

KEEPING the PEACE



A History of
Honorary Justices
in Victoria

BELINDA ROBSON

DISTRICT.	Names of all the Gentlemen in the Commission of the Peace in the Colony of Victoria.	Distances of Places of Residence from the Bench.	Number of Days each Magistrate has attended the Bench.
ALBERTON ...	McCrae, Andrew M. ... Turnbull, David ... Crooke, Ed. (sworn 11 Dec.)	Resident 5 miles 50 "	Each Court day 12 1
BACCHUS MARSH ...	Griffiths, Charles ... Labbiliere, Charles Edgar... Pyke, Thomas Henry ... Clarke, Robert Nalder Steiglitz, John Von ...	9 " 11 " 13 " Resident (16th July, 1852.) 15 miles	8 16 16 9 11
...	Eyre, Alfred John... Scott, Andrew ... Learmouth, Andrew ... Cockburn, O. R. ... McLean, Mordant ...	7 " 10 " 9 " " " " "	140 10 4 33 8



Barker, William ...
Taylor, William ...
Playne, George ...
Barrow, Samuel ...

Melbourne
14 miles
Collingwood
Melbourne
2 miles
1 "
5 "
5 "
Melbourne
1 1/2 miles
Melbourne
1 1/2 miles
2 "
8 "
Melbourne
9 miles
Melbourne
5 miles

Authorised and published by the Victorian Government,
1 Treasury Place, Melbourne
May 2015

© State of Victoria, Department of Justice & Regulation
ISBN 978-1-925140-91-0



Unless indicated otherwise, content in this publication is provided under a Creative Commons Attribution 3.0 Australia Licence. To view a copy of this licence, visit creativecommons.org/licenses/by/3.0/au

It is a condition of the Creative Commons Attribution 3.0 Licence that you must give credit to the original author who is the State of Victoria.

For further information or additional copies, please contact:
Honorary Justice Office
Department of Justice & Regulation
121 Exhibition Street, Melbourne, 3000
Tel 03 8684 4117

KEEPING *the* PEACE

A History of Honorary Justices in Victoria

“We will not make men justices, constables, sheriffs,
or bailiffs unless they are such as know the law
of the realm, and are minded to observe it rightly.”

Magna Carta, 1215.

BELINDA ROBSON

VOLUME 27 NUMBER 7

JULY 10TH. 1937

The JUSTICE of the PEACE

LEX DEFICERE NON POTEST IN JUSTITIA EXHIBENDA



REGISTERED AT THE
G.P.O. MELBOURNE
FOR TRANSMISSION BY
POST AS A NEWSPAPER

PRICE SIXPENCE



Copyright

Copyright

Peace-keepers: from landed gentry to today's citizens



Magna Carta 1215.

Volunteers play a powerful role in shaping the society we live in. They leave a legacy that endures well beyond each individual's contribution. In the justice system, Victoria has benefitted from a long tradition of Justices of the Peace (JPs) and later Bail Justices (BJs), collectively known as Honorary Justices (HJs). These volunteers have become part of Victoria's social fabric. Since colonisation, HJs have played a part in public debates about community safety, as well as making decisions that impact on the private lives of Victoria's citizens. The HJ roles have their roots in English history but these functions have evolved over many years to suit geographic and historical imperatives.

This book describes the evolution of the role in Victoria and celebrates the way it has adapted to social and cultural changes. While many citizens have taken up the role of JP and BJ, the backgrounds of the people who take on these roles have reflected changing ideas about what makes a good community leader. In the early days of England's justice system, landed gentry exercised local power on behalf of the monarch. Today, HJs come from a range of backgrounds and are firmly embedded in our democratic system of government.

There have also been debates as the honorary justice system has been embroiled in changing ideas about the administration of justice. HJs relationship with government was always negotiated with reference to the particular concerns of the government of the day. The criteria for the selection of JPs and BJs has reflected the ways local reputations are created and recognised. Nevertheless, there is also a timelessness about the desire to give back to the local community.

The evolving role of the HJ has reflected changing ideas about how society should be governed, the role of the citizenry in managing community life and the aspirations of government to devolve power to community leaders to participate in the governing process. Initially the functions of JPs were vast, involving a multitude of court duties as well as the hearing of child protection and bail applications. As the justice system evolved, the roles have become more specialised and the positions of JPs and BJs more carefully crafted to ensure quality and transparency. Nevertheless, HJs have always been individuals who adhere to the highest standards of community conduct. Because ideas about community conduct and appropriate ways of responding to crime, social disorder and civil disputes are evolving, the HJ story is one of challenges and re-definitions of the powers and functions of the roles.

Custodes Pacis:

minded to observe the law of the realm rightly

Today's JP are part of a long history. The precursor of the JP, 'Custodes Pacis' or Keepers of the Peace, can be dated as far back as 1195 when Richard I issued an edict to create this office in order to handle local disturbances. Local gentry were conferred with judicial duties as a means of enabling four knights in every 100 to summon before them all men aged 15 and over. These men were required to take an oath that they would not become outlaws and that, as required, they would pursue offenders, apprehend them and hand them over to the knights who would then report them to the local sheriff. They were drawn from local men of substance and independence and, as such, were often not trusted by the general community who felt excluded from their ranks.

The 1215 edict known as the Magna Carta, signed by King John and the Barons of England, defined the spirit of these times and articulated the ways the law-keepers would operate across the counties. It also assures the English people that:

'We will not make men justices, constables, sheriffs, or bailiffs unless they are such as know the law of the realm, and are minded to observe it rightly.'

The powers of the *Justice of the Peace Act 1361 (UK)*, is commonly seen to be the first formal creation of the office of 'Keepers of the Peace' and of the creation of what was to become the Magistrates' Courts, or the Courts of Petty Sessions.

The role enjoyed a significant degree of power and influence from the 18th century and JPs were able to conduct local affairs as they saw fit, combining administrative and judicial functions. The laws governing the judicial activities of JPs in the United Kingdom were codified in the *Summary Jurisdiction Act 1848 (UK)*. These developments were reflected in Victoria's Magistrates' Courts.

Victoria's first JPs: 1830s to 1860s



A poster used to summon the miners to Bakery Hill, which led to the Eureka Stockade.
wiki.prov.vic.gov.au

During this period, the functions of JPs were shared with salaried Police Magistrates, later known as Stipendiary Magistrates. Police Magistrates investigated crimes, presided over trials and handed down sentences. This arrangement continued for over a hundred years. JPs were intended to be the voice of detached reason and judgement to complement the higher level of legal expertise provided by the Police Magistrate.

The first JP in Victoria was James Simpson, who presided over a dispute between Henry Batman and John Pascoe Fawkner along with a doctor and a stockbreeder.¹ Simpson was appointed as 'arbiter upon all disputes between individuals, excepting as might relate to land, with power to name two assistances to help him, if necessary'. He was granted 'the power to inflict such fines as he might consider proportionate to any injury sustained'.²

The administration of justice was not tied to any one location. Captain William Lonsdale was appointed as a Police Magistrate and set about to create the legal machinery necessary to manage the unruly population. A Police Magistrate could hold a court wherever they chose until Captain Lonsdale established the first Court of Petty Sessions on the south side of Little Collins Street, between Spencer and King Streets in 1838. Its 'walls were made of wattle and gum tree boughs, the roof of reeds, and the floor was bare earth.'³

With the rise in Victoria's population following the gold rushes in the 1850s, the court system expanded rapidly.

The number of JPs distributed across the state reflected the pattern of Victoria's population growth. In 1853, Dr Thomson's Petty Sessions 'Return to Address' listed the names of all gentlemen in the Commission of the Peace residing in Victoria, the distance they live from

1 'The Justice of the Peace', 11 January 1937.

2 La Trobe University, Legal Studies Department, 'Guilty Your Worship. A Study of Victoria's Magistrates' Courts', 1980, pp. 6-7.

3 'The Justice of the Peace', 7 February, 1914.

the court, the number of days they attended the court and the number of cases disposed by each.⁴ This was because the demand for their services was high. Most were from Melbourne, but rural areas were well covered. For example, Foster Fyans of the Geelong district lived two miles from the court and heard 1,928 cases across 405 days. Others, such as Francis Henty of Portland lived 65 miles from the court and still managed to hear four cases in as many days.

By 1859 there were 21 JPs and 93 Courts of Petty Sessions.

On 2 December 1854 during the Eureka Stockade at Bakery Hill, Ballarat, a JP, Mr Webster, had to perform the duty known as ‘reading the riot act’ to quell rebelling diggers who were protesting about what they saw as unfair laws.

In the *Magistrates’ Manual for the Colony of Victoria 1852*, the Honorable Justice William A’Beckett, the state’s fourth Supreme Court Judge, expressed respect and gratitude for JPs:

“The community is much indebted to those gentlemen who gratuitously act as JPs, when it is considered how few are so situated as to be able to afford leisure for attention to the duties of the office, without some pecuniary sacrifice, and not without much personal inconvenience. Such a class deserves all the respect and encouragement which their position *prima facie* invites; and without any disparagement to the services and efficiency of the Stipendiary Magistrates, it is hoped that the unsalaried holders of commissions of the peace will always form a considerable portion of the Victorian Magistracy.”⁵



By 1859 there were 21 JPs and 93 Courts of Petty Sessions.

