



# Justice Matters

Official Journal of the ACT Justices of the Peace Association Inc.

ISSN 1833-2811

October 2007 — Volume 2, Number 1

## ACTJPA Annual General Meeting and Members' Seminar, Saturday 10 November 07 @ 11am

The 2007 ACTJPA Annual General Meeting is fast approaching and is due to be held in just under a fortnight on Saturday, 10 November in Room 1 at the Theo Notaras Centre (located in the same building as the Canberra Museum and Gallery at 180 London Circuit, Canberra City).

The Annual General Meeting will be held at 11am, followed by a professional development seminar focusing on the changes to Powers of Attorney under the new legislation and the Justice of the Peace Guidelines (see page 7 of this issue for a copy of the guidelines).

All members are strongly encouraged to attend and we look forward to seeing many of you at the AGM and Members' Seminar.

### 30 Years of Service

At a ceremony hosted on Friday, 26 October by the ACT Attorney General, Simon Corbell MLA, 16 ACT Justices of the Peace were recognised for their outstanding service to the community over 30 years as Justices of the Peace.

“The long-service awards held today symbolise the great value of the service these individuals provide over a considerable period of time. I think it is a testament to the character of these people to give up their free time to provide the service of Justice of the Peace for 30 years” Mr Corbell said.

Mr Corbell went on to say “this ceremony is an acknowledgment that the Government sets a high value on the commitment of the recipients of this award as a conspicuous example of community service given willingly and freely over a long period of time. I highly commend the 16 Justices of the Peace receiving their long service recognition today for the service they have provided to the people of Canberra over the last 30 years.”

The ACTJPA was represented at the ceremony by our President, Mr Rod Nicholas, and our Vice President, Mr Kanti Jinna who also passed on the thanks of the Association for the commitment of these long serving justices. *A full list of the recipients is on p17*

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*The ACTJPA's home in the Theo Notaras Centre, Canberra City.*

**ACT Justices of the Peace Assoc. Inc.**

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## MEETINGS OF THE EXECUTIVE

The Executive meets on a monthly basis to manage the affairs of the Association and to further the objects of the Association. Each meeting is held at the Association's office in the Theo Notaras Multicultural Centre which is located in Civic Square, Canberra City (180 London Circuit next to the Canberra Museum and Gallery). The meetings scheduled for the remainder of 2007 are:

Tuesday, 27 November at 6:30pm

Members are strongly encouraged to attend and participate in these meetings and the Executive values the additional insight that these members contribute to the meetings.

Members who wish to confirm the venue and times for meetings, or who wish to be added onto the email distribution list to receive the minutes and agendas and associated papers should contact the Secretary, Peter O'Halloran, by email ([secretary@actjpa.org.au](mailto:secretary@actjpa.org.au)).

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While every care has been taken in the preparation of this journal and the information it contains is believed to be accurate, the ACTJPA suggests that professional advice be sought where necessary. The views expressed in this journal are not necessarily those of the executive of the ACTJPA or its editor. The Association cannot be liable for any error or omission or for damages arising from the supply, performance or use of the journal and makes no warranty of any kind, either expressed or implied in relation to it.

## President's Report to the ACTJPA: 2007



### The Association's membership

Our membership is growing, but slowly. At the end of September 2007, we had 225 members (a slight increase since this time last year). We have actually secured quite a few new members, but have lost a few to relocation, ill-health, and the inevitable passage of time. Unfortunately, we have also 'struck off' (in accordance with the Constitution) several members who had been unfinancial for more than two years, but we have kept this number to the minimum, largely through the persuasive abilities of our experienced Treasurer/Registrar.

As I have said in my last two reports, growth remains our biggest challenge. It is becoming increasingly important for the Association to gain a larger share of the JP population in the ACT; at present we have about 25-30% of all registered JPs.

We again recognised the contributions of members with a Certificate of Recognition of Service for ten years' loyalty, devotion, and financial membership of the Association. By the end of 2007, some 100 of our members will have joined this select group.

### Guidelines for Justices of the Peace

Under the *Justices of the Peace Act 1989*, the Minister (the Attorney-General) may make guidelines about eligibility for appointment as a JP, and about the role of JPs.

Instruments authorising guidelines on both eligibility and role were tabled in the ACT Legislative Assembly in September 2006, and were formally made law in October 2006. They replace all previous guidelines. The Department of Justice and Community Safety sought the assistance of the Association in preparing the Guidelines, and most of the Associations suggestions have been recognised in the final form of the Guidelines.

