

CLAUSE NOTES

Justices of the Peace Bill 2018

Clause 1: Short title

Short title of the Bill.

Clause 2: Commences

The Act commences on Proclamation.

Clause 3: Interpretation

Provides for a range of definitions of certain key terms including:

'appointed justice' means a justice who holds the office of Justice of the Peace under an appointment under section 5 or 8 of the Act.

'duties' includes powers and a reference to carrying out duties includes a reference to exercising powers.

'justice' means –

- (a) an appointed justice; or
- (b) a Magistrate.

Part 2 – Appointment and Powers of Justices of the Peace

Clause 4: Application to be appointed as justice

Provides that a person may apply to be appointed as a Justice of the Peace by lodging an application, in a form approved by the Secretary, with the Secretary.

Clause 5: Appointment of justice

Provides the eligibility criteria for appointment as a Justice of the Peace for Tasmania and sets out the process by which the Governor appoints an eligible person to the office of Justice of the Peace for Tasmania.

Clause 6: Oaths to be taken by justices

Provides that appointed justices must take the judicial oath in accordance with the *Promissory Oaths Act 1869* prior to exercising any powers of the office of Justice of the Peace.

Clause 7: Application for reappointment as appointed justice

Provides a process for appointed Justices to apply for re-appointment within the six months prior to, and the six months following, the termination of their appointment due to attaining the age of 75 or the expiration of their appointment.

Clause 8: Reappointment as a Justice of the Peace

Provides a process for the reappointment, for a term of two years, of an appointed justice who has applied for reappointment under clause 8.

Clause 9: Magistrates as justices

Provides that a Magistrate is a Justice of the Peace by virtue of holding the office of Magistrate.

Clause 10: Powers of justices

Provides that a justice may exercise the powers conferred on a Justice of the Peace by this Act, any other act and any other law but that a power conferred on a Justice of the Peace at common law can only be exercised by a Justice of the Peace who is a magistrate.

Clause 11: Ratepayer not disabled from acting as justice

Provides that a justice may exercise the powers of a Justice of the Peace in any matter relating to a municipal area even if they are a ratepayer or a member of, or interested in, the concerns of the council.

Clause 12: Validity of acts of justice

Provides that acts of appointed justices in their capacity as a Justice of the Peace are not invalid despite certain defects in relation to the appointment process, the failure of the Justice to take the judicial oath, the justice being suspended from office or the termination of the justice's appointment if they were unaware of the termination.

Clause 13: Protection from liability

Provides that Justices of the Peace do not incur personal liability in respect of any act done, or omitted to be done, in good faith in the exercise of, or in the reasonable belief that it was in exercise of, a power or duty of a justice.

Clause 14: Termination of appointment as Justice of the Peace, &c.

Provides for the circumstances in which an appointed justice ceases to hold the office of Justice of the Peace. This clause also provides for the process by which an appointed justice may resign from the office of Justice of the Peace.

Part 3 – Duties of justices

Clause 15: Duties of justices

Provides that a justice has the duties imposed by this Act and by any other Act.

Clause 16: Providing information to the Secretary

Provides that the Secretary may require appointed justices to provide certain information that is necessary for the administration of Justices of the Peace and the maintenance of the register of Justices of the Peace.

Clause 17: Notifying of change in circumstances

Provides that appointed justices must notify the Secretary in writing within 21 days of certain changes in their circumstances.

Clause 18: Requirement to undertake training or professions development

Provides that appointed justices must undertake and complete certain training or professional development prescribed by regulations or required by the Secretary.

Clause 19: Requirement to be reasonably available and active

Provides that an appointed justice must be reasonably available to exercise his or her powers as a justice and reasonably active in doing so in the areas in which he or she resides or works.

Clause 20: Requirement to comply with code of conduct

Provides that appointed justices must comply with any code of conduct prescribed by the regulations that applies to them.

Part 4 – Suspension and Removal from Office of Justice of the Peace

Clause 21: Suspension of justice

Provides a process by which the Secretary may suspend an appointed justice from office.

Clause 22: Notice of suspension

Provides that the Secretary must notify an appointed justice in writing of their suspension from office, and what information that notice must include.

Clause 23: Term of suspension

Provides for when a suspension under Clause 21 takes effect and when the suspension ceases.

