



## **FOREWORD FROM THE NSW ATTORNEY GENERAL**

This handbook has been designed to assist Justices of the Peace in the performance of their duties and to familiarise them with their statutory and other responsibilities.

The Office of Justice of the Peace has a long and honourable history. A close reading of this handbook will help ensure the maintenance of the high standards traditionally associated with this Office.

I would like to take this opportunity to commend Justices of the Peace for the important contribution they make in assisting the community and offering their services and I look forward to many more years of your continued service to the community.

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to read 'B Debus'.

**Bob Debus MP**  
**Attorney General**

## INTRODUCTION

The Justice of the Peace Handbook has been written to acquaint Justices of the Peace with the history and responsibilities of their office. The Handbook incorporates the Justice of the Peace Guidelines. The Guidelines provide important information about the appointment and functions of a Justice of the Peace in New South Wales and have been approved by the Attorney General.

It is essential that Justices of the Peace fully understand the legal significance of the duties they perform. The contents of this handbook should be read thoroughly by all Justices of the Peace before any of the powers of the Office are exercised. Justice of the Peace appointments will be reviewed where a Justice of the Peace has failed to carry out his or her Justice of the Peace functions in accordance with the Guidelines.

It is stressed that Justices of the Peace must act fairly and impartially at all times and should be careful to avoid the appearance of bias. The appointment is an honorary one and a Justice of the Peace is not permitted to demand or receive fees for the performance of any duties. Involvement in improper practices, conviction for any serious offence or bankruptcy will result in the Justice of the Peace being removed from office.

The administrative responsibility for the Office of Justice of the Peace lies with the Attorney General's Department and any requests for clarification and/or updates concerning Justice of the Peace matters are best addressed to the Attorney General's Department.

The comments and statements in this handbook relate solely to Justices of the Peace appointed in the State of New South Wales, Australia.

Laurie Glanfield  
**Director General**  
**NSW Attorney General's Department**

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## DEFINITIONS

For a more detailed definition of the terms refer to any standard dictionary or law lexicon.

adjuration	the action of adjuring, that is, putting on oath.
attest	to bear witness to, affirm the truth of, to testify, certify.
Consular Officer	see definition of “Australian Consular Officer” and “British Consular Officer” in section 26 of the Oaths Act 1900.
declarant	one who makes a declaration.
deponent	one who deposes or makes an affidavit under oath.
jurat	a memorandum of the place, date and person before whom an affidavit is sworn.
Justice of the Peace (JP)	a person appointed (or reappointed) to the Office of Justice of the Peace in and for the State of New South Wales.
Public Notary	a legal practitioner appointed as a Public Notary pursuant to the Public Notaries Act 1997.
subscribe	to write one’s name or mark on or at the bottom of a document, especially as a witness or consenting party.
voir dire	a preliminary examination of a witness by the judge in which the witness is required to “speak the truth” to any questions asked of them. If incompetency appears, the witness is rejected, eg. on the grounds of insanity.

### Other terms used in the Handbook

JP Register	Justice of the Peace Register - the few details of a Justice of the Peace that will be made available to the public by way of an Internet based public register
reappointment	refers to the process where a Justice of the Peace appointed under the Justices of the Peace Act 2002 seeks to have his/her current term extended for a further 5 years (includes Justices of the Peace appointed prior to 8 December 2003 who must apply for reappointment by 8 December 2006)

## HISTORICAL BACKGROUND

The Office of Justice of the Peace was first established in England by statute in the fourteenth century. The “good men and lawful” appointed to the position were given far ranging powers, making them the “jacks of all trades” in the day to day administration of the community.

It was during the reign of Edward III from 1327 to 1377 that the position of Justice of the Peace was officially created.

From Edward III’s reign, appointments were made exclusively by the Sovereign. This enabled regular succession of officers whose primary task was to prevent offences from being committed rather than to punish and try offenders.

Gradually Justices of the Peace were invested with wider judicial authority to regulate trade and the police. By the reign of Henry IV, it had become the rule to charge Justices of the Peace with these duties.

Early in the reign of Henry VII it was enacted that justices, at their discretion, could hear and determine all offences short of felony. In 1653 justices were empowered to take the mutual declarations of the contracting parties to a marriage. They were also authorised to receive information about any indictable offence and were invested with important administrative functions such as licensing ale-houses and controlling police. They acted, of course, in an honorary capacity.

The powers vested in the Office at this time were so wide-ranging they could only be listed under their alphabetical order in the Charter of Justice. One historian, describing their work, said “they regulated wages, prices, profits, employment, marriages, wearing apparel, apprenticeship and housebuilding . . . they were put in charge of the regulations dealing with weights and measures, the maintenance of bridges, the upkeep of roads, the administration of the Poor Law, the building and control of local prisons”.

When the colony of New South Wales was settled under Governor Phillip, the Office of Justice of the Peace as it then existed was inherited from England. Governor Phillip was himself appointed a Justice of the Peace by his Letters Patent and given power to make other appointments.

Increasing populations in both England and Australia, coupled with the growing complexity of legal questions arising, led the Governments of the two countries to establish paid magistracies.

In England in 1837, an Act was passed authorising the appointment of Police Magistrates by the Crown, and in 1863 the “*Stipendiary Magistrates’ Act*” entitled cities, towns and boroughs of 25000 inhabitants and upwards to have a Stipendiary Magistrate.

In 1833, it was enacted that the Governor of NSW could spasmodically appoint two or more Police Magistrates for the town of Sydney. These magistrates were also charged with the nomination and control of the Police Force. In 1838

power was given to appoint a Police Magistrate to the towns of Parramatta, Windsor, Maitland, Bathurst and other towns declared by the Governor to come under the operation of the Act.

History shows that successive Governments in New South Wales have pursued a policy of appointing full-time magistrates to deal with judicial and ministerial responsibilities in Local Courts and other courts of summary jurisdiction. In 1850, the *Colonial Police Act* was passed regulating the police force and transferring control thereof to the Inspector-General of Police. By the *Metropolitan Magistrates' Act*, 1881, power was given to appoint up to six Stipendiary Magistrates within the Metropolitan Police District. With the expansion of the magistracy, the powers vested in Justices of the Peace began to reduce.