The Guidelines provide a sound framework for the conduct of our 'professional services'. They also offer JPs room to exercise discretion to suit individual circumstances. Nevertheless, the Guidelines have the force of law, and the Minister may end a person's appointment as a Justice of the Peace if satisfied the JP has failed to observe these guiding principles. The Guidelines on the role of JPs is a 'de facto' framework for a 'code of conduct' for JPs in the ACT.

The Guidelines (and the *Justices of the Peace Act 1989*) are available from the ACT Legislation Register at: [http://www.legislation.act.gov.au/alt\\_a1989-44co/default.asp](http://www.legislation.act.gov.au/alt_a1989-44co/default.asp).

### Professional Development

In the ACT, there is a compulsory professional development course for prospective JPs, but no similar requirement for existing JPs who have not undertaken the training and development, or for the ongoing professional development of JPs. This would appear to leave a gap in ensuring the delivery of 'professional' services.

There is, at present, only one approved training program for prospective JPs, and it

is presented through the Canberra Institute of Technology. Unfortunately the CIT has deferred presentation of the program as the lecturer is on extended leave. Indeed, I understand the Department is using this opportunity to 'test the market' for alternative providers for the JP training. Meanwhile, as there is no training on offer, the Department has not approved any new JPs, and those who have applied since the delivery of the last program (now some while ago), are 'in limbo' while awaiting the training.

The Department has sought our input to several matters relating to training, including the form and content of the program, whether the training should be 'accredited', ongoing professional development, and the dissemination of information relevant to JP responsibilities. Although we have yet to meet with Departmental representatives to present our views, this is a very encouraging offer and we are keen to take it up.

### **The Register of JPs**

The Register of JPs is maintained by the Department of Justice and Community Safety. The JP Act provides for the Association to have access (with the Minister's approval) to information on the Register to 'help [the Association] in circulating information about services that may be given by justices of the peace in the ACT'.

The Minister has agreed to provide this information, and we have received an extract of the Register, and recent updates. We have yet to take advantage of the range of opportunities for the Association that this presents, which (if managed well) include increased membership, the strength of greater representation of the 'JP community' and the ability to provide even better professional development for members.

### **Achievements during 2007**

This year has been a little slower than we would have liked, as the inevitable collision between the demands of a maturing Association and an Executive consisting largely of members with busy full-time jobs, and personal/family commitments took its toll. The year has been dominated by preparation for ACJA 2007 and a 'struggle' to obtain the public liability insurance needed to continue occupation of our leased office space.

#### ***Australian Council of Justices Association General Meeting 2007***

Our preparations to host the 2007 General Meeting for the Council had been underway since late last year, and it was with more than a little nervousness that I welcomed delegates and their partners to Canberra at a Reception at the Canberra Business Events Centre, Regatta Point on 5 October. I needn't have worried. The Reception went well, with many of our interstate (and international) visitors impressed with the location, the service, and the company (which included several of our members who have had connections with the council over the years). It was the start of a very busy weekend – the Meeting was lively and productive, the social events were greatly appreciated, and the Dinner on 6 October that closed the Meeting was a tremendous success.

I wish to thank all who helped in preparations and activities; you have contributed to showcasing this wonderful city and its friendly people. Special thanks go to Dominic DeMarco for sponsoring the ACJA 2007 Meeting and to the Canberra Business Events Centre and Waldorf Apartments Hotel. Thank you to the Executive Committee who assisted with preparations and arrangements, members who attended the Reception and Dinner and delegates, observers and partners who

helped make the Meeting and accompanying events thoroughly enjoyable.

### *The Association's Office*

The Association had rented a small office in the Griffin Centre, to act as a 'home' for the Association, and with the intention of establishing a 'signing centre', from which we could provide our services to the public. As a condition of leasing the office, the Association was required to arrange public liability insurance, providing cover of \$10 million for JPs and clients and others while on the premises. This proved to be a difficult and frustrating experience, at least in so far as obtaining such cover at a cost the Association could sustainably afford. Attempts to work with other tenants of the community centre to secure a 'group' insurance arrangement advanced only slowly, and the Association felt there was no alternative but to seek other accommodation.

