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The Bulletin reflects the legislation as introduced. The Queensland Legislation Annotations, prepared by the Office of the Queensland Parliamentary Counsel, or the Bills Update, produced by the Table Office of the Queensland Parliament, should be consulted to determine whether the Bill has been enacted and if so, whether the legislation as enacted reflects amendments in Committee. Readers are also directed to the relevant Alert Digest of the Scrutiny of Legislation Committee of the Queensland Parliament.

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PORTFOLIO: Attorney-General and Minister for Justice

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1. BACKGROUND

In 1991, the Legislative Assembly passed the *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld). Sections 1, 2 and 45 of the Act came into force on 10 September 1991. The remainder of the provisions commenced operation on 1 November 1991. Prior to the commencement of the 1991 Act, there was only one category of justices of the peace, responsible for both administrative and judicial duties.\(^1\)

The 1991 Act replaced the single category model with four categories of justices of the peace. The position prior to and post-1991 is summarised in Appendix A to this *Legislation Bulletin*. In the Second Reading Speech to the 1991 legislation, the then Attorney-General, Hon D M Wells MLA, outlined the rationale for the changes, and the functions to be performed by each category of persons, as follows:

*The world in which we live is becomingly increasingly complex. It is time for the age-old institution of justice of the peace to be equipped to meet the demands and*

the complexity of the twenty-first century. The Bill which I am introducing to this House will enable this to occur. Eventually, there will be four categories of people performing the functions which we now associate with justices of the peace.

The first category will be called commissioners for declarations. Their commissions will entitle them to perform the witnessing functions which most people associate with the role of the justice of the peace as it is now understood. They will hold a commission which will authorise them to perform their witnessing function and they will be entitled to the use of a seal of office.

... the second category [of] justices of the peace (qualified) will be the people who will exercise many of the more weighty powers associated with the present concept of justices of the peace. They will be able to perform certain bench duties as well as non-bench duties, such as the issue of search warrants, the remand of defendants, the adjournment of a court, granting of bail, and take certain procedural actions. These JPs will be required to use their seal when appropriate. They will also possess all the powers of a commissioner for declarations.

The third category will be known as justices of the peace (Magistrates Court). These justices will be able to constitute a court for the hearing and determination of a charge of a simple offence where the defendant pleads guilty. This will include those indictable offences which are punishable on summary conviction before a Magistrates Court by a fine, imprisonment or otherwise. ... They will also have the power to preside over proceedings for the examination of witnesses in relation to an indictable offence. The justices of the peace (Magistrates Court) will, in addition, possess all the powers of justices of the peace (qualified) and commissioners for declarations. These justices of the peace will be required to use their seals in respect of their functioning as justices of the peace on the bench, as well as when performing those duties of a JP (qualified).

But what of somebody who does not want to undertake any of the courses and does not want to become a commissioner for declarations? Such a person is now a justice of the peace, and has served the community in that capacity. The Government, therefore, does not propose to take the honour or the title away from them. Such people will continue to be able to write “JP” after their name. After five years, the powers of a JP (qualified) and of a JP (Magistrates Court) will only be capable of being exercised by a person who has received formal training. A person choosing not to undertake the further training and choosing not to become a commissioner for declarations will not be entitled to a seal, but will be entitled to continue his witnessing functions, and to write “JP (commissioner for declarations)” after his name. This will become the fourth category to which I have already referred.2

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### 2. PURPOSE

The Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 makes amendments to the *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld). The main purposes of these proposed amendments are set out below.

- Under the *Justices of the Peace and Commissioners for Declarations Act 1991*, persons who, immediately before the 1991 Act commenced, held office as justices of the peace continue to hold office under the 1991 Act. However (as explained in the extracts from the Second Reading Speech to the 1991 Act above), after a five year moratorium period, if existing JPs do not apply to become either a JP (Qualified), a JP (Magistrates Court), or a Commissioner for Declarations, they will automatically become a Justice of the Peace (Commissioner for Declarations). The five-year transitional period is due to expire on 1 November 1996. The Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 extends the transitional period from 1 November 1996 to 30 June 2000.

- Under the current legislation, a Justices of the Peace Council is established. The amending legislation replaces this body with an advisory council.

- Under the regulations to the existing legislation (s 11 of the *Justices of the Peace and Commissioners for Declarations Regulation 1991*), practising barristers and solicitors are not eligible to become justices of the peace. This prohibition is removed under the proposed changes. In addition, lawyers will not be required to undertake further training before they can be appointed as justices of the peace.

