

Can I witness this? Asking for a friend ...

One of the remarkable things about the COVID-19 virus is just how widespread the disruption it has caused has been. There seems no aspect of our lives which is not touched by it, including the very mundane – such as getting signatures witnessed or copies of documents signed. Before the virus, much of that was handled by Justices of the Peace (JPs), often at a desk set up in a shopping centre.

The long lockdown due to the virus, combined with the fact that many of our JPs are in a vulnerable age demographic and not ready to return to the front lines, has meant people are looking elsewhere for their signing and certifying needs. Many people are now turning to lawyers in their friendship groups and local communities for this assistance – so what exactly can lawyers sign, and for whom?

Lawyer or solicitor/Australian Legal Practitioner?

While the words lawyer and solicitor are often used interchangeably, they have different technical meanings that have implications for signing. As noted in our [“What’s in a Name?”](#) note, a person who is admitted can use the term “lawyer”; however, to use the term “solicitor” or “Australian Legal Practitioner”, a person must be admitted and hold a current practising certificate.

This has implications for what can be signed. In Queensland, the *Oaths Act 1867* (Qld) provides that lawyers can take statutory declarations¹ and affidavits.² This is because admission as an officer of the court carries with it a high level of credibility, and the act of witnessing the signature merely involves confirming that a certain person signed the document. It does not involve the application of legal skill and does not constitute the performance of legal services.³

In circumstances where the governing legislation of a particular document requires a solicitor or Australian Legal Practitioner, the person doing the witnessing or certifying must be admitted and the holder of a current practising certificate. In these cases particular consideration must be given to the task at hand, as the requirement for a person capable of providing legal services raises a presumption that the task constitutes the performance of legal services.

This is of importance as a solicitor can only perform legal services within the confines of the practising certificate they hold. In-house counsel, for example can only perform legal services for their employer. While simply witnessing a signature is unlikely to be the performance of legal services, more complex tasks may be different. Witnessing a complaint and summons, for example, involves an assessment of the complaint and the exercise of a discretion⁴ and would constitute the provision of legal services.

For whom can the services be performed?

Although the scope of any witnessing or signing task should be carefully considered on each occasion, it the task does not involve the performance of legal services, it is likely that it can be done for people who are not within the definition of client (for example, witnessing the signature of a friend on a statutory declaration).

If the signing of the document falls within the definition of legal services, however, it can only be performed in accordance with a practitioner’s right to perform legal services. For example, a practitioner with a corporate practising certificate will only be able to provide legal services for their corporate employer; government lawyers have similar restrictions on their practising certificates, with which they must comply.

¹ *Oaths Act 1867* (Qld) s 13.

² *Ibid* s 41.

³ As can be seen from the fact that those sections provide for witnessing by non-legally qualified people such as conveyancers and Justices of the Peace.

⁴ *R v Joice; Ex parte Fure* [1981] Qd R 550.

Practitioners should also be aware that even when simply witnessing a signature, their duties as officers of the court remain applicable. Witnessing the signature of a friend on a 'known user' declaration in relation to a speeding fine would not constitute the provision of legal services. That said, if the fine is accompanied by a photo from a speed camera clearly showing that the friend was indeed driving the car, the practitioner cannot witness the signature; doing so would be contrary to the duty to court and the administration of justice.

Similarly, practitioners should be wary of witnessing signatures on documents that are in a grey area as to what they might involve. Recipients of some fines can elect to have the matter heard by a court or tribunal; a practitioner witnessing that signature would need to make it explicitly clear (preferably in writing) that they were not providing advice on the wisdom or otherwise of challenging the infringement. Prudence would counsel that we avoid witnessing signatures on such documents particularly with regard to strangers.

As always, members who are unsure about a request to witness a signature or sign a document should contact the QLS Ethics and Practice Centre for more specific guidance 07 3842 5843 or ethics@qls.com.au.

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7 July 2020