

Justice of the Peace Handbook

Delivering high quality honorary justice services that meet community needs

Honorary Justice Services Support



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Disclaimer for Handbook

This edition of the Handbook has been prepared by the Victorian Department of Justice and Community Safety for the use of Justices of the Peace for the state of Victoria. All reasonable care has been taken to provide accurate information.

It is believed to be up to date at the time of publication on 1 September 2022. The law may change after the date of publication of this handbook and further updates will be communicated via HJSS and the departmental website.



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1. Introduction

This handbook is designed to provide you with information to assist you in carrying out the functions of a Justice of the Peace (JP) for the state of Victoria. The handbook includes procedures, checklists and examples which will be useful when witnessing and attesting different documents.

If you are a newly appointed JP, this handbook is a tool to help you become familiar with your role and to use as a reference.

For clarification on the information in this handbook, or for information not covered in this handbook, contact the Honorary Justice Services Support (HJSS), Department of Justice & Community Safety (the department) during business hours on 03 9136 3415 or email jp@justice.vic.gov.au.

Please use this handbook in conjunction with training provided by the department. Training and professional development provides the opportunity to refresh skills and update knowledge about your JP duties, as well as learn from and with other JPs in your area.

Training and professional development options will be advertised via email, HJSS Newsletter and [website](#).

2. History and Development of Justices of the Peace

2.1 The Origins of JPs

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

Throughout the early 1300s, Keepers of the Peace were appointed by each county and had the power to hear and determine trespasses and punish offenders. The title, Justice of the Peace, derived from the reign of Edward III in 1361. During this time, JPs in Britain were authorised to perform functions ranging from hearing and determining offences to licensing public houses. JPs were recognised in the Australian colonies from 1788. Captain William Lonsdale, the first officially appointed JP in the settlement of Port Philip, and Ensign George King would hear cases together.

JPs in Victoria were first appointed under Victorian Acts from 1851 for the administration of Justice in the colony. A number of Acts in the 19th and 20th centuries further regularised the activities and responsibilities of JPs.

You can find out more about the history of JPs in the Honorary Justice Services Support e-book: [Keeping the Peace: History of Honorary Justices in Victoria](#).



2.2 The contemporary Australian JP

JPs in Australia today play a more limited role and have little in common with their earlier British counterparts. Modern JPs in Australia are volunteers who are chosen because they are regarded as honourable members of the community. 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 and witnessing requirements differ between jurisdictions.

There are no reciprocal arrangements or transfers of JP appointments from one state or territory to another. JPs from interstate who permanently live in Victoria can apply for an appointment in Victoria



through the same process as other applicants. All past community service is considered during the appointment process.

Other jurisdictions' JP training ranges from the sitting of a simple exam to fully accredited TAFE courses. There are no exams or TAFE courses in Victoria. JPs in Victoria are required to undertake training before their appointment, and this training includes a formal assessment component.

In Victoria, JPs are appointed by the Governor in Council on the recommendation of the Attorney-General.¹ Their role involves attesting to the execution of documents, witnessing statutory declarations and affidavits, certifying identity, and certifying document copies. While the traditional JP role called for a very formal demeanour and dress, the modern JP is encouraged to present in a professional and approachable way.

3. Appointment and support for JPs

3.1 Your appointment as a JP

The Attorney-General recommends JP appointments to the Governor in Council.²

3.2 Honorary Justice Services Support (HJSS)

The HJSS team is situated within the Department of Justice and Community Safety (the department).

HJSS is responsible for appointing and managing honorary justice volunteers, a collective group consisting of JPs and Bail Justices. To do this, we:

- maintain transparent, fair, and effective policies for the recruitment, training, and deployment of JPs,
- support you in your role, and
- respond to complaints.

We support both volunteer JPs and Bail Justices (BJs) and provide information to the public of Victoria. We do not have a role in managing, overseeing, or supporting authorised witnesses other than JPs or BJs, although we make our resources publicly available.

3.3 Wellbeing and support service

We offer an independent Employee Wellbeing and Support Service. Your Employee Wellbeing and Support Service is a free, confidential service available to Honorary Justices including JP volunteers. The service is available 24 hours a day, 365 days a year.

To make an appointment to speak with a Converge International counsellor:

- Call 1300 687 326
- Visit the Converge International [website](#)
- Download the free EAP Connect app (search for 'EAP Connect' in your app store)

Converge International portal log-in details:

Username: djcs

Password: ews

Appointments can be face to face, over the phone, through Live Chat on the Converge International [website](#) or through audio-visual or online videoconferencing, such as Zoom.

¹ Section 7, *Honorary Justices Act 2014*

² Section 7, *Honorary Justices Act 2014*



3.4 Victorian honorary justice associations

There are several honorary justice associations and groups around Victoria, who provide support and services to Justices of the Peace, including regular meetings, information sessions and peer support. It is not compulsory to join a group.

The department is independent of all honorary justice groups and associations, therefore honorary justices must always update their details with the department directly via email or post.

The Royal Victorian Association of Honorary Justices (RVAHJ) is a paid membership organisation that operates state-wide and has regional branches. You can find out more at www.rvahj.org.au or by phoning 9525 7099.

There are also local Honorary Justices groups, including:

- Geelong Group Association of Honorary Justices
- Gippsland East Honorary Justices Inc.
- Outer Easter Honorary Justices Inc.

Please contact the Honorary Justice Services Support area for further details on these groups.

4. JPs in the community

Volunteers, including JPs, carry out a variety of tasks in the Victorian justice system that strengthen and sustain our communities. As a JP, you will deal with matters of great importance to people's lives. Some of the documents you witness will have financial implications for the people involved or may be used in court proceedings. You have the authority to witness enduring powers of attorney documents and documents appointing medical treatment decision makers that influence people's quality of life when they can no longer manage their affairs.

Your role is to be an independent and objective witness to documents used for official or legal purposes, such as:

- attesting the execution of a document
- taking an affidavit for use in court
- witnessing a statutory declaration
- certifying a true copy of an original document or a person's identity.

Your services will be in significant demand in the community. You are appointed to serve all members of the community. It is important that you endeavour to perform the role for all community members and are not limited to specific language, ethnic, religious, or cultural groups, your employees or associates, or organisations you belong to.

As a person appointed to public office, the public, institutions, and the court will rely upon your word. You must always perform your duties honestly, truthfully, and conscientiously and take care to act fairly, independently, and impartially, minimising conflicts of interest.

Your personal contact details must be provided to the HJSS, however only your name, phone number and suburb or town will be publicly available.

All other personal details (such as your street address) are kept confidential. The department provides the names and contact phone numbers of JPs to members of the public seeking to locate a JP including via the department's web site at www.justice.vic.gov.au/justices.



We will not provide your home address to members of the public without your consent, unless required or permitted by law to do so.

4.1 The Oath of Office

After appointment by the Governor in Council and before performing any of the functions of a JP, you will take the oath or affirmation of office before a magistrate. The oath or affirmation commits you to high standards of integrity and discretion.

In taking the oath or affirmation, you promise to:

“...at all times discharge the duties of my office according to law and to the best of my knowledge and ability without fear, favour or affection.”³

4.2 Limits of your role as a JP

4.2.1 No requirement to copy or read a document

You are generally not required to read, take notes of, or copy the documents you witness. You are asked to attest to the fact that a person signed the documents, as required, in your presence. You are not required to attest to the truth or legality of the documents.

In some specific circumstances, such as when a person is vision impaired or has limited literacy, you may read the contents of an affidavit⁴ or statutory declaration⁵ and acknowledge you have done so in writing when you witness the document.

4.2.2 Limits on interstate functions

The functions of a JP vary in each state and territory of Australia. As a JP, you can witness interstate and international documents if certain legislation or the document expressly allows a Victorian JP (or a JP from any state or territory of Australia) to do so.

JPs are appointed under different legislation in each state and territory. If you move interstate and would like to be a JP in that state, you can enquire at the JP office of that state. To be a JP in Victoria, you must ordinarily live in Victoria, so you will also need to resign from the Victorian office of JP if you move interstate.

You are allowed to act as a JP when outside Victoria if the document you are witnessing or the duty you are fulfilling is prescribed by Victorian law or permitted by the document. Please check if you are authorised to witness Commonwealth forms or documents from other states. This is usually indicated on the document in question.

4.3 Code of Conduct

The community perceives JPs as people of trust and honour and expects that you will:

- respect, observe and adhere to the highest standards of integrity and professionalism, and

³ Schedule 1, *Honorary Justices Regulations 2014*

⁴ Section 28, *Oaths and Affirmations Act 2018*

⁵ Section 35, *Oaths and Affirmations Act 2018*



- ensure an independent, fair, and impartial service for all Victorians.

As a JP, you are bound by the [Honorary Justices Code of Conduct](#). This outlines the behaviour expected of honorary justices.⁶ It is important that you understand and comply with all aspects of the Code. If you seriously or repeatedly breach the Code, you may be removed as an honorary justice.⁷

4.4 Upholding privacy and confidentiality

As a JP, you have access to personal information. When handling this information, you are bound by the [Privacy and Data Protection Act 2014](#). This Act establishes guidelines for the collection and disclosure of personal information.⁸

In accordance with this Act, you must ensure that any documents you see are kept private except to those persons or parties who have the authority to access such documents. Generally, it is unlawful to collect or record any personal information unless:

- the person has consented to have that information recorded and held by you
- the collection is required under law (this is rare, and you would be informed beforehand).

You do not need to keep originals or copies of documents to protect yourself in any future dispute. You are not liable for anything done or omitted to be done in good faith or in the reasonable belief that an act or omission was in the exercise of a power or the discharge of a duty as a JP.

A breach of the [Privacy and Data Protection Act 2014](#) can lead to substantial penalties.

4.4.1 Media inquiries

You should not provide any documents or information obtained as a JP, including identification information, to the media or to other members of the public. This includes making a presentation to the community or to professional and educational groups. Please refer any enquiries from the media to the department.

4.5 Fees, gratuities, patronages, or rewards

It is an offence for a JP to demand, take or accept from any person any fee, gratuity, patronage, or reward for carrying out the duties of a JP.⁹ The penalty for this offence includes imprisonment of up to 12 months and includes cash, gifts (even if of no monetary value) and free or discounted goods or services.

It does not matter if the fee, gratuity, patronage, or reward is paid to another person or whether you benefit personally. Even a requirement or request to donate to charity is illegal.¹⁰ Please contact us for advice if you are unsure.

⁶ Section 25, *Honorary Justices Act 2014*; regulation 13 and schedule 2, *Honorary Justices Regulations 2014*

⁷ Section 33(a), *Honorary Justices Act 2014*

⁸ Section 13(1)(g), *Privacy and Data Protection Act 2014*

⁹ Section 46(1), *Honorary Justices Act 2014*

¹⁰ Section 46(1), *Honorary Justices Act 2014*



4.6 Use of JP title

You may use the title 'Justice of the Peace' and include the letters **JP** after your name.¹¹ You cannot use your title to advertise or advance, or appear to advertise or advance, your business or personal interests, and to do so is an offence.¹²

Prohibited use of your title may include using the title on stationery, such as business cards and letterheads, in advertisements or business signage and on websites promoting your business.

4.7 Availability and absences

As a JP, you must be reasonably active and available in the performance of your duties.¹³ If you need to take a leave of absence from your role as a JP of more than a month, let us know. If you will be absent for more than twelve months, we can discuss whether it is appropriate for you to continue in the role of JP.

4.8 Where to deliver JP services

For your own safety, we recommend that you do not conduct JP duties in private locations, for example, your own home or the home of the person requiring your services. Consider the use of public venues such as a signing station, your local community centre, council chambers or a library.

A person's documents and dealings with a JP are confidential, so ensure that the location allows privacy.

4.9 Notifying the department of a change of circumstances

You must notify the department, either by letter or email, of the following changes in your circumstances, within 21 days of the change of circumstances occurring:

- changes of name, residential address or contact details
- ceasing to be an Australian citizen
- ceasing to ordinarily reside in Victoria
- insolvency under administration (bankruptcy)
- being charged with a criminal offence that is punishable by imprisonment of 6 months or more
- losing the physical or mental capacity to fulfil the duties of office¹⁴
- any other prescribed change of circumstances.

Note: If you are charged with a criminal offence, you should let us know in writing. It may be appropriate in some circumstances to refrain from undertaking JP duties until the matter is resolved.

¹¹ Section 39, *Honorary Justices Act 2014*

¹² Clause 14, *Honorary Justices Code of Conduct*; Section 44, *Honorary Justices Act 2014*

¹³ Section 24(1), *Honorary Justices Act 2014*

¹⁴ Section 22(1), *Honorary Justices Act 2014*



4.10 Resignation

You may resign as a JP by sending written notice to the Governor of Victoria.¹⁵ Alternatively, you may provide written notice to HJSS via email. If you are incapacitated, your power of attorney may write a letter of resignation on your behalf.

Once you cease to be a JP, you remain bound to adhere to the principles of privacy and confidentiality about any matters you have dealt with in your capacity as a JP.

After resigning you may apply to the department for permission to use the title 'JP (retired)' after your name.¹⁶ If you are under 75 when you cease to hold office, you must have performed 20 years of service as a JP or as a BJ to retain the title. If you are over 75 or you cease to hold office because of ill health, you must have performed 10 years of service.

You will not receive permission to use the title "JP (retired)" if you were removed from office because of misconduct, bankruptcy or if the Secretary of the department considers that you are not a fit and proper person to use the title.

5. Managing Complaints

5.1 Complaints and removal from office

The department often receives feedback from members of the public and from organisations where JPs conduct their services. Most often this feedback is positive but there are occasions when the department receives complaints about JPs.

The review of complaints is carried out in accordance with the [Guideline on the Handling of Complaints against Honorary Justices](#).

Complaints can be made by any person, including an honorary justice who wishes to make a complaint about another honorary justice. If you believe there are grounds for a complaint against an honorary justice, please bring it to our attention in writing.

A complaint may be about your behaviour when performing your role as a JP, or your behaviour as a private citizen, or that your behaviour has brought the office of justice of the peace into disrepute.

Complete this [form](#) to register a complaint about the conduct of an honorary justice in Victoria.

5.2 Ceasing to hold office

You cease to hold office as a JP by resigning, by becoming bankrupt, ceasing to be an Australian citizen, no longer residing in Victoria, or if you are removed from office.

5.3 Grounds for removal from office

The grounds for removal of an honorary justice from office are:

- committing serious or repeated breaches of the code of conduct
- failing to comply with a direction to undertake training or professional development
- failing to comply with a direction or request of the department authorised by the *Honorary Justices Act 2014*

¹⁵ Section 20(a), *Honorary Justices Act 2014*

¹⁶ Section 40, *Honorary Justices Act 2014*



- failing to carry out your duties
- being found guilty or convicted of an offence punishable, in Victoria, by imprisonment of 6 months or more
- losing the physical or mental capacity to discharge the duties of office
- engaging in misconduct or misbehaviour sufficient to justify removal
- bringing the office of honorary justice into disrepute
- no longer ordinarily residing in Victoria.¹⁷

6. Locating a JP

6.1 Document Signing Stations

A Document Signing Station (DSS) is located in a public space such as a police station, library or council office. The department encourages JPs to establish DSS groups in places such as libraries, hospitals, and educational facilities.

These signing stations are coordinated by local JPs and operate on a structured rostering basis to ensure flexibility and responsive services. They are a central location for JPs to provide services and may on occasion be equipped with photocopying facilities to assist you in your role.

You can find the contact details for specific DSS locations on the [‘Find a JP’ website](#) or email jp@justice.vic.gov.au. If you are interested in joining an existing DSS or would like to set one up, please contact us at jp@justice.vic.gov.au

6.2 Public listings of JPs

As a JP, your full name, registration number, preferred availability, language(s) spoken and contact number(s) will be included in the ‘Find a JP’ listings at www.justice.vic.gov.au.

Members of the public may access this resource.

7. Certifying documents and validating identity

7.1 What is a certified copy of a document?

A certified copy is a copy (often a photocopy) of an original document that contains an endorsement or certification that it is a true copy of the original. Many legal and administrative processes require documentary evidence to establish identity, residence, qualifications, or other facts.

If it is not practical to provide an original document, organisations will usually accept a copy of the original document if a trusted person certifies that the copy is a true copy of the original.

7.2 Who may certify a copy of a document?

Honorary justices are authorised certifiers under the [Oaths and Affirmations Act 2018](#).¹⁸

Certification of documents by an authorised certifier may be required by a variety of statutes, regulations, rules, or the internal policies or procedures of government departments and private organisations.

¹⁷ Section 33, *Honorary Justices Act 2014*

¹⁸ Section 39, *Oaths and Affirmations Act 2018*



Not every document needs to be certified by an authorised certifier. If the certification procedures of an organisation are unclear as to who is authorised to certify a document, the person who is seeking certification of a copy of a document should contact the organisation for clarification about the certification process they should use.

7.3 What constitutes an original document?

An original document is one that you, using your best judgment, determine is an original.¹⁹ An original document can be paperless. For example, cards such as drivers' licences or documents presented in a digital format, which can be viewed on a screen.