- The current legislation automatically makes Supreme Court and District Court judges, and magistrates, justices of the peace, but only for as long as they hold office. Under the proposed amendments, Supreme Court and District Court judges, and magistrates, will remain justices of the peace, regardless of having retired or resigned from office.

- Certain officers of the Courts Division of the Department of Justice who were, under the old Justices of the Peace 1975 Act, justices of the peace by virtue of their employment, will now retain their status as justices of the peace for as long as they continue to work as officers of the public service in the Supreme Court, a District Court or a Magistrates Court.

The Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 also amends the *Electoral Act 1992* (Qld) to allow persons
holding the office of Justice of the Peace or Commissioner for Declarations to have the initials “JP” or “Cd” noted on the electoral roll after their names.

3. MAIN PROVISIONS OF THE BILL

3.1 TRANSITIONAL ARRANGEMENTS, ELIGIBILITY FOR APPOINTMENT AND APPOINTMENT BY VIRTUE OF OFFICE

3.1.1 Transitional Arrangements

Under s 41 of the current Justices of the Peace and Commissioners for Declarations Act 1991, persons who, immediately before the 1991 Act commenced, held office as justices of the peace continue to hold office under the current legislation. However, after a five year moratorium period (to expire on 1 November 1996), if existing JPs do not apply to become either a JP (Qualified), a JP (Magistrates Court) or a Commissioner for Declarations, they become a Justice of the Peace (Commissioner for Declarations): s 42.

In introducing the Justices of the Peace and Commissioners for Declarations Bill 1991 to the Legislative Assembly, the then Attorney-General, Hon D M Wells MLA, said:

There will be a five-year moratorium during which justices of the peace will continue to hold the powers of a justice of the peace under the present legislation and perform all of the functions associated with the justice of the peace as understood in the context of that legislation. That should give them plenty of time to make a decision as to whether they wish to exercise the higher powers of a justice of the peace and, if so, if they wish to undertake the courses which will be made available.3

Under Clause 9(1) of the Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996, which amends s 42(1) of the current Act, the transitional period will be extended from 1 November 1996 to 30 June 2000.

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Barristers and Solicitors

Clause 9(2) of the 1996 Bill further amends s 42 of the existing Act by providing that the proposed amendment to s 42(1), whereby the transitional period is extended to 30 June 2000, will not apply to lawyers. The effect of this proposed amendment will be that barristers and solicitors who held office as justices of the peace prior to 1 November 1991 will now remain JPs for life.\(^4\)

3.1.2 Eligibility for Appointment

Barristers and Solicitors

The Current Position

Prior to the commencement of the 1991 Justices of the Peace and Commissioners for Declarations Act, barristers and solicitors were eligible to hold office as justices of the peace. However, under the existing legislation, barristers and solicitors cannot be appointed as justices of the peace. Section 11(1) of the Justices of the Peace and Commissioners for Declarations Regulation 1991 provides that a person practising as a barrister or solicitor is not qualified to be appointed as, or to continue in office as, a justice of the peace. However, by virtue of s 11(2), the above prohibition does not apply to lawyers who held the office of justice of the peace immediately before the provision came into force.

The Proposed 1996 Amendments

According to the Minister’s Second Reading Speech to the Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996, Section 11 of the Justices of the Peace and Commissioners for Declarations Regulation 1991: “... will be repealed upon royal assent of this Bill”.\(^5\) Section 6 of the Justices of the Peace and Commissioners for Declarations Amendment Regulation (No 1) 1996 (Subordinate Legislation No 237 of 1996) repeals the existing s 11 of the Justices of the Peace and Commissioners for Declarations Regulation 1991.

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\(^4\) Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 (Qld), Explanatory Notes, p 6.

\(^5\) Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, Queensland Parliamentary Debates, 4 September 1996, p 2424.
In addition, s 16 of the 1991 Act is also proposed to be amended. Section 16(1) currently provides that a person is not qualified to be appointed as a JP or a commissioner for declarations unless the person:

- is at least 18 years of age: s 16(1)(b),
- is considered by the Governor in Council to be a fit and proper person: s 16(1)(a), and
- has completed any compulsory training course: s 16(1)(c).

Section 16(2) currently states that the requirement in s 16(1)(c) does not apply to the appointment of a retired magistrate as a justice of the peace (magistrates court) if the person applies to be appointed as a JP within five years after having retired as a magistrate.

