

First print



New South Wales

Justices of the Peace Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to provide for the appointment and functions of justices of the peace.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Appointment and functions of justices of the peace

Clause 4 provides for the appointment of justices of the peace. The Governor may, on the recommendation of the Minister, appoint eligible persons as justices of the peace. A person appointed as a justice of the peace holds office for a period of 5 years and may be re-appointed.

Clause 5 provides that a person is eligible to be appointed as a justice of the peace if the person is aged at least 18 years, is nominated for appointment by a member of the New South Wales Parliament and satisfies the criteria for appointment prescribed by the regulations for the purposes of the proposed section. A person seeking re-appointment need not be nominated by a member of the New South Wales Parliament. The Minister may also issue guidelines with respect to the appointment of justices of the peace.

Clause 6 provides for applications to be made to the Minister for appointment or re-appointment as a justice of the peace.

Clause 7 provides that a person who is appointed as a justice of the peace must not exercise the functions of a justice of the peace unless the person has taken the prescribed oath of office.

Clause 8 sets out the functions of a justice of the peace. A justice of the peace may exercise any function conferred or imposed on a justice of the peace by or under the *Oaths Act 1900* or any other Act.

Clause 9 provides for the circumstances in which a person vacates the office of a justice of the peace. A person ceases to hold office:

- (a) if the person completes a term of office and fails to apply for re-appointment before the end of the term, or is not re-appointed, or
- (b) if the person resigns the office by instrument in writing addressed to the Minister, or
- (c) if the person is removed from office by the Governor.

A person may be removed from office at any time by the Governor, including for the following reasons:

- (a) if the person becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- (b) if the person becomes a mentally incapacitated person,
- (c) if the person is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,
- (d) in any other circumstances prescribed by the regulations.

Part 3 Miscellaneous

Clause 10 provides that a justice of the peace must notify the Minister of any matter that may cause the justice of the peace to cease to satisfy the prescribed criteria for appointment as a justice of the peace or to satisfy certain grounds for ceasing to hold the office of justice of the peace (being bankruptcy or insolvency, mental incapacity or conviction of certain offences).

Clause 11 provides that the Minister is to cause a register of justices of the peace to be kept and maintained and for the issue of evidentiary certificates. The register is to be made available to the public.

Clause 12 provides for procedure for offences under the proposed Act.

Clause 13 requires the Minister to make guidelines issued by the Minister under the proposed Act publicly available.

Clause 14 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 15 gives effect to Schedule 1 containing savings and transitional provisions.

Clause 16 repeals provisions of the *Imperial Acts Application Act 1969* that relate to the appointment of justices of the peace.

Clause 17 provides for a review of the operation of the proposed Act to be undertaken after 5 years from the date of assent to the proposed Act.

Schedule 1 Savings and transitional provisions

Schedule 1 contains savings and transitional provisions, including a power to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act. Also, proposed clause 2 of the Schedule provides that a person who was appointed, or held office, as a justice of the peace immediately before the commencement of the proposed Act, is taken to have been appointed, or to hold such office, under the proposed Act until the third anniversary of the commencement of proposed section 4. However a person referred to in the clause may be re-appointed, or may resign or be removed from office, in accordance with the proposed Act, as a justice of the peace.



New South Wales

Justices of the Peace Bill 2002

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New South Wales

Justices of the Peace Bill 2002

No. , 2002

A Bill for

An Act to provide for the appointment and functions of justices of the peace; and for other purposes.

Clause 1 Justices of the Peace Bill 2002

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Justices of the Peace Act 2002*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by
proclamation. 6
7

3 Definitions 8

In this Act: 9

exercise a function includes perform a duty. 10

function includes a power, authority or duty. 11

justice of the peace means a person who holds office as a justice of the
peace under this Act. 12
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| Part 2 Appointment and functions of justices of the peace | 1 |
| | 2 |
| 4 Appointment of justices of the peace | 3 |
| (1) The Governor may, on the recommendation of the Minister, appoint a person as a justice of the peace. | 4 |
| | 5 |
| (2) A person may not be appointed as a justice of the peace unless the person is eligible to be so appointed. | 6 |
| | 7 |
| (3) A person appointed as a justice of the peace is to hold office for a period of 5 years from the date of his or her appointment and may, if eligible to be appointed as a justice of the peace, be re-appointed. | 8 |
| | 9 |
| | 10 |
| 5 Persons who are eligible to be appointed as justices of the peace | 11 |
| (1) A person is eligible to be appointed as a justice of the peace if the person meets all of the following requirements: | 12 |
| | 13 |
| (a) the person is at least 18 years of age, | 14 |
| (b) the person is nominated for appointment by a member of the Legislative Assembly or the Legislative Council, | 15 |
| | 16 |
| (c) the person satisfies the criteria for appointment as a justice of the peace prescribed by the regulations. | 17 |
| | 18 |
| (2) A person seeking re-appointment as a justice of the peace is not required to be nominated for re-appointment by a member of the Legislative Assembly or the Legislative Council. | 19 |
| | 20 |
| | 21 |
| (3) The Minister may issue guidelines with respect to the appointment of justices of the peace. | 22 |
| | 23 |
| 6 Applications to Minister | 24 |
| (1) A person may apply to the Minister for appointment or re-appointment as a justice of the peace. | 25 |
| | 26 |
| (2) An application is to be in the form approved by the Minister and accompanied by: | 27 |
| | 28 |
| (a) except in the case of an application for re-appointment, a written nomination signed by a member of the Legislative Assembly or the Legislative Council, and | 29 |
| | 30 |
| | 31 |
| (b) any other documents required by the Minister. | 32 |

