



ANNO VICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 51 of 1975

An Act relating to the appointment, registration and functions of justices of the peace; to repeal certain provisions of the Justices Act 1886–1975; and for connected purposes

[ASSENTED TO 4TH NOVEMBER, 1975]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Justices of the Peace Act 1975*.

2. Commencement. This Act shall commence on a day to be fixed by Proclamation.

3. Provisions repealed. (1) Sections 6 to 10 inclusive, 12 to 17 inclusive, 18 (2), 252 to 257 inclusive, 260, and 262 to 265 inclusive (all of which are in sections 4, 5 and 7 referred to as "the repealed sections") of and the Second Schedule to the *Justices Act 1886–1975* are repealed and that Act is amended accordingly.

(2) The *Justices Act 1886–1975* (being the *Justices Act 1886–1974* as amended by *The Criminal Code and the Justices Act Amendment Act 1975*) as amended by this section may be cited as the *Justices Act 1886–1975*.

4. Savings and transitional. (1) Every person appointed a justice under the repealed sections who is a justice immediately prior to the commencement of this Act and every person who is a justice by virtue of his office immediately prior to the commencement of this Act (not being a person prohibited from acting as a justice pursuant to section 9 of the repealed sections) continues, subject to this Act, to be a justice on such commencement and is deemed to have been appointed under this Act or, in accordance with this Act, to be a justice by virtue of his office, as the case may be.

(2) Nothing in this section limits the operation and effect of the *Acts Interpretation Act 1954-1971*.

5. Interpretation. In this Act, unless the contrary intention appears—

“appointed justice” means a justice appointed under the repealed sections or under section 8;

“justice” means a justice of the peace;

“Minister” means the Minister for Justice and Attorney-General or other Minister of the Crown who, at the material time, is charged with the administration of this Act: the term includes any Minister of the Crown who is temporarily performing the duties of the Minister;

“register” means the register of justices kept under this Act;

“registrar” means the registrar of justices appointed in accordance with this Act: the term includes any person for the time being performing the duties of the registrar;

“Under Secretary” means the Under Secretary, Department of Justice: the term includes any person for the time being occupying the office or performing the duties of the Under Secretary, Department of Justice.

6. Registrar of justices. (1) The Governor in Council may appoint a registrar of justices and such other officers as he considers necessary for the effectual administration of this Act.

(2) The registrar and other officers as aforesaid shall be appointed and hold their respective offices under and in accordance with the *Public Service Act 1922-1973*.

(3) An officer of the Public Service of Queensland may be appointed to and hold the office of registrar or other office as aforesaid in conjunction with any other position in the Public Service.

7. Register of justices. (1) The registrar shall keep a register, to be called the “Register of Justices”, in the prescribed form or, where a form is not prescribed, in such form as the Under Secretary determines of the names and addresses and other prescribed particulars of persons who are entitled to be and who remain registered under this Act as justices.

(2) The duty imposed on the registrar under subsection (1) does not apply in the case of any person who is a justice by virtue of his office.

(3) The name, address and other prescribed particulars of every person appointed a justice under the repealed sections who is a justice immediately prior to the commencement of this Act and who continues

to be a justice on such commencement pursuant to section 4 (1) shall be entered by the registrar in the register on such commencement or as soon as practicable thereafter, and the registrar shall issue to every such person a certificate of registration in the prescribed form:

Provided, however, that an entry shall not be so made and a certificate of registration shall not be so issued in any case where the registrar is satisfied that any such person is no longer desirous or capable of being a justice.

8. Appointment of justices generally. (1) The Governor in Council may from time to time appoint as justices as many persons as he thinks necessary to keep the peace in Queensland.

(2) Persons appointed as justices shall be—

- (a) persons appearing to the Governor in Council to be fit and proper persons to be appointed as justices;
- (b) of or above the age of 21 years at the date of appointment; and
- (c) under the age of 66 years at the date of appointment.

(3) Notification of appointment of a person as a justice shall be published in the Gazette and upon such publication the appointment shall be judicially noticed.

