

Handbook for Justices of the Peace

**A GUIDE FOR JUSTICES OF THE PEACE IN
TASMANIA**

November 2022

Disclaimer

This Handbook for Justices of the Peace has been 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 in November 2022. 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

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I. 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.

You should 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 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 900 JPs in Tasmania and each year new JPs are appointed as required. New JPs are only appointed where there is a specific need, such as if it is desirable because of a person's employment or where there are few JPs in a particular area. 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 is available to the public. Contact details can be obtained by visiting the [Department of Justice website](https://www.justice.tas.gov.au/commissioners-for-declarations-and-justices-of-the-peace/justice-of-the-peace)¹.

¹<https://www.justice.tas.gov.au/commissioners-for-declarations-and-justices-of-the-peace/justice-of-the-peace>

3. Obligations and Conduct of JPs

Appointment obligations and conditions

Most JPs are appointed by the Governor of Tasmania under the *Justices of the Peace Act 2018* (the Act). Such JPs are known as appointed justices.

The Act sets out the powers and duties of JPs. A copy of the Act can be found on the [Tasmanian Legislation website](https://www.legislation.tas.gov.au/)².

You are appointed as a JP until you reach the age of 75, or for as long as you reside in Tasmania, do not breach the Code of Conduct and are not declared bankrupt.

The Act provides for a retirement age for JPs of 75 years. The Act makes provisions for JPs who are 75 years or older to seek re-appointment for a period of two-years. Section 7 of the Act provides that a JP must seek reappointment either six months before they attain the age of 75 or within six months after their appointment was terminated, if the termination occurred because they attained the age of 75 years. If a JP does not seek re-appointment within these periods, their appointment expires and they are no longer able to seek re-appointment.

A JP may continue to seek re-appointment every two years until they reach an age of 84 years and 6 months, ensuring that the application for re-appointment is received within six months after their appointment expired. A JP is responsible for ensuring they seek re-appointment when required if they wish to continue their appointment. You may seek reappointment by completing the [on-line form](#)³.

You may resign as a JP by completing the [on-line resignation form](#)⁴ or by writing to the Secretary of the Department of Justice at GPO Box 825, Hobart, 7001.

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 or visit the [Department's website](#)⁵.

Ex officio appointments

Some people are appointed as a JP by virtue of their office, for example Magistrates. These are called ex officio appointments.

² <https://www.legislation.tas.gov.au/>

³ <https://www.justice.tas.gov.au/justice-of-the-peace/reappointment-as-a-justice-of-the-peace>

⁴ <https://www.justice.tas.gov.au/commissioners-for-declarations-and-justices-of-the-peace/justice-of-the-peace/forms/resignation>

⁵ <https://www.justice.tas.gov.au/commissioners-for-declarations-and-justices-of-the-peace/justice-of-the-peace/find>

The judicial oath

After appointment, and before performing any of the functions of a JP, you are required by section 6 of the *Justices of the Peace Act 2018* to take the judicial oath. In taking the oath you swear or affirm 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 may use the title Justice of the Peace or the initials ‘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 your name, address or other contact details change at any stage of your term of office as a JP, you must notify the Secretary of the Department of Justice in writing within 21 days. You may do this by [email](mailto:secretary@justice.tas.gov.au)⁶ or by post to GPO Box 825, Hobart, 7001 or by completing the [on-line form](https://www.justice.tas.gov.au/commissioners-for-declarations-and-justices-of-the-peace/justice-of-the-peace/forms/change-details)⁷.

Protection of JPs in the execution of their office

As long as you perform your JP duties 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

⁶ secretary@justice.tas.gov.au

⁷ <https://www.justice.tas.gov.au/commissioners-for-declarations-and-justices-of-the-peace/justice-of-the-peace/forms/change-details>

Code of Conduct

JPs are bound by the Code of Conduct contained in the Justices of the Peace (Code of Conduct) Regulations 2019. This Code sets out the standards JPs in Tasmania are expected to uphold. A copy of the Regulations can be found on the [Tasmanian Legislation website](#)⁸ and the Code is included in section 15 of this handbook.

