



Attorney General's
department of nsw

REGULATORY

IMPACT

STATEMENT

JUSTICES OF THE PEACE REGULATION 2003

September 2003

REGULATORY IMPACT STATEMENT

TITLE OF REGULATORY PROPOSAL:	Justices of the Peace Regulation 2003
PROPONENT:	Attorney General's Department
RESPONSIBLE MINISTER:	The Hon RJ Debus, MP Attorney General
RELEVANT ACT:	Justices of the Peace Act 2002 No 27

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OBJECTIVES OF THE REGULATORY PROPOSAL

The objects of the *Justices of the Peace Regulation 2003* are as follows:

- (i) set out additional criteria for appointment of persons as Justices of the Peace;
- (ii) prescribe requirements for the taking of oaths by Justices of the Peace;
- (iii) prescribe additional circumstances in which Justices of the Peace may be removed from office; and
- (iv) set out particulars to be included in the public register of Justices of the Peace.

JUSTICES OF THE PEACE REGULATION 2003

1. BACKGROUND

The method of appointment and regulation of the office of Justice of the Peace has remained relatively unchanged since the late nineteenth century. In New South Wales, Justices of the Peace have previously been appointed for an indefinite term and on an 'ad hoc' basis by the NSW Attorney General, usually to fulfil the requirement of a particular job or community need.

In February 1998 the Government released a discussion paper concerning the role of Justices of the Peace, and invited submissions from members of the public. After receipt of a large number of submissions, the majority of which supported the proposals contained in the paper, the draft *Justices of the Peace Exposure Bill 2001* was developed. The Justices Act reform package was introduced in conjunction with the draft exposure Bill; under the reform package, all court duties formerly performed by court staff as Justices of the Peace, are now to be performed by those officers in their role as Registrars or Deputy Registrars.

The *Justices of the Peace Act 2002* No 27 ("the Act") received the Governor's assent on 21 June 2002 and will commence on 1 November 2003.

The Act provides a basic framework for the appointment of Justices of the Peace in New South Wales. The Act contains provisions that contemplate the making of regulations or Ministerial guidelines and this Regulation is made pursuant to a number of such provisions in the Act. This Regulation will assist in providing detail with respect to the regulatory framework set out in the Act and, along with providing clarity, certainty and greater protection of consumers.

One of the key features of the Act is the creation of a register of Justices of the Peace, which will be available on the Internet. The register is to be available for members of the public, free of charge, during business hours at such places as the Minister determines (s.11(4) of the Act). Section 11(3) provides that the register is to be in the form prescribed by the Minister and contain the particulars prescribed by the Regulations.

In relation to the register, it should be noted that a further Regulation is to be introduced, the *Privacy and Personal Information Protection Amendment (Justices of the Peace) Regulation 2003*, to ensure the Department's privacy obligations are met. Part 6 of the *Privacy and Personal Information Act 1998* ("PIIP Act") is concerned with public registers. Personal information (which would include contact details of Justices of the Peace), must not be disclosed unless the agency responsible for the register is satisfied that it is to be used for a purpose of the register, or of the Act under which the register is kept (s.57 of the PIIP Act).

The Department has been advised that if the personal information were available over the Internet, the Department would be unable to discharge its privacy obligations, as it could not be sure of the purpose to which people accessing the register would use the information. For this reason, the *Privacy and Personal Information Protection Amendment (Justices of the Peace) Regulation 2003* will be introduced shortly. This Regulation, made under section 71 of the PIIP Act, will exempt the register of Justices of the Peace from requirements preventing disclosure of personal information and provisions relating to requests to suppress personal information kept on public registers.

Other reforms contained in the Act include the replacement of lifetime appointments with five-year renewable terms. The Act also provides that the Governor may, on the recommendation of the Minister, remove a Justice of the Peace from office at any time, with further circumstances warranting removal, also specified in the Act.

2. PROVISIONS OF THE REGULATION

Clause 4 - Additional criteria for appointment of persons as Justices of the Peace.

The Act provides basic requirements for appointment as a Justice of the Peace. Section 5(1) of the Act provides that in order to be appointed as a Justice of the Peace, a person must be at least 18 years old and nominated for appointment by a member of the Legislative Assembly or Legislative Council.

Section 5(1)(c) of the Act contemplates the making of regulations prescribing further appointment criteria. Pursuant to this section, the Regulation provides that, in addition to the criteria set out in the Act, to be appointed as a Justice of the Peace, a person must:

- be an Australian citizen or entitled to vote unless the Minister exempts the person from having to satisfy that criteria;
- be of good character;
- consent in writing to confidential inquiries being made as to their suitability for appointment, including a criminal records check;
- not be bankrupt; and
- establish that their appointment is required for reasons relating to their employment or to fulfil a community-based need for the appointment.

These additional criteria are intended to protect the status and high standing of Justices of the Peace in our community. The appointment criteria set out in the

Regulation are the same criteria used to determine suitability for appointment as a Justice of the Peace, prior to the Act.

