

CHAPTER 1:

YOUR RESPONSIBILITIES

What is a Justice of the Peace?

In becoming a Justice of the Peace, you have made an important decision to assist the community. Justices of the Peace are respected citizens who hold a statutory position in the modern-day legal system. They assume special unpaid responsibilities within that system.

Most Justices of the Peace do not possess formal legal qualifications. The complexity of our legal system does, however, necessitate thousands of formal documents having to be signed daily, and a range of legal procedures must be undertaken to enable the system to continue to operate credibly and to function effectively. Justices of the Peace witness many documents and undertake some less complicated procedures. This means that the legal system can work more reliably and cost-effectively. The court system becomes less clogged, and qualified legal practitioners and officers can concentrate on more complex legal matters that require more formal training.



Key Phrases

C.dec	Commissioners for Declarations
JP (Qual)	Justices of the Peace – Qualified
JP (Mags Ct)	Justices of the Peace - Magistrates Court
Department of Justice and Attorney General (JP Branch)	The area of the Queensland government responsible for administering the legislation and government policy relating to Justices of the Peace and Commissioners for Declarations. The JP Branch's core responsibilities are the appointment of JPs and maintenance of the register of JPs. The JP branch also publishes a JP and a C. Dec Handbook, co-ordinates the JPs in the Community Program, organises mentoring for new JPs, and provides professional development workshops.
Queensland Justices Association (QJA)	The Queensland Justices Association (QJA) is the peak industry body representing Justices of the Peace and Commissioners for Declarations throughout Queensland. Established in 1918, the QJA has a long history of providing outstanding professional support to its members. With a membership base of over 6000, the QJA is a Registered Training Organisation and provides pre-appointment training, professional development, information, and resources to its members.

To avoid repetition in this book, the generic use of the term Justice of the Peace or JP refers to all the above classifications of a JP unless expressly stated. Chapters with a blue heading represent the fact that duties outlined are relevant to all the above categories, while chapters with a black title are responsibilities allocated explicitly to a JP (Qual) or JP (Mags Ct).



Handy Tips: Your Responsibilities

- ✓ You will need to purchase and have the right materials to perform your duties in a timely and efficient manner. Such materials include a blue or black pen, your seal of office, a certified copy stamp, your logbook, a Bible, a copy of this guide, as well as a copy of the JP handbook issued by the Department of Justice and Attorney General.
- ✓ It is essential that you keep records of all documents you have witnessed, preferably in a logbook. These can be obtained from the QJA by hard copy, which can be purchased, or eLogbook, which can be downloaded free of charge.
- ✓ If you are asked to appear in court for any reason, you should take your logbook with you and (with the court's prior permission) refer to / use it to give evidence.
- ✓ You must understand that legislative requirements and associated procedures change from time to time. Therefore, it is important that you attend available update sessions, refresher seminars, and conferences arranged by the Queensland Justices Association (QJA) and the Department of Justice and Attorney General.
- ✓ It is recommended that periodically, you peruse sections of the Acts of Parliament mentioned in this guide and become familiar with their contents.
- ✓ Being a member of the QJA will enable you to receive the quarterly journal and access online content, which has interesting articles, news updates, professional development tools, and other information. This will ensure that you are up to date with relevant matters to a Justice of the Peace.
- ✓ It is not permissible to use the Queensland Government logo or the Queensland Justices Association logo on stationery or signs when acting as a JP. QJA members can, however, indicate on their business card that they are a member of the QJA.

Frequently Asked Questions



What burden of responsibility do I carry?

Being appointed a Justice of the Peace (Qualified) or a Commissioner for Declarations carries some significant responsibilities. As a JP (Qual) or a C. Dec, you have a duty of care to perform your duties professionally, to prevent others from suffering loss or damage because of your actions. By following the advice in this guide, by adhering to the Department of Justice and Attorney-General Code of Conduct, and by staying up to date with changes to legislation and procedures, you will best be able to exercise that duty.

Under what authority do I gain my powers?

The principal powers of a JP are granted under the *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld). However, the duties of Justices of the Peace are found in a range of Acts of Parliament. Many of these Acts are referred to in this guide.

What duties do I have to perform?

As a Justice of the Peace or Commissioner for Declarations, you have a range of administrative duties. These include, but are not limited to:

- statutory declarations.
- land title documents.
- Blue Card and White Card applications.
- a range of relationship documents.
- certifying copies of documents.
- various Family Law Court and Federal Circuit Court documents.
- General Powers of Attorney, Enduring Powers of Attorney and Advance Health Directives; and
- Affidavits.

