

Guidelines on the appointment of Justices of the Peace: handling complaints and reviewing appointments

These Guidelines have been issued by the Attorney General under the *Justices of the Peace Act 2002*. They are designed to assist officers of the Department of Attorney General and Justice to handle complaints about, and review the appointments of, persons who are Justices of the Peace (JP) in NSW.

The aim of the Guidelines is to support consistent decision-making and ensure procedural fairness. The processes for handling complaints about JPs and reviewing certain JP appointments are necessary to maintain the integrity of the office of JPs and public confidence in JP services.

Essential Summary

- A complaint about a JP must be made in writing to the Department, and must include certain information.
- The Department will generally focus on matters concerning the eligibility of the JP to continue to hold the office and conduct which relates to the role and obligations of a JP when providing JP services.
- The Department will consider a complaint about a JP's personal behaviour, private dealings or professional conduct only in very limited circumstances. Where appropriate, complainants should report their concerns to the relevant investigatory or regulatory authority. If that process results in an adverse finding about the JP, the Department may consider the matter at that time.
- The Department may determine the appropriate response to a complaint, including either issuing to the JP a reminder or warning letter, or reviewing the JP's appointment.
- The Department must keep confidential the personal information of complainants and other individuals, unless their consent has been obtained for its release to the JP.
- Disciplinary action such as a warning letter or review of an appointment should also generally remain confidential between the JP and the Department.
- The Department will generally give a JP the opportunity to 'show cause' why he or she should not be removed from office by the Governor.
- The public register of JPs is the appropriate forum for making public any changes to the appointment status of individual JPs.

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1 Scope

These Guidelines apply to the Department's handling of complaints about, or notifications in respect of, people who hold a current appointment as a JP for NSW.

Reference to these Guidelines may also be made in any other relevant circumstances that relate to the administration of JPs in NSW.

2 Purpose

The purpose of these Guidelines is to support consistent decision-making and procedural fairness in the handling of complaints and notifications, particularly where disciplinary action against a JP is contemplated, such as the removal of a JP from office.

The objectives of the complaint handling, notification and removal processes are:

- to ensure that persons with a current appointment as a JP continue to meet the 'good character' and other eligibility requirements of the *Justices of the Peace Act*, and
- to help maintain public confidence in the integrity of the office of JP and in JP services.

The handling of a complaint or notification about a JP, and the review of a JP's appointment, are sensitive processes. Where a complaint or notification is accepted, the Department is required to undertake careful assessment of the issues and the proposed response.

Such an assessment is undertaken with careful regard to the role and rights of a JP, and the need to maintain public confidence in the office. In some instances, JPs who consider themselves to have a good standing in the community will not meet the high standards contained in these Guidelines. This is because, given their important role, JPs are required to satisfy higher standards than might otherwise be expected of many members of the community.

3 Principles

The key principles on which these Guidelines are based are:

- a focus on conduct which relates to the role and obligations of a JP when providing JP services (rather than the personal conduct of people who are JPs, unless that conduct causes the Department reasonable concern about the JP's eligibility under the legislation)
- ensuring procedural fairness to a JP who is the subject of a complaint or other notification
- protecting confidential information and the privacy of JPs and complainants
- ensuring efficiency and timeliness of the complaint handling process.

It is important to note that:

- many JPs are volunteers, who provide a valuable service to the community and
- most JPs are not public sector employees.

As such, procedures for the handling of complaints about public sector services and the investigation of alleged misconduct by public sector employees are not applicable to all JPs.

4 Definitions

The following definitions apply in this document:

- Attorney General** means the Minister for the purposes of the *Justices of the Peace Act 2002*.
- Complaint** means an expression of dissatisfaction by any person or organisation about the competence or conduct of a JP.
- Criminal history** means the information that results from one or more criminal records checks performed within Australia about a JP. It includes any other information that is available to the Department of Attorney General and Justice about any criminal offence found proven against the JP, in Australia or anywhere else, at any time.
- Department** means the Department of Attorney General and Justice.
- Disciplinary action** means the issue of a warning letter to a JP or the review of a JP's appointment, as described in section 11 of these Guidelines.
- JP** means a Justice of the Peace for NSW, as appointed or reappointed under the *Justices of the Peace Act 2002*.
- Notification** means a notification required to be made by a JP under section 10 of the *Justices of the Peace Act*¹ and/or under item 15 of the *Code of Conduct for JPs in NSW*.² It also includes information from any person or organisation, however received, that is relevant to the eligibility or good character of a JP.

