

Justice of the Peace Handbook

Edition 1.0



affidavit

witness

declaration

oath

affirmation

attorney

juratory

identity

witness



Government
of South Australia

Attorney-General's
Department

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Disclaimer for Handbook

This is the first edition of the Handbook that has been prepared by the South Australian Attorney-General's Department for the use of Justices of the Peace for the State of South Australia. All reasonable care has been taken to provide accurate information. It is believed to be up to date at the time of publication on **20 October, 2006**. Readers should be aware that changes may be made to the law after that date of the publication of this Handbook. The Attorney-General's Department will periodically revise the electronic copy of this Handbook and will make paper copies of the updates available to J.Ps.

For copies of this handbook contact the Justice of the Peace Services at the above address. Also you can go to the website: www.justice.sa.gov.au

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Introduction by the Attorney-General



As Attorney-General I want for Justices of the Peace in South Australia to be able to do more. I value your contribution as a volunteer. I am also a Justice of the Peace and I am pleased to serve the public.

This handbook has been written to guide and help you do your duties with confidence. It includes a short history of Justices of the Peace, lists the main functions you will perform as a Justice of the Peace and shows you how to handle common requests. Also included are a witnessing procedure with a checklist and a step-by-step guide on how to witness and attest the different documents.

As new laws come into force it has been necessary to update the law governing the appointment and conduct of Justices of the Peace. The new *Justices of the Peace Act 2005* and the *Justices of the Peace Regulations 2006* came into operation on 1 July, 2006. This handbook includes the changes made to the office of Justices of the Peace as provided by the Act.

The handbook is available online at: www.justice.sa.gov.au and will be reviewed to include regulations and policies as the need arises. You can check this website regularly to keep up to date with changes affecting your duties as a Justice of the Peace. If you do not have access to the Internet, access may be available in your local public library. Otherwise, please contact the Justice of the Peace Services and ask for updates to be mailed to you.

If you need clarification about this handbook, please contact the Justice of the Peace Services during business hours.

I would like to take this opportunity to thank all Justices of the Peace for their continued service to the public.

A handwritten signature in black ink, reading 'Michael Atkinson'.

The Hon. Michael Atkinson, M.P., J.P.
Attorney-General

How to use this handbook

This handbook is designed to provide you with information on the functions of a J.P. for the State of South Australia. It concentrates on the duties you will be required to perform most of the time. If you are asked to perform a function that is not covered in this handbook, contact the Justice of the Peace Services of the Attorney-General's Department. Justices of the Peace will be referred to as J.Ps in this handbook because that is what most people call them.

Please note that this handbook does not deal with the functions of Special Justices. If you wish to enquire about how to become a Special Justice contact the Justice of the Peace Services of the Attorney-General's Department. In this handbook the word "witness" is generally used in a shorthand way referring to attesting the execution of an instrument (that is documents intended to have legal effect) and to taking affidavits and statutory declarations.

Read the handbook to familiarise yourself with each section so you can access the information easily. If you are a newly appointed J.P., this handbook can be a useful tool to help you become familiar with your tasks and you may later use it as a reference. For clarification on the information in this handbook, contact the Justice of the Peace Services. The handbook provides some historic information followed by five sections.

1) Obligations and Conduct of a J.P.

This section outlines when you are required to witness as an authorised person, as distinct from witnessing as any adult witness. J.Ps are appointed under the *Justices of the Peace Act 2005* and must comply with the legal requirements of the Act and other Acts that relate to the office of a J.P. You can access the Act by going to the website, www.justice.sa.gov.au or by contacting the Justice of the Peace Services. The Justice of the Peace Services of the Attorney-General's Department has administrative responsibilities for recommending appointment of J.Ps.

2) Witnessing

This section includes a set procedure of 16 questions and points that you can use to ensure everything has been covered. Using a set procedure helps you remember points you may otherwise forget. It can also help you report with accuracy the methods you use every time you witness a document, should you be asked to give evidence in court on the witnessing of a document.



Notes



How to use this handbook

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3) Types of documents witnessed by a J.P.

This section describes the types of documents you will be asked to witness most of the time, their purpose (why people use them) and a step-by-step guide on how to witness them. This information, together with the checklist, can help you perform your duties thoroughly and accurately.

4) Information and Referral contacts and SA Community Legal Centres.

You can use this list to refer people to other organisations or government departments. Sometimes people may be confused about your role and may ask you to give legal advice. Under no circumstances should you give legal advice when you are performing J.P. duties, even if you have legal knowledge. If a person needs legal advice or some other service, use this list to give the contact details.

5) A glossary

The glossary gives the definition of the most common words used in J.P. witnessing. Some of the words and terms are used under different circumstances, for different documents and for other witnessing procedures. You can add definitions of other terms and words you may come across.

History of Justices of the Peace

Notes



The origin of J.Ps

The origin of J.Ps has been traced back to England in 1195, when Richard the Lionheart commissioned some knights to preserve the peace in unruly areas. They were responsible to the king for ensuring that the law was upheld and they were known as *custodes pacis* (keepers of the peace). The *custodes pacis* were the forefathers of J.Ps.

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

Over time, J.Ps in Britain were authorised to perform functions ranging from hearing and determining offences to licensing public houses.

J.Ps in Australia today play a more modest role and have little in common with their earlier British counterparts.

Justices of the Peace in South Australia

J.Ps were recognised in the Australian colonies from 1788, and, after the settlement of South Australia in 1836, the first J.P. was appointed here. Today there are about 8,900 J.Ps in South Australia and each year about 300 new justices are appointed. There are no national J.Ps in Australia. Each State and Territory has its own legislation to regulate the appointment, powers and functions of J.Ps.

The Justice of the Peace Services of the Attorney-General's Department is responsible for the administration and the processing of applications for appointment of J.Ps. The Governor makes appointments on the recommendation of the Attorney-General. The office also provides information about J.Ps to the public of South Australia.

The Attorney-General is required by law to keep a Roll with the contact details of all J.Ps. Only the name, telephone number and suburb of J.Ps is available to the public. These details can be accessed on the Website: www.justice.sa.gov.au or by telephoning the Justice of the Peace Services of the Attorney-General's Department.



Obligations and Conduct of J.Ps

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Appointment obligations and conditions

The Act that provides for the appointment of J.Ps is the *Justices of the Peace Act 2005*. This Act and the *Justices of the Peace Regulations 2006* replaced the *Justices of the Peace Act 1991* from July 2006. Section 13 of the new Act sets out the information that must be kept on the Roll of Justices by the Attorney-General.

The information available to the public will be your name, telephone number at which people can contact you and the name of your suburb. You must use the identification number, which is given to you when you are appointed, each time you perform J.P. duties. If the public want to check the identification number of a J.P. or to verify that a person is indeed a J.P. they can contact the Justice of the Peace Services.

As an appointed J.P. remember that you have agreed to these specific appointment conditions:

- that you will comply with the Code of Conduct for Justices which form part of the regulations;
- that you will carry out all duties attached to the office and comply with the legislative requirements as provided in the *Justices of the Peace Act 2005* and the *Justices of the Peace Regulations 2006*;
- that your name, telephone number or numbers at which you can be contacted during and after business hours and your suburb or town will be included on the Roll of J.Ps. The Roll of J.Ps is a public roll and it will be posted on the Justice website. Please note that your street name and number will not be shown on the public roll;
- that the Justice of the Peace Services will make your name, telephone number and suburb available to other organisations, such as local councils, which may provide services to the public;
- that you will be contactable for witnessing after business hours, unless you have been exempted from this obligation under regulation 8 of the *Justices of the Peace Regulations 2006*.

The oath of allegiance and the judicial oath

After appointment and before performing any of the functions as a J.P., you are required by section 7 of the *Oaths Act 1936* to take the oath of allegiance and the judicial oath. Remember that in taking the oath or affirmation of allegiance, you promise that you:

...will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law...

Further, in taking the judicial oath or affirmation, you promise to:

Obligations and Conduct of J.Ps

...well and truly serve our Sovereign Lady, Queen Elizabeth the Second, Her Heirs and Successors, according to law, in the office of Justice of the Peace for the State of South Australia, and I will do right to all manner of people after the laws and usages of this State, without fear or favour, affection or ill will...

The judicial oath commits you to high standards of integrity and discretion. As a person appointed to public office, the public, institutions and the court will rely upon your word. You must at all times perform your duties honestly, truthfully and conscientiously and take care to act fairly, impartially and without personal interest. As a J.P. you will often come across personal information, which must remain, private and confidential. You must not divulge that you have that information or disclose it to anybody, unless the person you did the witnessing for asks you to, or unless a court orders you, or you are otherwise required to do so by law.

