

**HONORARY JUSTICES ACT 2014**

**GUIDELINE ON THE HANDLING OF COMPLAINTS  
AGAINST HONORARY JUSTICES**

I, Clare Morton, Director, Community Operations and Victims Support Agency, Department of Justice and Regulation, pursuant to a delegation made by Greg Wilson, Secretary, Department of Justice and Regulation under section 47 of the *Honorary Justices Act 2014* make the following guideline pursuant to section 48(1) of the *Honorary Justices Act 2014* on the handling of complaints against Honorary Justices and persons granted permission to use the title JP (Retired) or BJ (Retired), as the case may be.

Signed Clare Morton

Dated 20/2/18

## Background

1. This Guideline relates to the handling of complaints under the *Honorary Justices Act 2014* (the Act) against Bail Justices and Justices of the Peace (Honorary Justices), and persons granted permission to use the title JP (Retired) or BJ (Retired), as the case may be.
2. Honorary Justices make a valuable contribution to the Victorian community. It is important that the persons holding appointment as an Honorary Justice have the appropriate skills and capacities for the role and understand the necessity of maintaining the integrity of the Victorian justice system.
3. The Act provides that the Attorney-General, as the Minister responsible for this Act of Parliament has a role in the outcome of complaints against Honorary Justices concerning removal from office and the revoking of permission granted to persons to use the title JP (Retired) or BJ (Retired), and making recommendations to the Governor in Council, where necessary.
4. The Secretary, Department of Justice and Regulation also has legal responsibility under the Act for making decisions in relation to complaints made against Honorary Justices and persons granted permission to use the title JP (Retired) or BJ (Retired).
5. The Secretary may delegate some of those decisions to senior officers within the department through an Instrument of Delegation made under the Act.<sup>1</sup>

### *Ill-health of the Honorary Justice*

6. From time to time, the investigation of a complaint identifies that an Honorary Justice no longer has the capacity (mental or physical) to satisfactorily discharge the duties of office. This is more common in the case of a Justice of the Peace, who is appointed for life.<sup>2</sup>
7. In these cases, the Honorary Justice may consider resigning. The Honorary Justice is referred to the *Guideline on the Use of Titles by Retired Honorary Justices (October 2014)* for guidance on the circumstances in which an Honorary Justice, may be granted permission to use the title BJ (Retired) or JP (Retired).

## Matters not covered by Guideline

### *Protected Disclosure*

8. This Guideline does not cover complaints that are a disclosure under the *Protected Disclosure Act 2012*. Such disclosures will be dealt with in accordance with the *Protected Disclosure Act 2012* and the department's *Making and Handling Protected Disclosures Procedures*.

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<sup>1</sup> See Section 47 of the *Honorary Justices Act 2014* for the power to delegate.

<sup>2</sup> See Section 7 of the *Honorary Justices Act 2014*. This compares with a Bail Justice, who must be under the age of 70 years at the time of appointment, is appointed for a maximum period of five years and their term of appointment or re-appointment ends on attaining 75 years of age (s17).

## *Notifications*

9. This Guideline does not apply to matters brought to the attention of the department that may result in informal enquires by the department and which are unable to progress to a complaint.

## *Bail Justices holding a prescribed office*

10. A person who holds a prescribed office is, by virtue of holding that prescribed office, a Bail Justice.<sup>3</sup>
11. The offices which are prescribed are the office of Prothonotary and deputy Prothonotary (Supreme Court), principal registrar (Magistrates' Court and Children's Court), registrar and deputy registrar (Magistrates' Court and Children's Court), or associate to a judge of the Supreme Court or the County Court.<sup>4</sup>
12. If a complaint is made against a Bail Justice who is a Bail Justice by virtue of holding a prescribed office under the Act, the department will not investigate the complaint, but refer it to the head of the jurisdiction where the Bail Justice performs their duties.
13. For example, a complaint against a registrar of the Magistrates' Court of Victoria regarding the discharge of their duties as a Bail Justice would be referred to the Chief Executive Officer of Court Services Victoria for investigation and resolution as considered appropriate.

