

4.1 Witnessing documents – general procedure

What types of documents am I authorised to witness?

As a JP or Cdec you have the authority to witness any lawful document, from commercial contracts to powers of attorney. While it is not possible for this handbook to provide a procedure for every document you have the power to witness, generally you have the power to take an affidavit or declaration, attest the execution of documents, and certify copies of documents. If you are a JP you are also able to issue warrants and summonses.

If you are asked to witness a document that is unfamiliar to you, you should satisfy yourself you are authorised by an Act or law to sign it. You can do this by:

- checking the document itself (most indicate at the top the Act under which it is ‘attested’)
- asking the person producing the document to name the Act (it is this person’s responsibility, not yours, to name the authorising Act and, if necessary, to produce a copy so you can be sure its witnessing by a JP or Cdec, is authorised)
- contact us to seek further advice.

If you have any doubt about your authority to witness the document, you should decline to do so and provide your reasons to the signatory. You may wish to refer the person to another JP or Cdec who is more familiar with the procedure or document in question.

You should make yourself familiar with some of the most relevant legislation, such as:

- section 29 of the *Justices of the Peace and Commissioners for Declarations Act 1991*, which gives a general description of JP and Cdec powers
- part 4 of the *Oaths Act 1867*, which deals with affidavits and statutory declarations
- chapter 3, part 4 of the *Powers of Attorney Act 1998*, which deals with making enduring documents (e.g. an enduring power of attorney and an advance health directive)
- section 162 of the *Land Title Act 1994*, which deals with witnessing obligations when executing a Titles Registry form.

Why must some documents be witnessed?

Having a document witnessed is a way of establishing the signature is authentic, and with a JP or Cdec as the witness, the document has higher legal standing. Should the matter be disputed, you can be contacted to confirm the correct process was followed.

Certain documents are required by law to be witnessed by a JP or Cdec to encourage the honesty of the signatory (the person who signs the document). In some cases, the process will require an oath or affirmation to be administered prior to the document being signed. Some documents include an oath or affirmation that all the information given in the document is ‘true and correct’.

How do I witness a document?

You need to develop a general procedure that suits you, which is vital for three reasons:


- Following a set procedure will ensure you carry out your duties correctly.
- If people use your services frequently, before long you will have witnessed thousands of signatures. Occasionally, you may be called upon by a court or receiving agency to verify a particular incident. Unless the incident occurred recently, you are unlikely to recall the particulars.
- Sticking faithfully to your standard procedure gives you confidence to make an affirmation or swear an oath in court to the process you follow consistently. This can be particularly important if you don't recall the occasion in question.

You may wish to adopt the general procedure suggested here or use it as a basis for developing your own.

The general procedure you follow can be broken down into steps. If you deal with each in turn, you can cover everything and leave nothing to chance.

General witnessing steps

1. Take reasonable steps to identify the signatory. You have statutory obligations when witnessing a statutory declaration, affidavit or Titles Registry forms to verify the identity of the signatory. Enter their name and the type of identification sighted in your logbook.

 **Note:** You can only request – not demand – proof of identity unless it is a requirement of the document or Act the document is being witnessed under, or you have sufficient grounds to doubt the signatory's identity.

2. Check the document to find out what type it is.

If it is a document you have not seen before, explain this to the person and examine it closely such as:


- Is the document authorised by an Act or law? Look at the top of the document for the name of the Act or law. If the document is from a government agency, it will have the agency's details on the form.
- Do you have the authority to witness it? A document usually carries instructions about who has the authority to witness its signing. If you are of the opinion you do not have the authority, explain this to the person (international documents, for example, usually have to be witnessed by a notary public, consular or embassy official).

3. Check if the document lists any special requirements, such as:


- Your personal knowledge of the signatory's identity for a stated period of time or particular types of proof of their identity. If so, ensure these are met before you sign.
- If an oath or affirmation is required, you should administer it at the very start.

4. Confirm the document is in the correct format or on the approved form.


- If the document is an affidavit or statutory declaration, check it includes the required statements. If it does not, ask the signatory to write them on the document as outlined in chapters 4.2 and 4.7.
- Check the signatory is the person named on or in the document. On most occasions, it is not acceptable for one person to sign on behalf of another, but there are some exceptions. Statutory declarations and affidavits can be signed by a substitute signatory in certain circumstances as outlined in chapters 4.2 and 4.7.