Use of J.P. title and stamp

You should use the initials J.P. only when carrying out the official functions of witnessing documents as a J.P. You should not use your status or title a J.P. for private or business interest, for example, on business stationery, such as business cards and letters, or in advertisements or business signage. The practice of discouraging the use of the initials J.P. has been so that people do not use them improperly so as to diminish the standing of this public office. The initials J.P. must be used cautiously so that people know who are J.Ps and how to contact them.

The *Justices of the Peace Act 2005* provides that J.Ps who resign from office after having served for a period of time prescribed in regulations will be able to use the title “J.P. Retired”.

Change of your contact details

If at any stage of your term in office as a J.P. your details change, you must notify the Justice of the Peace Services in writing. For example, if you change your name through marriage or other reasons or if you move house. If you change your name, please provide a certified copy of your marriage certificate or a certified copy of registration of change of name.

If you are absent from the State for a period of at least three months you must inform the Attorney-General by writing, to the Justice of the Peace Services.





Obligations and Conduct of J.Ps

Notes



Resignation, suspension and removal

Resignation or ill-health

Under the new *Justices of the Peace Act 2005*, a J.P. may apply to the Governor for suspension from official duties for personal reasons. The suspension may be for a specified period or until further notice, but cannot exceed two years.

If your circumstances change and you are unable to perform your duties, for example, because of illness, incapacity or other personal matters, you or a family member must inform the Attorney-General of this by writing to the Justice of the Peace Services. The letter must include the full name, date of birth and identification number of the J.P. The Attorney-General, depending on your circumstances, will either recommend your removal from office or suspension from the Roll for a period that does not exceed two years.

If the person who writes the letter of resignation on behalf of the J.P. is also the donee of an Enduring Power of Attorney or an Enduring Power of Guardianship, he or she must also send a certified copy of the power to the Justice of the Peace Services.

Disciplinary Action (Code of Conduct)

The Code of Conduct (C.O.C.) is prescribed in regulations to the *Justices of the Peace Act 2005* and all J.Ps must comply with the Code of Conduct. The Governor will have powers to take disciplinary action against a J.P. if the justice breaches or does not comply with the conditions of appointment. Additionally, if a J.P. does not comply or breaches a prescribed provision of the code of conduct, that justice may be reprimanded, suspended or further conditions may be imposed upon his or her appointment.

The code will be given to all appointed J.Ps, and posted on the Justice website www.justice.sa.gov.au.

Removal

The *Justices of the Peace Act 2005* provides that:

If a justice

- (a) is mentally or physically incapable of carrying out official functions satisfactorily; or
- (b) is convicted of an offence that, in the opinion of the Governor, shows the convicted person to be unfit to hold office as a justice; or
- (c) is bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
- (d) should, in the Governor's opinion, be removed from office for any other reason,

then the Governor may, by notice in the Gazette, remove the justice from office.

Obligations and Conduct of J.Ps



Common questions

Can I transfer my appointment to another State?

No. J.Ps are appointed under different Acts in each State and Territory. If you move interstate, and are interested in being a J.P., you can enquire at the Justice of the Peace Office of that State. You must first resign from your position in South Australia in writing.

Am I exempt from jury duty?

No, you are not exempt because you are a J.P. Only Special Justices who perform bench duties and their spouses are exempt.

Must I disclose my contact details to the Justice of the Peace Services?

Yes, you must provide all contact details. However, only your name, phone number and suburb or town will be made available to the public. All other personal details (such as your street address) are kept confidential.

Do I have to conduct J.P. duties from home?

No. You do not have to conduct your duties from home. You can arrange with the other person to meet in another appropriate location.

Lined area for taking notes, starting below the 'Notes' icon and extending to the bottom of the page.



The Role and Duties of J.Ps

Main duties

Your main role as a J.P. is to act as an independent and objective witness to documents people use for official or legal purposes. The duties you will perform most of the time are described below:

Attest or witness the execution of a document

Sometimes, this is called ‘to attest or witness an instrument’, and it means to sign a legal document to verify that it has been completed according to law in your presence. The court will rely on your certificate as proof that the document was completed in accordance with the legal requirements.

Take an affidavit for use in court

An affidavit is a document that contains a person’s written statement in support of his case in court. The information in an affidavit must be sworn or affirmed in the same way people are sworn or affirmed when giving evidence in court. An authorised witness such as a J.P. must administer the oath or affirmation. Examples include, affidavits containing evidence about serving divorce papers and acknowledgment of receipt of papers for the Family Court, both of which require the witness to be an authorised person (for example, a J.P.).

Take a statutory declaration

A statutory declaration is a formal statement made by people because it is required by a government department or agency or for other official purposes. Also some people choose to make a statement by way of a statutory declaration. When you witness a statutory declaration the person making the declaration must state in your presence that he is the person making the declaration and that he believes the contents to be true and sign it in your presence. By adding your signature to the statutory declaration, you vouch that the person who signed it made the declaration of his own free will. For example, a person makes a declaration to say he was not driving a vehicle that has been caught running a red light. Many government agencies rely heavily on a J.P. witnessing statutory declarations.

For example, a person making an application for first home ownership requires a J.P. to witness the statutory declaration on the form.

Certify a true copy of an original document

To certify that a document is a true copy of an original you must examine and compare the copy with the original and make sure they are identical. The person must present both the copy and the original for your inspection. You then write on the copy that you certify that the copy is a true copy of the original.

The Role and Duties of J.Ps



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Certify a person's identity

Certifying a person's identity will depend on what the statute requires you to do. It may be that you need to have known the person for a certain time, or simply that you know the person to be the same as the person named in the document. If you do not know the person you may ask for proof of identity that has a photograph on it such as a driver's licence or a passport. You should state on the document you certify what type of identification was produced and any identifying number on the proof of identity.

Notaries Public

J.Ps are not notaries (also "notaries public" or "public notaries").

A notary in South Australia is generally a solicitor, whose witnessing of documents will be recognised and accepted by foreign courts and authorities. The functions of a notary include:

- attesting documents and certifying their due execution;
- preparing powers of attorney, wills and other documents for use overseas;
- administering oaths and affirmations for use in overseas courts;
- witnessing affidavits and statutory declarations;
- certifying copy documents;
- noting and protesting of bills of exchange; and
- preparing admiralty documents.

For contact details of South Australian notaries, contact the Law Society of South Australia on (08) 8229 0222 or look in the Yellow Pages under "Notaries".

Commissioners for taking affidavits

J.Ps are not commissioners for taking affidavits. Commissioners for taking affidavits in the Supreme Court are also authorised witnesses who can attest or take documents. They are appointed under section 28(1) of the *Oaths Act 1936* and are:

- members of the judiciary (Judges, Masters and Magistrates);
- all persons on the roll of legal practitioners of the Supreme Court (except any such person whose right to practise the profession of law is under suspension by virtue of disciplinary action taken against him).



Witnessing

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How to witness documents

It is good practice to use a set procedure each time you witness a document, unless the law requires you to do something different. Following a set procedure will help you perform your duties correctly. It will also help you ensure you have covered everything. After witnessing many signatures and documents, you may not remember exactly what happened in a particular case. Sometimes you may be asked to give evidence in court about a case and, if you know that you always use the same procedure, you can tell that to the court.

Below is a guide to proper witnessing. You may wish to use it to ensure you have covered everything. Usually you will have to rely on your own experience and the guidance of this handbook to witness a document. Sometimes the person seeking your J.P. services will bring along special instructions from a solicitor or the agency or department that produced the document.

Making the appointment

Although many J.Ps allow people to come to their homes, sometimes another place may be more convenient. Make sure it is a private place. A person's documents and dealings with a J.P. are confidential and it is not appropriate to see a person in a place where others can see the documents or overhear the conversation. The person might have a suitable meeting room at his workplace or elsewhere. Otherwise, make enquiries for a venue where you can see the person in a private office. Such places are your local community centre, the council chambers or a public library that has a meeting or discussion room. Most councils offer, on a roster system, a J.P. service to the public.

If you agree to see people in their home, take extra care about your safety.

Witnessing



Notes

Witnessing procedure

1. What type is the document?

Some documents are straightforward whereas others are more complex. When a person contacts you about J.P. witnessing, ask what type the document is so that both you and the person can be prepared.

- **Powers of attorney or of guardianship.** Tell the person that you must allow at least half an hour or longer for the appointment.
- **Affidavit.** Ask if the person wants to swear on a holy book or take an affirmation. If the person wants to swear and you do not have their chosen holy book, ask him or her to bring one along.
- **To certify.** Ask how many documents there are to certify. If there are more than 10 documents you may wish to make more than one appointment to certify in batches.