We have recently secured office accommodation in the government-supported Theo Notaras Multicultural Centre, located in the city centre. The new office is shared with two other tenants (which is quite acceptable given the Association does not have a need for a full-time office) and offers a high standard of convenience and facilities at a very reasonable cost. Further, we have been able to join the group insurance arrangements that have been developed for the Multicultural Centre, and this too provides a good outcome at a reasonable cost.

Over the next few months, and subject to the views of the 2008 Executive, the Association will relocate its office and records to the new accommodation, and recommence the 'signing centre' initiative. We would like to offer our professional services to other tenants and the public from our new office during 2008.

### *Working with the Department of Justice and Community Safety*

The Association's relationship with the ACT Government's Department of Justice and Community Safety is much improved over that of a few years ago, and could now be described as reasonably robust. We are much encouraged by the collaborative nature of recent communications from the Department, but the relationship is perhaps too dependent on the willingness of individuals within the Association and Department to work cooperatively. Ideally, we would like to see the relationship extend beyond this stage, and will look to developing a more substantial protocol as a framework for further cooperation.

### *Value for money*

The Executive strives to deliver 'value for money' for members of the Association. We believe that overall we offer benefits of membership that exceed the small cost, but are keenly aware that more can be done. Unfortunately, small lapses are often noticed, and to this extent, a breakdown in communications during the year gave some members cause for concern. I regret those lapses and any difficulty for members that arose as a result. Nevertheless, as reported last year, small steps can be just as rewarding as great leaps, and the Executive remains confident the Association is moving forward in almost every respect.

- Our Journal - *Justice Matters* – is our principal means of communicating with members. Unfortunately, it has been a victim of competing pressures for the Executive's resources, and we have not been able to deliver the planned three or four editions each year. We have sought to fill the gap with a couple of editions of the briefer (two-page) *JP Update*, but look forward to once again delivering a regular, quality journal to members.

- Recent Members' Seminars have been organised in conjunction with our AGM and a social outing. Attendance has been good (although it could be better) and feedback from members attending has been very supportive.
- The Association has continued to represent concerns relevant to the role of JPs and to contribute to promoting and supporting the interests of JPs through discussions with the Department on a range of issues including professional development for JPs, and the public access to current and accurate information on JPs. The Executive is considering ways to address the common complaint – often expressed to members - that 'you can't find a JP when you need one'.
- further developing the relationship with the Department of Justice and Community Safety to the advantage of all parties; and
- working with the Department to improve the professional development of JPs in the Territory (both as initial pre-appointment training, and on-going skills maintenance and development).

The Executive will also commence a review of the governance framework for the Association, to ensure it meets best practice in the management of an incorporated association. Expected outcomes of this project include an updated constitution, statements of responsibility for the various Executive positions, and a code of conduct for members. The latter issue is also an area of considerable interest to the ACJA.

#### ***Online Services project***

A review of the Association's website is almost complete, and will lead to a substantial update of the structure and content of the site. Meanwhile, the website is functioning (albeit lacking currency in some areas), and has received a reasonable number of visitors. Further development of the site will take place over the next year, particularly if the Association is successful in finding an experienced web manager to assist the Executive Committee. We are yet to reach the full potential of this project.

#### ***Challenges for the coming year/s***

There is little substantial change in the challenges facing the Association over the next few years, although advances have been made in most areas of the Association's operations. Three key challenges are:

- securing growth – the Association needs to attract the majority of the ACT's eligible JPs as members if it is to remain a viable voice of representation;

#### ***Executive – 2007 and 2008***

We continue to gain new members on the Executive Committee, which is a very encouraging development, reflecting a renewed interest in the development of the Association. This is important, as we expect our longest serving Executive member – Mr Alf Robbie – will 'retire' at the end of this year. Alf has been our Treasurer/Registrar from inception of the Association and will be sorely missed. On the positive side, new membership to the Executive brings new talents and ideas, and is often the impetus for change. I encourage all members to consider having a real say in the business of the Association by nominating for a position on the Executive.



**Rod Nicholas JP  
President**

## Justices of the Peace (Role) Guideline 2006

### Disallowable instrument DI2006—217

made under the

### Justices of the Peace Act 1989, S 3A (Guidelines about the role of justice of the peace)

#### 1 Name of instrument

This instrument is the Justices of the Peace (Role) Guideline 2006.

#### 2 Declaration

Under section 3A I make the attached guideline about the role of Justices of the Peace.

