

Handbook for Justices of the Peace

Version: 1.0



Tasmania
Explore the possibilities

Disclaimer

This is the first edition of the Handbook for Justices of the Peace developed by the Tasmanian Department of Justice for the use of Justices of the Peace in Tasmania. All reasonable care has been taken to provide accurate information. It is believed to be up to date at the time of publication on 18 December 2009. Readers should be aware that changes may be made to the law after that date. The Department of Justice will periodically review the Handbook and make updated copies available on its website.

Acknowledgments

This document is substantially based on the publication *Justice of the Peace Handbook* produced by the South Australian Attorney-General's Department.

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1. How to use this handbook

This handbook is designed to help you in your role as a Justice of the Peace (which will be referred to as JP throughout this handbook). The handbook provides information about the functions of a JP in Tasmania and provides practical information about how to undertake your duties. If you are asked to perform a duty that is not covered in this handbook and require information on how to deal with it, you can contact the Department of Justice.

Read the handbook and familiarise yourself with each section so you can easily access the information you need. The Table of Contents sets out the structure of the document so you can easily find the information you need to guide you in your duties.

If you are a new JP, you can use the handbook as a tool to help you become familiar with your tasks and as an ongoing reference tool.

2. Brief history of JP

The origin of JPs

JPs have existed since the thirteenth century. First known as Conservators of the Peace, they were responsible to the King of England for ensuring that the law was upheld. The *Justices of the Peace Act of 1361* bestowed a judicial function upon the Conservators and from then they became known as Justices.

JPs were recognised in the Australian colonies from 1788 under British law, and incorporated into Australian law by the *Australian Courts Act 1828*.

JPs in Tasmania

Today there are about 2,500 JPs in Tasmania and each year about 50 new JPs are appointed as required. There are no national JPs in Australia. Each State and Territory has its own legislation to regulate the appointment, powers and functions of JPs.

In Tasmania, the Department of Justice is responsible for the administration and processing of applications for appointment of JPs. The Governor makes the appointments on the recommendation of the Attorney General. The Department also provides information about JPs to the Tasmanian public.

The Department of Justice keeps the contact details of all JPs. Only the name, telephone number and suburb of JPs are available to the public. Contact details can be obtained by phoning the Legal Commission on 1300 366 611.

3. Obligations and Conduct of JPs

Appointment obligations and conditions

JPs are appointed by the Governor of Tasmania under the *Justices Act 1959*. This Act sets out the powers and duties of JPs.

Once you are appointed a JP you are appointed for life, or for as long as you reside in Tasmania, or do not breach the code of conduct and are not declared bankrupt. You may resign as a JP by writing to the Attorney General who will recommend to the Governor that your resignation be accepted.

Once you become a JP your name, suburb and telephone number at which people can contact you will be available to the public. You must use your identification number, which is given to you when you are appointed as a JP, each time you perform JP duties. If the public wants to check the identification number of a JP or to verify that a person is indeed a JP, they can contact the Department of Justice.

Ex officio appointments

Some people are appointed as a JP by virtue of their office, for example a Mayor. These are called ex officio appointments and their status as a JP ceases when they no longer hold office.

The judicial oath

After appointment, and before performing any of the functions of a JP, you are required by section 5 of the *Justices Act 1959* to take the judicial oath. In taking the oath you swear that you will “faithfully execute the office of Justice of the Peace and do equal right and justice to all persons to the best of your judgment and ability according to law”.

The use of JP title

You should use the initials ‘JP’ only when carrying out the official functions of a JP. You should not use your status or title as a JP for private or business interest; for example, on business stationery, cards and letters, business advertisements or business signage.

This is so the standing of this public office is not diminished. However, you may put the initials ‘JP’ following your name in the phonebook.

Change of contact details

If at any stage of your term of office as a JP your name, address or other contact details change, you must notify the Department of Justice in writing.

Protection of JPs in the execution of their office

As long as JPs act justly and fairly and without malice you are protected against criminal or civil proceedings for any mistakes you may make or any erroneous decision you may give. Generally, you are only liable if you act corruptly (for example, by accepting bribes).

Ethical issues

It is critical that you maintain the integrity of the office of a JP by:

- acting impartially without bias or prejudice
- guarding against conveying an impression of holding a position of influence
- not giving legal advice (even if you are legally trained)
- not accepting gifts of money or kind in the performance of judicial or administrative duties

- maintaining strict confidentiality.

Code of Conduct

JPs are bound by the *Code of Conduct for Justices (TAS)*. This Code sets out the standards JPs in Tasmania are expected to uphold.

The *Code of Conduct for Justices* can be found at the back of this handbook.

Professional development

Justice of the Peace Associations occasionally hold seminars on different aspects of the legal system, e.g. on the introduction of new legislation. As a member of these associations, you will be advised of dates and topics of these seminars. Further information on joining these associations is provided in the Resources section of this handbook.

Further assistance

Officers of the Human Resources Branch of the Department of Justice are available to provide assistance for appointment and administrative matters. Officers can be contacted via email: jp@justice.tas.gov.au.

Magistrate Court Registry Managers are also available to assist you in performing your duties. The Court website at www.magistratescourt.tas.gov.au has contact details for each Court Registry and also contains useful information about court procedural matters.

Common questions

Can I transfer my appointment to another state?

No. JPs are appointed under different Acts in each State and Territory. If you move interstate, and are interested in being a JP, you can enquire at the Justice of the Peace Office of that State. You must also resign from your position in Tasmania in writing.

Am I exempt from jury duty?

No, you are not exempt because you are a JP. Only Bench Justices who perform bench duties are exempt.

Must I disclose my contact details to the Department of Justice?

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 JP 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.

Can I decline to exercise my powers as a JP?

Yes, there may be occasions where it is personally inconvenient or inappropriate, for example where a relative or friend is involved in the matters being dealt with.

4. JPs and the justice system

JPs have become an increasingly vital part of the justice system in Australia. JPs perform a range of administrative duties that are intertwined with the structures and process of the justice system.

Separation of Powers

The Separation of Powers doctrine says that the three arms of Government – legislative, executive and judicial – should be kept separate so power is not concentrated in any one arm. Each arm checks and balances the others.

It is important for JPs to be aware of the Separation of Powers because their duties can straddle across the administrative and judicial divide. The requirements on each side vary and are mostly prescribed by relevant legislation.

While this is a greater risk for Bench Justices, this could still occur with JPs. For example, a JP could issue a search warrant to a police officer (an executive or administrative duty) and later be asked to witness an affidavit for another party in the same case (a judicial duty).

Legislation

It is important that JPs are familiar with the following legislation, which can be found at www.thelaw.tas.gov.au.

- **Justices Act 1959 (TAS)**
This sets out the obligations, powers and duties of JPs in Tasmania.
- **Justices Rules 2003 (TAS)**
This is important subordinate legislation that sets out the practice and procedural matters relating to the appointment and activities of JPs.
- **Oaths Act 2001 (TAS)**
This deals with one of the fundamental duties of JPs – the administration of oaths and affirmations in affidavits. It regulates how the oath or affirmation is to be taken. Further information on how to administer an oath is provided in the section 7 of this handbook.
- **Search Warrants Act 1997 (TAS)**
You may be asked by a Police Officer to issue a search warrant so it is important that you are familiar with this Act.

Difference between JPs and Bench Justices

JPs hold office under the *Justices Act 1959* to perform a range of administrative duties, primarily relating to the witnessing of documents. The Chief Magistrate may call on JPs who have completed a special course to perform particular Bench duties, such as hearing and dealing with certain proceedings in the Magistrates Court in Tasmania. Bench Justices are drawn from a pool of JPs appointed by the Chief Magistrate.

JPs who go on to be Bench Justices should also have a more detailed knowledge of the structures and processes of the justice system. They should be familiar with the division of power between the States and Commonwealth, the separation of powers among various arms of government, how laws are made, the hierarchy of the courts, and the operation of the concept of precedent within the courts. This information can be found at the Department of Justice website at:

www.justice.tas.gov.au/justice/justices_of_the_peace.

Notaries Public

JPs are not Notaries Public. If you are asked to undertake duties as a Notary you must decline, as it is not within your capacity as a JP.

A Notary Public is an officer of the law whose function is somewhat like that of an International Justice of the Peace. Notaries are appointed by the Supreme Court Tasmania under the provisions of the *Notaries Public Act 1990 (TAS)*; prior to this Act, they were an historical appointment by the Archbishop of Canterbury.

All Notaries Public in Tasmania are (or have been) senior lawyers. Their most common function is notarising documents, or completing Notarial Certificates of documents that are required in foreign countries. Each Notary has an official Notarial seal and this is unique to each Notary. A list of Notaries may be found in the Yellow Pages.

5. Main role and duties of JPs

Main role and duties

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

- witnessing documents;
- taking an affidavit for use in court;
- taking a statutory declaration; and
- certifying a true copy of an original document.

Other functions you will perform less frequently are:

- witnessing wills;
- witnessing applications for probate;
- witnessing applications for Letters of Administration;
- witnessing enduring power of attorney;
- witnessing Family Law documents;
- witnessing applications under the *Family Violence Act 2004 (TAS)*;
- witnessing applications for restraint orders;
- certifying a person's identity;
- issuing search warrants;
- making and issuing complaints;
- issuing witness summonses; and
- attending juvenile interviews.

Further information on how to perform all these duties is provided in this handbook.