2. Do you have authority to witness this document?

You have authority to witness documents that list J.Ps as authorised witnesses. This is usually stated in the 'witness' section of the document. Other legally authorised witnesses for some purposes are lawyers, proclaimed police officers, commissioners for taking affidavits in the Supreme Court and Notaries Public. To ensure you are an authorised person, check that the document lists a J.P. as an authorised witness.

As provided by section 8 (4) of the *Justices of the Peace Act 2005*, you can witness documents to be used in South Australia, if you are outside the State temporarily, unless the law says that the particular document has to be witnessed by a J.P. whilst in South Australia.

Overseas documents require other official witnesses, such as a Notaries Public. Documents that are either from other countries or are made for overseas purposes usually carry instructions to say who is an official witness. Do not witness these documents unless they state that an Australian J.P. is an authorised witness. In most cases the country where the document will be used will not accept a J.P. as a witness. A Notary Public, a commissioner for taking affidavits, or a consular or embassy official are accepted as witnesses to these documents.

Some documents require you to witness a signature and hear the signatory declare that the document is true and correct, or to ask the signatory to take an oath or affirmation that the contents of the document are true and correct. Details are set out under **affidavit** and **statutory declaration**. Statutory declarations and oaths are legally binding documents. If they are false, the person commits a criminal offence, therefore it is important for you to witness them correctly. Never witness an affidavit or statutory declaration that has no declaration in it, in other words, that is blank.



Witnessing

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Some documents require the witness to be just an independent adult. Other documents may need the witness to know the signatory for a period of time or vouch for his identity. In these instances the witness does not have to hold any official position. When you witness this type of document, you do not have to sign as a J.P., but just as an adult witness. These are some examples:

- Two people can witness the marriage certificate of two adults over 18 years.
- Land transfer documents, wills and electoral enrolment forms need the witness to know the signatory personally, or need to be satisfied by evidence, such as a driver's licence, as to the signatory's identity.
- Australian passport applications need the witness to have known the applicant for 12 months.

If you are not sure, check this handbook or the Act or department that creates the specific document. South Australian Acts of Parliament can be found on the Internet at www.parliament.sa.gov.au or you can purchase them from Services SA. If still in doubt, refer the person to a legal centre or the Justice of the Peace Services. (see **Information and Referral contacts**).

3. Is it correctly completed?

You are not expected to know whether a document is in a form that makes it legally effective. The person making the document, not the witness, must ensure it is in proper form and, if necessary, get legal advice for this.

If it is obvious to you that the form is not the right one, you may suggest that the person obtains a standard form before having it witnessed. Information about where people can obtain forms is included in this handbook under each type of document, for example, statutory declarations, affidavits, etc.

Witnessing



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 checked and complied with any special requirements before you witness.

Special requirements for witnessing a document can be found in the Act that governs when or how the document is to be used. For example, requirements for:

- A statutory declaration (requirements contained in the *Oaths Act 1936*);
- An affidavit (requirements contained in the *Evidence Act 1929*);
- witnessing an enduring power of attorney (contained in the *Powers of Attorney and Agency Act 1984*); and
- Witnessing a medical power of attorney or a treatment direction (contained in the *Consent to Medical Treatment and Palliative Care Act 1995*).

5. Who signs the document?

The rule is that 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 for proof of identity with photograph such as driver's licence or passport. It is recommended that you also ask for proof of authority, for example, a current power of attorney.

6. What is the legal age for making the document?

Usually, the legal age is 18, but there are some documents that can be executed by a person under 18. For example, a person can enrol to vote at 17. If you are in doubt about the person's age, ask for proof. If you do not know the legal age requirement for the specific document, contact the Justice of the Peace Services for information or, if you can, check the Act that governs the document.

7. Can a child make a document?

A child can make a document if allowed by the law. If you are asked to witness a document made by a child, go through the same questions as you would with an adult, and check that the child understands the nature and effect of the document.



Witnessing

Notes



8. Does the person understand what he or she is doing?

Before witnessing a person's signature to a document always ask if she has read the document and fully understands what she is signing.

Only a person who is able to understand what she is doing can make a valid legal document. A J.P. is not expected or qualified to make a detailed assessment. You can ask open-ended questions, such as: 'What kind of document is this?' 'What does it mean?' These questions require more than a simple 'yes' or 'no' answer. For more detailed suggestions about what questions to ask, see the **Witnessing a Power of Attorney and Guardianship** section in this handbook.

Signs that might indicate that the person does not understand the meaning of signing the document are when a person:

- gives inappropriate answers
- has difficulty answering questions or has memory lapses during the conversation, or has a restricted vocabulary.

These signs might indicate that the person is ill, intellectually or emotionally disabled, or speaks little or no English or does not understand the Australian legal system. They, by themselves, do not necessarily mean that the person does not understand the nature and effect of the document she is signing.

Remember that you are checking the capacity of the person to make this particular document, not for anything else. An inability to read does not necessarily mean the person cannot understand the document. She may fully understand it if it is read to her. Equally, an ability to read does not mean a person can understand a complicated legal document. You can rely on a letter from the person's doctor stating that he has the capacity to understand.

If you resolved your initial doubts about capacity to understand, by questioning the person, you should write down some notes. If questions arise later about the appropriateness of your agreeing to witness the document, you have an accurate record to show how you made your decision.

If after you question the person you still have doubts, do not witness the document and explain your position to the person.

Witnessing



9. Is the person signing of his or her own free will?

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

Sometimes people in a relationship of trust with a vulnerable person try to obtain legal power over that person’s financial or personal affairs for his own benefit. There have been occasions when older people have become destitute because they were coerced to sign, or had unwittingly signed over to others the right to dispose of their property. 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, or at least without anyone who might have an interest in the transaction being present, so that the person can speak freely. This is especially important if a person who might benefit from the transaction makes the appointment with you, or comes with that person.

If you have any doubts about the person being under duress or pressured to sign the document, do not witness it until you are satisfied that the person is signing of his own free will. If you continue to have doubts, refuse to witness and suggest the person seeks legal advice. Again, keeping a record of what you did in that situation can help, if later there are enquiries about it.

10. Can you read the document to check for false material?

As a J.P. you are not expected to know the content of the document so do not read the document. Your responsibility is to be sure that the document is in the correct form, for example, if it is a statutory declaration the correct wording of the relevant Act is included. You must also tell the person making the document that false statements carry punishment, including imprisonment. The maximum penalty for making a false statement under oath or affirmation is seven year imprisonment and for making a false statement in a statutory declaration is four year imprisonment.

Notes section with horizontal lines for writing.



Witnessing

Notes



11. Dates on the document

The date the document is signed must be the same as the date it is witnessed. Some documents such as “power of attorney”, “medical power” or “power of guardianship” can be signed by the donor and the donee on separate dates. The date you record as a witness must be the same as the date each signs the document. It is acceptable for different signatories to the document to sign it separately and before different authorised witnesses.

12. Are there any alterations, or blank spaces in the document?

All alterations including liquid paper should be initialled and dated by both you and the signatory. This shows that the alteration was not made later. The signatory 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.

13. Are all the questions 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. (This is done because an answered question can be misinterpreted or an answer can be added after it is signed.)

14. Are there any exhibits, annexures or attachments?

These are documents that are attached or related to the main document and contain information that supports that document. Affidavits and statutory declarations often have exhibits or annexures.

Each attached or related document must be identified in the main document. This is usually done by consecutive numbers or letters of the alphabet as used for annexures, for example, annexure A, annexure B, etc. The name and date of the main document also should be written in the attached or related document.

Exhibits to an affidavit are usually marked with the initials of the person making the affidavit (the deponent or affirmant) and a consecutive number (1,2,3).

If a document refers to exhibits, annexures or attachments, check that each is present, marked and identified correctly. Each attachment should refer to the main document. Check that each exhibit, annexure or attachment is presented, marked and identified correctly. The date on each attachment should be the same as the date the document is witnessed.

Witnessing



This is an example of how an exhibit to an affidavit made by John Michael Smith should be marked:

This is Exhibit marked JMS1 [or 'a copy of Exhibit JMS1'] referred to in the affidavit of John Michael Smith sworn/affirmed Before me this.....day of.....20....

*.....
Signature of J.P.
[Your full name, J.P. initials, I.D. number and the words:
A Justice of the Peace for South Australia]*

If the annexures are attached to documents other than affidavits, use the same marking, but replace the words 'sworn/affirmed before me' with the words 'signed in my presence this [date] day of [month] 20...' and so on.

For statutory declarations insert the words 'declared in my presence this... day....etc.

If a document refers to annexures or exhibits, but they are not with the document, you must not witness the document.

15. Ensure the document is signed in your presence

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 are exhibits or annexures to the document, you must sign and date each one, having ensured they are correctly marked. If they are not marked, ask the signatory to mark them correctly before you sign.

