

Australian Capital Territory

Justices of the Peace (Role) Guideline 2016

Disallowable instrument DI2016–53

made under the

Justices of the Peace Act 1989, s 3A (Guidelines about the role of Justices of the Peace)

1. Name of instrument

The instrument is the *Justices of the Peace (Role) Guideline 2016*.

2. Declaration

I make the attached guideline about the role of the Justices of the Peace.

3. Revocation

This instrument revokes the *Justices of the Peace (Role) Guideline 2013* DI2013-247.

Simon Corbell MLA
Attorney-General
16 May 2016

Justices of the Peace (Role) Guideline 2016

INTRODUCTION

Section 3A of the *Justices of the Peace Act 1989* provides that the Minister may make guidelines about the role of Justices of the Peace in the ACT. The following guideline aims to assist Justices of the Peace and members of the community to understand the role and responsibilities of ACT Justices of the Peace.

THE ROLE OF JUSTICES OF THE PEACE IN THE ACT

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 affirmation 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.

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 the Peace in the ACT serve the community primarily by:

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

The role of ACT Justices of the Peace is generally 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.

There are occasions where ACT Justices of the Peace may exercise functions outside the ACT. Specifically, Commonwealth legislation provides for State and Territory Justices of the Peace to witness various statements and take other administrative actions. Whether or not these functions may be performed by an ACT Justice of the Peace outside the ACT or outside Australia will depend on the provisions of the applicable Commonwealth Act.

Where they are permitted to do so by the terms of the relevant legislation, ACT Justices of the Peace can also exercise functions anywhere outside the ACT for the purposes of a law in force in the ACT or a proceeding taking place in the ACT. For example, under section 11 of the *Oaths and Affirmations Act 1984* (ACT) an ACT Justice of the Peace may administer an oath or affirmation to be taken or affidavit to be made for the purposes of a proceeding or for any other purpose under a law in force in the ACT in an Australian state or other territory or in any other place.

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.

HOW JUSTICES OF THE PEACE SHOULD PERFORM THEIR ROLE

This guideline requires 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:

- be available at reasonable times;
- be professional, courteous and impartial;
- not provide legal advice;
- avoid conflicts of interest;
- not receive payment or reward for service;
- keep contact details up to date;
- adhere to the appropriate legislation and correct procedures; and
- 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.

1. 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.

2. 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. Justices 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.

4. Justices 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, employers, 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.

5. Justices of the Peace should neither seek nor 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.

6. Justices of the Peace should keep contact details up to date

A Justice of the Peace must keep the Justice and Community Safety Directorate 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.

7. Justices of the Peace must take reasonable steps to be satisfied about identity of a person

With the occurrence of identity fraud ever present, a Justice of the Peace must take reasonable steps to be satisfied as to the identity of the person seeking the services of the Justice of the Peace.

It is particularly important to do so if the Justice of the Peace is not satisfied as to the identity of the person claiming to be the signatory to the document being witnessed.

'Reasonable steps' could be defined as steps an ordinary person would consider prudent and fair in the circumstances.

Ordinarily, to be reasonably satisfied as to the identity of the person seeking their services, a Justice of the Peace should:

- request confirmation of the person's identity. Photographic identification with a signature is preferred such as a drivers' licence, passport, proof of age card or employer ID card; and
- be satisfied that the facial characteristics of the client are of those on the submitted identification (this can be achieved through a face-to-face assessment); or
- if photographic identification is not available, request authoritative documentation such as a birth certificate or citizenship certificate, documentation that verifies the client's full name and address (such as a utility account) or a document that provides a sample of the client's signature (such as a debit or credit card from a financial institution).

A Justice of the Peace may refuse to provide the services requested if the client's identity is not proven **to the satisfaction of the Justice of the Peace**. It is recommended that a Justice of the Peace keep a brief record of what was supplied as proof of identity.

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, care must be taken to ensure that all legislative requirements are complied with. 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.

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.