4 www.parliament.vic.gov.au/papers/govpub/VPARL1853-54NoC8.pdf (accessed 21 Oct 2014)

5 William A’Beckett, *Magistrates’ Manual for the Colony of Victoria*, 1852, p. iii



James Wilton was one of the early JPs.
 Thomas Foster Chuck photographer, 1872, State Library of Victoria H5065/224

DISTRICT.	Names of all the Gentlemen in the Commission of the Peace in the Colony of Victoria.	Distances of Places of Residence from the Bench.	Number of Days each Magistrate has attended the Bench.	Number of Cases disposed of by each.	
ALBERTON ...	McCrae, Andrew M. ...	Resident	Each Court day	77	
	Turnbull, David ...	5 miles	12	5	
	Crooke, Ed. (sworn 11 Dec.)	50 "	1	"	
BACCHUS MARSH ...	Griffiths, Charles ...	9 "	8	2	
	Labilbere, Charles Edgar...	11 "	16	1	
	Pyke, Thomas Henry ...	13 "	16	5	
	Clarke, Robert Valder	Resident	} (15th July, 1852.)	9	5
	Steiglitz, John Von ...	15 miles		11	2
BALDANAT ...	Eyre, Alfred John...	7 "	149	368	
	Scott, Andrew ...	10 "	10	21	
	Leamouth, Andrew ...	9 "	4	11	
	Cockburn, O. R. ...	" "	33	91	
	McLenn, Mordant ...	" "	8	18	
BELFAST ...	Mair, William ...	Town of Belfast	10	49	
	Gray, William Nairn ...	"	26	47	
	Stewart, George ...	"	276	408	
	Rutledge, William...	"	9	10	
	Faris, Claude ...	} In the Hexham Section of the District	3	29	
	Gottreux, Henry ...		"	"	
	Burke, Robert ...		1	"	
	Manifold, Thomas ...	Warrnambool	6	6	
	Ritchie, John ...	7 miles	11	70	
BENALLA ...	Smythe, Henry W. H. ...	1 "	42	53	
	Cheyne, Alexander M. ...	3 "	11	22	
	Cheyne, Peter ...	3 "	4	13	
	Clifton, William Snow ...	45 "	1	3	
	Goodman, John ...	3 "	40	76	
	Jones, Daniel Lloyd ...	53 "	—	—	
	Rowe, John Pearson ...	50 "	—	—	
	Ryan, Charles ...	40 "	3	16	
	Moore, James ...	30 "	1	1	
BENDIGO.					
BOURKE (County of)	Westby, Edmund ...	Melbourne	3	} Cannot be accurately ascertained.	
	Smith, James ...	1 1/2 miles	26		
	Hutton, Charles ...	Collingwood	69		
	Candell, Henry ...	Melbourne	38		
	Jacomb, Robert ...	2 miles	20		
	McLachlan, Archibald ...	1 "	17		
	Payne, Charles ...	5 "	68		
	Thomas, William ...	5 "	113		
	Greaves, Augustus F. A. ...	Melbourne	100		
	Heape, Benjamin ...	"	25		
	Hull, William ...	1 1/2 miles	60		
	Russell, Andrew ...	Melbourne	25		
	Sturt, Evelyn P. S. ...	"	87		
	Pohlmann, Robert W. ...	1 1/2 miles	3		
	Palmer, Frederick J. ...	2 "	4		
	Ware, Jonathan B. ...	8 "	3		
	Barker, Edward ...	Melbourne	2		
	Taylor, William ...	9 miles	7		
	Payne, George ...	Melbourne	2		
	Barrow, Samuel ...	5 miles	18		

Sample of the list of JPs in 1853's 'Return to Address' showing the distance between their homes and the court as well as numbers of days sat on the bench.

<http://www.parliament.vic.gov/papers/govpub/VPARL1853-54NoC8.pdf>

Questioning JPs

Questions about the role of the JP began to be expressed as early as 1869 when *The Age* newspaper found cause to raise debate about 'the occurrence of improper, erroneous and unjust decisions by magistrates on the Petty Sessions bench, [which are] so frequent as to justify the maintenance of the old reproach about 'Justices' justice'.

One of the issues was the qualifications of those who took these positions. These were described by one barrister of the time as belonging in three distinct categories: 'men of general education and position, men of wealth and a non-descript class possessing neither education nor wealth, nor exhibiting any mental or moral fitness for the position'. Appointments were made following recommendations to local councillors and tended to be rewards for political favours.

There was regular questioning of their training and qualifications as well as the methods used to ensure quality assurance. The questions became a defining part of the history of JPs as JPs sought to define their value and differentiate themselves from trained lawyers. These debates have continued to this day.

Consolidation: 1887 to 1927

men of independent position, above fear or favour

“The cooperation of laymen in the administration of justice is a constant reminder to judges and other members of the legal profession that the law is made not for lawyers but for the regulation of the business and social relations of all members of the community.”⁶

With the passing of the *Justice of the Peace Act 1887 (Vic)*, the JP role was formally articulated.

By 1901, there were 3,700 JPs in Victoria, with their appointments approved by the Crown Law Department after being recommended by local councils, following a petition from local residents that there was a need.⁷ In recognition of their identity as men of importance, in 1901 a proposal was made to the Solicitor-General that each JP receive a gold badge for attachment to their watches. A design of an ornamental character bearing the letters JP was submitted. There was pride and a sense of strong collegiality that together they would be a valued group that bridged government, the legal establishment and local communities.

One of their challenges was to differentiate themselves from the legal fraternity and to define their value to the community. They did this through a number of organisations, including establishing the HJs Association.

Mr W H Irvine, in his forward on the authority and functions of out of sessions hearings in the Courts of Petty Sessions, described the ideal JP as men of independent means:

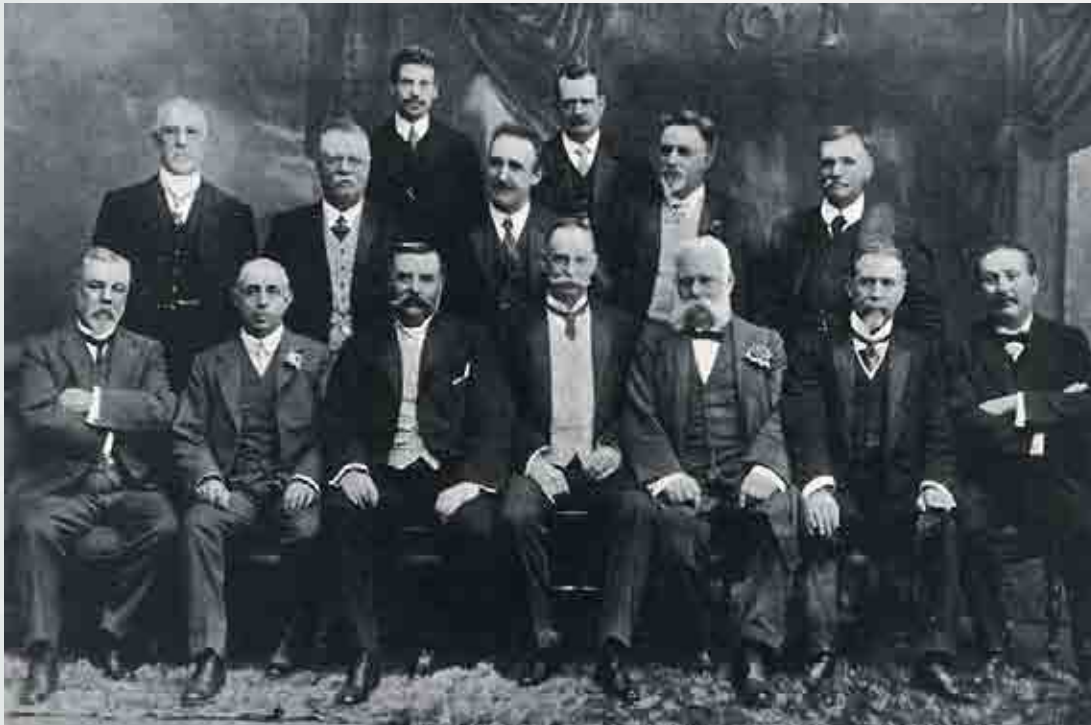
“No property qualification is here necessary, but as a matter of fact, only men of independent position, who are assumed to have sufficient means to enable them to devote the requisite time and industry to the performance of their important duties, and to rise above the influences of fear and favour, are usually made JPs.”

⁶ ‘The Justices of the Peace’. 8 December 1913, p. 159.

⁷ *Mildura Cultivator*, 7 December 1901.

Birth of the Victorian HJs Association

On the 6 October 1909, three gentlemen sent a circular to their brother JPs to meet at the Vienna Café in Melbourne. Thirteen men attended and from this group, nine were appointed as a provisional committee of the newly formed HJs Association of Victoria.⁸ They held their inaugural meeting in the Melbourne Town Hall on 27 April 1910. The Association commenced its newsletter, 'The Justice of the Peace', in September 1910. The newsletter set out to educate members about the role of a JP and provide a vehicle for sharing information. It included names of new JPs, social events, answered queries about the law and published lectures that were relevant to their role. At the time of their first newsletter, the Association reported that it already had 350 members. Over the coming years, the Association was to see itself as a body that would advocate to government on issues of concern for all JPs.



The Council and Officers
of the HJs Association.

'The Justice of the Peace', supplement,
December 1910.

⁸ This was later to become known as the Royal Victorian Association of HJs or the RVAHJ.

Defining the role of a JP

JPs had a wide and varied judicial brief. The Courts of Petty Sessions could be constituted by a Police Magistrate either alone or with JPs, or alternatively by two or more JPs sitting in an open court at a time and place appointed by the Governor in Council. The court also heard civil disputes where the costs to be incurred were £50 and under. In 1917 the Court of Petty Sessions moved to Russell Street, a ‘stately pile of buildings’⁹ and a total of 235 Courts of Petty Sessions were established during the latter half of the 19th and into the 20th century.¹⁰

As justice could be dispensed either by Police Magistrates or JPs, there was a continual need to define the role of JPs. The former had considerable law training and experience while the latter were appointed without regard to whether they had any theoretical knowledge of law.

According to the President of the Law Institute of Victoria, Mr M C A Dale, who spoke on the role of the Honorary Magistrates in 1916, the lack of legal knowledge of JPs was not a problem to their job administering justice and, indeed, may be of assistance:

‘I have no doubt that HJs from their social or commercial position in life have acquired just as much, if not more, knowledge of the world as trained lawyers, and are quite as able to give as sound a decision on questions of facts as any Police Magistrate.’ Nevertheless Mr Dale had some concerns. Firstly, an issue existed when any JP, regardless of a lack of experience, had the same power on the bench as an experienced Police Magistrate. Secondly, a problem was posed when any one JP could commit for trial in an indictable offence regardless of the dissent of his ‘brother Justices’. Finally, he felt that there were too many Courts of Petty Sessions (25 were in Melbourne) and there was a need to reduce the number and have them presided over by a Police Magistrate which, according to Mr Dale, would enable uniformity of decisions, and fewer appeals.¹¹

9 ‘The Justices of the Peace’, 7 February 1914.

10 MCV_exhibition_final_layout.pdf, www.magistratescourt.vic.gov.au, accessed 14 November 2014.

11 ‘The Justice of the Peace’, 7 February 1916, pp. 1-16.