If the main document is an affidavit, the signatory must also sign each exhibit in your presence.

16. When to sign and add your J.P. details

After the person has signed the document in your presence, you witness by signing and dating the document. Clearly print your full name, including your full middle name, J.P. initials and I.D. number. Underneath or next to your signature write the words, "A Justice of the Peace for South Australia". If you have a stamp, place it close to your signature. Do not place it over your signature or sign over your stamp.

If there is more than one place on the document that requires signing, witness each signature separately.



Witnessing

Notes



If there are several pages to the document, first ask the signatory to initial each one (other than the final page) and then put your initials beside the signatory's and both you and the signatory must sign the final page.

Common questions

Should I read the document?

No, do not read through the contents of the document. Your duty is to ensure that the document has been correctly executed and all parts of the document have been completed. You are not certifying that the information is correct.

How do I witness multiple-page documents?

Ask the person to number each page in this manner, 'page 1 of 4', 'page 2 of 4' and so on. Both you and the person must initial each page and sign and date the final page, as the document requires.

Whose signature can I witness?

You can only witness the signature of the person who signs the document in your presence. If the document is to be signed by several people and not all are present at the same time, state on the document that you are witnessing only the signature of the person or persons present. For example:

The signature of John Smith only witnessed.

Do I have to make a J.P. stamp?

It is not compulsory to have stamps made. Justices of the Peace have stamps made for the purpose of convenience and this can be done at most stationers. The general stamp must have your full name, that is, first, middle and family name, the initials J.P., your I.D. number and the words "A Justice of the Peace for South Australia" underneath your name. Here is an example of a stamp:

*John Michael Smith, J.P. # 12345
A Justice of the Peace for South Australia*

The second stamp is used to certify and here is an example:

*I certify this to be a true and correct copy
of the original sighted by me
at.....on.....day of.....20....*

"At" means the location where the witnessing is done, for example, Adelaide, etc. Underneath the certification place your general J.P. stamp (see above). Place your signature near your stamps.

Witnessing



What proof of identity is acceptable?

The type of proof of identity is entirely up to you unless it is specified on the document or in an Act of Parliament specified in the document. A driver’s licence, a passport, a health care card, a birth certificate, or any other document issued by an authority that checks the person’s identity, is sufficient.

Are the documents confidential?

You must treat all documents you witness as confidential. You can disclose information about a document only if the person who signed the document asks you to or if the law requires you to, for example, if you are ordered to give evidence about your witnessing in court.

Can I keep copies for my records?

No, because the documents you witness are confidential, you may not keep copies.

Can I be a witness for friends or relatives?

Though it is not unlawful to witness a document signed by a friend or relative, it is not good practice. You could risk being accused of having an interest and lacking independence as a witness. In some cases, it could make the document invalid.

Can I help complete the documents?

It is not recommended to be both a witness and help complete documents for the same person. You are an independent, unbiased witness, therefore, if you wish to help someone complete a document, it is better not to witness that document and refer the person to another J.P.

Lined area for taking notes, starting below the 'Notes' header and extending to the bottom of the page.



Affidavit

Notes



What is an affidavit?

An affidavit is a written statement, made on oath or affirmation and it is used as evidence in court proceedings. The person making the affidavit swears or affirms in your presence that she made the statement and that the statement is true to the best of her knowledge and belief. This oath or affirmation is the written equivalent of an oath or affirmation a person takes when giving evidence in a court of law and has the same legal consequences. It is a serious offence (perjury) for a person to lie under oath or affirmation, whether orally in court or in writing in an affidavit.

Affidavits are the only documents where as a J.P. you administer an oath or an affirmation. Only a person who can understand the implications of giving sworn evidence can take an oath or affirmation. Young children may not have sufficient grasp of the meaning of an oath, even if they understand the difference between the truth and a lie, and in that case they cannot take one. The same might apply for some intellectually disabled people. If you come across such a situation do not take the affidavit. Refer the person back to their lawyer, or, if they do not have one, to a legal service, (see **Information and Referral contacts**).

Where can people access affidavits?

Some affidavits are prepared by a lawyer or by the person who is giving evidence to the court. Others are standard forms that are to be used in court as evidence. The affidavit has a heading that refers to the court case and usually names the court, for example, the Family Court of Australia, the Magistrates Court of South Australia etc. It also has a number identifying the proceedings and the year they were started, for example, number 231 of 2004 as well as the names of the parties to the case in the court.

What are oaths and affirmations?

An oath is a promise to God. An affirmation is a promise to the court. Both are legally binding promises that the person is telling the truth. An affirmation is an alternative to an oath for people who object to taking an oath for religious or conscientious reasons. People are free to choose an oath or an affirmation and they do not need to give you a reason for this choice.

If the person takes an oath, it must be one that the person considers binding on his conscience and must be sworn on the holy book of his religion. It is useful to check with the person when making the appointment whether he will take an oath. If you do not have the holy book required ask the person to bring it along.

Affidavit



An affidavit taken on oath

The document starts with these words:

*I, [full name, address and occupation of deponent],
MAKE OATH AND SAY:*

The person’s statement follows and at the end of the document is the jurat with these words:

Sworn at.....by.....
this.....day of.....20....
Before me
.....
Signature of J.P.
*[Your full name, J.P. initials, I.D. number and the words:
A Justice of the Peace for South Australia]*

An affidavit taken on affirmation

The format of an affidavit taken under affirmation is the same as for under oath, except that the words “make oath and say” are replaced with the words “affirm”. The person is called the affirmant, not the deponent. This is an example:

I, [full name, address and occupation of affirmant], do solemnly and sincerely declare and affirm:

Make sure the person has a statement written in this space and it is followed by the jurat* with these words:

Affirmed atby.....
this.....day of.....20....
Before me
.....
Signature of J.P.
*[Your full name, J.P. initials, I.D. number and the words:
A Justice of the Peace for South Australia]*

Preparation

Before taking an affidavit, use the **Checklist** paying extra attention to points 8 to 16.

* Memorandum at the end of the document stating the place, date and person before whom an document is made



Affidavit

Notes



How to administer an oath

Ask the person: *Do you want to take an oath or affirmation?* If the person says 'to take an oath', ask him to hold a book he regards holy or sacred in his hand and ask:

Do you swear that this is your:

- *name*
- *address*
- *occupation*
- *signature and*
- *that the contents of this, your affidavit, are true and correct to the best of your knowledge and belief, so help you God?*

The person must say:

- *Yes I do,*

or

- *I swear.*

Make sure you hear this response before you:

- Initial all alterations in the document.
- Sign and date the foot of every page of the affidavit except the last page. If there are any exhibits sign and date each one.
- Either the person or you must write down the place (for example, Unley, Prospect) where the affidavit is taken and the date. If are exhibits, sign and date each one, (see checklist, number 14).
- Sign both the affidavit and the exhibits as indicated in points 15 and 16 of the **Checklist**.

Affidavit



How to administer an affirmation

Follow the same process as for an oath but the words ‘make oath and say’ must be crossed-out and replaced with the words ‘do solemnly and sincerely declare and affirm’. Then ask the affirmant:

Do you affirm that this is your:

- *name*
- *address*
- *occupation*
- *signature and*
- *that the contents of this, your affidavit, are true and correct to the best of your knowledge and belief?*

The affirmant must say:

- *I do,*
- or
- *I affirm.*

before you follow the process (as for an oath). At the end of the document (in the jurat) cross out or replace the word ‘sworn’ with the word ‘affirmed’.

Affidavit by more than one deponent or affirmant

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 must be written in the jurat, for example:

Sworn [or “Affirmed] at.....by.....
the above named deponents or affirmant this.....etc.

2. The deponents or affirmants can attend before you at different times, or they can attend before different Justices. If that happens, there must be a separate jurat for each deponent or affirmant by name, to record the place and date each was sworn or affirmed.

Sworn [or “Affirmed] at.....by the deponent or affirmant
this.....etc.
 Sworn [or “Affirmed] at.....by the deponent or affirmant
this.....etc.

If an affidavit is more than one page, both you and each deponent must initial each page. Also, if there are amendments to the affidavit each must be initialled by each deponent or affirmant and you. Every page of the affidavit must be numbered in this manner, ‘page 1 of 4’, ‘page 2 of 4’ and so on. Both you and the deponents or affirmants must sign and date the final page.



Affidavit

Notes



Common questions

Should I administer an oath if this is contrary to my personal beliefs?

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

Can I refuse to administer an oath or affirmation?

