

5.5 Issuing arrest warrants

What is an arrest warrant?

An arrest warrant is a document authorising a police officer to arrest a particular person, take that person into custody, detain, and remove to another place for examination or treatment or take them before a court to be dealt with according to the law. Most arrest warrants are issued under the *Police Powers and Responsibilities Act 2000* (the Act).

The arrest warrant is an approved, prescribed form and consists of two parts and remains in force until executed or withdrawn.

1. Application – the information required to substantiate the issuing of the arrest warrant, such as details about the offence and may include the date, time and place of a court hearing.
2. Arrest warrant – gives details about the person and that there are reasonable grounds for suspecting they have committed an offence.

Why would an arrest warrant be issued?

An arrest warrant is issued to bring a person to court when either a ‘notice to appear’ or a ‘summons’ would be unlikely to have the desired result. This could be when:

- it is reasonable to believe the person will not voluntarily surrender to the custody of the court
- the police are unable to find them to serve them with a summons (an arrest warrant allows any police officer anywhere in the state to arrest the person named in the arrest warrant)
- it is considered the defendant could harm someone (including themselves) if not immediately placed into custody.

Most arrest warrants are issued when the charge is for an indictable offence.

It would be advisable to issue an arrest warrant if the defendant was in the process of absconding from the jurisdiction of the court.

If the charge is for a simple offence, the court can usually proceed to hear and determine the matter without the defendant being present – it deals with the matter ‘ex parte’. For most simple offences, you would not have the authority to issue an arrest warrant, unless police have authority from the chief executive of a government department.

How do I issue an arrest warrant?

The process of issuing an arrest warrant is very similar to issuing a summons or a search warrant. The same principle of exercising judicial discretion applies in both cases. Extra care should be taken with arrest warrants because they permit police officers to take people into custody.

Before you issue the arrest warrant, you must be satisfied of three things:

- an offence has occurred within Queensland
- the offence exists in Queensland law
- all elements of the offence, e.g. date, place, details of the offence and the name of the person charged are included in the application under which the arrest warrant is issued.

There are three people principally involved:

- Applicant – the person applying for an arrest warrant
- JP – the person issuing the arrest warrant
- Defendant – the person being charged with an offence.

Part 1 – Application

Follow the general procedure for witnessing signatures as outlined in chapter 4.1 then:

1. Warn the applicant at the outset, and check they understand that if they knowingly provide information in the arrest warrant application and they know the information is false they commit an offence.

Ensure the applicant understands making an oath or affirmation is a solemn matter.

2. Immediately place the applicant on oath or affirmation as outlined in chapter 4.6.
3. Read the application carefully. This is one of the many occasions when you must read the entire document and would be failing in your duty if you did not.

An application for an arrest warrant under the Act must state the following:

- the name, rank, registered number and station of the applicant
- full details of the offence and the legislation that creates it
- includes the grounds on which the arrest warrant is sought
- the name and date of birth of the person named in the warrant
- one offence only, unless all the offences are related or part of the same incident. More than one indictable offence can be included on one application as long as they are related and each offence is covered in a separate paragraph.

4. Ask the applicant any questions you need to clarify what offence is involved and what evidence there is that the defendant committed it.

If the offence is for an armed robbery, for example, the application should give the name and the date, time and place of the offence, and mention any relevant details, such as how the defendant was armed and whether anyone was injured.

Here are some questions to guide you:

- How did you receive your information?
- Is it reliable?
- How did you identify the defendant?
- How did you get the defendant's particulars?
- What evidence do you have that an offence was committed?
- Are all the elements of the offence included in the application?
- Do you have a copy of the relevant Act?
- Can an arrest warrant be issued for this offence? (Is it a simple or indictable offence?)
- Would a summons suffice on this occasion?

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

5. If you are satisfied the arrest warrant is justified, have the applicant sign the application, reminding them they are under oath or affirmation.