Public documents, that is, copies or extracts of official records or registers issued by the body that creates or holds those official records or registers are not original documents. Examples include land titles issued by Land Victoria, a transcript of academic results issued by the university that awarded them or travel documents issued by the governments of foreign countries.²⁰

Those agencies have their own processes in place to authenticate authorised copies of their own records.

7.4 Process for certifying copies of documents

To certify that a document is a true copy of an original, you must inspect the original to ensure that it is an original document and inspect the copy to ensure that it is identical to the original document.²¹ A person does not have to be the owner of the document to obtain a certified copy.

Identical does not mean of the same size or colour, provided that the use of a different size or colour does not result in the loss of any material information.²²

You then legibly write or stamp, on the copy, the words:

Certified to be a true copy of the original seen by me.

The prescribed words shown above are to be written or stamped on the first page of the certified copy of an original document, unless there is insufficient space on the first page.²³

You must sign and date the copy and legibly write or stamp the copy with your name, title and address.²⁴

It is preferable to use coloured ink so that your signature or stamp does not look like a photocopy.

We will issue you with a stamp that contains your name, your title, and your professional address.

Please avoid writing on, stamping, or marking the original document at all times.

¹⁹ Section 3, *Oaths and Affirmations Act 2018*

²⁰ Sections 3 and 40(2) and (3), *Oaths and Affirmations Act 2018*

²¹ Section 41(1), *Oaths and Affirmations Act 2018*

²² Section 3, *Oaths and Affirmations Act 2018*

²³ Regulation 10(2), *Oaths and Affirmations (Affidavits, Statutory Declarations and Certifications) Regulations 2018*

²⁴ Section 41(2), *Oaths and Affirmations Act 2018*; Schedule 5, *Oaths and Affirmations (Affidavits, Statutory Declarations and Certifications) Regulations 2018*



7.5 Certifying a copy of a certified copy

Sometimes an original document will be lost or destroyed but a certified copy of the original is available. To certify a copy of a certified copy of an original document, you must inspect the certified copy of the original document to ensure it appears authentic and inspect the copy of the certified copy to ensure it is identical to the certified copy of the original document.²⁵

You then legibly write or stamp on the copy the words:

Certified to be a true copy of another certified copy seen by me.

The prescribed words shown above are to be written or stamped on the first page of the certified copy of a certified copy of an original document, unless there is insufficient space on the first page.²⁶

You must sign and date the copy and legibly write or stamp the copy with your name, qualification, and your professional address.

7.6 Certifying electronic documents

Usually, an original document will be a hard copy such as a driver's licence, but you may be asked to certify an electronic document such as a phone bill from a paperless account. Use your best judgement to determine whether the printed document is the same as the electronic original.

If you are uncertain that a copy of an electronic document is authentic you might suggest that the person obtain a hardcopy of the document from the organisation that issued the electronic document.

Alternatively, you could suggest that the person makes a statutory declaration confirming that the copy is a true copy or print-out of an original electronic document.

7.7 Certifying multiple page copies of documents

If the original is a multiple-page document, check every page of the document to satisfy yourself that it is the original or a certified copy of an original document. Then sign or initial each page of the copy and number each page of the copy, for example 'page 1 of 26'.

You then legibly write or stamp, on the copy, the words:

Certified to be a true copy of the original seen by me.

The prescribed words are to be written or stamped on the first page of the certified copy of the original document, unless there is insufficient space on the first page.²⁷

If there is insufficient space on the first page, it is recommended that certification occurs on the final page.

If possible, it is a good idea to staple multiple pages of a document together.

7.8 Certifying a non-enduring and enduring powers of attorney

Each page other than the last page of the copy must be certified that the copy of that page is a true and complete copy of the *corresponding* page of the original document:

²⁵ Section 42(1), *Oaths and Affirmations Act 2018*

²⁶ Regulation 11(2), *Oaths and Affirmations (Affidavits, Statutory Declarations and Certifications) Regulations 2018*

²⁷ Regulation 10(1), *Oaths and Affirmations (Affidavits, Statutory Declarations and Certifications) Regulations 2018*



This is a true and complete copy of the corresponding page of [insert name of original document]

[Stamp of Name, Address and Title of witness]

And:

The **last page** of the copy must be certified to the effect that the copy of the instrument is a true and complete copy of the *original* document:

This is a true and complete copy of the last page of

[insert name of original document]

..... [your signature]

[Stamp of Name, Address and Title of witness]

7.9 Certifying documents in a language other than English

There is nothing to prevent you from certifying a document in a language other than English, if you believe (using your best judgement) that the content of the original document and the copy are actually identical. You do not have to understand a document to be satisfied that it is a true copy.

7.10 Ensuring the authenticity of documents

The definition of original document in the *Oaths and Affirmations Act 2018* recognises that a certifier cannot be expected to carry out a forensic examination of the original document. Rather, the expectation is that the certifier will take reasonable steps to assure themselves that the relevant document is an original.

What to look for:

- use of covering agents or areas of different tone of white on the page
- identity cards with scratching, increased thickness, roughness of surface, raised edges or lack of consistent finish
- typographical or grammatical errors in supposedly authentic documents
- stains around handwritten areas suggesting that the original information may have been erased and replaced.

7.11 Minor non-compliance does not affect validity

If a mistake is minor, unintended and does not materially affect the nature of what is being certified, the certified copy of the document will be valid despite the mistake.²⁸

7.12 Certification offences

It is an offence to present a document for certification as a true copy of an original document if the person knows it is not a copy of the original document.

You must not certify a copy of a document as a true copy of an original document if you know that the original document is not in fact an original document, or the purported copy is not in fact a true copy.

²⁸ Section 45, *Oaths and Affirmations Act 2018*



These offences carry a penalty of 600 penalty units or imprisonment for 5 years or both.

Knowingly making a false or misleading statement about the circumstances in which the certification of a true copy of a document or whether or not a certified true copy of a document was actually made can lead to a criminal charge punishable by a fine of 10 penalty units. Please refer to the full [Schedule of Offences in Section 24.4](#).

7.13 Validating a person's identity

It is not necessary to ask for identification of the person when witnessing or certifying copies of documents unless there is an explicit requirement for verification of identity.

If you are required to certify that you know the person presenting the document to be the same as the person named in the document, you will need to see proof of identity that has a photograph on it such as a driver's licence or a passport. You should state the type of identification produced and the identifying number of the proof of identity on the document you witness or certify.

You cannot validate a person's identity unless:

- the person who stands before you is recognisable as the same person shown in the photograph/s.
- the person before you has a true likeness to the person in the photograph/s.

You can accept any form of photo identification unless the document requires a particular form of identification. For example, the document may require you to sight a passport or citizenship certificate. If the signatory has no photo identification, and you are not satisfied about their identity, you may refuse to witness or certify the document.

7.13.1 Cultural sensitivity in certifying identity

Certification of identity may present a challenge if the person wears cultural dress which conceals their face, such as a niqab (veil) or burka worn by some women of Islamic faith. It is important that you treat these situations sensitively and respectfully, ensuring that the person's dignity is preserved. If you are a male, a woman of Islamic faith who is wearing a niqab or burka would generally prefer to see a female JP.

7.14 National criminal history checks

JPs are often asked to witness applications for Nationally Coordinated Criminal History Checks and to verify that photographic identification accompanying the application is a true likeness to the applicant.

The applicant must download a prescribed form. They will need to sign the form in your presence. The form explains the documents that must be produced and contains a section for you to certify that the applicant's photographic identification is a true likeness and that the proof of identification documents they are providing are true copies of originals that you have sighted.

7.15 The JP stamp

On commencement, you will be supplied with personalised stamps. The general JP stamp will include your name (first and family name), the initial JP, the departmental address, the words Justice of the Peace for Victoria and your JP registration number. Use the stamp for *[name, address, and title of witness]* endorsements when executing a document in your role as a JP.



Although the *Oaths and Affirmations Act 2018* permits handwritten details, we advise that you use the JP stamp provided. Please refer to an example of a general JP stamp below:

John Smith JP
C/O Honorary Justice Services Support
24/121 Exhibition Street
Melbourne 3000
Justice of the Peace for Victoria
Reg No. 1111



7.16 Photo identification badge

We will supply you with a badge containing your photo to assist the public in identifying you as a JP. You may choose to wear your badge when acting as a JP in a shopping centre, community centre or retirement village. It is important to wear your ID if attending a police station for the purposes of performing your duties, so that police officers can confirm your identity as a JP.

7.17 Can I use a printed label or sticker instead of a stamp?

Using stickers for the purpose of including your details on a document is not allowed. You must either write the endorsement words or use a stamp. Your signature on documents must always be handwritten in ink and never on a sticker or label.

8. Witnessing documents

Your key function as a JP is to act as an independent and objective witness to documents people use for official or legal purposes. The process is sometimes called 'attesting' or 'witnessing an instrument'. It means signing a legal document to verify that it has been completed according to the law that is applicable to the document.

8.1 How to witness documents

It is good practice to use the same procedure each time you witness a document, unless the law requires you to do something different.

In the event you are asked to outline your witnessing process, using the same procedure each time you witness a document will allow you to efficiently describe the process.

You can use the [General Checklist for Witnessing Documents](#) at the end of this handbook as a general procedural guide for witnessing documents.

8.2 Steps to witness documents

Step 1. What type of document is it?

Some documents are straightforward whereas others are more complex.

When a person contacts you about witnessing a document, ask what type of document it is so that both of you can be prepared.



Type of document	
Multiple documents	Ask how many documents there are. If there are many documents, you may wish to make more than one appointment.
Enduring powers of attorney	Inform the person that more time is required. Allow at least half an hour or longer for the appointment.
Affidavit	Ask if the person would like to take an affirmation or swear an oath on a holy book. If the person wants to swear an oath and you do not have their chosen holy book, ask them to bring it along. Alternatively, you may suggest that you take the oath without having the holy book physically present.

Step 2. Do you have authority to witness this document?

Documents will usually list the categories of people who are authorised to witness them. Before making an appointment ask the person to check if JPs are included in a list of witnesses on the document. Check again when you have the document in front of you.

If JPs are not listed, or the document does not include a list of authorised witnesses, you have several options:

- ask the person why they believe a JP is required to witness the document
- refer the person to the organisation that requires the document to clarify who is authorised
- assist the person to contact the organisation that requires the document
- refer the person to one of the authorised witnesses listed in the document
- find out if the document is to be used in Victoria or overseas and consider if it should be witnessed by someone who is authorised to witness interstate or overseas documents, e.g., a notary public.

Some documents only require the witness to be an independent adult. Other documents may need the witness to have known the signatory for a period or to vouch for their identity. In these instances, the witness does not need to hold any official position. For example, Australian passport applications need to be endorsed by a person who has known the applicant for at least 12 months, or since birth for applicants under one year old.

Step 3. Is the document correctly completed?

You do not need to verify that the information contained in the document is true or correct. Your role is to ensure that the aspects of the document to which you attest or certify, are correctly completed.

You are not expected to know whether a document is in a form that is legal. The person making the document, not the witness, must ensure it is in a proper form. In cases of uncertainty, the person should obtain legal advice. However, if it is obvious to you that the form is not the right one, you may suggest that the person obtains a correct form before having it witnessed.

Step 4. Are there special requirements?

Some documents have special requirements, and it is important to be clear about which ones apply to each document. Sometimes the form will contain instructions for the witness. Make sure you have complied with any special requirements before you witness.



Step 5. Who signs the document?

Generally, the person named in the document must be the person who signs it.

The exception to this rule is when another person has been appointed to act on behalf of the named signatory. Before you witness this type of document ask the appointee for proof of identity in the form of photo identification and proof of authority, for example, a current power of attorney.

A legal document can only be executed by a natural person. However, corporations and associations adopt procedures to allow a nominated officer or officers of a corporation or association to execute documents on behalf of their organisation. This can occur with or without use of the organisation's official stamp (called the 'common seal'). The [Corporations Act 2001 \(Cth\)](#) establishes the procedure for authorised representatives of a company to execute documents.²⁹

Step 6. Does the person understand what they are doing?

Before witnessing a signature to a document, always ask the person if they have read the document and fully understand what they are signing. Only a person with decision-making capacity who voluntarily signs the document can make a valid legal document. As a JP you are not expected, or qualified, to make a detailed assessment but if you have any concerns you should investigate. The best way to investigate is to ask the person open-ended questions.

Signs that *might* indicate a person does not understand the implications of signing the document include:

- inappropriate answers
- difficulty answering questions
- memory lapses during the conversation
- restricted vocabulary.

These signs might be due to a language barrier, illness, disability, or cognitive deficit. They might mean a person is having trouble understanding the Australian legal system. They do not necessarily mean that the person does not understand the nature and effect of the document they are signing.

Remember that you are checking the capacity of the person to make this document. Equally, an ability to read does not mean a person has capacity to understand a complicated legal document.

If you resolve any initial doubts about decision-making capacity by questioning the person, you can witness the document. If, after you question the person, you still have doubts, do not witness the document, and explain your position to the person. They may require additional legal advice or the support of a medical practitioner.

If you are asked to witness a document made by a child

There are many documents that can be executed by a person under 18 years old.

If you are asked to witness a document made by a child, (especially if the child is under 14 years of age), you may wish to involve the child's guardian or a supportive adult to be satisfied that the child is:

- legally entitled to sign the document;
- fully understands what they are signing; and
- understands the effect of signing the document.

²⁹ Section 127, *Corporations Act 2001* (Cth)



Where relevant, you should place a note with the jurat to indicate the age of the deponent and that, in your opinion, the child/young person understands these aspects. For further information, please refer to the [Decision-making capacity section](#) of this Handbook.

Step 7. Is the person signing of their own free will?

Even when a person has legal capacity and understands what signing the document means, the document may be invalid 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 being coerced into making the document.

Sometimes people in a relationship of trust with a person may try to obtain legal power over that person's financial or personal affairs for their own benefit. This kind of abuse of trust may happen in any relationship but is especially prone to occur where one person relies on the other for care or is afraid of the other person.

Talk to the person making the document alone and without anyone who might have an interest in the transaction present, so that the person may speak freely. This is important if a person who might benefit from the transaction attends with the person making the document.

If you have any doubts about the person signing of their own free will, do not witness it. If doubts persist, refuse to witness the document, and suggest the person seeks legal advice.

Step 8. Advise the person of penalties for false statements

Your role is to satisfy yourself as to the accurate completion of the document and not for you to read the contents. You should inform the person that they are responsible for ensuring the contents are true and correct. There may be penalties, including imprisonment, for making false statements in a document.

Step 9. Is the document correctly dated?

The date the document is signed must be the same as the date it is witnessed but, in many cases, it is acceptable for different signatories to a document to sign at separate times before different witnesses.

Step 10. Are there any alterations or blank spaces in the document?

You should initial and date all alterations (including erasures, use of liquid paper or other means of alteration) to demonstrate that the alteration was not made after the document was signed. Both the authorised witness and signatory must initial each alteration.³⁰

The signatory or witness should also place a 'Z' or an 'X' across blank spaces, so that nothing else can be added to the document after it is signed and witnessed. Both you and the signatory should initial one of the cross-bars of the 'Z' or 'X'.

Step 11. Are all the questions answered?

If the document is a form or application, look to see that all the questions are answered. If they are not, ask the signatory to answer them. If a question is irrelevant ask the person to cross it out or write 'not applicable' next to it. Both you and the signatory must initial and date any crossing out.

³⁰ Section 30, *Oaths and Affirmations Act 2018*



Step 12. Are there any exhibits, annexures, or attachments?

Exhibits, annexures, and attachments are documents that are attached or related to the main document and contain information that supports that document.

Each attached or related document must be identified in the main document. This is usually done by consecutive numbers or letters of the alphabet, for example, 'Annexure A', 'Annexure B' for single page annexures, or 'A1-1' to 'A1-3' for multiple page annexures.

All attachments require a separate certificate to be attached.

If a document refers to exhibits, annexures or attachments, check that each is present, marked and identified correctly. Each attachment should include the name and date of the main document. The date of witnessing the exhibit should be the same as the date of the main document.

If a document refers to annexures or exhibits, but they are not with the document, you **must not** witness the document. Do not sign exhibits or annexures until the oath, affirmation or declaration is taken.

Step 13. Endorse all exhibits

If there are exhibits or annexures to the document, you **must sign a completed certificate for each exhibit**, having ensured they are correctly marked. If they are not marked, ask the signatory to mark them correctly before you sign. You do not need to sign the exhibit itself.

In many cases, the deponent does not need to sign the exhibits or annexures, but you should check the requirements of the documents you are witnessing.

Step 14. Ensure the document is signed in your presence

The signatory should sign the document in front of you. If the document is already signed, ask the person to cross out the signature and sign it afresh in your presence. Both you and the signatory must initial and date the crossing-out.

If there is more than one place on the document that requires signing, you will need to witness each signature separately. You **must not** witness:

- a blank or partially completed document, for the signatory to complete or sign later; or
- a document which has been pre-signed by a person who is not present for the witnessing.

