

Guidelines on the appointment of Justices of the Peace: assessing eligibility and good character

These Guidelines have been issued by the Attorney General under the *Justices of the Peace Act 2002* and the *Justices of the Peace Regulation 2009*. They comprise mandatory directions to the Department of Justice and Attorney General, as well as guidance about the exercise of Departmental discretion, in assessing applications for appointment and reappointment.

Essential Summary

- A criminal history check must be undertaken for all applicants for appointment or reappointment as a JP. Applicants who have certain categories of criminal histories must be declined. For other categories of criminal histories, discretion may be exercised, taking into account a range of specified factors.
- The assessment of 'good character' must consider other factors such as any known adverse finding or comment about the applicant's character, honesty or integrity made by bodies such as a court, tribunal, regulatory agency, complaint handling body, or professional, business, trade or industry association.
- The grounds specified in the *Justices of the Peace Act* for removal of an existing JP must also be applied as grounds for declining applications for appointment or reappointment as a JP.
- Applicants who, despite being asked, fail to disclose significant matters in their application forms must be declined, unless such failure can reasonably be attributed to an error or omission on the part of the Department.
- Applicants who, without reasonable excuse as provided by the Regulations, refuse or fail to consent to the inclusion of their contact details on the public register of JPs must be declined.
- Applications from persons who are unable to demonstrate that they ordinarily reside in NSW must be declined, unless there are special circumstances to justify the appointment or reappointment.
- Upon written request to the Department, decisions made under the discretionary provisions of these Guidelines may be subject to an internal review and/or review by the Attorney General.

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1 Scope

These Guidelines apply to the assessment of applications for appointment or reappointment as a JP in NSW. Such assessments must be conducted by the Department of Justice and Attorney General prior to proposing the appointment of a new JP or the reappointment of a current JP.

The eligibility criteria for the appointment and reappointment of JPs are set out in section 5 of the *Justices of the Peace Act 2002* and in clause 4 of the Justices of the Peace Regulation 2009. These Guidelines describe how the Department of Justice and Attorney General is to assess applications against key criteria, specifically the requirement that an applicant:

- must be of good character, and
- must establish the appointment is required for reasons relating to the person's employment or to fulfil a community-based need for the appointment.

Application of these Guidelines is not limited to appointment and reappointment matters. Reference to these Guidelines may also be made in any other relevant circumstances that relate to the administration of JPs in NSW.

2 Purpose

The aim of these Guidelines is to promote consistency and transparency in the assessment of applications for appointment or reappointment as a JP in NSW.

The purpose of the Department's assessment process is to help maintain public confidence in the integrity of the office of JP and in JP services.

The assessment of an applicant's good character can be a sensitive issue. Such an assessment must be undertaken with careful regard to the role of a JP. In some instances, applicants who consider themselves to have a good standing in the community will not be appointed as JPs. This is because, given the important role of JPs, applicants are required to satisfy higher standards than might otherwise be expected of many members of the community.

3 Definitions

The following definitions apply in this document:

Applicant	means a person who submits an application to be appointed or reappointed as a JP for NSW.
Application	means the forms specified by the Department of Justice and Attorney General for use by applicants. It refers to both paper and online versions of those forms.
Attorney General	means the Minister for the purposes of the <i>Justices of the Peace Act 2002</i> .
Criminal history	means the information that results from one or more criminal records checks performed within Australia about an applicant. It includes any other information that is available to the Department of Justice and Attorney General about any criminal offence found proven against the applicant, in Australia or anywhere else, at any time.
Department	means the Department of Justice and Attorney General.
JP	means a Justice of the Peace for NSW, as appointed or reappointed under the <i>Justices of the Peace Act 2002</i> .
Sentence of imprisonment	includes not only a custodial sentence but also home detention, periodic detention, a sentence of imprisonment that has been suspended, and a sentence of imprisonment by way of compulsory drug treatment detention. It does not include a sentence of imprisonment that has subsequently been quashed on appeal, either wholly, or converted to a non-custodial sentence, or become the subject of a pardon.

4 Assessing good character using criminal history

An essential part of the assessment of good character involves a criminal records check for each applicant and the assessment of any criminal history.

It is important to note that, under section 15 of the *Criminal Records Act 1991*, 'spent conviction' provisions do not apply to applicants for appointment or reappointment as a JP. This means that applicants must disclose all convictions, regardless of how much time has passed since the conviction, and regardless of the fact that, in certain other circumstances, the conviction may be considered 'spent' and would not have to be disclosed.

4.1 Applications to be declined

An application from a person whose criminal history includes one or more of the circumstances below must be declined.