Finding their place in the 'modern' world

The first half of the twentieth century was a time of dramatic social change. JPs were required to respond to the challenges of changing times. A 1912 article on 'Motor cars and modern manners' called on JPs to adjudicate on cases involving this new and dangerous machine:

'It is here that the responsibility of the JP comes in. In adjudicating on motor-car cases he has to help in framing the new standards of manners of conduct and of capacity, and to take a lead in the improvement of the regulation of traffic. The great power conferred by the motor car must be controlled with a firm hand, but all who use the public highways must be prepared to adapt themselves to the new conditions.'¹²

Too much local power?

During the 1910s, JPs continued to hold a great deal of power in their local communities. It was noted by Mr W H Wadey of South Australia, speaking at the Melbourne Town Hall on 21 April 1914, during the first JP interstate conference, that JPs local knowledge could at times interfere with their capacity to deliver justice:

“A JP, without culture, may not be able to rid his mind of prejudice against an unpopular accused person, for it takes a man of culture and strong mind to hold the scales evenly.”¹³

In 1917, this issue still worried JPs. An article in 'The Justice of the Peace' entitled 'Justices and local influence' argued that a magistrate with local knowledge could potentially eliminate a miscarriage of justice where local knowledge can be applied honestly and without bias, because they knew what was behind the sworn evidence. However, being a part of the local community could also lead to allegations of bias in areas of factories, food and health legislation, and also licensing legislation where JPs could be faced with class or local influence.¹⁴

¹² 'The Justice of the Peace', 7 February 1912, p 24.

¹³ 'The Justice of the Peace', 7 May 1914, pp. 64-65.

¹⁴ 'The Justice of the Peace', 7 August 1917, p. 3.



The first President of the HJs Association, Cr Burston, the Right Honourable Lord Mayor of Melbourne. All Council Mayors automatically became JPs.

'The Justice of the Peace', 1910.

World War One

Disquiet regarding local influences gave way to greater political concern as the hostilities of World War One led to many men electing to defend their country. The exceptional circumstances of men leaving to defend their country meant that consideration was given to allowing JPs to be appointed members of the Auxiliary Police Force formed during war-time. However, the Attorney-General, the Honorable W M Hughes decided that JPs judicial duties needed to remain distinct from police powers to apprehend or arrest and therefore they could not be appointed as members of the Auxiliary Police Force.¹⁵

Loyalty to the English empire ran high. 'The Justice of the Peace' reported on the attempts of the New South Wales HJ Association to persuade the Solicitor-General to remove the Commission of Keepers of the Peace from men of German birth.¹⁶ The newsletter notes with sadness the losses of JPs on the fields of Gallipoli, France, and elsewhere in its 7 December 1916, War Roll of Honour, 'Australia's noble sons'.

Return to peace

After the fighting in Europe ceased, there was a return to the on-going tasks of keeping the peace at home. The first version of *A Justices' Handbook*, released by the HJs Association in 1919, outlines some of the varied functions of the JP, offering a window into the concerns of Victorian legislators during this period:¹⁷



Maurice Smith, front, son of Corporal Issy Smith. Corporal Smith was awarded the Victoria Cross medal for bravery after his heroic actions during the 2nd Battle of Ypres, 26 April 1915. On this day he carried several wounded men to safety in the midst of heavy machine gun and rifle fire. After the war he returned to Melbourne and was appointed a Justice of the Peace in 1930.

Australian War Memorial (am.gov.au/collection/044296)

¹⁵ 'The Justice of the Peace', 15 August 1953, p. 2.

¹⁶ 'The Justice of the Peace', 7 June 1917, p. 9.

¹⁷ *A Justices Handbook*, issued by the Honorable HJs' Association of Victoria, compiled by T B Wade and A W Dixon, McBean and Sons, Melbourne, 1919.

JPs power out of sessions included:

To issue a summons
Issue a warrant to apprehend or search
Commit an accused person to trial
Admit any accused person to bail
Remand people who have been arrested
Take or receive voluntary declarations
Order inspection of any property
Hold an inquest

Some of the crimes and Acts of the time included:***Bakers and Millers Act 1915***

Using weight other than avoirdupois
Not providing scales and weights in shop
Delivering bread and not having means of weighing
Selling bread made of unwholesome flour

Crimes Act 1915

Taking, using or working cattle or goat without consent of the owner
Stealing a dog

Dog Act 1915

Non registration
No collar
Worrying, chasing any person or horse, cattle or sheep

Education Act 1915

Failing to cause child to attend school

Licensing Act 1915

Selling liquor during prohibited hours; or not in accordance with license or to an aboriginal

Police Offences Act 1915

Offences related to good order including placing rubbish in a public place, driving on the footpath
Drunk in a public place

Responding to society's most vulnerable

JPs had powers that also brought them very close to the lives of the most vulnerable. In cases of aggravated assaults on women and children, a JP had to ensure that the defendant could find guarantees to keep the peace and be of good behaviour for six months from the expiration of the sentence. JPs also had powers under the *Lunacy Act 1915 (Vic)*. If the mentally ill had no means of support or was wandering at large, police could bring them before two JPs, or the JPs could visit and examine the person themselves, and following advice from a medical practitioner, organise a committal to a 'receiving house' to be assessed. The JP could examine any person deemed to be mentally ill at any convenient place and proceed in all respects as if the person brought before him was at a Court of Petty Sessions.¹⁸

Under the *Marriage Act 1915 (Vic)*, the Court of Petty Sessions was able to compel the husband to pay maintenance. JPs could hear and determine matters involving charges of drunk and disorderly, prostitution, threatening or abusive words, obscene language or indecent drawings and riotous behaviour within a public place, in an open court at any time or place as long as all parties consented.

But are they qualified?

With such a vast judicial responsibility, *The Argus* newspaper commenced a systematic campaign to have JPs removed from the bench because of a perceived lack of integrity and balance in their decisions. In 1917, the HJs Association pointed out that Victoria could not afford to remove them from their role, noting that in 1912 the numbers of cases tried at the Court of Petty Sessions, 36,043, was much higher than those in the Supreme Court, 92, or at the County Court, 545.

It also noted that petty sessions heard quasi-criminal matters including 947 maintenance cases, 44,165 electoral revision cases and 545 persons alleged to be 'lunatics'.¹⁹ With HJs doing so much work, there was an argument that the justice system could not afford to do without them.

¹⁸ Ibid, p. 47.

¹⁹ 'The Justice of the Peace', 7 June 1917, p 11.

There was clearly an important social role for JPs and each individual needed to be acquainted with a multitude of social issues. Whether they were representative of the population of Victoria became a question of increasing importance as the age and gender profile of JPs caused commentators to publically question how they could perform their function.

They are too old!

In 1912, an article appeared in *The Argus* newspaper accusing JPs of being too old:

'No age limit is assigned them, they are allowed to go on parodying justice long after they have reached their dotage. Not very long ago it was found that the average age of the estimable citizens who adorned a suburban bench was a little short of 80 years!'²⁰

In 1917, 'The Justice of the Peace' recorded that the oldest JP had died in Wellington Street, Collingwood. Mr James Leven, 89, was born in England in 1828, credited with having served Louis Napoleon who went on to become Emperor of France. He came to Melbourne in gold-digging days, and became a draper in Collingwood after being a wholesale greengrocer.²¹

It was not until the *Justices of the Peace Act 1935 (Vic)*, that persons aged over 72 years were deemed to be incapable of acting as JPs. This did not apply to JPs appointed before the commencement of the *Justices of the Peace Act 1935 (Vic)*. This was to create further problems over the years to come, as it was difficult to find younger people interested in taking on the role. An ageing profile of the cohort of JPs meant that their skills and qualifications could appear out-dated. Nevertheless, fresh ideas continued to be introduced into the justice community which created new opportunities, for new individuals, to revitalise the role of JP.

²⁰ *The Argus*, 18 December 1912.

²¹ 'The JP', 9 June 1917, p. 4.

1920s and 1930s: the rise of women JPs, a rustling of women's dresses on the magisterial bench

The 1920s saw new challenges to the power of JPs, not least from the women's movement. A 1913 'Justice of the Peace' article revealed a degree of anxiety amongst some JPs about the new democratic role for women:

'Are the suffragettes mad? ... Is there any rational explanation of the phenomena – something that will assure us that the next generation is not insane? While it is not easy to point to any present injustices in our laws and institutions which are of such character as to goad our sisters to an outbreak of frenzied rebellion – it cannot be denied that there are certain legal inequalities, but these only now and then affect isolated individuals.'²²

There was a move to increase the diversity of people who could be eligible to take on the role in a hope to broaden the appeal of the role. On 7 April 1920 the 'Justice of the Peace' newsletter noted that the *Sex Disqualification (Removal) Bill (UK)* passed both houses of parliament. Still, 'It must not be supposed that there will suddenly be a rustling of women's dresses on magisterial benches, however desirable it may be in principle. JPs need to have been regarded as having some form of social distinction.' If there was a role for women, the newsletter noted, it might best be in providing insight into the woman's true position on crimes related to women (eg assault, concealment of birth, offences against affiliation orders).²³

However, the movement to allow women to become JPs grew. Victoria was the last Australian state to appoint women as JPs. New South Wales, who passed the legislation in 1918, had 219 women JPs by 1926.²⁴ An unlikely alliance formed between socially conservative groups



Ms Lilius Skene was recognised for her decades of progressive reform in the National Council of Women in Victoria by her selection as one of the first women JPs in Victoria.

www.womenaustralia.info/exhib/ncwa/presidents-26.html

²² 'The Justice of the Peace', 7 October 1913, p. 131.

²³ 'The Justice of the Peace', 7 April 1920, p. 11-12.

²⁴ *The Herald*, 5 May 1926.



Skirt are growing longer and larger. Note the width on this coat, which is caught in at the waist with a fur cuff.

CALL TO ACTION

Must Have Women J's.P.

"In England the women Justices of the Peace have entered into the life of the nation, and are necessary to the welfare of the community," said the Rev. H. H. E. Hayes, P.O. Padre in Australia, at an open meeting of the Victorian Women Citizens' Movement in the Independent Hall last night.