**Clause 5(2)** of the 1996 Bill amends s 16(2). **Proposed new s 16(2)** will now provide that s 16(1)(c) does not apply to the appointment of a lawyer. As explained in the Minister’s Second Reading Speech, the effect of the proposed amendment is that barristers and solicitors will be able to be appointed as JPs (Qualified) or JPs (Magistrates Court) without being required to complete an approved training course. The rationale for the proposed change, as explained by the Minister, is that:

> It must be acknowledged that the training and experience of a solicitor or barrister equips them with the necessary knowledge to meet the demands placed on them as a justice of the peace.

### 3.1.3 JPs and Commissioners for Declarations by Virtue of Office

**Judges and Magistrates**

Section 19 of the Justices of the Peace and Commissioners for Declarations Act 1991 sets out the categories of persons who hold office as justices of the peace or commissioners for declarations by virtue of the office to which they are appointed or the position in which they are employed.

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Section 19(1) of the existing legislation provides that Supreme Court judges, District Court judges and magistrates are, without further appointment and for as long as they hold office, justices of the peace.

Clause 6(1) of the 1996 Bill amends s 19(1) of the existing legislation by omitting the proviso that judges and magistrates are automatically justices for the peace, but only for so long as they hold office. Clause 6(2) of the 1996 Bill inserts a proposed new s 19(1A) as a result of which persons who have retired or resigned from office as Supreme Court judges, District Court judges or magistrates still remain justices of the peace.

Clerks of Court, Registrars etc

Under s 19(2) of the existing legislation, people who are registrars of the Supreme Court or of a District Court, or clerks of the court or registrars of magistrates courts (as long as the person is not a police officer) are, for as long as they hold office:

- a justice of the peace (magistrates court) (where the person is a legal practitioner), or
- a justice of the peace (qualified) (where the person is not a legal practitioner).

By virtue of s 19(3), clerks aged 18 years or over who are employed as public service officers in an office of the Supreme Court, a District Court or a Magistrates Court are, for as long as they are so employed, commissioners for declarations.

Section 19(4) of the existing legislation goes on to provide that persons in any of the above categories who were, immediately prior to the commencement of the 1991 Act, justices of the peace under s 9(vi) of the now repealed Justices of the Peace Act 1975 are justices of the peace (magistrates court) while they continue to be employed as public service officers in an office of the Supreme Court, a District Court or a Magistrate Court. However, this only applies until 1 November 1996: s 19(4)(d). Clause 6(3) of the 1996 Bill amends s 19(4) by removing the 1 November 1996 cut-off date. The effect of the proposed amendment is that this group of people will maintain their old powers for as long as they continue to hold their positions. In his Second Reading Speech, the Minister stated:

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8 Section 9(vi) of the Justices of the Peace Act 1975 (Qld) made clerks employed as officers of the Queensland Public Service in an office of the Supreme Court, or a District Court or a Magistrates Court, justices of the peace by virtue of their office, without further appointment.

9 Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, Queensland Parliamentary Debates, 4 September 1996, p 2423.
The continuation of JP powers for the old courthouse staff is particularly significant. The vast majority of these staff are in rural and remote areas. In some remote places this may result in a person being unnecessarily detained if there is no justice of the peace to hear a remand or bail application.¹⁰

3.1.4 Commentary

Commenting upon the transitional provisions contained in s 42 of the 1991 Act, Adrian Philpott, author of the text *The New J.P. (Qualified) in Queensland*, writing in 1992, said:

Essentially, this is a ‘default’ category of Justices, and it raises a number of issues. The Government’s reasoning on this provision may only be guessed. Perhaps, at the time the Bill was passing through the various stages in the House, few people could estimate how many existing Justices would resign, or become Commissioners, or enrol in the proposed (then mandatory) training courses for the new J.P. categories. If demand for training was likely to be heavy, then perhaps a long transition period seemed indicative ...