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|---|----------------------------|
| 7 Oaths of office to be taken | 1 |
| A person who is appointed as a justice of the peace must not exercise the functions of a justice of the peace unless the person has taken an oath of office in the form and manner prescribed by the regulations. | 2 3 4 |
| 8 Functions of justices of the peace | 5 |
| (1) A justice of the peace may exercise any function conferred or imposed on a justice of the peace by or under the <i>Oaths Act 1900</i> or any other Act. | 6 7 8 |
| (2) The Minister may issue guidelines with respect to the exercise of specified functions by justices of the peace under this or any other Act. | 9 10 |
| 9 Vacation of office | 11 |
| (1) A person ceases to hold the office of a justice of the peace if the person: | 12 13 |
| (a) completes a term of office and fails to apply for re-appointment before the end of that term, or is not re-appointed, or | 14 15 |
| (b) resigns the office by instrument in writing addressed to the Minister, or | 16 17 |
| (c) is removed from office by the Governor under subsection (2). | 18 |
| (2) The Governor may at any time, on the recommendation of the Minister, remove a justice of the peace from office. | 19 20 |
| (3) Without limiting subsection (2), the Governor may at any time, on the recommendation of the Minister, remove a justice of the peace from office: | 21 22 23 |
| (a) if the person becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or | 24 25 26 27 |
| (b) if the person becomes a mentally incapacitated person, or | 28 |
| (c) if the person is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or | 29 30 31 32 33 |
| (d) in any other circumstances prescribed by the regulations. | 34 |

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| Part 3 Miscellaneous | 1 |
| 10 Notification of matters to Minister | 2 |
| (1) A justice of the peace must notify the Minister in writing of the following: | 3 |
| | 4 |
| (a) any matter that may cause the justice of the peace to cease to satisfy the prescribed criteria for appointment as a justice of the peace, | 5 |
| | 6 |
| | 7 |
| (b) if the justice of the peace satisfies any of the grounds for removal from office under section 9 (3). | 8 |
| | 9 |
| (2) The notice must be given as soon as practicable after the justice of the peace becomes aware of the matter concerned. | 10 |
| | 11 |
| Maximum penalty: 20 penalty units. | 12 |
| 11 Register of justices of the peace | 13 |
| (1) The Minister is to cause to be kept and maintained a register of justices of the peace. | 14 |
| | 15 |
| (2) The register is to be in the form determined by the Minister and is to contain the particulars prescribed by the regulations. | 16 |
| | 17 |
| (3) The register is to be available for inspection by the public, free of charge, during business hours at such places as the Minister determines. | 18 |
| | 19 |
| | 20 |
| (4) The Director-General of the Attorney General's Department may issue a certificate certifying as to whether a person was registered on the register at a particular time. The certificate is admissible in legal proceedings as evidence of the matters certified. | 21 |
| | 22 |
| | 23 |
| | 24 |
| (5) Information entered on the register is presumed (in the absence of evidence to the contrary) to be correct. | 25 |
| | 26 |
| 12 Nature of proceedings for offences | 27 |
| Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court. | 28 |
| | 29 |
| 13 Guidelines to be publicly available | 30 |
| The Minister must ensure that guidelines issued by the Minister under this Act are publicly available. | 31 |
| | 32 |

Clause 14 Justices of the Peace Bill 2002

Part 3 Miscellaneous

| | | |
|-----------|--|------------------|
| 14 | Regulations | 1 |
| | (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. | 2 3 4 5 |
| | (2) The regulations may create offences punishable by a penalty not exceeding 10 penalty units. | 6 7 |
| 15 | Savings and transitional provisions | 8 |
| | Schedule 1 has effect. | 9 |
| 16 | Amendment of Imperial Acts Application Act 1969 No 30 | 10 |
| | The <i>Imperial Acts Application Act 1969</i> is amended by omitting Division 8 (Justices of the Peace) of Part 3. | 11 12 |
| 17 | Review of Act | 13 |
| | (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. | 14 15 16 |
| | (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. | 17 18 |
| | (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. | 19 20 |

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| Schedule 1 | Savings and transitional provisions | 1 |
| | (Section 15) | 2 |
| 1 | Regulations | 3 |
| (1) | The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: | 4 |
| | this Act | 5 |
| | this Act | 6 |
| (2) | Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. | 7 |
| | | 8 |
| (3) | To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: | 9 |
| | (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or | 10 |
| | | 11 |
| | (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. | 12 |
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| 2 | Existing justices of the peace | 18 |
| (1) | A person who, immediately before the commencement of section 4, was appointed, or held office, as a justice of the peace for the State, is taken to be so appointed, or to hold such office, under this Act until the third anniversary of the commencement of section 4, unless the justice of the peace sooner ceases to hold office. | 19 |
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| | | 21 |
| | | 22 |
| | | 23 |
| (2) | Nothing in this clause prevents a person referred to in subclause (1) from being re-appointed, or from resigning or being removed from office, in accordance with this Act, as a justice of the peace. | 24 |
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| | | 26 |