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:

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.legislation.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

*name of declarant*

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.

My husband is planning four week’s leave from when the baby is born.

While on maternity leave I will not engage in any conduct that may be contrary to my employment contract.

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

Declared at: Parramatta on 1 October 2013

[place] [date]

*signature of declarant*

in the presence of an authorised witness, who states:

*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*

1. *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* [qualifi cation of authorised witness]

[describe identification document relied on]

1 October 2013

Appendix B2: NSW statutory declaration – Ninth Schedule

Statutory Declaration
OATHS ACT 1900, NSW, NINTH SCHEDULE

I, …………………………………………, of ……………………………………………………………
[姓名 of declarant] [居住地]
do hereby solemnly declare and affirm that …………………………………………………………
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[事实陈述根据宣誓者的知识、信念或信息，分项]

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 ……………………………………………
[地点] [日期]

..............................................................
[宣誓者的签名]
in the presence of an authorised witness, who states:

I, …………………………………………………………, a ……………………………………………
[name of authorised witness] [资格证号]
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 ………………………………………
[描述使用的身份证明文件]

..............................................................
[签名]
[日期]

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

Lynne Gibson
Clerical Officer
83 Lavinia Street, Bankstown NSW 2200

I, Lynne Gibson, make the following declaration under the Statutory Declarations Act 1959:

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.

Lynne Gibson
Declared at Bankstown on 17th of October 2013

Before me,

James Ireland
NSW JP No 24417
81 Lavinia Street, Bankstown NSW 2200

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

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

## AFFIDAVIT OF GEORGE JONES 16 OCTOBER 2013

### COURT DETAILS
- **Court**: Supreme Court
- **Division**: Equity Division
- **List**: Family Provision List
- **Registry**: Sydney
- **Case number**: 2013/12345

### TITLE OF PROCEEDINGS
- **First plaintiff**: George Jones
- **Second plaintiff**: Betty Jones
- **First defendant**: NSW Trustee & Guardian
- **Second defendant**: 

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

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Continues next page
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 George Jones

Name of witness Rhonda Jackson
Address of witness 10 Kurrajong Road, Parramatta NSW 2150
Capacity of witness NSW JP No 278943

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):
1 I saw the face of the deponent. [OR, delete whichever option is applicable].
   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 applicable].
   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)†

Signature of witness Rhonda Jackson

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

[* The only “special justification” for not removing a face covering is a legitimate medical reason (at 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’.

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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:

\[
\begin{array}{ll}
[\text{full name of JP}] & [\text{JP registration number}] \\
\end{array}
\]

[* 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]

\[
\begin{array}{ll}
\text{[signature of JP]} & \text{[date]} \\
\end{array}
\]

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.
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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

Phone: (02) 8688 7487
Fax: (02) 8688 9620

You can address any correspondence or written notices to the Attorney General c/- the Department at the postal address, street address, email address or facsimile number above.