

5.2 Issuing a summons or warrant under the *Peace and Good Behaviour Act 1982*

What is the *Peace and Good Behaviour Act 1982*?

This Act is designed to protect the individual's right to peace and quiet, undisturbed by threats to their wellbeing or their quality of life.

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.

How do I issue a summons or warrant under this Act?

The people involved with an application under this legislation are:

- **complainant**—the person making the complaint and requesting the summons or warrant
- **JP (Qual)**—the person who issues the summons or warrant
- **defendant**—the person whom the complainant has named as causing the trouble.

Note: Only one complainant must be listed per complaint. If it is a husband and wife, then two complaint forms must be completed.

When approached to issue a summons to be served on a defendant, you should:

1. Ask the complainant for some form of identification.
2. Immediately place the complainant 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 summons 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 if you ask any further questions about the complaint, the complainant's answers are considered to be under oath. You should warn the complainant about the penalties for making false statements under oath.

3. Check there is the correct number of documents. For summonses, you need the original and two copies. The complainant will file the original and two copies with the court. The original complaint and summons becomes the court's record. The court may arrange for a police officer to serve a copy of the complaint and summons on the defendant. When the summons has been served, the police officer who served the documents will swear or affirm the oath of service (also known as the service copy) before either yourself or another JP. The police officer will then file this oath of service and a copy of the complaint with the court as proof it has been served.

For warrants, the original and one copy must be witnessed, as both are filed with the Magistrates Court.

Note: Issuing of a warrant in these matters is extremely rare and extreme caution should be displayed if you are considering this process.

4. Read the complaint section carefully. Check:
 - a. 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.
 - b. the material in the complaint is sufficient to satisfy you a summons or warrant is justified, that is:
 - (i) A threat has been made.
 - (ii) The complainant is genuinely afraid of the defendant.
 - (iii) The complaint is made within one year of the last threat.
5. 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.

Keep a record of any further information supplied to you under oath in case you need it later.

Note: If you decide to refuse to issue the summons or warrant, you should cross out the complaint and note your reasons on the form and in your logbook, and refer them to the registrar of the nearest Magistrates Court.
6. Once you are satisfied the complaint is justified, have the complainant sign it. Remind them they are under oath.
7. Witness the complainant's signature on the complaint or application. Affix your seal of office and enter your registration number and name. These are mandatory requirements of the *Justices of the Peace and Commissioners for Declarations Act 1991* and the *Peace and Good Behaviour Regulation 2010*.
8. Now decide whether you will issue a summons or a warrant. *If you contemplate issuing a warrant under this legislation, you must be satisfied that 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.
9. In the case of a summons, contact the Magistrates Court to arrange a mention date. A mention date is the date when the complainant and defendant first appear in court. Ensure the date is convenient to the court. Be careful not to set it during general public holidays, local public holidays (such as a show or exhibition) or during the Christmas–New Year court closure.
10. Complete the summons or warrant, and then check through it carefully. Ensure it:
 - a. gives the full name and address of the complainant and the basis for the complaint
 - b. is dated the day you issue it
 - c. gives the full name and address of the person to be served
 - d. shows the date, time and place of the court hearing.

11. Sign the summons or warrant. Affix your seal of office and enter your registration number and name. These are mandatory requirements of the *Justices of the Peace and Commissioners for Declarations Act 1991* and the *Peace and Good Behaviour Regulation 2010*.

Do not complete the oath of service in the reverse of the form at this time. It must only be signed after the document has been served on the defendant.

12. In the case of a summons, give the complainant the original and two copies, and check they know how to deal with them. Explain the complainant is responsible for filing the complaint and summons with the Magistrates Court. The complainant is required to pay a filing fee for the document. The copies are used to serve the defendant with a copy of the complaint and summons, and to provide the oath of service to the court as proof the summons has been served. Remind the complainant to request an extra copy of the complaint for their own records. In the case of a warrant, the complainant gives the original of the warrant to the police to arrange for the defendant to be arrested and taken before a court.