Step 15. Administer the oath, affirmation, or declaration (if required)

If the document is a statutory declaration, you will take the declaration from the person. If the document is an affidavit, you will administer an oath or affirmation.

Step 16. Sign and add your JP details

After the person has signed the document in your presence, you witness the execution of the document by signing and dating the document. It is generally advisable to use an appropriate pen colour (black or blue) that helps prevent the impression of a photocopied stamp and signature. Follow any explicit instructions on the document in relation to pen colour.

You then clearly print or stamp your name and details underneath or next to your signature.

Place the stamp close to your signature. Do not place it over your signature and do not sign over your stamp. You must endorse your title showing your authority to witness the document. This endorsement is referred in the examples in this handbook as *[name, address, and title of witness]*.



8.3 Common Questions

8.3.1 Should I read the document?

You do not need to read the document in detail; however, you will look briefly through the document in order to witness it. Your duty is to ensure that the document has been correctly executed and all parts of the document have been completed.

8.3.2 Do I need to verify that the content of a document is correct?

No, you do not need to verify the content is correct. The onus is on the person who signs the document to ensure it is true. You should not witness a document you know to be untrue or incorrect; however, you are not responsible for ensuring the truth of the document. You should always remind people that making a false statement may constitute fraud and/or perjury. These offences often have significant consequences, including imprisonment.

8.3.3 How do I witness multiple-page documents?

As a best practice, multiple pages of a document should be permanently fastened together, e.g., stapled. If not possible, ask the person to number each page in this manner, 'page 1 of 4', 'page 2 of 4' and so on. Then sign at the foot of each page and sign and date the final page as the document requires.

This applies to discrete certified copies, statutory declarations, affidavits and any relevant attachments.

8.3.4 Whose signature can I witness?

You can only witness the signature of the person who signs the document in your presence.

8.3.5 Can I be a witness for friends or relatives?

Although it is not unlawful to witness a document signed by a friend or relative, it is not good practice. We recommend that you do not witness under these circumstances, as it may be perceived as a conflict of interest. You could risk being accused of having a personal interest in the execution of the document and lacking independence as a witness. In some cases, it could make the document invalid.

8.3.6 Can I help complete the documents?

As impartiality is an important part of your role, it is not recommended that you both witness and contribute content for the same person. If you wish to help someone complete a document, you should not then witness that document and you should refer the person to another JP.

Please note, the current statutory declaration form allows for a JP to read that document if a person is visually impaired or has literacy issues. Additionally, other parties, not prescribed in the *Oaths and Affirmations Act 2018*, can assist with the content of the statutory declaration, and can also sign the document in front of an authorised witness.

8.3.7 What if I cannot comply with a requirement set out in the document?

If you cannot meet a requirement about witnessing the document, you must decline to witness the document. For example, citizenship applications require you to have known the signatory for a specified period. If you have not known the signatory for the specified period, you must decline to witness the document.



8.3.8 What do I need to know to witness a will?

Wills do not need to be witnessed by authorised witnesses if the process is conducted in-person. However, if a will or other testamentary documents are witnessed via online means, an authorised witness is required. One or more people participating can be present via audio visual link, provided they are physically situated in Victoria.

We do not cover the specifics of will-witnessing in this handbook. For more information about witnessing wills in Victoria, refer to www.legalaids.vic.gov.au.

9. Statutory Declarations

9.1 What is a statutory declaration?

A statutory declaration is a legally recognised written statement made by a person (the declarant) who promises, before an authorised witness, that its contents are truthful. It includes an acknowledgement that the declarant knows it is an offence to make a statement they know to be untrue.

It is a criminal offence to make a false statutory declaration. The declarant must treat the making of a statutory declaration seriously.

Statutory declarations have a variety of uses, for example, they may be required by banks, trustee organisations, educational institutions, employers, clubs, and other organisations. A statutory declaration may be used to verify insurance claims, proof of age, applications for sick leave or various types of benefits and for many other day-to-day business and personal matters. Any person, whether adult or child, can make a statutory declaration.

In some cases, the law requires information to be supplied in the form of a statutory declaration, but some people may wish to make a statutory declaration even when it is not legally necessary.

9.2 Who can witness a statutory declaration?

JPs are authorised to witness statutory declarations along with a wide variety of other people.³¹ A full list of authorised statutory declaration witnesses can be found in the [Authorised Witnesses](#) section of this Handbook.

9.3 Prescribed form of statutory declaration

A statutory declaration must be in the prescribed form.³² This means the relevant legislation requires specified information to be provided.

Before 1 March 2019, the form for a statutory declaration was prescribed under the [Evidence \(Miscellaneous Provisions\) Act 1958](#). After that date all statutory declarations must be in the form prescribed under the new regulations.³³

The declarant may prepare a statutory declaration themselves, provided it is in the prescribed form.

A statutory declaration is not invalid merely because a person makes a small insignificant mistake that does not materially affect the nature of the declaration.³⁴

³¹ Section 30, *Oaths and Affirmations Act 2018*

³² Regulation 9, *Oaths and Affirmations (Affidavits, Statutory Declarations and Certifications) Regulations 2018*.

³³ Regulation 5, *Oaths and Affirmations Transitional Regulations 2019*

³⁴ Section 38, *Oaths and Affirmations Act 2018*



An endorsed statutory declaration template is included in the resource section of this Handbook. It can be downloaded from the departmental [website](#).

9.4 How to witness a statutory declaration

The person making the statutory declaration and the person witnessing the statutory declaration must be together and in front of one another.

Each person must:

- sign or initial any alteration to the statutory declaration
- sign or initial each page of the statutory declaration
- if the statutory declaration refers to a document, sign a certificate attached to the document identifying the document as an exhibit to the statutory declaration
- sign and date the statutory declaration
- legibly write, type or stamp that person's name and address on the statutory declaration.

The declarant makes an oral declaration in front of you by saying the following words in your presence:

"I, [full name of person making declaration] of [address], declare that the contents of this statutory declaration are true and correct."

The declarant must say the prescribed words aloud, unless they are living with a disability that prevents them from doing so. They may repeat the words after you or read them from a card.

It is not enough to simply answer "yes" to questions such as "are the statements made in this statutory declaration true and correct?".

You must write or stamp, under the declarant's signature, your qualification as a statutory declaration witness. Your address may be a personal address or a professional address, including the address of the HJSS.³⁵

Refer to the example set out below:

Example

Declared at Melbourne
 in the State of Victoria, this 1st day of June, 2009
 before me Bob Smith-Brown
 Bob Smith-Brown JP
 436 Smith Street
 Melbourne VIC 3000
 JUSTICE OF THE PEACE FOR VICTORIA
 REG NO. 989898

³⁵ Section 30, *Oaths and Affirmations Act 2018*



A Bible or holy book is not used when making a statutory declaration.

If the document has been pre-signed, you can cross out the signature and ask the declarant to re-sign the document in your presence or prepare a fresh statutory declaration (if this is convenient to the declarant).

You, and the person making the statutory declaration, need to initial cross-outs.

9.5 Certification of Exhibits

There is no limit to the number of exhibits that can be attached to a statutory declaration.

The placement and form of certification for an exhibit to a statutory declaration is not prescribed in regulations.

Please refer to the sample Certificate for use with statutory declarations in the [Templates](#) section of the handbook. You could use the following words:

This is the exhibit marked [e.g., ABC-01] now produced and shown to me, [name of person making statutory declaration], at the time of making my declaration on [date].

Signed: [signature of person making statutory declaration]

Witnessed by: [signature of statutory declaration witness]

9.6 Assisting a person to make a statutory declaration

As impartiality is an important part of your role, it is not recommended that you both witness and contribute content for the same person. If you wish to help someone complete a document, you should not then witness that document and you should refer the person to another JP.

However, you can help a person who needs assistance to make a statutory declaration which does not involve contributing substantive content. For example, translation or assistance with reading or writing. Either you or an additional person who provided assistance must legibly write or stamp on the front page of the statutory declaration:

- the name and address of the assistant, and
- the nature of the assistance provided.

If the assistance is given by a person who, in their professional capacity, prepares or writes statutory declarations on the client's instructions, they do not need to comply with this requirement. Examples include an Australian legal practitioner, a licensed conveyancer or a person assisting someone to prepare a Victim Impact Statement.³⁶

You will find information about the use of interpreters for statutory declarations in languages other than English in the [Cultural and Linguistic Diversity](#) section of this Handbook.

9.7 Reasonable modifications for persons living with disability

If the person making the statutory declaration is living with a disability that makes it difficult for them to follow the usual process, you may make reasonable modifications to the usual process to help the person to make the statutory declaration. See the examples of reasonable modifications below:

³⁶ Section 32, *Oaths and Affirmations Act 2018*



Example 1	A person who has a hearing impairment may read and sign the oral declaration instead of saying it aloud
Example 2	A person who is unable to speak may be able to listen to the statutory declaration being read and nod assent
Example 3	A person who is unable to sign their name with their usual signature, can make a distinguishing mark, such as an 'X'.

The form of certification you must use if you read a statutory declaration to a person is as follows:³⁷

I confirm that reasonable modifications were used in preparing this statutory declaration and that the contents of this statutory declaration were read to the person making the statutory declaration in a way that was appropriate to the person's circumstances.

[signature of authorised statutory declaration witness]

9.8 No fee for witnessing a statutory declaration

Although the law does not prohibit other authorised witnesses from charging a fee or seeking a charitable donation to witness a statutory declaration, JPs are not permitted to charge a fee.³⁸

9.9 Who can witness a statutory declaration for use in Victoria?

A statutory declaration for use in Victoria can be witnessed by:

- any person authorised to witness statutory declarations in Victoria
- certain consular and Australian Trade and Investment Commission officials
- a person who is authorised to administer an oath or affirmation in that place.

9.10 Offences in relation to statutory declarations

It is an offence to make a statement in a statutory declaration that the person knows to be untrue. The penalty is a fine of up to 600 penalty units or imprisonment of up to 5 years or both. It is also an offence to make a false or misleading statement as to the making of a statutory declaration. The penalty for this offence is 10 penalty units. Please refer to the full [Schedule of Offences in Section 24.4](#).

9.11 Commonwealth statutory declarations

Commonwealth statutory declarations are made under the *Statutory Declarations Act 1959* (Cth) and the *Statutory Declarations Regulations 2018*. The template for a Commonwealth statutory declaration can be downloaded from the federal Attorney-General's [website](#).

Victorian honorary justices are authorised to witness Commonwealth statutory declarations. You should follow the same procedure when witnessing state or Commonwealth statutory declarations.

³⁷ Schedule 3, *Oaths and Affirmations (Affidavits, Statutory Declarations and Certifications) Regulations 2018*

³⁸ Section 46, *Honorary Justices Act 2014*



9.12 Common questions regarding statutory declarations

9.12.1 How do I determine if someone would benefit from reasonable modifications when making a statutory declaration?

You will need to exercise your ordinary judgement. You are not expected to be a psychologist, psychiatrist, or a medical professional so you are not required to undertake a complex assessment.

9.12.2 How is a statutory declaration different to an affidavit?

Unlike an affidavit, a statutory declaration is not made by oath or by affirmation. Most courts require affidavits, but statutory declarations can be used for a variety of other purposes.

The penalty for making a false statutory declaration is significant. It is just as important for a person to tell the truth when making a statutory declaration as it is when making an affidavit.

9.12.3 Can multiple people make a single statutory declaration?

No. It is recommended that each person complete their own separate statutory declaration – even though the statements of facts by each person may be identical.

10. Affidavits

10.1 What is an affidavit?

An affidavit is a written statement made by a person (the deponent) who swears an oath or makes an affirmation, before an authorised witness, that the contents of the statement are truthful. Taking an affidavit is also called 'witnessing' or 'administering' an affidavit.

An affidavit is a form of sworn evidence that can be used in court proceedings and for other purposes authorised by law. An affidavit can serve to set out a person's own account of relevant events in numbered paragraphs or to collect a handful of exhibits together for ease of handling or reference.

10.2 Who can make an affidavit?

Any person, whether an adult or a child, may make an affidavit but, to swear an oath or make an affirmation, they must have capacity to understand the nature of an oath or affirmation. That is, they must be able to understand that they are making a legal promise to tell the truth, and that being untruthful in an affidavit is an offence. If they do not appear capable of understanding these matters, an authorised witness must refuse to administer the oath or affirmation.³⁹

10.3 Who can take an oath or affirmation for an affidavit?

JPs are authorised affidavit takers.⁴⁰ A full list of all prescribed affidavit takers can be found on the department's website at www.justice.vic.gov.au.

³⁹ Section 14, *Oaths and Affirmations Act 2018*

⁴⁰ Section 19, *Oaths and Affirmations Act 2018*



10.4 Is there a prescribed form of affidavit?

There is a prescribed form of affidavit.⁴¹ However, courts and tribunals (where affidavits are used most commonly) are allowed to use their rules to customise the contents of particular affidavits to suit their requirements.

10.5 Taking an affidavit out of Victoria for use in Victoria?

An Australian consular officer, certain local employees of the Commonwealth in overseas locations, and employees of the Australian Trade and Investment Commission are authorised to take affidavits in any place out of Victoria for use within Victoria, as well as any person having authority to administer an oath or affirmation in a place outside of Victoria.

If an affidavit can or must be taken by a JP or BJ, then it can be taken by a JP or BJ outside of Victoria, for use in Victoria.⁴²

10.6 What is the penalty for making a false statement?

If a person lies in an affidavit they can be charged with perjury. This offence has a maximum penalty of 15 years imprisonment.

10.7 How to take an affidavit?

What the deponent must do⁴³

The deponent must be in your presence.

The deponent must:

- sign or initial any alteration to the affidavit
- sign each page of the affidavit
- sign at the foot of the affidavit
- if the affidavit refers to a document, sign a certificate attached to the document identifying the document as an exhibit to the affidavit
- take the oath or make an affirmation before you.

What you as authorised witness must do:

- sign or initial any alteration to the affidavit
- sign each page of the affidavit
- sign at the foot of the affidavit
- if the affidavit refers to a document, sign, and date a certificate attached to the document identifying the document as an exhibit to the affidavit. You must also legibly write or stamp below your signature your name and address and the title, justice of the peace.

⁴¹ Regulation 7 & Schedule 1, *Oaths and Affirmations (Affidavits, Statutory Declarations and Certifications) Regulations 2018*

⁴² Section 21, *Oaths and Affirmations Act 2018*

⁴³ Section 27, *Oaths and Affirmations Act 2018*



- make sure the affidavit is dated
- administer an oath or affirmation to the deponent
- complete the jurat section at the end of the document stating when and where the affidavit was made, and write or stamp your name, address, and title.

* The form of certificate needed for exhibits does not have to comply with the certification provisions in the *Oaths and Affirmations Act 2018*.

Completing the jurat

The jurat will usually take the following form:

Sworn/Affirmed at [place] in the State of Victoria, on [date].

[signature of person swearing or affirming the affidavit contents, to be signed in front of the authorised affidavit taker]

Before me, _____ [your signature]

on [date]



Print or stamp your name, title and address

Note: A person authorised under section 19(1) of the *Oaths and Affirmations Act 2018* is to take an affidavit.

10.8 Affidavits by illiterate, blind or cognitively impaired person

If a person appears to be illiterate, blind or has a cognitive impairment, you may read the affidavit to the deponent, but you must certify in or below the jurat that you read the affidavit to the deponent.⁴⁴

This is a form of certification you might use:

I certify that I read the affidavit to the deponent because it appeared to me that they are illiterate/blind/have a cognitive impairment.

You may also make modifications to the form of the oath or affirmation as outlined further in this section.

10.9 What is an oath or affirmation?

An oath is a solemn promise made before a god, recognised by the deponent's religion, to tell the truth.

An affirmation is a solemn promise to tell the truth (without reference to a god). Both an oath and an affirmation have equal value and the same effect.

You must inform the deponent that they have a choice between taking an oath or making an affirmation, unless you are satisfied that the deponent already knows they have a choice.

A person may use a religious text (such as the Bible or Koran) in taking an oath but is not required to do so. An oath is effective even if the person who takes it does not have a religious belief or a religious belief

⁴⁴ Section 28, *Oaths and Affirmations Act 2018*



of a particular kind and a person may take an oath even if their religious or spiritual beliefs do not include a belief in the existence of a god.⁴⁵

You may direct a person to make an affirmation if the person refuses to choose whether to take an oath or make an affirmation or it is not reasonably practicable for the person to take an appropriate oath.

The form of oath or affirmation to be used when a person takes an affidavit is in accordance with the form of Schedule 1 of the Oaths and Affirmations Act 2018 or a similar form unless a different form is specified in another Act or by convention or otherwise.⁴⁶

10.9.1 Prescribed words for oaths and affirmations

Prescribed words:	
Oaths	<i>I, [name of person making oath], swear [or promise] by Almighty God [or name of a god recognised by the person's religion] that the contents of this affidavit are true and correct.</i>
Affirmations	<i>I, [name of person making affirmation], solemnly and sincerely affirm that the contents of this affidavit are true and correct.</i>
For a child or deponent with cognitive impairment	<i>I, [name of person making the promise], promise that I have told the truth in this affidavit, and it is correct.</i>

10.9.2 Affidavits with exhibits

There is no prescribed form of words for use when there are exhibits attached to an affidavit, but you could use the following:

I, [name of person making oath], swear [or promise] by Almighty God [or the person may name a god recognised by the person's religion] that the contents of this affidavit are true and correct and these are the exhibits referred to in the affidavit.

