

2.2 Eligibility and conduct

Qualification and suitability of appointment and conduct

To become and remain a JP or Cdec, you must meet the following qualifications for appointment and standards.

Among the provisions of the *Justices of the Peace and Commissioners for Declarations Act 1991* (the Act), sections 16 to 17A provide the qualifications, suitability for appointment and disqualifying convictions for prospective and current JPs and Cdecs. Once you are appointed as a JP or Cdec you should familiarise yourself with these sections and if your circumstances change contact the JP Branch.

Section 16 Qualification for appointment

- 1) *Subject to subsection (2), a person is qualified for appointment as a justice of the peace or a commissioner for declarations if—*
 - a) *the chief executive is satisfied under section 17 that the person is suitable for appointment; and*
 - b) *the person is an adult; and*
 - c) *for a person other than an Australian lawyer—the person has completed any pre-appointment training course; and*
 - d) *the person is an Australian citizen; and*
 - e) *the person—*
 - i) *ordinarily resides in Queensland; or*
 - ii) *works, or proposes to work, in Queensland and cannot perform that work unless the person is a justice of the peace or a commissioner for declarations.*
- 2) *A person is not qualified for appointment as a justice of the peace or a commissioner for declarations if—*
 - a) *the person is an insolvent under administration; or*
 - b) *the person has a disqualifying conviction; or*
 - c) *a previous appointment of the person as a justice of the peace or a commissioner for declarations was revoked within the previous 5 years.*

Section 17 Suitability for appointment

- 1) *In deciding whether a person is suitable to be appointed as a justice of the peace or a commissioner for declarations, or continue to hold office, the chief executive may consider—*
 - a) *the person’s character and standing in the community; and*
 - b) *anything that may affect the person’s ability to competently fulfil the duties of a justice of the peace or a commissioner for declarations; and*
 - c) *whether the person has ever—*
 - i) *held an occupational licence that has been suspended or revoked; or*
 - ii) *been disqualified from holding an occupational licence; and*
 - d) *whether the person has ever been convicted of an offence and, if so—*
 - i) *the number of offences of which the person has been convicted; and*
 - ii) *the following matters relating to each offence—*
 - A. *the nature and seriousness of the offence;*
 - B. *the penalty imposed for the offence;*
 - C. *the person’s age when they committed the offence;*
 - D. *how long ago the person committed the offence; and*
 - e) *for a person holding office or who has held office—whether the person has ever contravened the code of conduct without reasonable excuse and, if so, the number, recency, nature and seriousness of the contraventions; and*
 - f) *anything else relevant to the person’s suitability to hold office.*
- 2) *In this section—*

Occupational licence means a licence, permit or other authority to work in a profession, business, trade or industry.

Office means office as an appointed justice of the peace or appointed commissioner for declarations.

Revoked includes cancelled.

Section 17A Disqualifying convictions

- 1) A disqualifying conviction is—
 - a) a conviction, including a spent conviction, for—
 - i) an indictable offence; or
 - ii) an offence involving dishonesty; or
 - iii) an offence involving a breach of confidentiality; or
 - iv) an offence against this Act; or
 - b) a conviction, including a spent conviction, for an offence for which a sentence of imprisonment was imposed, even if the sentence was suspended.
- 2) However, a conviction of a person is not a disqualifying conviction if the chief executive has granted the person an exemption under section 17B in relation to the conviction.

17B Exemptions for disqualifying convictions

- 1) A person who is a justice of the peace or commissioner for declarations, or is applying under section 15A for appointment, may apply to the chief executive for an exemption in relation to a conviction mentioned in section 17A(1).

JP and Cdec obligations for disqualification provisions

As per section 26 (1) of the Act, you must notify the JP Branch Director and Registrar immediately by phone or in writing if you are subject to any of these disqualification provisions. Failure to notify the registrar is an offence under the Act with a maximum penalty of 10 penalty units.

What is a ‘special witness’ and how do I become one?

