Department of Justice and Attorney-General
Justices of the Peace Branch

HANDBOOK

Duties of Justices of the Peace (Qualified) and Commissioners for Declarations

NAME

Queensland Government

Duties of Justices of the Peace (Qualified) and Commissioners for Declarations Handbook

May 2024

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Disclaimer

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The Department of Justice and Attorney-General acknowledges the Traditional Custodians of all lands on which these witnessing services are delivered and pay our respects to their Elders past, present and emerging.

We recognise and celebrate the unique and continuing position of Aboriginal and Torres Strait Islander peoples in Australia's history, culture and future, and acknowledge their ongoing strength, resilience and wisdom. We are working to translate this recognition into fair, safe and inclusive practices, policies and services for Aboriginal and Torres Strait Islander peoples.

MAY 2024

SECTION 1

Introduction

SECTION 1
Introduction

Information in this section relates to duties which can be carried out by both Justices of the Peace (Qualified) and Commissioners for Declarations

1.1 Welcome to your JP and Cdec handbook

This handbook is a guide for Justices of the Peace (Qualified) and Commissioners for Declarations. Both qualifications are referred to as JP and Cdec in this handbook.

Justice of the Peace (Qualified) has, at times, been abbreviated to JP and Commissioner for Declarations to Cdec. The term JP may also refer to any number of the separate JP positions listed in section 2.1.

Sections 1 to 4 are relevant to the duties being performed by both JPs and Cdecs. These chapters provide information on the administrative duties for both qualifications.

Sections 5 and 6 relate to the judicial duties of JPs only such as issuing summonses and warrants.

The handbook has been written to provide you with a clear understanding of what is expected of you in your role and a day-to-day reference to help you perform your duties responsibly, correctly and consistently.

You'll note there are other abbreviations used throughout the handbook. Each is defined the first time it is used and is also listed in the glossary in chapter 1.3.

How to use this handbook

The handbook describes your role in the community and then deals chapter by chapter with your duties, your special responsibilities and your conduct as a JP or Cdec.

Each of the chapters dealing with your duties is divided into:

'What…?' (giving a definition of the subject)

'Why…?' (explaining the reason or purpose)

'How…?' (explaining the procedure).

You'll also find sections on things to bear in mind, frequently asked questions and where to find more information.

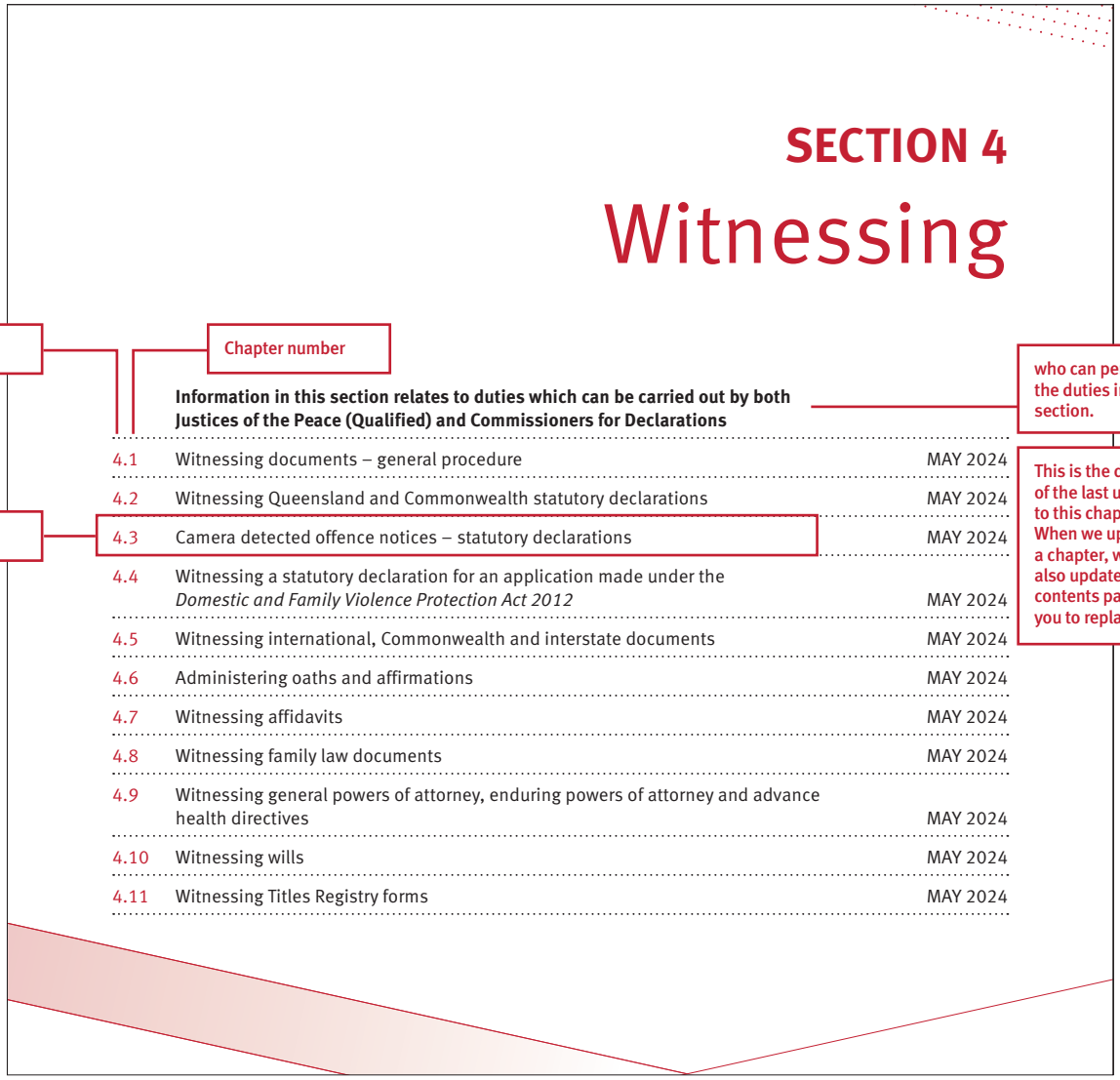
Table of contents

Number and name of section

Chapter names

Date stamp of last update

Section table of contents



Page footer

1.2 Services for you

Justices of the Peace Branch

As regulator of the *Justices of the Peace and Commissioners for Declarations Act 1991*, the Justices of the Peace Branch (JP Branch) manages the application process for people seeking to be appointed as JPs or Cdecs throughout Queensland. Such appointments are then subject to the consideration of the Attorney-General and the Governor in Council.

The JP Branch is focused on compliance and support for all JPs and Cdecs and provides professional development and mentoring to enable this. It also administers the JPs in the Community program.

The JP Branch provides best-practice witnessing procedures to all JPs and Cdecs. The JP Branch is responsible for all official publications such as handbooks, bulletins, and other publications that assist JPs and Cdecs to provide a consistently high-quality service to the community.

www.qld.gov.au/jps

JPs in the Community program

The JPs in the Community program was launched in 2003 for JPs and Cdecs to volunteer their services at community venues across the state. Signing sites can be found at locations such as shopping centres, libraries, courthouses and universities.

Additionally, the JP Branch supplies resources to the sites, such as stamps, logbooks and other items needed to witness documents.

www.qld.gov.au/volunteerjp

Insurance

When performing official JP or Cdec duties as for the State of Queensland, you are covered under:

- Queensland Government Indemnity Guidelines (Indemnity guidelines)
- Queensland Government Insurance Fund (QGIF).

Under the Indemnity guidelines:

- Volunteers offering services on behalf of the state, cannot be personally held liable for any injury they may cause to a third party as long as they are acting in good faith (in this case, injury refers to monetary loss and good faith means they made an honest mistake on a form).
- The Queensland Government accepts responsibility for any financial harm caused inadvertently, which ensures they can continue to provide an important service to the Queensland community.

The QGIF covers you for personal injury, public liability and professional indemnity while you are witnessing anywhere in Australia, regardless of whether an incident takes place in the JPs in the Community program, a private residence or workplace.

If an incident occurs, complete the Incident Report Form and send it to the JP Branch.

www.qld.gov.au/jpincidentreport

Professional development

The JP Branch provides many different avenues for JPs and Cdecs to stay up to date and provides free workshops, online modules, webinars and seminars throughout the year to help JPs and Cdecs improve their knowledge and keep their skills up to date.

www.qld.gov.au/jplearn

Mentoring

The JPs in the Community mentoring program assists JPs and Cdecs who are newly appointed and those who are re-entering the system or refreshing their knowledge. Through the mentoring program an experienced JP or Cdec will provide you with one-on-one mentoring and sit with you while you undertake your duties.

www.qld.gov.au/jpmentor

JP bulletin

The *JP Bulletin* is published regularly to inform you about changes in legislation and witnessing procedures, provide information and alerts, and recognise the work you do for the community.

www.qld.gov.au/jpbulletin

Technical bulletin

Technical bulletins are released in response to changes in JP and Cdec responsibilities or legislation, inform you about issues, or provide reminders about specific responsibilities.

www.qld.gov.au/jptechnicalbulletin

JP and Cdec merchandise

As a JP or Cdec, you need items that identify you so the public knows the vital role you carry out in our community.

The seal of office stamp is licensed to the Queensland Government and is only available from JP Branch. We have a range of other merchandise and stamps available for purchase from our online shop. You will need your registration number to purchase these products.

www.qld.gov.au/jpshop

Update my JP or Cdec details

It is important you keep us up to date with your contact details, which you can easily do online.

Maintaining your current contact details means we can keep you informed about dates and locations of professional development, updates related to your responsibilities, latest news and more.

www.qld.gov.au/updatejpdetails

Resign as a JP or Cdec

If you are no longer able to be a JP or Cdec due to time constraints, family commitments, illness or other reasons, you can resign from the role online.

www.qld.gov.au/resignjp

Justice associations

There are independent associations for JPs and Cdecs across Queensland who provide additional peer support, professional development and networking opportunities.

All Justice associations are run independently from the JP Branch and the Department of Justice and Attorney-General and may charge for membership. Membership of these associations is entirely optional, there is no requirement for you to join an association upon becoming a JP or Cdec.

In some locations, members of associations support the volunteer JPs in the Community program by coordinating rosters, mentoring and disseminating information to volunteers. The JP Branch works closely with all Justice associations to ensure JPs and Cdecs maintain best witnessing practice.

Support for JPs and Cdecs

We can help you to access free, professional, confidential counselling, and crisis response services following potentially traumatic events related to your role as a JP or Cdec.

You can access support for a broad range of concerns such as issues related to your role as a JP or Cdec, stress and coping, relationship issues, or depression/anxiety. Counselling may be accessed face-to-face, by telephone, or over audio visual link. It is capped at four appointment sessions per year. If you require longer term support, you may be referred to another provider, at your own expense.

Where a potentially traumatic event occurs when witnessing documents, we have counsellors who can support you. Contact the JP Branch for a referral in this instance.

Our contact details

Justices of the Peace Branch
Level 6, 154 Melbourne Street
South Brisbane QLD 4101

1300 301 147
jp@justice.qld.gov.au

GPO Box 5894
West End QLD 4101

1.3 Terms and acronyms

The glossary of terms and acronyms is a basic guide to those most commonly used through the handbook.

Glossary of terms

Adjourn

Defer or postpone a court event to another day.

Adult

A person who is 18 or more years old.

Advance Health Directive (AHD)

A document where a person states their wishes or directions regarding their future health care for various medical conditions. It comes into effect only if they are unable to make their own decisions.

Advice

Legal advice is a written or oral statement that interprets some aspect of the law, court rules or court procedures. It recommends a specific course of conduct or strategy a person should take in an actual or potential legal proceeding.

Affidavit

In relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

Affidavit of justification

A document that sets out the relationship between the surety and the defendant, and the surety's financial status. It includes a declaration that, if the court requires the surety to forfeit, the loss would not be detrimental to their livelihood.

Affirmation

The act of confirming something to be true, or is a written or oral statement that confirms something is true.

Aggrieved – domestic violence

A person who is the victim of domestic or family violence or the person that a domestic violence order is made to protect.

Amend

Means to omit, insert, alter or vary a document or instrument.

Annexure

Document(s) that are affirmed or sworn to and referred to in the affidavit. These can be attached or separate to an affidavit.

Arrest warrant

A document authorising a police officer to arrest a particular person and take them before a court to be dealt with according to law.

Attest

To confirm something is true, genuine, or authentic.

Bail

A written undertaking upon release from custody that a person will appear in court at a certain date, time and place while awaiting the determination of a charge. It is signed by a defendant and witnessed by a JP.

Bailiff

A court officer who may serve documents, carry out court orders and assist in court.

Certified copy

A certificate or endorsement stating a document is a true copy of the main document sighted. It does not certify the main document is authentic, only that it is a true copy of the main document.

Childrens Court of Queensland

Deals with serious offences committed by juveniles under 17 years of age. This court also deals with matters of child protection.

Commonwealth

Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

Complainant

A person who makes a formal complaint.

Complaint and summons

A complaint and summons under the *Justices Act 1886*.

Declarant

The individual who is seeking to have their document formally witnessed by a JP or Cdec.

Declaration

The statement in a statutory declaration that stipulates that the contents of the declaration is true or if the contents of the declaration are stated on the basis of information and belief, that they are true to the best of the knowledge of the person making the statement.

Defendant

A person against whom legal action is taken, including criminal charges.

Deponent

A person who makes an affidavit and is then seeking to have their document witnessed by a JP or Cdec.

District Court

The second tier of the court system. This court deals with offences of a more serious nature than the Magistrates Court, including armed robbery and dangerous driving. Civil matters between $150,000 and $750,000 are dealt with in this jurisdiction.

Document

Means a record of information, however recorded, and includes a thing on where there is writing and on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them. It also means an electronic document.

Electronic document

Means a record of information that exists in digital form and is capable of being reproduced, transmitted, stored or duplicated by electronic means.

Enduring Power of Attorney (EPA)

A formal document where a person delegates to another person the power to make legally binding personal and/or financial decisions on his or her behalf.

Executor

Individual(s) appointed to administer and carry out the instructions of a will.

General Power of Attorney (GPA)

A formal document where a person delegates to another to make financial decisions on his or her behalf for a specific period or event while the principal person has capacity.

Instrument

Means any document.

Judge

A judicial officer appointed to hear matters in the Supreme and District Court.

Jurat

The certification at the end of the body of an affidavit that stipulates where or when the affidavit was sworn or affirmed and by whom. Signatures are also of the deponent and the JP or Cdec, and the name and title of the JP or Cdec before whom the affidavit was sworn or affirmed.

Magistrate

A judicial officer appointed to hear and decide matters in the Magistrates Court.

Magistrates Court

The first tier of the court system. This court deals with less serious offences such as assault, theft and minor traffic matters. Civil matters less than $150,000 are also dealt with here.

Notary public

Usually a practising solicitor or attorney, appointed by an English Archbishop in the case of Queensland, and given statutory powers to witness documents, administer oaths and perform other wide-ranging administrative functions of a national and international nature.

Notice to appear

Provides a general description of the accused charged, rather than the formally worded charge in a summons. It is not sworn on oath, and is issued 'on the spot' by a police officer.

Oath

A solemn declaration or undertaking that calls upon God to witness the truthfulness of the statement a person is making.

Prescribed mark of office

This is the title 'Justice of the Peace (Qualified)' or 'Commissioner for Declarations'. This mark may be handwritten if you do not have your seal of office with you, except in the case of a JP issuing any warrants, complaints or summonses.

Prosecutor

The person who acts on behalf of the Crown in the case before the court. The prosecutor, who will either be a police officer or an officer for the Office of the Director of Public Prosecutions, presents evidence to the court.

Receiving agency

Refers to an organisation or entity designated to receive specific documents, forms, or submissions as part of a formal process or procedure. It often denotes the government department, office, or authority responsible for accepting and processing such documents according to relevant laws and regulations.

Registration number

A unique number issued to JPs and Cdecs upon appointment and is to be applied to all documents witnessed along with their signature and seal of office.

Respondent – domestic violence

A person who is the alleged perpetrator of the domestic or family violence or the person the domestic violence order is made against.

Seal of office

Issued to all JPs and Cdecs upon appointment and is to be applied to all documents, along with their signature and registration number.

Search warrant

A document authorising a police officer to search a specified property within a specified timeframe.

Signatory

The person who is seeking to have their document formally witnessed by a JP or Cdec.

State Member of Parliament

A member of the Legislative Assembly who is elected at least every four years by the people of Queensland. They are often referred to as an MP.

Statutory Declaration

A document containing statements that are declared true and correct. Please note these forms can come in a wide variety of versions as different organisations have created their own formats.

Summons

A document that commands a person to attend a court at a prescribed date, time and place as set out on the form.

Supreme Court

The third tier in the court system. This court deals with the most serious criminal matters such as murder and major drug offences. Civil matters involving amounts greater than $750,000 are dealt with in this jurisdiction.

Surety

A condition of bail where the court orders a third person to guarantee the defendant will abide by the bail undertaking.

Sworn

A person swearing to the contents of a document is an individual who places his or her hand on the Bible and makes a solemn declaration the contents are true and correct.

Testator

Someone who makes a will.

Witness

Some documents do not require a JP or Cdec. If the document is not being sworn or affirmed to, then the witness can be an ordinary member of the public (often not a relative or a friend, depending on the nature of the document) who will merely sign, recognising the document was signed in front of them. A JP or Cdec can still sign these documents, even though their official designation is not essential.

Acronyms and abbreviations

AHD	Advance Health Directive
CALD	Culturally and Linguistically Diverse
Cdec	Commissioner for Declaration
DJAG	Department of Justice and Attorney-General
DRB	Dispute Resolution Branch
DV1	Domestic and Family Violence Protection Order Application
EPA	Enduring Power of Attorney
FCFOA	Federal Circuit and Family Court of Australia
GPA	General Power of Attorney
ID	Identity document
JP	Justice of the Peace
JP Branch	Justices of the Peace Branch
JP Cdec	Justice of the Peace (Commissioner for Declarations)
JP (Mag Ct)	Justice of the Peace (Magistrates Court)
JP (Qual)	Justice of the Peace (Qualified)
NAATI	National Accreditation Authority for Translators and Interpreters
OPG	Office of the Public Guardian
QCAT	Queensland Civil and Administrative Tribunal
QGIF	Queensland Government Insurance Fund
QIC	Queensland Interpretor Card
RBDM	Registry of Births, Deaths and Marriages
VAQ	Victim Assist Queensland

SECTION 2

Your role

SECTION 2
Your role

Information in this section relates to duties which can be carried out by both Justices of the Peace (Qualified) and Commissioners for Declarations

2.1 Historical and social context of your role

As a JP or Cdec you belong to a centuries-old system of voluntary legal officers known as Justices of the Peace.

The office of Justice of the Peace was first established in England by the enactment of a series of statutes in the fourteenth century.

The office of Justice of the Peace was inherited from England when Australia (or, more accurately, the colony of New South Wales) was first settled in 1788. Queensland inherited the office when it separated from New South Wales in 1859.

Today, appointments are made from a wider section of the community. JPs and Cdecs are citizens who are entrusted by their community to take on special responsibilities, from witnessing the signing of documents to hearing certain types of court matters.

Over time, the responsibilities of the JP and Cdec have evolved. In recent years, with the passing of more complex and intricate legislation, JP and Cdec roles have been taken over partly by the appointment of professionally qualified Magistrates. This has not diminished the importance of today's JP or Cdec. In fact, contemporary legislation facilitates greater responsibility for the JP and Cdec role, ensuring legislation objectives are properly and efficiently carried out – witnessing an enduring power of attorney is one example of this.

On many occasions, the JP and Cdec still acts as a check and balance on the powers of state authorities, including the Queensland Police Service. It is the JP's or Cdec's responsibility to exercise discretion in all matters.

Qualifications and appointments

Before 1991, there was only one level of Justice of the Peace in the Queensland system. The position encompassed a very broad range of duties.

As society and its laws have grown more complex, there has been an increasing need to streamline the JP system and ensure its officers are kept informed.

The *Justices of the Peace and Commissioners for Declarations Act 1991* (the Act) was part of this process. With this Act, the single role of Justice of the Peace was split into three separate positions.

Commissioner for Declarations (Cdec)

As a Cdec, your role is a purely administrative role. You do not have any judicial function – that is, you do not deal with any type of court process.

Justice of the Peace (Qualified)

As a JP (Qual), you have all of the responsibilities of Cdecs and also several judicial duties, both 'non-bench' and 'minor bench'. Two JPs (Qual) or one JP (Qual) and one JP (Mag Ct) can constitute a Magistrates Court to deal with specific matters listed further in *Summary of Duties*.

Justice of the Peace (Magistrates Court)

This role has all of the duties and responsibilities of the previous two roles with an additional power. Two JPs (Mag Ct) can constitute a Magistrates Court to deal with guilty pleas for offences under the *Summary Offences Act 2005* and the *Regulatory Offences Act 1985*.

Summary of duties

Position	Abbreviation	Duties
Commissioner for Declarations	Cdec	Administrative duties only
Justice of the Peace (Qualified)	JP (Qual)	Administrative duties Non-bench judicial duties Minor bench duties
Justice of the Peace (Magistrates Court)	JP (Mag Ct)	Administrative duties Non-bench judicial duties Some bench judicial duties
Justice of the Peace (Commissioner for Declarations)	JP Cdec	Administrative duties only

2.2 Eligibility and conduct

Qualification and suitability of appointment and conduct

To become and remain a JP or Cdec, you must meet the following qualifications for appointment and standards.

Among the provisions of the *Justices of the Peace and Commissioners for Declarations Act 1991* (the Act), sections 16 to 17A provide the qualifications, suitability for appointment and disqualifying convictions for prospective and current JPs and Cdecs. Once you are appointed as a JP or Cdec you should familiarise yourself with these sections and if your circumstances change contact the JP Branch.

Section 16 Qualification for appointment

1) Subject to subsection (2), a person is qualified for appointment as a justice of the peace or a commissioner for declarations if—

a) the chief executive is satisfied under section 17 that the person is suitable for appointment; and

b) the person is an adult; and

c) for a person other than an Australian lawyer—the person has completed any pre-appointment training course; and

d) the person is an Australian citizen; and

e) the person—

i) ordinarily resides in Queensland; or

ii) works, or proposes to work, in Queensland and cannot perform that work unless the person is a justice of the peace or a commissioner for declarations.

2) A person is not qualified for appointment as a justice of the peace or a commissioner for declarations if—

a) the person is an insolvent under administration; or

b) the person has a disqualifying conviction; or

c) a previous appointment of the person as a justice of the peace or a commissioner for declarations was revoked within the previous 5 years.

Section 17 Suitability for appointment

1) *In deciding whether a person is suitable to be appointed as a justice of the peace or a commissioner for declarations, or continue to hold office, the chief executive may consider—*

   a) *the person's character and standing in the community; and*

   b) *anything that may affect the person's ability to competently fulfil the duties of a justice of the peace or a commissioner for declarations; and*

   c) *whether the person has ever—*

      i) *held an occupational licence that has been suspended or revoked; or*

      ii) *been disqualified from holding an occupational licence; and*

   d) *whether the person has ever been convicted of an offence and, if so—*

      i) *the number of offences of which the person has been convicted; and*

      ii) *the following matters relating to each offence—*

         A. *the nature and seriousness of the offence;*

         B. *the penalty imposed for the offence;*

         C. *the person's age when they committed the offence;*

         D. *how long ago the person committed the offence; and*

   e) *for a person holding office or who has held office—whether the person has ever contravened the code of conduct without reasonable excuse and, if so, the number, recency, nature and seriousness of the contraventions; and*

   f) *anything else relevant to the person's suitability to hold office.*

2) *In this section—*

   ***Occupational licence** means a licence, permit or other authority to work in a profession, business, trade or industry.*

   ***Office** means office as an appointed justice of the peace or appointed commissioner for declarations.*

   ***Revoked** includes cancelled.*

Section 17A Disqualifying convictions

1) A disqualifying conviction is—

a) a conviction, including a spent conviction, for—

i) an indictable offence; or

ii) an offence involving dishonesty; or

iii) an offence involving a breach of confidentiality; or

iv) an offence against this Act; or

b) a conviction, including a spent conviction, for an offence for which a sentence of imprisonment was imposed, even if the sentence was suspended.

2) However, a conviction of a person is not a disqualifying conviction if the chief executive has granted the person an exemption under section 17B in relation to the conviction.

17B Exemptions for disqualifying convictions

1) A person who is a justice of the peace or commissioner for declarations, or is applying under section 15A for appointment, may apply to the chief executive for an exemption in relation to a conviction mentioned in section 17A(1).

JP and Cdec obligations for disqualification provisions

As per section 26 (1) of the Act, you must notify the JP Branch Director and Registrar immediately by phone or in writing if you are subject to any of these disqualification provisions. Failure to notify the registrar is an offence under the Act with a maximum penalty of 10 penalty units.

What is a 'special witness' and how do I become one?

Under the *Oaths Act 1867*, a special witness is authorised to witness eligible documents electronically, in person and online, by an audio-visual link.

Section 12 of the *Oaths Act 1867* provides information regarding the appointment approval of special witnesses.

The Chief Executive Officer of the Department of Justice and Attorney-General may approve a JP or Cdec to be a special witness if they are satisfied the JP or Cdec is an appropriate person. The JP Branch will seek expressions of interest for special witnesses from time to time.

Standards required for JPs and Cdecs

As a JP or Cdec, you play a very important role in the community and, in return, the community expects you to maintain a certain standard of professionalism.

There are multiple publications outlining guidelines for all JPs and Cdecs to follow. There are also statutory (or legislative) requirements to which JPs and Cdecs must adhere, including:

- You shall abide by the law and be of good behaviour at all times.
- You shall not accept any reward, gift or payment for services rendered as part of your official duties.
- You shall not repeat to another person any information that has been divulged to you in the course of your duties, unless required to do so in a court of law. All information must be treated with utmost confidentiality.
- You must not use any information you receive as a result of your official duties for your own or any other person's profit.

- You must never give legal advice.
- You must never witness any document unless the oath or declaration is authorised by an Act or other law, is stated on the document to be witnessed, and authorises you to sign the document.
- You must never witness a document unless it is substantially in the correct format and is an authorised or prescribed version for that type of document. Variations that are unusual and not provided for under an Act or other law should not be witnessed.
- You must never witness a document that the signatory has signed anywhere other than in your presence. These documents should be re-signed in your presence.
- You must never witness a blank document or a document that has blank spaces or unanswered questions in it.
- You must always warn the signatory of the consequences of making a false statement under declaration, oath or affirmation.
- When witnessing an oath, affirmation or declaration, always ensure the signatory takes it in the proper manner and that nothing is substituted for the Bible or Koran when they are required.
- You should never be pressured into signing a document. You must take the time to ensure the documentation is correct. If unsure, you can seek assistance from the JP Branch prior to witnessing.
- You must advise the Department of Justice and Attorney-General in writing within 30 days of any change to your contact details (address, email and phone).
- You must advise the department of any event that would disqualify you from holding office.

Code of conduct

Further to the standards, you are expected to abide by the JP and Cdec Code of Conduct made by the Director-General under section 31G of the Act.

The Code of conduct's main objective is to further promote a higher standard of practices, principles, professionalism and consistency of procedures.

1. JPs and Cdecs shall act and make decisions in a way that is compatible with human rights. This helps ensure their decisions are based on principles of human dignity, equality, freedom and rule of law.
2. JPs and Cdecs shall be prepared to contribute time and effort to the service of society pursuant to their solemn undertaking on application for appointment.
3. JPs and Cdecs shall at all times perform their functions honestly, fairly, competently and diligently.
4. JPs and Cdecs shall at all times serve their fellow citizens with courtesy, dignity, consideration and compassion.
5. JPs and Cdecs shall not act with bias, prejudice, intolerance, bigotry, malice and ill will. They shall pursue the principles of equity and social justice as consistent criteria in all their dealings with the community.
6. JPs and Cdecs shall perform their functions with dignity, rationality and decorum. They shall not use their title where it is inappropriate, irrelevant or insensitive to do so, or in such a way as to bring the office into public disrepute or derision.
7. JPs and Cdecs shall not witness signatures of persons whose level of competence is questionable without first obtaining relevant independent advice (e.g. medical, educational and legal).
8. JPs shall always employ proper judicial discretion in their consideration of applications for the issue of summonses and warrants, being prepared to ask questions and put their minds to the issues, thereby seeking to be fully satisfied before the granting of any order sought. A summons or warrant shall not be approved without the sworn complaint or application first being thoroughly read and judicially considered by the JP.
9. JPs and Cdecs shall at all times observe confidentiality unless authorised by law to make disclosure and must not share any information that comes to their knowledge while carrying out their duties in the course of serving the community.

10. JPs and Cdecs are not to use any private electronic recording devices without first advising the deponent and will respect the person's wishes to not record the witnessing process by electronic means if requested forthwith.
11. JPs and Cdecs shall give the appropriate warnings as to truth and honesty, and put the required formal questions when administering oaths, affirmations and solemn declarations.
12. JPs and Cdecs are to check their details every six months on the general website of the Department of Justice and Attorney-General.

Conflict of interest

13. JPs and Cdecs shall not show favour to friends, relations and associates nor adopt procedures other than outlined in the *Duties of Justices of the Peace and Commissioners for Declarations* handbook and technical bulletins published by the Department of Justice and Attorney-General. They shall disqualify themselves from acting if they are faced by a conflict of interest situation.
14. JPs and Cdecs shall not make use of their position, title, seal of office or any other emblem of office of any kind of personal advantage including monetary gain or profit of any kind, direct or indirect, in carrying out their duties. It shall, however, be permissible for JPs and Cdecs to inscribe their title on signs and business stationery in order to raise awareness throughout the public regarding their availability and readiness to serve the community.
15. JPs and Cdecs shall administer the law as it stands, with no right to decline to act because of personally held views about particular legislation.
16. JPs and Cdecs shall at all times separate their functions of office from any interpersonal or political considerations, influence and benefit.
17. JPs and Cdecs must retain their independence and must never regard themselves as servants of any law enforcement agency.

Competency and knowledge

18. With the changing nature of law and society, JPs and Cdecs shall endeavour to keep themselves up to date with legislative changes as provided by the Department of Justice and Attorney-General.

Notification

19. JPs and Cdecs are required to undertake the full range of administrative and judicial functions prescribed for their office and shall inform the police of their identity and availability.
20. JPs and Cdecs must notify the Department of Justice and Attorney-General in writing within 30 days of any changes to their name, address, contact numbers and email address.

Liability of JPs and Cdecs

Your official duties as a JP or Cdec requires you to carry out many functions that may, occasionally, raise the question of liability. The Act provides in section 36:

> 1) *A person injured –*
>
> a) *by an act done by a justice of the peace or a commissioner for declarations purportedly in the performance of the functions of office but which the Justice of the Peace or Commissioner for Declarations knows is not authorised by law; or*
>
> b) *by an act done by a Justice of the Peace or Commissioner for Declarations in the discharge of the functions of office but done maliciously and without reasonable cause;*
>
> *May recover damages or loss sustained by the person by action against the justice of the peace or commissioner for declarations in any court of competent jurisdiction.*
>
> 2) *Subject to subsection (1), action is not to be brought against a justice of the peace or commissioner for declarations in respect of anything done or omitted to be done in, or purportedly in, the performance of the functions of office.*

Section 36 of the Act provides protection for JPs and Cdecs against actions to recover damages or loss. The clear exception to this protection – where a JP or Cdec committed an act knowing the act was not authorised by law, or that the act was done within the law but maliciously and without reasonable cause.

More on the coverage provisions and how to advise us if an incident occurs as outlined in chapter 1.2.

Requests for legal advice

While most JPs and Cdecs do not have any formal legal training, due to the nature of the position and the public esteem in which it is held, they are often asked for legal advice. Legal advice is about telling a person what to do rather than how to do it – your role is to witness documents not to provide advice on possible outcomes or court procedures.

Under no circumstances should you give legal advice unless you are authorised to do so under the *Legal Profession Act 2007*.

Be mindful not to take sides, or to be sympathetic one way or another, or to offer any opinion as to possible grounds of legal action or the likely success of such action. Instead, you should recommend the person contact their solicitor or refer them to the relevant government department. You should not refer them to any particular solicitor.

Building up a reference library of people and organisations to contact about different matters is a good idea.

Assisting with document completion

You are an independent, unbiased witness. If you choose to assist someone to complete a document, you must not witness that document. The best practice is to refer the person to another JP or Cdec to witness the document.

2.3 Your role and responsibilities in the community

As a JP or Cdec, your main role is to witness the signing of official documents. The community expects you to be constantly mindful that, as you discharge your duties, you are an integral part in the administration of justice.

The position of a JP or Cdec indicates you are trusted to act responsibly. Documents witnessed by a JP or Cdec have more legal weight than a document witnessed by someone without any official position. The community will expect you to have some understanding of the documents brought before you.