Simon Corbell MLA, Attorney General  
5 October 2006

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### 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 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.

## 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.

### 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, 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.

#### **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 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.

#### **7. 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.

#### **8. 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.

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The Justice of the Peace (Role) Guideline 2006 as prepared by the ACT Parliamentary Counsel's office is available from the ACT Legislation Register online at

[www.legislation.act.gov.au/di/2006-217/](http://www.legislation.act.gov.au/di/2006-217/)

## **Correct Procedures**

The *Justices of the Peace (Role) Guideline 2006* (the Guidelines) in part 7 require JPs to adhere to the appropriate legislation and correct procedures.

The ACTJPA has developed the following advice to guide members in how to interpret this part of the Guidelines.

### **A Justice of the Peace must not act unless satisfied he or she has the authority or jurisdiction to do so**

Although we are all aware of the basic acts which authorise us to exercise our duties (such as the Commonwealth *Statutory Declarations Act 1989* and the ACT *Oaths and Affirmations Act 1984*), there is a myriad of other acts from all jurisdictions within Australia that give (or not) us our authority to act.

There are four main ways that a JP can ascertain whether he or she has jurisdiction:

1. You must be physically present in the ACT to act (as outlined in the Guidelines);
2. In many cases the form to be executed (or the attached explanatory notes) will provide guidance as to whether or not you have jurisdiction;
3. By contacting the agency (or relevant Attorney-General's department) that issued the document and ascertaining from them your authority;
4. By consulting the relevant legislation governing the document:
  - Commonwealth Legislation [www.comlaw.gov.au](http://www.comlaw.gov.au)
  - Australian Capital Territory [www.legislation.act.gov.au](http://www.legislation.act.gov.au)
  - New South Wales [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)
  - Northern Territory [www.nt.gov.au/dcm/legislation/current.html](http://www.nt.gov.au/dcm/legislation/current.html)

- Queensland  
[www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)
- South Australia  
[www.legislation.sa.gov.au](http://www.legislation.sa.gov.au)
- Tasmania  
[www.thelaw.tas.gov.au](http://www.thelaw.tas.gov.au)
- Victoria  
[www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au)
- Western Australia  
[www.slp.wa.gov.au/statutes/swans.nsf](http://www.slp.wa.gov.au/statutes/swans.nsf)

The ACTJPA has checked each of the relevant jurisdictions for legislation covering statutory declarations and has confirmed that ACT JPs acting within the ACT are eligible to witness statutory declarations made under any Australian legislation.

For documents that are going to be used overseas, you can contact the relevant diplomatic mission for that country. The full list of these missions is available from the Department of Foreign Affairs and Trade at [www.info.dfat.gov.au/protocol](http://www.info.dfat.gov.au/protocol). Many countries however, will require such documents to be executed by a Notary Public rather than a JP. Lists of notaries public are available from the ACT Supreme Court. There is also a comprehensive Australia-wide list online at [www.notarylocator.com.au](http://www.notarylocator.com.au).

**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.**

Should you not be able to exercise your duties for whatever reason, you are required to locate another JP who is available and willing to act for the person seeking your services. It is not acceptable to simply refer the person to the list of JPs and let them find one themselves.

The list of current ACT JPs is available online at [www.jcs.act.gov.au/eLibrary/jps/jplist.html](http://www.jcs.act.gov.au/eLibrary/jps/jplist.html) or by contacting Canberra

Connect on 13 ACT 1 (13 22 81). Once you have located a willing JP, you can then refer the person on to them and give them the details for the other JP.

Should they require the services of a JP from another jurisdiction, a link to the various sites is available on the Australian Council of Justices' Associations website at [www.acja.org.au/public/locate.html](http://www.acja.org.au/public/locate.html).

**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).**

The ways in which you may satisfy this requirement are many and varied, and will be covered in detail in the following issue of *Justice Matters*.

**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.**

No is often the hardest word to say, but at times it is entirely appropriate for you to not exercise your duties immediately, if at all. You must always take time to carefully check a document and confirm that it is proper for you to execute it. If you are unsure, you MUST NOT act until you are sure.

A failure to act appropriately could cause the document to be found invalid (as has happened with affidavits before the ACT Courts). At best this may delay a matter and at worst, it may cause a case to be dismissed.