## **Definitions**

### *Complaint*

14. For the purposes of this Guideline, a 'complaint' is defined as:
  - a) an expression of concern, dissatisfaction or frustration with the manner in which a Justice of the Peace or Bail Justice delivers services to the Victorian community and in the case of a Bail Justice does not include the decision made by, or discretion exercised by, the Bail Justice at a hearing under the *Bail Act 1977* or the *Children, Youth and Families Act 2005*; or
  - b) information received by the department which indicates that the Justice of the Peace or Bail Justice:
    - i. has engaged in misconduct or misbehaviour sufficient to justify removal from office, whether or not the conduct or behaviour was engaged in by the Honorary Justice while holding office; or
    - ii. has brought the office of Justice of the Peace or Bail Justice into disrepute; or

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<sup>3</sup> See Section 18 (1) of the *Honorary Justices Act 2014*.

<sup>4</sup> See Regulation 10 of the *Honorary Justices Regulations 2014*.

- c) in the case of a person granted permission to use the title JP (Retired) or BJ (Retired);
  - i. information received which indicates that the person may have been convicted or found guilty of an offence punishable by a term of imprisonment of 6 months or more or an offence that if committed in Victoria would constitute an offence punishable by a term of imprisonment of 6 months or more; or
  - ii. an expression of concern, or information received which indicates, that the person's use of the title or other behaviour is such that the continued use of the title by the person could bring the office of Justice of the Peace or Bail Justice into disrepute.<sup>5</sup>

#### *Department*

15. In this Guideline, 'department' means the Department of Justice and Regulation, and includes the Honorary Justice Office.

#### *Director*

16. In this Guideline, Director means the Director Community Operations and Victims Support Agency, Department of Justice and Regulation.

#### *Investigator*

17. In any case where the Secretary is satisfied on reasonable grounds that there may be grounds for removal of an Honorary Justice, the Secretary may appoint an investigator to undertake an investigation into the conduct of an Honorary Justice.<sup>6</sup>

18. The Secretary may appoint an investigator, irrespective of whether the Honorary Justice has been suspended.<sup>7</sup>

19. In this Guideline, complaints categorised as Category B will be referred to an investigator to undertake the investigation of the conduct of an Honorary Justice.

20. An investigator must be a person who has served as a judicial officer in Victoria or another Australian jurisdiction.<sup>8</sup>

#### *Secretary*

21. In this Guideline, Secretary means the Secretary to the Department of Justice and Regulation.

### **General principles to be applied in progressing complaints**

22. The department is committed to resolving complaints fairly, and as soon as practicable.

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<sup>5</sup> See Section 42 of the *Honorary Justices Act 2014* for revocation of permission to use title

<sup>6</sup> See Section 31(1) of the *Honorary Justices Act 2014*.

<sup>7</sup> See Section 31(2) of the *Honorary Justices Act 2014*.

<sup>8</sup> Under Section 31(3) of the *Honorary Justices Act 2014*, an investigator must be a person who has served as a judicial officer in Victoria or another Australian jurisdiction.

23. The department applies the rules of natural justice and the principles of the *Charter of Human Rights and Responsibilities 2006* when managing a complaint.
24. The department aims to deal with those wishing to make a complaint, and those who have made a complaint, about an Honorary Justice, professionally and sympathetically. Complainants and their concerns are taken seriously and managed impartially by the department.
25. The department aims to deal with the Honorary Justice against whom a complaint is made in an unbiased, professional and courteous manner.
26. The department will inform the Honorary Justice of the complaint and provide them with a copy (for exceptions see below), and keep the Honorary Justice informed about the progress of handling the complaint.
27. The Honorary Justice will be provided with an opportunity to respond to the complaint.

### **Process overview for handling complaints**

28. The department requires all complaints to be in writing. Complaints may be made via email or by ordinary mail.
29. The department is committed to the protection of personal information, through compliance with the *Privacy and Data Protection Act 2014*.
30. All information which is collected as a part of the handling of a complaint against an Honorary Justice will be dealt with by the department consistently with the Fact Sheet *Collection and Use of Personal Information under the Privacy and Data Protection Act 2014* and the *Department of Justice and Regulation information privacy policy*. These documents can be accessed either from the departmental website or from the Honorary Justice Office.

### *Anonymous Complaints*

31. It is standard practice for the department to provide the Honorary Justice with details of the complainant.
32. The department will not take action on an anonymous complaint, unless the complaint addresses a public interest or safety issue.
33. If a complainant wishes not to have their identity disclosed to the Honorary Justice, a written request, together with reasons should be made to the department at the time of lodging the complaint.
34. Circumstances that may warrant the non-disclosure of the complainant's details include (but are not limited to) the physical safety of either the complainant or the Honorary Justice or persons known to either, risk to employment, association or property.
35. If the department denies a request from a complainant not to disclose their identity to the Honorary Justice, the complainant will be advised of this decision and the complainant will be asked to decide whether they wish to pursue the complaint.
36. If the department determines to withhold the identity of the complainant, the Honorary Justice will be provided with a summary or extract of the complaint which will include sufficient detail to enable the Honorary Justice to comprehensively respond to the matters raised.

