

4.1 Witnessing documents—general procedure

What types of documents am I authorised to witness?

You have the authority to witness any lawful document, from commercial contracts to powers of attorney.

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

- first, checking the document itself (most indicate at the top the Act under which it is ‘attested’)
- then, asking the person producing the document to name the Act. (It is this person’s responsibility, not yours, to name the authorising Act and, if necessary, to produce a copy so you can be sure you have the authority, as a Cdec, to witness it.)
- finally, contacting the JP Branch to seek further advice on 1300 301 147 or jp@justice.qld.gov.au.

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

It is advisable to make yourself familiar with some of the most relevant legislation, such as:

- section 29 of the *Justices of the Peace and Commissioners for Declarations Act 1991*, which gives a general description of JP and Cdec powers
- part 4, sections 13–15 of the *Oaths Act 1867*, which deals with statutory declarations, and section 41, which addresses affidavits.

Why must some documents be witnessed?

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

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

How do you witness a document?

First, you need to choose a procedure that suits you. A procedure is necessary for two reasons:

- Following a set procedure guarantees you will carry out your duties properly.
- If people use your services frequently, before long you will have witnessed thousands of signatures. Occasionally, you may be called upon to verify a particular incident in court. Unless the incident occurred recently, you are unlikely to be able to recall all the particulars. Sticking faithfully to your set procedure gives you confidence even where your memory is hazy. It allows you to swear on oath in court, if need be, that the witnessing was done in a particular way.

So, whether the document you are asked to witness is a statutory declaration, an affidavit or some ‘one-off’ paper, you should follow the same general procedure, varying it only where the particular form of the document makes it necessary to do so.

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

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

General witnessing steps

1. Check the document to find out what type of document it is.

If it is a type you have not seen before, explain this to the person and then examine it closely. Ask yourself these questions:

Is the document lawful? Look at the top of the document for the name of the Act that authorises it. If the document does not name the Act or you suspect that it fails to comply with the law in some way, decline to witness the document and suggest they contact the receiving agency for further advice.

Do you have the authority to witness it? A document usually carries instructions about who has the authority to witness its signing. If you decide you do not have the authority, explain this to your client. (International documents, for example, usually have to be witnessed by a notary public, consular or embassy official.)

2. Check if the document lists any special requirements, such as your personal knowledge of the signatory's identity for a stated period of time or particular types of proof of his/her identity. If so, ensure they are complied with before you sign.
3. If the document is a statutory declaration or an affidavit, check it is in the correct format (see chapters 4.2 and 4.7). If it is not, explain it will have to be drawn up again and the document will need to be amended appropriately.
4. Check if the document is to be signed under oath or affirmation, or by way of statutory declaration. This will be indicated at the place where it is to be signed. If it is to be sworn (that is, by oath or affirmation) it is advisable to place the signatory under oath or affirmation at the very start. You should decline to witness a document where the form of oath, affirmation or declaration is not substantially in the correct format or the format is not authorised by law.
5. Check the person signing the document is the person named in the document. It is not acceptable for one person to sign on behalf of another. There are some exceptions to this rule. This includes when a person has appointed someone to act on their behalf, such as acting as an attorney under the *Powers of Attorney Act 1998*. The person should be able to provide proof of their authority to act on another person's behalf.
6. Ask for proof of identity. Ask the declarant for identification and enter their name and the type of identification presented in your logbook.

It is advisable, but not always mandatory, to ask for proof of identity. It is particularly important to do so if you are not satisfied as to the identity of the person claiming to be the signatory or where the document relates to ownership of property. (Note that you can only *request*—not *demand*—proof of identity unless it is one of the requirements of the document itself or unless you have sufficient grounds to doubt the signatory's identity.)

7. If the date of the document is given in more than one place (e.g. at the beginning as well as where it is signed) check it is correct wherever it appears. The date of the document must always be the same as the date when it is signed and witnessed. Do not witness a document with the incorrect date as this may invalidate the document at a later time.
8. Check the contents of the document for:
 - a. **any alterations, spaces or omissions**, all of which should be initialled by both you and the signatory. Remember to check and initial any places where correction fluids or tapes have been used over any text.
 - b. **material you know to be false**. If you have personal knowledge that material in the document is false, then you should decline to witness it. Remember that you may not refuse to witness a document simply because you do not agree with the contents or the law under which the document is framed.
 - c. **unanswered questions**. Either cross them out or have the signatory complete them as the case requires, and then ensure both you and the signatory initial them.

Note: These are exceptions to witnessing a document with unanswered questions:

- Victim Assist Queensland (VAQ) financial applications
- domestic and family violence applications
- some family law documents.

9. Check any annexures to the document. Annexures are documents that are attached to the main document. Annexures are usually information supporting the main document and they will be referred to there.

