



## 2 Performing your functions as a Justice of the Peace

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This section details the most commonly exercised functions of a Justice of the Peace. It includes step-by-step procedures for key JP functions.

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## 2.1 Witnessing a statutory declaration

<b>What is it?</b>	<p>A <b>statutory declaration</b> is a written statement which a person declares to be true in the presence of an authorised witness. Some organisations ask for information to be provided in a statutory declaration.</p> <p>A person who makes a statutory declaration is called the <b>declarant</b>.</p> <p>The section at the end of the declaration, where the declarant and the witness both sign, is called the <b>jurat</b>. It is also referred to as a 'signature panel' throughout this handbook.</p> <p>The law that governs the making of a NSW statutory declaration for general purposes in NSW is the <i>Oaths Act 1900</i> (NSW).</p> <p>Other Australian states and territories and the Commonwealth of Australia have their own laws which govern statutory declarations.</p>
<b>What can I witness?</b>	<p>You may witness a statutory declaration that is made for use in:</p> <ul style="list-style-type: none"><li>• NSW;</li><li>• any other Australian state or territory; and</li><li>• the Commonwealth of Australia.</li></ul> <p>The statutory declaration must be <b>signed and witnessed in NSW</b>, except in certain circumstances when you are delivering JP functions via audio-visual link (see page 14).</p>
<b>What can't I witness?</b>	<p>Some examples of documents that you shouldn't witness include:</p> <ul style="list-style-type: none"><li>• declarations written in a language other than English;</li><li>• declarations that refer to an annexure, where that document has not been provided.</li></ul> <p>Note: this is not a full list. If you are unsure about a document, please seek advice (see <b>Section 1.3</b> Available support and information on page 8).</p>

<b>Where can I witness?</b>	<p>You can only witness a statutory declaration when both you and the declarant are physically present together in NSW, except in certain circumstances when you are delivering JP functions via audio-visual link (see page 14).</p> <p><b>You must see the declarant sign the statutory declaration in front of you.</b> Never witness a signature that was already on the statutory declaration when it was brought to you.</p>
<b>Offences and penalties</b>	<p>It is an offence, and penalties apply, for:</p> <ul style="list-style-type: none"><li>• a person who makes a false declaration;</li><li>• a person who witnesses a statutory declaration when not authorised by law to do so; and</li><li>• an authorised witness in NSW who witnesses a statutory declaration and fails to follow the required steps for identifying the declarant (Step 2, Step 3 and Step 11 of this procedure).</li></ul>
<b>If the client does not speak English</b>	<p>If the client does not speak English and requires an interpreter, follow the procedures outlined in <b>Section 2.5.1</b> on page 70.</p>
<b>Still unsure?</b>	<p>If you are unsure about what to do when witnessing a statutory declaration, seek advice (see <b>Section 2.1</b> on page 12).</p>

## 2.1.1 Remote witnessing over an audio/visual link (AVL)

The Electronic Transactions Act<sup>1</sup> was amended in 2021 to enable remote witnessing of documents. The JP may witness statutory declarations and affidavits remotely in accordance with this Act.

This imposes several requirements on JPs, including that:

- The JP must see the signatory signing the document in real time over the audio-visual link;
- The JP must sign the document, or an exact copy of the document, signed by the signatory as evidence that they witnessed the signature;
- The JP must be reasonably satisfied that the document they sign is the same document, or a copy of the document, signed by the signatory.

The remote witnessing scheme allows a NSW JP to remotely witness a statutory declaration or an affidavit for a person located outside of NSW over a video link. And, the JP may also be outside of NSW at the time of witnessing a statutory declaration or affidavit provided that:<sup>2</sup>

- the document is required to be signed under a NSW Act or law or,
- the governing laws for the document are the laws of NSW.

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1 See Electronic Transactions Amendment (Remote Witnessing) Bill 2021.

2 See Section 14i and 14j of the Electronic Transactions Amendment (Remote Witnessing) Bill 2021 [NSW].



## QUICK REFERENCE:

### Witnessing a statutory declaration

STEP 1	Check the document is a statutory declaration
STEP 2	See the client's face
STEP 3	Confirm the client's identity
STEP 4	Look for any blank spaces or alterations
STEP 5	Look for any annexures (and make sure they have been appropriately referred to)
STEP 6	Check that the client understands the purpose, effect and contents of the statutory declaration
STEP 7	Warn the client about their responsibilities
STEP 8	Ask the client to declare the contents are true and correct
STEP 9	Watch the client sign the statutory declaration in front of you
STEP 10	Sign and print your full name, JP registration number and other details
STEP 11	Certify identity requirements have been met
STEP 12	Complete and sign the statement on each annexure (if any)
STEP 13	Certify the client understood (for clients who are blind or illiterate only)


## Step-by-step procedure

### STEP 1

#### Check if the document is a statutory declaration

You can identify a statutory declaration because it will contain:

- the words ‘statutory declaration’; and
- the name of the relevant state, territory or Commonwealth law. A list of those laws is in **Appendix A** on page 112.

A NSW statutory declaration is made under the *Oaths Act 1900 (NSW)*. There are two alternative formats, which are set out in the Eighth Schedule and the Ninth Schedule of the Act. Either of those two formats may be used for a NSW statutory declaration. Examples of completed NSW and Commonwealth statutory declarations are found below and at [www.jp.nsw.gov.au](http://www.jp.nsw.gov.au) 

Sometimes a statutory declaration will be incorporated into an application form. In these cases, you should check to see if the form contains any extra instructions for the JP. If so, you should follow those instructions, as well as this step-by-step procedure.

Some NSW laws create extra statutory declarations requirements for specific purposes (for example, section 169 of the *Conveyancing Act 1919*, about property transactions). **Section 2.4** of this handbook on page 63 has more guidance about how to meet these requirements.

A statutory declaration may be either hand-written or type-written, but must be written in English.

### STEP 2

#### See the client’s face

You must see the face of the person making the statutory declaration.

If the person is wearing a face covering, you should politely ask them to remove as much of the face covering so it is possible to see their face.

#### *Definition of face and face covering*

**Face** means a person’s face from the top of their forehead to the bottom of their chin, and between (but not including) their ears.

**Face covering** means an item of clothing, helmet, mask or any other item that is worn by a person and prevents the person’s face from being seen (whether wholly or partly).

For example, a face covering includes sunglasses that cover the eyes, or a hat that covers the forehead.

However a face covering does not include a scarf that is covering only the person’s hair.



### *More information on legitimate medical reasons*



Exceptions can be made to seeing a person's face, if you are satisfied that they have a legitimate medical reason.

It is preferable that the person shows you a recent medical certificate stating that they cannot remove their face covering for medical reasons. However, in certain circumstances, you may be satisfied the person has a legitimate medical reason based on what you can see or what the person tells you.

#### **Examples of legitimate medical reasons include:**

- obvious injury to their face;
- wearing a face mask as they are frail or at risk in the community due to medical conditions.

#### **Examples that are not legitimate medical reasons:**

- refusing to remove dark sunglasses because of a hangover;
- refusing to remove a face mask worn for air pollution.

How much information you need in order to be 'satisfied' will also depend on the context. For example:

- the purpose and effect of the document in question;
- the possible consequences for you as a JP, as well as for any other person. For example, if the document were to be fraudulently signed by a person other than the person named; or
- the person's behaviour or what they have said, if that causes you to suspect they might be lying about their supposed medical condition.

If you cannot truthfully certify that you are satisfied the person has a legitimate medical reason, you must decline to witness the document.

You do not have any authority to make a person remove their face covering. If the person chooses not to remove their face covering, you must decline to witness the statutory declaration, unless you are satisfied that the person has a legitimate medical reason. See below. Religious beliefs or cultural practices are not a special justification for a person not removing their face covering. However, when you ask a person to remove their face covering, you should make reasonable efforts to accommodate the person's beliefs. More information about accommodating the person's beliefs is in **Section 2.5** on page 70.

If the person does not have a legitimate medical reason, and you are unable to see the person's face, it is an offence for you to witness the statutory declaration.

### STEP 3

#### Confirm the client's identity

You must confirm the identity of the person who is making the statutory declaration, and make sure that it matches the name written at the start of the declaration.

You can confirm the person's identity in one of two ways:

- you have known the person for a period of at least 12 months; **or**
- you have sighted an approved identification document, or a certified copy of an approved identification document.

A list of approved identification documents is in **Appendix B** on page 113. This also includes a list of people who may certify a copy of an identification document for the *Oaths Act 1900*.

#### *Definition of 'known the person for a period at least 12 months'*



The definition of '**known the person for a period at least 12 months**' is not clearly defined by NSW legislation. To assist JPs, this handbook provides the following as a general guide.

You can validly state that you have known a person for at least 12 months if all three statements below are true.

- You recall learning the person's given name and family name at least 12 months ago, and you are confident that it is their true identity (As a guide, you should feel confident that you could identify the person again about their statutory declaration or affidavit);
- You now recognise the person in front of you as that same person; and
- The document you are being asked to witness is made out in the same name.

If you are not sure you can meet those conditions, you should instead confirm the person's identity using an approved identification document.

**STEP 4****Look for any blank spaces or alterations**

You must never witness a statutory declaration that is blank or missing information in a space where information is required.

If the statutory declaration contains any alteration or deletion (**including changes made with correction fluid, correction tape or any similar product**), it is recommended that you:

- write your initials next to each change; and
- re-write (in the margin) the words that have been inserted, and sign or initial the words you have written in the margin.

If no words have been written over the correction fluid, it is recommended that you draw a line over the correction fluid as if crossing out words. Then, initial it and make a note in the margin such as 'Deletion using correction fluid - no words written on erasure' (or similar) and sign or initial your note.

Any blank space at the end of the declaration should be crossed out. Cross out the blank space by drawing lines in the shape of a 'Z' over the entire blank area.

If for some reason you are unable to meet these requirements, you should decline to witness the statutory declaration.

**STEP 5****Look for any annexures**

An **annexure** is an attachment of more pages. If an annexure is attached, it must:

- be referred to in the statutory declaration; and
- include a written statement by the JP that identifies it as an annexure. If a written statement is not already on the annexure, you will need to add it, either by hand or using an appropriately worded stamp.

If the statutory declaration refers to an annexure but it is not present, you must not witness the statutory declaration in that form. See **FAQ 25** on page 98 ('What if I haven't been provided with the annexures referred to in a document?') for details on what to do if an annexure is not present.

### *More information on requirements for annexures*



**Use an appropriate naming system for the annexures.** If there is more than one annexure, they must all be marked in alphabetical or numerical order. For example, Annexure 'A' or '1', Annexure 'B' or '2' and Annexure 'C' or '3'.

- The marking should be placed in a conspicuous position on the annexure. For instance, at the top of the page.
- Number the annexures consecutively. For example, from the first page of the first annexure to the last page of the last annexure.

**For a single-page annexure**, the following statement must also be included:

This is the annexure marked [insert 'A' or '1', or 'B' or '2', or 'C' or '3' as appropriate] referred to in the [insert 'statutory declaration' or 'affidavit' as appropriate] of [insert client name, [declared/sworn/affirmed] before me this [insert date] day of [insert month, year].

[insert your signature, full name and JP registration number]

**For multiple page annexures**, the following statement must be included on the cover page (not on a separate page). Preferably, this is placed at the bottom, if space allows.

This and the following [insert number of pages] pages is the annexure marked [insert 'A' or '1', or 'B' or '2', or 'C' or '3' as appropriate] referred to in the [insert 'statutory declaration' or 'affidavit' as appropriate] of [insert client], [declared/sworn/affirmed] before me this [insert date] day of [insert month, year].

[insert your signature, full name and JP registration number]

The statement should not cover or obscure the contents of the annexure. The statement can be written by hand or added using a stamp. If you use a stamp, cross out any words that do not apply (for example, crossing out 'sworn' if the annexure is attached to a statutory declaration).

**STEP 6****Check the client understands**

You should check that the client understands the purpose, effect and contents of the statutory declaration. Do this by asking open-ended questions, such as:

- Why do you need to complete this document?
- What is this document about?
- What will you use this document for?
- Who wrote this document?

***If the client is not familiar with the contents***

If the client is not familiar with the contents of the statutory declaration, you should give them an opportunity to read the document. Once they have read it, ask them some questions about the contents (see above). If, based on their answers, it appears to you that the client understands the contents, proceed to witness the statutory declaration.

***If the client does not understand the purpose and effect***

It appears to you that the client does not understand the purpose and effect of the statutory declaration, you must decline to witness it. For more information about this issue, see **Appendix C** on page 114.

Do not try to explain the purpose and effect of the document to the person (see **FAQ 2** on page 9: ‘What if a person asks me for legal advice?’).

***If the client is blind or cannot read***

If it appears that the client is blind or illiterate (cannot read), either you or another person in your presence, must read aloud the entire contents of the statutory declaration. For privacy reasons, if possible, you should offer the option to have the statutory declaration read aloud in a place where others cannot overhear.

After the contents of the statutory declaration have been read aloud, you must check that the client has understood the declaration. Do this by using the suggested questions above. If the client does not appear to you to have understood, you must decline to witness the statutory declaration.

## STEP 7

### Warn the client

You must warn the client that:

- it is a serious criminal offence to make a false declaration; and
- the penalties include imprisonment.

You should ask appropriate questions to make sure that they have understood the warning.

## STEP 8

### Ask the client to declare the contents are true and correct

You must ask the client to make the declaration required by the statutory declaration form. For an ordinary NSW statutory declaration under the *Oaths Act 1900* (often called an 'Eighth Schedule' or 'Ninth Schedule' declaration), you can ask the following question:

**Do you solemnly and sincerely declare the contents of this declaration to be true and correct, to the best of your knowledge and belief?**

If it is a statutory declaration under some other law, you should check the form carefully to see if there is any special wording required. If so, you will need to use that wording. If not, you can use the same wording as above.

It is sufficient if the client responds with words which show an affirmative answer (for example, 'Yes' or 'I do'), or an alternative non-verbal affirmative response (such as nodding) if the person cannot speak.

## STEP 9

### Watch the client sign the statutory declaration in front of you

If the client has agreed the contents are true and correct, ask them to sign and date the document at the end of the statutory declaration. The client **must** sign in your presence.

Generally a black or blue ink pen should be used, but you should check whether the document specifies that a particular colour must be used. The ink must be permanent and erasable pens must never be used.