"I was shocked to find that here in so-called democratic Australia, women cannot play that part in public affairs. The trouble is you're too modest. You can't go on hanging about with meetings and deputations. There are too many other things to fight for, such as child adoption. Get to work and educate public opinion. Don't be ashamed to make use of individual propaganda." Dig somebody in the ribs in the railway compartment and say: "How do you do, do you know anything about women Justices of the Peace?" Make trouble, set aside half-a-crown a week, and bombard members of Parliament with postcards till they have to give in to get rid of you. Make everybody talk about it. Take your cue from the women who fought and suffered in England for the liberty they enjoy today."

The padre went on to tell of a heartrending case brought under his notice in an outback Victorian town, where a woman who had been assaulted time and again by her husband—a drunken farm laborer—in front of her six small children, was unable to take her trouble to the courts because there were no women on the bench to whom she could tell her terrible story. "In 1918 an act was passed in New South Wales granting women this privilege. There are now 219 women J's.P. in that State, surely that speaks for itself. Are you going to set to work to force the aids of the powers here? Don't save it to the other person."

The padre was speaking to a resolution which had been brought forward by Mrs John Jones, president,

and which later was passed unanimously by the meeting. It was as follows:

"That this representative meeting of women voters calls the attention of the State Government to the discreditable fact that in Victoria alone of all the Australian States, women are treated as ineligible to act as justices of the peace, and the meeting affirms its opinion that the Government should take immediate steps to bring Victoria into line with the rest of the States in this urgent matter."

Mrs James made the fact known that a fortnight ago the matter was brought before the State Attorney-General by a deputation of members of the Women Citizen Movement, led by Mrs Joan Rosanove, and introduced by Mr H. I. Cohen, M.L.C. As yet the executive had received no answer. Last evening's meeting was therefore called to follow up the matter. This time women citizens are determined to keep the question alive. "We know only too well," said Mrs James, "how prone Parliament is to go to sleep after a deputation, say to themselves: Thank goodness, that's over. They'll be quiet for another few months."

Others who spoke last evening were Dr. Edith Barrett, honorary secretary of the National Council of Women; Mrs Evan Rees, honorary secretary of the W.A.T.F.; Mrs Britomarte James, Miss Williamson and Mr H. I. Cohen.

Since the meeting last night an interesting development has taken place, for while the women were discussing the subject the Premier announced that the cabinet had decided to introduce a bill providing for the appointment of women J's.P. Commenting on the matter this morning, Mrs John Jones said "that now is the time, as never before, to educate public opinion to ensure the passing of the bill which will be introduced next session. Let's hope the Government won't go out in the meantime."

WOMEN JUSTICES INSIST ON DUTY

"All Part Of Life"

MRS BRITOMARTE JAMES'S ACTION COMMENDED

Other women Justices of the Peace commended today the attitude adopted by Mrs Britomarte James, J.P., in refusing to retire from the Bench during the hearing of a case in South Melbourne Court yesterday, after the police sergeant had indicated that unavailing evidence would be given.

Mrs James announced that she would remain, prompted by her sense of duty as a Justice.

The secretary of the Victorian Women Citizens' Movement (Mrs Julia Rapke, J.P.) declared herself in full sympathy with Mrs Britomarte James, who had displayed great courage in acting as she had done.

"We accept our duty as Justices with our eyes open," said Mrs Rapke, "and we must carry out the duties attached to the position. Although I am entitled to do so, of course, I have never occupied a seat on the sessions bench. I am concentrating on the Children's Court, where we are called on at times to listen to unpleasant evidence. I regard that as an unpleasant duty, but one which must be performed."

"Knowing the high ideals of Mrs Britomarte James," Mrs Rapke said, "I am aware of the ordeal yesterday's experience must have been for her. Her action showed how earnest is her desire to carry out what she saw to be her duty to the public."

MISS ONIANS' VIEW

"I agree with Mrs Britomarte James," said the hon. secretary of the City Newsboys' Society (Miss Edith Onians). "It is all a part of life."

"As the first woman to be appointed a special magistrate for the Children's Court in Melbourne, I have had a long experience in this class of work. When I was overseas I took every opportunity of broadening my experience of such matters."

"It is rather puzzling to me why anybody should consider that Mrs James could have acted in any other way. Why should women Justices not listen to any evidence brought before the courts? They are there to represent the woman's viewpoint, and their presence must help any women or girls brought before the Bench."

"To me it is unthinkable that women Justices should shirk their clear duty, for that is what they would be doing if they did not accept the unpleasant with the pleasant."

The Herald, 18 September 1930.
Trove, National Library of Australia

Herald, 5 May 1926.

Trove, National Library of Australia

such as The Women's Christian Temperance Union who, at their Annual Conference in Melbourne in 1922, included a resolution that there be more women as JPs, while also opposing the secularisation of the Sabbath, the facilities for wine drinking in restaurants and the facilities for smoking in railway carriages.²⁵

Those advocating for democratic rights for women, such as the Victorian Women's Citizenship Movement, were also active in encouraging change so that women could be eligible to be JPs. At an open meeting on 4 May 1926, the Reverend H H E Hayes expressed his dismay that a democratic country such as Australia was so slow to grant this right to women. He urged the attendees to commence a campaign, including suggesting they 'dig someone in the hips in the railway compartment and say, "How do you do, do you know anything about women JPs?"' He told of a case where a woman who had been seriously assaulted by her husband felt unable to take the matter to court as there were no women sitting on the bench to hear her story.²⁶

Following a deputation from the Victorian Women's Citizenship Movement, the government announced it would release a bill to allow women to be eligible to become JPs. However, in 1930 the Honorable H R Richardson noted in parliament that 'a good many cases come before the bench that were not suitable for women to listen to'. However, less than four months later the first woman sat as a JP on the City Court Bench.²⁷

Seven women were appointed as JPs in Victoria including Ms Lillias Skene, (a prominent member of numerous women's groups and social welfare organisations), Ms Eleanor Glencross and Ms Blanche Muriel Eugenie Ross-Watt. Other notable female JPs from this period included Major Mary Anderson, who was involved with Salvation Army's women's shelters²⁸ and Mrs O Hicken, first woman in a rural part of Victoria to be appointed as a JP.²⁹

Allowing women to be JPs was not without its controversy. In September 1930, JP Mrs Britomarte James refused to leave the South Melbourne court on hearing a case of a disorderly house, even though her fellow male JP Mr Cohen insisted the evidence was too 'revolting' for a woman to hear. She reported that 'it is more important that women should be present in cases of this description in which women are concerned than in others.

25 *The Argus*, 18 November 1922.

26 *The Herald*, 5 May 1926.

27 La Trobe University, 'Guilty, your worship. A study of Victoria's Magistrates' Courts', Legal Studies Department, 1980, p. 15.

28 www.salvationarmy.org.au/history.

29 *The Argus*, 17 May 1927.

As one who takes a keen interest in having the laws amended where necessary so that women shall obtain full justice, I am determined that nothing will prevent me from doing my duty.³⁰

In 1938, the Women Justices Association was formed in Melbourne with the aim of uniting women justices, women's special magistrates and women Commissioners for the Taking of Affidavits. The group existed in this form until 1971 when it became the Australian branch of the International Association of Youth Magistrates.

A letter signed by 'a male JP' entitled 'Are women magistrates desirable?' appeared in 'The Justice of the Peace' on 11 February 1935:

“It may be argued that, when a woman assumes the responsibilities attached to the position of a JP and sits on the bench, she had perforce to face up to any and every problem – distasteful or otherwise – that confronts her. But it is desirable? ..It is – with all due deference to woman's rights, her natural intuition, brain power and all her womanly virtues – essentially a man's job. There is one sphere that in my opinion can most effectively be served by women and that is in the Children's Court, where their kindly, humane and sympathetic talents can be exercised to guide the erring boy or girl. But the Petty Sessions Court benches – in my opinion – No!”³¹

30 *Herald*, 17 September 1930

31 'The Justice of the Peace', 11 February 1935.

1930s:

the great depression and 'susso' applications

The 1930s saw a period of tightened economic conditions due to the collapse of the world economy in 1929. In Victoria, financial relief for the unemployed (known as sustenance or 'susso') was provided with the aid of a JP who could witness applications from people who wished to apply. They also gave advice about what assets to declare and how to maximise their entitlements. As early as 1931, 150 cases of fraudulent applications had been discovered with the same number of pending investigations.³² For example, Mr Percy Hodge of Tecoma was charged with having wilfully made a false declaration of his income because he did not include in his application income from sale of poultry and income from a tea-room. He said he was told by a JP that this was not necessary and the conviction was set aside.³³

In another case, a blacksmith from Fitzroy named Mr John Cairns signed his application before a JP as a married man. It was later found that he was merely 'associated' with a woman rather than legally married. He was sentenced to one month's imprisonment for the crime of having imposed himself on the Fitzroy Unemployed Relief Committee by a false representation with a view to obtaining a benefit.³⁴

JPs also heard cases relating to incapacity to pay fines. Mr Harold Rudd, unemployed of Burwood, was called upon by Mr Sneddon, JP at the Box Hill Court of Petty Sessions to explain why a fine had not been paid. The fine was incurred for allowing a cow to wander. "I am a married man with five children to feed. Where am I to get the money from to pay this fine?" asked the defendant. Mr Sneddon gave him 14 days in which to pay the fine or else be liable for a prison sentence.³⁵



'Smoke social', the JP, June 1937. The HJs Association of Victoria often held social events for its members. The Secretary of the Crown Law Department and Mayors were in attendance. The 'Justice of the Peace', 10 June 1937.

³² *The Argus*, 23 October 1931, p. 11.

³³ *The Argus*, 13 June 1935, p. 6.

³⁴ *The Argus*, 13 January 1933, p. 11.

³⁵ *The Herald*, 30 August 1930.

As Victoria's population faced such financial hardships, the value of the JP as an ordinary person who could understand the plight of others became perhaps even more relevant. This case was made by Mr Eager, MLA, in a lecture to JPs in 1936:

“It is a great thing for people to feel that, when adjudications are being made upon matters affecting their liberty, their property, and their money, they are getting justice, not from any official class, but from men of their own kind; and that is one of the strong reasons for the preservation of honorary justices – that they bring justice to the ordinary man in the community, and that the ordinary man feels he is getting justice from his peers”³⁶. (Hear, hear!)