Professional development

Section 18 of the Act provides that appointed Justices must undertake and complete any training or professional development prescribed by regulations or required, by notice in writing, by the Secretary of the Department of Justice.

Justice of the Peace Associations regularly hold seminars on different aspects of the legal system, e.g. on the introduction of new legislation. Contact details for further information are provided in section 14 of this handbook.

Further assistance

Officers of the Department of Justice are available to provide assistance for appointment and administrative matters. Officers can be contacted via [email](#)⁹.

Magistrate Court Registry Managers are also available to assist you in performing your duties. The [Court website](#)¹⁰ 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. A [resignation form](#)¹¹ can be completed online or you can write to the Secretary, Department of Justice at GPO Box 825, Hobart, 7001.

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.

⁸ <https://www.legislation.tas.gov.au/>

⁹ jp@justice.tas.gov.au

¹⁰ <https://www.magistratescourt.tas.gov.au/>

¹¹ <https://www.justice.tas.gov.au/commissioners-for-declarations-and-justices-of-the-peace/justice-of-the-peace/forms/resignation>

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 matter(s) being dealt with. This will depend on each individual situation. It is up to the JP to decide whether, at some time in the future, the JP role that was undertaken could be perceived as not 'acting impartially without bias or prejudice'. A JP can also decline if they are unsure if they have the legal power to act in the circumstance.

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 on the [Tasmanian Legislation website](https://www.legislation.tas.gov.au/)¹².

Justices of the Peace Act 2018 (Tas)

This sets out the obligations, powers and duties of JPs in Tasmania.

Justices of the Peace (Code of Conduct) Regulations 2019 (Tas)

This is important subordinate legislation that sets out the Code of Conduct for 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. Further information in relation to issuing search warrants is provided in section 11 of this handbook.

¹² <https://www.legislation.tas.gov.au/>

Difference between JPs and Bench Justices

JPs hold office under the Act 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.

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, and to do so is a breach of the Code of Conduct.

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 of Tasmania under the provisions of the *Notaries Public Act 1990* (Tas). Prior to the introduction of the *Notaries Public Act 1990*, Notaries 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 or on the [Supreme Court website](https://www.supremecourt.tas.gov.au/practitioners/notaries/)¹³.

¹³ <https://www.supremecourt.tas.gov.au/practitioners/notaries/>

5. Main role and duties of JPs

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
- 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
- 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 in the community 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, it is preferable not to do so unless the JP knows the person. 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. Some councils offer, on a roster system, a JP service to the public. Some of the Tasmanian JP Associations also operate a document signing centre. Further details about their location and opening times are available directly from those Associations.

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 driver's 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 can be signed by a witness with no specific qualifications or 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 or that the document can be witnessed by an individual with no specific qualifications.

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, never witness any blank document or any pre-signed document. Further information on affidavits and statutory declarations is provided in sections 7 and 8 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 their 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. A JP is able to witness a child's application - the parent's signatures are witnessed.

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 online](#)¹⁴ or you can purchase copies from Service Tasmania offices. If still in doubt, refer the person to a legal centre or the Department of Justice. Contact information is provided in section 14 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. A JP should never give legal advice. 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.

¹⁴ <https://www.legislation.tas.gov.au/>

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 a photograph such as driver's licence or passport. You must 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.

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
- have limited, or no, English language
- have a restricted vocabulary

However, these signs might indicate that the person is ill, has an intellectually or emotional disability, 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 being signed. 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 section 11 of the handbook 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 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 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 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, PMI, 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 JMSI [or 'a copy of Exhibit JMSI'] 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 day of 20.....' and so on.

For statutory declarations insert the words 'declared in my presence this day of 20.....' 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. However, there are different requirements if you are requested to approve a search warrant (for additional information refer to section 11 of this handbook).

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 should have your full name, the initials JP, your identification number, and the words "Justice of the Peace" underneath your name. Some JPs also include the words "for Tasmania" or "in Tasmania".

