

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.

The search warrant is an approved, prescribed form and consists of two parts:

1. **Application**—the information required to substantiate the issuing of the 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.

Most search warrants are issued under the *Police Powers and Responsibilities Act 2000*. Based on this legislation, the following information applies:

Section 156(1) of the Act provides the search warrant itself must state the following:

- (a) *a police officer may exercise search warrant powers under the warrant; and*
- (b) *if the warrant is issued in relation to—*
 - (i) *an offence—brief particulars of the offence for which the warrant is issued; or*
- (c) *the warrant evidence or property that may be seized under the warrant; and*
- (d) *if the warrant is to be executed at night, the hours when the place may be entered; and*
- (e) *the day and time the warrant ends.*

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 were able to show a search is both:

- necessary for the investigation of an offence
- likely to produce the evidence they are seeking.

How do you issue a 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. As with arrest warrants, extra care should be taken with search warrants because they may authorise police officers to enter someone's premises at any time, even at night (9 pm – 6 am).

When you issue a search warrant—just as with issuing a summons or an arrest warrant—you should apply the same principles that govern the witnessing of documents, such as verifying the identity of the signatory.

Before issuing the search warrant, you must be satisfied of three things:

1. The offence is suspected to have occurred within Queensland.
2. The offence exists in Queensland law.
3. All elements of the offence and necessary details are included in the application.

Note: JPs do not have the power to issue search warrants in relation to offences committed in another state. Only a magistrate can issue such a warrant.

There are at least two, and frequently three, people principally involved:

- **applicant**—the person applying for a search warrant
- **JP (Qual)**—who issues the search warrant
- **occupier**—if there is someone occupying the place to be searched.

When approached to issue a search warrant, you should:

1. Ask the applicant for some form of identification.
2. Ask the applicant if any other JP has refused the application. If it has, you do not have the power to grant it. Only a magistrate has that authority.
3. Immediately place the applicant on oath or affirmation.

The form of basic oath for this situation is:

I swear that the contents of this document and any further information I may supply either orally or in writing are true and correct, so help me God.

The affirmation for a warrant is:

I, solemnly, sincerely and truly affirm and declare that the contents of this document and any further information I may supply either orally or in writing are true and correct.

This means that, if you ask any further questions about the applicant, the applicant's answers are considered to be under oath. You should warn the applicant about the penalties for making false statements under oath.

4. 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:

- a. the applicant's name, rank, registered number and station
- b. a description of the place to be searched, sufficient to correctly identify the premises
- c. the name of the occupier of the place, if known (for an occupied premises)
- d. a brief description of the offence the application relates to
- e. a description of the type of evidence sought
- f. why it is suspected that evidence of the offence is likely to be found on the premises
- g. if the evidence is thought to be presently on the premises or likely to be there within the next 72 hours
- h. full details of any previous search warrants
- i. reasons for exercising the following additional police powers (if required):
 - the power to search anyone at the place
 - 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 has adequate facilities for searching it
 - the power to execute the search warrant at night (naming the proposed hour).

5. Ask the applicant any questions that are needed to clarify why a search warrant is necessary, the type of evidence sought and whether the search is likely to yield this evidence.

Here are some sample questions to guide you:

- Is your source of information reliable? Explain.
- Have you used this source before, and how regularly do you use this source?
- What was the outcome of previous search warrants issued as a result 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 on the application.

Keep a record of any further information supplied to you under oath in case it is required for future reference.

If you decide to refuse to issue the search warrant, you should cross out the application and note your reasons for refusal on the form. You should then inform the officer in charge of the police station where the applicant is stationed that you have refused to issue the search warrant.

6. If you are satisfied the search warrant is justified, have the applicant sign the search warrant application. Remind the applicant they are under oath or affirmation.
7. Witness the applicant's signature on the search warrant application by signing the search warrant application, affixing your seal of office and entering your registration number. There is no requirement for you to write your full name on a search warrant application.
8. Ensure you retain the original of the search warrant application and keep it in a secure place. There is no requirement for a copy of the actual search warrant to be retained by you, nor is a copy provided for you.
9. Complete the search warrant and check through to ensure:
 - a. it gives the full name, rank, registered number and station of the applicant, as well as the basis of the application
 - b. it is dated the day you issued it
 - c. it gives 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)
 - d. it gives the date and time when it ends.
10. Sign the search warrant, affix your seal of office and enter your registration number. This is a mandatory requirement under the *Justices of the Peace and Commissioners for Declarations Act 1991*.
11. Enter the details in your logbook. Information that can be entered includes:
 - date and time the document was witnessed
 - type of warrant (that is, a search warrant)
 - details of the person requesting the search warrant
 - type of identification sighted
 - location of signing
 - questions you asked and answers given.