JPs have additional responsibilities over those of a Cdec in that a JP has a quasi-judicial role. A JP may be requested to issue a warrant or a summons. On some occasions, particularly in the more remote areas of the state, JPs may also be called upon to sit on the Magistrates Court bench with a registrar of a court to deal with procedural motions.

You have a duty of care to act within your scope of practice. You cannot provide legal advice in your role as a JP or Cdec.

You must carry out your duties in a professional manner, adhere to the *Justices of the Peace and Commissioners for Declarations Code of Conduct* to ensure consistent witnessing practices, procedural and legislative guidelines are always followed.

An outline of the duties of a Commissioner for Declarations

- witnessing people signing documents as prescribed by law
- certifying copies of documents.

An outline of the duties of a Justice of the Peace (Qualified)

JPs perform the same duties as a Cdec, as well as:

- issuing summonses and warrants
- attending police records of interview
- minor bench duties – acts by 2 JP (Qual). Examples include:
  - hearing a bail application
  - hearing a bail application for children
  - make or vary a temporary protection order.

Why these roles are important

The duties of a JP or Cdec are not to be taken lightly. You have a vital and responsible role to play in the general community. You will, at times, deal with matters of crucial importance to people's lives. For instance:

- Some documents will have substantial financial implications for the people involved.
- Some documents may be used in court proceedings where a person's liberty may be at stake.
- Some documents may ultimately control how a person is treated in hospital or in a nursing facility.

A JP also has authority for the following, all of which can have major impact on people's lives:

- Issue summonses to direct people to attend at court.
- Issue warrants for a person's arrest or to search their property.
- Constitute a court, depending on the jurisdiction, with another JP to carry out specific duties.

Who will use my services?

The services of JPs and Cdecs are in demand by commerce and industry, all levels of government, and the community in general.

You are appointed to serve all members of the community, not just a select few in the organisation in which you work or participate or for the organisation's customers. You should make yourself available to offer your services whenever possible.

Am I allowed to act outside Queensland?

Yes, you may act outside Queensland, as long as the document you are witnessing or the duty you are fulfilling comes under Queensland law (and the document is to be used in Queensland) or Commonwealth law.

For example, you can witness a statutory declaration anywhere as long as it applies to matters under Queensland law and is intended for use in Queensland.

You can also generally witness a Commonwealth document anywhere in Australia, subject to any special provisions required by the legislation that covers such documents.

However, the power of a JP (Qual) or JP (Mag Ct) to constitute a court applies only within Queensland.

When should I be available?

You should always be available to carry out your duties, as people may contact you at any time of the day or night. If you are busy, you can make an appointment for a time that suits both you and the person seeking your services.

If you are unable to find a time that suits you both, refer the person to the online directory to locate another JP or Cdec.

How can people who need my services find me?

The names and contact telephone numbers of all JPs and Cdecs are listed in a private database maintained by us.

We have a directory of JPs and Cdecs who are willing to have their name, qualification, suburb and phone number listed publicly online. You can be included in this public facing list by clicking the appropriate box when you next update your details online.

Other ways to offer your service include:

- volunteer in the JPs in the Community program
- contact your local police station, hospital or other local organisations and advise them of your availability.

www.qld.gov.au/findJP

Resigning from office

If at any time you wish to resign from your position, you can do so by notifying us online or by writing to the JP Branch Director and Registrar.

If, after you resign, you wish to be reappointed as a JP or Cdec, you will need to reapply through your State Member of Parliament and undertake the mandatory training course again.

www.qld.gov.au/resignJP

Moving interstate

There is no requirement for you to resign from your position if you move overseas or interstate, provided you remain registered on the Queensland electoral roll. There are times when people living interstate or overseas need Queensland JPs or Cdecs to witness Queensland or Commonwealth documents.

If you are moving, whether within Queensland or beyond, ensure you notify us online.

www.qld.gov.au/updatejpdetails

How do I update my contact details?

It's easy to update your details online. By updating your details we can keep you informed about dates and locations of professional development opportunities, updates related to your responsibilities, latest news and other matters relating to your role.

www.qld.gov.au/updatejpdetails

2.4 Record keeping and logbooks

Why keep records?

JPs and Cdecs assist members of the community with many different documents. At times, the contents of documents, or the capacity of a person to sign a document, are challenged in a court of law. You may be called to a court or tribunal to give evidence about what occurred when the documents were witnessed.

Therefore, it is important you make and retain thorough and consistent records of all the documents you witness and any action you may take. You should advise the signatory you must record certain information in case there are ever any questions about how the document was witnessed.

What information should I record?

You should keep accurate and consistent records, develop a standard procedure for dealing with a particular document and not deviate from this practice. That way if a document you witnessed is challenged in court but you have no specific recollection of it, you can honestly state you have a witnessing practice which you do not deviate from and show evidence of your consistent records for that type of document.

The information you record may vary depending on the type of document witnessed. Your logbook should contain the following information:

- date
- name of the signatory
- type of document witnessed
- type of identification sighted
- location where the document was witnessed
- whether there were any special requirements you needed to take to ensure compliance with the document
- any questions asked and answers given to clarify the document contents and the signatory's understanding of the document
- if the signatory took an oath, affirmation or declaration.

You should also keep detailed records when the document to be witnessed is unusual or there are circumstances where it is wise to keep more detailed records. These may include:

- applications for warrants
- documents under the *Powers of Attorney Act 1998*
- if an interpreter or translator was used, the language and dialect used, and the oath or affirmation of interpreter
- Titles Registry forms.

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

Confidentiality and recording personal information

Any information you record as a result of witnessing a document must remain confidential. You should never include specific details about the contents of a document as this may breach confidentiality between yourself and the signatory.

You are not permitted to record in your logbook any specific numbers appearing on the signatory's identification. This includes but is not limited to passport, driver licence or credit card numbers.

All documents should be treated as confidential. However, there may come a time you are required to disclose information to a court or tribunal about a document you have witnessed. In these instances, you must follow the direction of the court or tribunal.

When should I make my records?

You should make your records at the time of the witnessing or as soon as practicable after.

A court will not normally allow reference to records made a long time after the event.

Can I keep copies of documents that I witness?

No, maintaining confidentiality of the documents you witness is paramount. You do not have any authority to request, retain, photocopy or photograph any documents you witness. Your logbook should only contain details of the type of documents you witnessed.

You do not have any authority to request, make or retain a copy of any document that will be or has been lodged in a court or tribunal. This includes but is not limited to:

- land title documents
- enduring documents
- applications to extend detention periods
- warrants
- complaints and summonses
- matters before the courts where the named person is a juvenile.

However, JPs may retain copies of documents such as applications for warrants and applications for external body searches.

Storage and security of retained documents

You should keep your records in a secure place where you control access.

Retention and destruction of records

There is no specific legislation that stipulates how long you should keep information obtained in exercising your duties of office.

An exception to this is recording of Titles Registry transactions. There is a mandatory requirement for you to keep a written record of how you verified the signatory's identity and their entitlement to sign the form for a period of seven (7) years from the date of witnessing, as outlined in chapter 4.11.

If you are no longer able to perform your official duties and resign from your role as a JP or Cdec you can contact us for information on how to best dispose of your reference material.

Never dispose of any documents or logbooks in household bins, business bins or public refuse disposal areas.

2.5 Queensland courts

The *Queensland Criminal Code* divides offences committed in Queensland into two categories:

- criminal offences
- regulatory offences.

Criminal offences are further separated into:

- crimes
- misdemeanours
- simple offences.

Crimes and misdemeanours are indictable offences, meaning the offender may be sent to trial before a judge and jury.

Pleas for simple offences and regulatory offences are usually dealt with by a Magistrates Court, which may be constituted by a Magistrate or two JPs (Mag Ct).

A simple offence is any offence not designated as any other type of offence. In other words, unless the Act (which creates the offence) states the offence is a crime, misdemeanour or regulatory offence, then it is a simple offence.

The following are examples of simple offences that may be dealt with by a Magistrates Court:

- speeding
- driving a motor vehicle while under the influence of liquor or a drug
- unlicensed driving
- Liquor Act offences
- resisting arrest
- using obscene language.

Some examples of regulatory offences are:

- unauthorised dealing with shop goods where the value is less than $150 (such as shoplifting)
- failing to pay a restaurant or hotel bill where the value is less than $150
- unauthorised damage to property where the value is less than $250.

More serious offences are committed to a District Court or Supreme Court.

The following table lists various types of offences and shows which court usually deals with each type. It is a guide only, as some exceptions apply in different legislation.

Queensland Courts jurisdictions

Type of offence	Court of jurisdiction
Serious offence with penalty ›20 years	Supreme Court
Serious offence with penalty ‹20 years	District Court
Certain serious offences under section 552 of the *Criminal Code Act 1899* (Criminal Code) • simple offences • regulatory offences • domestic violence applications • bail applications.	Magistrates Court constituted by a Magistrate
On a plea of guilty: • simple offences only by children.	Where neither a Childrens Court Magistrate nor other Magistrate is available, the Children's Court can be constituted by two justices: • Two JP (Qual) or • One JP (Qual) and one JP (Mag Ct) or • Two JP (Mag Ct)
On a plea of guilty, certain serious offences under section 552 of the Criminal Code.	Magistrates Court constituted by two JPs (Mag Ct) appointed pursuant to section 552C Criminal Code

On a plea of guilty:
• simple offences
• regulatory offences
• domestic violence protection orders (where an offender pleads guilty to a domestic violence offence before two justices of the peace exercising jurisdiction pursuant to section 552C of the Criminal Code
• temporary domestic violence protection orders (whether by consent or otherwise). Two or more justices may deal with:
  ◦ an application to make or vary a temporary protection order if a Magistrate is not readily available to constitute a Magistrates Court; or
  ◦ an application to adjourn a proceeding taken with a view to the making of a domestic violence protection order against a respondent (s 137(2) of the *Domestic and Family Violence Prevention Act 2012*) (DFVP Act).
• bail applications of the (s 27 *Justices Act 1886*) (Justices Act).
	Magistrates Court constituted by two JPs (Mag Ct)

Domestic violence protection orders (where an offender pleads guilty to a domestic violence offence before two Justices of the Peace exercising jurisdiction pursuant to section 552C of the Criminal Code) Temporary domestic violence protection orders (whether by consent or otherwise). Two or more justices may deal with: • an application to make or vary a temporary protection order if a Magistrate is not readily available to constitute a Magistrates Court; or • an application to adjourn a proceeding taken with a view to the making of a domestic violence order against a respondent (s 137(2) of the DFVP Act). Bail applications for children (s 27 Justices Act) Bail application by adult (s 27 Justices Act)	Magistrates Court constituted by: • Two JP (Qual) or • One JP (Qual) and one JP (Mag Ct) or • Two JP (Mag Ct)

Supreme Court

The Supreme Court is the highest level of court in Queensland. It comprises the trial division and the Court of Appeal.

The trial division deals with:

- the most serious criminal offences, including major drug offences, attempted murder, manslaughter and murder
- civil disputes between people and organisations over money or property involving amounts greater than $750,000.

The Court of Appeal hears appeals from the trial division and the District Court.

District Court

The District Court is the second tier in the court system and is presided over by a Judge.

The District Court is responsible for:

- matters of a serious nature, including armed robbery, rape and dangerous driving
- civil disputes between people and organisations involving amounts between $150,000 and $750,000
- serious cases involving defendants under 17 years of age (Children's Court)
- disputes about town planning, land subdivision and rezoning (Planning and Environment Court).

Magistrates Court

The Magistrates Court is the first tier in the court system. Most criminal cases are first heard in this court in some form, and many civil actions are also heard here.

The Magistrates Court deals with a range of matters, including:

- more serious offences, such as burglary, assault, fraud and drugs – the Magistrate may commit the case to the District Court or Supreme Court for sentence or trial
- less serious offences (summary offences), such as traffic infringements
- minor offences, such as shoplifting or disorderly behaviour
- civil disputes between people and organisations involving amounts $150,000 or less
- domestic violence matters
- applications for child protection orders
- some minor family law matters (though most go to the Family Court)-
- some other Commonwealth matters, such as those covered by the *Customs Act 1901, Social Security Act 1991* and *Taxation Act 1953*.

Other court and tribunals

There are many courts and tribunals across the state, including but not limited to:

- Coroners Court
- Domestic and Family Violence Court
- Drug and Alcohol Court
- Land Court
- Mental Health Court
- Murri Court
- Queensland Civil and Administrative Tribunal.

More information can be found on the Queensland Courts website.

What do I do if I receive a summons to appear in court?

You may be called to give evidence in relation to a document you have witnessed. This could occur for several reasons, such as doubt about whether the:

- correct person signed the document
- document was sworn or affirmed correctly
- signatory was capable of making the document at the time.

Whatever the reason, you should not feel intimidated by the court process, provided you have exercised your powers with due care and professionalism.

What action should I take if I am summonsed to appear in court?

If you are required to appear in court to give evidence, you will receive what is legally called a court summons. When you receive the summons, you should:

- find out what the matter is about
- collect any records you have that relate to the matter
- contact the JP Branch if you need further support
- take the records with you to court.

At the hearing

You will be asked to take an oath or affirmation before giving evidence.

When questioned by the solicitor or barrister, you should ask the court for permission to refer to your records and then answer all questions fully and honestly.

You may then be cross-examined by the solicitor or barrister for the other party. These questions are usually intended to clarify a point or to double-check something you have already said in evidence.

Giving evidence in court can be a daunting experience for a novice, so it is important you have standardised procedures when witnessing documents and that you keep and retain consistent and accurate records. If you always follow these procedures, you can confidently go into court and relate what would have occurred at the time of witnessing the document.

Where can I get more information?

Queensland courts and tribunals
www.courts.qld.gov.au

Australian courts and tribunals
www.fedcourt.gov.au

2.6 Assisting people from culturally and linguistically diverse backgrounds

Communicating with people from culturally and linguistically diverse (CALD) backgrounds

An inability to communicate can be one of the greatest forms of isolation for people from CALD backgrounds. Culturally and linguistically diverse people may also have limited awareness of relevant legislation, laws, regulations and processes.

If needed, you should use the services of a language interpreter when communicating with a signatory from a CALD background. You should also check to see if the document, or the receiving agency, requires the use of a qualified interpreter.

How do I ascertain the signatory's ability to communicate in English?

You can clarify if a signatory with limited English language needs support by asking open-ended questions, rather than questions that can be answered with 'yes' or 'no'. Their ability to respond will indicate the level of their English language skills.

When would I need to use a qualified interpreter?

You may refer the signatory to the JP Branch for interpreting assistance if they:

- have extensive limitations or are unable to communicate in English
- verbally request an interpreter or present a Queensland Interpreter Card (QIC). Issued by the Queensland Government, the QIC identifies the language for which an interpreter is required. If the signatory presents a QIC, follow the instructions on the card, or refer them to the JP Branch.

What do I say to an interpreter?

You can use the following script to introduce yourself and the signatory to an interpreter, describe the purpose of the meeting and the type of document the signatory requires to be witnessed.

'I am a Justice of the Peace (Qualified)/ Commissioner for Declarations, and I have a person with me who wants me to witness their signature on a document. Because it is a legal document, I will need to ask you as the interpreter to either swear an oath or make an affirmation and then I will need to ask the person here also to either swear an oath or make an affirmation with your assistance. Would you prefer to make an oath or affirmation?'

Oath of interpreter

I, (full name) swear by Almighty God that I understand the language of the signatory and am able to interpret between the signatory and the witness to this statement [add, if relevant: and any other persons speaking the English language or language of the signatory], and I shall, to the best of my skill and ability, truly and faithfully translate from the [language of signatory] language into the English language, and from the English language into the [language of signatory] language. So help me God.

Affirmation of interpreter

I, (full name) solemnly, sincerely and truly declare and affirm I understand the language of the signatory and am able to interpret between the signatory and the witness to this statement [add, if relevant: and any other persons speaking the English language or language of the signatory], and I shall, to the best of my skill and ability, truly and faithfully translate from the [language of signatory] language into the English language, and from the English language into the [language of signatory] language.

Once the interpreter is sworn or affirmed, you can proceed with the document in the normal manner.

The Queensland Government's *Language Services Policy (2016)* (the policy) and *Language Services Guidelines (2016)* (the guidelines), recommend a National Accreditation Authority for Translators and Interpreters (NAATI) accredited interpreter be used. Family members or friends should not be used for reasons such as protecting privacy, avoiding conflict of interest, preventing embarrassment and ensuring accuracy.

Do not use drawings or hand signals in an attempt to translate information as these are highly subjective and significantly increase the risk of misunderstanding and misinterpretation. These could lead to unfavourable outcomes for the signatory.

Technology should not be used as a replacement for a qualified interpreting service.

If during the course of the witnessing process you find the signatory is having difficulty with understanding the language, you should contact the JP Branch for further assistance.

When qualified interpreters are crucial

Consistent with the policy, qualified interpreters are crucial for people who have difficulty communicating in English but must complete documents.

A signatory must be able to understand the document's contents, nature and effects of the document, and consequences of the warning prior to signing their documents. Using qualified interpreters will help avoid costly mistakes as well as complaints or litigation that results from neglecting to provide an interpreter.

What do I need to consider when using an interpreter?

According to the policy to avoid difficulties that could impact the signatory's outcomes, you need to:

- determine whether telephone or onsite interpreting and/or translation is appropriate
- ensure there is enough time for the translation/interpreting and questioning to avoid rushing
- ensure a quiet, comfortable environment with minimal distractions
- provide privacy during the interview and interpreting process.

This practice will reduce distraction for all parties, helping to avoid potential frustration and pressure.

Considering JPs and Cdecs are often providing services in busy and noisy locations, a telephone interpreting service could be impractical and detrimental to the signatory. Contact us (our details are in chapter 1.2) if you need help finding an alternative solution, which may include:

- making a booking for a quieter time
- arranging an alternate venue.

Things to bear in mind

- Speak directly to the signatory, not the interpreter.
- Avoid looking at the interpreter unless you are directly addressing them.
- Maintain your usual voice volume and conversation pace – you do not need to speak louder or slower.
- Use plain English and avoid using slang, metaphors or idioms.
- Ask questions one at a time.

Record keeping

Record all relevant information in your logbook as outlined in chapter 2.4.

Where can I get more information?

Queensland interpreter card
www.forgov.qld.gov.au/queensland-interpreter-card

2.7 Assisting people with disability

When assisting people living with disability, you should focus on the person, not the disability.

When you first meet the person, tactfully ascertain the type of disability and to what degree, if any, it will affect their ability to complete the presented documentation. Most people will be open and let you know at the outset what their disability is and if they require support.

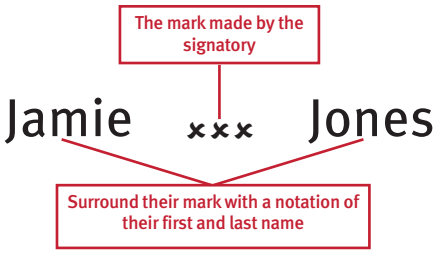
Always treat people with disability with dignity and respect. If they are in the company of a carer (or a friend or colleague), address your remarks to the person with disability. If the carer has to act as an interpreter, speak to the person and listen to the carer, maintaining eye contact with the person with disability. A major complaint from people with disability is they tend to be left out of the conversation when accompanied by others.

There are varying forms of disability, and you must exercise a duty of care according to the disability. You must still maintain the procedures, integrity and independence of your office while offering additional help.

It is important to communicate with a person with disability in the same way you would anyone else. Put the person before the disability. Be mindful of the pace and volume of your speech. Confirm your use of language and terminology is clearly understood by the person.

Do not try and complete sentences or questions for a person with disability. Be patient and allow them to complete their words in their own time.

If the signatory is unable to sign but is able to make a mark you are required to ensure their mark can be clearly identified. You can do this by writing their name either side of their mark and adding the words 'The mark made by the signatory' as shown below.



Witness the signature or mark in the usual manner.

Assisting a person who is blind or has low vision

Explain to the signatory while the contents of the document will remain confidential, it is necessary to read the document out aloud to be sure you have the correct one and they have a thorough understanding of it.

Read the entire document to them, allowing time for them to ask questions if they need to clarify anything.

If the signatory wishes to make any alterations to the document, your options are:

- Assist them to make the requested alterations, with both you and the signatory initialing all alterations. Be aware by helping in this way, you cannot then witness the document – you must refer them to another JP or Cdec to have it witnessed.
- Refer the signatory to someone else for assistance to make the changes prior to you witnessing the document.

Write the certification clause on the document, using the following or similar words:

> *I have read the contents of this document to the signatory, and they appeared to me to understand the contents, nature and effect of the document, and they have placed their signature or mark upon the document in my presence.*

The signatory should then sign or place their mark on the document. If they make a mark, you should then surround their mark with a annotation of their name, as outlined earlier in this chapter.

Additional information to your standard record keeping could include:

- if the document was read aloud to the signatory
- if any alterations were made to the document
- if there was an annotation made on the document if the signatory made their mark on the document
- any other actions taken which differ form your standard witnessing process.

Assisting a person who is deaf or hard of hearing

If approached by a signatory who is deaf or hard of hearing, check if they need the services of a 'signer' to interpret between the signatory and yourself, or if they lip-read.

If an interpreter is available to assist, ask the interpreter to make an oath or affirmation for interpreters of signs prior to the document being witnessed.

Oath for interpreter of signs

> *I swear by Almighty God that I shall, to the best of my skill and ability, truly and faithfully communicate, by signs or other convenient means, words spoken in the English language, and translate, into the English language, statements made by signs. So help me God.*

Affirmation for interpreter of signs

> *I solemnly, sincerely and truly declare and affirm that I shall, to the best of my skill and ability, truly and faithfully communicate, by signs or other convenient means, words spoken in the English language, and translate, into the English language, statements made by signs.*

Where there is no interpreter to assist, it is possible to communicate with the signatory in writing – you may put questions to the signatory in writing and they may answer in writing. You should destroy these written questions and answers in front of the signatory once you have fulfilled your obligations and witnessed the documents.

Additional information to your standard record keeping could include:

- interpreter's name
- oath or affirmation for interpreter of signs completed
- any other actions taken which differ from your standard witnessing process.

Assisting a person with speech and language disorder

If approached by a signatory with a speech and language disorder, ascertain how they wish to communicate e.g. they may wish to write or sign. It is possible they will present with a signer to interpret.

If an interpreter is available to assist, ask the interpreter to make an oath or affirmation for interpreters signs (as outlined earlier in this chapter) prior to the document being witnessed.

Where there is no interpreter to assist, it is possible to communicate with the signatory in writing – you may put questions to the signatory verbally or in writing, and they may answer in writing. You should destroy these written questions and answers in front of the signatory once you have fulfilled your obligations and witnessed the documents.

Additional information to your standard record keeping could include:

- interpreter's name
- oath or affirmation for interpreter of signs completed
- any other actions taken which differed from your standard witnessing process.

Assisting a person with physical disability

A physical disability can be described as physical condition that affects a person's mobility, physical capacity, stamina or dexterity. Physical disabilities impacting on the signatory's ability to complete documentation may include an inability to write, sign or hold a pen. You should always ensure a flat, comfortable writing surface is available.

If the signatory is unable to hold a pen, you may make a mark on the document as long as they touch the end of the pen while it rests on the document, in acknowledgement of that mark. You should then make a certification on the document using this wording:

> *This is to certify that [signatory's name] is unable to make a mark or signature. They agree with the contents of this document, and has symbolically touched the pen which I have used to make a mark on their behalf.*

Additional information to your standard records could include:

- if assistance was required to make their mark on the document
- any other action taken which differed from your standard witnessing process.

Assisting a person with intellectual disability

Every person should be treated as an individual with rights and responsibilities that are the same as anyone else. A person with intellectual disability will usually have a guardian or attorney who is legally entitled to make decisions and sign documents on their behalf.

Under no circumstances should you witness a document if you reasonably believe the person is not capable of understanding the document. Inform the signatory in your own words that you are unable to witness their document and suggest they contact the receiving agency for guidance on completing the document.

If a guardian or attorney is not present, and you suspect the signatory is being pressured into signing the document it is recommended you refer the matter to the Office of the Public Guardian. However, you should discuss the matter with the person prior to making a decision to refer to the Office of Public Guardian.

Note: If you are presented with a document to be signed on another person's behalf by an attorney or guardian, you will require proof of their authority to do so.

Where can I get more information?

Information about disabilities
www.qld.gov.au/disability

2.8 Assisting people who have difficulty reading and writing

Many people have literacy levels that make it difficult to complete the increasingly complex forms required to access essential services. This can have the potential to place those with low literacy levels at a disadvantage and at risk of missing out.

They also may have low self-esteem or feel emotions such as shame, fear and powerlessness, which can often lead to isolation. It is important you treat those with low literacy with dignity and respect, in the same way you would anyone else.

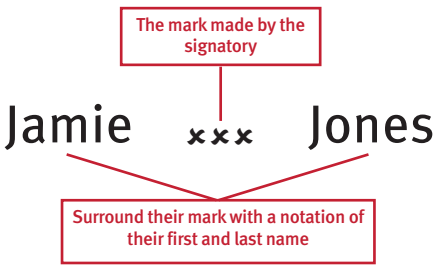
Be mindful of your tone and pace of speaking – speaking louder or slowing your pace is not necessary and can come across as offensive.

When witnessing:

- Explain to the signatory, though the contents of the document will remain confidential, it is necessary to read the document out aloud to be sure that you have the correct one and that they have a thorough understanding of it.
- Read the entire document to them, allowing time for them to ask questions if they need to clarify anything.
- You should never act on the signatory's behalf by filling in a document you intend to witness. If for any reason a person is unable to complete or make alterations to a document themselves, your options are:
  - Assist them to make the requested alterations, with both you and the signatory initialing all alterations. Be aware by helping in this way, you cannot then witness the document you must refer them to another JP or Cdec to have it witnessed.
  - Refer the signatory to someone else for assistance to make the changes prior to you witnessing the document.
- Complete a certification clause on the document, using the following or similar words:

> *I have read the contents of this document to the signatory, and they appeared to me to understand the contents, nature and effect of the document, and they have placed their signature or mark upon the document in my presence.*

- If the signatory is unable to sign but is able to make a mark you are required to ensure their mark can be clearly identified. You can do this by writing their name either side of their mark and adding the words 'The mark made by the signatory' as shown below.



- Witness the signature or mark in the usual manner.

Additional information to your standard record keeping could include:

- if the document was read aloud to the signatory
- if any alterations were made to the document
- if there was an annotation made on the document if the signatory made their mark on the document.
- any other actions taken which differ from your standard witnessing process.

Where can I get more information?

Reading Writing Hotline
www.readingwritinghotline.edu.au

SECTION 3

Certifying copies

SECTION 3

Certifying copies

Information in this section relates to duties which can be carried out by both Justices of the Peace (Qualified) and Commissioners for Declarations

3.1 Certifying copies of documents

What is certifying a copy?

Certifying copies of documents is a common duty of JPs and Cdecs. You are stating that, in your opinion, the document is a true and complete copy of the original you have sighted. It is not certifying the original document is authentic.

What can I certify?

Generally, there is no single piece of legislation in Queensland that dictates the types of documents that may be certified, who may certify them and the process to be followed. Requirements will vary between documents depending on how they are to be used and the relevant legislation. However, the *Powers of Attorney Act 1998* is quite specific about certifying enduring documents, which is covered later in this chapter.

Note: Information on the witnessing of enduring documents is outlined in chapter 4.9.

When certifying electronic documents, you must apply the same process and scrutiny as you would to an original paper copy to ensure the document is a true and complete copy of the original.

What is the definition of a document?

The definition of 'document', physical or electronic, is wide ranging and means any record of information however recorded and includes:

- any paper or other material on which there is writing
- any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them
- any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).

An electronic document can also be referred to as a download, or digital document. You may have a certified copy stamp with the term 'download', and this is acceptable for use when certifying copies of electronic documents.

Examples of documents include but are not limited to:

- book
- map
- plan
- drawing
- photograph
- disc
- tape
- soundtrack
- anything of any kind which is marked with words, figures, letters or symbols.

Why certify a copy?

It is a common occurrence that a document may need to be held by multiple parties. An example of this is the enduring power of attorney document. Copies of these are normally left with relatives, doctors, financial institutions and solicitors. However, doubt could be raised about whether or not a copy is genuine.

In some cases, a certified copy has the same legal status as the original. Documents certified as true and complete copies of the original, copy or a download give the document more legal weight than an uncertified copy.

How to certify a copy?

You should take great care when certifying copies of documents and follow a set of procedures.

Take additional care if the document is in a foreign language. Check it appears the same as the original.

Ensure you provide your name when certifying documents. If you do not provide your full name, we may disclose your name to relevant third parties in order to verify the validity of the document(s) you certified.

Certifying a copy of an original

The person must provide you with the original document from which the copy was made and then:

- Compare the original document with the copy, making sure there are no alterations.
  - Pay particular attention to names, dates and reference numbers.
- Endorse the copy with the following certification and apply your seal of office and registration number.

This is to certify this is a true and complete copy of the original, which I have sighted.

Date:

Signed:

Name:

Certifying digital identity documents

Many acceptable forms of identity (ID) documents are becoming increasingly available in a digital version. If you have been asked to certify a copy of a digital ID, you can certify the copy as a true and complete copy of the original.

Keep in mind, the way digital information appears may differ from how it appears when printed. Your role is to certify the information is a true and complete copy of the digital ID – not it's appearance.

The person must be able to access the authorised webpage or application (app) on their device and then:

- Observe the person accessing the app.
- Compare the information in the original digital ID with the copy, making sure there are no alterations.
  - Pay particular attention to names, dates and reference numbers.
- Endorse the copy with the following certification and apply your seal of office and registration number.

This is to certify this is a true and complete copy of the original which I have sighted

Date:

Signed:

Name:

Certifying a printed copy of a document attached to an email

In this instance the certification is that the document which is attached to the email is the original, and the document provided is a copy. Once you have sighted the electronic version it can be certified as a copy of an original document.

In some circumstances a copy will still be a reliable copy even if the formatting of the copy is different to the electronic original. Each case will need to be determined on its own merits before you certify the copy.

Certifying multi-page documents

If the original document has multiple pages, the entire document must be certified as true and complete.

The person must provide you with the original document from which the copy was made.

- Compare each page of the copy with the original document to verify every page is a true and complete copy of the original, making sure they are no alterations.
  - Pay particular attention to names, dates and reference numbers in the document.
- Initial the bottom of every page. If the document does not have numbered pages in the lower right-hand corner of each page, number the pages by inserting page 1 of 40, 2 of 40, and so on.
- On the first or last page, endorse the copy with the following certification and apply your seal of office and registration number.

Note: Some documents are many pages in length and it may not be possible to certify each page. In such cases, you must sign or initial every page and then amend the certification on the first or last page to read as follows.

This is to certify this ‹note the number of pages› page document (each page of which I have numbered and signed) is a true and complete copy of the original ‹note the number of pages› page document, which I have sighted.

Date:

Signed:

Name:

Certifying copies of enduring powers of attorney and advance health directives

You may be called upon to certify one or more copies of an enduring power of attorney (EPA) or an advance health directive (AHD). This will be used as proof of the validity of the document and will allow valid copies of the enduring document to be held by more than one person or at more than one place.

The *Powers of Attorney Act 1998* (the Act) provides that a person may prove the existence of an EPA or AHD by producing a certified copy of the original document. The Act provides that a properly certified copy must be certified to the effect that it is a true and complete copy of the original.

To make a certified copy of an original EPA or AHD, the person must provide you with the original document from which the copy was made and then:

- Compare each page of the photocopy with the original EPA or AHD to verify the photocopy is a true and complete copy of the original document (including any additional pages).
  - Pay particular attention to names, dates, commencement provisions, terms and reference numbers in the document.

- Check that the number of pages presented in the copy (including any additional pages) corresponds with the number of pages indicated on the witness certificate in the document.
- Sign or initial each page of the photocopy (including any additional pages), other than the page on which the certification is made.
- Make the following certification on the first or last page and apply your seal of office, full name and registration number.
- Ensure you also include the total number of pages certified.

This is to certify that this is a true and complete copy of the original EPA/AHD.

Date:

Signed:

Name:

Provided the certification is to the effect the document is a true and complete copy of the original, there is no precise wording that must be used. Certification can be achieved with any of the following:

- …true and complete copy of the original
- …true and complete copy of the original document
- …true and complete copy of the original enduring power of attorney
- …true and complete copy of the original EPA.

Certifying copies of general powers of attorney

The Act provides that proof of a copy of a general power of attorney must include a certification clause on each page including the last. The last page certification clause is slightly different to the other pages (see below). To make a certified copy of a GPA, the person must provide you with the original GPA from which the copy was made and then:

- Compare each page of the photocopy with the original GPA to verify the photocopy is a true and complete copy of the original document (including any additional pages).
  - Pay particular attention to names, dates and reference numbers.
- Check the number of pages presented in the copy corresponds with the number of pages in the original document.
- Endorse the copy with the following certifications and apply your seal of office, full name and registration number.

