



Justices of the Peace

PRACTICE MANUAL

THIS PRACTICE MANUAL

The practice manual has been developed to assist applicants and Office of Regulatory Services (ORS) staff in the appointment of persons under the *Justices of the Peace Act 1989*. This practice manual sets out basic information on the Act and provides information to assist applicants applying for appointment as a Justice of the Peace.

It is intended that this practice manual will operate as a living document, which will be improved upon as policy or the law is amended. This may also include capturing responses to issues as they arise in the application of the policy and the law.

We encourage all stakeholders (applicants, licensees and staff) to feel comfortable in raising issues regarding this Manual, with a view to clarifying policy or legal issues, to improve the administration of the Act.

Written and published by the ACT Office of Regulatory Services

OUR CUSTOMER COMMITMENT

Who We Are:

We are the Office of Regulatory Services (ORS). The Office is made up of a variety of licensing, registration and compliance activities including:

- Workcover
- Security Industry
- Liquor Licensing
- Business Names
- Associations
- Charitable Collections
- Real Estate Agents
- Land Titles
- Births, Deaths and Marriages
- Occupational Health and Safety
- Dangerous Goods and Dangerous substances
- Rental Bonds
- Consumer protection
- Justice of the Peace

Objective:

Our mission is that we are a regulator of best practice, serving the ACT community, industry and government. Our objective is to register, licence and ensure compliance of activities against relevant legislation.

What you can expect from us:

As a customer you can expect high quality customer service.

If you wish to make a complaint or you have a suggestion:

Please contact the ORS on (02) 62076 444 or via email at bdm@act.gov.au

Or attend the office at:

255 Canberra Avenue
FYSHWICK ACT 2609

Our office hours are:

9am - 4.30pm Monday to Friday (excluding Public Holidays)

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CHAPTER 1 - PURPOSE

1.1. Purpose of the Justices of the Peace Act 1989

Justices of the Peace serve different roles in different jurisdictions. It is important, therefore, to understand the role of Justices of the Peace in the ACT, and the legislative basis for that role.

In the ACT, Justices of the Peace are appointed by the Minister, under the *Justices of the Peace Act 1989*, but the Act does not prescribe the role. Generally, the role of Justices of the Peace in the ACT is determined by procedural requirements of other ACT legislation. Justices of the Peace may, however, perform a wider range of functions under Commonwealth law, including the witnessing of statutory declarations.

Specifically, Justices of the Peace have a role under the *Oaths and Affirmations Act 1984*. Under this Act, an oath or affidavit to be made for the purposes of a proceeding or for any purpose under law in the ACT can be sworn or affirmed before a Justice of the Peace.

The *Instruments Act 1933* provides for Justices of the Peace to have a role in the enforcement of bills of sale.

Justices of the Peace may also have a role under the Commonwealth *Customs Act 1901*. This Act provides for Justices of the Peace to issue an order for an external search of a detainee, in certain circumstances.

By virtue of the Oath of Office taken at the time of their appointment, ACT Justices of the Peace undertake to “well and truly serve in the office of justice of the peace of the Australian Capital Territory”. Justices of Peace in the ACT serve the community primarily by:

- administering oaths or affidavits, witnessing statutory declarations and taking affirmations;
- witnessing signatures; and
- attesting and certifying documents.

The role of ACT Justices of the Peace is limited to functions in the ACT and while the Justice is physically present in the ACT. There is legislation in most other jurisdictions, which allows documents witnessed in the ACT to be accepted in a court in that jurisdiction.

The Minister’s expectation of Justices of the Peace in the ACT is that they will serve the wider ACT community. This means that Justices of the Peace are not generally appointed for the purposes of serving only the organisation in which they work.

CHAPTER 2 -GUIDANCE MATERIAL

2.1 Guidelines for appointment

The Attorney-General issues guidelines for:

- The Role of a Justice of the Peace (Justices of the Peace (Role)Guidelines 2006); and
- The Eligibility criteria for a Justice of the Peace (Justices of the Peace (Eligibility) Guidelines 2006)

This manual will seek to explain these guides and discuss what is being considered by the Office in recommending an appointment to the Attorney-General.