Here is an example of a general stamp

John Michael Smith, JP # 1234
Justice of the Peace for Tasmania

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 the 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, so long as you are satisfied that the documents produced are sufficient to properly identify the person. Notwithstanding this, there will be some matters where specific forms of identity are required and these will be specified in the document itself or in the relevant Act. 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 generally 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. The exception relates to search warrants, covered in section 11 of this handbook.

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 people with an intellectual disability. 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 section 14 – 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
- 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 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
this day 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 affirmant], 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 at by
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 (section 6) of this handbook.

How to administer an oath

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 the person to hold the book they regard as sacred in their hand and ask: *Have you read and understood the contents of your affidavit?* The reply should be “Yes”.

Then ask: *Do you swear that the content of this affidavit is true to the best of your knowledge, information 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 the foot of every page of the affidavit except the last page
- sign and date any and each attachment
- write down the location where the affidavit is taken and the date

How to administer an affirmation

To administer an affirmation, ask the person: *Have you read and understood the contents of your affidavit?* The reply should be “Yes”.

Then ask: *Do you solemnly and sincerely declare and affirm that the content of this affidavit is true and correct 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 the day of 20.....

.....

Signature of Deponent

Before me

.....

[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 the day of 20.....

.....

Signature of Deponent

Before me

.....

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

The deponents or affirmants can come to you at different times, 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 an 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 the day of 20

.....

Signature of Deponent

Before me

.....

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/her mark upon the affidavit in my presence.

Sworn/Affirmed by the above named deponent

at [town/city] in Tasmania

on the day of 20

His/ Her Mark Before me

.....

.....

Signature of JP

[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, the person should cross out their signature (both the person and the JP should initial that crossing out) and sign the documents again in your presence.

A blank document of any form should never be signed until completed.

It is also necessary that the person identifies himself or herself as the person signing the document by providing a driver's licence or other form of identification (see section 6 for additional information).

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
- 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.

The *Oaths Act 2001* only authorises JPs 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 (see section 11).

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 Registry. An electronic statutory declaration can also be downloaded from the [Department of Justice website](https://www.justice.tas.gov.au/forms/statutory_declarations)¹⁵. It is not necessary to use these blank forms, as long as the document 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).

¹⁵ https://www.justice.tas.gov.au/forms/statutory_declarations

This is an example of a statutory declaration

I, [insert full 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 (see section 6).

You may 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 every deletion and alteration in the document after the declarant has initialled them
- initial the foot of every page of the declaration and sign the last page near the signature of the declarant
- complete and sign the part that starts 'Declared atbefore me ' as outlined in 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 cross out the current signature, both the declarant and the JP initial that crossing out and then 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, birth, marriage and death certificates, 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 at this day of
..... 20.....

.....

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 or stamp 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 pages]-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 at this day of 20...

.....

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.

Common Questions

Can I certify a copy of an electronic document?

JPs are only able to certify copies of original documents. As copies of electronic documents are generally either printouts or photocopies themselves, they cannot be certified by a JP as being a copy of the original document.

The following practice is recommended when asked to deal with electronic copies of documents

- Ask the person seeking a certified copy of an electronic document to complete a statutory declaration marking each set of documents as 'A' 'B' 'C' etc.
- The declaration should use the words "Attached hereto and marked with the letter 'A' are" together with a suitable description of the document and how it was generated. For example
 - a. Printouts downloaded from my computer that are true and accurate copies of my payslips from etc. etc.

- b. Printouts downloaded from my computer that are true and accurate copies of my bank statements of my accounts with etc. etc.
 - c. A printout that is a true and accurate copy downloaded from my iPad of an email forwarded to me by the Department of Immigration.
- Each page of each attachment should be signed by the declarant and countersigned, dated and stamped by the witnessing JP as the attachment referred to in declaration.
- The statutory declaration may then be dated and signed before a JP or other officer able to witness statutory declarations.

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 other's 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.

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 instrument appointing an enduring guardian or enduring power of attorney. These appointments are made by a person authorising another person to make decision on their behalf in the event that the person loses capacity to make decisions in the future. The person 'giving' the power is referred to as the donor; the person accepting the power is the donee. These appointments can only be made while the donor has decision-making capacity.