Each page of the document except the last page must be certified as a true and complete copy of the corresponding page of the original.

This is to certify this is a true and complete copy of the corresponding page of the original document.

Date:

Signed:

Name:

The last page must show certification that the document is a true and complete copy of the original.

This is to certify that this is a true and complete copy of the original document.

Date:

Signed:

Name:

Certifying a copy of a copy

You may be asked to certify a copy of a copied document, which can be due to the original having been lost, stolen or damaged. The document presented may or may not have previously been certified as a copy of the original.

The person must provide you with the copy of the document from which the additional copy was made and then:

- Compare the copy of the document against the copy, making sure there are no alterations.
  - Pay particular attention to names, dates and reference numbers.
- Endorse the additional copy with the following certification and apply your seal of office and registration number.

This is to certify this is a true and complete copy of a copy. Original document not sighted.

Date:

Signed:

Name:

Certifying a copy of an electronic document or download

If the document is electronic or a download from a website, you can certify the document as a true copy of a download.

The person must be able to access the official website where the document has been produced or issued and then:

- Observe the person accessing the official website.
- Compare the original electronic document with the copy, making sure there are no alterations.
  - Pay particular attention to names, dates and reference numbers.
- Endorse the copy with the following certification and apply your seal and registration number.

This is to certify this is a true copy of the download, which I have sighted.

Date:

Signed:

Name:

Things to bear in mind

- Best practice is to return the originals to the person before applying the certification to the copies. This will reduce the possibility of damaging the document by applying the certification to the original.
- You are not required to cross out or obliterate any reference numbers, bank details, credit card details or passport numbers on the copies for the person.
- A copy can be reduced or enlarged in size in comparison to the original document.

There should not be any:

- alterations to the original document or the copies, such as words crossed out or changed
- use of white-out or correction fluid in the document.

Frequently asked questions

My certified copy stamp does not have the words ‘and complete’. Can I apply my stamp and handwrite the words ‘and complete’ when certifying a copy of a document?

Yes, you can use a combination of the stamp and handwriting when certifying a copy of an enduring document. You must initial the amendment to the stamp to demonstrate that the words ‘and complete’ were added by you at the time of certification.

You should also insert the number of pages you have certified on the copy. These actions will emphasise that the document is complete and the page numbers in the copy are the same as the original.

Can I purchase certified copy stamps?

Certified copy stamps are available for purchase from our online shop at www.qld.gov.au/jpshop.

What if there are multiple forms of identification on a page?

You should provide one certification for each form of identity that you sight, despite the fact that they are on one sheet of paper. You would provide a certification multiple times if they were on multiple sheets of paper, so attaching multiple certifications complies with best practice.

Does the owner of the document need to be present before I can certify the copies?

You will regularly certify copies of documents for third parties for legitimate reasons e.g. a family member presenting on behalf of another. The owner of the document does not have to be present for you to complete the certification of the copies.

Do I need to sight identification when certifying copies?

It is advisable, but not always mandatory, to take reasonable steps to identify everyone you assist. Your role is certifying the document is a true copy of what you have sighted.

Can I have some adhesive labels made and apply these to the documents instead of the certified copy stamp?

No. The use of adhesive labels is not sufficient nor permitted by some receiving agencies and could place the document in jeopardy. You should use certified copy stamps or handwrite the certification.

What if there is no room on the copy, can I endorse the back of the document?

No. You must place your certified copy stamp, or certified wording, on the front of the copy to be certified. Placing the certified copy stamp on the reverse of a document may place the document in jeopardy.

Can I certify a document that will be sent overseas?

Yes. You can certify copies of documents regardless of where they will be presented. However, it is a good idea to ask the person if they have checked with the receiving agency if a Queensland JP or Cdec is authorised to complete the certification and if there are any special instructions for how the document is to be certified.

Do copies of coloured documents have to be copied in colour?

Unless the person has instructions stating the copies must be in colour, the copies can be made in colour or black and white.

How will I know if the receiving agency will accept the document?

You are not expected to be aware of the certification requirements of receiving agencies. It is a good idea to ask the person if they have any instructions with them that may require a modification to the usual certifications. The person should make enquiries with the receiving agency if they are unsure.

Should I make a note in my logbook when certifying copies?

Yes. Record all relevant information in your logbook as outlined in chapter 2.4.

SECTION 4

Witnessing

SECTION 4
Witnessing

Information in this section relates to duties which can be carried out by both Justices of the Peace (Qualified) and Commissioners for Declarations

4.1 Witnessing documents – general procedure

What types of documents am I authorised to witness?

As a JP or Cdec you have the authority to witness any lawful document, from commercial contracts to powers of attorney. While it is not possible for this handbook to provide a procedure for every document you have the power to witness, generally you have the power to take an affidavit or declaration, attest the execution of documents, and certify copies of documents. If you are a JP you are also able to issue warrants and summonses.

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

- checking the document itself (most indicate at the top the Act under which it is 'attested')
- 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 its witnessing by a JP or Cdec, is authorised)
- contact us to seek further advice.

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

You should 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 of the *Oaths Act 1867*, which deals with affidavits and statutory declarations
- chapter 3, part 4 of the *Powers of Attorney Act 1998*, which deals with making enduring documents (e.g. an enduring power of attorney and an advance health directive)
- section 162 of the *Land Title Act 1994*, which deals with witnessing obligations when executing a Titles Registry form.

Why must some documents be witnessed?

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

Certain documents are required by law to be witnessed by a JP or Cdec 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 I witness a document?

You need to develop a general procedure that suits you, which is vital for three reasons:

- Following a set procedure will ensure you carry out your duties correctly.
- If people use your services frequently, before long you will have witnessed thousands of signatures. Occasionally, you may be called upon by a court or receiving agency to verify a particular incident. Unless the incident occurred recently, you are unlikely to recall the particulars.
- Sticking faithfully to your standard procedure gives you confidence to make an affirmation or swear an oath in court to the process you follow consistently. This can be particularly important if you don't recall the occasion in question.

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

The general procedure you 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. Take reasonable steps to identify the signatory. You have statutory obligations when witnessing a statutory declaration, affidavit or Titles Registry forms to verify the identity of the signatory. Enter their name and the type of identification sighted in your logbook.

   Note: You can only request – not demand – proof of identity unless it is a requirement of the document or Act the document is being witnessed under, or you have sufficient grounds to doubt the signatory's identity.

2. Check the document to find out what type it is.

   If it is a document you have not seen before, explain this to the person and examine it closely such as:

   - Is the document authorised by an Act or law? Look at the top of the document for the name of the Act or law. If the document is from a government agency, it will have the agency's details on the form.
   - Do you have the authority to witness it? A document usually carries instructions about who has the authority to witness its signing. If you are of the opinion you do not have the authority, explain this to the person (international documents, for example, usually have to be witnessed by a notary public, consular or embassy official).

3. 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 their identity. If so, ensure these are met before you sign.
   - If an oath or affirmation is required, you should administer it at the very start.

4. Confirm the document is in the correct format or on the approved form.
   - If the document is an affidavit or statutory declaration, check it includes the required statements. If it does not, ask the signatory to write them on the document as outlined in chapters 4.2 and 4.7.
   - Check the signatory is the person named on or in the document. On most occasions, it is not acceptable for one person to sign on behalf of another, but there are some exceptions. Statutory declarations and affidavits can be signed by a substitute signatory in certain circumstances as outlined in chapters 4.2 and 4.7.

   Note: 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 signatory understands the contents of the document and is making the document freely and voluntarily.

   Note: If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily decline to witness the document and explain why.

6. 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 it is signed and witnessed. Do not witness a document with the incorrect date as this may invalidate the document at a later time.
7. Check the contents of the document for:
   - 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.
   - Unanswered questions. Ask the signatory to cross them out or complete them. Ensure both you and the signatory initial them.

   Note: A signatory may withhold information in a document, such as an address or other personal details, if they have concerns it may jeopardise their safety if disclosed to another party. This information will be supplied to the receiving agency or court at the time of lodgement.
8. If you have knowledge the material in the document is false, you should decline to witness it. Remember 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 made.
9. Check any annexures (or attachments) to the document. Annexures are usually information supporting and referred to in the main document as outlined in chapters 4.2, 4.7 and 4.8.
10. Warn the signatory, at the outset, for making a false statement under oath, affirmation or declaration. Explain that if information in the document is found to be untruthful, the signatory commits an offence. Ensure the signatory understands that making an oath, affirmation or declaration is a solemn matter.
11. If you have not already done so, administer the oath, affirmation or declaration as required. The taking of these is outlined 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 theirs. If someone approaches you with a document already signed, ask them to cross out through the one already there and sign the document again. Ensure both you and the signatory initial the alteration to the unwitnessed signature.
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. If there is more than one signature required on the document, you should witness each one in turn.

    Affidavits, statutory declarations and Titles Registry forms require you to print your full name on the document. This means you must insert your entire name (including any given names), not just your initials, on these documents.

    Note: If you do not provide your full name, we may disclose your name to relevant third parties in order to verify the validity of the document(s) you witnessed or certified.

    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. Be careful with the application of your seal of office to avoid obliterating other information on the document.

    The prescribed mark of office of your title is either Justice of the Peace (Qualified) – abbreviated to 'JP (Qual)' – or Commissioner for Declarations – abbreviated to 'Cdec'. You can use this mark of office if you do not have your seal of office with you when you witness the document.

    Note: As a JP you must apply your seal of office and registration number when issuing a warrant, complaint and summons or to constitute a court as outlined in the chapters in section 5.

    Note: A JP (Cdec) does not have a seal of office or a registration number.

Section 31 of the *Justices of the Peace and Commissioners for Declarations Act 1991* 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.	
the office of justice of the peace preserved by section 41 or held under section 19(1)	*"Justice of the Peace" or "J.P"*
justice of the peace (magistrates court)	*"Justice of the Peace (Magistrates Court)" or "J.P (Magistrates Court)" or "J.P (Mag Crt.)"*
justice of the peace (qualified)	*"Justice of the Peace (Qualified)" or "J.P (Qualified)" or "J.P (Qual.)"*
justice of the peace (commissioner for declarations)	*"Justice of the Peace (Commissioner for Declarations)" or "J.P (C.dec)"*
commissioner for declarations	*"Commissioner for Declarations" or "C.dec"*

Note: Variations of no significance between an imprint or mark appearing on a document or instrument and an imprint or mark prescribed by this section are to be disregarded for the purposes of this section.

The colour of the pen used for signing documents is not prescribed by legislation but the normal colours are blue and black. Red pen can denote 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, fine felt-tipped or fountain pen.

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

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

As a JP or Cdec you are provided with a stamp pad in the appropriate colour when you receive your seal of office.

14. Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

- Under the *Powers of Attorney Act 1998* a person (the principal) can appoint another person (the attorney) to make decisions for them. This allows the attorney to sign certain documents with their own signature for the principal. The attorney should be able to provide the power of attorney as proof of their authority to act on the principal's behalf.

  Note: An attorney appointed by a principal under a power of attorney or enduring power of attorney does not have the power to make an affidavit or statutory declaration for the principal – they can only sign as a substitute signatory for the person.

- You should never act on the signatory's behalf by completing a document you intend to witness. If for any reason a person is unable to complete a document themselves, your options are:
  - Assist them to complete their document or make any alterations if required. Ensure you both initial the changes. Be aware by helping in this way, you cannot then witness the document – you must refer them to another JP or Cdec to have it witnessed.
  - Refer the signatory to someone else for assistance to complete the document or make the changes prior to you witnessing it.
- Be courteous. It is your responsibility to be polite, even with difficult people. However, if a person is disrespectful, offensive, aggressive or argumentative to the point of being impossible to cope with or you feel unsafe, you may stop the process and request they leave. If this occurs, refer the person to another JP or Cdec and make a note of the interaction in your logbook.

  Note: If you need support following an interaction, see chapter 1.2 for information on support services available to you.

- 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 respect the confidentiality of the documents you witness and the information made available to you in your official capacity. This builds the public's trust in the JP and Cdec role.
- Never witness a blank document. Always ensure a document is completed fully before you witness it. If a document contains blank spaces, ask the signatory to cross them out. Both you and the signatory initial all alterations before signing the document.

Frequently asked questions

What should I accept as proof of identity?

Unless the type of identification you are required to sight 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.

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

At times, you must place your full name on the document you have witnessed. For example, the *Oaths Act 1867* requires you to include your full name on an affidavit or statutory declaration. It is important when a document asks for your full name, you include your entire name, including any given names, e.g. *‹first name› ‹middle name› ‹last name›* and not initials.

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

Generally, there is no requirement for you to place your personal address on documents you witness. If the document requires it, you can provide the address of Justices of the Peace Branch as outlined in chapter 1.2.

Can I decline to witness a document?

If you decline to witness a document, you should explain your reasons for refusal to the person requesting your services 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?

Explain you are required to check if there are any alterations or omissions or if the document includes any unanswered questions. Tell them you will treat the contents as confidential.

If the signatory remains firm on you not perusing the document, ask them to look through it and point out any alterations or omissions so you can both initial them. You should then witness their signature and include the following statement:

> *Signature only witnessed. Contents not disclosed.*

Make a note in your logbook you did not view the contents of the document.

You are not responsible for the truth or accuracy of the statements made by the signatory in their document.

What if the document has more than one page?

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

There is no legal requirement to sign or initial every page of all documents, excluding affidavits and Commonwealth statutory declarations. However, it is good practice to initial every page. The final page must be witnessed in the normal manner by signing your name.

Signature stamps

We do not recommend the use of signature stamps over signing by hand.

If you intend to use one, extreme caution should be exercised on every occasion, and it is your responsibility to:

- check the agency where the document is to be filed to find out if a stamped signature will be accepted
- store the signature stamp in a secure place.

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, you should write on the document that you are only witnessing the signature of a particular person or persons e.g. *the signature of ‹first name› ‹last name› only witnessed.*

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

If you are a JP add '(Qualified)' after 'Justice of the Peace'.

If you are a Cdec, check you are an eligible witness before crossing out 'Justice of the Peace' and inserting Commissioner for Declarations. There is no need to initial these alterations.

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?

Yes. 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?

To avoid potential conflicts of interest, we do not recommend witnessing documents for friends or relatives.

Doing this could raise accusations of bias which 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.

Although it is not illegal for you as a JP or Cdec to witness the will of a relative or friend, you should be aware 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 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 document.

What is a seal of office?

Your seal of office should only be used when discharging your services as a JP or Cdec. It should not be used when it is inappropriate 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?

We do not recommend this, 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(1)(a) 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.

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

No, maintaining confidentiality of the documents you witness is paramount. You do not have any authority to request, retain, photocopy or photograph any documents you witness.

As suggested earlier, you should note in your logbook details of the documents you have witnessed, but these should be general notes.

4.1 Quick guide

Witnessing documents - general procedure

1	Take reasonable steps to identify the signatory.
2	Check what type of document it is. Ensure: • it is authorised by an Act or law • you have the authority to witness it.
3	Check if the document has any special requirements such as: • particular types of proof of their identity • personal knowledge of the signatory for a particular length of time • is to be signed by way of oath, affirmation or declaration.
4	Confirm the document is in the correct format or on the approved form. ***Note:*** If the document is an affidavit or statutory declaration check it contains the required statements. If it doesn't contain the required statements ask the signatory to write them on the document as outlined in chapter 4.2. and 4.7.
5	Check the signatory: • understands the content of the document • is making the document freely and voluntarily • is the person named on or in the document.
6	Confirm the date of signing the document is the same as the date on which you are witnessing it.
7	Check the document for any alterations, spaces or omissions. • Both you and the signatory should initial any changes, including the use of correction fluid or tape. • Ask the signatory to cross out or complete any unanswered questions. Ensure both you and the signatory initial them. ***Note:*** A signatory may withhold certain information in the document and provide it to the court or receiving agency at the time of lodgement.
8	Decline to witness the document if you know the content is false.
9	Check any annexures or attachments to the document.
10	Warn the signatory there may be penalties for making a false statement.
11	Administer the oath, affirmation or declaration.
12	Ask the signatory to sign the document in front of you.
13	Witness their signature and: • place your seal of office on the document beneath or beside your signature (but never over where you have signed) • insert your registration number • write your full name and location, if required.
14	Record all relevant information in your logbook as outlined in chapter 2.4.

4.2 Witnessing Queensland and Commonwealth statutory declarations

Queensland Statutory Declarations

What is a Queensland statutory declaration?

Statutory declarations are written statements declaring something is true and correct. They carry a degree of formal authority that statements with only a signature do not. For matters dealt with by Queensland legislation, they are made under the *Oaths Act 1867* (Oaths Act).

The person making the declaration is called the declarant (also known as the signatory).

There is no requirement for a statutory declaration to be sworn or affirmed as they are not generally used in a court of law.

Why do people make Queensland statutory declarations?

A statutory declaration is intended to ensure the statement being made is truthful. It has the effect of putting the signatory on notice that the information they provide must be, in their conscientious opinion (e.g. to the best of their knowledge and belief) true and correct.

Some legislation requires information to be supplied in the form of a statutory declaration. In some cases, people choose to make a statement by way of a statutory declaration – not because there is a legal requirement to do so, but because they believe the statement will carry more weight as a result.

The signatory must understand they commit an offence if they know information in their statutory declaration is false.

Queensland statutory declaration forms

In Queensland, the Department of Justice and Attorney-General has approved and published a statutory declaration form that complies with the requirements of the Oaths Act.

Two versions of the form are available, a print and electronic version – both are available online. The print version should be used if handwriting the contents of the statutory declaration, while the electronic version can be prepared on a computer or other electronic device, then printed out and signed on paper.

Note: There is no legal requirement to use the approved forms. These forms simply provide a template in compliance with the requirements in the Oaths Act. A person can use another form or document to make a statutory declaration in Queensland, provided they comply with the requirements in the Oaths Act (highlighted further on in this chapter).

Most government forms and many other forms required by a wide range of statutory authorities and businesses follow the format of a statutory declaration. Others, such as insurance claim forms, include a statutory declaration at the end.

What are my obligations when witnessing a Queensland statutory declaration?

1. You must take reasonable steps to verify:
   - the signatory's identity
   - the signatory's name matches the name of the signatory written on or in the statutory declaration.
2. You must also satisfy yourself:
   - the signatory is making the document freely and voluntarily
   - the signatory understands the document.

It must be clear the signatory is freely and voluntarily making the document and is not being pressured or coerced. If you feel a family member, friend or carer is behaving in a way that is domineering or overbearing, it is best practice to speak to the signatory alone.

Note: If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily, decline to witness the document and explain why.

Requirements

The Oaths Act requires the signatory and the witness to include certain information and statements on the statutory declaration.

The signatory must ensure the statutory declaration contains the following statements:

1. *The contents of this statutory declaration are true and correct, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.*
2. *I understand that a person who makes a declaration that the person knows is false in a material particular commits an offence.*

You should not proceed to witness the statutory declaration unless it contains the required statements set out above.

As the witness, you must include the following information on the statutory declaration:

1. your full name
2. your qualification (i.e. Justice of the Peace or Commissioner for Declarations).

Substitute signatories in Queensland

The Oaths Act allows a signatory to direct another person (called a substitute signatory) to sign the statutory declaration on their behalf.

A substitute signatory cannot be:

- the person witnessing the statutory declaration
- a person who is another party to the proceeding or a relation of another party to the proceeding if the statutory declaration is to be filed or admitted into evidence in a proceeding by or for a party.

The signatory and the substitute signatory must both be physically present with you at the same time. You should decline to witness the document if only one attends the appointment.

If a substitute signatory is involved, you must:

- observe the signatory giving the direction to the substitute signatory to sign the document for them
- be satisfied the signatory is giving the direction freely and voluntarily

- check the declaration includes the names of both the signatory and the substitute signatory.

  Note: The role of the substitute signatory is simply to sign the document for the signatory. The statutory declaration is made in the name of the signatory, and it is the signatory who must declare the contents of the statutory declaration are true and correct to the best of their knowledge and belief.

  Note: If the statutory declaration is to be used in a court proceeding, you must be satisfied the substitute signatory is not a relation of any other party to the proceeding.

  Whilst not mandatory, you should take reasonable steps to verify the identity of the substitute signatory (in addition to the signatory) and enter their name and the type of identification presented in your logbook.

How do I witness a Queensland statutory declaration?

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

1. Take reasonable steps to verify:
   - the signatory's identity
   - the signatory's name matches the name of the signatory written on or in the statutory declaration.
2. Check the requirements for the statutory declaration have been met.
3. Check if the statutory declaration has any special requirements such as:
   - particular types of proof of their identity
   - personal knowledge of the signatory for a particular time.
4. Warn the signatory, at the outset, and check they understand that if they knowingly make a declaration and they know the information is false they commit an offence.
5. Check the signatory understands the declaration and they are making it freely and voluntarily.

   Note: If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily, decline to witness the document and explain why. This is a requirement of the *Oaths Act 1867*.
6. If you are satisfied the signatory understands the declaration, ask them:

> *Do you solemnly and sincerely declare that the contents of this declaration are true and correct to the best of your knowledge and belief?*

Instruct the signatory to answer:

> *I solemnly and sincerely declare that the contents of this declaration are true and correct to the best of my knowledge and belief.*

Or:

> *I do so declare.*

8. Have the signatory or substitute signatory sign the declaration.

   Note: If a substitute signatory is required, ensure the statutory declaration includes the names of both the signatory and the substitute signatory.
9. Witness the signatory's declaration and insert your full name and qualification. This is a requirement of the *Oaths Act 1867*.
10. Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

Location

Under the Oaths Act, you can witness the signing of a statutory declaration anywhere. However, a statutory declaration under this Act will apply only to matters covered by Queensland law.

Check over the declaration

This is covered in the general witnessing chapter 4.1, and you should do this as a matter of course.

However, it is worth repeating here because you need to check there are no blank spaces, particularly in a document that requires the signatory to answer prepared questions.

Ask the signatory to cross them out or complete them. Ensure both you and the signatory initial them.

Note: A signatory may withhold information in a document, such as an address or other personal details, if they have concerns it may jeopardise their safety if disclosed to another party. This information will be supplied to the receiving agency or court at the time of lodgement.

Commonwealth statutory declarations

What is a Commonwealth statutory declaration?

A Commonwealth statutory declaration is a formal written statement used to set out facts, meet a requirement, or situations relating to matters under a law of the Commonwealth or of a Territory. They are also used in the administration of Commonwealth Departments i.e. Australian Taxation Office, Department of Health and Aged Care and Department of Home Affairs.

You are an approved witness under the *Commonwealth Statutory Declarations Act 1959* (the Commonwealth Act) and can witness a Commonwealth statutory declaration anywhere.

Why do people make Commonwealth statutory declarations?

Normally a person will be asked to complete a statutory declaration as part of a formal process, such as an application or as a legal requirement. The department or individual requesting the declaration will provide guidance and instructions on what the person should include in their declaration.

People of any age or nationality can make a Commonwealth statutory declaration.

Commonwealth statutory declaration forms

The statutory declaration must be in the approved form and can be witnessed either in person or by video link.

What are my obligations as an approved witness?

Before witnessing a Commonwealth statutory declaration you should:

- Be satisfied the signatory has the legal capacity to sign the declaration and understands what they are doing and the consequences.
- Ensure the signatory understands that making a declaration is a serious matter and they commit a Commonwealth criminal offence if they make a false statement in a declaration.
- Be satisfied the signatory is acting freely and voluntarily and are not being pressured into making the document.

Electronic signatures

Commonwealth statutory declarations can be witnessed by video link and the signatory may choose an online video conferencing platform such as Zoom, Microsoft Teams or Skype to have their statutory declaration witnessed.

The Commonwealth Act allows for statutory declarations to be:

- Made in the form of a physical or electronic document.
- Signed using a pen (wet ink) or electronic signature.
- Made in counterparts (where the signatory and witness sign separate, but identical copies of the same document).

The Commonwealth Act does not specify any method of electronic signing. It requires the document to be signed using an accepted method that:

- Identifies the person and indicates the person's intention in relation to the contents of the document.
- Is reliable as appropriate for the purpose for which the information was recorded.

This means you can electronically sign the document in several ways. For example you can:

- Paste a scanned image of your handwritten signature into a document.
- Sign on a touch screen (such as a tablet, smartphone or laptop) using a stylus or finger.
- Use an electronic platform which supports electronic signing of documents (such as DocuSign).
- Use a digital signature which uses encryption and decryption technology alongside a Public Key Infrastructure (PKI).

While electronic signatures can be made in a variety of ways, many of those ways are not appropriate for use on statutory declarations. It is not recommended that you, or the signatory, electronically sign the document by:

- typing a name in a Word version of the document
- clicking or ticking a button or box on a computer screen.

How do I witness a Commonwealth statutory declaration?

You can witness a Commonwealth statutory declaration either in person or by a video link. The format of the declaration can either be a paper or electronic version of the approved form.

When witnessing a Commonwealth statutory declaration follow the general procedure for witnessing signatures as outlined in chapter 4.1 then:

1. Meet with the signatory in person or using video link technology.

   Note: When witnessing by video link technology there must be the ability for both you and the signatory to see and hear each other.

2. Whilst not mandatory you should.

   - Take reasonable steps to satisfy yourself as to the identity of the signatory.
   - Warn the signatory at the outset, and check they understand that if they knowingly make a declaration and they know the information is false they commit a Commonwealth criminal offence.

   Note: You are not responsible for the truth or accuracy of what the signatory is declaring. The signatory holds the liability for committing an offence for making an intentional false statement. You cannot be charged or connected with the signatory if the signatory makes a false statement.

3. Ensure the signatory understands that making a declaration is a solemn matter.

4. Check the signatory understands their declaration and are making it freely and voluntarily.

   If you are satisfied the signatory understands the declaration you must:

   - Observe them sign the declaration either with a pen or electronically.
   - Ensure they sign and date the bottom of any additional pages or attachments.
   - Ensure they include their email address or telephone number beneath their signature.

   Note: This means if you are witnessing using a video link, they may need to position the camera or share their screen so you can see them sign their declaration.

   If witnessing electronically you may need the signatory to send you the signed document so you can apply your signature and other required information.

5. Witness the signatory's signature, sign and date every page including extra pages or attachments. If the document was signed:

   - In person:
     - Witness their signature on the physical document.
     - Witness their signature on the electronic document.
   - By video link:
     - Place your electronic signature on the document.
     - Print the signed copy of the document and witness their signature.
     - Print a counterpart of the document and witness in the usual manner.

6. You must include your:

   - full name
   - qualification and registration number
   - address
   - email address and/or telephone number.

   Note: You do not need to apply your seal of office on the statutory declaration. You will meet your witnessing requirements by completing the witness sections listed on the statutory declaration.

   Note: You can provide the address details of the Justices of the Peace Branch as outlined in chapter 1.2.

7. Return the witnessed document to the signatory.

   Note: When witnessing the signatory's signature by video link, you should sign and complete the witness sections and return it to the signatory at the same time during the video call.

8. Record all relevant information in your logbook as outlined in chapter 2.4.

Frequently asked questions

Can I witness a Queensland statutory declaration by video link?

No. Only approved Justices of the Peace and Commissioners for Declarations under the *Oaths Act 1867* can witness Queensland statutory declarations by audio visual link.

What if the Queensland statutory declaration has more than one page?

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

There is no legal requirement to sign or initial every page of a Queensland statutory declaration. However, it is good practice to initial every page. The final page must be witnessed in the normal manner by signing your name.

Do I need to use a Bible or other religious text to administer the declaration?

Bibles or other religious text are not required for statutory declarations as they are not sworn or affirmed. However, if a signatory wishes to swear or affirm their statutory declaration using a Bible or religious text, they can (provided there is one available).

Can someone under the age of 18 make a statutory declaration?

There is nothing in law that precludes someone who is under 18 years of age making a statutory declaration.

You need to be satisfied the signatory understands the nature and content of the declaration and that they must tell the truth.

Can more than one person sign the same statutory declaration?

Sometimes the receiving agency requires more than one person to make a declaration. You can execute such a document, however it must be legible and the appropriate wording used, such as changing 'I' to 'we'.

What if there are attachments to the statutory declaration?

Attachments must be referred to and described in the body of the declaration. Each attachment should be marked with the following:

> *This is the [type of document] or copy of the [type of document] marked with the letter 'A' referred to in the [name of main document] declared before me on this ..... day of ..... 20 .....*

The signatory has presented with a previous version of a Queensland statutory declaration. Can I witness it?

Yes. Ask the signatory to handwrite the required statements and information (outlined previously in this chapter) on the document so it complies with the requirements of the Oaths Act.

What place should be included on the document?

The signatory should insert their location at the time of signing the document. If the signatory has concerns about disclosing their location, it is recommended that they use a general location (such as 'Queensland').

Should I keep a record of the statutory declarations I witness?

Yes. Record all relevant information in your logbook as outlined in chapter 2.4.

Do I need to apply my seal of office when witnessing a Commonwealth statutory declaration electronically?

No. You do not need to apply your seal of office if the document is in the form of an electronic document, or if you are signing the document electronically.

Can I make a digital seal of office to use when witnessing a Commonwealth statutory declaration electronically?

No. You are not authorised to reproduce a seal of office issued by the Department of Justice and Attorney-General. You are not required to insert your seal of office on statutory declarations witnessed by video link.

Do I have to witness Commonwealth statutory declarations by video link if I do not have the means to do so?

No. You are not obligated to witness a Commonwealth statutory declaration by video link in certain situations including, but not limited to, if you do no have:

- access to a computer or video link equipment
- limited knowledge on how to meet with the signatory by video link
- the ability to conduct the meeting by video link in a quiet and appropriate location
- approval from your employer to meet with a person by video link using your work computer or other electronic device
- limited knowledge on creating and using an electronic signature
- software or other applications used to meet by video link
- If you decline to witness the signatory's document by video link, explain to the signatory the reason.

Can I witness other documents for Commonwealth matters using a video link?

No. Affidavits, deeds, and certifying documents are not covered under the *Statutory Declarations Act 1959*.

Can a recording of the witnessing of the Commonwealth statutory declaration be made?

The *Statutory Declarations Act 1959* does not require any party to record the witnessing of a Commonwealth statutory declaration by video link technology.

There may be times when the signatory wishes to record the signing of their document. This can only occur with the consent of all parties. If you do not wish to be recorded, you should advise the signatory at the time of making the meeting arrangements.

Will the Justices of the Peace Branch reimburse me for the cost of printing or other expenses related to witnessing a Commonwealth statutory declaration electronically?

No. There is no need to print the document if you apply an electronic signature.

You cannot charge the signatory for printing or copying services.

What equipment will I need to witness a Commonwealth statutory declaration by video link?

Regardless of how you will be signing the signatory's statutory declaration, you will need the following equipment to carry out your online witnessing role:

- a computer, tablet, mobile phone or other compatible device
- a keyboard (if not integrated into your device)
- a stable internet connection
- a camera or webcam (if not integrated into your device)
- microphone and speakers (if not integrated into your device)
- your handbook and logbook.

I have printed the signatory's Commonwealth statutory declaration, witnessed their signature, and scanned and emailed it back to the signatory. What do I do with the physical copy?

You must securely destroy the copy of the document that you physically signed if you have scanned and sent it to the signatory electronically.

You must delete the signatory's email and any attachments. Once you have deleted the files, you must also permanently delete them from your trash and/or deleted items folder.

How do I create an electronic signature?

If you are unsure about the process of adding an electronic signature, the internet provides numerous useful resources and instructions on integrating them into Microsoft Word and PDF files.

Where can I get more information?

Queensland legislation
www.legislation.qld.gov.au

Commonwealth legislation
www.legislation.gov.au

Statutory declarations
www.ag.gov.au/legal-system/statutory-declarations

Have your documents witnessed online by a JP or Cdec
www.qld.gov.au/onlinewitnessing

Forms

Queensland statutory declaration
www.publications.qld.gov.au/dataset/statutory-declaration

Commonwealth statutory declaration
www.ag.gov.au/legal-system/statutory-declarations

4.2 Quick guide

Witnessing Queensland statutory declarations

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

1	Take reasonable steps to verify: • the signatory's identity • the signatory's name matches the name of the signatory written on or in the statutory declaration. This is a requirement of the *Oaths Act 1867*.
2	Check the requirements for the statutory declaration have been met.
3	Check if the declaration has any special requirements.
4	Warn the signatory that if they knowingly make a false declaration, they commit an offence.
5	Check the signatory understands the declaration and they are making it freely and voluntarily. This is a requirement of the *Oaths Act 1867*.
6	Ask the signatory to make their declaration. ***Note:*** The signatory must make the declaration, not the substitute signatory.
7	Have the signatory or substitute signatory sign the declaration. ***Note:*** If a substitute signatory is required, ensure the statutory declaration includes the names of both the signatory and the substitute signatory.
8	Witness the signatory's declaration and insert your full name and qualification. This is a requirement of the *Oaths Act 1867*.
9	Record all relevant information in your logbook as outlined in chapter 2.4.