#### *If the client has already signed*

If the client has already signed the document before bringing it to you, you must not witness that signature. The client **must** sign in your presence.

However, you can watch the client place a fresh signature on the document. To do this:

- rule a line in ink through the signature that was already on the document;
- write your initials next to the ruled-out signature (both yourself and the client); and
- watch the client add their fresh signature as close as possible to the space provided.

### *If the client is unable to sign*

A client who is unable to sign (because of a visual or physical impairment, or is illiterate) may make a mark instead. Instructions for making a mark, including extra wording that the JP is required to add, are in **Section 2.6** on page 92.

### *If the statutory declaration comprises more than one page*

If the statutory declaration is more than one page, it is recommended that the client signs each page of the declaration, in addition to the signature panel. The client's signatures should be placed at the foot of each page, or if there is no space, elsewhere on the page.

### *If there are two or more declarants (people)*

If a statutory declaration is made by two or more people, you must:

- confirm that all their names appear in the declaration;
- confirm each person's identity: you must see each person's face and confirm against a form of identity (Steps 2 and 3 above);
- check that each person understands and warn each person (Steps 6 and 7 above);
- receive a declaration from each person that the contents are true and correct (Step 8 above);
- watch each person sign the signature panel separately (Step 9); and
- watch each person sign the preceding pages of the declaration (Step 9).

You must only witness the statutory declaration of people who are present before you at the time of signing. If one of the declarants is not present, you must record in writing, in or below the signature panel, the words:

**This statutory declaration has **not** been declared before me by [insert name(s) of the person(s) not present].**

It is acceptable for individuals to sign a joint statutory declaration at different times and before different authorised witnesses.

## STEP 10

### Sign and print your full name, JP registration number and other details

After you have seen the client sign or make a mark (including on any extra pages), you should immediately sign, print your full name, your qualification (NSW JP), and your JP registration number in the space provided.

Your signature should always be handwritten in ink, and never added with a stamp, label or sticker.

You should also sign any extra pages, near the signature of the client on each page.

You **must** include any additional information required as instructed by the statutory declaration form.

If you are unsure about the requirements of a particular form, seek advice (see [Section 1.3](#) on page 8).

#### *If the form requires your address*

Some forms require you to state your address. Either a home, business or postal address **where you can be reliably contacted** will usually be sufficient (unless the form states that a particular kind of address is required). Unless the form allows, an email address will usually **not** be sufficient.

If you do not have a business or postal address and you do not wish to use your home address, you can give the address of a JP association (if you are a member) or the address of the Department. Contact details for the Department are at the back of this handbook, on page 127.

**STEP 11****Certify identity requirements have been met**

If the document is a statutory declaration under the law of NSW (or any other Australian state or territory), you **must** also certify in writing that you saw the person's face and confirmed their identity (as in Steps 2 and 3 above) **before** you witness the statutory declaration.<sup>3</sup>

It is a criminal offence punishable by a fine for an authorised witness (including a JP) to witness a statutory declaration if these requirements have not been satisfied.

A NSW statutory declaration can be identified because it will contain a reference to the *Oaths Act 1900*. Statutory declarations of other Australian states and the territories can be identified because they will contain a reference to the relevant legislation, as listed in **Appendix A** on page 112.

Many NSW statutory declarations have the wording of the required certificate pre-printed. You will only need to fill in the blanks and cross out text that does not apply.

In some cases, such as when an old form has been used, you will have to add the wording of the certificate, either by hand or with a stamp (but not with an adhesive label). See the appropriate wording on the following page.

If you relied on an identification document to confirm the person's identity, it is sufficient to write the type of identification, such as 'NSW driver licence' or 'Australian passport'. You should not record on the statutory declaration any unique details of the identification document, such as the document's number or the person's date of birth (unless the statutory declaration requires it). You should not keep a copy of the identification document.

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<sup>3</sup> You do not have to certify that identity requirements have been met if you are witnessing a statutory declaration made under the Commonwealth Statutory Declarations Act 1959.



**STEP 12****Complete and sign the statement on each annexure**

After you have signed the signature panel and preceding pages of the statutory declaration, complete and sign the statement on each annexure (if any). Detailed instructions on how to do this are in Step 5 on page 19.

**STEP 13****Certify the client understood (for clients who are blind or illiterate only)**

If the client is blind or illiterate, you must also certify in writing, below the signature panel, that:

- the statutory declaration was read to the declarant in your presence;
- it appeared to you that the declarant understood the statutory declaration; and
- the declarant signed or marked the statutory declaration in your presence.

This step is necessary to meet the requirements of section 24A of the *Oaths Act 1900*, which governs declarations by people who are unable to read.

## Sample: NSW statutory declarations

### NSW statutory declaration - Eighth Schedule

An editable template can be downloaded from the JP website [www.jp.nsw.gov.au](http://www.jp.nsw.gov.au) 

**Statutory Declaration**  
OATHS ACT 1900, NSW, EIGHTH SCHEDULE

I, Susan Smithson, do solemnly and sincerely declare that  
[name of declarant]

I have applied for 12 months maternity leave from 16 October 2021 until 15 October 2022.  
I am currently 8 months pregnant and my baby is due 11 November 2021.  
I will be the baby's primary care giver for the majority of the leave period.  
My husband is planning four week's leave from when the baby is born.  
While on maternity leave I will not engage in any conduct that may be contrary to my employment contract.

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at: Parramatta on 1 October 2021  
[place] [date]

Susan Smithson  
[signature of declarant]

in the presence of an authorised witness, who states:

I, Derek Jones, a NSW JP No 269856,  
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: [\* please cross out any text that does not apply]

1. \*I saw the face of the person ~~OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and~~

2. \*I have known the person for at least 12 months ~~OR I have confirmed the person's identity using an identification document and the document I relied on was~~ .....  
[describe identification document relied on]

Derek Jones 1 October 2021  
[signature of authorised witness] [date]

## NSW statutory declaration - Ninth Schedule

An editable template can be downloaded from the JP website  
[www.jp.nsw.gov.au](http://www.jp.nsw.gov.au)

**Statutory Declaration**  
OATHS ACT 1900, NSW, NINTH SCHEDULE

I, Jacqueline Irene Brown, of 2 Elizabeth Street, Auburn NSW 2144  
[name of declarant] [residence]

do hereby solemnly declare and affirm that .....

I am a retired customer service officer - date of birth 2 February 1952.  
I am the registered owner of a white 1970 Holden Torana, registration plate number JIB-522.  
I was issued with a traffic infringement notice on 7 August 2021. The offence listed was 'make unlawful u-turn' on 27 July 2021 at Rookwood Road, Regents Park at 3.30pm.  
I was not in Sydney on the date of the infringement. I did not drive the Torana on that date.  
On 25 July 2021 I travelled by plane to Mackay to visit my mother-in-law on the occasion of her 90th birthday. I returned to Sydney by plane on Monday 29 July 2021. As far as I am aware, the Torana remained in the driveway during my absence.

[the facts to be stated according to the declarant's knowledge, belief, or information, severally]

And I make this solemn declaration, as to the matter (or matters) aforesaid, according to the law in this behalf made – and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Declared at: Lidcombe on 16 September 2021  
[place] [date]

Jacqueline Brown  
[signature of declarant]

in the presence of an authorised witness, who states:


I, Harry Wilson, a NSW JP No 233749,  
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: [\* please cross out any text that does not apply]

- ~~\*I saw the face of the person~~ ~~OR \*I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and~~
- ~~\*I have known the person for at least 12 months~~ ~~OR \*I have confirmed the person's identity using an~~ identification document and the document I relied on was NSW Driver Licence  
[describe identification document relied on]

Harry Wilson 16 September 2021  
[signature of authorised witness] [date]

## Commonwealth statutory declaration

An editable template can be downloaded from the JP website  
[www.jp.nsw.gov.au](http://www.jp.nsw.gov.au) 

Commonwealth of Australia  
STATUTORY DECLARATION  
*Statutory Declarations Act 1959*

1 Insert the name, address and occupation of person making the declaration

I, <sup>1</sup> **Lynne Gibson**  
**Clerical Officer**  
**83 Lavinia Street, Bankstown NSW 2200**

2 Set out matter declared to in numbered paragraphs

make the following declaration under the *Statutory Declarations Act 1959*:

<sup>2</sup>

1. I have never been convicted of any crime in any state of Australia or any other country
2. I have not been charged with any offence that is awaiting legal action
3. I am of sound mind and have never been acquitted of any offence on the grounds of unsoundness of mind. \_\_\_\_\_

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 Signature of person making the declaration

<sup>3</sup> **Lynne Gibson**

4 Place  
5 Day  
6 Month and year

Declared at <sup>4</sup> **Bankstown** on <sup>5</sup> **17th** of <sup>6</sup> **October 2021**

Before me,

7 Signature of person before whom the declaration is made (see over)

<sup>7</sup> **James Ireland**

8 Full name, qualification and address of person before whom the declaration is made (in printed letters)

<sup>8</sup> **James Ireland**  
**NSW JP No 244117**  
**81 Lavinia Street, Bankstown NSW 2200**

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

## Frequently asked questions: about statutory declarations

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](#) on page 118.

### *FAQ 4. Can I ask a person to remove their face mask to confirm their identity?*

You can't force any client to remove their face mask.

If you are satisfied that they have a 'legitimate medical reason' to keep the face mask on, you may proceed with witnessing the document. For more information about legitimate medical reasons, see Step 2 in this section on page 16.

However, if you are unable to see a person's face to verify their identity, you must not witness that document.

## 2.2 Witnessing an affidavit

<b>What is it?</b>	<p>An <b>affidavit</b> is a written statement for use as evidence in court proceedings.</p> <p>The person who makes an affidavit is called the <b>deponent</b>. They are also referred to as clients (or people) in this handbook. When witnessing an affidavit, a JP must hear the deponent swear an oath or make an affirmation.</p> <p>An <b>oath</b> is a binding promise, based on the person's religious or spiritual beliefs, to tell the truth.</p> <p>An <b>affirmation</b> is a binding and solemn promise to tell the truth. It has the same legal effect as an oath, but does not refer to God or another sacred being or object. Anyone may choose to take an affirmation instead of an oath.</p> <p>After the oath or affirmation, the deponent and the JP complete the section at the end of the affidavit. This section is called the <b>jurat or signature panel</b>.</p>
<b>What can I witness?</b>	<p>You may witness an affidavit that is required for:</p> <ul style="list-style-type: none"><li>• any Australian court or tribunal;</li><li>• the registration of any instrument in Australia; or</li><li>• any arbitration in Australia.</li></ul> <p>The affidavit must be <b>signed and witnessed in NSW</b>, except in certain circumstances when you are delivering JP functions via audio-visual link (see page 34).</p>
<b>What can't I witness?</b>	<p>Some examples of affidavits that you shouldn't witness include:</p> <ul style="list-style-type: none"><li>• Those for use in an overseas jurisdiction</li></ul> <p>Note: this is not a full list – if you are unsure about a document, please seek advice (see <b>Section 1.3</b> on page 8).</p>

**Important tips**

You should **check that the client understands** the purpose, effect and contents of the affidavit. You can do this by asking open-ended questions outlined in Step 6 on page 43.

**If the client does not speak English** and requires an interpreter, follow the procedures outlined in **Section 2.5.2** on page 82.

**It is an offence, and penalties apply**, for:

- a person who makes a false affidavit; or
- an authorised witness in NSW who witnesses an affidavit and fails to follow the required steps for identifying the person (Step 2, Step 3 and Step 11 of this procedure).

An affidavit may be made by **two or more people**. In these cases, you must undertake certain steps in the procedure for each person.

## 2.2.1 Remote witnessing over an audio/visual link (AVL)

The Electronic Transactions Act<sup>4</sup> was amended in 2021 to enable witnessing requirements to be performed remotely via an audio-visual link. This scheme imposes several requirements on witnesses, including that:

- The witness must see the signatory signing the document in real time over the audio-visual link;
- The witness must sign the document, or an exact copy of the document, signed by the signatory as evidence that they witnessed the signature;
- The witness must be reasonably satisfied that the document they sign is the same document, or a copy of the document, signed by the signatory; and
- The witness may witness statutory declarations and affidavits remotely pursuant to this scheme.

The remote witnessing scheme allows a NSW JP to remotely witness a statutory declaration or an affidavit for a person located outside of NSW over a video link, and, the JP may also be outside of NSW at the time of witnessing a statutory declaration or affidavit provided that:

- The document is required to be signed under a NSW Act or law or,
- The governing laws for the document are the laws of NSW.


For further information on remote witnessing, check

[www.jp.nsw.gov.au](http://www.jp.nsw.gov.au) 

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4 See Electronic Transactions Amendment (Remote Witnessing) Bill 2021.

## Sample: NSW affidavits

More information on affidavits can be accessed via a link from the JP website [www.jp.nsw.gov.au](http://www.jp.nsw.gov.au) 

Form 40 (version 3)  
UCPR 35.1

### AFFIDAVIT OF GEORGE JONES 16 OCTOBER 2021

#### COURT DETAILS

Court	Supreme Court
Division	Equity Division
List	Family Provision List
Registry	Sydney
Case number	2013/12345

#### TITLE OF PROCEEDINGS

First plaintiff	George Jones
Second plaintiff	Betty Jones
First defendant	NSW Trustee & Guardian
Second defendant	

#### FILING DETAILS

Filed for	George Jones, Plaintiff
Filed in relation to	Plaintiff's claim
Legal representative	Barry Smith, Barry Smith & Associates
Legal representative reference	56976
Contact name and telephone	Barry Smith, (02) 9999 1111
Contact email	barry@barrysmith.com.au

Continues next page

**AFFIDAVIT**

Name George Jones  
 Address 123 Park Street, Parramatta NSW 2150  
 Occupation Engineer  
 Date 16 October 2021

I say on oath:

- 1 I am the plaintiff.
- 2 I am the only child of the late Mr Kevin Jones, formerly of 11/22 Treetop Drive, Parramatta.
- 3 I was not listed as a beneficiary in the estate of Mr Kevin Jones and have commenced legal action to make a claim against the estate. The estate Trustee is the NSW Trustee & Guardian.