### *Complaints Involving Victoria Police*

37. Where a complaint involves a Victoria Police officer, irrespective of whether a complaint is lodged by an officer, or an officer was a witness to a complaint by a stakeholder, or if a complaint is made against an officer, the department will not make direct contact with the officer.
38. In the event that the department or an investigator requires making contact with a Victoria Police officer, contact will be made through the relevant Assistant Commissioner.

### *Complaint Register*

39. The department maintains a Complaint Register regarding Honorary Justices. All complaints received by the department are entered on to the Register, thus assisting the department in its task of recording and reporting on complaints in an informative and manner.
40. The outcomes of all complaints are also recorded. This information assists the department to identify any systematic trends and areas for improvement.
41. The Complaint Register is an internal document only, for the better administration of justice in Victoria. It is confidential to the department and the Attorney-General, and is not available to any other person.

## **Process steps**

### *Making a complaint*

42. A complaint must be in writing and may be in the form marked Appendix 1 to this Guideline.
43. Complaints regarding the conduct of an Honorary Justice are to be addressed to:  

The Manager  
Honorary Justice Office  
Department of Justice and Regulation  
GPO Box 4349  
Melbourne VIC 3001

or by email to [jp@justice.vic.gov.au](mailto:jp@justice.vic.gov.au).

### *Complaint management*

44. The Honorary Justice Office of the Department of Justice and Regulation will be responsible for the managing of complaints against Honorary Justices.
45. The Honorary Justice Office will acknowledge a complaint in writing within 10 working days of receipt.
46. Subject to decisions regarding requests for non-disclosure of complainant details, the Honorary Justice will be informed of the details of the complaint.
47. The department will make a preliminary determination as to whether the allegation constitutes a valid complaint, whether the department is the appropriate body to receive the complaint, whether the complaint relates to any of the grounds for removal or suspension under the Act (or revocation of the BJ (Retired) or JP (Retired) title) or whether the complaint can be resolved informally.
48. If the matter is deemed not to be a complaint the department will advise the complainant of the decision.

## **Categorisation of complaints and specific process steps**

### *Categories*

49. Complaints will be categorised into one of the following:
  - a) Category A – minor and/or operational and/or not warranting suspension or removal from office.
  - b) Category B – serious misconduct and/or conduct not falling into Category A.
  - c) Complaints against a person granted permission to use the 'retired' title
50. Complaints may be progressed to another category at any time during the actioning of the complaint.

## Category A

51. Complaints of the following nature will be progressed under this category:
- a) Inappropriate conduct of a minor nature;
  - b) A minor breach of the Honorary Justices Code of Conduct that does not warrant investigation for possible suspension or removal;<sup>9</sup>
  - c) A minor failure by an Honorary Justice to follow process in a manner that does not impact on the integrity of the function carried out by the Honorary Justice.
52. Repeated Category A complaints that have been substantiated may result in a complaint being categorised as a Category B complaint.

### *Process Steps*

53. The department will acknowledge receipt of the complaint and seek permission to release details of the complaint, or provide a copy, to the Honorary Justice.
54. The department will advise the Honorary Justice of the complaint in writing. The department will request the Honorary Justice to respond to the complaint within an appropriate timeframe.
55. The department will assess all the information provided by both parties.
56. Possible outcomes of the complaint may be:
- a) The complaint is found to be of a minor nature with no further action taken; and/or
  - b) A mutually satisfactory resolution is achieved between the parties; and/or
  - c) The complaint is substantiated and the Honorary Justice is asked to apologise and/or;
  - d) The Honorary Justice is required to undertake:
    - \* training or professional development and/or counselling.
  - e) The complaint is not substantiated.
57. The department will advise both parties of the outcome in writing.

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<sup>9</sup> See Schedule 2 of the Honorary Justices Regulations 2014 for the Honorary Justices Code of Conduct.