4.2 Quick guide

Witnessing Commonwealth statutory declarations

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

1	Meet with the signatory in person or using video link technology.
2	Whilst not mandatory you should take reasonable steps to identify the signatory and warn them at the outset that if they knowingly make a false declaration they commit a criminal offence.
3	Ensure the signatory understands that making a declaration is a solemn matter.
4	Check the signatory understands their declaration and are making it freely and voluntarily. If you are satisfied the signatory understands the declaration you must: • Observe them sign the declaration either with a pen or electronically. • Ensure they sign and date the bottom of any additional pages or attachments. • Ensure they include their email address or telephone number beneath their signature.

5	Witness the signatory's signature, sign and date every page including any additional pages or attachments. If the document was signed:
	• In person:
	  ◦ Witness their signature on the physical document.
	  ◦ Witness their signature on the electronic document.
	• By video link:
	  ◦ Place your electronic signature on the document.
	  ◦ Print the signed copy of the document and witness their signature.
	  ◦ Print a counterpart of the document and witness in the usual manner.

6	You must include your full name, qualification and registration number, address, email address and/or telephone number. ***Note:*** You can provide the address details of the Justices of the Peace Branch as outlined in chapter 1.2.
7	Return the witnessed document to the signatory.
8	Record all relevant information in your logbook as outlined in chapter 2.4.

4.3 Camera detected offence notices – statutory declarations

What is a camera detected offence notice?

A camera detected offence notice is a fine issued when it is alleged a person disobeys the speed limit, a red light, fails to wear a seat belt correctly or uses a mobile phone while driving.

The fine is issued in the name of the registered owner of the vehicle (registered owner), which can be a person or a company. If not responsible for the camera detected offence, the *Transport Operations Road Use Management Act 1995* (the Act) allows the registered owner to transfer the fine to the person who was driving or not wearing their seatbelt correctly at the time. This ensures the person responsible for the offence receives the penalty, not the registered owner.

For the transfer of liability of the offence to occur a statutory declaration must be completed.

Who can make this type of statutory declaration?

A person can request to transfer a fine if they are:

- the registered owner (the person whose name is printed on the infringement notice)
- an executive officer (e.g. owner, manager, secretary or supervisor) of the corporation named in the infringement notice
- the driver or person in charge of the vehicle at the time of the offence, including a person not wearing their seatbelt correctly, this is referred to as a self-nomination
- a person who has control of another person's affairs such as power of attorney or an executor of an estate. The person must show you a copy of the document authorising them to complete the declaration.

How do I witness a camera detected offence statutory declaration?

When witnessing a statutory declaration follow the general procedure as outlined in chapters 4.1 and 4.2. You should also check it gives the following:

Name and address of the signatory

The signatory is the person making the statutory declaration. They complete this section if they:

- are the registered owner of the vehicle but were not driving at the time of the offence
- are completing the statutory declaration on behalf of a company and they are an authorised representative

  Note: While the signatory must record their company position title, they are not required to prove this position to you.

- were the driver of the vehicle, or not wearing their seatbelt correctly, at the time of the offence (self-nomination)
- received the camera detected offence notice but were not driving or in charge of the vehicle at the time of the offence.

Particulars of the person

The signatory nominates the driver of the vehicle or the person not wearing their seatbelt correctly in this section, providing as many details of the driver as possible. If the signatory is self-nominating, they must insert their full particulars.

Address

The signatory may nominate a residential street, postal (including PO Boxes), corporation, interstate or overseas address for the person in charge of the vehicle at the time of the offence.

Witnessing officer

Insert your signature, title and registration number. You must also print your full name (including middle name/s, not initials). If you apply your seal of office, this may be placed adjacent to this field. Please ensure your seal of office does not obscure or cover any information inserted into the document.

Enter the details in your logbook

Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

- The signatory must understand they commit an offence if they know information in their statutory declaration is false.
- Never void, cancel or decline to witness an expired infringement notice. It is the receiving agency's decision to reject or accept an expired notice.
- The signatory should cross out irrelevant sections i.e. 'stolen/sold vehicle'.
- The signatory should write all names in full.
- The signatory can record an overseas or international licence number on the declaration.
- If an executive officer is completing the infringement notice as a company representative, they must record their position, title and company name (as per the infringement notice) next to their printed full name.
- There is no legal requirement to use the statutory declaration received by the registered owner.

Frequently asked questions

Should I witness the declaration if the infringement notice is past its due date?

Yes. You should however bring this to the attention of the signatory.

The image on the infringement notice appears to look like the signatory, and they are nominating someone else. Can I still witness it?

Yes. Your role is to witness the signatory's declaration, not to scrutinise the images on the infringement.

You should warn the signatory, at the outset, and check they understand that if they knowingly make a declaration and they know the information is false they commit an offence.

What is meant by an Executive Officer of a company?

Executive Officer means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director. Some examples include, but are not limited to: manager, chief financial officer, secretary, fleet manager, and so on.

The signatory has used correction fluid or tape on the declaration, can I still witness it?

Yes. The receiving agency will accept a witnessed declaration where correction fluid or tape has been used. Ensure both you and the signatory initial these amendments.

There is no room for me to place my seal of office, will the declaration still be accepted?

Yes. You can use your relevant prescribed mark of office alongside your full name and signature as outlined in chapter 4.1.

Where can I get more information?

How to transfer a fine
www.qld.gov.au/transport

Queensland legislation
www.legislation.qld.gov.au

Forms

Statutory declaration
www.publications.qld.gov.au/statutory-declaration

4.3 Quick guide

Witnessing camera detected offence notices - statutory declarations

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.2 then:

1	Check the requirements for the statutory declaration have been met.
2	Check if the declaration has any special requirements, including the following: • the particulars of the registered owner • the particulars of the person driving the vehicle • address details are completed.
3	Warn the signatory that if they knowingly make a false declaration they commit an offence.
4	Check the signatory understands the declaration. ***Note:*** The signatory must make the declaration, not the substitute signatory.
5	Ask the signatory to make their declaration.
6	Have the signatory sign the document and then witness their signature.
7	Record all relevant information in your logbook as outlined in chapter 2.4.

4.4 Witnessing a statutory declaration for an application made under the *Domestic and Family Violence Protection Act 2012*

What is the *Domestic and Family Violence Protection Act 2012* (the Act) for?

The main objectives defined in the Act are:

- to maximise the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives
- to prevent or reduce domestic violence and the exposure of children to domestic violence
- to ensure people who commit domestic violence are held accountable for their actions.

This Act deals with prescribed behaviours committed or threatened to be committed by a person towards another person who are in a 'relevant relationship', which include:

- a family relationship – two relatives (by marriage or blood), including a child over 18, parent, stepchild, step-parent, brother, sister, grandparent, aunt, uncle, nephew or niece, as for some community groups, a person who is not related by blood or marriage but is considered a relative
- an informal care relationship – one person who is, or was, depending on another person for help with daily living activities

  Note: It is not considered domestic violence when a person is a paid carer under a commercial arrangement.

- an intimate personal relationship – two people (regardless of gender) who are/were a couple, engaged, married, in a de facto relationship, the parents of a child or in a registered relationship (a legally recognised relationship).

Who can make an application under this Act?

An application can be made by:

- the person experiencing domestic and family violence (the aggrieved)
- a police officer
- an aggrieved person's guardian appointed under the *Guardianship and Administration Act 2000*
- an attorney for the aggrieved appointed under an enduring power of attorney under the *Powers of Attorney Act 1998*
- any person 18 years of age and over who is authorised to appear by the aggrieved person (an authorised person). This person can be authorised in writing. If the authority is not in writing – such as for a person who has a disability and can't write – then oral authority can be given.

Why would someone make an application under this Act?

Regardless of age, culture, sexuality or gender identity, everyone has the right to live without fear. A person can make an application for a protection order if they are experiencing emotional, financial, psychological, physical or sexual abuse in a relevant relationship.

What is domestic and family violence (DFV)?

The Act provides for a broader definition of domestic violence and the relationships that are protected by it.

Domestic violence means behaviour by a person (the first person) towards another (the second person) with whom the first person is in a relevant relationship that –

- is physically or sexually abusive
- is emotionally or psychologically abusive
- is economically abusive
- is threatening
- is coercive
- is causing them to fear for their own or someone else's safety and wellbeing.

How do I witness a statutory declaration in a protection order application?

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.2.

Take your time with the signatory. Start by asking them if they feel safe and comfortable in the location where you are witnessing their declaration. If possible, move to a quiet space out of the presence of others. This will allow the signatory to speak freely without being overheard.

Also let the signatory know they can stop the witnessing process at any time without explanation.

A signatory may withhold information in a document, such as an address or other personal details, if they have concerns it may jeopardise their safety if disclosed to another party. This information will be supplied to the receiving agency or court at the time of lodgement.

Things to bear in mind

The decision to leave a domestic violence situation is often a difficult one, and the person in front of you may lack self-esteem and self-confidence.

Take your time going through the witnessing steps with the signatory. Avoid language/tone that may make a person going through this process feel scared, judged or not believed.

If needed, reassure them you are impartial and cannot provide any advice or opinions about the matter or the contents of their application or the process for obtaining a protection order.

Frequently asked questions

The declaration in the application has 'Queensland' prepopulated on the form should I change this to the location of signing?

No. Do not cross out Queensland and enter the town or suburb you are located in.

Inserting a location other than Queensland has the potential to disclose to another party the signatory's general whereabouts, which could jeopardise their safety.

Can additional pages be submitted with the application?

Yes. Additional pages can be submitted with the application. If there are attached statements, they should be prepared as statutory declarations or annexures to the original declaration and should be witnessed accordingly.

A domestic and family violence safety form may also accompany the application. If the person has concerns for their safety, this form should be completed by the aggrieved or a representative. It is important to note the safety form does not form part of the application or the statutory declaration.

Are there other applications under this Act I can witness?

There are several forms under this Act you may be asked to witness where you will need to take the signatory's declaration or place them on oath or affirmation to take their affidavit.

Where can I get more information?

DFV information, services and support
www.qld.gov.au/domesticviolence

Queensland Courts
www.courts.qld.gov.au/dfv

Forms

Application for a protection order (DV1) online – statutory declaration
www.qld.gov.au/dfvorders

For help and advice

If the signatory asks you for help in completing an application, you should refer them to their nearest Magistrates Court, or alternatively you can provide them with the contact details of the following helplines:

1800RESPECT
1800 737 732

Womensline
1800 811 811

Mensline
1800 600 636

Kids Help Line
1800 55 1800
www.kidshelpline.com.au

Elder Abuse Helpline
1300 651 192
www.eapu.com.au

DVConnectv
www.dvconnect.org

4.4 Quick guide

Witnessing a statutory declaration for an application made under the *Domestic and Family Violence Protection Act 2012*

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.2 then:

1	Check the requirements for the statutory declaration have been met.
2	Warn the signatory that if they knowingly make a false declaration they commit an offence.
3	Check the signatory understands the declaration. ***Note:*** The signatory must make the declaration, not the substitute signatory.
4	Ask them to show you each page of the application, ensuring: • they cross out or answer any unanswered questions • any changes are initialled by both you and the signatory. ***Note:*** A signatory may withhold details if they have concerns for their safety. These will be supplied to the receiving agency or court at the time of lodgement.
5	Ask the signatory to make their declaration.
6	Have the signatory sign the document and witness their signature. ***Note:*** Ensure you do not change or modify the location listed on the document. If there is no location listed, insert 'Queensland'.
7	Record all relevant information in your logbook as outlined in chapter 2.4.

4.5 Witnessing international, Commonwealth and interstate documents

What powers do I have for witnessing international, Commonwealth and interstate documents?

Before agreeing to witness an international, Commonwealth or interstate document, you should ask the signatory to confirm with the receiving agency if you are an acceptable witness. The court or authority where the document is to be lodged determines if you are acceptable as a witness.

International documents

Generally, you have no authority to sign a document intended for use outside Australia. A notary public, consular staff or embassy officials should witness international documents, unless the document specifies otherwise.

Commonwealth documents

You may witness Australian (Commonwealth) documents anywhere in the world.

Commonwealth legislation recognises your appointment as a JP or Cdec under state legislation and authorises you as a witness for Commonwealth documents. Therefore, neither state nor national borders limit your powers as a witness for Commonwealth documents.

Interstate documents

Witnessed outside Queensland

JPs and Cdecs do not have authority to witness interstate documents while they are outside Queensland. However, a JP or Cdec can witness Queensland documents anywhere, as long as the document is returning to Queensland.

While some states have legislation authorising JPs or Cdecs from other states to witness certain documents in their particular state, we recommend you have the signatory confirm with the receiving agency you are an acceptable witness.

Witnessed in Queensland

In some circumstances, you can witness interstate documents while you are in Queensland.

Queensland documents witnessed outside Queensland

Your appointment as a JP or Cdec is made under Queensland legislation by virtue of the *Justices of the Peace and Commissioners for Declarations Act 1991*. This means your powers apply to all matters within the State of Queensland.

You may perform your functions as a witness in any state or territory, or indeed internationally, provided the document in question is to be used in Queensland.

The following scenarios may help to illustrate your parameters of power.

Scenario	Do I have authority to witness?
In Brisbane you are approached to witness a family law form (a Commonwealth document) which is to be used in Western Australia.	Yes
In Adelaide you are approached to witness a family law form which is to be used in Brisbane.	Yes
In London you are approached to witness an affidavit which is to be tendered as evidence in a court hearing in Brisbane.	Yes
In California you are approached to witness an affidavit which is to be tendered as evidence in a court hearing in Los Angeles.	No
In Victoria you are approached to witness a statutory declaration under that state's legislation.	No
In Queensland, you are approached to witness a New South Wales document that is to be filed in the Supreme Court of New South Wales.	You should have the signatory confirm with the receiving agency you are an acceptable witness. If yes, you may witness the document, but you must note beside your signature that you are a JP or a Cdec 'for and in the State of Queensland'.

Why are there limits on my powers to witness international and interstate documents?

As your appointment as a JP or Cdec is made under Queensland legislation, your powers generally relate to Queensland and Commonwealth documents.

Unless a particular document specifically allows it, you do not have the authority to deal with documents coming under the legislation of other states or other countries.

Where can I get more information?

Justices of the Peace Branch
www.qld.gov.au/jps

4.6 Administering oaths and affirmations

What is an oath?

An oath is a solemn declaration or undertaking that calls upon a faith-based higher power (such as God or another Deity) to witness the truthfulness of the statement a person is making.

A document made under oath is said to be 'sworn under oath', as the contents of the document are 'sworn before God'.

What is an affirmation?

A solemn affirmation is the equivalent of an oath except that it does not call upon God or another Deity to bear witness. It was introduced as a concession to people who object to taking an oath. Some religions do not accept the use of oaths, and the use of affirmations by people with no religious beliefs is now commonly accepted.

Why would a person make an oath?

The reason for a person, also known as the signatory, making an oath is based in the historical significance of religion when swearing an oath before God was a very serious thing. The serious nature of an oath is still evident today, as any false statement under oath is a criminal offence and results in substantial penalties, including heavy fines or imprisonment.

However, today's law recognises a person's right to beliefs other than Christianity, and there are various oaths for people with other religious beliefs.

By law, certain statements – such as documents intended for use in court proceedings, oaths of office, requests for the replacement of certain lost documents and some statements of debt – must be sworn under oath or by affirmation.

Why would a person make an affirmation?

The *Oaths Act 1867* (the Act) states the signatory may make an affirmation in lieu of an oath if they regard the taking of an oath as objectionable. The Act also provides that the objection to being sworn may be based on:

- an absence of religious beliefs
- conscientious grounds
- other grounds considered reasonable by the court, a judge, another presiding officer or a person qualified to administer oaths or to take affidavits or depositions.

The law does not allow people to avoid taking an oath in the belief they are under a lesser obligation to tell the truth when making an affirmation.

How do I administer an oath or affirmation?

Following the general procedure for witnessing signatures as outlined in chapter 4.1, you must administer the oath or affirmation before the document is signed. It is advisable to administer the oath or affirmation at the very beginning so the signatory is under oath if you ask any questions.

It is your responsibility to make sure the oath or affirmation is taken correctly.

Before administering the oath or affirmation, be sure to warn the signatory of the necessity to tell the truth, and the consequences if the document is found to be false.

A document to be made under oath is set out as follows:

> *I ..... [name] of ..... [address], state on oath that [body of document].*

A document to be made under affirmation is set out as follows:

> *I, ... [name] of ..... [address], do solemnly, sincerely and truly affirm and declare that [body of document].*

At the end of the document, before the space for your signature, there is provision for you to indicate if the document was signed under oath or affirmation.

Note: There are many religions not covered in this handbook and some branches of the major religions require variations in the wording. When in doubt, you should use whatever wording the signatory regards as solemn and binding.

Oaths

Christian oath

To administer a Christian oath, you must use a Bible that contains either a full Bible (Old Testament and New Testament together) or an Old Testament or a New Testament alone. A Christian oath cannot be taken without a Bible, and no substitute is allowable.

Ask the signatory to take the Bible in either hand, and repeat the following words after you:

> *I swear that the contents of this document are true and correct to the best of my knowledge and belief, so help me God.*

Or:

> *I swear that I will [as per the requirements of the documents], so help me God.*

Once the oath has been taken, ensure the document is signed and witnessed in accordance with your normal procedure.

Jewish oath

The wording for the Jewish oath is the same as for the Christian oath except the Old Testament, the Torah or Pentateuch is used instead of the Bible. If the signatory wears a hat, this may remain on during the administering of the oath. The Old Testament, Torah or Pentateuch is usually held high in the right hand.

Islamic oath

The Holy Koran, or Qur'an, is used when taking an Islamic oath. Care should be taken when handling the Koran, as some Islamic people believe it is sacrilegious for a non-believer to touch it.

- Ensure the Koran has been wrapped, by a believer, in a piece of plain white material.
- Hand the Koran to the signatory, asking them to take the Koran in either hand and place the other hand on their forehead.
- Ask the signatory to state the following words:

> *In the name of Allah, the Beneficent, the Merciful. By Almighty Allah, in whose hands are my life, I promise to give the facts completely, truthfully and sincerely to the best of my ability.*

- Ensure the signatory kisses the Koran at the completion of the oath.

Buddhist oath

There are no set procedures to follow. Simply ask the signatory to state the following words:

> *I declare, as in the presence of Buddha, that I am unprejudiced, and if what I shall speak shall prove false, or if by colouring the truth others shall be led astray, then may the three Holy Existences – Buddha, Dhamma and Pro Sangha – in whose sight I now stand, together with the Devotees of the Twenty-two Firmaments, punish me and also my migrating soul.*

Chinese oath

- Light a candle or a match.
- Ask the signatory to blow out the flame and state the following words:

> *I swear that I shall tell the truth, the whole truth, and nothing but the truth. This candle (or match) is now extinguished, and if I do not tell the truth, may my soul, in like manner, be extinguished forever hereafter.*

Affirmations

The procedures for administering an affirmation are the same as for an oath, except no holy book is used, and the wording is different. There are also prescribed affirmations under the Act for people of certain religious persuasions.

Secular affirmation

Either ask the signatory:

> *Do you solemnly, sincerely and truly affirm and declare that the contents of this your [document] are true and correct to the best of your knowledge?*

and then instruct the signatory to answer:

> *I do.*

Or ask the signatory to repeat these words after you:

> *I solemnly, sincerely and truly affirm and declare that the contents of this my [document] are true and correct to the best of my knowledge.*

Affirmation by Quakers

> *I, [name], being one of the people called Quakers, do solemnly sincerely and truly affirm and declare that the contents of this my [document] are true.*

Affirmation by Moravians

> *I, [name], being of the united brethren called Moravians, do solemnly sincerely and truly affirm and declare that the contents of this my [document] are true.*

Affirmation by Separatists

> *I, [name], do in the presence of Almighty God solemnly, sincerely and truly affirm and declare that I am a member of the religious sect called Separatists and that the taking of an oath is contrary to my religious belief as well as essentially opposed to the tenets of that sect and I do also in the same solemn manner affirm and declare that the contents of this my [document] are true.*

Things to bear in mind

Be careful: The followers of some faiths believe it is wrong for a non-believer to speak the words of their oath.

Before hearing the oath, check whether the signatory objects to you reading the words of the oath for them to repeat. If they do object, hand them a written copy of the oath and ask them to read it out aloud.

Frequently asked questions

Can I use a mobile device to take a religious oath?

Yes. A mobile device containing religious text can only be used if a physical copy is not available. It would be prudent to confirm there is a copy of a religious text open on the device by asking the signatory to show it to you.

Am I precluded from administering a particular oath if it is contrary to my personal beliefs?

No. As a witnessing officer in Queensland, it is your duty to ensure the signatory is provided every opportunity to take an oath in their own way, regardless of your own beliefs.

Can I refuse to administer an oath or affirmation?

No. By law, some documents must be witnessed under oath or affirmation. As a witnessing officer in Queensland, it is your duty to ensure the signatory's document is witnessed according to the law.

However, you should refuse to attest a document where the form of oath or affirmation is not substantially in a format that is authorised by law – that is, as set out in this section.

Who provides the equipment?

The person making the oath or affirmation is expected to provide whatever equipment is necessary. Bibles are supplied to the JPs in the Community program signing sites.

Where can I get more information?

Queensland legislation
www.legislation.qld.gov.au

4.7 Witnessing affidavits

What is an affidavit?

An affidavit is a written statement made and sworn under oath or affirmation before an authorised witness that the contents of their document are true and correct. The person making the affidavit, and who makes the oath or affirmation, is called the signatory, also known as the deponent.

The legislation governing administering oaths and witnessing affidavits is the *Oaths Act 1867* (the Act). Your role is to take the oath or affirmation and witness the signature of the signatory.

Why do people make affidavits?

Affidavits are often intended for use as evidence in a court of law. They are usually tendered to the court in lieu of verbal evidence. Therefore, they must be prepared and sworn as if they were evidence being given before a court.

The signatory must understand they commit an offence if they know information in their affidavit is false.

Affidavit forms

There is not one universal affidavit form that must be used – it will vary depending on the court or tribunal in which it will be used and the type of proceeding.

You as the witness are not expected to know or understand the rules for different proceedings. The responsibility to ensure the relevant form is being used is on the person making the affidavit.

What are my obligations when witnessing an affidavit?

1. You must take reasonable steps to verify:
   - the signatory's identity
   - the signatory's name matches the name of the signatory in the affidavit.
2. You must also satisfy yourself:
   - the signatory is making the document freely and voluntarily
   - the signatory understands the document.

It must be clear the signatory is freely and voluntarily making the document and is not being pressured or coerced. If you feel a family member, friend or carer is behaving in a way that is domineering or overbearing it is best practice to speak to the signatory alone.

Note: If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily, decline to witness it and explain why.

Requirements

The Act requires the signatory and the witness to include certain information and statements on the affidavit.

The signatory must ensure the affidavit contains the following statements:

1. *The contents of this affidavit are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.*
2. *I understand that a person who makes an affidavit that the person knows is false in a material particular commits an offence.*

You should not proceed to witness the statutory declaration unless it contains the required statements set out above.

If these statements are not included on the affidavit presented to you, ask the signatory to write the required statements above or as close to the execution section.

As the witness, you must include the following information on the affidavit:

- your full name
- your qualification (i.e. Justice of the Peace or Commissioner for Declarations).

Substitute Signatories

The Act allows a signatory to direct another person (called a substitute signatory) to sign the affidavit on their behalf. A substitute signatory cannot be:

- the person witnessing the affidavit
- if the affidavit is to be filed or admitted into evidence in a proceeding by or for a party - a person who is another party to the proceeding or a relation of another party to the proceeding.

The signatory and the substitute signatory must both be present with you at the same time. You should decline to witness the document if only one is in attendance.

If a substitute signatory is involved, you must:

- observe the signatory giving the direction to the substitute signatory to sign the document for them
- be satisfied the signatory is giving the direction freely and voluntarily
- check the affidavit includes the names of both the signatory and the substitute signatory.

Note: The role of the substitute signatory is simply to sign the document for the signatory. The affidavit is made in the name of the signatory, and it is the signatory who must swear or affirm the contents of the affidavit are true and correct to the best of their knowledge and belief.

You should take reasonable steps to verify the identity of the substitute signatory (in addition to the signatory) and enter their name and the type of identification presented in your logbook. You must be satisfied that the substitute signatory is not a relation of any other party to the proceeding.

How do you witness an affidavit?

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

1. Take reasonable steps to verify:
   - the signatory's identity
   - the signatory's name matches the name of the signatory written on or in the affidavit.

   This is a requirement of the *Oaths Act 1867*.
2. Check the requirements for the affidavit have been met.
3. Check if the affidavit has any special requirements, such as:
   - particular types of proof of their identity
   - personal knowledge of the signatory for a particular time.
4. Warn the signatory, at the outset, and check they understand that if they knowingly make an affidavit and they know the information is false they commit an offence.

   Ensure the signatory understands that swearing an oath or making an affirmation is a solemn matter.
5. Check the signatory understands the contents of the affidavit and they are making the document freely and voluntarily.

   Note: If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily, decline to witness it and explain why. This is a requirement of the *Oaths Act 1867*.
6. If you are satisfied the signatory understands the affidavit, administer the oath or affirmation as outlined in chapter 4.6.
7. Both you and the signatory or substitute signatory must sign the bottom of every page of the affidavit.
8. Have the signatory or substitute signatory sign the last page of the affidavit. Witness their signature and insert your full name and qualification.

   This is a requirement of the *Oaths Act 1867*.

   Note: If a substitute signatory is required, ensure the affidavit includes the name of both the signatory and substitute signatory.
9. Record all relevant information in your logbook as outlined in chapter 2.4.

Annexures and certificates of exhibits

Annexures

Annexures are documents and attached to the affidavit. Each annexure must be introduced and described in the body of the affidavit. Under the *Uniform Civil Procedures Rules 1999* (UCPR) annexures are referred to as exhibits.

Examples of annexures include (but are not limited to):

- financial statements
- medical records
- reports
- photographs
- any record of information that exists in digital form.

Annexures are normally marked with the letters ‘A’, ‘B’, ‘C’ and so on, but other references such as numerical markings, are acceptable.

If the annexure does not have a certificate of exhibit attached, you may mark the annexure with the following wording. Normally, there is no need for the deponent to sign or initial these annexures.

This page and pages ..... to ..... are the particulars marked "....." referred to in the affidavit of .....Sworn/Affirmed before me at ..... this ..... day of ..... 20 .....

Deponent	*JP Qual/Cdec*

Certificate of exhibit

Under the UCPR each exhibit to an affidavit must have an identifying mark on it (such as letter or number), and the certificate in the approved form on it. It is acceptable for multiple annexures to be bound with one certificate of exhibit listing all annexures.

Where a certificate of exhibit is provided, you and the signatory/substitute signatory must sign the certificate. The annexures do not need to be individually signed or initialled.

If an annexure does not have a certificate of exhibit attached, ask the signatory to mark the annexure with the following wording.

Certificate of exhibit

Exhibit 'A' to the affidavit of (name of signatory) sworn [affirmed] (date)

Deponent / Substitute Signatory (delete whichever is not applicable)	*Witness (Description of witness)*

or

Bound and marked 'A' - 'B' are the exhibits to the affidavit of (name of signatory) sworn [affirmed] (date)

Deponent / Substitute Signatory (delete whichever is not applicable)	*Witness (Description of witness)*

Things to bear in mind

Here is a summary of the changes you will need to make to the wording of the form if the document is to be affirmed rather than sworn:

For oath	For affirmation, replace with
Make oath and say	Solemnly, sincerely and truly affirm and declare
Signed and sworn	Signed and solemnly, sincerely and truly affirmed and declared
Sworn herein	Affirmed herein

Frequently asked questions

What if I administer the oath/affirmation at the start?

You will need to make a slight alteration to the standard oath or affirmation if you decide to administer it at the start. After the phrase *'the contents of this document'*, include the following words:

'…and any further information I may supply either orally or in writing…'.

The standard written oath or affirmation on the bottom of the document need not be altered.

Can a mobile device be used to take a religious oath?

Yes. A mobile device containing a religious text can only be used if a physical copy is not available, as outlined in chapter 4.6.

What if the affidavit has more than one page?

If the affidavit is a multiple-page document, you and the signatory/substitute signatory must sign each page. Number each page 'page 1 of 4', 'page 2 of 4' and so on. Although placement of this on the page is not prescribed, it is normally done on the lower right-hand corner. The final page must be witnessed in the normal manner.

What if alterations or additions are made to the document?

As with all documents, any alterations or additions made to the document should be initialled by both you and the signatory/substitute signatory.

What if there is more than one affidavit to be witnessed?

You can administer an oath or affirmation simultaneously. Place the affidavits together and amend the oath or affirmation to include all affidavits.

Should I keep a record of the affidavits I witness?

Yes. Record all relevant information in your logbook as outlined in chapter 2.4.

Where can I get more information?

Queensland Courts
www.courts.qld.gov.au

Queensland legislation
www.legislation.qld.gov.au

Legal Aid Queensland
www.legalaid.qld.gov.au

Your rights crime and the law
www.qld.gov.au/law

Forms

Queensland Courts and tribunals affidavits
www.courts.qld.gov.au/forms

QCAT affidavit
www.qcat.qld.gov.au/resources/forms

4.7 Quick guide

Witnessing affidavits

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

1	Take reasonable steps to verify: • the signatory's identity • the signatory's name matches the name of the signatory written on or in the affidavit. This is a requirement of the *Oaths Act 1867*.
2	Check the requirements for the affidavit have been met.
3	Check if the affidavit has any special requirements.
4	Warn the signatory that if they knowingly make a false affidavit they commit an offence.
5	Check the signatory understands the contents of the affidavit and they are making the document freely and voluntarily. This is a requirement of the *Oaths Act 1867*.
6	Ask the signatory to make their oath or affirmation. ***Note:*** The signatory must make the oath or affirmation, not the substitute signatory.
7	Both you and the signatory/substitute signatory sign each page of the affidavit.
8	Have the signatory or substitute signatory sign the last page of the affidavit. Witness their signature and insert your full name and qualification. This is a requirement of the *Oaths Act 1867*. ***Note:*** If a substitute signatory is required, ensure the affidavit includes the name of both the signatory and substitute signatory.
9	Record all relevant information in your logbook as outlined in chapter 2.4.

4.8 Witnessing family law documents

What court is responsible for hearing family law matters?

The Federal Circuit and Family Court of Australia (the court) was established by the *Federal Circuit and Family Court of Australia Act 2021*.

What type of family law matters are dealt with by the court?

The court's family law jurisdiction deals with several matters, including:

- applications for divorce
- applications for spousal maintenance
- property and financial disputes
- parenting orders
- enforcement of orders
- location and recovery orders
- determination of parentage.

What legislation governs family law documents?

When witnessing a document for a family law matter, generally the *Family Law Act 1975* (Cth) and the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* apply.

The rules outline how documents are to be filed in the court, including applications and evidence. As a JP or Cdec it is important you are familiar with these rules, how to witness an affidavit with annexures, as they differ to other court jurisdictions. Of particular note for family law documents is the necessity to properly witness annexures to an affidavit.

How do I witness family law documents?

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.7 then:

1. Check the affidavit or divorce application to ensure the names of both parties appear.

   Note: When eFiling, the signatory is not required to produce the electronic copy of their application for divorce.

2. Warn the signatory, at the outset, and check they understand that if they knowingly make an affidavit and they know the information is false they commit an offence.

   Ensure the signatory understands that swearing an oath or making an affirmation is a solemn matter.

3. Check the signatory understands the contents of the affidavit and they are making the document freely and voluntarily.

   Note: If you are not satisfied the signatory understands the contents or is not making the document freely and voluntarily, decline to witness the affidavit and explain why.

4. If you are satisfied the signatory understands the affidavit administer the oath or affirmation as outlined in chapter 4.6.

5. Remember both you and the signatory must sign the bottom of every page of the affidavit. Have the signatory sign the last page of the affidavit, witness their signature in the normal manner.

6. Record all relevant information in your logbook as outlined in chapter 2.4.

What is divorce?

Divorce is the legal end of a marriage (dissolution of marriage). A divorce proceeding may only be commenced by a party to the marriage and the application for divorce can be filed by one party (sole application) or both parties jointly (joint application).

If the signatory has lodged their divorce application using the Commonwealth Courts Portal you may be asked to witness an *Affidavit for eFiling application (Divorce)*.

If a signatory is unable to electronically file or access their application for divorce you may be presented with a physical copy of an application for witnessing.

Both of these documents need to be sworn or affirmed.

What is an Affidavit of Service (Divorce)?

Service is the process of sending or giving court documents to a party after they have been filed, in accordance with the rules of the court. Service ensures all parties have received the documents filed with the court.