The onus is on you to ensure that you are acting in accordance with the relevant legislation and procedures. A failure to do so may lead to your commission as a JP being withdrawn or legal action (criminal

and/or civil) being undertaken against you in which you may be held liable for your actions.

**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.**

The Department of Justice and Community Safety are very clear in their views that JPs should not read documents:

“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.”  
*Guidance notes for Justices of the Peace of the Australian Capital Territory—Assistance Manual—November 2002*

When undertaking a scan of the document prior to acting, you should undertake the following checks:

1. Is the document in the correct form (such as the current wording for statutory declarations) ? If not, you should instruct the person seeking assistance to complete the document in the correct form and only then should you witness/execute the document.
2. If the document contains any blank spaces which could be used to insert additional material at a later time, you must rule through any blank space prior to witnessing the document.
3. If the document contains any alterations the alterations must be circled and the initials of both you and the signatory made within the circle. You should NEVER initial such changes in the margin as other changes may be made at a later time and a person could assume that you had also witnessed these later changes.

4. If the document is longer than one page, the jurat (and the signature of the signatory and yourself) must appear on the last page. You and the signatory should also sign or initial at the bottom of each of the other pages of the document and number the pages in the format ‘1 of 3’, ‘2 of 3’ and so on.
5. If the document refers to annexures or exhibits, these should be appropriately referenced and the annexures or exhibits suitably labelled.

If the signatory refuses to allow you to scan the document (which they may lawfully do), you should ask them to undertake the steps outlined above and then add the following jurat under your signature at the end of the document “Witnessed signature only. Declarant (for statutory declarations) or Deponent (for affidavits) unwilling to show the whole of the document.”

It is not necessary for you to understand or agree to the contents of the document, you are only attesting to the signature, not the content of the declaration/affidavit.

**A Justice of the Peace must always warn the signatory to a statutory declaration or affidavit of the consequences of making a false statement.**

Statutory declarations are used every day in the administration of all aspects of government business, and the business of many private and not-for-profit organisations. They are used for everything from applications for gaming licenses, through to road traffic offence notices and declarations by students that assignment and exam papers are their own work and that they have abided by the relevant rules governing these assessment tasks.

Affidavits are normally intended for use as evidence in a court of law, usually instead

of verbal evidence. Cases in the ACT and Commonwealth jurisdictions have been dismissed due to incorrectly executed affidavits and magistrates and judges have been scathing in their criticisms of those who have permitted the incorrect execution of these documents.

Before a declarant or deponent signs the declaration or affidavit, you must warn them of the penalties for making a false statement, namely:

- Up to four years imprisonment for false statements in Statutory Declarations; or
- Up to fourteen years imprisonment for false statements in an affidavit.

Historically there has not been a great deal of publicity given to those convicted of making false statements, but this has changed in the last few years (see the article on recent cases in New South Wales elsewhere in this issue). In New South Wales, 8% of those convicted of making a false statement in a statutory declaration are imprisoned, the remainder receive punishment other than imprisonment.

One of the main benefits to the public of having a Justice of the Peace witness a statutory declaration rather than one of the other list of authorised witnesses is that a JP can ensure that the declarant makes a declaration that is in accordance with the relevant legislation. This helps speed the administration of justice, government and the functioning of the community and is one of the many ways that JPs provide a vital community service.

**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.**

The legislation covering statutory declarations and affidavits require that they must be signed by the declarant or

deponent in the presence of the Justice of the Peace (or other authorised witness), by extension the Justice must therefore have met the declarant or deponent in person prior to witnessing the signature.

In witnessing a signature on a declaration or affidavit, the Justice of the Peace is confirming that the person who has just made the declaration or affidavit claims to be that person and that the signature of that person is their signature.

A recent case in the New South Wales Supreme Court of Appeal (Graham v Hall of 1 September 2006) upheld the ruling of a lower court that the Justice of the Peace had acted dishonestly in attesting that a declarant had signed an affidavit in his presence when she had not done so, and in fact he had never met her. The case involved the sale of a property jointly owned by two parties and damages in excess of \$55,000 were awarded against the Justice.

The Court concluded that *Justices of the peace, who sign attestation clauses that declarants have made and subscribed the declaration before them when that is not true, commit an act that is the antithesis of their function. Such an act strikes at the heart of the system they are charged to protect. It constitutes a dishonest misrepresentation and is an act done "maliciously" within the meaning of the word.*

Further information on this case is outlined in Graham v Hall on page 16.

