** The Council is to have a President, who is to be a member of the Council appointed as President in writing by the Minister.

**(2)** An appointment under subsection (1) may be made by the instrument by which the person appointed as President is appointed as a member or by another instrument.

## **Term of office**

**7.** A member of the Council, subject to this Act, is to hold office for such term, not exceeding 3 years, as is specified in the instrument of appointment of the member.

## **Disqualifications for appointment as member**

**8.** A person who—

- (a) is an undischarged bankrupt or is taking advantage, as a debtor, of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) is convicted of an indictable offence (whether on indictment or summarily); or
- (c) is a patient within the meaning of the *Mental Health Act 1974*;

is not qualified to be or to continue as a member of the Council.

## **Vacation of office**

**9.(1)** The office of a member of the Council becomes vacant if the member—

- (a) dies; or
- (b) resigns office by writing signed by the member and given to the Minister; or
- (c) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post except on leave granted by the

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Council, and is not, before the expiration of 4 weeks from the last of those meetings, excused by the Council for being absent from those meetings; or

- (d) ceases to be qualified to continue as a member; or
- (e) is removed from office by the Minister.

(2) The Minister may remove a member of the Council from office for—

- (a) misbehaviour or physical or mental incapacity; or
- (b) inefficiency or incompetence.

### **Meetings of the Council**

**10.(1)** The procedure for the calling of meetings of the Council and for the conduct of business at those meetings, subject to this Act, is to be as determined by the Council.

(2) The President of the Council or, in the absence of the President, the member chosen by the members present at the meeting to act as President, may preside at any meeting of the Council.

(3) Five members form a quorum at any meeting of the Council and a duly convened meeting of the Council at which a quorum is present is competent to transact the business of the Council and perform all its functions.

(4) The person presiding at any meeting of the Council, in the event of an equality of votes, has in addition to a deliberative vote, a second or casting vote.

(5) A decision supported by a majority of the votes of the members present and voting at a meeting of the Council is the decision of the Council.

### **Public service legislation not to apply to membership**

**11.** The *Public Service Management and Employment Act 1988* does not apply in respect of the appointment of a member of the Council and a member is not subject to that Act in the capacity of member.

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### **Registrar and deputy registrars**

**12.(1)** The following officers may be appointed under the *Public Service Management and Employment Act 1988*—

- (a) a registrar of justices of the peace and commissioners for declarations;
- (b) deputy registrars of justices of the peace and commissioners for declarations.

**(2)** A deputy registrar may exercise the powers of the registrar.

### **Register of justices of the peace and commissioners for declarations**

**13.(1)** The registrar is to keep a register of all appointed justices of the peace and appointed commissioners for declarations.

**(2)** The register—

- (a) is to be kept in such form and manner that it may be inspected at any office of the registrar in the State and be available for inspection by any person; and
- (b) is to state—
  - (i) the name and address; and
  - (ii) particulars of appointment;of each justice of the peace and commissioner for declarations.

### **Correction of register**

**14.** Without derogating from any other power conferred by this Act to correct the register, the registrar is to make such amendments from time to time to the register as are necessary to ensure that it contains an accurate record of the names and addresses and other registered particulars of appointed justices of the peace and appointed commissioners for declarations.

## **PART 3—JUSTICES OF THE PEACE AND COMMISSIONERS FOR DECLARATIONS**

### **Appointments of justices of the peace and commissioners for declarations**

**15.(1)** The Governor in Council may appoint as justices of the peace as many persons as the Governor in Council thinks necessary to keep the peace in Queensland.

**(2)** A justice of the peace appointed under subsection (1) is to be appointed to 1 of the categories—

- (a) justice of the peace (qualified); or
- (b) justice of the peace (magistrates court).

**(3)** The Governor in Council may appoint as many persons as the Governor in Council thinks fit to be commissioners for declarations.

**(4)** An appointment takes effect on and from registration under this Act.

**(5)** Application by a person for appointment as a justice of the peace or commissioner for declarations is to be made in the manner prescribed by the regulations.