6. Witnessing

Although there are many documents that can be signed by a witness with no specific qualifications, JPs are often called upon to carry out this duty. This is probably because of the regard in which JPs are held and the belief that their witness may carry more weight.

It is a good idea to follow 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.

It is also a good idea to keep diary notes of when you have performed your duties as a JP. Particularly in cases where you may have concerns, noting them in your diary helps you to recall the events if you are later called upon to do so.

Below is a guide to proper witnessing, with a suggested procedure. You may wish to use it as a basis for your own procedure, 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, although sometimes the person seeking your JP services will bring along special instructions from a solicitor, agency or department that produced the document.

Making the appointment

Although many JPs 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 JP 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 include your local community centre, council chambers or public library that has a meeting or discussion room. Most councils offer, on a roster system, a JP service to the public.

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

When making the appointment it is a good idea to determine what type of document you will be witnessing so you can both be prepared, and so you can allow sufficient time for the appointment.

Witnessing procedure

1. Identify the person

When witnessing it is necessary that the person identifies himself or herself as the person signing the document by providing a drivers licence or other form of identification.

2. What type is the document?

Some documents you will be required to witness are straightforward while others will be more complex. Further information on witnessing specific types of documents such as affidavits is provided in this handbook.

3. Do you have authority to witness this document?

You have authority to witness documents that list JPs as authorised witnesses. This may be stated in the 'witness' section of the document. Other legally authorised witnesses for some purposes are lawyers, police officers empowered by statute to administer oaths, commissioners for taking affidavits in the Supreme Court and Notaries Public. To ensure you are an authorised person, check that the document lists a JP as an authorised witness.

There are some documents that you may not witness a signature for. Overseas documents require other official witnesses, such as a Notary Public. Documents from other countries or 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 JP is an authorised witness. In most cases, the country where the document will be used will *not* accept a JP 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 person signing a document, and hear the person declare that the document is true and correct; or to ask the person to take an oath or affirmation that the contents of the document are true and correct. 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 content in it; in other words that is blank. Further information on affidavits and statutory declarations is provided in the Affidavit and Statutory Declaration sections of this handbook.

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 JP, but just as an adult witness. These are some examples:

- 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 the instructions on the document or the Act or department that creates the document. You can find Tasmanian Acts at www.thelaw.tas.gov.au or you can purchase them from Service Tasmania Offices. If still in doubt, refer the person to a legal centre or the Department of Justice (further information is provided in the Information and Referral contacts section of this handbook).

4. 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.

5. 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. This handbook also provides information about the specific requirements for witnessing a statutory declaration, an affidavit and enduring power of attorney. Special requirements for witnessing a document can also be found in the Act that governs when or how the document is to be used.

6. 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.

7. 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 document to be witnessed for the purposes of an insurance claim. 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, check instructions on the document or the Act that governs the document.

8. 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.

9. Does the person understand what they are doing?

Before witnessing a person's signature to a document, always ask if they have read the document and fully understand what they are signing. Only a person who is able to understand what they are doing can make a valid legal document.

A JP 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. Further information and suggestions about what questions to ask are provided in the Witnessing Enduring Power of Attorney section of this handbook.

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

- give inappropriate answers;
- have difficulty answering questions or have memory lapses during the conversation; or
- have a restricted vocabulary.

However, 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 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 they cannot understand the document. They may fully understand it if it is read to them.

Equally, an ability to read does not mean a person can understand a complicated legal document. You may rely on a letter from the person's doctor stating that they have the capacity to understand.

If you have resolved any initial doubts about the person's capacity to understand, 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. However, if you still have doubts, do not witness the document and explain your position to the person.

10. Is the person signing of their own free will?

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

If you have any doubts about the person being under duress or pressured to sign the document, do not witness it until you are satisfied that the person is signing of their own free will. If you continue to have doubts, 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.

11. Should you read the document to check for false material?

No, as a JP you are not expected to check the content of 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. However if the document is a Search Warrant you must read it and be satisfied that it should be issued, see Part II of this guide for further information.

12. Is the document dated correctly?

The date the document is signed must be the same as the date it is witnessed. 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 a document to sign it separately on different dates and before different authorised witnesses.

13. Are there any alterations or blank spaces or erasure marks in the document?

All alterations (including those made with 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.

14. Are all the questions answered?

If they are not, ask the person to answer them. If a question is irrelevant, ask them to cross it out or write 'not applicable' next to it. Both you and the signatory must initial and date any crossing out.

15. 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 these attachments. Each of these attachments must be identified in the main document:

- annexures are usually marked with consecutive numbers or letters of the alphabet: for example, annexure A, annexure B
- exhibits to an affidavit are usually marked with the initials of the person making the affidavit and a consecutive number: for example, PM1, PM2.

Make sure each attachment is presented, marked and identified correctly. The date on each attachment should be the same as the date the document is witnessed. The name and date of the main document should be included in the attachment.

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 JP

Signature of Deponent

[Your full name, JP initials, JP number and the words: "Justice of the Peace"]

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...' and so on.

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

16. 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 a fresh in your presence. Both you and the signatory must initial and date the crossing-out.

If there are attachments to the document (see 15 above), 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.

17. When to sign and add your JP details

After the person has signed the document in your presence, you witness by signing and dating the document.

Clearly print your full name JP initials and identification number. Underneath or next to your signature write the words, "A Justice of the Peace". 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.

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.

You may be asked to sign documents with red seals or rubber stamps with the word "seal" included attached to the jurat (the memorandum at the end of the document stating the place, date and person before whom a document is made). You should ask the person to identify the seal alongside their signature as their seal, or confirm that they are authorised to apply the seal on behalf of a company or organisation. You should then sign in the place provided.

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. Note however that there are different requirements if you are requested to approve a Search Warrant.

How do I witness multiple-page documents?

Ask the person to number each page '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.

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 JP stamp?

You may decide to have a stamp made up with your name and identification number, although this is not necessary. They can be made at most stationers. You might have two stamps: a general one, and a certifying one.

The general stamp must have your full name, the initials JP, your identification number, and the words "Justice of the Peace" underneath your name.

Here is an example of a general stamp:

John Michael Smith, JP # 1234

Justice of the Peace

Here is an example of a certifying stamp:

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.
If you use the certifying stamp, use your general one after it.
Place your signature near your stamps (but not over them).

What type of proof of identify is suitable?

This is entirely up to you, unless it is specified on the document or in an Act 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?

You should not both 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. Refer them to another JP.

7. Affidavits

What is an affidavit?

An affidavit is a written statement, made on oath or affirmation, and is used as evidence in court proceedings. Affidavits are the main documents where as a JP you administer an oath or affirmation.

The person making the affidavit swears or affirms in your presence that they made the statement and that the statement is true to the best of their knowledge and belief.

An affidavit is the written equivalent of the oath or affirmation that a person takes when giving evidence in a court of law; it has the same legal consequences; and it may be used as evidence in court proceedings.

A person lying under oath or affirmation (whether orally in court or in writing in an affidavit) is committing perjury.

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, so you should make sure they understand the difference between the truth and a lie before asking them to sign. The same might apply for some intellectually disabled people. If you come across such a situation, do not witness 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 get affidavits?

Usually someone will bring you an affidavit that either they or their legal representative have prepared.

They will ask you to administer the oath or affirmation, and complete the jurat or the signing clause at the foot of the affidavit.

What are oaths and affirmations?

These are legally binding promises that the person is telling the truth:

- an oath is a promise to God, and someone making this promise is called a deponent; and
- an affirmation is a promise to the court, and it is an alternative to an oath for people who object to taking an oath for religious or conscientious reasons. Someone making this promise is called an affirmant.

People are free to choose an oath or an affirmation and they do not need to give you a reason for this choice.

The main purpose of an oath or affirmation is to emphasise the seriousness of the requirement that the information contained in the sworn or affirmed document is the truth.

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

You may only administer oaths or affirmations if the person is located within Tasmania at the time of the swearing.

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.....

thisday of.....20....

Before me

.....
Signature of JP

[Your full name, JP initials, JP number and the words:
Justice of the Peace]

An affidavit taken on affirmation

The document starts with these words:

I, [full name, address and occupation of affiant], do solemnly and sincerely declare and affirm:
The person's statement follows and at the end of the document is the jurat with these words:

Affirmed atby.....
this..day of.....20....

Before me

.....
Signature of JP

[Your full name, JP initials, JP number and the words:
Justice of the Peace]

If a person refuses to take an oath or affirmation

If the person refuses to take an oath or affirmation by arguing that their religion forbids them from doing so, or by saying they would rather merely state "it is true" or words to that effect, then you should advise that you are unable to sign the document. Suggest that the person seeks legal advice.

Preparation

Before taking an affidavit, refer to the Witnessing section of this handbook.

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 the book he regards sacred in his hand and ask:

Have you read and understood the contents of your affidavit?

The reply should be "Yes".

Do you swear that the content of this affidavit is true to the best of your knowledge, and belief "So Help You God"?

The reply should be: "*I swear*" or "*I do*".

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;
- sign and date any and each attachment; and
- write down the location where the affidavit is taken and the date.

How to administer an affirmation

To administer an affirmation you ask the person:

Have you read and understood the contents of your affidavit?

The reply should be "Yes".

Do you solemnly and sincerely declare and affirm that the content of this affidavit is true to the best of your knowledge, information and belief? If this is the case please respond with the words "I Affirm".

The reply should be "*I affirm*".