In 1998 a Discussion Paper was released as part of a review that was prompted by perceived problems with the Office of Justice of the Peace in New South Wales. Those matters came to the attention of the Attorney General through the experience of the Department; a paper written by the NSW Law Reform Commission and by correspondents writing to the Attorney General's Department. The problems noted included a lack of a publicly available register of Justices of the Peace which made it difficult for members of the public to locate a Justice of the Peace when they needed one. In addition, there had been no duty placed upon Justices of the Peace appointed before 1992 to notify the Department of any change of address or of any convictions recorded against them and a large number of Justices of the Peace did not inform the Department when their details or circumstances changed. The Department saw the need to update the records of all appointments.

In May 2002, the Attorney General, the Hon Bob Debus MP introduced draft legislation into Parliament with proposals to reform the Office of Justice of the Peace in New South Wales. Following community consultations with members of the public and other stakeholders, including the various Justice of the Peace organisations, the Justices of the Peace Act 2002 was passed by the Parliament and brought into force on 8 December 2003.

Lifetime appointments were abolished under the Act and five year terms instituted. Provisions were made for a publicly accessible register of Justices of the Peace. Justices of the Peace must also report any criminal proceedings or bankruptcy and maintain up to date contact details with the Department.

This Handbook provides up to date information about the Office of Justice of Peace in New South Wales. The Handbook incorporates the Justice of the Peace Guidelines which have been developed in line with requirements under the Justices of the Peace Act 2002. The Guidelines outline important information about the appointment and functions of a Justice of the Peace in New South Wales.

## JUSTICE OF THE PEACE GUIDELINES

The Justice of the Peace Guidelines have been developed in accordance with requirements under the Justices of the Peace Act 2002 and the Justices of the Peace Regulation 2003.

### APPOINTMENT CRITERIA

From 8 December 2003, all appointments of Justices of the Peace in NSW are made under the Justices of the Peace Act 2002. Appointments are for five year terms. At the end of a five year term a JP may apply to have his/her commission renewed for a further five years. A formal application for renewal must be lodged by the JP prior to the expiry of the term.

Appointments prior to 8 December 2003 were made under the Imperial Acts Application Act 1969. This Act has been amended to remove references to Justices of the Peace.

***To be eligible for appointment as a Justice of the Peace in NSW, applicants must:***

- be at least 18 years of age;
- be nominated for appointment by a member of the NSW Parliament (Legislative Assembly or the Legislative Council);
- be an Australian Citizen or a person who is entitled to vote in this State (unless exempted by the Minister);
- be of good character;
- not be an undischarged bankrupt;
- consent to confidential inquiries being made to determine suitability for appointment, including a criminal records check;
- establish an employment and/or a community based need for appointment as a Justice of the Peace; and
- consent to having their full name published on the Justices of the Peace Register (JP register).

The Department's general policy considerations in assessing an applicant's character and fitness to be appointed as a Justice of the Peace are as follows:

- An application will be declined if it falls into any of the categories outlined below:
  - (a) the applicant is found to have made (previous) false declarations;
  - (b) the applicant has failed to disclose convictions or offences (except where a satisfactory explanation for failure to disclose is provided and the offence(s) minor);

- (c) the applicant received a conviction for Prescribed Concentration of Alcohol (PCA) or similar serious traffic offence within five years of the date of application;
  - (d) the applicant received a conviction for a serious offence within 10 years of the date of application;
  - (e) the applicant received a conviction for a criminal offence, including serious traffic offences, dealt with by a Children's Court within two years of the date of application;
  - (f) the applicant is subject to a current bond pursuant to section 10 of the Crimes (Sentencing Procedure) Act 1999 (previously s556A of the Crimes Act 1900);
  - (g) the applicant had an offence found proven but discharged under section 10 (1) (b) or 10 (1) (c) of the Crimes (Sentencing Procedure) Act 1999 within two years of date of application;
  - (h) the applicant is subject to a current period of driving disqualification imposed by a Court;
  - (i) the applicant has breached an Apprehended Violence Order within five years of the date of application;
  - (j) the applicant re-applies within a period of revocation.
- In cases where an applicant has had the benefit of s10(1)(a) of the Crimes (Sentencing Procedure) Act 1999 within five years of the date of application; that is, found guilty but charge dismissed without proceeding to conviction, an application will generally be accepted unless the nature of the charge(s), court records and any other explanations provided by the applicant give rise to concerns about the suitability of the applicant to hold office.
  - Cases which do not fall directly into the above categories and where concern is had as to whether the person is suitable to hold office will be examined on the merits and submitted to the Attorney General for consideration.

## **APPLICATION FORMS**

Application forms for appointment or reappointment as a Justice of the Peace shall be in a form approved by the Minister from time to time.

Applications for a new appointment as a Justice of the Peace may be obtained from the electorate office of a State Member of Parliament (MP). An application for a new appointment must be lodged through an MP's office.

Applications for reappointment may be obtained directly from the Attorney General's Department or the Department's website: [www.lawlink.nsw.gov.au/crd](http://www.lawlink.nsw.gov.au/crd). Reappointment applications must be lodged with the Community Relations Division of the Department.

An application for a renewal of commission will be forwarded to all Justices of the Peace who are appointed or reappointed after 8 December 2003, approximately three months prior to the expiry of their current five year commission.

## **APPOINTMENT PROCESS**

**New Appointments:** under the provisions of the Justices of the Peace Act 2002, a person seeking a new appointment must be nominated by a NSW Member of Parliament (MP). For this reason, members of the public seeking a new appointment must contact their local MP for information and application forms. New applications must be endorsed by an MP and must be lodged through the MP's office.

**Reappointments:** Reappointment applies to Justices of the Peace appointed under the Justices of the Peace Act 2002 who seek to have their current term extended for a further five years. This includes existing Justices of the Peace who were appointed prior to 8 December 2003 who must apply for reappointment by 8 December 2006. A JP's appointment is deemed current unless the appointment has lapsed, the JP has resigned or has been the subject of review and the JP's commission has been suspended or revoked following the review.