Enduring guardians are appointed to make lifestyle decisions, e.g. healthcare or accommodation, while enduring powers of attorney are appointed to make decisions about financial and property matters.

The appointment of enduring guardians is governed by the provisions of the *Guardianship and Administration Act 1995*, while the appointment of enduring powers of attorney is governed by the provisions of the *Powers of Attorney Act 2000*.

More information about the process is available from the [Guardianship and Administration Board website](https://www.guardianship.tas.gov.au/about_us)¹⁶. An instrument appointing an enduring guardian or enduring power of attorney must be signed by two witnesses. Consequently, you and a second witness will need to be present when 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 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

- Application for Divorce.
- Acknowledgement of Service.
- Affidavit of Service.
- Affidavit of Proof of Signature.
- 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 page. Similarly, as with any affidavit, ensure that all corrections and erasures are initialled.

¹⁶ https://www.guardianship.tas.gov.au/about_us

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
<https://www.magistratescourt.tas.gov.au/forms>
- Application for Variation of a Police Family Violence Order or a Family
<https://www.magistratescourt.tas.gov.au/forms>
- Application for Revocation of a Police Family Violence Order or a Family
<https://www.magistratescourt.tas.gov.au/forms>
- Application for Registration of an External Family Violence Order
<https://www.magistratescourt.tas.gov.au/forms>

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 declare 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) 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.

Copies of restraint order forms can be found on the Magistrates Site -
<https://www.magistratescourt.tas.gov.au/forms>

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' required by most institutions.

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 should 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

To protect the rights of citizens, our laws do not generally give police officers the power to enter and search private premises. They must first apply for a search warrant.

A search warrant is a document authorising police officers to enter and search a place for evidence relating to an offence that has been committed.

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

A search warrant would be issued if the police were able to show a search is both

- necessary for the investigation of an offence, and
- likely to produce the evidence they are seeking

The search warrant is an approved, prescribed form and consists of two parts

- Application—the information required to substantiate the issuing of the warrant, such as details about the suspected offence, why the occupier is suspected of having committed the offence, and the type of evidence sought.
- Search warrant—giving details about the premises (the address and type of premises), the name and occupation of the occupier of the premises, and the date and time of the proposed search.

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
- 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 1997*.

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
- 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 1997* deals with issuing search warrants by telephone or other electronic means.

A search warrant may be signed electronically, providing that the signature is affixed by the JP issuing the warrant.

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.

Points to consider with search warrants

When approached to issue a search warrant, you should

- Ask the applicant for some form of identification.
- Immediately place the applicant on oath or affirmation.
- Read the entire application carefully. This is one of the occasions when you must read the entire document and would be failing in your duty if you did not.

Check it gives

- the applicant's name, rank and station
- a description of the place to be searched, sufficient to correctly identify the premises
- the name of the occupier of the place, if known (for an occupied premises)
- a brief description of the offence the application relates to
- a description of the type of evidence sought
- why it is suspected that evidence of the offence is likely to be found on the premises
- full details of any previous search warrants

Ask the applicant any questions that are needed to clarify why a search warrant is necessary, the type of evidence sought and whether the search is likely to yield this evidence.

Here are some sample questions to guide you

- Is your source of information reliable? Can you please explain?
- Have you used this source before, and how regularly do you use this source?
- What was the outcome of previous search warrants issued as a result of information provided by this source?
- How did you identify the premises?
- How did you determine the name of the occupier (if there is one)?
- Have there been any previous search warrants issued in relation to these premises or this occupier?
- What exactly are you looking for?
- What other evidence do you have?
- What is the suspected offence?
- Why do you need the search warrant to be executed at night?
- Do you have anything further to add?

Most of these questions should have been answered on the application.

Keep a record of any further information supplied to you under oath in case it is required for future reference.

If you are satisfied the search warrant is justified, have the applicant sign the search warrant application. Remind the applicant they are under oath or affirmation.