5 Making a complaint

Any person may make a complaint to the Department about a current JP in NSW. The requirements for a complaint are that it must:

1. be made in writing
2. include the full name and contact details of the complainant
3. identify the JP concerned, preferably by name and/or JP registration number
4. provide specific details of the nature of the complaint
5. be lodged within six months of the conduct being complained about, unless the Department determines exceptional circumstances exist.

It is preferable that a complaint or notification also:

- includes a copy of any supporting documentary evidence
- states whether or not the complainant consents to details of the complaint being disclosed to the JP, including the complainant's name or any details that may cause the complainant to be identified
- indicates whether or not the complaint has been, or will be, the subject of other action by the complainant, such as a report to police, a complaint to a regulatory body or the commencement of legal proceedings.

Information for members of the public about making a complaint is available at the website www.jp.nsw.gov.au.

The contact details for complaints and notifications are:

Justices of the Peace Section, Community Relations Unit

Department of Attorney General and Justice

Postal address: Locked Bag 5111

PARRAMATTA NSW 2124

Email address: jp@agd.nsw.gov.au

Facsimile: (02) 8688 9620

6 Accepting or declining a complaint

The Department will make an initial assessment of each complaint, before determining whether or not to accept it. The Department will generally focus on complaints that raise:

- matters concerning the eligibility of the JP to continue to hold the office and
- conduct relating to the role and obligations of a JP when providing JP services.

The Department may decline to consider a complaint that does not meet the five requirements listed in section 5 of these Guidelines.

The Department will decline to consider some or all aspects of any complaint, including those aspects which are:

- about a JP's personal behaviour, private dealings or professional conduct (including private legal matters), where they are unrelated to the provision of JP services, and/or
- of a nature that may appropriately be reported to an investigatory or regulatory agency or similar authority.

However the Department may still consider such complaints where the Department forms a reasonable concern that the allegation, if proven, would be likely to affect public confidence in JP services generally. The Department must also have received independent and conclusive documentary evidence which substantiates the allegation, or have received similar complaints from multiple, unrelated complainants.

In this context, 'independent and conclusive documentary evidence' excludes written allegations by the complainant or other documents prepared by the complainant for the purposes of making the complaint. In addition, where the Department holds any doubt about documentary evidence, it may request to view originals or at least certified copies.

The Department will not become involved in private legal matters or private disputes between a complainant and a JP. It is also not the role of the Department to investigate personal behaviour, private dealings or professional conduct of a JP. Examples include where a complainant alleges a JP has:

- committed a criminal offence
- failed to meet his or her obligations under the law or a contract
- committed a civil wrong (tort) against another person
- contravened the rules or obligations of a professional, business, trade or industry organisation

Where it appears the relevant investigatory agency or regulatory body has not already been notified, the Department should advise the complainant to make an official complaint to that agency or body. For example, the Department should advise a complainant to report an allegation of:

- criminal conduct to the NSW Police Force, or
- a breach of the *Legal Profession Act 2004* to the Legal Services Commissioner, or
- unacceptable business practices to the Department of Fair Trading.

If the JP is ultimately convicted of a criminal offence or an adverse finding is made about the JP by a court, tribunal, regulatory agency, complaint handling or dispute resolution body, the Department may at that time review the person's appointment as a JP.

The Department will also not become involved where a third party asks a JP to give evidence about the JP's past witnessing or certifying of any document. The proper place for the hearing of the JP's evidence as a witness is in the relevant court or tribunal. Alternatively the organisation which originally sought to rely on the document may subpoena the JP.

7 Responding to a complaint

The Department's response to a complaint will generally fall into one of the following categories:

1. recording the complaint but determining not to take further action at the present time
2. issuing a reminder letter to the JP
3. issuing a warning letter to the JP
4. reviewing the JP's appointment.

If the Department accepts a complaint about a JP and determines to take further action, the JP will generally be informed of the relevant substance of the complaint. Where a warning letter is issued or an appointment is to be reviewed, the JP will generally also be given the opportunity to reply to the allegation. However the JP is not obliged to respond. The Department may require that any reply from the JP be given by way of statutory declaration within a reasonable time frame.

The Department's decision about its response to a complaint is final. A complainant may only request a review of a Departmental decision if the complainant provides new information or evidence relevant to that complaint.

7.1 Reminders

The Department may issue a reminder letter to the JP, if it considers the conduct raised is minor and is likely to be satisfactorily addressed by such a reminder. For example, reminder letters are appropriate for incidents which appear to involve mere error, oversight or misunderstanding of the correct procedure.

