

Western Australia

Justices of the Peace Act 2004

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Justices of the Peace Act 2004

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Western Australia

Justices of the Peace Act 2004

An Act to provide for the appointment of Justices of the Peace and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Justices of the Peace Act 2004*.

2. Commencement

This Act comes into operation on the day on which the *Magistrates Court Act 2004* comes into operation.

[Section 2 amended by No. 59 of 2004 s. 141.]

3. Interpretation

In this Act, unless the contrary intention appears —

“**CEO**” means the chief executive officer of the department that principally assists the Minister with the administration of this Act;

“**identification number**”, for a JP, means a number, unique to the JP, that is entered in the register in relation to the JP;

“**insolvent under administration**” has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth;

“**JP**” means Justice of the Peace;

“**register**” means the register kept under section 15.

Part 2 — Functions of JPs

4. Functions of JPs

- (1) A JP has and may perform —
 - (a) the functions conferred on a JP by laws that apply in Western Australia, including this Act and other written laws; and
 - (b) the functions conferred by the commission appointing the JP.
- (2) A JP may perform his or her functions anywhere in the State unless the commission appointing the JP says otherwise.
- (3) A JP is not disqualified from performing a function of a JP by reason only of being a ratepayer or being interested in common with the public.

5. JP's functions reduced at age 70 and 75

- (1) A JP who has reached 70 years of age must not —
 - (a) constitute, whether alone or with others, the Magistrates Court or the Children's Court; or
 - (b) perform any function of a visiting justice under the *Prisons Act 1981*,except with the Minister's written permission given under subsection (3).
- (2) A JP who has reached 75 years of age must not —
 - (a) perform any function of a JP under any of the following Acts —
 - (i) *Bail Act 1982*;
 - (ii) *Criminal Investigation (Identifying People) Act 2002*;
 - (iii) *Criminal Property Confiscation Act 2000*;
 - (iv) *Misuse of Drugs Act 1981*;

s. 6

or

- (b) issue any warrant or other document that authorises, or includes an authorisation for —
 - (i) the arrest, apprehension or detention of a person;
 - (ii) the entry or search of a place;
 - (iii) the apprehension, detention, entry or search of an aircraft, vehicle or vessel; or
 - (iv) the seizure of any thing.
- (3) The Minister may permit a JP who has reached 70 years of age to perform all or some of the functions referred to in subsection (1), until the JP reaches 75 years of age or until an earlier date, in the whole or a part of the State, as the permit specifies.

6. Validity of JP's acts not affected by JP's death etc.

The validity and effect of a warrant, summons or other document issued by a JP, or of an act done by a JP, is not affected by the JP reaching an age referred to in section 5 or ceasing to hold office or dying.

7. Acts done outside WA or limit of jurisdiction, validity of

- (1) An act done outside the State in the performance of a function of a JP by a JP in respect of a document intended to take effect inside the State, including the administration of an oath, is as valid and effectual as if the act were done inside the State, unless the act is required by law to be done in the State.
- (2) If a JP's commission limits where or the circumstances in which the JP may perform the functions of a JP —
 - (a) an act of the JP performed as part of those functions is not invalid only because it was not done at a place where or in circumstances in which the JP may perform those functions;

- (b) a summons issued by the JP may be served, and a warrant issued by the JP may be executed, anywhere in the State; and
- (c) it is not necessary for any document signed by, or recording an act of, the JP to indicate where and in what circumstances it was signed or the act was performed.

Part 3 — Appointing JPs and related matters

Division 1 — Appointing JPs

8. Qualifications for appointment

A person is qualified to be appointed as a JP if the person —

- (a) is an Australian citizen under the *Australian Citizenship Act 1948* of the Commonwealth; and
- (b) is enrolled as an elector for the Legislative Assembly in accordance with the *Electoral Act 1907* or for the House of Representatives in accordance with the *Commonwealth Electoral Act 1918*.

9. Minister may recommend appointment to Governor

The Minister may recommend to the Governor that a person who is qualified under section 8 be appointed as a JP.

10. Governor may appoint JPs

- (1) If under section 9 the Minister makes a recommendation in respect of a person, the Governor may appoint the person as a JP.
- (2) The Governor may appoint as many people as JPs as are necessary to assist in the administration of justice and in the maintenance of peace, order and good government in the State.
- (3) A person who ordinarily resides outside the State may be appointed as a JP.
- (4) The appointment of a JP is to be by a commission in the form in Schedule 1 issued under the Public Seal of the State to the appointee.
- (5) The commission appointing a JP may limit where, or the circumstances in which, the JP may perform the functions of a JP.

- (6) Notice of the appointment of a JP is to be published in the *Gazette* after the JP has complied with section 11.

11. Oath or affirmation of office

Before performing the functions of a JP, a JP must take an oath or affirmation of office, in the form set out in Schedule 2, before the Governor, a judge of the Supreme Court or the District Court, a magistrate, or a person authorised for the purpose by the Governor.

Division 2 — People who are JPs by virtue of an office

12. Judges, magistrates and others to be JPs

- (1) A person who holds any of the following offices is, while and by virtue of doing so, a JP —
- (a) a judge, acting judge, auxiliary judge, master, or commissioner, of the Supreme Court;
 - (b) a judge, acting judge, auxiliary judge, or commissioner, of the District Court;
 - (c) a judge, or acting judge, of the Family Court;
 - (d) a judge, acting judge, magistrate, or acting magistrate, of the Children's Court;
 - (e) a magistrate, or acting magistrate, of the Magistrates Court;
 - (f) the State Coroner, Deputy State Coroner, or acting Deputy State Coroner, appointed under the *Coroners Act 1996*;
 - (g) a member of Executive Council.
- (2) Section 11 and Division 3 do not apply to a person who is a JP by virtue of subsection (1).