 **Note:** You should decline to witness a document where the form of oath, affirmation or declaration is not substantially in the correct format or the format is not authorised by law.


5. Check the signatory understands the contents of the document and is making the document freely and voluntarily.

 **Note:** If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily decline to witness the document and explain why.

6. If the date of the document is given in more than one place (e.g. at the beginning as well as where it is signed) check it is correct wherever it appears. The date of the document must always be the same as the date it is signed and witnessed. Do not witness a document with the incorrect date as this may invalidate the document at a later time.
7. Check the contents of the document for:
 - Any alterations, spaces or omissions, all of which should be initialled by both you and the signatory. Remember to check and initial any places where correction fluids or tapes have been used over any text.
 - Unanswered questions. Ask the signatory to cross them out or complete them. Ensure both you and the signatory initial them.


 **Note:** A signatory may withhold information in a document, such as an address or other personal details, if they have concerns it may jeopardise their safety if disclosed to another party. This information will be supplied to the receiving agency or court at the time of lodgement.
8. If you have knowledge the material in the document is false, you should decline to witness it. Remember you may not refuse to witness a document simply because you do not agree with the contents or the law under which the document is made.
9. Check any annexures (or attachments) to the document. Annexures are usually information supporting and referred to in the main document as outlined in chapters 4.2, 4.7 and 4.8.
10. Warn the signatory, at the outset, for making a false statement under oath, affirmation or declaration. Explain that if information in the document is found to be untruthful, the signatory commits an offence. Ensure the signatory understands that making an oath, affirmation or declaration is a solemn matter.
11. If you have not already done so, administer the oath, affirmation or declaration as required. The taking of these is outlined in chapters 4.2 and 4.6.
12. Ensure the document is signed in front of you. You are witnessing a signature, not someone telling you the signature on a document is theirs. If someone approaches you with a document already signed, ask them to cross out through the one already there and sign the document again. Ensure both you and the signatory initial the alteration to the unwitnessed signature.
13. Once the signatory has signed in the appropriate place on the document, you should immediately sign your name, affix your seal of office and insert your registration number. If there is more than one signature required on the document, you should witness each one in turn.


Affidavits, statutory declarations and Titles Registry forms require you to print your full name on the document. This means you must insert your entire name (including any given names), not just your initials, on these documents.

 **Note:** If you do not provide your full name, we may disclose your name to relevant third parties in order to verify the validity of the document(s) you witnessed or certified.

Place your seal of office close to your signature, either immediately beneath or beside it. Do not place the seal over your signature or sign over your seal. Be careful with the application of your seal of office to avoid obliterating other information on the document.

The prescribed mark of office of your title is either Justice of the Peace (Qualified) – abbreviated to ‘JP (Qual)’ – or Commissioner for Declarations – abbreviated to ‘Cdec’. You can use this mark of office if you do not have your seal of office with you when you witness the document.


 **Note:** As a JP you must apply your seal of office and registration number when issuing a warrant, complaint and summons or to constitute a court as outlined in the chapters in section 5.

 **Note:** A JP (Cdec) does not have a seal of office or a registration number.

Section 31 of the *Justices of the Peace and Commissioners for Declarations Act 1991* provides information regarding your seal of office and the prescribed mark of office for JPs and Cdecs.

(4) The prescribed mark of office of each office specified in the first column of the following table is the mark specified in the second column opposite the office.

<i>the office of justice of the peace preserved by section 41 or held under section 19(1)</i>	<i>“Justice of the Peace” or “J.P”</i>
<i>justice of the peace (magistrates court)</i>	<i>“Justice of the Peace (Magistrates Court)” or “J.P (Magistrates Court)” or “J.P (Mag Crt.)”</i>
<i>justice of the peace (qualified)</i>	<i>“Justice of the Peace (Qualified)” or “J.P (Qualified)” or “J.P (Qual.)”</i>
<i>justice of the peace (commissioner for declarations)</i>	<i>“Justice of the Peace (Commissioner for Declarations)” or “J.P (C.dec)”</i>
<i>commissioner for declarations</i>	<i>“Commissioner for Declarations” or “C.dec”</i>

 **Note:** Variations of no significance between an imprint or mark appearing on a document or instrument and an imprint or mark prescribed by this section are to be disregarded for the purposes of this section.