If the reader accepts that the thrust of the new legislation is to ensure that only those Justices competent to exercise decision-making functions, do so, then it is difficult to see the logic in permitting some to retain full powers for such a long period.¹¹

However, the Explanatory Notes to the 1996 Bill state that, upon the expiry of the existing transitional period on 1 November 1996, there will be approximately 38,000 justices of the peace who were appointed prior to the commencement of the 1991 legislation and who have not upgraded their qualifications to either a JP (Qualified) or JP (Magistrates Court). Under the current legislation, these justices of the peace will lose all their old JP powers except those associated with the role of Commissioner for Declarations.¹²

The Explanatory Notes explain that the proposed amendments, whereby the transitional period is extended for a further period, and whereby certain categories of persons —

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- will become eligible for appointment as JPs where presently they are disqualified (ie barristers and solicitors),
- will remain JPs for life (judges and magistrates, and barristers and solicitors appointed as JPs before 1 November 1991), or
- will remain JPs for as long as they hold office whereas currently they will remain JPs only until the expiry of the transitional period on 1 November 1996 (certain public service officers employed in the Courts Division of the Department of Justice who were justices of the peace by virtue of their office under the former Justices of the Peace Act 1975), are —

  “... particularly important for the servicing of rural and remote areas”.13

3.2 THE ADVISORY COUNCIL

The Justices of the Peace and Commissioners for Declarations Act 1991 established a council, called the Justices of the Peace Council: s 4. Part 2, Sections 4 to 11 of the 1991 Act provide for:

- the functions of the Council: s 4;
- the membership of the Council: s 5;
- the appointment of a President of the Council: s 6;
- the term during which a member of the Council may hold office: s 7
- the grounds upon which a person is disqualified from membership of the Council: s 8;
- the circumstances in which the office of a member of the Council becomes vacant: s 9
- the procedure to be followed for calling meetings of the Council and conducting business: s 10, and
- the application of the Public Service Management and Employment Act 1988 to appointments of members of the Council: s 11.

Clause 4 of the Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 repeals ss 4-11 of the existing Act and replaces it with only one section, proposed new s 4.

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13 Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 (Qld), Explanatory Notes, pp 2 & 3.
3.2.1 Council Functions

The Existing Legislation

In introducing the 1991 legislation to the Legislative Assembly, the then Attorney-General, Hon D M Wells MLA, explained:

The legislation will establish a JPs’ advisory council. The council will advise the Attorney in relation to the operation of the Act, selection criteria and procedures for the selection of persons for appointment, the nature of training courses to be undertaken, and manuals and other publications that should be produced for the purposes of the Act. It will also advise as to the special needs of justices of the peace situated in remote areas or within communities of Aboriginal and Torres Strait Islanders. Specific cultural considerations for the training needs of Aboriginal justices of the peace and Torres Strait island justices of the peace who are able to constitute Aboriginal or Torres Strait Islander courts under relevant legislation should be identified. While they might be addressed separately from those general responsibilities applicable to justices undergoing other courses, there will be a retention of the essential elements.14

The functions of the Justices of the Peace Council, as described in the extract from the Second Reading Speech above, are set out in s 4 of the existing Act. Specifically, the Council is to provide advice to the Minister (the Attorney-General and Minister for Justice) in relation to:

- the operation of the Act: s 4(a);
- selection criteria and procedures for selection of persons to be appointed as justices of the peace or commissioners for declarations: s 4(b);
- training courses that should be undertaken by persons appointed as justices of the peace or commissioners for declarations: s 4(c);
- manuals and other publications that should be produced for the purposes of the Justices of the Peace and Commissioners for Declarations Act 1991: s 4(d), and
- special needs of justices of the peace situated in remote areas or within communities of Aborigines and Torres Strait Islanders: s 4(e).

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The Proposed Legislation

The 1996 Bill will replace the Justices of the Peace Council with an advisory council. According to the Minister’s Second Reading Speech, this proposed amendment:

... will clarify the role of the council and give it greater scope to advise the Minister in the administration of the Act and attend to priorities set by the Minister. ... The council will be able to give clear advice in relation to all the issues that concern justices throughout the state.15

Proposed new s 4(1) of the Act allows an advisory council to be established. Proposed new s 4(1) provides that the role of the council is “to advise the Minister in the administration of this Act” [ie the Justices of the Peace and Commissioners for Declarations Act 1991]. By contrast with the existing s 4 of the Act, there is only this one, broad, purpose assigned to the advisory council.

3.2.2 Membership of the Council

Section 5 of the existing legislation, under which the Justices of the Peace Council is created, provides that the Council is to consist of not more than 10 members appointed by the Minister (the Attorney-General and Minister for Justice).

