“... I will do right to all manner of people, after the laws and usages of the State of New South Wales, without fear or favour, affection, or ill-will.”

Extract from the Oaths of Office for appointment as a Justice of the Peace in NSW
Section 1 Introduction

1.1 Your functions as a Justice of the Peace 4
1.2 Your obligations as a Justice of the Peace 5

Section 2 Performing your functions as a Justice of the Peace

2.1 Witnessing a statutory declaration 8
2.2 Witnessing a statutory declaration of a person who does not speak English 17
2.3 Witnessing an affidavit 22
2.4 Witnessing an affidavit of a person who does not speak English 30
2.5 Certifying a copy of an original document 36
2.6 Performing other JP functions 40

Section 3 Important information about your appointment

3.1 Justices of the Peace Register 46
3.2 Notifying changes in your name, address or contact details 47
3.3 Your term of appointment 48
3.4 Code of Conduct for Justices of the Peace 49
3.5 Complaints about JPs and reviews of JP appointments 50
3.6 Ceasing to hold the office 51

Section 4 Frequently asked questions

4.1 About your appointment 54
4.2 About your authority as a JP 54
4.3 About providing JP services 55
4.4 About statutory declarations and affidavits 64

Appendices 67

Code of Conduct for Justices of the Peace in NSW 92
About this handbook

This handbook is for Justices of the Peace (JPs) in New South Wales (NSW).

It has been written to help you, in your role as a JP, to understand the functions of a JP and to perform those functions correctly.

The handbook also explains your other obligations, such as keeping your appointment registration details up to date, and acting in accordance with the Code of Conduct for Justices of the Peace in NSW.

This handbook constitutes the guidelines issued by the Attorney General of NSW for the purpose of section 8 of the Justices of the Peace Act 2002.

Using this handbook

Read this handbook before performing any functions as a JP, and refer to it as needed to refresh your memory about particular functions.

It is recommended that you follow the suggested procedures and other guidance in this handbook when performing your JP functions. The procedures and guidance have been developed to assist you to comply with the basic requirements of your JP functions, including any duty of care you may have (see Section 1.2 on page 5).

The procedures use imperative language (such as ‘you must’ or ‘you must not’) to indicate when a particular step is mandatory (compulsory). Such steps are mandatory because there is an associated requirement that is imposed by law. If for any reason you are unable to complete a mandatory step, you must decline to witness or certify the document.

This handbook only provides general guidance and does not contain legal advice. You should seek advice if you are unsure about exercising a function generally or in a particular case (see Section 4.3.1 on page 55 about the support and information available to JPs in NSW).

The latest information and any updates to this handbook will be available at www.jp.nsw.gov.au.

An index of key words that are used in this handbook is on page 91. Page numbers in the index which are in bold indicate that a definition of the word can be found on that page.
Section 1

Introduction

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

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

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

1.1 Your functions as a Justice of the Peace

Your primary functions as a NSW JP are to:
• witness a person making a statutory declaration
• witness a person making an affidavit
• certify that a copy of an original document is a true and accurate copy.

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

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

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

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

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

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

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

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

You must understand how to carry out each function of a JP correctly. To help you in your role, read this handbook and refer to it when you are exercising functions as a JP. Suggested step-by-step procedures for the functions of a JP are detailed in Section 2 of this handbook.

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

Duty of care

You should assume you may have a duty of care whenever you perform a JP function, including in relation to every document you witness or certify. A duty of care means you have a legal obligation to take reasonable care to avoid your actions or omissions causing harm to another person.

To fulfil any duty of care you must:

• **complete the steps that are required by law, honestly and carefully.**
  This includes following any instructions in the document and, for affidavits and statutory declarations, certifying that you have confirmed the person’s identity; and

• **take any additional steps which are reasonable in the circumstances,**
  such as seeking advice if you are unsure about what you are required to do, or confirming the person’s identity before witnessing documents concerning significant transactions (even if there is no specific requirement to do so).

A person who suffers loss or damage because a JP did not take reasonable care may have cause to take legal action against the JP. An example of such a case is outlined in Section 4.3.2 on page 56.

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

Your appointment as a JP is subject to the Code of Conduct for Justices of the Peace in NSW. The Code of Conduct explains the acceptable standards of conduct for JPs. Failure to comply may mean that your appointment as a JP is reviewed. A copy of the Code of Conduct is at the back of this handbook and at www.jp.nsw.gov.au.

**Conflicts of interest**

You should avoid performing any JP functions for a matter in which there may be an actual or perceived conflict of interest. More information about conflicts of interest is in Section 4.3.4 on page 57.
Section 2
Performing your functions as a Justice of the Peace

This section details the most commonly exercised functions of a Justice of the Peace, and includes suggested step-by-step procedures and other guidance for each function.
2.1 Witnessing a statutory declaration

| What is it? | A **statutory declaration** is a written statement which a person declares to be true in the presence of an authorised witness. Various organisations often require information to be provided to them in a statutory declaration.

In this handbook, a person who makes a statutory declaration is called the **declarant**. The section at the end of the declaration, where the declarant and the witness both sign, is called the **jurat**.

The law that governs the making of a NSW statutory declaration for general purposes in NSW is the *Oaths Act 1900* (NSW).

Other Australian states and territories and the Commonwealth of Australia have their own laws which govern the making of statutory declarations for use in those jurisdictions. |
|---|---|
| What can I witness? | You may witness a statutory declaration that is made for use in:

• NSW, or
• any other Australian state or territory, or
• the Commonwealth of Australia provided that the statutory declaration is **signed and witnessed in NSW**. |
| Important tips | You can only witness a statutory declaration **when both you and the declarant are physically present together in NSW**.

**You must see the declarant sign the statutory declaration in front of you.** You must never witness a signature that was already on the statutory declaration when it was brought to you.

It is an offence, and penalties apply, for:

• a declarant who makes a false declaration
• a person who witnesses a statutory declaration when not authorised by law to do so
• 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).

If you are unsure about what to do when witnessing a statutory declaration, you should seek advice (see Section 4.3.1). |
Suggested step-by-step procedure

**STEP 1**

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

You can identify if a document is a statutory declaration because it will contain:
- the words ‘statutory declaration’ and
- the name of the state, territory or Commonwealth law under which it is made.

A list of those laws is in Appendix A on page 68.

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 in Appendix B1, B2 and B3 on pages 69-71.

Sometimes a statutory declaration will be incorporated into an application form. A common example is the application form for a NSW Seniors Card. In such cases, you should check to see if the form contains any additional instructions for the JP. If so, you should follow those instructions, as well as this step-by-step procedure.

Some NSW laws create additional requirements for statutory declarations for specific purposes (for example, section 169 of the *Conveyancing Act 1919*, in relation to property transactions). Section 2.6 of this handbook has further guidance about how to meet any such additional requirements.

A statutory declaration may be either hand-written or type-written.

**STEP 2**

**See the declarant’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 the person to remove as much of the face covering as will allow you to see the person’s face. The definition of ‘face’ and ‘face covering’ is in Appendix C on page 77.

You do not have any authority to make or require a person to remove a face covering. If the person chooses not to remove his/her face covering, you must decline to witness the statutory declaration, unless you are satisfied that the person has a ‘special justification’ (which means a legitimate medical reason) for not removing the face covering. Further guidance about how you may be satisfied that a person has a legitimate medical reason is in Appendix D on page 77.

Religious beliefs or cultural practices are not a special justification for a person not removing his/her face covering. However, when you ask a person to remove his/her face covering, you should make reasonable efforts to accommodate the person’s beliefs. Further guidance about accommodating the person’s beliefs is in Appendix E on page 78.
If the person does not have a ‘legitimate medical reason’ for not removing his/her face covering, it is an offence for you to witness a statutory declaration without seeing the person’s face. This offence applies to a declaration made under the law of NSW or any other Australian state or the Northern Territory.

**STEP 3**

**Confirm the declarant’s identity**

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

You must confirm the declarant’s identity in one of two ways. These are either:

- you have known the person for a period of at least 12 months
- you have sighted an approved identification document or a certified copy of an approved identification document, and you have confirmed the person’s identity based on that document.

Guidance about the meaning of ‘known the person for a period of at least 12 months’ is at Appendix F on page 79.

A list of approved identification documents is in Appendix G on page 80. A list of people who may certify a copy of an identification document for the purposes of the *Oaths Act 1900* is also in Appendix G.

Once you have confirmed the person’s identity based on your knowledge of the person or their identification document, make sure that you also check that the statutory declaration has been prepared under the same name.

**STEP 4**

**Look for any blank spaces or alterations**

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

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

- write your initials next to each alteration/deletion, and
- re-write (in the margin of the statutory declaration) the words that have been inserted, and sign or initial the words you have written in the margin.

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1. The offence does not apply to a statutory declaration made under the Commonwealth *Statutory Declarations Act 1959*. 
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 declaration should be crossed out. You can ask the declarant to 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 statutory declaration.

**STEP 5**

**Look for any annexures**

An **annexure** is an attachment of additional 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.

The details for these requirements are set out in Appendix H on page 82. 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.

**STEP 6**

**Check the declarant understands**

You should check that the declarant understands the purpose, effect and contents of the statutory declaration. You can do this by asking open-ended questions such as:
- ‘Why do you need to complete this document?’
- ‘What will you use this document for?’
- ‘Did you write this document?’ and (if the declarant did not write it) ‘Have you read this whole document?’
- ‘What is this document about?’.

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

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

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

If, based on the declarant’s answers to your questions or some other circumstance (such as the person’s age or intellectual impairment etc), it appears to you that the declarant does not understand the purpose and effect of the statutory declaration, you must decline to witness it. For further guidance about this issue, see Appendix I on page 83.
You should not attempt to explain the purpose and effect of the document to the person (see Section 4.3.3 on page 56 ‘What if a person asks me for legal advice?’).

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

If it appears to you that the declarant is blind or illiterate (cannot read), either you or another person in your presence must read aloud the entire contents of the statutory declaration to the declarant. For privacy reasons, if possible, you should offer the declarant 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 to the declarant, you must check that the declarant appears to have understood the declaration. You can do this by using the suggested questions above. If the person does not appear to you to have understood, you must decline to witness the statutory declaration.

**STEP 7**

**Warn the declarant**

You must warn the declarant that:
- it is a serious criminal offence to make a false declaration, and
- the penalties include imprisonment.

You should also ask the declarant appropriate questions to ensure that he/she has understood the warning.

**STEP 8**

**Ask the declarant to declare the contents are true and correct**

You must ask the declarant 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 declarant 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 you are required to use in your question to the declarant. If so, you will need to use that wording. If not, you can use the same wording as above.

It is sufficient if the declarant responds with words which indicate 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 declarant sign the statutory declaration in front of you**

If the declarant has agreed the contents are true and correct, ask him or her to sign and date the jurat, at the end of the statutory declaration. The declarant **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 obviously never be used.

**If the declarant has already signed**

If the declarant has already signed the jurat before bringing the document to you, you must not witness that signature. The declarant **must** sign in your presence. However a solution is detailed in Section 4.4.1 on page 64.

**If the declarant is unable to sign**

A declarant who is unable to sign (because he or she has a visual or physical impairment or is illiterate) may make a mark instead. Further instructions for making a mark, including additional wording that the JP is required to add, are in Appendix J on page 86.

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

If the statutory declaration comprises more than one page, it is recommended that (in addition to completing the jurat) the declarant also signs each preceding page of the declaration. The declarant’s signatures should preferably be placed at the foot of each page, or if there is insufficient space, elsewhere on the page.