IMPORTANT

You do not have authority to issue search warrants in the following circumstances:

- where the search warrant states structural damage may occur when carrying out the search. Only a Supreme Court judge can issue a search warrant containing this condition (see section 150(4) of the *Police Powers and Responsibilities Act 2000*)
- where the search warrant orders a person in possession of documents at the place to give to the police officer all documents of a type stated in the warrant
- where the search warrant orders a person in possession of ‘access information’ for a ‘storage device’ in the person’s possession to give a police officer the ability to access, use, examine or make a copy of the ‘stored information’
 - **Access information** means information of any kind that it is necessary for a person to use to be able to access and read information stored electronically on a storage device.
 - **Storage device** means a device of any kind on which information may be stored electronically.
 - **Stored information** means information stored on a storage device.

Note: You do not have any authority to request or retain a copy of a search warrant.

Application for a post-search approval order

Under section 161 of the *Police Powers and Responsibilities Act 2000*, an officer can apply to you with an Application for post-search approval order. A post-search approval order is a sworn document required when an 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.

IMPORTANT

Justices of the Peace can only consider the application. Only a magistrate can make the actual order.

If you are approached by an officer with an Application for a post-search approval order, you can only witness their signature on the application. The officer will then send the application and the order to a magistrate, who has the authority 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:

1. Ask the applicant for some form of identification.
2. Immediately place the applicant on oath or affirmation.

The form of basic oath for this situation is:

.....

I swear that the contents of this document and any further information I may supply either orally or in writing are true and correct, so help me God.

.....

The affirmation for a warrant is:

.....

I, solemnly, sincerely and truly affirm and declare that the contents of this document and any further information I may supply either orally or in writing are true and correct.

.....

3. Read the application carefully. Check it gives the:
 - a. applicant's name, rank, registered number and station
 - b. information or evidence relied on to support the reasonable suspicion
 - c. type of offence in relation to which the search was conducted
 - d. nature of the thing sought that was reasonably suspected of being evidence of the commission of an offence
 - e. time, date and place of the search
 - f. description of anything seized because of the search
 - g. name, age and address of each person detained or searched, if known.
4. Witness the applicant's signature on the application by signing the application, affixing your seal of office and entering your registration number.
5. Enter the details in your logbook. Information that can be entered includes:
 - date and time the document was witnessed
 - type of document (that is, an *Application for a post-search approval order*)
 - details of the person making the *Application for a post-search approval order*
 - type of identification sighted
 - location of signing
 - questions you asked and answers given.

Note: You do not have any authority to request or retain a copy of a post-search approval order.

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 warrant is necessary. Remember: a search warrant must only be issued if the police are able to prove a search is both necessary and likely to produce the evidence they are seeking.

It is important you read the entire document.

Frequently asked questions

Can I refuse to issue a search warrant?

Yes. You should refuse to issue the warrant if you believe the police officer 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 application upon which you issue the warrant, you should also maintain a logbook of the actions you take, including any questions you ask and the answers you are given.

Remember, you do not have any authority to request or retain a copy of a search warrant.

What do I do if the occupier of the premises in the search warrant is known to me personally?

If you know personally or are related to the person who is occupying the premises that are to be searched, it creates a conflict for you, and you should refuse to issue the warrant. Direct the applicant to another JP (Qual).

You must not discuss the warrant with the occupier, or with anyone else. Enforcement action and criminal penalties could apply if it is proved you have done so.

Do I have to print my name on the search warrant?

Though you may be asked to print your name on the warrant, there is no requirement for you to do so.

When there is a gap on the warrant for the insertion of a name, the practice of some is to insert 'I, the undersigned'.

What happens when the search warrant is executed?

When the police enter and search the premises, they give the occupier a copy of the warrant and an occupier's notice, which sets out the occupier's rights under the terms of the search warrant.

Any property seized under the warrant is entered into a register at the police station.

Why are there different expiry times for search warrants?

To protect the rights of the occupier, the legislation distinguishes between cases where the evidence sought is believed to already be on the premises and cases where the evidence is merely expected to be there in the future.

