

5.3 Issuing warrants under the *Animal Care and Protection Act 2001*

What is the *Animal Care and Protection Act 2001*?

The *Animal Care and Protection Act 2001* promotes the responsible care and use of animals and protects animals from cruelty.

What is a warrant under the Act?

A warrant under the *Animal Care and Protection Act 2001* allows an inspector to enter a premise named in the warrant to search for evidence of an offence described by the Act.

How do I issue a warrant under the Act?

You may be approached by an inspector from the Royal Society for the Prevention of Cruelty to Animals (RSPCA) or Biosecurity Queensland (a service of the Department of Agriculture, Fisheries and Forestry) to hear an application for a warrant to search a particular place in relation to an offence under the *Animal Care and Protection Act 2001*. The process for issuing a warrant under this Act is very similar to issuing a warrant under the *Police Powers and Responsibilities Act 2000*, in that the application must be sworn and state the grounds on which the warrant is sought.

Section 127 of the *Animal Care and Protection Act 2001* states that, before issuing the warrant, you must be satisfied there are reasonable grounds for suspecting there is:

- (a) a need to enter the place for which the warrant is sought to relieve an animal in pain, or
- (b) there is a particular animal or other thing or activity (the evidence) that may provide evidence of an offence against this Act and the evidence is at the place, or, within the next 7 days, may be at the place.

Therefore, the inspector must provide reasonable grounds in the application to substantiate the issue of the warrant. If you are not satisfied there are reasonable grounds from the information provided to you, you must refuse to witness the application form and state your reasons on it.

When approached to issue the warrant, you should:

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

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

3. Read the application carefully. Check that it gives:
 - a. the applicant's name and address
 - b. a sufficient description of the place and/or location to be searched to correctly identify the premises
 - c. details of the occupier (if known)

- d. a brief description of the animal or offence that the application relates to and why there are reasonable grounds to believe there is an animal in pain at the premises
 - e. a description of why there are reasonable grounds to believe there is a particular animal or thing or activity that may provide evidence of an offence
 - f. details about the evidence that is thought to be presently at the location or likely to be there within the next seven days. This will affect the expiration time of the warrant.
4. Ask the applicant any questions that are needed to clarify why the warrant is necessary, the type of evidence sought and if the search is likely to yield this evidence. Here are some questions to guide you:
- How did you identify the premises?
 - Is your source of information reliable?
 - What evidence do you have to substantiate the warrant?
 - How did you determine the name of the occupier (if there is one)?
 - What are you looking for and why?
 - How did you identify what type of animal it is?
- It is important to keep a record of any information supplied to you under oath. You may need to refer to this at a later date.
5. Once you are satisfied the warrant is justified, have the applicant sign the application.
6. Witness the applicant's signature on the application by signing it, affixing your seal of office and entering your registration number.
7. Complete the warrant and check through it carefully. Ensure the warrant gives:
- a. the full name of the applicant
 - b. the address of the place and/or location to be searched
 - c. details of the occupier (if known)
 - d. the hours of the day or night when the premise may be entered
 - e. the evidence that may be seized under the warrant
 - f. the time the warrant will expire. (The warrant will expire seven days after being issued.)
8. Sign the warrant, affix your seal of office and enter your registration number.
9. Enter the details in your logbook. Information that can be entered includes:
- date and time the document was witnessed
 - type of warrant sought
 - details of the person requesting the warrant
 - 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 search warrant.

What is a 'special warrant' under the Act?

Section 128 allows an inspector to apply for a special warrant by electronic communication, fax, phone, radio or another form of communication if the inspector considers it necessary because of urgent circumstances.

The inspector must still prepare the application stating the grounds on which the warrant is sought and may apply for the warrant before the application is sworn.

If you issue a special warrant, you must immediately communicate by fax or email a copy to the inspector if it is reasonably practicable to do so. If it is not practicable to do so (for example, you do not have access to a fax machine or email) you must tell the inspector what the terms of the warrant are and the date and time the warrant ends.

Things to bear in mind

When issuing a warrant under this legislation, you must not act mechanically or as a mere rubber stamp. It is your duty to ensure the issue of the warrant is substantiated and justified to you.

This is one of the occasions when you must read the entire document. You would be failing in your duty if you did not read the entire document.

Frequently asked questions

Do I have to print my name on the warrant?

No. There is no requirement for you to print your name on the warrant.

How often will I be called upon to issue a warrant under the Act?

The RSPCA receives around 12,000 complaints each year with many of these complaints leading to prosecution under the legislation. The applicant must demonstrate and satisfy you there is a need for a warrant under the legislation. You must exercise your judicial discretion.

Can I refuse to issue a warrant under the Act?

Yes. You should refuse to issue the warrant if you believe the applicant has not sufficiently substantiated the information in the application to justify its issue.

Can I ask the applicant questions to clarify the information in the application for the warrant?

Yes. It is important when issuing a warrant under the *Animal Care and Protection Act 2001* that you ask any questions required to clarify the information presented to you. This will assist you in determining an application for a warrant under this legislation.

Where can I get more information?

Queensland legislation

www.legislation.qld.gov.au

Department of Agriculture and Fisheries

www.daf.qld.gov.au

Queensland business and industry portal

www.business.qld.gov.au

Forms

Warrants are not available as public documents.

Quick guide

Follow these steps to issue a warrant under the *Animal Care and Protection Act 2001*

- ① Ask the applicant—who must be an RSPCA or Biosecurity Queensland inspector—for identification.
- ② Place them under oath or affirmation.

Read the application carefully, checking for:
 - a. applicant's name and address
 - b. description of the location to be searched sufficient to correctly identify it
 - c. details of the occupier (if known)
- ③
 - d. brief description of the animal or offence and why there are reasonable grounds to believe an animal is in pain at the premises
 - e. description of why there are reasonable grounds to believe there is a particular animal or thing or activity (the evidence) that may provide evidence of an offence
 - f. details of the evidence thought to be at the location now or likely to be there within the next seven days. This will affect the expiration time of the warrant.
- ④ Ask questions to clarify why the warrant is necessary e.g. How did you identify the premises? Is your source reliable? What are you looking for and why?
 - a. Keep a record in your logbook of this information.
- ⑤ If you are satisfied the warrant is justified, remind the applicant they are under oath and ask them to sign the document.
- ⑥ Witness the signature by signing, affixing your seal of office and adding your registration number.

Now complete the warrant and check it thoroughly for:
 - a. applicant's full name
 - b. address of the place and/or location to be searched
- ⑦
 - c. occupier's details (if known)
 - d. hours of the day or night the premise may be entered
 - e. evidence that may be seized
 - f. when the warrant will expire (seven days from issue).
- ⑧ Sign the warrant, affix your seal and enter your registration number.

If it is a special warrant because of urgent circumstances, you may:
- ⑨
 - a. issue the special warrant before the application is sworn
 - b. immediately communicate a copy to the inspector by fax or email.
- ⑩ Enter all relevant details in your logbook.