Clause 24: Revocation of suspension

Provides that the Secretary must revoke the suspension of an appointed justice where an investigator's report finds that there are no grounds for the removal from office of the justice; where the Minister has decided not to recommend removal from office; where a charge against the Justice is dismissed; where the Justice is found not guilty; or it is otherwise appropriate to do so.

The Clause also provides powers for the Secretary to require a suspended justice to take an action before the revocation of the suspension takes effect.

Clause 25: Notice of revocation of suspension

Provides that the Secretary is to provide an appointed justice with written notice of the revocation of their suspension and the day on which the revocation takes effect.

Clause 26: Authorisation of investigation

Provides for the Secretary to appoint a State Service officer or State Service employee to undertake an investigation into the conduct of an appointed justice.

Clause 27: Conduct of investigation of appointed justice's conduct

Provides for a process for an investigator to notify an appointed justice in writing of an investigation under Clause 27, and for the appointed Justice to make submissions to the investigator in relation to matters specified in the notice.

Clause 28: Report of investigator

Provides a process for the provision of a report by an investigator and for the Secretary to take relevant action in respect of the recommendations made in the investigator's report.

Clause 29: Grounds for removal from office of Justice of the Peace

Provides the grounds for the removal of an appointed justice from the office of Justice of the Peace.

Clause 30: Recommendation that appointed justice be removed from office of Justice of the Peace

Provides the process for the Minister to recommend that the Governor remove an appointed Justice from the office of Justice of the Peace.

Clause: 31: Removal from office of Justice of the Peace

Provides for a process for the Governor, on the recommendation of the Minister, to remove an appointed Justice from the office of Justice of the Peace.

Clause 32: re-appointment after removal from office of Justice of the Peace

Provides that a person who has been removed from the office of Justice of the Peace may make an application to be re-appointed after 5 years from the date on which notice of their removal from office was published in the Gazette, and specifies the matters that must be addressed in such an application.

Part 5 – Use of Titles

Clause 33: Use of title of Justice of the Peace

Provides the Justices may use the title “Justice of the Peace” or “JP” after their name.

Part 6 – Offences

Clause 34: Impersonation a justice

Creates an offence for a person who is not a justice to hold himself or herself out to be a Justice.

Clause 35: False or misleading information

Creates an offence for a person to provide false or misleading information, including by omission, under the Act to the Minister, Secretary or an investigator.

Clause 36: Demanding or accepting a fee, gratuity, &c.

Creates an offence for a justice to demand, take or accept a fee, gratuity, patronage or reward for carrying out the duties of a Justice of the Peace.

The offence does not apply to the remuneration paid to magistrates in respect of their office as magistrate, or to the remuneration paid to a Justice in respect of their employment despite one of the duties of that employment being that the justice performs the duties of a Justice of the Peace.

Part 7 – Miscellaneous

Clause 37: Abrogation of assignment of justices under a commission of the peace

Provides that a person may not be assigned a justice under a commission of the peace.

Clause 38: Register of justices

Provides that the Secretary is to maintain a register of appointed justices and specifies the information to be recorded in the register and provides that the Secretary may publish the register or information contained in the register.

Clause 39: Guidelines

Provides that the Secretary may issue guidelines for or with respect to any matter relating to appointed justices.

Clause 40: Delegation by Secretary

Provides that the Secretary may delegate any of his or her functions under the Act, other than the power of delegation, to a State Service officer, or State Service employee, employed in the Department.

Clause 41: Regulations

Provides that the Governor may make regulations for the purposes of the Act. Other standard provisions relating to regulations are also included.

Clause 42: Administration of the Act

Provides that until other administrative arrangements are made under the *Administrative Arrangements Act 1990*, administration of the Act is assigned to the Minister for Justice and the Department of Justice.

Clause 43: Transitional and savings

Provides for a process for existing Justices of the Peace to continue in office following the commencement of the Act if the Justice is eligible and has notified the Secretary that he or she wishes to continue in the role under the Act.

Clause 44: Consequential amendments

Schedule I – Consequential Amendments

Provides that the *Justices Act 1959* is amended by omitting the definition of *commission of the peace* in section 3(1), and repeals Parts II and III of the *Justices Act 1959*.