OPTION 1 - The 'do nothing' option – No Regulation

This option is undesirable because the Act only sets out basic criteria for appointment as a Justice of the Peace: that a person is 18 years of age and is nominated by a member of the Legislative Council or Assembly. The Regulation is necessary because it prescribes additional criteria to be taken into account when assessing if an applicant ought to be appointed as a Justice of the Peace. Justices of the Peace perform important functions including verifying affidavits and it is therefore imperative that people occupying the office are of good character.

If the Regulation is not made there will be no discretion to prevent persons being appointed as a Justice of the Peace in circumstances where they are bankrupt, have a criminal record or are not of good character. Not making the Regulation will mean that a Justice of the Peace need not satisfy citizenship requirements or that their appointment is necessary for the carrying out of community or employment-based functions.

OPTION 2 - The proposed Regulation (the preferred option)

By including additional criteria for appointment in the Regulation, the Department is given discretion to determine, on a case-by-case basis, whether a particular applicant is an appropriate person to be appointed as a Justice of the Peace. While the Act provides basic criteria, by requiring high standards of probity and integrity, the Regulation assists to preserve status of the office and to protect consumers of Justices of the Peace services.

The objective of the Regulation is also to provide discretion in relation to whether a person satisfies the high standards of probity and integrity required to hold office. In particular, a person must not be an undischarged bankrupt and must be of 'good character.' If the Regulation is made, the Department is also given the authority to make confidential inquiries as to the person's suitability for appointment, including a criminal records check, which further assists in ensuring only appropriate persons are appointed as Justices of the Peace.

For appointment, a person is also required to be an Australian citizen or entitled to vote at a general election for the Legislative Assembly, unless otherwise exempted by the Minister. This requirement is long-standing and is considered necessary as it ensures that only long-term Australian residents carry out the functions of a Justice of the Peace, which is considered necessary should verification from the Justice of the Peace be required at a later date. Where appropriate, an exemption from the requirement is available.

To be appointed as a Justice of the Peace, the Regulation also requires that a person establish that their appointment is required for reasons relating to their employment or to fulfil a community-based need for the appointment. This requirement ensures that Justices of the Peace are not appointed indiscriminately, but when and where their

services are needed.

The criteria contained in the Regulation are derived from the previous requirements for appointment as a Justice of the Peace. By incorporating these criteria as Regulations, the criteria are accorded formal status and thus more certainty and clarity is provided in relation to the requirements for appointment. Further, by incorporating the criteria in Regulations, the criteria are more accessible to applicants.

Clause 5 – Requirement for Justices of the Peace to take the oath within 4 months’ from the date of appointment.

Section 7 of the Act states that a person must not exercise the functions conferred on a Justice of the Peace without undertaking an oath of office. This section also states that the form and manner of the oath can be prescribed in regulations.

Clause 5 of the Regulation provides that the oath is to be taken not later than four months after the date of appointment, or such other period approved by the Minister.

OPTION 1 - The ‘do nothing’ option – No Regulation

Under section 7 of the Act, Justices of the Peace are required to take the oath of office, but no time frame is specified. The duties of a Justice of the Peace cannot be performed until the oath is taken. If this Regulation is not made, there will be no requirement for Justices of the Peace to take the oath of office within a particular time frame. It would be a waste of resources to appoint Justices of the Peace who cannot perform duties.

OPTION 2 - The proposed Regulation (the preferred option)

The Regulation requires that the oath of office must be taken within four months of appointment. The issue of Justices of the Peace waiting for extended periods of time after appointment to take the oath of office will be addressed by this Regulation, which provides that, for the purposes of section 7 of the Act, the oath is to be taken within four months after the date of appointment.

It should also be noted that a breach of this Regulation is grounds for removal as a Justice of the Peace under Regulations prescribed pursuant to section 9(3)(d) of the Act.

Clause 6 - Additional circumstances in which a Justice of the Peace may be removed from office.

Section 9(2) of the Act outlines circumstances in which the Governor may remove a Justice of the Peace from office, which are: bankruptcy, mental incapacity and conviction of an offence punishable by more than 12 months’ imprisonment. Section 9(3)(d) of the Act contemplates the making of regulations prescribing further circumstances in which the Governor may remove a Justice of the Peace from office.

The Regulation provides for removal as a Justice of the Peace in the following circumstances: failure to take the oath in accordance within the prescribed timeframe; where the person applies in writing to be removed; where in the Minister's opinion the person does not satisfy the criteria for appointment or has failed to carry out their functions properly; and when the person has been the subject of an adverse finding in civil or criminal proceedings.

The circumstances in which a Justice of the Peace can be removed from office under the Act are very limited. The objective of the Regulation is to provide further criteria for removal and thus assist in ensuring that the high standard of behaviour expected by the community of Justices of the Peace is maintained. The overall objective of this provision is therefore to ensure that the integrity of a Justice of the Peace is maintained and that consumers of services provided by Justices of the Peace are protected.

