

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 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:

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- ① Warn the signatory that if they knowingly make a false application, they commit an offence.
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- ② Immediately place the applicant on oath or affirmation as outlined in chapter 4.6.
 - ③ Ensure the applicant understands that swearing an oath or making an affirmation is a solemn matter.
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- 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.
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- 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
- ④
 - 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.
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- ⑤ Ask questions to clarify why a search warrant is necessary.
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- If you are satisfied the search warrant is justified, have the applicant sign the application, reminding them they are under oath or affirmation.
- ⑥ 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.
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- 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.
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- ⑧ Retain the original of the application and keep it secure.
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Search warrant

Check the search warrant gives:

- the full name, rank, registered number and station of the applicant, as well as the basis of the application
- ①
- 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.
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- 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.
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- ③ Return the search warrant to the applicant. There is no requirement for you to retain a copy of it.
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- ④ Record all relevant information in your logbook as outlined in chapter 2.4.
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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.

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- ① Warn the signatory that if they knowingly make a false application, they commit an offence.
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- ② Immediately place the applicant on oath or affirmation as outlined in chapter 4.6.
 - ② Ensure the applicant understands that swearing an oath or making an affirmation is a solemn matter.
-
- 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
- ③
 - 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.
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- 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.
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- ⑥ Record all relevant information in your logbook as outlined in chapter 2.4.
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