



New South Wales

Justices of the Peace Regulation 2020

under the

Justices of the Peace Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Justices of the Peace Act 2002*.

MARK SPEAKMAN, MP
Attorney General, and Minister for the Prevention of Domestic Violence

Explanatory note

The object of this Regulation is to repeal and remake, with minor changes, the *Justices of the Peace Regulation 2014*, which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following—

- (a) the power of the Secretary of the Department of Communities and Justice to extend or reduce the term of office of justices of the peace,
- (b) additional criteria for the appointment of persons as justices of the peace,
- (c) the requirements for the taking of oaths of office by justices of the peace,
- (d) a code of conduct for justices of the peace,
- (e) additional circumstances in which justices of the peace may be removed from office,
- (f) the particulars relating to justices of the peace that are to be included in the public register of justices of the peace,
- (g) savings and formal matters.

This Regulation is made under the *Justices of the Peace Act 2002*, including sections 4(3) and (3A), 5(1)(c), 7(1), 8(3), 9(3)(d), 11(2) and 14 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Justices of the Peace Regulation 2020

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Justices of the Peace Act 2002

1 Name of Regulation

This Regulation is the *Justices of the Peace Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Justices of the Peace Regulation 2014*, which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

Department means the Department of Communities and Justice.

the Act means the *Justices of the Peace Act 2002*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Extension or reduction of term of office

(1) The Secretary may, by notice in writing to a justice of the peace—

- (a) extend the term of office of the justice of the peace for a period not exceeding 2 years, or
- (b) reduce the term of office of the justice of the peace for a period not exceeding 1 year.

(2) The Secretary may delegate the Secretary's function under subclause (1) to a senior executive of the Department.

(3) This clause extends to persons holding office as justices of the peace immediately before the commencement of this clause.

5 Criteria for appointment as justice of the peace

For the purposes of section 5(1)(c) of the Act, the following criteria must be satisfied by a person for appointment as a justice of the peace—

- (a) the person must be an Australian citizen or a person who is entitled to vote at a general election for the Legislative Assembly,
- (b) the person must be of good character,
- (c) the person must successfully complete any knowledge test that may be required by the Department on the functions of a justice of the peace,

- (d) the person must consent in writing to confidential inquiries being made as to the person's suitability for appointment, including a criminal records check,
- (e) the person must not be an undischarged bankrupt,
- (f) 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.

6 Oath of office

For the purposes of section 7(1) of the Act, the oath of office is to be taken, not later than 4 months after the date of appointment of the person concerned or within a further period that the Minister may approve in relation to the person, in accordance with requirements for justices of the peace under the *Oaths Act 1900*.

7 Code of conduct

For the purposes of section 8(3) of the Act, the code of conduct set out in Schedule 1 is prescribed.

8 Additional circumstances for removal from office

For the purposes of section 9(3)(d) of the Act, a person may be removed from office as a justice of the peace in the following circumstances—

- (a) if the person fails to take the oath of office in accordance with clause 6,
- (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.

9 Contents of register

- (1) For the purposes of section 11(2) of the Act, and subject to subclauses (2) and (3), the register of justices of the peace is to contain the following particulars in relation to each justice of the peace—
 - (a) the full name of the justice of the peace,
 - (b) the suburb or town where the justice of the peace carries out most of the functions as a justice of the peace, and the postcode of that suburb or town,
 - (c) a telephone number, nominated by the justice of the peace, on which members of the public may contact the justice of the peace,
 - (d) if the justice of the peace is appointed to fulfil a community-based need (rather than primarily for purposes related to the employment of that justice of the peace (*employment-related purposes*)), the times at which the justice of the peace is available to provide justice of the peace services.
- (2) The particulars referred to in subclause (1)(b) and (c) may not be included on, and must be removed from, the register if a justice of the peace who exercises functions as a justice of the peace for employment-related purposes notifies the Secretary in writing that the justice of the peace does not consent to their inclusion.
- (3) The particulars referred to in subclause (1)(b), (c) and (d) may not be included on, and must be removed from, the register if—
 - (a) a justice of the peace notifies the Secretary that the safety or well-being of the justice of the peace would be affected if the information is included or not removed, and
 - (b) the Secretary is satisfied that the exclusion or removal is necessary for that reason.