A reminder letter may draw the attention of the JP to his or her obligations under the *Code of Conduct for JPs in NSW*, or any relevant procedural instructions in *A Handbook for JPs in NSW*.

7.2 Warnings

The Department may issue a warning letter to the JP, if it considers the conduct raised is more serious and could ultimately lead to a review of the JP's appointment.

For example, warning letters may be appropriate where there appears to be a pattern of incompetence, or a deliberate breach or repeated minor breaches of the *Code of Conduct or Handbook*.

7.3 Reviews of appointments

The Department may review a person's appointment as a JP in certain circumstances. More detail about conducting reviews of appointment is at section 11 of these Guidelines.

8 Communicating with complainants

The Department will endeavour to acknowledge all written complaints about JPs within three business days of their receipt.

Within three weeks, the Department should advise complainants whether or not their complaint has been accepted. If a complaint has been declined, the Department will, where possible, give a reason.

Where the Department has accepted a complaint, it should also advise the complainant that appropriate action has been or will be taken in respect of the JP's alleged conduct. However there may be circumstances where it would be inappropriate to advise a complainant about the specific details of action taken, particularly where disciplinary action is involved. Disciplinary action such as a warning letter or review of an appointment should remain confidential between the JP and the Department.

In limited circumstances, the Department may consider releasing specific details of disciplinary action taken, such as where:

- the complainant is an organisation which has an investigatory or regulatory role or
- it is strongly in the public interest for any disciplinary action taken against a JP to be made public, and that public interest overrides any considerations of privacy for the JP.

In all other circumstances, the public register of JPs is the appropriate medium for making public any changes to the appointment status of individual JPs. If the Governor removes a JP from office as a result of a complaint, the JP's details will be removed from the public register.

9 Informing JPs about complaints while protecting the privacy of complainants and others

The principles of procedural fairness require that the Department provide the JP with essential details regarding a complaint about him or her, if the Department is considering taking disciplinary action. Essential details are those which the Department considers are necessary for the JP to understand and respond to the allegation.

However, in accordance with the *Privacy and Personal Information Protection Act 1998*, the Department also has an obligation to protect the privacy and personal information of individuals. Personal information includes the name of an individual who is a complainant.

9.1 Obtaining consent from a complainant

Even if the Department withholds a complainant's name and personal information, releasing other details about the complaint to the JP may still cause the complainant to be identified. Where this risk exists, the Department should obtain the consent of the complainant, before raising the complaint with the JP.

If the complainant does not consent to the release of either his/her name or any of the essential details about the complaint that may cause him or her to be identified, the Department may be unable to take further action about the complaint.

9.2 Providing a copy of a complaint to the JP

A copy of a completed complaint form or other related correspondence can only be provided to the JP with the written consent of the complainant.

Even if the complainant has consented in writing, the Department should still consider, on a case-by-case basis, whether or not to provide a copy to the JP. This is because it is often preferable for the Department to express the complaint to the JP itself. This allows the Department to:

- focus on the elements of the complaint which it considers significant
- leave out details which may be private, confidential or otherwise sensitive
- leave out comments which may be offensive, inflammatory or irrelevant
- obtain the JP's response, without that being coloured by the complainant's version of events.

9.3 Providing a copy of documentary evidence to the JP

Where a complaint about a JP's performance of JP functions is supported by documentary evidence, it is usually helpful for the Department to provide a copy of that evidence to the JP. An example is where a statutory declaration has been incorrectly completed.

When doing so, the Department should take care to remove any information from the documents which may identify the complainant, or breach the privacy of any other person. Information such as any person's name, address or other personal information should be blacked out in the copy of the documents that are provided to the JP.

10 Handling notifications about JPs

Under these Guidelines, a 'notification' differs from a 'complaint' in that:

- a JP may make a notification about himself or herself (and indeed is required to do so, in certain circumstances under the *Justices of the Peace Act* and the *Code of Conduct*)
- any other person or organisation who makes a notification about a JP does not necessarily have a complaint about the JP.

10.1 Circumstances requiring a notification by a JP

Section 10 of the *Justices of the Peace Act* provides that:

(1) A justice of the peace must notify the Minister in writing of the following:

(a) any matter that may cause the justice of the peace to cease to satisfy the prescribed criteria for appointment as a justice of the peace,³

(b) if the justice of the peace satisfies any of the grounds for removal from office under section 9 (3).⁴

(2) The notice must be given as soon as practicable after the justice of the peace becomes aware of the matter concerned.