### **Qualifications of office**

**16.(1)** A person is not qualified to be appointed under this Act as a justice of the peace or a commissioner for declarations unless—

- (a) the Governor in Council considers the person to be fit and proper; and
- (b) the person is of or above the age of 18 years; and
- (c) if the Minister has approved a training course that the person is required to complete before being so appointed—unless the person has completed the course.

**(2)** Subsection (1)(c) does not apply to the appointment of a retired Magistrate as a justice of the peace (magistrates court) if the person applies

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for the appointment within 5 years after the person's retirement as a Magistrate.

### **Disqualification from office**

**17.** A person who—

- (a) is an undischarged bankrupt or is taking advantage, as a debtor, of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) is convicted of an indictable offence (whether on indictment or summarily); or
- (c) is a patient within the meaning of the *Mental Health Act 1974*; or
- (d) is convicted of an offence defined in Part 4;

is not qualified to be appointed to, or to continue in, office under this Act as an appointed justice of the peace or as an appointed commissioner for declarations.

### **Cessation of office on disqualification**

**18.** A person holding office as an appointed justice of the peace or appointed commissioner for declarations ceases to hold the office on becoming disqualified from continuing in the office.

### **Justices of the peace and commissioners for declarations by virtue of office**

**19.(1)** Every person who holds office as—

- (a) a Supreme Court Judge or a District Court Judge; or
- (b) a Magistrate;

without further appointment, and for so long as the person holds the office, is a justice of the peace.

**(2)** Every person who holds office—

- (a) as a Registrar of the Supreme Court or of a District Court; or

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- (b) as a clerk of the court or registrar of a Magistrates Court, not being a police officer;

without further appointment, and for so long as the person holds the office, is—

- (c) if the person is a legal practitioner—a justice of the peace (magistrates court); or
- (d) if the person is not a legal practitioner—a justice of the peace (qualified).

(3) Every clerk of or above the age of 18 who is employed as an officer of the public service in an office of the Supreme Court, a District Court or a Magistrates Court without further appointment, and for so long as the clerk is so employed, is a commissioner for declarations.

(4) A person—

- (a) who is mentioned in subsection (2) or (3); and
- (b) who was, on 31 October 1991, a justice of the peace under section 9(vi) of the repealed Act;

is, without further appointment and despite subsections (2) and (3), a justice of the peace (magistrates court)—

- (c) while the person continues to be employed as an officer of the public service in an office of the Supreme Court, a District Court or a Magistrates Court; but
- (d) only until 1 November 1996.

(5) This section does not affect an office held by a person under a provision of this Act other than this section.

### **Oath or affirmation of office**

**20.(1)** Before a person other than a Supreme Court Judge or District Court Judge performs any of the functions of office as a justice of the peace, the person is to—

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

“I, \_\_\_\_\_, do swear that I will well and truly serve Her

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Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of justice of the peace and I will do right to all manner of people according to law without fear or favour, affection or ill-will.

SO HELP ME GOD!"; or

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

“I, \_\_\_\_\_, do solemnly, sincerely, declare and affirm that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of justice of the peace and I will do right to all manner of people according to law without fear or favour, affection or ill-will.”.

(2) The oath or affirmation referred to in subsection (1) may be taken or made before, and administered or received by, a Supreme Court Judge or a District Court Judge, a Magistrate or any person authorised in that behalf by writ of *dedimus potestatem*.

(3) In the case of the death or abdication of Her Majesty, the name of Her Majesty’s successor according to law for the time being is to be substituted in the form of the oath or affirmation prescribed by this section for the name of Her Majesty.

(4) The form of oath to be taken or affirmation to be made by a justice of the peace under this section is in substitution for any oath or affirmation of allegiance or office otherwise prescribed by law.

(5) Before a person performs any of the functions of office as a commissioner for declarations the person is to take or make the oath or affirmation prescribed by the regulations.

(6) The oath or affirmation referred to in subsection (5) may be taken or made before—

- (a) a justice of the peace or a commissioner for declarations; or
- (b) a person before whom may be taken or made the oath or affirmation prescribed for justices of the peace.