Justices of the Peace (Qualified) also have a range of judicial duties, requiring the JP to use their discretion to make decisions about some issues. These are divided into non-bench and minor bench duties.

Non-bench Judicial Duties

- Issuing summonses.
- Issuing arrest warrants.
- Issuing search warrants.
- Issuing warrants under the *Animal Care and Protection Act 2001* (Qld).
- Issuing warrants and summonses under the *Peace and Good Behaviour Act 1982* (Qld).
- Attending a record of interview.
- Granting extensions to detention periods.
- Witnessing the destruction of identifying particulars.
- Authorising external searches under the *Customs Act 1901*.

Minor Bench Duties

- Hearing a bail application; and
- Assisting in making Queensland Civil and Administrative Tribunal (QCAT) decisions if QCAT has provided the required training.

Can I perform marriages?

It is not an authorised duty of a Queensland Justice of the Peace or Commissioner for Declarations to perform marriage ceremonies. Registration of Marriage Celebrants is undertaken by the Commonwealth Attorney-General's Department, which administers the *Marriage Act 1961* (Cth).

When can I use the title of Justice of the Peace or Commissioner for Declarations?

The title of Justice of the Peace or Commissioner for Declarations should only be used when undertaking such duties. However, it is acceptable to place your qualification after your title or post-nominals on business stationery or signs to raise awareness of your availability. Any post-nominals should be placed last on stationery or signs – after royal honours, educational and professional qualifications.

Can I be compensated for performing my duties?

Justices of the Peace and Commissioners for Declarations provide a voluntary service to the community and must not be paid for their services under any circumstances. Section 35 of the *Justices of the Peace and Commissioners for Declarations Act 1991* states:

A Justice of the Peace or Commissioner for Declarations is not to seek or receive, directly or indirectly, any reward in connection with the performance of the functions of office.

To breach this section of the Act is an offence, for which the maximum penalty is 20 penalty units (at the time of publication, one penalty unit = \$133.45) or imprisonment for one year. You also will be disqualified from holding office.

What constitutes a reward under this section of the Act is difficult to interpret. It would be suggested that the following may be a breach of the Act:

- placing a tin in front of where you are signing, which says “donations.”
- receiving gifts of any sort (monetary or non-monetary) in return for performing duties;
- signing documents at your workplace for a non-customer and then attempting to sell work products and services to that person. It is irrelevant as to whether the sales attempt is successful.
- soliciting your local shopping centre management to provide you with vouchers for free food or drinks at the centre because you perform witnessing duties in the centre.
- asking for reimbursement of transport costs to attend local signing facilities.

Sometimes people may attempt to leave money at the point of signing in appreciation of your services. You will need to be emphatic with the person requiring your services and demonstrate effective communication skills to ensure that this does not happen.

Should I provide any legal advice?

From time to time, members of the public may ask you for advice on a range of legal matters. It must be remembered that Justices of the Peace and Commissioners for Declarations are not solicitors – few have any formal legal training or professional qualifications. **Members of the public with any questions that may fall in the realm of legal advice should be referred to a solicitor or a relevant government department.** This includes requests for advice as to how to fill out a document that is presented to you. Your job is to witness the document, not to assist in filling it out.

After refusing to give legal advice, a person may still need to know where to obtain assistance. Some legal services may be able to assist, such as Legal Aid Queensland or the Queensland Association of Independent Legal Services. Some appropriate phone numbers appear at the end of this chapter.

From time to time, Justices of the Peace may be approached by solicitors or other legally qualified persons who wish to debate witnessing procedures that are clearly outlined in this guide or other handbooks. In such situations, you should assert your responsibility to follow established procedures and relevant legislation and offer the person the Department of Justice and Attorney-General's contact details.

Can I be sued?

This is covered by section 36 of the *Justices of the Peace and Commissioners for Declarations Act 1991*, which states:

Action against justices

(1) A person injured—

(a) by an act done by a justice of the peace or a commissioner for declarations purportedly in the [s 37] Justices of the Peace and Commissioners for Declarations Act 1991 Part 4 Miscellaneous Page 26 Current as at 5 June 2017 Authorised by the Parliamentary Counsel 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.