I, [name of person making affirmation], solemnly and sincerely affirm that the contents of this affidavit are true and correct and these are the exhibits referred to in the affidavit.

10.9.3 Children and people with cognitive impairments

A child or a person with a cognitive impairment may make a promise to tell the truth and can make an affidavit provided they have legal 'capacity' to do so. That is, they must be able to understand that they are making a legal promise to tell the truth, and that being untruthful under oath or affirmation is an offence.

10.9.4 Reasonable modifications to accommodate people with disabilities

If a person is able to understand that they are making a legal promise to tell the truth, and that being untruthful in an affidavit is an offence, they can make an affidavit.

You may make reasonable modifications for a person living with disability (such as vision impairment, physical disability, or intellectual disability) that would prevent them from reciting an oath or affirmation in the prescribed way. For example, a hearing-impaired person may read and sign an oath or affirmation

⁴⁵ Section 10, Oaths and Affirmations Act 2018

⁴⁶ Section 8, Oaths and Affirmations Act 2018



instead of saying it aloud or a person who is unable to speak may be able to listen to an oath or affirmation being read and nod assent.

10.9.5 What if the deponent requires an interpreter?

If the deponent needs an interpreter to make an affidavit for legal proceedings, you should require the interpreter to swear an oath or make an affirmation that they accurately translated the contents of the affidavit and the jurat from English into the deponent's language.

You will find information about the use of interpreters in the [Cultural and Linguistic Diversity](#) section of this Handbook.

10.10 How to take an oath or affirmation

A person making an oath or affirmation for an affidavit must say the prescribed words aloud. They may repeat the words after the authorised affidavit taker has spoken or read them from a card. It is not sufficient (unless reasonable modifications are made for people living with disability) to simply answer yes to questions such as 'Are the statements made in this affidavit true, and correct?'

10.10.1 When should you refuse to take an affidavit?

You must refuse to take an oath or affirmation if it appears to you that, for whatever reason, the person taking the oath or making the affirmation is unable to understand the nature of the oath.⁴⁷

10.11 Multiple affidavits

Multiple affidavits can be sworn simultaneously. The affidavits are placed side by side and the oath you administer is modified:

I, [name of person making oath], swear [or promise] by Almighty God [or name of a god recognised by the person's religion] that the contents of my affidavits are true and correct.

I, [name of person making affirmation], solemnly and sincerely affirm that the contents of these affidavits are true and correct.

10.12 Multiple deponents

There are two ways to witness an affidavit made by two or more deponents:

1. All the deponents can attend before you at the same time. The name of each deponent is written in the jurat, for example:

Sworn/affirmed at [place] in the State of Victoria

on [date]

by _____ the above-named deponents.

Before me _____.

⁴⁷ Section 14, *Oaths and Affirmations Act 2018*



2. The deponents can attend before you or another authorised witness at different times. If this happens, there must be a separate jurat for each deponent by name, to record.

You may also deal with affidavits that can be “jointly and severally” signed.

10.13 Subsequent alterations to affidavits

Sometimes alterations are made to affidavits, and you will be asked to witness an amended affidavit. In addition to signing each page of the affidavit, you should sign (or initial) and date next to any alterations or additions. The affidavit must be sworn or affirmed again. A new jurat for the amended affidavit should acknowledge that it has been re-sworn or re-affirmed.

10.13.1 Minor non-compliance does not affect validity

If a person makes a small, insignificant mistake the affidavit may still be valid.⁴⁸ Failing to make the oral oath or affirmation is not inadvertent non-compliance and will invalidate an affidavit.

10.14 No fee for taking an affidavit

You must not request, require, or accept payment of a fee for administering an oath or affirmation for an affidavit or signing an affidavit. It is an offence punishable by 10 penalty units.

The only exception is for public notaries, who are permitted to charge a fee for their services when taking affidavits intended solely for use outside of Australia. It is not an offence for a person, such as a legal practitioner, to charge for preparing or drafting the contents of an affidavit.⁴⁹ Please refer to the full [Schedule of Offences in Section 24.4](#).

10.15 Should I administer an oath that is contrary to my personal beliefs?

As a JP, it is your duty to administer the oath or affirmation regardless of your own beliefs. It is the person's choice to take an oath or affirmation as required by law.

11. Powers of attorney

11.1 What is a power of attorney?

A power of attorney is a legal document that allows a person to conduct another person's financial, legal, or personal affairs. Powers of attorney operate when the principal is alive and wants or needs someone to make decisions on their behalf. When the principal dies the attorney ceases to have any powers.

11.2 Powers of Attorney Act 2014

The *Powers of Attorney Act 2014* (the Act) commenced on 1 September 2015. All powers of attorney made in Victoria after this date must be made under this Act. Powers of attorney properly executed under previous legislation remain valid under the Act.

The Act provides for different types of powers of attorney. Although they each have much in common, it is important to be aware of their differences in purpose, documentation, and execution requirements. The powers of attorney are:

⁴⁸ Section 29, *Oaths and Affirmations Act 2018*

⁴⁹ Section 20, *Oaths and Affirmations Act 2018*



- general non-enduring power of attorney, often called general power of attorney
- enduring power of attorney, and
- supportive power of attorney.

The person who makes the power of attorney is called 'the principal'.

The Office of the Public Advocate (OPA) has prepared a handbook on powers of attorney called [Take Control](#).

This valuable resource covers enduring powers of attorney, supportive attorney appointments, appointments of medical treatment decision makers and advance care directives in detail. It includes tear-out fact sheets containing information for witnesses, which you are encouraged to keep and utilise in your witnessing role.

11.3 General (non-enduring) power of attorney

A general power of attorney authorises one or more persons to act on behalf of the principal for defined purposes.⁵⁰ For example, selling the principal's house for a specific figure, operating a bank account, managing the principal's business affairs, or acting on behalf of the principal while they are overseas or in hospital.

A general power of attorney operates only while the principal has legal capacity, but not when they lose legal capacity.

The form for the general (non-enduring) power of attorney can be accessed [here](#).

11.3.1 Witnessing requirements

- There is no legal requirement for a general non-enduring power of attorney to be witnessed unless the principal is unable to sign the form.
- If the principal cannot sign the form, they can direct another person to fill in and sign the form on their behalf.
- The other person must sign on their behalf in front of the principal and two witnesses, who must also sign the form.⁵¹
- In this situation, a special witness, such as a JP, is required to witness non-enduring power of attorney documents.

11.3.2 Certifying a copy of a general (non-enduring) power of attorney

To prove a copy of a power of attorney, the copy must be certified. Certification must be made by an authorised witness. JPs are authorised witnesses for this purpose.

To certify a copy of a general (non-enduring) power of attorney you must:

- On each page, other than the last page of the copy, certify to the effect that the copy of that page is a true and complete copy of the corresponding page of the original.
- On the last page, certify to the effect that the copy of the instrument is a true and complete copy of the original instrument.

⁵⁰ Part 2, *Powers of Attorney Act 2014*

⁵¹ Section 11, *Powers of Attorney Act 2014*



You should also follow this procedure to certify a copy of a certified copy of a general (non-enduring) power of attorney (with appropriate modifications).

11.4 Enduring power of attorney

An enduring power of attorney is an instrument in which the principal authorises another person to conduct their financial or personal affairs on their behalf.⁵²

The principal can appoint one or more attorneys and can appoint different people to make different decisions about financial and personal issues. Both the principal and the attorney must be 18 or over and must have decision-making capacity.

An enduring power of attorney can start immediately or when the principal specifies that it is to start. They are often expressed to start when the principal no longer has decision-making capacity (perhaps caused by illness, dementia, or accident).

The power ends when the principal dies or cancels the power, if the Victorian Civil and Administrative Tribunal (VCAT) makes an order to that effect, or if the attorney dies or becomes unable to act.

An enduring power of attorney must be in the prescribed form.⁵³ A template form for the enduring power of attorney can be accessed [here](#).

11.4.1 Witnessing requirements

- Two independent adult witnesses must sign the document **in the presence of the principal and of each other**.
- One of the independent witnesses must be an authorised witness (including JPs and registered medical practitioners).
- Relatives of the principal, a person being appointed as an attorney, relatives of a person being appointed as an attorney, and care workers or accommodation providers for the person making the appointment cannot be witnesses.
- If the principal cannot sign the form, they can direct another person (over the age of 18 years) to fill in and sign the form for them. The other person must sign on their behalf in front of the principal and the two independent adult witnesses. The person signing the form on behalf of the principal cannot be a witness to the principal's signature and cannot be an attorney appointed under the enduring power of attorney.
- Each of the witnesses signing the document must sign a certificate that includes a statement that the principal appeared to sign the instrument freely and voluntarily and appeared to have decision-making capacity. For further information, please refer to the [Decision-making capacity](#) section of this Handbook.
- The person or persons appointed under the enduring power of attorney must sign an acceptance of the appointment in the presence of a witness. The witness does not need to be an authorised witness. They can do this at the same time as the principal completes their section or at another time. If there is more than one attorney, they do not need to be present at the same time.

11.4.2 Certifying a copy of an enduring power of attorney

To prove a copy of an enduring power of attorney, the copy must be certified. Certification must be made by an authorised witness. JPs are authorised witnesses for this purpose.

⁵² Part 3, *Powers of Attorney Act 2014*

⁵³ Regulation 5, Schedule 1, Form 1, *Powers of Attorney Regulations 2015*



To certify a copy of an enduring power of attorney you must:

- On each page, other than the last page of the copy, certify to the effect that the copy of that page is a true and complete copy of the corresponding page of the original.
- On the last page, certify to the effect that the copy of the instrument is a true and complete copy of the original instrument.

You should also follow this procedure to certify a copy of a certified copy of an enduring power of attorney (with appropriate modifications).

11.4.3 Revocation of Enduring Power of Attorney

A principal may revoke an enduring power of attorney or the appointment of an attorney (e.g., to appoint another one) if the principal still has decision-making capacity.⁵⁴ The revocation of a power of attorney is a prescribed [form](#).⁵⁵

11.4.4 Revocation of Enduring Power of Attorney – witnessing requirements

The witnessing requirements for the revocation of an enduring power of attorney or the appointment of an attorney are the same as for when the power of attorney was originally made, including the requirement that you and the other witness certify that the principal appeared to sign the instrument freely and voluntarily and appeared to have decision-making capacity.

11.5 Supportive power of attorney

A supportive power of attorney is an instrument by which an adult person (the principal) appoints one or more adults to support them in making decisions.⁵⁶ The decisions can be limited to assisting with financial or personal matters or both, and for a specific purpose. A supportive power of attorney is different to a general (non-enduring) or enduring power of attorney because a supportive attorney cannot make decisions on behalf of the principal. Once the principal loses decision-making capacity, the power automatically ends.

The types of help a supportive attorney can provide include communicating with organisations such as banks, supplier companies and government departments on behalf of the principal, gathering information to assist the principal make decisions and ensuring (within reason) that the principal's decisions are carried out in accordance with their wishes.

Supportive attorneys cannot (even with the consent of the principal) assist the principal in real estate transactions (other than tenancy arrangements) or to enter into a financial transaction over \$10,000.

A supportive attorney cannot formally support a decision about medical treatment.

The power can start immediately or when the principal specifies that it is to start. It ends when the principal dies or cancels it or loses capacity to make decisions or the supporting attorney resigns or dies.

The appointment of a supportive attorney is in a prescribed form.⁵⁷

⁵⁴ Part 5, Division 1, *Powers of Attorney Act, 2014*

⁵⁵ Regulation 6, Form 2, *Powers of Attorney Regulations 2015*

⁵⁶ Part 7, *Powers of Attorney Act 2014*

⁵⁷ Regulation 9, Form 5, *Powers of Attorney Regulations 2015*



11.5.1 Witnessing requirements

- Two independent adult witnesses must sign the document **in the presence of each other and of the principal**.
- Neither of the witnesses can be the person appointed as the supportive attorney or related to the supportive attorney or the principal or a care worker or accommodation provider for the principal.
- One of the independent witnesses must be an authorised witness.
- Each of the witnesses signing the document must sign a certificate that includes a statement that the principal appeared to sign the instrument freely and voluntarily and appeared to have decision-making capacity.
- If the principal cannot sign the form, they can direct another person to fill in and sign the form for them. The other person must sign on behalf of the principal in front of the principal and two witnesses, who must also sign the form. The other person cannot be a witness to the principal's signature.
- The person appointed as a supportive witness must accept the appointment by signing the prescribed form in the presence of two independent witnesses.

11.5.2 Revocation of appointment of supportive attorney

A principal may revoke a supportive attorney appointment (e.g., to appoint another one) if the principal still has decision-making capacity.

The revocation of a support attorney appointment is a prescribed [form](#).⁵⁸

11.5.3 Revocation of Supportive Power of Attorney – witnessing requirements

The witnessing requirements for the revocation of a supportive power of attorney or the appointment of a supportive attorney are the same as for when the supportive power of attorney was made, including the requirement that both witnesses certify that the principal appeared to sign the instrument freely and voluntarily and appeared to have decision-making capacity.

12. Medical decision-making

Since March 2018, the appointment of a medical treatment decision-maker has replaced the enduring power of attorney (medical treatment). The appointment of a medical treatment decision-maker works in conjunction with the new advance care directive, although it is not necessary to have both.⁵⁹ In addition, a person may appoint a support person to communicate their medical treatment decisions and represent their interests in relation to medical treatment.

12.1 Advance care directive

An advance care directive is a document that sets out a person's binding instructions or preferences and values about their medical treatment, in the event that the person no longer has decision-making capacity for that medical treatment.⁶⁰

It may record general statements about a person's preferences and values to guide their medical treatment decision maker (values directive) and/or instruct their health practitioners about medical treatments they want or do not want in the future (instructional directive).

⁵⁸ Regulation 6, Form 2, *Powers of Attorney Regulations 2015*

⁵⁹ *Medical Treatment Planning and Decisions Act 2016*

⁶⁰ Part 2, *Medical Treatment Planning and Decisions Act 2016*



There is no prescribed form for an advance care directive. However, the Department of Health has developed templates which individuals can use to assist in their preparation. For example, an [Advance care directive for adults](#) form and an [Advance care directive for young people under 18 years of age](#) form is accessible on the Department of Health's [website](#).

12.1.1 Witnessing requirements

- Two adult witnesses, one of whom must be a medical practitioner.
 - Each witness must sign and date the document in the presence of the person giving the advance care directive and of each other.
 - Neither witness can be the appointed medical treatment decision-maker for the person giving the advance care directive.
 - In the case of an advance care directive by a child, a psychologist with prescribed training and experience may witness the advance care directive as an alternative to a medical practitioner
- Each witness must certify that, at the time of signing the directive the person appeared to:

- have decision-making capacity in relation to each statement in the directive; and
- freely and voluntarily sign the document; and
- understand the nature and effect of each statement in the directive.

12.1.2 Amendment or revocation

If the person who made the advanced care directive still has decision-making capacity, an advanced care directive may be revoked by making a later advanced care directive or by following the same procedure used for creating an advanced care directive.

An amendment must be made on the face of the original advance care directive. The witnessing requirements are the same.

12.2 Appointment of Medical Treatment decision-maker

An adult who has decision-making capacity may appoint another adult (or more than one other adult) as the person's medical treatment decision maker, either at the same time as an advance care directive is given or at any other time.

A medical treatment decision-maker has authority to make decisions about the person's medical treatment when the person is unable to make such decisions themselves. For example, whether/when to perform surgery, whether to have a flu shot, whether to turn off life support. Medical treatment includes medical research and dental treatment.

A medical treatment decision-maker must make the medical treatment decision that they reasonably believe is the decision that the person would have made if they had decision-making capacity to make the decision. This also involves considering the person's advance care directive if there is one.

12.2.1 Witnessing requirements

- Two adult witnesses, one of whom must be an authorised witness (this includes a JP).
- Each witness must sign and date the document in the presence of the person appointing the medical treatment decision maker and of each other.
- Neither witness can be the appointed medical treatment decision-maker.

Each witness must certify at the time of signing the directive the person appeared to:

- have decision-making capacity; and



- understand the nature and consequences of making the appointment.

The person appointed as a medical decision maker must sign an acceptance of the appointment on the same document (but not necessarily at the same time) in the presence of an adult witness. This witness does not have to be an authorised witness.

12.2.2 Revocation of appointment

If the person who made the medical treatment decision maker appointment still has decision-making capacity, the appointment may be revoked by making a later appointment or by following the same procedure used for creating the medical treatment decision-maker appointment.

