

JUSTICE OF THE PEACE HANDBOOK

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Government of South Australia
Attorney-General's Department

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- Royal Association of Justices of SA Inc
- SA Health
- SA Lands Titles Office
- SA Registry of Birth, Deaths and Marriages
- South Australian Civil and Administrative Tribunal
- Supreme Court of South Australia (Civil Registry)
- TAFE SA

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DISCLAIMER FOR HANDBOOK

This is the third edition of the Justice of the Peace Handbook prepared by Justice of the Peace Services of the Attorney-General's Department of South Australia. It is believed to be up to date at the time of publication. It is intended to assist JPs in understanding their role as a JP and their duties in witnessing various documents. It is not to be used for the purposes of interpreting or applying legislation, court rules, practice directions, subordinate legislation or the like. It is not intended as a legal document. For legal advice the reader must seek advice from the legal profession. All reasonable care has been taken to provide accurate information; however, as legislation may change there may be changes to the information contained in this publication. Justice of the Peace Services will periodically update the information in this Handbook and post on the website.

The Justice of the Peace Handbook is free to download from the Attorney-General's Department website www.agd.sa.gov.au.

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SECTION 1

INTRODUCTION

ABOUT THIS HANDBOOK

The Justice of the Peace Handbook (the Handbook) will help guide you in undertaking your duties as a Justice of the Peace (JP) with confidence.

The Handbook has been developed by Justice of the Peace Services (JPS) and will help you understand your responsibilities and obligations under the *Justices of the Peace Act 2005* (the Act) and the *Justices of the Peace Regulations 2021* (the Regulations).

If you are asked to perform a duty that is not covered in the Handbook or have any questions, please contact JPS on 131 882 or email jpservices@sa.gov.au.

The Handbook is available online at the Attorney-General's Department website www.agd.sa.gov.au. It will be revised periodically with changes affecting your functions as a JP.

Please note this Handbook does not deal with the duties of Special Justices.

HISTORY OF JPS IN SA

The origin of JPs has been traced back to Britain in 1195, when King Richard the Lionheart commissioned certain knights to preserve the peace in unruly areas. They were responsible to the King for ensuring that the law was upheld and they were known as Custodes Pacis (Keepers of the Peace). The Custodes Pacis were the forefathers of JPs.

During the early 1320s, Keepers of the Peace were appointed in each county, and by the 1340s these keepers had powers to hear and determine trespasses and punish offenders. The title 'justice of the peace' derives from 1361 during the reign of Edward III, making the office one of the oldest in the common law system.

Over time, JPs in Britain were authorised to perform functions ranging from hearing and determining offences to licensing public houses. JPs in Australia today play a more limited role and have little in common with their earlier British counterparts.

JPs were recognised in the Australian colonies from 1788 and after the settlement of SA in 1836, the first JP was appointed here. Today there are over 7,000 JPs in SA.

There are no national JPs in Australia. Each state and territory has its own legislation to regulate the appointment and powers of JPs. The functions of the office are different from state to state and witnessing requirements also differ between jurisdictions.

SA JPs can witness documents whilst outside SA if the document is to take effect in SA. This is the same as if the witnessing was done in SA, unless the law that governs the document requires it to be witnessed in the State.

SUPPORT FOR JPS

Justice of the Peace Services

JPS delivers a range of services to the SA community including managing the application, appointment, conduct and removal of JPs and Special Justices (SJs) in accordance with the Act and the Regulations. JPS is part of the Registration Branch of Consumer and Business Services, a Department within the SA Attorney-General's Department.

JPS maintains the SA Roll of Justices - a database containing contact information for JPs available around the state. The Roll of Justices is accessible via the Attorney-General's Department website www.agd.sa.gov.au.

JPS staff are available to:

- answer queries about how to become a JP or SJ
- assist members of the public to find a JP
- provide verification of JP Identification Numbers and whether a person is a JP
- provide support to JPs carrying out the functions of their office
- take complaints against JPs.

JPS also manages the Attorney-General's Department JP Volunteer Service which provides a witnessing service to the public between 10am to 4pm Monday to Friday in the central business district.

JPS can be contacted on 131 882 or email jpservices@sa.gov.au between 9am to 4.30pm Monday to Friday.

Attorney-General's Department Website

The website contains important information for JPs. The website address is www.agd.sa.gov.au and you can access the JPS section by clicking in the box 'Services and Support' and on the link 'Justice of the Peace'.

In this section you will find:

- information relevant to your role
- resources and forms
- information about the JPS Portal.

The JPS Portal allows JPs to:

- update their contact and employment details
- update details which appear on the Roll of Justices (the Roll)
- advise JPS of a change of name
- apply for suspension as a JP for personal reasons
- resign from being a JP
- apply for reappointment as a JP.

If you do not have access to the JPS Portal and you are a current JP, please contact JPS on 131 882 or email jpservices@sa.gov.au

Information for the public about how to become a JP or where to find one is available on the SA.GOV.AU website.

Royal Association of Justices of South Australia Inc.

The Royal Association of Justices of South Australia Inc. (the Association) is a registered not-for-profit association which supports its members through education and training. JPs can apply to become members of the Association; however membership is not compulsory and has no impact on your appointment as a JP.

The Association is located at Building 8, 300 Richmond Road, Netley and can be contacted on (08) 8297 4044 Monday to Friday 10am-4pm or email [**registrar@rajsa.com.au**](mailto:registrar@rajsa.com.au).

Further information about the Association is available on their website [**www.rajsa.asn.au**](http://www.rajsa.asn.au).

Training

The Royal Association of Justices of SA Inc. and TAFE SA provide training for JPs and some other authorised witnesses. For more information contact:

- Royal Association of Justices of SA Inc. - (08) 8297 4044 or [**www.rajsa.asn.au**](http://www.rajsa.asn.au)
- TAFE SA - (08) 1800 882 661 or [**www.tafesa.edu.au**](http://www.tafesa.edu.au).

Please note while we recommend training, it is not a prerequisite for applying to become a JP or to remain a JP in SA.

SECTION 2

YOUR RESPONSIBILITIES, OBLIGATIONS & CONDUCT AS A JP

APPOINTMENT CONDITIONS & RESPONSIBILITIES

Your appointment

Your appointment as a JP is for a term of up to 10 years. The date of the expiration of your appointment is stated on your Certificate of Appointment. Approximately five months prior to the expiration of your appointment, you will receive notification to commence the reappointment process through the JPS Portal.

Your appointment is made under the Act and the Regulations. You can access copies of the Act, the Regulations and the JP Code of Conduct on the website www.agd.sa.gov.au

JPs holding office immediately before **1 July 2006** (having been appointed under the former legislation) were given the opportunity to apply for appointment under the Act. Pursuant to the transitional provisions in Schedule 1 of the Act, JPs who were not appointed under the Act during this process, ceased on 30 June 2020 by notice published in the SA Government Gazette by the Attorney-General.

Responsibilities as a JP

As a JP you play an important role in helping the community and the legal system. Your role is to act as an independent and impartial witness to documents people make for legal or official purposes. You have been appointed to this role because you are considered a person of good character, reputation and standing in the community. The public trusts that you are a person of integrity and honesty and that you will carry out your duties with care and diligence.

It is good practice to use the same procedure every time you witness a document and we recommend you use the procedures set out in the Handbook unless a document has accompanying instructions. If you use a standard procedure you can describe confidently how you witnessed a document should you be asked to give evidence in court.

You should examine the document to check it is in the correct format and to ensure you understand what is required by you. If there are instructions you must read them carefully and follow them to ensure you have carried out your duties correctly.

Incorrect witnessing of a document may result in the person suffering financial loss or other detriment. If you are unsure about the document or what you are required to do, please contact JPS. If you are not able to contact JPS, we suggest you decline to witness the document, explaining the reasons you are doing so and refer the person to another JP who may have more experience with the type of document you are being asked to witness. Alternatively you can offer to make another time with the person after you have been able to seek assistance.

Oaths of Office

Following your appointment as a JP and before exercising any duties, you must take the oath of allegiance and the judicial oath within three months after your appointment, as required by section 6 of the *Oaths Act 1936*.

The completed Oaths form must then be returned to JPS so you can receive your appointment package. Should you fail to take your Oaths within three months after your appointment under the Act, you may be subject to disciplinary action which may include suspension.

Please note a JP is **not** authorised to administer these Oaths.

If you are reappointed for a further term and have already taken the Oaths, you are not required to retake it.

JP Code of Conduct

The JP Code of Conduct (COC) is prescribed in the Regulations (Schedule 1) and all JPs are required to comply with it.

You must notify JPS in writing within 14 days of the following matters occurring:

- being charged with an offence (other than an offence that is expiable)
- the charge of an offence (other than an offence that is expiable) alleged to have been committed by you being withdrawn, dismissed or discontinued
- being convicted or acquitted of an offence (other than an offence that is expiable)
- being issued with an interim intervention order or an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*
- being issued with an interim firearms prohibition order or a firearms prohibition order under the *Firearms Act 2015*

being subject to any of the following:

- a control order under the *Serious and Organised Crime (Control) Act 2008*
- a control order under Part 5.3 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code
- a control order under the *Child Sex Offenders Registration Act 2006*
- being diagnosed with a mental illness where there are concerns the justice may cause harm to themselves, others or property- being convicted or acquitted of an offence (other than an offence that is expiable)
- being found to have acted dishonestly by any court, tribunal, inquiry, regulatory agency or complaint handling or dispute resolution body
- becoming bankrupt or applying as a debtor to take benefit of the laws relating to bankruptcy
- being disqualified from managing or being involved in the management of any company under the *Corporations Act 2001* (Commonwealth).

You must also notify JPS in writing if you are expecting to leave the state or unable to carry out your duties for longer than three months.

The Attorney-General or Delegate has the power to take disciplinary action against a JP if the JP breaches or fails to comply with the conditions of appointment or with a prescribed provision of the COC. Disciplinary action can include reprimand, suspension or further conditions may be imposed upon the appointment.

A copy of the full COC is in Section 4 of this handbook.

USE OF THE JP & JP RETIRED TITLES

Use of the title 'JP'

The title 'JP' must only be used when performing official functions as a JP and not when conducting business that does not relate to your role. You must not use the initials 'JP' when witnessing documents that do not require a JP to witness them. The COC contains the following restrictions on the use of office or the title JP:

7— Restrictions on use of office or title of justice

1. A justice must not—
 - (a) use, or seek to use, the office of justice of the peace for the purpose of advancing the justice's business, commercial or personal interests; or
 - (b) use, or seek to use, the title of justice of the peace for the purpose of advancing the justice's business or commercial interest; or
 - (c) use, or seek to use, the office or title of justice of the peace in a manner, or for a purpose, that may bring the office of justice of the peace into disrepute.

You must also not use the title 'JP' to advance your standing in the community, when providing written character references to support or promote family, friend or business associates or when signing statements or letters about personal matters.

JPs can however use the JP title with their contact details for the purpose of promoting their services as a JP. An example of this can be on printed cards detailing their contact details so that people can contact them for JP services.

It is an offence to use the title 'JP' when you are not entitled to do so. It is also an offence to hold yourself out as a JP if you are not.

Use of title 'JP (Retired)'

If you resign from office as a JP you must cease performing official functions and using the title 'JP'. If you resign as a JP you may use the title 'JP (Retired)' if:

- you served as a JP for at least 20 years
- you were not removed from office by the Attorney-General
- you have not been prohibited by the Attorney-General or Delegate to use the title.

The JP (Retired) title must be used with caution and not to gain profit or to advance business or commercial interests. Disciplinary action can be taken against a person who uses the title or any other title that suggests the person is a retired justice, in contravention of a code of conduct.

Payment for Services

As a JP you are a volunteer and it is in breach of the COC if you directly or indirectly solicit or accept any fees or reward from any person in connection with your office. This includes any gifts, gratuity, benefit or favour.

It is however within your right to refuse to witness a document if it will result in you incurring any monetary costs.

Changes to your details and the Roll of Justices

Your details are recorded in the JP System maintained by JPS. The JP System includes the Roll of Justices (the Roll) which is accessed by the public to find a JP.

The Attorney-General is required by the Act to maintain the Roll and it is available to the public through the **SA.GOV.AU** website. It is important to have your current details on the Roll because members of the public use the Roll to find a JP in their local area.

The Roll contains your:

- name
- suburb
- telephone number
- available times
- languages spoken
- expiry date of your appointment
- whether you are a SJ

Other information the JP System holds, which is not available to the public, includes your:

- residential and postal address
- employment and occupation
- other information relating to your appointment.

JPS will use your contact information to advise you of:

- the latest information about the office of JPs
- any changes to the Act or Regulations
- information to help you carry out your official duties accurately and appropriately.

You must notify JPS in writing within 28 days of any changes to:

- your name
- business or home address
- your contact telephone numbers (including mobile, home or business) or
- your occupation.

Login to the JPS Portal to update your information. If you change your name, you must upload to the Portal a certified copy of the change of name document at the time of submitting your change of name request. The documents you can provide as evidence of your change of name are an official change of name certificate, deed poll document or official marriage certificate (issued by Births, Deaths and Marriages, not the one provided to you on the day of marriage by your celebrant).

COMPLAINTS, CHARGES & CONVICTIONS

Complaints

Complaints against JPs must be made in writing and lodged with the JPS. There is an online feedback and complaints form which is accessible via www.sa.gov.au.

JPS reviews all complaints made against JPs for South Australia and considers whether a breach of the JP Code of Conduct may have occurred. If the information provided in the complaint determines there is sufficient cause for concern, JPS can arrange for an investigation to ascertain whether there may be any grounds for taking disciplinary action against the JP.

Types of complaints that will be considered are:

- JPs not complying with or breaching the COC
- JPs not complying with or breaching the *Justices of the Peace Act 2005*
- JPs not complying with a condition or requirement of their appointment
- JPs who have been charged with or convicted of offences
- JPs not carrying out the official functions of the office correctly
- General misconduct of JPs that if substantiated may result in bringing the office of a JP into disrepute.

Trivial or vexatious complaints against a JP or personal disputes between a member of the public and a JP will not be considered. JPS follows a standard procedure in managing complaints about JPs. However the approach adopted to investigate and manage complaints may vary depending on the nature and seriousness of the complaint as well as the urgency of the issues arising in connection with the complaint.

The Act and Regulations provide that the following disciplinary actions can be taken against a JP:

- formal reprimand
- imposing conditions on the JP's appointment
- suspending the JP from office

JPS does not investigate or prosecute criminal offences as criminal offending is generally a matter for the police.

Charges and convictions

JPs are required to notify JPS in writing within 14 days of being charged or convicted of an offence (other than an expiable offence) and to notify of the withdrawal, dismissal or discontinuance of a charge of an offence. Disciplinary action may be taken against a JP for failing to notify within 14 days of being charged or convicted of an offence.

JPS follows a standard procedure in handling situations when a JP is charged or convicted of an offence; however JPS will manage each case according to its circumstances.

INCAPACITY TO CARRY OUT FUNCTIONS OF THE OFFICE AND RESIGNATION

Incapacity to carry out functions

The Act provides that if you become mentally or physically incapable of carrying out official functions satisfactorily, the Attorney-General may remove you from office.

If you become unwell and can no longer carry out your official duties, you may be advised to resign or apply for suspension for personal reasons. You can resign or apply for suspension for personal reasons through the JPS Portal.

Resignation

You may resign from office at any time during your term of appointment or you can elect not to reapply when your term of office expires. Resignations must be made in writing and can be submitted through the Portal.

After you have resigned from office as a JP you cannot perform the functions of the office and your name and contact details will be removed from the Roll of Justices. If at a future stage you wish to resume JP functions, you will need to apply again.

If you resign as a JP after having served for 20 years or more, you can use the tile 'JP (Retired)' provided that you do not do so in contravention of the COC for Retired JPs in Schedule 2 of the Regulations or in contravention of section 16(4) of the Act.

If you move interstate or overseas permanently you may wish to resign from your office of JP. If you do not resign, your office of JP nevertheless becomes vacant because, by ceasing to reside in South Australia, you are no longer eligible for appointment as a JP. JPs are appointed under different Acts in each State and Territory.

SUSPENSION AND REMOVAL

Suspension

If you are unable to perform your JP functions for a period of more than three months for personal reasons, it is recommended you seek suspension so that the public does not contact you. Personal reasons include illness, family or business commitments or prolonged absence from the state.

Applications for suspension may be made through the JPS Portal.

The Attorney-General or Delegate must be satisfied that personal reasons exist before giving written notice of your suspension from office. The suspension can be for a specified period or until further notice, but cannot exceed two years. Upon suspension your name is removed from the Roll of Justices.

At the end of your suspension period your details will be reinstated on the Roll of Justices. You can ask to have your suspension revoked by the Attorney-General or Delegate if you are able to resume your duties earlier. A suspension may be revoked by further notice.