Under the 1991 legislation, as originally enacted, the Justices of the Peace Council consisted of not more than 10 members appointed by the Minister, of whom:

- one was to be a justice of the peace chosen by the Minister as a representative of justices of the peace
- one was to be a person nominated by the Minister for Education
- one was to be a nominee of the Minister for Family Services and Aboriginal and Islander Affairs
- one was to be a nominee of the Minister for Police and Emergency Services
- one was to be a person nominated by the Minister for Justice and Corrective Services
- one was to be an officer from a department selected by the Minister, and

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• not more than four were to be persons selected by the Minister because they had special interest or experience that the Minister considered to be of assistance in the administration of the legislation.\textsuperscript{16}

The provisions relating to membership of the Justices of the Peace Council were amended in 1993 by the \textit{Statute Law (Miscellaneous Provisions) (No 2) Act}, and in 1995 by the \textit{Justice and Attorney-General (Miscellaneous Provisions) Act}. The Act currently specifies that the composition of the Council’s 10 members is to be as follows:

- One is to be a justice of the peace whom the Minister has selected as a representative of justices of the peace: s 5(a).

- The Act requires that an officer from each of the following departments is to be a member of the Council (ie the department administering the \textit{Vocational Education, Training and Employment Act 1991}: s 5(b), and the department administering the \textit{Community Services (Aborigines) Act 1984} and the \textit{Community Services (Torres Strait) Act 1984}: s 5(c)). One member of the Council is to be a police officer: s 5(d). Another is to be an officer of a department selected by the Minister: s 5(e).

- Finally, not more than 5 appointees to the Council are to be persons selected by the Minister on the basis that they possess special interest or experience of the kind that the Minister considers to be of assistance in the administration of the Justices of the Peace and Commissioners for Declarations Act 1991: s 5(f).

When the Justices of the Peace and Commissioners for Declarations Bill 1991 was originally introduced to the Legislative Assembly, Mr Littleproud MLA expressed concern about the representativeness of the Council:

\textit{My major concern with this Bill is the composition of the Justices of the Peace Council and the position of the president of the council. I am not alone in criticising the proposed membership of the council and the method of appointment of the president of the council. Critics claim that the council needs to be more representative of the legal profession and the law in general. I agree with that criticism. I cannot see any legitimate reason why the members of the council should be nominees of selected Ministers. It makes much more sense for people representative of various organisations associated with the law and the courts to serve on the council. Groups such as the Queensland Law Society, the Bar Association, the Stipendiary Magistrates Association of Queensland and the Queensland Justices Association deserve membership.}\textsuperscript{17}


\textsuperscript{17} Justices of the Peace and Commissioners for Declarations Bill 1996 (Qld), Second Reading, Mr Littleproud MLA, \textit{Queensland Parliamentary Debates}, 20 August 1991, p 365.
Under the proposed changes to the Justices of the Peace and Commissioners for Declarations Act 1991, the advisory council will consist of “… the members appointed to the council by the Minister”: proposed new s 4(2). By contrast with s 5 of the existing legislation, there is no limit on the number of persons who may be appointed as members of the advisory council.

Unlike the provisions contained in s 5 of the existing legislation, there is no requirement in the proposed amendments for any members of the council to be representatives of particular government departments. Rather, the only requirement contained in proposed new s 4(3) is that the Minister, when appointing members to the council, must consider:

- a person’s knowledge of the roles and functions of justices of the peace and commissioners for declarations: proposed new s 4(3)(a)
- any special interest, knowledge or experience a person may bring to the advisory council, including a special interest in or knowledge or experience of
  - the needs of particular areas of the State, including rural and remote areas, to be serviced by justices of the peace and commissioners for declarations and the special needs JPs and Cds servicing such areas have: proposed new s 4(3)(b)(i); or
  - the needs of Aboriginal or Torres Strait Islander communities to be serviced by justices of the peace and commissioners for declarations and the special needs of JPs and Cds servicing these communities: proposed new s 4(3)(b)(ii).

3.2.3 Council Meetings

Under the existing legislation, the procedure for calling meetings of the Justices of the Peace Council and for conducting business at those meetings is determined by the council: s 10(1).

Under the proposed amendments, the advisory council will meet at the times and conduct its proceedings in the way the Minister directs: proposed new s 4(4).

3.2.4 Other Administrative Matters

Proposed new s 4 of the Justices of the Peace and Commissioners for Declarations Act 1991 makes no provision for any of the following matters:

- the appointment of a President of the advisory council
• how long a member of the advisory council is to hold office (Under the existing legislation, members of the Justices of the Peace Council hold office for not more than three years: s 7.)

