

ADVISORY PANEL REPORT
ON THE
APPROPRIATENESS OF THE APPOINTMENT
PROCESSES OF JUSTICES OF THE PEACE
ARISING FROM AN INVESTIGATION OF
MR HAKKI SULEYMAN

JUNE 2009

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TABLE OF CONTENTS

	PAGE NO.
1. Scope of the Investigation	1
2. Analysis of the Justice of the Peace Appointment Process	2
3. Findings and Recommendations	6

APPENDICES

Appendix A: Justice of the Peace Application & Appointment Procedure Overview	10
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1. Scope of the Investigation

Introduction

1. On 26 May, 2009 the Honourable Rob Hulls, Attorney-General wrote to Mr Ron Beazley and Mr Peter Harmsworth AO appointing them to form an Advisory Panel to investigate and report on whether Mr Hakki Suleyman is a fit and proper person to hold the office of Justice of the Peace in and for Victoria. In addition to the investigation of Mr Suleyman, the Advisory Panel was also asked to provide advice to the Attorney-General on:

whether the appointment processes at the time of Mr Suleyman's appointment were appropriate and provide any recommendations to improve the existing Departmental appointment process for the office of Justice of the Peace.

This report relates to the appointment processes employed by the Department of Justice (DOJ).

2. The Advisory Panel was requested to provide a written report to the Attorney-General by 5 June, 2009. This was subsequently extended to 10 June, 2009 at the request of the Advisory Panel.

Investigation Approach

3. In carrying out its investigation the Advisory Panel undertook the following activities:
 - a. considered material relating to the appointment of Mr Hakki Suleyman;
 - b. considered past and present codes of conduct for Justices of the Peace and Bail Justices;
 - c. considered briefing material provided by the Department of Justice in relation to appointment processes;
 - d. visited the Honorary Justices Office (HJO) in Lygon Street, Carlton and discussed current and past appointment processes with senior staff of the unit and was provided with a further briefing package.
4. The Advisory Panel in developing its recommendations needs to emphasise that this report is not a detailed systems review of every aspect of the process, but rather a higher level review which focuses on issues that arose around the appointment of Mr Suleyman and key observations about current processes.
5. The Advisory Panel would like to acknowledge the effective administrative support provided to it by Mr Glenn Took from the Department of Justice (DOJ) and thank the staff from the HJO for their open, frank and insightful discussion about current appointment processes of Justices of the Peace.

2. Analysis of the Justice of the Peace Appointment Process

Overview

6. The appointment processes of Justices of the Peace and Bail Justices (collectively referred to as Honorary Justices) are the responsibility of the Honorary Justice Office (HJO), which is part of the Courts and Tribunals Unit within the Department of Justice (DOJ). The three staff of the HJO are presently administratively responsible for over 4500 Justices of the Peace and around 450 Bail Justices. The high number of Justices of the Peace arises as there are no restrictions on the number of Justices of the Peace as anyone who meets the selection criteria can apply and be appointed by the Governor in Council. Once appointed a Justice of the Peace there is no age limit on the eligibility of serving Justices of the Peace unlike Bail Justices where the age limit is 65 years (refer Section 120 (2) *Magistrates Court Act 1989*).
7. Justices of the Peace can resign from office (refer Section 115 (10)) or the Governor in Council may revoke their appointment (refer Section 116). The Act is silent as to the basis of revocation. In the past, most revocations have resulted from a complaint of inappropriate behaviour while carrying out the duties and responsibilities of the office, from being convicted in court of a criminal matter(s) or from acting in a way that brings dishonour on the office.
8. The HJO has developed a well documented application and appointment set of procedures for Justices of the Peace which were provided to the Advisory Panel. An overview of the current appointment procedural steps is included as Appendix A. The Advisory Panel was informed that the HJO was presently undertaking a 'reform program' of the operations of the Office, which involved a review of all procedures and key documents as well as about the ways the Office could better train and support all Honorary Justices. The speed of the 'reform program' was very much materially affected by the available staff resources and their capacity to undertake additional responsibilities outside their normal workload.
9. The current application process for Justices of the Peace involves the following key steps:
 - a. validation of each application as meeting assessment criteria;
 - b. an interview and report by a police officer;
 - c. consideration of the application and police report by the Justice Assessment Panel (a retired Magistrate and a senior Departmental officer);
 - d. batches of applications being recommended to the Attorney-General and Governor in Council for appointment;
 - e. appointees take an oath of office by a local Magistrate;
 - f. appointees are then sent an information pack by the HJO about their duties and expected conduct.
10. In the past, the Royal Victorian Association of Honorary Justices (RVAHJ) has played a key role in the ongoing training and communication of current events to serving Honorary Justices. Over recent times, the HJO has taken a more assertive role in the Office's interaction with Honorary Justices as it sees this to be an appropriate role of the Office, and because there has apparently been some disharmony within the Association over its role and direction. The Advisory Panel supports this approach by the HJO. Honorary Justices are appointed by a commission granted by the Crown and as such require the oversight and supervision by the Department of Justice on behalf of the Attorney-General.