- Witness the applicant's signature on the search warrant application by signing the search warrant application and endorsing your JP registration number.
- Ensure you retain a copy of the search warrant application and keep it in a secure place. Although uncommon, a JP can be called on to explain in court why a search warrant was justified, so you should keep applications for search warrants for a reasonable period before destroying them. A period of 12 to 18 months is recommended. There is no requirement for a copy of the actual search warrant to be retained by you, nor is a copy provided for you.
- Complete the search warrant and check through to ensure
 - it gives the full name, rank and station of the applicant, as well as the basis of the application
 - it is dated the day you issued it
 - it gives the address of the premises to be searched and the full name, date of birth and occupation of the occupier of the premises (if known), and
 - it gives the date and time when it ends
- Sign the search warrant and endorse it with your JP registration number.

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 (<https://www.magistratescourt.tas.gov.au/forms>).
- 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 more serious offences (<https://www.magistratescourt.tas.gov.au/forms>).

Although you have the power to sign complaints, **it is recommended that you refer the person requesting the complaint be signed to the nearest Magistrates Court Registry**, for a Justice on the Registry staff to 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
- 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

It is recommended that you do not sign witness summonses, but refer the person to the nearest Magistrates Court Registry.

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

However, there are exceptions 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.

JPs do not have a power to issue a witness summons on restraint or family violence order applications.

Witness summons on a complaint

Section 41 of the *Justices Act 1959* (Tas) provides that a defendant may apply to a JP to issue a witness summons to a party compelling them to attend at court to give evidence in respect of a complaint.

The discretion to issue or refuse to issue witness summons is an administrative decision by a JP, which requires very careful consideration. A witness summons should not be issued lightly. A JP may refuse to issue a witness summons if it appears that the witness summons is not for a bona fide purpose or is vexatious in nature.

When considering whether to issue a witness summons, a JP may make enquiries of the person making the request, to establish that there is a proper purpose for issuing the summons. This may include being satisfied that the proposed evidence has some relevance to the case. In considering whether to issue a witness summons, a JP should not determine the weight of the proposed evidence, or impede a defendant's capacity to properly defend themselves at the hearing of a complaint.

Witness summons on a restraint order or a family violence order

While a JP has power under the *Justices Act 1959* to issue a witness summons in respect of a complaint, the same power is **not provided** in the Act for a JP to issue a witness summons on a restraint order or family violence order application.

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)
- 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 pages]-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 at this day of 20...

.....

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 their 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 can be found on the Tasmanian Magistrates Court page <https://www.magistratescourt.tas.gov.au/forms>

12. Witnessing documents in other jurisdictions and other countries

As a JP appointed under Tasmanian legislation, 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
<i>Affidavit</i>	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
<i>Affirm</i>	Make a legally binding promise to a court that the contents of a document are true
<i>Affirmant</i>	Person who affirms an affidavit
<i>Agent</i>	Person who legally acts on behalf of another person
<i>Attest</i>	Bear witness to, affirm the authenticity of, certify, ask a person to make an oath or solemn declaration
<i>Attest or witness the execution of a document (instrument)</i>	Sign a legal document to verify that it has been completed according to law in your presence
<i>Attest or witness a signature</i>	Sign a document to certify that it was signed by another person in your presence
<i>Attorney</i>	Person who accepts the legal authority to act on another's behalf
<i>Bench justice</i>	JPs who have completed a special course of instruction and have been appointed by the Chief Magistrate to deal with certain proceedings in the Magistrates Court
<i>Declarant</i>	Person who makes a statutory declaration
<i>Deponent</i>	Person who make an affidavit or deposition
<i>Donee</i>	Person who accepts the legal authority to act on another's behalf
<i>Donor</i>	Person who gives another person legal authority to act on his or her behalf
<i>Execute</i>	Carry out, perform, make (legal instrument) valid by signing
<i>Grantee</i>	Person who accepts the legal authority to act on another's behalf
<i>Grantor</i>	Person who grants to another person the legal authority to act on his or her behalf
<i>Instrument</i>	Legal document such as a will, a mortgage or power of attorney
<i>Jurat</i>	Memorandum at the end of the document stating the place, date and person before whom a document is made
<i>JP identification number</i>	The identification number the Department of Justice provides JPs on their appointment that is to be used with the JPs signature
<i>Notary Public</i>	Witness for overseas documents, particularly those for use in non-Commonwealth countries (may be likened to an international JP)
<i>Revoke</i>	Withdraw or cancel
<i>Signatory</i>	Person who signs a document or declaration
<i>Statutory declaration</i>	Written statement made in the form prescribed by section 14 of the <i>Oaths Act 2001</i> (TAS)
<i>Testator</i>	A person making a will

