

Witnessing overseas and interstate documents (Updated 30 Sept 2019)

The Department of Communities and Justice regularly receives inquiries as to whether NSW Justices of the Peace (JPs) can witness interstate or overseas documents. Recent changes to the law now permit NSW JPs to witness the execution of interstate documents. This factsheet updates previous advice to JPs published by the Department.

What interstate documents can NSW JPs witness?

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

JPs can also **certify copies of documents** from other States, Territories and the Commonwealth.

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

Can NSW JPs witness documents for use overseas?

NSW JPs are not authorised under NSW law to witness the execution of documents for use overseas, including “proof of life” forms for the purposes of claiming overseas pensions. NSW JPs can certify copies of original documents from overseas.

What prevents NSW JPs from witnessing documents from overseas?

NSW JPs can only perform a task in their capacity as a JP if that function is conferred by a NSW Act or Regulation. If a NSW JP performs any other task, they are not doing so in their capacity as a NSWJP. There have been no recent changes to the functions of NSW JPs with regard to witnessing the execution of documents for use overseas.

What if overseas governments will accept other documents I have witnessed?

Overseas government agencies may advise that a NSW JP can witness the execution of their document. However, in the absence of any authority under NSW law, any NSW JP who witnesses an overseas document does not do so in their capacity as a NSW JP.

Who can witness overseas documents?

In Australia, public notaries are able to witness signatures on overseas documents. Public notaries are appointed by the Supreme Court and must:

- Be a solicitor or barrister with at least five years’ standing;
- Have completed the prescribed Notarial Practice Course, which includes the implications of witnessing, certifying and authorising foreign legal documents;
- Have applied through the Legal Profession Admission Board.

Public notaries are held to the same standard of conduct as other Australian legal practitioners, have additional conduct requirements applicable to the office of public notary, and must have indemnity insurance to protect clients’ interests.

Is there anyone else that can witness ‘Proof of Life’ documents?

The International Services Branch of Centrelink provides assistance to people seeking to claim a pension from a number of countries which Australia has reciprocal aged pension agreements with. JPs can refer people who ask them to witness proof of life documents to the International Services Branch phone line on 131 673 or website at:

<https://www.humanservices.gov.au/individuals/services/centrelink/international-services>