A JP whose office has been suspended by reason of a prolonged absence from the State, must on or before the period of suspension expires, notify the Attorney-General (which may be done through JPS) whether they intend to return to the State when the period of suspension expires.

Section 9(a)(iv) of the Act provides that the office of a JP becomes vacant if the JP ceases to satisfy the qualification by virtue of which the member was eligible for appointment as a JP. Pursuant to section 4(8) of the Act, a person is not a 'suitable person' for appointment under section 4(1) of the Act unless the person is an Australian citizen resident in South Australia. Should you not return to SA at the end of your suspension, you may prefer to resign as a JP pursuant to s9(a)(ii) of the Act.

Under section 11 of the Act the Attorney-General or Delegate may suspend you from office if satisfied that there is proper cause for disciplinary action against you such as breaching or failing to comply with the Act, the COC or a condition of your appointment. The suspension may be for a specified period or until you fulfil conditions set by the Attorney-General or Delegate, or until further notice, but will not exceed two years.

Removal

A JP can be removed from office by the Attorney-General or Delegate by notice in the *SA Government Gazette* for the following reasons:

- is mentally or physically incapable of carrying out official functions satisfactorily
- is found guilty or convicted by a court of an offence that, in the opinion of the Attorney-General shows the person to be unfit to hold office as a JP
- is bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors
- should, in the Attorney-General's opinion, be removed from office, for any other reason.

If you are removed from office as a JP, you are not entitled to use the title 'JP (Retired)' and you may not apply for reappointment as a JP for a period of five years from the date of removal or such longer period as may be specified by the Attorney-General in the notice of removal.

COMMON QUESTIONS

Am I ineligible for jury service?

Not necessarily. Only JPs who perform court duties are ineligible for jury service (unless you are otherwise ineligible pursuant to Schedule 3 of the *Juries Act 1927*). If you are a JP who performs court duties, your spouse or domestic partner will also be ineligible for jury service.

Must I disclose my contact details to JPS?

Yes, you must provide all your contact details to JPS as required by the COC. However, only your name, nominated telephone number(s) and suburb or town in which you reside and/or work will be made available to the public on the Roll of Justices. All other personal details (such as your street address) are kept confidential.

Do I have to conduct JP duties from home?

No, you do not have to conduct your duties from home. You can arrange with the client to meet at a mutually agreed location such as a library or shopping centre.

Can I keep copies of documents I witness?

No, a JP must not keep copies of any documents they witness unless required by legislation.

If you have concerns about a particular document you can record the document type, location of witnessing, the date and your concerns about the document should any questions arise, but you must not keep any personal details about the person such as their name, contact details or any numbers on their documents.

Can a JP perform marriage ceremonies?

No. Only those authorised under the *Marriage Act 1961* can.

Can I provide legal advice?

No. You must not give legal advice when you are performing duties as a JP, even if you have legal knowledge. It is a breach of the COC if you provide legal advice when acting in your capacity as a JP. If a person needs legal advice you can refer them to the Legal Services Commission on 1300 366 424 or you can suggest they seek their own legal advice.

Do I have legal protection?

Section 15 of the Act provides that 'a JP incurs no civil or criminal liability for an **honest** act or omission in carrying out or purportedly carrying out official functions' (emphasis added).

You have a legal responsibility to adhere to your statutory duties and to follow the requisite procedures when performing functions as a JP. If you do not follow the required procedures, you could cause a client to suffer financial detriment or other loss and you risk having other legal action taken against you.

If you perform a function you know is not the duty of a JP, the immunity offered under the Act may not apply. You should ensure you follow the correct procedures and seek help or refrain from witnessing a document if you are unsure of how to do it correctly.

SECTION 3

YOUR ROLE & DUTIES AS A JP

INTRODUCTION TO WITNESSING DOCUMENTS

Your main role as a JP is to act as an independent and objective witness to documents people use for official or legal purposes. As a JP you will be required to witness documents such as affidavits and statutory declarations.

Most documents reference relevant legislative provisions, contain or are accompanied by instructions, or list the categories of persons who can witness them. Sometimes you may be asked to witness a document that does not need a JP to witness it. You should only witness documents in your capacity as a JP if it is required by law or if the document lists a JP as a witness.

Each type of document is different; therefore, before you witness a document as a JP check the following:

→ What type is the document

Some documents are straight forward whereas others are more complex. When a client contacts you to witness a document, ask them what the document is that they need witnessed so that you can be prepared.

→ Do you have authority to witness the document

You have the authority to witness documents that list JPs as authorised witnesses. Under the Act you can witness

documents intended to take effect in SA while you are temporarily outside the state, unless the law requires that the particular document has to be witnessed in SA.

Most overseas documents (particularly from non-commonwealth countries) require an authorised witness such as a Notary Public to sign them. Unless the relevant legislation or the document specifies that an Australian JP can sign it, you must refrain from witnessing it.

Some documents require the witness just to be an independent adult. If the document requires a 'witness' you should not sign it as a JP but can as an independent adult.

→ Is it correctly completed

You are not expected to know whether a document is in a form that makes it legally effective. The person making the document must ensure it is in the proper form and if necessary they should seek legal advice for it. If you know the document is not in the correct form, you can suggest the person obtains a standard one before you witness it. However, you should make it clear that you are not authorised to provide legal advice in respect of the form or content of the document as it is a breach of the COC.

You should advise the client that you must visually scan the document to ensure it is fully completed before you can witness it.

→ **Are there special requirements**

Some documents have special requirements and it is important to understand which ones do and how to inform yourself of those requirements. Particular requirements may be contained in relevant legislation and sometimes there will be instructions that accompany the document. You must ensure that you identify and comply with any statutory requirements or accompanying instructions before you witness the document.

Special requirements for witnessing a document can mostly be found in the Act that governs when or how the document is to be used. For example, Section 25 of the *Oaths Act 1936* provides, generally, for the taking of a South Australian statutory declaration, you should explore the purpose for which the statutory declaration is to be made so that you can identify what, if any, other statutory requirements may apply in respect of the witnessing of the relevant declaration.

→ **Who signs the document**

The person named in the document must sign it. Before you witness the document, ask the named signatory for photo identification (eg driver's licence or passport) to confirm their identity. If another person has been appointed to act on behalf of the named signatory, ask for photo identification (eg driver's licence or passport) and proof of authority (eg Power of Attorney) from the person who has been appointed to act on behalf of the named signatory. You should explain that you need to read the Power of Attorney for the conditions.

→ **Is the person making the document of legal age**

Usually the legal age is 18, however there are some documents that can be made by a person under 18 such as a Statutory

declaration. If you are requested to witness a document for a person under 18 and you are not sure if it is legal, you can contact Legal Services Commission phone advice line 1300 366 424 for assistance.

If you are asked to witness a document for a child, you must ensure that it is allowed by law. You should follow any accompanying instructions with the document and ensure the child understands the nature and effects of the document.

→ **Does the person understand what he or she is doing**

Before witnessing a document (apart from when you certify a copy as a true and correct copy of the original) you must ensure that the person understands the nature, contents and effect of the document and that they have read the contents.

If the person has completed the document themselves it is a good indicator they understand the contents. If it was prepared by their solicitor or another person, you should ask them if they have read the document and understand it. If the person does not appear to understand it, you should ask some open-ended questions which require more than a 'yes' or 'no' answer.

→ **Is the person signing of their own free will**

Even when a person has legal capacity and fully understands what signing the document means, the document may be ineffective at law if the person does not sign voluntarily. Before witnessing a document you should be satisfied that the person is signing of their own free will, and is not under pressure or coerced into making the document.

Talk to the person making the document alone, or at least without anyone who

might have an interest in the transaction being present, so that the person can speak freely.

If you have any doubts about the person being under duress or pressured to sign the document, do not witness it until you are satisfied that the person is signing of their own free will. If you continue to have doubts, decline to witness and suggest the person seeks legal advice. Again, the standard procedures set out in this Handbook will assist.

→ **Ensure you see the whole of the document**

Occasionally the person who is asking you to sign their document may not want you to see the contents of the document.

In this situation you can still witness the person's signature on the document; however you still ought to ascertain the nature of the document (so that you can ensure you witness it in accordance with any relevant legal requirements) and satisfy yourself that the document is not incomplete. You must also ensure that you follow the standard procedures outlined in this Handbook and ensure you write under your signature the words 'Witnessed Signature Only, Contents not disclosed'.

→ **Are there any blank spaces**

If there are blank spaces, ask the person signing the document whether they wish to add anything else to the document. Large blank spaces must be ruled out in a 'Z' shape. This prevents anyone adding extra information after the document has been signed and witnessed by you. Both you and the person signing must initial the 'Z' at the start and end of it. You should print 'JP' and the date after your initials.

You must never witness a signature on a document that is blank or partially incomplete.

→ **Are there any alterations or changes**

Any alterations should have a straight line placed through the wording but not so that it obliterates the wording. The change should be written above the crossed out wording and you and the person must then initial the alteration (as close as possible to it, preferably on the same line). You must write 'JP' and the date next to your initials.

Please note that liquid paper is not appropriate and must not be used. Some documents, especially those to be used in a court may not be admissible if changes are not made correctly. Remember it is not your responsibility to correct spelling or grammar.

→ **Is the document a Multi-Page document**

You must ensure each page of the document is numbered '1 of 5', '2 of 5' etc on the bottom right hand corner of the document. Both you and the person must initial each page.

→ **Ensure the document is signed in your presence**

If the document requires you to witness the person's signature but they have already signed it, ask them to cross out their signature and sign it again (as close as possible to the crossed out one) in front of you. Both you and the person must initial and date the alteration.

You must not ask them to sign their signature again on a blank piece of paper. It must be done on the document.

→ **Should I include a location of where a document has been witnessed**

Some documents require a location to be stated. However, vulnerable people at risk may not wish to disclose the locality of where the document was witnessed. Unless the document specifically requires you to state or declare the location where the document was witnessed, you should refrain from including this.

ADVANCE CARE DIRECTIVES

The Advance Care Directives (ACD) Form is a legal form by which people aged over 18 years can give directions about, and write down their instructions, values and wishes for, their future health care, residential and accommodation arrangements and personal affairs.

An ACD Form can also be used to allow people to appoint one or more Substitute Decision-Makers (SDM) to make decisions on their behalf about the above matters.

A SDM may only make a decision under an ACD at a time when the person who gave the ACD has impaired decision-making in respect of the relevant decision. Likewise, a health practitioner may only provide health care pursuant to a consent granted under an ACD at a time when the person who gave the ACD has impaired decision-making capacity in respect of a decision relevant to the provision of the health care.

It is important to note the ACD Form cannot be used to make financial or legal decisions. The relevant forms in the *Powers of Attorney and Agency Act 1984* (SA) are still to be used to create a general or an enduring power of attorney.

The ACD Form and Kit can be found on www.advancedirectives.sa.gov.au. A hard copy of the ACD Form and Kit can be ordered for a small fee from Service SA.

The *Advance Care Directives Act 2013* (SA) establishes offences for making false or misleading statements in or in relation to an ACD and for inducing another to give an ACD by dishonesty or undue influence. Maximum penalties of \$20,000 or two years' imprisonment apply in respect of the making of false or misleading statements, while improperly inducing an ACD attracts penalties of up to 10 years' imprisonment.

The Advance Care Directives (ACD) Form has now replaced the Medical Power of Attorney, Anticipatory Direction and Enduring Power of Guardianship with a single ACD Form. These replaced forms no longer have legal effect.

Witnessing Advance Care Directives

An authorised witness for an ACD includes JPs, lawyers, doctors, nurses, pharmacists, certain teachers, and Local, State or Commonwealth Government employees with more than five years' continuous service. A full list of authorised witnesses can be found in the ACD Guide on the website www.advancedirectives.sa.gov.au.

A witness must not:

- have a direct or indirect interest in the estate of the person giving the ACD (whether as a beneficiary of the person's will or otherwise)
- be appointed as the person's SDM
- be a health practitioner or paid professional carer. If there is a chance you will be the person's health practitioner in the future you should not witness their ACD.

To ensure that an ACD has effect as such under the ACD Act, the person giving the ACD must complete any relevant sections of the official ACD Form, being the ACD form approved by the Minister and published in the *SA Government Gazette*. The official ACD Form can be accessed by visiting www.advancedirectives.sa.gov.au.

The ACD form can be completed in handwriting or electronic text. Please remember it is not your role as a JP to check the content of the person's ACD or to provide legal advice.

A person who has given an advanced care directive cannot vary it. Rather, if they wish to alter their ACD or appoint a new SDM once the form has been finalised and signed, they will need to complete a new ACD Form. This automatically revokes the previous ACD.

If you think the person is not competent to complete the ACD form, you can request they provide medical documentation which states that they are, otherwise you must refrain from witnessing the ACD on that basis.

How to witness an ACD

- Confirm that the identity of the person giving the ACD matches the details on the ACD Form eg name, address and date of birth. Ask the person for photo identification (eg driver's licence or passport) to confirm their identity.
- Speak with the person alone so you can assess if they are voluntarily giving the ACD and to limit the possibility of coercion by others.
- Give the person the ACD Information Statement (this should be presented with the ACD form or is available online; however it is not expected that the witness will have one). You may need to read the ACD Information Statement to the person if they are visually impaired.
- When the person has read the ACD Information Statement, ask them the questions below (also found in the 'Information for witnesses' at the end of the ACD form) to make sure that you are satisfied that the person appears to understand it and they do not appear to be acting under duress or coercion:
 - What is an ACD?
 - When will your ACD be used?
 - What types of decisions will it cover?
 - Who will have to follow your ACD?
 - Why have you decided to complete an ACD?

- Have you appointed any SDMs?
Why did you choose them? What decisions will they be able to make? When will they be able to make decisions for you?
- Check whether there are any alterations to the ACD (including white-out). You (as the authorised witness) and the person completing the ACD must initial and date any alterations. Make sure any blank sections are ruled out in a 'Z' shape and that you and the person initial and date it.
- The SDM(s), if any are being appointed, need to be named and must have signed the relevant part of the ACD form to say that they accept the appointment as SDM and has read and understands the guidelines for SDMs The SDM(s) will need to have signed to this effect before you can witness the ACD. You do not need to witness the SDM(s) signature but you are required to 'Z' out that section if not being completed. Please note appointing a SDM is optional.
- If you are satisfied that the person appears to understand the ACD Information Statement and does not appear to be acting under duress or coercion, ask the person to initial each page of the ACD form in the boxes provided and also sign the ACD on page six of the ACD form in front of you.

- Space is provided at the bottom of page six 'extra execution statement' if a person due to an injury, illness or disability needs to execute the document in another way such as by placing a 'mark' on the document, or if a representative needs to sign on their behalf. The execution must be in your presence. You should state in the 'extra execution statement' space provided exactly what occurred, for example:

He/She, due to an illness, injury or disability was unable to personally sign this form, but made the above mark in my presence/instructed [name of person] to sign on their behalf in my presence.

- The representative should not be the SDM or you as the authorised witness.
- You must then initial and date each page of the ACD form in the boxes provided to demonstrate that you witnessed the person giving the ACD mark their initials on those pages. You must also complete the Witness Statement on page six of the ACD Form. Write your full name, the full name of person giving the ACD, your occupation as a witness (eg JP - you can stamp your JP stamp here if you have one), your contact telephone number and then sign the form.

Cancelling an ACD

Once an ACD has been finalised and signed by the person making the ACD, their SDM (if any appointed) and the authorised witness, they cannot vary it.

If a person wants to change their ACD they need to complete a new ACD Form. If appointed the SDMs will need to sign it including, the person making the ACD and an authorised witness. Once the new ACD has been properly witnessed in accordance with the *Advanced Care Directives Act 2013*, the person's previous ACD will be taken to have been revoked and replaced by their new ACD.

Alternatively, if a person wishes to cancel their ACD without replacing it, they can complete the '**Cancelling my Advance Care Directive**' form, which is available on the website www.advancedcaredirectives.sa.gov.au.

Once this form is signed by the person to whom the ACD relates and by an authorised witness who is satisfied that the person understands the consequences of cancelling their ACD, their ACD will be revoked. An ACD can only be cancelled by a person in this manner if the person is still competent and understands what it will mean if they cancel their ACD.

If a person wishes or may wish, to revoke their ACD, but the person is not competent or does not appear to understand the consequences of revoking their ACD, the South Australian Civil and Administrative Tribunal ('SACAT') can revoke the person's ACD in accordance with sections 30 – 32 of the *Advanced Care Directives Act 2013*.

If you become aware that a person who has given an ACD wishes or may wish to revoke it, but the person is not competent or does not understand the consequences of revoking an ACD, you are required to advise the SACAT of that fact as soon as practicable in the manner and form that is determined from time to time by the SACAT.