Division 3 — Ceasing to be a JP

13. JP may resign

- (1) A JP may resign from office by sending the Minister a signed letter of resignation.
- (2) The resignation takes effect when the letter is received by the Minister or on a later date (if any) stated in the letter.
- (3) The CEO must publish a notice of the resignation in the *Gazette*.

14. JP's appointment may be terminated

- (1) The Governor, on the recommendation of the Minister, may terminate the appointment of a person as a JP.
- (2) The person ceases to hold office as a JP on the publication of a notice in the *Gazette*.

Part 4 — Register of JPs

15. Register

- (1) In this section —
“public information” means information that is prescribed to be public information.
- (2) The CEO is to create and keep a register of all JPs other than those referred to in section 12.
- (3) The CEO is to ensure that a permanent record is kept of the information in the register.
- (4) The register —
 - (a) is to be kept in a form and manner that enables the public information in it to be inspected in an up to date form by the public; and
 - (b) is to contain, in relation to each JP, the identification number of the JP, and such other details as are prescribed.
- (5) The public information in the register is to be available for inspection by any person, on payment of any fee prescribed.
- (6) A copy of the public information in the register may be supplied, on payment of any fee prescribed.
- (7) The CEO is to make any amendments necessary to ensure that the register is accurate and up to date.

16. JP to provide information to CEO

- (1) A JP is to inform the CEO if the JP —
 - (a) changes his or her name or address;
 - (b) is convicted of any offence; or
 - (c) becomes an insolvent under administration,within 30 days after the event concerned.

s. 16

- (2) If requested to do so by the CEO, a JP is to provide the CEO with —
- (a) proof of a change of name or address;
 - (b) any information that the CEO requests for the purpose of the administration of this Act.

Part 5 — Miscellaneous

17. Titles for JPs

A JP is entitled to use the titles “Justice of the Peace” and “JP”.

18. Evidentiary matters

- (1) The presence after a signature of a title referred to in section 17 is proof that the signature is that of a person who was at the time a JP, unless the contrary is proved.
- (2) A certificate signed by the CEO certifying that a person is or is not, or was or was not on a date or during a period specified in the certificate, a JP is proof of the contents of the certificate, unless the contrary is proved.
- (3) It is to be presumed that a certificate issued under subsection (2) that purports to be signed by the CEO was signed by a person who at the time was the CEO.

19. Protection from personal liability

- (1) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- (2) A action in tort does not lie against a person for anything that the person does while he or she is a JP in the performance or purported performance of a function of a JP unless the person acts corruptly or maliciously.
- (3) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (2).

20. Breach of this Act by JP not punishable

Contravention of this Act by a JP is not an offence.

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21. Impersonating a JP

- (1) If a person who is not a JP pretends to be, or asserts that he or she is, a JP in the knowledge that he or she is not a JP, the person commits an offence.
- (2) If a person who is not a JP uses a title referred to in section 17 in the knowledge that he or she is not a JP, the person commits an offence.

Penalty: Imprisonment for 12 months.

22. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted to be prescribed by this Act or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made with respect to —
 - (a) preventing or suppressing improper or undesirable practices relating to the performance of functions by JPs;
 - (b) prescribing fees payable in connection with the administration of this Act.

Schedule 1 — Form of commission

[s. 10(4)]

[Heading for commissions]

To: [name]:

1. By this commission issued under the Public Seal of the State, I, the Governor, acting under the *Justices of the Peace Act 2004* section 10 and with the advice and consent of the Executive Council and reposing full trust and confidence in your loyalty, integrity and ability, appoint you as a Justice of the Peace as from and including [date].
2. You have the powers, responsibilities, authorities, jurisdictions and privileges that apply to the office of Justice of the Peace.
3. You are to perform conscientiously, responsibly, and in accordance with the law, the duties that the law imposes on Justices of the Peace, and you are to assist in the administration of justice and in the maintenance of peace, order and good government in the State.
4. You hold the office of Justice of the Peace subject to the *Justices of the Peace Act 2004* as amended from time to time.

Issued ...

Schedule 2 — Oath and affirmation of office

[s. 11]

I, *[name]*, *[insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2003]* that I will faithfully serve the people and the State of Western Australia in the office of a Justice of the Peace and I will do right to all manner of people, according to law, without fear or favour, affection or ill will.

Notes

¹ This is a compilation of the *Justices of the Peace Act 2004* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Short title	Number and Year	Assent	Commencement
<i>Justices of the Peace Act 2004</i>	23 of 2004	15 Sep 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7127)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Oath, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> s. 63 ²	24 of 2005	2 Dec 2005	To be proclaimed (see s. 2)

² On the date as at which this compilation was prepared, the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 s. 63, which gives effect to Sch. 1, had not come into operation. It reads as follows:

“

63. Various Acts amended

Each Act listed in Schedule 1 is amended as set out in that Schedule below the short title of the Act.

Schedule 1 it. 11 reads as follows:

Schedule 1 — Amendments to various Acts

[s. 63]

11. Justices of the Peace Act 2004

Schedule 2	Delete " <i>Act 2003</i> " and insert instead — " <i>Act 2005</i> ".
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