

South Australia

## Justices of the Peace Act 2005

An Act to provide for the appointment of justices of the peace.

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### Contents

1	Short title
3	Interpretation
4	Appointment of suitable persons as justices
5	Appointment of persons occupying certain offices as justices
6	Justices must take oath before exercising official powers
7	Special justices
8	Exercise of powers by justices
9	Tenure of office
10	Justice may apply for suspension of official duties for personal reasons
10A	Suspension and removal of special justices
11	Disciplinary action, suspension and removal of other justices
12	Disciplinary action—retired justices
13	Roll of justices
14	Use of titles and descriptions
15	Immunity of justices
16	Offence to hold out etc
17	Regulations

### Schedule 1—Transitional provisions

2	Transitional provision
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### Legislative history

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### The Parliament of South Australia enacts as follows:

#### 1—Short title

This Act may be cited as the *Justices of the Peace Act 2005*.

#### 3—Interpretation

In this Act, unless the contrary intention appears—

***code of conduct*** means a code of conduct referred to or incorporated in the regulations;

***justice*** means a justice of the peace for South Australia (however appointed), and includes a special justice;

*principal member of a council* has the same meaning as in the *Local Government Act 1999*.

#### **4—Appointment of suitable persons as justices**

- (1) The Governor may, on the recommendation of the Attorney-General, by notice in the Gazette, appoint a suitable person to be a justice of the peace for South Australia.
- (2) Subject to section 7, a justice will be appointed on conditions determined by the Governor for a term, not exceeding 10 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (3) The conditions of appointment may include conditions specifying or limiting the official powers that the justice may exercise.
- (4) An application for appointment as a justice must—
  - (a) be made to the Attorney-General in the manner and form approved by the Attorney-General; and
  - (b) be accompanied—
    - (i) by such evidence as the Attorney-General thinks appropriate as to the identity, age and address of the applicant; and
    - (ii) by any other information required by the Attorney-General for the purposes of determining the application.
- (5) The information in, or accompanying, an application for appointment must be verified by the applicant by statutory declaration.
- (6) The Attorney-General must give the Commissioner of Police a copy of each application for appointment.
- (7) As soon as reasonably practicable following receipt of any such application, the Commissioner of Police—
  - (a) must make available to the Attorney-General information about criminal convictions; and
  - (b) may make available to the Attorney-General other information to which the Commissioner of Police has access,  
relevant to whether the application should be granted.
- (8) The Attorney-General will not recommend the appointment of a person as a justice unless the Attorney-General is satisfied the person—
  - (a) is at least 18 years of age; and
  - (b) is an Australian citizen resident in South Australia; and
  - (c) is of good character; and
  - (d) meets the requirements prescribed by the regulations.

#### **5—Appointment of persons occupying certain offices as justices**

- (1) The Governor will, on application by a Member of Parliament or the principal member of a council, by notice in the Gazette, appoint the Member of Parliament or principal member of a council to be a justice of the peace for South Australia.

- (2) A justice will be appointed on conditions determined by the Governor and specified in the instrument of appointment only for the term during which the justice also holds office as a Member of Parliament or principal member of a council (as the case may be).
- (3) The conditions of appointment may include conditions specifying or limiting the official powers that the justice may exercise.

## **6—Justices must take oath before exercising official powers**

- (1) A justice may not exercise official powers as a justice until the justice has taken the oaths required of a justice under the *Oaths Act 1936*.
- (2) The oaths must—
  - (a) be taken before—
    - (i) a Judge or Master of the Supreme Court; or
    - (ii) a Judge or Master of the District Court; or
    - (iii) a Magistrate; or
    - (iv) a commissioner for taking affidavits in the Supreme Court; and
  - (b) be signed by the person taking the oaths and attested by the person before whom the oaths are taken.

## **7—Special justices**

- (1) The Governor may, on the recommendation of the Attorney-General, appoint a justice to be a special justice.
- (2) A special justice will be appointed on conditions determined by the Governor for a term, not exceeding 5 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (3) The Attorney-General will not recommend that a justice be appointed as a special justice unless the Attorney-General is satisfied that the justice—
  - (a) has successfully completed a course of training approved (after consultation with the Chief Justice of the Supreme Court) by the Attorney-General; and
  - (b) is, in the opinion of the Attorney-General, suitable to be appointed as a special justice; and
  - (c) meets the requirements prescribed by the regulations.
- (4) The conditions of appointment may include conditions specifying or limiting the official powers that the special justice may exercise.
- (5) A special justice is entitled to such remuneration as may be determined by the Governor for the performance of judicial duties.