Witnessing Certified Copies of ACDs

You may also be asked to witness certified copies of the completed ACD as the person may want to give them to their family, SDMs (if any) or their doctor or other health practitioners.

When certifying copies of ACDs you must ensure you:

- Sight the original ACD and check that the copy is an identical copy of the original.
- Stamp or write the certification statement on the front of the ACD form in the certification box. You can use this suggested wording:

I [insert name] (insert occupation eg JP) certify this and the following [insert number of pages] pages to be a true and correct copy of the original sighted by me.

This [full date eg dd/mm/yyyy]

Sign and put your JP stamp underneath the certification or if you do not have a stamp, write your full name, your JP ID number and the words '*A justice of the peace for South Australia*'.

WITNESSING PROCEDURES FOR AFFIDAVITS

AMENDED FROM 1 JANUARY 2025

An **affidavit** is a written statement of fact, sworn on oath or affirmed, which may be used in evidence in court. As a JP you must administer an oath or an affirmation when taking an affidavit.

An affidavit is a written statement of fact, sworn on oath or affirmed, which may be used in evidence in court. As a JP you must administer an oath or an affirmation when taking an affidavit.

The person who makes the affidavit is called the **deponent**. The deponent makes the affidavit by taking an oath or affirmation in the presence of an authorised witness that:

- they are the person named in the affidavit
- the contents of the affidavit are true
- the signature or mark on the document is theirs.

Affidavits are usually set out in the format required by the court in which it is to be lodged.

The '**jurat**' (also described as signing clause, witnessing clause or attesting clause) of an affidavit is a certificate on an affidavit showing when, by whom and before whom the affidavit was sworn or affirmed.

A JP is not expected to know the Practice Directions or Court Rules but should follow any instructions that accompany the affidavit.

The onus is on the person who requires the affidavit to ensure it is in the correct format and all instructions and rules are adhered to.

Who is an authorised affidavit witness?

Authorised witnesses to affidavits may be prescribed by the legislation pursuant to which the affidavit is made or by the Court Rules of the court with which the affidavit is to be lodged.

The classes of persons authorised to witness affidavits in South Australia are set out in Clause 2 of Schedule 1 of the *Oaths Act 1936* (SA) and the *Oaths Regulations 2021* (the Oaths Regulations).

You can find a list of categories of authorised affidavit witnesses (this includes JPs) and more information under **Authorised affidavit witnesses**.

Is this a South Australian affidavit?

Before witnessing an affidavit as a JP, you should ascertain the jurisdiction in which the affidavit is to be used and ensure that you administer the relevant oath or affirmation in accordance with the applicable requirements for that jurisdiction.

For example, before administering an oath or affirmation in the Commonwealth jurisdiction, you should refer to the relevant provisions of the *Evidence Act 1995* (Cth).

BELOW IS AN EXAMPLE OF A SOUTH AUSTRALIAN AFFIDAVIT:

Form 12

<p>To be inserted by Court</p> <p>Case Number:</p> <p>Date Filed:</p> <p>FDN:</p>
--

AFFIDAVIT OF *[FULL NAME OF DEPONENT]* MADE ON *[DATE]*

[SUPREME/DISTRICT/MAGISTRATES/YOUTH/WARDENS] Delete all but one COURT OF SOUTH AUSTRALIA
[COURT OF APPEAL] if applicable
 CIVIL JURISDICTION
[MINOR CIVIL] if applicable
[NAME OF LIST] LIST if applicable

Please specify the Full Name including capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable) for each party. Each party should include a party number if more than one party of the same type.

[FULL NAME]
 First *[Applicant/Appellant]*

[FULL NAME]
 First Respondent

[FULL NAME]
 First Interested Party

Lodging Party	Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))	
Name of law firm / solicitor if any	<small>Law Firm</small>	<small>Solicitor</small>

Deponent <small>the person who is making the affidavit</small>			
Deponent	Full Name		
Address	Street Address (including unit or level number and name of property if required)		
	<small>City/town/suburb</small>	<small>State</small>	<small>Postcode</small>
	<small>Country</small>		
Phone Details	<small>Email address</small>		
	<small>Type (eg. Home, work, mobile) - Number</small>		<small>Another number</small>

Affidavit

Mark appropriate section below with an 'x'

I, [full name],

swear on oath that:

do truly and solemnly affirm that:

Enter text in separate numbered paragraphs

If the Affidavit relates to an Application, identify the Application, and state the material facts relevant to the Application

1.

[Sworn/Affirmed] select one by the Deponent

At [place]

On [date]

.....
Signature of Deponent

before me

Signature of attesting witness

Must be an authorized witness – see rule 21.9

.....
Printed name of witness

.....
Qualification as authorised witness under section 27A(3) of the Oaths Act 1936.

Stamp here if applicable

.....
Identification of witness if applicable

(ID number of Justice of the Peace; rank, identification number and "South Australia Police" for police officer)

Next box not displayed on completed affidavit

Please ensure you have complied with instructions for completing an affidavit

Instructions

- Please review the Code of Practice in relation to Affidavits published by the Attorney-General under s 33 of the Oaths Act 1936 before completing this form.

Difference between an Oath and an Affirmation

An **oath** is an attestation to the truth of a statement, which is administered by:

- a. the deponent taking the oath holds a copy of the Bible in the deponent's hand and, after the oath has been tendered to the deponent, says "I swear"; or
- b. in any other manner and form which the deponent taking the oath declares to be binding on the deponent's conscience; or
- c. in any other manner or form authorised or permitted by law.

You may find it convenient to have a copy of the Bible with you. If the deponent wishes to make the oath on another religious text then you should request the deponent bring it with them.

An **affirmation** is an alternative to an oath. It is also an oral attestation to the truth of a statement, but it is made without swearing to a God or faith or otherwise as described above. Instead of the deponent 'swearing' an affidavit, an affirmation is to be administered to a deponent by asking them 'Do you solemnly and truly affirm' followed by the words of the appropriate oath, after which the deponent must say 'I do solemnly and truly affirm'.

An affirmation has the same legal force and the same legal effect as an oath. People are free to choose to swear or affirm an affidavit and they do not need to give a reason for this. The requirements for oaths and affirmations for South Australian affidavits are set out in section 6 of the *Evidence Act 1929* (SA).

Annexures and exhibits

The requirements on whether to annex or exhibit a document to an affidavit vary depending on the purpose for which the affidavit is being prepared and in which jurisdiction it is to be used.

Often there are legislative provisions or court rules that apply in respect of the preparing and filing of an affidavit in a particular jurisdiction, and these may specifically require that an affidavit be accompanied by either annexures or exhibits.

A JP must not advise a deponent about legal requirements that need to be met when preparing or filing their affidavit. The role of a JP is to confirm that the document referred to in the affidavit as an annexure or exhibit is marked in a manner that corresponds with its description in the affidavit and that the deponent attests to the fact that each annexure/exhibit is the relevant document to which they refer in their affidavit.

ID check

From 1 January 2025 it is now mandatory under the *SA Oaths Act 1936* (the Oaths Act) for an authorised affidavit witness (e.g. a JP) to verify that the deponent signing and swearing/affirming the affidavit is the person whose name is on the affidavit by sighting photo identification, e.g. a driver's licence or passport.

How to witness a South Australian affidavit

The **Code of Practice – Affidavits**

published by the Attorney-General and gazetted under section 33(1)(a) the Oaths Act governs the process for witnessing a South Australian affidavit. Please ensure you read the Code of Practice to ensure you comply with the requirements.

Below is a detailed step by step checklist of the steps for witnessing South Australian affidavits:

Confirm the document is an affidavit. It should contain the word ‘Affidavit’ at the top of the document, along with the name of the court or tribunal it is being filed in.

Confirm that the identity of the deponent making the affidavit matches the details on the affidavit e.g. full name and address. You must speak with the deponent named in the affidavit.

Ask the deponent for photo identification (e.g. driver’s licenses or passport) to confirm their identity. The mandatory requirement to sight photo identification is set out in the Code of Practice – Affidavits.

Ask the deponent ‘*did you write the affidavit yourself?*’. If the answer is ‘no’ ask if they have read and understand the contents’.

Ask the deponent if there are any annexures or exhibits. If there are, ensure they are referenced in the body of the affidavit and are correctly labelled. For example, annexures are often marked ‘Annexure A’, ‘Annexure B’ and exhibits usually with the initials of the deponent followed by a number (e.g. ‘Exhibit JMS1’).

Each page of the affidavit, including any annexures or exhibits, must be consecutively numbered e.g. 1,2, 3 etc.

Advise the deponent:

‘The affidavit is written evidence which will be given in court and you are giving the evidence under oath or affirmation. There are also penalties, which can include imprisonment, for knowingly giving false evidence’.

Then ask the deponent ‘*Now that you are aware of this, do you wish to proceed?*’ You must hear the deponent say ‘*I do*’ or ‘*I understand*’.

Ask the deponent to sign and date the bottom of every page.

Ask the deponent to sign the jurat of the affidavit

Ask the deponent ‘*Do you wish to swear or affirm the affidavit?*’ If necessary, explain the difference between the two. The deponent can only choose one.

Swearing : Ask the deponent to place their hand on the Bible or holy book of their religion or faith. Point to the deponent’s name in the affidavit and ask:

*‘Do you swear that this is your name, this is your normal signature on each page of the affidavit and in the jurat (point to their signature), that the contents of this affidavit are true and correct to the best of your knowledge, information or belief and that the materials annexed/exhibited to this affidavit are the correct documents to which you refer in your affidavit, so help you God? If so, please say **‘I swear’**’.*

Affirming : Point to the deponent’s name in the affidavit and ask:

‘Do you solemnly and truly affirm that this is your name, this is your normal signature on each page of the affidavit and in the jurat (point to their signature); that the contents of this affidavit are true and correct to the best of your knowledge, information or belief and that the materials annexed/exhibited to this affidavit are the correct documents to which you refer in your affidavit? If so, please say ‘I do solemnly and truly affirm’.

Counter initial and date all alterations and ‘Z’s’ in the affidavit, add the initials ‘JP’ and sign and date the bottom of each page.

Complete the jurat e.g. write the place, date, your signature, initials ‘JP’, your full name, your JP ID number and your authority ‘A Justice of the Peace for South Australia’. If you have a stamp you can place this under your signature instead of writing the above out.

You must also sign and date all annexures or exhibits. The date on each annexure or exhibit should be the same as the date the affidavit is witnessed.

If the affidavit refers to annexures/exhibits but they have not been provided to you, you must advise the deponent you are unable to witness the affidavit.

If the annexure or exhibit have not already been marked by the deponent, write or stamp the following wording on the first page:

This is the annexure/exhibit marked [e.g. ‘A’ referred to in the Affidavit of [name of deponent]

Sworn/affirmed before me this [full date]

.....
[Date, Signature, JP ID number
A Justice of the Peace for South
Australia]

Annexures or exhibits for the SA Courts (Magistrates/District/Supreme Court) will have a cover page (see example below) that you will complete instead of writing on the first page of the annexure or exhibit.

EXHIBIT

[SUPREME/DISTRICT/MAGISTRATES] Delete all but one COURT OF SOUTH AUSTRALIA
[COURT OF APPEAL] if applicable
CIVIL JURISDICTION
[MINOR CIVIL] if applicable
[NAME OF LIST] LIST if applicable

Please specify the Full Name including capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable) for each party. Each party should include a party number if more than one party of the same type.

First Applicant

First Respondent

First Interested Party

This is the exhibit/these are the exhibits [exhibit number(s)] to the [affidavit/declaration] of [name] made on the day of 20 .

.....
Signature of deponent

.....
Signature of attesting witness

.....
Date

How to witness an SA affidavit online

The Code of practice in relation to affidavits gazetted under the Oaths Act provides for witnessing of affidavits to occur remotely online in real time, e.g. via Skype, Zoom, Microsoft Teams, Facetime or other audio-visual link (AVL).

There is no set program you must use, as long as it allows for both you and the deponent to connect with video and audio so you can see and hear each other and so you as the authorised witness (e.g. JP) can sight the deponents photo identification on the screen and see the deponent sign their affidavit in real time.

In addition to the witnessing steps set out in the section 'How to witness a South Australian affidavit', when witnessing an SA affidavit remotely you must:

Watch the deponent sign their affidavit (in pen or through electronic signature). The camera must be positioned so you can see them sign the affidavit in real time.

Ensure the deponent sends you a copy of their affidavit. They can do this by saving or scanning the affidavit and then emailing it to you. Alternatively, they can share it with you on your device. You must maintain the audio-visual link while this is being done.

Ensure the affidavit you are signing is the same affidavit, or a copy of the affidavit, sworn or affirmed and signed by the deponent. You can do this by checking that the number of pages, name of the deponent, and signature of the deponent match with the original affidavit.

Countersign the affidavit as soon as practicable after witnessing the deponent sign the affidavit. You can sign by hand with

a pen, electronically on your device or by pasting a copy of your signature on it. You must maintain the audio-visual link while you are doing this.

Endorse the affidavit, or the copy of the affidavit, underneath the jurat, with the statement:

This affidavit was witnessed remotely under the observation of the authorised person through an audio visual link and the requirements under the Oaths Act 1936 for taking affidavits by audio visual link were complied with.

An affidavit that is signed or initialled by electronic means must include a statement on it that the affidavit was signed or initialled by electronic means. If you signed the affidavit using an electronic signature, you must also include this statement underneath your electronic signature:

This affidavit was signed and/or initialled by me as the authorised witness by electronic means.

This statement is not required if you signed the affidavit with wet ink.

Send the witnessed affidavit and annexure(s) or exhibit(s) (if any) back to the deponent by email, or scan or use some other method of electronically transmitting the documents back to the deponent.

Reasonable modifications or assistance for the deponent (from the Oaths Regulations 2021)

Sometimes a deponent may need help when making an affidavit, for example if they have a disability or need someone to translate for them.

The authorised affidavit witness (e.g. JP) may make or permit reasonable modifications to the process of taking an affidavit in those circumstances, for example, if the deponent has a disability and requires assistance with the process.

If reasonable modifications are made, **you must certify on the affidavit what modifications were made.**

For example, if the affidavit was read to the deponent by you and the deponent nodded in agreement, this must be stated in writing by the authorised person on the affidavit.

If another person provides assistance, such as translation assistance, the person helping must also be present in person or online by audio visual link when the affidavit is signed. After the you and the deponent have both signed the affidavit, you **must** write on the affidavit:

- the name and address of the person who provided the assistance and
- what type of assistance was provided (for example: 'translation assistance' or 'assistance with writing or reading').

This does not apply to assistance by a person who prepared the affidavit in a professional capacity on the deponent's instructions, including a legal practitioner or conveyancer.

Divorce Documents (Affidavits)

There are many documents and forms associated with Family Law but the most common ones that a JP will see are the 'application for divorce', 'affidavit of service by post', 'affidavit of service by hand' or the 'affidavit proving signature'.

All of these are, or in the case of an 'Application for Divorce' require affidavits which should be witnessed as per the affidavit procedures set out above. However, there are a few additional points in relation to the application for divorce and the affidavits of service by hand or post of which you need to be aware to ensure you witness these forms correctly.

Application for divorce

Applications for divorce are primarily filed electronically using an interactive online form through the Commonwealth Courts Portal (www.comcourts.gov.au). If the application is filed electronically, the deponent will complete the online application and then print it, along with the 'Affidavit for eFiling Application (Divorce)'.

If the deponent is lodging as a sole applicant, they must sign the affidavit before an authorised witness, e.g. a JP. If they are lodging a joint application, both parties must sign the affidavit before an authorised witness. The affidavit can be signed by both parties at the same time or separately, but both signatures must be witnessed by an authorised witness.

Once signed, the deponent must upload the signed Affidavit for eFiling Application (Divorce) to the Commonwealth Courts Portal. If both parties are unable to sign the same affidavit, then two affidavits can be uploaded together.

If unable to file electronically, the deponent has the choice to also write or type their details into a hardcopy Application for Divorce form and file it by post or hand at their nearest family law registry.

With the hardcopy of the Application for Divorce form, the affidavit is contained in part G of the form. Parts A to F are **not** required to be signed at the bottom of each page as they are not part of the affidavit. However, if there are any alterations to the application, you and the deponent must initial them. If the deponent has completed the 'application for divorce kit' then you need to see parts A to F along with the affidavit (Part G) to check for alterations.

Service by post or hand

The purpose of affidavits of service are to prove to a court that a particular person was served with (and that the person received) documentation, and how and when the relevant person was served.

This only applies if the deponent has made a sole application for divorce and not if they have made a joint application.

