

Legislative Council—No 138

As received from the House of Assembly and read a first time, 23 June 2016

South Australia

**Justices of the Peace (Miscellaneous) Amendment
Bill 2016**

A BILL FOR

An Act to amend the *Justices of the Peace Act 2005*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Justices of the Peace Act 2005*

- 4 Amendment of section 4—Appointment of suitable persons as justices
 - 5 Amendment of section 5—Appointment of persons occupying certain offices as justices
 - 6 Amendment of section 6—Justices must take oath before exercising official powers
 - 7 Amendment of section 10—Justice may apply for suspension of official duties for personal reasons
 - 8 Amendment of section 11—Disciplinary action, suspension and removal of justices from office
 - 9 Amendment of section 12—Disciplinary action—retired justices
 - 10 Amendment of section 16—Offence to hold out etc
 - 11 Insertion of sections 16A and 16B
 - 16A False statements
 - 16B Delegation
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Justices of the Peace (Miscellaneous) Amendment Act 2016*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Justices of the Peace Act 2005*

4—Amendment of section 4—Appointment of suitable persons as justices

(1) Section 4(1)—delete subsection (1) and substitute:

15 (1) The Attorney-General may, by notice in the Gazette, appoint a suitable person to be a justice of the peace for South Australia.

(2) Section 4(2)—delete "Governor" and substitute:

Attorney-General

(3) Section 4(5)—delete subsection (5) and substitute:

(5) The Attorney-General may require that information in, or accompanying, an application for appointment be verified by the applicant by statutory declaration.

5 (4) Section 4(8)—delete "will not recommend the appointment of" and substitute:
must not appoint

5—Amendment of section 5—Appointment of persons occupying certain offices as justices

Section 5—delete "Governor" wherever occurring and substitute in each case:

10 Attorney-General

6—Amendment of section 6—Justices must take oath before exercising official powers

(1) Section 6(2)(a)—delete paragraph (a) and substitute:

(a) be taken before—

- 15 (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,
within 3 months after the justice's appointment; and

20 (2) Section 6—after subsection (2) insert:

(3) This section does not apply to a person who is re-appointed as a justice and has complied with this section in relation to the person's first appointment as a justice.

7—Amendment of section 10—Justice may apply for suspension of official duties for personal reasons

25

(1) Section 10(1)—delete "Governor" and substitute:

Attorney-General

(2) Section 10—after subsection (2) insert:

30

(2a) A justice whose office has been suspended under this section by reason of a prolonged absence from the State must, on or before the period of suspension expires, notify the Attorney-General whether the justice intends to return to the State when the period of suspension expires.

8—Amendment of section 11—Disciplinary action, suspension and removal of justices from office

(1) Section 11(1)—delete subsection (1) and substitute:

(1) There is proper cause for taking disciplinary action against a justice if the justice breaches or fails to comply with—

(a) this Act; or

(b) a condition of his or her appointment (whether as a justice or special justice); or

(c) a prescribed provision of a code of conduct.

(2) Section 11(2)—delete "Governor" wherever occurring and substitute in each case:

Attorney-General

(3) Section 11(3)—delete "Governor" and substitute:

Attorney-General

(4) Section 11(5)—delete "Governor" wherever occurring and substitute in each case:

relevant authority

(5) Section 11(5)(d)—delete "Governor's" and substitute:

relevant authority

(6) Section 11(6)—delete "Governor" and substitute:

relevant authority

(7) Section 11—after subsection (6) insert:

(7) In this section—

relevant authority—

(a) in relation to a special justice—means the Governor;

(b) in relation to a justice who is not a special justice—means the Attorney-General.

9—Amendment of section 12—Disciplinary action—retired justices

Section 12(2)—delete "Governor" wherever occurring and substitute in each case:

Attorney-General

10—Amendment of section 16—Offence to hold out etc

Section 16(4)(c)—delete "Governor" and substitute:

Attorney-General

11—Insertion of sections 16A and 16B

After section 16 insert:

16A—False statements

5 A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty:

- 10 (a) if the person made the statement knowing that it was false or misleading—\$10 000 or imprisonment for 2 years; or
(b) in any other case—\$5 000.

16B—Delegation

(1) The Attorney-General may delegate a power or function of the Attorney-General under this Act.

(2) A delegation under this section—

15 (a) may be made—

(i) to a particular person or body; or

(ii) to the person for the time being occupying a particular office or position; and

(b) may be absolute or subject to conditions or limitations specified in the instrument of delegation; and

20 (c) if the instrument of delegation so provides, may be further delegated by the delegate; and

(d) is revocable at will and does not derogate from the power of the delegator to act in any matter.