

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 – Summonses

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.

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.

⑤ If needed, ask questions to clarify how the threats have been made and the effect on the complainant's quality of life.

⑥ 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.

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.

② 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.

③ Return the documents to the complainant. There is no requirement for you to retain a copy of the complaint and summons or warrant.

④ Record all relevant information in your logbook as outlined in chapter 2.4.