**A Justice of the Peace must not sign a document until after the signatory has signed it.**

The Justice of the Peace must always sign a document after the signatory has signed it and not before.

**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 document must be complete and not capable of being altered without evidence of this alteration before it is executed or attested.

Clients who have documents that have been prepared in pencil should be directed to complete a new document in pen before you witness the document. If this is impractical, the client should be directed to completely erase all pencil marks and to complete the document in pen before you witness it.

You should take particular care that any space where further information could be added later is ruled through so that it cannot be so used.

**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.**

With the advent of modern scanning equipment, sophisticated computer software and high quality laser printers, it is becoming ever easier for the dishonest to make fraudulent copies that are hard to detect.

Where possible, you should photocopy the original documents yourself to ensure that the copies are exact replicas of the original. If this is not possible, you should take whatever other steps that will enable you to satisfy yourself that the copy is an exact copy of the original document. One common method is to hold the original and the copy over one another against a strong light source (such as a window) to quickly identify if there are any alterations or differences.

Once you have satisfied yourself that the copy is an exact copy, you should legibly write or stamp the following certification on the copy:

“I certify this document to be a true copy of the original sighted by me.”

You must then sign and date the document and write or stamp your name, “Justice of the Peace of the ACT” and your registration number.

**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).**

Unless a specific notation or jurat is added to a document by a witnessing Justice of the Peace, a court or an individual would be reasonable in assuming that the Justice had undertake the full extent of the role and their involvement was not limited in any way.

If your role in executing a document is limited in any way, such as the document written in a language not able to be understood by the JP, the client being unwilling to show the contents and so on, you must add a suitable jurat to the document.

Some of the more common jurats are:

- “Witnessed signature only. Document in a language not able to be understood by JP.”
- “Witnessed signature only. Declarant (for statutory declarations) or Deponent (for affidavits) unwilling to show the whole of the document.”
- “Deponent blind and unable to read the document himself. The document was read to the deponent in my presence and the deponent appeared to understand the document.”

**A Justice of the Peace cannot witness his or her own signature.**

In addition to not witnessing your own signature, your attention is also drawn to the need to avoid a conflict of interest (as outlined in the Guidelines on page 8 of this issue of *Justice Matters*) which prevents a Justice from witnessing signatures of family members (including in-laws and de factos), business associates, clients and the Justice's employer.

**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.**

We are appointed as JPs under our own legal names and are required to exercise our functions using these names. In circumstances where a person or organisation wishes to confirm the authority to act and validity of the signature of an ACT JP, they may confirm the appointment status, name and signature of a JP by contacting the Supreme Court (where the JP Register is maintained). The use of a registration number greatly aids in the quick and ready identification of individual JPs.

**A Justice of the Peace must maintain appropriate records regarding the provision of services to the public.**

In the course of undertaking your duties, you will be called on to witness many different types of documents and usually, significant quantities of those documents.

At times, the content of these documents may be challenged in a court, and you could be called to give evidence relating to your role in the execution of certain documents.

To enable you to give reliable, accurate advice in such cases, the keeping of detailed records of all services that you provide is essential.

In terms of the level of detail, it depends on the particular function exercised. For the more simple functions such as certified copies, you should record basic data such as the date, client's name, identification sighted (such as a passport) and a note on the number of copies made. For more complex or unusual functions (such as Powers of Attorney, more detailed notes should be made.

In order to maintain the confidentiality of the client's documents, the notes that are made should relate to the function, the identification of the client and how the function was exercised (such as by Christian oath, Buddhist oath or affirmation). Very limited notes should be made on the actual content of the document. For example, it would be appropriate to note that the affidavit related to a divorce matter in the Family Court, but not the details of the other party, financial matters outlined and so on.

In the same way that you should always store any rubber stamps that you may use to execute your functions in a secure, locked place, you should always ensure that your records are stored securely whenever they are not in use.

The ACTJPA has developed a template for a log book that members may wish to use to maintain the records of the services that are provided to members of the public.

A copy of the log book is included with this addition of *Justice Matters* and further copies may be purchased from the Treasurer/Registrar.

**By Peter O'Halloran JP**

## Graham v Hall

A recent case in the NSW Court of Appeal involving a Justice of the Peace serves as a stark reminder for us all to follow the legislation and procedures to the letter when undertaking our duties.