SWORN at Parramatta  
 Signature of deponent George Jones  
 Name of witness Rhonda Jackson  
 Address of witness 10 Kurrajong Road, Parramatta NSW 2150  
 Capacity of witness NSW JP No 278943

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent. ~~[OR, delete whichever option is inapplicable]  
 +did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.]~~
- 2 ~~I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]~~  
 I have confirmed the deponent's identity using the following identification document:  
Australian Passport  
 Identification document relied on (may be original or certified copy)<sup>†</sup>

Signature of witness Rhonda Jackson

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[\* The only "special justification" for not removing a face covering is a legitimate medical reason (at November 2021).]

[<sup>†</sup> "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011 or JP Ruling 003 - Confirming identity for NSW statutory declarations and affidavits, footnote 3.]



## **QUICK REFERENCE:** **Witnessing an affidavit**

<b>STEP 1</b>	Confirm that the document is an affidavit
<b>STEP 2</b>	See the client's face
<b>STEP 3</b>	Confirm the client's identity
<b>STEP 4</b>	Look for any blank spaces or alterations
<b>STEP 5</b>	Look for any annexures or exhibits (and make sure they have been appropriately referred to)
<b>STEP 6</b>	Check that the client understands the affidavit
<b>STEP 7</b>	Warn the client
<b>STEP 8</b>	Ask the client to swear an oath or make an affirmation
<b>STEP 9</b>	Watch the client sign the affidavit in front of you
<b>STEP 10</b>	Sign the signature panel and each page of the affidavit
<b>STEP 11</b>	Certify identity requirements have been met
<b>STEP 12</b>	Complete and sign the statement on each annexure
<b>STEP 13</b>	Certify the client understood (for blind or illiterate clients only)

## Step-by-step procedure

### STEP 1

#### Check if the document is an affidavit

You can identify an affidavit because it will contain:

- the word 'Affidavit' in the title;
- the name of the court or tribunal; and
- other details that **might** include the court or tribunal case number, the title of the proceedings and the names of the parties.

Affidavits can be made under a number of state, territory and Commonwealth laws. These are listed at [Appendix A](#) on page 112. There are many different affidavit forms.

You should look for any special requirements that are stated on the affidavit form or its attached instructions. For example, the various affidavits used in a divorce have special requirements. These are described below.

### STEP 2

#### See the client's face

You must see the face of the person making the affidavit.

If the person is wearing a face covering, you should politely ask them to remove as much of the face covering as possible to see their face.

#### *Definition of face and face covering*

**Face** means a person's face from the top of their forehead to the bottom of their chin, and between (but not including) their ears.

**Face covering** means an item of clothing, helmet, mask or any other item that is worn by a person and prevents the person's face from being seen (whether wholly or partly).

For example, a face covering includes sunglasses that cover the eyes, or a hat that covers the forehead.

However a face covering does not include a scarf that is covering only the person's hair.



You do not have any authority to make a person remove a face covering. If the person chooses not to remove their face covering, you must decline to witness the affidavit, unless you are satisfied that the person has a 'legitimate medical reason' (see page 39).

Religious beliefs or cultural practices are not a special justification for a person not removing their face covering. However, when you ask a person to remove their face covering, you should make reasonable efforts to accommodate their beliefs. Guidance about accommodating the person's beliefs is outlined in **Section 2.5** on page 70.

If the person does not have a legitimate medical reason, and you are unable to see the person's face, it is an offence for you to witness the affidavit.

### *More information on legitimate medical reasons*



Exceptions can be made to seeing a person's face, if you are satisfied that they have a legitimate medical reason.

It is preferable that the person shows you a recent medical certificate stating that they cannot remove their face covering for medical reasons. However, in certain circumstances, you may be satisfied the person has a legitimate medical reason based on what you can see or what the person tells you.

#### **Examples of legitimate medical reasons include:**

- obvious injury to their face;
- wearing a face mask as they are frail or at risk in the community due to medical conditions

#### **Examples that are not legitimate medical reasons:**

- refusing to remove dark sunglasses because of a hangover;
- refusing to remove a face mask worn for air pollution

How much information you need in order to be 'satisfied' will also depend on the context. For example:

- the purpose and effect of the document in question;
- the possible consequences for you as a JP, as well as for any other person. For example, if the document were to be fraudulently signed by a person other than the person named; or
- the person's behaviour or what they have said, if that causes you to suspect they might be lying about their supposed medical condition.

If you cannot truthfully certify that you are satisfied the person has a legitimate medical reason, you must decline to witness the document.

### STEP 3

#### Confirm the client's identity

You must confirm the person's identity in one of two ways:

- you have known the person for a period of at least 12 months; or
- you have sighted an approved identification document or a certified copy of an approved identification document.

Guidance about the meaning of 'known the person for a period of at least 12 months' is at [Section 2.1](#), on page 12.

A list of approved identification documents is in [Appendix B](#) on page 114.

Once you have confirmed the identity of the person who is making the affidavit, make sure that it matches the name written at the top of the affidavit.

#### *Definition of 'known the person for a period of at least 12 months'*



The definition of '**known the person for a period of at least 12 months**' is not clearly defined by NSW legislation. To assist JPs, this handbook provides the following as a general guide.

You can validly state that you have known a person for at least 12 months if:

- you recall learning the person's given name and family name at least 12 months ago in circumstances where you are confident that it is their true identity (As a guide, you should feel confident that you could identify the person again about their statutory declaration or affidavit);
- you now recognise the person in front of you as that same person; and
- the document you are being asked to witness is made out in the same name.

If you are not sure you can meet those conditions, you should instead confirm the person's identity using an approved identification document.

**STEP 4****Look for any blank spaces or alterations**

You must never witness an affidavit that is blank or is missing information in a space where information is required.

If the affidavit contains any alteration or deletion (including changes made with correction fluid, correction tape or any similar product), it is recommended that you:

- write your initials next to each change, and
- re-write (in the margin) the words that have been inserted, and sign or initial the words you have written in the margin.

If no words have been written over the correction fluid, it is recommended that you draw a line over the correction fluid as if crossing out words, initial it and make a note in the margin such as 'Deletion using correction fluid - no words written on erasure' (or similar) and sign or initial your note.

Any blank space at the end of the affidavit should be crossed out. Cross out the blank space by drawing lines in the shape of a 'Z' over the entire blank area.

If for some reason you are unable to meet these requirements about alterations or deletions, you should decline to witness the affidavit.

**STEP 5****Look for any annexures or exhibits**

An annexure is an attachment of extra pages. An exhibit is a paper, document, or piece of physical evidence provided to the court at a trial or hearing or as part of an affidavit.

If an annexure is attached, or an exhibit is to be provided in court, it must:

- be referred to in the affidavit; and
- include a written statement by the JP that identifies it as an annexure or exhibit. If a written statement is not already on the annexure or exhibit, you will need to add it, either by hand or using an appropriately worded stamp.



### **More information on requirements for annexures**

If the affidavit refers to an annexure, but the annexure is not present you must not witness the affidavit in that form. See **FAQ 24** on page 98 ('What if I haven't been provided with the annexures referred to in a document?') for details on what to do if an annexure is not present.

**Use an appropriate naming system for the annexures.** If there is more than one annexure, they must all be marked in alphabetical or numerical order. For example, Annexure 'A' or '1', Annexure 'B' or '2' and Annexure 'C' or '3'.

- The marking should be placed in a conspicuous position on the annexure, for instance at the top of the page.
- Number the annexures consecutively. For example, from the first page of the first annexure to the last page of the last annexure.

**For a single-page annexure**, the following statement must also be included:

**This is the annexure marked [insert 'A' or '1', or 'B' or '2', or 'C' or '3' as appropriate] referred to in the [insert 'statutory declaration' or 'affidavit' as appropriate] of [insert client name], [declared/sworn/affirmed] before me this [insert date] day of [insert month, year].**

**[insert your signature, full name and JP registration number]**

**For multiple page annexures**, the following statement must be included on the first page (not on a separate page). Preferably, this is placed at the bottom, if space allows.

**This and the following [insert number of pages] pages is the annexure marked [insert 'A' or '1', or 'B' or '2', or 'C' or '3' as appropriate] referred to in the [insert 'statutory declaration' or 'affidavit' as appropriate] of [insert client name], [declared/sworn/affirmed] before me this [insert date] day of [insert month, year].**

**[insert your signature, full name and JP registration number]**

The statement should not cover or obscure the contents of the annexure. The statement can be written by hand or added using a stamp. If you use a stamp, cross out any words that do not apply (for example, crossing out 'sworn' if the annexure is attached to an affidavit).

## Requirements for exhibits

**Exhibits should be numbered with the client's initials and a number (for example, 'Exhibit "JD 1" in the affidavit of John Doe', "JD 2" in the affidavit of John Doe' for the second exhibit).**

The witness to the affidavit should sign the cover page, with words like:

**Exhibited to me at the time of swearing this affidavit and marked [client's initials and a number] is [describe item, for example 'a folder of documents' or '10 photographs'].**

If an exhibit has pages, you also need to number the pages.

If the exhibit is an object (for example portable data storage device or similar), it should be bagged and tagged and labelled as above.

## STEP 6

### Check the client understands

You should check that the client understands the purpose, effect and contents of the affidavit. You can do this by asking open-ended questions such as:

- Why do you need to complete this document?
- What is this document about?
- What will you use this document for?
- Who wrote this document?

### *If the client is not familiar with the contents*

If the client is not familiar with the contents of the affidavit, you should give them an opportunity to read the document. Once they have read it, ask them some questions about the contents (see above). If, based on their answers, it appears to you that the client understands the contents, you may proceed to witness the affidavit.

### *If the client does not understand the purpose and effect*

If, based on the answers to your questions or some other circumstance (such as the person's age or intellectual impairment), it appears to you that the client does not understand the purpose and effect of the affidavit, you must decline to witness it. For more information about this issue, see **Appendix C** on page 114.

You should not try to explain the purpose and effect of the document to the person (see **FAQ 2** on page 9: 'What if a person asks me for legal advice?').

### ***If the client is blind or cannot read***

If it appears that the client is blind or illiterate (cannot read), either you or another person in your presence, must read aloud the entire contents of the affidavit. For privacy reasons, if possible, you should offer the option to have the affidavit read aloud in a place where others cannot overhear. After the contents have been read aloud, you must check that the client appears to have understood the document. You can do this by using the suggested questions above.

If the client does not appear to you to have understood, you must decline to witness the affidavit.

#### **STEP 7**

### **Warn the client**

You must warn the client that:

- it is a serious criminal offence to make a false affidavit; and
- the penalties include imprisonment.

You should also ask the client appropriate questions to make sure that they have understood the warning.

#### **STEP 8**

### **Ask the client to swear an oath or make an affirmation**

The client may choose between swearing an oath or making an affirmation.

It is important that you, and the client, understand that an oath or affirmation is not a mere formality. If an oath or affirmation is not properly taken or made, a court might refuse to admit the affidavit into evidence. It is also an offence for a deponent to falsely swear or affirm things that are untrue.

If you are not satisfied that the client sufficiently understands what it means to swear or affirm an affidavit, or you are not satisfied that they are mentally and physically able to, you should decline to witness the affidavit.

For more information, see [Appendix C](#) on page 114.

### *If the client chooses an oath*

If the client chooses to take an oath, it is recommended that the word 'swear' is used. An oath may also (but does not have to) refer to the person's religious or sacred beliefs (for example 'God' or 'Buddha'). It is not necessary for the client to hold a holy book when swearing their oath, but they may choose to do so.

Acceptable forms of words for an oath include:

**JP: Do you swear that the contents of this your affidavit are true and correct to the best of your knowledge and belief?**

The client must give an affirmative response such as 'So help me God', 'I do', 'Yes' or (if unable to speak) a physical sign such as nodding.

or:

**Client (before the JP): I swear that the contents of this my affidavit are true and correct to the best of my knowledge and belief.**

### *If the client chooses an affirmation*

If the client chooses to make an affirmation, two acceptable forms of words are:

**JP: Do you solemnly, sincerely and truly declare and affirm that the contents of this your affidavit are true and correct to the best of your knowledge and belief?**

The client must give an affirmative response such as 'I do', 'Yes' or (if unable to speak) a physical sign such as nodding.

or:

**Client (before the JP): I solemnly, sincerely and truly declare and affirm that the contents of this my affidavit are true and correct to the best of my knowledge and belief.**

## STEP 9

### Watch the client sign the affidavit in front of you

After the client has sworn an oath or made an affirmation, ask them to sign in the space provided in the signature panel. The client **must** sign the affidavit in your presence.

Generally, a black or blue ink pen should be used, but you should check whether the document specifies that a particular colour must be used. The ink must be permanent and erasable pens must never be used.

#### *If the client has already signed*

If the client has already signed the signature panel before bringing the document to you, you must not witness that signature. You must never witness a signature that was already on the document when it was brought to you. The client **must** sign in your presence.

However you can watch the client place a fresh signature on the document. To do this:

- rule a line in ink through the signature that was already on the document;
- both you and the client should write your initials next to the ruled-out signature; and
- after following all the other requirements of the relevant procedures in this handbook, you should watch the client write their fresh signature as close as possible to the space provided.

#### *If the client is unable to sign*

A client who is unable to sign may make a mark instead (for example, if they have a visual or physical impairment, or are illiterate). Instructions for making a mark, including extra wording that the JP is required to add, are in [Section 2.6](#) on page 92.

#### *If the affidavit includes more than one page*

If the affidavit is more than one page, the client must also sign each preceding page of the affidavit. The client's signatures should be placed at the foot of each page, or if there is no space, elsewhere on the page.

#### *If there are two or more deponents (people)*

If an affidavit is made by two or more people, you must:

- confirm that each name appears in the signature panel;
- confirm each person's identity: you must see each person's face and confirm against a form of identity (Steps 2 and 3 above);
- check that each person understands and warn each person (Steps 6 and 7 above);

- receive an oath or affirmation from each person (Step 8);
- watch each person sign the signature panel (Step 9); and
- watch each person sign the preceding pages of the affidavit (Step 9).

You must only witness the affidavit of people who are present before you at the time of signing. If there is more than one deponent (person) and one of them is not present, you must record in writing, in or below the signature panel, the words:

**This affidavit has *not* been sworn before me by [insert name(s) of the person(s) not present].**

It is acceptable for individuals to sign a joint affidavit at different times and before different authorised witnesses.

#### **STEP 10**

### **Sign the signature panel and each page of the affidavit**

After you have seen the client sign or make a mark (including on any extra pages), you should immediately sign, print your full name, your qualification (NSW JP), and your JP registration number in the space provided.