If it was a sole application, once the deponent has filed their application at a family law registry, they are required to serve it on their spouse. They can serve the application by post or by hand. Each Affidavit should be accompanied by the '*Acknowledgment of Service (Divorce)*' and if you witness the Affidavit of Service by Post or Hand, you must also ensure you complete the annexure note on the Acknowledgment of Service (Divorce)

EXAMPLE BLANK AFFIDAVITS FOR DIVORCE

AFFIDAVIT OF SERVICE BY POST (DIVORCE)

Filed in:

- Federal Circuit and Family Court of Australia
 Family Court of Western Australia
 Other (specify):

You must attach the signed Acknowledgment of Service (Divorce) to this form.

Client ID	
File number	
COURT USE ONLY	
Filed at	
Filed on	
Court date	
Court time	

Part A

The applicant

1. Name

Family name
Given names

Part B

Details of service

2. Person served (respondent)

Family name
Given names

3. Postal address of respondent

State	Postcode
-------	----------

4. Date of posting

/ /

5. What documents were posted?

<input type="checkbox"/> Application for Divorce <input type="checkbox"/> Marriage, Families & Separation brochure <input type="checkbox"/> Other (give details):

6. Acknowledgment of Service signed

<input type="checkbox"/> The Acknowledgment of Service (Divorce) is signed by the person named in question 2 above. It is attached to this affidavit.

Part C

Signing

Do not swear/affirm this affidavit until you are with a person who is authorised to witness your signature.

I swear / affirm that:

- I am the applicant.
- The person served is my spouse (respondent).
- The facts set out are true.
- I recognise the signature on the Acknowledgment of Service (Divorce) as that of my spouse.

Signature

Place
Date / /

Before me (signature of witness)

Full name of witness (print name)

- Lawyer Justice of the Peace Authorised Staff Member of the Court
 Other (specify):

The witness must also sign the annexure note on the Acknowledgment of Service (Divorce).

0921V1

AFFIDAVIT OF SERVICE BY HAND (DIVORCE)

Filed in:

- Federal Circuit and Family Court of Australia
 Family Court of Western Australia
 Other (specify):

The applicant cannot personally serve the respondent.

If the respondent signed the Acknowledgment of Service (Divorce), it must be attached to this form.

Client ID	
File number	
COURT USE ONLY	
Filed at	
Filed on	
Court date	
Court time	

Part A Person serving documents

1. Name	Family name Given names
2. Address	State Postcode
3. Occupation	
4. Relationship to person served	

Part B Details of service

5. Person served (respondent)	Family name Given names
6. Date documents served	/ /
7. What documents were served?	<input type="checkbox"/> Application for Divorce <input type="checkbox"/> Marriage, Families & Separation brochure <input type="checkbox"/> Other (give details):
8. How were the documents served?	<input type="checkbox"/> I handed them to the person at (give address): <input type="checkbox"/> I attempted to hand them to the person at (give address): <input type="checkbox"/> The person refused to accept them. I put them down and left them in the presence of the person and told the person what they were.

Part C Identity of person served

9. How was the person served identified?	<input type="checkbox"/> The person is shown in the attached photograph <input type="checkbox"/> I saw the person sign the attached Acknowledgment of Service (Divorce) <input type="checkbox"/> I know the person (explain how you know the person below): <input type="checkbox"/> I spoke to the person at the time of service (give details of the conversation you had with the person relating to identity):
(Please tick all that apply)	

Part D Signing

Do not swear/affirm this affidavit until you are with a person who is authorised to witness your signature.

I swear / affirm that:

- I am the server.
- The facts set out are true.

Signature

Place
Date / /

Before me (signature of witness)

Full name of witness (print name)

- Lawyer
 Justice of the Peace
 Authorised Staff Member of the Court
 Other (specify):

The witness must also sign the annexure note on the Acknowledgment of Service (Divorce).

ACKNOWLEDGMENT OF SERVICE (DIVORCE)

Filed in:

- Federal Circuit and Family Court of Australia
 Family Court of Western Australia
 Other (specify):

This form must be attached to EITHER:
an Affidavit of Service by Post (Divorce)
OR
an Affidavit of Service by Hand (Divorce), if the
respondent signs it, and Affidavit Proving Signature
(Divorce).

Client ID	
File number	
COURT USE ONLY	
Filed at	
Filed on	
Court date	
Court time	

Part A

1. Name

The applicant

Family name
Given names

Part B

2. Person served
(respondent)

Details of service

Family name
Given names

3. Date documents
served

/ /

4. What
documents were
served?

- Application for Divorce
 Marriage, Families & Separation brochure
 Other (give details):

Part C

Signing

I acknowledge service of the documents named in question 4 above.

Signature _____ Date / /

OR

I am the lawyer for the person served. On behalf of my client, I acknowledge service of the documents named in question 4 above.

Lawyer's signature _____ Date / /

Name of lawyer (print name):

Lawyer's code:

Address of lawyer:

ANNEXURE NOTE — Witness to complete only if this form is attached to an affidavit.

This Acknowledgment of Service (Divorce) is referred to in the affidavit of (name):

Sworn/affirmed at (place):

On (date):

Before me (witness to sign):

- Lawyer Justice of the Peace Authorised Staff Member of the Court
 Other (specify):

0921V2

1

(ONLINE APPLICATION FOR DIVORCE)

AFFIDAVIT FOR EFILING APPLICATION (DIVORCE)

FEDERAL CIRCUIT AND FAMILY COURT
OF AUSTRALIA

REGISTRY:

File number:
COURT USE ONLY	
Court Location	
Court date	
Court time	

Affidavit of applicant/s

Do not swear or affirm this affidavit until you are with a person who is authorised to witness your signature.

If you are applying as a sole applicant, you only need to sign your part of the affidavit. You do not have to ask or arrange for the other party to the marriage to sign their part of the affidavit.

If you are applying together with the other party to the marriage (joint applicants), each person must sign their part of the affidavit. You may do so at different times and before different witnesses or before the same witness at the same time.

Full Name of Party 1	Full Name of Party 2
----------------------	----------------------

Party 1

I swear / affirm that:

- I am the applicant.
- I have read the application.
- The facts and circumstances set out in the application of which I have personal knowledge are true.

Signature

Place
Date / /

Before me (signature of witness)

Full name of witness (print name)

- Lawyer
 Justice of the Peace
 Other authorised person
(specify):

Party 2

I swear / affirm that:

- I am the applicant.
- I have read the application.
- The facts and circumstances set out in the application of which I have personal knowledge are true.

Signature

Place
Date / /

Before me (signature of witness)

Full name of witness (print name)

- Lawyer
 Justice of the Peace
 Other authorised person
(specify):

CERTIFYING COPIES

People are often required to provide documented proof of academic qualifications, university transcripts, birth certificates, driver's licences, passports or other documents.

As it can be difficult and impractical for people to provide their original documents, the organisation that requires it will usually accept a certified copy of the original. There is no specific legislation in Australia that governs how certification is to be done or who is authorised to certify it. It is generally up to an organisation who is requesting the certified copy to decide this.

The person who is the owner of the original document does not need to be present when you certify a copy of their document. Provided you sight the original and the copy that is sufficient.

It is important to remember that your role as a JP is not to verify the authenticity of an original document, but to be satisfied that a document is an original. If you are not satisfied that the documents provided for certification are originals (or can be discerned from the original), then you should advise the client to contact the organisation to discuss what other options would be acceptable, be this varying the wording of the certification or attaching the documents to a Statutory declaration.

Things that you should consider when certifying a copy of an original document:

- the original document must be presented to you with the copy
- the copy must be a full copy of the original eg you must ensure that parts of the copy have not been chopped off because the original was incorrectly photocopied
- if the original document is in a foreign language and you have access to a photocopier, you should photocopy the original to ensure the copy is identical. If you do not have access to a photocopier, check the copy against the original for distinguishing marks/letters/symbols to satisfy yourself it is a true and correct copy of the original
- you can certify copies that have been reduced or enlarged in size or where the original has been laminated as this does not change their authenticity
- you can certify copies where the copies have been photocopied in black and white but the originals are in colour
- you should always follow any accompanying instructions on how to certify a document as some organisations require specific wording to be used when certifying a copy of an original document, or require each page to be individually certified even when it could be considered a multi-page document
- you are not required to declare the location of where the document was witnessed when certifying copies of original documents in South Australia.

How to certify copies of one page documents

- ensure the person gives you both the original document and the copy
- inspect the original to satisfy yourself that it is an original document
- inspect the copy to satisfy yourself that it is identical to the original document and has not been altered
- write or stamp the following wording on the copy:

I certify that this is a true and correct copy of the original document sighted by me.

This [full date eg dd/mm/yyyy]

- sign and put your JP stamp underneath the certification or if you do not have a stamp, write your full name, your ID number and the words, *A justice of the peace for South Australia*.

How to certify copies of multi paged originals

- ensure the person gives you both the original document and the copy
- inspect the original to satisfy yourself that it is an original document
- inspect the copy to satisfy yourself that it is identical to the original document and has not been altered
- if pages are not numbered, you must number them in this manner page 1 of 10, page 2 of 10 and so on
- date and initial each page
- write or stamp the following wording on the front of the copy:

I certify that this [write number of pages] document is a true and correct copy of the original [write number of pages] document sighted by me.

This [full date eg dd/mm/yyyy]

- sign and put your JP stamp underneath the certification or if you do not have a stamp, write your full name, your ID number and the words, *A justice of the peace for South Australia*.

Electronic documents

As technology is developing more people are receiving documents electronically eg by email or accessing them using electronic devices from websites. JPs are increasingly being asked to certify printed copies of documents that have been received electronically or are from websites.

JPs should first ask the client if they have discussed with the organisation requiring the document if a printed copy that has not been certified is acceptable. It is suggested the client checks this as many organisations will accept a printed copy without the need for it to be certified given it can be printed multiple times.

However some organisations specifically require the printed copies to be certified. In these cases it is legally acceptable to vary the wording of standard certification to make it relevant to the situation as you are not certifying the printed copy to be a true and correct copy of the original document.

How to certify printed copies of electronic documents

The only time you can certify a copy of an electronic document (including documents received by email) is if you have satisfied yourself that the copy is a true and correct copy of the original through using one of the following methods:

- you have seen the copy being printed directly from the official website or computer that is under the control of the document's issuing authority
- you have seen the electronic original on the official website that is under the control of the document's issuing authority, and have compared the printed copy against the electronic original
- the issuing authority has endorsed the printed copy of the original document with an official stamp in ink.

Using a statutory declaration

An alternative to certifying these documents is for the client to annex the 'copy' to a statutory declaration.

It is up to the organisation who is requesting the copies whether or not they will accept this certification. Again in the first instance the client should be asked if they have discussed with the organisation requiring the document if they will accept a printed copy that has not been certified. JPs should not recommend that a statutory declaration be used **before** ascertaining if the client has checked with the organisation if one would be accepted.

JPS does not direct JPs to follow one particular course of action over another as all organisations have different requirements. By advocating one approach a disservice may be done if the document is then not accepted by the organisation. The client must first check with the organisation which method they will accept.

If an organisation will accept a statutory declaration with the copies of the documents attached to it, then the wording of the statutory declaration should read:

I, [name] do solemnly and sincerely declare that this is a true and correct copy of the [name of document] received by me from [insert name of the relevant issuing authority] via electronic means on [insert date received].

I make this solemn declaration conscientiously believing the same to be true by virtue of the provisions of the *South Australian Oaths Act of 1936*.

Declared at [place], South Australia on [full date eg dd/mm/yyyy]

CHANGING A CHILD'S NAME

Generally speaking, the parents of a child under the age of 18 may apply for registration of a change of the child's name in South Australia, if:

- the child's birth is registered in South Australia
- the child was born outside Australia, the child's birth is not registered in another State or Territory and the child has been resident in South Australia for at least 12 consecutive months immediately before the date of the application (in certain circumstances, the residence requirement may not apply or may be waived. For example if the applicants have legally married and wish the child to change to the married name of both applicants)

If the child was born in Australia, but their birth is registered in another State or Territory they must apply to the Registry of Births, Deaths and Marriages in the State or Territory of the child's birth.

An application to register a change of name for a child under 18 must be submitted to the South Australian Registrar of Births, Deaths and Marriages with the required copies of proof of identification and supporting evidence. The application form can be downloaded from www.sa.gov.au/topics/family-and-community/births-deaths-and-marriages.

Both parents named on the child's birth certificate must apply to change their child's name. One parent can apply if they are the only parent named on the child's birth certificate, the other parent is deceased or the SACAT has specifically approved the new name for the child.

If the parents of a child are dead, cannot be found, or for some other reason cannot exercise their parental responsibilities to a child, the child's guardian may be able to apply for registration of a change of the child's name.

Before registering a change of name of a child, the Registrar may require the applicant to provide evidence to establish to the Registrar's satisfaction that (among other things) the child either consents to the change of name or is unable to understand the meaning and implications of the change of name. The child's consent must be determined by a qualified person (eg a Consumer and Business Services Officer, JP, Solicitor or Police Officer). The qualified person must interview the child to determine if they understand the implications of changing their name and if they do, whether they agree to the change.

How to witness a child's name change application form

- the child must be present before you as the qualified person (eg a JP) no matter the child's age
- the parent(s) of the child should be with the child while you interview them
- advise the parent(s) you need to explain the meaning and implications of the change of name and ask the child a few questions to ensure the child understands the change, what it means and whether they agree to it
- proceed to explain to the child the meaning and implications of the change of name

- after giving the above explanation, the following are suggested questions you can ask the child to ensure the child understands the change, what it means and whether they agree to it:
 - what is your name now?
 - what is your new name going to be?
 - are you happy with the new name? If not why?
 - has anybody told you that you have to agree to have your name changed?
 - would you prefer to change to the new name or keep your current name?

The answers to these questions should allow you to determine if the child understands the meaning and the implications of the name change and whether they consent to the change.

If you are satisfied the child understands and consents to the change of name, you can proceed to complete part 8 'Child's Consent' on the application form and cross out the bolded part that reads 'is unable to understand the meaning and implications of the change of name'.

If the child is unable to understand the meaning and implications of the change of name (eg because they are too young) then you would complete part 8 'Childs Consent' on the application form and cross out 'consents to the change of name'.

Parts 1-7 of the application form should have been completed by the parent(s) and must show the child's name before change and after change. You can also witness part 11 of the application form for the parent(s) consent.

CONSENT TO THE MARRIAGE OF A MINOR

The Commonwealth *Marriage Act 1961* (the Marriage Act) provides that a person who is over the age of 18 is eligible to be married, provided he or she can legally consent, is not already lawfully married to another (and that marriage is recognised in Australia as valid) and is not in a prohibited relationship (eg where the proposed spouse is a grandparent, parent, brother or sister).

In exceptional circumstances, a person aged between 16 and 18 years of age may marry a particular person over the age of 18 if an order to that effect has been obtained from a Judge or Magistrate pursuant to s 12 of the Marriage Act.

Consent of a parent or guardian is also generally required for the person who is not of marriageable age, but it must be accompanied by the court order authorising the marriage. In some cases the court may dispense with the consent of a parent or guardian. Section 14 and the Schedule to the Marriage Act provide whose consent is required to the marriage of a minor in the

relevant circumstances.

The requirements for how consent to the marriage of a minor are:

- be in writing
- identify the person giving the consent, eg by stating the full name and address of the person giving consent
- indicate the capacity in which the person's consent is required (refer to s 14 and the Schedule to the Marriage Act)
- identify the parties to the intended marriage, eg: by stating:
 - the full name and address of the minor; and
 - the full name and address of the other party to the intended marriage.

If the consent is signed in Australia it must be witnessed by one of the following persons:

- an authorised celebrant
- a Commissioner for Declarations under the *Statutory declarations Act 1959*
- a JP
- a barrister or solicitor
- a legally qualified medical practitioner
- a member of the Australian Federal Police or the police force of a State or Territory.

If you are asked to witness consent as a JP, you need to be aware that under section 13(3) of the Marriage Act you are not to witness the signature of a person to a consent to a marriage unless:

- (a) you are satisfied on reasonable grounds as to the identity of the person giving consent; and
- (b) the consent bears the date you subscribe your name as a witness to the signature of the consenting person.

It is important to note that it is an offence for you to fail to comply with the above, in relation to a consent to marriage of a minor, attracting penalties under the Marriage legislation including a fine or imprisonment for 6 months.

As you are required to be satisfied of the identity of the person giving consent, you should ask for photo identification such as a driver's licence or passport.

Generally speaking, consent must be given within three months before the date of the marriage and lapses after three months. The document must be dated at the same time you sign it as a witness.