CHAPTER 3 -ROLE

3.1 How Justices of the Peace should perform their role?

This guideline enjoins Justices of the Peace to do right to all people, following the laws of the Commonwealth and the Territory, without fear or favour, affection, or ill-will.

In performing their role, Justices of the Peace should:

1. be available at reasonable times;
2. be professional, courteous and impartial;
3. not provide legal advice;
4. avoid conflicts of interest;
5. not receive payment or reward for service;
6. keep contact details up to date;
7. adhere to the appropriate legislation and correct procedures; and
8. maintain confidentiality.

The Minister may end a person's appointment as a Justice of the Peace if satisfied the Justice of the Peace has failed to observe these guiding principles.

3.2 Justices of the Peace should be available at all reasonable times

Justices of the Peace should be available to perform their role at all reasonable times. They should generally be available:

- after hours;
- on weekends and public holidays; and
- if possible, during business hours (with agreement of their employer).

It is generally not acceptable for a Justice of the Peace to refuse or fail to perform his or her role because they are busy, or because it is otherwise inconvenient to do so. The Justice of the Peace should instead either arrange to meet with the person requiring assistance at a mutually convenient time, or direct them to an available, local Justice of the Peace.

The role of a Justice of the Peace may involve a large time commitment. If a Justice of the Peace finds that he or she cannot accommodate the demand for his or her services, then he or she should tender his or her resignation, in writing, to the Minister.

3.3 Justices of the Peace should be professional courteous and impartial

In performing their role, a Justice of the Peace should behave in a professional, courteous, and impartial manner. The Justice of the Peace should at all times be respectful of the circumstances of the person requiring assistance.

3.4 Justice of the Peace should not provide legal advice

Although Justices of the Peace are required to undertake training before being appointed to the office, they are not legally trained and cannot provide legal advice. If legal advice is sought, the Justice of the Peace should decline to provide advice and indicate that the person should contact a legal practitioner, or seek assistance from one of the providers of free legal advice.

3.5 Justice of the Peace should avoid conflicts of interest

A Justice of the Peace should not knowingly perform the functions of a Justice of the Peace where there is a real or apparent risk of a conflict between the Justice of the Peace's public duties and his or her personal or pecuniary interests.

A Justice of the Peace must be (and be seen to be) independent of matters connected with the performance of his or her office. A Justice of the Peace should therefore not:

- administer oaths or affidavits, or take statutory declarations and affirmations for members of his or her family (including 'in-laws' and de facto relationships), business associates, personal clients, employer, or any other person in circumstances in which it could be claimed the Justice of the Peace is not a disinterested party;
- witness documents for any person in circumstances in which it could be claimed that the Justice of the Peace is not a disinterested party; and
- prepare, or assist in the preparation of, documents which the Justice of the Peace intends to witness.

If in any doubt whatsoever, a Justice of the Peace should refer the matter to another Justice of the Peace.

3.6 Justices of the Peace should neither seek or accept payment or reward for service

The office of Justice of the Peace is an honorary one. A Justice of the Peace must not charge or accept any payment, reward or any form of compensation or gift for acting in the capacity of Justice of the Peace.

3.7 Justices of the Peace should keep their contact details up to date

A Justice of the Peace must keep the Department of Justice and Community Safety informed of changes that may affect his or her role as a Justice of the Peace. This includes changes to his or her current private and business addresses and telephone numbers, or any other event that would disqualify the Justice of the Peace from holding office.

3.8 Justices of the Peace should adhere to the appropriate legislation and correct procedure in performing their role

In performing the role of a Justice of the Peace, it is very important that you comply with the legislation. A Justice of the Peace should decline to act if he or she is not aware of the legislative requirements for acting in a particular case or if he or she

cannot comply with the legislative requirements or instructions accompanying a document.