12.3 Appointment of support person

A person (including a child) may appoint another person to act as their support person.⁶¹ Only one person may be appointed as a support person at a time. The role of a support person is to support the principal to make, communicate and give effect to their medical treatment decisions and to represent the person's interests about their medical treatment, including when they do not have capacity to make decisions about their treatment. The support person does not have the power to make a person's treatment decisions.

12.3.1 Witnessing requirements

The witnessing requirements are the same as for the appointment of a medical treatment decision-maker.

12.3.2 Revocation

The requirements to revoke the appointment of a support person are the same as for the appointment of a medical treatment decision-maker.

13. Advance Statements/Nominations under Mental Health Act

13.1 What is an advance statement?

An advance statement is a statement made under the [Mental Health Act 2014](#). It sets out a person's preferences about treatment in the event that they become unwell and require compulsory treatment.⁶² An advance statement may include information about treatment a person finds effective, treatment that has been less effective in the past and the person's views and preferences about neurosurgery and electroconvulsive treatment.

A psychiatrist treating a person must have regard to a person's advance statement when making a treatment decision, although the psychiatrist may disregard the advance statement if they consider that acting on the patient's preferences is not clinically appropriate or is not a treatment ordinarily provided by the mental health service.

13.2 What is a nomination?

A nomination is a statement made under the *Mental Health Act 2014* appointing a person to assist a patient who becomes so unwell they require compulsory treatment. A nominated person may provide

⁶¹ Part 3, Division 3, *Medical Treatment Planning and Decisions Act 2016*

⁶² Section 19, *Mental Health Act 2014*



support, help represent the patient's interests and help the patient exercise their rights under the Act.⁶³ They must be informed and consulted about key stages of a patient's assessment, treatment and recovery in a mental health service.

13.3 Witnessing an advance statement

An advance statement must be in writing and signed and dated by the person making the advance statement. It must be witnessed by a JP or other [authorised witness](#), who must include a statement stating that in their opinion:

- the person making the advance statement understands what an advance statement is and the consequences of making an advance statement;
- the witness observed the person sign the advance statement; and
- the witness is an authorised witness.

13.4 Witnessing a nomination

The nomination must be in writing and signed and dated by the person making the nomination. It must specify the name and contact details of the person nominated and include a statement signed by the nominated person that they agree to be the nominated person.

It must be witnessed by a JP or other [authorised witness](#) who must include a statement that, in their opinion:

- the person making the nomination understands what a nomination is and the consequences of making a nomination;
- the witness observed the person sign the nomination; and
- the witness is an authorised witness.

The nominated person must not be the person who witnesses the nomination.

13.5 Duration, amendment, and revocation

Advance statements and nominations are effective until they are revoked. They cannot be amended. If a person changes their mind about their preferences in an advance statement or the person they have nominated in a nomination, they must make a new advance statement or nomination. The new document has the effect of revoking the previous advance statement or nomination.

The witnessing requirements for revocation are the same as those for making an advance statement or nomination, including the requirement that the authorised witness include a statement that, in the opinion of the witness, the person making the revocation understands the consequences of the revocation.

The nominated person does not need to be present for the revocation of a nomination but the person who revokes the nomination must take reasonable steps to inform them (and their authorised psychiatrist if they are a compulsory patient at the time) about the revocation.

The nominated person does not have to sign a document if they no longer wish to act as a nominated person, but they must take reasonable steps to inform the person who nominated them and their authorised psychiatrist if they are a compulsory patient at the time.

⁶³ Section 23, *Mental Health Act 2014*



Table 1: Key documents being witnessed

				What witnesses certify			
Form	How many witnesses?	Who can be an authorised witness?	Who cannot be a witness?	Decision-making capacity	Understands nature and consequences	Freely and voluntarily signs	Eligibility to be a witness
Enduring power of attorney appointment	Two adult witnesses	One witness must be: • a registered medical practitioner or • authorised to witness affidavits (including JPs)	Neither witness can be: • a relative of yours • a person who you are appointing as an attorney or alternative attorney, or any of their relatives • a care worker or accommodation provider of yours	That the person appears to have decision-making capacity at the time of signing in relation to the making of the enduring power of attorney	That the person appears to understand the effect of their decision to make the enduring power of attorney (see above for what the Act says this means)	That the person appears to sign the document freely and voluntarily, and in the presence of the witnesses	That you are eligible to be a witness
Appointment of medical treatment decision-maker	Two adult witnesses	One witness must be: • a registered medical practitioner or • authorised to witness affidavits (including JPs).	Neither witness can be a person who you are appointing as your medical treatment decision maker	That the person appears to have decision-making capacity at the time of signing in relation to making the appointment	That the person appears to understand the nature and consequences of making the appointment	That the person appears to sign the document freely and voluntarily, and in the presence of the witnesses	That you are eligible to be a witness
Advance care directive	Two adult witnesses	One witness must be a registered medical practitioner	Neither witness can be someone who is an appointed medical treatment decision maker for you.	That the person appears to have decision-making capacity at the time of signing in relation to each statement in the directive	That the person appears to understand the nature and effect of each statement in the advance care directive	That the person appears to sign the document freely and voluntarily, and in the presence of the witnesses	That you are not an appointed medical treatment decision maker for the person



14. Decision-making capacity for powers of attorney and other documents of similar nature

Most powers of attorney and other appointments under [Powers of Attorney Act 2014](#), the [Medical Treatment Planning and Decisions Act 2016](#) and under the [Mental Health Act 2014](#), require that witnesses to the appointments certify to the effect that the person making the appointment has decision-making capacity and freely and voluntarily signs the document.

This is a significant responsibility. It has arisen because powers of attorney and other documents of a similar nature have been used to deprive vulnerable people of their property. Unfortunately, it is often the people closest to them that have taken advantage of the power given to them by legal documents.

In the case of medical and mental health treatment appointments, it is obvious that the person who makes or supports a person needing treatment must be a person who can be trusted to observe the wishes of the person who appointed them at times when they are likely to be most vulnerable.

The *Powers of Attorney Act 2014* contains a detailed explanation of what is meant by decision-making capacity under that Act.⁶⁴ It states that a person is presumed to have decision making capacity unless there is evidence to the contrary.

A person has decision-making capacity if the person is able to:

- understand the information relevant to the decision and the effect of the decision; and
- retain that information to the extent necessary to make the decision; and
- use or weigh that information as part of the process of making the decision; and
- communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures, or other means.

It is important a person understands the nature and impact of their decision-making given the significance to their personal circumstances, including their finances. This can be communicated flexibly by modified language, visual aids, or any other means.

In determining whether or not a person has decision making capacity, you should consider:

- a person may have decision making capacity for some matters and not others
- if a person does not have decision making capacity for a matter, it may be temporary and not permanent
- it should not be assumed that a person does not have decision making capacity for a matter on the basis of the person's appearance
- it should not be assumed that a person does not have decision making capacity for a matter merely because the person makes a decision that is, in the opinion of others, unwise
- a person has decision-making capacity for a matter if it is possible for the person to decide in the matter with practicable and appropriate support.

Examples of practicable and appropriate support set out in the Act include:

- using information or formats tailored to the particular needs of a person
- communicating or assisting a person to communicate his/her decision
- giving a person additional time and discussing the matter with the person

⁶⁴ Section 4, *Powers of Attorney Act 2014*



- Using technology that alleviates the effects of a person's disability.

A person may make or propose to make a decision that has a high risk of being seriously injurious to the person's health or wellbeing. In conjunction with other factors, this may be evidence that the person is unable to understand, use or weigh information relevant to the decision or the effect of the decision.

14.1 Assessing decision-making capacity

When making a certification that a person appears to have decision-making capacity or signs a document freely and voluntarily, you do not have to assume the role of a medical practitioner, psychologist, or psychiatrist. All that you must do is use your best judgement and apply any principles that are set out in the legislation relevant to the document you are witnessing.

Conversely, you must take reasonable steps to conduct the assessment at a time and in an environment in which the person's decision-making capacity can be assessed most accurately.

14.2 Extra steps to assess capacity or free will

If you have doubts about decision-making capacity, here are some extra steps that will help you ascertain the person's understanding and free will.

14.2.1 See the person alone for part of the appointment

If another person accompanies the principal, ask this person to leave the room for part of the appointment.

Seeing the principal in private provides them an opportunity to speak with you freely. Explain to the principal that the conversation between you will remain confidential and that you will not repeat anything to the person accompanying the principal.

During this contact, it is reasonable to discuss background, family, health problems or related issues (such as medication that may affect cognitive function, the person's broad financial circumstances including assets, source of income, payment of household and other accounts).

14.2.2 Check the person's understanding and wishes

Once you have satisfied yourself that the principal can speak freely to you, find out whether they understand the document and want to sign voluntarily. Ask open-ended questions that cannot be answered with a simple 'yes' or 'no'. Ask if they have read the document or had it read to them.

The following are examples of questions you may ask if you have some doubt about the person's capacity. You need to be tactful when choosing the questions because their only purpose is to verify that the person truly wants to sign the document and understands its contents and purpose. You should not ask why the person has decided to make the document or about the person's family and health.

- What does this document do?
- What decisions can the person you are appointing make after the document is signed?
- When can the person make these decisions?
- What are the limits on decisions this person can make?
- Can this person make the decisions for you when you are capable of making them yourself?
If yes, ask:
 - Does the person have to consult you?
 - Can the person make a decision you agree with?
- Can the person make decisions for you after you lose the legal capacity to make them yourself?
If yes, ask:
 - Does the person have to check with anyone else?



- Can the person make a decision that you would not make yourself, if you were able?
- Can you change or revoke the terms of the document?
If yes, ask:
 - When? (the principal should be able to provide information such as : 'At any time I wish to, until I lose legal capacity, and, after that, it can only be changed with the approval of a court/guardianship board')
- Do you need anyone's permission to change or revoke this document? (the answer should be 'no')
- Has anyone put pressure on you to do this?

14.2.3 When an interpreter is involved

When the services of an interpreter are used it is important that you are satisfied that the form has been explained in a language that the principal understands. The person who is being appointed as an attorney for the principal cannot be the principal's interpreter.

15. Electronic signing and online witnessing

The requirement to witness and sign legal documents in person, with all parties present, has been the only available method to formally manage a range of legal documents.

Recent changes to Victorian law mean that for most legal documents electronic signatures and online witnessing has now become an ongoing practice option.

The following pieces of legislation have been amended to enable these significant reforms, including the:

- [Electronic Transactions \(Victoria\) Act 2000](#)
- [Oaths and Affirmations Act 2018](#)
- [Wills Act 1997](#)
- [Powers of Attorney Act 2014](#)

15.1 What does this mean?

Arrangements allowing legal documents to be signed electronically and witnessed online in real time using audio-visual technology (AVL) can now be implemented as standard witnessing practice for certain documents.

Importantly, these new laws do not replace existing ways to witness documents. You may continue to witness documents in the usual manner, without using online witnessing procedures. Visit our departmental website at www.justice.vic.gov.au to read more about the existing processes.

You cannot certify a true copy of an original document or certify a person's identity online. This must be completed in-person.

15.2 How does witnessing online via AVL work?

If a document has a witnessing requirement, this may be fulfilled through online witnessing under the new amendments. This means the witness can be 'present' via an audio-visual link. The amendments require that:

- all parties involved are connected through an audio-visual link
- if the document requires the witnessing of a signature, the witness must see this take place through an audio-visual link
- the witness must be satisfied that the document they sign is the same document or a copy of



- the same document signed by the signatory (the person who signed the document)
- all aspects of the witnessing by audio visual link must take place on the same day
- any other prescribed requirements that apply to the document being signed must also be met
- the witness must include a statement on the document that all the requirements of witnessing by audio visual link have been met.

Witnesses do not need to be physically located in Victoria to witness a document via audio visual link unless they are required to by another applicable Victorian law. For example, all participants must be located in Victoria during the witnessing process for power of attorney documents and wills, codicils and other testamentary instruments.⁶⁵

Witnesses must also ensure that they fulfil any existing duties they may have under any other relevant statute or within common law – these will apply in addition to their obligations when witnessing by audio visual link.

It is important to note that both parties must have access to suitable IT equipment and software (including scanning, emailing and digital signing) and access to online audio-visual platforms such as Microsoft Teams, Zoom or WebEx.

Please refer to the [Fact Sheet: Electronic signing and online witnessing of legal documents](#) for a comprehensive overview of the online witnessing requirements for the document types listed in Section 15.3.

15.3 Witnessing signatures, taking oaths and affirmations

Using audio-visual technology, you can conduct the processes that you would usually undertake in witnessing signatures and taking oaths and affirmations.

Depending on how the electronic signature is made, either the JP or the member of the public may need two electronic devices, one to sign on, and one to maintain audio-visual communication of the signing process.

The new legislation does not affect the existing requirements of witnesses, either in statute or common law, to be satisfied of certain matters or to certify certain matters including:

- the identity of the signatory
- that the signatory has decision making capacity
- that there is no defect such as undue influence, duress or unconscionable conduct apparent in the transaction
- that the signatory is signing freely and voluntarily.

If a witness is not able to meet these requirements by audio-visual link, the witness should not execute the document.

⁶⁵ Section 5A(3), *Powers of Attorneys Act 2014*; Section 8A(3), *Wills Act 1997*



15.2.1 Which documents can be witnessed online?

Type of online document and practice requirements	
Statutory Declarations	<p>Both the declarant and the witness are still required to fulfil all existing obligations under s30 of the <i>Oaths and Affirmations Act 2018</i> while each appearing on audio-visual link.</p> <p>If a statutory declaration is made in electronic form or witnessed via audio visual link, the witness may use a scanned or electronic copy of that statutory declaration to comply with s30 of the <i>Oaths and Affirmations Act 2018</i>.</p> <p>When making a statutory declaration in electronic form or via an audio-visual link, the witness must include a statement that specifies the manner of the witnessing and clarify whether a scanned or electronic copy of the statutory declaration was used. This statement may be pre-filled on the statutory declaration form.</p> <p><i>All online witnessing steps must be completed on the same day.</i></p>
Affidavits	<p>Both the deponent(s) and authorised affidavit taker may use a scanned or electronic copy of the affidavit for the purposes of complying with all existing requirements of s26 and s27 of the <i>Oaths and Affirmations Act 2018</i>.</p> <p>If an affidavit has been signed and sworn or affirmed by a deponent by audio visual link, the authorised affidavit taker must state in the jurat that the affidavit was signed and sworn or affirmed by the deponent by audio-visual link, and that the authorised affidavit taker has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements under s27(1) of the <i>Oaths and Affirmations Act</i>.</p> <p><i>All online witnessing steps must be completed on the same day.</i></p>
Powers of Attorney	<p>Each witness is still required to fulfill all existing obligations under the <i>Powers of Attorney Act 2014</i>, including certification requirements under s36 of the Act. A power of attorney document can be electronically signed and witnessed with all persons in separate spaces connected by an audio-visual link.</p> <p>The witnesses must observe, by audio-visual link, the principal (or directed signer) sign the document, either electronically or on hard copy (and the signature of any witnesses physically present).</p> <p>The witnesses must also be physically situated within Victoria.</p> <p><i>*Please review the broader Power of Attorney document list in Section 15.3.2.</i></p>
Wills	<p>The <i>Wills Act 1997</i> allows wills (including those signed under direction) and other testamentary instruments to be electronically signed and witnessed online.</p> <p>This means a will can be validly executed where the testator and witnesses are in separate locations, provided they are connected by audio visual link.</p> <p>It is possible to use a mix of witnesses that are physically present with the testator and those that are connected to the testator through audio visual link, however any witnesses that are remote will have additional requirements.</p> <p>One or more people participating can be present via audio visual link, provided they are physically situated in Victoria.</p> <p>A special witness, which includes JPs, is required when the remote execution procedure is used to execute a will or other testamentary instrument online.</p> <p><i>All witnessing steps must be completed on the same day and within Victoria.</i></p>



15.3.2 Power of Attorney Documents and Special Witness Requirements

Documents that can be witnessed remotely and require a special witness	Documents that can be witnessed remotely without a special witness
<ul style="list-style-type: none"> • Enduring power of attorney • Revocation of enduring power of attorney/Appointment of attorney or alternative attorney • Appointment of supportive attorney • Revocation of supportive attorney appointment/Appointment of supportive attorney or alternative supportive attorney • Non-enduring power of attorney where the principal is directing another to sign on their behalf (and therefore requires two witnesses) 	<ul style="list-style-type: none"> • Statement of acceptance of appointment by attorney • Statement of acceptance of appointment by alternative attorney • Statement of acceptance of appointment by supportive attorney • Statement of acceptance of appointment by alternative supportive attorney

15.3 Electronic signatures and witnessing

There are several ways to undertake electronic signing of documents, with the format of documents and the type of software available affecting the process of doing so. However, there are two main methods you can use:

- signing on paper and converting to an electronic document, or
- electronic signing on a device.

An audio-visual communication link should be maintained throughout the process.

15.3.1 Signing on paper and converting to an electronic document

If a paper version of the document is available, it can be signed in the usual manner and converted to an electronic document for sending.