(7) If, in compliance with subsection (1) or with any Act authorising the appointment of justices of the peace in existence at any time before the

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commencement of this Act, a person has taken or made an oath or affirmation of allegiance and an oath or affirmation of office or an oath or affirmation of allegiance and office upon being appointed or becoming a justice of the peace, the person is not required to take or make any oath or affirmation referred to in this section—

- (a) on being continued in office as, or on again being appointed or becoming, a justice of the peace under any provision of this Act; or
- (b) on being appointed or becoming a commissioner for declarations under any provision of this Act;

before performing any of the functions of office as justice of the peace or, as the case may be, commissioner for declarations.

(8) If in compliance with subsection (5) a person has taken or made the oath or affirmation referred to in the subsection on being appointed or becoming a commissioner for declarations, the person is not required, on again being appointed or becoming a commissioner for declarations under any provision of this Act, to take or make the oath or affirmation before performing any of the functions of office as commissioner for declarations.

### **Registration of justices of the peace and commissioners for declarations**

**21.(1)** On proof to the satisfaction of the registrar that a person—

- (a) has been appointed to be a justice of the peace or a commissioner for declarations under section 15; and
- (b) has taken or made the prescribed oath or affirmation of allegiance and office; and
- (c) has complied with any prescribed conditions;

the registrar is to register the person as a justice of the peace or, as the case may be, a commissioner for declarations, unless subsection (7) applies.

(2) The registrar is to register a person under subsection (1) by entering in the register—

- (a) the name and address of the person; and

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- (b) a note of the office to which the person has been appointed; and
- (c) the person's registered number of office mentioned in subsection (3); and
- (d) the date of registration.

(3) On registering a person under subsection (2), the registrar is to issue to the person, in a form approved by the Minister—

- (a) a seal of office; and
- (b) a registered number of office.

(4) A seal of office approved by the Minister is to allow for an imprint—

- (a) that indicates the office of the person to whom it is issued; and
- (b) provides a space for the insertion of the person's registered number of office.

(5) The registrar is to cause notification of the appointment and registration of a person as a justice of the peace or commissioner for declarations to be published in the Gazette.

(6) Upon payment of the prescribed fee, the registrar may issue to an appointed justice of the peace or appointed commissioner for declarations a certificate of registration in a form approved by the Minister.

(7) If, 6 months after the appointment by the Governor in Council of a person as a justice of the peace or a commissioner for declarations—

- (a) the appointment has not been registered under subsection (1); and
- (b) proof of the matters mentioned in subsection (1)(a) to (c) has not been provided to the registrar's satisfaction;

the appointment lapses.

### **Registrar to be notified of change to registered particulars**

**22.(1)** A person who is an appointed justice of the peace or an appointed commissioner for declarations is to notify the registrar of any change to the person's name or address as stated in the register within 30 days of the change and provide any reasonable proof the registrar may require of the change.

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(2) Upon receipt of such a notification, subject to any required proof being provided, the registrar is to record the change in the register.

### **Resignation**

**23.(1)** A person who is an appointed justice of the peace or an appointed commissioner for declarations may resign from office at any time by giving a written resignation to the registrar.

(2) The registrar is to cause notification of the resignation to be published in the Gazette.

(3) Upon publication in the Gazette of a notification—

- (a) the person ceases to hold office; and
- (b) the registrar is to remove the person's name from the register;

as a justice of the peace or, as the case may be, a commissioner for declarations.

### **Revocation of appointment**

**24.(1)** The Governor in Council, by notification published in the Gazette, may revoke the appointment of a person as an appointed justice of the peace or an appointed commissioner for declarations for such reason as the Governor in Council thinks fit.

(2) Upon publication in the Gazette of a notification—

- (a) the person ceases to hold office; and
- (b) the registrar is to remove the person's name from the register;

as a justice of the peace or, as the case may be, a commissioner for declarations.

### **Prohibition on acting in office**

**25.(1)** The Governor in Council, by notification published in the Gazette, may prohibit an appointed justice of the peace or an appointed commissioner for declarations from acting in office for a period defined in the notification.

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(2) The Governor in Council may act under subsection (1) for such reasons as the Governor in Council thinks fit.

(3) A person prohibited from acting as a justice of the peace or commissioner for declarations pursuant to a notification—

- (a) ceases to hold office as a justice of the peace or, as the case may be, a commissioner for declarations on and from the commencement of the period defined in the notification; and
- (b) resumes office as a justice of the peace or, as the case may be, a commissioner for declarations, on and from the expiration of the period defined in the notification.