## **8—Exercise of powers by justices**

- (1) Subject to the conditions of his or her appointment as a justice, a justice has the powers conferred on a justice by or under this Act, the *Oaths Act 1936* or any other Act.

- (2) Subject to the conditions of his or her appointment as a special justice, a special justice has (in addition to the powers conferred on a justice) any powers of a judicial or quasi-judicial nature, or authority to make an inquiry or receive evidence, conferred on a special justice by or under an Act.
- (3) A reference in any other Act to a justice or special justice and the exercise of a power or authority by a justice or special justice under that Act is to be read as a reference only to a justice or special justice who is, under the conditions of his or her appointment, able to exercise that power or authority.
- (4) An act done outside of the State by a justice for the purpose of taking a declaration or attesting an instrument or document in writing intended to take effect in the State is as valid and effectual as if the act were done in the State, unless the act is required by law to be done in the State.

### **9—Tenure of office**

The office of a justice becomes vacant—

- (a) if the justice—
  - (i) dies; or
  - (ii) resigns by written notice to the Attorney-General; or
  - (iii) completes a term of office and is not reappointed; or
  - (iv) ceases to satisfy the qualification by virtue of which the member was eligible for appointment as a justice; or
  - (v) is removed from office under this Act or the *Judicial Conduct Commissioner Act 2015*; or
- (b) during any period of suspension from office under this Act.

### **10—Justice may apply for suspension of official duties for personal reasons**

- (1) The Governor may, on application by a justice, by notice in writing, suspend the justice from office for a specified period or until further notice (but not in any event for a period exceeding 2 years) if satisfied that there are personal reasons for so doing.
- (2) The suspension may be revoked by further notice.
- (3) For the purposes of subsection (1)—

*personal reasons* include illness, family or business commitments, or prolonged absence from the State.

### **10A—Suspension and removal of special justices**

- (1) The Governor may, by notice in writing given on the advice of the Chief Magistrate, suspend a special justice from office for a specified period or until the fulfilment of stipulated conditions or until further notice.
- (2) A special justice may not be suspended from office unless—
  - (a) subsection (4) applies; or
  - (b) action is being taken under the *Judicial Conduct Commissioner Act 2015* for the purpose of determining whether proper cause exists for removing the special justice from office.

- (3) A suspension under subsection (2)(b) may be revoked by further notice.
- (4) If a special justice is charged with an offence other than an expiable offence, the special justice is, by force of this subsection, suspended from office as a special justice until proceedings based on the charge have been completed.
- (5) However, the Attorney-General may, on application by the special justice, by notice in writing—
  - (a) cancel a suspension under subsection (4) if satisfied that the outstanding charge should, in the circumstances, be disregarded; and
  - (b) impose such conditions specifying or limiting the official powers that the special justice may exercise as the Attorney-General considers appropriate.
- (6) A purported exercise of power or authority by a special justice suspended from office under this section is not rendered invalid by reason only of the suspension.
- (7) If a special justice is found guilty or convicted by a court of an offence other than an expiable offence, the special justice is, by force of this subsection, removed from office as a special justice.
- (8) However, the Attorney-General may, on application by the special justice, by notice in writing—
  - (a) reinstate the special justice if satisfied that the finding of guilt or conviction should, in the circumstances, be disregarded; and
  - (b) impose such conditions specifying or limiting the official powers that the special justice may exercise as the Attorney-General considers appropriate.
- (9) A person who has been removed from office as a special justice may not apply for reappointment as a justice for a period of 5 years from the date of removal or such longer period as may be specified by the Governor in the notice of removal.
- (10) Nothing in this section affects the operation of the *Judicial Conduct Commissioner Act 2015*.

## **11—Disciplinary action, suspension and removal of other justices**

- (a1) This section applies to justices other than special justices.
  - (1) There is proper cause for taking disciplinary action against a justice if the justice—
    - (a) breaches, or fails to comply with, a condition of his or her appointment; or
    - (b) breaches, or fails to comply with, a prescribed provision of a code of conduct.
  - (2) If the Governor is satisfied that there is proper cause for taking disciplinary action against a justice, the Governor may, by notice in writing, do one or more of the following:
    - (a) reprimand the justice;
    - (b) impose conditions or further conditions on the justice's appointment;
    - (c) suspend the justice from office for a specified period or until the fulfilment of stipulated conditions or until further notice (but not in any event for a period exceeding 2 years).