**If there are two or more declarants**

If a statutory declaration is made by two or more declarants:
- all their names must appear in the declaration
- you must see each declarant’s face and confirm each declarant’s identity (steps 2 and 3 above)
- you must check each declarant understands and warn each declarant (steps 6 and 7 above)
- each declarant must separately declare the contents are true and correct (step 8 above)
- each declarant must separately sign the jurat (step 9), and
- each declarant must separately sign each preceding page 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 there is more than one declarant and one of them is not present, you must record in writing, in or below the jurat, the words:

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

It is acceptable for different declarants 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 declarant sign or make a mark (including on any additional pages), you should immediately sign, print your full name, your qualification (NSW JP), and your JP registration number in the space provided in the jurat.

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

You should also sign any additional pages, near the signature of the declarant on each page.

You **must** also include any additional information required by the jurat, or by any other instructions in the statutory declaration form.

If you are unsure about the requirements of a particular form, you should seek advice (see Section 4.3.1 on page 55).

**If the jurat requires your address**

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

If you do not have a business or postal address and you do not wish to disclose your home address, you can provide the address of a JP association (if you are a member) or the address of the Appointments Services unit of the Department of Justice.
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 declarant’s face and confirmed his or her identity (as in Steps 2 and 3 above) before you witnessed the statutory declaration.\(^2\)

It is a criminal offence punishable by a fine for an authorised witness (including a JP) to witness such 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 Northern Territory can be identified because they will contain a reference to the relevant legislation, as listed in Appendix A on page 68.

Many NSW statutory declarations have the wording of the required certificate pre-printed, so you need only 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). The appropriate certificate wording is in Appendix K on page 88.

If you relied on an identification document to confirm the declarant’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 declarant’s date of birth (unless the statutory declaration requires it). You should not keep a copy of a declarant’s identification document.

If a statutory declaration is made by two or more declarants, you must complete a separate certificate for each declarant who has declared the statutory declaration before you.

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\(^2\) 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 (if any)

After you have signed the jurat and preceding pages of the statutory declaration, you should complete and sign the statement on each annexure (if any). Detailed instructions on how to do this are in Appendix H on page 82.

STEP 13

Certify the declarant understood (for blind or illiterate declarants only)

If it appears to you that the declarant is blind or illiterate (cannot read), you must also certify in writing, below the jurat, 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 subscribed the statutory declaration (by signature or mark) 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.

3. In this context, ‘subscribe’ means to add a signature or mark to a document in approval of its contents.
# 2.2 Witnessing a statutory declaration of a person who does not speak English

| What is it? | Before witnessing any statutory declaration, you must be satisfied that the declarant understands the purpose, effect and contents of the statutory declaration.  
If the declarant does not speak English, you should use an interpreter to communicate with the declarant during the step-by-step procedure in this section.  
Both the interpreter and the declarant should each make a statutory declaration. The interpreter’s statutory declaration should contain the appropriate wording set out in Appendix B5 on page 74 or Appendix B6 on page 75. |
|---|---|
| What can I witness? | You may witness a statutory declaration that is made for use in:  
• NSW, or  
• any other Australian state or territory, or  
• the Commonwealth of Australia  
provided that the statutory declaration is signed and witnessed in NSW. |
| Important tips | The important tips listed in Section 2.1 also apply to this step-by-step procedure.  
You need to be able to rely on the interpretation being accurate, independent and impartial.  
You should use an interpreter, even if you speak the same language as the declarant. However you may communicate with the declarant in a language other than English before or after the step-by-step procedure in this section (for example, to arrange a time and place to meet, or to answer the declarant’s questions about the process).  
A statutory declaration must be written entirely in English. |
Suggested step-by-step procedure

**STEP 1**
Check if you need an interpreter who is accredited

The interpreter should be accredited at a suitable level of proficiency, through the National Accreditation Authority for Translators and Interpreters (NAATI), if the statutory declaration is for the purpose of:
- a substantial financial or property transaction, or
- a mortgage, borrowing or guarantor transaction.

If you rely on any other type of interpreter (in the case of a statutory declaration for a purpose other than those listed above), you must still be satisfied that as a result of the interpretation the declarant understands the purpose, effect and contents of the statutory declaration.

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

Information about the provision of accredited interpreter services is at Appendix L on page 89.

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

You should not perform the functions of a JP in a spoken language other than English. This is because, if you purport to interpret for the declarant, a court might impose a duty of care on you in respect of your language and interpreting skills. A court might also find that you were not acting in your capacity as a JP, if you administer a declaration in a language other than English.

**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 matters to which the declarant’s statutory declaration relates (other than, in the case of an accredited interpreter, payment for professional interpretation services).

For information about the meaning of ‘conflict of interest’, see Section 4.3.4 on page 57.

If you rely on an interpreter who is not accredited, ideally that interpreter should not be a relative or friend of the declarant, but if they are a relative or friend, that should be 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 declarant, you must follow the usual steps for witnessing a statutory declaration as set out in 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 declarant
• confirming the identity of both the interpreter and the non-English speaking declarant
• looking for and dealing with any blank spaces or alterations on each statutory declaration
• 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 accredited interpreter is at Appendix B5 on page 74, and for any other type of interpreter at Appendix B6 on page 75. The text can also be downloaded from the JP website, www.jp.nsw.gov.au.

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

You must read the statutory declaration aloud to the declarant in English, allowing the interpreter to repeat your words in the declarant’s language.
STEP 6  
**Check the non-English speaking declarant understands**

After you have finished reading the statutory declaration aloud, you should check that the declarant understands the purpose, effect and contents of the statutory declaration by asking the declarant open-ended questions (through the interpreter) such as those listed in Step 6 of section 2.1 on page 11.

STEP 7  
**Warn the non-English speaking declarant**

You must warn the declarant 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 declarant’s language.

You should also ask the declarant appropriate questions (through the interpreter) to ensure that he/she has understood the warning.

STEP 8  
**Ask the declarant to declare the contents are true and correct**

You must ask the declarant to make the declaration required by the statutory declaration form, allowing the interpreter to repeat your words in the declarant’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 declarant the following question:

“So 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 you are required to use in your question to the declarant. If so, you will need to use that wording. If not, you can use the same wording as above.

It is sufficient if the declarant responds with words which indicate 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  
**Warn the interpreter**

You must warn the interpreter that there are penalties for making a false declaration in his/her 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 question in Step 8 above, about his/her interpreter’s declaration (that is, for an ordinary NSW statutory declaration under the *Oaths Act 1900*):

> “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, as applicable**

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

- watch the interpreter sign the jurat of his/her 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 the Northern Territory)
- 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 declarant’s declaration).

**STEP 12**

**Follow the final steps for the non-English speaking declarant’s declaration, as applicable**

For the **non-English speaking declarant’s declaration**, these steps as shown in Section 2.1 are:

- watch the declarant sign the jurat of his/her statutory declaration in front of you, and also watch the declarant sign any preceding pages of the declaration
- sign and print your full name, qualification (NSW JP), JP registration number and other details, and also sign next to the declarant’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 the Northern Territory)
- complete and sign the statement on each annexure (if any).

You must also certify in writing, below the jurat, that:

- the statutory declaration was read to the non-English speaking declarant in your presence
- it appeared to you that the declarant understood the statutory declaration, and
- the declarant subscribed the statutory declaration (by signature or mark) in your presence.
### 2.3 Witnessing an affidavit

| What is it? | An affidavit is a written statement for use as evidence in court proceedings. The person who makes an affidavit is called the deponent. When witnessing an affidavit, a JP must hear the deponent swear an oath or make an affirmation.  

An oath is a binding promise, based on the deponent’s religious or spiritual beliefs, to tell the truth.  

An affirmation 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. Any person may choose to take an affirmation instead of an oath.  

After the deponent swears an oath or makes an affirmation, the deponent and the JP complete the section at the end of the affidavit. This section is called the jurat. |
|---|

| What can I witness? | You may witness an affidavit that is required for the purpose of:  

- any Australian court or tribunal, or  

- the registration of any instrument in Australia, or  

- any arbitration in Australia provided that the affidavit is signed and witnessed in NSW. |
|---|

| Important tips | Section 2.3 sets out a suggested step-by-step procedure for witnessing an affidavit.  

You should check that the deponent understands the purpose, effect and contents of the affidavit. You can do this by asking open-ended questions such as those in Step 6 of the suggested procedure.  

It is an offence, and penalties apply, for:  
- a deponent who makes a false affidavit  
- an authorised witness in NSW who witnesses an affidavit and fails to follow the required steps for identifying the deponent (Step 2, Step 3 and Step 11 of this procedure).  

An affidavit may be made by two or more deponents. In such a case, you must undertake certain steps in the procedure in respect of each deponent. |
**Suggested step-by-step procedure**

**STEP 1**

**Check if the document is an affidavit**

You can identify if a document is an affidavit because it will contain:
- the word ‘Affidavit’ in the title
- the name of the court or tribunal, and
- other details such as the court or tribunal case number, the title of the proceedings and the names of the parties.

A list of state, territory and Commonwealth laws under which an affidavit may be made is at Appendix A on page 68. There are many different affidavit forms. An example of one is at Appendix B4 on page 72.

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 in Section 4.4.2 on page 64.

**STEP 2**

**See the deponent’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 the person to remove as much of the face covering as will allow you to see the person’s face. The definition of ‘face’ and face covering’ is in Appendix C on page 77.

You do not have any authority to make or require a person to remove a face covering. If the person chooses not to remove his/her face covering, you must decline to witness the affidavit, unless you are satisfied that the person has a ‘legitimate medical reason’ for not removing the face covering. Further guidance about how you may be satisfied that a person has a legitimate medical reason is in Appendix D on page 77.

Religious beliefs or cultural practices are not a special justification for a person not removing his/her face covering. However, when you ask a person to remove his/her face covering, you should make reasonable efforts to accommodate the person’s beliefs. Further guidance about accommodating the person’s beliefs is in Appendix E on page 78.

If the person does not have a ‘legitimate medical reason’ for not removing his/her face covering, it is an offence for you to witness an affidavit without seeing the person’s face. This offence applies for an affidavit made under the law of NSW or any other Australian state or territory.4

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4. The offence does not apply in relation to an affidavit that is 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 3
Confirm the deponent’s identity

You must confirm the identity of the person who is making the affidavit, and ensure that it matches the name of the deponent that is written at the top of the affidavit.

You must confirm the deponent’s identity in one of two ways. These are either:
• 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, and you have confirmed the person’s identity based on that document.

Guidance about the meaning of ‘known the person for a period of at least 12 months’ is at Appendix F on page 79.

A list of approved identification documents is in Appendix G on page 80. A list of people who may certify a copy of an identification document for the purposes of section 34 of the Oaths Act 1900 is also in Appendix G.

Once you have confirmed the person’s identity based on your knowledge of the person or their identification document, make sure that you also check that the affidavit has been prepared under the same name.

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 an alteration or deletion that has been made with correction fluid, correction tape or any similar product), it is recommended that you:
• write your initials next to each alteration/deletion, and
• re-write (in the margin of the affidavit) 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. You can ask the deponent to 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**

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

- be referred to in the affidavit, and
- include a written statement by the JP that identifies it as an annexure.

The details for these requirements are set out in Appendix H on page 82. 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.

**STEP 6**

**Check the deponent understands**

You should check that the deponent 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 will you use this document for?’
- ‘Did you write this document?’ and (if the deponent did not write it) ‘Have you read this whole document?’
- ‘What is this document about?’.

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

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

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

If, based on the deponent’s answers to your questions or some other circumstance (such as the person’s age or intellectual impairment etc), it appears to you that the deponent does not understand the purpose and effect of the affidavit, you must decline to witness it. For further guidance about this issue, see Appendix I on page 83.

You should not attempt to explain the purpose and effect of the document to the person (see Section 4.3.3 on page 56 ‘What if a person asks me for legal advice?’).

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

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

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

**STEP 7**

**Warn the deponent**

You must warn the deponent that:

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

You should also ask the deponent appropriate questions to ensure that he/she has understood the warning.