In addition, a Justice of the Peace must comply with the following procedural rules:

- a Justice of the Peace must not act unless satisfied he or she has the authority or jurisdiction to do so;
- a Justice of the Peace must assist a person seeking assistance to find another qualified and available Justice of the Peace if unable to act;
- a Justice of the Peace should assist a person seeking assistance if required by the circumstances (for example, due to a person's mobility, sight or hearing disability, or concerns regarding language or literacy);
- a Justice of the Peace should not be pressured into acting, but should take the time necessary to ensure the appropriate legislation and procedures are followed;
- a Justice of the Peace is not required to read a document, but should be satisfied, before acting, that the document is substantially in the correct format for that type of document;
- a Justice of the Peace must always warn the signatory to a statutory declaration or affidavit of the consequences of making a false statement;
- a Justice of the Peace must not witness a signature unless he or she has personally met the signatory and the document is signed in his or her presence;
- a Justice of the Peace must not sign a document until after the signatory has signed it;
- a Justice of the Peace should not witness a blank or incomplete document or a document written in pencil, which could be erased, or where there is space where information can be added at a later time;

- a Justice of the Peace must not sign copies of documents as certified true copies unless he or she has actually sighted the document and is satisfied that it is a copy of that document;
- a Justice of the Peace should suitably qualify the jurat if his or her role was limited in any way (for example, if the person seeking assistance refused to allow the Justice of the Peace to sight the entire document);
- a Justice of the Peace cannot witness his or her own signature;
- when signing documents, a Justice of the Peace must use the same name as noted in the Justices of the Peace Register, and should record his or her Registration Number; and
- a Justice of the Peace must maintain appropriate records regarding the provision of services to the public.

3.9 Justices of the Peace must maintain confidentiality

Justices of the Peace may, through their role in witnessing documents, become aware of the contents of documents and confidential information. A Justice of the Peace must at all times maintain the confidentiality and privacy of a person seeking assistance.

A Justice of the peace must not use information obtained in performing the office for his or her own advantage or that of any other person.

CHAPTER 4 - ELIGIBILITY REQUIREMENTS

4.1 Eligibility Criteria

For the purposes of section 2 of the *Justices of the Peace Act 1989* a person is eligible to be appointed as a Justice of the Peace if the person:

- (a) is an Australian citizen; and
- (b) is a permanent resident of the ACT; and
- (c) is on the electoral roll for an ACT electorate; and
- (d) is of good character and standing in the ACT community; and
- (e) is capable of understanding the functions and duties of the office of Justice of the Peace; and
- (f) has satisfactorily completed a relevant course as approved by the Minister, or the Minister is satisfied that their experience or qualifications are sufficient to carry on the function of a Justice of the Peace; and
- (g) is not an undischarged bankrupt; and
- (h) has consented to their name and contact details being published on the Register of Justices of the Peace of the Australian Capital Territory and being made available to the ACT community; and
- (i) has consented to inquiries being made to determine suitability for appointment, including a criminal records check to determine whether they are of good character and standing; and
- (j) has consented to be available to the public at all reasonable times.

4.2 Community Need

A person will not be appointed as a Justice of the Peace unless there is a demonstrated community need for that appointment.

4.3 Application procedures

Applicants are required to complete an application form which is available on the Office of Regulatory Services website at www.ors.act.gov.au

The application form requires applicants to provide supporting evidence to their application that ensures they meet the requirements of the Act and the guidelines. Each application will also require applicants to declare that they:

- are an Australian Citizen;
- are on the ACT Electoral Role;
- have not been convicted, or found guilty, in Australia of an offence punishable by imprisonment for one year or longer.
- have not been convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for one year or longer.
- have not been an undischarged bankrupt, have executed a personal insolvency agreement or have otherwise applied to take the benefit of any law for the relief of bankrupt or insolvent debtors.

- do not have any physical or mental incapacity that may affect the exercise of their functions if registered as a civil partnership notary
- acknowledge that, if appointed, I will not knowingly perform the functions of a Justice of the Peace in relation to a matter before them in circumstances that would give rise to a conflict of interest; and
- acknowledge that such a conflict of interest would arise if the matter before them was related directly to my day to day work responsibilities in which I have a personal or family interest; and
- agree to their contact details (as identified within an application) being made available via Canberra Connect, ACT Government Shopfronts and published on the government internet site and other publicly available publications; and
- agree that all information supplied on the form and any attachments in support of this application are true, to the best of their knowledge, in every particular.