This section means that you are protected against legal action provided that the act performed by the JP is not deliberately unlawful or done maliciously. What is important to note is the phrase “performance of the functions of office.” If you do something that you know is not a duty of a JP / C. Dec, and therefore is not a “function of office,” this protection may not apply. Thus, it is advisable to perform only the duties outlined in this guide, or those where a written document or Act clearly outlines that a JP can perform a particular duty.

Should I keep records of what I have witnessed?

For many tasks you perform, there may be no legislative requirement to keep a record. Still, it is strongly recommended that you do so, since a JP may have their actions subsequently scrutinised by a court, tribunal, or other authority. These records are usually kept in a logbook, which can be in hard copy or electronic format. Except in a small number of circumstances (warrant applications, external body search applications), it is not allowable to keep copies of the actual documents you have witnessed.

A suggested logbook format appears over the page. It has a space for

- the date that the document was witnessed.
- the location that the document was witnessed.
- the type of duties undertaken or document witnessed.
- the name of the person presenting the document for witnessing.
- the identification sighted - note the issues discussed in chapter 4 about what identification is acceptable and when sighting ID is recommended (as opposed to when it is mandatory, as explained in Chapter 8).

- any other comments e.g., questions asked, answers received, whether a declaration was made, an Oath administered, or any other special requirements needed to ensure compliance.

As you will learn later, it will be necessary when witnessing documents to adhere to a set procedure. Most chapters in this guide outline a process that you should follow, and your logbook records should note variations from the set procedure.

The Department of Justice and Attorney General has always maintained that privacy should be a priority for all Justices of the Peace and Commissioners for Declarations. While you must make and retain thorough and consistent records, the Justices of the Peace Branch recommends you only record limited personal information in your logbook to prevent it from being inappropriately handled. By only recording limited personal information in your logbook, you reduce the risk of that information being used fraudulently by another party.

Some examples of personal information that do not need to be recorded or kept include:

- a person's title, address, phone number, or email address
- a photograph of a person
- drivers' licence, passport, or other identification document number
- a video recording of a person, whether CCTV or otherwise, for example, a recording of events in a classroom, at a train station, or a family barbecue
- details about a person's land ownership or disputes to do with their land
- details about a person's education or education activities
- the fact that a person is a member, or leader, of an association and their attendance at meetings
- a person's medical details or health information
- details about a person's religious or sexual preferences
- details about a person's membership of a trade union or professional body.

The more complicated or unusual the document, the more notes that you should make in your log. This particularly applies to power of attorney documents, warrants, and summonses. However, it must be pointed out that you should not record specific details about what is contained in the document. Additional notes may also need to be made when using interpreters or where you decline to witness a document.

SUGGESTED LOGBOOK FORMAT

Date and Location	Document Witnessed	Name of Deponent	ID Sighted	Comments
1/4/20 Brisbane	Certified True Copy	J. Smith	Nil	CTC of academic certificate. Sighted original.
2/4/20 Brisbane	Stat Dec	J. Bloggs	Aust passport	Followed steps as per QJA Guide. Z out blank space.
4/4/20 Noosa	Certified true copy	B. Jones	Qld Drivers Licence	CTC of Drivers Licence. Copied original on my photocopier.
6/4/20 Brisbane	Land Transfer	A. Apple	Australian Passport + Qld Drivers Licence	Selling property. Lot 55 RP 12345. Sighted recent rates notice. Followed steps from QJA Guide.
8/4/20 Cairns	Advance Health Directive	M. Spoon	Aust Passport	Asked to fill out Q2, Initialled changes to Q29. Followed steps and asked questions in the QJA guide. Doctor signed & dated capacity certificate on 7/4/20. Asked capacity questions from QJA Guide. Had to clarify with principal when the power begins. From the questions asked, she appeared to have capacity.
10/4/20 Brisbane	Affidavit	M. FRASER	Vic Drivers Licence	Qld Supreme Court Affidavit. Placed under Oath. Followed steps from QJA Guide. One annexure had to have certificate written on front page.

For how long do I need to keep records?

Even though the Act generally protects you from legal liability, there have been occasions where prosecution of a Justice of the Peace or Commissioner for Declarations has occurred. Prosecution may occur for several reasons. Some of these reasons have been mentioned already in this chapter (accepting payment, maliciously or intentionally committing a breach of the act).