Annexures are normally marked with the letters ‘A’, ‘B’, ‘C’ and so on.

Mark the annexures in the following fashion:

.....
This is the [type of document] or a copy of the [type of document] marked with the letter ‘A’ referred to in the [name of main document] sworn/taken/affirmed/solemnly declared before me this day of 20

Signed:

Title:

.....

Normally there is no need for the signatory to sign or initial these annexures. However, under the *Uniform Civil Procedures Rules 1999*, any annexures attached to an affidavit to be filed in a court for a civil proceeding must be accompanied by a ‘certificate of exhibit’ signed by both the witness and the person making the affidavit (the deponent). The documents to be filed under these rules would indicate that both the signatory and the witness should sign the annexures.

10. Issue a warning to the person that they need to tell the truth and, if they fail to do so, they are committing a very serious offence.
11. If you have not already done so, administer the oath, affirmation or statutory declaration as required. The taking of these oaths/affirmations and declarations is covered in detail in chapters 4.2 and 4.6.
12. Ensure the document is signed in front of you. You are witnessing a signature, not someone telling you the signature on a document is their signature. If someone approaches you with a document already signed, ask them to sign the document again. You can rule a line through the unwitnessed signature. Ensure both you and the person initial the alteration.
13. Once the signatory has signed in the appropriate place on the document, you should immediately sign your name, affix your seal of office and insert your registration number in the space provided on the impression of your seal. If there is more than one place to sign, you should witness each signature in turn.

Place your seal of office close to your signature, either immediately beneath or beside it. Do not place the seal over your signature, or sign over your seal.

The prescribed mark of office of your title is ‘Commissioner for Declarations’ or it can be abbreviated as ‘Cdec’. You can use this mark of office if you do not have your seal of office with you when you witness the document. Please note that a JP (Cdec) does not have a seal of office or a registration number.

Section 31 *Proof of acts done in the performance of office* provides information regarding your seal of office and the prescribed mark of office for JPs and Cdecs.

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

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

Some documents, particularly land title documents, require you to print your full name on the document. This means your entire name, not just your initials.

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

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

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

As a Cdec, you are supplied with a black stamp pad when you receive your seal of office.

- Note the details of the document and the action you’ve taken in a register or logbook. You should do this as soon as you’ve added your signature, seal and registration number. Don’t wait until the person has left as you need to be able to refer to the document directly.

If you have asked the person to supply further information, you should keep a record of this information, including what questions you asked, what form of identification was supplied and if the information was supplied on oath. This is of particular importance for enduring powers of attorney, advance health directives and land title documents.

Such a register provides you with a reliable record to refer to, should you be called upon to give evidence in court about a particular document.

Further information regarding record-keeping is covered in detail in chapter 2.4 of this handbook.

Summary of general witnessing steps

Keep a sheet of paper handy with these questions as a checklist. Tick them off as you go:

1. Check the document to find out what type of document it is:
 - a. Is the document lawful?
 - b. Do you have the authority to witness it?
2. Does it have any special requirements?
3. Is the document an affidavit or statutory declaration? If so, is it in the correct format?
4. Is it to be signed on oath or affirmation or by way of statutory declaration? If so, does it use the correct form of words?
5. Is the signatory the person named in the document?
6. Have you requested proof of identity?
7. Is the date correct?
8. Have you checked through the document for any alterations, spaces or omissions?
9. Have you checked the annexures and marked them properly?
10. Have you issued the warning about the importance of telling the truth?
11. Have you administered the oath, affirmation or statutory declaration?
12. Was the document signed in front of you?
13. Have you signed in the appropriate place on the document, applied your seal of office and inserted your registration number?
14. Did you keep a record of any additional information supplied?

You may find it useful to keep this checklist in your register as evidence you have followed the correct procedure.

Things to bear in mind

- **Do not complete the document yourself.** You should not, under any circumstances, act on the signatory's behalf by filling in the details of a document that you intend to witness. If a person is unable to write and asks for help in completing a document, you should ask them whether they want you to:
 - find someone else to help them complete it, or
 - give the help yourself, and then refer them to another JP or Cdec to witness the document.
- **Be courteous.** It is your responsibility to be courteous at all times, even with difficult people. If you find a particular person impossible to cope with and you cannot witness their document, refer them to another JP or Cdec.
- **Maintain confidentiality.** The people you serve are entitled to their privacy. You will see many documents in the course of your duties, some of which are intensely private. You must, at all times, respect the confidentiality of the documents you witness and of the information made available to you in your official capacity. This builds the trust of the general public in the role of the Cdec.
- **Never witness a blank document.** Always ensure a document is completed fully before you witness it. If a document contains blank spaces, cross them out, have the signatory initial them and initial them yourself before signing the document.

Frequently asked questions

What does it mean to say a document is unlawful?