### ***What happens after an application is lodged?***

- Officers of the Community Relations Division (CRD) will check the application against the eligibility criteria and for completeness.
- A criminal records check will be undertaken.
- Applicants will be advised if they do not meet the eligibility requirements.
- Incomplete applications (where sections have been left out and/or supporting documents are not provided) will be returned to the applicant for completion.
- All applications that are in order will proceed to be added to a 'Schedule' for recommendation by the Attorney General and then forwarded to the Governor for approval.
- The Governor in Executive Council will appoint applicants as Justices of the Peace.
- Appointees/Reappointees will be notified of their appointment/reappointment by letter – JPs will not be able to perform JP functions at this stage as there is a requirement to take the oaths of office. At this point, current JPs reappointed under the Act must cease to continue to perform JP functions until they have taken their oaths of office as required by the Act and the Attorney General's Department has confirmed their reappointment. An oaths of office form will be provided with the appointment/reappointment letter. Appointees/Reappointees will be

required to have the oaths administered at a Local Court within four months of the date of appointment. The completed oaths form must then be returned to CRD by the appointee/reappointee.

- Appointees/Reappointees who fail to take their oaths of office within four months of their appointment date will be removed from Office, that is, their appointment will be cancelled and they will not obtain authority to function as a JP.  
(The issue of JPs having to take the Oaths of Office every five years is currently under review.)
- A JP's appointment will be confirmed once the completed oaths form is received. A JP registration number will be issued to the JP and a confirmation of appointment letter sent. JPs are only permitted to exercise their JP functions after receipt of the confirmation letter and a registration number.
- JPs will be able to apply for a certificate of appointment if they wish to obtain one at a cost of \$25.00. The certificate is optional. All relevant details appearing on a certificate of appointment are also available on the confirmation of appointment letter issued.
- A copy of the Justice of the Peace Handbook will be provided to JPs with confirmation of appointment.

## FUNCTIONS AND DUTIES

The functions of a Justice of the Peace under the Justices of the Peace Act 2002, following the repeal of the Justices Act 1902, are primarily:

- **administering oath declarations or affidavits, and taking statutory declarations and affirmations principally under the Oaths Act 1900;**
- **witnessing signatures; and**
- **attesting and certifying documents.**

### Territorial limitations

*Justices of the Peace appointed in NSW can only perform their JP functions within the State of NSW and whilst physically present in the State.* Section 26 of the Oaths Act 1900 allows anyone to administer oaths, declarations or affidavits if they are lawfully authorised to do so in their own State or Country. Many other States and Territories (including the ACT) also have such legislation, which allows for reciprocity, so that a document witnessed in NSW by a NSW JP will be recognised as valid in another State or Territory. Likewise, there is no difficulty in a NSW court accepting a document, which has been witnessed by a person in another State or Territory who has the authority to administer an oath in that State or Territory.

## Performing the functions of a Justice of the Peace

- Under no circumstances should a Justice of the Peace purport to take an affidavit, declaration or affirmation, or witness a signature unless he/she has personally met the deponent, declarant or signatory **and the document is signed in his or her presence**. The Justice of the Peace must sign the document **after** it has been signed by the deponent, declarant or signatory. In the case of an affidavit, a Justice of the Peace must personally put the deponent on oath.
- A Justice of the Peace must provide his or her full name and registration number on the documents he or she witnesses. Where a stamp is used this information should be clearly stated in the wording of the stamp. If writing by hand, the Justice of the Peace must write clearly. In all the cases, a Justice of the Peace must be mindful of the form of identification required, which is determined by the law of the State, Territory or Country where the document is to be used. Some documents may require a Justice of the Peace to state their address as well as name and registration number. If a document is to be used overseas, it may be advisable to refer the person requiring the service to a Public Notary.
- A Justice of the Peace must never sign copies of documents as certified true copies unless he or she has actually sighted the original documents and is satisfied that they are in fact the original documents referred to.
- If a Justice of the Peace residing in NSW is called upon to acknowledge or sign a document for use in another State, Territory or Country, he or she must add the following words after their signature:  
***“Justice of the Peace in and for the State of New South Wales, Australia.”***
- Where the document is longer than one page, the jurat or statement to be signed by the Justice of the Peace must be included in the document at the end of the last page containing the deponent’s statement but before the attachment of any annexures. Both the deponent and the Justice of the Peace must sign at the end of the last page and at the foot of each preceding page of the document.
- All alterations and erasures except those made in annexures and exhibits must be initialled in the margin by the Justice of the Peace. It is not necessary for the deponent to initial such matters although it is good practice to do so.
- A Justice of the Peace must make sure that no additional space is left before the jurat where other material could be inserted. The Justice of the Peace must rule a line through any such space prior to taking the affidavit, affirmation or statutory declaration.

## **Duties and obligations of a Justice of the Peace**

By virtue of the Oaths of Office taken, Justices of the Peace undertake to “do right to all manner of people, after the laws and usages of the State of New South Wales, without fear or favour, affection, or ill-will.”

While it may not be convenient for Justices of the Peace to provide a service in every instance when requested, in such cases, the Justice of the Peace may make other arrangements with the person concerned, for example, the Justice of the Peace may inform the person that it is not convenient to act at that particular time because of commitments to his/her employer (or other reasons) and the person may be requested to come at a more convenient time.

Similarly, when a member of the public contacts a Justice of the Peace on the telephone number nominated by the Justice of the Peace for the purposes of the JP register, the Justice of the Peace should make appropriate arrangements to assist the person concerned. The Justice of the Peace may make an appropriate appointment time and nominate a place to meet the person in order to provide the service.

A Justice of the Peace is not entitled to charge any fees for his/her services as a Justice of the Peace. When signing documents, a Justice of the Peace must use the same name as noted in the Justices of the Peace Register.

A Justice of the Peace must inform the Attorney General’s Department in writing of any change in their address and other details including a change of name, and any matter that may cause him/her to cease to satisfy the prescribed criteria for appointment as a Justice of the Peace.

## **JUSTICES OF THE PEACE REGISTER (JP register)**

### **Purpose of the Register**

The Justices of the Peace Act 2002 provides for a publicly available register of Justices of the Peace. This register serves the important function of allowing members of the public to access the services of a Justice of the Peace in their local area. It also enables an interested party to verify that a person who has witnessed a document is in fact a Justice of the Peace for NSW.

The JP register is an Internet based register maintained by the Community Relations Division of the Attorney General’s Department. The register is available on the Community Relations Division website [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au).