Under the *Oaths Act 1867*, a special witness is authorised to witness eligible documents electronically, in person and online, by an audio-visual link.

Section 12 of the *Oaths Act 1867* provides information regarding the appointment approval of special witnesses.

The Chief Executive Officer of the Department of Justice and Attorney-General may approve a JP or Cdec to be a special witness if they are satisfied the JP or Cdec is an appropriate person. The JP Branch will seek expressions of interest for special witnesses from time to time.

Standards required for JPs and Cdecs

As a JP or Cdec, you play a very important role in the community and, in return, the community expects you to maintain a certain standard of professionalism.

There are multiple publications outlining guidelines for all JPs and Cdecs to follow. There are also statutory (or legislative) requirements to which JPs and Cdecs must adhere, including:

- You shall abide by the law and be of good behaviour at all times.
- You shall not accept any reward, gift or payment for services rendered as part of your official duties.
- You shall not repeat to another person any information that has been divulged to you in the course of your duties, unless required to do so in a court of law. All information must be treated with utmost confidentiality.
- You must not use any information you receive as a result of your official duties for your own or any other person’s profit.

- You must never give legal advice.
- You must never witness any document unless the oath or declaration is authorised by an Act or other law, is stated on the document to be witnessed, and authorises you to sign the document.
- You must never witness a document unless it is substantially in the correct format and is an authorised or prescribed version for that type of document. Variations that are unusual and not provided for under an Act or other law should not be witnessed.
- You must never witness a document that the signatory has signed anywhere other than in your presence. These documents should be re-signed in your presence.
- You must never witness a blank document or a document that has blank spaces or unanswered questions in it.
- You must always warn the signatory of the consequences of making a false statement under declaration, oath or affirmation.
- When witnessing an oath, affirmation or declaration, always ensure the signatory takes it in the proper manner and that nothing is substituted for the Bible or Koran when they are required.
- You should never be pressured into signing a document. You must take the time to ensure the documentation is correct. If unsure, you can seek assistance from the JP Branch prior to witnessing.
- You must advise the Department of Justice and Attorney-General in writing within 30 days of any change to your contact details (address, email and phone).
- You must advise the department of any event that would disqualify you from holding office.

Code of conduct

Further to the standards, you are expected to abide by the JP and Cdec Code of Conduct made by the Director-General under section 31G of the Act.

The Code of conduct's main objective is to further promote a higher standard of practices, principles, professionalism and consistency of procedures.

1. JPs and Cdecs shall act and make decisions in a way that is compatible with human rights. This helps ensure their decisions are based on principles of human dignity, equality, freedom and rule of law.
2. JPs and Cdecs shall be prepared to contribute time and effort to the service of society pursuant to their solemn undertaking on application for appointment.
3. JPs and Cdecs shall at all times perform their functions honestly, fairly, competently and diligently.
4. JPs and Cdecs shall at all times serve their fellow citizens with courtesy, dignity, consideration and compassion.
5. JPs and Cdecs shall not act with bias, prejudice, intolerance, bigotry, malice and ill will. They shall pursue the principles of equity and social justice as consistent criteria in all their dealings with the community.
6. JPs and Cdecs shall perform their functions with dignity, rationality and decorum. They shall not use their title where it is inappropriate, irrelevant or insensitive to do so, or in such a way as to bring the office into public disrepute or derision.
7. JPs and Cdecs shall not witness signatures of persons whose level of competence is questionable without first obtaining relevant independent advice (e.g. medical, educational and legal).
8. JPs shall always employ proper judicial discretion in their consideration of applications for the issue of summonses and warrants, being prepared to ask questions and put their minds to the issues, thereby seeking to be fully satisfied before the granting of any order sought. A summons or warrant shall not be approved without the sworn complaint or application first being thoroughly read and judicially considered by the JP.
9. JPs and Cdecs shall at all times observe confidentiality unless authorised by law to make disclosure and must not share any information that comes to their knowledge while carrying out their duties in the course of serving the community.