• the circumstances in which a person would be disqualified to be appointed as a member of the council (Under s 8 of the existing legislation, a person who is an undischarged bankrupt, stands convicted in Queensland of an indictable offence, or is a patient as defined in the Mental Health Act 1974, cannot be a member of the Justices of the Peace Council. Nor can such persons, if previously appointed, continue to be members of the council.)

• the circumstances in which the office held by a member of the council will become vacant, and in which a member of the council can be removed from office (Under the existing legislation, the Minister may remove a member of the advisory council from his or her position on the grounds of misbehaviour, physical or mental incapacity, inefficiency or incompetence: s 9(2)).

3.3 PROCEDURAL CHANGES

The proposed 1996 amendments to the Justices of the Peace and Commissioner for Declarations Act 1991 include two procedural changes. One involves an amendment to s 27 of the Act; the other involves an amendment to s 24. According to the Minister’s Second Reading Speech, both proposed changes are designed “... to increase efficiency. Savings in both time and costs will be generated”.18

3.3.1 Return of Seal of Office or Certificate of Registration

Section 27(1) of the Justices of the Peace and Commissioners for Declarations Act 1991 requires a person who ceases to hold office as an appointed justice of the peace or an appointed commissioner for declarations to return to the Registrar of justices of the peace and commissioners for declarations any seal of office or certificate of registration that has been issued to the person. Seals or certificates must be delivered up to the registrar within 14 days of a person ceasing to hold office. The seal or certificate of registration need not be returned in the event that a person is disqualified from being a JP or a commissioner for declarations under s17(c) of the Act. That disqualification relates to a person who is a patient within the meaning of the Mental Health Act 1974.

18 Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, Queensland Parliamentary Debates, 4 September 1996, p 2424.
The Act imposes a penalty for failing to comply with the requirements contained in s 27(1). The maximum penalty is 10 penalty units (ie currently $750\textsuperscript{19}).

Clause 8 amends s 27(1) so that a seal of office or certificate of registration will only be required to be returned to the registrar if a person is disqualified from being a JP or a commissioner for declarations because the person:

- is an undischarged bankrupt (This is the ground for disqualification from office set out in s 17(a) of the Justices of the Peace and Commissioners for Declarations Act 1991.)
- is convicted of an indictable offence in Queensland (This is the ground for disqualification from office set out in s 17(b) of the Act.)
- is convicted of an offence set out in Part 4 of the Justices of the Peace and Commissioners for Declarations Act (such as wrongfully acting as a JP or a commissioner for declarations, or seeking or taking a reward for performing the functions of a JP or a commissioner for declarations) (This is the ground for disqualification from office set out in s 17(d) of the Act.)

The rationale for the proposed change, as explained in the Minister’s Second Reading Speech, is that:

> Administrative problems have developed for JPs who are upgrading under the new system as the new certificates are withheld pending the return of the old certificates. Also, many JPs wish to keep their certificates as evidence of their commitment to the community.\textsuperscript{20}

### 3.3.2 Changes of Office

Section 24 of the existing legislation authorises the Governor in Council to revoke the appointment of a justice of the peace or commissioner for declarations for such reasons as he or she thinks fit. Revocation of an appointment is made by notification published in the Queensland Government Gazette. Once the notification is published in the Government Gazette, the registrar removes the person’s name from the register of justices of the peace and commissioners for declarations.

Clause 7 of the 1996 Bill inserts proposed new s 24A. As a result of this proposed amendment, if a JP or commissioner for declarations holds office under one category and later transfers to another category, the only requirement will be that

\textsuperscript{19} Penalties and Sentences Act 1992 (Qld), s 5(b).

\textsuperscript{20} Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, Queensland Parliamentary Debates, 4 September 1996, p 2424.
the registrar is to remove the person’s name from the register as the holder of the existing office and insert an entry that the person holds the later office (ie there is no requirement that the original appointment be revoked and that notice of the revocation be published in the Government Gazette). As the Explanatory Notes explain, the proposed amendment:

... 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 (commissioners for declarations) and commissioners for declarations.21

3.4 AMENDMENTS TO THE ELECTORAL ACT

Clause 11 of the Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 amends s 58 of Queensland’s Electoral Act. Section 58(1) of the Electoral Act requires the Electoral Commission of Queensland to maintain an electoral roll for each electoral district. Under s 58(3) of the Electoral Act, an electoral roll for a district must give the name, address, sex, occupation and date of birth of each person entitled to be enrolled for the electoral district. Clause 11 proposes to amend s 58 by inserting a new s 58(3A). Proposed new s 58(3A)(a) provides that each electoral roll may also set out, for a person who holds office as a justice of the peace, the initials “JP” after the person’s name. Proposed new s 58(3A)(b) provides that each electoral roll may also set out, for a person who holds office as a Commissioner for Declarations, the initials “Cd” after the person’s name.