14. Further information

Magistrates Court website

The [Magistrates Court of Tasmania](https://www.magistratescourt.tas.gov.au/)¹⁷ has a useful website containing a large amount of useful information for background knowledge about the Tasmanian legal system.

Department of Justice website for JPs

The [Department of Justice](https://www.justice.tas.gov.au/commissioners-for-declarations-and-justices-of-the-peace/justice-of-the-peace/resources-for-justices-of-the-peace)¹⁸ website has a section dedicated to JPs.

Glossary of legal terms

A glossary of legal terms can be found on the [Magistrates Court](https://www.magistratescourt.tas.gov.au/glossary)¹⁹ website.

JP Associations

The Tasmanian Society of Justices of the Peace Inc.

GPO Box 805

HOBART TAS 7001

Email: admin@tsjpi.asu.au

www.tsjpi.asn.au

The Honorary Justices Association of Tasmania Inc.

PO Box 1418

LAUNCESTON TAS 7250

Phone: (03) 6334 9699

Email: jpnorthtas@hjat.com.au

www.jptasmania.com.au

The Honorary Justices' Association of Tasmania-North/West-Inc.

PO Box 785

DEVONPORT TAS 7310

Email: hjatnw@bigpond.com

¹⁷ <https://www.magistratescourt.tas.gov.au/>

¹⁸ <https://www.justice.tas.gov.au/commissioners-for-declarations-and-justices-of-the-peace/justice-of-the-peace/resources-for-justices-of-the-peace>

¹⁹ <https://www.magistratescourt.tas.gov.au/glossary>

Information and referral contacts

HOBART

Administrator of Courts

23-25 Liverpool Street

HOBART TAS 7000

Phone: (03) 6233 3616

Clerk of Petty Sessions

23-25 Liverpool Street

HOBART TAS 7000

Phone: (03) 6233 3610

LAUNCESTON

Clerk of Petty Sessions

73 Charles Street

LAUNCESTON TAS 7250

Phone: (03) 6336 2605

BURNIE

Clerk of Petty Sessions

38 Alexander Street

BURNIE TAS 7320

Phone: (03) 6477 7140

DEVONPORT

Clerk of Petty Sessions

8 Griffith Street

DEVONPORT TAS 7310

Phone: (03) 6478 4353

15. Code of Conduct for Justices (TAS)

PART 1 - Preliminary

1. Interpretation of code of conduct

In this code of conduct

Act means the Justices of the Peace Act 2018

service, in relation to a Justice of the Peace, has the meaning given by clause 2

2. Meaning of service provided by Justice of the Peace

A service is provided by a Justice of the Peace if he or she exercises a power, or performs a duty, of a Justice of the Peace for the benefit of another person.

3. Application of code of conduct

This code of conduct applies to all appointed justices.

4. Purpose of code of conduct

This code of conduct prescribes the behaviour expected of all appointed justices.

5. Effect of contravention of code of conduct

Under section 29(a) of the Act, serious or repeated breaches of this code of conduct by an appointed justice may result in his or her removal from the office of Justice of the Peace.