Make sure you hear this response before you follow the same process as for an oath. At the end of the document (in the jurat) cross out and replace the word 'sworn' with the word 'affirmed'.

Affidavit by more than one person

If there is more than one deponent to an affidavit, they may both swear the affidavit as long as the jurat has been prepared for this case as follows:

Sworn by the above named Deponent

John Smith

At.....(town/city)...in Tasmania

On theday of.....20....

Before me

.....
Signature of Deponent

.....
[your full name, JP initials, JP number and the words:

Justice of the Peace

Sworn by the above named Deponent

Betty Smith

At.....(town/city)...in Tasmania

On theday of.....20....

Before me

.....
Signature of Deponent

.....
[Your full name, JP initials, JP number and the words "Justice of the Peace"]

The deponents or affirmants can come to you at different time, or they can go to two (or more) different JPs, as long as the jurat allows the recording of the location and date of each swearing. When one party wants to swear and the other wants to affirm the affidavit, separate affidavits are necessary.

Annexure to affidavits

If there are attachments or annexures to the affidavit, check that they are all attached, and that each separate annexure has these words on their first page:

This is page.... and the following.....pages are Annexure "A" / "B" (etc)

referred to in the affidavit of (Name of deponent)

Sworn/Affirmed before me

This day of.....20...

.....
Signature of JP

.....
Signature of Deponent

[Your full name, JP initials, JP number and the words: "Justice of the Peace"]

You should initial each page of the annexure. This prevents any substitution later on. Should you be called to Court to testify to the document, it is easy to check initials on each page of annexure.

Illiterate or blind deponents

Where the deponent is either illiterate or blind, you should read the contents of the affidavit to them and be sure they understand it and agree with the contents.

The person then makes their signature or mark. You must note on the jurat that you have followed this procedure with these words:

As the deponent is unable to read/or is blind, I have read this affidavit to him/her

and he/she has stated that he/she knew of, understood and approved of the contents of the affidavit and the deponent then signed this affidavit.

Sworn/Affirmed by the above named Deponent

at..... (town/city)...in Tasmania

.....

On theday of.....20....
Before me

Signature of Deponent

.....

Signature of JP

[Your full name, JP initials, JP number and the words:
Justice of the Peace]

Competence of deponent

You may be advised, or you may form the opinion, that the person is not competent to take an oath.

In this case, the affidavit is only allowed if you tell the person that it is important to tell the truth, and that the person declares that the affidavit does not contain any lies.

If you feel the person does not understand the difference between the truth and a lie, or is not able to respond rationally to your questions, then the affidavit is not allowed.

Deponent unable to write or illiterate

If the deponent is unable to write because of illiteracy or a physical disability, add the following words to the jurat before the oath or affirmation is administered:

The deponent, being unable to write, made his mark upon the affidavit in my presence.

Sworn/Affirmed by the above named Deponent

at..... (town/city)...in Tasmania

On theday of.....20....

His/ Her Mark

Before me

.....

[Your full name, JP initials, JP number and the words:

Justice of the Peace]

Affidavits pre-signed by the deponent

If an affidavit is presented to you already signed, it is still acceptable because the person will be stating (when he takes the oath or affidavit) that this is their true name and their handwriting (they should point to their signature to indicate this).

However, a blank document of any form should never be signed until completed.

Affidavits by non-English speaking persons

Where a person is not sufficiently conversant with English to be able to swear or affirm an affidavit in this language, and it is desired to file the affidavit in another language, the following procedures should be followed:

- the deponent should swear the affidavit in their language;
- the affidavit should be translated by a suitably qualified interpreter;
- the interpreter shall swear an affidavit setting out their qualifications and verifying the translation;
- the translation and the affidavit in the foreign language shall be exhibited to the affidavit by the interpreter; and
- the three documents shall be filed together.

Signing the affidavit

When you sign the jurat at the end of the affidavit, it is important to indicate whether the document was 'sworn' or 'affirmed'.

If the word 'affirmed' is not included and it was affirmed, you must insert in the jurat 'affirmed' and cross out and initial the word 'sworn'.

It may also be necessary in the body of the affidavit to correct 'make oath and say' to 'solemnly and sincerely declare and affirm' and initial this change.

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 JP regardless of your own beliefs.

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.

JPs are only authorised to administer oaths and affirmations for use in court proceedings so you can also refuse to administer an oath or affirmation if it is for any other purpose.

Should I read the affidavit?

It is not necessary to read the affidavit. However, you should ask the person if *they* have read it and if it is true and correct. Note however that there are different requirements if you are requested to approve a Search Warrant.

What if corrections have been made to the document?

If an error has been corrected in the document get the deponent to initial the correction in the margin. You must also initial the correction.

8. Statutory Declarations

What is a statutory declaration?

A statutory declaration is a written statement in which the person (called a declarant) 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 JP is authorised to take a statutory declaration.

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 a Traffic Infringement Notice for running a red light asserts that someone else was driving the car at the time, they can send a statutory declaration to the police stating who was driving. Police then rely on this information to issue a Traffic Infringement Notice to that other person.

Insurance companies, banks, educational institutions, employers, clubs, government departments and other organisations often require information to be provided in the form of a statutory declaration.

While statutory declarations are much less complex than affidavits they still carry a serious penalty for a false declaration.

Where can people get a statutory declaration?

Blank statutory declaration forms are available from most post offices, Service Tasmania offices and the local Magistrates Court 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.

Tasmanian statutory declaration

There are different versions of statutory declarations, but those made for a purpose under Tasmanian law must be in the form set out in section 14 of the *Oaths Act 2001 (TAS)*.

This is an example of a statutory declaration:

I, (insert name, place of abode and occupation)

do solemnly and sincerely declare that..... (state the facts).

I make this solemn declaration under the Oaths Act 2001

.....(signed by the declarant)

At.....(place)

On.....the.....day of 20.....

.....before me.

(Justice, Commissioner for Declarations or authorised person)

Commonwealth statutory declaration

A statutory declaration made for a purpose under Commonwealth law begins with the same words as a declaration under Tasmanian law. It must be in the form prescribed by section 8 of the *Statutory Declaration Act 1959 (Commonwealth)*.

The only difference between State and Commonwealth statutory declarations is the closing clauses. A Commonwealth declaration ends with these words:

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

The rest of the form is the same as the Tasmanian one. You should follow the same procedure as for Tasmanian declarations.

How to witness a statutory declaration

Before taking a statutory declaration, refer to the Witnessing section of this handbook, paying particular attention to points 8 to 16.

Then ask the declarant:

Do you solemnly and sincerely declare that the contents of this document 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 response 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; and
- complete and sign the part that starts 'Declared atbefore me' as in points 16 and 17 of the Witnessing section of this handbook.

Never sign a blank form. If a statutory declaration doesn't take up a full page, it is good practice to rule a diagonal line across the remainder of the page before you sign it to ensure nothing is added later on.

Common questions

What if the statutory declaration is pre-signed?

You should ask the declarant to sign again.

What if I have suspicions the declaration is untrue?

Even if you are suspicious that a declaration is untrue, you do not have the power to refuse to sign it. However, make a note of your suspicions for future reference in case it should be needed.

9. Certifying documents

What are certified copies?

Often people or organisations need documented proof of a degree parchment, identification or other documents. For instance, a person wishing to be registered as a legal practitioner, doctor or dentist needs to provide proof that a university has awarded them 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 a true copy. A JP can certify that the copy is a true copy.

How to certify a copy

- 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 it has not been altered.
- Certify the document using these words:

I certify that this is a true and correct copy of the original document sighted by me atthis.....day of20....

Signature of JP

[Your full name, JP initials, JP number and the words: “Justice of the Peace”]

These are the standard words used for certifying copies and many JPs have a stamp made to use every time they certify a document.

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. You must then check each photocopied page. You must then:

- Sign or initial every page.
- Number each page of the copy ‘page 1 of 40, page 2 of 40’.
- Certify the last page with these words:

I certify that this [write number of page]-page document, each page of which I have numbered and signed or initialled, is a true and correct copy of the original [write number of pages]-page document sighted by me atthis.....day of20....

Signature of JP

[Your full name, JP initials, JP number and the words: “Justice of the Peace”]

Certifying copies of documents in other languages

You may be asked to certify documents written in languages 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.

Then follow the procedure given above.

10. Other types of documents a JP may be required to witness

Witnessing wills

Although there is no legal requirement for a JP to witness a will, you will often be called upon to do so. Great care should be taken to correctly perform this task as there can be serious repercussions if the correct procedure is not followed.

The *Wills Act 2008 (TAS)* sets out the necessary requirements for wills.

It is important that you do not provide legal advice about a will.

If questions do arise, it is strongly suggested that you recommend that the person seek formal legal advice about the will or surrounding issues. In fact it is preferable (if circumstances permit) that you recommend that the person making the will (called a testator) arrange for a legal practitioner to witness the signing of the will (called the execution of the will).

However, if the person insists on having the will executed and witnessed in the presence of the JP, there are some important aspects of signing a will you must follow.

- You cannot act alone when witnessing a will. There must be two witnesses who (together with the testator), all sign in each others' presence.
- Witnesses must not be beneficiaries in the will.
- The testator must indicate that the signature is theirs and that it is their will.
- Importantly, the testator must sign the will in the presence of both witnesses. Pre-signing is not permissible and could in fact invalidate the will if it is later challenged.
- You must ensure the will is dated. This is extremely important.
- If there have been any changes or amendments made to the will, the testator and both witnesses must initial each and every change *before* the final signing of the will.
- Each page of the will must be signed by both witnesses and the testator. You should also print their name under their signature, and insert your identification number. These identification details are required if the validity of the will is ever questioned in subsequent legal proceedings. The addresses of the witnesses must also be shown under their signatures on the last page in case they are required later for verification.
- There is no requirement for the contents of the will to be revealed to the witnesses.