- (3) If a justice is charged with an offence, the Governor may, if of the opinion that conviction of the offence would show the justice to be unfit to hold office, by notice in writing, suspend the justice from office until proceedings based on the charge have been completed.
- (4) A suspension under subsection (3) may be revoked by further notice.
- (5) If a justice—
  - (a) is mentally or physically incapable of carrying out official functions satisfactorily; or
  - (b) is found guilty or convicted by a court of an offence that, in the opinion of the Governor, shows the person to be unfit to hold office as a justice; or
  - (c) is bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (d) should, in the Governor's opinion, be removed from office for any other reason,the Governor may, by notice in the Gazette, remove the justice from office.
- (6) A person who has been removed from office may not apply for reappointment as a justice for a period of 5 years from the date of removal or such longer period as may be specified by the Governor in the notice of removal.

## **12—Disciplinary action—retired justices**

- (1) There is proper cause for taking disciplinary action against a person who uses the title "JP (Retired)", or any other title that suggests that the person is a retired justice, in contravention of a code of conduct.
- (2) If the Governor is satisfied that there is proper cause for taking disciplinary action against such a person, the Governor may, by notice in writing, do one or more of the following:
  - (a) reprimand the person;
  - (b) prohibit the person from using "JP (Retired)", or any other title or description that suggests that the person was a justice, together with his or her name or signature.

## **13—Roll of justices**

- (1) The Attorney-General must maintain a roll of justices.
- (2) The following information must be recorded in the roll in relation to each justice:
  - (a) the justice's name;
  - (b) either or both of—
    - (i) the town or suburb in which the justice resides;
    - (ii) the town or suburb in which the justice works;
  - (c) either or both of—
    - (i) the telephone number on which the justice can be contacted during business hours;

- (ii) the telephone number on which the justice can be contacted after business hours;
  - (d) if the justice is also a special justice—that information;
  - (e) any conditions specifying or limiting the official powers that the justice may exercise;
  - (f) the expiry date of the current term of office of the justice.
- (3) The information about a justice who dies or is suspended or removed from office must be removed from the roll.
  - (4) The roll may be kept in the form of a computer record.
  - (5) The roll is to be available for inspection, without fee, during ordinary office hours at a public office, or public offices, determined by the Attorney-General.
  - (6) The Attorney-General may determine that the roll can be inspected at a website determined by the Attorney-General.

#### **14—Use of titles and descriptions**

- (1) "JP" appearing with a person's name or signature will be taken to signify that the person is a justice.
- (2) "SJ" appearing with a person's name or signature will be taken to signify that the person is a special justice.
- (3) "JP (Retired)" appearing with a person's name or signature will be taken to signify that the person is a retired justice.

#### **15—Immunity of justices**

A justice incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

#### **16—Offence to hold out etc**

- (1) A person who is not a justice must not—
  - (a) hold himself or herself out as a justice; or
  - (b) permit another person to do so; or
  - (c) use "JP", or any other title or description that implies that the person is a justice, together with his or her name or signature.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) A person who is not a special justice must not—
  - (a) hold himself or herself out as a special justice; or
  - (b) permit another person to do so; or
  - (c) use "SJ", or any other title or description that implies that the person is a special justice, together with his or her name or signature.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (3) A person must not hold out another as a justice or special justice unless that other person is a justice or special justice.  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (4) A person must not use "JP (Retired)", or any other title or description that implies that the person was a justice, together with his or her name or signature unless the person—
- (a) served as a justice for at least the prescribed period; and
  - (b) was not removed from office; and
  - (c) has not been prohibited by the Governor from using any such title or description.
- Maximum penalty: \$2 500.

## **17—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) require justices, special justices or retired justices to comply with a code of conduct; and
  - (b) exempt (conditionally or unconditionally) persons from specified provisions of this Act.
- (3) The regulations may incorporate or operate by reference to a specified code as in force at a specified time or as in force from time to time.
- (4) If a code is referred to or incorporated in the regulations—
- (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Attorney-General;
  - (b) evidence of the contents of the code may be given in legal proceedings by production of a document apparently certified by the Attorney-General to be a true copy of the code.

## **Schedule 1—Transitional provisions**

### **2—Transitional provision**

- (1) Subject to this Act, a person holding office as a justice immediately before the commencement of this clause will continue in office from that commencement until the end of the period prescribed by the Minister by notice in the Gazette in relation to that justice.
- (2) A justice continuing in office under this clause may apply for appointment under this Act.



## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Justices of the Peace Act 2005* repealed the following:

*Justices of the Peace Act 1991*

### Legislation amended by principal Act

The *Justices of the Peace Act 2005* amended the following:

*Acts Interpretation Act 1915*

*Administration and Probate Act 1919*

*Adoption Act 1988*

*Bail Act 1985*

*Correctional Services Act 1982*

*Criminal Law Consolidation Act 1935*

*Debtors Act 1936*

*Drugs Act 1908*

*Family and Community Services Act 1972*

*Impounding Act 1920*

*Landlord and Tenant Act 1936*

*Local Government Act 1999*

*Lottery and Gaming Act 1936*

*Magistrates Court Act 1991*

*Real Property Act 1886*

*Renmark Irrigation Trust Act 1936*

*Youth Court Act 1993*

## Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2005	56	<i>Justices of the Peace Act 2005</i>	17.11.2005	1.7.2006 ( <i>Gazette</i> 22.6.2006 p2012)
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 16 (s 28)—18.1.2007 ( <i>Gazette</i> 18.1.2007 p234)
2012	17	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2012</i>	24.5.2012	Pt 9 (s 21)—5.8.2012 ( <i>Gazette</i> 2.8.2012 p3302)
<b>2015</b>	<b>34</b>	<b><i>Judicial Conduct Commissioner Act 2015</i></b>	<b>5.11.2015</b>	<b>Sch 1 (cll 9—11)—5.12.2016 (<i>Gazette</i> 29.11.2016 p4525)</b>
2016	41	<i>Justices of the Peace (Miscellaneous) Amendment Act 2016 as amended by 41/2017</i>	29.9.2016	19.12.2017 ( <i>Gazette</i> 19.12.2017 p5121)
2017	41	<i>Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2017</i>	24.10.2017	Pt 6 (s 12) substitution of s 8 of 41/2016—24.10.2017

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	18.1.2007
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>18.1.2007</i>
s 4		
s 4(1)	substituted by 41/2016 s 4(1)	uncommenced—not incorporated
s 4(2)	amended by 41/2016 s 4(2)	uncommenced—not incorporated
s 4(5)	substituted by 41/2016 s 4(3)	uncommenced—not incorporated
s 4(8)	amended by 41/2016 s 4(4)	uncommenced—not incorporated
s 5	amended by 41/2016 s 5	uncommenced—not incorporated
s 6		
s 6(2)	amended by 41/2016 s 6(1)	uncommenced—not incorporated
s 6(3)	inserted by 41/2016 s 6(2)	uncommenced—not incorporated
<b>s 9</b>	<b>amended by 34/2015 Sch 1 cl 9</b>	<b>5.12.2016</b>
s 10		
s 10(1)	amended by 41/2016 s 7(1)	uncommenced—not incorporated
s 10(2a)	inserted by 41/2016 s 7(2)	uncommenced—not incorporated
<b>s 10A</b>	<b>inserted by 34/2015 Sch 1 cl 10</b>	<b>5.12.2016</b>
s 11		
<b>s 11(a1)</b>	<b>inserted by 34/2015 Sch 1 cl 11(1)</b>	<b>5.12.2016</b>
s 11(1)	substituted by 41/2016 s 8(1)	uncommenced—not incorporated
<b>s 11(1)</b>	<b>amended by 34/2015 Sch 1 cl 11(2)</b>	<b>5.12.2016</b>

s 11(2)	amended by 41/2016 s 8(2)	uncommenced—not incorporated
s 11(3)	amended by 17/2012 s 21(1)	5.8.2012
	amended by 41/2016 s 8(3)	uncommenced—not incorporated
	<b>amended by 34/2015 Sch 1 cl 11(3)</b>	<b>5.12.2016</b>
s 11(4)	amended by 17/2012 s 21(2)	5.8.2012
s 11(4a)—(4c)	<i>inserted by 17/2012 s 21(3)</i>	5.8.2012
	<i>deleted by 34/2015 Sch 1 cl 11(4)</i>	<b>5.12.2016</b>
s 11(5)	amended by 17/2012 s 21(4), (5)	5.8.2012
	amended by 41/2016 s 8(4), (5)	uncommenced—not incorporated
	<b>amended by 34/2015 Sch 1 cl 11(5)</b>	<b>5.12.2016</b>
s 11(5a) and (5b)	<i>inserted by 17/2012 s 21(6)</i>	5.8.2012
	<i>deleted by 34/2015 Sch 1 cl 11(6)</i>	<b>5.12.2016</b>
s 11(6)	amended by 41/2016 s 8(6)	uncommenced—not incorporated
s 11(7)	inserted by 41/2016 s 8(7)	uncommenced—not incorporated
s 12		
s 12(2)	amended by 41/2016 s 9	uncommenced—not incorporated
s 13		
s 13(2)	amended by 44/2006 s 28	18.1.2007
s 16		
s 16(4)	amended by 41/2016 s 10	uncommenced—not incorporated
ss 16A and 16B	inserted by 41/2016 s 11	uncommenced—not incorporated
Sch 1		
cl 1	<i>omitted under Legislation Revision and Publication Act 2002</i>	18.1.2007
Sch 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	18.1.2007

## Historical versions

18.1.2007  
5.8.2012