How to witness consent

- make sure the consent states in writing:
 - the full name and address of the person giving consent
 - the capacity in which the person's consent is required
 - the full name and address of the minor
 - the full name and address of the other party to the marriage
- ask to sight photo identification to verify the identity of the person(s) giving consent;
- check the document to ensure there are no alterations and if there are ensure these are initialled by you and the person(s) giving consent
- check for any blank spaces and 'Z' out any large ones, ensuring this is initialled by you and those giving consent

→ ensure the person(s) giving consent understand the contents of the document, what it means and that they are giving their consent freely. The following are suggested questions you can ask the person(s) giving consent:

- Do you understand the contents of the document?
 - What are you giving consent to?
 - Are you happy to give consent? If not, why?
 - Has anybody told you that you have to agree to give consent?
 - Would you prefer not to give consent?
- ensure the document is signed in your presence. If it has already been signed, the person(s) giving consent must sign it again
- sign the document on the last page and put your JP stamp underneath or if you do not have a stamp, write your full name, your ID number and the words, *A justice of the peace for South Australia*

It is important to note that you are not responsible to determine whether the person signing the consent is a person who can, by law, consent to the marriage. That is the responsibility of the person who wishes to get married. However, you should refuse to witness the consent to marriage if you are not satisfied of the identity of the person giving consent.

You should also be aware that JPs do not have the authority to conduct marriages. If someone asks you to conduct a marriage, refer them to a marriage celebrant or other authorised celebrant under the Marriage Act, or to Births, Deaths and Marriages Registration Office.

DIGITAL LICENSES

South Australians can digitise selected government-issued passes and licences with the mySA GOV app and store this information on their Apple or Android device.

While digital passes and licences are now available, some organisations and businesses may not be set up to validate people's digital pass or licence. As such people are still encouraged to continue to carry their physical licence with them just in case, with the exception of real estate registrations as these are all now digital and holders are not required to have a physical licence.

As a JP, you may encounter a growing number of digital passes and licences as the mySA GOV app becomes more popular. Digital passes and licences currently available on the app include:

- Driver's Licences
- Proof of Age
- Real estate registrations for land agents, sales representatives and property managers
- Occupational licences for builders, tradespeople, security and investigation agents
- Recreational boat licences

Vehicle registrations are also available through the app. Information will be available at www.my.sa.gov.au as additional licences and functions become available.

Digital passes and licences displayed in the mySA GOV app are an electronic form of the existing pass or physical licence and are valid credentials. To view a digital pass or licence:

SHAKE-TO-ANIMATE SECURITY FEATURE

If you do not have the mySA GOV app or an internet connection, you can view a digital pass or licence as you would a physical pass or licence, by sighting the digital version in the mySA GOV app on the licence holder's device.

A 'shake-to-animate' security feature has been added to the app, which will animate the screen and display the current date and time when the phone is shaken to show that the digital pass/licence is not a screenshot.



EXPIATION NOTICES

Minor offences are often dealt with by way of an expiation notice. Among other minor offences, expiation notices are often issued for traffic offences or parking offences. An expiation notice allows the offender to pay a fee instead of being prosecuted through the court system.

Where an expiable offence has been alleged against the registered owner of a vehicle, who was not driver of the relevant vehicle at the relevant time, that person may complete a statutory declaration to the above effect and provide it to the authority that has alleged the offence. In their statutory declaration the person may:

- nominate another person who they believe was driving the relevant vehicle at the relevant time
- declare that the vehicle had been sold/hired/leased at the time of the relevant offence
- declare that the driver was unknown to them.

Depending on the relevant circumstances, the statutory declaration for an expiation notice can be completed by one of the following:

- the named recipient on the expiation notice
- a duly authorised executive of the company that the expiation notice is issued to (eg owner, manager, secretary, supervisor)
- a person who has power of attorney or an executor of an estate of the person named in the expiation notice. Evidence of this must accompany the statutory declaration outlining authority to complete the statutory declaration.

You should check to ensure that the form has been completed and then witness the statutory declaration in accordance with the statutory declaration section of this handbook.

EXAMPLE EXPIATION NOTICE STATUTORY DECLARATION

SPEED / RED LIGHT STATUTORY DECLARATION

- WARNING:** The Oaths Act 1936 provides a maximum penalty of 4 years imprisonment for any person who knowingly makes a Statutory Declaration which is untrue in any regard.
- WARNING:** Under s79B(6a) of the Road Traffic Act 1961, SA Police must provide your name to the person you have nominated on this statutory declaration. SA Police must not provide your address. However, the nominated person might later obtain a copy of your statutory declaration.
- WARNING:** If this Statutory Declaration is not accepted by the issuing authority at any time, responsibility may return to you and an enforcement warning notice may be issued to you – additional fees apply.

**SEND COMPLETED DECLARATION to the Manager, Expiation Notice Branch,
GPO Box 2029, Adelaide SA 5001 Or email to DriverNomination@police.sa.gov.au**

DO NOT SEND OR MAKE PAYMENT – A NEW NOTICE WILL BE ISSUED TO THE NOMINATED DRIVER

This Declaration must be completed by the person the notice is issued to;

- It must be witnessed by a Justice of the Peace or a person proclaimed under Part V of the Oaths Act 1936 (e.g. legal practitioner, a proclaimed police officer);
- Responsibility for payment will remain with the owner if this Declaration is not properly completed and submitted to the Commissioner of the South Australia Police on or before the due date for payment of the notice.

I, Daytime Phone No.:

(Full Name)

of

(Address)

(Email)

authorised to speak for Company Name: *(if applicable)*

do solemnly and sincerely declare that at the time of the offence referred to in Expiation Notice No.:

--	--	--	--	--	--	--	--	--	--

issued to Motor Vehicle Registration Number: State:

The vehicle was **Cross applicable**

- driven by another person whose details are listed below; or
- sold to the person / company whose details are listed below; or
- hired to the person / company whose details are listed below; or
- in possession of the person/company whose details are listed below; or
- I am unable to ascertain the identity of the driver of the vehicle at the time of the alleged offence.
The enquiries I have made to identify the driver are: *(attach an additional page if necessary – must be sighted and witnessed)*

.....

.....

.....

.....

.....

.....

Full Name:

Address:

(Full Residential Address)

(Postal Address – if same as above, write 'AS ABOVE')

Drivers Licence No.: State of Issue: Date of Birth: / /

Date Vehicle Sold: / / Date of Hire: (from) / / (to) / /

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Oaths Act 1936.

Declared and subscribed at: **in the State of:**

Signature: (person making declaration)

Declared before: Name & ID:

Signature: **Date:** / /

- Justice of the Peace
- Proclaimed Police Officer
- Commissioner for taking affidavits

FOR OFFICE USE ONLY:

INTERSTATE OR OVERSEAS DOCUMENTS

Your main function as a JP is to witness documents for use in South Australia. However, the Act allows you to witness documents while you are outside the State if the document is for use in South Australia. The exception to this is if the Act under which the document is made states it must be witnessed in South Australia.

If you are outside South Australia and you are asked to witness a document made under the laws of that State, the client must first ensure you are authorised to witness that document as a JP for South Australia.

JPs from any State or Territory can witness some documents created under or requiring certification for the purposes of the laws of the Commonwealth and which are used in Australia. An example of this is certain documents which are made or to be certified under these Commonwealth Acts:

- *Statutory declarations Act 1959*
- *Family Law Act 1975*
- *Migration Act 1958*
- *Marriage Act 1961.*

Before you witness a document for use in another country, you must ensure you are an authorised witness. In most cases JPs are not recognised as an authority to witness documents from another country, particularly if the document is from a non-commonwealth country. A Notary Public or a Consulate or Embassy official is usually authorised to witness these documents.

You can check with the Consulate Office or Embassy of the country where the document will be lodged to see if you are an authorised witness for the document. If you are not authorised to witness that document, the Consulate Office or Embassy will be able to tell you who can witness that document. You can access a list of the Consulates or Embassies on the Department of Foreign Affairs and Trade website www.dfat.gov.au.

Some documents from Commonwealth countries can be witnessed by a JP for any Australian State or Territory. Please ensure that you have the authority before you agree to witness the document. There have been incidents where documents to be used overseas have been witnessed by South Australian JPs and the overseas country has not accepted them.

SA LANDS TITLE OFFICE (KNOWN AS LAND SERVICES SA) DOCUMENTS

Land Services SA are responsible for a range of transactional land services and property valuation services previously delivered by the Lands Titles Office (LTO) and State Valuation Office. Lands titles is a term used to refer to a legal document that demonstrates ownership of land or property that belongs to a person.

Section 267 of the *Real Property Act 1886* provides that if a provision of the Act requires the signing of an instrument by or on behalf of a party to the instrument, the signing of the instrument must be witnessed by a person who either knows the person signing the instrument personally or is satisfied as to their identity. The witness must:

- be a person aged 18 years or over and not be party to the instrument;
- sign their name as a witness and must provide their full name, address and telephone number at which they can ordinarily be contacted during business hours printed legibly under their signature.

It is an offence carrying a maximum penalty of \$5,000 or imprisonment for one year for you to sign an instrument as witness if you do not know the person signing the instrument personally and you have no reasonable ground on which to be satisfied as to the person's identity. It is also an offence if you know or have reasonable grounds for suspecting that the person signing the instrument—

- if signing as a party—is not a party to the instrument
- if signing on behalf of a party—does not have authority to sign on behalf of the party.

Most LTO documents do not require a JP to witness them. JPs are only authorised to conduct Verification of Identity (VOI) for a self-represented party, complete the 'Self-Represented Party— Authorised Person Certification' and certify the copies of the documents you sight as a JP.

It is important to note you must:

- ensure that any specific instructions are identified and complied with
- not witness the document if you are a party involved with the transaction
- verify the identity of the signatory(s) in accordance with the VOI Requirements
- confirm the signatory(s) understand the nature and effect of the document they are signing

- ensure alterations are initialled by the signatory(s) in your presence. You as the witness must print the initials 'JP' and date next to your initials
- ensure all blank spaces are crossed out with the 'Z'
- ensure the document is signed in front of you. If it has already been signed, the signatory(s) must sign it again in your presence
- sign the document and include your authority as a witness (eg a justice of the peace for South Australia), your full name and a telephone number at which you can be contacted during business hours underneath your signature. You must also write the date and your JP Identification number.

For further information and to ensure you comply with the requirements for witnessing these documents, please refer to the 'Verification of Identity for Self-Represented Parties Guidance Note' and the 'Registrar-General's Verification of Identity Requirements' available on the Land Services SA website www.landservices.com.au

NOTICE OF INTENDED MARRIAGE

All marriages must be conducted in accordance with this legislation which makes provisions in relation to pre-requisites for a valid marriage, the requirements for the marriage ceremony and various other matters related to marriages.

Marriage in Australia is regulated by the *Marriage Act 1961* and the *Marriage Regulations 2017*.

A marriage shall not be solemnised unless a notice in writing of the intended marriage, in the prescribed form, is given to the authorised celebrant solemnising the marriage.

Except in prescribed circumstances, the notice of intended marriage (NOIM) must be lodged at least one month and not more than eighteen months before the marriage takes place regardless of where the person marries in Australia.

As a JP you are authorised to witness the NOIM form. When witnessing the NOIM you must ensure that:

- you only witness the signature of the person in front of you (the party or parties). If both parties to the marriage are present, you must witness both their signatures
- after the relevant person(s) have signed, you need to sign in the space 'Signature of witness' and put your JP stamp underneath. If you do not have a stamp, write your full name, your ID number and the words, *A justice of the peace for South Australia*.

The NOIM form can be viewed on the Commonwealth Attorney-General's Department website www.ag.gov.au.

PEOPLE WITH SPECIAL NEEDS

There will be occasions where you will be asked as a JP to witness documents for people who have special needs.

For example the person may:

- have a hearing impairment
- have an intellectual disability
- have a physical impairment
- have a speech impairment
- have a vision impairment or illiteracy
- have difficulty with the English language
- be a vulnerable person at risk of abuse.

Hearing impairment or speech impairment

An interpreter can be used to communicate with a person who understands sign language. There are accredited Auslan (Australian Sign Language) interpreters who can be asked to attend when making the appointment.

If an interpreter is not present, you can offer to communicate with the person in writing. Remember that some people with a hearing impairment are not fluent in English. Take extra care to be satisfied that the person understands what you write, as well as the nature and effect of the document. After witnessing the document for the person, ensure that you destroy your written communication.

If the person comes with an interpreter, they must be a qualified interpreter, must not be a friend or relative of the person and must take an oath or an affirmation that they will interpret truthfully and accurately to the best of their skill and ability. This is particularly important if the document to be witnessed is to be sworn or affirmed. The appropriate wording for the interpreter to take an oath or affirmation is:

Oath for interpreter

I [name of interpreter] swear that I shall, truthfully, accurately and to the best of my skill and ability, communicate by signs or other convenient means, words spoken in the English language, and interpret into the English language, statements made by signs, so help me God.

Affirmation for interpreter

I [name of interpreter] do truly and solemnly declare and affirm that I shall truthfully, accurately and to the best of my skill and ability, communicate by signs or other convenient means, words spoken in the English language, and interpret into the English language, statements made by signs.

After that the document can be witnessed in the usual manner, although the conversation with the person will take place through the interpreter.

Where the document concerned is an affidavit, the jurat should read as follows:

Sworn/Affirmed by the abovenamed deponent at [place] on this [day]. day of [month] 20[year] [signature of deponent] before me [your signature as a JP], [your full name, JP initials and JP ID number] A justice of the peace for South Australia through the interpretation of [name of interpreter], that person having first [sworn/affirmed] that they had truthfully and accurately communicated the contents of this Affidavit to the abovenamed deponent and that they would truthfully and accurately communicate and interpret the [oath/affirmation] administered in respect of the abovenamed deponent [signature of interpreter].

Intellectual disability

People with intellectual disabilities have significantly more difficulty in learning new things, understanding concepts, solving problems, concentrating and remembering. In most cases, the person would have a guardian or attorney who is legally appointed to make decisions on their behalf.

If a person with an intellectual disability comes to you as a JP to witness a document, you must exercise extreme caution. If the person is not accompanied by a guardian or attorney and you cannot ascertain that they have one, you must not witness the document.

Some intellectually disabled people want to control their own affairs even if someone has been appointed to make decisions for them. If a person comes to you without a guardian or attorney and they pressure you to sign but you are of the opinion they do not have the capacity to make decisions, then you must not witness the document. It is recommended that in this situation you refer the person to the Office of the Public Advocate www.opa.sa.gov.au.

Before witnessing a document you must satisfy yourself that the person understands 1) the content and 2) the effect of the document. If not satisfied on either point, you must refuse to witness and refer them to the Office of the Public Advocate.

Physical impairment

There are many types of physical impairment and people's needs vary. Things such as ensuring a person in a wheelchair has a firm writing surface on which to comfortably sign the document can assist the person.

If the person is unable to sign the document but can make a distinguishing mark and understands the nature and effect of the document, you must then write these words before witnessing:

This is the mark of [full name] made in my presence, he or she being physically unable to sign their name but agrees with and understands the nature and effect of this document and has made this mark.

If the person is unable to sign the document or make a distinguishing mark but they understand the nature and effect of the document, you must then write these words before witnessing:

I certify that [full name] agrees with and understands the nature and effect of this document but is physically incapacitated from signing or making a mark.

Vision impairment or illiteracy

If the person is unable to read the document:

- advise the person that you must read the document aloud to them to ensure that it is the correct document and that they understand its content
- assure the person that the document will remain confidential
- read the entire document to the person, allowing time for questions or clarification
- if satisfied that they understand the nature and effect of the document, write these words on the document:

I have read the contents of this document to the signatory [insert the person's name] who appeared to understand the content, nature and effect of the document.

If the document is an affidavit the person must swear or affirm the affidavit. The person should sign or place their mark on the document and you then witness the signature or mark by writing the person's full name under the mark (for example John Henry Smith's mark).

The JP then writes these words on the document (if they are not already written on it):

Sworn/Affirmed before me by the abovenamed deponent at [place] on this [full date eg dd/mm/yyyy], this Affidavit, having previously been read to the deponent by me, and the deponent appearing to understand the same, and having [made his/her mark/signed his/her name] thereto in my presence.

[Your signature as a JP]

[Your full name, JP initials & JP ID number]
A justice of the peace for South Australia.

Languages other than English

When witnessing documents for people who are non-English speakers or who understand little English, you may need to use an accredited interpreter, recognised in Australia by the National Accreditation Authority for Translators and Interpreters or has equivalent overseas qualifications. The accredited interpreter must not be a friend or relative of the person.

If you are asked to witness a document written in a language other than English, tell the person that it cannot be used for legal purposes in South Australia unless attached to it is:

- an English translation
- an Affidavit/declaration by the translator stating that the translation is an accurate translation of the document in the original language.

You may certify documents written in a language other than English if you are competent in that language. If you are not competent in that language and you have access to a photocopier, you should photocopy the originals yourself to ensure the copy is identical. If you do not have access to a photocopier, check the copy against the original for distinguishing marks/letters/symbols etc. to satisfy yourself the copy is a true and correct copy of the original. You could also refer the person to a JP who is competent in that language. There are some JPs that speak other languages who are listed on the Roll of Justices which is accessible on the SA.GOV.AU website.