Witnessing applications for probate

When a person dies it may be necessary for the executors of the estate to apply for probate. Probate is a document issued by the Supreme Court certifying that a will has been proved as valid, and authorising the executor named in the will to administer the estate. An executor may approach a JP to witness an application for probate. The role of the JP is simply to witness the signature on the application for probate and not to guarantee the validity or otherwise of the will or the signatures on it. In this case the JP must administer the Executor's Oath and concurrently sign and witness the executor's signature on the will. The Executor's Oath can be found at the Supreme Court website www.supremecourt.tas.gov.au.

You must ensure (in addition to the normal requirements for executing an affidavit and marking an exhibit or annexure) that the jurat clause in the affidavit is signed.

You and the Executor must both sign the exhibit clause on the will. You should also print your name under your signature, and insert your JP identification number. These details are required in the event that the validity of the witnessing is ever questioned in subsequent legal proceedings.

Witnessing applications for letters of administration

If, for any number of reasons, there is no executor for an estate to apply for probate, then an application must be made to the Supreme Court for a grant of letters of administration. The granting of letters of administration means that an administrator is appointed to deal with and finalise the estate.

This is normally done by a solicitor but as a JP you may be asked to witness a letter of administration. As with applications for probate, letters of administration require that the person takes an oath. There may or may not be a will attached, depending on the particular circumstances. The Administrator is also required to sign a bond to ensure that they deal with the estate according to the law and this must be witnessed by the same person who administered the Administrator's Oath.

As with the administration of any other oath, you must sign the documents and print your name under your signature, and insert your JP identification number. These identification details are required in the event that the validity of the witnessing is ever questioned in subsequent legal proceedings.

Witnessing enduring power of attorney

As a JP you may be asked to witness an enduring power of attorney. Enduring power of attorney is a system established by the *Guardianship and Administration Act 1995 (TAS)* to protect the interests of people who are not able to make reasoned decisions for themselves.

While someone still has the capacity to make decisions, through an enduring power of attorney they can appoint another person (or persons) to manage their property and financial affairs in the future event that they lose their capacity for decision making.

The person 'giving' the power is referred to as the donor; the person 'accepting' the power is the donee.

Enduring power of attorney is granted through a document called an Instrument Appointing Enduring Guardian, available at www.publicguardian.tas.gov.au. Enduring power of attorney allows for personal, medical and lifestyle decisions to be made, or other decisions set out in the Instrument Appointing Enduring Guardian.

An enduring power of attorney comes into effect from the time specified and continues to operate even if the donor loses ability to make decisions for themselves at some time in the future. It does not cease till the death of the donor, and then the will takes over.

The enduring power of attorney places legal obligations on the donees who will be accountable by law for their actions. These are specified in the *Guardianship and Administration Act 1995*.

There may be provisions for limiting the power of the donees in certain circumstances.

The Act also provides that where a person has lost the capacity to make rational decisions, then somebody can apply to the Guardianship and Administration Board on that person's behalf to be appointed to manage their affairs. This normally follows such illnesses such as a stroke, Alzheimer's disease or serious head injuries.

Two witnesses must be present while the Instrument Appointing Enduring Guardian is signed so you will need to be present at the time the instrument is signed by the donor.

Witnessing Family Law documents

There are several types of documents that may be called upon in proceedings before the Family Court (a Federal Court which exercises jurisdiction in all States except for Western Australia, which has its own Family Court).

You may be asked to sign a number of different Family Court documents, the most common ones being affidavits for:

- Acknowledgement of Service;
- Affidavit of Service;
- Affidavit of Proof of Signature; and
- Application for Remission of Fees.

It is very important to read and carefully follow the instructions for witnessing these documents.

If it is not clear what is required, or if you have any queries, contact the local Family Court Registry. The Tasmanian Registry is located in Hobart.

You may also be asked to sign documents issued from an interstate Registry. You have the authority to sign these documents if they are signed in Tasmania.

It is important to also note that the rules of signing affidavits are the same whether the documents are issued from the Family Court or a Tasmanian Court. The general principles for administering an oath or affirmation are the same in all jurisdictions. As with any other affidavit, you should initial each such page. Similarly, as with any affidavit, ensure that all corrections and erasures are initialled.

Witnessing applications under the *Family Violence Act 2004 (TAS)*

Under this Act, you may be asked to administer an oath or affirmation for the:

- Application for a Family Violence Order (see Appendix 1);
- Application for Variation or Revocation of a Police Family Violence Order or a Family Violence Order (see Appendix 2); and
- Application for Registration of an External Family Violence Order (see Appendix 3).

The procedures for the administration of these oaths or affirmations are the same as administering any other oath or affirmation.

Witnessing applications for restraint orders

The purpose of a restraint order is to prohibit or restrict certain activities or behaviour. An application for a restraint order is made by either:

- a police officer, who is required to swear a statutory declaration that to the best of their knowledge and belief, the information contained in the application is true; or
- any other person (such as the victim of the behaviour) who must swear an affidavit that to the best of their knowledge and belief, the information contained in the application is true.

As a JP you may be called upon to administer the necessary oath or affirmation for the application.

Additionally, if the person against whom the restraint order is sought (the respondent) wished to defend the application, they may file an affidavit that would also require a JP to administer an oath or affirmation. Affidavits may also be filed from other persons whose evidence has some relevance to the proceedings.

The decision whether to make an interim or final restraint order rests with the Court, which must decide the case on the evidence presented.

A sample restraint order application is provided at Appendix 4 for your information along with a sample restraint order variation at Appendix 5.

11. Other issues a JP may be involved in

Certifying a person's identity

Certifying a person's identity used to be a common function of a JP. However, this function is now less common because of the '100 point checks' now required by most institutions.

However, should you be asked to certify a person's identity, you will need to do what the particular legislation requires you to do. For example, you may need to have known the person for a certain time, or know the person to be the same as the person known in the document.

If you do not know the person, you may ask for proof of identity 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.

Issuing search warrants

Search warrants are generally issued under the *Search Warrants Act 1997 (TAS)*.

You may be asked by a police officer to issue a search warrant. The police officer will apply for the warrant by providing you with facts on oath.

In issuing a search warrant, you must act as independent decision maker. If you do not feel that the warrant should be issued, you can refuse to sign it. The JP stands between the Police and the citizen, and is not an agent for the Police.

The information that must be included in the search warrant is:

- the offence to which the warrant relates;
- the description of the premises to which the warrant relates;
- the kind of evidence that is to be searched for;
- the name of the police officer responsible for executing the warrant;
- the period that the warrant remains in force (no longer than 28 days);
- whether the warrant may be executed at any time or only during particular hours;
- the circumstances under which additional evidence (i.e. not evidence that is stated to relate to the search warrant) may be seized;
- the circumstances under which an ordinary or frisk search of any person at or near the premises may be conducted when the warrant is executed; and
- the circumstances under which additional evidence (i.e. not evidence that is stated to relate to the search warrant) may be seized in the course of a search or a search of a person.

Further detail can be found in Section 5(2) of the *Search Warrants Act*.

A search warrant authorises:

- the search and seizure of things specified in the warrant
- a frisk search or ordinary search of a person
- the taking of fingerprints from any object
- the taking of forensic samples of any object
- the taking of photographs or video recordings of the premises.

Compiling and safe keeping of the record of the application for a search warrant is extremely important. The Registry of the Magistrates Courts in Tasmania will hold the related documentation for a JP if requested.

Procedure for issuing search warrants by telephone or other electronic means

You may issue a search warrant by telephone or other electronic means if you are satisfied that the case is urgent, or that the delay that would occur in making an application in person would frustrate the warrant's execution.

In these cases, the application for a warrant may be made before the information is sworn on oath. Immediately upon issuing the warrant, you must complete and sign the forms relating to the issue of the warrant as outlined in the previous section. You must record:

- the time and date the warrant was issued;
- the person to whom it was issued; and
- your name and identification number.

If the search warrant is to be issued, you must inform the applicant (by telephone or other electronic means) of the terms of the warrant and the day and time at which it was signed. You must then receive the original form of the warrant completed by the applicant within 24 hours of the expiry or execution of the warrant. If the information was not previously sworn, that information must then be sworn. Once you receive the information, you should attach the documents to the form of the warrant previously completed.

Section 15 of the *Search Warrants Act* deals with issuing search warrants by telephone or other electronic means.

Search warrants issued under other Tasmanian legislation

There is some other Tasmanian legislation that deals with search warrants; one example is the *National Parks and Reserves Management Act 2002 (TAS)*. You should familiarise yourself with *Part 4 – Provisions Relating to Enforcement*.

Making and issuing complaints

You may be asked to sign complaints. A complaint is the foundation of all criminal proceedings. A complaint may be sworn or unsworn.

- An unsworn complaint results in a summons being issued for the defendant to attend court at a certain time and place. This type of complaint is used for less serious offences (see Appendix 6).
- A sworn complaint requires the person making the complaint (usually a police officer) to swear that information contained in the complaint is true. If you sign it, the complaint is issued along with a warrant for the defendant's arrest. A sworn complaint is normally reserved for the more serious offences (see Appendix 7).