**STEP 8**

**Ask the deponent to swear an oath or make an affirmation**

The deponent may choose between swearing an oath, or making an affirmation.

It is important that you, and the deponent, 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. Also, it is an offence for a deponent to falsely swear or affirm things that are untrue.

If you are not satisfied that the deponent sufficiently understands what it means to swear or affirm an affidavit, or you are not satisfied that the deponent is mentally and physically able to swear/affirm, you should decline to witness the affidavit. For further guidance, see Appendix I on page 83.

**If the deponent chooses an oath**

If the deponent 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 (eg ‘God’, ‘Buddha’ etc). It is not necessary for the deponent to hold a holy book when swearing their oath, but the deponent 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 deponent 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:

Deponent (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 deponent chooses an affirmation

If the deponent 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 deponent must give an affirmative response such as ‘I do’, ‘Yes’ or (if unable to speak) a physical sign such as nodding.

or:

Deponent (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 deponent sign the jurat in front of you

After the deponent has sworn an oath or made an affirmation, ask him or her to sign in the space provided for the deponent in the jurat. The deponent **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 obviously never be used.

If the deponent has already signed

If the deponent has already signed the jurat before bringing the document to you, you must not witness that signature – the deponent **must** sign in your presence. However, a solution is detailed under in Section 4.4.1 on page 64.

If the deponent is unable to sign

A deponent who is unable to sign (because he or she has a visual or physical impairment or is illiterate) may make a mark instead. Further instructions for making a mark, including additional wording that the JP is required to add, are in Appendix J on page 86.

If the affidavit comprises more than one page

If the affidavit comprises more than one page, in addition to completing the jurat, the deponent must also sign each preceding page of the affidavit. The deponent’s signatures should preferably be placed at the foot of each page, or if there is insufficient space, elsewhere on the page.
If there are two or more deponents

If an affidavit is made by two or more deponents:

• all their names must appear in the jurat
• you must see each deponent’s face and confirm each deponent’s identity (steps 2 and 3 above)
• you must check each deponent understands and warn each deponent (steps 6 and 7 above)
• each deponent must separately swear an oath or make an affirmation (step 8 above)
• each deponent must separately sign the jurat (step 9), and
• each deponent must separately sign each preceding page 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 and one of them is not present, you must record in writing, in or below the jurat, the words:

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

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

STEP 10

Sign the jurat and each page of the affidavit

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

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

You must also:

• sign any additional pages, near the signature of the deponent 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 jurat, as appropriate
• include any additional information required by the jurat, or by any other instructions in the affidavit. If you are unsure about the requirements of a particular affidavit, you should seek advice (see Section 4.3.1) on page 55.

If the jurat requires your address

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

If you do not have a business or postal address and you do not wish to disclose your home address, you can provide the address of a JP association (if you are a member) or the address of the Appointments Services unit of the Department of Justice.
**STEP 11**

**Certify identity requirements have been met**

You **must** also certify in writing that you saw the deponent’s face and confirmed his or her identity (as in Steps 2 and 3 above) **before** you witnessed the affidavit.5

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

Most affidavits used by NSW courts have the wording of the required certificate pre-printed, so for those you need only 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). The certificate wording is in Appendix K on page 88.

If you relied on an identification document to confirm the deponent’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 affidavit any unique details of the identification document, such as the document’s number or the deponent’s date of birth (unless the affidavit requires it). You should not keep a copy of a deponent’s identification document.

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

**STEP 12**

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

After you have signed the jurat 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 Appendix H on page 82.

**STEP 13**

**Certify the deponent understood (for blind or illiterate deponents only)**

If it appears to you that the deponent is blind or illiterate (cannot read), you **must** also certify in writing, in or below the jurat, 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.

Further instructions for making a mark, including additional wording that the JP is required to add, are in Appendix J on page 86.

5. You do not have to certify that identity requirements have been met if the affidavit is a Commonwealth affidavit (ie 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).
### 2.4 Witnessing an affidavit of a person who does not speak English

| What is it? | Before witnessing any affidavit, you must be satisfied that the deponent understands the purpose, effect and contents of the affidavit.  
If the deponent does not speak English, you must use an interpreter to communicate with the deponent during the step-by-step procedure in this section.  
Both the interpreter and the deponent must each swear or affirm a separate affidavit.  
The interpreter’s affidavit should contain the wording set out in Appendix B7 on page 76. |
|---|---|
| What can I witness? | You may witness an affidavit that is required for the purpose of:  
• any Australian court or tribunal, or  
• the registration of any instrument in Australia, or  
• any arbitration in Australia  
provided that the affidavit is signed and witnessed in NSW. |
| Important tips | The important tips listed in Section 2.3 on page 22 also apply to this step-by-step procedure.  
You must be able to rely on the interpretation being accurate, independent and impartial. This is necessary in order to exercise your JP functions and to fulfil any duty of care you may owe when witnessing an affidavit by a deponent who does not speak English.  
The interpreter should be accredited through the National Accreditation Authority for Translators and Interpreters (NAATI).  
The affidavit of the interpreter must be sworn or affirmed first, before the affidavit of the non-English speaking deponent. |
Suggested step-by-step procedure

STEP 1
Check that the interpreter is accredited

For all affidavits by a deponent who does not speak English, you must use an interpreter. The interpreter should be accredited at a suitable level of proficiency, through the National Accreditation Authority for Translators and Interpreters (NAATI).

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 deponent who does not speak English.

Information about the provision of accredited interpreter services is at Appendix L on page 89.

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

You should not perform the functions of a JP in a spoken language other than English. This is because, if you purport to interpret for the deponent, a court might impose a duty of care on you in respect of your language and interpreting skills. A court might also find that you were not acting in your capacity as a JP, if you administer an affidavit in a language other than English.

You must use an interpreter even if you speak the same language as the deponent. However you may communicate with the deponent in a language other than English before or after this step-by-step procedure (for example, to arrange a time and place to meet, or to answer the deponent’s questions about the process).

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 matters to which the deponent’s affidavit relates (other than payment for professional interpretation services).

For information about the meaning of ‘conflict of interest’, see Section 4.3.4 on page 57.

The interpreter should not be a friend or relative of the deponent.
STEP 3
Follow the usual first five steps for witnessing an affidavit

For both the interpreter and the non-English speaking deponent, you must follow the usual steps for witnessing an affidavit as set out in Steps 1 to 5 in Section 2.3. This includes:

- checking if both documents are set out as affidavits
- seeing the faces of both the interpreter and the non-English speaking deponent
- confirming the identity of both the interpreter and the non-English speaking deponent
- looking for and dealing with any blank spaces or alterations in their respective affidavits
- 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 person
- 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 at Appendix B7 on page 76. The text can also be downloaded from the JP website, www.jp.nsw.gov.au.

STEP 5
Ask the interpreter to swear an oath or make an affirmation

Interpreters must swear an oath or make an affirmation in which they undertake to interpret for the deponent to the best of their ability and in accordance with the law. The interpreter’s oath/affirmation may take the following effect:

“I swear/affirm that I will truly interpret the contents of the affidavit to the deponent [name of deponent] and also the oath/affirmation about to be administered to him/her 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 non-English speaking deponent

You must read the affidavit aloud to the deponent in English, allowing the interpreter to repeat your words in the deponent’s language.
**STEP 7**

**Check the non-English speaking deponent understands**

After you have finished reading the affidavit aloud, you should check that the deponent understands the purpose, effect and contents of the affidavit by asking the deponent open-ended questions (through the interpreter) such as those listed at Step 6 in Section 2.3 on page 25.

**STEP 8**

**Warn the deponent**

You must warn the deponent 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 deponent’s language.

You should also ask the deponent appropriate questions (through the interpreter) to ensure that he/she has understood the warning.

**STEP 9**

**Ask the deponent to swear an oath or make an affirmation**

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

You can do this by using the wording specified in the procedure for witnessing an affidavit at Step 8 in Section 2.3 on page 26.

The deponent must repeat the oath or affirmation in his or her own language, and the interpreter must interpret the deponent’s response for you.

**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 ensure that he/she has 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 his/her 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 at Step 8 in Section 2.3 on page 26.
STEP 12

Watch the interpreter sign the jurat of his/her affidavit

The interpreter must sign his/her separate affidavit first, confirming that he/she has interpreted the contents of the deponent’s affidavit and oath/affirmation. The interpreter must sign in your presence.

If the interpreter’s affidavit comprises more than one page, in addition to completing the jurat, the interpreter must also sign each preceding page of the affidavit. The interpreter’s signatures should preferably be placed at the foot of each page, or if there is insufficient space, elsewhere on the page.

STEP 13

Watch the deponent sign the jurat of his/her affidavit

After the interpreter has signed his/her affidavit, ask the non-English speaking deponent to sign the jurat in his/her own affidavit. The deponent must sign in your presence.

If the deponent’s affidavit comprises more than one page, in addition to completing the jurat, the deponent must also sign each preceding page of the affidavit. The deponent’s signatures should preferably be placed at the foot of each page, or if there is insufficient space, elsewhere on the page.

STEP 14

Follow the final steps for the interpreter’s affidavit, as applicable

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 jurat, 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 jurat in the space provided, and
• sign any additional pages (if any), near the signature of the interpreter on each page
• certify identity requirements have been met (see Step 11 in Section 2.3 on page 29)6
• complete and sign the statement on each annexure (see Step 12 in Section 2.3 on page 29). The interpreter’s affidavit will have at least one annexure, which will be an unsigned copy of the non-English speaking deponent’s affidavit.

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6. You do not have to certify that identity requirements have been met if the affidavit is a Commonwealth affidavit (ie 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 deponent’s affidavit, as applicable**

For the **deponent’s affidavit**, you **must**:

- cross out either the words ‘I swear’ or ‘I affirm’ at the beginning of the affidavit, according to whether the deponent has sworn an oath or made an affirmation
- cross out either the word ‘sworn’ or the word ‘affirmed’ in the jurat, according to whether the deponent has sworn an oath or made an affirmation
- certify in writing, in or below the jurat, that the affidavit was read to the deponent in your presence, that it appeared to you that the deponent understood the affidavit, and that the deponent subscribed the affidavit (by signature or mark) in your presence
- add your full name, qualification (NSW JP), and JP registration number
- sign the jurat in the space provided
- sign any additional pages (if any), near the signature of the deponent on each page
- certify identity requirements have been met (see Step 11 in Section 2.3 on page 29)
- complete and sign the statement on each annexure, if any (see Step 12 in Section 2.3 on page 29).

You **must** also include any additional information required by the jurats, or by any other instructions in the affidavits. If you are unsure about the requirements of a particular affidavit, you should seek advice (see Section 4.3.1 on page 55).

**If the jurat requires your address**

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

If you do not have a business or postal address and you do not wish to disclose your home address, you can provide the address of a JP association (if you are a member) or the address of the Appointments Services unit of the Department of Justice.

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7. You do not have to certify that identity requirements have been met if the affidavit is a Commonwealth affidavit (ie 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).
## 2.5 Certifying a copy of an original document

<table>
<thead>
<tr>
<th>What is it?</th>
<th>A certified copy may sometimes be accepted, instead of the original document, by an organisation that wishes to rely on information contained in the original. This practice came about because it may be inconvenient or unreasonable to require people to provide the original of precious documents, like birth certificates or academic qualifications. 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. A definition of ‘copy’ and ‘original document’ is in Appendix M on page 89.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What can I certify?</td>
<td>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.</td>
</tr>
<tr>
<td>Important tips</td>
<td>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. You do not need to sight identification or confirm a person’s identity, when the only function you are performing is to certify a copy of an original document. 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 provide 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.</td>
</tr>
</tbody>
</table>

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8. In this context, ‘certify’ means to vouch for in writing.
Suggested 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.\(^9\)

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

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 or
- the content of the original is accurate or
- the original was correctly and validly issued.

