

## 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 – Summonses

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](http://www.courts.qld.gov.au)

Queensland legislation  
[www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)

## Forms

Queensland Courts  
[www.courts.qld.gov.au/forms](http://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:

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- ① Warn the complainant that if they knowingly make a false complaint they commit an offence.

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  - ② If it's a sworn summons, place the complainant on oath or affirmation as outlined in chapter 4.6.

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  - ③ Check the complainant understands the document and is making it freely and voluntarily.

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  - ④ Check there are three copies of the complaint and summons.

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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.
- ⑤
    - 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.

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If needed, ask the complainant questions to clarify what offence is involved and what evidence there is the defendant is implicated.

- 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.

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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:

- ⑦
  - 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.

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Witness the complainant's signature. Affix your seal of office and enter your registration number.

- ⑧ 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.
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## Summons

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Read the entire summons and check it carefully to see it includes:

- ①
    - 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.
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- 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.
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- 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.
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- ④ Return the documents to the complainant. There is no requirement for you to retain a copy of the complaint and summons.
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- ⑤ Record all relevant information in your logbook as outlined in chapter 2.4.
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## Summons to a witness

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

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- 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.
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- 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.
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- ③ Return the documents to the complainant. There is no requirement for you to retain a copy of the summons.
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- ④ Record all relevant information in your logbook as outlined in chapter 2.4.
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