Other matters may not lead to your prosecution but may require you to give evidence in a court of law about duties that you have undertaken for a range of legal reasons. Some of these reasons include:

- ✓ whether you, in fact, witnessed a document; or
- ✓ whether correct procedures were followed; or
- ✓ the (mental) capacity of a person at the time of signing a document.

For this reason, your logbook is particularly important as a reference document, as it may be a long time into the future before a court case takes place. You may need to take your logbook to court with you and (with the court's prior permission) refer to / use it to give evidence. As chapter 4 states, if you adhere to a set procedure for signing every type of document that you encounter, you will be able to give evidence in court with much more confidence. For this reason, you should become very familiar with the step-by-step processes used in this guide.

Some records have a stated limit of time for which retention is necessary. Under section 162 of the *Land Title Act 1994* (Qld), records must be kept for seven years.

If it is deemed that records are no longer required to be kept, they should be destroyed. Merely disposing of them in bins or at rubbish tips is not appropriate.

Am I subject to Anti-Discrimination Legislation when performing duties?

The JP Branch of the Department of Justice and Attorney General has made it clear in a technical bulletin that JPs are subject to the above legislation. Section 7 of the *Anti-Discrimination Act 1991* prohibits discrimination based on the following attributes:

- sex
- relationship status
- pregnancy
- parental status
- breastfeeding
- age
- race
- impairment
- religious belief or religious activity
- political belief or activity
- trade union activity
- lawful sexual activity
- gender identity
- sexuality
- family responsibilities
- association with, or relation to, a person identified based on any of the above attributes.

Section 9 of the Act provides that direct or indirect discrimination based on the attributes listed is prohibited. Section 46 of the Act provides that a person must not discriminate against another person in the provision of services, whether for reward or profit.

You must not let your personal attitudes, values, and beliefs affect you performing your role as a JP or C.dec. If you choose not to assist a client based on an attribute listed under the Act, you may be discriminating against the client and open to a complaint being made against you.

Do I have obligations under the Human Rights Act 2019?

JPs and C. Dec are regarded as “functional public entities” under the *Human Rights Act 2019* and are obliged to consider the human rights implications of the duties they undertake. If the outcome of a task you are asked to perform is an adverse impact on another person’s human rights, you are obliged to satisfy yourself that such an impact is justified.

An example might be where a JP(Qual) is asked to consider the merits of an application for a search warrant on a property occupied by a third party. The warrant's execution may compromise the property owner’s right to privacy, but does the information provided in support of the application (regarding observed or suspected criminal activity) justify the adverse impact on the owner’s human rights? The JP(Qual) is expected to satisfy themselves that this is the case before agreeing to authorise the search.

What materials should I purchase to be able to do the job properly?

Every JP(Qual) or C. Dec appointed under the *Justices of the Peace and Commissioners for Declarations Act 1991* is issued with a seal of office and a registration number. The seal of office is an oval-shaped stamp that is issued to you by the Department of Justice and Attorney General.

There are set ink colours for a seal of office. They are:

- C.dec. – Black
- JP(Qual) – Red
- JP (Mags Ct) - Blue

The registration number is effectively your identification number, and it is used to identify you in your duties uniquely. Hence, it is essential to include this number whenever you sign your name on a document as a JP or C.dec.

It is also strongly recommended that you purchase a stamp that can be used for certifying true copies of single-page documents. The consequence of not doing this is most likely a case of writer's cramp! Of course, you will also need a black or blue pen and a copy of this guide, as well as a copy of the JP handbook that has been issued by the Department of Justice and Attorney General. You may also wish to consider whether you need more than one set of materials to save moving them between home and work. As you will be placing some people on Oath, you should also ensure that you have a Bible. As outlined in Chapter 12, you cannot substitute any other book for a Christian Bible.

How does a JP make it known that they are available to assist the community?

The key to being an active and useful JP / C. Dec is availability. Many Justices of the Peace and Commissioners for Declarations place their name and phone number on the Department of Justice and Attorney-General website so that they can be easily located by those looking to use their services. You might also include your details in the QJA Online Member Directory, which can be accessed by members of the public seeking to locate a JP for a private signing service.

You should also inform your local police station if you are available to undertake some of the JP duties that police require. Such duties may include approving a summons/warrant or sitting in on a child suspect's interview. To this extent, it may also be advisable to tell your neighbours that you have become a JP (Qual). There is nothing worse than being the subject of neighbourhood banter as you are taken away to the station by the local constabulary for what are genuinely honourable purposes!