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 amendments that are very obviously not made by the issuing authority.

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

**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 equivalent document copying functions).

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.

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\(^9\) 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.
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 even if:

• 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, or
• the copy is in black and white only, but the original contains colour, or
• 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. 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 the copy 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

You should only certify a copy of an electronic original document if you have used one of the following methods to be satisfied that the copy is a true and accurate copy of the original:

• you have seen the paper copy being printed directly from an official website that is under the control of the document’s issuing authority, or
• you have seen the paper copy being 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 under the control of the document’s issuing authority, and you have compared every item of information in the electronic original with its counterpart on the paper copy, and confirmed that every item of information is the same, or
• the issuing authority has endorsed a printout of the original document with its official stamp in ink.

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

The reason for these recommended limitations in relation to an electronic original is because in all other cases there would be some risk that the document reported to you to be the original 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).

There may be other alternatives available to a person who is asking you to certify a copy of an electronic original document. These are described in Appendix N on page 90.
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 reported to you to be the original, you may cause your certification to be printed on the copy. 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 handwriting in ink. A certification that has been added with a label or sticker is not sufficient.

If the document to be certified 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 / initialled, to be a true and accurate copy of the document reported to me to be the original document’.

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.
## 2.6 Performing other functions of a JP

<table>
<thead>
<tr>
<th>What is it?</th>
<th>As a JP, you can <strong>only</strong> perform functions that are conferred on a JP by or under a NSW Act or NSW Regulation. Apart from the functions described in Sections 2.1 to 2.5, other functions conferred on a JP may include witnessing various kinds of legal documents and administering special kinds of oaths. You will probably only be called upon to perform these other functions of a JP on rare occasions.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What functions can I perform?</td>
<td>It is not possible for this handbook to list every other function of a JP. However official forms often state the name of the relevant NSW Act or NSW Regulation under which a particular function is conferred. In general, you are not authorised to perform functions under Commonwealth, interstate, territory or overseas laws (other than those described in Sections 2.1 to 2.5).</td>
</tr>
<tr>
<td>Important tips</td>
<td>You should first <strong>check which NSW Act or NSW Regulation</strong> confers on a JP the function that you have been asked to perform. If you cannot identify any such NSW Act or NSW Regulation, you should decline to perform the function. If the function is conferred 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.</td>
</tr>
</tbody>
</table>
Suggested step-by-step procedure

It is not possible for this handbook to provide a procedure for performing every other function that may be conferred on a JP by a NSW Act or NSW Regulation.

However as a general guide only, the following steps are suggested.

**STEP 1**

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

You should first check which NSW Act or NSW Regulation confers on 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 that are currently in force at the website www.legislation.nsw.gov.au.

If you cannot identify any NSW Act or NSW Regulation that confers the relevant function on a JP, 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).

You should never feel obliged to perform a function that is not conferred on 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 in relation to the document.

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.

Some documents may require you to check a person’s identification and confirm his or her 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 about 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 9 and 10.
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.

The purpose and the intended effect of the document 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 below). 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. You can do this by asking open-ended questions such as those listed at Step 6 in Section 2.1 on page 11.

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 I on page 83.

If the person does not understand or speak English adequately, it is advisable that you:
- use an interpreter who is accredited and independent (see Step 1 of Section 2.2 on page 18)
- read the document aloud to the person, allowing the interpreter to repeat your words in the person’s language
- 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 ensure that the person understands the purpose, effect and contents of the document (as in Step 4 above)
- make other enquiries as necessary in the circumstances, for example, by checking the relevant legislative provision or seeking advice if you are unsure about exercising the function (see Section 4.3.1 on page 55 about the support and information available to JPs in NSW)
• 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 4.3.19 on page 64). For example, you must not sign the attestation clause or other part of the document if you have not completed all the relevant steps. You must never attest to a signature that was not made in front of you (for further guidance, see Section 4.4.1 on page 64).10

Other general information about the concept of ‘duty of care’ is in Section 1.2 on page 5. However this handbook provides only general guidance and does not contain legal advice. If you are unsure about a particular situation, you should seek appropriate advice (see Section 4.3.1 on page 55).

**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 obviously never be used.

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10. In this context, ‘attest’ means to bear witness to, to affirm the genuineness of in an official capacity.
Section 3

Important information about your appointment

This section provides important information about your appointment as a Justice of the Peace, including the public register of JPs and how to apply for reappointment.
3  Important information about your appointment

It is important that you are aware of how the JP public register works, how to be reappointed and how to notify the Department of Justice if your details change. Read this section carefully.

3.1  Justices of the Peace register

The Justices of the Peace register (JP register) is an online public listing of all current JPs in NSW. It is available at the website www.jp.nsw.gov.au.

The JP register allows members of the public to search for a JP who is available in their local area. JPs may nominate the locations at which they usually perform their functions as a JP, as well as the telephone numbers on which they are happy to be contacted by members of the public.

The JP register can also be used to check if a person is currently appointed as a JP, by entering the JP’s name or registration number.

It is recommended that you take a moment to familiarise yourself with the workings of the JP register at www.jp.nsw.gov.au.

A JP who has been appointed primarily for purposes related to his or her employment (an ‘employment-based JP’) may choose whether or not to include his or her location and telephone number on the JP register. Employment-based JPs may indicate their preference on the application form for appointment or reappointment. Alternatively, an employment-based JP may notify the Secretary of the Department of Justice in writing that he or she does not consent to inclusion of those details in the JP register.

The JP Regulation 2014 also provides that any JP’s contact details may be removed from the JP register if the JP notifies the Secretary of the Department of Justice that his or her safety or wellbeing would be affected if the information is included or not removed and the Secretary is satisfied that the exclusion or removal is necessary for that reason.
3.2 Notifying changes in your name, address or contact details

Changing your address or other contact details

You should advise the Appointments Services unit of the Department of Justice as soon as possible if you change your:

- email, postal or residential address, or
- home, work or mobile telephone numbers, or
- telephone number on which you can be contacted by members of the public in relation to JP services, or
- the location at which you usually perform your functions as a JP.

This is a requirement of the Code of Conduct for JPs. It also helps to ensure the Department can contact you if necessary and that you receive a reminder notice before the end of your term of appointment as a JP.

You can notify the Department of a change to your address or contact details at the website www.jp.nsw.gov.au. Alternatively you can write to the Department at the contact details at the back of this handbook.

We protect the privacy of your personal information in accordance with the law governing public sector agencies in NSW. More information is in our ‘Privacy policy for the administration of JP appointments’, a copy of which is available at the JP website, or on request to the Department.

Changing your name

You are only permitted to provide JP services in the name under which you were appointed as a JP. Under the Code of Conduct for JPs, you are required to notify the Department of Justice if your name has changed. You should not perform JP services in your new name until you have received written confirmation from the Department of your change of name notification.

A change of name form is available at the website www.jp.nsw.gov.au. Alternatively you can write to the Appointments Services unit of the Department at the postal address provided at the back of this handbook.

When advising the Department of a change of name, you will need to attach:

- a certified copy of the change of name document such as a marriage certificate, and
- another document which proves that you use the new name, such as a certified copy of your driver licence, Medicare card or Seniors Card.
Moving interstate or overseas

If you move interstate or overseas permanently, you should resign your appointment as a JP in NSW. This is because you are not authorised to act as a NSW JP while you are in another state, territory or country. You would also cease to satisfy the criteria for appointment as a JP, relating to an employment or community based need for the appointment. Your appointment is not transferable to another state, territory or country.

3.3 Your term of appointment

Five-year terms

Lifetime appointment of JPs was abolished in December 2003 with the implementation of the Justices of the Peace Act 2002. All JP appointments are now for five-year terms. The start and end dates of your term are shown in your letter of appointment. You are advised to record these dates somewhere easy for you to locate for future reference.

The introduction of five-year terms assists the Department of Justice to maintain an accurate public JP register and an up-to-date database of confidential JP contact details. Five-year terms also ensure that only JPs who remain eligible and willing to hold the office continue to do so.

JP registration numbers

Each JP in NSW is issued with a six-digit registration number. You are advised to record your JP registration number where you can locate and refer to it as needed. The Code of Conduct for JPs states that, when providing JP services, a JP must clearly record his or her JP registration number (together with his or her full name and signature) on the document.

Seven-digit and nine-digit registration numbers which were issued to JPs in the past are no longer valid and should not be used.

Applying for reappointment

If you have a continuing need for your appointment as a JP, you must apply for reappointment before the end of your five-year term. If you do not apply before your term lapses, you cannot be reappointed and you will have to apply for a new appointment through a Member of the NSW Parliament.

The fastest and easiest way to apply for reappointment is using the online application form at www.jp.nsw.gov.au. You can apply for reappointment from 12 months before the end of your term of appointment.
The Appointments Services unit of the Department of Justice will send you a reminder notice up to 12 months before the end of your term. The reminder will be sent firstly by email, if you have provided an email address. Further information about the reminder process is at www.jp.nsw.gov.au.

To ensure you receive your reminder, it is very important that you advise the Department as soon as possible of any changes to your email address, postal address or telephone numbers.

The reappointment application form requires you to confirm your personal information and answer questions about your eligibility to continue as a JP. It does not require you to be nominated for reappointment by a Member of the NSW Parliament.

Your application for reappointment must be received by the Appointments Services unit of the Department of Justice before the end of your term. If it is not received before the expiry date of your term, your appointment will automatically lapse.

If your appointment lapses, and you wish to continue as a JP, you will have to submit an application for a new appointment through a Member of the NSW Parliament.

You must not carry out JP functions at any time while you do not have a current appointment as a JP. If you do, it is possible that any functions you perform may not be valid. Exercising JP functions without holding a valid appointment may also be an offence in some circumstances.

### 3.4 Code of Conduct for Justices of the Peace

Your appointment as a JP is subject to the Code of Conduct for Justices of the Peace in NSW. A copy of the Code of Conduct is at the back of this handbook. Additional copies can be downloaded from the website www.jp.nsw.gov.au.

The Code of Conduct establishes acceptable standards of conduct for JPs. It clarifies standards for those JPs who may be uncertain of their obligations and is also useful for members of the public who are unsure about what to expect when seeking the services of a JP.

It is very important that you understand and comply with the Code of Conduct. Failure to comply with the Code of Conduct may mean that your appointment as a JP is reviewed.
3.5 Complaints about JPs and reviews of JP appointments

The Attorney General has issued the Department of Justice with ‘Guidelines on the appointment of JPs: handling complaints and reviewing appointments’. A copy of the Guidelines is available at the website www.jp.nsw.gov.au, or on request to the Department.

Complaints about a JP

A complaint about a JP can be made in writing to the Department. To assist the Department in processing the complaint, it should include certain information specified in the Guidelines.

The Department will generally focus on matters concerning the eligibility of the JP to continue to hold the office, or conduct which relates to the role and obligations of a JP when providing JP services. The response to a complaint may include either issuing to the JP a reminder or warning letter, or reviewing the JP’s appointment.

Reviews of JP appointments

A person’s appointment as a JP may be reviewed at any time, if questions arise about his or her suitability to remain a JP. This may include cases where the JP is alleged to have breached the Code of Conduct for JPs, no longer satisfies the criteria for appointment, or meets the grounds for removal from office prescribed by the Justices of the Peace Act 2002 and the JP Regulation 2014.

Under section 10(1) of the Act, a JP has an obligation to notify the Minister in writing of any matter that may cause the JP to cease to satisfy the prescribed criteria for appointment as a JP or if the JP satisfies any of the grounds for removal prescribed under the Act (see below).

The notice must be given as soon as practicable after the JP becomes aware of the matter concerned. A penalty applies for failure to notify.