A search warrant issued because there are reasonable grounds for suspecting there is evidence or property at a place ends at different times for different reasons.

- If the warrant is for stock—whether or not there is any other evidence mentioned in the warrant—the warrant expires 21 days after it is issued.
- If the evidence is already on the premises, the warrant expires seven days after it is issued.
- If there are reasonable grounds to suspect warrant evidence or property is likely to be taken to a place within the next 72 hours, this warrant ends 72 hours after it is issued.

Search warrant requested @ 2:16 pm

A search warrant is issued because there are reasonable grounds for suspecting there is evidence of the commission of an offence at a place	Days (extra time)	01.06.2017	Hours	A search warrant is issued because there are reasonable grounds for suspecting evidence of the commission of an offence is likely to be taken to a place within the next 72 hours and ends 72 hours after it is issued.
	1	02.06.17	24	
	2	03.06.17	48	
	3	04.06.17	72	Warrant expires 2:16pm
	4	05.06.17		
	5	06.06.17		
	6	07.06.17		
Warrant expires 12:00 midnight	7	08.06.17		
If the search warrant is for stock it expires 12:00 midnight	21	22.06.17		

Can I issue any type of search warrant?

No. You do not have authority to issue search warrants in the following circumstances:

- where structural damage may occur, only a Supreme Court judge can issue a search warrant under section 150(4) of the *Police Powers and Responsibilities Act 2000*
- where the search warrant orders a person in possession of documents at the place to give to the police officer all documents of a type stated in the warrant
- a search warrant that orders a person in possession of access information for a storage device in the person's possession to give a police officer the ability to access, use, examine or make a copy of the 'stored information'.

Note:

- **Access information** means information of any kind that it is necessary for a person to use to be able to access and read information stored electronically on a storage device.
- **Storage device** means a device of any kind on which information may be stored electronically.
- **Stored information** means information stored on a storage device.

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 officer can't attend, and record the reasons in your logbook.

It is important to remember this assistance does not fall within your role as a JP (Qual). If you are contacted by an 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

Forms

These are not publicly available.

Sample form

Application for Search Warrant (page 1 of 2)




QUEENSLAND POLICE SERVICE

APPLICATION FOR SEARCH WARRANT

Police Powers and Responsibilities Act 2000

Section 150



QP 0711
03/17
Δ1‡

Place where application is heard: _____

Applicant details

Family name: _____ Given name(s): _____

Rank: _____ Reg. no.: _____ Station/Est.: _____

Place to be searched

Description of place: _____

Occupier details

Is place to be searched occupied: Yes ☐ No ☐

If Yes – Is name of occupier known: Yes ☐ No ☐

If Yes – Name of occupier: _____

Details

Details of the offence or suspected offence or confiscation related activity to which the application relates or, for a forfeiture proceeding, the Act under which the proceeding may be started: _____

Things sought

Description of the nature of the thing sought that is reasonably suspected of being evidence of the commission of the offence or confiscation related evidence in relation to the confiscation related activity: _____

Grounds

Information or evidence being relied on to support a reasonable suspicion that evidence of the commission of an offence or the confiscation related evidence is at the place. _____

Previous warrant

- When and where the warrant was issued: _____
- Type of offence or confiscation related activity to which the warrant related: _____
- Whether anything was seized under a warrant or any proceeding started after a search: _____

Authority to exercise powers

Authority is sought to exercise power to search anyone found at the place for anything sought under the warrant that can be concealed on the person.

Reasons why it is necessary to exercise the power: _____

Authority is sought to exercise power to search anyone or anything in on or about to board, or be put on, a transport vehicle.

Reasons why it is necessary to exercise the power: _____

QP 0711 Application for Search Warrant

Page 1 of 2

Insert your signature and date

(Magistrate/Justice) (Date)

Indicate your qualification by crossing out
whichever is not applicable

Application for Search Warrant (page 2 of 2)

Authority is sought to exercise power to take a vehicle to, and search for evidence of the commission of an offence that may be concealed in a vehicle at, a place with appropriate facilities for searching the vehicle.

Reasons why it is necessary to exercise the power:

Authority to execute the warrant at night

Authority is sought to execute the warrant at night.

Reasons why it is necessary to execute the warrant at night:

I, the above applicant, apply for a search warrant under *Police Powers and Responsibilities Act 2000* with respect to the premises described in the application, and I declare the information set out in this application is true and correct to the best of my knowledge.