In addition, item 15 of the *Code of Conduct* requires that a JP must give notification in writing as soon as practicable after:

- being convicted of a criminal offence
- being found to have acted dishonestly by any court or tribunal
- becoming bankrupt or applying for relief of a similar nature
- being disqualified from being involved in the management of any company under the *Corporations Act 2001*.

10.2 Making a notification

Any person may make a notification to the Department about a current JP in NSW. The general requirements for a notification are that it should:

1. be made in writing
2. include the full name and contact details of the person making the notification

3. identify the JP concerned, preferably by name and/or JP registration number
4. provide specific details of the matter which is the subject of the notification.

Where the Department has received a notification which does not include some of that information, the Department may make its own further enquiries. There is no time limit on the making of notifications.

10.3 Responding to a notification

The Department's response to a notification will generally fall into one of the following categories:

1. recording the notification but determining not to take any further action at the present time, or
2. reviewing the JP's appointment.

Where a matter raised in a notification:

- falls within section 10 of the *Justices of the Peace Act* or item 15 of the *Code of Conduct* AND
- the Department has received, or is able to obtain, documentary evidence that verifies the matter raised

the Department will generally conduct a review of the JP's appointment.

In all other cases, the response is at the discretion of the Department.

10.4 Communicating with those who make a notification

The Department will endeavour to acknowledge all written notifications about JPs within three business days of their receipt.

Where JPs make notifications about themselves, the Department will endeavour to advise them within three weeks whether or not it will review their appointments.

Where any other individual makes a notification, the Department should advise him or her within three weeks whether or not the notification has been accepted or declined. However whether or not the JP's appointment is to be reviewed should remain confidential between the JP and the Department.

The public register is the appropriate forum for making public any changes to the appointment status of individual JPs. The Department may consider informing interested parties of a JP's removal from office, if it is strongly in the public interest, and that public interest overrides any considerations of privacy for the JP.

Where an investigatory or regulatory organisation has made a notification, the Department may inform the organisation of both the review of a JP's appointment and/or whether or not the JP has been removed from office.

11 Reviewing a JP's appointment

The purpose of a review is so that the Department can advise the Attorney General whether or not to recommend to the Governor that a JP be removed from office.

The grounds for the removal of a current JP from office are set out in section 9 of the *Justices of the Peace Act* and in clause 7 of the Justices of the Peace Regulation 2009.⁴

The circumstances which may lead to a review of a JP's appointment include where the Department considers the person:

- may not satisfy, or may no longer satisfy, one or more of the criteria for appointment³
- may meet one or more of the grounds for removal
- has failed to carry out properly the functions of a JP or has made a serious breach or repeated breaches of the *Code of Conduct*.

11.1 The eligibility criterion of good character

A key criterion for appointment is that the person must be of 'good character'. Where the Department holds reasonable concern about the JP's good character, a review of the person's appointment should be undertaken. Examples of situations which may give rise to reasonable concerns include where the JP has:

- received a criminal record or become subject to any of the circumstances covered by section 4.1 or section 4.2 of the *Guidelines on the appointment of JPs: assessing eligibility and good character*
- been the subject of any adverse finding or comment (that reflects on the JP's good character) by any court, tribunal, official inquiry, regulatory agency, complaint handling or dispute resolution body, or professional, business, trade or industry association
- been suspended or disqualified from holding any licence, registration, certificate or membership in any profession, business, trade or industry
- been disqualified from being involved in the management of any company under the *Corporations Act 2001*.

Similar to section 6 of these Guidelines, the Department may also form a reasonable concern about the good character of a JP if it:

- is satisfied that the allegation, if proven, is one which is likely to affect public confidence in JP services, and

- has received independent and conclusive documentary evidence which substantiates the allegation, or has received similar complaints from multiple, unrelated complainants.

11.2 Mental incapacity

One of the grounds for removal of a JP under the *Justices of the Peace Act* is if the person is a mentally incapacitated person. In reviewing a JP's appointment on this ground, the Department should refer to whether or not there has been an official finding of current incapacity with respect to the applicant. A relevant official finding may include that the applicant is:

- a protected person or a person under guardianship within the meaning of the *Guardianship Act 1987*, or
- a voluntary or involuntary temporary patient under the *Mental Health Act 2007* or a forensic patient under the *Mental Health (Forensic Provisions) Act 1990*.