If a person’s appointment as a JP is to be reviewed, he or she will be notified and given the opportunity to respond to the concerns raised.
3.6 Ceasing to hold the office

A person ceases to hold the office as a JP if he or she:
• completes a term of office without having been reappointed, or
• resigns as JP, or
• is removed from office by the Governor of NSW.

Completing a term of office without reappointment

Your term of appointment as a JP will automatically lapse after five years if:
• you did not apply for reappointment before the end of your five-year term, or
• you applied for reappointment but your application was declined.

Further information about applying for reappointment is in Section 3.3 on page 48.

Resigning from office

You can resign your appointment as a JP at any time, by writing to the Attorney General c/- the Department of Justice at the contact details at the back of this handbook.

Removal from office

The Governor of NSW may at any time, on the recommendation of the Attorney General, remove a JP from office:
• if the person becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit or
• if the person becomes a mentally incapacitated person or
• if the person is convicted in NSW of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in NSW of an offence that, if committed in NSW, would be an offence so punishable or
• if the person fails to take the oaths of office within four months of the date of his or her appointment and in accordance with the requirements of the Oaths Act 1900, or
• if the Attorney General is of the opinion that the person has failed to properly carry out his or her functions as a JP or
• if the Attorney General is of the opinion that the person does not satisfy or no longer satisfies the criteria for appointment as a JP.
Criteria for appointment

The criteria for appointment as a JP are that the person:

• be at least 18 years of age
• is nominated for appointment by a member of the NSW Legislative Assembly or NSW Legislative Council
• must be an Australian citizen or a person who is entitled to vote at a general election for the Legislative Assembly, unless the Minister exempts the person from having to satisfy this criterion
• must be of good character
• must consent in writing to confidential enquiries being made as to the person’s suitability for appointment, including a criminal records check
• must not be an undischarged bankrupt, and
• must establish that the person’s appointment as a JP is required for reasons relating to the person’s employment or to fulfil a community-based need for the appointment.
Section 4
Frequently Asked Questions
4 Frequently Asked Questions

4.1 About your appointment

4.1.1 Can I obtain a Certificate of Appointment as a Justice of the Peace?
You can apply for an optional Certificate of Appointment following confirmation of your appointment as a JP by the Department of Justice. A fee applies. Further information and order forms are available at the website www.jp.nsw.gov.au.

4.1.2 Is there a JP club or association I can join?
Yes, there are a number of JP associations in NSW. These are private associations, and are not endorsed by or supported by government. Associations generally charge a membership fee and offer a range of services to their members. There is no obligation for a JP to join any association.

JP associations in NSW include:
- NSW Justices Association (www.nswja.org.au)
- Northern NSW Federation of JPs (www.nnswfips.org)
- Tweed Valley Justices Association (www.tweedjustices.com)
- Australian Justices of the Peace Association.

4.2 About your authority as a JP

4.2.1 Where do I get my authority to perform the role of JP?
NSW JPs are appointed by the Governor of NSW under the Justices of the Peace Act 2002 (NSW).

The functions and authority of a JP are set out in section 8 of the Justices of the Peace Act 2002, which gives JPs the authority to exercise functions conferred by or under the Act, the Oaths Act 1900 (NSW) (especially sections 21 and 26), or any other NSW Act. These are the only functions that you can exercise when you are acting in your capacity as a JP.

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

No, marriages are performed by Marriage Celebrants. A NSW JP does not automatically become a Marriage Celebrant. If you wish to become a Marriage Celebrant, you should contact the Commonwealth Attorney General’s Department.

4.2.3 *Can a JP witness a Power of Attorney?*

The law in NSW does not authorise a NSW JP to witness either a General Power of Attorney (GPOA) or an Enduring Power of Attorney (EPOA).

As a NSW JP, you must not witness a GPOA or EPOA relating to any other state or territory, even if a JP for that state or territory would be authorised to do so.

4.2.4 *Is a JP exempt from jury duty?*

No, the *Jury Act 1977* does not provide an exemption for JPs from jury duty.

4.3 *About providing JP services*

4.3.1 *What support and information is available to JPs in NSW?*

Apart from this handbook, the Department of Justice provides the following information and support for JPs:

- **JP Infoline** – telephone advice for JPs is available by calling (02) 8688 7487 between 9:00 am and 5:00 pm Monday to Friday (excluding public holidays). 24-hour recorded information is also available outside of those hours.
- **JP website** – the most up to date information for JPs is published at www.jp.nsw.gov.au, including latest news, policies and procedural advice.
- **JP email** – the Department’s email address for all JP enquiries is jp@justice.nsw.gov.au. The Appointments Services unit endeavour to respond to email enquiries within five working days.
- **JP News** – the official newsletter for JPs, which is distributed via email and published on the JP website. You can ensure you receive JP News by advising the Department of Justice of any changes to your email address.

In addition, the official NSW Government website for online publication of legislation is www.legislation.nsw.gov.au. You can use this website to check the provisions of a NSW Act or Regulation in relation to the exercise of JP functions. It is recommended that you do not rely on any other websites to check legislation, as they do not have the official versions of NSW Acts and Regulations, and may not be up to date.

If you or another person need legal advice, legal information or other legal assistance, refer to section 4.3.3 on page 56.
4.3.2 What is an example of a court finding that a JP owed a ‘duty of care’?

For an outline of the concept of a ‘duty of care’ in relation to the functions of a JP, see Section 1.2 on page 5.

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

The District Court determined that Mr G owed Mrs H a duty of care to act honestly when performing his function of witnessing her signature on the document. Because Mr G had attested to Mrs H’s signature without seeing her sign the documents (and without Mrs H even being present), the District Court found that Mr G had breached his duty of care and was therefore liable for part of the financial loss caused to Mrs H by the fraudulent mortgage document. Mr G was ordered to pay Mrs H $54,591.86 in damages.

Following the guidance in this handbook will assist you to meet any duty of care that you may owe when you are exercising your JP functions. However this handbook provides only general guidance and does not contain legal advice. If you are unsure about a particular situation, you should seek appropriate advice (see Section 4.3.1 about the support and information available to JPs in NSW).

4.3.3 What if a person asks me for legal advice?

You must never provide legal advice in your capacity as a JP, even if you have legal knowledge. If a JP purports to provide legal advice:

- the JP may be in breach of item 4(5) of the Code of Conduct for JPs in NSW
- if a person relies on any legal advice a JP purports to provide and suffers loss or damage as a result, a court might find the JP breached his or her duty of care, and/or
- unless the JP is an ‘Australian legal practitioner’, the JP will be committing an offence under section 14(1) of the Legal Profession Act 2004 (NSW).

If people ask you for legal advice, you can refer them to LawAccess NSW.

LawAccess NSW is a free government telephone service that provides legal information, referrals to legal assistance services and in some cases, legal advice. The service is an initiative of the Department of Justice, Legal Aid NSW, Law Society of NSW and NSW Bar Association.

Members of the public can call LawAccess NSW on 1300 888 529 during normal business hours or visit its 24-hour online services – LawAccess Online (general website) or LawAssist (website for self-represented litigants) – at www.lawaccess.nsw.gov.au.

LawAccess NSW publishes a range of promotional resources that JPs may find useful when referring people to their service. To view and/or order any LawAccess publications, please go to the Publications tab at www.lawaccess.nsw.gov.au.
4.3.4 What is a conflict of interest, and how should I avoid one?

A **conflict of interest** occurs when a person attempts to serve two or more interests that are not compatible with each other.

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

However if a document that you witness or certify is to be used for a purpose that may affect an interest that you have (or that one of your associates has), that may create a conflict with your duty as a JP. On the one hand, you have a duty to serve the community’s interest that you act impartially, but on the other hand, you may have a competing motivation to act in your own interest, or in the interest of your associate.

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

A conflict of interest should be avoided, whether it is an ‘actual’ conflict or merely ‘perceived’. If you or your associate expect to benefit in some way as a result of the JP function you will perform, there is an actual conflict of interest. Even if you or your associate do not expect to benefit, it may still be open to a third party to suspect that you might benefit, in which case there is a ‘perceived conflict of interest’. The existence of either an actual or perceived conflict of interest can lead to rejection of the document you have witnessed or certified, and can undermine public confidence in the impartiality and integrity of JPs. In some circumstances, it could also lead to the review of your appointment as a JP.

If you perform JP functions as part of your employment, you may be asked to witness or certify a document in which your employer or a work colleague has an interest. As long as you yourself do not stand to benefit directly from the outcome of the document, you may perform the functions of a JP in that situation.

However if the document is part of a process that will lead (or might reasonably be expected to lead) to you obtaining a commission, bonus or indeed any income or benefit that you would not ordinarily receive, you should refer the document to another JP who does not have such a conflict of interest.
4.3.5 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, and
- you must not certify a copy of your own original document, such as your own birth certificate.

It is not advisable for you to witness or certify a document for a member of your family. This is because of the potential for an actual or perceived conflict of interest (see Section 4.3.4 above) and the 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.

4.3.6 Do I need to keep a log book of services I provide as a JP?

No, there is no requirement that you keep a log book of JP services that you provide. 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 the personal information of any person, other than the name of the declarant or deponent (or, in relation to a copy of an original document that you have certified, the name of the person to whom the document relates). 'Personal information' means a person's name, address, contact details, date of birth, and any other information or opinion about the person.

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 declarant/deponent
- the type of identification document the declarant/deponent showed you (for example ‘NSW driver licence’ or ‘Australian passport’)
- any additional steps you took or checks you made, aside from the suggested procedures in this handbook, and
- other general comments or observations you wish to make to assist your memory.

You must not intentionally disclose or use personal information that you have or had access to in the exercise of your JP functions, unless that disclosure or use occurs in connection with the lawful exercise of your JP functions. This duty continues to apply even after you cease to hold office as a JP.
You should ensure 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 provide 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.

4.3.7  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, such as their full name and JP registration number. However you must never use a stamp to place your signature on a document.

There is no obligation for a JP 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 words, or words substantially the same as the following, must be used:

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 jurat or other clauses when witnessing documents, 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 Appendix H on page 82).
4.3.8 Can I use adhesive labels to save time when performing JP functions?

No, you must never use an adhesive label to place your signature, or any other details such as your name or JP registration number, on a document when performing JP functions.

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

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.

4.3.9 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 at the outset that your time will be limited, so 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, to ensure 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, he or she 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 provide JP services. A refusal may or may not be unreasonable, depending on the particular circumstances. If a complaint is made to the Department of Justice about a JP’s refusal, the Department considers the circumstances before making a decision about the complaint.

4.3.10 Where should I provide my JP services?

When members of the public call your telephone number listed on the public JP register, you are not expected to provide them with your home address details or to invite them into your home for the purpose of providing JP services.

You can instead provide JP services at your workplace or other appropriate public place, at a mutually agreed time.

A number of JP associations coordinate the provision of JP services in public places like shopping malls and libraries, at scheduled times and locations across NSW. If you would like to provide JP services for the community on a regular basis in this way, you can make enquiries with one of the JP associations listed in Section 4.1.2 on page 54.
4.3.11 Can I help someone prepare a document that I witness or certify?

If you wish to help someone prepare a document, it is not advisable for you also to witness or certify that document. In particular, you should consider whether you might have a conflict of interest (see Section 4.3.4 above on page 57). You can ask the person to have the document witnessed by another JP.

4.3.12 What kind of pen should I use when carrying out JP functions?

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 obviously never be used.

Erasable pens do not use normal ink, but a solution that looks like ink and can be erased for a short time after application.