## *Review*

58. Where a complaint has been investigated and a decision made, a person dissatisfied with the outcome of the complaint may seek a review of the decision by making the request in writing to:  
Director  
Community Operations and Victims Support Agency  
Department of Justice and Regulation  
GPO Box 4349  
Melbourne Vic 3001.
59. Only the complainant or the Honorary Justice may seek a review.
60. A review of the decision will be conducted by a senior departmental officer appointed by the Director.
61. The review will be based on the process surrounding the department's handling of the complaint and not the merit of the decision made.
62. The request for a review must contain details of the basis on which the review is sought.

## **Category B**

63. All complaints that are not categorised as Category A.

## *Process Steps*

64. The department will acknowledge receipt of the complaint and seek permission to release details of the complaint, or provide a copy, to the Honorary Justice.
65. The department will advise the Honorary Justice of the complaint and request the Honorary Justice to respond within 14 days.
66. At the conclusion of the 14 days afforded to the Honorary Justice to lodge a response, the complaint will be referred to the investigator for investigation, consideration and recommendation as he/she see fit.<sup>10</sup>
67. The department will provide the investigator with any previous complaints and other relevant material.
68. The investigator must make contact with the complainant and Honorary Justice and may make contact with witnesses during the course of his/her deliberations.
69. If the alleged behaviour is such that it may result in the Honorary Justice being removed from office, the Secretary may suspend the Honorary Justice in accordance with the Act and appoint an Investigator in accordance with the Act.

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<sup>10</sup> See Section 31(1) of the *Honorary Justices Act 2014*.

70. An investigator appointed under the Act must undertake the investigation of the conduct of the Honorary Justice in accordance with the Act and

- a) investigate whether there are grounds for removal of the Honorary Justice from office; and
- b) report to the Attorney-General the Investigator's findings as to whether facts exist which could constitute grounds for the removal of the Honorary Justice from office.

71. The Investigator must afford the Honorary Justice 21 days to respond to the complaint in writing, orally or both.<sup>11</sup>

72. Possible outcomes of the complaint may be:

- a) The investigator makes findings that facts exist which could constitute grounds for removal of the Honorary Justice from office. In which case the Attorney-General may recommend to the Governor in Council that the Honorary Justice be removed from office.

If the investigator makes a finding that facts exist which could constitute grounds for the removal of the Honorary Justice from office, the department will advise the Honorary Justice of this finding.

- b) The investigator makes findings that facts do not exist which could constitute grounds for removal. In such case:
  - (i) The investigator may include in the report to the Attorney-General one or of more of the following recommendations:
    - The Honorary Justice apologise
    - The Honorary Justice undertake training or professional development
    - Other recommendations relating to the future conduct of the Honorary Justice<sup>12</sup>
  - (ii) Where the Honorary Justice has been suspended, the investigator will provide a copy of the report to the Attorney-General to the Secretary and the Secretary will revoke the suspension.<sup>13</sup>

73. The department will advise the Honorary Justice and complainant of the outcome. The advice to the complainant may be general in nature.

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<sup>11</sup> See Section 32(2) (b) of the *Honorary Justices Act 2014*.

<sup>12</sup> See Section 35(3) of the *Honorary Justices Act 2014*.

<sup>13</sup> See Section 35(1) of the *Honorary Justices Act 2014*.

## **Complaints against a person granted permission to use title**

74. The Act allows the Secretary to grant a person who has ceased to hold office as a Justice of the Peace or a Bail Justice, permission to use the title JP (Retired) or BJ (Retired), as the case may be.<sup>14</sup>
75. Complaints against a person granted permission to use the retired title are limited to complaints that fall within the definition of a complaint in paragraph 14.c) of this Guideline.
76. Permission to use the title may be revoked by the Attorney-General<sup>15</sup> only when an investigator appointed by the Secretary has found that facts exist which could constitute grounds for revoking the permission.

### *Process Steps*

77. The department will acknowledge receipt of the complaint and seek permission to release details of the complaint, or provide a copy, to the retired Honorary Justice.
78. The department will advise the retired Honorary Justice of the complaint and request the retired Honorary Justice to respond within 14 days.
79. At the conclusion of the 14 days afforded to the retired Honorary Justice to lodge a response, the complaint will be referred to the investigator for investigation, consideration and findings as he/she see fit.<sup>16</sup>
80. The department will provide the investigator with any previous complaints and other relevant material relating to the retired Honorary Justice.
81. The investigator must make contact with the complainant and the retired Honorary Justice and may make contact with witnesses during the course of their deliberations.
82. The Investigator must afford the Honorary Justice 21 days to respond to the complaint in writing, orally or both.<sup>17</sup>
83. Possible outcomes of the complaint may be:
  - a) The investigator makes a finding that facts exist which could constitute ground for revoking the permission to use the title in which case the Attorney-General may revoke the permission to use the title.
  - b) The investigator makes a finding that facts do not exist which could constitute grounds for revoking permission to use the title.
84. The department will advise the person granted permission to use the title and the complainant of the outcome. The advice to the complainant may be general in nature.

