

Private Clients Interests Newsletter

New Regime for Justices of the Peace

The *Justices of the Peace Act 2002* commenced on 8 December 2003.

The main changes under the Act are that appointments will no longer be for life. All appointments will now be for 5 year terms and JPs will be required to apply for renewal of their commission every 5 years.

All existing appointments will expire on 8 December 2006. Existing JPs who wish to continue their commission after that time must apply for reappointment before that date. Applications can be made now and at any time before 8 December 2006.

Applicants will be required to re-establish either an employment or community based need for their reappointment.

The Attorney-General's Department will issue new registration numbers to all JPs who are reappointed.

In addition, there will be an Internet based Register of JPs accessible to the public. The Register will contain limited information about each JP – full name, the suburb/town and postcode where the JP conducts most of his/her JP functions and a contact telephone number provided by the JP for this purpose.

Existing JPs seeking reappointment should access the Community Relations Division of the Attorney-General's Department website for information and application forms at www.lawlink.nsw.gov.au/crd.nsf/pages/reppt_app

People seeking to be appointed as JPs for the first time will still require nomination by a Member of either House of the New South Wales Parliament.

If you require any further information in relation to this please do not hesitate to contact Mr Bill d'Apice of our office on (02) 9233 7788 wdapice@makdap.com.au.

Powers of Attorney

A Power of Attorney is a document which appoints and authorises another person (the "Attorney") to act on behalf of the person or company who gives the power (the "Donor" or the "Principal").

The power can be to act generally on the Donor's behalf or can be specific, eg for a particular period of time or in certain limited circumstances.

RICHARD J W d'APICE, A.M. • WILLIAM R d'APICE • ALEXANDER KOHN • STEWART J ROBERTS
NANCY A BRAMLEY-MOORE • JOHN R BAXTER • GRAHAM MARTIN • VERA M VISEVIC • NORMAN DONATO
CONSULTANT • ANTHONY F McDONALD ASSOCIATE • ROSEMARY CARRERAS

LEVEL 12 • 135 KING STREET • SYDNEY 2000
GPO BOX 495 SYDNEY 2001 • DX 296 SYDNEY
TELEPHONE (02) 9233 7788

FACSIMILE (02) 92331550 • EMAIL mail@makdap.com.au
ABN 83 586 046 478

The Donor can give a Power of Attorney to one or more persons and, if more than one, the Power of Attorney should state whether or not it is necessary for all attorneys to act together or whether any one can act on behalf of the Donor.

A Power of Attorney can be an “enduring power of attorney” so that it operates notwithstanding that the Donor has become of unsound mind. For an enduring power of attorney to be effective, the Donor must sign the Power of Attorney in front of a solicitor or other prescribed witness who must explain the nature of the document.

It is wise to consider granting a Power of Attorney to one or more people when planning a long overseas holiday or where a Donor is bedridden or physically incapacitated. Also, it may be wise for elderly people to consider the granting of a Power of Attorney so that the arrangement can be in place in the event that the person becomes incapacitated. This may avoid the trouble and expense in having a formal property manager appointed under the *Protected Estates Act*.

Appointment of Guardian

Whilst a Power of Attorney deals with matters related to financial management, the *Guardianship Act* allows a person to appoint a guardian to make lifestyle decisions for him or her if the person becomes incapacitated.

As with a Power of Attorney, an individual may appoint one or more persons to act as a guardian and again the appointment should state whether it is necessary for all guardians to act together or whether any one guardian can act on behalf of the appointor.

There are formalities that need to be satisfied for the appointment of a guardian to be effective and a certificate needs to be given by a solicitor or other authorised person that the effect of the appointment of guardian was explained to both the appointor and the guardian(s).

Again, it is wise to consider the appointment of a guardian at an early stage to avoid any unnecessary complication and expense to other members of the family were it necessary to apply for the formal appointment of a guardian through the Guardianship Tribunal.

Should you require any further information in relation to this please do not hesitate to contact us.

If you would prefer to receive this newsletter by email in the future, please register with us by filling in your details on our website www.makdap.com.au and submitting them to us.