4.3.13 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:
• in general you will need to read enough to understand the purpose and effect of the document, to check for and carry out any special instructions, and to carry out other specific steps in the suggested procedures in this handbook
• it is recommended that you carefully read the wording of the jurat clause (or other signature panel in the document) so that you can ensure 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 to assist the person to declare a statutory declaration or to swear or affirm an affidavit, the whole document must be read aloud to the person by you or by another person in your presence, in accordance with the procedures set out in Section 2.2 or Section 2.4 as applicable
• there might be other circumstances that arise where, for some reason, you need to read more. For example, if by signing the jurat you are agreeing that you have sighted a number of attachments, you would need to carefully read the list of attachments and check the attachments themselves to ensure that they are all present and correctly listed.

4.3.14 Should I keep a copy of documents I have witnessed or certified?

No, you should not keep a copy. It is not necessary or appropriate for you to do so.
4.3.15 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.

4.3.16 Can I leave out some details required by a document, such as my address?

No, you must provide 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 will usually be sufficient (unless the document states that a particular kind of address is required). An email address will usually not be sufficient (unless the document allows).

If you do not have a business or postal address and you do not wish to disclose your home address, you can provide the address of a JP association (if you are a member) or the address of the Appointments Services unit of the Department of Justice.

4.3.17 What if someone attempts to intimidate me in relation to my JP functions?

Most members of the community appreciate the volunteer nature of JP services. On rare occasions, a person may attempt 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 also contact the Department of Justice if you have any concerns about any incident involving intimidation or attempted intimidation of a JP, and/or to request that your details be removed from the public JP register (see Section 3.1 on page 46). The Department’s contact details are at the back of this handbook.
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) in a particular case.

4.3.18 Should a JP refuse to witness or certify a document that contains offensive language or seems otherwise inappropriate?

Generally, you do not need to be concerned with the content of a document, except to the extent necessary to check that it is complete and to undertake the other steps needed to perform the relevant JP function (see also Section 4.3.13 on page 61 and the suggested procedures in Section 2). The role of a JP does not involve verifying the truthfulness or appropriateness of the content of documents.

Of course, the suggested procedures in this handbook include a step where you warn a declarant/deponent about the penalties for making a false declaration or swearing/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, unless 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 of Justice as soon as possible (the Department’s contact details are at the back of this handbook). This is because, if the declarant/deponent 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 in 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.
4.3.19 What does a requirement to be ‘satisfied’ mean?

In legal terms, when legislation requires a person to be ‘satisfied’ of a particular matter or fact, this means that the person ‘must feel an actual persuasion of its occurrence or existence’. The degree of certainty that is needed depends on ‘the nature and consequence of the fact or facts to be proved’.

This means that, what is required for a JP to be ‘satisfied’ will depend on the context, including the purpose and effect of the document and the importance that the relevant law places on the thing about which the JP is required to be ‘satisfied’.

Appendix D on page 77 contains guidance about how a JP may be satisfied that a person has a ‘legitimate medical reason’ not to remove their face covering.

If you are unsure about a particular situation, you should seek advice (see Section 4.3.1 on page 55 about the support and information available to JPs in NSW).

4.4 About statutory declarations and affidavits

4.4.1 What if the declarant or deponent has already signed the document before bringing it to me?

Before you witness any statutory declaration or affidavit, you must see the declarant or deponent sign the jurat in front of you. You must never witness a signature that was already on the document when it was brought to you.

However you can watch the declarant or deponent place a fresh signature on the document. To do this:
• you should rule a line in ink through the signature that was already on the document
• both you and the declarant/deponent should write your initials next to the ruled out signature
• after following all the other requirements of the relevant procedure in this handbook, you should watch the declarant/deponent writing his/her fresh signature as close as possible to the space provided for the signature in the jurat.

4.4.2 What special requirements should I look out for in affidavits relating to 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**

A husband or wife 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 requirement has not been met, you may inform the deponent that he/she 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 need sign, in the space provided for either the husband or wife, as appropriate.

**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) will sometimes be attached as an annexure. 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 husband or wife has completed an Affidavit of Service (by Hand), they will also need to swear or affirm an Affidavit Proving Signature.

**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.

Further information for applicants as well as downloadable forms are at the website www.familylawcourts.gov.au under ‘Divorce forms and kits’.
Appendices
Appendix A: State, territory and Commonwealth laws

The following is a list of the state, territory and Commonwealth laws under which a statutory declaration or affidavit may be made, in or for the relevant jurisdiction:11

Commonwealth
- Statutory Declarations Act 1959 (for statutory declarations)
- Evidence Act 1995 (for affidavits)

NSW
- Oaths Act 1900

Victoria
- Evidence (Miscellaneous Provisions) Act 1958

Queensland
- Oaths Act 1867

Western Australia
- Oaths, Affidavits and Statutory Declarations Act 2005

South Australia
- Oaths Act 1936 (for statutory declarations and affidavits)
- Evidence (Affidavits) Act 1928 (for affidavits)

Tasmania
- Oaths Act 2001

ACT
- Statutory Declarations Act 1959 (Cth) (for statutory declarations)
- Oaths and Affirmations Act 1984 (for affidavits)

Northern Territory
- Oaths, Affidavits and Declarations Act 2010

The following NSW Acts and Regulations are also relevant to the appointment of JPs and/or the performance of their functions:

- Justices of the Peace Act 2002
- JP Regulation 2014
- Oaths Regulation 2011

A complete version of all NSW Acts and Regulations that are currently in force is at the website www.law.nsw.gov.au. This is the official NSW Government website for online publication of legislation. It is recommended that you do not rely on any other websites to check legislation, as they do not have the official versions of NSW Acts and Regulations, and may not be up to date.

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11. This list is not exhaustive, because other legislation may be relevant to affidavits, such as various court rules.
Appendix B1: NSW statutory declaration – Eighth Schedule

Statutory Declaration
OATHS ACT 1900, NSW, EIGHTH SCHEDULE

I, ....................................................., do solemnly and sincerely declare that

I have applied for 12 months maternity leave from 16 October 2013 until 15 October 2014.

I am currently 8 months pregnant and my baby is due 11 November 2013.

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.

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 2013

..............................................................

[surname]

in the presence of an authorised witness, who states:

I, ....................................................., a NSW JP No 269856

 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

..............................................................

[signature of authorised witness] [date]

Appendix B2: NSW statutory declaration – Ninth Schedule

Statutory Declaration
OATHS ACT 1900, NSW, NINTH SCHEDULE

I, ........................................, of ........................................

[full name of declarant] [residence]
do hereby solemnly declare and affirm that

[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: ................................................ on ................................................

[place] [date]

................................................

[signature of declarant]

in the presence of an authorised witness, who states:

I, ........................................, a ........................................

[full 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 ........................................

................................................

[signature of authorised witness] [date]

Appendix B3: Commonwealth statutory declaration

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

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

I, [Name], make the following declaration under the Statutory Declarations Act 1959:

2 Set out matter declared to in numbered paragraphs

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

[Signature]

4 Place

Bankstown

5 Day

17th

6 Month and year

October 2013

Declared at Bankstown on 17th of October 2013

Before me,

[Signature]

[Name]

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

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

[Name]

[Qualification]

[Address]

### AFFIDAVIT OF GEORGE JONES 16 OCTOBER 2013

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<th>COURT DETAILS</th>
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</thead>
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<tr>
<td>Division</td>
<td>Equity Division</td>
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<td>List</td>
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<td>George Jones</td>
</tr>
<tr>
<td>Second plaintiff</td>
<td>Betty Jones</td>
</tr>
<tr>
<td>First defendant</td>
<td>NSW Trustee &amp; Guardian</td>
</tr>
<tr>
<td>Second defendant</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FILING DETAILS</th>
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<tbody>
<tr>
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<td>George Jones, Plaintiff</td>
</tr>
<tr>
<td>Filed in relation to</td>
<td>Plaintiff’s claim</td>
</tr>
<tr>
<td>Legal representative</td>
<td>Barry Smith, Barry Smith &amp; Associates</td>
</tr>
<tr>
<td>Legal representative reference</td>
<td>56976</td>
</tr>
<tr>
<td>Contact name and telephone</td>
<td>Barry Smith, (02) 9999 1111</td>
</tr>
<tr>
<td>Contact email</td>
<td><a href="mailto:barry@barrysmith.com.au">barry@barrysmith.com.au</a></td>
</tr>
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</table>
Appendix B4 continued:

AFFIDAVIT

Name: George Jones
Address: 123 Park Street, Parramatta NSW 2150
Occupation: Engineer
Date: 16 October 2013

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
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.] I 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:

   [Signature of witness: Rhonda Jackson]

   Identification document relied on (may be original or certified copy)†: Australian Passport

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 April 2012).]
[† 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.]

An editable template can be accessed via a link from the JP website www.jp.nsw.gov.au.
Appendix B5: Suggested wording for declaration by an accredited interpreter

The text below can be downloaded from the JP website www.jp.nsw.gov.au.

Declaration by accredited interpreter

1. 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.

2. 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.

3. I spoke to the declarant in the [name of language] language and I established that this is [his/her] customary language.

4. 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.

5. 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.

6. I do not have a personal relationship with the declarant.

7. Other than payment for professional service, I receive no financial or other benefit from the matters to which the declarant’s statutory declaration relates.
Appendix B6: Suggested wording for declaration by other interpreter

The text below can be downloaded from the JP website www.jp.nsw.gov.au.

Declaration by other interpreter

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

2. I spoke to the declarant in the [name of language] language and I established that this is [his/her] customary language.

3. 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.

4. 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.

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

6. I receive no financial or other benefit from the matters to which the declarant’s statutory declaration relates.
Appendix B7: Suggested wording for affidavit by an interpreter

Note to JP:

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 deponent who does not speak English.

The text below can be downloaded from the JP website www.jp.nsw.gov.au.

1. 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.

2. 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.

3. I spoke to the deponent in the [name of language] language and I established that this is [his/her] customary language.

4. 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.

5. 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] to the English language.

6. I do not have a personal relationship with the deponent.

7. Other than payment for professional service, I receive no financial or other benefit from the matters to which the deponent’s affidavit relates.
Appendix C: Definition of face and face covering

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

‘Face covering’ means an item of clothing, helmet, mask or any other thing 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 which is worn in such a way that it covers only the person’s hair.

Appendix D: Being satisfied of a legitimate medical reason

If a person who is making a statutory declaration or affidavit chooses not to show you his/her face, you must decline to witness the document, unless you are satisfied that the person has a ‘legitimate medical reason’ not to remove their face covering.

To be ‘satisfied’, you need enough information to feel actually persuaded that the person has a medical reason and that it is a legitimate one. For example, refusing to remove dark sunglasses because of a hangover is not a legitimate reason.

It is preferable that the person shows you a recent medical certificate stating that, for medical reasons, they cannot remove their face covering.

However, in certain circumstances, you may be satisfied the person has a legitimate medical reason based on what you can see (for example, if the person has an obvious injury to their face) or what the person tells you.

The extent of information you require in order to be ‘satisfied’ will also depend on the context, including:

- the purpose and effect of the document in question
- the possible consequences (for you as a JP, as well as for any other person) if the document were to be fraudulently signed by a person other than the named declarant/deponent
- 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’ not to remove their face covering, you must decline to witness the document.
Appendix E: Accommodating religious or cultural beliefs

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 9 or Section 2.3 on page 23, as applicable).

Religious beliefs or cultural practices are not a special justification for a person not removing his/her face covering. However, if possible, you should make reasonable efforts to accommodate the person’s beliefs, such as:

- only ask the person to remove the face covering to the extent needed for you to see the whole of the person’s ‘face’ (see Appendix C on page 77)
- allow the person to replace their face covering as soon as you have confirmed their identity
- if possible and not impractical, make reasonable efforts to provide the person with privacy when they remove their face covering, and
- if the person is reluctant to show their face because they are of the opposite gender to you, inform the person that they can choose to arrange to have the document witnessed by another JP who is the same gender as the person.