(4) A person may be appointed a justice although he is not a resident in the State.

(5) Application by or on behalf of a person for appointment as a justice shall be made in the manner, in accordance with the procedures and subject to the conditions prescribed.

9. Justices by virtue of office. Every—

- (i) member of the Executive Council;
- (ii) judge of the Supreme Court or of a District Court;
- (iii) stipendiary magistrate;
- (iv) registrar of the Supreme Court or of a District Court;
- (v) clerk of the court or registrar of a Magistrates Court, not being a member of the police force;
- (vi) clerk employed as an officer of the Public Service of Queensland in an office of the Supreme Court, a District Court or a Magistrates Court;
- (vii) person acting as such a member, judge, stipendiary magistrate, registrar or clerk of the court,

not already holding an appointment as a justice, who is of or above the age of 21 years, shall, by virtue of his office and without any further appointment or authority than this Act, be a justice; and he shall continue, subject to this Act, to be a justice pursuant to this section whilst holding the position in question or whilst so acting in any of the positions referred to in paragraph (vii).

10. Oath of office. (1) A justice other than a judge of the Supreme Court or of a District Court shall not exercise any of the functions of his office until he has—

(a) taken an oath of allegiance and office in the following form:—

“ I, _____, do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, as lawful Sovereign of Australia, and Her other Realms and Territories, and to Her Heirs and Successors, according to law, and that I will at all times and in all things discharge the duties of my office according to the laws and statutes of the Commonwealth and of Queensland to the best of my knowledge and ability and will do equal justice to all, without fear, favour or affection.

So HELP ME GOD! ”

or made an affirmation of allegiance and office in the following form:—

“ I, _____, do solemnly and sincerely promise and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, as lawful Sovereign of Australia, and Her other Realms and Territories, and to Her Heirs and Successors, according to law, and that I will at all times and in all things discharge the duties of my office according to the laws and statutes of the Commonwealth and of Queensland to the best of my knowledge and ability and will do equal justice to all, without fear, favour or affection.”; and

(b) in the case of an appointed justice, received a certificate of registration as a justice.

(2) The oath or affirmation may be taken or made before, and may be administered or received by, a judge of the Supreme Court or of a District Court, a stipendiary magistrate or any person authorized in that behalf by writ of *dedimus potestatem*.

(3) In the case of the death or abdication of Her Majesty, the name of Her Majesty's successor according to law for the time being shall be substituted in the form of oath or affirmation prescribed by this section for the name of Her Majesty.

(4) The form of oath to be taken or affirmation to be made by a justice pursuant to this section is in substitution for any oath or affirmation of allegiance or office heretofore prescribed by law.

(5) When a person has once taken or made an oath or affirmation of allegiance and an oath or affirmation of office or an oath or affirmation of allegiance and office on becoming a justice and he afterwards ceases or has ceased to hold the office of justice, it shall not be necessary for him to take again any such oath or affirmation on his again becoming a justice.

11. Registration of justices. (1) Upon proof to the satisfaction of the registrar that a justice appointed pursuant to section 8 has taken or made the prescribed oath or affirmation of allegiance and office and

upon payment of a prescribed registration fee, if any, the registrar shall enter in the register the name, address and other prescribed particulars in respect of that justice and issue to him a certificate of registration in the prescribed form.

(2) If at the expiration of three months after his appointment a justice has not furnished to the registrar proof to the registrar's satisfaction that he has taken or made the prescribed oath or affirmation of allegiance and office, his appointment as a justice shall cease to have effect, and the registrar shall thereupon cause notification thereof to be published in the Gazette.

(3) Where a registration fee referred to in subsection (1) is prescribed, it may be prescribed generally or in respect of certain persons or classes of persons only or in respect of persons other than certain persons or classes of persons.

(4) (a) An appointed justice who changes his name or address or his name and address shall notify the registrar of any such change and shall if required by the registrar produce to him proof of that change.

(b) Upon receipt of notification of any such change and, where required, proof, the registrar shall amend the register to record the change.

