

South Australia

Justices of the Peace Regulations 2006

under the *Justices of the Peace Act 2005*

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Legislative history

1—Short title

These regulations may be cited as the *Justices of the Peace Regulations 2006*.

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 his or her official duties; and
 - (iii) seek advice about his or her 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) The following persons are exempt from meeting the requirements under subregulation (1)(e) and (f):
- (a) a person applying for appointment as a justice under Schedule 1 clause 2 of the Act (Transitional provision);
 - (b) a person applying for reappointment as a justice on the expiration of his or her term of appointment under section 4 of the Act.

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 Senior 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 him or her 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

- (1) Pursuant to section 11(1)(b) 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 8(2) or (3)) of the Code.
- (2) Pursuant to section 11(1)(b) of the Act, there is proper cause for taking disciplinary action against a special justice if the special justice breaches, or fails to comply with—
- (a) Part 1 (other than clause 8(2) or (3)) of the Code; or
 - (b) Part 2 of the Code.
- (3) In this regulation—
Code means 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.

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 his or her appointment.

2—Prohibition on charging fees etc

A justice must not exercise the powers of a justice for fee or reward.

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 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 Form 1 (Waiver of Rights) under the *Second-hand Vehicle Dealers Regulations 1995*.

- (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 his or her 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—Prohibition on profiting from office of justice

A justice must not use, or seek to use, the office of justice of the peace for the purpose of advancing his or her business interests.

7—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 a declaration.
- (2) A justice must behave in a proper and courteous manner to any person who seeks his or her services as a justice.

- (3) A justice must not conduct himself or herself in such a way that brings the office of justice of the peace into disrepute.

8—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 withdrawal, dismissal or discontinuance of a charge of an offence (other than an offence that is expiable) alleged to have been committed by the justice;
 - (c) being convicted or acquitted of an offence (other than an offence that is expiable);
 - (d) being adjudged in civil proceedings to have acted dishonestly;
 - (e) becoming bankrupt or applying as a debtor to take the benefit of the laws relating to bankruptcy;
 - (f) 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 he or she will be absent from the State for a period expected to last at least 3 months; or
 - (b) that he or she will, for some other reason, be unable to carry out his or her 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

9—Interpretation

In this Part—

Senior Judge of the Youth Court includes, if the Senior Judge is not reasonably available to exercise a power vested in the Senior Judge under the *Youth Court Act 1993*, the most senior of the Judges of the Youth Court who is available to exercise that power;

supervising judicial officer means—

- (a) the Chief Magistrate; or

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

10—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 he or she has given reasonable notice to the relevant supervising judicial officer of his or her 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 his or her ability.
- (5) A special justice must, at all times—
 - (a) when carrying out his or her 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.

11—Notice of certain information to be provided to Chief Magistrate and Senior 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 expiable offence);
- (b) the charge of an offence (other than an expiable offence) alleged to have been committed by the justice being withdrawn, dismissed or discontinued;
- (c) being convicted or acquitted of an offence (other than an expiable offence);
- (d) being adjudged in civil proceedings to have acted dishonestly;
- (e) becoming bankrupt or applying as a debtor to take the benefit of the laws relating to bankruptcy;
- (f) 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 Senior Judge of the Youth Court (depending on the court to which the special justice is assigned).

Note—

See also clause 8 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 his or her business 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.

Legislative history

Notes

- Variations 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 these regulations (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.

Principal regulations and variations

New entries appear in bold.

| Year | No | Reference | Commencement |
|-------------|------------|---------------------------------------|-----------------------|
| 2006 | 176 | <i>Gazette 22.6.2006 p2028</i> | 1.7.2006: r 2 |
| 2007 | 214 | <i>Gazette 16.8.2007 p3393</i> | 16.8.2007: r 2 |
| 2010 | 252 | <i>Gazette 9.12.2010 p5584</i> | 9.12.2010: r 2 |
| 2016 | 277 | <i>Gazette 8.12.2016 p4930</i> | 1.1.2017: r 2 |

Provisions varied

New entries appear in bold.

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

| Provision | How varied | Commencement |
|---------------|--|------------------|
| <i>r 2</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>16.8.2007</i> |
| r 4 | | |
| r 4(1) | r 4 redesignated as r 4(1) by 252/2010 r 4 | 9.12.2010 |
| r 4(2) | inserted by 252/2010 r 4 | 9.12.2010 |
| r 5 | | |
| r 5(2) | varied by 214/2007 r 4(1) | 16.8.2007 |
| r 5(3) | varied by 214/2007 r 4(2) | 16.8.2007 |
| <i>r 8</i> | <i>deleted by 214/2007 r 5</i> | <i>16.8.2007</i> |

Historical versions

16.8.2007