### **Contents of the Register**

The JP register contains particulars of only those Justices of the Peace who have been either newly appointed or in the case of existing Justices of the Peace, reappointed under the Act.

Details on the JP register are limited to:

- the full name of the Justice of the Peace;
- the suburb or town which the Justice of the Peace nominates to carry out most of his or her functions as a Justice of the Peace and the postal code of the suburb or town; and
- a telephone number nominated by the Justice of the Peace on which members of the public may contact the Justice of the Peace (this could be a work, a community organisation or a mobile telephone number).

The Act requires the publication of the full name of all Justices of the Peace appointed under the Act on the JP register.

## **Consent**

Consent to have the above mentioned details published on the JP register will be requested from applicants during the application process. A Justice of the Peace who exercises functions as a Justice of the Peace primarily for purposes related to his or her employment may notify the Director General of the Attorney General's Department in writing that they do not consent to the inclusion of the suburb/town and postal code locality and a telephone contact number on the JP register.

Applicants or Justices of the Peace who have concerns that their safety or well-being would be affected by the inclusion of the suburb/town and postal code locality and a telephone contact number on the JP register may contact the Community Relations Division c/ GPO Box 6, Sydney 2001 or by telephone 9228 7593 to discuss their circumstances and modification of the entry on the JP register.

## **Keeping up to date**

It is important for Justices of the Peace to advise the Attorney General's Department of any changes to their contact details provided on the JP register or other details concerning their continued suitability for appointment. This will enable the Department to contact JPs promptly and accurately and is an obligation imposed on JPs as part of their undertaking in the Oaths of Office taken.

## **OFFENCES AND PENALTIES**

The following chapter has been written especially for NSW Justices of the Peace and is not intended to be comprehensive in its application of the law to the crimes mentioned.

It is an offence for a person to take or receive a statutory declaration if he or she is not authorised to do so. This applies to Justices of the Peace who have not yet taken the oaths of office, whose names have been removed from the Justices of the Peace register, whose appointments have lapsed or become invalid or who have resigned their commission.

## **Notification of matters to the Attorney General**

While Justices of the Peace hold an honorary position, they must remain of good character during the period of their appointment. Any subsequent offences and/or convictions, involvement in improper practices or behaviour unbecoming to the Office are viewed seriously.

Under section 10(1) of the Justices of the Peace Act 2002, 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) of the Act (a list of circumstances/grounds for removal of office is listed in these Guidelines under 'Grounds for Removal from Office')

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 points.

The intent of the provisions is to oblige Justices of the Peace to notify the Attorney General's Department of any proven offences or convictions recorded against them, findings against them by disciplinary tribunals, declarations of bankruptcy and of any other circumstances that would warrant their commission to be reviewed.

These measures have been put in place primarily to enable appropriate investigation of disciplinary matters and to ensure that Justices' records maintained on the Justices of the Peace Register are accurate and that Justices remain suitable to hold their commission during the term of their appointment.

## **GROUNDS FOR REMOVAL FROM OFFICE**

The circumstances in which Justices of the Peace may be removed from office are prescribed under section 9 of the Justices of the Peace Act 2002 and clause 6 of the Justices of the Peace Regulation 2003.

### **The specific grounds for removal from Office are:**

A person ceases to hold the office of a Justice of the Peace if the person:

- completes a term of office and fails to apply for reappointment before the end of that term, or is not reappointed; or
- resigns the office by notification in writing to the Minister; or
- is removed from office by the Governor

The Governor may, on the recommendation of the Minister and advice of the Executive Council, remove a Justice of the Peace from office:

- if the person becomes bankrupt;
- if the person becomes a mentally incapacitated person;
- if the person is convicted in NSW of an offence that is punishable by imprisonment for 12 months or more or if convicted elsewhere than in NSW of an offence that, if committed in NSW, would be an offence so punishable;
- if the person fails to take the oaths of office within four months of the date of his/her appointment;
- if the Minister is of the opinion that the person does not (or no longer) satisfies the criteria for appointment as a Justice of the Peace;
- 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;
- if the person has been the subject of an adverse finding in criminal proceedings.

In addition to the above provisions, the Governor in Council, upon the recommendation of the Minister may discipline a Justice of the Peace in circumstances where by reason of any act, omission or other activity, the fitness of the person to remain a Justice of the Peace is questionable. More details are provided in the following section marked 'general policy considerations concerning the disciplining of Justices of the Peace'.

## **GENERAL POLICY CONSIDERATIONS CONCERNING THE DISCIPLINING OF JUSTICES OF THE PEACE**

The Governor in Council, upon the recommendation of the Attorney General, may review the appointment of a Justice of the Peace in circumstances where the fitness of the person to remain a Justice of the Peace is questionable.

Three grounds for review, criminal misconduct, unbecoming conduct and failure to continue to meet the eligibility criteria form the basis of a decision to undertake a review of an appointment. Such circumstances may include:

- (1) *Where, since appointment, a JP has been convicted of a criminal offence or a criminal offence has been found proven against the JP.* The offence may be an offence under the *Crimes Act 1900* (NSW) or may be an offence under the criminal provisions of any other State or Federal legislation.
- (2) *Where, since appointment, the JP has engaged in unbecoming conduct.* Unbecoming conduct includes a failure by the JP to uphold the Oaths of Office sworn at the time of appointment or where the retention of the appointment of the JP may be injurious or contrary to or generally no

longer in the public interest. It includes the circumstance where a JP has been adversely subjected to civil proceedings or the proceedings of disciplinary or other tribunals.

- (3) *Where, since appointment, the JP otherwise ceases to meet the eligibility criteria for appointment.* This may apply in cases where for example, the JP becomes a bankrupt or renounces Australian citizenship.

Whether the person should remain a JP and whether any disciplinary action should be taken, will be determined by considering each case on its individual merits and in view of all the relevant circumstances. In providing advice to the Governor, the Attorney General will pay particular regard to the presence of and degree of seriousness of factors such as violence, fraud and disregard of the community's safety and needs.

If the Attorney General is satisfied that the circumstances of the case do not warrant removal or suspension, the Attorney may direct that the appointment continue but that an appropriate warning be given to the JP concerned.

If the person is considered no longer fit and proper to hold office, the Attorney General may recommend to the Governor that the person be removed from the office or suspended from office for a finite period of time.