12. Resignation. (1) An appointed justice may at any time resign his office by writing addressed to the registrar.

(2) The registrar shall cause notification of the resignation to be published in the Gazette.

(3) Upon the publication in the Gazette of the notification of resignation, the appointed justice ceases to hold office.

13. Revocation of appointment or prohibition from acting. (1) The Governor in Council may—

(a) revoke the appointment of any person who is an appointed justice;

(b) prohibit any justice from acting as a justice for a period determined by him

for failure to comply with a provision of this Act applicable to him or for such other reason as he determines to be a sufficient reason.

(2) Notification of the revocation or prohibition shall be published in the Gazette.

(3) Upon publication of the notification in the Gazette, the appointed justice ceases to hold office or the justice is prohibited from acting as a justice for the period so determined, as the case may be.

14. Ceasing to hold office as a justice. (1) Any appointed justice who—

(a) is convicted of an indictable offence whether on indictment or on summary conviction and whether in Queensland or outside Queensland or is convicted of an offence under section 130 of the *Health Act 1937-1974*;

(b) becomes bankrupt or compounds with his creditors, or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;

(c) becomes mentally ill

thereupon ceases to be a justice, and, in respect of any case referred to in paragraph (a) or (b), he shall forthwith notify the registrar in writing of such conviction, bankruptcy, compounding or otherwise taking advantage of the laws in force for the time being relating to bankruptcy.

Penalty: \$500.

(2) The registrar shall cause notification of the cessation of office of such justice to be published in the Gazette.

15. Correction of register. Without derogating from the provisions of section 11 (4), the registrar shall from time to time make such alterations and amendments to the register as are necessary to ensure that it contains an accurate record of the names and addresses of and other prescribed particulars relating to appointed justices.

16. Return of certificate of registration. (1) Where an appointed justice ceases to be a justice by virtue of any of the provisions of this Act or, pursuant to section 13, is prohibited from acting as a justice for a determined period, he shall, within 14 days after so ceasing to be a justice or after being so prohibited, deliver up to the registrar his certificate of registration.

Penalty: \$500.

(2) A justice who is prohibited from acting as a justice for a determined period is deemed to have ceased to be a justice during that period.

17. Justices for the State. Justices acting within the scope of their respective capacities are justices for the whole of the State.

18. Acts done beyond the State. Any act done by a justice by virtue of his office as a justice out of the State for the purpose of the authentication of the signature of any person to any instrument or document intended to take effect within the State, and any oath administered by any such justice by virtue of his office as a justice out of the State in any case in which an oath may be administered by a justice for Queensland shall, unless such act or oath is required by law to be done or administered within the State, be valid and effectual within the State.

19. Functions and jurisdiction of justices. A justice—

(a) has and may exercise within and for his jurisdiction the several powers and authorities conferred upon him by the *Justices Act 1886-1975* or any other Act;

(b) may take any affidavit or declaration or attest any instrument or document that he may take or attest in accordance with any Act or law thereunto enabling.

20. Identification of signature of justice. (1) The words "Justice of the Peace" or the letters "J.P." written or printed immediately beneath or beside or close to the signature of any person upon any instrument or document shall be prima facie evidence that the person whose signature it purports to be is a justice.

(2) A justice placing his signature upon any instrument or document as a justice shall write or print the words "Justice of the Peace" or the letters "J.P." immediately beneath or beside or close to his signature or otherwise ensure that such words or letters appear immediately beneath or beside or close to his signature.

21. Identity of justices on rolls. The Principal Electoral Officer shall cause the electoral roll for each electoral district to contain, in addition to the particulars it contains pursuant to the provisions of the *Elections Act* 1915-1973, the letters "J.P." against the name of every appointed justice appearing on such roll.

22. Wrongfully acting as a justice. (1) Any person who, not being a justice, assumes to act as a justice is guilty of an offence.

Penalty: \$1 000 or imprisonment for one year.

(2) Any person who, although a justice, is prohibited for the time being from acting as a justice and who, whilst so prohibited, assumes to act as a justice is guilty of an offence.

Penalty: \$1 000 or imprisonment for one year.