Your signature should always be handwritten in ink, and never added with a stamp, label or sticker.

You **must** also:

- sign any extra pages, near the signature of the client on each page;
- cross out either the words 'I swear' or 'I affirm' at the beginning of the affidavit, as appropriate;
- cross out either the word 'sworn' or 'affirmed' in the signature panel, as appropriate; and
- include any more information required or any other instructions in the affidavit. If you are unsure about the requirements of a particular affidavit, you should seek advice (see [Section 1.3](#) on page 8).

#### ***If the form requires your address***

Some forms require you to state your address. Either a home, business or postal address **where you can be reliably contacted** will usually be sufficient (unless the form states that a particular kind of address is required). Unless the form allows, an email address will usually **not** be sufficient.

If you do not have a business or postal address and you do not wish to use your home address, you can give the address of a JP association (if you are a member) or the address of the Department (at the back of this handbook, on page 127).

## STEP 11

### Certify identity requirements have been met

You **must** also certify in writing that you saw the person's face and confirmed their identity (as in Steps 2 and 3) **before** you witness the affidavit.<sup>5</sup>

It is a criminal offence for a JP to witness an affidavit if these requirements have not been satisfied. This is punishable by a fine.

Most affidavits used by NSW courts have the wording of the required certificate pre-printed. You will only need to fill in the blanks and cross out text that does not apply.

In some cases, such as when an old form has been used, you will have to add the wording of the certificate, either by hand or with a stamp (but not with an adhesive label). See detail on the right for the appropriate wording.

If you relied on an identification document to confirm the person's identity, it is sufficient to write the type of identification, such as 'NSW driver licence' or 'Australian passport'. You should not record any unique details of the identification document, such as the document's number or the client's date of birth (unless the affidavit requires it). You should not keep a copy of the identification document.

If an affidavit is made by two or more people, you must complete a separate certificate for each person who has sworn or affirmed the affidavit before you.

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5 You do not have to certify that identity requirements have been met if the affidavit is a Commonwealth affidavit (i.e. an affidavit for proceedings in a Commonwealth court, for the purpose of or in connection with a law of the Commonwealth, or in connection with the administration of a Commonwealth department or agency).



## **STEP 12**

### **Complete and sign the statement on each annexure (if any)**

After you have signed the signature panel and each preceding page of the affidavit, you must complete and sign the statement on each annexure (if any). Detailed instructions on how to do this are in Step 5 on page 41.

## **STEP 13**

### **Certify the client understood (for clients who are blind or illiterate only)**

If it appears to you that the client is blind or illiterate (cannot read), you must also certify in writing, in or below the signature panel, that:

- the affidavit was read to the deponent in your presence
- it appeared to you that the deponent understood the affidavit, and
- the deponent signed the affidavit (by signature or mark) in your presence.

Instructions for making a mark, including extra wording that the JP is required to add, are in [Section 2.6](#) on page 92.

### **Frequently asked questions: about affidavits**

A frequently asked question about this topic is included below. For a full list of frequently asked questions included in this handbook, see page 118.

#### ***FAQ 5. What special requirements should I look out for in affidavits about divorce?***

There are various affidavits used in a divorce application, and they have some special requirements. The affidavits are:

- Affidavit in the Application for Divorce;
- Affidavit of Service (by Post or by Hand);
- Affidavit Proving Signature; and
- Affidavit for eFiling Application (Divorce).

## **Affidavit in the Application for Divorce**

An applicant can only sign the Affidavit in the Application for Divorce after they have been separated for at least twelve months. If you become aware that this requirement has not been met, you may inform the applicant that they should obtain legal advice, but you are not required to decline to witness the affidavit.

If only one of them is applying for divorce as a sole applicant, they do not both need to sign the affidavit. Only the sole applicant needs to sign, in the space provided, as appropriate.

If both parties are applying for divorce as joint applicants, each party must sign their part of the Affidavit. Both parties can sign at different times and before different JPs or before the same JP at the same time.

## **Affidavit of Service (by post or by hand)**

At a later stage, a sole applicant will need to complete an Affidavit of Service (by post) or an Affidavit of Service (by hand). A separate document titled Acknowledgment of Service (divorce) must be attached as an annexure to prove that the Applicant's spouse has been served with the divorce application.


If you are witnessing an Affidavit of Service that has such an annexure, you must also complete the Annexure Note at the bottom of the Acknowledgment of Service.

## **Affidavit Proving Signature**

If the applicant has completed an Affidavit of Service (by hand), they will also need to swear or affirm an Affidavit Proving Signature. This must also have a copy of the Acknowledgement of Service (divorce) annexed (this doesn't need to be certified).

## **Affidavit for eFiling Application (Divorce)**

Applicants have the option of completing a divorce application online. In this case, an Affidavit for eFiling Application (divorce) will be needed. A JP can witness this type of affidavit by following the usual procedure in this handbook. The applicant then scans the document and lodges it online.

More information for applicants as well as downloadable forms are at the website [www.fcfoa.gov.au](http://www.fcfoa.gov.au)  under 'Divorce forms and kits'.

## 2.3 Certifying a copy of an original document

<b>What is it?</b>	<p>Sometimes, a certified copy may be accepted instead of the original document. This can be where an organisation needs to rely on information contained in the original.</p> <p>This practice came about because it may be inconvenient or unreasonable to require people to give the original of important documents, like birth certificates or academic qualifications.</p> <p>If satisfied that a copy is a true and accurate copy of the document reported to the JP to be the original, the JP may print a certification to that effect on the copy.<sup>6</sup></p> <p>See definition of '<b>copy</b>' and '<b>original document</b>' on the following page.</p>
<b>What can I certify?</b>	<p>There is no law in NSW that specifies or restricts the types of original documents that may be certified as true copies, or when a certified copy is acceptable in place of the original.</p>
<b>What can't I certify?</b>	<p>Some examples of documents that you shouldn't certify include:</p> <ul style="list-style-type: none"><li>• a laminated copy of a citizenship certificate</li><li>• that a photograph is the true likeness of a person</li></ul> <p>Note: this is not a full list – if you are unsure about a document, please seek advice (see <b>Section 1.3</b> on page 8).</p>

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6 In this context, **certify** means to vouch for in writing.

**Important tips**

You must never certify a copy unless you have both the original and the copy physically in front of you.

You must never certify a copy **unless you are satisfied that the copy is a true and accurate copy** of the document reported to you to be the original.

You **must use the certification words specified in this procedure** (or words substantially the same). This is required by law, and also helps to clarify that you are not certifying the original document is authentic.

The owner of the original document does not need to be present when you certify a copy of the document.

When the only function you are performing is to certify a copy of an original document, you do not need to sight identification or confirm a person's identity.

You may certify a copy even if the original document was not produced in Australia, or is to be used for a purpose outside Australia.

You are not expected to give advice about whether or not an organisation will accept a certified copy of a particular document. People should make their own enquiries directly with the relevant organisation.

## ***Definition of 'original document', 'electronic document' and 'copy'***



The *Justices of the Peace Act 2002* does not define what is meant by an 'original document' or a 'copy'. The following definitions are provided as a guide, to assist JPs in their decisions about certifying copies.

### **Original document**

An **original document** is the actual record of text or images made directly by the author or issuer of the document, which is later used to make a copy. An original document can be either printed or in electronic form.

An issuing authority may produce more than one version of a document, and each version is considered 'original'. For example, a person's birth certificate issued shortly after their birth by the NSW Registry of Births, Deaths and Marriages is an original document. If many years later the Registry produces a duplicate birth certificate to replace one that was lost, that document is also an original, because it is also an 'actual record' made 'directly by the issuer'.

A paper original is usually different from a photocopy or other printed reproduction (although it may be difficult to tell the difference between an original and a copy if a JP is shown a high-quality photocopy). Indicators that a printed document is an original are that it:

- appears on official letterhead;
- contains an official logo, seal or watermark; or
- includes a handwritten signature or inked stamp of the issuing authority.

### **Copy**

'**Copy**' means a reproduction (of the original document) on paper or similar. It is made by a photocopier or other machine with similar copying and printing functions. It does not include a reproduction of the document that is handwritten or hand-drawn, or a mere transcription of the content of the original.

### **Electronic document**

An 'electronic document' is any electronic file format that contains writing, numbers, images, symbols, marks, drawings, maps or plans, and which can be reproduced on paper or similar.



### QUICK REFERENCE:

## Certifying a copy of an original document

STEP 1	Have the original document and copy in front of you
STEP 2	Check that the copy is a true copy
STEP 3	If satisfied, add your certification in writing
STEP 4	Add your details to the certification (name, JP registration number, date)
STEP 5	Sign your certification

## Step-by-step procedure

### STEP 1

#### Have the original document and the copy physically in front of you

You must have both the original document and the copy physically in front of you.<sup>7</sup>

You can be satisfied that a document is an original, if the client shows it to you and states that it is the original.

However, if it is immediately and obviously apparent to you that the document could not be an original, you should decline to certify the copy. For example, this might occur where the document presented as the original is very obviously a reproduction, or contains changes that are very obviously not made by the issuing authority.

Your role as a JP is limited to ensuring that the copy is a true and accurate copy of the original. Your role **does not** involve certifying that:

- the document presented as the original is authentic;
- the content of the original is accurate; or
- the original was correctly and validly issued.

You should not certify a copy of a certified copy. Only certify a copy of a document reported to you to be the original document.

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7 Viewing a paper original document remotely, such as by video telephone call or video over the internet, does not meet the requirement to have the original document and the copy physically in front of you. However, if an original document is in electronic form and you are using a computer or similar to view the document live on an official website that is under the control of the document's issuing authority, then you are considered to have that original document physically in front of you.

### *Example: certifying copies of electronic documents*



**EXAMPLE A:** A JP observes Ms A print her bank statement directly from the official website of Ms A's bank. The JP may then certify the printout as a true copy of the original.

**EXAMPLE B:** Mr B prints his electronic payslip, and his employer endorses the printout with the organisation's official stamp. As this document has certification from the original authority, this is considered an original copy and does not require certification from the JP. However, if this original is then copied following the steps outlined in Step 1, the JP may certify the copy of the original.

**EXAMPLE C:** Ms M requests that a printed copy of her university transcript is certified and shows the JP the email received from the university. The JP **should not** certify this copy, as it can't be verified as a true copy as per the three options in Step 2.

## STEP 2

### Check the copy is a true copy

#### *If the original is on paper*

You can be satisfied that the copy is a true and accurate copy of the original by either:

- carefully comparing both the copy and the original in front of you; or
- watching the copy be made by a copying machine in front of you (such as a photocopier or other machine with similar copying functions).

If the document is in a language other than English, you must watch the copy being made by a copying machine in front of you (instead of simply comparing the copy with the original). This is because, if you cannot read the other language, you may not notice a tiny difference on the copy that changes the meaning of the original.

Sometimes a copying machine may produce a poor quality copy. Even if you watched the copy being made by a copying machine, you should still check that the copy is true and accurate before certifying it.

If you are not satisfied that the copy is a true and accurate copy of the original (by using one of the above two methods), you must decline to certify the copy.

You may certify a copy as a true and accurate copy when:

- the copy is a different size to the original. For example, this may occur if a copying machine has produced an enlarged or a reduced copy of the original;
- the copy is in black and white only, but the original contains colour; and
- the original is laminated. Some issuing authorities prohibit the laminating of their original documents, because lamination makes it difficult for them to authenticate the original. For example you are not able to certify a laminated citizenship certificate. However JPs are not required to authenticate original documents, so there is nothing to prevent a JP from certifying a copy of a laminated original.

You must not certify a copy if it contains an alteration that is not present on the original document as produced by the issuing authority. This is because the copy would not be a true and accurate copy.

### ***If the original is in electronic form***

Only certify a copy of an electronic original document if you have used one of the following methods.

- You saw the paper copy printed directly from an official website that is under the control of the document's issuing authority;
- You saw the paper copy printed directly from a computer that is under the control of the document's issuing authority; or
- The electronic original is displayed live in front of you on an official website or mobile application, under the control of the document's issuing authority.

Compare every item of information in the electronic original with its counterpart on the paper copy, and confirm that every item of information is the same. The screen of the mobile phone, computer or other device must be readable despite any cracks or chips.

If you are not satisfied that the copy is a true and accurate copy of the original (by using one of the above methods), you should decline to certify the copy.

Outside of these three reasons, there is some risk that the document presented to you could have been altered at a prior stage, using computer editing software. This includes where the document has been transmitted by email, fax or other electronic communication (even when that communication appears to have come from the issuing authority).

### ***More information on alternatives to a certified copy of an electronic original document***



In some circumstances, this handbook recommends against certifying a copy of an electronic original document (see page 62). However there may be alternatives to a certified copy.

#### **The person could instead make a statutory declaration.**

They can declare that it is a true copy of the original, and that it exists only in electronic form. The copy can be included as an annexure. You could witness the person making that declaration, but would still be prohibited from certifying the copy.

**The person could forward the electronic original, if it is an email or attached to an email.** The person could forward the email directly to the organisation that requested the certified copy. It would then be a matter for that organisation to decide whether or not to accept the forwarded email, or to make its own enquiries about it.

To avoid wasted time and effort, the person should first discuss the proposed alternative with the organisation that requires the certified copy.

### **STEP 3**

#### **If satisfied the copy is true and accurate, add your certification in writing**

If you are satisfied that the copy is a true and accurate copy of the document, you may add your certification. You must always use the following words, or words substantially the same as the following:

**I certify this to be a true and accurate copy of the document reported to me to be the original document.**

Use of this wording (or substantially the same wording) is required by law, and also helps to clarify that you are not certifying the document is authentic. This may be important if someone who relied on your certification sought to have a court impose such a duty of care on you.

Your certification must be printed on the copy either using a stamp or handwritten in ink. A certification that has been added with a label or sticker is not sufficient.

If the document is more than one page, you may add your certification to the first page only, and then just sign or initial each subsequent page. In this case, the certification on the first page should read:

**I certify this document, comprising this and the following [insert number of pages] pages, each of which I have signed or initialled, to be a true and accurate copy of the document reported to me to be the original document.**

### ***More information on what to do if the certification wording differs on the form you are completing***



Many organisations will give detailed instructions on how to certify copies of original documents. At times, the suggested wording is different from what has been provided in this handbook. This may be as the organisation has specific needs for their situation.

