

Ruling 003

Confirming identity for NSW statutory declarations and affidavits

Background

Changes to the law mean that JPs must take additional steps to confirm the identity of a person making a NSW statutory declaration or affidavit. There are no changes to existing procedures for Commonwealth statutory declarations or affidavits.

This Ruling has been issued by the Attorney General as additional guidelines for the purpose of section 8(2) of the *Justices of the Peace Act 2002*.

Ruling

Effective from 30 April 2012, before witnessing a NSW statutory declaration or affidavit, a JP must follow the instructions in *A Handbook for JPs in NSW* as well as these 3 additional steps:

1. see the face of the person making the NSW statutory declaration or affidavit
2. confirm the person's identity, and
3. certify on the document that these requirements have been met.

It is a criminal offence punishable by a fine for a JP to witness a NSW statutory declaration or affidavit if these requirements have not been satisfied. It is also a breach of the *Code of Conduct for JPs in NSW*.

Step 1: See the person's face

A JP must see the face¹ of the person making the NSW statutory declaration or affidavit. If the person is wearing a face covering², a JP should politely ask the person to remove as much of the face covering as will allow the JP to see the person's face.

If a person chooses not to show his/her face to the JP, the JP must decline to witness the NSW statutory declaration or affidavit. A JP does not have any authority to make or require a person to remove a face covering.

However a JP does not have to see the person's face if the JP is satisfied that the person has a 'special justification' for not removing a face covering. A 'special justification' is any legitimate medical reason. At present, the law does not permit any other special justification.

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¹ 'face' means a person's face from the top of the forehead to the bottom of the chin, and between (but not including) the ears

² 'face covering' means an item of clothing, helmet, mask or any other thing that is worn by a person and prevents the person's face from being seen (whether wholly or partly)