However, the same speaker pointed out that the selection of these individuals needed to be above reproach:

“The real way to preserve the proper performance of the judicial duties of HJs sitting on the bench in courts of petty sessions is to take extraordinary care in their appointments, and see that they have the qualities which I have already described. A JP should be a man of good moral character, and of a kindly disposition; and if he is a man, what is called a gentleman. I don't know about the qualifications for a lady – they are always good!” (Laughter)³⁷

According to Mr Eager, a JP needed to be a 'gentleman' (or lady) as well as a person of the people. This requirement pointed to the wide and, perhaps at time, contradictory expectations of the role. As well as having the good judgement to adjudicate in cases before them at court, they also needed to be approachable and acceptable to all who required their advice and service.

36 'The Justice of the Peace', 10 June 1936, p. 3, quote from lecture by Hon C H A Eager, MLA on 'Are the powers of justices being unduly curtailed?'

37 'The Justice of the Peace', 10 June 1936, p. 3, quote from lecture by Hon C H A Eager, MLA on 'Are the powers of justices being unduly curtailed?'

Red cliff riots

Mildura, March 1939

500 rioting fruitpickers overwhelmed local police and citizens for two hours from 6.45 pm on the night of 12 March 1939. A young picker who helped to restore order said they were angry about the lack of work due to adverse harvest conditions, and had had enough of the tactics of police. A local JP, Mr C P Howie, saw 24 men charged with offences at the Red Cliffs court the following Monday. Three years later, the self-proclaimed 'Queen of the Red Cliffs riots', Ms Louise Edwards, again appeared before another JP, Cr H N Sarah, who found her guilty of contempt of court.³⁸

³⁸ *The Argus* 13 March 1939, p. 1; *Border Watch*, 16 March 1939; *Sunraysia Daily*, 23 March 1943.

Joys of a JP

In a small population, the personal and professional could be hard to distinguish. When matters became too close to home, one JP decided to surrender his commission and retire from his role. First, his daughter came before him at court for riding a bike without a light. Next, a drunk came before him and said a lady gave him sixpence for a beer. When it turned out that this kind lady turned out to be the JP's wife, the JP decided he had enough. 'I found the pressure of business necessitated my depriving myself of the honour'.³⁹

³⁹ 'The Justice of the Peace', 10 March 1936, p. 8.

Second World War: keeping the peace on the home-front

War conditions again created new political concerns that had potential ramifications for the role of the JP. On a very immediate level, reduced transport and street lighting meant that the HJs Association had to cancel many of its lectures and other professional development activities. Apart from losing many of its citizens to the fighting abroad, the country was also increasingly concerned about domestic security. The new Commonwealth legislation curtailing ‘Un-Australian activities’ and the policing of ‘subversive organisations’, for example, caught the attention of the Association and in 1941 it conveyed its interest in assisting in this area to the acting Prime Minister, the Honorable A W Fadden.⁴³

Despite the political turmoil, JPs continued to perform their duties at court.



JPs Thomas Ryan, William Young and Frank Davis sitting on the bench at the Drouin Courthouse [ca 1944].

Jim Fitzpatrick, National Library of Australia, nla.pic-an24358616

⁴³ 'The Justice of the Peace', 10 April 1941, p. 6.

1940s and 1950s: one foot in the grave?

Australia commenced a period of reconstruction following the cash-strapped period of World War II. This was an opportune time for renewal and reinvigoration of the JP selection system. In 1944, the Victorian Parliament passed a bill to amend the *Justices of the Peace Act 1935 (Vic)*. The main purpose of this amendment was to give legislative sanction to the practice that already existed of not appointing JPs who had attained the age of 65. However, the debate at the second reading suggested that there was more at stake than just age. As well as suggesting that the government should relax the rule not to appoint men aged under 35, Mrs Brownbill, Labor member for Geelong, advocated for yet more women to be appointed. In addition, she pointed out that appointments of JPs had been ‘too easy’. ‘She had found people on the list of JPs in her district who did not render public service in any shape or form’. Mr Corrigan, Labor member for Port Melbourne, went even further and said the Crown Law Department would be doing a duty to the community if it cancelled 50% of the appointments which had been made. ‘Indeed, as a poor man’s court, a person should be assured of courtesy and consideration instead of being a butt for the witticisms of ‘a long, grey-bearded JP with one foot in the grave, whose mentality was nil but who had achieved the distinction of having greatness thrust upon him for a short while.’⁴⁴

Community standards of justice were changing and the backgrounds of JPs again provoked debate. The Royal Commission on JPs in Britain 1946-48 found that political prominence was the major criteria used for determining local worth of JPs and that vested political interests were behind the selection of some JPs.

In Melbourne’s working class suburb of Braybrook, discussions took place at the local council about the selection of JPs. Councillor Treloar remarked that there were 14 JPs in the Sunshine area and, of them, eight were either too old or suffered some physical infirmity which ‘prevented a satisfactory discharge of duty’. They noted the discussion in parliament about

44 *The Argus*, 20 July 1944, p. 5.

the selection of HJs and the view that the letters 'JP' should not be seen like a decoration nor should it be taken as reward for past public services. Rather, 'it was a privilege and instruction to the appointee to use his talents and his time for the benefit of the community'.⁴⁵

At a meeting in the Hawthorn Town Hall in late 1944, the Mayor of Hawthorn Cr W T Lewis welcomed 25 of the 35 Hawthorn JPs and advised them:

“Serving the public as a JP is a most important matter. All work has to be done with dignity and also with thoroughness; laxity or indifference in any matters even of the most trivial nature brought Justices as a whole into disrepute”⁴⁶

Mr L H Hollins, MLA, said he had 'a keen appreciation of the large amount of good work HJs performed. Their duties were of a most important nature and only the most worthy persons, persons who comprised all the necessary qualifications of loyalty, good citizenship, and a practical knowledge of the life of the community, should be considered for appointment'.⁴⁷

45 *Sunshine Advocate*, 22 September 1944, p. 2.

46 'The Justice of the Peace', 11 December 1944, p. 5.

47 'The Justice of the Peace', 11 December 1944, p. 5.

1950s: loyal to the British Empire

The role of the JP during this period was no doubt influenced by a desire to preserve domestic security. It was reported that during a JP conference in Wangaratta, attendees were told that, ‘Every JP, irrespective of his political views, must be truly anti-communist, for no man could be loyal to a communist regime and swear his allegiance to the King.’

Upon the coronation of Queen Elizabeth in 1953, JPs were invited to restate their commitment to England:

“We are Members of the Judiciary, commissioned by Her Majesty, for a specific duty in our own particular sphere. We are commissioned from among the people, because it is believed, by experience, we know the tempo of the people and are fit and proper people to preserve Her peace and maintain Her laws, tactfully, discreetly, and with all the dignity becoming a person so highly honoured. It is the Commission of Her Majesty, Queen Elizabeth the Second, who has so recently dedicated Herself to Her People, that we now hold. Her Oaths are inseparable from those taken by each JP and She is entitled to the best each can give”⁴⁸

However, questions about their role and integrity continued to be raised in the press. In the mid-1950s, the Melbourne newspaper *The Argus* ran articles documenting the apparent incorrect handling of cases in Melbourne’s 227 suburban and provincial courts by JPs. The main issue under debate was their personal knowledge of defendants, which meant the punishment might be more lenient in some cases or, in others, harsher, depending on the relationship the JP had with the accused. In some cases, their penalties had to be corrected by

48 ‘The Justice of the Peace’, 15 June 1953, p 3-4.

the clerk of courts.⁴⁹ One case even included the first JP falling asleep during the case and the other being stone deaf!

The Attorney-General, the Honorable A G Rylah, issued a notification to government members to take care in who they recommended become a JP.⁵⁰ The time for more stipendiary magistrates appeared to be over-due, and it was increasingly felt that JPs needed better training before they could sit on the bench. This clash of cultures between an 'old world' view that ordinary citizens should have a share in the administration of justice using 'common sense', and unease over JPs lack of training in the administration of justice, grew over the decades to come.

At the end of the 1950s, there was still a sense of the HJs Association being tied to the enduring English legal traditions. In an address given by Mr P H N Opas, QC to the Camberwell Group of HJAV on 24 November 1959,

“Your commission today is not very much different from that of the Justices of those early days [1327 King Edward III] and you are enjoined to keep the peace and ordinances and statutes made for “ the good of the peace and quiet rule and government of our people”. One of the bulwarks of our British system of jurisprudence is that the people themselves have a very real share in the administration of their own laws.”⁵¹

49 *The Argus*, 'Too many JPs abuse the law', 10 June 1955, p. 4.

50 *Victoria Parliamentary Debates*, Legislative Assembly, 24 September 1958, Government Printer, p. 549.

51 'The Justice of the Peace', Jan 1960, p. 1.

1960s:

a restlessness and dissatisfaction with the old order of things

During the 1960s, the modernisation of Australian society increasingly challenged JPs to expand their knowledge and experience of diversity within the community.

Old ties to England and its customs would no longer be good enough as Australia experienced a period of rapid economic growth, industrial modernisation and cultural heterogeneity.

