

Honorary Justice Office

Complaints Procedure

Honorary Justice Office
GPO Box 4356
Melbourne VIC 3001
Ph: 03 8608 6018
Fax: 03 8608 6111
Email: jp@justice.vic.gov.au
Web: www.justice.vic.gov.au/justices

December 2008

DEPARTMENT
OF JUSTICE

Introduction

This Complaints Procedure outlines how the Honorary Justice Office, Department of Justice is required to handle a complaint about the conduct of a Victorian Justice of the Peace or Bail Justice, collectively referred to as Honorary Justices.

This document forms part of our commitment to deliver a fair, transparent and accountable complaints handling process.

This Complaints Procedure should be read in conjunction with the Honorary Justice Office Complaints Policy.

The Process

Upon receipt of a written complaint, the Honorary Justice Office is required to:

- acknowledge the complaint in writing within seven (7) days of receipt
- consider any written request by the complainant not to disclose his or her identity to the Honorary Justice
- contact the complainant should their request for non-disclosure of identity be denied and ascertain whether the complainant wishes to pursue the complaint
- send the Honorary Justice a copy of the complaint, or a summary of the complaint should it be determined not to disclose the identity of the complainant
- ensure any summary of a complaint includes enough detail to enable the Honorary Justice to comprehensively respond to the matters raised
- request the Honorary Justice to provide a written response to the complaint within 14 days.

Upon receipt of the Honorary Justice's written response, or expiration of 14 days if no response is received, the Honorary Justice Office is required to ask a retired/Acting Magistrate to consider:

- the merit or otherwise of the complaint
- whether the Honorary Justice breached the Code of Conduct for Honorary Justices
- whether the Honorary Justice's conduct was otherwise inappropriate or unlawful
- whether further review of the complaint is required.

If a retired/Acting Magistrate considers that further review of the complaint is required, the Honorary Justice Office is required to:

- inform the complainant and Honorary Justice (the parties) of the recommendation
- seek advice from the parties whether:
 - they wish to participate in the review
 - know any other person/s who could contribute relevant information relating to the subject of the complaint
 - any party intends to engage a legal representative or advocate
- appoint an independent person to conduct a review of the complaint.

Notes:

- If a party does not wish to participate in the review, the review may still continue.
- Each party bears their own costs associated with the engagement of a professional advocate.

Upon receipt of the parties' responses, or after the passing of 14 days if no response is received, the independent person is required to:

- contact the parties, and any additional persons as identified by the parties and arrange a meeting, either in person or via telephone
- prepare a confidential report and submit it to the Honorary Justice Office.

The Honorary Justice Office may also ask Victoria Police to provide an updated police record check, particularly if there is an allegation of criminal activity or inappropriate conduct within the community.

At the conclusion of the review, the Honorary Justice Office is required to ask a retired/Acting Magistrate to consider:

- whether the Honorary Justice breached the Code of Conduct for Honorary Justices
- whether the Honorary Justice's conduct was otherwise inappropriate or unlawful.

The Honorary Justice Office is required to also ask a retired/Acting Magistrate to recommend one or more of the following outcomes:

- the complaint is unsubstantiated and no further action is required
- advise the Honorary Justice the complaint is substantiated and why
- the Honorary Justice make a verbal or written apology

- the Honorary Justice be matched with a buddy
- the Honorary Justice undergo further training
- the Department of Justice make a recommendation to the Attorney-General or Governor in Council that the Honorary Justice be removed from office or have their appointment revoked (details of the statutory provisions are attached to this document)
- the Department of Justice refer the matter to Victoria Police for investigation.

Outcome

After considering the complaint, responses, any review report and the recommendation of the retired/Acting Magistrate, the Honorary Justice Office is required to advise the parties of the outcome of the complaint in writing.

Assistance

For assistance or further information, please contact the Honorary Justice Office:

Email:

jp@justice.vic.gov.au

Telephone:

03 8608 6018

Facsimile:

03 8608 6111

Mail:

GPO Box 4356

Melbourne VIC 3001

Statutory Provisions

Justice of the Peace - Revocation of Appointment

A Justice of the Peace may have their appointment revoked or be prohibited from acting under Section 116 of the *Magistrates' Court Act 1989*.

Under this provision:

The Governor in Council may by Order published in the Government Gazette -

- a) revoke the appointment of any person as a Justice of the Peace; or
- b) prohibit any person who is a Justice of the Peace by virtue of holding, or having held, another office from acting as a Justice of the Peace-

and from the day on which the Order is published the person shall cease to be a Justice of the Peace or shall be incapable of acting as a Justice of the Peace, as the case requires.

Bail Justice - Removal from Office

A Bail Justice may be suspended or removed from office under Section 122 of the *Magistrates' Court Act 1989*.

Under this provision:

- (1) the Governor in Council may suspend a bail justice from office and cause notice of the suspension to be served on him or her.
- (2) A bail justice must not be suspended from office unless the Supreme Court, on the application of the Attorney-General without notice to any person, has determined that—
 - a) there are reasonable grounds to suspect that the bail justice is guilty of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - b) the bail justice is mentally or physically incapable of carrying out satisfactorily the duties of his or her office; or
 - c) the bail justice is incompetent or guilty of neglect of duty; or
 - d) the bail justice is guilty of unlawful or improper conduct in the performance of the duties of his or her office.
- (3) If a bail justice is suspended from office the Attorney-General must, as soon as is practicable, apply to the Supreme Court for a determination as to whether proper cause exists for removing the bail justice from office.
- (4) If the Supreme Court determines, on an application under subsection (3), that the ground or grounds on which the bail justice was suspended from office have been established, the Governor in Council may remove the bail justice from office.