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<sup>14</sup> See Section 40(3) of the *Honorary Justices Act 2014*.

<sup>15</sup> See Section 42(2) of the *Honorary Justices Act 2014*.

<sup>16</sup> See Section 31(1) of the *Honorary Justices Act 2014*.

<sup>17</sup> See Section 32(2) (b) of the *Honorary Justices Act 2014*.

## Suspension overview

85. An Honorary Justice may be suspended as follows:

- a) If the Secretary believes that the Honorary Justice has unreasonably failed to undertake training or professional development.<sup>18</sup>
- b) If the Secretary is satisfied on reasonable grounds that:
  - i. An investigation is warranted as to whether there are grounds for removal of the Honorary Justice from office,<sup>19</sup> or
  - ii. The Honorary Justice is charged with an offence, which, if the Honorary Justice were found guilty of or convicted of that offence, could justify removal from office.<sup>20</sup>

86. The Secretary may only suspend an Honorary Justice on the grounds in 85 (b) ) if the Secretary is also satisfied that suspension is required:

- a) To protect the administration of justice,<sup>21</sup> or
- b) Because public confidence in the office may be damaged if the Honorary Justice is not suspended.<sup>22</sup>

87. In applying these criteria, the Secretary will take into account the need to support the Victorian justice system, and to retain public confidence in the justice system, including with Honorary Justices.

88. If the Secretary decides to suspend an Honorary Justice, written notice of the suspension, including the grounds for the suspension and the date that it takes effect, will be given to the Honorary Justice.

89. Where the Secretary decides to suspend an Honorary Justice on the basis that the Honorary Justice has failed to undertake training or professional development<sup>23</sup>, the suspension will take effect on a date specified in the notice being at least 21 days after the date of the notice.<sup>24</sup>

90. If an Honorary Justice is suspended, and an investigator appointed under the Act reports that facts do not exist which could constitute grounds for removal, the Secretary will revoke the suspension as soon as practicable.<sup>25</sup>

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<sup>18</sup> See Section 27(1) (a) and (b) of the *Honorary Justices Act 2014*.

<sup>19</sup> See Section 28(1) (a) of the *Honorary Justices Act 2014*.

<sup>20</sup> See Section 28(1) (b) of the *Honorary Justices Act 2014*.

<sup>21</sup> See Section 28(2) (a) of the *Honorary Justices Act 2014*.

<sup>22</sup> See Section 28(2) (b) of the *Honorary Justices Act 2014*.

<sup>23</sup> See Section 27 of the *Honorary Justices Act 2014*.

<sup>24</sup> This is in accordance with Section 29 of the *Honorary Justices Act 2014*.

<sup>25</sup> See Section 35(1) (b) of the *Honorary Justices Act 2014*.

## **Report of the investigation**

91. The investigator's report will be addressed to the Attorney-General.
92. The department is unable to provide a copy of the report to the Honorary Justice or the complainant.<sup>26</sup>

## **Findings that facts do not exist to constitute grounds for removal**

93. If the investigator reports to the Attorney-General that facts do not exist which could constitute grounds for removal, the Secretary will revoke the suspension as soon as practicable<sup>27</sup> and notify the Honorary Justice.

## **Findings that facts do exist to constitute grounds for removal**

94. If the investigator reports to the Attorney-General that facts do exist which could constitute grounds for removal, the Secretary will, as soon as practicable, seek the Attorney-General's instructions as to whether the removal of the Honorary Justice is to be recommended to the Governor in Council.

## **Complaints regarding the department's complaint handling process**

95. Complaints regarding the department's complaint handling process may be made to:  
Victorian Ombudsman  
<https://www.ombudsman.vic.gov.au>

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<sup>26</sup> Section 32(1) (b) of the *Honorary Justices Act 2014* requires the investigator to report to the Attorney-General to whether facts exist which could constitute grounds for removal. Note that where the investigator finds that such facts do exist, the Attorney-General retains a discretion as to whether to recommend to the Governor in Council that the Honorary Justice be removed.

<sup>27</sup> See Section 35(1) (b) of the *Honorary Justices Act 2014*.