The colour of the pen used for signing documents is not prescribed by legislation but the normal colours are blue and black. Red pen can denote an error and should not be used. Non-conventional colours are not appropriate, and pencils should never be used because the signatures can be erased at any time. Use a ball-point, fine felt-tipped or fountain pen.

It is accepted practice for the seals of office of the three levels of JP to use three different colours.


Seal of office	Accepted colour
Commissioners for Declaration	Black
Justices of the Peace (Qualified)	Red
Justices of the Peace (Magistrates Court)	Blue

As a JP or Cdec you are provided with a stamp pad in the appropriate colour when you receive your seal of office.


- Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

- Under the *Powers of Attorney Act 1998* a person (the principal) can appoint another person (the attorney) to make decisions for them. This allows the attorney to sign certain documents with their own signature for the principal. The attorney should be able to provide the power of attorney as proof of their authority to act on the principal's behalf.

 **Note:** An attorney appointed by a principal under a power of attorney or enduring power of attorney does not have the power to make an affidavit or statutory declaration for the principal – they can only sign as a substitute signatory for the person.

- You should never act on the signatory's behalf by completing a document you intend to witness. If for any reason a person is unable to complete a document themselves, your options are:
 - Assist them to complete their document or make any alterations if required. Ensure you both initial the changes. Be aware by helping in this way, you cannot then witness the document – you must refer them to another JP or Cdec to have it witnessed.
 - Refer the signatory to someone else for assistance to complete the document or make the changes prior to you witnessing it.
- Be courteous. It is your responsibility to be polite, even with difficult people. However, if a person is disrespectful, offensive, aggressive or argumentative to the point of being impossible to cope with or you feel unsafe, you may stop the process and request they leave. If this occurs, refer the person to another JP or Cdec and make a note of the interaction in your logbook.

 **Note:** If you need support following an interaction, see chapter 1.2 for information on support services available to you.

- Maintain confidentiality. The people you serve are entitled to their privacy. You will see many documents in the course of your duties, some of which are intensely private. You must respect the confidentiality of the documents you witness and the information made available to you in your official capacity. This builds the public's trust in the JP and Cdec role.
- Never witness a blank document. Always ensure a document is completed fully before you witness it. If a document contains blank spaces, ask the signatory to cross them out. Both you and the signatory initial all alterations before signing the document.

Frequently asked questions

What should I accept as proof of identity?

Unless the type of identification you are required to sight is specified on the document, this is up to you. Normally a driver licence, proof of age card, student identification or passport would be sufficient. Photographic identification is ideal, however this may not always be possible.

Do I need to write my full name on the documents I witness?


At times, you must place your full name on the document you have witnessed. For example, the *Oaths Act 1867* requires you to include your full name on an affidavit or statutory declaration. It is important when a document asks for your full name, you include your entire name, including any given names, e.g. <first name> <middle name> <last name> and not initials.

Do I need to write my address on documents I witness?

Generally, there is no requirement for you to place your personal address on documents you witness. If the document requires it, you can provide the address of Justices of the Peace Branch as outlined in chapter 1.2.

Can I decline to witness a document?

If you decline to witness a document, you should explain your reasons for refusal to the person requesting your services and note your reasons in your logbook.

 **Note:** Remember you cannot refuse to witness a document simply because you do not agree with the contents or the law under which the document is administered.

What if the signatory doesn't want me to peruse the document?

Explain you are required to check if there are any alterations or omissions or if the document includes any unanswered questions. Tell them you will treat the contents as confidential.

If the signatory remains firm on you not perusing the document, ask them to look through it and point out any alterations or omissions so you can both initial them. You should then witness their signature and include the following statement:

Signature only witnessed. Contents not disclosed.

Make a note in your logbook you did not view the contents of the document.

You are not responsible for the truth or accuracy of the statements made by the signatory in their document.

What if the document has more than one page?

Number each page 'page 1 of 4', 'page 2 of 4' and so on. Although placement of this on the page is not prescribed, it is normally done on the lower right-hand corner, in the same place on each page.

There is no legal requirement to sign or initial every page of all documents, excluding affidavits and Commonwealth statutory declarations. However, it is good practice to initial every page. The final page must be witnessed in the normal manner by signing your name.