11. This is not a responsibility that can be devolved to another body. So while the HRO should work closely with the RVAHJ and any other organisations representing Honorary Justices, it needs to ensure it does not abrogate critical responsibilities associated with the on-going development, supervision and administration of Honorary Justices within Victoria.

Issues Associated with the Appointment of Mr Hakki Suleyman

12. This Section of the report is divided into two parts. This part of the report relates to issues identified arising from the appointment of Mr Hakki Suleyman in 2006 and 2007. The next part of the report identifies issues with present appointment processes.
13. Mr Suleyman applied to become a Justice of the Peace on 6 March, 2006. He was subsequently interviewed by the Justice Assessment Panel on 21 August, 2007 primarily due to past criminal convictions. (On 25 September, 1989 at the Broadmeadows Magistrates' Court Mr Suleyman was convicted and fined \$4000.00 for the offence of intentionally cause injury. Further he was fined \$250.00 for being found armed with an offensive weapon and fined \$750.00 for assault with an instrument). Subsequently on 12 November, 2007 along with forty other candidates he was recommended for appointment to the Attorney-General. On 18 December, 2007 Mr Suleyman was appointed a Justice of the Peace by the Governor in Council and he was administered the oath of office by Magistrate Jones on 27 December, 2007. On 9 January, 2008 the HJO sent Mr Suleyman a package of materials relating to his appointment as a justice of the peace including his Certificate of Appointment, his identity card and the Code of Conduct – Justices of the Peace and Bail Justices - May 2005.
14. Observations the Advisory Panel can make about Mr Suleyman's appointment process include:
- a. the appointment process was a long and drawn out activity commencing in March, 2006 and completing in December 2007. (The Panel has been advised by the HJO that the current average time to process an application for a Justice of the Peace is around three months);
 - b. a police check of the Victoria Police LEAP system did not reveal any prior convictions for Mr Suleyman and it was only a further check by the HJO of court records that revealed he in fact had a number of criminal convictions in 1989;
 - c. the Justice Assessment Panel interviewed Mr Suleyman in August, 2007 primarily to discuss the substance of his criminal convictions. The offences apparently arose out of an altercation between Mr Suleyman and others when he was a taxi driver. It would appear the Panel formed the view that as the offences had occurred some 18 years prior to the consideration of his application to become a Justice of the Peace and as Mr Suleyman had not been convicted of any subsequent serious criminal matters his application should be supported. The Panel did not see the need to bring the matter to either the attention of either senior departmental management or the Attorney-General;

- d. the Advisory Panel found significant issues with the Code of Conduct forwarded to Mr Suleyman in January, 2008:
- the face sheet of the document is titled "Code of Conduct – Justices of the Peace and Bail Justices – May 2005" yet its contents are almost exclusively targeted at Bail Justices, hence its application to the conduct of Justices of the Peace like Mr Suleyman is somewhat problematic;
 - when opening the document it commences with the heading "Appendix 1" which implies it is attached to a main document, but the Advisory Panel has been advised this was not the case;
- e. the Advisory Panel was provided with a current copy of the Honorary Justice Office Code of Conduct – April 2008 which applies equally to Justices of the Peace and Bail Justices. The HJO advised that the Office was presently working on developing two separate codes – one for Justices of the Peace and one for Bail Justices – which has the full support of the Advisory Panel. Given the different legislative provisions about the appointment, suspension and removal of the two classes of Honorary Justices it is important that this is reflected in a separate code of conduct for each cohort. Such an individual code will remove any future ambiguity like that confronted by the Advisory Panel in considering matters about the conduct of Mr Suleyman.

