

JUSTICES OF THE PEACE AND COMMISSIONERS FOR DECLARATIONS AMENDMENT BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives of the Bill are to amend the *Justices of the Peace and Commissioners for Declarations Act 1991* (the Act) to:

- extend the transition period from 1 November 1996 to 30 June 2000;
- allow the Justices of the Peace (JP) and Commissioner for Declarations (Cd) designation to be noted on the electoral roll;
- permit magistrates and judges to remain JPs for life, and barristers and solicitors to become JPs by appointment, all groups without the need to take further training; and
- replace the JP Council with an advisory council and change its role; and
- make two procedural changes.

Reasons for the objectives and how they will be achieved

Before the Act came into effect on 1 November 1991, there was one stratum of JPs. These JPs obtained their general powers under the *Justice of the Peace Act 1975* and *Justices Act 1886*. Since 1991, no new appointments as “Justices of the Peace” could be made. Instead, three new categories of JPs were created to which a person could belong. These are, in descending order of powers, JP (Magistrates Court), JP (Qualified) and Commissioner for Declarations.

The Act provided for a five year transitional period terminating on 1 November 1996. During these five years JPs have been allowed to retain their old powers and to transfer to the new categories by taking training courses, if they so wished.

On 1 November 1996, approximately 38,000 JPs, who were appointed prior to 1 November 1991 and did not upgrade to either a JP (Qualified) or JP (Magistrates Court) will lose all their old JP powers (except those of a Commissioner for Declaration). They will automatically hold office as a JP (Commissioner for Declarations). This group includes:

- barristers and solicitors (who had applied to become, and were appointed as JPs prior to 1 November 1991);
- retired magistrates and judges;
- certain officers of the Courts Division of the Department of Justice.

The Queensland Law Reform Commission (QLRC) has now received its fifth program which includes the following reference:

“Review of the role of Justices of the Peace in Queensland in particular the desirability of maintaining this office in light of a changing society.”

Due to the expiry of the transitional period on 1 November 1996, there are a number of amendments that are required to maintain the status quo until the QLRC hands down its report. To facilitate this, the transition period will be extended to 30 June 2000 for all JPs except for:

- previously appointed barristers and solicitors and retired judges and magistrates, who will maintain their old JP powers for life; and
- certain officers of the Courts Division of the Department of Justice, actually working in courthouses, who will maintain their old powers for as long as they hold their positions.

These amendments are particularly important for the servicing of rural and remote areas.

Under section 21 of the *Justice of the Peace Act 1975*, which governed the situation prior to the 1991 amendments, the JP designation was noted on the electoral roll. For public policy reasons, it is desirable that this arrangement be inserted in the *Electoral Act 1992* and be extended to cover commissioners for declarations. This will assist members of the public generally to locate these officers when they are needed.

In addition, magistrates and judges will remain JPs for life and not only for their tenure as a magistrate or judge as is currently the case. They will not be required to undertake further training. Similarly, barristers and solicitors will no longer be disqualified from appointment, as has been the case since 1991. As with the judiciary, they will also not be required to undertake further training. This is because the education of a magistrate or judge or barrister or solicitor far surpasses the JP training and it is therefore superfluous. This amendment is also particularly important for the servicing of rural and remote areas.

It is desirable to replace the JP Council with an advisory council and change its role. The previous JP Council was impeded by the limitations to its role and functions in the Act. The amendment will give a council greater scope to advise the Minister in the administration of the Act.

Two procedural changes have been made to increase efficiency and reduce costs and confusion for the public. These are:

- Old JP certificates need not be returned to the Registrar unless the JP is disqualified; and
- Automatic transfers from one office to another will be made when there are dual appointments.

Administrative cost to government of implementation

The amendments will have a positive budgetary impact. They will reduce the need for JP training and the administrative burden of processing applications and gazettal.

The decision to extend the cut-off date will enable funding and administrative resources to be absorbed over a number of financial years. At present, resources have been devoted to the 1 November 1996 deadline.

The advisory council will have enhanced accountability to, and only act on the direction of the Minister. This will reduce their costs.

The financial implications of noting the initials “JP” and “Cd” on the electoral roll are still being assessed. However, the amendment is permissive and the changes to the electoral roll will not be made until these costs are known.

Fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

The essence of the substantive amendments made by this Bill are largely based on concerns either raised with the Department of Justice by a number of key stakeholders over the past 5 years or brought to the attention of the Honourable the Attorney-General and Minister for Justice in his then capacity as Opposition Spokesman. No additional consultation has, therefore, been carried out in relation to the Bill, apart from further discussions with the Electoral Commission of Queensland concerning the technical amendments related to the electoral roll.

