

South Australia

Justices of the Peace Regulations 2021

under the *Justices of the Peace Act 2005*

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1—Short title

These regulations may be cited as the *Justices of the Peace Regulations 2021*.

2—Commencement

These regulations come into operation on 1 September 2021.

3—Interpretation

In these regulations—

Act means the *Justices of the Peace Act 2005*.

4—Prescribed requirements for appointment as justice

- (1) For the purposes of section 4(8)(d) of the Act, a person who is to be appointed as a justice must meet the following prescribed requirements:
 - (a) the person must be able to understand the duties and powers of a justice;
 - (b) the person must be sufficiently proficient in speaking English, and in reading and writing in the English language, so as to be able to—
 - (i) identify the nature of documents; and
 - (ii) read and understand instructions relating to the person's official duties; and
 - (iii) seek advice about the person's official duties;
 - (c) the person must not be bankrupt or have applied as a debtor to take the benefit of the laws relating to bankruptcy;
 - (d) the person must not be disqualified from managing or being involved in the management of any company under the *Corporations Act 2001* of the Commonwealth;
 - (e) the person must provide at least 2 references as to the person's good character, reputation and standing in the community;
 - (f) the person must live or work in an area or community in which there is a need for a justice.

Examples—

- 1 The community in which the applicant lives or works may be scattered over a wide area. In that case, it may be desirable to appoint more justices per head of population than in a densely populated urban community.
 - 2 The community in which the applicant lives or works may include particular ethnic or cultural groups. In that case, it may be desirable to appoint a justice of the same ethnic or cultural group.
 - 3 Some places of employment (such as a local council office or the electorate office of a Member of Parliament) have a higher than usual demand for the services of a justice. In that case, it may be desirable to appoint an applicant employed in such a place as a justice.
- (2) A person applying for reappointment as a justice on the expiration of the person's term of appointment under section 4 of the Act is exempt from meeting the requirements under subregulation (1)(e) and (f).

5—Additional prescribed requirements for appointment as special justice

- (1) For the purposes of section 7(3)(c) of the Act, a justice who is to be recommended by the Attorney-General for appointment as a special justice must meet the following prescribed requirements:
 - (a) the justice must be under the age of 65 years;

- (b) the justice must speak English fluently, and be sufficiently proficient in reading and writing in the English language, so as to be able to—
 - (i) communicate clearly in a courtroom; and
 - (ii) read and understand court documents and legislation;
 - (c) the justice must not have been convicted of any offence and must not have any outstanding charges or proceedings in relation to an offence alleged to have been committed by the justice;
 - (d) the justice must have been recommended to the Attorney-General by the Chief Magistrate or the Judge of the Youth Court.
- (2) Despite subregulation (1)(a), the Attorney-General may recommend for appointment as a special justice a justice who is of or over the age of 65 years if satisfied that there is good reason to do so.
- (3) Despite subregulation (1)(c), the Attorney-General may recommend for appointment as a special justice a justice who has been convicted of an offence or who has outstanding against them a charge or proceedings in relation to an offence if the Attorney-General is satisfied that the conviction, or outstanding charge or proceedings should, in the circumstances, be disregarded.
- (4) In this regulation—
offence does not include an offence that is expiable.

6—Disciplinary action

Pursuant to section 11(1)(c) of the Act, there is proper cause for taking disciplinary action against a justice if the justice breaches, or fails to comply with, Part 1 (other than clause 9(2) or (3)) of the Code of Conduct for Justices of the Peace and Special Justices.

7—Period of service prescribed for retired justices

For the purposes of section 16(4)(a) of the Act, the prescribed period is 20 years.

8—Special justices must comply with Code

Special justices must comply with the Code of Conduct for Justices of the Peace and Special Justices.

Schedule 1—Code of Conduct for Justices of the Peace and Special Justices

Part 1—Provisions applicable to all justices of the peace

1—Justice must act within conditions of appointment

A justice must not breach, or fail to comply with, a condition of the justice's appointment.