4.4 Documents that may be used in support of an application

- ☐ A Birth Certificate/Drivers Licence; or, (If born in Australia)
- ☐ Current Passport; or, (If born in Australia, an Australian Passport)
- ☐ Citizenship Certificate, (If born outside Australia)
- ☐ A Marriage Certificate; or Change of Name if applicable,
- ☐ Proof of Residency in the ACT, (current residential tenancy agreement, rates notice, electricity account (not less than 3 months old), Taxation notice (not more than 12 months old), bank statement, centrelink card)
- ☐ A recent passport size photograph (taken within the last 3 months)
- ☐ An Australian Federal Police National Police Check Application check

☐ Character Reference 1 (must be an ACT Resident, document the date written (not more than 3 months from the date of this application), length of time you have been known by the referee - which must be in excess of 12 months)

☐ Character Reference 2 (must be an ACT Resident, document the date written (not more than 3 months from the date of this application), length of time you have been known by the referee - which must be in excess of 12 months)

☐ Character Reference 3 (must be an ACT Resident, document the date written (not more than 3 months from the date of this application), length of time you have been known by the referee - which must be in excess of 12 months)

4.5 Police Checks

An enquiry will be made with the Australian Federal Police about the existence or status of a criminal record in the person's name.

The Minister may refuse to appoint a person as a Justice of the Peace if the person has at any time been convicted of an offence, whether the offence was committed within or outside Australia.

CHAPTER 5 - WHAT MAY PREVENT ME FROM BEING A JP

5.1 What if a JP moves out of the ACT?

A Justice of the Peace must be a permanent resident of the ACT and be on the electoral roll for an ACT electorate. If a JP resides outside the ACT for a period longer than 12 months and/or is no longer listed on the electoral roll for an ACT electorate, they should notify the Office of Regulatory Services in writing and submit their resignation.

5.2 What if I can no longer make myself available to the community?

A Justice of the Peace must be publicly available at all reasonable hours. This normally means they must be willing to perform their duties during business hours and, within reason during non business hours as well. Members of the community have a right to expect that a JP will assist them during these hours. It would normally not be acceptable for a JP to decline to perform their functions because they are busy or because it is otherwise inconvenient for them to do so. People wishing to be appointed as a JP should be aware of the demands that may consequently be placed upon their time.

If a JP finds that they cannot accommodate demands for their services, they should notify the Office of Regulatory Services in writing so that their appointment can be revoked. If extenuating circumstances exist (eg. Unavailable due to illness) the office will make arrangements for the JP to be listed as inactive for a period of time.

5.3 What if I no longer want to be a JP?

If a JP no longer wishes to hold office, they should notify the Office of Regulatory Services in writing so that their appointment can be revoked.

5.4 What if I change my address and/or phone number?

A JP must inform the Office of Regulatory Services if they change their address or phone number. If the JP fails to advise the office of new details, this may give cause for the Office of Regulatory Services to terminate their appointment.

CHAPTER 6 - CONDUCT

6.1 Conflicts of Interest

AS NOTED previously, a JP should not perform the functions of their office where there is a real or apparent risk of a conflict of interest between the JPs personal or pecuniary interests and their public duties.

A JP must be and be seen to be independent of matters connected with documents that they are asked to witness. This means that:

- a JP should never witness documents for family, business, clients, employer or any other person such that it could be claimed the JP was not a disinterested party;
- a JP should never witness documents connected with matters in which they have an actual or perceived personal or pecuniary interest
- a JP should never prepare or assist in the preparation of documents that they intend to witness.

6.2 What sort of special needs might people have?

Some people who seek the services of a JP may not be familiar with or may be confused by what is required of them. Some may have problems with English literacy and/or spoken English.

A JP should always be sympathetic and given consideration to how he/she can be of assistance to them.

If a person is experiencing difficulties with English, a JP who speaks a language which the person is more comfortable with could be recommended. Otherwise the JP may wish to seek the assistance of an interpreter.

Awareness of and sensitivity to cultural differences should also underlie a JP's performance of their duties. For example, a JP should be aware that direct inquiries for services of a JP may be considered impolite by people from some cultures, who might be hesitant to request assistance. Other cultures also consider eye contact poor manners and the JP should be sensitive to this.

6.3 May a Justice of the Peace receive fees for services rendered?

As previously noted, an office of the JP is an honorary one. A JP may not under any circumstances charge fees, accept payment, gifts or compensation for services rendered.