The case was *Graham v Hall* and an excerpt of the Judgement of 13 September 2006 is provided below.

*Mr and Mrs Hall lived near Bathurst and were joint owners of the family home. In early 2001, Mr Hall found himself in financial trouble. In order to pay off his debts, he decided to mortgage the family home. However, he did not wish Mrs Hall to know of the state of his finances.*

*On 3 April 2001, Mr Hall instructed Mr Gelin, a solicitor, to act for both him and Mrs Hall in effecting and registering a mortgage over the family home. Mr Hall told Mr Gelin that Mrs Hall was dying of cancer and therefore Mr Gelin could not see her or visit her. Mr Hall said that he would take the papers to Mrs Hall and arrange for her to sign them.*

*Mr Gelin knew that, after payment of the existing mortgage and some business debts, the rest of the money from the new mortgage was to be paid to Mr Hall alone. Nonetheless, Mr Gelin did not investigate why a woman dying of cancer would want to enter into a new mortgage.*

*In fact, Mrs Hall did not have cancer and was not aware of Mr Hall's visit to Mr Gelin or of the financial difficulty her husband was in.*

*On 20 April 2001, Mr Graham, a justice of the peace, attested a statutory declaration headed "Declaration by Borrower" that purported to be signed by Mrs Hall. In fact, the signature of Mrs Hall had been forged*

*by Mr Hall. Mr Graham further attested Mrs Hall's signature on a mortgage document headed "Real Property Mortgage" on which Mrs Hall was listed as the co-mortgagor with Mr Hall. He did this by signing his name under an attestation clause that recorded that the mortgage was "signed in my presence by the Mortgagor who is personally known to me." In fact, Mrs Hall had not been in Mr Graham's presence and was not personally known to him. They had never met.*

*On 7 May 2001, the existing mortgage over the Hall family home was discharged and a new mortgage registered.*

*On 27 April 2003, Mr Hall died and Mrs Hall discovered the existence of the new mortgage.*

*The trial judge, Williams DCJ, held that both Mr Gelin and Mr Graham were negligent and were liable for Mrs Hall's damages, which his Honour assessed to be \$136,479.66. His Honour found that the primary responsibility for these damages lay with Mr Gelin and apportioned liability 60% against Mr Gelin and 40% against Mr Graham.*

*Mr Graham appealed against his Honour's findings on duty of care, breach, causation, apportionment and that he was not entitled to immunity under s 135 of the Justice Act 1902 (NSW). Mr Gelin appealed against the finding that he was 60% responsible for Mrs Hall's damages.*

The appeal was dismissed and Mr Graham was ordered to pay 40% of Mrs Hall's damages (the total cost of damages totalled \$136,479.66, of which Mr Graham was liable for approximately \$55,6000.

## 30 Year Service Award Recipients

The Court concluded that *Justices of the peace, who sign attestation clauses that declarants have made and subscribed the declaration before them when that is not true, commit an act that is the antithesis of their function. Such an act strikes at the heart of the system they are charged to protect. It constitutes a dishonest misrepresentation and is an act done "maliciously" within the meaning of the word.*

In his ruling, Judge Ipp suggested that the standard of care required that a witness be honest and ensure a signature is made in their presence and the signatory identified as the person in the document - by reference to a passport or driving licence.

"After all, one cannot obtain an electronic airplane ticket without providing similar identification. Should the identification of a person signing a document transferring an interest in property be any less?" wrote Ipp.

Mr Graham paid considerably for his error in not witnessing Mrs Hall's signature personally, an error that could have been avoided.

To ensure that you are not placed in such a situation, ensure that you always follow the *Guidelines* established by the Attorney-General and that you comply with any instructions on the form or outlined in the relevant legislation.

You can access the full judgement online at [www.lawlink.nsw.gov.au/lawlink/caselaw/ll\\_caselaw.nsf/pages/cl\\_ca](http://www.lawlink.nsw.gov.au/lawlink/caselaw/ll_caselaw.nsf/pages/cl_ca) (and then search by year—2006 and search for judgement 208).