Many Justices of the Peace and Commissioners for Declarations also volunteer their services at a local signing facility, such as those located in shopping centres and libraries. These facilities are run by the Department of Justice and Attorney General under the "JPs in the Community Program" banner.

Should those wanting to secure my services make an appointment first?

If the witnessing procedure is likely to take place on private premises, such as at your home or business, it would be courteous of any member of the public to contact you first to make an appointment for a time that is suitable to you. This should apply even more so at work, as people are usually engaged in paid activities for their employer.

Making an appointment also has the advantage of enabling you to check what documents need to be witnessed and to make sure that the person concerned arrives with all the correct supporting documentation and identification.

A Justice of the Peace or Commissioner for Declarations who cannot sign documents during business hours could also consider redirecting members of the public to another Justice in the area. Alternatively,

you could direct the person to signing facility locations as listed on the QJA website or the Department of Justice and Attorney General web site. There is also a JP search facility on the Department's website which gives names and telephone numbers of Justices in any locality.

What if I change my address or other contact details?

Section 22 of the *Justices of the Peace and Commissioners for Declarations Act 1991 (Qld)* requires you to advise address changes within 30 days. This should be notified separately to both the Department of Justice and Attorney-General and the Queensland Justices Association. Remember that when changing your home address, telephone numbers and email addresses also usually change, and these changes need to be notified as well.

Invariably, many Queensland Justices of the Peace find that they move interstate or overseas. This does not mean that you must resign your commission. As discussed in Chapter 4, you can, in most cases, witness Queensland documents and Commonwealth documents anywhere, any place, any time. If moving overseas, it is recommended that you inform the nearest Australian Embassy or Consulate that you are a JP / C. Dec for the State of Queensland. You would be surprised to know that your services are occasionally in demand.

It must also be noted that if you move interstate, you do not automatically become a Justice of the Peace for that state. If you wish to become a Justice of the Peace in another state, you must apply as per that state's legislative requirements. However, you remain an appointed Queensland JP or C. Dec unless you choose to resign your commission.

What if I wish to resign from my commission?

You may resign your commission at any time for any reason by writing to the Registrar of the Justices of the Peace branch at the Department of Justice and Attorney-General. If at a subsequent time, you wish to be reappointed as a JP(Qual) or a C. Dec, you will need to go through the entire process again, including training.

What standards of behaviour should I strive to achieve?

The Justice of the Peace Branch of the Department of Justice and Attorney-General has issued a Code of Conduct, which all Justices should abide by. This is reproduced in its entirety:

Justices of the Peace and Commissioners for Declarations

Code of Conduct

*Justices of the Peace and Commissioners for Declarations Act 1991**Updated 1 June 2020***Conduct**

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 serve their fellow citizens with courtesy, dignity, consideration and compassion.
4. 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.
5. 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.
6. 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).
7. 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.
8. JPs or Cdecs shall at all times observe confidentiality unless authorised by law to make disclosure, and must not share any information which comes to their knowledge whilst carrying out their duties in the course of serving the community.
9. JPs and Cdecs are not to use any private electronic recording machines without first advising the deponent and will respect the person's wishes to not record the witnessing process by electronic means if requested forthwith.
10. 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.
11. A Bible shall be used when JPs or Cdecs are required to administer a Christian Oath.

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 both *the Duties of Justices of the Peace* and *Duties of Commissioner for Declarations* handbooks 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 Justices of the Peace 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 his or her name, address, contact numbers and email address.

For further information, contact the Justices of the Peace Branch
 GPO Box 5894, West End Qld 4101 | Level 6, 154 Melbourne Street, South Brisbane QLD 4101
 Phone: 1300 301 147 | Email: jp@justice.qld.gov.au | Website: www.qld.gov.au/jps



**Queensland
Government**



Resources and Reference Material

Websites

Queensland Justices Association Website - www.qja.com.au

Department of Justice and Attorney General JP Information -

<https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/jp-and-cdec->

[information/](#)

Search for a JP or C. Dec - <https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/about-justice-of-the-peace/after-hours>

Important phone numbers

The following numbers may assist you while you are undertaking your duties.

Office of the Public Guardian	1300 653187
Customs	1800 061800
Department of Justice and Attorney-General JP Branch	1300 301147
Land Titles Office	07 34056900
Legal Aid Queensland	1300 651188
Mental Health Liaison	1800 989451
Public Trustee	1300 360044
Queensland Association of Independent Legal Services	07 33920092