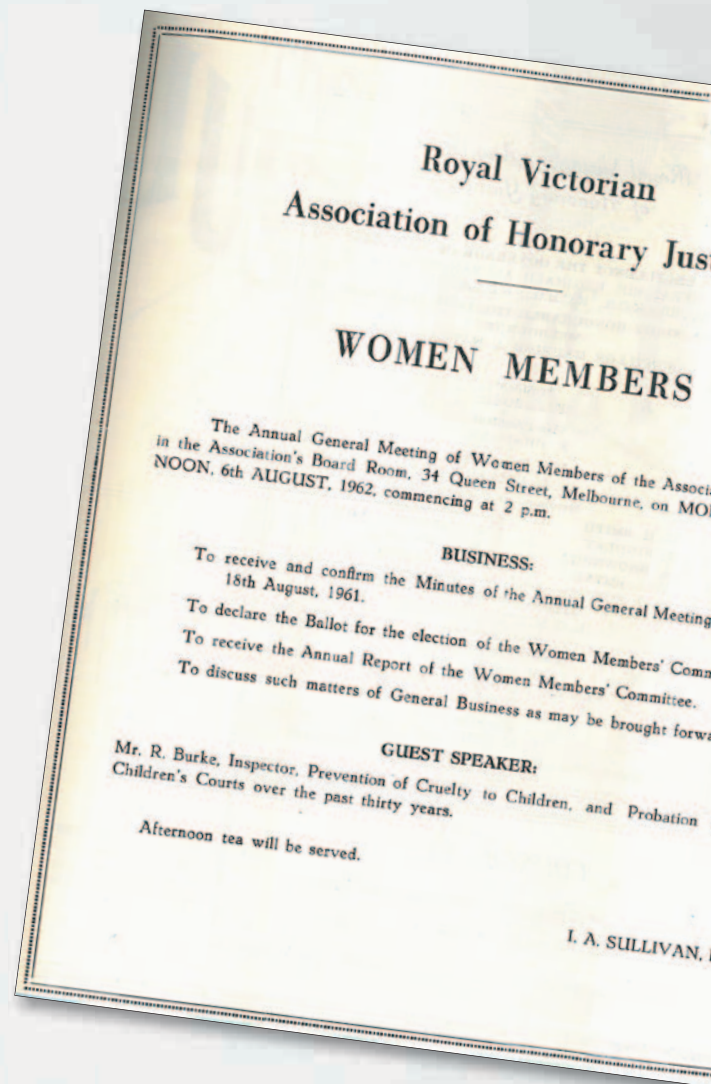
In February 1964, Melbourne's *The Sun* newspaper reported that two Chinese were among 14 new people sworn in as JPs.⁵² As Victoria became a more multicultural society, JPs were increasingly asked to deal with cases involving people from different cultures. One JP who worked as a magistrate in St Kilda heard a case of a man from Yugoslavia who was accused of indecently assaulting a girl on the beach. The JP was outraged by this behaviour and demanded that the accused be deported as he was not an Australian citizen. This, he argued, was to ensure the safety of the beach and prevent further attacks. He did not get his way and was told to surrender his commission by the Attorney-General, the Honorable A G Rylah, for prejudicing the case. Although the Attorney-General retracted this request, this storm of controversy brought into sharp relief anxieties about Victoria's changing society.⁵³

'New Australians' were challenging JPs to respond to new cultures. These were not just Melbourne concerns. Mr G Lyle, JP, said in Warracknabeal Court on hearing an unlawful assault case involving two migrants, '[I] view this incident with grave concern. All Australians want to help New Australians to be good citizens and the migrants should keep to their part of the contract'.⁵⁴

⁵² *The Sun*, 5 February 1964.

⁵³ Frank Power, 'HJs History', Vol 2, Melbourne.

⁵⁴ *Horsham Times*, 20 November 1953, p. 5.



Women members of the Royal Victorian Association of HJs organised their own meetings.

'The Justice of the Peace', July 1960.

**The Honorary Justices' Association of Victoria
DIRECTORY OF GROUPS**

METROPOLITAN:

CAMBERWELL.—Chairman: M. Harrison, Esq., M.B.E., J.P., 179 Bourke St., Melbourne. Secretary: P. T. Pook, Esq., J.P., 6a Butler Street, Camberwell.

CAULFIELD.—Chairman: A. J. G. Sinclair, Esq., J.P., 249 Glen Eira Road, Caulfield. Secretary: W. J. Greig, Esq., J.P., 31 Emily Street, Murrumbidgee.

COBURG/PRESTON.—Chairman: F. C. Waldron, Esq., J.P., 99 Bell Street Coburg. Secretary: G. C. L. Cain, Esq., J.P., 134 St. George's Road, Northcote.

NORTHERN SUBURBS (CARLTON).—Chairman: J. Turner, Esq., J.P., 2 Roseberry Avenue, Chelsea. Secretary: J. C. Cato, Esq., J.P., 321 Lygon Street, Carlton.

ST. KILDA.—Chairman: E. C. Mitty, O.B.E., S.B.S.L.J., J.P., 71 Ruskin Street, Elwood. Secretary: H. Spigelman, Esq., J.P., 83 Acland Street, St. Kilda.

SOUTH EASTERN GROUP (SPRINGVALE).—Chairman: N. A. W. Billing, Esq., C.S.L.J., J.P., 5 Heatherton Road, Springvale. Secretary: A. J. Barratt, Esq., J.P., 221 Heatherton Road, Noble Park.

WESTERN SUBURBS (FOOTSCRAY).—Chairman: R. Bassett, Esq., J.P., 14 Mackay Street, Yarraville. Secretary: J. T. Manallack, Esq., J.P., 103 Buckley Street, Footscray.

COUNTRY:

ALEXANDRA.—Chairman: O. W. Rawson, Esq., J.P., 20 Station Street, Ferntree Gully.

BALLARAT.—Chairman: D. J. Duggan, Esq., J.P., 11 Webster Street, Ballarat. Secretary: L. J. Denme, Esq., J.P., 1335 Gregory Street, Ballarat.

BENDIGO.—Chairman: O. Mulcair, Esq., J.P., 46 Breen Street, Bendigo. Secretary: E. A. Hains, Esq., J.P., 46 Breen Street, Bendigo.

DIAMOND VALLEY.—Chairman: J. Ward, Esq., J.P., 88 Bible Street, Eltham. Secretary: J. V. Nell, Esq., J.P., Fay Street, Eltham.

HORSHAM.—Chairman: D. Anderson, Esq., J.P., 10 Delrille Street, Horsham. Secretary: J. P. Sharry, Esq., J.P., 10 Delrille Street, Horsham.

LATROBE VALLEY (MORWELL).—Chairman: H. Hare, Esq., O.B.E., J.P., Hazlewood Road, Morwell.

MORNINGTON PENINSULA (FRANKS).—Chairman: L. F. Payne, Esq., J.P., 353 Neerim Road, Frankston. Secretary: W. R. Lumley, Esq., J.P., Franklin Ave., Chelsea.

NORTH EASTERN GROUP (WANGARATTA).—Chairman: D. Reid, Esq., J.P., 76 Swan Street, Wangaratta. Secretary: W. E. Warrnambool, Esq., J.P., 76 Swan Street, Wangaratta.

SOUTH WESTERN GROUP (WARRAGUL).—Chairman: N. K. Morris, Esq., J.P., c/o Morse's, Lava Street, Warragul. Secretary: V. Warrnambool, Esq., J.P., c/o Morse's, Lava Street, Warragul.

WARRAGUL.—Chairman: J. Sutton, Esq., J.P., 26 Palmerston Street, Warragul. Secretary: V. Warrnambool, Esq., J.P., c/o Morse's, Lava Street, Warragul.

ABORIGINAL WOMAN WILL BE A JP

SYDNEY, Today. — An aboriginal woman, Mrs A. McLeod, of Green Valley, a southern suburb, will be sworn in as a justice of the peace next week.

Mrs McLeod moved to the Housing Commission community with her husband and six children from a tin shack at Nowra, on the south coast, in May last year. Since then she has conducted a regular Sunday school class in her blue-painted cottage, been the Sadlier Public School women's auxiliary, a committee member of the school's parents and citizens' association, and a worker for the Baptist Church.

"ACCEPTED"

Mr McLeod, who left a timber mill job to move to Sydney, now works in a factory at Granville. "We get along fine," Mrs McLeod said today, as her dark-skinned children played noisily with a group of blond-haired youngsters from neighboring homes. "No one here at Green Valley thinks he or she is better than anyone else, and we are accepted. "We have lived in places where there was a color bar, but have found nothing of the sort here," she said today.

This Directory of Groups from the 'Justice of the Peace' in November 1960 shows the locations of the HJ Association of Victoria groups. Note the use of the title 'Esquire' was used before JP in some instances.

JPs needed to adapt to Victoria's changing demographic profile. In 1964, 30 year old Mr John Fautley became Victoria's youngest JP, suggesting that younger people were developing an interest in justice issues.⁵⁵ Changing ideas about the family were also impacting on JPs in their roles in the Court of Petty Sessions. New legislation on maintenance of deserted mothers, for example, gave illegitimate children rights which they had not had before. In addition, when a wife sought to issue her maintenance summons, she could go to a JP and ask for an order that the children receive payment independently of up to £2 per child per week. This was based on the principle that children should not be prejudiced by the rights or wrongs of the case as between their parents and was 'a great step forward.'⁵⁶

Despite the demands on JPs, the total number of JPs declined over the early 1960s. The proclamation of the *Evidence Act 1958 (Vic)*, had led to an increase in the number of people who took on the role Commissioner of the Supreme Court for taking Declarations and Affidavits, although these commissioners were then precluded from becoming a JP. The Chief Justice made such appointments and they were usually granted to members of the legal profession. Local members of parliament were closely watching the appointments of new JPs in their area to determine whether they were suitable for the magistracy.⁵⁷ It was a time of assessment. The Victorian HJ Association had 3,833 members, of which only 120 were women. As of March 1966, of 136 JP appointments in the past year, only six were women. In 1964, of the 178 appointments, only four were women.⁵⁸

Across 1965 and 1966, the Liberal Bolte Government took steps to have all JPs centrally registered and temporarily put a hold on the conferring of any new JPs.⁵⁹ This met with the approval of both sides of parliament.

Mr Floyd, Labor member for Williamstown, thought the government should go even further and print the names of JPs in the local papers or have them displayed in municipal offices and police stations. This would avoid the present situation where, he felt, one or two JP are required to do most of the work in their area while 'some go into seclusion and bask in the sunshine of the prestige of being a justice without doing much work'.⁶⁰

55 *The Sun*, 4 June 1964.

