

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.

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

③

- 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.

If needed, ask questions to clarify why the search warrant is necessary

④ Record in your logbook questions asked and answers given, and any information supplied under oath or affirmation.

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

⑤ 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

Check the search warrant to ensure it gives:

- applicant's full name
 - address of the place and/or location to be searched
 - ① • 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).
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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.

- ② 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.
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- ③ Return the warrant to the applicant. There is no requirement for you to retain a copy.
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- ④ Record all relevant information in your logbook as outlined in chapter 2.4.
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