Other Issues Identified with Present Appointment Procedures

15. From its discussions with HJO staff, the Advisory Panel identified several other matters it considers worthy of review:
- a. presently an applicant for Justice of the Peace can print off an application form from the DOJ website and submit the application without first gaining any detailed advice about the role and responsibilities of the office or about character expectations of the office;
 - b. any number of individuals can apply to become a Justice of the Peace;
 - c. once appointed there is no age limit when eligibility to remain a Justice of the Peace ceases (unlike Bail Justices);
 - d. applicants are not required in their application to make a statutory declaration as to the correctness of the material contained in their application;
 - e. the 'gatekeeper' role of initially assessing the suitability of an applicant is vested with Victoria Police. Each applicant is interviewed by a police officer and it is the interviewing officer's role to access the LEAP system to check any prior convictions of an applicant;
 - f. applicants are not presently required to include other names they may use or have used in the past on their applications which could result in the failure to detect past prior convictions;

- g. In undertaking a police record check, it is unclear how individual police officers interpret Victoria Police policy over the release of criminal history information. For example, Victoria Police guidelines state adults found guilty of an offence and ten years has elapsed then no details will be released, and if the person was a child when found guilty of an offence and five years has elapsed then no details will be released. In addition, there are a further six conditions which could mean criminal history information about an applicant for Justice of Peace may not be released. However there are six exceptions to these guidelines including the full release of criminal history if it relates to 'the administration of justice'. But it is unclear to the HJO what interpretation interviewing officers may give to the guidelines in the case of Justice of the Peace applicants;
 - h. the Justice Assessment Panel considers all written applications and only actually meet with applicants if an issue arises either in their application or from the police report. If the Assessment Panel is satisfied as to the issue(s) following its meeting with the applicant (as in the Suleyman case) it supports the recommendation of the applicant for appointment, but no advice is forwarded to either senior management or the Attorney-General of issues considered and determinations made which are favourable to the applicant.
16. While outside its terms of reference, the Advisory Panel noted that Honorary Justices (Justices of the Peace and Bail Justices) do not have their own dedicated website but access material on the DOJ website titled 'Justices of the Peace' which is designed for both potential applicants as well as members of the community seeking to contact a Justice of the Peace. While recognising the financial implications (in terms of both its development and maintenance), the Advisory Panel sees merit in developing such a site to better administer and inform Honorary Justices of new/revised policies and administrative procedures. Such a site would also facilitate the improved analysis of the data bases of both Justices of the Peace and Bail Justices which could better inform future policy making (e.g. demographic analysis, regional analysis, turnover rates, appointment rates, ethnic coverage etc).

Findings and Recommendations

17. Building upon the 'reform program' being pursued by the HJO, the Advisory Panel makes the following findings and recommendations for the consideration by the Department of Justice with the aim of 'tightening up' the current appointment processes for Justices of the Peace.

Application Form

18. Presently any person with Internet access can print off an Application Form for a Justice of the Peace and then submit same to the HJO without fully understanding the role and responsibilities of the office, nor fully appreciating the high expectations of character required of individuals in both their work and private lives.
19. The Advisory Panel supports the early conclusion by the HJO of the separate codes of conduct for Justices of the Peace and Bail Justices respectively. It is important that both applicants and current office holders have a clear understanding of the respective responsibilities required of them in legislation as well as by the Government.
20. Recommendation 1: That DOJ give consideration to requiring all prospective Justice of the Peace applicants to first apply to the HJO for an Application Form which would then allow the HJO to forward all prospective applicants important background material about role, responsibilities as well as the code of conduct expected of individuals once they become Justices of the Peace.
21. Recommendation 2: That as a matter of priority the HJO concludes the separate codes of conduct for both Justices of the Peace and Bail Justices and these are made available on a regular basis to all office holders. That the codes should include expected sanctions for non-compliance with the code, for example, failing to divulge to the HJO criminal charges/convictions. That a copy of the relevant code be provided to all applicants to the office of Honorary Justice.

JP Numbers & Age Limit

22. The role of a Justice of the Peace is largely limited to witnessing documents. Justices of the Peace are no longer the exclusive cohort undertaking this role with Governments around Australia recognising a range of offices and occupations as being able to certify official documents. Therefore the critical need for Justices of the Peace in a community has been diminished over recent years. There are presently no limits on the number of Justices of the Peace. As any adult person meeting the assessment criteria can apply to become a Justice of the Peace, their numbers have swelled to be above #500. The HJO informed the Advisory Panel many Justices of the Peace were 'no longer active' but nevertheless needed to be catered for administratively. For cost reasons, the HJO relies on Justices of the Peace accessing the DOJ website to gain information about recent developments as this reduces the need for large mail outs to such a large cohort. The website though is not specifically designed for Honorary Justices but rather the wider community. The Advisory Panel see merit in DOJ undertaking research to develop a position paper for the Attorney-General of the future need and role of Justices of the Peace in contemporary society in Victoria.

23. The Advisory Panel was informed that until 1994, when it was rescinded, there was set in legislation an age limit of 72 years at which the eligibility of a Justice of the Peace to retain office would cease. As has been noted above there is presently in legislation an age limit of 65 years for Bail Justices.