The court will only grant a divorce once it is satisfied both parties have a copy of the application for divorce and are aware of the court hearing date. Service can be affected by either posting the documents or serving them by hand. Both methods require an affidavit of service to be witnessed.

Depending on how service was affected you will be presented with the following documents:

Service by post

- *Affidavit of Service by Post (Divorce)*
- *Acknowledgment of Service (Divorce)*.

Service by hand

- *Affidavit of Service by Hand (Divorce)*
- *Acknowledgment of Service (Divorce)*
- *Affidavit Proving Signature (Divorce)*.

How do I witness an Affidavit of Service (Divorce)?

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.7 then:

1. Check the requirements for the affidavit of service have been met:
   - Ask the signatory how the other party was served, by post or by hand?
2. Check if the affidavit of service has any special requirements.
   - Service carried out by post:
     - Check the *Affidavit of Service by Post (Divorce)* to ensure the form appears to be fully completed.
     - Check the relevant sections have been completed on the *Acknowledgement of Service (Divorce)*.
   - Service carried out by hand:
     - Check the *Affidavit of Service by Hand (Divorce)* to ensure the form appears to be fully completed.
     - Check the relevant sections have been completed on the *Acknowledgement of Service (Divorce)*.
     - Check the respondent has signed the *Affidavit Proving Signature (Divorce)*.
3. Warn the signatory, at the outset, and check they understand that if they knowingly make an affidavit and they know the information is false they commit an offence.

   Ensure the signatory understands that swearing an oath or making an affirmation is a solemn matter.

4. Check the signatory understands the contents of the affidavit and they are making the document freely and voluntarily.

   Note: If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily decline to witness the affidavit and explain why.

5. If you are satisfied the signatory understands the affidavit administer the oath or affirmation as outlined in chapter 4.6.
6. Remember both you and the signatory must sign the bottom of every page of the affidavit. Have the signatory sign the last page of the affidavit, witness their signature in the normal manner.
7. Record all relevant information in your logbook as outlined in chapter 2.4.

What are attachments and annexures?

'Attached'

Inserted as an addendum within an affidavit, 'attached' means a continuation of evidence and is still part of the signatory's affidavit. The bottom of each page must be signed by the signatory and you. All attached evidence is placed between the first page of the affidavit and the last.

'Annexure'

Annexures are referenced as evidence. They include any documents provided to support the facts deposed in an application or affidavit, such as bank statements, bills, medical reports or school reports. Copies of these must accompany the affidavit at the time of witnessing. Annexures should be photocopies of the original documents, noting there is no requirement for these to be certified as copies.

Annexures must be referred to in the body of the affidavit and titled i.e. Annexure 1 or Annexure A.

If there is more than one annexure, they must be referenced consecutively i.e. Annexure A, Annexure B, Annexure C and so on.

The page numbers of all annexures must run consecutively – that is, from the first page of the first annexure to the last page of the last annexure. For example, if there are three annexures totalling 30 pages, the first page of the first annexure is page 1 and the last page of the third annexure is page 30. Each annexure must have a statement signed by the witness identifying it as the document referred to in the affidavit. The statement must be signed at the same time as the affidavit and by the same witness.

Annexures should be marked in the following way to meet the requirements of the court.

This is the document referred to as Annexure [insert reference number] in the affidavit of [insert signatory's name], sworn/affirmed at [insert place] on [insert date] before me [authorised person to sign and provide name and qualification].

Full-page photographs

In some circumstances, you may be asked to sign and complete a full-page photograph as an annexure. The most appropriate procedure to follow is to place a blank sheet of paper in front of the photograph and use the above wording. Certification on the back of the photograph is not acceptable.

Things to bear in mind

- Generally, three copies of documents are to be filed in the courts, with an applicant instructed to file an original and two copies. It is reasonable to expect an applicant will present with one copy to be witnessed prior to making additional copies. However, if you are presented with three copies, there is no objection by the courts to having all three witnessed.
- There is no requirement for any annexures or additional copies of applications to be certified as copies of originals.
- An application for divorce can be electronically filed through the Commonwealth Courts Portal. The applicant is required to print off the application, called the *Affidavit for eFiling application (Divorce)*. This application must be witnessed. The affidavit of eFiling only requires you to witness the signature of the applicant and/or respondent to the divorce application. The signatories are required to attest they have read the application identified by the noted transaction number. From the courts' position, you do not have to physically see the signatory read the application, nor do they need to read the application themselves.

Where can I get more information?

Federal Circuit and Family Court of Australia
www.fcfcoa.gov.au

Court forms and Divorce Service Kit
www.fcfcoa.gov.au/form/affidavit
www.fcfcoa.gov.au/fl/forms/divorce-service-kit

Legislation and Court Rules
www.legislation.gov.au

4.8 Quick guide

Witnessing family law documents

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.7 then:

1	Check the affidavit or divorce application to ensure the names of both parties appear. ***Note:*** When eFiling, the signatory is not required to produce the electronic copy of their application for divorce.
2	Warn the signatory that if they knowingly make a false affidavit they commit an offence.
3	Check the signatory understands the affidavit.
4	Ask the signatory to make their oath or affirmation.
5	Both you and the signatory sign each page of the affidavit and then witness their signature on the last page.
6	Record all relevant information in your logbook as outlined in chapter 2.4.

Affidavit of service

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.7 then:

1	Check the requirements for the affidavit of service have been met. • Was it served by post or hand?
2	Check if the affidavit of service has any special requirements.
3	Warn the signatory that if they knowingly make a false affidavit they commit an offence.
4	Check the signatory understands the affidavit of service.
5	Ask the signatory to make their oath or affirmation.
6	Both you and the signatory sign each page of the affidavit and then witness their signature on the last page.
7	Record all relevant information in your logbook as outlined in chapter 2.4.

4.9 Witnessing general powers of attorney, enduring powers of attorney and advance health directives

General powers of attorney

What is a general power of attorney?

A general power of attorney (GPA) is a formal agreement in which a person grants a person they trust (the attorney) the power to make decisions on their behalf about financial matters.

The person making the GPA is called the principal.

The principal can only grant this power if they have the capacity to make that decision for themselves.

If the GPA is made under the *Powers of Attorney Act 1998* (the POA Act), it must be in the approved *Form 1 – General Power of Attorney*. Only the principal and a witness sign this form.

GPAs can be made in other forms, such as by deed or under common law. Individuals or corporations can also make GPAs.

Sometimes the GPA specifies a time or a circumstance when the attorney can begin to make decisions on the principal's behalf. Unless this is specified in the GPA, the power begins as soon as the GPA is signed.

Generally, a GPA for an individual may be revoked (cancelled) if the:

- principal dies
- terms of the GPA provide for its revocation
- principal revokes it – for example by signing a *Form 5 – Revocation of General Power of Attorney*
- principal has impaired capacity for financial matters.

A GPA may also be revoked, to the extent that it gives power to an attorney, if the attorney:

- dies
- resigns
- does not have capacity for the matter for which they have been appointed
- is declared bankrupt – to the extent it gives power for financial matters to the attorney.

Why would someone make a GPA?

A person may decide to make a GPA for the following reasons:

- they want someone to handle their financial affairs while they are absent
- they are travelling overseas for an extended period
- companies also regularly use GPAs to authorise particular people to sign documents for the company.

Who can witness a GPA?

Generally, any independent adult may witness a GPA (i.e. the witness does not have to be a JP or Cdec). However, if the GPA is required to be registered under the *Land Title Act 1994* (LTA) with the Titles Registry Office so it can be used for a land transaction, section 161 of the LTA requires the GPA to be witnessed by certain qualified witnesses, including JPs and Cdecs as outlined in chapter 4.11.

Some people consider having a GPA witnessed by a JP or Cdec adds legal weight to the document and may therefore request you to witness it even though it is not strictly required.

If you are asked to witness a GPA, follow the general procedure for witnessing documents as outlined in chapter 4.1.

Enduring documents – enduring powers of attorney and advance health directives

This section should be read in conjunction with:

- *Queensland Capacity Assessment Guidelines 2020* (capacity guidelines)
- *Form 9 – Enduring power of attorney explanatory guide* (EPA guide)
- *Form 10 – Advance health directive explanatory guide* (AHD guide).

Enduring powers of attorney

What is an enduring power of attorney?

An enduring power of attorney (EPA) is a legal document which allows a person to appoint a person they trust (the attorney) to make decisions on their behalf about personal (including health) matters and/or financial matters.

The person making the EPA is called the principal.

The approved *Form 2 – Enduring Power of Attorney – short form* (EPA short form) or *Form 3 – Enduring Power of Attorney – long form* (EPA long form) must always be used.

Subject to its terms, an EPA may continue even if the principal has impaired capacity for the matter.

An attorney may be appointed under an EPA to make decisions about:

- personal (including health) matters only
- financial matters only
- personal (including health) matters and financial matters.

The terms of the EPA set out the types of decisions which an attorney can make.

Personal matters relate to the principal's care and welfare, for example:

- where they live and who they live with
- services and supports provided to them
- whether they work and, if so, their role, their workplace location and employer
- who they have contact with
- whether they apply for a license or permit
- day to day issues (e.g. diet and dress, daily activities)
- legal matters (e.g. seeking legal advice) other than financial or property matters.

Health care is a type of personal matter. Decisions about health matters relate to the principal's health care including medical treatments, procedures and services to treat both physical and mental conditions. Most commonly, decisions about health matters are about consenting to or refusing health care.

For example, health decisions might include deciding whether or not to go to hospital, to have surgery, or to take a medication.

When the principal is nearing the end of their life, health care also includes stopping treatments aimed at keeping them alive or delaying their death (life-sustaining treatments).

Financial matters relate to the principal's finances and property, for example:

- paying everyday expenses, such as rent and bills for electricity, gas and water
- arranging deposits or withdrawals from their bank account
- paying rates, taxes, insurance premiums or other outgoings for their property
- making or seeking advice about investment decisions
- seeking legal advice in relation to their financial or property matters
- carrying on a business or trade
- signing contracts on their behalf and performing contracts they have entered into (e.g. signing agreements relating to aged care homes)
- selling, mortgaging or purchasing their property.

When can an attorney begin making decisions?

An attorney appointed by an EPA can only start to make decisions as an attorney when:

- the attorney has signed the Attorney(s) acceptance in section 5 of the EPA
- for personal matters – during times when the principal does not have capacity to make decisions about the matters the attorney is appointed for
- for financial matters – unless the principal has specified under section 3 '*When does your attorney(s) power begin for financial matters?*', decisions can be made as soon as the EPA is signed.

What terms or instructions can a principal give to their attorney(s)?

A principal can set terms on how their attorney(s) are required to make decisions and/or give specific instructions that their attorney(s) must follow.

The following are some examples of terms or instructions a principal may place on their attorney(s).

For personal (including health) matters:

- My attorney can make all decisions about personal matters except for decisions about the friends and family members I have contact with.
- I do not consent to my children or their families living in my home, with or without me.

For financial matters:

- My attorney is not to sell my house unless they have exhausted all other options to pay for my aged care accommodation and services.
- My attorney must not make any investments with my money.

Who can make an EPA?

To make an EPA, the principal must be at least 18 years old and have capacity to understand the EPA they are signing and the powers it gives. They must also be capable of making the EPA freely and voluntarily, not due to pressure from someone else. To find out more about the capacity to make an EPA, see the capacity guidelines.

Why would someone make an EPA?

An adult with decision-making capacity, can make their own decisions about personal, health or financial matters.

At any point in life, situations can arise where someone is unable to make their own decisions about these matters. This might be because of an accident, a medical condition or a mental illness. An EPA allows them to appoint people they trust to make decisions for them if they are unable to. It is a legal document that can significantly affect their legal rights. It is recommended they seek independent legal advice before completing an EPA form.

Who can a principal appoint as their attorney under an EPA?

To be eligible to be an attorney, a person must:

- have capacity to make the decisions they are appointed for
- be 18 years or older
- not be a paid carer or have been a paid carer in the last three years for the principal
- not be a health provider for the principal
- not be a service provider for a residential service where the principal lives
- not be bankrupt or taking advantage of the laws of bankruptcy, if appointed for financial matters.

An attorney does not have to be a lawyer to carry out this role.

How many attorneys can a principal appoint under an EPA?

There is no limit on the number of attorneys a principal can appoint in an EPA but can only appoint a maximum of four joint attorneys for a matter (i.e. they can only appoint a maximum of four people who must agree on all decisions).

Having more than one attorney may be helpful, as it means more than one person may be able to make decisions for them if needed. If one of their attorneys is unavailable, another attorney could make the decision.

Examples of joint attorneys:

- The principal appoints their spouse and four children and then specifies their spouse is appointed first and their children will become appointed jointly if their spouse is unwilling or unable to act.
- The principal appoints four people to act jointly for financial matters and another four people to act jointly for personal matters.

If the principal does appoint more than one attorney, they need to decide how those attorneys exercise their power (e.g. jointly, severally, by a majority, successively or alternatively) – see *'How must your attorneys make decisions?'* in the EPA guide for more information.

If they need more space to appoint additional attorney(s), they can attach another page with those details to the form. See *'How to add additional pages'* in the EPA guide for more information on how to do this.

It is recommended *Form 8 – Additional page* be used to insert additional pages.

Advance health directives

What is an advance health directive?

At some point in the future, a person may be unable to make decisions about their health care and special health care, even temporarily. This might be due to an accident, dementia, a stroke or a mental illness.

An advance health directive (AHD) lets a person give directions about their future health care. It allows their wishes to be known and gives health professionals direction about the treatment they want.

The person making the AHD is called the principal.

The principal can also use an AHD to appoint someone they trust to make decisions about their health care for them. That person is called their attorney and they can appoint more than one if they choose. They don't need any legal experience to carry out this role.

Who can make an AHD?

To be eligible to make an AHD, the principal must:

- have capacity to understand the document they are signing and the powers it gives
- be 18 years or older
- not pressured into making it by someone else.

To find out more about capacity to make an AHD see the capacity guidelines.

When will an AHD be used?

An AHD can be used only during times when the principal does not have capacity to make their own healthcare decisions.

Having capacity to make a decision for a health care matter means they are capable of:

- understanding the nature and effect of decisions about the matter
- freely and voluntarily making decisions about the matter
- communicating the decisions in some way.

For more information about capacity to make a decision for a health care matter, refer to the capacity guidelines.

Who can a principal appoint as their attorney under an AHD?

To be eligible to be an attorney a person must:

- have capacity to make healthcare decisions
- be 18 years or older
- not be a paid carer or health provider for the principal
- not be a service provider for a residential service where the principal lives.

How many attorneys can a principal appoint under an AHD?

A principal can appoint more than one attorney for health matters under an AHD. Having more than one attorney may be helpful, as it means more than one person may be able to make decisions if needed. If one of their attorneys is unavailable, another attorney could make the decision.

If the principal does appoint more than one attorney, they will need to decide how those attorneys exercise their power (e.g. jointly, severally, by a majority, successively or alternatively) – see *'How must your attorneys make decisions?* in the AHD guide for more information.

If they need more space to appoint additional attorney(s), they can attach another page with those details to the form – see *'How to add additional pages'* in the AHD guide for more information on how to do this.

It is recommended *Form 8 – Additional page* be used to insert additional pages.

How do I assess an adult's capacity to make an enduring document?

It is recommended you refer to the capacity guidelines, section 6 *'Assessing capacity to make an enduring document'*. The following information has been extracted from these guidelines.

The legal test to apply

Under Queensland's guardianship legislation there is a specific legal test of capacity for making an enduring document'. In general terms the principal must be capable of:

a. understanding the nature and effect of the document

b. making the document freely and voluntarily.

Both criteria must be met for the principal to be considered to have capacity to make an enduring document. To revoke (cancel) an enduring document, the adult must have capacity to make the enduring document that would give the same powers.

(a) Understanding the nature and effect of the document

It is not enough for the principal to have a general understanding of the enduring document.

The law requires them to actually understand the nature and effect of the document, the powers it gives, when it operates and how and when they can revoke (cancel) it.

For an EPA, the level of understanding required will also depend on the specific powers given under the EPA and the complexity of the principal's financial and personal affairs. They don't need to know all the complexities of the types of transactions the attorney could undertake on their behalf.

However, they should be able to generally understand:

- their own personal and financial affairs that will be managed by the attorney(s)
- the types of decisions which are likely to be made by the attorney(s)
- the scope of the power given to the attorney(s).

Generally, the more complex the principal's personal and financial affairs are, the greater their understanding must be.

For an AHD, the principal must have the same capacity for making an EPA giving the same type of power.

(b) Making the document freely and voluntarily

It must be clear the principal is freely and voluntarily making the EPA and/or AHD and is not being pressured or coerced. If you feel a family member, friend or carer is behaving in a way that is domineering or overbearing it is best practice to speak to the principal alone.

The legal test in Queensland's guardianship legislation

The POA Act sets out the test of capacity for making an EPA and an AHD. These tests are reflected in the summary checklists in section 6 of the capacity guidelines.

Witnessing procedures

It is a good idea to keep a copy of the capacity guidelines with you when conducting a capacity assessment and use the summary checklists from the guidelines.

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

1. Ideally, meet with the principal alone. This allows you to have a discussion, develop a rapport with them and ensure they are not being pressured into making the document. It is a good idea to directly ask them if they feel they have been pressured into making the enduring document.

   Ask the principal if they have an existing enduring document in Queensland or in another State or Territory. If the answer is yes, it is best to recommend the principal seeks independent legal advice about the effect of making a new EPA or AHD will have on any existing enduring document.

2. Determine if the document is a GPA, an EPA or an AHD and whether it must be in an approved form.

   Note: You can witness a document that has additional pages attached to it or is formatted in a way that increases the total number of pages, provided you follow the ordinary witnessing guidelines.

3. Make sure you are eligible to witness the document. You must not be:
   - the eligible signer (the person signing the document on the principal's behalf)
   - an attorney for the principal (someone appointed under this EPA, AHD or another power of attorney)
   - related to the principal or to the principal's attorney
   - the principal's paid health carer or health care provider (if the EPA or AHD appoints an attorney for personal matters)
   - if the document is an AHD – a beneficiary under the principal's will.

4. Set the scene and develop a rapport with the principal. Tell them you will be conducting a capacity assessment. In your own words, let them know the following.
   - As the witness, you must be satisfied the principal has the capacity to make the document. This means they must:
     - understand the nature and effect of the document
     - be capable of making the document freely and voluntarily.
   - You will be asking questions to ensure they have capacity to make the document and:
     - a written record of the process with will be made
     - a decision about the person's capacity will be made at the end of the process
     - if you conclude they have the capacity to make the document you may sign it as the witness
     - if you conclude they do not have capacity to make the document you will not sign it
     - your conclusion is your opinion only. They can seek a second opinion if they do not agree with your conclusion. This could mean seeking a finding by a tribunal (applying to the Queensland Civil and Administrative Tribunal) or seeking an opinion or assessment from a medical professional.
5. Explain to the principal the document will need to be read through to ensure it is correctly completed. Ask them to show you each page. If there are any unanswered questions ask the principal to either complete them or cross them out. Ensure you both initial them and any other changes made in the document.
6. Check the principal is not being pressured in any way to make the document.
7. If the document is an AHD, ensure a doctor or nurse practitioner has already signed the doctor's certificate.
8. Determine if the principal is physically capable of signing the document or if an eligible signer is to be used. Ensure the eligible signer meets the criteria specified.
9. Ensure everyone who needs to be present is present (e.g. the principal, witness (you) and the eligible signer or interpreter/translator, if required). If the principal is unable to read or understand the English language, you should ensure the interpreter/translator completes *Form 7 – Interpreter's/Translator's Statement*. The attorney need not be present. In fact, ideally you should meet with the principal alone.

   Principals who are unable to sign the document themselves may instruct an 'eligible signer' to sign on their behalf. An eligible signer must:
   - confirm the principal instructed them to sign the document
   - be 18 years or older
   - not be either the witness or an attorney for the principal.

   The eligible signer must sign the document in the presence of the principal and you as the witness at the same time, and must complete the '*Person signing for the principal*' section of the form which also must be witnessed by you.
10. If you are satisfied the principal has capacity to make the document, observe them (or the eligible signer) sign and date the document and any additional pages attached to it.

    Ensure the document is signed in front of you. You are witnessing a signature, not someone telling you the signature on a document is theirs. If someone approaches you with a document already signed, ask them to cross out the signature already there and sign it again in front of you. Ensure both you and the principal initial this alteration.
11. Complete the witness's certificate, and sign and date the document, including any additional pages. Remember to insert the total number of pages in the witness certificate section of the document, before signing.

12. Remind the principal the nominated attorney(s) must read and complete the attorney's acceptance section, as soon as possible after the document has been signed and witnessed by both you and the principal for the document to be valid.
    - If the principal or their attorney has any questions, refer them to the EPA or AHD explanatory guides or the capacity guidelines or recommend they seek independent legal advice.
13. Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

- An EPA must be in the approved form and an AHD must be in writing and may be in the approved form.
- Enduring documents must comply with the POA Act, contain all the required information and be executed in accordance with the POA Act.
- The POA Act places a very serious responsibility on the witness, one that far exceeds your normal duty in witnessing other types of documents.
- If, as the witness, you are not satisfied the principal has the capacity to make the EPA or AHD, you should refuse to witness the document and refuse to sign the witness's certificate.
- Record all relevant information in your logbook. If a principal's capacity to make an EPA is called into question, after the document has been made, you may be required to provide evidence to either the Supreme Court or QCAT of the steps you took to assess their capacity to understand the document.
- Due to the nature of the document, you must satisfy yourself the person asking you to witness it is the principal by asking for proof of identification prior to witnessing the document.
- You may be called upon to certify a copy of an EPA or AHD as a true and complete copy of the original as outlined in chapter 3.1.

Frequently asked questions

What's the difference between a GPA and EPA?

The important difference is a GPA generally comes to an end if the principal has impaired capacity for the matter. An EPA carries more significant legal consequences because a principal cannot effectively oversee the exercise of power by their attorney once they have lost capacity.

The attorney has signed the document before the principal and witness, what should I do or say to the principal?

If the attorney has already signed the document, you should not witness it.

When signing an EPA an attorney is stating they have read the EPA and understand they must make decisions in accordance with the EPA. They can only do this once the document has been finalised, signed and witnessed.

Let the principal know the attorney must only sign the original document, after both the principal and the witness have signed it.

The principal may wish to complete the document again and have it witnessed before the attorney signs it.

If the principal requires further information about making the document, refer them to the EPA or AHD guide, or suggest they seek independent legal advice.

The principal has approached me to make changes to their signed enduring document. Can they attach a statutory declaration to do this?

No. An enduring document should not be amended after it has been signed and witnessed. It is not recommended to write on an EPA or AHD once it has been signed and witnessed. If changes are required, the principal should make a new enduring document and revoke the old one.

For minor changes, like updating an address, the principal may not need to make a new document.

What if the principal has an existing EPA or AHD in Queensland or another jurisdiction?

The first step in witnessing an enduring document requires you to ask the principal if they have an existing enduring document in Queensland or in another State or Territory. An interstate enduring document may be recognised in Queensland. Also, if they make a new EPA or AHD, the new EPA or AHD may fully or partially revoke the existing enduring document to the extent of any inconsistency.

There may be reasons why the principal needs multiple enduring documents to operate in different jurisdictions. This can sometimes be complex, and it is best to recommend that the principal seeks independent legal advice about the effect of making a new EPA or AHD on any existing enduring document.

When inserting additional pages in an enduring document, must *Form 8 – Additional page* be used?

No. It is not essential *Form 8 – Additional page* be used. The principal can add additional pages to the form on any document.

If the additional pages are not on *Form 8 – Additional page*, the principal should still sign, and you should still witness each additional page. You should also ensure the additional page contains the name of the enduring document it relates to, the name of the principal and which part of the enduring document it provides additional information for.

Remember to insert the total number of pages (including any additional pages) in the witness certificate section of the document, before signing.

While certifying a copy of an enduring document I have found what I believe to be a discrepancy. Can I give them advice about what I think they should do?

When certifying a copy, you are simply certifying the document is a true and complete copy of the original document. If there is a discrepancy between the original and the copy, you must not certify the copy.

If there is an obvious error in the original document that would render it and any certified copies invalid for their original purpose, you could suggest the person consider seeking independent legal advice to ensure the original document is valid.

Note: You cannot provide legal advice about the validity of a document.

When Solicitors and Public Trustee prepare enduring documents for the principal, sometimes the documents are different in page length. Can I still witness the enduring document if the number of pages is not the same as the form on the website?

Yes. You can witness a document that has additional pages attached to it or is formatted in a way that increases the total number of pages, provided the document is substantially compliant with the approved form. This may occur because the terms and conditions are longer than the space allocated in the approved form which push back the remaining sections in the document, or if the principal appoints more than four attorneys. You must follow the general procedure as outlined in chapter 4.1.

As with any enduring document, you should ensure the total number of pages is inserted in the witness certificate section of the document, before signing.

If you are concerned the form does not meet the legislative requirements, you could suggest the person consider seeking independent legal advice about the validity of the document.

Note: You cannot provide legal advice about the validity of a document.

Is the witnessing officer required to keep a copy of the capacity assessment checklist?

The capacity guidelines provide useful information, checklists, hints and tips for assessing the capacity of a person to make an enduring document. There is no requirement to use the checklists or keep them. However, you may choose to do so if you wish. You should make notes about how you conducted the assessment, the conclusion you reached and the reasons for that decision in your logbook.

If the principal is accompanied by someone who I feel is trying to influence or pressure the principal, can I tell them I would like to be alone with the principal?

Yes. Ideally, you should meet with the principal alone. This allows you to have a discussion and develop a rapport with the principal, assess their capacity to make the enduring document and satisfy yourself they are making it freely and voluntarily.

If you believe the principal is being pressured into making the document, you should not sign it.

If you suspect the principal is being physically, financially or emotionally abused or pressured to make the enduring document, the priority must be to ensure the principal's health, safety and well-being.

See Appendix A of the capacity guidelines for information about support services, including elder abuse support services. **If you think the principal is in immediate danger, call the police.**

Which form should be used for an EPA?

There are two types of EPA forms and all pages must be present at the time of witnessing:

- The EPA short form is used when the principal wishes to appoint the same attorney(s) for both financial and personal matters (including health care). This form can also be used to appoint an attorney(s) for financial matters only or for personal (including health) matters only.
- The EPA long form is used when the principal wishes to appoint more than one attorney for financial and/or personal matters or appoint separate attorneys for personal and financial matters, or even for specific matters.

Can I refuse to witness a GPA, an EPA or an AHD?

You should refuse to witness if you are not satisfied:

- the correct form has been used (for EPA and AHD)
- the principal has the capacity to make a GPA, EPA or AHD
- the principal is not making the GPA, EPA or AHD freely (i.e. you believe the principal is under some form of pressure to sign the document).

Note If you are not satisfied the principal understands the content or is not making the document freely and voluntarily decline to witness it and explain why.

If you suspect the adult is being abused, neglected or exploited, you can make a referral to the Office of the Public Guardian. See Appendix A in the capacity guidelines for information about support services, including elder abuse support services.

Where can I find more information?

The Queensland Capacity Assessment Guidelines
www.publications.qld.gov.au/dataset/capacity-assessment-guidelines

EPA and AHD explanatory guides
www.qld.gov.au/planahead-forms

Queensland Government Power of Attorney and making decision for others website
www.qld.gov.au/guardianship-planahead

Office of the Public Guardian
www.publicguardian.qld.gov.au

Queensland legislation
www.legislation.qld.gov.au

Forms

Power of attorney and advance health directive forms

www.qld.gov.au/planahead-forms

4.9 Quick guide

Witnessing general powers of attorney

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

1	Check the document is in the approved form.
2	Make sure you meet the criteria of an eligible witness.
3	Question the principal on their understanding of the document, including the power being given to the attorney and when the power begins.
4	Confirm for yourself the principal has capacity to make the document and can physically sign the form. • If they are not physically capable of signing, do they have an eligible signer?
5	Check the principal is making the document freely and voluntarily. • It must be clear the principal is freely and voluntarily making the document and is not being pressured or coerced. If you feel a family member, friend or carer is behaving in a way that is domineering or overbearing it is best practice to speak to the principal alone. ***Note***: If you are not satisfied the principal understands the content or is not making the document freely and voluntarily decline to witness it and explain why.
6	Ask the principal to show you each page. If there are any unanswered questions have the principal complete or cross them out, and ensure both you and the principal initial any changes.
7	Have the principal sign the document and witness their signature.
8	Record all relevant information in your logbook as outlined in chapter 2.4.

4.9 Quick guide

Witnessing enduring powers of attorney and advance health directives

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

It is a good idea to have a copy of the capacity guidelines with you when conducting a capacity assessment and to use the summary checklists from the guidelines.

1	Try to meet with the principal alone. Ask the them if the have an existing enduring document in Queensland. If they do, recommend they seek independent legal advice about the effect of making a new one.
2	Determine what type of document the principal is asking you to witness.
3	Make sure you meet the criteria of an eligible witness.
4	Set the scene and try to develop a rapport with the principal. Let them know you will be conducting a capacity assessment.
5	Ask the principal to show you each page of their document. If there are any unanswered questions have the principal complete or cross them out, and ensure both you and the principal initial any changes.
6	Check the principal understands the nature and affect of the document and is making the document freely and voluntarily. • It must be clear the principal is freely and voluntarily making the document and is not being pressured or coerced. If you feel a family member, friend or carer is behaving in a way that is domineering or overbearing it is best practice to speak to the principal alone. ***Note***: If you are not satisfied the principal understands the content or is not making the document freely and voluntarily decline to witness it and explain why.
7	If the document is an AHD, check to see if a doctor or nurse practitioner has signed the doctor's certificate.
8	Determine if the principal is physically capable of signing the document. • If they are not physically capable of signing, do they have an eligible signer?
9	Ensure everyone who needs to be present is present (e.g. the principal, witness (you) and the eligible signer or interpreter/translator, if required). If the principal is unable to read or understand the English language, you should ensure the interpreter/translator completes *Form 7 – Interpreter's/ Translator's Statement*. The attorney need not be present.
10	If you are satisfied the principal has capacity to make the document observe them, or the eligible signer sign the document.
11	Complete the witness certificate, including the total number of pages. Remember to sign and date the document.
12	If the attorney is not present, remind the principal the attorney should read the notice and complete the acceptance as soon as possible after it has been witnessed. If the principal or their attorney has questions, refer them to the capacity guidelines, explanatory guide or suggest they seek independent legal advice.
13	Record all relevant information in your logbook as outlined in chapter 2.4.

4.10 Witnessing wills

What is a will?

Wills are documents in which people, known as testators, give instructions about what is to happen to their property when they die. Normally, the will names the people who are to carry out the terms of the will – called the executors – and sometimes also gives instructions about funeral arrangements.

People who die intestate – without a will – lose the opportunity to give directions about how their property (their estate) will be apportioned.

Wills are often drawn up by legal practitioners but many people use legal will kits, which are available through stationers and other suppliers.

A will is one of the most important documents a person will sign during their lifetime, so witnessing a will is an important task.

Why should a will be witnessed?

Wills are among the most contested of all legal documents. Anything that assists in establishing a will's authenticity will reduce the grounds on which it can be challenged. A reliable, impartial witness is crucial for establishing a will's authenticity.

For a will to be valid, two independent people – that is, people who are not beneficiaries or the spouse of a beneficiary under the will – must be present to witness its signing. That is, they must both be there at the same time. Many people prefer a JP or Cdec as one of their witnesses, although this is not a requirement. Anyone is free to witness a will if they are asked to do so.

How do I witness a will?

A will is a private document, so it is not advisable nor ethical to read unless the testator has a disability that affects their capacity to draft the will.

There are conventions to follow when witnessing a will.

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

1. Check there is a second person present to witness the will.

   Note: The person cannot be a beneficiary of the will or a spouse.

2. Ask the testator if the document is their will.
3. Check the testator understands the contents of their will.
4. Ask the testator if they require you to witness their will.
5. Advise the testator they must sign first in full view of both you and the other witness.

   Note: Ensure the same pen is used by all signatories.

6. Avoid reading the will contents when perusing the document for alterations, errors or blank spaces. Alternatively, you can ask the testator to read through the will and check for any alterations, errors or blank spaces. Any blank spaces must be crossed out. These and any other alterations, additions or corrections must be initialled by the testator and both witnesses at the same time.
7. Ensure the date shown on the will is the date of signing.
8. Sign the will with your normal signature in the presence of the testator and the other witness. You should include your occupation and an address, you can provide the Justices of the Peace Branch address (as outlined in chapter 1.2.).

9. Ask the second witness to sign in the same way, in the presence of the testator and yourself.

   Note: Ensure the pages of the will are not pinned or stapled together. However, if the testator has previously done this, do not remove them.

10. Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

The capacity of the testator

You may be asked to recollect and perhaps to give evidence about the testator's capacity to make a will and/or their demeanour and understanding at the time of signing. Therefore, you should adopt a standard practice of recording all relevant information in your logbook, as outlined in chapter 2.4.