(3) Evidence adduced in any proceedings to show that a person referred to in subsection (1) or a person referred to in subsection (2) whilst prohibited as aforesaid wrote or printed the words "Justice of the Peace", the word "Justice" or the letters "J.P." immediately beneath or beside or close to his signature or otherwise caused such words, word or letters to be written or printed or to appear or remain immediately beneath or beside or close to his signature is sufficient evidence in the absence of proof to the contrary that at the time in question such person assumed to act as a justice.

23. Prohibition of reward. (1) A justice shall not extort, demand, take, accept or receive whether directly or indirectly any charge, fee, reward, gratuity or other consideration—

(a) for or in connexion with—

(i) the doing or making of any act or omission as a justice;

(ii) any act or omission done or made or to be done or made as a justice;

(b) under any colour or pretext in respect of his office as a justice.

Penalty: \$1 000 or imprisonment for one year.

(2) The court may upon conviction order the repayment or return by the offender to the rightful owner of any such charge, fee, reward, gratuity or other consideration.

(3) An appointed justice who is convicted of an offence under this section thereupon ceases to be a justice and the registrar shall cause notification of such cessation of office to be published in the Gazette and remove the name of such person from the register.

24. Actions against justices. (1) Any person injured by an act done by a justice in a matter in which by law the justice has not, to his knowledge, jurisdiction or in which he knowingly has exceeded his jurisdiction or by an act done by a justice, in the execution of his duty as such justice with respect to any matter, maliciously and without

reasonable cause may recover damages or loss sustained by him in respect of such injury in an action brought against the justice in any court of competent jurisdiction.

(2) Subject to subsection (1), an action shall not be brought against a justice in respect of anything done by him in the execution of his office.

25. Proceedings generally. (1) An offence against this Act may be prosecuted in a summary way under the *Justices' Act* 1886–1975 upon the complaint of the registrar.

(2) Without derogating from the provisions of section 139 of the *Justices Act* 1886–1975, a complaint for an offence against this Act may be heard at a place in the Magistrates Court District within which the defendant resides.

26. Evidentiary provisions. A certificate purporting to be signed by the registrar stating—

- (a) that a person named therein is or is not registered as a justice;
- (b) that a person named therein is or is not entitled to be registered as a justice for any reason stated therein;
- (c) that a person named therein, being a justice, was or is prohibited from acting as such for a period or at any time specified therein;
- (d) that a person named therein, being a justice, has—
 - (i) been convicted of an indictable offence or an offence under section 130 of the *Health Act* 1937–1974;
 - (ii) become bankrupt;
 - (iii) compounded with his creditors;
 - (iv) otherwise taken advantage of the laws in force for the time being relating to bankruptcy, as referred to in section 14, at a time and as particularized in such certificate;
- (e) that a person named therein, being a person to whom section 14 (1) applies, has failed to forthwith notify the registrar in writing of a conviction, bankruptcy, compounding or otherwise taking advantage of the laws in force for the time being relating to bankruptcy in accordance with the said section 14 (1),

shall for all purposes and in all proceedings be sufficient evidence of the matters stated therein and, in the absence of evidence to the contrary, shall be conclusive such evidence.

27. Publicity. (1) The registrar shall, whenever directed by the Minister, cause to be published in the *Gazette* a list of the names of persons who are appointed justices registered under this Act as justices as at the date specified in the direction, such list being of the names of such appointed justices in the State or of those within a particular district or area specified in the direction.

(2) The list shall show also the addresses of the justices and any other particulars that may be prescribed or, where there is no such prescription, that the Minister directs be shown.

(3) Copies of the list as published in the Gazette shall be kept at the office of every registrar of a Magistrates Court and at every police station in the State or within the particular district or area to which the list relates, as the case may be, in such a position in each case that it is accessible to and may be read by members of the public.

(4) The register shall be open to inspection by members of the public at the office of the registrar but persons inspecting the register shall be entitled to ascertain only the names and addresses of the justices and any other particulars as referred to in subsection (2).

28. Regulations. The Governor in Council may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.