As long as the words are substantially the same, following the instructions provided by the requesting organisation is recommended. Some examples are listed here.

Wording recommended by **NSW Education** for certified copies:

**I certify this is a true and unaltered copy of the original.**

The **Australian Health Practitioner Regulation Agency** (AHPRA) recommend the text below for copies of original documentation:

**I have sighted the original document and certify this to be a true copy of the original.**

**STEP 4****Add your details to the certification**

Add the following details underneath or alongside the wording of the certification:

- your full name;
- your qualification (NSW JP);
- your JP registration number; and
- the date.

Your details should be added by a stamp or handwritten in ink.

**STEP 5****Sign your certification**

Your signature must always be handwritten in ink, and never added with any kind of stamp, label or sticker.

**Frequently asked questions: certifying copies**

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** on pages 118-119.

***FAQ 6. What interstate or overseas documents can NSW JPs certify?***

JPs can **certify copies of documents** from other states, territories and the Commonwealth. NSW JPs can also certify copies of original documents from overseas.

***FAQ 7. Can JPs certify copies of documents that are not in English?***

Yes, you may certify copies of documents in any language. This is regardless of whether or not you may be able to read that language.

It is important to remember that your role as a JP is limited to ensuring that the copy is a true and accurate copy of the original. See Step 2 on page 57 of this section for more details.

If the document is in a language other than English, you should watch the copy be made by a copying machine in front of you (instead of simply comparing the copy with the original). This is because, if you cannot read the other language, you may not notice a tiny difference on the copy that changes the meaning of the original.

**FAQ 8. I've been asked to certify a copy of an electronic document. How do I know if I am not looking at the electronic original?**

There are only three acceptable ways to accept a copy of an electronic document, as explained in Step 2 of this section on page 58.

1. You saw the paper copy printed directly from an official website that is under the control of the document's issuing authority;
2. You saw the paper copy printed directly from a computer that is under the control of the document's issuing authority; or
3. The electronic original is displayed live in front of you on an official website or mobile application, under the control of the document's issuing authority.

Compare every item of information in the electronic original with its counterpart on the paper copy, and confirm that every item of information is the same. The screen of the mobile phone, computer or other device must be readable despite any cracks or chips. If you are not able to confirm by one of the above options, you should decline to certify the copy. This is because you can't be sure you are looking at a true copy.

**FAQ 9. When should a JP decline to certify a copy of an electronic document? And what are the alternatives if I must decline?**

**EXAMPLE A:** Mrs C asks a JP to certify a copy of her electricity bill. Mrs C opens her own laptop computer and displays an electronic image of the bill, which she says she downloaded from the web earlier.

In this instance, the JP is unable to confirm the electronic image original was sourced from the issuing authority's official website or a computer under its control. The JP must decline to certify the copy.

**Alternative:** Mrs C could instead make a statutory declaration. The declaration can note that it is a true copy of her original electricity bill, which exists only in electronic form. The copy of the electricity bill should be attached as an annexure. A JP could witness Mrs C making that declaration. Mrs C should check first that the relevant organisation will accept her statutory declaration in place of a certified copy.

**EXAMPLE B:** Mr D asks a JP to certify a copy of a building certificate issued by Fairfield City Council. Mr D logs into his own email account and shows the JP the certificate, which is attached to an email that was sent from service@fairfieldcity.com.au.

As an electronic copy sent via email, there is some risk the email was not genuinely sent from the issuing authority. The JP must decline to certify the copy.

**Alternative:** Mr D could instead forward the email to the person or organisation that requested the certified copy of the building certificate. It would then be a matter for that person or organisation to decide whether or not to accept and rely upon Mr D's emailed copy, or to make their own enquiries with the certificate's issuing authority.

## 2.4 Performing other functions of a JP


<p><b>What is it?</b></p>	<p>As a JP, you can <b>only</b> perform functions that are given to a JP by or under a NSW Act or NSW Regulation.</p> <p>Apart from the functions described in <b>Section 2</b>, other functions may include witnessing various kinds of legal documents and administering special kinds of oaths.</p> <p>You will probably only be called upon to perform these other functions of a JP on rare occasions.</p>
<p><b>What functions can I perform?</b></p>	<p>It is not possible for this handbook to list every other function of a JP.</p> <p>However official forms often state the name of the relevant NSW Act or NSW Regulation.</p> <p>In general, you are not authorised to perform functions under Commonwealth, interstate, territory or overseas laws (other than those described in <b>Section 2</b>).</p>
<p><b>Important tips</b></p>	<p>You should first <b>check which NSW Act or NSW Regulation</b> gives a JP the function that you have been asked to perform.</p> <p>If you cannot identify a relevant NSW Act or NSW Regulation, you should decline to perform the function.</p> <p>If the function is given by a NSW Act or NSW Regulation, you should follow the instructions for the JP on the relevant document. If you cannot comply with those instructions or any special conditions that must be met, then you must decline to perform the requested JP function.</p>

It is not possible for this handbook to list a procedure for every function that may be given to a JP by a NSW Act or NSW Regulation. The following steps are suggested as a guide.

### STEP 1

#### Check which NSW Act or NSW Regulation confers the function

You should first check which NSW Act or NSW Regulation gives a JP the function that you have been asked to perform.

The relevant NSW Act or NSW Regulation will usually be named somewhere on the document. You can also look up a complete version of all NSW Acts and Regulations online at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) 

If you cannot identify any relevant NSW Act or NSW Regulation, then you must not perform that function in your capacity as a JP.

If you decide to perform the requested task anyway, you will be doing so only in your personal capacity. This means that you should not record on the document your JP registration number or any reference to your status as a JP (for example, you should not include the initials 'JP' after your name).

Never feel obliged to perform a function that is not given to a JP under a NSW Act or NSW Regulation, simply because you have been asked.

### STEP 2

#### Follow the instructions on the document

You should carefully read the instructions on the document, including the wording of any jurat or signature panel, to understand what you are required to do.

You should also look for any conditions you are required to meet, for example, that you have known the person for a period of 12 months or more. If for any reason you cannot comply with those conditions, you must decline to perform the requested JP function.

Guidance about the meaning of 'known the person for a period of at least 12 months' is in **Section 2.1** on page 18. Some documents may require you to check a person's identification and confirm their age, or NSW address. Sometimes the document may require you to sight a specific type of identification. When required to sight a person's identification, you must always sight the original, unless the document states you may sight a certified copy.

If there are no specific instructions for how to satisfy yourself about the person's identity, you should follow a procedure similar to the one set out in Steps 2 and 3 of **Section 2.1** on pages 16 and 18.

**STEP 3****Make sure you understand the purpose and effect of the document**

You should make sure you understand the purpose and the intended effect of the document.

This will affect the scope of any duty of care that a court might impose on you, and any reasonable steps that you might be expected to take before performing the function (see Step 5 on the next page). For example, your duty of care may be greater where the document involves a substantial transaction (such as a mortgage or sale of land).

**STEP 4****Check that the person understands**

You should always check that the person understands the purpose and effect of the document, and is familiar with its contents.

Do this by asking open-ended questions, such as:

- Why do you need to complete this document?
- What is this document about?
- What will you use this document for?
- Who wrote this document?

You must decline to witness a document if you are not satisfied that the person has capacity to execute it. More information about capacity is in **Appendix C** on page 114.

If the person does not understand or speak English adequately, it is advisable that you:

- use an interpreter who is accredited and independent (see **Section 2.5** on page 71);
- read the document aloud to the person, allowing the interpreter to repeat your words in the person's language; and
- check that the person understands the purpose, effect and contents of the document by asking open-ended questions through the interpreter, as above.

## STEP 5

### Do anything else that is necessary and reasonable in the circumstances

In general terms, to fulfil any duty of care that you might owe, you should at least:

- carefully follow the instructions and complete all the steps in the document;
- clarify any instructions or steps that you are not sure about;
- take steps to be satisfied of the person's identity (as in Step 2 above), even if that is not a specific requirement on the document (and particularly if the document relates to a substantial financial or property transaction);
- ask appropriate questions to make sure that the person understands the purpose, effect and contents of the document (as in Step 4 above);
- make other enquiries as needed in the circumstances. For example, by checking the relevant legislative provision or seeking advice if you are unsure about exercising the function (see **Section 1.3** on page 8 about the support and information available to JPs in NSW); and
- always act honestly when performing JP functions, particularly when signing that you have witnessed a person's signature on a document or been 'satisfied' of a specific matter or thing (see **Section 1.1** on page 5: 'Definition: What does a requirement to be 'satisfied' mean?'). For example, you must not sign the document if you have not completed all the relevant steps. You must never witness a signature that was not made in front of you.

Other general information about the concept of duty of care is in **Section 1.2** on page 6, however, this handbook provides only general guidance and does not contain legal advice. If you are unsure about a particular situation, seek advice (see **Section 1.3** on page 8).

## STEP 6

### Sign and print your full name, JP registration number and other details

After you have seen the person sign, you should immediately sign, print your full name, your qualification (NSW JP), and your JP registration number in the space provided.

Your signature should always be handwritten in ink, and never added with a stamp, label or sticker.

Generally a black or blue ink pen should be used, but you should check whether the document specifies that a particular colour must be used. The ink must be permanent and erasable pens must never be used.

### *If the client has already signed*

If the client has already signed the document before bringing it to you, you must not witness that signature. You must never witness a signature that was already on the document when it was brought to you. The client **must** sign in your presence.

However you can watch the client place a fresh signature on the document. To do this you must:

- rule a line in ink through the signature that was already on the document;
- write your initials next to the ruled out signature (both you and your client); and
- watch the client writing their fresh signature as close as possible to the space provided.

### **Frequently asked questions: performing other functions**

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](#) on pages 118-119.

#### ***FAQ 10. Can JPs witness documents from interstate?***

NSW JPs are authorised under NSW law to take **statutory declarations** and **affidavits** for use in other states and territories and the Commonwealth.

JPs can also **certify copies** of documents from other states, territories and the Commonwealth.

#### ***FAQ 11. Can JPs witness land title documents from another state?***

JPs are authorised under the Oaths Act 1900 to witness the **execution of other interstate documents**, such as land titles documents from another state or territory, where this is also permitted by the law of the other state or territory.

There are some important clarifications to note however.

NSW JPs need to **exercise caution when asked to witness property transactions**.

While NSW JPs are authorised to witness the execution of other interstate documents, there are some important considerations to remember.

JPs **should not be involved** in the verification of identity processes required for online conveyancing matters. 95 per cent of conveyancing transactions are now conducted online, and are governed under the Electronic Conveyancing National Law (NSW). As most of the documentation is held online, a JP does not have access as an authorised subscriber. This means that you cannot verify the document as an original document.


Also, JPs would not usually hold the appropriate insurance or relevant identity certification required under the eConveyancing participation rules.

However, for paper applications the NSW Conveyancing rules allow for a certificate to be used that is signed by an eligible witness.

In this context, an eligible witness is someone who is at least 18 years of age, and has either known the applicant for more than 12 months, or has taken reasonable steps to verify the identity of that person. If you do certify this form, you are not acting in your capacity as a JP. As you are not delivering this function as a JP, you should not use your JP number.

### **FAQ 12. Can JPs witness documents from overseas?**

NSW JPs **are not authorised** under NSW law to witness the execution of documents for use overseas. This is because there may be requirements for overseas documents that are governed by overseas laws, rather than NSW law.

In Australia, Public Notaries are able to witness signatures on overseas documents. You can find out more information about Public Notaries at <https://notarynsw.org.au> 

For example, NSW JPs **cannot** witness:

- overseas proof of life forms for claiming overseas pensions;

However, NSW JPs **can**:

- **witness** the Commonwealth of Australia's Life Certificate form; and
- **certify copies** of overseas original documents such as a birth certificate, if satisfied that the document is a true and accurate copy.



### **Example: Proof of Life forms**

Mr John Doe, who lives in Sydney NSW, has asked you to witness a Dutch proof of life form, to support his overseas pension application. However, NSW JPs are not authorised to witness these overseas documents, as they are governed by international laws.

You **must** decline to witness this proof of life form.

Instead, you can either refer Mr Doe to a Public Notary, or the International Services Branch of Centrelink. This branch provides support for people seeking to claim a pension from countries where Australia has a reciprocal aged pension agreement.

International Services Branch, Centrelink  
Ph: 131 673

[www.servicesaustralia.gov.au/individuals/services/centrelink/international-services](http://www.servicesaustralia.gov.au/individuals/services/centrelink/international-services) 

### **FAQ 13. Can JPs witness wills and general powers of attorney?**

Any person over the age of 18 **who is not** a beneficiary of the will, or an attorney under that power of attorney, can witness a will or general power of attorney.

If you do witness a will or general power of attorney, you are not acting in your capacity as a JP (but as a general member of the public). As you are not delivering this function as a JP, **do not** use your JP number.

**Note:** there are no circumstances where JPs can witness enduring powers of attorney. They may only be witnessed by specially qualified witnesses.

## 2.5 Providing services to people from culturally and linguistically diverse backgrounds

The Code of Conduct for JPs in NSW states that a JP must treat all people seeking JP services with courtesy, dignity and respect. This includes people whose first language may not be English, or have different religious beliefs. It is recommended that some adjustments be made to support people from diverse backgrounds.

### Supporting people who do not speak English

Before witnessing any statutory declaration or affidavit, you must be satisfied that the person understands the purpose, effect and contents of the document. If a person does not speak English, you should use an interpreter. You need to be able to rely on the interpretation being accurate, independent and impartial.

You do not need to use an interpreter if:

- the client can read and understand written English; and
- both you and the client communicate in Auslan (or another recognised English-language based sign language).

Even if you speak the same language as the client, you should use an interpreter. This is because you should not perform the functions of a JP in a spoken language other than English. If you interpret for the client, a court might impose a duty of care on you about your language and interpreting skills. A court might also find that you were not acting in your capacity as a JP if you deliver your functions in a language other than English.


However, you may communicate in a language other than English **before or after** the step-by-step procedure outlined. For example, to arrange a time and place to meet, or to answer questions about the process.

For non-English speaking clients, extra steps are recommended for the procedures outlined in **Section 2.1** Witnessing a statutory declaration, and **Section 2.2** Witnessing an affidavit. These extra steps are on the following pages.