Most printers available are also able to scan documents. Alternatively, the document be captured by a camera, with most mobile phones and tablets having high-resolution cameras that can capture images of documents as electronic files. In addition, there are many apps available for document scanning on phones and tablets (e.g., Adobe Scan, search for “scanning” in the Apple or Android app stores).

15.3.2 Electronic signing on a device

An electronic document can come in many formats, such as PDF document, a Microsoft Word document or an image file (e.g., jpeg). There is also a range of software for editing these files.

The term “electronic signature” is not defined to preserve technology neutrality. Therefore, you can electronically sign a document in several ways. For example, you could:

- Paste a copy of a signature into a document
- Sign a PDF on a tablet, smartphone or laptop using a stylus or finger
- Physically sign a hardcopy document and scan the document before sending to another person while maintaining an audio-visual link (e.g., using Zoom or Microsoft Teams)
- Confirm your agreement by electronically selecting an option indicating agreement.



15.3.3 Recording that a document was witnessed remotely

A witness must write or stamp under their signature a statement indicating that the document was witnessing using an audio-visual link in accordance with the legislation, and in accordance with any specific requirements for the document.

15.3.4 Suggested statements for online documents

Statutory Declarations:

“This statutory declaration was witnessed via an audio-visual link using a scanned copy of the statutory declaration in accordance with the *Oaths and Affirmations Act 2018*.”

If a declarant is to be assisted by audio-visual link (e.g., through interpreter services), the person assisting the declarant must be sent a copy of the statutory declaration before it is finalised and write down their name, address, and an explanation of what kind of assistance they provided.

Affidavits:

“This affidavit was sworn by the deponent via an audio-visual link, and the authorised affidavit taker had used a scanned copy of the affidavit and not the original in accordance with the *Oaths and Affirmations Act 2018*.”

Power of Attorney:

“This document was witnessed by “name” who is a Justice of the Peace in accordance with the *Powers of Attorney Act 2014*, and no audio-visual recording of the signing was made.”

An audio-visual recording of the signing of the document by remote witnessing procedure may be made only if all the parties to the procedure consent to the recording being made.

Wills:

The special witness must fulfil the requirements of an ordinary witness. The special witness must be the final signatory, and must only sign the document after:

- checking the document for compliance with the remote execution procedure; and
- ensuring that there is a statement on the will (this can be written or typed) setting out:
 - whether the document was signed and witnessed in accordance with the remote execution procedure;
 - whether they are a special witness and include their qualification as a special witness; and
 - whether to their knowledge, an audio-visual recording was made of the remote execution procedure.

Please refer to the [Section 23](#) for a Checklist regarding electronic signatures and witnesses.



16. Witnessing for People Living with Disability

During your appointment, there will be occasions when you will be asked to witness documents for people living with disabilities. The suggestions below can help you provide JP functions to these service users in an appropriate way.

- Ascertain the person's ability to identify whether an individual's disability affects their capacity to complete the documents. In all cases, you should ensure that the person proposing to sign understands the meaning and effect of the document. Only if the disability affects the person's capacity to understand or complete the document do you need to take special steps.
- Always speak directly to the person who is seeking your services. For example, ask questions using 'you' and not through the accompanying carer or the friend, even if the relative or carer acts as an interpreter. Speaking exclusively to the interpreter (for example 'can you ask them....') can make the person living with a disability feel left out of the conversation.
- Remember that if you are uncertain or feel uncomfortable about a person's ability to understand a document, or you suspect they may have been coerced, you can decline to witness and refer the person to a suitable service (see the [Information and Referral Contacts](#) section in this Handbook).

16.1 How to witness for people living with disability

16.1.1 People living with a physical disability

There are many types and degrees of physical disability. There may be simple things you can do to assist a person living with a disability while providing your services. For example, if you are witnessing a document for a person who uses a wheelchair, ensure that they have a firm writing surface on which to sign the document comfortably.

If the person cannot sign the document but can make a distinguishing mark rather than a signature, write these words under that mark before adding your signature as the witness:



For a document other than an affidavit

This is the mark of _____ made in my presence, as they are unable to sign their name.

For an affidavit

Sworn/affirmed at [place] this day of ____20____ by [name of person swearing or affirming the affidavit contents] who, being unable to sign their name, have made their mark in my presence

[mark]

Before me _____.



The oath or affirmation you administer is as follows:

Oath:

I [name of person making oath], swear [or promise] by Almighty God [or the person may name a god recognised by the person's religion] that this is my mark, and that the contents of this affidavit are true and correct.

Affirmation:

I [name of person making affirmation], solemnly and sincerely affirm that this is my mark and that the contents of this affidavit are true and correct.

If the deponent is unable to sign the document or make any distinguishing mark, and you are satisfied they understand the nature and effect of the document, and would sign it if they could, you can certify the document as follows:

For a document other than an affidavit

I certify that _____ understands the nature and effect of this document but is physically incapacitated from signing or making a mark.

For an affidavit

A deponent who is unable to sign their name or make a mark, may still swear, or affirm an affidavit.

The jurat should be endorsed to reflect this:

Without the deponent fixing any mark or signature,

As they are unable to sign their name

this affidavit was sworn/affirmed at _____ [place]

in the State of Victoria, this day of _____ 20__.

before me _____ [your signature]

[Name, Address and Title of witness]

16.1.2 Vision impairment or illiteracy

The certificate need say no more than:

I certify that I read this affidavit to the deponent.

signed: [your signature]

16.1.3 Hearing impairment

You can use an interpreter to communicate with a person who understands sign language. There are accredited Auslan (Australian Sign Language) interpreters who can be arranged when making the appointment.



If an interpreter is used to make an affidavit or statutory declaration by a hearing-impaired person, the normal interpreter's oath/affirmation is used. This declares that they will interpret to the best of their ability. The interpreter's oath for an Auslan interpreter is the same as for an interpreter for a non-English speaking person.

If an interpreter is not present, or the hearing-impaired person cannot communicate in sign language, you can offer to communicate with the person in writing. Remember that some people with a hearing impairment are not fluent in English and consider it as a second language. Take extra care to be satisfied that the person understands what you write, as well as the nature and effect of the document. Destroy your written communication once you have witnessed the document.

For an affidavit under these circumstances, administer the oath/affirmation as follows.

- Once the deponent has signed the affidavit, hand them a piece of paper on which is written: *Is this your name and signature?*
- Upon making an affirmative gesture, the person should then be asked in writing: *Do you swear (or promise) by Almighty God [(or the person may name a god recognised by the person's religion)/solemnly and sincerely declare and affirm that the contents of this affidavit are true and correct.*
- Again, an affirmative gesture is required.

16.1.4 People living with an intellectual disability

A person living with a significant intellectual disability usually has a guardian or attorney who makes decisions on his or her behalf. If you cannot ascertain that the person has a guardian acting on their behalf, do not witness the document. Instead, refer them to the Office of the Public Advocate, who can arrange for a guardian. (For Office of the Public Advocate contact details, see the [Information and Referral Contacts](#) section of this Handbook).

A cautious approach is best

It is important to allow adequate time and engagement with a person seeking JP services to ensure they can express their wishes to you. In some circumstances, you may decide not to witness a document if it is evident the person cannot understand the nature and impact of the document.

17. Cultural and linguistic diversity

17.1 General guidelines

It is important to be aware of and sensitive to the culture and language of people who ask you to perform JP duties. Misunderstandings are very common between people of different cultures and are often due to factors other than language barriers, such as differences in communication style and relationships to authority figures. It is advisable to take extra care in checking for understanding and be very wary of making assumptions.

Try to negotiate through differences, rather than ignoring them. Never make assumptions about a person's understanding of English based on linguistic or cultural background. People may sometimes wish to give you the impression that their understanding of English is sufficient when it is not.

Documents written in a language other than English generally cannot be used for legal purposes in Victoria unless they include the following attachments:

- an English translation



- an affidavit by the translator stating that the translation is an accurate translation of the document in the original language.

You may certify copies of documents written in a language other than English if you are sure that the document is a true copy. It is a good practice where possible, to have the originals photocopied in your presence to ensure they are the correct copies.

17.2 Witnessing English-language documents for a non-English speaking person

To witness English-language documents for a non-English speaking person, you must be satisfied that the person understands the nature and effect of what they are signing. If you cannot communicate in their language, you may need to arrange another appointment and ask the person to attend with an interpreter.

The Translating and Interpreting Service (TIS) provides interpreter services. There is usually a fee, although some services are free. The fee should be paid by the non-English speaking person. There is no prohibition against using family members or friends as interpreters, but it is preferable to use professional interpreters if they are available.

JPs who speak other languages can be found through the online JP Register at www.justice.vic.gov.au by searching 'Language'.

17.3 Witnessing through an interpreter

For documents other than affidavits

- Ask the interpreter to translate orally to the person the contents of the document; and
- Interpret everything you say to the person and everything the person says to you.

Ask the interpreter to certify on the document using words such as these:

I certify that I have orally translated the document from the English language into [language of the person] to the best of my skills and ability.

[Signature of interpreter]

[Printed name of interpreter]

For affidavits

The steps you must follow when an interpreter is used to translate an affidavit are as follows:

1. To begin, the interpreter takes an interpreters' oath or makes an affirmation. The words that may be used are:

Oath	<i>I swear by almighty God (or the interpreter may name a god recognised by the persons religion) that I will well and truly interpret the contents of this affidavit, the oath/affirmation about to be administered to the deponent and all other things that may be required of me, to the best of my skill and ability.</i>
Affirmation	<i>I solemnly and sincerely declare and affirm that I will well and truly interpret the contents of this affidavit, the oath/affirmation about to be administered to deponent and all other things that may be required of me, to the best of my skill and ability.</i>

2. The interpreter interprets the contents of the affidavit to the deponent;



3. The deponent signs the document in your presence (including signing or initialling alterations, signing each page and signing the certificates on the exhibits).
4. You administer the oath or affirmation and the interpreter interprets it into the language of the deponent. The deponent repeats the oath in the deponent's language and the interpreter translates what the deponent says into English.
5. You sign and stamp a modified form of jurat:

Sworn/Affirmed at [place]

in the State of Victoria,

this ____ day of _____ 20__

[signature of person swearing or affirming the affidavit contents]

through the interpretation of [name of interpreter],

the interpreter having first sworn/affirmed that they would well and truly interpret the contents of this affidavit and the oath/affirmation that was administered to the deponent.

before me _____ [your signature]

[Name, Address and Title of witness (JP stamp)]

18. Interstate and Overseas Documents

In Victoria, JPs are appointed under the *Honorary Justices Act 2014*. As JPs ordinarily reside in Victoria, your main function is to witness documents in Victoria.

18.1 Other States and Territories of Australia

When the documents are to be used in Australia, you can witness many documents created under the laws of the Commonwealth, including documents made under the following Commonwealth acts:

- [Statutory Declarations Act 1959](#);
- [Family Law Act 1975](#);
- [Migration Act 1958](#); and
- [Marriage Act 1961](#).

Most organisations will provide instructions or guidelines as to who can witness a document and by what method.

If a person requires a document to be witnessed for use interstate, and the document does not expressly state that a Victorian JP may act as a witness, you or the person requiring the document should enquire directly with the organisation that requires the document.

Other Countries

You should be cautious about witnessing documents for use in other countries. Whilst some overseas countries accept JPs as witnesses, others are not familiar with the concept of a JP. Unless you can



establish that you have authority to witness, you should refer the person to a Notary Public or to the embassy or consulate office of the document issuing country.

Check before you witness

Although it is the responsibility of the person making the document to ensure a JP is authorised to witness a document, it is worth checking. It is an inconvenience if an interstate or overseas document has been witnessed by a JP and an interstate or overseas authority has not accepted it.

19. Managing challenging scenarios

19.1 Using your influence appropriately as a JP

Members of the community generally hold JPs in esteem. As a JP you also have access to personal information. These factors may create a power imbalance between you and the people seeking your services.

Even though this power imbalance may not always be apparent to you, it is important that you recognise it may exist and take it into account in your interactions. It is important that you uphold high standards of integrity, accountability, and professionalism.

The appropriate and sensitive use of your influence as a JP does not come about purely as the result of good intentions. It requires diligence and practice and knowledge of the duties and boundaries of your role.

Considering your actions as a JP	
Giving advice of any nature	<p>It can be very tempting to give people advice, either because they ask for it, or because they appear to need it.</p> <p>A simple rule of thumb is to provide an appropriate referral and leave it up to the person to decide whether they will follow up that referral.</p>
Seeking donations	<p>It is not acceptable to ask or encourage people who use JP services to donate to a charity. This is like asking for payment which is a breach of the <i>Honorary Justices Act 2014</i>.</p>
Offering opinions or comment on personal information that arises as part of the witnessing process	<p>You are entrusted with people's personal details to undertake your role.</p> <p>You must honour that information and demonstrate to the person that you will uphold their privacy and dignity.</p> <p>Only matters pertinent to the witnessing process should be discussed with the person seeking the services.</p>

19.2 Conflicts of interest

The management of risk associated with conflict of interest is fundamental to ensuring integrity and public trust in the JP. Conflict of interest should be avoided wherever possible or declared and managed appropriately.



A conflict of interest is where a JP has private interests that could improperly influence, or be seen to influence, their decisions or actions in the performance of their public duties. Conflicts may be actual, potential, or perceived:

Conflict of interest	Explanation
Actual	There is a real conflict between a JP's public duties and private interests.
Potential	A JP has private interests that could conflict with their public duties. For example, it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.
Perceived	The public or a third party could form the view that a JP's private interests could improperly influence their decisions or actions, now or in the future.
Private interest	Anything that can influence you. This may include: <ul style="list-style-type: none"> • direct interests: an employee's own personal, family, professional or business interests. • indirect interests: the personal, family, professional or business interests of individuals or groups with whom the employee is, or was recently, closely associated.

19.3 Managing challenging behaviour

You have decided to serve the community, however, sometimes members of the community can be challenging to deal with. Keep in mind:

- **You are not always seeing people at their best.** Many of the reasons behind people seeking out JP services involve stressful situations.
- **What you are seeing may be the result of underlying thoughts and feelings.** People may express feelings such as fear, anger, loss, and frustration as behaviour that can be challenging. They may also have triggers you are not aware of causing them to behave the way they do.
- **It is often not about you.** People who demonstrate challenging behaviour are often expressing their heightened stress or underlying emotions. Try not to take their behaviour personally.

19.4 How to say 'no'

Many JPs report that they find it difficult when refusing requests for witnessing or certifying. Examples of such situations are when a person does not have enough identification or supporting documentation for the task or if you are unable to satisfy yourself of the authenticity of an original document. It may be that you have identified a conflict of interest.

You may offer a tactful explanation. You can explain to the person that what you can and cannot do as a JP and that you are legally obliged to meet certain requirements. It may help to let people know that a document that you complete incorrectly, or without authorisation may be considered invalid and may cause problems later. Similarly, you can explain that accepting a gift is a criminal offence for JPs and you are happy to provide your services for free.

You can empathise with the person's situation and assist them by referring them to an organisation who may be able to help.



20. JPs, authorised witnesses, and notaries public

20.1 Authorised witnesses

Authorised witnesses are authorised to witness documents such as statutory declarations and affidavits under the [Oaths and Affirmations Act 2018](#).