## **REGISTRATION NUMBERS**

The Attorney General's Department will issue registration numbers to all Justices of the Peace appointed under the Justices of the Peace Act 2002. The registration number issued by the Department will be the official Justice of the Peace registration number. This number will identify a person's appointment as a Justice of the Peace in NSW and must not be confused with other membership numbers, for example, those issued by a Justice of the Peace organisation.

Existing Justices of the Peace previously issued with registration numbers and/or those who later obtained duplicate certificates and registration numbers from the Department must use the new number issued as part of the reappointment process, as the new number issued will replace any number(s) previously issued by the Department.

Justices of the Peace must write their registration number on any document they sign or witness as a Justice of the Peace.

## **RENEWAL OF COMMISSION**

Under the Justices of the Peace Act 2002, Justices of the Peace will be appointed for five year terms. A Justice of the Peace appointed under the Act may apply to have his or her commission renewed for a further five years.

In order to have his/her commission renewed for a further five years, a Justice of the Peace must apply for renewal **prior** to the expiry of his/her five year

term. Should a Justice of the Peace not apply for renewal before the expiry of the term, his/her appointment will lapse and the Justice of the Peace will be required to lodge a new application and go through the process of a new appointment.

The Attorney General's Department will send a renewal notice to all JPs appointed under the Act, approximately three months prior to the date of expiry of their term. Notices will be sent to the addresses noted on the Department's records at that time.

### **The renewal process**

Renewal of commission will involve Justices of the Peace completing a simple form to confirm their personal details and circumstances and establishing a continued need for appointment. Character references will not be required. Justices of the Peace *will not be* issued a new registration number if their application for renewal is received prior to the expiry of the current five-year term. However, new registration numbers will be issued to Justices of the Peace who fail to apply prior to the expiry of their current term and who then submit a new application for appointment. Any new application for appointment must be lodged through a NSW Member of Parliament.

Renewal applications will not be accepted until a Justice of the Peace has completed at least four years and six months of his/her current term. The deadline to lodge a renewal application will be listed on the Notice of Renewal issued to Justices of the Peace by the Department.

## OATHS

*What is an **oath** and when are oaths generally taken?*

The Shorter Oxford English Dictionary defines “oath” as “a solemn appeal to God (or to something sacred) in witness that a statement is true, or a promise binding; an act of swearing; a statement or promise corroborated by such an appeal, or the form of words in which such a statement or promise is made.”

In modern times an oath is given to put witnesses in a state of mind so that they will “speak the truth”. This is usually done by reinforcing the witness’s concept of divine punishment for false swearing. If the witness objects to taking an oath, a solemn affirmation may be taken instead. The obligation of an oath or affirmation is regarded as completely binding on the witness’s conscience.

Oaths vary in different countries according to different laws, constitutions and religious beliefs. It is the common law of England that the form of an oath accommodate the religion of the swearer. A Christian may take an oath on the Bible, a Jew may be sworn on the Pentateuch or the Old Testament, a Muslim may be sworn on the Koran and so forth. No special form of swearing is necessary if the witness does not have a religion.

The simple principle of the common law is that oaths should be administered according to the person’s opinion and conscience. Witnesses must be allowed to choose the oath they regard as binding and must not be coerced into using any particular one.

In recent times there has been a tendency to view the value of an oath with scepticism and indifference. The way the oath is administered is likely to influence the swearer’s attitude. It is important to impress upon the deponent the solemnity of the occasion.

The *Oaths Act* 1900 now permits a person to make a solemn affirmation if they object to taking an oath or appear incompetent of taking an oath.

The following are some situations where an oath is required:

- any oath or affidavit made for a judicial proceeding in any court of justice;
- any oath or affidavit concerned with the preservation of the peace, or the prosecution, trial, or punishment of offenders;
- any oath or affidavit required by the laws of any State or other Country for the validation of any of their legal documents;
- any proceedings before either a House of Parliament or a committee thereof;
- the oath of allegiance when it is required to be taken by a person appointed to a statutory office.

## AFFIDAVITS

An affidavit is a document or written statement usually given in the place of verbal evidence for court proceedings. Affidavits can be distinguished from declarations and affirmations by the compulsory verification by oath.

The Supreme Court Rules 1970 state that every affidavit made in New South Wales shall commence with the following or equivalent form:

On (*day, month, year*),

I, A. B. (*the deponent's full name, address and occupation*)

say on oath –

1. (*here set out the statements in paragraphs*)

2.

3. etc.

At the end of the statements in the affidavit, the jurat is placed in the left hand corner, with the deponent's signature to be endorsed in the right hand corner:

Sworn at (*place*) before me:

A.B.

C.D. (*Signature of Justice of the Peace*)      (*Signature of deponent*)

Justice of the Peace

**(Print full name and JP registration number)**

Where there is more than one deponent the affidavit should commence as follows:

On (*day, month, year*)

I, A.B. (*name, address and occupation*)

and on (*day, month, year*),

I, E.F. (*name, address and occupation*) say on oath

1. (*here set out the statements in paragraphs*)

2.

3. etc.

The jurat is in the following form:

Sworn by A.B. (*name*) at (*place*) before me:

A.B.

C.D. (*Signature of Justice of the Peace*)      (*Signature of deponent 1*)

Justice of the Peace

**(Print full name and JP registration number)**

Sworn by E.F. (*name*) at (*place*) before me:

E.F.

G.H. (*Signature of Justice of the Peace*)      (*Signature of deponent 2*)

Justice of the Peace

**(Print full name and JP registration number)**

- A Justice of the Peace is not entitled to read all the contents of an affidavit. The Justice of the Peace should, however, be satisfied that the affidavit's form is correct and that the affidavit is being made for a lawful purpose.
- The affidavit must be signed by the deponent in the presence of the Justice of the Peace.
- When administering an oath on using a religious text (eg Bible, Koran etc), the Justice of the Peace must give the religious text to the deponent to hold open in their hand and say the following:

***“Do you swear that the contents of this your affidavit are true and correct to the best of your knowledge and belief?”***

- The deponent swears to the truth of the contents of the affidavit by saying the words:

***“So help me, God”.***

After this has been said, complete and sign the jurat.