Although you have the power to sign complaints, it is preferable that you refer the person requesting the complaint be signed to the nearest Magistrates Court Registry, for a Justice on the Registry staff sign the necessary forms to issue the complaint.

If you decide to sign a complaint, you should check that the complaint contains:

- the defendant's name and address;
- the defendant's date of birth (if available);
- the exact section(s) of the legislation which it is alleged has been breached; and
- a brief description of the offence.

It is *not* your role to decide whether the complaint is legally valid; this is a subsequent matter for a Court. Unless there is some glaring error on the face of the complaint, you would sign it.

You can ask the person requesting to make a complaint on oath to state why this complaint needs to be made on oath (and therefore have a warrant issued for the arrest of the defendant). If you are not satisfied with the reasons given, you may sign the complaint without administering an oath, and therefore no arrest warrant would be issued.

Issuing witness summonses

Under the *Justice Act 1959 (TAS)* you have the power to issue or sign witness summonses for proceedings before a Court.

There is one exception to this; under the *Crown Proceedings Act 1993 (TAS)*, a witness summons addressed to a government minister must not be issued without the Director of Public Prosecutions being advised and given an opportunity to be heard on the matter.

Despite having the authority to issue witness summonses, it is strongly recommended that you do *not* sign witness summonses, but refer the person to the local Magistrates Court Registrar or Clerk of Petty Sessions.

Attending juvenile interviews

As a JP you may be asked by the police to be an independent adult observer in police interviews of young people. Although there is no legislation requiring the police to have a parent or independent adult observer present during an interview, internal policy requires them to do so. This is to ensure that there can be no accusations that a statement was made under any threat or coercion by the police.

You may perform the role of the independent adult observer, and the procedure you should follow is:

- speak to the young person alone and introduce yourself as an ‘independent observer’ and ask if they object to your presence;
- ask about their parent or guardian’s knowledge of the proceedings and why they will not be attending;
- establish your impartiality and your ability to communicate with the young person;
- establish that the young person understands the charges and the proceedings;
- satisfy yourself that the young person is not affected by any substance (such as alcohol or drugs) to the extent that may affect their ability to participate in the interview;
- establish the type of interview to be conducted (for example, audio, video or question and answer form); and
- ensure the young person’s rights to medical attention, to legal representation, and to speak or remain silent are met.

The young person is obliged to supply their name and address, to answer any statutory obligation requirements and to undergo a lawful search or examination.

You should not take part in the interview but should merely be present to witness the interview occurring. However, if it is obvious that the young person does not understand the question, you may ask if they know what they are being asked.

It is important that you do not give any legal advice.

If the statement or interview is handwritten or typed, you should either hear the young person read it aloud, or you should read it aloud back to them. Each page of the statement should be signed and dated by you, the police, and the young person. You should write the following words on the last page:

I certify that this [write number of page]-page document, each page of which I have numbered and signed or initialled, is a true and correct copy of the original [write number of pages]-page document sighted by me atthis.....day of20....

Signature of JP

[Your full name, JP initials, JP number and the words: “Justice of the Peace”]

I was present during this interview and it was given of his own free will, without threats, promises, or inducements.

Signature of JP

[Your full name, JP initials, JP number and the words: “Justice of the Peace”]
A suggested form for JPs to complete for juvenile interviews is contained in Appendix 8.

12. Witnessing documents in other jurisdictions and other countries

As a JP appointed under the *Justices Act 1959* (TAS), your main function is to witness documents to be used in Tasmania.

Tasmanian courts accept as evidence affidavits sworn in other Australian States and Territories, before a JP or other authorised person for that State or Territory.

Generally the witnessing and certifying of documents by persons authorised interstate is also accepted in Tasmania.

Other States and Territories of Australia

JPs from any State or Territory can witness some documents created under Commonwealth laws, but only when these documents are used in Australia. This includes statutory declarations under these Commonwealth Acts:

- Statutory Declarations Act 1959
- Family Law Act 1975
- Migration Act 1958.

It also includes the consent of a parent or guardian to the marriage of a minor under the *Commonwealth Marriage Act 1951*.

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

Other countries

It is not advisable to witness a document to be used overseas, as you are not likely to be accepted as a valid witness (in fact, the concept of a JP is not known in many countries).

If you are asked to witness such a document, and there are no instructions, refer the person to the Embassy or Consulate Office of that country or to a Notary Public.

However, some documents from Commonwealth countries can be witnessed by a JP from any Australian State or Territory. Make sure you have the authority before you agree to witness the document. This is the responsibility of the person making the document.

13. Glossary of terms

Term	Description
Affidavit	Written statement sworn or affirmed by a person (the deponent) before a person who has authority to administer an oath or an affirmation. Affidavits are used 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
Attest	Bear witness to, affirm the authenticity of, certify, 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
Bench justice	JPs who have completed a special course of instruction and have been appointed by a magistrate to deal with certain proceedings in the Magistrates court
Declarant	Person who makes a statutory declaration
Deponent	Person who make 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 a document is made
JP identification number	The identification number the Department of Justice provides JPs on their appointment that is to be used with the JPs signature
Notary Public	Witness for overseas documents, particularly those for use in non-Commonwealth countries (may be likened to an international JP)
Revoke	Withdraw or cancel
Signatory	Person who signs a document or declaration
Statutory declaration	Written statement made in the form prescribed by section 14 of the Oaths Act 2001 (TAS)
Testator	A person making a will

14. Further information

Magistrates Court website

The Magistrates Court of Tasmania has a useful website at www.magistratescourt.tas.gov.au. It contains a large amount of useful information for background knowledge about the Tasmanian legal system.

Department of Justice website for JPs

The Department of Justice website has a section dedicated to JPs at www.justice.tas.gov.au/justice/justices_of_the_peace

Glossary of legal terms

A glossary of legal terms can be found on the Magistrates Court website at www.magistratescourt.tas.gov.au

Justice associations

The Tasmanian Society of Justices of the Peace Inc
GPO Box 805
HOBART TAS 7001
Phone/fax: (03) 6261 1444
Email: jpregistrar@intas.net.au

The Honorary Justices Association of Tasmania Inc
PO Box 1418
LAUNCESTON TAS 7250
Ph: (03) 6334 9699
Email: hjat@dodo.com.au

The Honorary Justices' Association of Tasmania-North/West-Inc.
PO Box 785
DEVONPORT TAS 7310
Phone: (03) 6428 4032
Email: hjatnw@bigpond.com

Information and referral contacts

Hobart
Administrator of Courts
23-25 Liverpool Street
Hobart 7000
Ph: (03) 6233 3616

Clerk of Petty Sessions
23-25 Liverpool Street
Hobart 7000
Ph: (03) 6233 3610

Launceston

**Clerk of Petty Sessions
73 Charles Street
Launceston 7250
Ph: (03) 6336 2605**

Burnie
**Clerk of Petty Sessions
38 Alexander Street
Burnie 7320
Ph: (03) 6434 6322**

Devonport
**Clerk of Petty Sessions
8 Griffith Street
Devonport 7310
Ph: (03) 6421 7886**

15. Code of Conduct for Justices (TAS)

3.1 Introduction

Our legal system is based on the principle of integrity and independence of the Judiciary. This Code provides ethical standards for the promotion and preservation of these principles. This Code provides important guidance on the acceptable standard of conduct applicable to all Justices of the Peace in the performance of their official duties.

This Code is approved by the Chief Magistrate of Tasmania pursuant to his responsibility for the professional development of Justices under s.15AB of the Magistrates Court Act 1987.

3.2 Personal Propriety and Behaviour

Justices of the Peace shall-

- Maintain and promote such standards of conduct that are likely to uphold the integrity and independence of the office.
- Respect and comply with the law and conduct themselves in a manner to promote public confidence in the integrity and independence of the Office. They are to avoid behaviour, which might bring the office into disrepute or undermine the impartiality, fairness or character of the honorary justice system.
- Act impartially at all times.
- Not convey or permit directly or indirectly the impression that they are in a special position of influence.
- When acting in their capacity as a Justice of the Peace or when using their title refrain from public comment or activity in relation to political issues
- Refrain from publicly criticizing the administration of justice or the conduct of other judicial officers.

3.3 Justices of the Peace shall-

- Give due precedence to their judicial and administrative duties without undue detriment to their personal or business life.
- Perform their judicial duties without bias or prejudice.
- Act faithfully to the law.
- Be unswayed by partisan interests, public clamour, fear of criticism or appeal.
- Maintain order and decorum in proceedings before them.
- Approach their duties in a calm and courteous manner when dealing with the public and others and should present and conduct themselves in a manner consistent with the dignity of their office
- In discharging their duties treat those with whom they deal in a respectful and tolerant manner regardless of the gender, sexual orientation, race, religion, culture, language, mental abilities, or physical abilities of those persons.

3.4 Conflict of Interest

- Justices of the Peace shall disqualify themselves from any proceedings in which their impartiality might reasonably be questioned.
- Justices of the Peace must avoid all conflicts of interest, whether real or perceived, and are responsible for taking appropriate steps to disclose, resolve, or obtain advice with respect to such conflicts when they arise

3.5 Administrative Responsibilities

- Justices of the Peace shall diligently discharge their administrative responsibilities and remain professionally competent at all times.

