

## 5.5 Issuing arrest warrants

### What is an arrest warrant?

An arrest warrant (also known as a ‘warrant in the first instance’) authorises a police officer to arrest a particular person, take that person into custody and then bring them before a court to be dealt with according to the law.

The arrest warrant is usually in a prescribed form and consists of two parts, and remains in force until executed or withdrawn.

The complaint in writing must be made under oath or affirmation and contains the information required to substantiate the issuing of the warrant.

The warrant itself contains details about the person to be arrested and may include the time and place of the court hearing.

There are other types of warrants, including bail warrants, warrants of commitment, warrants of imprisonment and search warrants.

### Why would an arrest warrant be issued?

An arrest warrant is issued to bring a person to court when either a ‘notice to appear’ or a ‘summons’ would be unlikely to have the desired result. This could be when:

- It is reasonable to believe the person will not voluntarily surrender to the custody of the court.
- The police are unable to find them to serve them with a summons. (A warrant allows any police officer anywhere in the state to arrest the person named in the warrant.)
- It is considered the defendant could harm someone (including himself or herself) if not immediately placed into custody.

Most arrest warrants are issued when the charge is for an indictable offence.

If you believe an arrest warrant is not justified and that a summons will suffice in getting the defendant before the court, you should only issue a summons.

It would be advisable to issue a warrant if the defendant was in the process of absconding from the jurisdiction of the court.

If the charge is for a simple offence, however, the court can usually proceed to hear and determine the matter without the defendant being present—it deals with the matter ‘ex parte’. For most simple offences, you would not have the authority to issue an arrest warrant, unless police have authority from the chief executive of another government department.

## The legislation

The *Justices Act 1886* states you have the authority to issue an arrest warrant for an indictable offence. It also states you may issue a warrant for a simple offence **only** if the Act under which the offence is created authorises the arrest of the offender (either without warrant or with an arrest warrant). With simple offences, you should always first ask the police officer concerned to show you the part of the Act that authorises the issue of a warrant.

Section 370 of the *Police Powers and Responsibilities Act 2000* provides that:

1. *A police officer may apply to a justice for a warrant to arrest a person for an offence ('arrest warrant');*
- (3) *The application must be sworn and state the grounds on which the warrant is sought;*
- (4) *If the application—*
  - (a) *relates to an offence other than an indictable offence; and*
  - (b) *is made because the applicant reasonably believes proceeding or continuing to proceed against the person named in the application by complaint and summons or notice to appear would be ineffective; the application must state the belief and the reasons for the belief;*
- (5) *The justice may refuse to consider the application until the police officer gives the justice all the information the justice requires about the application in the way the justice requires.*

Section 371 states:

*The justice may issue an arrest warrant only if satisfied there are reasonable grounds for suspecting—*

- (a) *that the person has committed the offence; and*
- (b) *for an offence other than an indictable offence, proceedings by way of complaint and summons or notice to appear for the offence would be ineffective, including because the person can not currently be located or served with a complaint and summons or notice to appear for the offence.*

Section 372 states:

- (1) *An arrest warrant must state the following-*
  - (a) *the name of the applicant for the warrant and the applicant's rank, registered number and station;*
  - (b) *that any police officer may arrest the person named in the warrant;*
  - (c) *the offence the person is alleged to have committed.*
- (2) *It is sufficient to describe an offence in the words of the law defining it, or in similar words.*
- (3) *A description of persons or things that would be sufficient in an indictment is sufficient in an arrest warrant.*

## How do you issue an arrest warrant?

The process of issuing an arrest warrant is very similar to issuing a summons. The same principle of exercising judicial discretion applies in both cases. Extra care should be taken with arrest warrants because they permit police officers to take people into custody.

When you issue an arrest warrant, you should apply the same principles that govern the witnessing of documents, such as verifying the identity of the signatory. Again, you have added responsibilities.

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

1. An offence has occurred within Queensland.
2. The offence exists in Queensland law.
3. All elements of the offence are included in the complaint under which the warrant is issued.

There are three people principally involved:

1. **Complainant**—the person applying for an arrest warrant on oath or affirmation
2. **JP (Qual)**—the person issuing the warrant (or, if the warrant is requested in a Magistrates Court, a magistrate)
3. **Defendant**—the person being charged with an offence.

When you're approached to issue an arrest 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 for this situation is:

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*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.*

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The affirmation for a warrant is:

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*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.*

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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 are two copies of the complaint (that is, the original and one copy), and one of the warrant. (When you have issued the warrant, the applicant will give you a copy of the complaint. Police will file the original of the complaint with the court and the warrant will be shown to the defendant during the arrest.)
4. Read the entire arrest warrant complaint 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 includes:
  - a. the name, rank, registered number and station of the applicant
  - b. full details of the offence and the legislation that creates it
  - c. the name and date of birth of the person named in the warrant
  - d. 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 application as long as they are related and each offence is covered in a separate paragraph.
5. Ask the complainant any questions you need to clarify what offence is involved and what evidence there is the defendant committed it.

If the offence is for an armed robbery, for example, the complaint should give the name and the date, time and place of the offence, and mention any relevant details, such as how the defendant was armed and whether anyone was injured.

Here are some questions to guide you:

- How did you receive your information?
- Is it reliable?
- How did you identify the defendant?
- How did you get the defendant's particulars?

- What evidence do you have that an offence was committed?
- Are all the elements of the offence included in the complaint?
- Do you have a copy of the relevant Act?
- Can a warrant be issued for this offence? (Is it a simple or indictable offence?)
- Would a summons suffice on this occasion?

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 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.