You only need to accommodate the person’s religious beliefs or cultural practices as far as it is reasonably practical for you to do so. If the above suggestions are not possible, then either the person must show you his/her face or you must decline to witness the document.

Oaths and affirmations – affidavits

When making an affidavit, the deponent may choose between swearing an oath, or making an affirmation. For more information, see Step 8 in Section 2.3 on page 26.

If the deponent chooses to swear an oath, he or she may also choose to hold a holy book or other religious text when swearing the oath. However it is not necessary for the deponent to hold such a text.

It is also not necessary for you to have copies of holy texts available. When a person contacts you about witnessing his or her affidavit, it is a good idea to ask if he or she chooses to swear an oath or make an affirmation. If the deponent wants to swear an oath, you can also suggest that the deponent brings his or her own holy text, if he or she wishes to hold such a text when swearing the oath.

If it is impractical for a person to swear an oath (for example, because the person insists on using a holy book but did not bring it with them) or if the person cannot decide or refuses to decide, you can suggest that they make an affirmation.
Other JP functions

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

You may sometimes need to make adjustments to accommodate a person’s religious affiliation, to the extent that it is possible to do so while still fulfilling the legal requirements of the relevant JP function.

If you would like to learn more about the practices and beliefs of particular religious affiliations, you may wish to read Section 4 of the ‘Equality Before the Law Bench Book’. Although aimed at judicial officers, it contains general information and guidance which JPs may find helpful. A copy can be found at the Judicial Commission’s website, www.judcom.nsw.gov.au, under ‘Bench Books’.

Appendix F: Definition of ‘known the person for a period at least 12 months’

Legislation in NSW does not define what is meant by the requirement in the Oaths Regulation 2011 that you have ‘known the person for a period of at least 12 months’.

To assist JPs, this handbook provides the following checklist 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 first name and surname 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 if called upon to do so in future in relation to their statutory declaration or affidavit), and
• you now recognise the declarant or deponent in front of you as that same person, and
• the statutory declaration or affidavit you are being asked to witness is made out in the name by which you have known the person for at least 12 months.

If you are not sure you can meet those conditions, you should instead confirm the person’s identity using an approved identification document.
Appendix G: Approved identification documents

Any one of these approved identification documents is acceptable, provided that it has not expired (except for an Australian passport, which is acceptable if it expired no more than two years ago). You must not accept any identification document that has been cancelled.

- A **driver’s licence or permit** with a photograph of the person in whose name the licence is issued, whether issued in Australia or another country
- A **NSW photo card** issued under the *Photo Card Act 2005*
- An **Australian proof of age card** which contains the photograph of the person in whose name the card is issued
- An **Australian passport** (either current or expired less than 2 years ago)
- A **passport or similar document** with the person’s photograph and signature issued by another country or by the United Nations (with an English language translation if not in English)
- A **national identity card** issued by another country or the United Nations for the purpose of identification with the person’s photograph and signature (with an English language translation if not in English)
- An **Australian citizenship certificate**
- A **foreign citizenship certificate** (with an English language translation if not in English)
- A **birth certificate**, whether issued in Australia, another country or by the United Nations (with an English language translation if not in English)
- A **birth extract** issued by an Australian state or territory
- A **pension card** issued by Centrelink that entitles the person in whose name the card is issued to financial benefits
- A **credit card or passbook** from a bank, building society or credit union
- An **account or statement of account** from a bank, building society or credit union, up to one year old
- A **Medicare card, pensioner concession card**, Department of Veterans’ Affairs **entitlement card** or other entitlement card issued by the Federal or any State Government
- An **electoral enrolment card** or other evidence of enrolment as an elector, up to 2 years old
- A **student identity card**, or a **certificate or statement of enrolment** up to 2 years old from an educational institution
- In the case of an inmate, an **inmate identification card**, or other document containing information identifying the inmate, prepared or used by the correctional centre in which the inmate is held
• in the case of a forensic patient, a **residential identity card**, or other document containing information identifying the patient, prepared or used by the mental health facility, correctional centre or other place in which the patient is detained

• in the case of a mental health patient other than a forensic patient, a **residential identity card**, or other document containing information identifying the patient, prepared or used by the mental health facility to which the patient is admitted

• a **police identification card** issued to a police officer by the Commissioner of Police.

A copy of one of the above identification documents is acceptable if the copy has been certified as a true copy by any:

• Justice of the Peace
• Public Notary
• Commissioner of the Court for taking affidavits
• Australian legal practitioner authorised to take and receive any affidavit
• the NSW Registrar-General
• a Deputy Registrar-General, or
• other person by law authorised to administer an oath.

However, the person who certified the copy must not be the same person who is witnessing the statutory declaration or affidavit.

You must not accept a certified copy of an identification document if the copy shows that the original has expired (except for an Australian passport, which is acceptable if it expired no more than two years ago) or that the original has been cancelled.
Appendix H: Requirements for annexures

If there is more than one annexure, they must all be marked in alphabetical order, for example, Annexure ‘A’, Annexure ‘B’ and Annexure ‘C’. The alphabetical marking should be placed in a conspicuous position on the annexure, for instance at the top of the page.

For an annexure which is only one page, the following statement must also be included on the annexure:

“This is the annexure marked [insert ‘A’, or ‘B’ or ‘C’ etc as appropriate] referred to in the [insert ‘statutory declaration’ or ‘affidavit’ as appropriate] of [insert name of declarant/deponent], [declared/sworn/affirmed] before me this [insert date] day of [insert month, year].

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

For an annexure which is more than one page, the following statement must be included on the first page of the annexure (not on a separate page):

“This and the following [insert number of pages] pages is the annexure marked [insert ‘A’, or ‘B’ or ‘C’ etc as appropriate] referred to in the [insert ‘statutory declaration’ or ‘affidavit’ as appropriate] of [insert name of declarant/deponent], [declared/sworn/affirmed] before me this [insert date] day of [insert month, year].

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

The above statement should preferably be placed at the bottom of the first page of the annexure, if the space allows it. The statement should not deface or obscure the contents of the annexure. The statement can be written by hand or added using a stamp. If you use a stamp, you will need to ensure that you cross out any words that do not apply (for example, crossing out ‘sworn’ if the annexure is attached to an affidavit that the deponent affirmed).

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

The declarant/deponent can elect to alter the declaration/affidavit by crossing out the references to the annexure (see instructions for making alterations in Step 4 of Section 2.1 on page 10 or Section 2.3 on page 24, as applicable). You can then witness the declaration/affidavit without the annexure.

Otherwise, if the declarant/deponent does not wish to remove the references to the annexure, you must decline to witness the declaration/affidavit.
Appendix I: Capacity and competence

When performing your functions as a JP, the situation may occasionally arise where it appears to you that a person might not have the legal capacity, or might not be legally competent, to make a statutory declaration or affidavit, or to sign a document relating to any kind of transaction.

A person has ‘capacity’ if they sufficiently understand the general nature of the decision they are being asked to make or the act they are being asked to perform. A person is ‘competent’ if they are mentally and physically able to do it.

You can and should assume that a person has capacity and is competent, unless there is some circumstance that indicates to you that the person might not understand or fully appreciate what he or she is being asked to do.

Circumstances where a person may lack capacity include: where the person is a child (under 18 years of age), is elderly or infirm, or appears to have an intellectual or cognitive impairment. Lack of competence may arise because of, for example, a physical disability or if the person has difficulty communicating in English.

If you are concerned that a person might not have capacity or might not be competent, you have a duty to take steps to satisfy yourself that the person does have capacity and is competent, before witnessing the person’s signature.

You can satisfy yourself about the person’s capacity by asking the person open-ended questions about the purpose, effect and contents of the document.

**Capacity – statutory declarations**

In the case of a statutory declaration, appropriate questions may include questions to check that the declarant understands, in general terms:

- the purpose for which the statutory declaration is to be used (for example, to ‘tell my story’ or ‘give information’ to the organisation that requires the declaration)
- the purpose for which that organisation is likely to use the declaration (for example, to issue a licence, or cancel a fine etc)
- what they have said in their declaration (ie its contents)
- that it is important to tell the truth in the declaration, and
- what can happen to the person if they don’t tell the truth in their declaration (ie that it is a serious criminal offence to make a false statement, and that the penalties include imprisonment).

If you are satisfied that the person understands these things, you may witness the statutory declaration in the usual way (see Section 2.1). If you are not satisfied that the person understands these things, you must decline to witness the statutory declaration.
Capacity – affidavits

In the case of an affidavit, appropriate questions may include questions to check that the deponent understands, in general terms:

- the purpose for which the affidavit is to be used (for example, to ‘tell my story to the court’)
- what they have said in their affidavit (ie its contents)
- what it means to swear an oath (eg ‘promising [name of religious deity] that I am telling the truth’) or to make an affirmation (eg ‘promising that I will tell the truth’)
- what can happen to the person if they don’t tell the truth in their affidavit (ie that it is a serious criminal offence to make a false statement, and that the penalties include imprisonment).

If you are satisfied that the person understands these things, you may witness the affidavit in the usual way (see Section 2.3).

If you are not satisfied that the person understands what is meant by ‘swearing’ or ‘affirming’ their affidavit, but you have no reason to think that the person is unable to understand the difference between the truth and a lie or to respond rationally to your questions, you may use the following special procedure:

1. tell the person that it is important to tell the truth in their affidavit
2. ask the person to declare that they will not tell lies in their affidavit
3. if the person agrees that they will not tell lies, you should cross out ‘Sworn’ or ‘Affirmed’ in the jurat and instead write ‘Declared pursuant to s.32 of the Oaths Act 1900’
4. the person then signs the affidavit in the jurat and on each page in the usual way, and
5. you can then sign your name in the jurat and on each page in the usual way (if there are any annexures, you should amend each annexure certificate by crossing out ‘Sworn/affirmed’ and instead writing ‘Declared’ before you sign the certificate.

However, if you consider that the person does not understand the difference between the truth and a lie, is not able to respond rationally to questions and/or if you are concerned for some other reason that the person does not have capacity, you must decline to witness the affidavit.

Capacity – other documents

If you are asked to witness some other kind of document, you can satisfy yourself by asking the person open-ended questions about the purpose, effect and contents of the document. If the document relates to a transaction of some kind, it is important to ask appropriate questions to satisfy yourself that the person understands:

- the general nature of the transaction (eg ‘selling my house’)
- the main choices involved (eg the person chose between selling/not selling and chose to accept the sale price offered)
- the consequences of the transaction for the person (eg the person will receive money from the sale and the house will not belong to them any more).
The greater the consequences of the transaction for the person, the more care you need to take to ensure that the person understands.

If you are satisfied that the person understands these things, you may witness the document in accordance with the instructions on the document.

If you are not satisfied that the person has capacity, you must decline to witness the document.

**Further information about capacity**

You can read more about legal capacity in the following publications:

- ‘Capacity Toolkit’, which is published by the NSW Department of Justice. A copy is available at the Department’s Diversity Services website, www.diversityservices.lawlink.nsw.gov.au
- ‘Equality Before the Law Bench Book’, which is published by the Judicial Commission of NSW. A copy is available at the Judicial Commission’s website, www.judcom.nsw.gov.au. The Bench Book provides guidance about capacity to swear or affirm, and about the kinds of adjustments that can be made for, and tips to assist communicating with:
  - people with disabilities (especially Sections 5.3.1 and 5.4.2 of the Bench Book)
  - children and young people (especially Sections 6.3.2 and 6.3.4 of the Bench Book)
  - Aboriginal and Torres Strait Islanders (especially Section 2.3.3 of the Bench Book) and
  - people from non-English speaking backgrounds (especially Sections 3.3.1, 3.3.3 and 3.3.5 of the Bench Book).