3.6 Financial Benefits

- **Justices of the Peace shall not accept or receive any monies or goods in kind for performing judicial or administrative duties.**
- **Justices of the Peace shall refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, or exploit their judicial position.**
- **Information acquired by Justices of the Peace in their official capacity as a Justice of the Peace shall not be used or disclosed by them except as required by law.**

3.7 Legal Advice

Justices of the Peace shall not give legal advice to any person whatsoever, unless duly authorized by law to do so.

Approved by Chief Magistrate A G Shott

16. Appendices (Sample documents only)

- Appendix 1 Application for a Family Violence Order
- Appendix 2 Application for Variation or Revocation of a Police Family Violence Order or a Family Violence Order
- Appendix 3 Application for Registration of an External Family Violence Order
- Appendix 4 Sample Restraint Order application
- Appendix 5 Sample Restraint Order Variation
- Appendix 6 Complaint form
- Appendix 7 Complaint on oath
- Appendix 8 Notes of record of interview (for juvenile)

Appendix 1
 Family Violence Act 2004, Section 15
 APPLICATION FOR A FAMILY VIOLENCE ORDER
 FORM No: FV1



1. APPLICANT

1.1. Application in Person

Person to be protected Police Officer Other Person

1.2. Police Officer Details

Name _____
 Station _____
 Rank _____ Number _____

1.3. Application by other person

Lawyer

Name _____
 Name of law firm _____
 Address _____
 Suburb _____ Postcode _____
 Email _____

Other person with Court's permission

Name _____
 Address _____
 Suburb _____ Postcode _____
 Email _____
 Relationship to person to be protected _____

1.4. PERSON TO BE PROTECTED

Name _____
 Address _____
 Suburb _____ Postcode _____
 Date of Birth / / Male Female

2. CHILDREN TO BE PROTECTED (list any children who may need to be included in any court order).

Full Name	Address	Sex	Date of Birth	Indicate Relationship to Applicant

3. RESPONDENT DETAILS (Person who has allegedly committed family violence)

Name _____
 Address _____

Suburb _____ Postcode _____

Date of Birth / / Male Female

Suggested other places at which the respondent can be located

Address _____

Suburb _____ Postcode _____

Address _____

Suburb _____ Postcode _____

4. RELATIONSHIP OF PERSON TO BE PROTECTED TO RESPONDENT

Married Partner/De Facto Other (Specify) _____

Divorced/Separated Ex-Partner

Length of the relationship?

Do you or have you lived together? Yes For how long? _____ No

Do you share common assets? Yes No

If so, types of assets shared? _____

5. RESIDENTIAL TENANCY

If the home is rented, please provide a copy of the residential tenancy agreement or details of the agreement

Name/s of Tenant _____

Name/s of Landlord _____

Landlord contact address and telephone number _____

Expiry date of Agreement _____

Other details _____

Sample only

7. URGENT ORDER (INTERIM FAMILY VIOLENCE ORDER)

If you wish the Magistrate to make the order you seek prior to formal hearing and as a matter of urgency, please state briefly why the order is urgent.

8. FAMILY COURT ORDERS

Are any of the following in force?

An existing Family Court Order that relates to contact/parenting between the person to be protected and the respondent in relation to any of their children

A pending application for a Family Court Order that relates to contact/parenting between the person to be protected and the respondent in relation to any of their children.

If so, please attach copy of application or order, if available. If not, provide details of the nature of conditions on the order or application

9. ANY OTHER COURT ORDERS OR ACTIONS

Have there been, or are there currently in progress, any other court proceedings involving the person to be protected and the respondent?

Yes Please provide details

No

10. ANY ADDITIONAL SUPPORTING INFORMATION OR DOCUMENTS

Please provide details of any supporting information or attach additional documents.

11. DURATION OF ORDER SOUGHT

6 months 12 months Other (please specify) _____

12. CONDITIONS SOUGHT

Please tick the sample conditions that you are asking the Court to make and provide details in the blank spaces, where appropriate.

(Name of Respondent) must

1 Not stalk _____
(see definition of stalking as it appears in the Criminal Code Act 1924, Section 192)

2 Keep the peace towards _____

3 Not directly or indirectly threaten, harass, abuse or assault _____

4 Not approach _____ directly or indirectly
Including by telephone, email, facsimile or letter except:

a) for the purpose of attending meetings by consent between

Name of person to be protected and

(The respondent) in the presence of a third party to discuss matters arising out of their relationship or relating to

Child/ren to be protected) including counselling, family court conferences, and legal aid conferences, and by letter to negotiate such matters; or

b) for the purpose of contact with the children named above as agreed or as ordered by a court of competent jurisdiction; or

c) during an appearance in court proceedings involving the parties, or discussions in the court precincts for the purpose of those proceedings and consented to by both parties.

5 Not enter the premises at _____

Where _____ is presently living or any other place
where the said person/s may be staying or living from time to time.

Sample only

- 6 Not go within _____ metres of the boundary of the premises at _____ or the boundary of any premises where the said _____ may be staying or living from time to time
- 7 Not enter the place of employment of _____, being _____ or any other place at which the said _____ may be working from time to time save _____ for the bona fide attendance not connected with the applicant.
- 8 On or before the _____ am/pm on _____ day of _____, vacate the premises at _____
- 9 Not damage the premises at _____ or any furniture, household effects or other items there.
- 10 Not damage any personal or other property of _____
- 11 Not approach within _____ metres of _____
- _____
Name and address of school and /or child care centre where
- _____
Name of child/ren may be present from time to time.
- 12 Immediately surrender any firearm, part of any firearm or any ammunition, and any firearm licence or permit in his/her possession to a police station or a police officer.
- 13 Not apply for any licence or permit under the Firearms Act 1996
- 14 Forfeit and immediately surrender any licence or permit held pursuant to the Firearms Act 1996 and in the possession of _____ (Respondent) to a police station or police officer.
- 15 That the residential tenancy agreement to which _____ (name of person to be protected) and/or _____ (respondent) is/are parties and dated _____ is terminated, and a new residential tenancy agreement is established on the following terms: -
- a) _____

- b) _____
- c) _____

13. SERVICE BY POLICE

It is a requirement of the Justices Rules 2003 that this application and any resulting order is served on the respondent to this application. If you are asking the Court order the Tasmania Police to serve the Family Violence Order or any Interim Family Violence Order please provide details why this is necessary.

14. AFFIDAVIT

I _____ of

Full name

Address

Occupation

swear/affirm that to the best of my knowledge and belief the information contained in this Application is true.

Signed _____ (Applicant)

Sworn/Affirmed at ____ this day of _____ 20

Before me _____

Signed _____ Justice of the Peace

Sample only

SERVICE INFORMATION SECTION

This section does not form part of the Application for a Family Violence Order. However the following information will assist in identifying and locating the Respondent for the service of documents. Please fill in as much detail as you can.

Name _____

Home Address _____

Home Phone Number _____

Occupation _____

Work Address _____

Work Phone Number _____

Date of Birth/Age/Approx Age _____

Height _____

Build _____

Distinguishing Marks _____

Country of Birth _____

Complexion _____

Eye Colour _____

Hair Colour _____

Car - Make/Model/Colour _____

Car Registration _____

Alias Names _____

Firearms _____

Sample only

Court Registry to complete:

NOTICE TO RESPONDENT

TO: _____
(Name of Respondent)

OF: _____
(Address of Respondent)

An application has been made asking the Court to make a Family Violence Order against you. A copy of the Application is attached.

THE APPLICATION WILL BE HEARD at the Magistrates Court at

- 23 - 25 Liverpool Street, Hobart
- 73 Charles Street, Launceston
- 8 Griffith Street, Devonport
- 38 Alexander Street, Burnie

on _____ at _____ am/pm

IF YOU WISH TO DEFEND the Application you must attend the hearing at the Court on the day set out above. You may also, before the day of the hearing, file with the Clerk of Petty Sessions an Affidavit replying to the claims made about you in the Application.

IF YOU DO NOT ATTEND AT COURT, the court may make the orders set out in the Application or other similar orders in your absence.

ANY ORDER MADE IN TASMANIA can be registered in another State or Territory without further notice to you and can be enforced against you there.

MEMORANDUM OF SERVICE

I _____
of _____
have today served _____
of _____

with a sealed copy of the Application for a Family Violence Order and/or (Interim) Family Violence Order by delivering them to him/her personally at:

DATED: _____ SIGNED

_____ NAME

Sample only

Appendix 2
Family Violence Act 2004, Sections 14 And 20
APPLICATION FOR VARIATION OF A POLICE FAMILY VIOLENCE ORDER
OR A FAMILY VIOLENCE ORDER
FORM No: FV2



1. Nature of Application

This application is made for a variation of: -

- Police Family Violence Order
 Family Violence Order

2. Applicant

2.1. Application in Person

Are you: -

- A person protected by the order? A person to whom the order was issued?

Name _____
Address _____
Suburb _____ Postcode _____

Date of Birth / / Male Female

- Police Officer

Name _____
Station _____
Rank _____ Number _____

2.2. Application by other person

- Lawyer

Name _____
Name of law firm _____
Address _____
Suburb _____ Postcode _____
Email _____

- Other person with Court's permission

Name _____
Address _____
Suburb _____ Postcode _____
Email _____
Relationship to person to be protected _____

3. RESPONDENT DETAILS (Person who has allegedly committed family violence)

Name _____
Address _____
Suburb _____ Postcode _____

4. DETAILS OF ORIGINAL APPLICATION

Number of Original Application _____

4.1. Applicant (Person to be protected)

Name _____
Address _____
Suburb _____ Postcode _____

4.2. Respondent

Name _____
Address _____
Suburb _____ Postcode _____

5. VICTIMS ASSISTANCE UNIT – COURT SUPPORT LIAISON

Have you discussed this variation with a Victims Assistance Unit Court Support Liaison Officer?