The circumstances are that the applicant, in NSW or elsewhere:

- (a) has at any time, served a sentence of imprisonment for any offence, or
- (b) has at any time, been convicted of an offence that is presently punishable in NSW by imprisonment of five years or more, or
- (c) has in the past twenty years (or ten years in the case of an offence committed as a juvenile), been convicted of any offence involving dishonesty, regardless of the maximum penalty presently applicable to that offence in NSW, or
- (d) has in the past ten years, been convicted of an offence that is presently punishable in NSW by imprisonment of twelve months or more, or
- (e) has in the past ten years, been convicted of more than one offence, regardless of the maximum penalties presently applicable to the offences in NSW (but excluding minor traffic offences where the maximum penalty is a fine), or
- (f) has in the past five years, been found guilty of an offence involving dishonesty and the offence was dismissed without conviction under section 10 of the *Crimes Sentencing Procedure Act 1999 (NSW)* (or similar provisions in another state or territory).

The above circumstances apply regardless of any actual penalty or penalties imposed on the applicant.

The date on which the applicant signed his or her application is the starting point for calculating the prior periods of time stated in (a) to (f) above. If the date on which the court convicted or found the person guilty falls within the relevant period of time, the application must be declined.

The fact that an appeal is pending in relation to either a conviction or penalty for any of the circumstances listed above has no effect on the requirement that the Department decline such an application.

4.2 Applications where discretion may be exercised

The Department has the discretion to assess on its merits an application from a person whose criminal history includes any offence which does not fall within the circumstances outlined in section 4.1 of these Guidelines. If the Department considers it appropriate, such an application may be submitted to the Attorney General (in the case of a new appointment) or the Departmental delegate (in the case of a reappointment).

In exercising its discretion, the Department will consider the following factors:

- the nature and number of offence(s), and any penalty imposed
- whether the charge(s) resulted in conviction or dismissal, or are still pending
- the age of offence(s) and length of crime-free period since the latest offence
- whether or not the applicant was a juvenile at the time of the offence(s)
- the merits of the application generally, including the employment or community need for the appointment, the strength of character references, and any other information provided in the application or available to the Department.

The Department should more commonly exercise its discretion to propose an appointment or reappointment where:

- 1) there is no more than one offence on the applicant's record within the past ten years AND
- 2) that offence and any earlier offences do not raise reasonable concern about the good character of the JP AND
- 3) any penalty imposed for that offence was low AND
- 4) there has been a significant crime-free period since that offence. (In this context, the length of a 'significant' period depends on the nature of the offence and penalty imposed. The purpose of such a period is for the Department to be satisfied that the offence is unlikely to indicate a pattern of conduct that would raise concern about the good character of the applicant).

Where one or more of the above four factors do not apply in respect of an applicant, the Department should only rarely exercise discretion to propose the appointment or reappointment and only in the most exceptional circumstances.

The Department must not take into account the fact that an appeal is pending in relation to either a conviction or penalty for any of the offences.

5 Assessing good character using other factors

The assessment of an applicant's good character is not limited to reviewing the person's criminal history. A range of other factors are relevant, including factors which point to applicants' honesty, integrity, capacity to act impartially, and to conduct themselves in such a way which does not bring the office of JP into disrepute.

The grounds on which an applicant may be assessed as not being of good character are broad and it is therefore not possible to specify each such potential ground in these Guidelines.

However the factors listed below, without limitation, are relevant. These include that the applicant has, in Australia or anywhere else:

- been the subject of any adverse finding or comment about the applicant's character, honest or integrity by any court, tribunal, official inquiry, regulatory agency, complaint handling or dispute resolution body, or professional, business, trade or industry association
- been suspended or disqualified from holding any licence, registration, certificate or membership in any profession, business, trade or industry
- been disqualified from being involved in the management of any company under the *Corporations Act 2001* (Commonwealth).

Applicants must disclose in the application form whether or not any of the above factors apply to them.

The Department may make such additional inquiries about an applicant as it considers necessary in order to verify the information provided by the applicant and to assess the person's good character.

6 Other applications to be declined

The Department must also decline an application from a person who:

- (a) is currently subject to a limiting term under the *Mental Health (Forensic Provisions) Act 1990*, or
- (b) is currently subject to an order under section 32(2) or section 32(3)(a) or section 32(3)(b) of the *Mental Health (Forensic Provisions) Act 1990*, or
- (c) is currently subject to a detention order under Part 1B Division 6 of the *Crimes Act 1914* (Commonwealth).

7 Grounds for removal must also be applied

The *Justices of the Peace Act 2002* contains a number of grounds upon which the Governor may, on the recommendation of the Attorney General, remove a JP from office.

Under these Guidelines, the grounds specified in section 9(3) of the Act for removal of an existing JP from office must also be applied as criteria for assessing the eligibility of an applicant for appointment or reappointment.

This ensures that the same standards are applied to both applicants and current JPs. It also avoids the potential situation where an applicant may be appointed, but immediately become subject to removal from office at the discretion of the Governor under section 9(3).