(4) Upon publication in the Gazette of a notification, the registrar—

- (a) at the commencement of the period defined in the notification, is to remove the name of the person from the register; and
- (b) at the expiration of the period defined in the notification, is to enter the name of the person in the register;

as a justice of the peace or, as the case may be, a commissioner for declarations.

(5) A person who resumes office under subsection (3)(b) is not required to take the oath or make the affirmation prescribed by section 20 before performing any of the functions of the office.

### **Notification of cessation of office**

**26.(1)** A person who ceases to hold office as a justice of the peace or as a commissioner for declarations by virtue of being disqualified under a provision of this Act other than section 17(c) is to immediately notify the registrar.

Maximum penalty—10 penalty units.

(2) The registrar upon receiving such a notification or on otherwise becoming aware that an appointed justice of the peace or an appointed commissioner for declarations has ceased to hold office by virtue of disqualification under this Act is to—

- (a) cause notification of the cessation of office to be published in the

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Gazette; and

- (b) remove the person's name from the register as a justice of the peace or, as the case may be, a commissioner for declarations.

### **Return of certificate of registration and seal of office**

**27.(1)** A person who ceases to hold office as an appointed justice of the peace or appointed commissioner for declarations by virtue of a provision of this Act other than section 17(c), within 14 days is to deliver up to the registrar any seal of office or certificate of registration issued to the person under this Act or under the repealed Act.

Maximum penalty—10 penalty units.

(2) The registrar is to return to any person who resumes office as an appointed justice of the peace or as an appointed commissioner for declarations under section 25(3)(b), a certificate of registration or seal of office of the person delivered up to the registrar under subsection (1).

(3) Without limiting subsection (1), if a person to whom a seal of office or certificate of registration is or was issued under this Act or the repealed Act ceases to hold the office for which the seal or certificate is or was issued, the registrar may give a notice to any person in possession of the seal or certificate requiring the person to deliver it up in accordance with reasonable directions specified in the notice.

(4) A person to whom a notice under subsection (3) is given is to comply with the notice.

Maximum penalty—20 penalty units.

### **Justices of the peace and commissioners for declarations hold office throughout State**

**28.** Justices of the peace and commissioners for declarations acting within the scope of their respective capacities are justices of the peace or, as the case may be, commissioners for declarations for the whole of the State.

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## **Powers of justices of the peace and commissioners for declarations**

**29.(1)** A justice of the peace—

- (a) subject to subsections (3) to (5), has and may exercise all the powers conferred on the justice of the peace or on a commissioner for declarations by the *Justices Act 1886* or any other Act; and
- (b) may take any affidavit or attest any instrument or document that may be taken or attested under any Act or law.

**(2)** The powers of a justice of the peace mentioned in section 19(1) include, but are not limited to, all the powers specifically conferred under any Act or law on a justice of the peace (qualified) or justice of the peace (magistrates court).

**(3)** A justice of the peace (qualified), in the exercise of any power to constitute a court for the purpose of a proceeding is limited to taking or making a procedural action or order.

**(4)** A justice of the peace (magistrates court), in the exercise of any power to constitute a court for the purpose of a proceeding is limited to—

- (a) the hearing and determination of a charge of a simple offence or a regulatory offence pursuant to proceedings taken under the *Justices Act 1886* in a case where the defendant pleads guilty; and
- (b) conducting an examination of witnesses in relation to an indictable offence under the *Justices Act 1886*; and
- (c) taking or making a procedural action or order.

**(5)** A justice of the peace (commissioner for declarations) is limited to the exercise of the powers of a commissioner for declarations.

**(6)** To allay any doubts, it is declared that subsections (3) to (5) do not limit the powers of—

- (a) a Magistrate exercising jurisdiction conferred on justices of the peace; or
- (b) a justice of the peace whose office is preserved by section 41(a); or
- (c) a justice of the peace mentioned in section 19(1).

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(7) A limitation imposed by subsection (3), (4) or (5) on the powers exercisable by a justice of the peace of a specified category applies despite the provisions of any Act conferring powers on a justice of the peace unless the Act expressly excludes the operation of the subsection.