You should refuse to administer an oath or affirmation for an affidavit if you believe the deponent or affirmant does not understand the contents of the affidavit or the nature of an oath or affirmation. You can also refuse to administer an oath or affirmation if it is not for the purpose of making an affidavit to be used in court proceedings. Remember, you are not authorised to administer oaths or affirmations for any other purpose.

Who provides the holy book?

In practice you may find it convenient to have a copy of the Bible or other holy book. As mentioned earlier, you can ask the person, when making an appointment, that if they wish to swear on oath, to bring the holy book of their religion to the appointment.

Statutory Declaration



Notes

What is a statutory declaration?

A statutory declaration is a written statement in which the person formally declares before an authorised person that the statement is true. A statutory declaration is different from an affidavit in that it is not sworn or affirmed. A J.P. is authorised to take a statutory declaration. A statutory declaration can be made in the form prescribed by:

- section 25 of the *Oaths Act 1936* (S.A.) when it is required for a purpose under South Australian law; or
- the Schedule to the *Statutory Declarations Act 1959* (Commonwealth) when it is required under Commonwealth law.

Statutory declarations have a wide variety of uses. In some cases, the law requires information to be supplied in the form of a statutory declaration. For example, if a driver who has received an expiation notice for running a red light asserts that someone else was driving the car at the time, he or she can send to the police a statutory declaration stating who was driving. Police then rely on this information to issue an expiation notice to that other person.

Banks, trustee organizations, educational institutions, employers, clubs and other organisations often require information to be provided in the form of a statutory declaration. Sometimes people make statements by statutory declarations even though it is not legally necessary.

Where can people access a statutory declaration?

Blank statutory declaration forms are available from most post offices, Services SA and the local Magistrates Courts offices. The person can prepare the document himself, provided it is substantially in the form set out by the relevant Act. If you can see that the format of the document is not substantially correct, you should decline to witness it.

South Australian statutory declaration

There are different versions of statutory declarations but those for a purpose under **South Australian law** must be in the form prescribed by section 25 of the *Oaths Act 1936* (S.A.).



Statutory Declaration

Notes



This is an example of a statutory declaration. It begins with these words:

STATUTORY DECLARATION

Oaths Act 1936

I.....

[full name, address and occupation of declarant]

Do solemnly and sincerely declare:

Make sure there is a statement written in this space. Do not witness if there is no declaration.

The declaration must end with these words:

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

.....

[signature of declarant]

Declared at.....in the State of South Australia this.....day of.....20....

.....

Signature of J.P.

.....

[Your full name, J.P. initials, I.D. number and the words:

A Justice of the Peace for South Australia]

Commonwealth Statutory Declaration

A statutory declaration for a purpose under **Commonwealth law** begins with the same words as a declaration under South Australian law. It must be in the form prescribed by section 8 of the *Statutory Declarations Act 1959* (Commonwealth). The only difference between State and Commonwealth statutory declarations is the closing clauses. The rest of the form is the same and you should follow the same procedure in witnessing both declarations.

A Commonwealth statutory declaration ends with these words:

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Statutory Declaration



How to witness a statutory declaration

Before taking a statutory declaration, read the **Checklist** paying extra attention to points 8 to 16.

Then ask the declarant:

Do you solemnly and sincerely declare that the contents of this declaration are true and correct to the best of your knowledge and belief?

The declarant must answer:

- *I declare,*
- or
- *I do.*

Make sure you hear this before you:

- initial and date every deletion and alteration in the document after the declarant has initialled them;
- initial and date the foot of every page of the declaration and sign the last page near the signature of the declarant;
- complete and sign the part that starts 'Declared at.....before me' as in points 15 and 16 of the **Checklist**.



Certifying Documents

Notes



What are certified copies?

Often people or organisations need documented proof of a degree parchment, registration or other documents. For instance, a person wishing to be registered as a legal practitioner, doctor, dentist, etc needs to provide proof that a university has awarded him the relevant degree. As it is not always possible to provide the original document, organisations often accept a photocopy of an original document, but only when they have an independent assurance that the copy is authentic. An authorised person, such as a J.P., can certify that the copy is a true copy.

How to certify a copy

To certify a true copy of an original document:

- inspect the original document to satisfy yourself that it is the original version;
- inspect the copy to satisfy yourself that it is identical to the original document, that is, check that it has not been altered; and
- certify the document using these words:

I certify that this is a true and correct copy of the original document sighted by me at.....this.....day of.....20....

.....
Signature of J.P.

.....
*[Your full name, J.P. initials, I.D. number and the words:
A Justice of the Peace for South Australia]*

These are the standard words used for certification and many J.Ps have a stamp made to use every time they certify a document.

Certifying Documents



Multiple-page documents

If the original is a multiple-page document, you must check every page of the document to satisfy yourself that it is the original. Then check each photocopied page but you do not have to endorse every page. You must:

- sign or initial each page;
- number each page of the copy in this manner: 'page 1 of 40', 'page 2 of 40', etc;
- certify on the last page with these words:

This is to certify that this [write number of pages]-page document, each page of which I have numbered and signed or initialed, is a true copy of the original [write number of pages] page document sighted by me at.....this.....day of.....20....

.....
Signature of J.P.

.....
*[Your full name, J.P. initials, I.D. number and the words:
A Justice of the Peace for South Australia]*

Certifying copies of documents in other languages

You may be asked to certify documents written in a language other than English. You can do so if you are competent in that language. If you are not, it is good practice to have the originals photocopied in your presence.



Power of Attorney

What is a power of attorney?

A power of attorney is a legal document that allows a person to conduct another person's financial or legal affairs.

In a power of attorney, the donor names one or more donees and specifies what powers they are given. The donor can appoint the attorney to do everything a donor is legally allowed to do through an attorney or the donor may limit the power given, for example, allow the attorney to operate bank accounts but not sell assets.

The power can be designed to take effect straight away, or to take effect at a later date or when a specific event happens. If the power takes effect straight away, both the donor and the attorney have legal power to handle the donor's affairs.

A person can appoint more than one attorney. Sometimes a donor feels safer to appoint two or more people. In this case, the donor has to decide to have the attorneys act either only when they agree on something (act jointly) or have each attorney act alone and without consulting the others (act severally).

The donor must be over the age of 18 years and is the only person who can make the choice to give a power of attorney to another person, to choose that person and to decide what that person can do on his or her behalf.

Types of power of attorney

A general power of attorney¹

A general power of attorney operates only while the donor has legal capacity, but not when he or she loses legal capacity. People use general powers of attorney to allow someone they trust to handle their affairs, often in their absence. A common example is appointing someone to use their bank account to pay bills while they are overseas. A general power of attorney, however, does not cover the donor if, while away, she loses legal capacity or is physically unable to attend to business. The witness to a general power of attorney does not need to be an authorised person. You can witness these documents as can any other adult witness.

An enduring power of attorney²

People use enduring powers of attorney to authorise someone they trust to look after their financial and legal affairs when they can no longer do so themselves, for example, if they become mentally incapacitated through accident or illness.

¹ *Powers of Attorney and Agency Act 1984 s5*

² *Powers of Attorney and Agency Act 1984 s6*

Power of Attorney



Notes

There are two ways of making an enduring power of attorney:

- have it start immediately, or on the happening of an event, or on a specified date and continue after the person or donor loses legal capacity; or
- have it start when the donor loses legal capacity.

A medical power of attorney³

A medical power of attorney appoints the donee as a medical agent of the donor. A medical agent can decide what treatment the donor will have if the donor is unable to express his own wishes, for instance, because he is unconscious or cannot speak or write. Examples of what the medical agent can decide are things such as, whether the person will have a blood transfusion, or whether a life-support machine will be switched off. A medical power of attorney may be registered with the Department of Health, so that treating medical practitioners are aware of its existence.

An enduring power of guardianship⁴

An enduring power of guardianship appoints someone as the guardian of another person in case that person loses legal capacity. The guardian can make decisions about the incapacitated person's lifestyle for example, whether he or she continues to live at home or moves into an institution. The guardian can also make decisions about medical treatment, subject to any medical power of attorney.

Where can people access the various power of attorney forms?

- An enduring power of attorney and Enduring powers of Guardianship kits, can be bought from Services SA and the Legal Services Commission.
- A medical power of attorney can be obtained free of charge from the Office of the Public Advocate and Services SA.

Common questions

Does a power of attorney need to be lodged anywhere?

You do not have to lodge an enduring power of attorney and an enduring power of guardianship anywhere. However, if the person who is given power wishes to sell a property belonging to the donee, the enduring power of attorney must be deposited with the Lands Titles Office. The last page of the enduring power of attorney is a lodgement form for the Lands Titles Office.

Is a pharmacist or a Minister of Religion an authorised witness for an enduring power of attorney?