**Competence**

You should consider whether a problem with competence can be addressed by the person receiving reasonable assistance, for example:

- reading documents aloud to a person who has a visual impairment
- using simpler language to communicate with a child or with a person who has an intellectual disability
- allowing a person who has difficulty communicating in English to be assisted by an interpreter
- having someone physically assist the person to sign the document (see Appendix J on page 86).
Appendix J: Instructions for making a mark

Statutory declarations and affidavits

If the declarant/deponent is unable to sign because he or she does not know how to write his or her name, or is unable to write it because of a visual or physical impairment, ask the person to make his or her mark on the declaration/affidavit.

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 his or her name but is physically unable to complete it, the partial signature (or even a partial letter) can be a sufficient ‘mark’.

It is preferable (but not essential) that the declarant/deponent makes his or her mark in the place for his or her signature.

After the declarant/deponent has made the mark, it is recommended that you:
• write the words ‘This is the mark of [full name of declarant/deponent]’ next to or underneath the mark, taking care not to write over or obscure the mark
• make a note on the document (preferably next to or beneath the jurat) of any unusual circumstances that occurred in signing or marking the document. This will provide other persons who may need to rely on the declaration/affidavit with information about how it was made.

If the declaration/affidavit was read aloud to the declarant/deponent in your presence because the declarant/deponent is blind, illiterate or made the declaration/affidavit through an interpreter, you must also certify at the end of the document that:
• the statutory declaration/affidavit was read to the declarant in your presence
• it appeared to you that the declarant/deponent understood the statutory declaration/affidavit, and
• the declarant/deponent subscribed the statutory declaration/affidavit (by signature or mark) in your presence.

If the declaration/affidavit has more than one page, it is preferable for the declarant/deponent, if he or she is able, to place his or her mark at the bottom of each preceding page (see Step 9 in Section 2.1 on page 13 or Section 2.3 on page 27, as applicable).

If the declarant/deponent is physically unable to sign or make a mark on the declaration/affidavit, another person (not the JP) can physically assist them, such as by guiding their hand, to make a signature or mark on the affidavit/declaration in your presence. This is called a ‘guided signature’ or a ‘guided mark’.
For a guided signature or guided mark to be valid, it is important that the deponent/declarant either says, or positively indicates (either verbally or non-verbally) when asked, that they would like the other person to assist them to sign or make a mark.

After the declarant/deponent 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 he/she wished for [name of other person] to assist him/her to sign/make a mark
- [name of other person] then [describe how the other person assisted the deponent/declarant to sign or make a mark] in my presence.

**Documents other than statutory declarations and affidavits**

Often, if a document is required to be ‘signed’ by a person, it is sufficient if the person makes his or her mark on the document (instead of signing his or her name). However, some legislation provides detailed rules about making marks and how a mark (and, in some cases, an ordinary signature) must be attested 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 68) or seek advice (see Section 4.3.1 on page 55 about the support and information available to JPs in NSW).
Appendix K: Certifying identity requirements

When a statutory declaration or affidavit does not contain the wording of the identity certification pre-printed, the appropriate wording for you to add is:¹²

I, ..........................................................................., a NSW JP ...................................................., certify:
[full name of JP]  [JP registration number]

[* include only the text that applies]

1. *I saw the face of the declarant/deponent OR
   *I did not see the face of the declarant/deponent because he/she was wearing a face covering, but I am satisfied that he/she had a special justification for not removing it, and

2. *I have known the person for at least 12 months OR
   *I confirmed the person's identity with ..............................................................................................................
   [describe identification document relied on]

...............................................................................                  ........................................................................,
[signature of JP]  [date]

You may hand-write or stamp the wording anywhere on the document that there is space, preferably on the same side of the page as the other text appears. However, if there is no space on the front, it is acceptable to place the certification on the back of the document. The identity certification must be ‘on’ the statutory declaration/affidavit, so you must not provide it on a separate piece of paper.

When adding the wording of the identity certification by hand or with a stamp, you have to sign the document twice: once to witness the client’s signature, and again for the certification.

¹² You do not have to certify that identity requirements have been met if you are witnessing:
- a statutory declaration under the law of the Commonwealth or the Australian Capital Territory (ACT), or
- a Commonwealth affidavit.
Appendix L: Provision of accredited interpreter services

NSW Government agencies fund the provision of interpreter services when dealing with clients, in order to provide all clients with access to Government services. Where a statutory declaration is required by a NSW Government agency, enquiries about booking an interpreter should be directed to the agency in question.

In other instances, Multicultural NSW may provide interpreter services on a fee-for-service basis. Further information is available at www.multicultural.nsw.gov.au or by contacting the Commission’s Language Services Division on telephone (1300 651 500).

In addition, an online directory of interpreters who are accredited through the National Accreditation Authority for Translators and Interpreters (NAATI) and available on a fee-for-service basis is at www.naati.com.au.

‘Professional Interpreter’ is the NAATI credential that is the minimum level of competence for professional interpreting recommended by NAATI for work in most settings, including banking, law, health, and social and community services.

Appendix M: 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 of original documents, in accordance with the procedure in Section 2.5.

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 all such versions are considered ‘original’ for the purposes of this handbook. For example, a person’s birth certificate issued shortly after his/her 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 could include that it:

- appears on official letterhead or
- 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, and made by a photocopier or other machine with equivalent document 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.

**Appendix N: 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. However there may be alternatives to a certified copy. For example, the person asking you to certify a copy could instead:

- make a statutory declaration, attaching the copy as an annexure and declaring that it is a true copy of the original that exists only in electronic form. You could witness the person making that declaration (but would still be prohibited from certifying the copy), or
- if the electronic original 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 asking you to certify a copy should first discuss the proposed alternative with the organisation who requires the certified copy.
# Index

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>affidavit</td>
<td>22-29, 30-35, 68, 72-73</td>
</tr>
<tr>
<td>affirm, affirmation</td>
<td>22, 27, 78</td>
</tr>
<tr>
<td>alterations</td>
<td>10, 24, 38</td>
</tr>
<tr>
<td>annexure</td>
<td>11, 16, 25, 29, 82</td>
</tr>
<tr>
<td>attest</td>
<td>43</td>
</tr>
<tr>
<td>appointment (as a JP)</td>
<td>48, 54</td>
</tr>
<tr>
<td>capacity</td>
<td>83-85</td>
</tr>
<tr>
<td>certificate of appointment</td>
<td>54</td>
</tr>
<tr>
<td>certify (a copy)</td>
<td>36-39</td>
</tr>
<tr>
<td>Code of Conduct for JPs in NSW</td>
<td>49, 92-93</td>
</tr>
<tr>
<td>competence</td>
<td>83</td>
</tr>
<tr>
<td>conflict of interest</td>
<td>6, 57</td>
</tr>
<tr>
<td>copy</td>
<td>36, 90</td>
</tr>
<tr>
<td>declare, declarant</td>
<td>8</td>
</tr>
<tr>
<td>deponent</td>
<td>22</td>
</tr>
<tr>
<td>duty of care</td>
<td>5</td>
</tr>
<tr>
<td>identity, identification</td>
<td>10, 15, 24, 29, 79, 80-81</td>
</tr>
<tr>
<td>interpreter</td>
<td>17-21, 30-35, 74-76, 89</td>
</tr>
<tr>
<td>JP register, JP registration number</td>
<td>46, 48</td>
</tr>
<tr>
<td>jurat</td>
<td>8, 22</td>
</tr>
<tr>
<td>Justices of the Peace Act 2002</td>
<td>2, 48, 50, 54, 68</td>
</tr>
<tr>
<td>label</td>
<td>60</td>
</tr>
<tr>
<td>legislation</td>
<td>68</td>
</tr>
<tr>
<td>log book</td>
<td>58</td>
</tr>
<tr>
<td>personal information</td>
<td>58</td>
</tr>
<tr>
<td>oath</td>
<td>22, 26, 78</td>
</tr>
<tr>
<td>original document</td>
<td>89-90</td>
</tr>
<tr>
<td>reappointment</td>
<td>48-49</td>
</tr>
<tr>
<td>satisfied, to be satisfied</td>
<td>64</td>
</tr>
<tr>
<td>subscribe</td>
<td>16</td>
</tr>
<tr>
<td>stamp</td>
<td>59</td>
</tr>
<tr>
<td>statutory declaration</td>
<td>8-16, 17-21, 64, 68, 69-71</td>
</tr>
<tr>
<td>swear</td>
<td>22, 26, 84</td>
</tr>
</tbody>
</table>

Page numbers in **bold** indicate that a definition of the word is on that page.
Code of Conduct for Justices of the Peace

1 Access to services

1) A justice of the peace must not unreasonably refuse to provide justice of the peace services and must treat all persons seeking such services with courtesy, dignity and respect.

2) A justice of the peace must deal with requests for justice of the peace services in a timely manner.

2 Conduct and integrity

1) A justice of the peace must not engage in dishonest activities or conduct himself or herself in such a way as to bring the office of justice of the peace into disrepute.

2) A justice of the peace must keep safe and must not reveal information which is private, confidential or commercially sensitive and which the justice of the peace has obtained when providing justice of the peace services, unless authorised by law.

3) A justice of the peace must remain independent and impartial when providing justice of the peace services.

4) If a justice of the peace has a personal, family, financial or business interest in a matter before them and is satisfied that there is a conflict of interest, the justice of the peace should decline to provide such services in that matter.

5) If the term of appointment of a justice of the peace expires and the person has not been reappointed or if the justice of the peace has been removed from office by the Governor, the person must immediately cease providing justice of the peace services.

3 Financial and personal benefit

1) A justice of the peace must not charge a fee or accept a gift for providing justice of the peace services.

2) A justice of the peace must not use the title of justice of the peace to advance or appear to advance his or her business, commercial or personal interests, but a justice of the peace may use the title of a justice of the peace after his or her name on a business card or letterhead (whether in hard copy or electronic form).
4 Knowledge and competence

1) A justice of the peace must be familiar with and follow the provisions in the Department of Justice’s publication *Justice of the Peace Handbook* and in any guidelines issued by Minister with respect to the exercise of specified functions by justices of the peace under the Act.

   **Note.** The Handbook is available at www.jp.nsw.gov.au.

2) When providing justice of the peace services, a justice of the peace must clearly record his or her justice of the peace registration number together with his or her full name and signature on the document.

3) A justice of the peace must never witness a document unless he or she is satisfied as to the identity of the person and has seen the person sign the document.

4) Where an Act of Parliament provides that a declaration or instrument be signed or attested by a justice of the peace, the justice of the peace must do so in accordance with any instructions under that Act and any instructions on the declaration or instrument.

5) A justice of the peace must not offer legal advice in his or her capacity as a justice of the peace.

5 Notifications

1) A justice of the peace must, as soon as practicable after:
   a) being convicted of a criminal offence, or
   b) being found to have acted dishonestly by any court, tribunal, inquiry, regulatory agency, complaint handling or dispute resolution body or professional, business, trade or industry association, or
   c) becoming bankrupt or making any debt agreement or personal insolvency agreement under the *Bankruptcy Act 1966* of the Commonwealth, or
   d) being disqualified from being involved in the management of any company under the *Corporations Act 2001* of the Commonwealth, or
   e) being suspended or disqualified from holding any licence, registration, certificate or membership in relation to any profession, business, trade or industry,

   notify the Department of Justice in writing of that matter.

2) A justice of the peace must notify the Department of Justice in writing of any of the following changes as soon as practicable after that change:
   a) a change to the name of the justice of the peace,
   b) a change to his or her postal or email address,
   c) a change to the telephone number on which the justice of the peace can be contacted in relation to justice of the peace services.
Contacting the NSW Department of Justice

Appointments Services
Ministerial and Parliamentary Services
Department of Justice
GPO Box 6,
Sydney NSW 2001

www.jp.nsw.gov.au
jp@justice.nsw.gov.au

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