



# A Short History of Justices of the Peace

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## Keepers of the peace

The history of Justices of the Peace can be traced as far back as 1195, when Richard I (*Richard the Lionheart*) commissioned certain knights to preserve the peace in unruly areas. Responsible to the King for ensuring the law was upheld, they were known as Keepers of the Peace.

A later statute, in 1327, referred to 'good and lawful men' to be appointed in every county in the land to 'guard the peace'; such individuals were first referred to as conservators of the peace, or wardens of the peace. The Statute of Edward III in 1344 provided that

*two or three persons of the best reputation in the Counties should be assigned by the King's commission as Keepers of the Peace and they, with others learned in the law, should hear and determine charges of felonies and trespasses against the Peace.*

Legal knowledge was not a pre-requisite for the office of Keeper of the Peace. Being a person 'of the best reputation' generally meant 'wealth'. The office was confined largely to members of the landowning class; knights, squires or gentlemen of the land. The exclusiveness of the office was maintained by mandating property qualifications such as owning land to the value of 20 pounds (in 1439), which was raised to 100 pounds in 1732.

The title of Justice of the Peace was first given to the office (also known as magistrates) by the *Justices of the Peace Act 1361*.

From the outset, justices of the peace had a broad range of administrative and judicial duties and their responsibilities and powers increased between the 14<sup>th</sup> and 19<sup>th</sup> centuries.

In 1691, justices of the peace were given the power of review of decisions of 'overseers of the poor' who themselves had responsibility to administer the Poor laws established under Elizabeth I. The Justices of the Peace also administered the legislation proliferating under the Poor laws. These included laws against vagrancy, begging, the possession of house-breaking instruments and offensive weapons and consorting.

As part of their administrative power, justices of the peace assumed responsibility for the administration of licencing laws, empowered to license alehouses and to de-license the keepers of such houses for a breach of the peace on such premises. Other duties included administration of the game laws, giving testimonials to dismissed servants, licensing of deceased persons to go to Bath and Brixton, making regulations in time of plague, the supervision of accounts at hospitals, the inspection of decayed bridges, the supervision of the making of malt, supervision of the cloth trade, weights and measures, searching for popish books and the reading of gas meters.

Such was the power of justices of the peace that 'they were often able to control the entire administration of a county'.



The office of justice of the peace has always been honorary, but in the years leading up to the 18th century, justices of the peace were entitled to receive certain fees. It seems that the opportunities this provided overwhelmed some, who used their office to make corrupt profits and became known as ‘Trading Justices’. Although undoubtedly many justices of the peace discharged their varied duties well, the lack of legal knowledge led to many inconsistent and legally erroneous decisions. This, and the rising corruption among the ranks, sparked a move to replace honorary justices of the peace with legally trained and qualified ‘professional magistrates’. Legislation was enacted accordingly in 1792.

By the middle of the 19<sup>th</sup> century justices of the peace were stripped of much of their power, and replaced (at least judicially) by stipendiary magistrates.

## Justices of the Peace in Australia

Justices of the Peace in Australia today play a more limited role and have little in common with their earlier British counterparts, although it wasn’t always like that. The existing legal institutions of England were brought to the new Colony of New South Wales, including the system of justices of the peace. In 1788, Governor Phillip was appointed as the first justice of the peace on this continent, with the power to appoint other justices by commission. He appointed a small number of civil and military officers as magistrates, whose primary function was to manage the convict labour force.

As well as the emerging judicial powers, the justices were involved in the administration of the convict system, convict discipline, granting tickets of leave and administration of local ordinances.

The office was honorary, but much prized. It offered symbolic, practical and strategic advantage to those who secured it. Almost naturally, appointees were often prestigious, wealthy, private individuals, who became heavily involved in administering districts over which they had control.

But just as in England, the combination of judicial and administrative powers was seen to compromise the judicial independence of the magistracy. Laws were introduced to restructure the judiciary and codify the roles, once again stripping most powers from the justice of the peace, and leaving a predominantly administrative role.

Just what that role involves differs across Australia’s jurisdictions. Having been founded as an independent nation through the federation of the six founding colonies, each state (and territory) has its own legislation to regulate the appointment and powers of justices of the peace. There are no national justices of the peace in Australia.

In some jurisdictions, such as Queensland, South Australia and Tasmania, JPs deal with certain types of court matters and bench duties—bail and surety, warrants, summonses and minor offences. There are common roles, such as:

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



## Justices of the Peace in the ACT

In the ACT, the Minister (the Attorney-General) appoints justices of the peace, under the *Justices of the Peace Act 1989*, but the Act does not prescribe the role. Rather, the role of is determined by procedural requirements of other ACT legislation (such as the *Oaths and Affirmations Act 1984*). Justices of the peace may, however, perform a wider range of functions under Commonwealth law, including the witnessing of statutory declarations.

The Oath of Office taken at the time of their appointment requires ACT JPs to undertake to ‘well and truly serve in the office of justice of the peace of the Australian Capital Territory’.

The role remains honorary.

## Further Information

Further information on the history of Justices of the Peace is available from a variety of sources including:

- **The Magistrates Association (Great Britain)**
- Most libraries, but particularly the **National Library of Australia** by searching their holdings for the subject “Justices of the Peace”
- *History of the Justices of the Peace*, Sir Thomas Skyrme, Barry Rose Publishers
- *The Justice of the Peace*, Esther Moir, Pelican