JPs are one type of authorised witness but there are many other authorised witnesses for Victoria. Many automatically become authorised witnesses because of their profession. Authorised witnesses in Victoria are:

A person currently licensed or registered to practice in Australia in one of the following occupations:

Architect	Chiropractor	Conveyancer
Dentist	Financial adviser or financial planner	Legal practitioner
Medical practitioner	Midwife	Migration agent
Nurse	Occupational therapist	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trademarks attorney	Veterinary surgeon

An accountant who meets at least one of the following criteria:

Fellow of the National Tax Accountants' Association	Member of Chartered Accountants Australia and New Zealand	Member of the Association of Taxation and Management Accountants
Member of CPA Australia	Member of the Institute of Public Accountants	

An engineer who meets at least one of the following criteria:

A member of Engineers Australia, other than a student	A Registered Professional Engineer of Professionals Australia	Registered as an engineer under a law of the Commonwealth or a State or Territory
Registered on the National Engineering Register by Engineers Australia		

Member of the Australian Defence Force who meets at least one of the following criteria:

An officer	A non-commissioned officer with 5 or more years of continuous service	A warrant officer
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Permanent employee with 5 or more years of continuous service who is not otherwise specified, if employed at one of the following:

State	Territory	State authority
Territory authority	Local government authority	

Any authorised affidavit taker, including:

A judicial officer	An associate to a judicial officer	An honorary justice
The prothonotary or a deputy prothonotary of the Supreme Court	The registrar of probates or an assistant registrar of probates	The registrar or a deputy registrar of the County Court
The principal registrar, a registrar or a deputy registrar of the Magistrates' Court	The principal registrar, a registrar or a deputy registrar of the Children's Court	The principal registrar, a registrar or a deputy registrar of VCAT
The principal registrar or a registrar of the Coroners Court	A member of VCAT	A member or former member of either House of the Parliament of Victoria
A member or former member of either House of the Parliament of the Commonwealth	A public notary	An Australian legal practitioner
A person acting judicially. For example, an arbitrator or any person or body with authority to hear, receive and examine evidence	A Victorian Public Service employee with a prescribed classification level of 4 or above	Any prescribed affidavit taker. For example, Country Fire Authority officers and employees with a classification level of 7.
A senior officer of a Victorian municipal Council who satisfies the specified criteria	A person registered as a patent attorney	A fellow of the Institute of Legal Executives (Victoria)
A police officer of or above the rank of sergeant or for the time being in charge of a police station	Any other officer or person empowered, authorised or permitted by or under any Act or rules of a court or rules of a tribunal to take affidavits	

A senior officer of a Victorian municipal Council who meets one of the following criteria:

Chief Executive Officer	A member of Council staff with management responsibilities and reporting directly to the Chief Executive Officer	Any other member of Council staff earning a salary of at least \$124,000 (or a higher threshold, if specified by the Minister under s 97B of the Local Government Act 1989)
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Any of the following:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public	Australian Public Service employee engaged on an ongoing basis with 5 or more years of continuous service who is not otherwise authorised	Australian Consular Officer or Australian Diplomatic Officer
Bailiff	Bank officer with 5 or more continuous years of service	Building society officer with 5 or more years of continuous service
Chief executive officer of a Commonwealth court	Clerk of a court	Commissioner for Affidavits
Commissioner for Declarations	Credit union officer with 5 or more years of continuous service	Employee of a Commonwealth authority engaged on a permanent basis with 5 or more years of continuous service who is not otherwise authorised
Employee of the Australian Trade and Investment Commission who is authorised in writing by the Secretary of DFAT to collect fees under s 3(d) of the Consular Fees Act 1955, if at a place outside Australia and in the course of the employee's duties at that place	Employee of the Commonwealth who is authorised in writing by the Secretary of DFAT to collect fees under s 3(c) of the Consular Fees Act 1955, if at a place outside Australia and in the course of the employee's duties at that place	Finance company officer with 5 or more years of continuous service
Holder of a Commonwealth statutory office not otherwise specified	IBAC Officers	Judge
Justice of the Peace	Local government Councillor	Magistrate
Registered marriage celebrant	Master of a court	Member of the Australasian Institute of Mining and Metallurgy
Member of the Governance Institute of Australia Ltd	Member of the Parliament of a State	Member of a Territory legislature
Member of a local government authority	Registered minister of religion	Notary public, including a notary public exercising functions at a place outside either the Commonwealth or the external Territories of the Commonwealth
Permanent employee of the Australian Postal Corporation with 5 or more years continuous service who is employed in an office providing postal services to the public	Police officer	Police reservist
Protective service officer (PSO)	Registrar, or Deputy Registrar, of a court	A school principal



Senior executive employee of a Commonwealth authority	Senior executive employee of a State or Territory	Senior Executive Service employee of the Commonwealth
Sheriff	Sheriff's officer	State Trustees officer or employee with a classification level of 2 or above
Teacher employed on a permanent full-time or part-time basis at a school or tertiary education institution	Transport Accident Commission officer or employee with a classification of level 2 or above	VicRoads officer or employee with a classification of level 2 or above
Victorian Inspectorate Officer	A Victorian Public Service employee with a prescribed classification level of 2 or above	Victorian WorkCover Authority officer or employee with a classification of band 2 or above
A fellow of the Institute of Legal Executives (Victoria)	A person acting judicially	Any other officer or person empowered, authorised, or permitted by or under any Act or rules of a court or rules of a tribunal to administer affidavits

Of this list of authorised witnesses, the department **only** manages JPs and BJs (collectively known as honorary justices).

20.2 Notaries

JPs are not notaries. A notary, otherwise known as a notary public or public notary, is a public officer, usually a solicitor, whose witnessing of documents will be recognised and accepted by foreign courts and authorities. Notaries usually charge for their services.

The functions of a notary include preparing powers of attorney, wills, deeds, contracts, and other legal documents, for use overseas and noting and protesting bills of exchange; and preparing admiralty documents.

You can find a notary by accessing the website of the Society of Notaries Victoria Inc. at www.notaries.org.au. The Law Institute of Victoria also keeps a list of notaries.

21. Discrimination, harassment, and access to services

It is unlawful to discriminate against a person on the basis of age, breastfeeding, carer status, disability, employment activity, gender identity, industrial activity, lawful sexual activity, marital status, parental status, physical features, political belief or activity, pregnancy, race (including colour, nationality, ethnicity and ethnic origin, religious belief or activity, sex, sexual orientation, expunged homosexual conviction and personal association with someone who has, or is assumed to have, any of these personal characteristics).⁶⁶

⁶⁶ *Equal Opportunity Act 2010*



Motive is irrelevant to discrimination

In determining whether a person discriminates against someone else, the person's motive is irrelevant. Even if you do not intend to cause offence or otherwise engage in unfavourable treatment towards a person, your behaviour may amount to discrimination.

Sexual harassment

It is also unlawful to sexually harass someone. Sexual harassment is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated, or intimidated. It can be physical, verbal or written. It is not consensual interaction, flirtation or friendship nor is it behaviour that is mutually agreed upon. A single incident is enough to constitute sexual harassment. It does not have to be repeated. Although men experience sexual harassment, it disproportionately affects women.

Discrimination and the Code of Conduct for Honorary Justices

As a JP you need to carefully consider how you respond to those who are different from you (whether as a result of gender, sexual orientation marital status, race, ethnicity, disability, or any other personal characteristic) to ensure that you do not behave in a way that is biased or prejudiced and that you are respectful towards all the people who seek your assistance.

As a JP, you must comply with the Honorary Justice Code of Conduct.⁶⁷ Item 5 of the Code of Conduct includes a requirement that you must act, and be seen to act, without prejudice and discrimination when performing your honorary justice functions. If you are unable to comply with the Code of Conduct you put yourself at risk of disciplinary procedures, including removal from office.

⁶⁷ Section 25, *Honorary Justices Act 2014*



22. Information and referral contact list

Department of Justice and Community Safety, Honorary Justice Services Support

Level 24, 121 Exhibition Street,
Melbourne, VIC, 3000

(Please note this is within a secure building. JPs wishing to contact the office should do so by phone or email.)

GPO Box 4356, Melbourne, VIC, 3001

Phone: (03) 9136 3415

Email: jp@justice.vic.gov.au

www.justice.vic.gov.au

www.honoraryjustices.vic.gov.au

Births, Deaths and Marriages

Ground Floor, 595 Collins Street Melbourne, VIC, 3001

GPO Box 4332 Melbourne VIC 3001

Phone: 1300 405 281 for new customers or 1300 369 367 for existing customers (within Australia)

www.bdm.vic.gov.au

Centre for Cultural Diversity in Ageing

Phone: (03) 8823 7979

Email: info@culturaldiversity.com.au

www.culturaldiversity.com.au

Consumer Affairs Victoria

Phone: 1300 55 81 81 (within Australia)

www.consumer.vic.gov.au

Federation of Community Legal Centres

Phone: (03) 9652 1501

administration@fclc.org.au

www.fclc.org.au

Governor of Victoria (for JP resignations)

Letters of resignation should be sent to:

The Honourable [current Governor]

The Governor of Victoria

Government House

Government House Drive

Melbourne VIC 3004

You can find the current Governor's name online at: www.governor.vic.gov.au by calling (03) 9655 4211.

Migrant Resource Centres

[North West region](#)

[South East region](#)

[Spectrum Migrant Resource Centre](#) (Sunshine)

Law Institute of Victoria

Phone: (03) 9607 9311

Email: lawinst@liv.asn.au

www.liv.asn.au/

Legal Services Board + Commissioner

Phone: (03) 9679 8001

Email: admin@lsb.vic.gov.au

www.lsb.vic.gov.au

Lifeline (counselling)

Phone: 131 114

www.lifeline.org.au

National Relay Service

People who are deaf or have a hearing or speech impairment can contact the National Relay Service, and then ask to be connected to any phone number via voice or TTY.

Voice: 1800 555 660 TTY: 1800 555 630

Internet relay users: via the National Relay Service [website](#).

Neighbourhood Justice Centre

Phone: (03) 9948 8777

Email: njc@justice.vic.gov.au

www.neighbourhoodjustice.vic.gov.au

Notaries Public

Phone: (03) 9863 7732

www.notaries.org.au

See also the *Law Institute of Victoria*

Office of the Public Advocate

Phone: 1300 309 337

www.publicadvocate.vic.gov.au

Ombudsman Victoria

Phone: (03) 9613 6222 Toll Free: 1800 806 314 (regional only)

Email: ombudvic@ombudsman.vic.gov.au

www.ombudsman.vic.gov.au



**Sign Language Communications Victoria
(Expression Australia)**

Phone: (03) 9473 1111 or TTY: (03) 9473 1199
Telephone interpreter bookings: 1300 010 877
www.expression.com.au

State Trustees

Phone: 1300 138 672
www.statetrustees.com.au

Translating and Interpreting Service (TIS)

This service is available over the phone or in person, 24 hours, 7 days a week, although the fee is higher for after-hours and in-person work.
Phone: 131 450 (within Australia) +613 9268 8332 (overseas callers)
www.tisnational.gov.au

**Victorian Civil and Administrative Tribunal
(VCAT)**

Phone: 1300 01 8228
www.vcat.vic.gov.au

Victorian Multicultural Commission

Phone: (03) 7017 8171
Email: info@vmc.vic.gov.au
www.multicultural.vic.gov.au

Victoria Legal Aid

Phone: 1300 792 387
www.legalaid.vic.gov.au

Working with Children Check, Victoria

www.workingwithchildren.vic.gov.au



23. Templates

23.1 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.justice.vic.gov.au.

When making the statutory declaration the declarant **must say aloud**:

I, [full name of person making declaration] of [address], declare that the contents of this statutory declaration are true and correct.

Regulation 9(1)

Statutory Declaration

Insert the name, address and occupation (or alternatively, unemployed or retired or child) of person making the statutory declaration.

I,

make the following statutory declaration under the **Oaths and Affirmations Act 2018**:

1.

Set out matter declared to in numbered paragraphs. Add numbers as necessary.

I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

Signature of person making the declaration

Place (City, town or suburb)

Date

Signature of authorised statutory declaration witness

Date

Declared at

on

***in the state of Victoria**

I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration:

on



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

A person authorised under section 30(2) of the **Oaths and Affirmations Act 2018** to witness the signing of a statutory declaration.

The witness must only sign this section if the person making the statutory declaration is illiterate, blind or cognitively impaired and the statutory declaration is read to them.

I certify that I read this statutory declaration to *[name of the person making the statutory declaration]* at the time the statutory declaration was made.

This section must be signed by any person who has assisted the person making the statutory declaration, for example by translating the document or reading it aloud. If no assistance was required, this section does not need to be completed.

I certify that I have assisted *[name of the declarant]* by *[insert assistance provided, for example translating the document]*.

Signed:

On:

Date

Name and address of person providing assistance:

Name and address of person providing assistance



23.2 Certificate Identifying Exhibit – Statutory Declaration

Certificate Identifying Exhibit (Sample)

[heading as in statutory declaration]

This is the exhibit marked [e.g., "ABC-01"] now produced and shown to me, [name of person making statutory declaration], at the time of making my declaration on [date].

Signed: [signature of person making statutory declaration]

Witnessed by: [signature of statutory declaration witness]

[state distinguishing mark of exhibit and briefly and
specifically describe exhibit: e.g., **Exhibit "ABC-
01" Letter ABC to CRA dated
15/12/18**



23.3 Affidavit

Instructions for completing an affidavit

Guidance on making affidavits can be found at www.justice.vic.gov.au. When making the oath or affirmation for the affidavit the deponent must say aloud:

Oath: *I, [name of person making oath], swear [or promise] by Almighty God [or the person may name a god recognised by the person's religion] that the contents of this affidavit are true and correct.*

Affirmation: *I, [name of person making affirmation], solemnly and sincerely affirm that the contents of this affidavit are true and correct.*

Regulation 7

Affidavit

1 Insert the name, address ¹
and occupation (or
alternatively, unemployed
or retired or child) of
person making the
affidavit.

²*affirm / *make oath and say:

2 If you are completing
this form by hand, you
may circle as applicable
rather than deleting as
applicable.

1. ³

3 Set out statement to be
sworn or affirmed in
numbered paragraphs.

4 If you are completing
this form by hand, you
may circle as applicable
rather than deleting as
applicable.

The contents of this affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

⁴*Sworn/*Affirmed at ⁵

*in the State of Victoria

5 Place (City, town or
suburb)

On ⁶

6 Date

⁷

7 Signature of person
making the affidavit

Before me, ⁸

8 Signature of authorised
affidavit taker

On ⁹

9 Date

10 Name, capacity in
which authorised person
has authority, and
address (writing, typing
or stamp)

¹⁰

A person authorised under section 19(1) of the **Oaths and Affirmations Act 2018** to take an affidavit.

* delete if not applicable



23.4 Certificate Identifying Exhibit – Affidavit

Certificate Identifying Exhibit (Sample)

[heading as in affidavit]

This is the exhibit marked [*e.g., "ABC1"*] now produced and shown to [*identify deponent*]
at the time of swearing the person's affidavit on [*date*].

[Signature of person taking affidavit]

[Signature of affidavit witness]

[state distinguishing mark of exhibit and briefly and
specifically describe exhibit: e.g., **Exhibit "ABC-
01" Letter ABC to CRA dated
01/01/22**



24. Checklists

24.1 Certifying a copy of a document*

You must not mark an original document

Step 1.	Inspect the original document and use your best judgement to satisfy yourself that it is the original document.	<input type="checkbox"/>
Step 2.	Inspect the copy to satisfy yourself that it is a true copy of the original document and has not been altered.	<input type="checkbox"/>
Step 3.	Carefully check that any names, dates and other identifying elements have not been changed.	<input type="checkbox"/>
Step 4.	Certify the document using certification stamp (if available), preferably in coloured ink: <i>Certified to be a true copy of the original seen by me</i>	<input type="checkbox"/>
Step 5.	Apply general JP stamp, date, and sign, preferably in coloured ink.	<input type="checkbox"/>

24.2 Checklist for certifying a copy of a certified copy*

Step 1.	Inspect the original document and use your best judgement to satisfy yourself that it is the original document.	<input type="checkbox"/>
Step 2.	Inspect the copy to satisfy yourself that it is a true copy of the original document and has not been altered.	<input type="checkbox"/>
Step 3.	Carefully check that any names, dates and other identifying elements have not been changed.	<input type="checkbox"/>
Step 4.	In place of certification stamp, write: <i>Certified to be a true copy of another certified copy seen by me.</i>	<input type="checkbox"/>
Step 5.	Add General JP stamp, date, and sign.	<input type="checkbox"/>

* Please refer to 24.3 for certifying a multi-page copy.



24.3 Certifying a multiple page copy

Step 1.	Inspect every page of the original document and use your best judgement to satisfy yourself that it is the original version.	<input type="checkbox"/>
Step 2.	Inspect the copy to satisfy yourself that it is identical to the original document and has not been altered.	<input type="checkbox"/>
Step 3.	Initial and number each page of the copy, e.g., page 1 of 20, 2 of 20.	<input type="checkbox"/>
Step 4.	On the first page of copy, unless there is insufficient space, stamp or write: <i>Certified to be a true copy of the original seen by me.</i> If there is insufficient space on the first page, it is recommended that certification occurs on the final page.	<input type="checkbox"/>
Step 5.	Add General JP stamp, date, and sign.	<input type="checkbox"/>
Step 6.	Where possible, staple or fasten the pages together.	<input type="checkbox"/>

24.4 Certifying an enduring and non-enduring power of attorney

Step 1.	On each page, other than the last page of the copy, certify to the effect that the copy of that page is a true and complete copy of the corresponding page of the original. <i>This is a true and complete copy of the corresponding page of [insert name of original document] [Stamp of Name, Address and Title of witness]</i>	<input type="checkbox"/>
Step 2.	On the last page, certify to the effect that the copy of the instrument is a true and complete copy of the original instrument. <i>This is a true and complete copy of the last page of [insert name of original document] [your signature] [Stamp of Name, Address and Title of witness]</i>	<input type="checkbox"/>
For multi-page documents, number and initial each page. You should also follow this procedure to certify a copy of a certified copy of an enduring power of attorney (with appropriate modifications).		