OPTION 1 - The 'do nothing' option – No Regulation

This option is not preferred. If the Regulation is not made, a Justice of the Peace cannot be removed by the Governor in circumstances where he or she no longer meets the original criteria for appointment or fails to 'carry out properly' his or her functions.

This provision gives the Minister discretion to remove a person for a range of reasons that are not specified in the Act, and assists in ensuring that the high level of community regard towards Justices of the Peace is maintained.

OPTION 2 - The proposed Regulation (the preferred option)

This option is preferred as the Regulation provides further circumstances for which a Justice of the Peace may be removed.

By prescribing in the Regulation that failure to take the oath is a ground for removal from office, the taking of the oath becomes a legal prerequisite to performing duties. This requirement also ensures that Justices of the Peace are more likely to comply with section 5 of the Act, as the penalty for failing take the oath within four months of appointment may be removal from office.

The Regulation ensures that the "criteria for appointment", contained in Regulations made under section 4 must be complied with after a Justice of the Peace is appointed. This provision ensures that consumers of the services of Justices of the Peace are protected. The Regulation also provides that a person can be removed from office if they apply in writing to be removed. This is an important practical measure as there are a large number of Justices of the Peace who were previously appointed for an indefinite period of time. By providing in the Regulation for a simple process for resignation, persons who no longer wish to continue as Justices of the Peace can easily remove themselves from the office.

Clause 7 - Particulars to be included in the public register of Justices of the Peace.

Section 11(1) of the Act provides that a register of Justices of the Peace is to be kept in a form determined by the Minister and made available to members of the public. Section 11(2) provides that the register is to contain the particulars prescribed by the regulations. The Regulation specifies that the register shall contain: the full name, telephone contact number, suburb and postal code where most of the Justice of the Peace functions are to be carried out.

The Regulation also provides, however, that a Justice of the Peace whose exercise of functions is related to his or her employment can notify in writing the Director General of the Attorney General's Department in writing that he or she does not consent to the inclusion of their suburb, post code and contact phone number and those particulars must not be included or must be removed.

One of the key features of the Act is the introduction of a public register, which will be available online, the objective of which is to make it easier for members of the public to locate a Justice of the Peace in their area. While there are a large number of Justices of the Peace in NSW, a common complaint received is that members of the public cannot locate a Justice of the Peace as no formal mechanism for doing so exists. By including a requirement in the Regulation that certain particulars (subject to the exemption in relation to employment-based Justices of the Peace), are to be placed on the register, public access to details on the availability of Justices of the Peace in NSW will be greatly improved.

It should be noted that the *Privacy and Personal Information Protection Amendment (Justices of the Peace) Regulation 2003* is to be introduced shortly and will exempt the register of Justices of the Peace from requirements preventing disclosure of personal information and provisions relating to requests to suppress personal information kept on public registers.

OPTION 1 - The 'do nothing' option – No Regulation

This option is not preferred. The Regulation prescribes the details to be included on the Public register, and if it is not made, the Public register cannot be created. One of the key features of the Act is the creation of a central register to enable members of the public to quickly access accurate and up-to-date details of Justices of the Peace in their location.

Currently there is no central database of contact information on Justices of the Peace in NSW and the information that is available may be out-of-date or inaccurate. As a result, there have been ongoing difficulties experienced by members of the public when attempting to access a Justice of the Peace in their locality. If the Regulation is not made, these problems will continue.

OPTION 2 - The proposed Regulation (the preferred option)

If the proposed Regulation is made, the register can be created and placed on the Internet. Access to contact details about Justices of the Peace will be greatly improved and this is one of the key objectives of the Act.

For privacy reasons, the amount of information has been kept to the bare minimum necessary to enable a consumer to establish contact with a Justice of the Peace in their locality.

4. CONSULTATION PROGRAMME

Interested members of the public will be invited to make submissions on the proposed Regulation and the Regulatory Impact Statement by way of an advertisement placed in the press.

In addition, both the proposed Regulation and the Regulatory Impact Statement will be available on the Department's website at: www.lawlink.nsw.gov.au/lpd

It is intended to consult on the making of the Regulation with the following persons/organisations:

- NSW Justices' Association
- NSW Women Justices' Association
- Northern NSW Federation of Justices of the Peace Inc
- United Justices' Association
- Tweed Valley Justices' Association
- Attorneys General of Australia
- NSW Police
- NSW Local Courts
- The Chief Magistrate, NSW
- Members of the Legislative Council, NSW
- Members of the Legislative Assembly, NSW

5. SUBMISSIONS

Submissions about the proposed Regulation can be made to:

Mr Laurie Glanfield
Director General
Attorney General's Department
GPO Box 6
SYDNEY 2001

or by email to christina_valentine@agd.nsw.gov.au.
Submissions must be received by Monday 13th October 2003.

ANNEXURES

A draft copy of the *Justices of the Peace Regulation 2003* is enclosed.