



Section 1

Introduction

This section provides a quick introduction to your appointment, functions and obligations as a Justice of the Peace for NSW.

1 Introduction

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.

1.1 Your functions as a Justice of the Peace

Your primary functions as a NSW JP are to:

- witness a person making a statutory declaration
- witness a person making an affidavit
- certify that a copy of an original document is a true and accurate copy.

Witnessing a person making a statutory declaration or affidavit involves receiving the person's declaration, oath or affirmation that the contents of the document are true and correct, and witnessing the person's signature on the document.

The law authorises certain people, including JPs, to perform this function. The purpose is to provide independent verification that the signatory provided the information under oath or affirmation and signed the document himself or herself. This may be very important to a court, a government agency or any other organisation that needs to rely on the document.

Another common function of a JP is to certify a copy of an original document, if satisfied that it is a true and accurate copy of the original. A certified copy may sometimes be accepted, instead of the original document, by an organisation that wishes to rely on information contained in the original.

NSW JPs also have other functions under various NSW Acts, including witnessing other kinds of legal documents and administering special kinds of oaths. You will probably only be called upon to perform those other functions of a JP on rare occasions.

People who are JPs are sometimes asked to perform tasks which are not functions of a JP established by law. You can only exercise a task in your capacity as a JP if that function is based on or referable to a NSW Act or Regulation. If you perform any other task, you are not doing so in your capacity as a JP.

You must be physically present in NSW to exercise your functions as a JP, including to witness any statutory declaration or affidavit. You are not authorised to exercise JP functions while you are in any other state or territory (including the ACT) or another country.

You are not authorised to perform any of the functions of a JP until you have taken the oaths of office. It is an offence, punishable by imprisonment, to exercise certain JP functions when not authorised to do so.

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 when you are exercising functions as a JP. Suggested step-by-step procedures for the functions of a JP are detailed in Section 2 of this handbook.

It is also recommended that you use a similar procedure every time you exercise a particular JP function. This may assist you if you are asked later 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. However 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 should assume you may have a **duty of care** whenever you perform a JP function, including in relation to every document you witness or certify. A duty of care means you have a legal obligation to take reasonable care to avoid your actions or omissions causing harm to another person.

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 additional steps which are reasonable in the circumstances,** such as 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).

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. An example of such a case is outlined in Section 4.3.2 on page 56.

The suggested procedures and other guidance in this handbook have been developed to assist you to meet your duty of care. However this handbook only provides general guidance and does not contain legal advice. If you are unsure about a particular situation, you should seek appropriate advice (see Section 4.3.1 on page 55 about the support and information available to JPs in NSW).

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. Failure to comply may mean that your appointment as a JP is reviewed. A copy of the Code of Conduct is at the back of this handbook and at www.jp.nsw.gov.au.

Conflicts of interest

You should avoid performing any JP functions for a matter in which there may be an actual or perceived conflict of interest. More information about conflicts of interest is in Section 4.3.4 on page 57.