24.5 Witnessing documents - general

Step 1.	What type of document is it?	<input type="checkbox"/>
Step 2.	Can a JP witness the document?	<input type="checkbox"/>
Step 3.	Is the document correctly completed?	<input type="checkbox"/>
Step 4.	Are there special requirements/instructions on the document?	<input type="checkbox"/>
Step 5.	Is the person signing the person named in the document?	<input type="checkbox"/>
Step 6.	Does the person understand what they are doing—does the person have decision-making capacity?	<input type="checkbox"/>
Step 7.	Is the person signing of his or her free will?	<input type="checkbox"/>
Step 8.	Advise the person of penalties for false statements.	<input type="checkbox"/>
Step 9.	Is the date on the document correct?	<input type="checkbox"/>
Step 10.	Are there any alterations, blank spaces, or erasure marks on the document? (Initial and date all alterations, blank spaces, or erasure marks)	<input type="checkbox"/>
Step 11.	Are there any exhibits, annexures, or attachments?	<input type="checkbox"/>
Step 12.	Endorse all certificates for each exhibit (stamp, sign and date).	<input type="checkbox"/>
Step 13.	Ensure the document is signed in your presence.	<input type="checkbox"/>
Step 14.	Administer the oath, affirmation, or declaration (if required).	<input type="checkbox"/>
Step 15.	Sign and add your JP details.	<input type="checkbox"/>



24.5.1 Variations to documents

Alterations	Initial and date (JP and signatory).	<input type="checkbox"/>
Blank Space	'Z' or 'X' across space (JP and/or signatory) .	<input type="checkbox"/>
Exhibits, Annexures, Attachments	Mark each extra page, e.g., 'Exhibit A' or 'A1-2' (signatory). Ensure the date on the certificate is identical to the date on the main document (JP). Attach a Certificate for each attachment.	<input type="checkbox"/>
Multiple pages	Mark each extra page, e.g., 'page 1 of 4', 'page 2 of 4' (signatory). Sign at bottom of each page (JP). Permanently fasten all together.	<input type="checkbox"/>



24.6 Statutory declaration

Only use general JP stamps

Please ensure you also follow the instructions on the *General Checklist* for all documents to be witnessed.

Step 1.	Check the declarant understands what they are doing.	<input type="checkbox"/>
Step 2.	Ask the declarant if they are the person named in the document and if their full name is included in the document.	<input type="checkbox"/>
Step 3.	Ensure the declarant is signing of their own free will.	<input type="checkbox"/>
Step 4.	Advise the declarant of penalties for false statements.	<input type="checkbox"/>
Step 5.	Ensure the statutory declaration is in a proper form.	<input type="checkbox"/>
Step 6.	Ask the declarant to sign or initial any alterations and blank spaces (this is also required of a JP).	<input type="checkbox"/>
Step 7.	Ask the declarant to sign certificate identifying the document as an exhibit. A separate certificate applies to each attached document.	<input type="checkbox"/>
Step 8.	Endorse all certificates for each exhibit (stamp, sign and date).	<input type="checkbox"/>
Step 9.	Ask the declarant to sign or initial the bottom of each page of a multi-page statutory declaration (this is also required of a JP).	<input type="checkbox"/>
Step 10.	Watch the declarant sign the document in front of you.	<input type="checkbox"/>
Step 11.	Administer the declaration.	<input type="checkbox"/>
Step 13.	Sign and stamp/write your JP details on the statutory declaration, adding location and date.	<input type="checkbox"/>

Declaration (*declarant repeats*)

"I, [name of declarant] of [address] declare that the contents of this statutory declaration are true and correct."



24.6.1 Variations to documents

Alterations	Initial and date (JP and signatory).	<input type="checkbox"/>
Blank Space	'Z' or 'X' across space (JP and signatory)	<input type="checkbox"/>
Exhibits, Annexures, Attachments	Mark each extra page, e.g., 'Annexure A' or 'A1-2' (JP). Ensure the date on the certificate is identical to the date on the main document (JP). Attach a Certificate for each attachment.	<input type="checkbox"/>
Multiple pages	Mark each extra page, e.g., 'page 1 of 4', 'page 2 of 4' (JP and signatory). Permanently fasten all together. Sign at bottom of each page (JP).	<input type="checkbox"/>



24.7 Affidavits

Only use general JP stamps

Step 1.	Check the document for special requirements and speak to the deponent about any special needs. For example, an interpreter, special instructions from document maker, multiple exhibits.	<input type="checkbox"/>
Step 2.	Ensure the deponent understands the nature of an oath and is signing the affidavit of their own free will.	<input type="checkbox"/>
Step 3.	Ask the deponent to choose either an oath or affirmation.	<input type="checkbox"/>
Step 4.	Advise the deponent of penalties for false statements.	<input type="checkbox"/>
Step 5.	Ask the deponent to sign or initial any alterations, erasures or blank spaces with a 'z' or an 'x' to cover the gap. Both the authorised witness and the deponent should initial these alterations. We also suggest dating each alteration.	<input type="checkbox"/>
Step 6.	Ask the deponent to sign each page of the affidavit. Both the authorised witness and the deponent should initial each page of the affidavit. For multi-page affidavits, each page must be numbered i.e., 1 of 5, 2 of 5 etc.	<input type="checkbox"/>
Step 7.	Ask the deponent to sign a certificate identifying the document as an exhibit. A separate certificate applies to each attached document.	<input type="checkbox"/>
Step 8.	Endorse all certificates for each exhibit (stamp, sign and date).	<input type="checkbox"/>
Step 9.	Watch the deponent sign the affidavit in front of you.	<input type="checkbox"/>
Step 10.	Administer the oath or affirmation.	<input type="checkbox"/>
Step 11.	Complete the jurat section stating when and where the affidavit was made.	<input type="checkbox"/>
Step 12.	Write or stamp you name, address and title. (You may use your JP stamp).	<input type="checkbox"/>
Step 13.	Add your signature to the jurat.	<input type="checkbox"/>



Oath	<i>"I swear (or promise) by Almighty God [or the person may name a god recognised by the person's religion] that the contents of this affidavit is [these my affidavits are] true and correct [and these are the exhibits referred to in the affidavit/s]."</i>
Affirmation	<i>"I solemnly, sincerely and affirm that the contents of this my affidavit is [these my affidavits are] true and correct and [and these are the exhibits referred to in the affidavit/s]."</i>
Affirmation (child or deponent with a cognitive impairment)	<i>"I, [name of person making the promise], promise that I have told the truth in this affidavit, and it is correct."</i>
Jurat	Oath: Sworn at... Affirmation: Affirmed at... More than one person: By the above named deponents... Altered after oath/affirmation: Re-sworn/Reaffirmed at...

24.8 Remote and online witnessing

Step 1.	Determine whether the document can be electronically signed and witnessed online.	<input type="checkbox"/>
Step 2.	Ensure that you as an authorised JP can witness the document – this includes being a 'special witness'.	<input type="checkbox"/>
Step 3.	In addition to the usual enquiries you would make about the type of document being dealt with, ensure the necessary technology requirements are met.	<input type="checkbox"/>
Step 4.	Ensure all parties involved are connected through an audio-visual link.	<input type="checkbox"/>
Step 5.	Ensure the existing requirements of witnesses are satisfied, for example: <ul style="list-style-type: none"> • The identity of the signatory • That the signatory has decision-making capacity • That there is no defect (e.g., undue influence, duress, or unconscionable conduct) apparent in the transaction • That the signatory is signing freely and voluntarily 	<input type="checkbox"/>
Step 6.	Using audio-visual technology, conduct the processes that you would usually undertake in witnessing signatures, making declarations and taking oaths and affirmations.	<input type="checkbox"/>
Step 7.	Ensure a statement is included that specifies the manner of the witnessing and clarify whether a scanned or electronic copy of the document was used.	<input type="checkbox"/>
Step 8.	Ensure all steps are completed on the same day.	<input type="checkbox"/>



24.9 Conflict of interest

Use these considerations when assessing a potential conflict of interest.

Public duty versus private interest	Do I have personal or private interests that may conflict or be perceived to conflict with my public duty?	<input type="checkbox"/>
Potential	Could there be benefits for me now or in the future that could cast doubt on my objectivity?	<input type="checkbox"/>
Perception	Could there be benefits for me now or in the future that could cast doubt on my objectivity?	<input type="checkbox"/>
Proportion	Does my involvement in the decision appear fair and reasonable in all the circumstances?	<input type="checkbox"/>
Presence of mind	What are the consequences if I ignore a conflict of interest? What if my involvement was questioned publicly?	<input type="checkbox"/>
Promises	Have I made any promises or commitments in relation to the matter? Do I stand to gain or lose from the proposed action or decision?	<input type="checkbox"/>

25. Legislation relevant to the role of the JP

25.1 How to access legislation

In the course of your work as a JP, you will come across many documents that refer to legislation, whether acts of parliament, regulations, or court rules. If you need to check a reference you can access Victorian legislation at www.legislation.vic.gov.au.

For Commonwealth legislation, go to www.comlaw.gov.au. If you need help to find legislation, you can contact us.

The following legislation is most relevant to you as a justice of the peace:

- [Honorary Justices Act 2014](#)
- [Honorary Justices Regulations 2014](#)
- [Oaths and Affirmations Act 2018](#)
- [Oaths and Affirmations \(Affidavit, Statutory Declarations and Certifications\) Regulations 2018](#)
- [Electronic Transactions \(Victoria\) Act 2000](#)



25.2 Other legislation

Sections of this manual discuss the special requirements associated with other legislation that you are likely to come across in your work as a JP, including:

- [Equal Opportunity Act 2010](#)
- [Medical Treatment Planning and Decisions Act 2016](#)
- [Mental Health Act 2014](#)
- [Powers of Attorney Act 2014](#)
- [Privacy and Data Protection Act 2014](#)

25.3 Commonwealth legislation

You may be asked to witness a commonwealth statutory declaration. They are governed by the *Statutory Declarations Act 1959* (Cth). For further information about Commonwealth Statutory Declarations, visit the federal Attorney-General's [website](#).



25.4 Offence Schedule for Oaths and Affirmations

Schedule of Offence (Certification)	Penalties
Section 47 Oaths and Affirmations Act 2018 Offence to present false copy of a document for certification	600 penalty points or imprisonment for 5 years or both
Section 48 Oaths and Affirmations Act 2018 Offence to certify certain types of documents	600 penalty points or imprisonment for 5 years or both
Section 49 Oaths and Affirmations Act 2018 False or misleading statement as to certification of copy of document	10 penalty points
Schedule of Offence (Statutory Declarations)	Penalties
Section 31 Oaths and Affirmations Act 2018 Offence to take statutory declaration if not statutory declaration witness	60 penalty points or imprisonment for 6 months or both
Section 31 Oaths and Affirmations Act 2014 Offence to purport to be statutory declaration witness	10 penalty points
Section 44 Honorary Justices Act 2014 Use of title without authorisation	10 penalty points
Section 36 Oaths and Affirmations Act 2018 Offence to make false statutory declaration	600 penalty points or imprisonment for 5 years or both
Section 37 Oaths and Affirmations Act 2018 False or misleading statement as to making of statutory declaration	10 penalty points
Schedule of Offence (Affidavit)	Penalties
Section 22 Oaths and Affirmations Act 2018 Offence to take affidavit if not authorised affidavit taker	60 penalty units or imprisonment for 6 months or both
Section 22 Oaths and Affirmations Act 2018 Offence to purport to be authorised affidavit taker	10 penalty units
Section 44 Honorary Justices Act 2014 Use of title without authorisation	10 penalty points
Section 20 Oaths and Affirmations Act 2018 Offence to require payment of fee to take affidavit	10 penalty points
Section 46 Honorary Justices Act 2014 Demanding, taking, or accepting fee, gratuity etc.	Imprisonment for 12 months
Section 50 Oaths and Affirmations Act 2018* Perjury to make false statements by oath, affirmation, or affidavit * See section 314(2) of the <i>Crimes Act 1958</i>	Up to a maximum of 15 years imprisonment



26. Honorary Justice Code of Conduct

(Schedule 2, Honorary Justices Regulations 2014)

Introduction

1. This Code of Conduct prescribes the behaviour expected of bail justices and justices of the peace.
2. The Code is binding and a contravention may constitute grounds for removal from office.
3. In addition to the matters outlined in this Code, honorary justices must also comply with the Honorary Justices Act 2014 and the regulations made under the Act.

Conduct

4. An honorary justice must maintain and uphold the oath of office and discharge the functions of a bail justice or justice of the peace, as the case may be, in a courteous and timely manner, in accordance with the law and to the best of his or her ability.
5. An honorary justice must act, and be seen to act, with due care, diligence, honesty, integrity, respect, independence, impartiality and without prejudice or discrimination when performing his or her honorary justice functions.
6. An honorary justice must not behave in a manner that brings the office of bail justice or justice of the peace, as the case may be, into disrepute.
7. An honorary justice must not—
 - a) purport to hold or exercise powers other than those conferred on him or her as an honorary justice
 - b) provide legal advice in his or her capacity as an honorary justice
 - c) improperly influence or attempt to influence a person when performing his or her functions.
8. An honorary justice must not administer an oath or affirmation or witness the signing or execution of a document if the honorary justice reasonably doubts that the person is legally or mentally competent to make the oath, affirmation, declaration or affidavit or to execute the document.

Conflicts of Interest

9. An honorary justice must disclose an actual or potential conflict of interest when performing his or her honorary justice functions and must not exercise the powers of an honorary justice where there is such a conflict of interest.

Competency and Knowledge

10. An honorary justice must maintain a competent knowledge of all laws applicable to the functions of a bail justice or justice of the peace, as the case may be.

Privacy

11. An honorary justice must not use, disclose or retain any information or documents obtained in the course of carrying out his or her functions as an honorary justice, other than for the purpose of performing those functions or as otherwise authorised or required by law.



Reasonably Active and Reasonably Available

12. In addition to the requirement under section 24 of the Act regarding availability and activity, an honorary justice must not unreasonably refuse to perform duties in relation to a matter where he or she is capable of performing those duties.
13. Unless there are exceptional circumstances, a justice of the peace is to make available, on the Department of Justice's public "Find a Justice of the Peace" Internet and telephone service, his or her name, the town or suburb where he or she is available to perform his or her duties, his or her hours of availability and a telephone number on which the justice of the peace may be contacted.

Use of Titles

14. An honorary justice must not use the title of bail justice or BJ, or justice of the peace or JP, as the case may be, to advertise or advance, or appear to advertise or advance, his or her business, commercial or personal interests.



27. Reference material

27.4 Glossary

Affidavit	An affidavit is a document that is sworn on oath or affirmed as being true and correct. It is made before a person who is authorised to take an oath or affirmation. Affidavits are mainly used as written evidence in legal proceedings.
Affirm	To make a legally binding promise that the contents of a document are true.
Affirmation	An affirmation is a verbal, solemn and formal declaration, with the same effect as an oath.
Agent	A person who acts on behalf of another person.
Appointee	A person who accepts the legal authority to act on another's behalf.
Attest	To bear witness to, affirm the authenticity of, certify, or ask a person to make an oath or affirmation.
Attest or witness the execution of a document	Sign a legal document to verify that it has been completed according to law in your presence.
Attest or witness a signature	Sign a document to certify that it was signed by another person in your presence.
Attorney	A person appointed to make financial, legal, or personal decisions for another person by a power of attorney.
Authorised person/witness	A person authorised under the <i>Oaths and Affirmations Act 2018</i> to witness statutory declarations and affidavits and to certify documents.
Capacity (or legal capacity)	The ability of a person to reason things out. They can understand, retain, believe, evaluate (that is, process) and weigh up relevant information.
Commissioners for Taking Affidavits	This role was a feature of the <i>Evidence Act 1958</i> and is no longer a function under Victorian legislation.
Declarant	A person who makes a statutory declaration.
Deponent	A person who makes an affidavit (or deposition).
Donor	A person who gives (donates) decision-making power to another person by a Power of Attorney or another form of appointment.
Enduring	In a Power of Attorney, the power continues (endures) even if the person giving it loses the capacity to make decisions.
Execute	To validate a legal instrument by signing it.
Exhibits	Attachments to affidavits or statutory declarations.
Honorary justices	The collective name for justices of the peace and bail justices, both of whom are administered, in Victoria, by the Honorary Justice Services Support.



Instrument	Legal document such as a will, a mortgage or power of attorney.
Jurat	The certification at the end of an affidavit stating when and where the affidavit was sworn or affirmed, and by whom. This is followed by the signature, address, and title of the person before whom the affidavit was sworn or affirmed.
Notary Public	A person who may witness overseas documents, particularly those for use in non-Commonwealth countries (may be likened to an international JP). Notaries are senior Australian lawyers who can authenticate, prepare, attest, witness and certify legal documents for use overseas. They certify documents originating in Australia and verify their validity under Australian law.
Oath	An oath is a solemn promise made in the name of a god recognised by the person's religion, whether made while holding a religious book or not.
Penalty Unit	Used in Victorian legislation to describe the amount of a fine. They change on 1 July each year. For example, from July 1, 2022, to June 30, 2023, the amount of a penalty unit is \$184.92.
Power of Attorney	A legal document in which a person (the principal) appoints another person, (the attorney), to make financial, legal, or personal decisions for the donor.
Principal	A person who gives (donates) decision-making power to another person by a Power of Attorney or another form of appointment.
Revoke	Withdraw or cancel.
Signatory	Person who signs a document or declaration.
Statutory declaration	A statutory declaration is a written statement, signed and declared to be true and correct before an authorised witness in the knowledge that it is an offence to make a statement, they know is untrue.
Witness	In this handbook the word 'witness' is generally used in a shorthand way referring to attesting the execution of an instrument and to taking affidavits and statutory declarations. See definition of ' attest '.