11.3 Bankruptcy or debt relief

Another ground for removal of a JP is if the person is currently bankrupt or subject to debt relief of a similar nature to bankruptcy, including any debt relief agreement with the applicant's creditors including but not limited to a Part X debt agreement under the *Bankruptcy Act 1966* (Cwth).

Where a JP notifies the Department of being bankrupt or subject to debt relief, the Department must review his/her appointment. Where another person notifies the Department that a particular JP is bankrupt or subject to debt relief, the Department should obtain independent confirmation before reviewing the JP's appointment.

11.4 Failure to properly carry out the functions of a JP

Before commencing a review in this circumstance, the Department should consider if the Attorney General would be likely to recommend to the Governor that the JP be removed from office for such failure.

This is likely to be the case where there has been a serious breach of the *Code of Conduct* or repeated serious incompetence when performing the functions of a JP. An example of a serious breach would be a JP who has been found to have witnessed a blank document.

A review will also be appropriate where the JP has previously demonstrated repeated non-compliance with reminders or a warning.

12 Informing JPs about reviews of appointments

The principles of procedural fairness require that the JP be advised of the Department's intention to review his or her appointment and given the opportunity to 'show cause' why he or she should not be removed from office. This should occur before the relevant Departmental submission is made to the Attorney General.

A JP whose appointment is to be reviewed must therefore be advised by the Department prior to the commencement of the review.

The Department must allow the JP a minimum of three weeks to respond to the matters raised. However the JP is not obliged to respond.

The Department may require that any response from the JP be given by way of statutory declaration.

In preparing a submission to the Attorney General, the Department should take into consideration any response received from the JP, and any other information which it considers relevant.

A JP whose appointment has been reviewed must be advised of the outcome as soon as possible after any relevant determination by the Attorney General or Governor about the JP's continuing appointment.

13 References

These Guidelines have been prepared with reference to:

- the *Justices of the Peace Act 2002*
- the Justices of the Peace Regulation 2009
- the *Privacy and Personal Information Act 1998*
- *Code of Conduct for JPs in NSW*
- *A Handbook for JPs in NSW*, Third Edition, August 2008

14 End notes

- ¹ The matters to be notified to the Minister under section 10 of the *Justices of the Peace Act 2002* are:
- (a) any matter that may cause the justice of the peace to cease to satisfy the prescribed criteria for appointment as a justice of the peace
 - (b) if the justice of the peace satisfies any of the grounds for removal from office under section 9 (3).
- ² The matters to be notified to the Department under item of the *Code of Conduct for JPs in NSW* are:
- (a) being convicted of a criminal offence
 - (b) being found to have acted dishonestly by any court or tribunal
 - (c) becoming bankrupt or applying for relief of a similar nature
 - (d) being disqualified from being involved in the management of any company under the *Corporations Act 2001* (Cwth).
- ³ The prescribed criteria in section 5(1) of the *Justices of the Peace Act 2002* are:
- (a) the person is at least 18 years of age
 - (b) the person is nominated for appointment by a member of the Legislative Assembly or the Legislative Council
 - (c) the person satisfies the criteria for appointment as a justice of the peace prescribed by the regulations.
- Further criteria specified in clause 4 of the *Justices of the Peace Regulation 2009* are:
- (a) the person must be an Australian citizen or a person who is entitled to vote at a general election for the Legislative Assembly, unless the Minister exempts the person from having to satisfy this criterion
 - (b) the person must be of good character
 - (c) the person must consent in writing to confidential inquiries being made as to the person's suitability for appointment, including a criminal records check
 - (d) the person must not be an undischarged bankrupt
 - (e) the person must establish that the person's appointment as a justice of the peace is required for reasons relating to the person's employment or to fulfil a community-based need for the appointment.
- ⁴ The grounds for removal in section 9(3) of the *Justices of the Peace Act 2002* include:
- (a) if the person becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (b) if the person becomes a mentally incapacitated person, or
 - (c) if the person is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (d) in any other circumstances prescribed by the regulations.
- Further grounds for removal specified in clause 7 of the *Justices of the Peace Regulation 2009* are:
- (a) if the person fails to take the oath of office in accordance with clause 5
 - (b) if the Minister is of the opinion that the person does not satisfy or no longer satisfies the criteria for appointment as a justice of the peace
 - (c) if the Minister is of the opinion that the person has failed to carry out properly the person's functions as a justice of the peace.

15 Document information

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16 Document history

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1.1	1 July 2011	Guidelines reviewed and updated to reflect the new name of the Department (Department of Attorney General and Justice). No other revisions made.