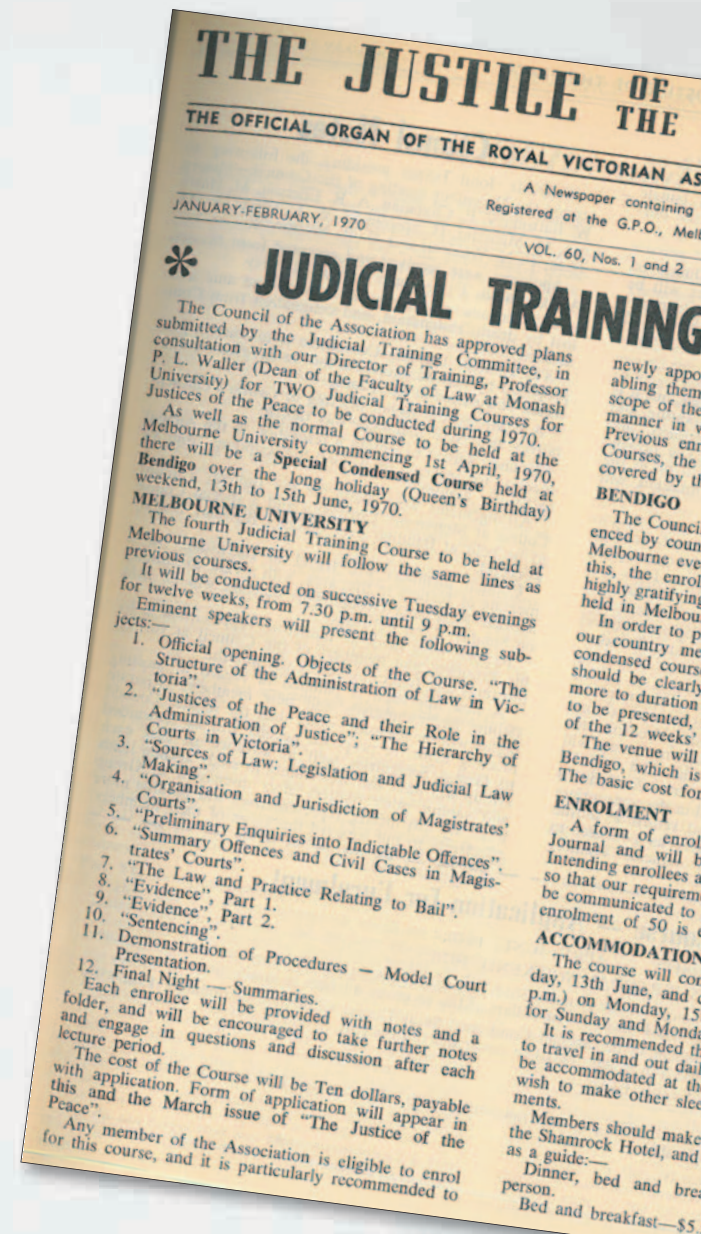
56 'The Justice of the Peace', 1 September 1965, p. 97.

57 'The Justice of the Peace', January 1962, pp 1-2.

58 'The Justice of the Peace', 1 March 1966.

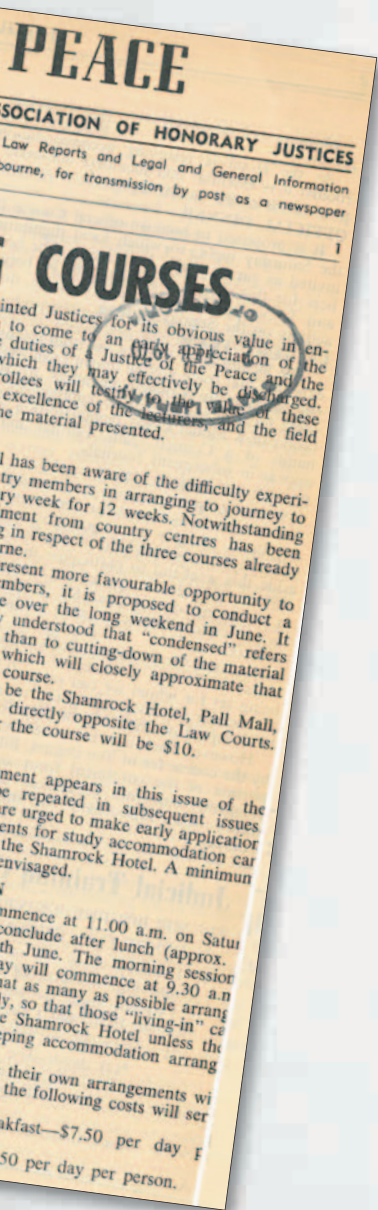
59 'The JP', 1 November 1966, p. 125.

60 *Victoria Parliamentary Debates*, Legislative Assembly, 27 April 1966, Government Printer, p. 3706.



The content of the training in 1970 included 'Justices of the Peace and their Role in the Administration of Justice', 'Evidence' and 'Sentencing'.

The 'Justice of the Peace', January-February 1970.



Some JPs were worried that this move signalled even more restrictions on their role. A talk by Mr Alan Blair to JPs in Diamond Valley entitled 'Winds of change for the JP', warned of 'a restlessness and dissatisfaction with the old order of things.' He felt that the registration of JPs was 'obviously a prelude to coming changes in the near future'.⁶¹ He articulated a sense that the growing scrutiny by government may not be in the best interests of JPs. He went on, however, to identify that training could only help JPs perform their role to meet modern standards: 'As justices we are surely demanded, of conscience, to analyse the situation as to whether our system of HJs has a rightful place in modern society, and whether or not we are fitting ourselves to properly carry out our duties in these times. Accepting the fact that criticism has arisen, it would seem that a person's ordinary knowledge, integrity and honesty of purpose are not, in the present day, sufficient to satisfy public demand. Let us accept the fact that we need some basic instruction in our duties as a prelude to experience'.

The Royal Victorian Association of HJs (RVAHJ), as the HJs Association was now known, had a membership at this time that included nearly three-quarters of Victoria's JPs. The RVAHJ took the lead in developing structured courses for Victoria's 5,000 JPs on a number of topics. Its council established a specialised training course for Honorary Magistrates to commence in 1968. The Attorney-General, the Honorable George Reid accepted the RVAHJ's invitation to attend and officially declare the course open on 2 April 1968.⁶² In 1970, the RVAHJ, in conjunction with the Dean of the Faculty of Law at Monash, adapted the 12 week course so that members from country areas could also attend.

While these new courses were an attempt to raise the reputation of the role of the JP across the state, there was also a concerted move in government to increase the number of stipendiary magistrates and remove the need for JPs to sit on the bench.

Debates in parliament also concerned the availability of JPs as the system of registration for JPs introduced in the mid-1960s was found wanting. As the system required names to be renewed every three years, it was difficult to keep it up to date. For example, JPs died, moved address or changed circumstances which meant they were no longer available to the public. The Attorney-General, the Honorable Mr Wilcox, confessed in parliament that it might not be up to date as that there were inadequate resources to administer the register in the Law Department.⁶³

61 'The Justice of the Peace', 1 June 1966, p. 71.

62 'The Justice of the Peace', 1 December 1967.

63 *Victorian Parliamentary Debates*, Legislative Assembly, 1 October 1975, Government Printer, p. 7037

1970s and 1980s: professionalisation of the Magistrates' Court

In 1969, the 200 courts of petty sessions, now known as Magistrates' Courts, continued to have a high volume of cases, but only one in five criminal cases was heard by a JP. The remainder were heard by the state's 63 Stipendiary Magistrates.⁶⁴ The decision as to which JPs were to regularly sit on the bench was arranged at the local level by consultation between the JPs and the Stipendiary Magistrates, with those with experience tending to be preferred.⁶⁵

Efforts were made to improve the training of JPs. A symposium held in 1972 at the Southern Cross Hotel offered JPs 'a full day program of instructional addresses from eminent and capable speakers'.

In 1975, the *Truth* newspaper ran an article entitled 'JPs in Giant Rip-off' in which allegations were made concerning misconduct by some JPs who were reported to be charging European migrants \$20 to witness their documents. This article was raised in Parliament and the Attorney-General, the Honorable Mr Wilcox, welcomed receiving the full particulars, pointing out that his government had been 'at pains' to improve the general standards of JPs.⁶⁶

By 1977, there were 5,238 Justices, of whom 216 were women. Training was provided by the Monash University Law School. As had been the case since their inception, the JP numbers were not evenly spread across the state and availability varied. For example, Mr Jones, the Labour member for Melbourne, reported to parliament that of the 22 JPs listed in North Melbourne, 11 were unavailable on request or had left the area.⁶⁷ They were sometimes difficult to find and the records were not easy to keep up-to-date. Yet when needed for extreme emergencies, they could be found.



This symposium was held in the Southern Cross hotel, since demolished and now the site of the Department of Justice.

'The Justice of the Peace', October 1972

64 La Trobe University, 'Guilty, your worship. A study of Victoria's Magistrates' Courts', 1980, p. 17.

65 Ibid, p. 20.

66 *Victoria Parliamentary Debates*, Legislative Assembly, 23 October 1975, Government Printer, p. 7891.

67 *Victorian Parliamentary Debates*, Legislative Assembly, 1 October 1975, Government Printer, p. 7033.

1979 Reading the Riot Act:

Frankston, 5 May 1979

'Our Sovereign Lady the Queen doth strictly charge and command all manner of person here assembled immediately to disperse themselves and peaceably depart to their own homes'. These were the words read by JP aged in his 60s after being hoisted by local police officers onto the bonnet of a car at the Frankston police station. He was the first JP in Victoria to enact their power to read the text prescribed under the *Unlawful Assemblies and Processions Act 1958*. The crowd, estimated to be 1,500, smashed windows at the police station, attempted to overturn police cars and hurled missiles at police.⁶⁸ Local police considered his words were inaudible.

⁶⁸ Frankston Standard Leader, 18 June 2014.

1981 Reading the Riot Act:

Mildura, 20 April, 1981

'The Riot Act was read to a crowd of drag race fanatics at Mildura on Saturday night. More than 30 police moved into the intersection of Deakin Avenue and Eighth Street where several hundred people had earlier threatened police ... Reading of the Riot Act virtually broke up a night of hectic activity for police ... As Justice of the Peace, Cr Roy Burr said, 'it was the first time the Act had been read in Mildura and would become part of the district's history'.⁶⁹

⁶⁹ Sunraysia Daily, 20 and 21 April 1981.

The Magistrates' Court Act 1989: a new era

In 1989, the government introduced a Bill, which, among other purposes, abolished the role of JPs sitting on the bench. This, they said, was the culmination of the professionalisation of the Magistrates' Court and was intended to promote accessibility of the court and create a more efficient and effective justice system.⁷⁰ The opposition argued that the role of JP had been reduced because 'the government does not believe in the services of volunteers' despite the fact that JPs have served the community well for over two hundred years.⁷¹

At the same time, the Office of BJ was created to meet the needs for after hours bail applications and the government encouraged JPs to apply to become a BJ. The issue of the training and legal knowledge of JPs was central to these debates. The creation of the Office of BJ, for example, included the requirement that all BJs undertake training designed and paid for by the Attorney-General's department. It was also stated that the Attorney-General, the Honorable Mr McCutcheon MP, would do everything he could to ensure that a JP or a future appointment would have the opportunity to become a BJ and that there would be an intensive course run by the Leo Cussen Institute. Speaking of the 'tragedy' over the years of not having compulsory training for JPs, regrets were expressed about the ways the office had been neglected and the declining numbers of appointments over the 1980s.⁷²

The RVAHJ raised strong concerns about the dramatic changes in their role. It cancelled its journal for December 1987 to focus its energies on opposing the Bill and urged its members to write to their local parliamentarian advocating for the preservation of the current roles for JPs. They conducted a media conference and ran an advertisement in *The Sun* and *The Age* on 23 October 1987.⁷³

The commencement of the *Magistrates' Court Act 1989 (Vic)* in September 1990 introduced several changes for HJs. For example, it abolished the office of JP for mayors, removed the need for JPs to be re-registered every few years, abolished the retirement age for JPs which was previously 72 years, and abolished the position of Commissioner for Taking Affidavits. The Office of BJ could be filled by people who had not yet reached 65 years and the post had to be abandoned once the office holder reached 70.