24. Recommendation 3: That DOJ prepare a position paper for the consideration of the Attorney-General about the future need and role of Justices of the Peace as well as about future numbers and the re-introduction of age eligibility for Justices of the Peace.

Applications to Include a Statutory Declaration

25. At present the Application Form for a Justice of the Peace contains a declaration that answers in the form provided by an applicant have been provided as being true and correct, however this is not in the form of a statutory declaration. Given the standing of the office in the community, the Advisory Panel see this is an important omission with the current form.

26. Recommendation 4: That the Application Form for Justice of the Peace be modified to include a statutory declaration to be made before a Justice of the Peace.

Police Record Checks

27. Presently a police record check for individuals applying to become a Justice of the Peace is undertaken by the police officer assigned to interview an applicant at their local community. It is unclear what guidelines are followed by individual police officers in terms of the report they provide the HJO in relation to the existence or otherwise of an applicant's prior convictions. In the case of Mr Suleyman, the police officer indicated in her report that LEAP showed Mr Suleyman as having no prior convictions. It is unclear if there were in fact no records discovered or that the police officer exercised discretion under Victoria Police's guidelines in relation to releasing criminal history information when the offences occurred over ten years past.

28. The Advisory Panel was advised by HJO staff that the current Application Form for Justice of the Peace does not include provision for applicants to declare if they have any former or other known names to ensure any police record check is comprehensive.

29. Recommendation 5: That the HJO undertake formal police record checks with the Victoria Police for applicants for a Justice of the Peace with the clear understanding that ALL matters will be released to the HJO pursuant to Victoria Police's exception guidelines in that the information is in the interest of the administration of justice.

30. Recommendation 6: That the Application Form for Justice of the Peace be modified to capture details of an applicant's current and former names to enable a comprehensive police record check of criminal history.

Applicant Interview Process

31. At present each applicant for a Justice of the Peace is interviewed by a local police officer and a report is furnished to the HJO. The application and the police report are reviewed by the Justice Assessment Panel. The Panel then makes a decision if there are issues with the application that require the applicant to meet with the Panel to discuss through these matters. The HJO reported that the quality of police reports was variable and perhaps this had much to do with the view of an individual officer about the office of Justice of the Peace or the need for police to undertake such an interview.
32. The Advisory Panel formed the view that while Victoria Police should be consulted to gain the views of local police as to issues of an applicant's character, they should not be responsible for interviewing prospective applicants. The role of a Justice of the Peace is more judicial in nature rather than one relating to law enforcement.
33. Recommendation 7: That Victoria Police should be relieved from interviewing prospective candidates for Justice of the Peace. That in metropolitan Melbourne, the Justice Assessment Panel should meet with every applicant who meets the assessment criteria and in regional Victoria Clerks of Courts should undertake the initial interview and assessment.
34. Recommendation 8: That for applicants assessed as being worthy of being recommended for appointment there should be a character check with local police to gain any additional insights. This would not involve the police interviewing the applicant but rather rely on local police knowledge.

Justice Assessment Panel Issue Review

35. At present, the Justice Assessment Panel meets with applicants where issues are identified as warranting a face to face meeting. If the matter(s) is assessed as being not sufficient to prevent the applicant from being recommended for appointment, a note is included on the applicant's file. These determinations have effectively been delegated to the Panel. In the case of Mr Suleyman, his criminal history motivated the Panel to meet with him and discuss the circumstances of his criminal convictions and understand that the offences had occurred some 18 years ago. A note was made to this effect on his file and he was recommended for appointment. No advice was provided to either senior departmental staff or the Attorney-General about issues raised and determinations made by the Assessment Panel about any of the applicants recommended for appointment.
36. Recommendation 9: That the role of the Justice Assessment Panel be supported and extended. That in cases where the Panel identifies issues about applicants warranting investigation but which do not prevent the applicant being recommended for appointment, advice should be made available to the Secretary or her/his delegate at the Executive Director level of issues considered and determinations made about such applicants. Such a process is seen as an essential 'check and balance' when such important appointments are being made.

Resourcing Implications

37. In making its recommendations, the Advisory Panel is acutely aware that they each have resource implications for the HJO which is not a resource rich unit and will need support by the Department in this respect. Notwithstanding the need for additional resourcing, the Advisory Panel believes its recommendations will build a greater robustness into the appointment processes of Justices of the Peace, the need for which has arisen, in large part, from the Panel's investigations of the case relating to Mr Suleyman.

APPENDICES

Justice of the Peace Application & Appointment Procedure

