



# 1 Introduction

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Thank you for serving the people of NSW as a JP.

The Attorney General of NSW acknowledges and sincerely appreciates the important contribution of JPs who volunteer their services to the community.

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## 1.1 Your functions as a Justice of the Peace

JPs have three primary functions:

- witness a statutory declaration;
- witness an affidavit; and
- certify a copy of an original document.

As a JP, you can perform these functions once you have taken the oath of office. Remember that it is an offence, punishable by imprisonment, to exercise certain JP functions when not authorised to do so.

You must be physically present in NSW to exercise your functions as a JP unless you are delivering JP functions via audio-visual link (see page 14).

### Witness a statutory declaration or affidavit

The law allows certain people, including JPs, to perform these functions. This is so an individual can arrange for independent verification that they have signed a document under oath or affirmation. These documents can be important for courts, government agencies or other organisations that rely on the information provided.

Witnessing a statutory declaration or affidavit involves three key steps:

1. An individual declares under oath or affirmation that a document is true and correct in front of a JP
2. The JP verifies their identity
3. The JP then witnesses the person's signature on the document

Detailed step-by-step procedures are outlined in:

- **Section 2.1** from page 12 for statutory declarations
- **Section 2.2** from page 32 for affidavits

### Certify a copy of an original document

Another common function is to certify a copy of an original document. Before certifying, a JP must be satisfied that it is a true and accurate copy of the original. Certified copies can be useful for organisations that need to rely on the information contained in the document. It also means that people won't need to submit their important original documents like birth certificates or academic qualifications.

Detailed step-by-step procedures are outlined in **Section 2.3** from page 52.

## Other JP functions

NSW JPs have other functions covered by different NSW Acts. However, you would only be required to perform these functions on rare occasions. They include witnessing other types of legal documents and administering special kinds of oaths.

It is important to note that JPs are sometimes asked to perform tasks which are not JP functions. If a function is not referred to by a NSW Act or Regulation, you are not delivering this function in your capacity as a JP.

It is not possible for this handbook to list every other function of a JP. However, a guideline on how to approach this is included in [Section 2.4](#) from page 63.

### *Definition: What does a requirement to be 'satisfied' mean?*



In legal terms, when legislation requires a person to be '**satisfied**' of a particular matter or fact, this means that the person must be persuaded of its occurrence or existence. The degree of certainty will depend on the nature and consequence of the fact (or facts) to be proved.

For a JP, to be satisfied will depend on the context. This includes the purpose and effect of the document, and the importance of the relevant law.

Guidance about how a JP may be satisfied that a person has a 'legitimate medical reason' to keep wearing their face covering is included in [Section 2.1](#) on page 39.

If you are unsure about a particular situation, seek advice (see [Section 1.4](#) on page 9).

## 1.2 Your obligations as a Justice of the Peace

Your appointment as a JP means you are trusted to be honest and careful, every time you carry out your functions as a JP.

You must understand how to carry out each function of a JP correctly. To help you in your role, read this handbook and refer to it regularly. The step-by-step procedures for the functions of a JP are detailed in **Section 2** of this handbook, from page 15.

It is recommended that you use a similar procedure every time you exercise a particular JP function. This may help if you are later asked about a specific document which you witnessed or certified. For example, you may be asked to give evidence in court about a document. You may not be able to remember every document you have witnessed. But if you use a similar procedure every time, you can truthfully describe how you usually witness such a document, even if you cannot remember the specific document in question.

### Duty of care

You have a **duty of care** whenever you perform a JP function, for every document you witness or certify. This means you have a legal obligation to take reasonable care to avoid causing harm to another person through your actions or omissions.

A person who suffers loss or damage because a JP did not take reasonable care may have cause to take legal action against the JP.

To fulfil any duty of care you must:

- **complete the steps that are required by law, honestly and carefully.**  
This includes following any instructions in the document and, for affidavits and statutory declarations, certifying that you have confirmed the person's identity; and
- **take any extra steps which are reasonable in the circumstances.**  
This might include seeking advice if you are unsure about what you are required to do, or confirming the person's identity before witnessing documents concerning significant transactions (even if there is no specific requirement to do so).

This handbook has been developed to help you meet your duty of care. However, it only provides general guidance and does not contain legal advice. If you are unsure about a particular situation, seek appropriate advice. See **Section 1.3** on page 8 for support and information available to JPs in NSW.



### ***Example: court finding that a JP owed a ‘duty of care’***

In 2001, Mr G, a NSW JP, testified to witnessing Mrs H’s signature on a statutory declaration for a mortgage document. Unfortunately, Mr G did not actually see Mrs H sign the document, and in fact had never even met her. It turned out that Mrs H’s husband had forged her signature on the statutory declaration.

The District Court determined that Mr G owed Mrs H a duty of care to act honestly when performing his function of witnessing her signature on the document.

Because Mr G had attested to Mrs H’s signature without seeing her sign the documents (and without Mrs H even being present), the District Court found that Mr G had breached his duty of care. As a result, Mr G was liable for part of the financial loss caused to Mrs H by the fraudulent mortgage document. Mr G was ordered to pay Mrs H \$54,591.86 in damages.

