

House of Assembly

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South Australia

Justices of the Peace Bill 2005

A BILL FOR

An Act to provide for the appointment of justices of the peace; to repeal the *Justices of the Peace Act 1991*; and to make related amendments to various other Acts.

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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*.

2—Commencement

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

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
- (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.

11—Disciplinary action and removal of justices from office

- (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 (whether as a justice or special justice); 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 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 convicted of an offence that, in the opinion of the Governor, shows the convicted 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) the town or suburb in which the justice resides and the town or suburb in which the justice works;

- (c) the telephone number on which the justice can be contacted during business hours and 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—Repeal and transitional provisions

1—Repeal of *Justices of the Peace Act 1991*

The *Justices of the Peace Act 1991* is repealed.

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.

Schedule 2—Related amendments

Part 1—Interpretation

1—Amendment provision

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

Part 2—Amendment of *Acts Interpretation Act 1915*

2—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *sitting days* insert:

special justice means a justice who has been appointed as a special justice;

3—Amendment of section 44—Interpretation of references to summary proceedings

- (1) Section 44(1)—delete "*Justices Act 1921* as simple offences" and substitute:

Summary Procedure Act 1921 as summary offences

- (2) Section 44(2)—delete "*Justices Act 1921*" and substitute:

Summary Procedure Act 1921

Part 3—Amendment of *Administration and Probate Act 1919*

4—Repeal of sections 125 and 126

Sections 125 and 126—delete the sections

Part 4—Amendment of *Adoption Act 1988*

5—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *the Court*—delete "constituted of a Judge or a magistrate and two justices (at least one of the three being a woman and at least one a man)"

- (2) Section 4—after subsection (1) insert:

(1a) For the purposes of this Act, the Court must be constituted of a Judge, or a magistrate and special justice.

(1b) If the Court is constituted of a magistrate and special justice—

(a) questions of law or procedure will be determined by the magistrate; and

(b) other questions will be decided by agreement unless no agreement can be reached, in which case, the decision of the magistrate will be the decision of the Court.

6—Transitional provision

An amendment made by Schedule 2 of the *Justices of the Peace Act 2005* to the *Adoption Act 1988* does not apply in respect of proceedings commenced before the commencement of the amending provision (and those proceedings may continue as if the amending provision had not been enacted).

Part 5—Amendment of *Bail Act 1985*

7—Amendment of section 5—Bail authorities

Section 5(1)(d)—delete "any magistrate" and substitute:
the Magistrates Court

Part 6—Amendment of *Correctional Services Act 1982*

8—Amendment of section 17—Establishment of Visiting Tribunals

Section 17(2)—delete paragraphs (b) and (c) and substitute:
(b) a special justice,

9—Amendment of section 20—Correctional institutions must be inspected on regular basis

Section 20(3)—delete "or is a member of such a Tribunal"

10—Amendment of section 28—Removal of prisoner for criminal investigation, attendance in court etc

- (1) Section 28(1)—delete "a justice or"
- (2) Section 28(2)—delete "justice," wherever occurring

11—Amendment of section 41—Powers of Visiting Tribunal

- (1) Section 41(1)(a)—delete "person, or one of the persons, constituting the Tribunal" and substitute:
Visiting Tribunal
- (2) Section 41(1)(b)—delete "person, or one of the persons, constituting the Tribunal" and substitute:
Visiting Tribunal
- (3) Section 41(1)(d)—delete "the person, or one of the persons, constituting"
- (4) Section 41(1)(e)—delete ", or one of the persons constituting the Visiting Tribunal,"
- (5) Section 41(2)(b)—delete "or any person who constitutes a Visiting Tribunal,"

12—Amendment of section 42—Immunity from liability of persons who constitute Visiting Tribunals

- (1) Section 42—delete ", or is a member of,"

- (2) Section 42—delete "by the person, or by the Visiting Tribunal," and substitute:
by the Visiting Tribunal

13—Amendment of section 47—Appeals against orders of Visiting Tribunals

Section 47(1a)(b)—delete "justice, or justices, of the peace" and substitute:
special justice

14—Amendment of section 89—Regulations

Section 89(2)(f)—delete ", or of persons constituting Visiting Tribunals"

15—Transitional provision

An amendment made by Schedule 2 of the *Justices of the Peace Act 2005* to the *Correctional Services Act 1982* does not apply in respect of proceedings commenced before the commencement of the amending provision (and those proceedings may continue as if the amending provision had not been enacted).

Part 7—Amendment of *Criminal Law Consolidation Act 1935*

16—Amendment of section 299A—Orders as to firearms and offensive weapons

Section 299A(6), definition of *court*—delete "or special magistrate or justices" and substitute:
magistrate or special justice

Part 8—Amendment of *Debtors Act 1936*

17—Amendment of section 3—Abolition of imprisonment for debt

Section 3(1)(b)—delete "before a justice or justices or a special magistrate of the State"

Part 9—Amendment of *Drugs Act 1908*

18—Amendment of section 5—Interpretation

- (1) Section 5, definition of *court*—delete the definition
(2) Section 5, definition of *justice*—delete the definition

19—Amendment of section 35—Diseased or unsound drugs may be seized or destroyed

Section 35II—delete "a special magistrate or two justices" and substitute:
the court

20—Amendment of section 36—Search warrant

Section 36—delete "special magistrate or two justices" and substitute:
court

21—Amendment of section 50—Proceedings

Section 50—delete "before a special magistrate or any two justices of the peace"

Part 10—Amendment of *Family and Community Services Act 1972*

22—Amendment of section 168—Bond or security for compliance with maintenance order