2—Prohibition on soliciting or accepting fees, gifts etc in connection with office of justice

- (1) A justice must not, whether directly or indirectly, solicit or accept any fee or reward from any person in connection with the office of justice.

- (2) In this clause—

reward includes any gift, gratuity, benefit or favour.

3—Conflict of interest and improper influence

- (1) A justice must not exercise the powers of a justice in respect of a matter in which the justice has a direct or indirect personal, family, financial or business interest.
- (2) A justice must not improperly influence, or attempt to improperly influence, a person who seeks the services of the justice.

4—Administering oaths, taking affidavits, witnessing instruments, etc

- (1) If, under an Act, it is provided—

- (a) that a declaration may be made before a justice; or
- (b) that an instrument may be signed or executed in the presence of, or be attested by, a justice,

the justice taking the declaration, or witnessing or attesting to the instrument, must do so in accordance with any directions provided under the Act.

Example—

Regulation 23 and Schedule 6 Document 1 (Waiver of Rights) under the *Second-hand Vehicle Dealers Regulations 2010*.

- (2) A justice must not—

- (a) administer an oath or affirmation to a person; or
- (b) take the declaration or affidavit of a person; or
- (c) witness the signing or execution of an instrument,

if the justice reasonably doubts that the person is legally or mentally competent to make the oath, affirmation, declaration or affidavit or to execute the document.

5—Justice must not divulge confidential information

A justice must not intentionally divulge information of a private, confidential or commercially sensitive nature obtained by the justice in carrying out official duties except—

- (a) as authorised or required by law; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates.

6—Justice must not provide legal advice

A justice must not provide legal advice when acting in their capacity as a justice.

7—Restrictions on use of office or title of justice

- (1) A justice must not—

- (a) use, or seek to use, the office of justice of the peace for the purpose of advancing the justice's business, commercial or personal interests; or

- (b) use, or seek to use, the title of justice of the peace for the purpose of advancing the justice's business or commercial interests; or
 - (c) use, or seek to use, the office or title of justice of the peace in a manner, or for a purpose, that may bring the office of justice of the peace into disrepute.
- (2) Subclause (1) does not apply to the use of the title of justice of the peace by a Member of Parliament or member of a council on a personal website or social media page.
- (3) In this clause—
member of a council has the same meaning as in the *Local Government Act 1999*.

8—General conduct

- (1) A justice must not criticise or comment on the choice of a person as to whether the person takes an oath or makes an affirmation.
- (2) A justice must behave in a proper and courteous manner to any person who seeks the justice's services as a justice.
- (3) A justice must not engage in dishonest activities or conduct themselves in such a way as to bring the office of justice of the peace into disrepute.

9—Notice of certain information to be provided to Attorney-General

- (1) A justice must, within 14 days after any of the following matters occurring:
 - (a) being charged with an offence (other than an offence that is expiable);
 - (b) the charge of an offence (other than an offence that is expiable) alleged to have been committed by the justice being withdrawn, dismissed or discontinued;
 - (c) being convicted or acquitted of an offence (other than an offence that is expiable);
 - (d) being issued with an interim intervention order or an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*;
 - (e) being issued with an interim firearms prohibition order or a firearms prohibition order under the *Firearms Act 2015*;
 - (f) being subject to any of the following:
 - (i) a control order under the *Serious and Organised Crime (Control) Act 2008*;
 - (ii) a control order under Part 5.3 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;
 - (iii) a control order under the *Child Sex Offenders Registration Act 2006*;
 - (g) being diagnosed with a mental illness where there are concerns the justice may cause harm to themselves, others or property;
 - (h) being found to have acted dishonestly by any court, tribunal, inquiry, regulatory agency or complaint handling or dispute resolution body;
 - (i) becoming bankrupt or applying as a debtor to take the benefit of the laws relating to bankruptcy;

