

# Justices of the Peace Act 2002 No 27

[2002-27]



New South Wales

## Status Information

### Currency of version

Current version for 26 September 2019 to date (accessed 22 December 2024 at 16:00)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes. Text of the legislation is not affected.

This version has been updated.

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Justices of the Peace Act 2002 No 27



New South Wales

An Act to provide for the appointment and functions of justices of the peace; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Justices of the Peace Act 2002*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

In this Act—

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**justice of the peace** means a person who holds office as a justice of the peace under this Act.

**Secretary** means the Secretary of the Department of Communities and Justice.

## Part 2 Appointment and functions of justices of the peace

### 4 Appointment of justices of the peace

- (1) The Governor may, on the recommendation of the Minister, appoint a person as a justice of the peace.
- (2) A person may not be appointed as a justice of the peace unless the person is eligible to be so appointed.
- (3) A person appointed as a justice of the peace is to hold office for a period of 5 years from the date of his or her appointment (subject to the regulations) and may, if eligible to be appointed as a justice of the peace, be re-appointed—

- (a) by the Governor, on the recommendation of the Minister, or
- (b) by the Secretary.

(3A) A regulation under subsection (3) cannot provide for a reduction of the term of office of any justice of the peace by more than 1 year and cannot provide for an extension of the term of office of any justice of the peace by more than 2 years.

(4) Despite subsections (3) and (3A), if an application for re-appointment is duly made by a person, the person's appointment as a justice of the peace continues in force until a determination is made in respect of the application.

(5) (Repealed)

## **5 Persons who are eligible to be appointed as justices of the peace**

(1) A person is eligible to be appointed as a justice of the peace if the person meets all of the following requirements—

- (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.

(2) A person seeking re-appointment as a justice of the peace is not required to be nominated for re-appointment by a member of the Legislative Assembly or the Legislative Council.

(3) The Minister may issue guidelines with respect to the appointment of justices of the peace.

## **6 Applications to Minister**

(1) A person may apply to the Minister for appointment or re-appointment as a justice of the peace.

(2) An application is to be in the form approved by the Minister and accompanied by—

- (a) except in the case of an application for re-appointment, a written nomination signed by a member of the Legislative Assembly or the Legislative Council, and
- (b) any other documents required by the Minister.

## **7 Oaths of office to be taken**

(1) A person who is appointed as a justice of the peace must not exercise the functions of a justice of the peace unless the person has taken an oath of office in the form and

manner prescribed by the regulations.

- (2) A person who is re-appointed as a justice of the peace is not required to take another oath of office if the person held office as a justice of the peace immediately before that re-appointment.

## **8 Functions of justices of the peace**

- (1) A justice of the peace may exercise any function conferred or imposed on a justice of the peace by or under this Act, the *Oaths Act 1900* or any other Act.
- (2) The Minister may issue guidelines with respect to the exercise of specified functions by justices of the peace under this or any other Act.
- (3) The guidelines are to incorporate relevant provisions of any code of conduct for justices of the peace that has been prescribed by the regulations.

### **8A Justices of the peace may certify copies**

- (1) A justice of the peace may certify a document to be a true and accurate copy if the justice of the peace has both the original document and the copy in his or her possession at the time of certifying.
- (2) A justice of the peace who certifies a document under this section must cause to be printed on the copy of the original document the following words or words substantially the same as the following—

*I certify this to be a true and accurate copy of the document reported to me to be the original document.*

## **9 Vacation of office**

- (1) A person ceases to hold the office of a justice of the peace if the person—
  - (a) completes a term of office and is not re-appointed, or
  - (b) resigns the office by instrument in writing addressed to the Minister, or
  - (c) is removed from office by the Governor under subsection (2).
- (2) The Governor may at any time, on the recommendation of the Minister, remove a justice of the peace from office.
- (3) Without limiting subsection (2), the Governor may at any time, on the recommendation of the Minister, remove a justice of the peace from office—
  - (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.