Using the same procedure you would for any other document, make sure you ask the interpreter to:

- translate orally to the person the contents of the document
- interpret everything you say to the person and everything they say to you.

If the document is an Affidavit, the interpreter must take an oath or affirmation to say that he/she has interpreted and translated everything accurately using the following words:

Oath for interpreter

I [name of interpreter] swear that I understand and can speak fluently in both the English language and [language of the person] and that I will truthfully and accurately interpret and translate the contents of this Affidavit to the deponent [name of person] and will truthfully and accurately interpret and translate the [oath/affirmation] about to be administered to the deponent and all other matter and things required of me in connection with this Affidavit so help me God.

Affirmation for interpreter

I [name of interpreter] do truly and solemnly affirm that I understand and can speak fluently in both the English language and [language of the person] and that I will truthfully and accurately interpret and translate the contents of this Affidavit to the deponent [name of deponent] and will truthfully and accurately interpret and translate the [oath/affirmation] about to be administered to the deponent and all other matter and things required of me in connection with this Affidavit to the best of my skill and ability.

Speaking through the interpreter, you must ensure that the deponent understands the contents and the effects of the Affidavit before you administer the oath or affirmation. You must then administer the oath or affirmation to the deponent through the interpreter.

The jurat for the deponent's Affidavit should read as follows:

Sworn/Affirmed by the above named deponent at [place] this [full date eg dd/mm/yyyy]

[Signature of deponent]

before me [your signature as a JP], [your full name, JP initials and JP ID number], a justice of the peace for South Australia, through the interpretation of [name of interpreter], that person having first [sworn/affirmed] that they had truthfully and accurately interpret and translate the contents of this Affidavit to the abovenamed deponent and that they would truthfully and accurately interpret and translate the [oath/affirmation] administered in respect of to the abovenamed deponent .

[Signature of interpreter].

If the document is a statutory declaration, the interpreter must certify that they have interpreted and translated accurately using the following words:

Interpreter's certification

I [name of interpreter] do hereby certify that I have truthfully and accurately orally translated this document from the English language into [language of the person] to the signatory to the best of my skills and ability.

Once the interpreter is sworn or affirmed, you may proceed with the document in the normal manner, using the interpreter.

Please note that most interpreters or translators charge a fee for their service.

Witnessing for vulnerable people at risk of abuse

Vulnerable people such as older people and victims of domestic violence can be at risk of physical, financial, psychological and other types of abuse.

The JP Code of Conduct provides that you must not administer an oath or affirmation to a person; take the declaration or affidavit of a person; or witness the signing or execution of an instrument if you reasonably doubt that the person is legally or mentally competent to make the oath, affirmation, declaration or affidavit or to execute the document. You are not expected to make a definitive assessment that the person has mental capacity, but you need to be mindful that the person may not have the mental capacity to make the document or may have been forced or coerced into making it.

Some documents require a location to be stated. However, vulnerable people at risk may not wish to disclose the locality of where the document was witnessed. Unless the document specifically requires you to state or declare the location where the document was witnessed, you should refrain from including this.

If the person who comes to see you is an older person and they are accompanied by another person and you suspect that the older person is at risk of abuse, you can ask to see them alone.

You may then ask the questions below to satisfy yourself that the person:

- (a) understands the effects of the document; and
- (b) is not under any sort of coercion.

- What does this document do?
- What does it mean?
- What decisions can be made by the person you give authority in this document?
- To whom do you wish to give authority to make these decisions?
- When can the person make these decisions?
- If the document is an Enduring power of attorney, ask “Can you change or revoke the terms of the power? If the answer is yes, the person should be able to tell you that they can revoke the terms and also when they can do that, such as ‘at any time I wish to’,’ before I lose legal capacity, etc.
- Do you need anyone’s permission to change or revoke this power?
The answer should be ‘no’.
- Has anyone put pressure on you to do this?
- Can the person make the decisions mentioned in this power even while you have the capacity to make the decisions yourself? If the answer is yes ask:
 - does the person you give authority to have to ask you first?
 - can the person you give authority make a decision you disagree with?

You should not ask personal questions such as why the person is making this document or about the person’s family and health.

If, after hearing their answers, you still have concerns that the older person does not understand the effects of the document or is being coerced or pressured into signing the document, you must refrain from witnessing it and advise them why you are doing so. You can suggest they contact the Aged Rights Advocacy Service (ARAS) who provides advocacy assistance to support older people to uphold their rights and their responsibilities. The contact details for ARAS are at the back of this Handbook.

If you suspect the person may be at risk of domestic violence and is being coerced or pressured into signing the document, you also must refrain from witnessing it. You can refer the person to the following support services:

Domestic Violence Crisis Line

Phone: 1800 800 098

Crisis Care

After hours crisis support 4pm-9pm plus 24 hours on weekends and public holidays.

Phone: 131 611

POWERS OF ATTORNEY

In South Australia people can make the following legal documents under the *Powers of Attorney and Agency Act 1984* to give power to someone else (usually called a donee) to make financial decisions on their behalf:

- a General Power of Attorney
- an Enduring power of attorney.

Any person who is over the age of 18 years and who has legal capacity can make a power of attorney. The donor is the only person who can make the choice to give a power of attorney to another person.

A general power of attorney operates only while the donor has legal capacity. People use general powers of attorney to allow someone they trust to handle their affairs, often in their absence. An example is appointing someone to access their bank account to pay bills while they are overseas. A general power of attorney does not cover the donor if while away they lose legal capacity or is physically unable to attend to business. The witness to a general power of attorney does not need to be an authorised person. You can witness these documents as can any other adult witness, and if you choose to do so, you should not sign as a JP or include your JP credentials.

People use enduring powers of attorney to authorise someone they trust to look after their financial affairs when they can no longer do so themselves eg if they become mentally incapacitated. This is different from an 'Advance Care Directive' which can relate to health care, residential and accommodation arrangements, and the person's personal affairs.

A person can appoint more than one attorney; however if there is more than one attorney being appointed, the donor must specify if they must work together and in agreement (act jointly) or if one can make decisions independently if unable to contact the other donee (jointly and severally).

An enduring power of attorney may be created by deed expressed to be made in pursuance of s 6(1) of the *Powers of Attorney and Agency Act 1984* or by deed containing words indicating an intention that the authority is to be exercised:

1. notwithstanding the donor's subsequent legal incapacity
2. in the event of the donor's subsequent legal incapacity.

A deed purporting to create an enduring power of attorney is not effective unless it is witnessed by at least one person who is authorised to take affidavits. You may therefore be asked to witness such a deed in your capacity as a JP.

The deed must also have endorsed on it, or annexed to it, a statement of acceptance executed by the person appointed to be the donee of the power. The statement of acceptance must be in the form set out in Schedule 2 of the *Powers of Attorney and Agency Act 1984*, or in a form to the same effect.

How to witness enduring powers of attorney

An enduring power of attorney is a very important document and if incorrectly made can have adverse effects on the person who is giving the power. Before you witness such a document you must ensure:

- you are not an inappropriate witness eg there is no conflict of interest
 - you check for any instructions for you as the witness
 - you verify the identity of the donor by sighting photo identification (eg driver's licence or passport)
 - the donor has legal capacity and understands what the document means
 - the donor has not been forced or coerced to make the document
 - the donor has filled in their full name and address. The address must not be abbreviated eg Street not St. and South Australia not SA
 - if there is only one donee you must cross out the words 'jointly/jointly and severally'
 - if there is more than one donee, you cross out either 'jointly' or 'jointly and severally' depending on the donor's wishes
 - the full name and address of the donee or donees is stated in the deed
 - all blank spaces are crossed out with a 'Z' and both ends of the 'Z' are initialled by you and the donor and dated.
- the section for conditions, limitations or exclusions is completed by the donor or is crossed out with a 'Z', both ends of the 'Z' are initialled by you and the donor and dated initialled
 - all alterations are initialled by you and the donor. You must also write the initials 'JP' next to your initials
 - the donor signs the deed in front of you and dates it. If it is already signed, you must cross out the signature, initial it, date it along with the donor and ask them to sign again.

It is your duty as the witness to ensure the donor understands what they are doing. The below is a list of open-ended questions that can help you establish the person has legal capacity. It is not an exhaustive list of questions; however any questions you ask must require more than a yes/no response:

- What does this document do?
- What decisions can the donee make after the document is signed?
- When can the donee make these decisions?
- What are the limits on the decisions the person can make?
- How can you change or revoke the enduring power of attorney?
- Do you need anyone's permission to change or revoke this power? Answer is 'no'.
- Has anyone put pressure on you to do this? The answer should always be 'no'.

If the person is reluctant to answer this or other questions, you should refrain from witnessing the document and refer them to seek legal advice.

Things to be mindful of when witnessing enduring powers of attorney:

- if the donor is accompanied by others and shows reluctance to speak freely, you should ask to speak with the donor in private and you should assure the donor the conversation will be kept confidential
- you can refuse to witness a Enduring power of attorney when you do not believe the person is making the power of their own free will or if the person does not understand what the power means. You must explain the reasons for refusing to witness the Power of Attorney and you may recommend they seek independent legal advice
- you do not need to witness a donee's acceptance of an Enduring power of attorney.

Enduring power of attorney Kits can be purchased from the Legal Services Commission and Services SA either online or in person at 108 North Terrace, Adelaide.

WITNESSING PROCEDURES FOR STATUTORY DECLARATIONS

**AMENDED FROM
1 JANUARY 2025**

A **statutory declaration** is a legally binding written statement of fact made for official or legal purposes.

The person making a statutory declaration (the **declarant**) must sign the document in the presence of an authorised witness (e.g. JP) in accordance with the requirements of the Act that governs the making of the statutory declaration.

By signing it, the declarant agrees that the information in it is true. The declarant can be charged with a criminal offence if the information is false. Under the South Australian *Oaths Act 1936* (the Oaths Act), a penalty of up to 4 years imprisonment applies for false SA statutory declarations.

Statutory declarations are used for many purposes including:

- insurance claims
- proving a person's age
- employment and sick leave applications.

An authorised witness does not need to be concerned with the accuracy or truthfulness of the statutory declaration as they are simply witnessing the declaration of the declarant. A statutory declaration may be handwritten or typed, including in electronic form.

Is this a South Australian Statutory Declaration?

Before witnessing a statutory declaration as a JP, you should ascertain the jurisdiction in which the statutory declaration is to be used.

Except where a more specific legislative provision applies to govern the making of a statutory declaration for a particular purpose, statutory declarations for use in a South Australian jurisdiction are to be made in accordance with section 25 of the Oaths Act. Find out more information about **SA statutory declarations**.

Section 32 of the Oaths Act provides that a South Australian statutory declaration is not invalid merely because of an inadvertent and minor non-compliance with a requirement imposed under the Oaths Act, *Oaths Regulations 2021* (the Oaths Regulations) and the Code of Practice - Statutory Declarations, that does not materially affect the nature of the statutory declaration.

If a statutory declaration is being made pursuant to the Commonwealth *Statutory Declarations Act 1959* (Cth) or another legislative provision, the declarant should make the declaration in the form required under the relevant legislation.

EXAMPLE SOUTH AUSTRALIAN STATUTORY DECLARATION

Instructions for completing a statutory declaration

Please complete the following form using the notes in the left-hand margin for guidance. More guidance on making statutory declarations can be found at www.sa.gov.au/statdec

When making the statutory declaration the declarant must say aloud: "I solemnly and sincerely declare" when prompted by the authorised witness who witnesses the signing and making of the statutory declaration.

Statutory Declaration

State of South Australia - *Oaths Act 1936*

Insert the full name of person making the statutory declaration (declarant)

I,

do solemnly and sincerely declare that:

Set out what is declared. Cross through any blank space here with a 'Z' and declarant and witness initial and date the start and end of the 'Z'.

I declare that the contents of this statutory declaration are true to the best of my knowledge, information and belief and I understand that making a false statutory declaration is a criminal offence.

Signature of person making the declaration [to be signed in view of an authorised witness]

Place (City, town or suburb) and State

Declared at

***in South Australia**

Date

on

I am an authorised statutory declaration witness and I witnessed the declarant sign the declaration:

Signature of authorised witness

Date

on

Name and capacity in which authorised person has authority to witness statutory declaration (writing, typing or stamp)

A person authorised under section 25(2) of the *Oaths Act 1936* to witness the signing of a statutory declaration.

Statement to be included if the declaration was witnessed remotely online

This declaration was taken remotely under the observation of the authorised witness through an audio visual link and the requirements under the *Oaths Act 1936* for taking declarations by audio visual link were complied with.

Statement to be included if the declaration was signed electronically

This declaration was signed/ initialed by electronic means.

Details to be included of any assistance the witness provided to the declarant. For example, state here that the statement was read to the declarant and/or they nodded their agreement

I certify that the following modifications were made to the witnessing process:

Signature of authorized witness

Name and address of any other person who assisted the declarant to make the declaration (not including assistance in a professional capacity to prepare/ write the declaration on the instructions of the declarant).

Nature of assistance the other person provided, eg translation assistance.

Who is an authorised Statutory Declaration witness?

The classes of persons authorised to witness statutory declarations in South Australia for use in a South Australian jurisdiction are set out in Clause 1 of Schedule 1 of the Oaths Act and the Oaths Regulations.

You can find a list of categories of authorised statutory declaration witnesses (this includes JPs) and more information under **Authorised statutory declaration witnesses**.

ID check

From 1 January 2025 it is now mandatory under the SA *Oaths Act 1936* (the Oaths Act) for an authorised witness (e.g. a JP) to verify that the person signing the SA statutory declaration is the person whose name is on the statutory declaration by sighting photo identification, e.g. a driver's licence or passport.

Completion of the declaration

From 1 January 2025 a SA statutory declaration can be completed in person or online.

Declarants can find more information on this website about **Making a statutory declaration**.

As an authorised witness (e.g. JP) you cannot certify copies of documents online. If the declarant needs to attach certified copies of documents to their declaration, then the declarant must have those documents certified in person.

How to witness a South Australian Statutory Declaration in person

The **Code of Practice – Statutory Declarations** published by the Attorney-General and gazetted under section 33(1) (a) the Oaths Act governs the process for witnessing a South Australian statutory declaration. Please ensure you read the Code of Practice to ensure you comply with the requirements.

Below is a detailed step by step checklist of the steps for witnessing South Australian statutory declarations:

Meet in person with the declarant and confirm the Act under which the statutory declaration is made is written on the document e.g. *Oaths Act 1936* (SA) or *Statutory Declarations Act 1959* (Cth).

Confirm that the identity of the declarant making the statutory declaration matches the details on the statutory declaration e.g. full name and address. You must speak with the declarant named in the statutory declaration; it cannot be made on someone else's behalf.

Ask the declarant for photo identification (e.g. driver's licenses or passport) to confirm their identity. The mandatory requirement to sight photo identification is set out in the Code of Practice – Statutory Declarations.

Check the statutory declaration is properly completed by the declarant e.g. they have written or typed their statement on it. You cannot witness a blank statutory declaration. You must also ensure the declarant has dated the statutory declaration the same date they sign it and it is witnessed by you.

Blank spaces in the section setting out the matter(s) being declared must be crossed through with a 'Z' to prevent any information being added after it has been witnessed. Both you and the declarant must initial and date the start and the end of the 'Z'.

Any alterations to the statutory declaration must be initialled and dated by both the declarant and you.

if it is a multi-page declaration, each page of the declaration must be numbered and signed by the declarant.

Ask the declarant if there are any annexures to be attached to the statutory declaration. If there are, ensure they are referenced in the body of the statutory declaration and correctly labelled.

For example, annexures are often marked 'Annexure A', 'Annexure B' etc and should then be referred to correspondingly as 'Annexure A', 'Annexure B', etc in the statutory declaration. If they are not attached, you must not witness the statutory declaration.

If the annexure is not referred to in the statutory declaration, the declarant must make an alteration to the wording in the statutory declaration to refer to the annexure. Ensure the alteration is initialled and dated by both the declarant and you.

Ask the declarant to sign the statutory declaration in front of you. If the declarant pre-signed it, ask them to cross out their signature and sign the statutory declaration again in front of you. It should be as close as possible to the original one and both you and the declarant must initial and date the alternation.

Ask the declarant the following '*Did you prepare and write the declaration yourself?*'. If the answer is 'no', ask the declarant '*have you read the declaration and do you understand the contents?*'.

Then ask '*Do you understand that making a false statutory declaration is an offence that carries serious penalties including possible imprisonment?*'. You must hear the declarant say

'I understand' or I do'.

'If the declarant says '*I understand' or I do'*,

proceed and ask:

'Is that your name at the start of the statutory declaration?'