No they are not. However, pharmacists can witness enduring powers of guardianship. If you are asked questions about other authorised witnesses for documents, you are advised to refer those enquiring to the Legal Services Commission or a Community Legal Centre in their area.

³ *Consent to Medical Treatment and Palliative Care Act 1995 s8*

⁴ *Guardianship and Administration Act 1993, s25*



Witnessing a Power of Attorney and Guardianship

How to witness a power of attorney

Follow the **Checklist** paying extra attention to points 8 and 9. Before you agree to witness the making, changing or revoking of a power of attorney, or an enduring power of guardianship, take special care to satisfy yourself that the person knows and approves of the person who will be given authority by the document.

Extra steps

You do not have to interpret and fully understand the document yourself. Here are some extra steps that will help you ascertain the person's understanding.

See the person alone for part of the appointment

If another person accompanies the donor, ask this person to leave the room for part of the appointment. This may be a relative, friend, business associate, or member of the staff of a care institution or a carer. Seeing the donor in private can give the donor the opportunity to speak with you freely and can help you ascertain whether the donor is making the decision voluntarily. Explain to the donor that the conversation between you will remain confidential and neither of you will tell the person accompanying the donor.

When to refuse to be a witness

There may be situations when you feel it is inappropriate to witness a document. If this happens, it is better to refuse and refer people for help elsewhere. Here are some examples of such situations:

- A person who is not fluent in English comes to you with a friend or relative who acts both as an interpreter and as the person who will become the attorney or will become the enduring guardian. In this case, you should suggest that the person obtains an independent interpreter, and decline to witness the document.
- A person has a disability and is only able to communicate effectively through a carer. The person and the carer bring to you a document that would give the carer control of the person's affairs. Tell the person with the disability, through the carer, that you cannot witness the document unless arrangements are made for someone independent of the carer to assist in your communications with the person with the disability.
- A husband and a wife attend together, asking you to witness a power of attorney that gives the husband or the wife control of the other partner's money and property or makes one partner the guardian of the other. The partner who will become the donee, or guardian does all the talking and the other seems to agree with everything said. Ask to see the donor alone, even if they both object. Explain that you want to make sure that the donor understands the effect of the document.

Witnessing a Power of Attorney and Guardianship

You can refer older persons to the Aged Rights Advocacy Service, non-English speakers to the Migrant Resource Centre or the Interpreting and Translating Centre and potential victims of domestic violence to the Domestic Violence Help Line, (see **Information and Referral contacts**).

Check understanding and wishes

Once you have satisfied yourself that the donor can speak freely to you, find out whether she understands the document and wants to sign voluntarily. Ask open-ended questions that cannot be answered with a simple yes or no. Ask her whether she has read the document or had it read to her. Ask other questions that may help validate the donor's understanding. Examples of questions you may ask are:

- What does this document do?
- What decisions can the person to whom you are giving power in the document make after it is signed?
- When can the person make these decisions?
- What are the limits on the decisions this person can make?
- Can this person make the decisions for you, when you are capable of making them yourself? If the answer is yes ask:
 - > does the person have to consult you?
 - > can the person make a decision you disagree with?
- Can the person make decisions for you after you lose the legal capacity to make them yourself? If the answer is 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 the answer is yes, ask when? (The donor should be able to give 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?

You need to be tactful when choosing the questions as you only intend to verify that the person wants to do this and understands the document. You should not ask why the person has decided to make this document or about the person's family and health.





Witnessing a Power of Attorney and Guardianship

Notes



If the answers give you the impression that the person is not making the document voluntarily, or does not really understand its nature and effect, you should decline to witness and suggest that the person gets independent legal advice.

A useful guide about the things a person should understand when signing these documents is called *Guidelines to assist in determining a person's competence to make advance directives*. This is prepared by the Office of the Public Advocate and can be found on their website www.opa.sa.gov.au under 'Your Future Plans/Determining competence to make advance directives'.

Often when there is a doubt about a person's ability, the person's family or friends can obtain a written medical opinion, preferably from a doctor who treats the person.

If medical opinion suggests that a person is no longer capable of understanding one of these advance directive documents, and someone is needed to handle his or her affairs, an application can be made to the Guardianship Board for an Administration Order. The Guardianship Board provides application forms and the Office of the Public Advocate produces pamphlets with information on Administration Orders and also provides advice to applicants.

A court can appoint a manager for the property and money of a person who is not able to manage his own affairs because of old age, accident, illness, mental or physical disability, alcoholism or drug addiction. In such a case the infirm person or a relative or a close friend will need to get legal advice.

If you are satisfied that the person understands and wishes to sign the document, go through the **Checklist** to ensure you have covered everything, then complete and sign the witness section.



Witnessing a Treatment Direction

Notes



How to witness a treatment direction

A treatment direction⁵ (or anticipatory direction) does not appoint a person. Rather, a person sets out wishes about her medical treatment in the event she ends up in the terminal phase of an illness or a persistent vegetative state. The direction must follow the form in the regulations under the *Consent to Medical Treatment and Palliative Care Act 1995* for an anticipatory direction. The treatment direction appoints a medical power of attorney to carry out the person's anticipatory directions. Only a person who is over 18 and has legal capacity can make these directions and these must be signed in the presence of an authorised witness.

Where can people access a treatment direction?

Treatment directions are available from Services SA and they are free of charge. They may be registered with the Department of Health, so that treating medical practitioners can find out the person's wishes easily. If there are both a treatment direction and a medical power of attorney, the medical agent must follow the treatment direction.

When using the **Checklist** remember to pay special attention to sections 8 and 9. You must satisfy yourself that all persons executing these documents are signing freely and voluntarily and understand the contents and the effect of the documents.

⁵ *Consent to Medical Treatment and Palliative Care Act 1995, s7*

Consent to the Marriage of a Minor



What is the age limit for marriage?

The *Marriage Act 1961* (Commonwealth) provides that “a person is of marriageable age if the person has attained the age of 18 years”.

Persons under the age of 16 years cannot marry, even with the permission of their parents or guardians.

Persons aged 16 or 17 years can marry if they have permission from their parents or guardians. These persons need:

- an order from a Judge or a Magistrate, and
- the written consent of parents or guardians.

The written consents of the parents or guardians need to be witnessed and signed by an authorised person, such as a J.P.

As a J.P., you need to be aware that under section 13(3) of the *Marriage Act 1961*, it is an offence to witness the signature of consent to marriage unless:

- you are satisfied on reasonable grounds of the identity of the person giving consent; and
- the consent form shows the date you witness the signature of the consenting person.

How to witness consent

Follow the **Checklist**. In addition, make sure the document states at least:

- the names of the man and woman intending to marry;
- the name of the person giving the consent; and
- the relationship of the person giving the consent to the man or woman intending to marry (for example, she is the mother of the intending groom).

By law, you are responsible to check the identity of the person who gives the consent. Ask for identification that includes a photograph, such as a driver’s licence or passport. Failure to comply with this provision of the law carries a maximum penalty of \$500 or imprisonment for six months.

You are not responsible to determine whether the signatory is a person who can, in law, consent to the marriage. That is the responsibility of the person who wants to get married.



Consent to the Marriage of a Minor

Notes



Common questions

Can I conduct marriages?

No, J.P.s do not have the authority to conduct marriages. If someone asks you to conduct a marriage, refer him to a marriage celebrant (see **Information and Referral contacts**).

Can an authorised marriage celebrant be the witness?

Yes, authorised celebrants are amongst those authorised to witness consent to the marriage of a minor.

Can I refuse to witness consent to the marriage of a minor?

Yes you can refuse, but only if you are not satisfied as to the identity of the person giving the consent or if the consent document does not bear the same date as the date you are witnessing the consent.

Remember that the date on the consent must be the same as the date you witness the consent. If a different date has been written on the consent form, this date must be crossed out and the correct date inserted. Both the person giving consent and you must initial the correction.

Why is the date on the document important?

Legislation provides that consent to marriage lapses after three months. Therefore, consent must be given within the three months before the date of the marriage, so the document must be dated at the time it is signed.



Witnessing documents whilst outside South Australia, other States and Territories of Australia and other Countries

Notes



Witnessing documents whilst outside South Australia

J.Ps are appointed under the *Justices of the Peace Act 2005* for South Australia. Your main functions are to witness documents to be used in South Australia. Section 8 (4) of the 2005 Act allows for a South Australian J.P. to witness documents when outside South Australia. if the document is for use in South Australia, unless the Act under which the document is made provides that it must be done in South Australia.

As a matter of practice, the South Australian courts accept as evidence affidavits sworn in other Australian States and Territories, before a J.P. or other authorised person for the other State or Territory. Generally the witnessing and certifying of documents by persons authorised interstate is also accepted in South Australia.

