



## Section 4

# Frequently Asked Questions

## 4 Frequently Asked Questions

### 4.1 About your appointment

#### 4.1.1 Can I obtain a Certificate of Appointment as a Justice of the Peace?

You can apply for an optional Certificate of Appointment following confirmation of your appointment as a JP by the Department of Justice. A fee applies. Further information and order forms are available at the website [www.jp.nsw.gov.au](http://www.jp.nsw.gov.au).

#### 4.1.2 Is there a JP club or association I can join?

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

JP associations in NSW include:

- NSW Justices Association ([www.nswja.org.au](http://www.nswja.org.au))
- Northern NSW Federation of JPs ([www.nnswfjps.org](http://www.nnswfjps.org))
- Tweed Valley Justices Association ([www.tweedjustices.com](http://www.tweedjustices.com))
- Australian Justices of the Peace Association.

### 4.2 About your authority as a JP

#### 4.2.1 Where do I get my authority to perform the role of JP?

NSW JPs are appointed by the Governor of NSW under the *Justices of the Peace Act 2002* (NSW).

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

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

### 4.2.2 Can a JP perform marriage ceremonies?

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

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

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

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

### 4.2.4 Is a JP exempt from jury duty?

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

## 4.3 About providing JP services

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

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

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

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

If you or another person need legal advice, legal information or other legal assistance, refer to section 4.3.3 on page 56.

### 4.3.2 What is an example of a court finding that a JP owed a ‘duty of care’?

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

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

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

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

### 4.3.3 What if a person asks me for legal advice?

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

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

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

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

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

LawAccess NSW publishes a range of promotional resources that JPs may find useful when referring people to their service. To view and/or order any LawAccess publications, please go to the Publications tab at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).

#### 4.3.4 What is a conflict of interest, and how should I avoid one?

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

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

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

Examples include where:

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

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

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

However if the document is part of a process that will lead (or might reasonably be expected to lead) to you obtaining a commission, bonus or indeed any income or benefit that you would not ordinarily receive, you should refer the document to another JP who does not have such a conflict of interest.

### 4.3.5 Can I witness or certify documents for myself, or my family members?

You cannot witness or certify a document for yourself. For example:

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

It is not advisable for you to witness or certify a document for a member of your family. This is because of the potential for an actual or perceived conflict of interest (see Section 4.3.4 above) and the risk that the document may be rejected on that basis by the organisation that requires it.

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

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

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

If you choose to keep a log book, you should not record the personal information of any person, other than the name of the declarant or deponent (or, in relation to a copy of an original document that you have certified, the name of the person to whom the document relates). **‘Personal information’** means a person’s name, address, contact details, date of birth, and any other information or opinion about the person.

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

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

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

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

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

#### **4.3.7 Can I use a stamp to save time when performing JP functions?**

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

There is no obligation for a JP to purchase or use any stamp when performing JP functions.

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

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

[your full name]

NSW JP [your JP registration number]

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

If you choose to purchase a stamp for certifying a copy of an original document, the following words, or words substantially the same as the following, must be used:

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

[your full name]

NSW JP [your JP registration number]

It is not recommended that you use a stamp to insert jurat or other clauses when witnessing documents, because some legislative provisions might require you to use a particular form of words. An exception is the clause required to be inserted and signed by the JP on annexures to affidavits and statutory declarations (see Appendix H on page 82).

#### 4.3.8 Can I use adhesive labels to save time when performing JP functions?

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

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

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

#### 4.3.9 How should I deal with requests to witness or certify a very large number of documents?

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

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

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

#### 4.3.10 Where should I provide my JP services?

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

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

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



#### 4.3.11 Can I help someone prepare a document that I witness or certify?

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

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

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

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

#### 4.3.13 Do I have to read the contents of each document I witness?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

You can also contact the Department of Justice if you have any concerns about any incident involving intimidation or attempted intimidation of a JP, and/or to request that your details be removed from the public JP register (see Section 3.1 on page 46). The Department's contact details are at the back of this handbook.

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

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

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

Of course, the suggested procedures in this handbook include a step where you warn a declarant/deponent about the penalties for making a false declaration or swearing/affirming a false affidavit.

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

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

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

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

### **4.3.19 What does a requirement to be ‘satisfied’ mean?**

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

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

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

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

## **4.4 About statutory declarations and affidavits**

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

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

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

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

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

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

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

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

A husband or wife can only sign the Affidavit in the Application for Divorce after they have been separated for at least twelve months. If you become aware that requirement has not been met, you may inform the deponent that he/she should obtain legal advice, but you are not required to decline to witness the affidavit.

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

### ***Affidavit of Service (by Post or by Hand)***

At a later stage, a sole applicant will need to complete an Affidavit of Service (by Post) or an Affidavit of Service (by Hand). A separate document titled Acknowledgment of Service (Divorce) will sometimes be attached as an annexure. If you are witnessing an Affidavit of Service that has such an annexure, you must also complete the Annexure Note at the bottom of the Acknowledgment of Service.

### ***Affidavit Proving Signature***

If the applicant husband or wife has completed an Affidavit of Service (by Hand), they will also need to swear or affirm an Affidavit Proving Signature.

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

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

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