'Is that your normal signature?'

'Do you make this solemn declaration by virtue of the Oaths Act 1936 and do you solemnly and sincerely declare that the contents of this declaration are true to the best of your knowledge, information and belief? If so, please say 'I solemnly and sincerely declare'.

'If there are any attachments to the statutory declaration, you must ask the declarant:

'Do you solemnly and sincerely declare that this/these attachment/s is/are the attachment/s referred to in the statutory declaration? If so please say "I solemnly and sincerely declare'.

You must then complete the witnessing clause (e.g. jurat) by writing the place and date (e.g. [Suburb], South Australia), your signature, initials JP and then writing, typing and/or stamping your name and your authority as a JP to witness the statutory declaration e.g. 'A justice of the peace for South Australia'.

You must also then sign and date all annexures and write or stamp the following wording on the first page of the annexures (if they have not already been marked by the declarant):

This is the annexure marked [e.g Annexure "A"] referred to in the statutory declaration of [name of declarant].

Declared before me on [full date eg dd/mm/yyyy]

[Your signature]

[Your full name and your authority to witness the statutory declaration e.g. A justice of the peace for South Australia].

How to witness an SA Statutory Declaration online

The Code of practice in relation to statutory declarations gazetted under the Oaths Act provides for witnessing of South Australian statutory declarations to occur online.

There is no set program you must use, as long as it allows for both you and the declarant to connect with video and audio so you can see and hear each other and so you as the authorised witness (e.g. JP) see the declarant sign their statutory declaration in real time.

If you agree to witness a SA statutory declaration online, you should consider the following:

- How will you meet online? For example, through Skype, Zoom, Microsoft Teams, Facetime or other form of video conferencing platform.
- How will you send documents to one another? This could be through email or some other way of electronically sending documents.
- Do you want to use a scanned copy or an electronic copy of the statutory declaration? Do you have access to a scanner (for example, some mobile phones or mobile phone apps can scan documents) and a printer?

- It is recommended that prior to making yourself available to witness statutory declaration on-line that you save an electronic signature of your own on the device that you will likely be using, so you can easily paste it into a document that you will be witnessing.

In addition to the witnessing steps set out in the section '*How to witness a South Australian statutory declaration in person*', when witnessing an SA statutory declaration online you must:

Sight the declarant's photo identification on the screen to confirm that they are the declarant named on the statutory declaration form.

Watch the declarant sign their statutory declaration (in pen or by pasting a copy of a previously saved electronic signature into the document). The camera must be positioned so you can see them sign the statutory declaration and any annexure(s) in real time. This should be done in the same way as if meeting in person.

Hear the declarant while they answer the witnessing questions/say the declaration out loud.

Ensure the declarant sends you the signed declaration and any annexure(s) to you. This can be by email or other method of electronically transmitting documents. You must maintain the audio-visual link while this is being done.

Ensure the statutory declaration you are signing is the same statutory declaration, or a copy of the statutory declaration, you observed being signed by the declarant. You can do this by checking the number of pages, name of the declarant and signature match with the original statutory declaration.

Countersign the statutory declaration and annexure(s) (if any) as soon as practicable after witnessing the declarant sign. You can sign by hand with a pen, electronically on your device or by pasting a copy of your signature on it, using the 'draw function' in Microsoft Word or Adobe Acrobat or using a program or software that supports electronic signatures. You must maintain the audio-visual link while you are doing this.

Write, type or stamp on the statutory declaration, or the copy of the statutory declaration, underneath the jurat, the statement:

This declaration was taken remotely under the observation of the authorised witness through an audio visual link and the requirements under the *Oaths Act 1936* for taking declarations by audio visual link were complied with.

A statutory declaration that is signed or initialled by electronic means must include a statement on it that the declaration was signed or initialled by electronic means.

If you signed the statutory declaration using an electronic signature, you must also include this statement underneath your electronic signature:

This declaration was signed and/or initialled by me as the authorised witness by electronic means.

This statement is not required if you signed the statutory declaration with wet ink.

Send the witnessed statutory declaration and annexure(s) (if any) back to the declarant by email, or scan or use some other method of electronically transmitting the documents back to the declarant.

Reasonable modifications or assistance for the declarant (from the *Oaths Regulations 2021*)

Sometimes a declarant may need help when making a statutory declaration, for example if they have a disability or need someone to translate for them.

The authorised statutory declaration witness (e.g. JP) may make or permit reasonable modifications to the witnessing process in those circumstances, or another person may provide assistance, such as translation assistance.

Examples of reasonable modifications include:

- a hearing-impaired person may read and use sign language for the oral declaration instead of saying it aloud; or
- a person who is unable to speak may be able to listen to you read the statutory declaration and nod assent.

If reasonable modifications are made, **you must certify on the statutory declaration what modifications were made.**

If another person provides assistance, such as translation assistance, the person helping must also be present in person or online by audio visual link when the statutory declaration is signed. After you and the deponent have both signed the statutory declaration, you **must** write on the statutory declaration directly below the jurat:

- the name and address of the person who provided the assistance and
- what type of assistance was provided (for example: 'translation assistance' or 'assistance with writing or reading').

This does not apply to assistance by a person who prepared the affidavit in a professional capacity on the deponent's instructions, including a legal practitioner or conveyancer.

Interstate and overseas declarations

As a JP you are authorised under the Oaths Regulations to witness a South Australian statutory declaration remotely online where the declarant is located outside South Australia. You can do this even if you are also located outside South Australia at the time of witnessing.

If the declarant is located outside South Australia and the statutory declaration is to be witnessed in person, then it should be witnessed by a person who is authorised to witness statutory declarations or administer an oath in that place outside South Australia. This does not include a South Australian JP.

If the matter is a Commonwealth one, such as visa matters, the declarant will need a **Commonwealth statutory declaration**. The declarant can visit to ag.gov.au for more information.

Commonwealth Statutory Declarations

A Commonwealth statutory declaration is a statement of facts declared by the person to be true and accurate. Commonwealth statutory declarations are made under the *Statutory Declarations Act 1959* (Cth).

There are 3 ways people can make a Commonwealth statutory declaration. They can use:

- the **approved form** made with an authorised witness e.g. JP in person; or
- the **approved form** made with an authorised witness e.g. a JP remotely using video link (such as over Zoom, Microsoft Teams, Skype or Facetime); or
- **myGov and their Digital Identity**.

The person can choose whichever way they prefer as each one creates an equally valid Commonwealth statutory declaration.

To view a full list of approved witnesses for Commonwealth statutory declarations visit **[list of approved witnesses](#)**.

Differences between each option:

The below helps to understand how each option differs:

Made with a witness in-person

- Format: Paper or electronic version of the approved form
- Witnessing: An approved witness (e.g. JP) observes the person sign in front of them in-person
- Signature: Wet-ink (pen) signature, or electronic signature

Made with a witness remotely with video-link

- Format: Paper or electronic version of the approved form
- Witnessing: An approved witness (e.g. JP) observes the person sign remotely through a video link program, such as Skype, Microsoft Teams, Zoom or Facetime.
- Signature: Wet-ink (pen) signature, or electronic signature

Made without a witness through myGov

- Format: Made using the myGov platform
- Witnessing: Digital Identity verification, no witness required
- Signature: Electronic signature using myGov.

ID checks

While it is not mandatory under the *Statutory Declarations Act 1959* for authorised witnesses (e.g. JPs) to verify the identification of a declarant for a commonwealth statutory declaration, it is recommended by Justice of the Peace Services that you do for all statutory declarations you witness to be consistent in your witnessing practices.

Below is an example of a Commonwealth statutory declaration (PDF which can be printed or filled in electronically):

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

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

make the following declaration under section 9 of the *Statutory Declarations Act 1959*:

2 Set out matter declared to in numbered paragraphs 2

I believe that the statements in this declaration are true in every particular, and I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, the punishment for which is imprisonment for a term of 4 years.

3 Signature of person making the declaration 3

4 Email address or telephone number of person making the declaration 4

5 Place
6 Day
7 Month and year
Declared at 5 on 6 of 7

Observed by me,

8 Signature of person observing the declaration being made 8

9 Full name, qualification and address of person observing the declaration being made 9

10 Email address and/or telephone number of person observing the declaration being made 10

To view the online form visit the Commonwealth Attorney-General's Department website **Online commonwealth statutory declaration form**

If the Commonwealth statutory declaration is being witnessed in person or witnessed remotely using video link (such as Zoom, Microsoft Teams, Skype or Facetime) ensure you following the same witnessing steps for witnessing a South Australian Statutory Declaration in person or remotely.

Please visit also refer If you have been requested to witness a Commonwealth statutory declaration, it's important to know how to properly execute the task. Find out more on **information for approved witnesses**.

Please visit the **Information for witnesses** page on the Commonwealth Attorney-General's Department website for further information about witnessing Commonwealth statutory declarations and to ensure you know how to properly execute the statutory declaration.

VERIFYING A PERSON'S IDENTITY

Many organisations and government departments require proof that an applicant is who they say they are and have different requirements as to what they will accept as a proof of identity (ID) and how it is to be submitted.

The verification of ID may be required by:

- an independent adult over the age of 18
- an authorised person eg a JP.

If verification of ID is required by an authorised person, the document or accompanying instructions will usually indicate who the authorised person can be. If a JP is authorised to verify the identity of a person, you must check for any other specific requirements. Some forms require that the witness must have known the person for a specific period of time or you may need to sight a particular type of proof of ID.

The instructions that accompany the document will usually list different types of documents that must be viewed by the witness. The applicant can choose from various types of personal ID documents and usually there is a requirement that these add up to the value of 100 points or more. The value for each type of document is usually listed on the form.

Another requirement may be that the applicant presents a specific size photograph of themselves and you need to state on the back of the photograph that it has a current likeness to the applicant. You may also be required to endorse a photograph to say it is a true photograph of [name of the person]. In this case you must view other photographic evidence, such as a passport or a driver's license.

Before witnessing photographs, you should ask to see the document that the photograph will be attached to or any accompanying instructions to ensure you are authorised to witness the photograph.

Verification process

Before you endorse the proof of ID check the following:

- the documents provided are originals unless the instructions allow for certified copies as proof of identity
- the photographs you view are clear and distinct photographs of the person before you
- if you are asked to view video camera, e-mail or colour photocopied images, check any accompanying instructions to ensure this is acceptable
- if instructions indicate that the same witness must endorse the photograph and sight the identity documents that the photograph will be attached to, you must ensure you do this
- the person named in the application form is the same person named in the documents you sight.

When endorsing a photograph you must ensure you follow any accompanying instructions as they may show specific wording that must be used on the photograph, eg 'This is a true photograph of (applicant's name in full) and signed by me ..., the witness'.

Occasionally you may be asked to verify proof of identity for someone wearing a face covering. In this instance you should first work out what is considered sufficient proof of identity under the relevant Act or Legislation or for the organisation or government department requiring the certification. Most likely you will need to match the person to a photograph on a licence, passport or other document.

The fact that a person is wearing a face covering for cultural, religious or other reasons does not exempt them from the requirement in certain circumstances to establish their identity.

If you are required to see the client's face in order to identify them, you should proceed with sensitivity and explain the situation to the client and ascertain whether they are willing to remove their face covering for the purposes of identification. You should not request the client reveal more of their face than is absolutely necessary for identification purposes and you should follow any instructions that are presented to you.

If the client is not willing to remove their face covering sufficiently for the purposes of identification and there seems to be no other options for appropriate identification, then you should decline from verifying the person's identity and explain to the person their options, such as seeking out a female JP (if that would assist them) or contacting the organisation or government department concerned to ascertain if the requirements might be waived or modified in their case.

WAIVER OF RIGHTS

A person who buys a second-hand vehicle from a licensed vehicle dealer has certain rights under the *Second-hand Vehicle Dealers Act 1995*. This includes the right to have the licensed dealer repair defects that are found within the statutory warranty period.

In certain circumstances, it also includes the right of a natural person, who enters into a contract for purchase of a second-hand vehicle from a licensed vehicle dealer, to rescind the contract within a cooling off period of two clear business days. A purchaser may rescind the sales contract by giving the dealer written notice before the expiry of the two day cooling off period.

A purchaser or prospective purchaser of a second-hand vehicle, aged 18 years or over, can waive his or her rights in relation to the repair of a defect in the vehicle and/or his or her right to a cooling off period. Such a waiver of rights must be done by completion of certain documents in accordance with the *Second-hand Vehicle Dealers Regulations 2010*.

A prospective purchaser of a second-hand vehicle from a dealer may waive his or her right to rescind the contract for the sale of the vehicle during an applicable cooling off period if he or she signs the *Waiver of Cooling-off Rights* document, as set out in Schedule 6 of the *Second-hand Vehicle Dealers Regulations 2010*. This must be done before a witness who signs the document as required or indicated by the document, but who must not be the dealer or a salesperson employed by the dealer who has been involved in any way in the transaction for the sale of the vehicle to the prospective purchaser. It is an offence carrying a maximum penalty of \$5,000 for such a person to sign as a witness to the **Waiver of Cooling-off Rights** document.

A person who purchases a second-hand vehicle from a dealer may waive his or her rights in relation to the repair of a defect in the vehicle by signing the **Waiver of Rights Under Part 4** document, as set out in Schedule 6 of the *Second-hand Vehicle Dealers Regulations 2010*. This must be done before a witness of a kind specified in that Schedule, which includes a JP, but who cannot be the dealer; a person who is owed money by or indebted to the dealer; who is employed by the dealer as an employee or under a contract for the performance of services; or otherwise a close associate of the dealer. As the JP witnessing this form, you must sign a certificate as required or indicated by Schedule 6, which requires you to certify that you are satisfied the purchaser signed the form freely and voluntarily in your presence and that he or she did so appearing to understand the effect of the waiver. While you are not required to explain to the purchaser the effect of completing the relevant form, it is an offence carrying a maximum penalty of \$5,000 for a person to sign a witness certificate, as set out in the **Waiver of Rights Under Part 4** document, unless the witness has made reasonable inquiries to satisfy himself or herself that the person proposing to sign understands the effect of completing the document.

Any waiver of the purchaser's rights must be the purchaser's choice. A contract for the sale of a second-hand vehicle that is conditional on the purchaser taking steps to waive a right conferred by the *Second-hand Vehicle Dealers Act 1995* is void.

How to witness a waiver of rights

As a JP you are authorised to witness the Waiver of Rights Under Part 4 document, as set out in Schedule 6 of the *Second-hand Vehicle Dealers Regulations 2010* and, as set out above, you are required to satisfy yourself that the person proposing to sign the form understands the effect of completing it and is signing freely and voluntarily in your presence. If you are not satisfied that the person proposing to sign the form understands the effect of the form, you must refuse to witness the person's signature and should refer the person to Consumer and Business Services.

You must not witness this document as a JP if:

- you are the dealer
- you are owed money by or indebted to the dealer
- you are employed by the dealer as an employee or under a contract for the performance of services
- you are the dealer's spouse, domestic partner, parent, brother, sister or child
- you and the dealer are members of the same household
- you are in partnership with the dealer
- you and the dealer are otherwise close associates (within the meaning of s 3A(1) the *Second-hand Vehicle Dealers Act 1995*).

If you witness the waiver of rights form as a JP you must ensure:

- it is in the prescribed format (Refer schedule 6 of the *Second-hand Vehicle Dealers Regulations 2010*)
- the purchaser is 18 years or older
- the purchaser appears to understand the effect of the waiver
- the purchaser is signing freely and voluntarily in your presence.

OTHER DUTIES

JPs may be asked to witness many other documents that are not specified in this handbook which can include bail agreements, drug warrants or you may be asked to attend drug destruction with the Police.

You may also be asked to witness a will for a person. It is important to note that a will does not require an authorised witness such as a JP to be a witness. The only requirement is that the witnesses are two independent adults and therefore if you choose to witness a Will you will do so as an adult and private citizen, not as a JP and you must not provide your JP credentials.

It is not possible to list every function that a South Australian JP is authorised to witness in this Handbook. Most official forms will state the name of the relevant Act or Regulation pursuant to which a particular function is conferred.

JP STAMPS

All JPs upon appointment are issued with a JP identification number which acts as your unique identifier.

It is recommended that you purchase a stamp, which can be done at most stationers, and that you can use in place of writing the same information in the 'jurat' or certificate of every document you witness. It is also convenient to have a stamp for certifying true copies of documents as this will save you a lot of time.

JPs for South Australia **must not** create or purchase stamps that contain their signature. JPs must sign all documents they endorse, certify or witness by hand.

Below is the standard wording to be used if you choose to have a general stamp made:

JP general stamp

The general stamp must have your full name eg first, middle and surname, the initials 'JP', your JP ID number and the words 'A justice of the peace for South Australia' underneath your name.