Signature stamps

We do not recommend the use of signature stamps over signing by hand.

If you intend to use one, extreme caution should be exercised on every occasion, and it is your responsibility to:

- check the agency where the document is to be filed to find out if a stamped signature will be accepted
- store the signature stamp in a secure place.

What if the document is to be signed by other people?

You may only witness the signature of people who are present with you at the time of signing. If the document requires several people to sign it and not all those people are present, you should write on the document that you are only witnessing the signature of a particular person or persons e.g. *the signature of <first name> <last name> only witnessed.*

What if the title 'Justice of the Peace' is printed on the document where I am to witness it?

If you are a JP add '(Qualified)' after 'Justice of the Peace'.

If you are a Cdec, check you are an eligible witness before crossing out 'Justice of the Peace' and inserting Commissioner for Declarations. There is no need to initial these alterations.

If alternative titles are printed on the document, cross out the titles that do not apply. There is no need to initial this alteration.

Should I treat the documents I witness as confidential?

Yes. In some circumstances, the law may require you to disclose information about the document, for example, you may be called to give evidence about the matter in court.

Can I witness documents for family or friends?

To avoid potential conflicts of interest, we do not recommend witnessing documents for friends or relatives.

Doing this could raise accusations of bias which could place the document in jeopardy if it is challenged at a later time.

With some documents, such as enduring powers of attorney, legislation prohibits you from being a witness if you are related to the signatory.

Although it is not illegal for you as a JP or Cdec to witness the will of a relative or friend, you should be aware it may prohibit any benefit coming to you and/or your spouse from the will. You may wish to seek legal advice in these circumstances.

Some legislation may require the witness to have personal knowledge of the signatory (e.g. you may have had to have known the signatory for 12 months or more). This will be specified on the document.

What is a seal of office?

Your seal of office should only be used when discharging your services as a JP or Cdec. It should not be used when it is inappropriate or irrelevant to do so. It is supplied to you when you are appointed as proof of your official position.

Can I have a seal made that incorporates my registration number?

We do not recommend this, as your registration number is a unique identifying number that shows you have signed the document. You should keep your seal of office as safe as practicable.

Section 31(1)(a) of the *Justices of the Peace and Commissioners for Declarations Act 1991* requires you to insert your registration number on the impression of your seal.

Am I allowed to make copies of documents I witness for my records?

No, maintaining confidentiality of the documents you witness is paramount. You do not have any authority to request, retain, photocopy or photograph any documents you witness.

As suggested earlier, you should note in your logbook details of the documents you have witnessed, but these should be general notes.

4.1 Quick guide

Witnessing documents - general procedure

① Take reasonable steps to identify the signatory.


Check what type of document it is. Ensure:

- ②
- it is authorised by an Act or law
 - you have the authority to witness it.
-

Check if the document has any special requirements such as:

- ③
- particular types of proof of their identity
 - personal knowledge of the signatory for a particular length of time
 - is to be signed by way of oath, affirmation or declaration.
-

Confirm the document is in the correct format or on the approved form.

- ④  **Note:** If the document is an affidavit or statutory declaration check it contains the required statements.

If it doesn't contain the required statements ask the signatory to write them on the document as outlined in chapter 4.2. and 4.7.


Check the signatory:

- ⑤
- understands the content of the document
 - is making the document freely and voluntarily
 - is the person named on or in the document.
-

⑥ Confirm the date of signing the document is the same as the date on which you are witnessing it.

Check the document for any alterations, spaces or omissions.

- ⑦
- Both you and the signatory should initial any changes, including the use of correction fluid or tape.
 - Ask the signatory to cross out or complete any unanswered questions. Ensure both you and the signatory initial them.

 **Note:** A signatory may withhold certain information in the document and provide it to the court or receiving agency at the time of lodgement.

⑧ Decline to witness the document if you know the content is false.

⑨ Check any annexures or attachments to the document.

⑩ Warn the signatory there may be penalties for making a false statement.

⑪ Administer the oath, affirmation or declaration.

⑫ Ask the signatory to sign the document in front of you.

Witness their signature and:

- ⑬
- place your seal of office on the document beneath or beside your signature (but never over where you have signed)
 - insert your registration number
 - write your full name and location, if required.
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⑭ Record all relevant information in your logbook as outlined in chapter 2.4.