10. JPs and Cdecs are not to use any private electronic recording devices without first advising the deponent and will respect the person's wishes to not record the witnessing process by electronic means if requested forthwith.
11. JPs and Cdecs shall give the appropriate warnings as to truth and honesty, and put the required formal questions when administering oaths, affirmations and solemn declarations.
12. JPs and Cdecs are to check their details every six months on the general website of the Department of Justice and Attorney-General.

Conflict of interest

13. JPs and Cdecs shall not show favour to friends, relations and associates nor adopt procedures other than outlined in the *Duties of Justices of the Peace and Commissioners for Declarations* handbook and technical bulletins published by the Department of Justice and Attorney-General. They shall disqualify themselves from acting if they are faced by a conflict of interest situation.
14. JPs and Cdecs shall not make use of their position, title, seal of office or any other emblem of office of any kind of personal advantage including monetary gain or profit of any kind, direct or indirect, in carrying out their duties. It shall, however, be permissible for JPs and Cdecs to inscribe their title on signs and business stationery in order to raise awareness throughout the public regarding their availability and readiness to serve the community.
15. JPs and Cdecs shall administer the law as it stands, with no right to decline to act because of personally held views about particular legislation.
16. JPs and Cdecs shall at all times separate their functions of office from any interpersonal or political considerations, influence and benefit.
17. JPs and Cdecs must retain their independence and must never regard themselves as servants of any law enforcement agency.

Competency and knowledge

18. With the changing nature of law and society, JPs and Cdecs shall endeavour to keep themselves up to date with legislative changes as provided by the Department of Justice and Attorney-General.

Notification

19. JPs and Cdecs are required to undertake the full range of administrative and judicial functions prescribed for their office and shall inform the police of their identity and availability.
20. JPs and Cdecs must notify the Department of Justice and Attorney-General in writing within 30 days of any changes to their name, address, contact numbers and email address.

Liability of JPs and Cdecs

Your official duties as a JP or Cdec requires you to carry out many functions that may, occasionally, raise the question of liability. The Act provides in section 36:

- 1) *A person injured –*
 - a) *by an act done by a justice of the peace or a commissioner for declarations purportedly in the performance of the functions of office but which the Justice of the Peace or Commissioner for Declarations knows is not authorised by law; or*
 - b) *by an act done by a Justice of the Peace or Commissioner for Declarations in the discharge of the functions of office but done maliciously and without reasonable cause;*

May recover damages or loss sustained by the person by action against the justice of the peace or commissioner for declarations in any court of competent jurisdiction.
- 2) *Subject to subsection (1), action is not to be brought against a justice of the peace or commissioner for declarations in respect of anything done or omitted to be done in, or purportedly in, the performance of the functions of office.*

Section 36 of the Act provides protection for JPs and Cdecs against actions to recover damages or loss. The clear exception to this protection – where a JP or Cdec committed an act knowing the act was not authorised by law, or that the act was done within the law but maliciously and without reasonable cause.

More on the coverage provisions and how to advise us if an incident occurs as outlined in chapter 1.2.

Requests for legal advice

While most JPs and Cdecs do not have any formal legal training, due to the nature of the position and the public esteem in which it is held, they are often asked for legal advice. Legal advice is about telling a person what to do rather than how to do it – your role is to witness documents not to provide advice on possible outcomes or court procedures.

Under no circumstances should you give legal advice unless you are authorised to do so under the *Legal Profession Act 2007*.

Be mindful not to take sides, or to be sympathetic one way or another, or to offer any opinion as to possible grounds of legal action or the likely success of such action. Instead, you should recommend the person contact their solicitor or refer them to the relevant government department. You should not refer them to any particular solicitor.

Building up a reference library of people and organisations to contact about different matters is a good idea.

Assisting with document completion

You are an independent, unbiased witness. If you choose to assist someone to complete a document, you must not witness that document. The best practice is to refer the person to another JP or Cdec to witness the document.