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 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.¹

**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. 3

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

<table>
<thead>
<tr>
<th>What is it?</th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What can I witness?</td>
<td>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 <strong>signed and witnessed in NSW</strong>.</td>
</tr>
<tr>
<td>Important tips</td>
<td>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 <strong>accurate, independent and impartial</strong>. 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.</td>
</tr>
</tbody>
</table>
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:

“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 respond 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.

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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. |
Functions

2.4 Affidavits (with interpreter)

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.

6. You do not have to certify that identity requirements have been met if the affidavit is a Commonwealth affidavit (i.e., an affidavit for the purpose of proceedings in a Commonwealth court, for the purpose of or in connection with a law of the Commonwealth, or in connection with the administration of a Commonwealth department or agency).
**STEP 15**

Follow the final steps for the 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)  
  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).
- 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.
### 2.5 Certifying a copy of an original document

| **What is it?** | 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.⁸

A definition of ‘**copy**’ and ‘**original document**’ is in Appendix M on page 89.

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| **What can I certify?** | 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.

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

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

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

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

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.

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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

| What is it? | As a JP, you can **only** 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. |
| --- | --- |
| What functions can I perform? | 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). |
| Important tips | You should first **check which NSW Act or NSW Regulation** 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. |
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).\(^\text{10}\)

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.

\(^\text{10}\) In this context, ‘attest’ means to bear witness to, to affirm the genuineness of in an official capacity.