⁷⁰ *Victoria Parliamentary Debates*, Legislative Assembly, 26 May 1989, Government Printer, p. 2132.

⁷¹ *Victoria Parliamentary Debates*, Legislative Council, 26 May 1989, Government Printer, p. 1281.

⁷² *Victoria Parliamentary Debates*, Legislative Assembly, 26 May 1989, Government Printer, p. 2129.

⁷³ 'The Justice of the Peace', December 1987.

The changes in their role had a large impact on JPs, according to one JP who spoke about the new legislation in 1991:

Memories of Mr Cyril Molyneux – Justice of Peace, Berwick, interviewed on 10 September 1991 by Ms Diana Dragicevic, student at Berwick Secondary College.

“I have been a JP since 1956. I was nominated at a public meeting and my name was put up through the local MP and a recommendation was made to the AG who then appointed me. I did a lot of witnessing of documents, and at that time the JP was entitled to sit on the bench in company of other justices. The Stipendiary Magistrate only visited this area once every three months. I was on the court roster and we took turns because court sat every Tuesday, so it would lessen the load for each. Sometimes I would do a court at a police station, if a person was locked up all night, to work out bail. But after the 1970s the Stipendiary Magistrate came more often. Recently, the government changed their powers. I used to do bail, but now they are only specially appointing BJs. They have special duties and have special courses. Now the JP has no judicial duties, and only does the witnessing of documents. I was the chairman of the bench. I often did committals on my own and decided if there was a case to answer and then referred to a higher court. I also did Children’s Court by consent of the parties and heard in closed court. I did them in the Magistrates’ room rather than the court. Now all magistrates have to have a law degree, but before that, they came up from the law department as clerk of courts but now must be drawn from the ranks of lawyers for reasons best known to them.

When I was first appointed I granted bail, sat in court, and gave penalties up to three months jail, but gradually the government whittled away the powers of the JP except to witness documents. With the changes, I feel that the lower courts are clogging up, and it is not saving money as the honorary magistrates saved money. I find it hard to understand why the system has changed and it has never been clearly explained apart from so-called cost cutting. Most people would prefer to be judged by their peers rather than professional lawyers. Now it’s all changed”.⁷⁴

74 <http://www.cclc.vic.gov.au/oralhistories>, accessed 29 November 2014, interview transcribed and edited by Belinda Robson.

1990s and 2000s: attending to quality as well as quantity

The 1990s saw a rise in demand for new JPs to be appointed. People were not always available to perform the administrative tasks they were required to fulfil. In 1993, Mr Sietz, the Member for Keilor alerted parliament to the problems in his electorate due to the shortage of JPs in his area, and the large needs of migrants to have documents witnessed.⁷⁵

The decade saw increasing diversity in the composition of new JP appointments. There was also recognition of the need to diversify those who took on the role of BJ. The first Indigenous BJs were sworn in on 13 November 2001 in a ceremony opened by the Attorney-General, the Honorable Rob Hulls. The group of 13 then commenced duty in Sunraysia, Ballarat, Bendigo, Gippsland, Goulburn Valley as well as metropolitan Melbourne.

The roles of JPs and BJs were duly honoured in the International Year of the Volunteer in 2001. That same year the Member for Bennettswood, Mr Wilson, put out a call for additional JPs in his area and five new appointments were made.⁷⁶ Yet certain areas still suffered from a deficit in appointments. The Wimmera, for example, had only two BJs and the parliamentary member for the area requested that there be greater training and that requests for appointments be processed.⁷⁷

The number of Victorian HJ groups and associations continued to grow. The role of HJ could be isolating and membership provided peer support and networking opportunities. HJs could continue to enjoy collegiate support with the RVAHJ, as they had done since its inception in 1910 or join one of the new independent groups HJs had established in Dandenong, Geelong, Melbourne's Outer East, East Gippsland, Shepparton and Victoria's Western Region.

⁷⁵ *Victorian Parliamentary Debates*, Legislative Assembly 16 March 1993, p. 220.

⁷⁶ *Victorian Parliamentary Debates*, Legislative Assembly, 6 June 2001, p. 1675.

⁷⁷ *Victorian Parliamentary Debates*, Legislative Assembly, 4 June 2002, p. 2113.

Debates about their role, however, have continued to surface. In 2004, for example, calls were made within Parliament to review the limited nature of the role of JP and consider a return to the bench. Mr Ron Bowden MLC, member of the Legislative Council for the South East and a JP who had served on the bench in Frankston and Springvale, argued there were advantages to increasing the role of JPs on the bench at the Magistrates' Court. He echoed similar themes from earlier days of the cost-effectiveness of the system and the desirability of having community members hear and judge cases:

'Many JPs would be willing to take appropriate training, and the cost to the community is quite modest. There are no reimbursements or salary considerations whatsoever. There are also important considerations where if we truly believe – I and others do – that the Magistrates' Court should operate as a credible hearing place in the community ... where the community can be relied on to maintain, hear and judge those cases.'⁷⁸

Despite such sentiments, JPs did not return to the bench. Instead, the government continued to define their role and adapt to changing circumstances. A review of their position was undertaken by the Department of Justice in 2009, with the possibilities of capping the number of appointments, setting term limits or even abolishing the office altogether under consideration. The review followed the ombudsman's investigations of the appointment of a JP who was found to be involved in corruption at a local Council. After extensive consultation, it found strong community and professional support for the role of JPs and led to greater safeguards to ensure the integrity of the future role. These included revised codes of conduct for BJs and JPs, a formalised training program, revised complaints process and appointments based on regional demand. It concluded that JPs continued to deliver an important service in having documents witnessed or certified and that the role needed more administrative support in order to ensure it continued to operate effectively. The Honorary Justice Office in the Department of Justice & Regulation took on this role.

The *Bail Amendment Act 2010 (Vic)* amended the unique role of BJs. BJs heard bail applications outside of court business hours under the *Bail Act 1977 (Vic)* and interim accommodation orders under the *Children, Youth and Families Act 2005 (Vic)*. Such challenging tasks were historically practised by JPs as part of their wide remit. However, the role of BJ has been increasingly recognised as a critical part of the modern justice system. The *Bail Amendment Act 2010 (Vic)* introduced new eligibility criteria and a new code of conduct. BJs were also now only appointed for five years, with options for reappointment. These steps were taken to ensure quality control and oversight by the government.

⁷⁸ *Victorian Parliamentary Debates*, Legislative Council, 13 October 2004, p. 875.

The Honorary Justices Act 2014 and beyond

The *Honorary Justices Act 2014 (Vic)*, for the first time consolidated the laws relating to JPs and BJs into a single Act. The new legislation underlined the important contribution that HJs make to the Victorian community and provided a comprehensive framework for their roles.

The *Honorary Justices Act 2014 (Vic)*, governs the functions, powers, appointment, suspension, investigation and removal of HJs. It also reinforces the standing, community recognition and independence of JPs and BJs.

As Mr Gordon Rich-Phillips stated in the Legislative Council, the role of BJ was increasingly being recognised as one that ensured the effective running of the Victorian justice system:

‘The office of Bail Justice, which is unique to this state, was created more than two decades ago. A Bail Justice hears and determines the question of bail and applications for interim accommodation orders under the *Children, Youth and Families Act 2005 (Vic)*, where a magistrate is not available. The office of Bail Justice is highly specialised and training for Bail Justices is demanding, as Bail Justices are required to make important decisions relating to the protection of the community, the liberty of individuals who have been charged with serious offences and safeguarding children who are in need of protection. A Bail Justice, by virtue of his or her role, is on call and presides at hearings outside the usual hours that a court sits. Bail Justices often have to travel some distance to conduct a hearing, particularly in the country. Bail Justices play an important role in the effective running of the Victorian criminal justice system and child protection within the state. There are approximately 200 Victorian Bail Justices, and the Department of Justice & Regulation calculates that in the three years from June 2010 to June 2013, they conducted more than 20,000 hearings. The Victorian community is indebted to each of them for their enormous contribution to our community.’⁷⁹

In their role as HJs, both JPs and BJs are now firmly established in the community as volunteers who contribute many hours of their time to perform important functions. BJs continue to hear bail applications after hours and provide Interim Youth Accommodation Orders in child protection cases. JPs collectively sign several million documents per year and operate from private houses, places of employment, community centres, shops or from one of the many document signing stations (DSSs) throughout Victoria. DSSs provide the community with convenient access to JPs during business hours and evenings and there is a

⁷⁹ Victorian Parliamentary Debates, Legislative Council, 3 April 2014.

substantial and growing demand for DSS services throughout Victoria. It is not uncommon for tens of thousands of documents to be witnessed at DSSs each year, translating to a significant saving of police time and a great convenience to the public.

The history of the Victorian HJ has been one of adaptation to suit changing ideas of the legal profession. Once gentlemen of land, status and money, HJs now come from all walks of life. Male and female, young and old, rural and city-based, ethnically diverse, HJs play a critical role in ensuring the day-to-day decisions and administrative requirements of governments can occur smoothly and promptly. HJs remain linked to their local communities but also are treated as valued members of the state-wide justice system.

HJs have survived a major challenge presented by the professionalisation of the magistracy. This led to a re-consideration of what tasks a JP and BJ are best suited to perform within the current justice system. While their role was questioned and debated, it has taken leadership and courage to review, improve and re-define who they are, how they perform their duties and how to ensure they are the best they can possibly be. The path has not been straightforward but keeping the peace in Victoria would have been much harder without them. By celebrating their history, we can also anticipate how important HJs will be to keeping the peace in Victoria in the future.