- (j) being disqualified from managing or being involved in the management of any company under the *Corporations Act 2001* of the Commonwealth,
provide written notice of the details of the matter to the Attorney-General.
- (2) A justice must, within 28 days after a change in—
 - (a) the justice's name; or
 - (b) the justice's business or home address; or
 - (c) the telephone number on which the justice can be contacted during business hours or after business hours; or
 - (d) the justice's occupation,provide written notice of the change to the Attorney-General.
- (3) A justice must, as soon as practicable after becoming aware—
 - (a) that the justice will be absent from the State for a period expected to last at least 3 months; or
 - (b) that the justice will, for some other reason, be unable to carry out official duties as a justice for a period of at least 3 months,provide written notice of that information to the Attorney-General.

Part 2—Additional provisions applicable to special justices

10—Interpretation

In this Part—

supervising judicial officer means—

- (a) the Chief Magistrate; or
- (b) the Magistrate who is designated as the Supervising Regional Manager of the Magistrates Court; or
- (c) a Magistrate who is designated as a Regional Manager of the Magistrates Court; or
- (d) the Judge of the Youth Court.

11—Court duties etc

- (1) A special justice must observe the directions of the relevant supervising judicial officer relating to the administration of the Magistrates Court or the Youth Court.
- (2) A special justice must attend court at the time and place notified to the special justice.
- (3) However, a special justice will be excused from attending court if the justice has given reasonable notice to the relevant supervising judicial officer of the justice's inability to attend.
- (4) A special justice must attend to the business of the court that is entrusted to the special justice diligently and to the best of the justice's ability.
- (5) A special justice must, at all times—
 - (a) when carrying out official duties as a special justice; and

- (b) while in the precincts of a court,
observe the standard of conduct and dress expected of a judicial officer.

12—Notice of certain information to be provided to Chief Magistrate and Judge of Youth Court

A special justice must, within 14 days after any of the following matters occurring:

- (a) being charged with an offence (other than an offence that is expiable);
- (b) the charge of an offence (other than an offence that is expiable) alleged to have been committed by the justice being withdrawn, dismissed or discontinued;
- (c) being convicted or acquitted of an offence (other than an offence that is expiable);
- (d) being issued with an interim intervention order or an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*;
- (e) being issued with an interim firearms prohibition order or a firearms prohibition order under the *Firearms Act 2015*;
- (f) being subject to any of the following:
 - (i) a control order under the *Serious and Organised Crime (Control) Act 2008*;
 - (ii) a control order under Part 5.3 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;
 - (iii) a control order under the *Child Sex Offenders Registration Act 2006*;
- (g) being diagnosed with a mental illness where there are concerns the justice may cause harm to themselves, others or property;
- (h) being found to have acted dishonestly by any court, tribunal, inquiry, regulatory agency or complaint handling or dispute resolution body;
- (i) becoming bankrupt or applying as a debtor to take the benefit of the laws relating to bankruptcy;
- (j) being disqualified from managing or being involved in the management of any company under the *Corporations Act 2001* of the Commonwealth,

provide written notice of the details of the matter to the Chief Magistrate or the Judge of the Youth Court (depending on the court to which the special justice is assigned).

Note—

See also clause 9 of the Code (Notice of certain information to be provided to Attorney-General).

Schedule 2—Code of Conduct for Retired Justices of the Peace

1—Prohibition on profiting from office of justice

A person must not use, or seek to use, "JP (Retired)", or any other title or description that implies that the person is a retired justice, for the purpose of advancing the person's business or commercial interests.

Note—

See also section 16(4) of the *Justices of the Peace Act 2005* which makes it an offence (punishable by a fine of \$2 500) to use the title or description when not entitled to do so.

Schedule 3—Revocation of *Justices of the Peace Regulations 2006*

The *Justices of the Peace Regulations 2006* are revoked.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 18 August 2021

No 122 of 2021