Yes
 No

6. PERMISSION OF THE COURT

Where: -

- (i) an application to vary or revoke a PFVO has been refused by the Police or the Court; or
- (ii) an application to revoke a Family Violence Order is received

the court is only able to hear the application if satisfied that there has been substantial change in the relevant circumstances since the current order was made.

6.1. Has an application previously been made to the POLICE to VARY this Police Family Violence Order and the application was REFUSED?

Yes
 No

Please contact the Police to seek a variation of this Order by consent between the parties.

6.2. Has an application been made to the COURT to VARY OR REVOKE this Police Family Violence Order and the application was REFUSED?

Yes
 No

Please contact the Police to seek a variation of this Order by consent between the parties.

7. RELEVANT CHANGE IN CIRCUMSTANCES AND REASONS FOR THE ORDER

Please provide the following details

Date on which the order currently in place was made _____

Court Registry to complete:

NOTICE TO RESPONDENT

TO: _____
(Name of Respondent)

OF: _____
(Address of Respondent)

An application has been made asking the Court to make a Family Violence Order against you. A copy of the Application is attached.

THE APPLICATION WILL BE HEARD at the Magistrates Court at

- 23 - 25 Liverpool Street, Hobart
- 73 Charles Street, Launceston
- 8 Griffith Street, Devonport
- 38 Alexander Street, Burnie

on _____ at am/pm

IF YOU WISH TO DEFEND the Application you must attend the hearing at the Court on the day set out above. You may also, before the day of the hearing, file with the Clerk of Petty Sessions an Affidavit replying to the claims made about you in the Application.

IF YOU DO NOT ATTEND AT COURT, the court may make the orders set out in the Application or other similar orders in your absence.

ANY ORDER MADE IN TASMANIA can be registered in another State or Territory without further notice to you and can be enforced against you there.

(Optional)
NOTICE TO POLICE

TO: The Commissioner of Police

An application has been made to vary a Police Family Violence Order//Family Violence Order.

A copy of the application is attached.

THE APPLICATION WILL BE HEARD at the date and time stated above.

IF YOU WISH TO CONTEST the application you must attend the hearing.

MEMORANDUM OF SERVICE

I _____
of _____
have today served _____
of _____
with a sealed copy of this Application to Vary a Family Violence Order/Police Family Violence
Order by delivering it to
him/her personally at (address): _____
DATED: _____ SIGNED

NAME:

Sample only



APPLICATION FOR REGISTRATION OF AN
EXTERNAL FAMILY VIOLENCE ORDER
FORM No: FV5

12. APPLICANT

Name _____
Address _____
(in Tasmania) _____
Suburb _____ Postcode _____
Date of Birth/Age: Male Female

13. RESPONDENT DETAILS (Person who is restrained or has allegedly committed family violence)

Name _____
Address _____
Suburb _____ Postcode _____
Date of Birth/Age: Male Female

14. RELATIONSHIP OF APPLICANT TO RESPONDENT

Married Partner/De Facto Other (Specify) _____
 Divorced/Separated Ex-Partner _____

Length of the relationship? _____

Do you or have you lived together? Yes No For how long? _____ No

Do you share common assets? Yes No

If so, types of assets shared? _____

15. INTERSTATE COURT ORDER SOUGHT TO BE REGISTERED

Name and location of Court that issued the apprehended violence order / family violence order :

Date of Order: _____

Period of Order: _____

NOTE : A copy of the interstate Order must be attached to this Application

16. SERVICE OF EXTERNAL FAMILY VIOLENCE ORDER

Has the interstate Order been served on the Respondent ? Yes No

Date of service: _____

Place of service _____

NOTE : A copy of the Affidavit of Service of the interstate Order on the Respondent must be attached to this Application. You may need to obtain a copy of the Affidavit from the Court that made the original Order.

17. DURATION OF ORDER SOUGHT

6 months 12 months Other (please specify) _____

18. SERVICE OF REGISTERED ORDER

After registration by the Court, a copy of the interstate Order is filed with the Commissioner of the Tasmania Police Service.

Do you also seek to have a copy of the registered interstate Order served on the Respondent (bearing in mind that such service may disclose your current address)? Yes No

19. AFFIDAVIT

I _____ of _____
Full name Address

Occupation

swear/affirm that to the best of my knowledge and belief the information contained in this Application is true.

Signed _____ (Applicant)

Sworn/Affirmed at _____ this
day _____ of
_____ 20

Before me _____

Signed _____ Justice of the Peace

The following documents must be attached to this Application:

a sealed copy of the interstate Order

a copy of the Affidavit of Service of the interstate Order on the Respondent



Appendix 4

APPLICATION FOR RESTRAINT ORDER

To: The Clerk of Petty Sessions at [] Hobart [] Launceston [] Devonport [] Burnie

1. APPLICANT

This Application is made by [] a person to be protected [] a police officer [] a third party

2. APPLICANT'S DETAILS

2.1. Details

NAME: ADDRESS: GENDER: DATE OF BIRTH:

2.2. Representation

Name of any law firm or person representing the person to be protected

2.3. Relationship of Person to be Protected with Person to be Restrained

[] Married [] De facto Spouse [] Separated [] Divorced [] Neighbour [] Other (Specify)

2.4. Children or Persons to be Protected

Table with 5 columns: Name, Address (if different from above), Sex, Date of Birth, Relationship with Person to be Protected. Includes a large 'Sample Only' watermark.

3. PERSON TO BE RESTRAINED (RESPONDENT)

3.1. Details

NAME: ADDRESS: GENDER: DATE OF BIRTH:

Is the person to be restrained currently living with the Person to be Protected? Yes [] No []

Suggested other places where the person to be restrained may be contacted or found:

(c) is likely to behave in the same or similar provocative or offensive manner, to that described above.

If so, please state why:

6. INTERIM (URGENT) ORDER

If you want the magistrate to make any of the orders you seek prior to a formal hearing as a matter of urgency, state briefly why the matter is urgent.

7. DURATION OF ORDER SOUGHT

6 months 12 months Other (please specify) _____

8. CONDITIONS SOUGHT

Please tick the sample conditions that you are asking the Court to make and provide details in the blank spaces, where appropriate.
(Name of Respondent) must _____

1 Not stalk _____
(see definition of stalking as it appears in the Criminal Code Act 1924, Section 192)

2 Keep the peace towards _____

3 Not directly or indirectly threaten, harass, abuse or assault _____

4 Not approach _____ directly or indirectly
Including by telephone, email, facsimile or letter except:

- a) for the purpose of attending
 - 1. Counselling
 - 2. Family Court or legal aid conferences
 - 3. Meetings by consent between the applicant and the respondent in the presence of a third party to discuss matters relating to the children

_____ or other matters arising out of their relationship.

- b) by letter to negotiate such matters
- c) for contact with the children named above as agreed or as ordered by a court of competent jurisdiction

d) during an appearance in court proceedings involving the parties or discussions in the court precincts for the purpose of them consented to by both parties.

5 Not enter the premises at _____

Where _____ is presently living or any other place where the said person/s may be staying or living from time to time.

6 Not go within _____ metres of the boundary of the premises at _____ or the boundary of any premises where

the said _____ may be staying or living from time to time

7 Not enter the place of employment of _____, being _____ or any other place at which the said _____ may be working from time to time save

for the bona fide attendance not connected with the applicant.

8 On or before the _____ am/pm on _____ day of _____, vacate the premises at _____

9 Not damage the premises at _____ or any furniture, household effects or other items there.

10 Not damage any personal or other property of _____

12 Immediately surrender any firearm, part of any firearm or any ammunition, and any firearm licence or permit in his/her possession to a police station or a police officer.

13 Not apply for any licence or permit under the Firearms Act 1996

14 Forfeit and immediately surrender any licence or permit held pursuant to the Firearms Act 1996 and in the possession of _____ (Respondent) to a police station or police officer.

15 This order to be served by a representative of the Tasmania Police Service.

9. ORDERS ALREADY IN FORCE

Are there any orders in force between you or any other person to be protected and the person to be restrained? If so, provide details below.

10. OTHER COURT ACTIONS

Have there been, or are there still going on, any other court proceedings between you or any other person to be protected and the person to be restrained? If so, provide details below.

11. ADDITIONAL SUPPORTING INFORMATION OR DOCUMENTS

12. STATUTORY DECLARATION

I _____ of _____
Full name Address

Occupation

solemnly and sincerely declare under section 4 of the *Oaths Act 2001* that to the best of my knowledge and belief the information contained in this Application is true.

Signed _____ (Applicant)

Declared at _____ this day of _____ 20____

Before me _____

Signed _____ Commissioner for Declarations/Justice of the Peace

SERVICE INFORMATION SECTION

This section does not form part of the Application for Restraint Order. However the following information will assist in identifying and locating the Person to be Restrained for the service of documents. Please fill in as much detail as you can.