- When a religious text is not used in by the deponent, the Justice of the Peace should ask:

***“Is the oath you now propose to take binding on your conscience?”***

If the answer is “yes”, then ask the deponent:

***“Do you swear that the contents of this your affidavit are true and correct to the best of your knowledge and belief?”***

If the answer is again “yes”, complete the jurat.

- Where an affidavit is longer than one page, the jurat to be signed by the Justice of the Peace must be included in the affidavit at the end of the last page containing the deponent's statement but before the attachment of any annexures. Both the deponent and the Justice of the Peace must sign at the end of the last page and at the foot of each preceding page of the affidavit.
- All alterations and erasures except those made in annexures and exhibits must be initialled in the margin by the Justice of the Peace. It is not necessary for the deponent to initial such changes but it is good practice to do so.
- A Justice of the Peace must make sure that no additional space is left where other material could be inserted. The Justice of the Peace must rule a line through any such space prior to taking the affidavit.



## STATUTORY DECLARATIONS

- The term "statutory declaration" according to the Interpretation Act 1987 means "a declaration made by virtue of any Act authorising a declaration to be made instead of an oath".
- Statutory declarations can be made in any matter where a formal statement is needed. In contrast, affidavits are only made in restricted circumstances such as for use in court or for a coroner's inquest.
- Statutory declarations should follow either of the forms given below:

I, A.B. (full name) of (address and occupation), do solemnly and sincerely declare that: (here set out the statements) and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900" (Form 8).

or

I, A.B. (*full name*) of (*address and occupation*), do hereby solemnly declare and affirm that: (*here set out the statements*) and I make this solemn declaration, as to the matter aforesaid, according to the laws in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration" (Form 9).

At the end of the declaration, both the Justice of the Peace and the declarant should complete and sign (the Justice of the Peace must sign **after** the declarant has signed):

Declared at (*place*) A.B.  
this (*date*) day of (*month, year*), (*Signature of declarant*)

Before me,  
C.D. (*Signature of Justice of the Peace*)  
Justice of the Peace  
**(Print full name and JP registration number)**

- Many of the procedures for affirmations apply to statutory declarations. These include:
  - (a) A Justice of the Peace is not entitled to read the contents of the declaration in detail but the form and the purpose of the declaration must be checked.
  - (b) No oath is required, the deponent merely states that the contents of the declaration are true.
  - (c) The declaration must be signed in the presence of the Justice of the Peace.
- When acknowledging the truth of the declarant's statements, the Justice of the Peace must ask:



- All alterations and erasures except those made in annexures and exhibits must be initialled in the margin by the Justice of the Peace. It is not necessary for the declarant to initial such changes but it is good practice to do so.
- A Justice of the Peace must make sure that no additional space is left where other material could be inserted. The Justice of the Peace must rule a line through any such space prior to taking the statutory declaration.

## ANNEXURES

- Affidavits, affirmations and statutory declarations, (here referred to as original documents) sometimes have other documents attached, called annexures. When an annexure is included *it must be referred to in the original document*, and if there is more than one they must all be marked in alphabetical order, for example, Annexure “A”, Annexure “B” and Annexure “C”.
- Original documents may also make reference to documents or tangible objects that cannot be conveniently attached. In such cases, the articles must be identified as exhibits in the original document and alphabetically marked.
- All annexures and exhibits must be produced at the time when the affidavit, affirmation or statutory declaration is made. The deponent or declarant must acknowledge the annexure or exhibit as the same one referred to in the affidavit, affirmation or statutory declaration.
- Where annexures or exhibits are referred to they must be marked and identified by the Justice of the Peace in the following way:

“This is the annexure (*or exhibit*) marked “A” referred to in the affidavit of A.B. (*show full name*), sworn before me this (*date*) day of (*month, year*).

C.D. (*Signature of Justice of the Peace*)

Justice of the Peace

**(Print full name and JP registration number)**

**Or**

“This is the annexure marked “A” referred to in the statutory declaration of A.B. (*show full name*), declared before me this (*date*) day of (*month, year*).

C.D. (*Signature of Justice of the Peace*)

Justice of the Peace

**(Print full name and JP registration number)**

- The alphabetical marking must be placed in a conspicuous position on the annexure or exhibit. For instance, with an annexed document, place it at the top of the page.
- Endorse the signed statement on the annexure in such a way that it does not deface or obscure the contents. Only sign the statement once, and under no circumstances initial any alterations or erasures made to the annexure presented to you.

- Exhibits must have an exhibit notation that is to be attached to the particular exhibit item.
- If annexures or exhibits are referred to in statutory declarations or affirmations, it must be indicated in the wording of the statement signed by the Justice of the Peace.

## **PEOPLE WITH SPECIAL NEEDS**

At some stage, a Justice of the Peace may have to take an affidavit, affirmation or statutory declaration from a person who has language difficulties, or is:

- blind;
- illiterate;
- a marksman (unable to sign);
- a young child; or
- unable to speak English

If a person is blind or illiterate, you must either read the document aloud to them or arrange for someone else to. This will ensure that the contents are understood and are being willingly adopted.

- With affidavits the jurat must contain an additional statement to the following effect:

“Sworn by the deponent on the day abovementioned at (*place*), before me, the deponent being blind (or illiterate) and the contents of this affidavit having first being read over to the deponent and the deponent appearing to fully understand the nature and the effect thereof:

C.D. (*Signature of Justice of the Peace*)

Justice of the Peace

**(*Print full name and JP registration number*)**

- When a deponent is unable to add their signature, you or some other person must write the deponent’s name adjacent to the jurat and the deponent must make a cross or a mark:

his  
Arthur X Brown  
mark

- The reason for the deponent signing as a marksman must be stated in the jurat.