## **9A Suspension**

- (1) The Minister may at any time suspend a justice of the peace from office.
- (2) Without limiting subsection (1), the Minister may at any time suspend a justice of the peace from office—
  - (a) if the person is charged with an offence referred to in section 9 (3) (c), or
  - (b) in any of the circumstances set out in section 9 (3) (a)–(d), or
  - (c) in any other circumstances prescribed by the regulations.
- (3) A suspension takes effect on the day on which written notice of the suspension is given to the justice of the peace concerned or at such later time as may be specified in the notice.
- (4) A person who is suspended under this section is taken not to be a justice of the peace and cannot exercise any function of a justice of the peace during that suspension.
- (5) The purported exercise of any function by a justice of the peace during any period that the justice of the peace is suspended cannot be used to challenge or call into question any document or other thing unless the person relying on the document or other thing knew, or ought reasonably to have known, that the justice of the peace was suspended when purporting to exercise the relevant function.
- (6) A suspension ceases to have effect when it is withdrawn by the Minister by notice in writing given to the person who is suspended.

## **Part 3 Miscellaneous**

### **10 Notification of matters to Minister**

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

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

Maximum penalty—20 penalty units.

### **11 Register of justices of the peace**

- (1) The Minister is to cause to be kept and maintained a register of justices of the peace.
- (2) The register is to be in the form determined by the Minister and is to contain the particulars prescribed by the regulations.
- (3) The register is to be available for inspection by the public, free of charge, during business hours at such places as the Minister determines.
- (4) The Secretary may issue a certificate certifying as to whether a person was registered on the register at a particular time. The certificate is admissible in legal proceedings as evidence of the matters certified.
- (5) Information entered on the register is presumed (in the absence of evidence to the contrary) to be correct.

### **12 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

#### **12A Delegation**

The Secretary may delegate the exercise of any function of the Secretary under this Act or the regulations (other than this power of delegation) to—

- (a) a Public Service senior executive, within the meaning of the *Government Sector Employment Act 2013*, assigned to a role in the Department of Communities and Justice, or
- (b) another employee of the Department of Communities and Justice who the Secretary considers a sufficiently senior member of the Department's staff to exercise the function.

### **13 Guidelines to be publicly available**

The Minister must ensure that guidelines issued by the Minister under this Act are publicly available.

#### **13A Use of retirement title**

- (1) A person may apply to the Secretary in writing for an authority to use the title "JP (Retired)" after the person's name if the person—



- (a) has ceased to hold office as a justice of the peace (whether before or after the commencement of this section), and
  - (b) was 65 years or older when the person ceased to hold that office, and
  - (c) held office as a justice of the peace for at least 10 consecutive years before ceasing to hold that office.
- (2) The Secretary must not grant an authority unless satisfied that the person is of good character.
- (3) The Secretary may cancel an authority by notice in writing to the person if—
- (a) the Secretary is satisfied that the person is not of good character, or
  - (b) the person notifies the Secretary in writing that the person no longer wishes to use the title.
- (4) The granting of an authority does not authorise the person to exercise any of the functions of a justice of the peace.
- (5) The regulations may make provision for or with respect to the use of retirement titles.

#### **14 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

#### **15 Savings and transitional provisions**

Schedule 1 has effect.

#### **16 (Repealed)**

#### **17 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Savings and transitional provisions

(Section 15)

### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### 2 Existing justices of the peace

- (1) A person who, immediately before the commencement of section 4, was appointed, or held office, as a justice of the peace for the State, is taken to be so appointed, or to hold such office, under this Act until the third anniversary of the commencement of section 4, unless the justice of the peace sooner ceases to hold office.
- (2) Nothing in this clause prevents a person referred to in subclause (1) from being re-appointed, or from resigning or being removed from office, in accordance with this Act, as a justice of the peace.

### 3 Amendments made by [Courts Legislation Amendment Act 2005](#)

The amendment made to section 7 by the [Courts Legislation Amendment Act 2005](#) applies to any re-appointment made on or after the commencement of that amendment, regardless of when the person being re-appointed was first appointed as a justice of the peace.

### 4 Amendments made by [Courts and Other Legislation Amendment Act 2014](#)

Section 4 (3A) as inserted by the [Courts and Other Legislation Amendment Act 2014](#) extends to a term of office of a justice of the peace that was commenced before the commencement of that subsection.