It means a JP or Cdec cannot attest the document—in other words, it cannot be officially verified as true and correct.

Unlawful documents need not be *illegal* (that is, they may not break any law) but, because they cannot be attested, they do not carry much legal weight and are unlikely to be acceptable to official and commercial institutions.

What makes a document unlawful?

Documents are unlawful if:

- they are not authorised to be sworn under any Act, or
- the wording they use is not the wording that the authorising Act prescribes, or
- they include unlawful material, such as defamatory comments.

Can I decline to witness a document?

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

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

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

Try to persuade them to change their mind. Explain you only wish to check if there are any alterations or omissions or if the document includes any material that would cast doubt on its legality. Tell them you will treat the contents as confidential.

If the signatory cannot be persuaded, ask them to look through the document for any alterations or omissions and initial them. You should then witness the signature in the following fashion:

Signature only witnessed. Contents not disclosed.

This will protect you if the document is later found to be invalid or includes objectionable material.

How do I deal with multiple-page documents?

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

Then initial each page and ensure the signatory does the same. The final page must be witnessed in the normal manner by signing your name.

Signature stamps

Using a signature stamp, rather than signing by hand, depends on the preference of the receiving agency. You should check with the department or agency where the document is to be filed to find out if a signature stamp satisfies their particular requirements.

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

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

What should I accept as proof of identity?

Unless the proof required is specified on the document, this is up to you. Normally a driver licence, proof of age card, student identification or passport would be sufficient. Photographic identification is ideal, however this may not always be possible. Be wary of service club ID cards.

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

Check the document to make sure you are authorised to witness it. If you are, change the title from 'Justice of the Peace' to 'Commissioner for Declarations'. There is no need to initial this alteration.

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

Should I treat the documents I witness as confidential?

Generally, yes. However, in some circumstances, the law may require you to disclose information about the document. For example, you may be called to give evidence about the matter in court.

Can I witness documents for family or friends?

You should make it a rule never to witness a document signed by a friend or relative.

If you fail to follow this rule, they could be accused of bias and this could place the document in jeopardy if it is challenged at a later time.

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

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

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

What is a seal of office?

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

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

This is not a recommended practice as your registration number is a unique identifying number that shows you have signed the document. You should keep your seal of office as safe as practicable.

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

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

Generally, there is no requirement to insert your full name when witnessing a document for a member of the community unless this is otherwise stated on the document. If your full name is required, then the document will normally provide a space for this to be inserted, such as land titles forms and some statutory declarations.

At times, it is also stated in legislation or the regulations of an Act that the witnessing officer must place their full name on a document that they have witnessed. It is important to remember that when a document asks for your full name, you include your entire middle name, e.g. John James Smith and not initials.

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

Generally, there is no requirement for you to place an address on documents you witness. If the document requires an address, you can provide the address of Justices of the Peace Branch at Level 6, 154 Melbourne Street, South Brisbane, Qld, 4101.

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

No, you cannot keep copies of documents you witness. You do not have any authority to request, retain, photocopy or photograph copies of documents.

As suggested earlier, you should maintain a register containing details of the documents you have witnessed.

Confidentiality of the documents you have witnessed is paramount and, if you hold copies of all documents you witness, keeping them secure could become a problem.

Am I allowed to witness a document via video link?

No. You can only witness documents that have been physically signed in your presence.

Quick guide

General steps to witness a document

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- Check what type of document it is. Don't witness the document if:
- ①
 - a. You don't believe it's lawful.
 - b. You don't have authority to do so.
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- ② Check if the document has special requirements e.g. proof of identity, personal knowledge of the signatory.
-
- ③ Confirm the document is properly formatted e.g. is it an affidavit or statutory declaration.
-
- ④ Check if the document is to be signed on oath, affirmation, or by way of statutory declaration.
-
- ⑤ Check the signatory is the person named in the document.
-
- ⑥ Ask for proof of identity.
-
- ⑦ Confirm the date throughout the document is the same as the date on which you're witnessing.
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- Read through the document for alterations, spaces or omissions.
- ⑧
 - a. Both you and the signatory should initial any changes, including correction fluid or tape.
 - b. Decline to witness material you know to be false.
 - c. Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.
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- Check for annexures and mark them.
- ⑨
 - a. If the annexures are for an affidavit under the *Uniform Civil Procedures Rules 1999*, then both you and the signatory must also sign them.
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- ⑩ Warn the signatory they must tell the truth.
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- ⑪ Administer the oath, affirmation or statutory declaration.
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- ⑫ Ask the signatory to sign the document in front of you.
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- ⑬ Sign the document and insert your registration number wherever a signature is required. Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).
- a. If the signatory has asked you to not check the document, state this in writing before signing.
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- ⑭ Enter all relevant details in your logbook.
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