Other States and Territories of Australia

All J.Ps from any State or Territory can witness some documents created under the laws of the Commonwealth, but only when used in Australia. Examples are statutory declarations under these Commonwealth Acts:

- *Statutory Declarations Act 1959*;
- *Family Law Act 1975*;
- *Migration Act 1958*; and
- The consent of a parent or guardian to the marriage of a minor under the *Commonwealth Marriage Act 1961*.

It is not your responsibility as a J.P., it is the responsibility of the person making the document to ensure you are authorised to witness an interstate document.



Waiver of Rights: Buying a Second-Hand Vehicle from a Dealer

Notes



What is a waiver of rights?

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

Under section 33(2) of the Act, a person aged 18 or more who buys a second-hand vehicle may waive (this means give up) these rights by using a form prescribed in Schedule 6 of the *Second-Hand Vehicle Dealers Regulations 1995*. Signing the form means that the vehicle will have no warranty under the Act. If the vehicle develops serious defects after purchase, the buyer may have other rights, but not under the *Second-Hand Vehicle Dealers Act 1995*.

There is no cooling-off period for second-hand vehicles and a buyer cannot cancel his purchase once he has agreed to buy and signed the contract.

It is an offence to witness a waiver under this Act without meeting criteria stated below. You will see that the form recommends that the buyer obtains an independent inspection report of the vehicle before waiving his rights. It is good practice to point this out to the person before he signs. To help understand this document people can contact the Office of Consumer and Business Affairs (see **Information and Referral contacts**).

How to witness a Waiver of Rights

A J.P. is an authorised witness for signing a waiver of rights. The Act requires that the witness:

- is not the dealer; and
- is not employed by the dealer as an employee or under a contract for the performance of services; and
- is not related by blood or marriage to the dealer; and
- is not indebted to or owed money by the dealer; and
- makes reasonable inquiries to satisfy himself or herself that the person proposing to sign the form understands the effect of completing the form.



Risk of Abuse

Notes



Older people at risk of abuse

Sometimes older people can be at risk of abuse for example, abuse can occur in misuse of a power of attorney. As a J.P., you may be asked to witness the a power of attorney for elderly persons. In most instances, the older persons will have the capacity to understand the document and will do so of their own free will. You must be mindful of the possibility that people may be coerced to sign documents. If you suspect the person is being coerced, do not witness the document. If you have doubts, try to find out whether the person is signing of his free will by asking to see him alone, (see **How to witness a power of attorney**). If you satisfy yourself that the person is not being coerced or unfairly pressured into signing, follow the **Checklist** and sign this handbook. Your awareness may help prevent abuse.

The Alliance for the Prevention of Elder Abuse (APEA) is an organisation that raises awareness about financial exploitation. The agencies that form the APEA are Aged Rights Advocacy Service (ARAS), Legal Services Commission, Office of the Public Advocate, South Australia Police Department and the Public Trustee. These agencies provide free advice and assistance to prevent or minimise the risk of abuse to older people. For further information or clarification, contact APEA through ARAS (see **Information and Referral contacts**).

Non-English speakers and victims of domestic violence

People in other circumstances that may be at risk of abuse are non-English speakers and victims of domestic violence. You might be asked to witness documents for people who do not speak English well. Some of these people are vulnerable and at risk of abuse. Also, you might be asked to witness a document for people who may be victims of domestic abuse. These people may have been pressured to sign documents. If you suspect that there may be abuse of power, refer non-English speakers to the Migrant Resource Centre and people at risk of violence to the Domestic Violence Help Line, (see **Information and Referral contacts**).



Witnessing for People with Disabilities

Notes



(For an affidavit)

Sworn/affirmed at.....this.....day of.....20....

by.....

[name of deponent/affirmant]

who, being physically incapacitated from writing, made his/her mark on the document.

If the person is unable sign the document or make any distinguishing mark, and you have established that she understands the nature and effect of the document, and would sign it if she could, write these words before witnessing:

(For a document other than an affidavit)

I certify that.....

[full name of deponent/affirmant]

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

For an affidavit you can use words such as these:

Sworn/affirmed at.....this.....day of.....20....

by.....

[full name of deponent/affirmant]

who is physically incapacitated from making her mark or signature.

Vision impairment and illiteracy

If the person cannot read the document:

- tell him that you must read the document aloud to him to ensure that it is the correct document and that he understands its content;
- assure him that the document will remain confidential;
- read the entire document to him, allowing time for questions of clarification; and
- if satisfied that he understands the nature and effect of the document, write on the document these words:

I have read the contents of this document to the signatory, and he or she appeared to understand the content, nature and effect of the document.

Witnessing for People with Disabilities

- If the document is an affidavit swear or affirm the person and write down these words if not already written on the document:

*Sworn/affirmed at.....this.....day of.....20....
by the above-named deponent or affirmant, this affidavit, having been
previously read to him or her; and he/she appearing to understand
the same, and having made his or her mark, or signed his name
thereto in my presence Before me, etc.*

If there are exhibits add these words, *and the nature and effect of the
exhibits referred to having been explained to him or her by me after
the words, having been previously read to him or her.*

Ask the person to sign or place his mark on the document and then witness the signature or mark by writing the person's full name under the mark, for example:

John Henry Smith's mark

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 not present, you can offer to communicate with the person in writing. Remember that some people with a hearing impairment are not fluent in English 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.

If you are using an interpreter, ask her to take an oath or an affirmation that she will interpret to the best of her ability. These are examples:

*I swear by Almighty God...
or I solemnly and sincerely declare and affirm...
that I shall, to the best of my skill and ability,
communicate, by signs or other convenient means,
words spoken in the English language,
and interpret into the English language,
statements made by signs.
So help me God! Omit this line when affirming.*





Witnessing for People with Disabilities

Notes



Insufficient mental capacity

If a person has a mild degree of reduced mental capacity, such as the early stages of dementia, you should take extra care to assess whether she signs of her own free will and understands the nature and effect of the document. See **Checklist** and **Check understanding and wishes** under **power of attorney**.

If you are still in doubt that the person understands the effect of the document, you should decline to witness.

Intellectual disability

A person with an intellectual disability usually has a guardian or attorney who makes decisions on his behalf. If you cannot ascertain that the person has a guardian acting on his behalf, do not witness the document. Instead, refer him to the Office of the Public Advocate where they can arrange for a guardian. Remember that some intellectually disabled people want to take control over their own affairs even though someone has been appointed to make decisions for them. If this person puts you under pressure to sign and you are of the opinion that he does not have the capacity to make decisions for himself, do not witness the document.

Cultural and Linguistic Diversity

Notes



General guidelines

It is important to be aware of and sensitive to the culture and language of people who ask you to perform J.P. duties. Never make assumptions about a person's understanding of English based on linguistic or cultural background. Often people may wish to give you the impression that their understanding of English is sufficient when it is not.

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

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

You may certify documents written in a language other than English if you are competent in that language. If not, a good practice is to have the originals photocopied in your presence to ensure they are correct copies.

How to witness

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 she is signing. If you cannot communicate in that language, another appointment may be needed to do the witnessing with the assistance of an interpreter. In most instances interpreters do not provide services free of charge and the person might have to pay for them. The Translating and Interpreting Service (TIS) provides some free interpreter services, but the person must contact them to check for eligibility. Otherwise the person would have to pay for the interpreter (see **Information and Referral contacts**).

There are also J.Ps who speak other languages. They can be found on the Roll of Justices kept by the Attorney-General on the Justice Portfolio Website (see **Information and Referral contacts**).

Witnessing through an interpreter

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

- translate orally to the person the contents of the document; and
- interpret everything you say to the person and everything she says to you.

If the document is an affidavit, the interpreter must take an oath or affirmation to say that she has interpreted and translated everything accurately.



Notes



Cultural and Linguistic Diversity

If it is a statutory declaration, the interpreter must certify that she has interpreted and translated accurately.

Oath

I swear by Almighty God that I shall truly and faithfully orally translate from the English language into [language of the person] to the best of my skill and ability so help me God.

Affirmation

I, [name of interpreter], affirm that I shall orally translate from the English language into [language of the person] to the best of my skill and ability.

Interpreter's certification

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

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

[Signature of interpreter]

[Printed name of interpreter]

Remember, if an interpreter is used for an affidavit, the interpreter must also interpret the oath or affirmation to the person.

Associations Commonwealth Member States

Associations

The Royal Association of Justices South Australia Inc. (RAJSA Inc.) is the only J.P. association in South Australia. The Association produces a quarterly journal, “The Honorary Magistrate”, which is posted to its members free of charge and contains articles of interest about the Association’s activities. Support and information are also provided to members through Justices Groups, established by RAJ members, throughout metropolitan and country areas. Justices of the Peace can apply to become members of the RAJ, but this is not compulsory.