13. Enter the details in your logbook. Information that can be entered includes:

- date and time the document was witnessed
- type of summons
- details of the person requesting the summons
- type of identification sighted
- location of signing
- questions you asked and answers given.

Note: You do not have any authority to request, make or retain a copy of a complaint and summons or a warrant issued under this Act.

Things to bear in mind

Be careful about issuing a warrant under this legislation. 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. Issuing a warrant in these matters is extremely rare and extreme caution should be displayed if you are considering this process.

If you consider the threat to the complainant is so serious and you are contemplating issuing a warrant, you are entitled to ask the complainant if they have contacted the police and, if so, what the response was.

You may ask the police why no action was taken. The police may have considered taking action under the *Criminal Code*. Under the *Criminal Code*, an assault is constituted by striking, touching, moving or other application of force to another person (directly or indirectly) without the person's consent. It also includes a threat to apply force if there is an actual or apparent ability to carry out the threat.

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.

In order to satisfy yourself the grounds for the complaint are sufficient, you are entitled not only to question the complainant but also ask other people about the complaint.

Frequently asked questions

Can I keep or make copies of these documents for my records?

No. You do not have any authority to request or retain a copy of a complaint and summons or a warrant issued under this Act. 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.

Am I permitted to fill out details on the form?

Not in the complaint section. However, you are permitted to fill out the details in the summons or warrant part.

Is there an alternative action I can take?

Yes. You can make a referral to a dispute resolution centre if the complaint meets these criteria:

- You believe the matter would be better dealt with by mediation than proceeding to a Magistrates Court.
- The complaint relates to the quiet enjoyment of the complainant's property.
- The complainant consents to the matter being referred to mediation.
- There is a dispute resolution centre in the district where the complaint is made that is able to mediate the matter.
- The complainant wishes to attempt mediation.

The complainant should then contact a dispute resolution centre to arrange mediation.

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 I know the defendant?

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

Sample form

Peace and Good Behaviour Act—Complaint (page 1 of 2)

Form 1
QUEENSLAND
PEACE AND GOOD BEHAVIOUR ACT 1982
(Section 4)
PEACE AND GOOD BEHAVIOUR REGULATION 2010
(Sections 8 and 12)

COMPLAINT

I, _____ (the complainant)
of _____ in the State of Queensland
swear/affirm that _____ of _____

1. has threatened:

- (a) to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant
- (b) to procure any other person to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant
- (c) to destroy or damage any property of the complainant
- (d) to procure any other person to destroy or damage any property of the complainant

and the complainant is in fear of the person complained against namely _____

OR

2. that the intentional conduct of _____ (the defendant) directed at the complainant has caused the complainant to fear that the defendant will destroy or damage any property of the complainant.

The grounds of the complaint are:

.....

.....

.....

.....

.....

.....

.....

.....

.....

I, **Insert full name** _____ (the complainant) request
that **Insert full name** _____ (name of Justice of the Peace) proceed according
to law

.....
(Signature of the complainant)

.....
Town or suburb _____ **Insert day** _____ **month and year** _____

SWORN/AFFIRMED before me at _____ in the State of Queensland on the _____ day of _____

.....
(Signature of Justice of the Peace)

Indicate if the document was sworn or affirmed

Indicate if the document was sworn or affirmed

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

Form 1, Version 2, 30/09/2010

Sample form

Peace and Good Behaviour Act—Summons (page 2 of 2)

Form 2
QUEENSLAND
PEACE AND GOOD BEHAVIOUR ACT 1982
(Section 4)
PEACE AND GOOD BEHAVIOUR REGULATION 2010
(Sections 9 and 12)

SUMMONS

To: _____ (the defendant)
of _____ in the State of Queensland

A complaint has been made before me and it has been substantiated to my satisfaction that on
Insert day, month and year at **Town or suburb**

1. you threatened—
(a) to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant
(b) to procure any other person to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant
(c) to destroy or damage any property of the complainant
(d) to procure any other person to destroy or damage any property of the complainant
and the complainant is in fear of you.