(8) A commissioner for declarations—

- (a) has and may exercise all the powers conferred on a commissioner for declarations by any Act or law; and
- (b) may take any affidavit or attest any instrument or document that may be taken or attested under any Act or law.

(9) If justices of the peace generally are authorised under an Act or law to do an act mentioned in subsection (8)(b)—

- (a) a commissioner for declarations may also do the act; and
- (b) the Act or law applies to the commissioner for declarations as if the commissioner for declarations were a justice of the peace;

unless the operation of this subsection is expressly excluded.

### **Act done beyond State**

**30.** An act done outside Queensland by a justice of the peace or a commissioner for declarations for the purpose of taking any affidavit or attesting any instrument or document intended to take effect in Queensland is as valid and effectual as if the act were done in Queensland unless the act is required by law to be done in Queensland.

### **Proof of acts done in the performance of office**

**31.(1)** A person placing his or her signature on an instrument or document as the holder of the office of justice of the peace or commissioner for declarations is to insert immediately beneath, beside or close to the signature—

- (a) the imprint of a seal of office issued to the person under this Act with the person's registered number of office inserted in the space provided; or
- (b) subject to subsection (2), the prescribed mark of office.

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(2) If a seal of office has been issued under this Act to a justice of the peace, the justice of the peace when placing his or her signature upon an instrument or document in the exercise of a power—

- (a) to constitute a court for the purpose of any proceedings; or
- (b) to issue a summons or warrant of any description;

is to insert, as prescribed by subsection (1), the imprint of the seal complete with registered number of office.

(3) In any proceedings evidence that—

- (a) an imprint in the form of an imprint of a seal of office of a kind issued under this Act with a number inserted in the space provided; or
- (b) a mark in the form of a prescribed mark of office;

has been inserted beneath, beside or close to a signature placed on an instrument or document is evidence that the person whose signature it purports to be duly signed the instrument or document in the performance of the functions of the office indicated by the mark or imprint.

(4) The prescribed mark of office of each office specified in the first column of the following Table is the mark specified in the second column opposite the office.

**TABLE**

the office of justice of the peace preserved by section 41 or held under section 19(1)	“Justice of the Peace” or “J.P.”
justice of the peace (magistrates court)	“Justice of the Peace (Magistrates Court)” or “J.P. (Magistrates Court)” or “J.P. (MAG. CT.)”
justice of the peace (qualified)	“Justice of the Peace (Qualified)” or “J.P. (Qualified)” or “J.P. (Qual.)”
justice of the peace (commissioner for declarations)	“Justice of the Peace (Commissioner for Declarations)” or “J.P. (C.dec)”

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commissioner for declarations                      “Commissioner for Declarations”  
or “C.dec”

(5) Variations of no significance between an imprint or mark appearing on a document or instrument and an imprint or mark prescribed by this section are to be disregarded for the purposes of this section.

## PART 4—MISCELLANEOUS

### Approved training courses

**32.** The Minister may approve, in relation to an office provided for by this Act, a training course that is to be completed by a person or class of person—

- (a) before appointment to the office; or
- (b) while holding the office.

### Inquiries about person’s appropriateness to hold office

**33.(1)** The chief executive may make inquiries about a person to assist in deciding whether the person is an appropriate person to hold office under this Act.

(2) If requested by the chief executive, the Commissioner of the Police Service must give the chief executive a written report about the person’s criminal history.

(3) Subsection (2) applies to the criminal history—

- (a) that is in the Commissioner’s possession; or
- (b) to which the Commissioner ordinarily has access through arrangements with the police service of the Commonwealth, another State or Territory.

(4) The report may only be used for the purposes of this Act.

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### **Wrongfully acting as justice of the peace or commissioner for declarations**

**34.(1)** A person who assumes to act in the office of justice of the peace or commissioner for declarations that the person does not hold commits an offence against this Act.

Maximum penalty—20 penalty units or imprisonment for 1 year.

**(2)** In any proceedings evidence that a person caused to appear or allowed to remain immediately beneath, beside or close to the person's signature on an instrument or document an imprint or a mark that under section 31 is evidence that the person duly signed the instrument or document in the performance of the functions of the office indicated by the imprint or mark, is evidence, if the person did not hold the office, that the person assumed to act in the office.