**Peter O'Halloran JP**

The following ACT Justices of the Peace were presented with their awards for 30 years of service by the Attorney General, Mr Simon Corbell, on Friday, 26 October:

- Mrs Judith Arrentz
- Mr Peter Gerrard Burrows
- Ms Joan Downing
- Mrs Wendy Patricia Duke
- Mr Alwyn Daniel Harris
- Mr Cecil Ted Hayduk
- Mr Richard Keith Gorman
- Mrs Ellen Maria O'Brien
- Mr Robert Edwin Pounds
- Mrs Carrol Vivienne McQualter
- Mr Maxwell Joseph Rowe
- Mrs Denise Anne Seddon
- Mr Douglas Hubert Stacy
- Mr Garry Peter John Stroud
- Mr Derryl Triffett
- Mr Barry Colin Williams

It is pleasing to see such a high representation of ACTJPA members in the list of recipients.

# Peng LEE

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## Locating a Justice of the Peace willing to act

Recently a number of ACT Justices of the Peace have reported to the Association an increase in the number of complaints that they have received from clients when undertaking the provision of JP services.

These complaints relate to the trouble that these members of the public have had in locating a JP who is actually willing to act and exercise their functions.

It appears that the issue is comprised of two separate, but related components:

1. Locating a JP; and

2. Once the JP has been located, the JP agreeing to act and execute the documents.

The Association is looking into ways in which we may be able to work with the Department of Justice and Community Safety to address this issue, and we will keep you informed of any progress.

You can assist by ensuring that your contact details are correct and current on the public listing (see the box below for details on how to do this) and by ensuring that if you are unable to act, that you refer a member of the public seeking your services on to another Justice who you have confirmed is willing to act.

If you have any thoughts on how these matters may be addressed, please contact the Secretary (contact details on page 2) so that they can be passed on to the ACTJPA Executive for consideration.

## Updating Your Details with JACS

The Department of Justice and Community Safety maintains a register of contact details for ACT JPs which is made available to members of the public who are seeking a JP.

In order to minimize any inconvenience to the public, it is essential that you ensure that your details listed on the register are correct at all times.

It is sensible to check your entry from time to time to see if it is correct—you can do this online through the ACTJPA website or by calling Canberra Connect (13 22 81).

You can update your contact details with the Department by a variety of means:

- By email — [JACSMinisterialServices@act.gov.au](mailto:JACSMinisterialServices@act.gov.au) ;
- By telephone — (02) 6207 0512 or (02) 6207 0588;
- By mail—Ministerial Services, Department of Justice and Community Safety, GPO Box 158, Canberra ACT 2601

# CRS

Canberra Rubber Stamps and Signs

49 Townsville St  
(PO Box 343)  
Fyshwick 2609  
Ph: 6280 6954  
Fax: 6280 7750

## Justice of the Peace RUBBER STAMPS

*Don't Write It ... Stamp It!*

Canberra Rubber Stamps offer ACT JPs a selection of self inking stamps – your own personal printer.

*These stamps are approved and recommended by the JPs' Association*

## SELF INKING STAMPS AT DISCOUNT PRICES



- A: Name and JP No.
- B: Crest with provision for sig/name
- C: Certification of document copy.
- D: Annexure to affidavit stamp.

## ACTJPA Merchandise

Why not proudly proclaim your membership of the ACT Justices of the Peace Association by purchasing and proudly displaying an ACTJPA lapel badge, an ACTJPA pen or an additional Justice of the Peace sticker.

These quality items are available to members only from the Treasurer, Alf Robbie JP ([treasurer@actjpa.org.au](mailto:treasurer@actjpa.org.au) or 02 6255 6086) or pick up one at the 2007 Annual General Meeting.



ACTJPA Lapel Badge — \$10



ACTJPA Pen — \$15



Justice of the Peace Sticker — \$2

## Justice of the Peace Log Book

The new *Justice of the Peace Log Book* distributed with this edition of *Justice Matters* has space for you to record the provision of 240 services. Should you require additional copies, you may purchase them from the Treasurer/Registrar.



## Justice of the Peace Log Book

ACT Justices of the Peace Association Inc.  
[www.actjpa.org.au](http://www.actjpa.org.au)

Name .....

Date Range ...../...../..... to ...../...../.....

The ACT Justices of the Peace Association Inc. would again like to thank one of our members, Dominic DeMarco JP of the Lyons and Fraser IGA stores for his generous sponsorship of the recent Australian Council of Justices' Association Annual General Meeting which was hosted in Canberra by our Association earlier this month.

Please support Dominc and his stores:

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*Local Heroes*

