

DRAFT SECOND READING SPEECH

HON. ELISE ARCHER MP

Justices of the Peace Bill 2018

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Madam Speaker, this Bill provides a new, and more comprehensive, framework for the appointment and regulation of the conduct of Justices of the Peace in Tasmania.

Justices of the Peace, apart from those few appointed as Bench Justices, perform the following major functions:

1. Administer oaths in certain circumstances, particularly taking affidavits for use in court;
2. Witness certain documents;
3. Take statutory declarations; and
4. Certify a true copy of an original document.

Justices of the Peace can also issue a search warrant. In this role the Justice of the Peace must ensure that all relevant information is included in the warrant.

The role is one of community service, with Justices of the Peace occupying a position of trust and responsibility.

Over time it has become apparent that, to meet current expectations of governance, the legislation governing Justices of the Peace should be more comprehensive than the limited provisions currently contained in the *Justices Act 1959* and that it should deal with more than just appointment.

All other States and Territories have updated their legislation relating to Justices of the Peace since 2000, with Victoria updating most recently in 2014.

Many of the new requirements in the Bill reflect what has been the general practice regarding Justices of the Peace, but the Bill makes those practices clearer and more transparent, and provides more certainty for appointed Justices and prospective appointees.

The three Tasmanian Justice of the Peace associations, and their individual members, have been consulted regarding the content of the Bill and have provided very valuable feedback that has been taken into account during its development.

The Bill contains provisions dealing with who is eligible for appointment as a Justice of the Peace.

The criteria include an understanding of the role and duties of a Justice, undertaking appropriate training, being likely to be reasonably available to exercise the powers of a Justice, and being a fit and proper person to hold the office.

These criteria provide a clearer understanding of the basis upon which appointments are made and increase the transparency of the appointment process. They will also assist persons applying for appointment to appreciate what the role of a Justice of the Peace requires.

The Bill includes specific provision for the investigation of complaints against Justices of the Peace and the failure to undertake the duties of a Justice of the Peace as required.

The Bill also sets out specific suspension and removal criteria, and the process that is to be followed in taking such action against an appointed Justice.

Currently, suspension or removal of Justices of the Peace, for example as a result of a Justice of the Peace being charged or convicted of a serious offence, is done in reliance on section 21 of the *Acts Interpretation Act 1931*, which simply provides that the power to appoint includes the power to suspend or remove a person appointed under that power.

The Bill imposes some additional duties on appointed Justices, including the requirement to undertake prescribed training, to be reasonably available and active and to comply with any code of conduct prescribed by the regulations.

The new duties, and the provisions of the Act dealing with suspension and removal from office, apply only to Justices appointed under the appointment provisions of the Bill—known as ‘appointed Justices’—and do not apply to magistrates who hold the office of Justice of the Peace by virtue of their appointments as magistrates.

Matters regarding the conduct of Magistrates when acting as Justices is to be governed by the legislation ordinarily applying to the office of magistrate.

The Bill retains the appointment of Justices of the Peace on a permanent basis, but it includes a statutory retirement age of 75 years.

To reflect that there are many retirees who are active Justices and who have considerable knowledge and experience, but who in many cases are over the age of 75, the Bill also provides that Justices who reach the age of 75 may apply to be re-appointed for further two- year periods up to the age of 85. Such applicants must be able to demonstrate that they continue to actively serve the community in the role and continue to be a fit and proper person for the role.

The Bill contains an obligation upon the Secretary of the Department of Justice to maintain a register of Justices of the Peace. The Bill also provides the Secretary with certain powers to require appointed Justices to provide information for the purposes of keeping the register up to date and obliges appointed Justices to notify of relevant changes in circumstance.

The Bill creates three offences relating to Justices of the Peace.

The Bill makes it an offence to impersonate a Justice of the Peace. It also makes it an offence to provide misleading information to the Minister, Secretary or an investigator appointed under the legislation.

The Bill also creates an offence in relation to the acceptance of a fee by a Justice of the Peace for carrying out the duties of a Justice of the Peace.

The transitional provisions of the Bill allow Justices appointed prior to commencement to notify the Secretary that they wish to continue in the office of Justice of the Peace. A person who

notifies the Secretary will, if eligible for appointment under the provisions of the Bill, be taken to have been appointed under the new legislation.

Any Justices of the Peace who do not notify the Secretary of their wish to continue in office will have their appointment terminated on the commencement of the Bill.

All existing Justices of the Peace will be notified of the new legislation in writing by my Department and sent a form to return if they are eligible and wish to continue in the role.

This procedure has been adopted in order to ensure that all eligible Justices of the Peace who wish to continue are automatically taken to be appointed under the new legislation.

This is preferable to the administratively burdensome task of formally reappointing all existing Justices of the Peace under the new Act. Such a process could also result in a situation where there is a period of time when there are insufficient Justices of the Peace to service all areas of the State.

Finally, the Bill repeals Parts II and III of the *Justices Act 1959*, which are the parts of that Act that currently deal with Justices of the Peace.

Madam Speaker, I commend the Bill to the House.