Name _____

Home Address _____

Home Phone Number _____

Occupation _____

Work Address _____

Work Phone Number _____

Date of Birth/Age/Approx Age _____

Height _____

Build _____

Distinguishing Marks _____

Country of Birth _____

Complexion _____

Eye Colour _____

Hair Colour _____

Car - Make/Model/Colour _____

Car Registration _____

Alias Names _____

Firearms _____

Sample only

Court Registry to complete:

NOTICE TO RESPONDENT

TO: _____

(Name of Respondent)

OF: _____

(Address of Respondent)

An application has been made asking the Court to make a Family Violence Order against you. A copy of the Application is attached.

THE APPLICATION WILL BE HEARD at the Magistrates Court at

- 23 - 25 Liverpool Street, Hobart
- 73 Charles Street, Launceston
- 8 Griffith Street, Devonport
- 38 Alexander Street, Burnie

on _____ at _____ am/pm

IF YOU WISH TO DEFEND the Application you must attend the hearing at the Court on the day set out above. You may also, before the day of the hearing, file with the Clerk of Petty Sessions an Affidavit replying to the claims made about you in the Application.

IF YOU DO NOT ATTEND AT COURT, the court may make the orders set out in the Application or other similar orders in your absence.

ANY ORDER MADE IN TASMANIA can be registered in another State or Territory without further notice to you and can be enforced against you there.

MEMORANDUM OF SERVICE

I _____

of _____

have today served _____

of _____

with sealed copies of the Application for a Restraint Order, and/or (Interim) Restraint Order of which these documents are true copies, by delivering them to him/her personally at:

DATED: _____ SIGNED

NAME



Appendix 5

APPLICATION TO VARY, EXTEND OR REVOKE RESTRAINT ORDER

To: The Clerk of Petty Sessions at Hobart Launceston Devonport Burnie

Personal details

Sample only

17. YOUR DETAILS (IF YOU ARE NOT A POLICE OFFICER)

(Do not complete this section if you are a police officer)

SURNAME:

Given
Names:

ADDRESS

Are you –

(Tick one box)

- a person protected by a restraint order; or
- a person restrained by a restraint order; or
- a person granted leave to apply

OR

Sample only

18. YOUR DETAILS (IF YOU ARE A POLICE OFFICER)

(Do not complete this section unless you are a police officer)

SURNAME: _____

Given
Names: _____

RANK: _____

STATION: _____

DETAILS OR ORDER YOU WANT VARIED, EXTENDED OR REVOKED

Attach a copy of the order.

(If you do not have a copy of the order, you may obtain one from a Court of Petty Sessions)

VARIATION OF EXISTING ORDER

(For examples of orders commonly made, see the example orders attached to Form 48A which is the Application for Restraint Order form)

- (1) If you want to add a new order(s) to the existing orders, write out the new order(s) you want added.

- (2) If you want to omit (take off) an order(s) that is one of the existing orders, write out the order(s) you want omitted from (taken off) the existing orders.

- (3) If you want an existing order(s) changed, write out the order(s) as you want it to be.

EXTENSION OF EXISTING ORDER

If you want the existing order to continue in force for a longer time, for how long is it to continue? (e.g. *extra 12 months, no time limit*)

REASONS FOR VARIATION OR EXTENSION

Briefly, what are your reasons for wanting to vary or extend the order?
(If you want to add or change an order so that the restraints on a restrained person, are extended, you must give examples of the behaviour of the restrained person which has caused you to make this application. The examples should be set out –

- (a) the name(s) of the person(s); and
- (b) the date, or approximate date, it happened; and
- (c) a brief description of what happened; and
- (d) whether the police attended the incident.

You must also say if you think that person will act like that again or carry out a threat)

(If insufficient space, attach a statement of reasons)

REVOCATION OF EXISTING ORDER

Do you want all of the existing order revoked (cancelled)? YES NO (Tick one box)

REASONS FOR REVOCATION

- (4) Briefly, what are your reasons for wanting to revoke (cancel) the order?

AFFIDAVIT

(If you are not a police officer, you must complete this part and sign it while a Justice of the Peace, Magistrate or other person acting judicially is watching)

I _____ of
Full name Address

Occupation

* swear/solemnly and sincerely affirm that to the best of my knowledge and belief the information contained in this application is true.

Signed (Applicant)

Sworn/Affirmed at this day of 200

Before me

Signed
Name of *Justice of the Peace/*Magistrate/*Other person acting judicially)

* Cross out if inapplicable

OR

STATUTORY DECLARATION

(Complete this section only if you are a police officer)

I _____
Rank and full name
of
Address

police officer, do solemnly and sincerely declare that to the best of my knowledge and belief the information contained in this application is true; and I make this solemn declaration by virtue of section 132 of the *Evidence Act 191*

Signed (

Declared at this day of 20

Before me

Signed *Commissioner for Declarations/Justice of the Peace

*Cross out if inapplicable

NOTICE TO RESPONDENT

TO:

(Name of Respondent)

OF:

(Address of Respondent)

An application has been made asking the court of petty sessions to **vary/*extend/*revoke* an existing restraint order which concerns you. A copy of the application is attached.

THE APPLICATION WILL BE HEARD at the Magistrates Court at

- | | |
|--------------------------|----------------------------------|
| <input type="checkbox"/> | 23 - 25 Liverpool Street, Hobart |
| <input type="checkbox"/> | 73 Charles Street, Launceston |
| <input type="checkbox"/> | 8 Griffith Street, Devonport |
| <input type="checkbox"/> | 38 Alexander Street, Burnie |

on at am/pm

IF YOU WISH TO DEFEND the Application you must attend the hearing at the Court on the day set out above. You may also, before the day of the hearing, file with the Clerk of Petty Sessions an Affidavit replying to the claims made about you in the Application.

IF YOU DO NOT ATTEND AT COURT, the court may make the orders set out in the Application or other similar orders in your absence.

ANY ORDER MADE IN TASMANIA can be registered in another State or Territory without further notice to you and can be enforced against you there.

NOTICE TO POLICE

To: -

The Commissioner of Police

**An application has been made to **vary/*extend/*revoke* a restraint order.
A police officer made the original application for that restraint order.
A copy of the current application is attached.**

THE APPLICATION WILL BE HEARD

at the courthouse at _____

on _____

At _____

**IF YOU WISH TO CONTEST the application for **variation/*extension/*revocation* of the
restraint order you must attend the hearing**

***Cross out if inapplicable**

Sample only

Form 1



Complaint No. **60216/2005**

Justices Act 1959

COMPLAINT

For hearing at the Court of Petty Sessions at
27-29 Liverpool Street, Hobart on 17th August 2005 at 2.15 PM

Complainant: **Sandy Lee Presley, Police Prosecution Services, Hobart**

Name and address of the person against whom the complaint is made

John William BLOGGS
24 Smith Street
Wanderville Tas 7235

D.O.B: 21/09/1964
Date of Offence: 03/12/04

Charge:

Unlicensed Driver

Breach:

Section 8(1) of the Vehicle and Traffic Act 1999

Particulars:

You are charged with being the driver of a motor vehicle AJX343 on 25th Day of January 2005 on Bass Highway in Municipal Area of Central Coast a public street in Tasmania when you were required to hold a driver licence, of the relevant class, and you did not.

The above complaint being made on the 1st June 2005.

SL Presley

Complainant's Signature

Samuel Beckett JP 9909

Signature of Justice of the Peace receiving the complaint

Form 1A

Court of Petty Sessions
Hobart



Complaint No. 92638 05

Justices Act 1959

COMPLAINT ON OATH

In the Complaint of

Detective Senior Constable William Blake of North Hobart CIB made upon oath says that

Joseph Peter Bloggs DOB 19/12/60 of Parker Street, Wintermere

Charge: Burglary/ Stealing

Breach: Criminal Code Act s244 and s243

Particulars: You are charged with on the 26th April 2005 in Moonah in Tasmania, entering a business premises situated at 104 Gall Stone Road, in Moonah, the property of TasNapkin Hire Pty Ltd as a trespasser with intent to commit the crime of stealing therein.

And Further

You are charged with on the 26th April 2005 in Moonah in Tasmania stealing a IBM laptop computer and a power board to the total value of \$3000.00, the property of TasNapkin Hire Pty Ltd.

William Blake

Complainant

Sworn before me this4th....day of ...June2005

Walter Whathisname.....No. 7447

Justice of the Peace

Warrant Issued...4/06/2005

Appendix 8

JUVENILE INTERVIEW

INDEPENDENT OBSERVER'S NOTES OF INTERVIEW OF A JUVENILE BY POLICE

Date: _____

Time: _____ Place: _____

Type of Interview:
Video/Written/Audio/Other _____

Name of Defendant _____

Date of Birth _____

Has any attempt been made to contact parents or guardian, if so, by whom?

Time defendant spoken to privately by you _____ hrs

Time finished talking to defendant _____ hrs

Time police commenced interview proper _____ hrs

Time police ceased interview _____ hrs

Police Officers' names _____

Where appropriate, before interview by the Police, the following questions were asked of the defendant

I am here as a neutral person in the absence of your parents or guardian, do you understand?

YES/NO.

(If NO explained that you're not here to take sides, but to ensure justice and equity to both sides YES/NO)

Have you been treated fairly since your arrest and being brought here

YES/NO (If NO, ask to explain)

Are you prepared to be interviewed by the police?

YES/NO.

When the police commence the interview, you will be cautioned that you are not obliged to say anything.

Do you understand? YES/NO.

Do you understand how an interview is conducted?

Sample only

Sample only



Tasmania
Explore the possibilities