- With statutory declarations and affirmations, the statement at the end must also be suitably amended.
- In a court of law, a young child may give evidence on oath if the court considers that the child understands the duty of telling the truth and the nature of an oath. The court satisfies itself on this by holding a voir dire. (see Definitions).
- Before taking an affidavit from a young child you must also be satisfied, through discreet questioning, that the child understands the duty of telling the truth, the nature of an oath, and is competent enough to be sworn.
- If a young child is not considered competent of making an oath but you are satisfied they understand what they are saying, their statement can be embodied in an affirmation or a statutory declaration.
- When a deponent has impaired hearing or does not speak English, the affidavit and oath must be interpreted. To ensure that the interpreter faithfully translates the affidavit or declaration, the following oath must first be administered:

*You shall truly and faithfully interpret the contents of the affidavit of A.B. and all other matters and things relating to the affidavit, and render the English language into the ( ) language, and the ( ) language into the English language, according to the best of your skill and ability”.*

## ATTESTING AND CERTIFYING DOCUMENTS

From time to time Justices of the Peace may be called upon to witness signatures or attest documents that are not affidavits, statutory declarations, or affirmations. The signatures may be required on forms, applications to Government agencies, private companies or other organisations. Such signatures frequently need to be witnessed by a person who is a solicitor, barrister, public notary, Justice of the Peace, Consular Officer, etc. In other cases they may be attested or witnessed by some person of no designated status. In some instances, the person attesting the document or witnessing the signature must personally know the signatory and a certificate or a statutory declaration may need to be made to that effect. If required, the witness may have to show his or her full name and address for identification.

Documents may also need to be authenticated for use outside Australia, or subscribed in accordance with the requirements of a particular statute or with the general law. It is not necessary with these types of documents for an oath, declaration or affirmation to be administered. In all cases, however, it is essential for a Justice of the Peace to strictly observe the requirements of the law or instructions accompanying the document.

When approached to verify that a copy of a document is a true and correct copy of the original document, a **Justice of the Peace must be satisfied that the copy of the document he/she is certifying as a copy of an original document is, in fact, a copy of the original document.**

The term “official document” is a legal term defined by the *Evidence Act 1995*. It includes documents held on the public record. This should not be confused with the term “original document”. For this reason, the original documents must be sighted at the time of certification of any copies. A Justice of the Peace may decline to act if not satisfied that the copy of the document is a true and correct copy of the original document. However, a Justice of the Peace should not restrict their services to only certifying selected original letterhead style documents. Identical photocopies are the most common documents submitted for certification.

An appropriate wording for the certification of a single page document is:

*“I certify this to be a true copy of the document shown and reported to me as the original”*

*Dated: (date)*

.....  
*(Signature of Justice of the Peace)*

Justice of the Peace (JP)

***(Print full name and JP registration number)***

When certifying documents consisting of multiple pages, it is not necessary for the Justice of the Peace to certify every page of the multiple page document. However, the Justice of the Peace may initial each additional page of a multiple page document they certify.

An appropriate wording for the certification of a multiple page document to be endorsed on the first page of the document is as follows:

*"I certify this and the following ..... pages to be a true copy of the document(s) shown and reported to me as the original*

Dated: *(date)*

.....  
*(Signature of Justice of the Peace)*

Justice of the Peace (JP)

***(Print full name and JP registration number)***

### **The use of stamps by Justices of the Peace**

Justices of the Peace who use stamps when certifying documents must ensure that the text of any stamp is appropriate.

It is acceptable for Justices of the Peace to use a stamp, indicating their name, commission as a Justice of the Peace and registration number. However, a Justice of the Peace must not use the New South Wales insignia (eg Coat of Arms) on any stamp.

An appropriate form of a stamp is as follows:

***(FULL NAME OF THE JUSTICE OF THE PEACE)***

A Justice of the Peace in and for  
the State of New South Wales  
*(JP Registration Number)*

## COMPLETION OF APPLICATION FORMS

### Important information about completion of application forms

To assist in the quick processing of their applications, applicants must ensure that they read the application form and accompanying information thoroughly and provide all the information and supporting documents requested.

Given that the Department receives approximately 500 applications a week (as at January 2004) and that it will continue to do so in the near future, there will be significant delays in processing applications that are not complete for one reason or another. Incomplete applications will be returned to applicants for completion.

### Some of the most common reasons why an application would be returned are as follows:

- the applicant has not answered all the questions on the application form;
- the applicant has failed to provide evidence and proof of use of change of name;
- an applicant with 'married' status has not provided her maiden name which is required for the purposes of the criminal records check;
- photocopies of birth certificates, change of name documents etc have not been duly certified by a Justice of the Peace or Solicitor;
- the applicant has not provided the original application form and/or character references;
- referees have not provided comments in the boxed section of the character reference form or as an attachment on letterhead;
- the statutory declaration section has not been completed properly (the Justice of the Peace has filled in the wrong sections, applicant has not signed, white ink has been used etc). If necessary, entries may be crossed out and initialled in the presence of the Justice of the Peace or Solicitor witnessing the applicant's signature);
- the applicant has failed to provide an original employment or community letter or insufficient information is provided;
- an applicant has not provided consent for inclusion of his/her full name in the JP register and for confidential enquiries;
- an applicant has completed **both** parts of the section requiring consent for publication of contact details on the JP register.
- electorate district is not provided (for enquiries contact State Electoral Office on 1300 135 736 or (02) 9200 5999);

- an application for new appointment is not endorsed by a NSW Member of Parliament.

For enquiries and assistance in completing application forms, please contact the Justice of the Peace Section on telephone (02) 9228 7487.

## **APPENDIX (OATHS OF OFFICE)**

### **Oath of Allegiance**

I, (*full name*), do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

So help me, God

### **Judicial Oath**

I, (*full name*), do swear that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second, in the Office of Justice of the Peace for the State of New South Wales, and I will do right to all manner of people, after the laws and usages of the State of New South Wales, without fear or favour, affection, or ill-will.

So help me, God.

## FREQUENTLY ASKED QUESTIONS

The information provided in this section canvasses some of the most commonly asked questions.

### **Are there any fees payable in relation to the appointment or reappointment of Justices of the Peace in NSW following commencement of the Justices of the Peace Act 2002?**

No. The Attorney General's Department does not charge any fees for appointment or reappointment.

The Local Courts charge a standard fee (\$61.00 as at March 2004) for the administration of the Oaths of Office. Justices of the Peace seeking reappointment are exempt from the payment of this fee.

### **What is the Justice of the Peace register?**

The Justice of the Peace register is an Internet based register containing limited particulars about a Justice of the Peace.

### **What if my contact details (for the JP register) change?**

You must advise the Justice of the Peace Section of the Department in writing.