## Provision of interpreter services

An **accredited** interpreter is recommended for:

- **statutory declarations** about substantial financial or property transactions, or a mortgage, borrowing or guarantor transaction; and
- **affidavits.**

The interpreter should be accredited at a suitable level of proficiency, through the National Accreditation Authority for Translators and Interpreters (NAATI). NAATI's 'Professional Interpreter' is the recommended minimum level of competence for interpreting in most work settings. This includes banking, law, health, and social and community services. An online directory of NAATI-accredited interpreters is available on a fee-for-service basis at [www.naati.com.au](http://www.naati.com.au) 


NSW Government agencies fund interpreter services when dealing with clients. Where a NSW Government agency requires a statutory declaration, enquiries about booking an interpreter should be directed to that agency.

In other instances, Multicultural NSW may provide interpreter services on a fee-for-service basis. More information is available at [www.multicultural.nsw.gov.au](http://www.multicultural.nsw.gov.au)  or by calling the Commission's Language Services Division on 1300 651 500.

## Supporting people from different religious affiliations

The Code of Conduct for JPs in NSW states that a JP must treat all people seeking JP services with courtesy, dignity and respect. You should never treat a person less favourably because of their religious affiliation when performing JP functions.

You may sometimes need to accommodate a person's religious affiliation. When doing so, keep in mind that you are still required to fulfil the legal requirements of the relevant JP function.

If you would like to learn more about the practices and beliefs of particular religious affiliations, read Section 4 of the 'Equality Before the Law Bench Book'. Although aimed at judicial officers, it contains helpful general information and guidance. You can access a copy of the publication on the Judicial Commission's website at [www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au)  under 'Bench Books'.

### *Seeing the person's face – statutory declarations and affidavits*

You must see the face of the person making a statutory declaration or affidavit (see Step 2 of **Section 2.1** on page 16 or **Section 2.2** on page 38, as applicable).

**Religious beliefs or cultural practices are not special justifications for a person not removing their face covering.** However, you should make reasonable efforts to accommodate the person's beliefs, as far as it is reasonably practical.



### ***Examples of reasonable efforts to accommodate religious beliefs***

- Ask the person to remove their face covering only to the amount needed. You need to see the whole of the person's face (see Step 2 of **Section 2.1** on page 16).
- Allow the person to replace their face covering as soon as you have confirmed their identity.
- Make reasonable efforts to allow some privacy when they remove their face covering.
- If the person is reluctant to show their face because they are of the opposite gender, let them know that they can have the document witnessed by another JP who is the same gender.

If the above suggestions are not possible, then either the person must show you their face, or you must decline to witness the document.

### ***Oaths and affirmations - affidavits***

When making an affidavit, the person can choose between swearing an oath or making an affirmation. For more information, see Step 8 in **Section 2.2** on page 44.

If the person chooses to swear an oath, they may choose to hold a holy book or other religious text when swearing the oath. However, this is not essential.

It is not necessary for you to have copies of holy texts available. When a person contacts you about witnessing their affidavit, it is a good idea to ask if they choose to swear an oath or make an affirmation. If they wish to swear an oath, you can suggest that they bring their own holy text.

If it is impractical for a person to swear an oath or if the person cannot decide or refuses to decide, you can suggest that they make an affirmation. For example, if the person wishes to use a holy book, but did not bring it with them.

**QUICK REFERENCE:****Witnessing a statutory declaration of a person who does not speak English**

<b>STEP 1</b>	Check if you need an accredited interpreter
<b>STEP 2</b>	Confirm that the interpreter is independent and impartial
<b>STEP 3</b>	Follow the usual first five steps for witnessing a statutory declaration: <ul style="list-style-type: none"> <li>• confirm that both documents are set out as a statutory declaration;</li> <li>• see the faces of both the interpreter and the non-English speaking client;</li> <li>• confirm the identity of both the interpreter and the non-English speaking client;</li> <li>• verify any blank spaces or alterations; and</li> <li>• look for any annexures and make sure they have been appropriately referred to in the statutory declaration.</li> </ul>
<b>STEP 4</b>	Check the wording of the interpreter's declaration
<b>STEP 5</b>	Check the client understands
<b>STEP 6</b>	Warn the client
<b>STEP 7</b>	Ask the client to declare the contents are true and correct
<b>STEP 8</b>	Warn the interpreter about the penalties for making a false declaration in their interpretation
<b>STEP 9</b>	Ask the interpreter to declare the contents are true and correct
<b>STEP 10</b>	Follow the final steps for the interpreter's declaration <ul style="list-style-type: none"> <li>• watch the interpreter sign the statutory declaration in front of you;</li> <li>• sign and print your full name, JP registration number and other details;</li> <li>• certify identity requirements have been met; and</li> <li>• complete and sign the statement on each annexure (if any).</li> </ul>

**STEP 11**

Follow the final steps for the declarant's declaration

- watch the declarant sign the statutory declaration in front of you;
- sign and print your full name, JP registration number and other details;
- certify identity requirements have been met;
- complete and sign the statement on each annexure (if any); and
- certify in writing that the statutory declaration was read to the non-English speaking declarant, and understood.

**STEP 12**

Follow the final steps for the declarant's declaration

- watch the declarant sign the statutory declaration in front of you;
- sign and print your full name, JP registration number and other details;
- certify identity requirements have been met;
- complete and sign the statement on each annexure (if any); and
- certify in writing that the statutory declaration was read to the non-English speaking declarant, and understood.

## 2.5.1 Witnessing a statutory declaration of a person who does not speak English

<p><b>What is it?</b></p>	<p>Before witnessing any statutory declaration, you must be satisfied that the declarant understands the purpose, effect and contents of the statutory declaration.</p> <p>If the client does not speak English, you should use an interpreter to communicate with them during the step-by-step procedure in this section.</p> <p>Both the interpreter and the client should each make a statutory declaration. The interpreter's statutory declaration must contain the appropriate wording as included in Step 12.</p> <p>The non-English speaking client needs to supply an unsigned copy of their statutory declaration to the interpreter, as this has to be annexed to the interpreter's declaration.</p>
<p><b>What can I witness?</b></p>	<p>You may witness a statutory declaration that is made for use in:</p> <ul style="list-style-type: none"> <li>• NSW;</li> <li>• any other Australian state or territory; or</li> <li>• the Commonwealth of Australia.</li> </ul> <p>The statutory declaration must be <b>signed and witnessed in NSW</b>, except in certain circumstances when you are delivering JP functions via audio-visual link (see page 14).</p>
<p><b>Important tips</b></p>	<p>The important tips listed in <b>Section 2.1</b> on page 33 also apply here.</p> <p>You need to be able to rely on the interpretation being <b>accurate, independent and impartial</b>.</p> <p>A statutory declaration must be written entirely in English. All communication between the JP and the declarant must be in English <b>during</b> the entire step-by-step procedure.</p> <p>You should use an interpreter, even if you speak the same language as the client. However, you may communicate in a language other than English <b>before or after</b> the step-by-step procedure in this section (for example, to arrange a time and place to meet, or to answer questions about the process).</p>

## **STEP 1**

### **Check if you need an accredited interpreter**

Before meeting with your client, check to see if an interpreter is required, and make arrangements if needed. Information about the provision of accredited interpreter services is included on page 71.

If at any time during this step-by-step procedure it appears that a client may not understand the purpose and effect of the statutory declaration, you should decline to witness it and advise the client to arrange an accredited interpreter.

## **STEP 2**

### **Confirm that the interpreter is independent and impartial**

The interpreter should not have a conflict of interest in, or receive any benefit (financial or other) from, the client's statutory declaration. The only appropriate exception is payment for professional interpretation services.

For information about conflicts of interest, see **FAQ 3** on page 10, 'What is a conflict of interest, and how should I avoid one?'.

If you rely on an interpreter who is not accredited, ideally that interpreter should not be a relative or friend of the client. If they are, make sure that this is clearly stated in the interpreter's declaration.

## **STEP 3**

### **Follow the usual first five steps for witnessing a statutory declaration**

For both the interpreter and the non-English speaking client, follow the usual steps for witnessing a statutory declaration (Steps 1 to 5 in **Section 2.1**).

This includes:

- checking if both documents are set out as statutory declarations;
- seeing the faces of both the interpreter and the non-English speaking client;
- confirming the identity of both the interpreter and the non-English speaking client;
- looking for and dealing with any blank spaces or alterations on each statutory declaration; and
- looking for any annexures and checking that they are correctly referred to in each statutory declaration.

**STEP 4****Check the wording of the interpreter's declaration**

The statutory declaration of the interpreter should use specific wording, which confirms that the interpreter:

- has checked that the language spoken by the interpreter is the appropriate language for the non-English speaking person;
- is fluent in both that language and English;
- is competent to interpret between both those languages (for accredited interpreters);
- correctly interpreted the exchanges between the people present, before the relevant documents were signed; and
- has no conflict of interest.

Recommended wording for the statutory declaration of an interpreter is included in this section on page 80.

**Note:** the non-English speaking client needs to supply an unsigned copy of their statutory declaration to the interpreter. This has to be annexed to the interpreter's declaration.

**STEP 5****Read the statutory declaration aloud to the non-English speaking client**

You must read the statutory declaration aloud to the client in English. Then, allow the interpreter to repeat your words in the client's language.

**STEP 6****Check the client understands**

After you have finished reading the statutory declaration aloud, check that the client understands the purpose, effect and contents of the statutory declaration. Try asking the client open-ended questions (through the interpreter) such as those listed in Step 6 of [Section 2.1](#) on page 21.

**STEP 7****Warn the client**

You must warn the client that:

- it is a serious criminal offence to make a false declaration; and
- the penalties include imprisonment.

You must allow the interpreter to repeat your words in the client's language.

You should also ask appropriate questions (through the interpreter) to make sure that they have understood the warning.

## STEP 8

### Ask the client to declare the contents are true and correct

You must ask the client to make the declaration required by the statutory declaration form, allowing the interpreter to repeat your words in the client's language.

For an ordinary NSW statutory declaration under the *Oaths Act 1900* (often called an 'Eighth Schedule' or 'Ninth Schedule' declaration), you can ask the following question:

**Do you solemnly and sincerely declare the contents of this declaration to be true and correct, to the best of your knowledge and belief?**

If it is a statutory declaration under some other law, you should check the form carefully to see if there is any special wording required. If so, you will need to use that wording. If not, you can use the wording as above.

It is acceptable if the client responds with words which show an affirmative answer (for example, 'Yes' or 'I do'), or if the person cannot speak, alternative non-verbal affirmative response (such as nodding).

**Note:** the non-English speaking client does not sign their declaration at this step. They sign at Step 12.

## STEP 9

### Warn the interpreter

You must warn the interpreter that there are penalties for making a false declaration in their interpreter's declaration. The penalties include imprisonment.

## STEP 10

### Ask the interpreter to declare the contents are true and correct

You must ask the interpreter the same question in Step 8 above, about their interpreter's declaration:

**Do you solemnly and sincerely declare the contents of this declaration to be true and correct, to the best of your knowledge and belief?**

**STEP 11****Follow the final steps for the interpreter's declaration**

For the **interpreter's declaration**, these steps as shown in **Section 2.1** are:

- watch the interpreter sign their statutory declaration in front of you;
- sign and print your full name, qualification (NSW JP), JP registration number and other details;
- certify identity requirements have been met (for a statutory declaration under the law of NSW or any other Australian state or territory); and
- complete and sign the statement on each annexure. The interpreter's declaration will have at least one annexure, which will be an unsigned copy of the non-English speaking client's declaration.

**STEP 12****Follow the final steps for the non-English speaking client's declaration**

These steps as shown in **Section 2.1** are:




- watch the client sign their statutory declaration in front of you, and also any preceding pages of the document;
- sign and print your full name, qualification (NSW JP), JP registration number and other details, and also sign next to the client's signature on any preceding pages;
- certify identity requirements have been met (for a statutory declaration under the law of NSW or any other Australian state or territory); and
- complete and sign the statement on each annexure (if any).

You must also certify in writing, below the signature panel, that:

- the statutory declaration was read to the non-English speaking client in your presence;
- it appeared to you that the client understood the statutory declaration; and
- the client subscribed the statutory declaration (by signature or mark) in your presence.

**More resources to support people from diverse backgrounds**

Some useful websites and resources are listed below:

- Multicultural NSW [www.multicultural.nsw.gov.au](http://www.multicultural.nsw.gov.au) 
- National Accreditation Authority for Translators and Interpreters (NAATI) [www.naati.com.au](http://www.naati.com.au) 
- Section 4 of the '*Equality Before the Law Bench Book*'. Access a copy of the publication on the Judicial Commission's website at [www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au)  under 'Bench Books'

## Suggested wording for declaration by an interpreter

An editable document can be downloaded from the JP website [www.jp.nsw.gov.au](http://www.jp.nsw.gov.au) 

### *Declaration by accredited interpreter*



I am a qualified interpreter in [name of language].  
My qualification to interpret is [relevant qualifications].  
I am competent to interpret between the English language and the [other] language.

On [date] I attended at [premises] with [name of JP] (the Justice of the Peace) and [name of declarant] (the declarant) for the purpose of providing interpreting services to enable the declarant to make a statutory declaration.

I spoke to the declarant in the [name of language] language and I established that this is their customary language.

Before the declarant signed the statutory declaration, I truly interpreted, to the best of my skill and ability:

- the contents of the statutory declaration (annexed and marked 'A') which were read aloud to the declarant by the Justice of the Peace;
- the warning provided to the declarant by the Justice of the Peace; and
- the questions that the Justice of the Peace asked the declarant.

Before the declarant made the statutory declaration, I truly interpreted, to the best of my skill and ability, the declarant's responses from the [declarant's language] to the English language.

I do not have a personal relationship with the declarant.

Other than payment for professional service, I receive no financial or other benefit from the matters to which the declarant's statutory declaration relates.



*Suggested wording for declaration by other interpreter*

I understand and I am fluent in the English language and the [name of language] language.

I spoke to the declarant in the [name of language] language and I established that this is their customary language.

Before the declarant signed the statutory declaration, I truly interpreted, to the best of my skill and ability:

- the contents of the statutory declaration (annexed and marked 'A') which were read aloud to the declarant by the Justice of the Peace;
- the warning provided to the declarant by the Justice of the Peace; and
- the questions that the Justice of the Peace asked the declarant.

Before the declarant made the statutory declaration, I truly interpreted, to the best of my skill and ability, the declarant's responses from the [declarant's language] to the English language.