(Applicant's signature) _____
(Date)

Sworn before me at Time this Day day of Month, Year
(Time) (Day) (Month) (Year)

(Magistrate/Justice)

Insert your seal of office and your registration number beside or below your signature

Note: the imprint of your seal of office and registration number are mandatory

Insert your signature and date


(Magistrate/Justice)

(Date)

Indicate your qualification by crossing out whichever is not applicable

Sample form

Search Warrant (page 1 of 2)




QUEENSLAND POLICE SERVICE

SEARCH WARRANT

Police Powers and Responsibilities Act 2000

Section 151(a)(i)



QP 0712
03/17
Δ13

To
 Family name: _____ Given name(s): _____
 Rank: _____ Reg. no.: _____ Station/Est.: _____
 or all police officers of the Queensland Police Service.

I, a **Justice**, after hearing a sworn application by *Ensure the term 'Justice' has been selected*

 (Rank and name of applicant officer)

am satisfied there are reasonable grounds for suspecting warrant evidence or property is at the below mentioned place.

Details of place:

A police officer may lawfully exercise the following powers under this search warrant:

- power to enter the place stated in the warrant and to stay on it for the time reasonably necessary to exercise powers authorised under the warrant;
- power to pass over, through, along or under another place to enter the relevant place;
- power to search the relevant place for anything sought under the warrant;
- power to open anything in the relevant place that is locked;
- power to detain anyone at the relevant place for the time reasonably necessary to find out if the person has anything sought under the warrant;
- if the police officer reasonably suspects a person on the relevant place has been involved in the commission of an offence, power to detain the person for the time taken to search the place;
- power to dig up land;
- power to seize a thing found at the relevant place, or on a person found at the relevant place, that the police officer reasonably suspects may be warrant evidence or property to which the warrant relates;
- power to muster, hold and inspect any animal the police officer reasonably suspects may provide warrant evidence or property to which the warrant relates;
- power to photograph anything the police officer reasonably suspects may provide warrant evidence or property to which the warrant relates;
- power to remove wall or ceiling linings or floors of a building, or panels of a vehicle, to search for warrant evidence or property.

A police officer has the following power(s):

This search warrant is issued in relation to –

Details of warrant evidence or property that may be seized under this search warrant:

QP 0712 Search Warrant

Insert your signature and date

(Justice's signature)

(Date)

Page 1 of 2

Ensure the term 'Justice' has been selected

Search Warrant (page 2 of 2)

The warrant ends at midnight on _____, 7 days after it was issued, in accordance with
(Date)
section 155(1)(b) of the Act.

Given under my hand at Town or suburb
(Place)

(Date) _____
(Time) _____
(Justice's signature)

This section does not require any action by a JP and is completed after the search

The within warrant was executed at the within named place
on the _____ day of _____, _____.
(Day) (Month) (Year)

The warrant was executed on one

The occupier of the place was one

The warrant was executed by
Family name: _____ Given name(s): _____
Rank: _____ Reg. no.: _____ Station/Establishment: _____

QPS Use Only

Ref. No.: _____ Investigative Warrant Occ. No.: _____

QP 0712 Search Warrant

Insert your signature and date

(Justice's signature) _____
(Date)

Insert your seal of office and your registration number beside or below your signature
Note: the imprint of your seal of office and registration number are mandatory

Sample form

Application for Post-search Approval Order (page 1 of 2)



QUEENSLAND POLICE SERVICE

APPLICATION FOR POST-SEARCH APPROVAL ORDER

Police Powers and Responsibilities Act 2000
Section 161



QP 0713
07/06
Δ6

Place where application is heard: _____

Applicant's details

Family name: _____ Given name(s): _____

Rank: _____ Reg. no.: _____ Police station: _____

Search details

(Time) _____ (Date) _____

(Place) _____

Type of offence (or Act under which a forfeiture proceeding may be started): _____

Description / the nature of thing sought (thing must be reasonably suspected of being evidence of the commission of an offence): _____

Description of anything seized because of the search _____

Details of any person detained or searched (if known)

Family name: _____ Given name(s): _____

Date of birth: _____ Age: _____

Address: _____

Suburb/Town: _____ State: _____ Postcode: _____

Information about any proceeding started against a person, before or because of the search, for an offence in relation to which the search was conducted _____

If an order under the Act, for the retention, disposal, return or destruction of anything seized is sought, why the order should be made _____

Grounds for the approval _____

Application for Post-search Approval Order (page 2 of 2)

I, the above applicant, apply for a post-search approval order under the *Police Powers and Responsibilities Act 2000* with respect to the place described in the application, and I declare the information set out in this application is true and correct to the best of my knowledge.