Please note there is no requirement for a location to be included on these general stamps. Vulnerable people at risk may not wish to disclose the locality of where the document was witnessed. Unless, the document specifically requires you to state or declare the location where the document was witnessed, you should refrain from including this.

Here is an example of a general JP stamp:

John Michael Smith JP # 12345
A justice of the peace for South Australia

COMMON QUESTIONS

When can or should I refuse to witness a document?

You should refuse to witness a document where there is a real or perceived conflict of interest. This may include witnessing for family or friends. Regulation 3 of Schedule 1 – Code of Conduct for JPs and Special Justices under the *Justices of the Peace Regulations 2021* expressly provides that a JP must not exercise his or her powers as a JP in respect of a matter in which the JP has a direct or indirect personal, family, financial or business interest.

Even where it is not illegal to witness for family or friends, we recommend that you refrain from doing this as you risk being accused of having an interest and lacking independence as a witness. In some cases it can make the documents invalid.

You can refuse to witness documents that do not require an authorised witness such as a JP to witness them. You should also refuse to witness a document when the person does not have the mental capacity to understand what they are signing, or if they are not completing it of their free will. Further, you must not witness any documents for yourself as a JP.

If you refuse to witness a document, you must explain the reasons for refusing to witness the document to the client.

What colour pen should I use to witness documents?

You should use blue or black pens when witnessing documents as a JP, unless another colour pen is specified on the form you are going to witness.

Can I help complete the document I am being asked to witness?

No. It is not recommended that you help complete the document and then be the witness. As a JP you are an independent witness.

Can I refuse to administer an oath or affirmation?

You should refuse to administer an oath or affirmation for an Affidavit if you believe the deponent does not understand the contents of the Affidavit or the nature of the oath or affirmation. You should also refuse to administer an oath or affirmation if it is not for the purpose of making an Affidavit to be used in legal proceedings.

You should not refuse to administer an oath or affirmation if it is contrary to your personal beliefs as it is your duty as a JP to do this regardless of your beliefs as it is the deponent's choice to take an oath or affirmation as required by law.

There is no space on the document to stamp or write my certification, can I put it on the back of the document?

No. You must certify the page that has the copy of the original document on it. If you certify the back of the document, you are technically certifying a blank page.

NOTARIES PUBLIC

A JP is not a notary public (also ‘notary’ or ‘public notary’). A notary public in South Australia is a legal practitioner who has been admitted and enrolled as a notary public of the Supreme Court of South Australia pursuant to s 5 of the *Notaries Public Act 2016*.

Pursuant to s 6 of that Act, a notary public so admitted and enrolled has all the powers and authorities (including the power to take affidavits) exercisable by law or custom by notaries public. A notary public’s authority for witnessing documents may be recognised and accepted by foreign courts and authorities.

The functions of a notary may include attesting documents and certifying their due execution, preparing powers of attorney, wills and other documents for use overseas, administering oaths and affirmations for use in overseas courts, witnessing affidavits and statutory declarations, certifying copies of original documents, noting and protesting of bills of exchange, and preparing admiralty documents.

The contact details of notaries in SA can be found on www.notarylocator.com.au/SA.

SECTION 4

OTHER INFORMATION

COMMISSIONERS FOR TAKING AFFIDAVITS

JPs are not Commissioners for taking affidavits under the *Oaths Act 1936*.

Pursuant to section 28(1) of the Oaths Act, the following are Commissioners for taking affidavits in the Supreme Court:

- all Judges and Masters of the Supreme Court and the District Court;
- all Magistrates;
- all Judicial Registrars, Registrars and Deputy Registrars of the Supreme Court, the District Court, the Environment Resources and Development Court, the South Australian Employment Tribunal, the Youth Court and the Magistrates Court;
- all persons on the roll of legal practitioners of the Supreme Court (except those whose right to practise the profession of law is under suspension by virtue of disciplinary action taken against him); and
- any other person appointed by the Governor to be commissioner for taking affidavits in the Supreme Court

GLOSSARY

Affidavit

A written statement sworn on oath or affirmed by a person (the deponent) before a person who has authority to administer an oath or affirmation. Affidavits are used as written evidence in legal proceedings.

Affirm

Make a legally binding promise to a court by declaring truly and solemnly before an authorised person that the contents of a document are true.

Affirmation

A pledge that statements made are true, which may be made in place of taking a religious oath.

Attest

Bear witness to, affirm the authenticity of, to certify, to declare to be correct, true or genuine.

Attest or witness a signature

Sign a document to certify that it was signed in your presence.

Attest or witness the execution of a document (instrument)

Sign a legal document to verify that it has been completed according to law in your presence.

Attorney/Donor

Person who is given the legal authority to act on another's behalf.

Declarant

Person who makes a statutory declaration.

Deponent

Person who makes an oath or affirmation on an Affidavit or deposition.

Donor

Person who gives another person legal authority to act on the donor's behalf.

Executed

Completed and given validity (eg a legal instrument) by fulfilling certain legal requirements as by signing, sealing, etc.

Instrument

A formal legal document such as a will, a mortgage or Power of Attorney.

Jurat

A certificate on an affidavit, by an authorised person, showing by whom, when and before whom it was sworn or affirmed.

JP

A justice of the peace for South Australia.

Notary Public (or Public Notary)

An official, usually a solicitor, vested with various powers and authorities (including the power to take affidavits and certify/witness legal instruments) exercisable by law or custom which may be recognised in overseas jurisdictions.

Oath

A sworn acknowledgement to tell the truth.

Revoke

To cancel.

Statutory declaration

A written statement of facts which the declarant signs and solemnly declares to be true before a person authorised to take declarations in the manner and form prescribed by an Act (for example section 25 of the *Oaths Act 1936*).

Swear

To make a solemn declaration with an appeal to God or some superhuman being in confirmation of what is declared eg on a Bible, the Quran or other religious book.

Witness

1. A person who can provide direct information based on their own knowledge about a relevant fact in issue.
2. A person who observes the signing of a document and signs the document to confirm this fact

USEFUL CONTACTS

Aged Rights Advocacy Service Inc

175 Fullarton Road, Dulwich SA
Phone: 8232 5377
Freecall in Australia: 1800 700 600
www.sa.agedrights.asn.au

Births, Deaths and Marriages

91 Grenfell Street, Adelaide SA
GPO Box 1351 Adelaide SA 5001
Phone: 131 882
www.cbs.sa.gov.au and www.sa.gov.au

Community Legal Centres

www.saccls.org.au

Consumer and Business Services

91 Grenfell Street, Adelaide SA
Phone: 131 882
www.cbs.sa.gov.au

Courts Administration Authority

Phone: 8204 2444 or Freecall 1800 571 191
www.courts.sa.gov.au

Family Court of Australia (SA Office)

Roma Mitchell Commonwealth Law Courts
Building, 3 Angas Street, Adelaide SA
Phone: 1300 352 000
www.familycourt.gov.au

Justice of the Peace Services

95 Grenfell Street, Adelaide SA
GPO Box 1351 Adelaide SA 5001
Phone: 131 882
Email: jpservices@sa.gov.au
www.agd.sa.gov.au and www.sa.gov.au

Interpreting & Translating Centre

Level 4, Riverside Centre, North Terrace,
Adelaide SA
Phone: 1800 280 203
Email: itc@sa.gov.au
www.translate.sa.gov.au

Land Services SA

101 Grenfell Street, Adelaide SA 5000
Phone: 8423 5000
Country callers: 1800 648 176
Email: customersupport@landservices.com.au
www.landservices.com.au

Law Society of South Australia

Level 10, 178 North Terrace, Adelaide SA
Phone: 8229 0200
www.lawsocietysa.asn.au

Legal Services Commission

159 Gawler Place, Adelaide SA
Legal Help Line: 1300 366 424
www.lsc.sa.gov.au

Notary Publics

[**www.notarylocator.com.au**](http://www.notarylocator.com.au)

Office of the Public Advocate

211 Victoria Square, Adelaide

Phone: (08) 8342 8200

Toll Free: 1800 066 969 (Country SA)

[**www.opa.sa.gov.au**](http://www.opa.sa.gov.au)

Ombudsman SA

95 Grenfell Street, Adelaide SA

Phone: 8226 8699

Toll Free: 1800 182 150 (outside metro SA only)

[**www.ombudsman.sa.gov.au**](http://www.ombudsman.sa.gov.au)

Public Trustee

211 Victoria Square, Adelaide

Phone: 8226 9200

Toll Free: 1800 673 119 (SA Country Toll Free)

[**www.publictrustee.sa.gov.au**](http://www.publictrustee.sa.gov.au)

Royal Association of Justices

Building 8, 300 Richmond Road, Netley SA

Phone: 8297 4044

Email: [**registrar@rajsa.com.au**](mailto:registrar@rajsa.com.au)

[**www.rajsa.asn.au**](http://www.rajsa.asn.au)

South Australian Civil & Administrative Tribunal

Level 4, 100 Pirie Street, Adelaide SA

Phone: 1800 723 767

[**www.sacat.sa.gov.au**](http://www.sacat.sa.gov.au)

Service SA

Phone: 13 10 84

[**www.service.sa.gov.au**](http://www.service.sa.gov.au)

Translating and Interpreting Service (TIS National) (Department of Immigration & Border Protection - Federal Government)

24 hours, every day of the year

Phone: 131 450 (within Australia)

Phone: +613 9268 8332 (outside Australia)

[**www.tisnational.gov.au**](http://www.tisnational.gov.au)

Women's Information Service

101 Grenfell Street, Adelaide SA

Phone: 8303 0590

Toll Free: 1800 188 158 (Rural)

[**www.wis.sa.gov.au**](http://www.wis.sa.gov.au)

CODE OF CONDUCT FOR JUSTICES OF THE PEACE AND SPECIAL JUSTICES

Schedule 1, Part 1 of the *Justices of the Peace Regulations 2021*

Part 1 — Provisions applicable to all justices of the peace

1. Justice must act within conditions of appointment

A justice must not breach, or fail to comply with, a condition of the justice's appointment.

2. Prohibition on soliciting or accepting fees, gifts etc in connection with office of justice

(1) A justice must not, whether directly or indirectly, solicit or accept any fee or reward from any person in connection with the office of justice.

(2) In this clause—
reward includes any gift, gratuity, benefit or favour.

3. Conflict of interest and improper influence

(1) A justice must not exercise the powers of a justice in respect of a matter in which the justice has a direct or indirect personal, family, financial or business interest.

(2) A justice must not improperly influence, or attempt to improperly influence, a person who seeks the services of the justice.

4. Administering oaths, taking affidavits, witnessing instruments, etc

(1) If, under an Act, it is provided—

- (a) that a declaration may be made before a justice; or
- (b) that an instrument may be signed or executed in the presence of, or be attested by, a justice,

the justice taking the declaration, or witnessing or attesting to the instrument, must do so in accordance with any directions provided under the Act.

Example—

Regulation 23 and Schedule 6 Document 1 (Waiver of Rights) under the *Second-hand Vehicle Dealers Regulations 2010*.

(2) A justice must not—

- (a) administer an oath or affirmation to a person; or
- (b) take the declaration or affidavit of a person; or
- (c) witness the signing or execution of an instrument,

if the justice reasonably doubts that the person is legally or mentally competent to make the oath, affirmation, declaration or affidavit or to execute the document.

5. Justice must not divulge confidential information

A justice must not intentionally divulge information of a private, confidential or commercially sensitive nature obtained by the justice in carrying out official duties except—

- (a) as authorised or required by law; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates.

6. Justice must not provide legal advice

A justice must not provide legal advice when acting in their capacity as a justice.

7. Restrictions on use of office or title of justice

- (1) A justice must not—
 - (a) use, or seek to use, the office of justice of the peace for the purpose of advancing the justice's business, commercial or personal interests; or
 - (b) use, or seek to use, the title of justice of the peace for the purpose of advancing the justice's business or commercial interests; or
 - (c) use, or seek to use, the office or title of justice of the peace in a manner, or for a purpose, that may bring the office of justice of the peace into disrepute.
- (2) use, or seek to use, the office or title of justice of the peace in a manner, or for a purpose, that may bring the office of justice of the peace into disrepute.
- (3) In this clause—
member of a council has the same meaning as in the *Local Government Act 1999*.

8. General conduct

- (1) A justice must not criticise or comment on the choice of a person as to whether

the person takes an oath or makes an affirmation.

- (2) A justice must behave in a proper and courteous manner to any person who seeks the justice's services as a justice.
- (3) A justice must not engage in dishonest activities or conduct themselves in such a way as to bring the office of justice of the peace into disrepute.

9. Notice of certain information to be provided to Attorney-General

- (1) A justice must, within 14 days after any of the following matters occurring:
 - (a) being charged with an offence (other than an offence that is expiable);
 - (b) the charge of an offence (other than an offence that is expiable) alleged to have been committed by the justice being withdrawn, dismissed or discontinued;
 - (c) being convicted or acquitted of an offence (other than an offence that is expiable);
 - (d) being issued with an interim intervention order or an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*;
 - (e) being issued with an interim firearms prohibition order or a firearms prohibition order under the *Firearms Act 2015*;
 - (f) being subject to any of the following:
 - (i) a control order under the *Serious and Organised Crime (Control) Act 2008*;
 - (ii) a control order under Part 5.3 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

- (iii) a control order under the *Child Sex Offenders Registration Act 2006*;
 - (g) being diagnosed with a mental illness where there are concerns the justice may cause harm to themselves, others or property;
 - (h) being found to have acted dishonestly by any court, tribunal, inquiry, regulatory agency or complaint handling or dispute resolution body;
 - (i) becoming bankrupt or applying as a debtor to take the benefit of the laws relating to bankruptcy;
 - (j) being disqualified from managing or being involved in the management of any company under the *Corporations Act 2001* of the Commonwealth,
- provide written notice of the details of the matter to the Attorney-General.
- (2) A justice must, within 28 days after a change in—
- (a) the justice's name; or
 - (b) the justice's business or home address; or
 - (c) the telephone number on which the justice can be contacted during business hours or after business hours; or
 - (d) the justice's occupation,
- provide written notice of the change to the Attorney-General.
- (3) A justice must, as soon as practicable after becoming aware—
- (a) that the justice will be absent from the State for a period expected to last at least 3 months; or
 - (b) that the justice will, for some other reason, be unable to carry out official duties as a justice for a period of at least 3 months,
- provide written notice of that information to the Attorney-General.

Part 2— Additional provisions applicable to special justices

10. Interpretation

In this Part—

supervising judicial officer means—

- (a) the Chief Magistrate; or
- (b) the Magistrate who is designated as the Supervising Regional Manager of the Magistrates Court; or
- (c) a Magistrate who is designated as a Regional Manager of the Magistrates Court; or
- (d) the Judge of the Youth Court.

11. Court duties etc

- (1) A special justice must observe the directions of the relevant supervising judicial officer relating to the administration of the Magistrates Court or the Youth Court.
- (2) A special justice must attend court at the time and place notified to the special justice.
- (3) However, a special justice will be excused from attending court if the justice has given reasonable notice to the relevant supervising judicial officer of the justice's inability to attend.
- (4) A special justice must attend to the business of the court that is entrusted to the special justice diligently and to the best of the justice's ability.
- (5) A special justice must, at all times—
 - (a) when carrying out official duties as a special justice; and
 - (b) while in the precincts of a court, observe the standard of conduct and dress expected of a judicial officer.

12. Notice of certain information to be provided to Chief Magistrate and Judge of Youth Court

A special justice must, within 14 days after any of the following matters occurring:

- (a) being charged with an offence (other than an offence that is expiable);
- (b) the charge of an offence (other than an offence by the justice being withdrawn, dismissed or discontinued);
- (c) being convicted or acquitted of an offence (other than an offence that is expiable);
- (d) being issued with an interim intervention order or an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*;
- (e) being issued with an interim firearms prohibition order or a firearms prohibition order under the *Firearms Act 2015*;
- (f) being subject to any of the following:
 - (i) a control order under the *Serious and Organised Crime (Control) Act 2008*;
 - (ii) a control order under Part 5.3 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;
 - (iii) a control order under the *Child Sex Offenders Registration Act 2006*
- (g) being diagnosed with a mental illness where there are concerns the justice may cause harm to themselves, others or property;
- (h) being found to have acted dishonestly by any court, tribunal, inquiry, regulatory agency or complaint handling or dispute resolution body;
- (i) becoming bankrupt or applying as a debtor to take the benefit of the laws relating to bankruptcy;
- (j) being disqualified from managing or being involved in the management of any company under the *Corporations Act 2001* of the Commonwealth,

provide written notice of the details of the matter to the Chief Magistrate or the Judge of the Youth Court (depending on the court to which the special justice is assigned).

Note—

See also clause 9 of the Code (Notice of certain information to be provided to Attorney-General).

NOTES



Government of South Australia
Attorney-General's Department