If you are not satisfied the application is justified, and you refuse to issue the arrest warrant you should:

- cross out the application and note your reasons on the form
- note your reasons in your logbook
- inform the officer in charge of the police station where the applicant officer is stationed.

6. Witness the applicant's signature. Affix your seal of office and enter your registration number. This is a requirement of the *Justices of the Peace and Commissioner for Declarations Act 1991*. If required, insert your full name, location and/or date.
7. Ensure you retain the original of the arrest warrant application and keep it in a secure place. This is one of the few occasions where you are required to retain copies of documents.

Part 2 – Arrest warrant

1. Check the arrest warrant to ensure it:
 - gives the full name, rank, registered number and station of the applicant
 - states that any police officer may arrest the person named in the arrest warrant
 - includes the offence the person is alleged to have committed
 - is dated the day you issue it
 - includes the name and date of birth of the person named in the arrest warrant.
2. Sign the warrant. Affix your seal of office and enter your registration number. This is a requirement of the *Justices of the Peace and Commissioner for Declarations Act 1991*. If required, insert your full name, location and/or date.
3. Return the arrest warrant to the applicant. There is no requirement for you to retain a copy of the arrest warrant.
4. Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

When issuing an arrest warrant, you must not act mechanically or as a mere rubber stamp. It is your duty to ensure the issue of the arrest warrant is necessary and, in the case of the application, there is sufficient evidence to substantiate the allegations made by the applicant.

This is one of the many occasions when you must read the entire document and would be failing in your duty if you did not.

Frequently asked questions

Should I keep a record of the arrest warrants I issue?

As well as keeping, in a secure place, the copy of the sworn application upon which you issue the arrest warrant, you should also maintain a logbook of the actions you take, including any questions you ask and the answers you are given.

What do I do if I know the defendant?

If you know personally or are related to the person who is the subject of the arrest warrant, it creates a conflict for you and you should refuse to issue the arrest warrant. Direct the applicant to another JP.

You must not discuss the arrest warrant with the person or with anyone else.

Where can I get more information?

Queensland legislation
www.legislation.qld.gov.au

Queensland Police Service
www.police.qld.gov.au

5.5 Quick guide

Issuing arrest warrants

Application

Follow the general procedure for witnessing signatures as outlined in chapter 4.1 then:

- ① Warn the signatory that if they knowingly make a false application, they commit an offence.
- ② Immediately place the applicant on oath or affirmation as outlined in chapter 4.6. Ensure the applicant understands that swearing an oath or making an affirmation is a solemn matter.
- Carefully read the entire application. Check it gives:
 - ③
 - the applicant's name, rank, registered number and station
 - a brief description of the offence the application relates to.
 - ④ Ask questions to clarify why an arrest warrant is necessary.
- If you are satisfied the arrest warrant is justified, have the applicant sign the application, reminding them they are under oath or affirmation.
- ⑤ If you are not satisfied the application is justified, and you refuse to issue the warrant:
 - cross out the application and note your reasons on the form
 - note your reasons in your logbook
 - inform the officer in charge of the police station where the applicant officer is stationed.
- ⑥ Witness the applicant's signature. Affix your seal of office and enter your registration number. This is a requirement of the *Justices of the Peace and Commissioner for Declarations Act 1991*. If required, insert your full name, location and/or date.
- ⑦ Retain the original application and keep it in a secure place.

Arrest warrant

- Check the arrest warrant gives:
- ①
 - the full name, rank, registered number and station of the applicant, as well as the basis of the application
 - the date of issue
 - includes the name and date of birth of the person named in the arrest warrant.
 - ② Sign the warrant. Affix your seal of office and enter your registration number. This is a requirement of the *Justices of the Peace and Commissioner for Declarations Act 1991*. If required, insert your full name, location and/or date.
 - ③ Return the arrest warrant to the applicant. There is no requirement for you to retain a copy of it.
 - ④ Record all relevant information in your logbook as outlined in chapter 2.4.