Confidentiality

The contents of any will you witness must be kept confidential. Witnessing the signing of a will is not part of your official duties but you may be asked to do so as a qualified witness.

Pins and staples

You should not pin or staple a will together or to another piece of paper. Nor should you remove any existing staples, clips or pins from an original will, as any residual marks left on the will may indicate that a page has been removed and could raise concerns or affect the administration of the estate.

Frequently asked questions

What if I am asked for advice?

A will is a legal document, only a qualified legal practitioner should provide legal advice on drafting a will and its contents. You should never give advice about the wording, how to draft or the effect of a will. However, you can refer the testator to their solicitor or the Public Trustee of Queensland.

What if I'm related to the person making the will?

You should refrain from witnessing the will if you are related to the testator, or if you or your spouse is a beneficiary under the provisions of the will. The same restriction applies to any person witnessing a will.

If you witness a will in these circumstances, the entitlement you or your spouse would have received from the will may be jeopardised.

What if the will is a multi-page document?

If the will is a multiple-page document, the testator and both you and the other witness must sign all the pages.

Is there a set format?

Wills are one of the few legal documents that have no specific format unless a will kit is used or the will is drawn up by a solicitor.

Can I refuse to witness a will?

If you believe the testator is under any form of duress or undue influence, you must refuse to witness the will and explain your reasons to the testator.

If the testator is infirm or seems for any reason to be unable to fully comprehend the contents of the will, you should decline to witness the will until the testator has obtained medical advice they are competent to make the will.

Note: Being available to witness wills is an important JP and Cdec duty. If you are approached to witness a will and it is not possible for you to do so, refer the person to find another JP or Cdec.

What if I am asked to witness changes to an existing will?

The process of altering or making changes to an existing will is complicated and the testator should seek independent advice. If you are presented with a codicil to a will, a short additional document used to make minor changes, you should follow 'How do I witness a will' steps outlined earlier in this chapter.

Where can I get more information?

Queensland legislation
www.legislation.qld.gov.au

Public Trustee
www.pt.qld.gov.au

Queensland Courts
www.courts.qld.gov.au

Find a Justice of the Peace
www.qld.gov.au/findjp

4.10 Quick guide

Witnessing wills

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

1	Check there is a second person present to witness the will. ***Note:*** The person cannot be a beneficiary of the will or a spouse.
2	Ask the testator if the document is their will.
3	Check the testator understands their will.
4	Ask the testator if they require you to witness their will.
5	Let the testator know they must sign the document first in front of both witnesses. Everyone signs the will with the same pen.
6	Ask the testator if you can peruse the will to check for alterations or blank spaces, or would they prefer to do this themselves. All parties must initial any alterations.
7	Ensure the date shown on the will is the date of signing.
8	Sign the will with your normal signature. You should include your occupation and address.
9	Ask the second witness to sign in the same way.
10	Record all relevant information in your logbook as outlined in chapter 2.4.

4.11 Witnessing Titles Registry forms

What are Titles Registry forms?

These are approved forms under the *Land Act 1994*, *Land Title Act 1994* and *Water Act 2000*. They deal mainly with the ownership and use of real estate property and water allocations in Queensland.

Forms under the *Land Act 1994* relate to non-freehold land titles such as state leasehold land and reserves and unallocated state land.

Forms under the *Land Title Act 1994* (LTA) relate to freehold land titles, while documents under the *Water Act 2000* relate to water allocation titles.

Why are Titles Registry forms treated differently from other documents?

These Acts have specific requirements you must satisfy when you witness these forms, particularly in relation to transfer of ownership and mortgage-related documents such as a *Form 1 – Transfer* and a *National Mortgage form*.

These Acts have eligibility criteria for witnesses which, as a JP or Cdec, you fulfil. They impose a strict onus on you to take reasonable steps to verify the identity of the person signing the form and ensure they are entitled to do so (e.g. they are the registered owner or about to become the holder of that interest) and, by implication, they understand the nature and effect of the document they are signing. You are required to print your full name on Titles Registry forms where you sign it as a witness – your initials are not acceptable.

If you do not provide your full name, we may disclose your full name to relevant third parties in order to verify the validity of the document(s) you have certified or witnessed.

In other respects, forms coming under these Acts must be witnessed in accordance with the usual rules, such as ensuring the signatory signs in the presence of the witness and the witness is not a party to the transaction covered by the document.

The legislative requirements are spelled out in the following extract.

Section 162 of the *Land Title Act 1994*

162 Obligations of witness for individual

(1) A person who witnesses an instrument executed by an individual must –

a. *first take reasonable steps to verify the identity of the individual and ensure the individual is the person entitled to sign the instrument; and*

b. *have the individual execute the instrument in the presence of the person; and*

c. *not be a party to the instrument.*

...

(3) The person must, for 7 years after the person witnesses the signing of the instrument–
(a) keep a written record of the steps taken under subsection (1)(a).

Note: Section 173 of the *Water Act 2000* provides that section 162 of the *Land Title Act 1994* also applies to documents under the *Water Act 2000*. Section 311 of the *Land Act 1994* contains provisions similar to section 162 of the *Land Title Act 1994*.

The Registrar of Titles can also request to inspect a copy of your written record for a period up to seven years after witnessing. Failure to comply with a request without reasonable excuse carries a maximum penalty of 20 penalty units.

Your obligations when witnessing a Titles Registry form

Statutory obligation 1

Take reasonable steps to verify the identity of the individual and ensure they are entitled to sign the instrument (the form).

'Reasonable steps' could be defined as steps an ordinary person would consider prudent and fair in the circumstances.

Verification of Identity

Unlike most cases when you witness a document, under this legislation there is a mandatory requirement for the signatory to prove their identity to you before you can witness the execution of the form.

You must confirm the person signing the form is who they say they are by sighting a combination of acceptable standard identity documents.

Under the legislation, if you elect to follow the Verification of Identity Standard (the VOI standard) to verify the signatory's identity, you are considered to have taken 'reasonable steps' in fulfilling that aspect of your statutory obligation. Verifying identity in accordance with the VOI standard involves an in-person interview between yourself (as the witness) and the signatory, where they supply original identity documents from one of the categories listed in the VOI standard. Each category includes a different combination of identity documents to cater for different situations, and you must be reasonably satisfied that a prior category cannot be met before using a subsequent category.

In circumstances where the VOI standard cannot be strictly adhered to, you would generally be regarded as meeting the section 162(1)(a) 'reasonable' requirement to verify the identity of the person signing the form if you have diligently sighted and compared evidence comprising of several established identity documents (equivalent to those mentioned in the VOI standard) and are fully satisfied the person is one and the same as named in the Titles Registry form.

Only after the signatory's identity is satisfactorily confirmed and the other statutory obligations are fulfilled should the Titles Registry form be signed and witnessed.

Prior to witnessing, you may question the signatory to confirm they understand the nature and effect of the form.

Note: If you are not satisfied the signatory has this capacity, you should decline to witness the Titles Registry form and record the details in your logbook.

Note: The VOI standard only applies to individuals (including Attorneys) executing Titles Registry forms. Companies do not require their signature to be witnessed.

How do I ensure the signatory is entitled to sign?

You have a legal responsibility to take reasonable steps to ensure the person signing the form is entitled to do so – that is, they are the holder (registered owner or registered proprietor) or about to become the holder of the relevant interest in the property. This is to prevent fraud and other improper dealings.

In either situation, to prove the signatory is entitled to sign, they should be able to provide you with one or more of the following documents in relation to the property.

If a person is selling property or are only refinancing	• a current local government rates notice • a current title search statement • a current land tax assessment notice.
The person is buying property and/or financing the purchase	• a copy of the contract of sale • official loan documentation from their lender • a letter from a solicitor confirming they are entitled to sign the form.

Each of these types of supporting evidence contains details about the property, such as the real property description (lot on plan or title reference) that should be compared to the Titles Registry form you have been asked to witness. If the details do not match, you should decline to witness the form.

Importantly, the real property description (lot on plan or title reference) must be shown on the form. However, in some cases (such as a purchase off-the-plan) the title reference may not be shown because the new survey plan has not yet been registered and a new title reference number not yet allocated to the lot.

Note: A new purchaser presenting a transfer and/or mortgage form for witnessing may not be able to provide the supporting evidence listed as they would not yet be recorded in the Titles Registry. In such cases, they should provide a copy of the contract of sale or a letter from a solicitor that includes the real property description, confirming their entitlement to sign the form(s).

Statutory obligation 2

Have the individual execute (sign) the instrument in your presence.

Be mindful of the requirements of the form(s) you are witnessing. Most Titles Registry forms provide spaces for each signatory to sign separately. The *Form 1 – Transfer*, *Form 3 – Release* and *National Mortgage Form* require each signature to be witnessed separately. The date of execution must also be included in the space provided. Where only one space is provided and there are multiple signatories for the party (e.g. *Form 9 – Easement*), but the signature of only one of them is being witnessed, it is good practice to include the following statement:

'Signature of (name) only witnessed'

Statutory obligation 3

The witness must not be a party to the instrument.

Any person with a vested interest in the transaction cannot also be a witness to the signing of the form. For example, if person A and person B own the land together and A is a JP or Cdec, then person A should not witness B's signature if they are both signing the form.

Care should also be taken when someone is signing under a power of attorney. For example, person A and person B own the land together and person C is both an attorney for B and a JP or Cdec. If A signs in their own right and C signs on behalf of B, then C cannot witness A's signature.

Statutory obligation 4

Record keeping

When witnessing Titles Registry forms, it is mandatory you keep for a period of seven (7) years from the date of witnessing, a written record of how you verified:

- the signatory's identity
- their entitlement to sign the form.

After that time has elapsed, you may securely destroy the record (see chapter 2.4 for more on the retention and destruction of records).

How do I witness Titles Registry forms?

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

1. Ensure you are not a party to the transaction. This is a requirement of the *Land Title Act 1994*.
2. Take reasonable steps to identify the signatory. A combination of identity documents issued by a government agency is ideal.

   This is a requirement of the *Land Title Act 1994*.
3. Ensure the signatory is the holder of the relevant interest in the property by sighting evidence they are the holder (registered proprietor) or about to become the holder of the relevant interest in the land. This is a requirement of the *Land Title Act 1994*.
   - Sight a current rates notice, utilities bills, title search, loan documentation or a sale contract for the land in question.
   - Compare the details on that evidence (lot on plan, title reference) with those on the form.
4. Check the signatory understands the contents of the document and they are making the document freely and voluntarily.

   Note: If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily decline to witness the document and explain why.
5. Ensure the form is fully completed with no blank panels or items.
   - Decline to witness the form if there are incomplete items, especially the lot on plan description.
   - Do not complete or rule through any blank spaces yourself.
6. Ensure the form is signed in front of you. This is a requirement of the *Land Title Act 1994*.
   - The signatory should use a permanent pen with dense blue or black ink.
7. Place your signature and print your full name on the form.
   - Use a permanent pen with dense blue or black ink.
   - Be careful with the application of your seal of office to avoid obliterating other information on the form.
   - Your qualification, registration number and execution date must all be included.
8. Record all relevant information in your logbook as outlined in chapter 2.4.

   It is a requirement of the *Land Title Act 1994* that you keep a written record of the steps taken to verify the signatory's identity and they are entitled to sign the form for a period of seven years.
   - While not mandatory, we strongly recommend you also keep a record of the real property description and/or title reference of the property.

Things to bear in mind

The Registrar of Titles has extensive powers of formal inquiry and, in particular circumstances, may require you to produce records about Titles Registry forms you have witnessed.

Along with creating a record when you witness a Titles Registry form, it is also prudent to record information any time you decline to witness a form, and if the circumstances warrant it, consider advising the Registrar of Titles accordingly – for example, if you consider there are suspicious circumstances involved.

If you decline to witness a Titles Registry form because you believe it is not a legitimate transaction, notify the Titles Registry so the title records can be checked for any potential impropriety. Ideally, details such as current owners, lot on plan description and title reference should be provided. These details and why you declined to witness should also be recorded in your logbook.

Further information on witnessing Titles Registry forms

Witness certificates and identification forms

When witnessing a *National Mortgage Form*, you may also be presented with a document called a witness certificate or client identification form, which is drafted by the lender (mortgagee).

Such certificates sometimes ask the witness to certify the identity of the signatory (mortgagor) and to also provide personal information regarding their own identity and contact details. Some have fields for your personal information such as driver licence details, home address or telephone number. You are not required to supply any information of a personal nature. In this instance, you can provide the address details of the Justices of the Peace Branch as outlined in chapter 1.2.

Some financial institutions have created certificates in an endeavour to meet their obligations under section 11A of the LTA in relation to confirming the identity of borrowers (mortgagors). These financial institutions usually give the borrower a witness certificate and instruct them to ask a JP or Cdec to complete it. The obligations are quite distinct from and separate to the obligations under section 162 of the LTA that do apply to witnesses such as JPs and Cdecs.

The Registrar of Titles provides practice guidelines in the *Land Title Practice Manual t*o assist mortgagees to meet their section 11A requirements. The level of verification of identity required by these practice guidelines is more stringent than the level of verification of identity a JP or Cdec is required to follow under section 162.

Under section 11A of the LTA, it is the responsibility of the mortgagee to verify the identity of the mortgagor. If a mortgagee seeks to utilise the services of JPs and Cdecs to perform an identification check of a mortgagor, this does not remove the mortgagee's obligations under section 11A.

We can confirm you are not acting as agents or representatives of financial institutions by completing an identification form. Rather you are simply an independent 'identity verifier'. If you decide to complete an identification form you should insert this disclaimer on the identification form only:

> *The Justice of the Peace/Commissioner for Declarations who has signed this identification form is unpaid and is not acting at the direction of, or as the agent for any party to any financial transaction, including any financial institution or entity requesting this identification form.*

Note: Never apply this disclaimer to any Titles Registry forms.

Ensure you record details of the ID check and of the mortgaged property in your logbook and retain for a period of seven (7) years.

Should a mortgagee wish to confirm the authenticity of an attestation clause on a Titles Registry form, they may contact the JP Branch with their inquiry.

Alterations to Titles Registry forms

Changes to information on the face of Titles Registry forms are categorised as either alterations or corrections.

Corrections are where minor typographical errors are corrected and do not affect the outcome or intent of the form. Examples include:

- changing a minor part of a name or detail – such as Ann to Anne
- changing RP to SP in the plan description field
- adding an Australian Company Number (ACN) to a company name.

Alterations are more significant changes that potentially alter the outcome and/or intent of the Titles Registry form. Examples include:

- changing the interest being dealt with
- adding or removing a lot on plan description
- adding or removing a party to the transaction (including a person's middle name)
- changing the tenancy type.

Where alterations (not corrections) are made and they impact upon your witnessing obligations under section 162 of the LTA, you and the parties affected by the alteration are required to initial the alteration. Alternatively, the Registrar of Titles will accept the alteration being initialled by an authorised person (being one of the affected parties, their legal representative or an appropriate person under a power of attorney) provided a statement of alteration is received from the authorised person that sets out who made the change, under what authority and the details of the actual alteration.

Note: In this context a JP and Cdec is not an authorised person.

Witnessing signatures on a *Form 7 – Lease*

For the registered owner granting the lease (lessor), you will need to be satisfied the usual proof of ID, proof of ownership and entitlement to sign requirements are fulfilled before witnessing their signature. The owner(s) should be able to provide a copy of a written lease agreement and a current title search/rates notice matching the details provided on the *Form 7 – Lease*.

For the person taking out the lease (lessee), there are the usual proof of ID requirements. However, evidence of entitlement to sign is not as readily available as the only basis is usually the lease agreement itself. The details of the lessee and real property description shown within the lease agreement should be compared to that shown on the *Form 7 – Lease* and any attached sketch of the leased area.

Where the description of the leased premises in the agreement is a street address only, the parties may have other documentation (e.g. a letter from their solicitor) which has both the street address and real property description information in it.

Leases are not usually a target for fraudulent transactions and in this respect, unlike the *Form 1 – Transfer* and the *National Mortgage form*, there is no requirement on the form for individual signatures to be separately witnessed. If there are multiple individuals acting either as lessor or lessee and you are witnessing only one of them, it is recommended you take the precaution of adding 'Signature of (name) only witnessed'.

Powers of attorney

There are two additional key checks you will need to make if you have been asked to witness a form being signed under the authority of a power of attorney (POA).

The first is to see either the original or certified copy of the POA to verify the person's entitlement to sign as attorney on behalf of the principal as you will have already confirmed the principal's involvement in the transaction. The name of the attorney shown in the POA should match the identity of the person signing the Titles Registry form.

The second step is to ensure reference is made to the POA in the execution clause on the Titles Registry form being witnessed. At a minimum, include this notation (or similar) above the signature:

> *[Name of Principal] by their duly constituted attorney [Name of attorney and/or designation attorney] under Power of Attorney (dealing number of the registered power of attorney).*

It is not unusual for a Titles Registry form and a POA form to be lodged for registration at the same time. Therefore, the dealing number – the number assigned to POA documents when they are lodged for registration with the Titles Registry – does not have to be completed when the form is presented to you for witnessing. A POA document that has been lodged for registration in the Queensland Titles Registry will usually display a label containing information such as the date and time of lodgement as well as the unique dealing number.

Note: You do not need to determine if the POA document grants the attorney the authority to sign the particular form being presented to you. Titles Registry examiners will determine this when the form is lodged for registration.

Deceased estates

When the owner is deceased

The administrative process and Titles Registry form applicable for registering dealings after the death of a property owner and dealing with their estate will depend upon:

- how they held their ownership of the property e.g. as joint tenants or as tenants in common
- where an executor of the estate is involved, the intention of the personal representative in dealing with the property.

Note: It is not your role or responsibility to advise parties about which Titles Registry form to use in the different circumstances.

You must still be satisfied the person signing the form is who they say they are and they are entitled to deal with the property. Therefore, you should establish:

- who is presently the registered owner of the property (using a rates notice, title search or similar)
- the name of the deceased and the name on the evidence of the death (e.g. death certificate or grant of probate) agrees with the rates notice or title search
- a link between the name of the executors/beneficiaries in the supporting evidence and the person signing the form.

Witnessing a *Form 4 – Request to Record Death [joint tenants]*

A death certificate or grant of probate is usually satisfactory evidence. The surviving joint tenant(s) must still provide you with the usual proof of ID and proof of entitlement/ownership before signing the Form 4.

Witnessing a *Form 5, 5A or 6 – Transmission by Death [tenant in common]*

Review the evidence of death – such as death certificate plus original will, grant of probate bearing a court seal or letters of administration – to confirm who is entitled to act as executor or be the beneficiary. You will require proof of identity that the person named as executor/beneficiary is the person signing the form:

- Form 5 – signed by the person(s) listed in the grant of probate
- Form 5A – signed by the executor(s) (personal representative) listed in the original will
- Form 6 – signed by the beneficiaries listed in the original will.

Finalising a deceased estate

Where an executor has already transmitted the property into their name in their capacity as personal representative and then wishes to transfer ownership, a title search will show the registered owner as the executor 'as personal representative', and a rates notice will show either 'the estate of (deceased's name), deceased' or '(name) as personal representative'.

Usual proof of identity requirements apply to witnessing the *Form 1 – Transfer*. As they have already established the death of the previous registered owner, they do not need to produce a copy of the will or death certificate when signing a transfer form as transferor. The will may still be needed if the purchasers/transferees are acquiring the land pursuant to the terms of the will as this is their entitlement to enter into the transaction.

Original wills

You should not pin, staple or make any markings on an original will and you should not remove any existing staples, clips, pins or attachments from an original will. Any residual marks left on the will may indicate a page has been removed and could raise concerns or affect the administration of the estate.

Frequently asked questions

Can a Titles Registry form be signed and witnessed outside Queensland?

Yes. Schedule 1 of the LTA provides that you may witness a Titles Registry form at any place in Australia or outside Australia.

What if a Titles Registry form is pre-signed?

As Titles Registry forms must be executed in your presence, pre-signed pages are not acceptable. If someone approaches you with a document already signed, ask them to draw a line through the one already there and sign the document again. Ensure both you and the person initial the alteration to the unwitnessed signature.

If there is insufficient room on the front of the page for the fresh signature, then a *Form 20 – Schedule* should be used with the item number and heading from the original form repeated in full on the Form 20. The title reference should also be included on the Form 20.

Can I witness more than one copy of a Titles Registry form?

Yes. Some financial institutions may provide two or more copies of Titles Registry forms to their client for witnessing. One copy will be lodged with the Titles Registry. The financial institution will retain the others in case anything happens to the first copy before the land title is registered.

What should I do if I am asked for legal advice?

As Titles Registry forms are legal documents, only a qualified legal practitioner should provide legal advice on their preparation or content. You cannot provide legal advice about the validity of a document.

When can I accept electronically downloaded evidence?

You can accept electronically downloaded evidence if it is being used to help verify a person's entitlement to sign a document (e.g. rates notice or a contract of sale).

While the evidence presented this way is equally as valid as the paper format, it is up to you to satisfy yourself as to the validity and reliability of its source before accepting it.

For example, observing the signatory opening their email on an electronic device, checking the email and attachment came from a legitimate source (e.g. local council or solicitor's office) could be more satisfactory than if it was on a pre-prepared desktop icon. Similarly, if the signatory telephoned their solicitor/bank in your presence and requested a scanned copy of the document be sent through to their email, this may also be acceptable.

Can I witness the document if the title reference is missing?

Only if the lot on plan is shown on the form. For example, if the title reference is missing from Item 2 in the *Form 1–Transfer* or the Land panel in a *National Mortgage Form*, but the lot on plan is shown in that section it may be the case that this is a purchase off-the-plan and so the title reference may not be shown because the new survey plan has not yet been registered and a new title reference number not yet allocated to the lot.

Acceptable – documents can be witnessed

TRANSFER

2. Lot on Plan Description	Title Reference
LOT 16 ON RP 32336	154320991

MORTGAGE

Land Title Reference	Part Land Affected?	Land Description
12348019		LOT 16 ON RP188963

Acceptable if evidence is provided to demonstrate why the Title Reference has not been completed. (e.g. for a lot purchased 'off the plan; where the survey plan has not been registered yet and a title reference not assigned to the proposed lot. A copy of the contract or a letter from a solicitor which confirms a purchase off the plan).

TRANSFER

2. Lot on Plan Description	Title Reference
LOT 16 ON RP 32336	

MORTGAGE

Land Title Reference	Part Land Affected?	Land Description
		LOT 16 ON RP188963

Not Acceptable – documents cannot be witnessed

TRANSFER

2. Lot on Plan Description	Title Reference

MORTGAGE

Land Title Reference	Part Land Affected?	Land Description

Where can I get more information?

Titles Queensland
www.titlesqld.com.au

Land Title Practice Manual
www.titlesqld.com.au/land-title-practice-manual/

Queensland legislation
www.legislation.qld.gov.au

Record of Titles Registry Forms Logbook
www.qld.gov.au/jpslogbook

Forms

Title Registry forms
www.titlesqld.com.au/titles-registry-forms/

4.11 Quick guide

Witnessing Titles Registry forms

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

1	Confirm you are not a party to the transaction. This is a requirement of the *Land Title Act 1994*.
2	Take reasonable steps to identify the signatory. This is a requirement of the *Land Title Act 1994*. • Preferably a combination of identity documents including photographic and government-issued.
3	Check the signatory is the holder of the relevant interest in the property. This is a requirement of the *Land Title Act 1994*. • Sight a current rates notice, title search or sale contract for the land in question.
4	Check the signatory understands the contents of the document and they are making the document freely and voluntarily.
5	Check all parts of the form are filled out. • Along with signatory, initial any corrections/alterations that have been made. • Do not complete or cross out any blank spaces yourself.
6	Have the signatory sign the form in front of you. This is a requirement of the *Land Title Act 1994*.
7	Place your signature and print your full name on the form. Include the execution date and your qualification and registration number. Be careful with the application of your seal of office to avoid obliterating other information on the form.
8	Record all relevant information in your logbook as outlined in chapter 2.4. It is a requirement of the *Land Title Act 1994* that you keep a written record of the steps taken to verify the signatory's identity and they are entitled to sign the form for a period of seven years. • While not mandatory, we strongly recommend you also keep a record of the real property description and/or title reference of the property.

SECTION 5

Warrants and summonses

SECTION 5

Warrants and summonses

Information in this section relates to duties which can only be carried out by Justices of the Peace (Qualified)

5.1 Issuing summonses

What is a complaint and summons?

A complaint and summons is a charge in writing, issued under the *Justices Act 1886*, and served on a person who is then required to appear in a Magistrates Court at a prescribed time and place as set out in the form. The summons is usually in a prescribed form and consists of three parts:

1. Complaint – the information required to substantiate the issuing of the summons
2. Summons – the details about the person summonsed and the time and place of the court hearing
3. Oath of service – sworn or affirmed before a JP to prove the summons was served (that is, presented to the person named in the summons).

Complaints may be either sworn or unsworn. A sworn complaint and summons is officially called a *Complaint – sworn and summons* and is generally used for indictable offences.

An unsworn complaint and summons is a *Complaint – general purposes – made and summons*, and it is typically used for simple offences.

Why would a summons be issued?

Summonses are issued because a person is required to:

- answer a charge or breach of duty
- give evidence at the trial of another person.

Who can request a summons?

The people most likely to ask you to issue a summons are police officers and authorised officers of other government departments. In some instances, private individuals may also ask for a summons to be issued.

There are three parties principally involved in the issue of a summons:

- Complainant – the person who requests the issue of a summons.
- JP – the person who issues the summons.
- Defendant – the person being charged with an offence or breach of duty.

How do I issue a summons?

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

Part 1 – Complaint

1. Warn the complainant at the outset, and check they understand that if they knowingly provide information in the complaint and they know the information is false they commit an offence.

   Ensure the complainant understands making an oath or affirmation is a solemn matter.
2. For a sworn summons, immediately place the complainant on oath or affirmation as outlined in chapter 4.6.
3. Check the complainant understands the document and they are making the document freely and voluntarily.
4. Check there are three copies of the document.
   - If the summons is issued, the complainant will file the original with the court.

5. Read the entire complaint section, reviewing it thoroughly. 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. Ensure:
   - An offence has occurred within Queensland.
   - The offence exists in Queensland law.
   - All elements of the offence are included in the complaint.
   - The complaint is made within one year of when the offence was committed if it is a simple offence or a breach of duty.
   - The Act or Regulation under which the summons is requested appears at the top of the complaint form. You are entitled to ask to see a copy of the relevant sections of the Act or Regulation if you require.

   The material in the complaint and any evidence given either orally or in writing must be sufficient to satisfy you an offence has been committed under Queensland legislation. It should cover all elements of the offence. For example, if the offence is 'unlicensed driving', the complaint should provide these details:
   - name and address of the defendant
   - date, time and place of the offence
   - the fact the defendant is unlicensed
   - motor vehicle involved
   - where the incident occurred.

   The complaint covers 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 complaint as long as they are related and each offence is covered in a separate paragraph.
6. If needed, ask questions to clarify what offence is involved and what evidence there is the defendant is implicated. Some sample questions to guide you:
   - What is the evidence on which you have made this complaint?
   - Where did you obtain the details about the defendant?
   - How did you identify the defendant as the offender?
   - Who informed you about the offence? How reliable is this informant?

   Record in your logbook all questions asked and answers given, and any information supplied to you under oath or affirmation in case it is required for future reference.
7. If you are satisfied the complaint is justified, have the complainant sign it, reminding them they are under oath or affirmation.

   The complaint and summons must be signed by the same JP, so if you witness the complaint, you must be the JP who issues the summons.

   If you are not satisfied the complaint is justified, and you refuse to issue the summons, you should:
   - cross out the complaint and note your reasons on the form
   - note your reasons in your logbook
   - in the instance of a police officer, inform the officer in charge of the police station where the complainant is stationed.
8. Witness the complainant's signature and 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.

Part 2 – Summons

1. Read the entire summons section and check it carefully against the complaint. Ensure it includes:
   - full name, address and date of birth of the defendant
   - it is dated the day of issue
   - full address of the court before which the defendant is to appear
   - date and time of the court hearing.
2. If a private individual is requesting the summons, contact the Magistrates Court to arrange a date for the matter to be heard before the court.
3. Sign the summons. 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.
   - Do not complete the oath of service on the reverse of the form at this time. It must only be signed after the document has been served on the defendant or witness.
4. Return the documents to the complainant. There is no requirement for you to retain a copy of the complaint and summons.
5. Record all relevant information in your logbook as outlined in chapter 2.4.

For a summons to a witness

If you are approached to issue a summons to a witness to attend court for a matter listed for hearing, the person requesting the summons normally does not supply a written complaint or information to substantiate the summons.

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

1. Check the witness is able to give material evidence at the hearing.

   You are permitted to ask the person requesting the summons questions to verify this. As you have not been supplied with any sworn evidence, you may place the person requesting the summons on oath or affirmation before you ask your questions but this is not essential.
2. Sign the summons to a witness. 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 documents to the person who requested the summons to a witness. You are not required to retain a copy of it.
4. Record all relevant information in your logbook as outlined in chapter 2.4.

Part 3 – The oath of service

The final part of the document is the oath of service, which:

- can be sworn or affirmed before the same JP who issued the complaint and summons, but does not have to be – it can be completed by another JP
- must only be completed after the person named in the summons has been served.

The person who served the summons completes the oath of service and swears or affirms this in front of you, specifying the manner of the service in the oath or affirmation.

It is then filed with the court by the complainant as proof the defendant or witness has been served the summons.

Things to bear in mind

Though the principles are the same, the procedure for issuing a summons is very different from the procedure for witnessing a document.

In the case of *R v Peacock, ex parte Whelan (1971) Qd R 4*, the Supreme Court held that, in receiving a complaint and issuing a summons, the JP performed a duty that 'although not a judicial act, required the exercise of their discretion in a judicial manner'. It went on to say: 'The justice has a discretion as to whether or not he should issue a summons and he must exercise his discretion in a judicial manner'.

It is therefore apparent you must not act mechanically or as a mere rubber stamp. It is your duty to ensure the issue of the summons is justified and, in the case of the complaint, there is sufficient evidence to substantiate the allegations made by the complainant.

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

Frequently asked questions

Can I keep or make copies of these documents for my records?

No. You should maintain a logbook and record all relevant details relating to the issue of the summons. If you have asked questions to substantiate the complaint, you should also note the questions you asked and the answers you were given.

In what circumstances would a private individual request a summons?

Most requests for private summonses are made in relation to offences covered by the *Peace and Good Behaviour Act 1982* – find more information in chapter 5.2.

On what grounds can I refuse to issue a summons?

You may refuse to issue the summons if you find it unsubstantiated, malicious or vindictive, or it does not actually refer to an offence under the law.

If you refuse the summons, you must cross out the complaint and, if a police officer made the complaint, inform the officer in charge at the police station.

What if the defendant is known to me?

If you personally know or are related to the person who is the subject of the complaint, it potentially creates a conflict for you. You should decline to issue the summons and advise the complainant to find another JP.

You must not discuss this summons with the person or anyone else.

Should I ever sign a blank summons?

Never. The document must be complete for you to carry out your quasi-judicial function in the issue of a summons. Never be rushed in the process. Always exercise your judicial discretion.

A JP's role is to protect the rights of the citizen. It is not just a signing function for the police or for government agencies.

Where can I get more information?

Queensland Courts
www.courts.qld.gov.au

Queensland legislation
www.legislation.qld.gov.au

Forms

Queensland Courts
www.courts.qld.gov.au/forms

5.1 Quick guide

Issuing summonses

Complaint

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

1	Warn the complainant that if they knowingly make a false complaint they commit an offence.
2	If it's a sworn summons, place the complainant on oath or affirmation as outlined in chapter 4.6.
3	Check the complainant understands the document and is making it freely and voluntarily.
4	Check there are three copies of the complaint and summons.
5	Read the entire document and ensure: • An offence has occurred within Queensland. • The offence exists in Queensland law. • All elements of the offence are included in the complaint. • The complaint is made within one year of when the offence was committed if it is a simple offence or a breach of duty. • The material and evidence are sufficient to satisfy you an offence has been committed. • The complaint covers one offence only, unless all the offences are related or part of the same incident.
6	If needed, ask the complainant questions to clarify what offence is involved and what evidence there is the defendant is implicated. • Record in your logbook all questions asked and answers given, and any information supplied to you under oath or affirmation in case it is required for future reference.
7	If you are satisfied the complaint is justified, have the complainant sign it, reminding them they are under oath or affirmation. If you are not satisfied the complaint is justified, and you refuse to issue the summons: • cross out the complaint and note your reasons on the form • note your reasons in your logbook • in the instance of a police officer, inform the officer in charge of the police station where the complainant is stationed.
8	Witness the complainant'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.