6. Once you are satisfied the warrant is justified, have the complainant sign the complaint. Remind them they are under oath or affirmation.
7. Witness the applicant's signature on the arrest warrant complaint by signing the warrant, affixing your seal of office and entering your registration number.
8. Ensure you retain the original of the complaint and keep it in a secure place. There is no requirement for a copy of the warrant to be retained by you, nor is a copy provided for you.
9. Complete the warrant and check through to ensure it:
  - gives the full name, rank, registered number and station of the complainant
  - includes the basis of the complaint
  - is dated the day you issued it
  - includes the full name and date of birth of the defendant.
10. Sign the 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*. You do not have any authority to request or retain a copy of the warrant.
11. Enter the details in your logbook. Information that can be entered includes:
  - a. date and time the document was witnessed
  - b. type of warrant
  - c. details of the person requesting the warrant
  - d. type of identification sighted
  - e. location of signing
  - f. questions you asked and answers given.

## Things to bear in mind

When issuing an arrest 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 and, in the case of the complaint, there is sufficient evidence to substantiate the allegations made by the complainant.

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.

## Frequently asked questions

### Can I issue a summons instead of a warrant?

Yes, if you believe a summons would be sufficient to bring the defendant to court, you should issue a summons rather than an arrest warrant.

### Should I keep a record of the warrants I issue?

As well as keeping, in a secure place, the copy of the sworn complaint 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 an arrest warrant.

### What do I do if I know the defendant?

If you know personally or are related to the person who is the subject of the complaint, it creates a conflict for you and you should refuse to issue the warrant. Direct the complainant to another JP (Qual).

**You must not discuss the warrant with the person or with anyone else.**

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

No, there is no requirement to print your name on the warrant.

### What happens after the warrant is executed?

An arrest warrant directs the police officer to take the person named in the warrant before a magistrate to be dealt with according to law. This means the person must appear before a Magistrates Court.

The arrest warrant remains in force until it has been executed or withdrawn.

## Where can I get more information?

Queensland legislation

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

Queensland Police Service


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

## Forms


Arrest warrants are not available as public documents.

## Sample form

### Arrest Warrant Application (page 1 of 1)



**QUEENSLAND POLICE SERVICE**  
**ARREST WARRANT APPLICATION**  
*Police Powers and Responsibilities Act 2000*  
Section 370



QP 0724  
07/06  
Δ7\*

Place where application is heard: \_\_\_\_\_

Details of applicant police officer:

Full name: \_\_\_\_\_

Rank: \_\_\_\_\_

Registered number: \_\_\_\_\_

Station: \_\_\_\_\_

Name of person: \_\_\_\_\_

DOB: \_\_\_\_\_

The offence(s) the person named in this application is alleged to have committed:

Statute: \_\_\_\_\_ Section: \_\_\_\_\_ Title: \_\_\_\_\_

The grounds on which the warrant is sought:

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

I, the above applicant, declare the information set out in this application is true and correct to the best of my knowledge.

And I apply for an Arrest Warrant with respect to the person mentioned in this application.

\_\_\_\_\_  
(Applicant's signature)

\* Sworn / Affirmed before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(Day) (Month) (Year)

Indicate if the document was sworn or affirmed

\_\_\_\_\_  
(Signature of Justice / Magistrate)

\_\_\_\_\_  
(Name of Justice / Magistrate)

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

Indicate your qualification by crossing out whichever is not applicable

QP 0724 Arrest Warrant Application Page 1 of 1

## Sample form

### Arrest Warrant (page 1 of 1)

**QUEENSLAND POLICE SERVICE**

**ARREST WARRANT**  
*Police Powers and Responsibilities Act 2000*  
 Sections 371, 372

QP 0725  
07/06  
Δ9‡

To \_\_\_\_\_ of \_\_\_\_\_, or  
 (Rank, name and reg. no. of applicant officer) (Police Station)  
 all police officers of the Queensland Police Service.

I, a justice / magistrate, after hearing a sworn / affirmed  
 application by \_\_\_\_\_ am satisfied there  
 (Rank and name of applicant officer)  
 are reasonable grounds for suspecting \_\_\_\_\_  
 (Name of person) and (DOB)  
 has committed the offence of  
 Statute: \_\_\_\_\_ Section: \_\_\_\_\_ Title: \_\_\_\_\_

Any police officer may arrest \_\_\_\_\_, the person named in this warrant.

Given under my hand at \_\_\_\_\_ on \_\_\_\_\_.  
 (Place) (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

\_\_\_\_\_  
 (Signature of Justice / Magistrate)

‡The imprint of a 'Seal of Office'  
 and the person's registered  
 number of office.  
 Justice of the Peace

Indicate your qualification by crossing  
 out whichever is not applicable

‡ If applicable [To be used where this document is given by a Justice of the Peace]

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Indicate  
if the  
document  
was sworn  
or affirmed

## Quick guide

### Follow these steps to issue an arrest warrant

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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 Check there are two copies (one original and one copy).
  - Carefully read the entire application. Check it gives details of:
    - a. the applicant's name, rank, registered number and station
    - b. full details of the offence and the legislation that creates it
    - c. name, date of birth, occupation and address of the person named in the warrant
    - d. one offence only, unless all offences are related or part of the same incident. (More than one indictable offence can be included on a single application as long as they are related and each is covered in a separate paragraph.)
  - ⑤ Ask any questions you need to clarify the offence involved and why the defendant is suspected of it. Keep a record of further information.
  - 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 arrest warrant is justified, have the applicant sign the complaint. Remind them 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 (not the copy) of the complaint and keep it secure.
  - Check the arrest warrant gives:
    - a. the full name, rank, registered number and station of the complainant
    - b. basis of the complaint
    - c. date of issue
    - d. the full name, date of birth of the defendant.
  - ⑪ Sign the warrant, affix your seal of office and enter your registration number.
  - ⑫ Enter the relevant details in your logbook.
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