### **Prohibition on reward**

**35.(1)** A justice of the peace or commissioner for declarations is not to seek or receive, directly or indirectly, any reward in connection with the performance of the functions of office.

Maximum penalty—20 penalty units or imprisonment for 1 year.

**(2)** In this section—

**“in connection with”** includes under colour or pretext of;

**“receive”** includes take or accept;

**“reward”** includes charge, fee, gratuity or any consideration;

**“seek”** includes request, require, extort or demand.

**(3)** A court that finds a person guilty of an offence under this section may make an order—

- (a) requiring the offender to return the reward to its rightful owner; or
- (b) confiscating the reward to the Crown.

**(4)** A court may make any further order necessary to enforce an order made under subsection (3).

**(5)** An order for the payment of an amount of money to a person under

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subsection (3)(a)—

- (a) may be enforced as prescribed by the *Justices Act 1886*; or
- (b) upon the order being filed in any court with jurisdiction in actions for debt of that amount, as an order of that court.

### **Action against justices**

**36.(1)** A person injured—

- (a) by an act done by a justice of the peace or a commissioner for declarations purportedly in the performance of the functions of office but which the justice of the peace or commissioner for declarations knows is not authorised by law; or
- (b) by an act done by a justice of the peace or commissioner for declarations in the discharge of the functions of office but done maliciously and without reasonable cause;

may recover damages or loss sustained by the person by action against the justice of the peace or commissioner for declarations in any court of competent jurisdiction.

(2) Subject to subsection (1), action is not to be brought against a justice of the peace or commissioner for declarations in respect of anything done or omitted to be done in, or purportedly in, the performance of the functions of office.

### **Proceedings generally**

**37.(1)** Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886* within 12 months after the offence is committed or within 6 months after the commission of the offence comes to the knowledge of the registrar, whichever period is later to expire, upon the complaint of the registrar or a person authorised for the purpose by the registrar.

(2) Without derogating from the provisions of section 139 of the *Justices Act 1886*, a complaint for an offence against this Act may be heard at a place within the district appointed for the purposes of Magistrates Courts under the *Justices Act 1886* in which the defendant resides.

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(3) In proceedings referred to in this section the authority of the complainant to make the complaint is to be presumed unless the contrary is proved.

### **Publication of office holders**

**38.(1)** The registrar, whenever directed to do so by the Minister, is to cause to be published in such manner as the Minister directs, a list of names of persons registered under this Act as justices of the peace or commissioners for declarations.

(2) A list of persons referred to in subsection (1)—

- (a) may contain such particulars shown on the register concerning those persons as the Minister directs; and
- (b) may be a list of all persons or such class of person registered under this Act as justices of the peace or commissioners for declarations as the Minister directs.

(3) Notwithstanding subsection (1), for the purpose of ensuring that as many justices of the peace as may be practicable perform functions of office, the registrar is to compile and deliver to the Commissioner of the Police Service from time to time lists of the names and addresses of justices of the peace residing in particular areas of the State.

(4) The lists referred to in subsection (3) may include such information as may be necessary to identify functions of office the justices of the peace included in the lists are authorised to perform.

(5) A police officer, in selecting a justice of the peace to perform a function of office, is to have regard, if practicable, to the list provided under subsection (3) for the area in which the function is to be performed.

### **Evidentiary provisions**

**39.(1)** In any proceedings, a certificate purporting to be signed by the registrar stating that a person named in the certificate—

- (a) was, or was not, on a date or during a specified period—
  - (i) registered under this Act or under the repealed Act as

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- holding a specified office; or
- (ii) issued with a specified seal or specified registered number; or
- (iii) prohibited under this Act or the repealed Act from acting in a specified office; or
- (iv) being a justice of the peace or commissioner for declarations, a person in respect of whom a specified event defined in section 17(a) to (d) had occurred; or
- (b) had failed, on or before a date or during a specified period, to notify the registrar of a specified matter;

is evidence of the matters stated in the certificate.