CHAPTER 7 - DUTIES AND FUNCTIONS

7.1 What are the duties of a JP in the ACT?

The principal function of a JP of the ACT is witnessing the signature of documents (mainly statutory declarations and affidavits) and authenticating copies of documents.

It is important to emphasize that, before exercising any function, the JP MUST be satisfied that they are legally entitled to exercise that function.

7.2 Should a JP ever issue a search warrant?

Although JP's have the power under some Commonwealth laws to issue a search warrant, it is most unlikely for a JP (other than one who is a court official) to be asked to exercise this function. This is because there is always a Magistrate or court officer available at any hour of the day or night to do so. Unless the circumstances are exceptional, a JP should refer any member of the police force requesting a warrant to the Magistrates Court.

7.3 Are there any geographical limits to the performance of the duties?

A JP of the ACT may perform functions assigned to JPs by any law of the ACT. A JP is, in effect, also appointed as a JP for the Jervis Bay Territory and may perform functions assigned to JP's by laws applying in the Jervis Bay Territory.

A JP of the ACT can not validly perform functions assigned to JPs under laws of other jurisdictions, unless the relevant law provides otherwise. If called upon to act under the law of another jurisdiction, the JP should ensure that they are in fact authorised to do so.

Similarly, a JP appointed by another State or Territory can not validly perform functions that are assigned to JP's under ACT law.

CHAPTER 8 - WITNESSING A DOCUMENT

8.1 What are the basic procedures for witnessing a document?

The basic procedure for witnessing the signature of a document is a simple one. After the signatory has signed the document, the JP:

- a) must sign his or her name;
- b) must record the date next to his or her signature;
- c) should write the words '**Justice of the Peace of the ACT**' or the initials '**JP of the ACT**' after their signature;
- d) should legibly print or stamp their name and registration number below '**Justice of the Peace of the ACT**' or '**JP of the ACT**'

The requirement for a JP to print or stamp their name assists in identifying the JP who has witnessed the signature if further proof of it is required. It is essential that a JP's registration number also be included after their name.

There might be additional requirements to the witnessing of the signature. For example, the JP may have to record his or her address and/or the place where the signature was witnessed. In some cases, the JP may have to know the signatory personally and give a certificate to that effect (eg. Consent by both parents to Marriage of a Minor form). The instruments accompanying a document of that nature should alert the JP to any such requirements.

8.2 Does a JP need to read the document?

A JP should scan a document before witnessing it to see if there are:

- Any blank spaces within the document
- Any alterations within the document
- Several pages to the document
- Any references to annexures or exhibits
- Any special instructions or requirements for witnessing the signature. It is neither necessary nor appropriate for a JP to actually read the contents of a document, or to require a person to read them aloud. It is essential that the JP respect personal privacy and the confidentiality of the contents of a document at all times.

8.3 What if the document contains blank spaces?

A JP should be satisfied that the document does not contain space in which additional material might be included at a later date. The JP should place a line or lines through any space within or at the end of the text prior to witnessing the document.

8.4 What if there are any alterations within a document?

The initials of both the signatory and the JP must be placed alongside the text of any additions, alterations or erasures (which should also be circled). Do not initial in the margin, as this could imply that you have witnessed any subsequent changes that might be made to the text of the adjoining line.

CHAPTER 9 - COMPLAINTS POLICY

9.1 How to make a complaint about an ORS officer

The ORS is committed to providing customer service in a professional, efficient and respectful manner. All people have the right to raise concerns and make legitimate complaints and expect that the issues raised will be handled in a fair, confidential and responsive manner and free from repercussion or prejudice.

The ORS Complaints Policy is available at the ORS shopfront and at www.ors.act.gov.au. The policy sets out the responsibility of the ORS to:

- Recognise, promote and protect the customer's right to complain about their dealings with the ORS;
- Ensure an accessible and well publicised complaints procedure is in place;
- Recognise the need to be fair to both the complainant and the organisation or person complained about;
- Provide a mechanism for responding to complaints in a timely and courteous manner;
- Determine and implement remedies;
- Provide adequate resources to support the complaints management process;
- Record, assess and review complaints on a regular basis to ensure responsive and on-going commitment to service improvement.