I do not have a personal relationship with the declarant [or] My relationship with the declarant is [insert nature of relationship].

I receive no financial or other benefit from the matters to which the declarant's statutory declaration relates.

## 2.5.2 Witnessing an affidavit of a person who does not speak English

<b>What is it?</b>	<p>Before witnessing any affidavit, you must be satisfied that the client understands the purpose, effect and contents of the affidavit.</p> <p>If the client does not speak English, <b>you must use an interpreter</b> during the step-by-step procedure in this section.</p> <p>Both the interpreter and the client must each swear or affirm a separate affidavit. The non-English speaking client needs to supply an unsigned copy of their affidavit to the interpreter, as this copy has to be annexed to the interpreter's affidavit.</p>
<b>What can I witness?</b>	<p>You may witness an affidavit that is required for:</p> <ul style="list-style-type: none"><li>• any Australian court or tribunal;</li><li>• the registration of any instrument in Australia; and</li><li>• any arbitration in Australia.</li></ul> <p>The affidavit must be <b>signed and witnessed in NSW</b>, except in certain circumstances when you are delivering JP functions via audio-visual link (see page 34).</p>
<b>Important tips</b>	<p>The important tips listed in <b>Section 2.2</b> on page 33 also apply here.</p> <p>You must be able to rely on the interpretation being <b>accurate, independent and impartial</b>. This is necessary to exercise your JP functions and to fulfil any duty of care you may owe when witnessing an affidavit by a client who does not speak English.</p> <p>You should use an interpreter, even if you speak the same language as the client. However, you may communicate in a language other than English <b>before or after</b> the step-by-step procedure in this section (for example, to arrange a time and place to meet, or to answer questions about the process).</p> <p>The <b>affidavit of the interpreter must be sworn or affirmed</b> first before the affidavit of the non-English speaking client.</p> <p>The interpreter's affidavit must contain the wording set out on page 90.</p>

**QUICK REFERENCE:****Witnessing an affidavit of a person who does not speak English**

<b>STEP 1</b>	Check that the interpreter is accredited
<b>STEP 2</b>	Confirm that the interpreter is independent and impartial
<b>STEP 3</b>	Follow the usual first five steps for witnessing an affidavit <ul style="list-style-type: none"> <li>• confirm that the document is an affidavit;</li> <li>• see the faces of both the interpreter and the non-English speaking client;</li> <li>• confirm the identity of both the interpreter and the non-English speaking client;</li> <li>• look for and deal with any blank spaces or alterations in both affidavits; and</li> <li>• look for any annexures and check that they are correctly referred to.</li> </ul>
<b>STEP 4</b>	Check the wording of the interpreter's affidavit
<b>STEP 5</b>	Ask the interpreter to swear an oath or make an affirmation
<b>STEP 6</b>	Read the affidavit aloud to the client
<b>STEP 7</b>	Confirm that the client understands
<b>STEP 8</b>	Warn the client
<b>STEP 9</b>	Ask the client to swear an oath or make an affirmation
<b>STEP 10</b>	Warn the interpreter
<b>STEP 11</b>	Ask the interpreter to swear an oath or make an affirmation
<b>STEP 12</b>	Watch the interpreter sign the affidavit
<b>STEP 13</b>	Watch the client sign their affidavit

#### STEP 14

Follow the final steps for the interpreter's affidavit

- cross out either the words **I swear** or **I affirm** at the beginning of the affidavit;
- cross out either the word **sworn** or the word **affirmed** in the signature panel;
- add your full name, qualification (NSW JP), and JP registration number;
- sign the signature panel in the space provided;
- sign any extra pages (if any), near the signature of the interpreter on each page;
- certify identity requirements have been met; and
- complete and sign the statement on each annexure.

#### STEP 15

Follow the final steps for the client's affidavit

- cross out either the words **I swear** or **I affirm** at the beginning of the affidavit;
- cross out either the word **sworn** or the word **affirmed** in the signature panel;
- add your full name, qualification (NSW JP), and JP registration number;
- sign the signature panel in the space provided;
- sign any extra pages (if any), near the signature of the interpreter on each page;
- certify identity requirements have been met; and
- complete and sign the statement on each annexure.

#### STEP 1

### Check that the interpreter is accredited

For all affidavits by a client who does not speak English, **you must use an interpreter**. The interpreter **should be accredited** at a suitable level through the National Accreditation Authority for Translators and Interpreters (NAATI). Information about the provision of accredited interpreter services is on page 71.

It is not advisable for you to rely on an interpreter who is not accredited at a suitable level of proficiency when witnessing an affidavit by a client who does not speak English.

You do not need an interpreter if the client can read and understand written English, **and** both you and the client communicate in Auslan (or another recognised English-language based sign language).

**STEP 2****Check that the interpreter is independent and impartial**

The interpreter should not have a conflict of interest in, or receive any financial or other benefit from, the client's affidavit. The only appropriate exception is payment for professional interpretation services.

The interpreter should not be a friend or relative of the client.

For information about conflicts of interest, see **FAQ 3** on page 10: 'What is a conflict of interest, and how should I avoid one?'

**STEP 3****Follow the usual first five steps for witnessing an affidavit**

For both the interpreter and the non-English speaking client, you must follow the usual steps for witnessing an affidavit as set out in Steps 1 to 5 in **Section 2.2**. This includes:

- checking if both documents are set out as affidavits;
- seeing the faces of both the interpreter and the client;
- confirming the identity of both the interpreter and the client;
- looking for and dealing with any blank spaces or alterations in their respective affidavits; and
- looking for any annexures and checking that they are correctly referred to in each affidavit.

**STEP 4****Check the wording of the interpreter's affidavit**

The affidavit of the interpreter requires specific wording, which confirms that the interpreter:

- has checked that the language spoken by the interpreter is the appropriate language for the non-English speaking client;
- is fluent in both that language and English;
- is competent to interpret between both those languages;
- correctly interpreted the exchanges between the people present, before the relevant documents were signed; and
- has no conflict of interest.

The recommended wording of the interpreter's affidavit is on page 90.

## **STEP 5**

### **Ask the interpreter to swear an oath or make an affirmation**

Interpreters must swear an oath or make an affirmation, where they state they are interpreting for the client to the best of their ability, and in accordance with the law. The interpreter's oath or affirmation should say:

**I swear/affirm that I will truly interpret the contents of the affidavit to the deponent [client name] and also the oath/affirmation about to be administered to them and all other matters and things required of me in connection with this affidavit, according to the best of my skill and ability.**

## **STEP 6**

### **Read the affidavit aloud to the client**

You must read the affidavit aloud to the client in English. Then, allow the interpreter to repeat your words in the client's language.

## **STEP 7**

### **Check the client understands**

After you have finished reading the affidavit aloud, check that the client understands the purpose, effect and contents of the affidavit.

Do this by asking open-ended questions, such as:

- Why do you need to complete this document?
- What is this document about?
- What will you use this document for?
- Who wrote this document?

## **STEP 8**

### **Warn the client**

You must warn the client that:

- it is a serious criminal offence to swear or affirm a false affidavit; and
- the penalties include imprisonment.

You must allow the interpreter to repeat your words in the client's language.

You should also ask the client appropriate questions (through the interpreter) to make sure that they have understood the warning.

**STEP 9****Ask the client to swear an oath or make an affirmation**

If you are satisfied the client understood and agreed with the contents of the affidavit, you must administer the oath or affirmation to the client.

You can do this by using the wording specified in the procedure for witnessing an affidavit at Step 8 in [Section 2.2](#) on page 45.

The client must repeat the oath or affirmation in their own language, and the interpreter must interpret the client's response for you.

**Note:** the client does not sign their affidavit at this step. They sign in Step 13.

**STEP 10****Warn the interpreter**

You must warn the interpreter that:

- it is a serious criminal offence to swear or affirm a false affidavit; and
- the penalties include imprisonment.

You should also ask the interpreter appropriate questions to make sure that they have understood the warning.

**STEP 11****Ask the interpreter to swear an oath or make an affirmation**

If you are satisfied the interpreter understood and agreed with the content of their affidavit, you must administer the oath or affirmation to the interpreter.

You can do this by using the wording specified in the procedure for witnessing an affidavit in this section.

**STEP 12****Watch the interpreter sign the affidavit**

The interpreter must sign their separate affidavit first, confirming that they have interpreted the contents of the client's affidavit and oath or affirmation.

The interpreter must sign in your presence.

If the interpreter's affidavit comprises more than one page, in addition to completing the signature panel, the interpreter must also sign each preceding page. The interpreter's signatures should preferably be placed at the foot of each page, or if there is no space, elsewhere on the page.

### STEP 13

#### Watch the client sign their affidavit

After the interpreter has signed their affidavit, ask the client to sign the document. The client must sign in your presence.

If the client's affidavit includes more than one page, in addition to completing the signature panel, the client must also sign each preceding page. The client's signatures should preferably be placed at the foot of each page, or if there is no space, elsewhere on the page.

### STEP 14

#### Follow the final steps for the interpreter's affidavit

For the interpreter's affidavit, you must:

- cross out either the words **I swear** or **I affirm** at the beginning of the affidavit, according to whether the interpreter has sworn an oath or made an affirmation;
- cross out either the word **sworn** or the word **affirmed** in the signature panel, according to whether the interpreter has sworn an oath or made an affirmation;
- add your full name, qualification (NSW JP), and JP registration number
- sign the signature panel in the space provided;
- sign any extra pages (if any), near the signature of the interpreter on each page;
- certify identity requirements have been met (see Step 11 in [Section 2.2](#) on page 48)<sup>8</sup>; and
- complete and sign the statement on each annexure (see Step 12 in [Section 2.2](#) on page 50). The interpreter's affidavit will have at least one annexure, which will be an unsigned copy of the non-English speaking client's affidavit.

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8 You do not have to certify that identity requirements have been met if the affidavit is a Commonwealth affidavit (i.e. an affidavit for the purpose of proceedings in a Commonwealth court, for the purpose of or in connection with a law of the Commonwealth, or in connection with the administration of a Commonwealth department or agency).

**STEP 15****Follow the final steps for the client's affidavit**

For the client's affidavit, you must:

- cross out either the words **I swear** or **I affirm** at the beginning of the affidavit, according to whether the client has sworn an oath or made an affirmation;
- cross out either the word **sworn** or the word **affirmed** in the signature panel, according to whether the client has sworn an oath or made an affirmation;
- certify in writing, in or below the signature panel, that the affidavit was read to the client in your presence, that it appeared to you that the client understood the affidavit, and that the client subscribed the affidavit (by signature or mark) in your presence;
- add your full name, qualification (NSW JP), and JP registration number;
- sign the document in the space provided;
- sign any extra pages (if any), near the signature of the client on each page
- certify identity requirements have been met (see Step 11 in [Section 2.2](#) on page 48)<sup>9</sup>; and
- complete and sign the statement on each annexure, if any (see Step 12 in [Section 2.2](#) on page 50).

You **must** also include any information or instructions included in the affidavit. If you are unsure about the requirements of a particular affidavit, you should seek advice (see [Section 1.3](#) on page 8).

***If the affidavit requires your address***

Some affidavit forms require you to state your address. Either a home, business or postal address **where you can be reliably be contacted** is usually enough (unless the form states that a particular kind of address is required).

An email address is usually **not** acceptable (unless the form allows).

If you do not have a business or postal address and you do not wish to give your home address, you can use the address of a JP association (if you are a member) or the address of the Department (at the back of this handbook, on page 127).

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9 You do not have to certify that identity requirements have been met if the affidavit is a Commonwealth affidavit (i.e. an affidavit for proceedings in a Commonwealth court, for the purpose of or in connection with a law of the Commonwealth, or in connection with the administration of a Commonwealth department or agency).

### *Suggested wording for affidavit by an interpreter*



I am a qualified interpreter in [name of language].  
My qualification to interpret is [relevant qualifications].  
I am competent to interpret between the English language and the [other] language.

On [date] I attended at [premises] with [name of JP] (the Justice of the Peace) and [name of deponent] (the deponent) for the purpose of providing interpreting services to enable the deponent to make an affidavit.

I spoke to the deponent in the [name of language] language and I established that this is their customary language.

Before the deponent signed the affidavit, I truly interpreted, to the best of my skill and ability:

- the contents of the affidavit (annexed and marked 'A') which were read aloud to the deponent by the Justice of the Peace;
- the warning provided to the deponent by the Justice of the Peace; and
- the questions that the Justice of the Peace asked the deponent.

Before the deponent made the affidavit, I truly interpreted, to the best of my skill and ability, the deponent's responses from the [deponent's language] language to the English language.

I do not have a personal relationship with the deponent.

Other than payment for professional service, I receive no financial or other benefit from the matters to which the deponent's affidavit relates.

## 2.6 Providing services to people with disabilities

The Code of Conduct for JPs in NSW states that a JP must treat all people seeking JP services with courtesy, dignity and respect. When delivering services for people with disabilities, you should focus on the person rather than the disability.

Follow the procedures and services required of you as a JP, while offering extra support. When you first meet the person, you should determine the type of disability and to what degree, if any, it will affect their ability to complete the presented documentation. Most people will be forthright and let you know at the outset what their disability is and if they need support.

Some general recommendations for supporting people with disability include:

- being conscious of the volume and pace of your speech;
- confirming your language and terminology is understood;
- being patient and not completing their statements, sentences or questions. Let them finish speaking in their own time;
- addressing your remarks directly to the person with disability, even if they are in the company of a carer or support person;
- *(if the carer is acting as an interpreter)* listening to the carer and maintaining eye contact with the person with the disability;
- paying attention to non-verbal signals, and clarifying with the person if you are unsure;
- giving time to process and being considerate of the extra time it might take for a person to do or say something; and
- remembering that a person's personal space can include their wheelchair and crutches. Do not touch or push a person's wheelchair or move their crutch without permission.

### Supporting people with vision impairment

JPs need to be satisfied that people with vision impairment understand the documents that they are signing, particularly for statutory declarations and affidavits. An extra step is recommended for people with vision impairment and has been included in the step-by-step procedures. This is included on the following page for reference.

### ***Certify the client understood (for people with vision impairment)***

If it seems the client is vision impaired or cannot read, it is recommended that you, a carer or support person, reads the entire document to the client.