(2) In any proceedings, a document purporting to be a list published under section 38 is evidence of the matters contained in the document.

(3) Judicial notice is to be taken of a notification published in the Gazette under this Act.

## **Regulations**

**40.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may be made about—

- (a) preventing or suppressing improper or undesirable practices relating to the performance of functions by justices of the peace or commissioners for declarations; or
- (b) imposing requirements upon justices of the peace or commissioners for declarations; or
- (c) prescribing qualifications and disqualifications for holding office as a justice of the peace or commissioner for declarations; or
- (d) prescribing fees payable in connection with the administration of this Act.

(3) The regulations may provide for offences punishable by penalties not exceeding 20 penalty units.

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## **PART 5—TRANSITIONAL**

### **Transitional office holders and register**

**41.** On and from the commencement of this Act—

- (a) subject to section 42, a person who immediately before the commencement holds office as a justice of the peace—
  - (i) pursuant to an appointment made under section 8 of the repealed Act; or
  - (ii) pursuant to an appointment deemed to have been made under the repealed Act because of section 4 of that Act;continues to hold office as a justice of the peace under this Act; and
- (b) the Register of Justices kept pursuant to section 7 of the repealed Act continues in existence as the register of justices of the peace and commissioners for declarations required to be kept under section 13 of this Act; and
- (c) the person holding office immediately before the commencement as registrar of justices appointed under section 6 of the repealed Act is taken to be appointed registrar of justices of the peace and commissioners for declarations under section 12 of this Act.

### **Justice of the peace (commissioner for declarations)**

**42.(1)** If at the expiration of 5 years from the commencement of this Act, a person remains in office as a justice of the peace under section 41(a), the person then ceases to hold that office and instead holds office as a justice of the peace (commissioner for declarations).

**(2)** The registrar is to remove the person's name from the register as a justice of the peace and insert an entry that the person is a justice of the peace (commissioner for declarations).

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### **Power to appoint and revoke in case of transitional office holder**

**43.** The power of the Governor in Council under sections 15 and 24 to appoint, or to revoke the appointment of, a person as a justice of the peace includes the power—

- (a) to revoke an appointment preserved by section 41(a) or conferred by section 42(1); and
- (b) to revoke an appointment preserved by section 41(a) or conferred by section 42(1) and appoint the person whose appointment is so revoked afresh as a justice of the peace to 1 of the categories mentioned in section 15(2).

### **Transitional office holder entitled to become commissioner for declarations**

**44.(1)** A person who holds office as—

- (a) a justice of the peace under section 41(a); or
- (b) a justice of the peace (commissioner for declarations) under section 42(1);

may apply to the registrar to be registered as a commissioner for declarations.

**(2)** The application is to be made in accordance with the regulations.

**(3)** Upon receipt of the application, the registrar is to—

- (a) remove the person's name from the register as a justice of the peace or justice of the peace (commissioner for declarations) and insert an entry that the person is a commissioner for declarations; and
- (b) issue the person with the seal of office and registered number of office prescribed by section 21(3).

**(4)** The person then ceases to be a justice of the peace or, as the case may be, a justice of the peace (commissioner for declarations) and is taken to be appointed as a commissioner for declarations under section 15(3).

**(5)** The registrar is to cause notification of the cessation of office of the

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person under this section and of the person's commencement in office as a commissioner for declarations to be published in the Gazette.

**Transitional applications**

**45.(1)** An application under section 8(5) of the repealed Act for appointment as a justice of the peace pending immediately before the commencement of this section, on and from the commencement of this section is taken to be an application under section 15(5) for appointment as a commissioner for declarations.