(Applicant's signature)

(Date)

Sworn before me this _____ day of _____, _____
(Day) (Month) (Year)

(Magistrate/Justice)

*Indicate your qualification by crossing out
whichever is not applicable*

*Insert your seal of office and your registration number beside
or below your signature*

*Note: the imprint of your seal of office and registration
number are mandatory*

Sample form

Post-search Approval Order (page 1 of 1)

QUEENSLAND POLICE SERVICE

POST-SEARCH APPROVAL ORDER

Police Powers and Responsibilities Act 2000
Section 161

QP 0714
07/06
Δ3

To _____ of _____ .

I, **Name of Issuer** _____ , a magistrate, after hearing a sworn application by _____ , am satisfied that

† in the circumstances that existed before the search the police officer, before exercising the powers under the Act, had a reasonable suspicion for exercising those powers; and there was a reasonable likelihood that the evidence would be concealed or destroyed.

(or)

† having regard to the nature of the evidence found during the search it is in the public interest to make the order.

* I therefore make an order approving the search made by the applicant at
Place of Search _____
on _____ .
(Date)

* I refuse to make an order under this section approving this search.

* I order that the police officer ***retain/dispose of/return/destroy** the thing seized.

(Magistrate)

(Date) _____
(Time)

* Delete inapplicable.
† Delete inapplicable.

Note: You cannot sign a post-search approval order. Only a magistrate can. This is an example only.

QP 0714 Post-Search Approval Order

Page 1 of 1

Quick guide

Follow these steps to issue a search warrant

-
- ① Ask the applicant for identification.
 - ② Ask the applicant if any other JP has refused the search warrant application. If it has, only a magistrate can grant the warrant.
 - ③ Place the applicant on oath or affirmation. Warn the applicant of the penalties for making a false statement.
-
- Carefully read the entire application. Check it gives:
- a. the applicant's name, rank, registered number and station
 - b. a sufficient description of the place to be searched
 - c. the name of the occupier of the place, if relevant
 - d. a brief description of the offence the application relates to
- ④
 - e. a description of the type of evidence sought
 - f. evidence for suspicion
 - g. if the evidence is thought to be presently on the premises or likely to be there within the next 72 hours
 - h. full details of previous search warrants
 - i. reasons for exercising additional powers.
-
- ⑤ Question in detail why a search warrant is necessary, including the evidence sought, why it is suspected of being there, and the likelihood of it being found. Keep a record of further information in case it's needed.
-
- ⑥ If you refuse to issue the warrant, cross out the application and note your reasons on the form. Inform the officer in charge.
-
- ⑦ If you are satisfied the search warrant is justified, have the applicant sign the application. Remind the applicant they are under oath or affirmation.
-
- ⑧ Witness the applicant's signature by signing the application, affixing your seal of office and entering your registration number. You do not have to write your full name.
-
- ⑨ Retain the original of the application and keep it secure.
-
- Check the search warrant gives:
- a. the full name, rank, registered number and station of the applicant, as well as the basis of the application
- ⑩
 - b. the date of issue
 - c. 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)
 - d. the end date and time.
-
- ⑪ Sign the search warrant, affix your seal of office and enter your registration number.
-
- ⑫ Enter the relevant details in your logbook.
-

Quick guide

Follow these steps to witness a signature on an application for a post-search approval order

Note: You do not have power to approve the order.

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- ① Ask the applicant for identification.
 - ② Place the applicant on oath or affirmation. Warn the applicant of the penalties for making a false statement.
 - ③ Carefully read the entire application. Check it gives:
 - a. applicant's name, rank, registered number and station
 - b. information or evidence relied on to support the suspicion
 - c. type of offence
 - d. what was suspected of being evidence
 - e. time, date and place of the search
 - f. description of anything seized
 - g. name, age and address of each person detained or searched.
 - ④ Witness the applicant's signature by signing the application, affixing your seal of office and entering your registration number. You do not have to write your full name.
 - ⑤ Enter the relevant details in your logbook. You cannot retain a copy of the application.
-