Under s 21 of the now repealed Justices of the Peace Act 1975, the Principal Electoral Officer was required to ensure that the electoral roll for each district contained the notation “JP” against the name of any person appointed as a justice of the peace. Section 27 of the Justices of the Peace Act 1975 provided for the publication in the Government Gazette, as directed by the Minister, of the names and addresses of justices of the peace. In introducing the 1975 legislation to the

21 Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 (Qld), Explanatory Notes, p 5.
Legislative Assembly, the then Minister for Justice and Attorney-General, Hon W E Knox MLA, stated:

The most frequent criticism concerning justices of the peace received by the Department of Justice is the difficulty associated with locating a justice to witness a signature on a document. The Bill seeks to overcome this difficulty by providing for lists of justices to be published from time to time. With the assistance of the computer, it will not be a difficult task to publish a list of persons appointed a justice of the peace in each electoral district. Such a computer programme will be made much easier by the requirement contained in the Bill of identifying appointed justices on each printed electoral roll.22

A requirement that a list of persons holding office as justices of the peace (or commissioners for declarations) be published was carried over into the 1991 Act (s 38). However, the requirement in s 21 of the Justices of the Peace Act 1975 was not re-enacted in the 1991 Act. The proposed 1996 amendments will now allow for the designation of JP to be entered after a person’s name on the electoral roll. Where a person holds office as a Commissioner for Declarations (the third category created by the 1991 legislation), the proposed amendments allow the initials “Cd” to be noted after the person’s name on the electoral roll. In introducing the Bill to the House, the Minister explained the rationale for the amendment to the Electoral Act as follows:

The electoral roll provides the best means of assisting members of the public and other interested parties to locate JPs and commissioners for declarations when they are needed, because the electoral roll is updated on a regular basis.23

However, by contrast with s 21 of the former 1975 Act, the proposed amendments to the Electoral Act do not make it mandatory for the Electoral Commission to note the JP (and Cd) designation on the roll (the wording of the proposed amendment states that the electoral roll “may set out” these initials). In discussing the administrative cost of implementing the changes proposed under the Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996, the Explanatory Notes to the Bill stated:

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.24


23 Justices of the Peace and Commissioners for Declarations Legislation Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, Queensland Parliamentary Debates, 4 September 1996, p 2424.
BIBLIOGRAPHY

Monographs


• Queensland. Department of Justice and Attorney-General, *Administrative Duties of Commissioners for Declarations and Justices of the Peace*, Department of Justice and Attorney-General, Brisbane, July 1993.


Articles


Hansard


**APPENDIX A**

**An overview of JP reform**

<table>
<thead>
<tr>
<th>Pre-1991</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only one category of justice of the peace, responsible for administrative duties, non-bench judicial duties, minor on-bench judicial duties and major on-bench judicial duties (but, in practice, not committal hearings).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Post-1991</th>
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</thead>
<tbody>
<tr>
<td>Three categories of justice of the peace</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Commissioner for Declarations</th>
<th>Justice of the Peace (Qualified)</th>
<th>Justice of the Peace (Magistrate's Court)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Administrative duties only</td>
<td>1. Administrative duties</td>
<td>1. Administrative duties</td>
</tr>
<tr>
<td></td>
<td>2. Non-bench judicial duties</td>
<td>2. Non-bench judicial duties</td>
</tr>
<tr>
<td></td>
<td>3. Minor on-bench judicial duties</td>
<td>3. Minor on-bench judicial duties</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Major on-bench judicial duties</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5. Committal hearings</td>
</tr>
</tbody>
</table>


Note: Under the existing legislation, persons appointed as justices of the peace who make no choice about becoming either a JP (Qualified), a JP (Magistrates Court) or a Commissioner for Declarations will automatically become a JP (Commissioner for Declarations) at the end of the five year moratorium period.
It is crucial that Queensland Justices of the Peace understand their powers and duties as the five year reform program moves into its final phase. November 1996 is the cut-off date for people to decide where they want to fit into the new system.