10 Repeal and savings

- (1) The *Justices of the Peace Regulation 2014* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Justices of the Peace Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Code of conduct for justices of the peace

(Clause 7)

1 Access to services

- (1) A justice of the peace must not unreasonably refuse to provide justice of the peace services and must treat all persons seeking justice of the peace services with courtesy, dignity and respect.
- (2) A justice of the peace must deal with requests for justice of the peace services in a timely manner.

2 Conduct and integrity

- (1) A justice of the peace must not engage in dishonest activities or behave in a way that brings, or is likely to bring, the office of justice of the peace into disrepute.
- (2) A justice of the peace must keep safe and must not reveal information that is private, confidential or commercially sensitive and that the justice of the peace has obtained when providing justice of the peace services, unless authorised by law.
- (3) A justice of the peace must remain independent and impartial when providing justice of the peace services.
- (4) If a justice of the peace has a personal, family, financial or business interest in a matter before them and is satisfied that there is a conflict of interest, the justice of the peace must decline to provide justice of the peace services in that matter.
- (5) If the term of appointment of a justice of the peace expires, the person must immediately cease providing justice of the peace services unless the person is re-appointed as a justice of the peace.
Note. A person's appointment as a justice of the peace continues in force, and the person may continue to provide justice of the peace services, until a determination is made in respect of an application for re-appointment duly made by the person. (See section 4(4) of the Act.)
- (6) If a justice of the peace has been removed from office by the Governor, the person must immediately cease providing justice of the peace services.
- (7) If a justice of the peace has been suspended from office by the Minister, the person must immediately cease providing justice of the peace services.

3 Financial and personal benefit

- (1) A justice of the peace must not charge a fee or accept a gift for providing justice of the peace services.
- (2) A justice of the peace must not use the title of justice of the peace to claim or imply that the justice of the peace has a special authority, credibility or status, or to advance or appear to advance the interests in a business, commercial or personal transaction or dispute of that justice of the peace.
- (3) However, a justice of the peace may use the title of a justice of the peace to advertise the person's availability to perform justice of the peace services for the public or clients (including by using the title after the person's name on a business card or letterhead, whether in hard copy or electronic form).

4 Knowledge and competence

- (1) A justice of the peace must be familiar with and follow the provisions in the Department's publication *Justice of the Peace Handbook* and in any guidelines issued by the Minister with respect to the exercise of specified functions by justices of the peace under the Act.

Note. The handbook is available at www.jp.nsw.gov.au.

- (2) When providing justice of the peace services, a justice of the peace must clearly record his or her justice of the peace registration number together with his or her full name and signature on the document.
- (3) A justice of the peace must never witness a document unless the justice of the peace is satisfied as to the identity of the person and has seen the person sign the document.
- (4) Where an Act of Parliament provides that a declaration or instrument be signed or attested by a justice of the peace, the justice of the peace must do so in accordance with any instructions under that Act and any instructions on the declaration or instrument.
- (5) A justice of the peace must not offer legal advice in the person's capacity as a justice of the peace.

5 Notifications

- (1) A justice of the peace must notify the Department in writing, as soon as practicable after the event occurs, if the justice of the peace—
 - (a) is convicted of a criminal offence, or
 - (b) is found to have acted dishonestly by a court, tribunal, inquiry, regulatory agency, complaint handling or dispute resolution body or professional, business, trade or industry association, or
 - (c) becomes bankrupt or makes a debt agreement or personal insolvency agreement under the *Bankruptcy Act 1966* of the Commonwealth, or
 - (d) is disqualified from being involved in the management of a company under the *Corporations Act 2001* of the Commonwealth, or
 - (e) is suspended or disqualified from holding a licence, registration, certificate or membership in relation to a profession, business, trade or industry.
- (2) A justice of the peace must notify the Department in writing of a change to any of the following as soon as practicable after that change—
 - (a) the name of the justice of the peace,
 - (b) the postal or email address of the justice of the peace,
 - (c) the telephone number on which the justice of the peace can be contacted in relation to justice of the peace services.