You must then certify in writing, in or below the signature panel, that:

- the declaration/affidavit was read to the declarant/deponent in your presence;
- it appeared to you that the declarant/deponent understood the declaration/affidavit; and
- the declarant/deponent signed the declaration/affidavit (by signature or mark) in your presence.

### **Supporting people to make a mark**

#### ***Statutory declarations and affidavits***

In some instances, you may encounter a person who may not know how to write their name, or is unable to write it because of a visual or physical impairment. If the person is unable to sign, you can ask the person to make their mark on the document.

Usually a mark is made in the form of a cross ('X'), but it can be in any form that is visible on the page. For example, if a person starts to sign their name but is physically unable to complete it, the partial signature (or even a partial letter) is sufficient.

It is preferable (but not essential) that the person makes a mark in the place for their signature.

After the client has made the mark:

- write the words **This is the mark of [full name]** next to or underneath the mark. Do not write over or obscure the mark; and
- make a note on the document of any unusual circumstances that occurred in signing or marking the document (Preferably next to or beneath the signature panel.) This will give more information about the mark to others who may need to rely on the document.

If the document has more than one page, it is preferable for the person, if they are able, to place their mark at the bottom of each page (see Step 9 in **Section 2.1** on page 23 or **Section 2.2** on page 46, as applicable).

## Making a guided mark or guided signature

If the client is physically unable to sign or make a mark on the document, another person (not the JP) can physically assist them. This can be done by guiding their hand to make a signature or mark on the document in your presence.

For a guided signature or guided mark to be valid, it is important that the client has requested this help. When asked, the person needs to either say, or positively show (verbally or non-verbally), that they would like the other person to help them sign or make a mark.

After the client has made their guided signature or guided mark, you should make a note on the document to the effect that:

**The declarant/deponent was physically unable to sign the declaration/affidavit (you can state a reason if you wish)**

**The declarant/deponent said/agreed when asked (state the words or describe the physical sign used) that they wished for [name of other person] to help them to sign/make a mark**

**[name of other person] then [describe how the other person helped the deponent/declarant to sign or make a mark] in my presence.**




## Documents other than statutory declarations and affidavits

Often, if a document needs to be 'signed' by a person, it is sufficient if the person makes their mark on the document (instead of signing their name). However, some legislation provides detailed rules about making marks and how a mark (and, in some cases, an ordinary signature) must be witnessed by the JP.

If you are unsure about the requirements for a particular document, you should check the relevant legislation (see **Appendix A** on page 112). Alternatively, seek advice (see **Section 1.3** on page 8 about the support and information available to JPs in NSW).

## More resources to support people with disabilities

Some useful websites and resources are listed below:

- Australian Federation of Disability Organisations [www.afdo.org.au](http://www.afdo.org.au) 
- Australian Network on Disability [www.and.org.au/pages/inclusive-language.html](http://www.and.org.au/pages/inclusive-language.html) 
- Disability Advocacy Resource Unit [www.daru.org.au](http://www.daru.org.au) 

## 2.7 Frequently asked questions: about providing JP services

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](#) on pages 118-119.

### FAQ 14. Can I witness or certify documents for myself, or my family members?

You **cannot** witness or certify a document for yourself.

For example:

- ✘ you must not act as the witness for a statutory declaration or affidavit that you yourself are declaring, swearing or affirming;
- ✘ you must not certify a copy of your own original document, such as your own birth certificate.

It is not recommended to witness or certify a document for a member of your family. This is because of the potential actual or perceived conflict of interest (see [FAQ 3](#) on page 10). There is a risk that the document may be rejected on that basis by the organisation that requires it.


If rejected, your family member would then need to complete the document again, and find another JP to witness or certify it. Avoiding the risk of such delay and inconvenience is another reason you should decline to perform JP functions for your family members.

### FAQ 15. Can I accept a form of identity if it is shown in an app on a mobile phone?

Currently, JPs can accept the NSW digital driver licence as a form of identification. The licence must be shown live from the Service NSW app for it to be valid. The screen of the mobile phone must be readable despite any cracks or chips.

The following **are not acceptable**:

- photograph of a driver licence; or
- screenshot of the digital driver licence.

The Department recognises that changes in the digital space are frequent. For the most up-to-date guidance on acceptable forms of identification (including changes to acceptable forms of digital identification), please visit the JP website at [www.jp.nsw.gov.au](http://www.jp.nsw.gov.au) .

### FAQ 16. The form that I am completing accepts forms of identity that are different to those usually accepted by JPs. What can I do?

JPs are required to carefully read and follow the instructions on the forms that they are certifying or witnessing. If the organisation requesting the information has noted that they accept differing forms of identification, then it is appropriate for you to follow those instructions.

### FAQ 17. Do I need to keep a log book of the services I give as a JP?

No, there is no requirement that you keep a log book of JP services. However, it is a good idea to do so, especially if you frequently witness the signing of statutory declarations or affidavits.

If you choose to keep a log book, you should not record any personal information other than the name of the client (or if it differs, the name of the person on the document itself).

Information that you **should not** include in any log book includes:

- other personal information such as address, contact details, date of birth;
- any other information or opinion about the person; or
- details about the identification document (such as a unique document number).

If you choose to keep a log book, you may record some or all of the following details about your JP services:

- the date, time and location you performed the JP function;
- the type of JP function you performed (for example 'NSW statutory declaration');
- the name of the client;
- the type of identification document the client showed you (for example 'NSW driver licence' or 'Australian passport');
- any extra steps you took or checks you made, aside from the procedures outlined in this handbook; and
- other general comments or observations to assist your memory.

You must not intentionally give or use personal information that you have or had access to in the exercise of your JP functions, unless it is in connection with the lawful exercise of your JP functions. This duty continues to apply even after you no longer hold office as a JP.

You should make sure that your log book is kept safely and securely at all times, and cannot be accessed by unauthorised persons.

Whether or not you decide to keep a log book, it is important for you to follow the procedures in this handbook every time you deliver JP services. If you are asked to give evidence in court, but you cannot recall the particular document in question, you will be able to truthfully describe how you witness or certify such a document.

## **FAQ 18. Can I use a stamp to save time when performing JP functions?**

Yes, many JPs purchase a stamp for themselves to save time handwriting certain information. This includes their full name and JP registration number. However, you must never use a stamp to place your signature on a document.

The Department is unable to supply stamps for JPs to use. There is no obligation to purchase or use any stamp when performing JP functions.

### ***For various uses***

If you choose to purchase a stamp for various uses, the following wording is recommended:

**[your full name]**

**NSW JP [your JP registration number]**

### ***For certifying a copy of an original document***

If you choose to purchase a stamp for certifying a copy of an original document, the following wording is recommended:

**I certify this to be a true and accurate copy of the document reported to me to be the original document.**

**[your full name]**

**NSW JP [your JP registration number]**

It is not recommended that you use a stamp to insert clauses when witnessing documents. This is because some legislative provisions might require you to use a particular form of words. An exception is the clause required to be inserted and signed by the JP on annexures to affidavits and statutory declarations (see [Section 2.1](#) on page 12).

## **FAQ 19. How should I deal with requests to witness or certify a very large number of documents?**

When a person contacts you for JP services, it is a good idea to ask how many documents (and pages) are involved. If a large number is involved, it can be helpful to explain that your time will be limited. You could suggest that the person can either schedule more than one appointment, or make alternative arrangements if they prefer.

If you are dealing with a queue of people waiting for your JP services, it can also be helpful to specify at the outset how many documents you can witness or certify for each person. This means that others in the queue do not have to wait for an excessive amount of time. If a person has more documents than the specified limit, they would need to re-join the queue or return at another time to have the remaining documents witnessed or certified.

The Code of Conduct for JPs states that a JP must not unreasonably refuse to give JP services. A refusal may or may not be unreasonable, depending on the particular circumstances. If a complaint is made to the Department about a JP's refusal, the Department considers the circumstances before making a decision about the complaint.

### **FAQ 20. Where should I give my JP services?**

You can give JP services at your workplace or another appropriate public place, at a mutually agreed time. You are not expected to give clients your home address or to invite them into your home.

A number of JP associations coordinate the provision of JP services in public places. This includes shopping malls, courthouses and libraries, at scheduled times and locations across NSW. If you would like to deliver JP services for the community on a regular basis in this way, you can make enquiries with one of the JP associations listed in [FAQ 32](#) on page 110: 'Is there a JP club or association I can join?'

### **FAQ 21. Can I help someone prepare a document that I witness or certify?**

If you wish to help someone prepare a document, you **must not** witness or certify that document. In particular, consider whether you might have a conflict of interest (see [FAQ 3](#) on page 10: 'What is a conflict of interest, and how should I avoid one?').

Instead, ask the person to have the document witnessed by another JP.

### **FAQ 22. How can I place my signature on documents? Do I need to use a specific pen or can I use adhesive labels? Can I place an e-signature remotely?**

Your **signature must always be handwritten** in ink, on the document. Your printed name or JP registration number may be either handwritten in ink or added with an inked stamp.

#### *Using pens*

Generally a black or blue ink pen should be used, but you should check whether the document specifies that a particular colour must be used. You do not need to use the same pen as the client. The ink must be permanent and erasable pens must never be used.

#### *Using adhesive labels*

Never use an adhesive label when performing JP functions. This includes to place your signature, or any other details such as your name or JP registration number.

This is because it may be possible for another person to remove the adhesive label and add it to another document, which you have not witnessed or certified. It may also be possible for someone to add a fresh label on top of your label, to disguise your details as the witness, and use the details of another person.

### **FAQ 23. Do I have to read the contents of each document I witness?**

You are not required to read the contents of every document in detail.

However, you should keep in mind the following points:

- You will need to read enough to understand the purpose and effect of the document. You also need check for and carry out any special instructions, and to carry out other specific steps in the procedures outlined in this handbook.
- You must carefully read the wording of the signature panel in the document. Make sure that you have complied with all of its requirements before you sign the document
- If the person is blind or illiterate or an interpreter is being used, **the whole document must be read aloud to the person**. See page 91 for more information about supporting people with vision impairment.
- There might be other circumstances where, for some reason, you need to read more. For example, if by signing the signature panel you are agreeing that you have sighted a number of attachments, you would need to carefully read the list of attachments. Then, check the attachments to make sure that they are all present and correctly listed.

### **FAQ 24. What if I haven't been provided with the annexures referred to in a document?**

If a statutory declaration or affidavit refers to an annexure, but the annexure is not present, you **must not** witness the document in that form.

The client can elect to alter the document by crossing out the references to the annexure (see instructions for making alterations in Step 4 on page 41 or **Section 2.2** on page 32, as applicable). You can then witness the document without the annexure.

Otherwise, if the client does not wish to remove the references to the annexure, you must decline to witness the document.

### **FAQ 25. Should I keep a copy of documents I have witnessed or certified?**

No, you must not keep a copy. It is not necessary or appropriate for you to do so.

### **FAQ 26. What if I cannot comply with a requirement set out in the document?**

If you cannot meet a particular requirement for witnessing or certifying a document, you must decline to witness or certify it. This is because the document may be rejected, which may cause delay, inconvenience and/or expense for the person requesting JP services. It could also be a breach of your duty of care.

Depending on the relevant legislation, you might also be committing an offence.

### **FAQ 27. Can I leave out some details required by a document, such as my address?**

No, you must give all the information required by the document. If the document requires details which you do not have, you should decline to witness or certify the document.

If the document requires your address, either a home, business or postal address **through which you can be reliably contacted** is usually enough (unless the document states that a particular kind of address is required). An email address is usually **not** acceptable (unless the document allows).

If you do not have a business or postal address and you do not wish to give your home address, you can use the address of a JP association (if you are a member) or the address of the Department (at the back of this book on page 127).

### **FAQ 28. What if someone tries to intimidate me about my JP functions?**

Most members of the community appreciate the voluntary services provided by JPs. On rare occasions, a person may try to intimidate a JP into witnessing or certifying a document in a way that is contrary to the law or the procedures in this handbook.

It is important that JPs do not accept such intimidation. Generally, it is best to give a polite refusal, explain why you cannot meet the request, and remain firm but calm on that point. You should avoid confrontation that may escalate.

You should report the matter to police, if you believe that the attempted intimidation was deliberate and intentional (even if you do not believe that the person will carry out the threat).

You can contact the police on the below details:

#### **NSW Police Assistance Line**

131 444 (for non-emergencies)

24 hours, 7 days a week

[www.police.nsw.gov.au](http://www.police.nsw.gov.au) 

In NSW, threatening a person with intent to influence the person's conduct as a public official is an offence. It carries a maximum penalty of ten years imprisonment. Stalking or intimidating another person with the intention of causing the other person to fear physical or mental harm is also an offence, with a maximum penalty of five years imprisonment. Other offences may apply, and it would be a matter for the NSW Police Force to determine the appropriate charges to be laid (if any).

**FAQ 29. Can I refuse to witness or certify a document? For example, if it contains offensive language or seems otherwise inappropriate? Or, if it conflicts with my own beliefs or opinions?**

Generally, you do not need to be concerned with the content of a document. A JP must treat all people seeking JP services with courtesy, dignity and respect. This includes delivering JP services regardless if the document conflicts with your own beliefs or opinions.

However, you do need to be assured that it is complete and undertake the other steps needed to perform the relevant JP function. See also **FAQ 24** on page 98: 'Do I have to read the contents of each document I witness?' and the procedures in **Section 2**. The role of a JP does not involve verifying the truthfulness or appropriateness of the content of documents.

The procedures outlined in this handbook include a step where you warn a client about the penalties for making a false declaration, and swearing or affirming a false affidavit.

If you are asked to witness a document and you know or believe that it contains false information or that it may be a forgery, you should decline to witness it. An exception would be if you believe that declining would create an immediate risk to your personal safety.

If you know, or later become aware, that a document you witnessed contains false information, you should report the matter to the Department as soon as possible. The Department's contact details are at the back of this handbook on page 127. This is because, if the client has committed an offence, you may have a legal obligation to tell the NSW Police Force. The Department can assist you in determining whether or not the matter has to be reported and making any report that is necessary.

Similarly, if you have no reason to doubt the contents of a document but something else about the circumstances causes you to be suspicious, you should report the matter to the Department so that it can assist in determining what steps (if any) need to be taken.

You must never misuse your position as a JP to participate in deliberate fraudulent or other criminal behaviour. If you do so, you may be prosecuted for criminal offences and you may be removed from office as a JP.