Summons

1	Read the entire summons and check it carefully to see it includes: • full name, address and date of birth of the defendant • it is dated the day of issue • full address of the court before which the defendant is to appear • date and time of the court hearing.
2	If a private individual is requesting the summons, contact the Magistrates Court to arrange a date for the matter to be heard before the court.
3	Sign the summons. 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.
4	Return the documents to the complainant. There is no requirement for you to retain a copy of the complaint and summons.
5	Record all relevant information in your logbook as outlined in chapter 2.4.

Summons to a witness

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

1	Ask questions to check the witness can give relevant evidence at the hearing. You may place the person requesting the summons on oath or affirmation before you ask your questions, but this is not essential.
2	Sign the summons to a witness. 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 documents to the complainant. There is no requirement for you to retain a copy of the summons.
4	Record all relevant information in your logbook as outlined in chapter 2.4.

5.2 Issuing a summons or warrant under the *Peace and Good Behaviour Act 1982*

What is the *Peace and Good Behaviour Act 1982?*

The *Peace and Good Behaviour Act 1982* (the Act) is designed to protect an individual's right to peace and quiet, undisturbed by threats to their wellbeing or their quality of life.

The document is usually in a prescribed form and consists of three parts:

1. Complaint – the information required to substantiate the issuing of the summons/warrant.
2. Summons/warrant – the details about the person summonsed and the time and place of the court hearing.
3. Oath of service – sworn or affirmed before a JP to prove the summons was served (that is, presented to the person named in the summons).

Why would someone make an application under this Act?

Anyone has the right to make a complaint and request the issue of a summons or a warrant under this Act if someone is denying their right to enjoy their own property or in any other substantial way interfering with their quality of life.

The main justification for issuing a summons or warrant is to stop the threatened action occurring and to reduce the complainant's genuine fear.

To issue a summons, the complainant must include evidence in their complaint that the defendant has either:

- threatened to assault or do bodily injury to a person or someone under their care – or has threatened to have someone else do it – and they fear this person because of this threat
- threatened to destroy or damage a person's property – or threatened to have someone else do it – and they fear this person because of this threat
- displayed intentional conduct that has caused a person to fear that the person will destroy or damage their property.

Who can request a summons?

The people involved in an application under this legislation are:

- Complainant – the person making the complaint and requesting the summons or warrant
- JP – the person who issues the summons or warrant
- Defendant – the person the complainant names as making the threats.

How do I issue a summons or warrant?

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

Part 1 – Complaint

1. Warn the complainant at the outset, and check they understand if they knowingly provide information in the complaint and they know the information is false they commit an offence.

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

2. Immediately place the complainant on oath or affirmation as outlined in chapter 4.6.

3. Check the complainant understands the document and they are making it freely and voluntarily.
4. Check the complainant has provided the correct number of documents.
   - Summons – an original and two copies.
   - Warrant – an original and one copy.

Note: Issuing of a warrant in these matters is extremely rare and extreme caution should be exercised if you are considering this process.

5. Read the entire complaint section, reviewing it thoroughly. 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. Ensure:
   - The material in the complaint is sufficient to satisfy you a summons or warrant is justified, that is:
     - A threat has been made.
     - The complainant is genuinely afraid of the defendant.
   - The Act or Regulation under which the summons or warrant is requested appears at the top of the complaint form. You are entitled to ask to see a copy of the relevant sections of the Act or Regulation if you wish.
   - The complaint includes:
     - the name and address of the complainant
     - the name and address of the defendant
     - the grounds/evidence relied on to make the complaint
     - the facts on which the complaint is based
     - the date the complaint is sworn or affirmed.
6. Ask the complainant any questions needed to clarify how the threats have been made and how they have affected the complainant's quality of life.

   Record in your logbook all questions asked and answers given, and any further information supplied to you under oath or affirmation. Keep this record in case it is required for future reference.
7. If you are satisfied the complaint is justified, have the complainant sign it, reminding them they are under oath or affirmation.

   If you are not satisfied the complaint is justified, and refuse to issue the summons or warrant, you should:
   - cross out the complaint and note your reasons on the form
   - note your reasons in your logbook
   - refer the complainant to the registrar of the nearest Magistrates Court.
8. Sign the summons or 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 and the Peace and Good Behaviour Regulation 2010*. If required, insert your full name, location and/or date.

   The complaint and summons must be signed by the same JP, so if you witness the complaint, you must be the JP who issues the summons.

   If you are contemplating issuing a warrant under this legislation, you must be satisfied such a step is justified as it authorises the police to take the defendant into custody. It would be advisable to ask the complainant if they have contacted the police and what the response was. It may also be prudent to contact the police officer in question to determine why they took no action in the matter.

Part 2 – Summons

1. In the case of a summons, contact the Magistrates Court to arrange a date for the matter to be heard before the court.
2. Read the entire summons or warrant and check it carefully against the complaint. Ensure it includes:
   - the name and address of the defendant
   - it is dated the day of issue
   - the grounds/evidence relied on to issue the summons
   - the location, date and time of the court where the complaint is to be heard.
3. Sign the summons. 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 and the Peace and Good Behaviour Regulation 2010*. If required, insert your full name, location and/or date.
4. Do not complete the oath of service on the reverse of the form at this time. It must only be signed after the document has been served on the defendant as outlined in chapter 5.1.
5. Return the documents to the complainant. There is no requirement for you to retain a copy of the complaint and summons or warrant.
6. Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

Issuing a warrant under this legislation is extremely rare and extreme caution should be exercised if you are considering this process.

A warrant authorises the police to take the defendant into custody and keep them there until they appear before a Magistrates Court. If the complaint is subsequently found to be vexatious or groundless, the defendant may be able to take legal action against the complainant.

If you consider the threat to the complainant is serious enough to contemplate issuing a warrant, you are entitled to ask the complainant if they have contacted the police and, if so, what the police response was.

Once you have considered all the material, you may make an informed decision about whether or not to issue a warrant or a summons.

This is another occasion when you must read the entire documentation to comply with your role and responsibilities.

Frequently asked questions

Can I keep or make copies of these documents for my records?

No. You should maintain a logbook and record all relevant details relating to the issue of the summons. If you have asked any further questions to substantiate the complaint, you should also note the questions you asked and the answers you were given.

On what grounds can I refuse to issue a summons or warrant?

You may refuse to issue a summons or warrant if the complaint does not contain evidence of a threat by the defendant to:

- assault the complainant or any person under their care
- destroy or damage property of the complainant.

Can a child make an application under this Act?

A child is allowed to make an application under this Act as long as you are satisfied they have the capacity to understand the nature, effect and consequences of making a statement under oath or affirmation.

What if the defendant is known to me?

If you personally know or are related to the person who is the subject of the complaint, it creates a conflict for you. You should refuse to issue the summons or warrant and advise the complainant to find another JP.

You must not discuss this summons with the person or anyone else.

Where can I get more information?

Queensland Courts
www.courts.qld.gov.au

Dispute Resolution Branch
www.qld.gov.au/disputeresolution

Forms

Queensland Courts
www.courts.qld.gov.au/forms

5.2 Quick guide

Issuing a summons or warrant under the *Peace and Good Behaviour Act 1982*

Complaint

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

1	Warn the complainant that if they knowingly make a false complaint they commit an offence.
2	Place the complainant on oath or affirmation as outlined in chapter 4.6.
3	Check the complainant understands the document and is making it freely and voluntarily.
4	Check there are three copies of the complaint and summons: • For a warrant, one original and one copy should be witnessed.
5	Read the entire document, ensuring: • the Act or Regulation is noted at the top of the form • the complaint contains enough information to satisfy you the summons or warrant is justified • a threat has been made • the complainant is genuinely afraid of the defendant.
6	If needed, ask questions to clarify how the threats have been made and the effect on the complainant's quality of life. Record in your logbook all questions asked and answers given, and any information supplied to you under oath or affirmation in case it is required for future reference.
7	Once you are satisfied the complaint is justified, remind the complainant they are under oath or affirmation and then ask them to sign it.
8	Witness the complainant'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 and the Peace and Good Behaviour Regulation 2010*. If required, insert your full name, location and/or date.

Summons

1	Contact the local Magistrates Court to arrange a date for the matter to be heard.
2	Read the summons or warrant and ensure it includes: • the name and address of the defendant • the grounds/evidence relied on to issue the summons or warrant • the location, date and time of the court where the complaint is to be heard • the date the summons is issued.
3	Sign the summons. 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 and the Peace and Good Behaviour Regulation 2010*. If required, insert your full name, location and/or date.
4	Return the documents to the complainant. There is no requirement for you to retain a copy of the complaint and summons or warrant.
5	Record all relevant information in your logbook as outlined in chapter 2.4.

5.3 Issuing search warrants under the *Animal Care and Protection Act 2001*

What is the *Animal Care and Protection Act 2001?*

The *Animal Care and Protection Act 2001* (the Act) promotes the responsible care and use of animals and protects animals from cruelty.

What is a search warrant under the Act?

A search warrant under the Act allows an inspector to enter a premises named in the search warrant to search for evidence of an offence described by the Act.

You may be approached by an inspector from the Royal Society for the Prevention of Cruelty to Animals (RSPCA) or an officer from the Queensland Government to hear an application for a search warrant.

How do I issue a search warrant?

The process for issuing a search warrant under this Act is very similar to issuing a search warrant under the *Police Powers and Responsibilities Act 2000*, in that the application must be sworn or affirmed and state the grounds on which the search warrant is sought.

Before issuing the search warrant you must be satisfied there are reasonable grounds for suspecting there is:

- a need to enter the place for which the search warrant is sought to relieve an animal in pain
- a particular animal or other thing or activity that may provide evidence of an offence against the Act
- the evidence is at the place, or, within the next seven days, may be at the place.

There are at least two, and frequently three, people principally involved:

- Applicant – the person applying for a search warrant
- JP – the person who issues the search warrant
- Occupier – if there is someone occupying the place to be searched.

How do I work out the end date for a search warrant?

The *Acts Interpretation Act 1954* (the AIA) provides information about the end time of a given day, act or event.

The AIA also states there must be a specified number of clear days and excludes the day, act or event. This means when calculating the number of days before a search warrant ends it does not include the day you issue the warrant. For example:

If there are reasonable grounds to suspect evidence is already on the premises, or within the next seven days to be at the place, the search warrant ends seven days after it is issued.

Date issued: 14.04.YYYY at 15:40

The warrant ends: midnight on 21.04.YYYY, seven days after it was issued.

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 search 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 entire 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. Check it gives:
   - the applicant's name and address
   - details about why they need to:
     - enter a place to relieve an animal in pain and the type of animal
     - the offence for which the search warrant is sought
   - a sufficient description of the place and/or location to be searched to correctly identify the premises
   - details of the occupier, if known
   - details about the evidence that is thought to be presently at the location or likely to be there within the next seven days.

4. If needed, ask questions to clarify why a search warrant is necessary, the type of evidence sought and if the search is likely to yield this evidence. Here are some questions to guide you:
   - How did you identify the premises?
   - Is your source of information reliable?
   - What evidence do you have to substantiate the search warrant?
   - How did you determine the name of the occupier (if there is one)?
   - What are you looking for and why?
   - How did you identify what type of animal it is?

   Record in your logbook all questions asked and answers given, and any information supplied to you under oath or affirmation in case it is required for future reference.

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

   If you are not satisfied the application is justified, and you refuse to issue the search warrant, you should:
   - cross out the application and note your reasons on the form
   - note your reasons in your logbook.

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 search warrant application and keep it in a secure place. This is one of the few occasions where you are required to retain a document.

Part 2 – Search warrant

1. Read the entire search warrant section, checking it carefully against the application to ensure it includes:
   - the full name of the applicant
   - the address of the place and/or location to be searched
   - details of the occupier (if known)
   - details of the offence
   - the evidence that may be seized under the search warrant
   - the time the search warrant will expire. The search warrant will expire seven days after being issued.
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 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.

What is a 'special warrant' under the Act?

The Act allows an inspector to apply for a special warrant by electronic communication, phone, radio or another form of communication if the inspector considers it necessary because of urgent circumstances.

The inspector must still prepare the application stating the grounds on which the special warrant is sought and may apply for the special warrant before the application is sworn or affirmed.

If you issue a special warrant, you must immediately communicate by emailing a copy to the inspector if it is reasonably practicable to do so. If it is not practicable to do so you must tell the inspector what the terms of the special warrant are and the date and time the special warrant ends.

Things to bear in mind

When issuing a search warrant under this legislation, you must not act mechanically or as a mere rubber stamp. It is your duty to ensure the issue of the search warrant is substantiated and justified to you.

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

Frequently asked questions

Can I refuse to issue a search warrant under the Act?

The inspector must provide reasonable grounds in the application to substantiate the issue of the search warrant. If you are not satisfied there are reasonable grounds from the information provided to you, you must refuse to witness the application form and state your reasons on it.

Where can I get more information?

Queensland legislation
www.legislation.qld.gov.au

Queensland business and industry portal
www.business.qld.gov.au

5.3 Quick guide

Issuing search warrants under the *Animal Care and Protection Act 2001*

Application

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

1	Warn the applicant that if they knowingly make a false application they commit an offence.
2	Place the applicant on oath or affirmation as outlined in chapter 4.6.
3	Read the application carefully, checking for: • applicant's name and address • details about the need to: – enter a place to relieve an animal in pain and the type of animal – the offence for which the search warrant is sought • a sufficient description of the place and/or location to be searched to correctly identify the premises • details of the occupier (if known) • details of the evidence thought to be at the location now or likely to be there within the next seven days. This will affect the expiration time of the search warrant.
4	If needed, ask questions to clarify why the search warrant is necessary Record in your logbook questions asked and answers given, and any information supplied under oath or affirmation.
5	If you are satisfied the search warrant is justified, have the applicant sign it, reminding them they are under oath or affirmation. If you are not satisfied the application is justified, and you refuse to issue the search warrant: • cross out the application and note your reasons on the form • note your reasons in your logbook.
6	Witness the applicant's signature on the application. 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.

Search warrant

1	Check the search warrant to ensure it gives: • applicant's full name • address of the place and/or location to be searched • occupier's details (if known) • hours of the day or night the premises may be entered • evidence that may be seized • when the search warrant will expire (seven days from issue).
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. If it is a special warrant because of urgent circumstances, you may: • issue the special warrant before the application is sworn or affirmed • immediately return the copy to the inspector.
3	Return the warrant to the applicant. There is no requirement for you to retain a copy.
4	Record all relevant information in your logbook as outlined in chapter 2.4.

5.4 Issuing search warrants

What is 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.

Most search warrants are issued under the *Police Powers and Responsibilities Act 2000* (the Act).

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

1. Application – the information required to substantiate the issuing of the search warrant, such as details about the suspected offence, why the occupier is suspected of having committed the offence, and the type of evidence sought.
2. 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.

Why would a search warrant be issued?

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 would be issued if the police officer is able to show the search is both:

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

How do I issue a search warrant?

The process of issuing a search warrant is very similar to issuing a summons or an arrest warrant. The same principle of exercising judicial discretion applies in all three cases.

Before issuing the search warrant, you must be satisfied of three things:

- The offence is suspected to have occurred within Queensland.
- The offence exists in Queensland law.
- All elements of the offence, this includes, e.g. the date, place, details of the offence, name of the victim and the name of the person charged, and there are reasonable grounds for suspecting the evidence is at the place or likely to be taken to the place within 72 hours.

There are at least two, and frequently three, people principally involved:

- Applicant – the person applying for a search warrant
- JP – the person who issues the search warrant
- Occupier – if there is someone occupying the place to be searched.

How do I work out the end date and time for a search warrant?

A search warrant issued because there are reasonable grounds for suspecting there is evidence or property at a place end at different times for different reasons. The *Acts Interpretation Act 1954* (the AIA) provides information about the end time of a given day, act or event.

The AIA also states there must be a specified number of clear days and excludes the day, act or event. This means when calculating the number of days before a search warrant ends it does not include the day you issue the warrant. For example:

- If there are reasonable grounds to suspect warrant evidence or property is already on the premises, the search warrant ends **seven** days after it is issued.

  Date issued: 14.06.YYYY at 11:55

  The warrant ends at midnight on 21.06.YYYY, seven days after it was issued.
- If the search warrant is for stock – whether or not there is any other evidence mentioned in the search warrant – the search warrant ends **21** days after it is issued.

  Date issued: 01.06.YYYY at 16:55

  The warrant ends at Midnight, on 22.06.YYYY, 21 days after it was issued.

  Note: Midnight, in relation to a particular day, means the point of time at which the day ends.
- If there are reasonable grounds to suspect warrant evidence or property is likely to be taken to a place within the next 72 hours, the search warrant ends **72** hours after it is issued.

  Date of issue: 15.02.YYYY at 15:10

  The warrant ends 18.02.YYYY at 15:10, 72 hours after it was issued.

Important

You do not have authority to issue search warrants or orders in circumstances where the search warrant:

- States structural damage may occur when carrying out the search.
- Orders a person in possession of documents at the place to give the police officer all documents of a type stated in the search warrant.
- Orders a person to give a police officer access to a device and the access information to a digital device e.g. user-id, username, passcode or password.

  Note: A digital device means a device of any kind on which information may be stored or accessed electronically e.g. a computer, memory stick, portable hard drive, smart phone or computer tablet.

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 search 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. Ask the applicant if another JP has refused the same application. If this is the case, you do not have the power to grant it.

   Note: The applicant's next step is to apply to a Magistrate for the issue of the search warrant.

4. 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 a search warrant under the Act must state the following:

   - the applicant's name, rank, registered number 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
   - the offence the application relates to
   - a description of the thing/s sought that is reasonably suspected as evidence of the offence
   - information relied on to support a reasonable suspicion that evidence is:
     - at the place
     - likely to be taken to the place within the next 72 hours.
   - full details of any previous search warrants issued in the previous year
   - if required, reasons for exercising the following additional police powers:
     - the power to search anyone at the place for anything sought under the search warrant which may be concealed on the person
     - the power to search anyone or anything in, on – or about to be in or on – a transport vehicle
     - the power to take a vehicle to a place that can search it for anything that may be concealed within the vehicle
     - the power to execute the search warrant at night and the hours when the place may be entered to prevent loss or destruction of evidence or because the occupier is only at the place at night.

5. If needed, ask the applicant questions to clarify why a search warrant is necessary, the type of evidence sought and whether the search is likely to yield this evidence. Some sample questions to guide you:

   - Is your source of information reliable?
   - Have you used this source before, and how regularly do you use this source?
   - What was the outcome of previous search warrants issued because 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 in the application.

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

6. If you are satisfied the search 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 search 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.

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

Part 2 – Search warrant

1. Read the entire search warrant section and check through it carefully against the application. Ensure it includes:
   - the full name, rank, registered number and station of the applicant, as well as the basis of the application
   - is dated the day you issued it
   - 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)
   - includes additional powers sought
   - the date and time when it ends.
2. Sign the warrant. Affix your seal of office, enter your registration number and the date and time the warrant was issued. This is a requirement of the *Justices of the Peace and Commissioner for Declarations Act 1991*. If required, insert your full name and/or location.
3. Return the search warrant to the applicant. There is no requirement for you to retain a copy of the search warrant.
4. Record all relevant information in your logbook as outlined in chapter 2.4.

Application for a post-search approval order

Under the Act, a police officer can apply to you with an application for a post-search approval order. This is a sworn document required when a police officer searches a place without a search warrant if the officer reasonably suspects evidence may be concealed or destroyed unless the place is immediately entered and searched. The document is in two parts:

1. Application
2. Order.

If you are approached by a police officer with an application for a post-search approval order, you can only witness their signature on the application. The police officer will then send the application and the order to a Magistrate, who has the authority to make the order.

As an application for a post-search approval order will be presented to you after the search has occurred, you will only be required to do the following:

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 application for a post-search approval order and they know the information is false they commit an offence.

   Ensure the applicant understands that 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. Check it gives the:
   - applicant's name, rank, registered number and station
   - information or evidence relied on to support the reasonable suspicion that unless the place was searched immediately evidence of the offence would have been concealed or destroyed
   - type of offence in relation to which the search was conducted
   - nature of the thing sought that was reasonably suspected of being evidence of the commission of an offence
   - time, date and place of the search
   - description of anything seized from the search
   - name, age and address of each person detained or searched, if known
   - information about any proceeding started against a person, before or because of the search.
4. Witness the applicant's signature and 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.
5. Return the documents to the applicant. There is no requirement for you to retain a copy of the post-search approval application or order.
6. Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

When issuing a search warrant, you must not act mechanically or as a mere rubber stamp. It is your duty to ensure the issue of the search warrant is necessary.

Remember: a search warrant must only be issued if the police officer is are able to prove a search is both necessary and likely to produce the evidence they are seeking.

Frequently asked questions

Can I refuse to issue a search warrant?

Yes. You should refuse to issue the search warrant if you believe the applicant applying for it has not substantiated the offence or supplied you with sufficient information to justify its issue. The rights of the occupier of the premises must be protected at all times.

Can I issue a summons instead of a search warrant?

No. There is no alternative to a search warrant.

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

As well as keeping, in a secure place, the copy of the sworn or affirmed application upon which you issue the search warrant, you should also maintain a logbook of the actions you take. This includes questions you ask and the answers you are given, as outlined in chapter 2.4.

What if the owner or occupier of the premises in the search warrant is known to me?

If you know or are related to the person who owns or is occupying the premises to be searched, it creates a conflict for you, and you should:

- refuse to issue the search warrant on those grounds
- direct the applicant to another JP.

You must not discuss the search warrant with the owner, occupier or anyone else. Enforcement action and criminal penalties could apply if it is proved you have done so.

What if I am asked to attend a search?

At times, there may be a requirement for a police officer to call upon an independent person for assistance when exercising a power. A situation where this might occur is when police are conducting a search of premises where the occupier is not known or there is no one at the place at the time of the search.

If you are approached to attend a search, you should always ask why another police officer can't attend. Record these reasons in your logbook.

It is important to remember this type of assistance does not fall within your role as a JP. If you are contacted by a police officer and decide to provide the assistance as requested, you would be attending the place and acting as an independent person under the direction of the police officer and the Act.

Where can I get more information?

Queensland legislation
www.legislation.qld.gov.au

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

5.4 Quick guide

Issuing search 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.
3	Ask the applicant if any other JP has refused the search warrant application. If it has, only a Magistrate can consider issuing the search warrant.
4	Carefully read the entire application. Check it gives: • the applicant's name, rank, registered number and station • a sufficient description of the place to be searched • the name of the occupier of the place, if known • a brief description of the offence the application relates to • a description of the type of evidence sought • evidence for suspicion if the evidence is thought to be presently on the premises or likely to be there within the next 72 hours • full details of previous search warrants • reasons for exercising additional powers.
5	Ask questions to clarify why a search warrant is necessary.
6	If you are satisfied the search 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 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.
7	Witness the applicant's signature. Affix your seal of office, enter your registration number and the date and time the warrant was issued. This is a requirement of the *Justices of the Peace and Commissioner for Declarations Act 1991*. If required, insert your full name and/or location.
8	Retain the original of the application and keep it secure.

Search warrant

1	Check the search warrant gives: • the full name, rank, registered number and station of the applicant, as well as the basis of the application • the date of issue • 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) • the end date and time.
2	Sign the warrant. Affix your seal of office, enter your registration number and the date and time the warrant was issued. This is a requirement of the *Justices of the Peace and Commissioner for Declarations Act 1991*. If required, insert your full name and/or location.
3	Return the search 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.

5.4 Quick guide

Application for a post-search approval

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

Note: You do not have power to approve the order.

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.
3	Carefully read the entire application. Check it gives: • applicant's name, rank, registered number and station • information or evidence relied on to support the suspicion • type of offence • what was suspected of being evidence • time, date and place of the search • description of anything seized • name, age and address of each person detained or searched • information about any proceeding started against a person.
4	Witness the applicant's signature. Affix your seal of office, enter your registration number and the date and time the warrant was issued. This is a requirement of the *Justices of the Peace and Commissioner for Declarations Act 1991*. If required, insert your full name and/or location.
5	Return the documents to the applicant. There is no requirement for you to retain a copy of the post search approval application or order.
6	Record all relevant information in your logbook as outlined in chapter 2.4.

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 Responsbilities 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.
3	Carefully read the entire application. Check it gives: • 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.
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 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

1	Check the arrest warrant gives: • 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.

5.6 Issuing production notices

What is a production notice?

A production notice is a document authorising a police officer to obtain documents when they reasonably suspect a cash dealer holds documents that may provide evidence of the commission of an offence or suspicious financial activity by someone else.

The production notice is an approved form and consists of two parts:

1. Application – information required to substantiate the issuing of the production notice, such as details of the suspected offence, the name of the cash dealer, the type of document(s) sought and a statement indicating that the cash dealer is not party to the offence.
2. Production notice – provides details of the documents the cash dealer is to produce to a police officer.

Why would a production notice be issued?

A police officer may apply to a JP for a production notice, issued under the *Police Powers and Responsibilities Act 2000* (the Act) instead of applying for a search warrant.

The production notice gives a police officer the power to:

- inspect the document(s)
- take extracts from the document
- make copies of the document
- seize the document.

How do I issue a production notice?

The process of issuing a production notice is very similar to issuing a summons or a search warrant, and you should take the same level of care when considering whether to issue a production notice.

Before issuing the production notice, you must be satisfied:

- there are reasonable grounds for suspecting the documents are in possession of the cash dealer
- the documents may be evidence of the commission of an offence or confiscation related evidence
- the cash dealer is not a parties principally to the offence.

There are three parties principally involved:

- Applicant – the police officer applying for the production notice
- JP – the person issuing the production notice
- Cash dealer – the entity on which the production notice is to be served.

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 production notice 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 entire 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. Check the application gives:
   - the applicant's name, rank, registered number and station
   - the name of the cash dealer to be given the notice
   - a brief description of the offence the application relates to
   - the nature of the documents sought, for example:
     - documents relating to transactions conducted by someone between *DD MM YYYY* and *DD MM YYYY*
     - documents relating to mortgages or property sales to which someone is a party
   - information or evidence relied on to support the suspicion the documents are with the cash dealer
   - a statement that the cash dealer is not a party to the offence
   - full history of any previous production notices issued in the past year in relation to the person suspected of being involved of the offence or suspected offence.
4. Ask the applicant any questions you need to clarify why a production notice is necessary. 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 production notice 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 production notice 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 production notice 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 – Production notice

1. Check the production notice to ensure it includes:
   - the applicant's name and station
   - the name and address of the cash dealer
   - a description of the documents sought
   - a place, time and date the documents are required to be produced.
2. Insert your full name on the first page of the production notice.
3. Sign the production notice. 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.
4. Return the production notice to the applicant. There is no requirement for you to retain a copy of the production notice.
5. Record all relevant information in your logbook as outlined in chapter 2.4.

Frequently asked questions

Should I keep a record of the production notices I issue?

As well as keeping, in a secure place, the copy of the sworn application upon which you issue the production notice, you should also maintain a logbook of the actions you take. This includes questions you ask and the answers you are given.

What is a cash dealer?

Under the *Commonwealth Financial Transactions Reports Act 1988*, the definition of "cash dealer" is very broad and includes, but is not limited to, a financial institution, a body corporate, an insurer, a payroll delivery service, a casino or a bookmaker.

What is confiscation related evidence?

Under the *Police Powers and Responsibilities Act 2000*, the definition of 'confiscation related evidence' is very broad and includes, but is not limited to, a thing or evidence of a serious crime related activity.

What if there is no date or time listed on the production notice for the cash dealer to produce the documents?

You can still proceed with issuing the production notice if the date and time is left blank. The Act does not specify a time limit for the time allowed for the cash dealer to produce the documents. The nature and length of the investigation, including the time to collate the documents sought, will determine the required date and time for the documents to be produced.

Where can I get more information?

Queensland legislation
www.legislation.qld.gov.au

Financial Transactions Reports Act 1988
www.legislation.gov.au

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

5.6 Quick guide

Issuing production notices

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.
3	Carefully read the entire application. Check it gives: • the applicant's name, rank, registered number and station • the name of the cash dealer to be given the production notice • a brief description of the offence the application relates to • the nature of the documents sought • information or evidence relied on to support the suspicion the documents are with the cash dealer • a statement the cash dealer is not a party to the offence • full history of any previous production notices issued in the previous year in relation to the person suspected of being involved in the commission of an offence.
4	Ask questions to clarify why the production notice is necessary.
5	If you are satisfied the production notice is justified, have the applicant sign the production notice application. Remind them they are under oath or affirmation. If you are not satisfied the application is justified, and you refuse to issue the production notice: • 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.

Production notice

1	Check the production notice gives: • the name and address of the cash dealer • the full name, rank, registered number and station of the applicant, as well as the basis of the application • a description of the documents sought • a place, date and time the documents are required to be produced, if required.
2	Insert your full name at the top of the production notice.
3	Sign the production notice. 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.
4	Return the production notice to the applicant. There is no requirement for you to retain a copy of it.
5	Record all relevant information in your logbook as outlined in chapter 2.4.

SECTION 6

Other times JPs may be required

SECTION 6

Other times JPs may be required

Information in this section relates to duties which can only be carried out by Justices of the Peace (Qualified).

6.1 Attending a record of interview

What is a record of interview?

Police conduct a record of interview when they are formally questioning a suspect about an offence they are alleged to have committed. These records of interview are normally conducted at a police station where there are proper facilities, including sound and/or video recording equipment. Sometimes the record of interview includes a visit to the alleged crime scene or other locations associated with the offence.

Why do records of interview concern me as a JP?

As you may be asked to attend an interview, it's important to understand what the law requires of you.

If the suspect is an adult, they have the right to have a friend present at the interview – with the term 'friend' being understood in its ordinary, everyday sense. In this situation you are under no obligation to attend as you have no role to play as a JP. You are free to attend independent of your JP role if you wish.

If the suspect is a child, the police may ask you to act as the required support person at the interview if there is no other suitable person available. In this situation, you are under an obligation to comply.

The *Police Powers and Responsibilities Act 2000* (the Act) sets out the procedures to be adopted by the police when questioning suspects. The Act defines 'Support person' for a child, who in summary is:

- a parent or guardian of the child
- a lawyer acting for the child
- a person acting for the child who is employed by an agency whose primary purpose is to provide legal services
- an adult relative or friend of the child who is acceptable to the child
- for an Aboriginal or Torres Strait Islander child where no one already mentioned is available – a person whose name is included in the list of support persons and interpreters
- a JP who is not a member of the Queensland Police Service.

How do I conduct myself at a record of interview?

There is a defined role for you as a support person at the interview of a juvenile suspect, which the police officer will inform you of in an approved form at the time.

Ensure you read the information in full so you understand the nature of the role during the interview. You can ask the police officer questions or seek an explanation of anything relevant to your role as a support person before the interview starts.

Before the interview

When you arrive at the police station:

1. In addition to the information about your role as a support person, the police officer will also supply you with:
    - the name and age of the suspect
    - why they are being questioned
    - how long they have been in custody
    - if the police officer has contacted any of the categories of support persons listed in the Act and what was the outcome
    - if the suspect has asked for a solicitor.

2. Under the Act, the police officer must allow you to talk to the suspect in private, without being overheard, before the interview. At this time you should:
   - Introduce yourself and explain you are a JP, asked to be present as an independent support person whose role is to ensure correct procedures are followed.
   - Warn the suspect they should not make any admissions to you, as you may be required to give evidence in court if the suspect does confide in you.
   - Emphasise it would be in their interests to have legal representation.
   - Be clear you are not there to give legal advice but they are entitled to ask you questions or request to speak to you in private at any time during the interview.

   Note: You can tell the suspect they are under no obligation to answer the questions but they may answer some or all of the questions if they desire.

   - Ask the suspect if they have been offered any other support persons and, if not, if they would like any of them to be present.
     – If the suspect asks for one of the other support persons to be present, let the police officer know. You may leave when this person arrives.
     – If the suspect does not want any of the other support persons to be present, ask if they want you to be present as their support person during the interview. You may only attend with the child's consent.
   - Find out when they last had food and drink and whether they require anything, including access to toilet facilities.
   - Determine if the suspect has been treated correctly, and that no threats were made before your arrival. It is your responsibility to ensure the interests of the suspect are looked after. If you are in doubt as to their mental or physical wellbeing, ask the police officer to arrange appropriate assistance for the child.
   - If the suspect requires the services of an interpreter, you should ensure an interpreter is made available. Speak to the police officer so the necessary arrangements can be made.
   - Remind the suspect they may terminate the interview at any time.

During the interview

1. Your primary role during the interview is to ensure the rights of the suspect are protected. You do this by checking the correct procedure is followed.

   The police officer will caution the suspect and it will be recorded electronically. This caution should substantially comply with the following:
   - Do you understand you are not under arrest?
   - Do you understand you are free to leave at any time unless you are arrested?
   - Before I ask you any questions, I must tell you that you have the right to remain silent.
   - This means you do not have to say anything, or answer any questions, or make any statement, unless you wish to do so.
   - However, if you do say something or make any statement, it may later be used as evidence. Do you understand this warning?
2. If during the interview, the child asks how they should answer a question, you must explain you are unable to answer this for them and they should have a legal representative present.
3. Do not intervene unnecessarily. The police officer has the right to exclude you if they believe you are unreasonably interfering. However, do ensure the suspect understands the questions and is not having language problems.