As we move into the last year of reform, the Department of Justice and Attorney-General would like J.P.s to consider the following options so they can reach a decision by the November deadline. If you are a J.P under the old system you can opt to:

- take an exam to upgrade to a Justice of the Peace (Qualified). Once you pass the exam you seek nomination by your local Member and then make application to the Department of Justice and Attorney-General. You will have to pay an administration fee of $29 and you will be issued with a seal of office, registration number, certificate and, if requested, the manuals.

  or

- transfer to become a Commissioner for Declarations. You must seek nomination by your local Member and then make application to the Department of Justice and Attorney-General. You will have to pay a $29 administration fee and you will be sent a seal of office, registration number, certificate and a manual for C.dec.s.

  or

- do nothing, in which case (as at 1 November 19996) you will be automatically transferred to the position of Justice of the Peace (Commissioner for Declarations). The Department will give you written notification before this happens.

The Reasons behind the Reforms

These changes are not being made for change’s sake. There are three reasons for them:

First, the new system is designed to guarantee that all city, country and coastal J.P.s have a clear understanding of their duties and responsibilities to the Queensland citizens who ask for their services.

Second, trained J.P.s will have more confidence when dealing with requests from the courts, the police and members of the community.

Third, the reforms encourage J.P.s to use their manuals to ensure that civil liberties and justice are properly upheld.

Next year’s reforms may affect you, so it is important to take steps to ensure that you are aware of the duties of your current office and the options available. Then make your decision. Now is the time to weigh up what role you want to play in 1996 as a Queensland J.P.

If you want more information after reading this newsletter, then contact the Department of Justice and Attorney-General by calling 1800 639 409.
APPENDIX C

THE NEW STRUCTURE FOR QLD J.P.S

As of 1 November 1996 all J.P.s will belong to one of these four categories

Commissioner for Declarations

C.dec.s have the authority to:
- Witness signatures on legal and official documents
- Attest statutory declarations
- Mark exhibits associated with affidavits
- Administer the swearing of oaths of service
- Supervise affidavits and affirmations
- Witness consent forms under the Marriage Act
- Witness wills and take dying declarations
- Certify ‘true copies’ of documents
- Assist people from interstate with legal documents

*This position requires no compulsory course or exam; however, training is available.*

Justice of the Peace (Qualified)

J.P. (Qual.)s have all the powers of a C.dec. and can also:
- Issue summonses, search warrants, arrest warrants and warrants of seizure
- Attend as an independent person when police are conducting a ‘Record of Interview’
- Remand defendants to appear in court
- Adjourn court sessions
- Grant bail to accused people
- Issue certain Domestic Violence Orders with another J.P. (Qual.)

*This position requires that applicants do both training and an exam. This position requires that applicants do both training and an exam. However, the training is presently confined to remote areas of Queensland where people have limited access to a Stipendiary Magistrate. As time goes on, training will be extended to all areas of Queensland.*

Justice of the Peace (Magistrates Court)

J.P. (MAG. CT)s have all the powers of a C.dec. and a J.P. (Qual.) and can also:
- Form a court with another J.P. (MAG. CT) to hear simple offences, preside over other minor offences where a guilty plea is being made and conduct committal proceedings.

*This position requires that applicants do both training and an exam. However, the training is presently confined to remote areas of Queensland where people have limited access to a Stipendiary Magistrate. As time goes on, training will be extended to all areas of Queensland.*

Justice of the Peace (Commissioner for Declarations)

J.P. (C.dec.)s have all the powers of a C.dec. already listed.
- J.P. (C.dec.)s have no judicial powers bar the ability to witness signatures and perform other administrative duties. This category of J.P. will officially commence on 1 November 1996.

All C.dec.s and J.P. (C.dec.)s are strongly urged to take the exam to become a J.P. (Qual.), as they are needed to serve their community in the fullest way possible.

New law for JPs

Solicitors and barristers can be appointed Justices of the Peace, repealing a 1991 law which prevented them, under new legislation introduced to Parliament yesterday.

Amendments to the Justice of the Peace Act also will make judges and magistrates JPs for life.

Attorney-General Denver Beanland said the Bill replaced the JP Council with an Advisory Council which would give it greater scope to advise the Minister.