Commonwealth Member States

At the time of printing this handbook there were 53 Commonwealth Member States.

The list of the Member States can be found on the Internet: www.dfat.gov.au



Information and Referral contacts

Attorney-General's Department Justice of the Peace Services

Address: 45 Pirie Street Adelaide S.A. 5000
Postal Address: G.P.O. Box 464 Adelaide S.A. 5001
Phone: (08) 8207 1725
Fax: (08) 8207 1736
Website: <http://www.justice.sa.gov.au>
Email: jpservices@agd.sa.gov.au

Aged Rights Advocacy Service (ARAS)

Address: 45 Flinders Street Adelaide S.A. 5000
Phone: 8232 5377
(country toll free) 1800 700 600
Website: www.sa.agedrights.asn.au/

Births, Deaths and Marriages

Address: Level 2, 91-97 Grenfell Street Adelaide S.A. 5000
G.P.O. Box 1351 Adelaide SA 5001
Phone: (08) 8204 9599
Website: <http://www.ocba.sa.gov.au/bdm/>

Courts Administration Authority

Address: Level 9, State Administration Centre, 200 Victoria Square
Adelaide S.A. 5000
Phone: 8204 2444
Website: <http://www.courts.sa.gov.au/>

Domestic Violence Help Line

Phone: 1800 800 098

Interpreting & Translating Centre (I.T.C.), Multicultural S.A.

Address: 24 Flinders Street Adelaide S.A. 5000
Phone: 8226 1990
Website: www.translate.sa.gov.au

Law Society of S.A.

Address: 124 Waymouth Street Adelaide S.A. 5000
Phone: 8229 0222
Website: www.lssa.asn.au/

Information and Referral contacts

Legal Services Commission

Address: 82-98 Wakefield Street Adelaide S.A. 5000

Phone: 8463 3555

Advice Line: 1300 366 424, TTY: 8463 3555

Website: <http://www.lsc.sa.gov.au/>

Marriage Celebrants

Address: Marriage Celebrant Section, Family Law Branch

Attorney-General's Department,

National Circuit, Barton A.C.T. 2600

Phone: (02) 6234 4800

Website: www.ag.gov.au/celebrants

Migrant Resource Centre of S.A. Inc.

Address: 59 King William Street Adelaide S.A. 5000

Phone: 8217 9500

Website: <http://www.users.bigpond.com/mrcsa>

Notaries Society of S.A. Inc.

Address: Law Society House, 124 Waymouth Street Adelaide S.A. 5000.

G.P.O. Box 2066 Adelaide S.A. 5001

Phone: 8261 7980

Fax: 8261 8058

Office of Consumer and Business Affairs

Address: 91-97 Grenfell St, Adelaide S.A. 5000

Phone: 8204 9777

Website: <http://www.ocba.sa.gov.au/>

Office of the Public Advocate

Address: Level 8, A.B.C. Building 85 North East Rd

Collinswood S.A. 5081

Phone: 8269 7575

Website: www.opa.sa.gov.au

Ombudsman's Office

Address: Level 5 East Wing,

50 Grenfell Street Adelaide S.A. 5000

Phone: 8226 8699, Toll Free: 1800 182 150

Website: www.ombudsman.sa.gov.au

Information and Referral contacts

Police Complaints Authority

Address: GPO Box 464 Adelaide S.A. 5001
Phone: 8226 8677
email: pca@agd.sa.gov.au
www.pca.sa.gov.au

Public Trustee

Address: 25 Franklin Street Adelaide S.A. 5000
Phone: 8226 9200
Website: www.publictrustee.sa.on.net/

Royal Association of Justices of South Australia Inc.

Address: Level 14, 31 Flinders Street Adelaide S.A. 5000
Phone: 8224 0377
Website: www.rajsa.asn.au/

S.A. Central

Website: www.sacentral.sa.gov.au

Service S.A.

Phone: 132 324
Website: www.service.sa.gov.au

State Electoral Office

Address: 134 Fullarton Road Rose Park S.A. 5067
G.P.O. Box 646 Adelaide S.A. 5001
Phone: 8401 4300
Website: www.seo.sa.gov.au/

Translating and Interpreting Service (TIS) Department of Immigration and Multicultural Affairs

Phone: 131 450

South Australian Community Legal Centres

Community legal centres are independent, not-for-profit organisations that provide **free** legal advice, casework and in some cases legal representation and referral to members of the community. Some of the additional services include, assistance for people who are discriminated against because of a disability or for low-income earners not eligible for legal aid, financial counselling services and for young people under the age of 18 years. Most centres also provide outreach services. To find out the specific services provided, contact your local community legal centre.

If you have access to a website you can check the services provided by your local community centre on <http://www.saccls.org.au>.

Name	Street Address	Telephone
Metropolitan		
Central Community Legal Service	2/59 Main North Road Medindie Gardens SA 5081	(08) 8342 1800
Northern Community Legal Service	26 John Street, Salisbury SA 5108	(08) 8281 6911
Roma Mitchel Community Legal Centre Limited services and evening legal advisory service by appointment.	Basement of the Norwood Library 110 The Parade, Norwood SA 5067	(08) 8362 1199
Southern Community Justice Centre Outreach: Warradale, Mount Barker, Victor Harbor, Yankalilla	40 Beach Road Christies Beach SA 5165	(08) 8384 5222
Westside Community Lawyers Inc. By appointment at these locations:	Mile End, Hindmarsh Library, West Lakes Library, Wesley Mission, Charles Sturt Council (Woodville Chambers) and the Parks Community Centre.	(08) 8243 5521
Rural		
Aboriginal Family Violence Legal Service Warndu Watlhilli – Carri Ngura (a service for the prevention of family and domestic violence in Aboriginal families)	26 Jervois Street, Port Augusta SA 5000	(08) 8641 2195
Riverland Community Legal Service Inc.	8 Wilson Street, Berri SA 5343	(08) 8582 2255
Rural Women's Outreach Program	27a Flinders Terrace, Port Augusta SA 5700	(08) 8641 3366
South East Community Legal Service (Inc)	9 Penola Road, Mount Gambier SA 5290	(08) 8723 6236
Westside Community Lawyers Inc. (Port Pirie)	1st Floor 60 Florence Street Port Pirie SA 5540	(08) 8633 3600

Glossary

Affidavit	Written statement sworn or affirmed by a person (the deponent or affirmant) before a person who has authority to administer an oath or affirmation. Affidavits are used as written evidence in legal proceedings.
Affirm	Make a legally binding promise to a court that the contents of a document are true.
Affirmant	Person who affirms an affidavit.
Agent	Person who legally acts on behalf of another person.
Appointee	Person who accepts the legal authority to act on another's behalf.
Appointor	Person who gives another person legal authority to act on his or her behalf.
Attest	Bear witness to, affirm the authenticity of, to certify, to ask a person to make an oath or solemn declaration.
Attest or witness the execution of a document (instrument)	Sign a legal document to verify that it has been completed according to law in your presence.
Attest or witness a signature	Sign a document to certify that it was signed by another person in your presence.
Attorney	Person who accepts the legal authority to act on another's behalf.
Declarant	Person who makes a statutory declaration.
Deponent	Person who makes an affidavit or deposition.
Donee	Person who accepts the legal authority to act on another's behalf.
Donor	Person who gives another person legal authority to act on his or her behalf.
Execute	Carry out, perform, make (legal instrument) valid by signing.
Grantee	Person who accepts the legal authority to act on another's behalf.
Grantor	Person who grants to another person the legal authority to act on his or her behalf.
Instrument	Legal document such as a will, a mortgage or power of attorney.
Jurat	Memorandum at the end of the document stating the place, date and person before whom an document is made.
Public Notary (or Notary Public)	Witness for overseas documents, particularly those for use in non-Commonwealth countries (may be likened to an international J.P.).
Signatory	Person who signs a document or declaration.
Statutory declaration	Written statement made in the form prescribed by section 25 of the <i>Oaths Act 1936</i> .
Revoke	Withdraw or cancel.

Checklist

- 1 What type is the document?
- 2 Do you have authority to witness the document?
- 3 Is it correctly completed?
- 4 Are there special requirements?
- 5 Who signs the document?
- 6 What is the legal age for making a document?
- 7 Can a child make a document?
- 8 Does the person understand what he or she is doing?
- 9 Is the person signing of his or her free will?
- 10 Can you read the document to check for false material?
- 11 Dates on the document
- 12 Are there any alterations, blank spaces or erasure marks on the document?
- 13 Are all the questions answered?
- 14 Are there any exhibits, annexures or attachments?
- 15 Ensure the document is signed in your presence
- 16 When do you sign and add your J.P. details