NOTES ON PROVISIONS

Clause 1. Short Title for this Bill.

Clause 2. Provides for the amendment of the *Justices of the Peace and Commissioners for Declarations Act 1991* by Part 2 of this Bill.

Clause 3. Omits the definition of “Council”.

Clause 4. Omits sections 4 to 11 of the Act, which provide for the existing Justices of the Peace Council, and replaces them with a new section 4 empowering the Minister to establish an advisory council to advise the Minister in the administration of the Act.

Clause 5(1). Removes a redundant word in section 16(1)(c) of the Act.

Clause 5(2). Amends section 16(2) of the Act. Under the current provisions of section 19 of the Act a magistrate or judge of the Supreme or District Court is a JP for so long as the person holds office. This means that upon retirement or resignation magistrates and judges lose their JP powers. In 1995 s. 16 (2) was amended to provide that a retired magistrate could become a JP (Magistrates Court) without the need for further training as long as the person applied for the appointment within 5 years after the person’s retirement as a magistrate. Clause 5(2) together with clauses 6(1)

& (2), which amend section 19, mean that both magistrates and judges remain JPs for life without the need for further training.

Since 1991, under the current provisions of section 11 of the *Justices of the Peace and Commissioners for Declarations Regulations* (the Regulations), a barrister or solicitor could not be appointed a JP. Section 11 of the Regulations will be repealed upon royal assent of this Bill. Together with clause 6(2) it will mean that a barrister or solicitor can be appointed as a JP (Qualified) or JP (Magistrates Court) and that in addition, there is no need to undertake the training.

Clause 6(1) & (2). Amend section 19(1) of the Act and add a new section 19(1A). Both magistrates and judges, including those who have retired or resigned will, by virtue of their office, be JPs for life.

Clause 6(3). Amends section 19(4) of the Act. Section 19(4) currently provides that certain officers of the Supreme, District or Magistrates Courts, who are, by virtue of their office, JPs (Magistrates Court), will lose their powers on 1 November 1996. These are officers who were, on 31 October 1991, JPs under section 9(6) of the repealed *Justices of the Peace Act 1975*. The amendment removes the 1 November 1996 cut-off date for these clerks. They will retain their current JP powers for as long as they hold the appointment as a clerk of the court or registrar. All new clerks appointed since 1991 are required to follow the usual process and training prior to obtaining an appointment as a JP (Magistrates Court).

Clause 7. Inserts a new section 24A in the Act which permits an automatic transfer from one office to another when there are dual appointments by the Governor in Council.

Under the current provisions of section 24, if a JP holds office under one category and then transfers to another category - for example - a JP to a JP (Qualified) - the original appointment must be revoked by the Governor in Council and a notification published in the Gazette. This is not only time consuming and costly, but is also confusing for the public. This amendment will no longer require the first appointment to be revoked by the Governor in Council and the revocation published in the Gazette. The registrar will simply alter the register, as currently authorised by section 21 of the Act. Once altered, the person stops holding the original appointment and holds the latter appointment.

This does not in any way affect the requirement for the Governor in Council to make the second appointment and for that second appointment to

be published in the Gazette. In addition, the amendment does not cover the “section 19 JPs” who, having obtained their powers by virtue of their office and not by appointment, are not recorded in the register. It also does not cover the transfers of office under the transitional provisions in sections 42 and 44 of the Act because those sections already provide arrangements for certain office holders becoming JPs (commissioner for declarations) and commissioners for declarations.

Clause 8. Amends section 27 of the Act. That section requires that anyone who ceases to hold the office of JP must return their JP certificate to the Registrar. Failure to do so constitutes an offence with a maximum penalty of 10 penalty units. Administrative problems have developed with respect to JPs who are upgrading under the new system. The upgrade certificates have been withheld pending the return of the old certificates. Also many JPs wish to keep their certificates.

The amendment will mean that the certificate of registration must only be returned in the event that a person is disqualified from being a JP under s. 17 (a),(b) or (d) of the Act. This disqualification relates only to undischarged bankrupts, those convicted of indictable offences or of abusing the position of a JP.

Clause 9. Amends section 42 by extending the 5 year transition period, currently expiring on 1 November 1996, to 30 June 2000, for all JPs who were appointed prior to 1 November 1991 except for barristers and solicitors who will maintain their JP powers for life.

Clause 10. Provides for the amendment of the *Electoral Act 1992* by Part 3 of this Bill.

Clause 11. Provides that the initials “JP” and “Cd” may appear after the person's name on the electoral roll. This re-enacts section 21 of the *Justice of the Peace Act 1975* which required that the JP designation be noted on the electoral roll and extends the arrangement to cover commissioners for declaration.