4. If you believe any of the following is taking place, immediately suspend the interview:
   - The suspect is being subjected to overbearing or intimidating behaviour or questioning.
   - The suspect's mental or physical wellbeing is deteriorating. If necessary, request the police officer arrange appropriate medical help.
   - The suspect is being mistreated. Report this to the officer in charge of the police station (they are obligated to take certain actions once a complaint is made) and ensure the interview does not recommence at this time.
5. If you believe the suspect is not coping with the interview process, remind them they may have a legal representative present.

After the interview

1. Under the Act, the police officer is required to ask the suspect certain questions at the end of the interview.

   This is to ensure both the questions and the answers are recorded. This precaution is intended to protect both the suspect and the police. The questions should substantially comply with the following:
   - Is there anything further you wish to say relating to this matter?
   - Did you take part in this interview of your own free will?
   - Have you answered all questions truthfully?
   - Do you have any complaints in relation to your treatment by the police?
   - Was any threat or promise made to you to induce you to make this record of interview?
   - Were you denied access to a support person or legal representation at any time?
   - Did the police explain your rights to you at the beginning of the interview?
   - Does anyone else present wish to say anything before the interview is concluded?
2. As the interview is recorded electronically, there is no requirement for you to certify the record at the time. The suspect will be supplied with a copy of the recording of the interview for their legal representative.
3. You may take notes throughout the interview and enter these into your logbook – these notes may be questioned if the matter is brought before a court at a later date.
4. Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

The police officer must not question the child unless:

- the child has been allowed to speak to a support person chosen by the child in circumstances in which the conversation cannot be overheard
- a support person is present while the child is being questioned.

Remember you are there to protect the interests of the suspect. At all times, you should emphasise the importance of legal representation. You are not permitted to give legal advice to the suspect under any circumstances.

Frequently ask questions

May I take notes during the interview?

Yes, you are permitted to take notes for your own records. You should also record the relevant details in your logbook of your attendance at the record of interview.

What if the taped record of interview is challenged?

If the validity of the taped record of interview is questioned during the trial of the accused, you may be called to give evidence as to its accuracy. The tape will be replayed for you at the court and you may refer to any of the notes that you took at the time of the interview.

Should I keep a record of the interviews I attend?

Yes. You should record all relevant information in your logbook as outlined in chapter 2.4.

Where can I get more information?

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

Queensland legislation
www.legislation.qld.gov.au

6.1 Quick guide

Attending a record of interview

Follow these steps to attend a record of interview under the Act.

Your role is to help protect the suspect's rights by ensuring police follow the correct procedure.

Before the interview

1	The police officer will provide you with: • information about your role as a support person • the suspect's name, age and length of time in custody • why the suspect is being questioned • if they have contacted any of the support persons • if the suspect has asked for a solicitor.
2	Speak to the suspect in private. • Introduce yourself. • Warn the suspect they should not make any admissions to you. • Explain you're there as an independent support person to ensure correct procedures are followed. • Ask if they have been offered or would like any of the support persons allowed under the Act. • Emphasise they should have legal representation. • Ask them when they last had access to food, drink and toilet facilities. If you are in any doubt, ask the police officer to arrange for assistance for the child. • Ensure an interpreter has been arranged, if needed. • Explain you cannot give legal advice but the suspect can ask you questions or ask to speak with you privately at any time. Remind them they may end the interview at any time.

During the interview

1	Check the police officer cautions the suspect, and the caution is recorded electronically.
2	Do not answer legal questions from the suspect and reinforce the need for legal representation.
3	Ensure the suspect understands the questions but do not intervene unnecessarily.
4	If you believe any of the following is taking place, immediately suspend the interview: • The suspect is being subjected to overbearing or intimidating behaviour or questioning. • The suspect's wellbeing is deteriorating. If necessary, request medical help. • The suspect is being mistreated. Report this to the officer in charge and do not recommence the interview.
5	Reiterate the need for legal representation.

After the interview

1	The police officer asks set questions at the end of the interview e.g. Is there anything more you wish to say? Was any threat made to you before this interview?
2	As the interview is recorded electronically, there is no requirement for you to certify the record at the time. The suspect will be supplied with a copy of the recording of the interview for their legal representative.
3	You may take notes throughout the interview and enter these into your logbook – these notes may be questioned if the matter is brought before a court at a later date.
4	Record all relevant information in your logbook as outlined in chapter 2.4.

6.2 Issuing extensions of detention periods

What is a detention period?

Under the *Police Powers and Responsibilities Act 2000* (the Act), a detention period refers to a period of time during which a person can be lawfully detained for the purposes of conducting an investigation into a suspected indictable offence.

The initial period of detainment is eight hours. The maximum amount of questioning time during this period is not more than four hours.

The rest of the detention period, when the person is not being questioned, is referred to as 'time out'. Time out may be for more than four hours in the initial detention period if the questioning time is correspondingly less. Time out includes travel time, time waiting for a legal representative, rest periods and time to conduct other necessary administrative functions.

The offence being investigated must be a serious offence with a maximum penalty of a term of imprisonment exceeding 12 months.

Under the Act, if a Magistrate or a JP (Mag Ct) is not available, a police officer can apply to you to extend a detention period.

The application is an approved form and consists of two parts:

1. Application – information required to substantiate the issuing of the extension such as the type of offence which questioning or the investigation relates to and information and evidence about the nature and seriousness of the offence.
2. Order – provides details of the extension such as the reason the detention of the person is necessary, the period of time authorised for time out and the period of time authorised for questioning.

Why would an extension to a detention period be requested?

Under the Act an extension to a detention period may be requested in certain circumstances. For example, when the police require additional time to conduct their investigation and gather evidence related to the office the person has been detained for.

How do I issue an order for the extension of a detention period?

Before extending the detention period, you must consider and be satisfied the police officer has reasonable grounds to believe the extension is necessary to complete their investigation, for example:

- the nature and seriousness of the offence requires the extension
- to preserve or obtain evidence of the offence or another indictable offence
- to complete the investigation into the offence or another indictable offence
- to continue questioning the person about the offence or another indictable offence
- the investigation is being conducted properly and without unreasonable delay.

There are three people principally involved:

- Applicant – the person applying for the extension
- JP – the person issuing the extension to the detention period
- Suspect – the person being detained.

Part 1 – Application

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

1. Check if the applicant has tried to find a Magistrate or JP (Mag Ct) to issue the order.
   - You can only consider an application if there is no Magistrate or JP (Mag Ct) available to approve the application.
2. Warn the applicant at the outset, and check they understand that if they knowingly provide information in the application to extend the detention period and they know the information is false they commit an offence.

   Ensure the applicant understands that making an oath or affirmation is a solemn matter.
3. Immediately place the applicant on oath or affirmation as outlined in chapter 4.6.
4. Check the person has either been arrested for an indictable offence or is suspected of having committed an indictable offence, whether or not it is the offence for which they have been arrested.
5. If required, ask the applicant for a copy of the section of the Act that deals with detention periods. Check you are clear about your powers and responsibilities.
6. Read through the application carefully, ensuring all the necessary information has been provided and asking any questions that may be needed to clarify particular points. Check the information in the application is sufficient to consider the extension necessary and includes:
   - the applicant's name, rank, registered number and station
   - details of the person being detained:
     - whether the person is in custody under another Act
     - if the person is Aboriginal, Torres Strait Islander, a child or a person with an impaired capacity
     - if the person is a child, whether a parent of the child has been contacted
   - details of a relative, friend, support person or lawyer and if they have asked to speak to them
   - information or evidence supporting a reasonable suspicion the person has committed the offence mentioned in the application
   - what investigations have taken place and why further detention of the person is necessary
   - details of the offence the questioning relates to
   - when the detention period started and how long the person has already been questioned
   - amount of questioning time and time out needed.
7. If the person or their lawyer wants to make a submission you are required to listen to any submissions about the application when you are determining whether or not to extend the period.
8. If you are satisfied the extension 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 extension order 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.
9. 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.
10. Ensure you retain the original of the application and keep it in a secure place. This is one of the few occasions where you are required to retain a document.

Part 2 – Order for extension of detention period

1. Check the order to ensure it gives:
   - the details of the person being detained
   - the period of time authorised for time out
   - the period of time authorised for questioning
   - the total of the time allowed for time out and question time
   - the full name, rank, registered number and station of the applicant.

   Note: You may extend the detention period for a reasonable time, with no more than eight hours of further questioning time included in the extended detention period.
2. Sign the order. Affix your seal of office, enter your registration number and the date and time the order ends. This is a requirement under the *Justices of the Peace and Commissioners for Declarations Act 1991*. If required, insert your full name, location and/or date.
3. Return the order 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.

Frequently asked questions

Can I extend the detention period for a second time?

No. Any further orders to extend a detention period must be made to a Magistrate.

Where can I get more information?

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

Queensland legislation
www.legislation.qld.gov.au

6.2 Quick guide

Issuing extensions of detention periods

Application

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

1	Ask the applicant if they have tried to find a Magistrate or a JP (Mag Ct).
2	Warn the signatory that if they knowingly make a false application, they commit an offence.
3	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.
4	Check the person has been arrested for an indictable, or suspected indictable offence.
5	If required, ask the applicant for a copy of the section of the Act which authorises you to issue the order.
6	Carefully read the entire application. Check it gives: • the applicant's name, rank, registered number and station • details of the person being detained and whether they have spoken to anyone who can support them • details about when questioning commenced • a brief description of the offence the application relates to and information supporting a reasonable suspicion the person has committed an offence • what investigations have taken place and the amount of questioning time and time out needed.
7	If the person or their lawyer wants to make a submission you are required to listen to any submissions about the application when you are determining whether or not to extend the period.
8	If you are satisfied the application 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 order: • 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.
9	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.
10	Retain the original application and keep it in a secure place.

Order

1	Check the order includes: • the details of the person being detained • length of time for questioning and time out • the details of the applicant. You may extend the detention period for a reasonable time, with no more than eight hours of further questioning time included in the extended detention period.
2	Sign the order. Affix your seal of office, enter your registration number and the date and time the order ends. This is a requirement under the *Justices of the Peace and Commissioners for Declarations Act 1991*. If required, insert your full name, location and/or date.
3	Return the order 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.

6.3 Your powers under the *Customs Act 1901*

What is the *Customs Act 1901?*

The *Customs Act 1901* (the Act) is a Commonwealth Act designed to regulate the passage of goods and people into and out of Australia.

The intention is to prevent:

- importation of prohibited goods, such as illegal drugs, weapons or wildlife
- entry of illegal immigrants
- unauthorised entry or departure of criminals
- entry of pests and diseases.

Why would an order for an external search be requested?

A Detention Officer (the officer) from Australian Border Force may apply to you for approval to carry out an external search. This may include, but not limited to, a person who either:

- is in need of protection, such as a child or an intellectually impaired adult
- refuses to consent to a frisk search
- refuses to produce any goods located during a frisk search.

How do I issue an application for an external search?

You may be contacted by an officer to hear an application for an order for an external search of a person.

The application is an approved form and is in two parts:

1. Application – information required to substantiate the issuing of the order such as whether the person refused to submit to a frisk search, refused to produce a thing required to be produced as a result of the frisk search, is a person 'in need of protection' or refused or has not consented to an external search.
2. Order – provides details of the person to be searched and the officer suspects the person is unlawfully carrying prohibited items on their body and the person is either 'in need of protection', has refused to submit to a frisk search, refused to produce a thing as a result of a frisk search or has not consented to an external search.

The process for issuing the order under this Act is very similar to issuing a warrant or order under the *Police Powers and Responsibilities Act 2000*, in that the application must be sworn or affirmed and state the grounds on which the order is sought.

Before issuing the order you must be satisfied there are reasonable grounds to suspect the person is unlawfully carrying prohibited goods on their body and they:

- are a person 'in need of protection'
- refused to submit to a frisk search
- refused to produce anything located during a frisk search
- have not consented to the external search.

The officer must provide reasonable grounds in the application to substantiate the issuing of the order. If you are not satisfied there are reasonable grounds from the information provided to you, you must refuse to witness the application and state your reasons on it.

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 application and they know the information is false, they commit an offence.

   Ensure the applicant understands that 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 entire 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. Check it gives:
   - the name of the applicant
   - location where the applicant is made
   - the officer's level and that they are a Detention Officer
   - details of the person detained
   - reason(s) the person was detained and why the applicant suspects the person is unlawfully carrying prohibited goods.
4. If needed, ask the applicant questions to clarify why the order is necessary. Do this separately from the person.
5. Speak to the person to establish their understanding of why they have been detained.
6. If you are satisfied the order 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 order for an external search of a person, you should:
   - cross out the application and note your reasons on the form
   - note on the order the person be immediately released from detention
   - note your reasons in your logbook.
7. 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.
8. Ensure you retain the original application for an external search and keep it in a secure place. This is one of the few occasions where you are required to retain a document.

Part 2 – Order for an external search

1. Check the order to ensure it:
   - gives the name of the applicant
   - gives the name of the person being detained and whether they:
     - are a person 'in need of protection'
     - have refused to submit to a frisk search
     - have refused to produce anything located during the frisk
     - have not consented to the external search.
   - is dated the day you sign it.
2. Sign the order. Affix your seal of office and enter your registration number. This is a requirement under the *Justices of the Peace and Commissioners for Declarations Act 1991*. If required, insert your full name, location and/or date.
3. Return the order 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.

Things to bear in mind

The officer may take into consideration a wide variety of matters when determining reasonable grounds of suspicion, such as:

- the person's travel itinerary, including plans in relation to places that have been visited or are intended to be visited by the person
- interest of Customs Drug Detector Dogs
- arrival or departure declarations or statements (made under Commonwealth law)
- documents in the person's possession, or produced by the person, or the refusal or failure to produce documents
- unusual behaviour by the person
- the contents of or appearance of any visible item carried by the person or the person's luggage (whether or not carried by the person)
- the answers given by the person, or their failure to answer questions.

As a JP you may also be requested to:

- issue a summons as outlined in chapter 5.1
- constitute a Magistrates Court and determine a bail application for a person charged with an offence under this Act as outlined in chapter 6.5.

Frequently asked questions

What is the definition of an external search?

External search means a search of the body of a person and of anything they are wearing or have in their possession to:

- determine if the person is carrying any prohibited goods
- recover any such goods.

It does not include an internal examination of the person's body.

What is a frisk search?

The officer may carry out a frisk search of the person that entails:

- a search of a person conducted by quickly running hands over a person's outer garments
- an examination of anything worn or carried by a person that is conveniently and voluntarily removed by the person.

Where can I get more information?

Department of Home Affairs
www.border.gov.au

6.3 Quick guide

Your powers under the *Customs Act 1901*

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. Ensure the applicant understands swearing an oath or making an affirmation is a solemn matter.
2	Immediately place the applicant on oath or affirmation as outlined in chapter 4.6.
3	Read the application and check it gives: • the name of the applicant officer • the location where the application is made • the officer's level and that they are a Detention Officer • the details of the person detained • the reason the person was detained and why the applicant suspects the person is unlawfully carrying prohibited goods.
4	If needed, ask the applicant questions to clarify why the order is necessary. Do this separately from the person.
5	Speak to the person to establish their understanding of why they have been detained.
6	If you are satisfied the order 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 order: • cross out the application and note your reasons on the form • note on the order the person be immediately released from detention • note your reasons in your logbook.
7	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.
8	Retain the original of the application and keep it in a secure place.

Order for an external search

1	Check the order gives: • the details of the applicant • the name of the person being detained • the reason they are being detained.
2	Sign the order. Affix your seal of office, enter your registration number and the date and time the order ends. This is a requirement under the *Justices of the Peace and Commissioners for Declarations Act 1991*. If required, insert your full name, location and/or date.
3	Return the order to the applicant. There is no requirement for you to retain a copy of the order.
4	Record all relevant information in your logbook as outlined in chapter 2.4.

6.4 Granting and refusing bail

What is bail?

Under the *Bail Act 1980* (the Act) bail is a written promise made by a defendant to the court (called an undertaking) that they will attend court on the adjourned date.

Usually, the defendant is released on their own undertaking to reappear in court.

Sometimes a third person will give a 'surety' – a guarantee the defendant will appear in court on the adjourned date as outlined in chapter 6.6.

Why is bail usually granted?

Bail is usually granted because there is a period of time before the case can be heard and finalised. Being held in custody during this waiting period is a serious limitation of the rights of the defendant, who is presumed innocent until proven guilty.

What powers do I have in relation to bail?

Under the *Justices of the Peace and Commissioners for Declarations Act 1991* (the JP Act) and the *Justices Act 1886*, if no Magistrate is available, you and another JP have the power to:

- hear an application for bail
- seek information about the defendant to enable you to decide whether it should be granted
- decide on any bail conditions
- hear 'show cause' applications, where the onus is on the defendant or the defendant's representative to demonstrate why bail should not be refused.

There is a general presumption a person should be granted bail unless they should remain in custody for their own protection or there is an unacceptable risk the defendant will either:

- fail to appear on the adjourned date
- commit further offences
- endanger other people, themselves or any other person
- interfere with witnesses.

How do I decide on the defendant's suitability for bail?

You are authorised to make any necessary inquiries about the defendant to determine their suitability for bail. The following are factors you may, but are not limited to, consider:

- the nature and seriousness of the offence
- the defendant's character and background such as a personal history including their criminal history, associations, home environment, employment and background, and their likelihood of committing further offences
- the defendant's age
- the history of any previous granting of bail
- the strength of the evidence against the defendant
- whether a surety is necessary or a cash deposit
- if the defendant has been charged with a domestic violence offence or offence against the *Domestic and Family Violence Protection Act 2012* (DFVP Act), the risk of further domestic violence or associated domestic violence.

You should refuse bail if, on any of these grounds, the defendant seems unsuitable.

What bail conditions can I impose?

The Act allows many types of conditions to be a part of the bail undertaking. Examples include, but not limited to:

- reporting condition – defendant must report to a police station at set times
- residence condition – defendant must reside at a particular location
- no-contact condition – defendant must not have contact with certain people
- curfew condition – defendant must not leave their residence between certain hours
- surrender passport – defendant ordered to surrender their passport to court
- cash bail – defendant is ordered to pay cash to the court
- surety – a third party is ordered to guarantee the defendant will appear in court on the due date
- security – a cash amount the defendant must pay before they can be released from custody.

Refusing bail

If you refuse to grant bail, you must remand the defendant in custody, and a remand warrant must be prepared and signed by both you and the other JP who sits with you. The warrant authorises police to deliver the defendant to the nearest remand centre, where they will be held until the date of the next court hearing.

Bail should also be refused if there has been insufficient time for you to obtain the information required to make an informed decision.

Things to bear in mind

In most situations, the onus is on the prosecutor to demonstrate the defendant should not be granted bail. However, in a 'show cause' situation, the onus is reversed, and the defence must prove the defendant is not an unacceptable risk for bail.

In the court proceedings, the defendant or legal representative speaks first, followed by the prosecutor. It may be more difficult for the defendant to obtain bail in these circumstances.

In circumstances where the defendant is in a 'show cause' situation and bail is granted, reasons must be given as to why bail has been granted. Also, bear in mind that in determining the issue of bail, a court may make such investigations on oath or affirmation concerning the defendant as 'the court thinks fit'.

There is a restriction on this power as the defendant or other persons are not to be questioned or queried about the charge or charges before the court. This allows you to seek information, beyond that which has been put before the court, so a fully informed decision can be made.

For example:

- two 'sitting' JPs grant a defendant bail with a residential condition
- the JPs may adjourn the court, remanding the defendant in custody, so police may check the address as to its suitability
- the sitting JPs may also adjourn the court to allow the owner or occupant of the home to appear before the court so they can satisfy themselves the proposed address is suitable.

Frequently asked questions

What is a 'show cause' situation?

When deciding on whether to grant bail the defendant must show you why they should get bail and not stay in jail when they have been charged with an offence while they are on bail or where they have been charged with an offence, including, but not limited to:

- a breach of a domestic violence order and the offence involved violence to a person
- the use of firearms, offensive weapons or explosives
- threatening violence, stalking, deprivation of liberty if the offence is also a domestic violence offence
- threatening or using a weapon when committing an offence
- against the Act e.g. failing to appear in court as required.

What powers do I have with relation to court duties?

The JP Act states your power is limited to 'taking or making a procedural action or order'.

Your power in the Magistrates Court is therefore limited to:

- determining bail for a person charged with an offence
- adjourning a matter to another date.

Under the DFVP Act, you together with another JP also have the authority to make consent protection orders and temporary protection orders in the Magistrates Court, namely:

- an application to make or vary a temporary protection order if a Magistrate is not readily available to constitute a Magistrates Court
- an application to adjourn a proceeding taken with a view to making a domestic violence protection order against a respondent.

Two JPs may also deal with an existing application for a domestic violence protection order or make a domestic violence protection order relating to the offence and to which the offender is the respondent.

Where can I get more information?

Queensland Courts
www.courts.qld.gov.au

Queensland legislation
www.legislation.qld.gov.au

6.5 Hearing a bail application

How do two JPs conduct a bail hearing?

1. Indicate to the prosecutor that you are both ready to commence. Sitting JPs are referred to as 'Your Honour' when convening a Magistrates Court.
2. The prosecutor (or clerk, in some cases) will open the court by stating, 'Silence, all stand please. This Magistrates Court is now open'.
3. Proceed to your places at the bench and face the body of the courtroom, bow slightly to the assembled persons and then take your seat.
4. The prosecutor will then say, 'You may be seated', and the rest of the people in the courtroom will sit.
5. Greet the parties before the court and then request the parties to announce their appearance for the record. The prosecutor will say words similar to:

   'Good morning, Your Honours. My name is ‹surname›, initials ‹xx›, a ‹rank› of police stationed at the ‹location› Prosecution Corps or ‹police station›, and I appear for the prosecution.'

   The defendant's legal representative should then announce their appearance in the following manner:

   'Good morning, Your Honours. My name is ‹surname›, initials ‹xx›. Solicitor for the firm of ‹name of firm›, and I appear representing the defendant.'

   You should reply 'thank you', and then ask the prosecutor which matter is to be dealt with.
6. Ensure the necessary paperwork is in front of you. This should either be a bench charge sheet or a bench complaint sheet.

   Read the charge(s) to the defendant to ensure the defendant and their legal representative are fully aware of them. The defendant's legal representative may waive this right by stating, 'We take the charge as read'.

   Note: If the defendant does not have legal representation, you must read the charge in full and ask the defendant if they understand the charge.
7. Inform the court the matter must be adjourned to a date when a Magistrate is available. The defendant may at this time indicate whether or not a plea will be entered and, if it is, you must note it on the court file.

   Request a date from the prosecutor when a Magistrate will be available to deal with the defendant. Check with the defendant as to the suitability of the date. Remember the court's time is limited, so there must be a substantial reason for the defendant not to accept the next available date.
8. Determine if the defendant is already on bail from either the watchhouse or a previous appearance in court. If the defendant is already on bail, it is normal to extend the bail undertaking until the next available date as advised by the prosecutor.

9. Address the prosecutor by name and rank or the same way they announced their appearance and ask the following:

> *'Has this court jurisdiction to grant bail, and what is the position in relation to bail for this defendant?'*

The prosecutor will then advise the court whether or not bail is opposed, and if you have the power to grant bail. There are some serious offences for which only the Supreme Court can grant bail.

If the prosecutor does not oppose bail, you should grant bail to the defendant with terms and conditions you believe are suitable – not just what the police are asking for. You should take into account the nature of the offence and the defendant's character and antecedents as outlined in chapter 6.4.

If bail is opposed, you should ask the prosecutor to outline the reasons for their opposition to the defendant's release.

The defendant or legal representative is requested to address you on the reasons why bail should be granted.

10. Once you have heard submissions from both the prosecution and the defendant, you should stand the matter down and adjourn the court for a short time. You and your fellow JP should leave the courtroom to discuss in private whether or not to grant bail and, if so, upon what terms.

    If you decide to grant bail, you both should:
    - advise the defendant if there are any bail conditions
    - remand the defendant to the next available date for the charge to be determined, and grant bail accordingly
    - note on the court records:
      - all actions you have taken
      - record of proceedings, including submissions made by the prosecution and defence
      - the conditions under which bail is granted.

    If you decide not to grant bail, you both must:
    - issue a warrant remanding the defendant in custody to appear before the court at the date, time and place appointed in the warrant.
    - note on the court records:
      - all actions you have taken
      - record of proceedings, including submissions made by the prosecution and defence
      - your reasons for refusing bail.
    - advise the defendant they may make further application for bail to a Magistrate.

11. Unless there are more defendants, the court should be closed by the prosecutor in the following terms:

> *'Silence. All stand please. This Magistrates Court is now closed.'*

You should then leave the courtroom and arrange with the courthouse staff to coordinate any other paperwork to be completed before you leave the courthouse.

12. Record all relevant information in your logbook as outlined in chapter 2.4.

Things to bear in mind

You should be familiar with the terms used at bail hearings.

Adjournment
The matter is 'adjourned' when the court puts it off until another day. The court grants an adjournment when it postpones the hearing of the matter.

Affidavit of justification
As outlined in chapter 6.6, a person providing a surety for the defendant must also provide an affidavit of justification to the court before the court will accept that person's surety. An affidavit of justification is a document that sets out the person's relationship to the defendant and their financial status, and includes a declaration that, if the court subsequently requires the forfeit of the surety, the loss of the sum of money forfeited would not be ruinous or injurious to their livelihood.

Bail
Bail is an undertaking by a defendant who is released from custody to observe certain conditions and to reappear before the court when required to do so.

Breach of bail
A defendant is said to 'breach' their bail by failing to obey one of the conditions of the bail. This would include failing to appear on the due date for the continuation of the hearing.

Court
A Magistrate, a JP (Mag Ct) or two JPs (Qual) can constitute a Magistrates Court.

Defendant
The person charged with the offence.

Enlarging bail
A court may enlarge an existing bail by extending the date of appearance to another date in the future.

Remand
Remand is the term used when a defendant's case is put off to another time. The defendant is said to be 'remanded'.

Prosecutor
The person who acts on behalf of the Crown in the case before the court is called the prosecutor. The prosecutor – who will either be a police officer, a private prosecutor employed by police or an officer from the Office of the Director of Public Prosecutions – presents the evidence to the court.

Security
This is a condition of bail when the court orders something (usually cash) to be lodged with the court as a guarantee the defendant will reappear on the due date.

Show cause
The court calls upon the defendant to show cause why their bail should not be revoked and why they should not be placed in custody if they fail to keep any of the conditions of the bail.

Surety
This is a condition of bail where the court orders a third person to guarantee the defendant will appear in the court on the due date. It also orders the third person to forfeit a sum of money if the defendant fails to honour their bail.

Undertaking as to bail
This is the formal document whereby the defendant undertakes to follow the conditions of bail, including surrendering to the court on the date set for the resumed hearing of the matter.

You should also be familiar with how the people involved are addressed.

Prosecutor
A prosecutor is addressed by their rank and surname if they are a police officer, otherwise you should address them the same way they announced their appearance to you at the commencement of the matter.

Defendant
The defendant can be addressed as 'defendant' but is normally addressed by their name.

Legal representatives
A legal representative is called by their name.

Magistrates and Justices of the Peace
When on the bench, Magistrates are addressed as 'Your Honour' and JPs are addressed as 'Your Honours' or 'Honours in the court'.

How is the defendant brought before the court?

1. An offence is committed.
2. Police investigate the offence.
3. A suspect may be brought before the court by:
   - arrest with or without a warrant (either in custody or on bail granted by the watchhouse)
   - the issue of a summons by a JP
   - the issue of a notice to appear by the police.
4. On the first appearance in court, the defendant will either be in custody if arrested, on bail from the watchhouse, or responding to a summons or a notice to appear.
5. The matter must be adjourned to a date when a Magistrate is available to constitute a court.

What if I know the defendant?

If you know the defendant personally or are related to them, you must disqualify yourself from hearing the matter.

Where can I get more information?

Queensland Courts
www.courts.qld.gov.au

Queensland legislation
www.legislation.qld.gov.au

6.6 Sureties and security

What is a surety?

A surety is a person, other than a defendant, who guarantees the defendant will abide by the bail undertaking.

The surety may be required to:

- pay a court-determined amount of money, to be held by the court until the court hearing
- promise to pay such a sum if the defendant fails to appear at the hearing.

In addition to completing and signing the necessary documents, the surety must either pay the relevant sum of money to the court or satisfy you they have sufficient equity or other property to cover the amount of the surety should it be required.

Requirements of a surety

Under the *Bail Act 1980* (the Act) a surety to an undertaking must be a person who:

- is 18 years or over
- has not been convicted of an indictable offence
- is not an involuntary patient under the *Mental Health Act 2016* who is, or is liable to be detained in an authorised mental health service under that Act
- is not a forensic disability client within the meaning of the *Forensic Disability Act 2011*
- is not a person for whom a guardian or administrator has been appointed under the *Guardianship and Administration Act 2000*
- is not an insolvent under administration
- has not been, and is not likely to be, charged with the same or another offence as a consequence with which the defendant has been charged
- is worth more than the amount of bail in real or personal property.

How do I enable a surety to become a party to a bail undertaking?

The surety must sign the prescribed *Form 11 – Affidavit of Justification* (the affidavit) prior to becoming a party to the bail undertaking. You must read it carefully and you are permitted to ask any questions and sight any evidence of ownership of property when determining the person's suitability to act as a surety.

The bail undertaking

1. Obtain a copy of *Form 7 – Undertaking as to bail* (the bail undertaking) and *Form 8 – Notice to surety or sureties of undertaking as to bail* (the notice to surety) from the relevant court registry.
2. Read through the bail undertaking and the notice to surety with them to satisfy yourself they have an understanding of:
    - all charges the defendant has been charged with
    - all bail conditions, including the requirement to attend necessary court dates and to comply with any such conditions
    - they will become personally liable for ensuring the defendant complies with all conditions of the bail.
3. If the surety is prepared to proceed, have them sign the undertaking of surety.
4. Complete and sign the bail undertaking and the notice to surety. 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.

The affidavit of justification

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.7 then:

1. Warn the signatory that if they knowingly make a false affidavit, they commit an offence.
2. Immediately place the signatory on oath or affirmation as outlined in chapter 4.6. Ensure the surety understands that swearing an oath or making an affirmation is a solemn matter.
3. Ask relevant questions to ensure the person's eligibility and sufficiency of means to meet the surety. Consider their financial resources, character and background, proximity to the defendant and any other matters considered relevant and reasonable.
4. Ask the surety to produce evidence of ownership or interest in any real estate or personal property. Evidence of ownership may include any document considered relevant, such as a current rates notice of the property or a current certificate of title.
    - Ensure the surety has sufficient equity in any property to meet the means of the surety by requesting any relevant document, such as a valuation certificate or mortgage account statement. Record the details of the property or document on the affidavit and return them to the surety.

      Note: If you accept a cash surety, you must instruct the applicant to pay the surety amount to the relevant court registry and ensure the court registry has the original documentation.

      You cannot accept a person as a surety if they advise you it would be damaging to them or their family if the undertaking is forfeited.

      You must ensure the surety has not been indemnified by the defendant i.e. the defendant or any other person has not agreed to make good any loss that may be suffered as a result of the forfeiture of the bail at a later time for any reason.
5. Check the surety understands the document and have them sign it.
6. Witness the surety'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. Record all relevant information in your logbook as outlined in chapter 2.4.

Frequently asked questions

What is security?

Security is a cash amount the defendant must pay before they can be released from custody. It is a payment as a personal security they will comply with the conditions of bail.

It must be their own money and documentary evidence will need to be produced to prove it is. Under no circumstances can it be money that has been lent to them by another person simply to enable them to meet their bail.

What are the different types of sureties?

Cash
A Magistrate may require a cash surety. If this occurs, cash will need to be paid to the Registrar of the courthouse. Bank cheques and real estate are not acceptable.

General
Cash, real estate or personal property can be used as general sureties. If cash is not provided, the most common and practical way of satisfying a surety is using real estate.

What are the responsibilities of the surety?

The surety:

- is responsible for ensuring the defendant's attendance at all court appearances
- is responsible for ensuring the defendant complies with all conditions of the bail undertaking
- remains responsible until the charge is finally dealt with or until a court grants them discharge of their liability.

What happens if the defendant fails to appear at the hearing?

If this happens, the sum of money the surety has either paid or promised to pay may be forfeited to the Crown and an arrest warrant may be issued.

Where can I get more information?

Queensland Courts
www.courts.qld.gov.au

Queensland legislation
www.legislation.qld.gov.au

Forms

Queensland Courts
www.courts.qld.gov.au/forms

Queensland Government

www.qld.gov.au/jps