

2.2 Eligibility and conduct

To become a JP (Qual) or Cdec, a person must meet the qualifications and standards outlined here.

Criminal and traffic convictions will be taken into account to determine eligibility, along with any bankruptcy proceedings. You may wish to check the list below before making a formal application.

Qualifications and disqualifications

Qualifications

A person wishing to be appointed as a JP or Cdec must be:

- 18 years of age or older
- an Australian citizen
- appropriately nominated, generally through your local State Member of Parliament
- correctly registered on the Queensland state electoral roll
- deemed competent and have received a Statement of Attainment through an approved training course delivered by a registered training organisation.

Disqualifications

Among the provisions of the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 17 provides disqualification provisions for prospective and current JPs and Cdecs. The list below includes:

(1) A person is not qualified to be appointed to, or to continue in, office under this Act as an appointed justice of the peace or as an appointed commissioner for declarations if the person—

- (a) is an insolvent under administration within the meaning of the Corporations Act, section 9; or*
- (b) is or has been convicted of an indictable offence, whether dealt with on indictment or summarily; or*
- (c) is or has been convicted of an offence against this Act; or*
- (d) is or has been convicted of more than 2 relevant offences; or*
- (e) within the last 5 years—*
 - (i) has been convicted of a relevant offence; or*
 - (ii) has been convicted of an offence under the Road Use Act, section 79 or 80; or*
- (f) within the last 4 years, has been convicted of more than 2 offences under the Road Use Act.*

(2) Also, if a person has been convicted of more than 6 offences under the Road Use Act in a 4 year period, the person is not qualified to be appointed to, or to continue in, office under this Act as an appointed justice of the peace or as an appointed commissioner for declarations for 5 years after the date of the last conviction.

(7) In this section -

relevant offence means an offence other than—

- (a) an offence under the Road Use Act; or*
- (b) an offence mentioned in subsection (1)(b) or (c).*

Road Use Act means the Transport Operations (Road Use Management) Act 1995.

JP and Cdec obligations for disqualification provisions

If you are subject to any of these disqualification provisions, you must immediately notify the registrar of JP Branch as per section 26 (1) of the Act. Alternatively, you can contact the JP Branch on 1300 301 147. Failure to notify the registrar is an offence under the Act with a maximum penalty of 10 penalty units.

Standards required for Cdec

Cdecs play a very important role in the community and, in return, the community expects them to maintain a certain standard of professionalism.

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

- 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 *Code of conduct*.

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, 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 that comes to their knowledge while 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 Commissioners 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.

Liability of JPs and Cdecs

As a Cdec, you carry out many functions as part of your official duties and the question of liability for those actions does arise on occasions.

The *Justices of the Peace and Commissioners for Declarations Act 1991* provides, in section 36, that:

(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 *Justices of the Peace and Commissioners for Declarations Act 1991* provides protection for JPs and Cdecs against actions to recover damages or loss. There is, however, a clear exception to this protection—where a Cdec committed an act knowing that the act was not authorised by law, or that the act was done within the law but maliciously and without reasonable cause.

Requests for legal advice

Most Cdecs do not have any formal legal training, however, because of the nature of the position and the public esteem in which it is held, they are often asked for legal advice.

What should I do when asked for legal advice?

Under no circumstances should you give specific advice of the kind that is the concern of solicitors.

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 a solicitor or refer them to the relevant government department. You should not refer to a private solicitor.

It is a good idea for you to build up a reference library of people and organisations to contact about different matters. Most government departments have brochures outlining their services and these are normally free of charge to the public or available on their webpage.

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 practise is to refer the person to another JP or Cdec to witness the document.