## **Code of Conduct**

Your appointment as a JP is subject to the Code of Conduct for Justices of the Peace in NSW. The Code of Conduct explains the acceptable standards of conduct for JPs. Your appointment as a JP may be reviewed if you fail to comply. The Code of Conduct is included in **Section 5** on page 123. It is also available at [www.jp.nsw.gov.au](http://www.jp.nsw.gov.au)


## **Conflicts of interest**

You should avoid performing any JP functions where there may be an actual or perceived conflict of interest. More information is available in **FAQ 3** ‘What is a conflict of interest, and how should I avoid one?’ on page 10.

## 1.3 Available support and information

Alongside this handbook, the Department of Communities and Justice (the Department) provides the following information and support for JPs.

### JP Online

**JP Online**  is a web portal for all JPs (and prospective JPs) to manage your registration. It is a quick and easy way for JPs to keep the Department notified of changes in your circumstances, and check public registration details.


JP Online allows you to:

- check your JP registration number and expiry date;
- apply for reappointment;
- submit changes in circumstances;
- update public register details (like address or phone contact); and
- order the JP handbook and certificate.

More information about how to use JP Online is in **Section 3.2**, on page 102.



#### JP website

All up-to-date information is published at [www.jp.nsw.gov.au](http://www.jp.nsw.gov.au)  This includes news, policies and procedural advice.



#### JP email

Email queries can be directed to [jp@dcj.nsw.gov.au](mailto:jp@dcj.nsw.gov.au) We aim to respond to email enquiries within five working days.



#### JP Infoline (02) 8688 0500


JPs can contact the JP Infoline between 8:30-11.30am and 1:30-3:30pm, Monday to Friday. There is recorded information if you ring outside of these hours.



#### JP News

JP News is the official newsletter sent to all JPs by email. It provides updates on changes to policies and procedural advice, and news relevant to JPs. Let the Department know of any changes to your email address to receive the latest news and updates.

## Legislation online

In addition, the NSW Government publishes legislation online at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)  Use this website to check the details of a NSW Act or Regulation about JP functions. Do not rely on any other websites to check legislation, as they do not have the official versions of NSW Acts and Regulations, and may not be up to date.

If you or another person needs legal advice, legal information or other legal support, refer to **FAQ 2** 'What if a person asks me for legal advice?' on page 9.

## 1.4 Frequently asked questions: about your authority as a JP

Some frequently asked questions about this topic are included below. For a full list of frequently asked questions included in this handbook, see **Appendix D**: list of frequently asked questions .

### FAQ 1. Where do I get my authority to perform the role of JP?

NSW JPs are appointed by the Governor of NSW under the *Justices of the Peace Act 2002 (NSW)*.

The functions and authority of a JP are set out in:

- section 8 of the *Justices of the Peace Act 2002*, which gives JPs the authority to exercise functions conferred by or under the Act; and
- sections 21 and 26 of the *Oaths Act 1900 (NSW)*.


You **must be physically present** in NSW to exercise your functions as a JP except in certain circumstances when you are delivering JP functions via audio-visual link (see page 14).

### FAQ 2. What if a person asks me for legal advice?

You must never give legal advice in your capacity as a JP, even if you have legal knowledge. If a JP provides legal advice, the JP may be in breach of clause 4(5) of the **Code of Conduct** for JPs in NSW.

If a person relies on any legal advice provided by a JP and suffers loss or damage as a result, a court might find the JP breached their duty of care.

Unless the JP is an Australian legal practitioner, the JP will be committing an offence under section 14(1) of the *Legal Profession Act 2004 (NSW)*.

If you are asked for legal advice, you can refer people to **LawAccess NSW** [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)  LawAccess NSW is a free government telephone service that provides legal information, referrals and in some cases, advice for people who have a legal problem in NSW. LawAccess NSW can be contacted on 1300 888 529 (for the cost of a telephone call), Monday to Friday during business hours.

### FAQ 3. What is a conflict of interest, and how should I avoid one?

A **conflict of interest** occurs when a person tries to serve two or more interests that are not compatible. JPs should avoid any potential conflicts of interest. This includes whether it is an 'actual' or merely 'perceived' conflict.

Your duty as a JP is to be an independent and impartial witness or certifier of documents. The community, the courts and government agencies have an interest in JPs performing those functions impartially (without bias). This is why JPs take an oath of office, promising to undertake the role 'without fear or favour, affection or ill-will'.

An **actual conflict of interest** occurs when you (or your colleague, business partner or other companion) may expect to benefit in some way as a result of delivering a JP function.

**Perceived conflicts of interest** may still exist where your actions may be seen as delivering some benefit by a third party.

The existence of either an actual or perceived conflict of interest can lead to rejection of the document you have witnessed or certified. This can undermine public confidence in the impartiality and integrity of JPs. In some circumstances, it could also lead to the review of your appointment as a JP.

If the document is part of a process that will lead (or might reasonably be expected to lead) to any income or benefit, **you must not** certify or witness the document. This includes if you – as well as your colleague, associate or companion – might expect to obtain a commission, bonus or any income or benefit that you would not ordinarily receive. Instead, refer the document to another JP.

#### *Examples of conflicts of interest*



Examples include if:

- you or your associate\* are involved in the court proceedings where the document will be used;
- you or your associate stand to benefit from the transaction to which the document relates;
- the document is about you or your associate; or
- the document contains confidential information that is capable of assisting you or your associate (for example, in your business).

**Do not** deliver any JP functions where they may pose a conflict of interest (perceived or actual).

\*The term **associate** here includes your colleague, business partner, or companion.