OR—
2. That the intentional conduct of the defendant directed at the complainant has caused the complainant to fear that the defendant will destroy or damage any property of the complainant.

You, the defendant, are hereby directed to appear before the Magistrates Court at:
Place:
Date:
Time:
to answer the complaint and to be further dealt with according to law.

GIVEN under my hand at
Place: **Town or suburb**
Date: **Insert day, month and year**

.....
(Signature of Justice of the Peace)
Insert full name
.....
(Name of Justice of the Peace)

OATH OF SERVICE

I,
of
do swear that on the _____ day of _____, 201 , I served the within-named defendant with a copy of the within summons and copy of the complaint whereon the said summons was issued by:
* (a) delivering a copy thereof to the defendant personally at:
* (b) leaving a copy thereof with
for the defendant at
* the usual place of * residence/ * business
* the place of * residence/ * business last known to me
of the defendant who could not reasonably be found.

Signed and *sworn/affirmed by the said deponent at _____ this _____ day of _____, 201

.....
Deponent Justice of the Peace

* Delete whichever is not applicable

Form 2, Version 2, 30/09/2010

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

Note: Oath of service can only be witnessed after the complaint has been served on the defendant

Quick guide

Follow these steps to issue a summons or warrant under the *Peace and Good Behaviour Act 1982*

①	Ask for identification.
②	Immediately place the complainant on oath or affirmation.
③	<p>Check there are three copies of the summons—an original and two copies.</p> <p>a. For warrants, one original and one copy should be witnessed.</p> <p>Thoroughly read the entire complaint section. Check:</p> <p>a. The Act or Regulation is at the top of the form. You can ask to see details.</p> <p>b. The complaint is enough to satisfy you the warrant or summons is justified, that is:</p> <p>i. A threat has been made.</p> <p>ii. The complainant is genuinely afraid of the defendant.</p> <p>iii. The complaint is dated within one year of the last threat.</p> <p>c. You may refer the complainant to a dispute resolution centre for mediation if these criteria are met.</p> <p>i. You believe the complaint would be better dealt with by mediation than court.</p> <p>ii. The complainant simply wishes to quietly enjoy their property.</p> <p>iii. The complainant agrees the matter should go to mediation and wishes to attempt it.</p> <p>iv. There is a convenient dispute resolution centre.</p>
⑤	<p>Ask questions to clarify how the threats have been made and the effect on the complainant.</p> <p>a. Keep a record in your logbook of this information.</p>
⑥	<p>If you are satisfied the complaint is justified, remind the complainant they are under oath and then ask them to sign.</p> <p>a. If you are not satisfied, cross out the complaint, note your reasons on the form and refer the complainant to the registrar of the nearest Magistrates Court.</p>
⑦	Witness the signature, and affix your seal of office and add your full name and registration number.
⑧	<p>Now decide if you will issue a summons or a warrant.</p> <p>a. A warrant authorises police to take the defendant into custody, so ask the complainant if they have talked to police and what the response was. You may also contact the officer to question them.</p>

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- 9 If you're issuing a summons, contact the Magistrates Court to arrange a mention date.
- a. Check the date does not clash with public holidays or court closures, such as Christmas–New Year.
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Complete the summons or warrant and check it through carefully for:

- a. the complainant's full name, address and details of complaint
- 10 b. today's date
- c. full name and address of the person to be served
- d. full address, date and time of the court hearing.
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- Sign the summons or warrant, affix your seal of office, and add your registration number and name.
- 11 a. Do not complete the oath of office on the reverse of the form. This is only signed after the defendant has been served with the document.
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Give the complainant their copies back.

- a. For a summons, the complainant receives the original and two copies. Explain they are responsible for filing the complaint and summons with the Magistrates Court, and for paying a filing fee. Remind the complainant to request a copy for their records.
- 12 b. For a warrant, the complainant receives an original and a copy, and gives the original to police for the defendant to be arrested.
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- 13 Enter all relevant details in your logbook.
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