**(2)** An application is pending if, before the commencement of this section—

- (a) the application has been received by the registrar; and
- (b) the person by or on whose behalf the application was made has not been appointed a justice of the peace; and
- (c) the application has not been refused.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 25 June 1996. Future amendments of the Justices of the Peace and Commissioners for Declarations Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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### 3 Key

**Key to abbreviations in list of legislation and annotations**

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 Table of earlier reprints

Reprint No.	Amendments included	Reprint date
1	to Act No. 97 of 1991	1 June 1992
2	to Act No. 76 of 1993	10 January 1994

### 5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

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### 6 List of legislation

**Justices of the Peace and Commissioners for Declarations Act 1991 No. 50**

date of assent 10 September 1991

ss 1–2, 45 commenced on date of assent

remaining provisions commenced 1 November 1991 (1991 SL No. 113)

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as amended by—

**Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 1, s 5 sch 4  
cl 2**

date of assent 17 November 1991

amendments (6)–(7), (14)–(15) commenced 1 November 1991

remaining provisions commenced on date of assent

**Note**—Acts Interpretation Act 1954, section 20A applies to the repeal of this Act (see Act No. 76 of 1993 s 4(2) sch 4)

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1**

date of assent 7 December 1992

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1**

date of assent 14 December 1993

commenced on date of assent

**Justice and Attorney-General (Miscellaneous Provisions) Act 1995 No. 24  
pts 1, 7**

date of assent 11 April 1995

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 2**

date of assent 28 November 1995

commenced on date of assent

## 7 List of annotations

### Commencement

s 1 amd 1993 No. 76 s 3 sch 1

### Repeal

s 1.03 om R1 (see RA s 40)

### Interpretation

s 3 def “**affidavit**” ins 1993 No. 76 s 3 sch 1  
def “**criminal history**” ins 1993 No. 76 s 3 sch 1  
def “**registrar**” sub 1993 No. 76 s 3 sch 1  
def “**repealed Act**” sub 1993 No. 76 s 3 sch 1  
def “**training course**” ins 1991 No. 97 s 3 sch 1

### Establishment of Council

s 4 amd 1991 No. 97 s 3 sch 1

### Membership

s 5 amd 1993 No. 76 s 3 sch 1; 1995 No. 24 s 21

### Term of office

s 7 amd 1993 No. 76 s 3 sch 1

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**Disqualifications for appointment as member**

s 8           amd 1993 No. 76 s 3 sch 1; 1995 No. 58 s 4 sch 2

**Vacation of office**

s 9           amd 1993 No. 76 s 3 sch 1

**Registrar and deputy registrars**

s 12          sub 1995 No. 24 s 22

**Qualifications of office**

s 16          amd 1995 No. 24 s 23

**Disqualification from office**

s 17          amd 1991 No. 97 s 3 sch 1; 1993 No. 76 s 3 sch 1; 1995 No. 58 s 4 sch 2

**Cessation of office on disqualification**

s 18          ins 1991 No. 97 s 3 sch 1

**Justices of the peace and commissioners for declarations by virtue of office**

s 19          amd 1991 No. 97 s 3 sch 1

**Oath or affirmation of office**

s 20          amd 1992 No. 68 s 3 sch 1

**Registration of justices of the peace and commissioners for declarations**

s 21          amd 1991 No. 97 s 3 sch 1

**Registrar to be notified of change to registered particulars**

s 22          amd 1991 No. 97 s 3 sch 1

**Notification of cessation of office**

s 26          amd 1991 No. 97 s 3 sch 1

**Return of certificate of registration and seal of office**

s 27          amd 1991 No. 97 s 3 sch 1

**Powers of justices of the peace and commissioners for declarations**

s 29          amd 1993 No. 76 s 3 sch 1

**Proof of acts done in the performance of office**

s 31          amd 1992 No. 68 s 3 sch 1

**Inquiries about person's appropriateness to hold office**

s 33          ins 1993 No. 76 s 3 sch 1

**Regulations**

s 40          amd 1991 No. 97 s 3 sch 1; 1993 No. 76 s 3 sch 1

**PART 5—AMENDMENT OF OTHER ACTS**

ss 5.01–5.02 om R1 (see RA s 40)

**Transitional office holder entitled to become commissioner for declarations**

s 44          amd 1991 No. 97 s 3 sch 1

**Numbering and renumbering of Act**

s 46          ins 1992 No. 68 s 3 sch 1

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sub 1993 No. 76 s 3 sch 1  
om R2 (see RA s 39)

**Validation of previous acts of commissioners for declarations**

**s 47** ins 1993 No. 76 s 3 sch 1  
exp on date of assent (see s 47(2))

## 8 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS (Reprint No. 2)  
under the Reprints Act 1992 s 43 as required by Justices of the Peace and  
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