- (1) Section 168(2)—delete "a justice"
- (2) Section 168(2)—delete "the justice" and substitute:
the court

23—Amendment of section 169—Power to commit for failure to pay maintenance

Section 169(3)—delete "or a justice"

24—Amendment of section 174—Warrant for arrest of deserter

Section 174(4)—delete "A justice" and substitute:
The court

25—Amendment of section 237—Exclusion of persons from the hearing of certain cases

Section 237(2)(a)—delete ", or justices," and substitute:
or justice

Part 11—Amendment of *Impounding Act 1920*

26—Amendment of section 30—Delivery of cattle on recognizance without payment of damages

Section 30(1)—delete "any justice in the form and with the conditions set forth in Schedule 9, such justice" and substitute:
a court, the court

27—Repeal of section 47

Section 47—delete the section

28—Repeal of Schedule 9

Schedule 9—delete the Schedule

Part 12—Amendment of *Landlord and Tenant Act 1936*

29—Amendment of section 24—Jurisdiction of Magistrates Court to hear adverse claims

Section 24(2)—delete subsection (2) and substitute:

- (2) The Magistrates Court has jurisdiction to hear a claim under subsection (1) and may make such orders, including an order as to costs, as the Court thinks fit.

30—Amendment of section 25—Decision of Magistrates Court

Section 25—delete "justices before whom the complaint is heard shall find accordingly, and their decision shall be deemed" and substitute:

Magistrates Court must decide accordingly and the decision will be taken

31—Amendment of section 26—Power of landlord to hold goods

Section 26—delete "justices adjudicating upon such claim shall think fit, shall, if the justices so order" and substitute:

Magistrates Court thinks fit, will, if the Court so orders

32—Transitional provision

An amendment made by Schedule 2 of the *Justices of the Peace Act 2005* to the *Landlord and Tenant Act 1936* does not apply in respect of proceedings commenced before the commencement of the amending provision (and those proceedings may continue as if the amending provision had not been enacted).

Part 13—Amendment of *Local Government Act 1999*

33—Amendment of section 58—Specific roles of principal member

Section 58(3)—delete subsection (3)

Part 14—Amendment of *Lottery and Gaming Act 1936*

34—Amendment of section 4—Interpretation

Section 4, definition of *court*—delete the definition

35—Amendment of section 95—Giving false name and address

- (1) Section 95—delete "any justices" and substitute:

a court

- (2) Section 95—delete "or person or by such justices" and substitute:

, person or court

36—Amendment of section 105—Reasonable suspicion sufficient to set up a *prima facie* case

Section 105(1)—delete "special magistrate or justices" and substitute:
court

37—Amendment of section 115—Entry of shops, factories and club premises

- (1) Section 115(1)—delete "justice or any"
- (2) Section 115(2)(a)—delete "justice, officer," and substitute:
officer

38—Repeal of Schedule 4

Schedule 4—delete the Schedule

Part 15—Amendment of *Magistrates Court Act 1991*

39—Amendment of section 3—Interpretation

Section 3(1), definition of *judicial office*—delete ", Special Justice or Justice" and substitute:
or special justice

40—Amendment of section 7—Divisions of Court

Section 7(1)—after paragraph (d) insert:
(e) the Petty Sessions Division.

41—Amendment of section 7A—Constitution of Court

- (1) Section 7A(2)—delete "two Justices or a Special Justice" and substitute:
a special justice but when so constituted, the Court may not impose a sentence of imprisonment in criminal proceedings
- (2) Section 7A—after subsection (2) insert:
 - (2a) If there is no Magistrate or special justice available to constitute the Court as a bail authority, the Court may be constituted of 2 justices for the purposes of an application under the *Bail Act 1985*.

42—Insertion of new section

After section 9 insert:

9A—Petty Sessions Division

The Court in its Petty Sessions Division has jurisdiction—

- (a) to reconsider matters remitted to the Court under section 70I of the *Criminal Law (Sentencing) Act 1988* and make appropriate orders under that section; and

- (b) to hear and determine a charge of an offence against the *Road Traffic Act 1961* for which no penalty of imprisonment is fixed.

43—Transitional provision

An amendment made by Schedule 2 of the *Justices of the Peace Act 2005* to the *Magistrates Court Act 1991* does not apply in respect of proceedings commenced before the commencement of the amending provision (and those proceedings may continue as if the amending provision had not been enacted).

Part 16—Amendment of *Real Property Act 1886*

44—Repeal of sections 235 and 236

Sections 235 and 236—delete the sections

Part 17—Amendment of *Renmark Irrigation Trust Act 1936*

45—Repeal of section 210

Section 210—delete the section

Part 18—Amendment of *Youth Court Act 1993*

46—Amendment of section 3—Interpretation

Section 3, definition of *judicial office*—delete ", special justice or justice" and substitute:

or special justice

47—Amendment of section 9—The Court's judiciary

- (1) Section 9(1)(d)—delete "justices and"
- (2) Section 9(5)—delete "justices and" wherever occurring

48—Amendment of section 14—Constitution of Court

- (1) Section 14(4)—delete "two justices or"
- (2) Section 14(5)—delete ", two justices"
- (3) Section 14(7)—delete "Justice" and substitute:
special justice

49—Amendment of section 22—Appeals

- (1) Section 22(2)(a)—delete ", two justices"
- (2) Section 22(2)(c)—delete ", two justices"

50—Transitional provision

An amendment made by Schedule 2 of the *Justices of the Peace Act 2005* to the *Youth Court Act 1993* does not apply in respect of proceedings commenced before the commencement of the amending provision (and those proceedings may continue as if the amending provision had not been enacted).