PART 2 - Conduct of appointed justices

6. Providing Justice of the Peace services

In addition to the requirement under section 19 of the Act for an appointed justice to be reasonably available to exercise his or her powers as a justice and reasonably active in doing so, an appointed justice

- (a) must not unreasonably refuse to provide the services of a Justice of the Peace, and
- (b) must deal with requests for the services of a Justice of the Peace in a timely manner

7. General conduct

- (1) An appointed justice must
 - (a) respect and comply with the law, and
 - (b) conduct himself or herself in a manner that promotes public confidence in the integrity and independence of the office of Justice of the Peace

- (2) An appointed justice must behave in a respectful and courteous manner towards anyone who seeks his or her services as a Justice of the Peace.
- (3) An appointed justice must not
 - (a) engage in any dishonest activities, or
 - (b) conduct himself or herself in such manner as to bring the office of Justice of the Peace into disrepute.
- (4) An appointed justice
 - (a) must always act impartially in exercising his or her powers as a Justice of the Peace, and
 - (b) must not allow his or her conduct as a Justice of the Peace to be influenced by his or her political, business, family, social, religious or personal interests
- (5) An appointed justice must not convey, or permit another person to convey, the impression that the justice is in a special position of influence by reason of being a Justice of the Peace.
- (6) An appointed justice must not use his or her office as Justice of the Peace for the purpose of benefitting his or her business, commercial or personal interests.
- (7) An appointed justice must give appropriate precedence to his or her duties as a Justice of the Peace without causing unreasonable detriment to his or her personal or business life.
- (8) An appointed justice must not purport to hold, or purport to exercise, as a Justice of the Peace a power that is not conferred on him or her as a Justice of the Peace by the Act or any other Act.

8. Confidentiality

- (1) An appointed justice must respect the confidentiality of a person to whom he or she provides the services of a Justice of the Peace.
- (2) An appointed justice must not, intentionally, reveal to another person or otherwise publish information
 - (a) that he or she obtained in providing services as a Justice of the Peace, and
 - (b) that is private, confidential or commercially sensitive
- (3) Subclause (2) does not apply to the revealing or publication of information that is required or authorised by any Act or other law.

9. Legal and notarial services and advice

An appointed justice, in the course of providing the services of a Justice of the Peace to a person, must not provide

- (a) legal advice to the person, or
- (b) notarial services or advice to the person

Note

Section 36 of the Act prohibits a Justice of the Peace from demanding, taking or accepting any fee, gratuity, patronage or reward for carrying out the duties of a Justice of the Peace. This does not include remuneration from an employer if the Justice of the Peace performs the duties of a Justice of the Peace as part of his or her employment. Contravening this section of the Act may result in a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.

10. Conflict of interest

- (1) For the purposes of this regulation, an appointed justice has a conflict of interest when providing the services of a Justice of the Peace if his or her personal, pecuniary or business interests interfere with, or may be perceived as interfering with, his or her independent and impartial provision of those services to, or in relation to, a person.
- (2) If
 - (a) an appointed justice is considering providing, or is providing, the services of a Justice of the Peace to, or in relation to, a person, and
 - (b) the appointed justice is aware, or becomes aware, that he or she has or may have a conflict of interest in the provision those services to, or in relation to, that person,

the appointed justice must disclose that conflict of interest or possible conflict of interest to that person and disqualify himself or herself from providing, or continuing to provide, those services.

11. Knowledge and competence

An appointed justice must be familiar with, and comply with, the provisions of

- (a) the Act, and
- (b) these regulations, and
- (c) any other regulations made under the Act, and
- (d) any other law having effect in relation to appointed justices, and
- (e) any guidelines issued under the Act and applying in relation to appointed justices

Note 2

Section 18 of the Act requires appointed justices to undertake and complete training or professional development –

- (a) prescribed by the regulations; or
- (b) required by the Secretary of the Department.

Please note that all forms relating to family Violence Orders, Restraints, Summons, Juvenile Interviews and others can be found on the Tasmanian Magistrates Court Forms page - <https://www.magistratescourt.tas.gov.au/forms>

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Tasmanian
Government

Department of Justice

Telephone

1300 135 513 (general enquiries)

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GPO Box 825
Hobart Tasmania 7001

Email

secretary@justice.tas.gov.au

Visit

www.justice.tas.gov.au