The relevant grounds for removal of a JP under section 9(3) are:

- (a) if the applicant is currently bankrupt or subject to debt relief of a similar nature to bankruptcy, including any debt relief agreement with the applicant's creditors including but not limited to a Part X debt agreement, or
- (b) if the person is a mentally incapacitated person, or
- (c) if the person has (in the past ten years) been convicted of an offence that is punishable (in NSW) by imprisonment for twelve months or more, or
- (d) in any other circumstances prescribed by the regulations.

Where an applicant falls into any of the categories listed above, the Department must decline the application.

If the Department holds concerns that an applicant may be a mentally incapacitated person, the Department should, in determining the application, refer to whether or not there has been an official finding of current incapacity with respect to the applicant. A relevant official finding may include that the applicant is:

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

8 Non-disclosure of significant matters

The application forms for appointment and reappointment as a JP require applicants to disclose a number of significant matters, such as whether they have ever been found guilty of any criminal offence or subject to the circumstances listed in section 5 of these Guidelines.

Honesty and accuracy in completing documentation is an essential requirement for performing the functions of a JP. The failure to disclose a significant matter in the application form, and particularly any criminal offence, is therefore an important consideration in assessing the good character of an applicant.

The Department must decline applications where the applicant has not disclosed a significant matter which is subsequently discovered by further Departmental inquiries, including but not limited to, a criminal records check.

The Department may exercise discretion to propose the appointment or reappointment of an applicant who failed to disclose a significant matter, but only where there is reasonable excuse for such failure. This should generally be limited to instances where the failure can be reasonably attributed to an error or omission on the part of the Department.

However such discretion must not be exercised in circumstances where a criminal offence or other significant matter which has not been disclosed makes the applicant otherwise ineligible for appointment.

9 Consent to inclusion on the public register

The *Justices of the Peace Act* requires the Attorney General to cause a public register of JPs to be maintained. The Justices of the Peace Regulation specifies that the register must include the JP's full name, suburb or town, postcode, and telephone number on which members of the public may contact the JP. The register is at the website www.jp.nsw.gov.au.

The Regulation provides that JPs who exercise their functions primarily for the purposes of their employment may choose not to consent to their inclusion on the public register, by notifying the Director General of the Department in writing. In addition, if the Director General is satisfied that exclusion or removal from the public register is necessary for the safety or well-being of any JP, the JP's details must not be included in the register.

In all other circumstances, an applicant is asked to consent to the inclusion of their details in the public register, when completing the application form. Obtaining this consent ensures that the Department meets the requirements of section 17 of the *Privacy and Personal Information Act 1998* with respect to the use of personal information.

Where such an applicant declines or fails to consent, the Department must decline the application. The basis for this approach is that it will not be possible for the applicant to meet the 'Access to services' requirements in the *Code of Conduct for JPs in NSW*.

10 Applicants who reside outside NSW

The *Justices of the Peace Act* requires that applicants demonstrate a community or employment based need in NSW for the appointment. The functions of a JP for NSW cannot be performed outside NSW.

Where an applicant's residential address is outside NSW, the Department should ordinarily decline the application on the basis that the applicant cannot meet the eligibility criteria relating to employment or community need.

In limited circumstances, the Department may exercise discretion to propose the appointment or reappointment of an applicant who has a residential address which is outside NSW. These limited circumstances are where an applicant:

- resides in a location which is near to the NSW border and has demonstrated a community or employment need for the appointment in NSW, or
- has employment which regularly requires him or her to visit NSW and to undertake the functions of a JP during those visits.

11 Review of decisions

If any person other than the Attorney General requests a review of a decision, the Department must limit its review to such matters set out in these Guidelines which allow the Department discretion in determining an application. A person whose application has been declined as a result of the Department exercising its discretion may request an internal review of the decision by writing to the Department c/o the Community Relations Unit, Locked Bag 5111, Parramatta NSW 2124.

The Department's internal review must be conducted by a senior manager. The person who requested the review must be advised of the outcome in writing.

If the applicant remains dissatisfied and requests a further review in writing, the matter may be submitted to the Attorney General for consideration.

As there are no statutory provisions for the review of decisions regarding the appointment or reappointment of JPs, the Attorney General's decision is final.

12 References

These Guidelines have been prepared with reference to:

- the *Justices of the Peace Act 2002*
- the Justices of the Peace Regulation 2009
- the *Crimes (Sentencing Procedure) Act 1999*
- the *Criminal Records Act 1991*
- the *Privacy and Personal Information Act 1998*
- Code of Conduct for JPs in NSW
- A Handbook for JPs in NSW, Third Edition, August 2008
- National Criminal History Record Checking Services Guidelines.

13 Document information

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14 Document history

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1.0	25 September 2009	Guidelines issued by the Attorney General.
2.0	26 November 2010	Guidelines amended to provide the Department with additional discretion to assess on their merits applications from people who have certain types of criminal histories.
2.1	18 January 2011	No change to Guidelines, but minor corrections to the table of contents and section references.
2.2	1 April 2011	No change to Guidelines, but minor correction to typographical error in section 4.1(f).

(End)