### **What if I wish to withdraw consent for the continued publication of my contact details on the JP register?**

It is a condition of appointment for applicants to provide consent for the publication of their full name on the JP register. For more information refer to the Guidelines in this Handbook under 'Justices of the Peace Register' (under Consent).

### **Am I expected to invite people into my home when they contact me through my contact details provided on the JP (public) register?**

No. The JP register will not publish your home address and you are not required to give this information to callers when they telephone you. The telephone number you provide on the JP register is meant to be the initial point of contact between you and members of the public who contact you for your JP services. When contacted by telephone you can arrange a time and place to meet the person to provide the service.

### **Do I have to act as a Justice of the Peace when requested?**

It will not always be convenient for a Justice of the Peace to provide a service in every instance when requested, eg. when employed in a chemist or a small business. In such cases, the Justice of the Peace may inform the person that it is not convenient to act at that particular time and the person can be requested to return at a more convenient time or, if necessary, be informed to seek the

services of another Justice of the Peace. However, refusal to act in a matter should not be for financial reasons, eg. a Justice of the Peace may not refuse to act for a person purely on the basis that the person is not a customer of his/her business.

### **What will happen when my current term of appointment expires?**

The Attorney General's Department will send you a notice of renewal approximately three months prior to the expiry of your current term. At that time you will have the option of making an application to be reappointed for a further five years.

### **Will I get a certificate following my appointment or reappointment?**

Certificates of appointment will not be issued as a matter of course. All the relevant information appearing on the certificate of appointment is also available on the Confirmation of Appointment letter issued to newly appointed or reappointed JPs free of charge. However, Justices of the Peace who would like to obtain a certificate can purchase one at a cost of \$25.00.

### **Can I witness documents for another State or country?**

(a) While outside of New South Wales  
No.

(b) While in New South Wales

Most Australian States and Territories, and many Commonwealth countries, have reciprocal legislation that permits the witnessing of a document in another place by a person authorised to administer an oath in that other place. Where such legislation exists, you may witness such a document, but must sign it:

**“Justice of the Peace in and for the State of New South Wales,  
Australia”**

Unless you are satisfied that you have the power to witness the document you should decline to act and refer the person either to a Public Notary or the appropriate Consular Office.

### **Can I witness documents for family members or myself?**

You cannot witness a document for yourself. It is not advisable to witness documents for your immediate family as the documents may be rejected on the basis of a conflict of interests. Also, Justices of the Peace must at all times act impartially and avoid any appearance of bias.

### **Can I charge a fee for performing my duties as a Justice of the Peace?**

No. The Office of Justice of the Peace is an honorary one and a Justice of the Peace is not entitled to demand or receive fees for the performance of any of the duties associated with the office.

## **Am I liable for what is contained in a document which I witness as a Justice of the Peace?**

No. A Justice of the Peace is not required to be aware of all the contents of a document placed before him or her. However, the Justice of the Peace must be satisfied that the form of the document is correct, for example, there is no space in which information can be later inserted, no “liquid paper” is used which could later be removed and the document is not completed in pencil or ink which could later be erased, etc. A Justice of the Peace must **never** sign a blank or incomplete document such as a statutory declaration.

If a Justice of the Peace becomes aware of the contents of a document, he/she must maintain the person’s confidentiality and privacy at all times. Failure to do so may result in the Justice’s appointment being reviewed.

## **Can I use the initials “JP” after my name?**

Yes. When a Justice of the Peace signs a document, he/she must, unless the words “Justice of the Peace” are already printed or typed on the form, add those words to his/her signature or, if he/she prefers, the initials “JP”. It is in order for a Justice of the Peace to adopt the initials after his/her name in a private capacity, however, the initials must not be used to assert the person’s title as a Justice of the Peace in private and personal dealings. The use of the initials should not be for personal or commercial gain or to serve a person’s personal interests.

## **As a Justice of the Peace can I perform marriage ceremonies?**

No. Marriages are performed by Marriage Celebrants. A Justice of the Peace does not automatically become a Marriage Celebrant. To become a Marriage Celebrant you should contact the Commonwealth Attorney General’s Department on telephone (02) 6250 6496.

## **Do I have to resign if I move Interstate?**

If you move Interstate permanently, your appointment as a Justice of the Peace in NSW is likely to serve very little purpose as you cannot perform any of your functions unless you are physically in NSW. In addition, under the terms of the Justices of the Peace Act 2002, a Justice of the Peace is required to be available to provide Justice of the Peace services to NSW members of the public who may contact him or her via the publicly available JP register.

## **Can I transfer my appointment to another state?**

No. Different States and Territories have different eligibility criteria and appointments are not transferable. Information about the relevant Justice of the Peace Authority in a given State or Territory may be obtained by contacting the State/Territory Attorney General’s Office/Department.

### **Do I have to advise a change of name?**

Yes. Justices of the Peace are only permitted to sign documents in the name under which they were appointed. If a Justice of the Peace changes his/her name he/she must seek official approval to use that new name when acting as a Justice of the Peace. Documentary proof must be provided, eg. a certified photocopy of the change of name document **and** a certified photocopy of a document to verify use of the new name, eg, a driver's licence. Justices should not perform their duties in their new name until their Justice of the Peace records with the Attorney General's Department have been noted to that effect and they have received written confirmation of the change of name from the Department.

### **Do I have to notify a change of address?**

Yes. It is imperative that all Justices of the Peace notify the Attorney General's Department of a change of address. Justices of the Peace must also give written notification of any change of circumstances, for example, if they receive a criminal conviction or become bankrupt etc.

### **Are there any Justice of the Peace Associations that I could join?**

Yes. There are a number of associations that offer membership, educational and other services to Justices of the Peace. However, there are no requirements for Justices of the Peace to join a Justice of the Peace organisation.

### **Can I resign my office?**

Yes. A Justice of the Peace can resign the office at any time by writing to the Justice of the Peace Section of the Community Relations Division.

### **Am I exempt from jury duty?**

No. Being a Justice of the Peace does not exempt you from jury duty.

### **Contact details of the Justice of the Peace Section**

The Justice of the Peace Section  
Community Relations Division  
NSW Attorney General's Department  
GPO Box 6, Sydney NSW 2001  
Telephone: (02) 9228 7487  
Facsimile: (02) 9228 7216  
Website: [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au)

## **NOTES**