

HANDBOOK

Duties of Justices of the Peace (Qualified)

NAME



Duties of Justices of the Peace (Qualified) handbook

October 2021

Acknowledgements

Justices of the Peace Branch wishes to thank the many people and organisations who lent their knowledge and expertise to this publication. In particular, we are grateful for the assistance provided by:

- Department of Agriculture and Fisheries
- Department of Communities, Child Safety and Disability Services
- Department of Immigration and Border Protection, Australian Border Force
- Department of Natural Resources and Mines
- Family Court of Australia
- Office of Public Guardian
- Queensland Courts Service
- Queensland Family and Child Commission, Blue Card Services
- Queensland Health
- Queensland Police Service
- Registry of Births, Deaths and Marriages
- RSPCA Queensland
- The Public Trustee
- Victim Assist Queensland.

Disclaimer

This handbook has been prepared by the Department of Justice and Attorney-General (Justices of the Peace Branch) for the State of Queensland. While every care has been taken in relation to its accuracy, no warranty is given or implied. Further, it contains guidelines only and does not constitute legal advice.

Changes may be made to the law after the date of publication of this handbook. The Department of Justice and Attorney-General will periodically revise this handbook and provide notification and content updates online at www.qld.gov.au/jphandbook.

Copyright

© The State of Queensland (Department of the Premier and Cabinet) 2017

Published by the Queensland Government, June 2017, 100 George St, Brisbane, Qld, 4000.



Unless otherwise noted, all copyright material in this document is licensed under a [Creative Commons Attribution-Non-commercial-No Derivatives 4.0 International License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

You are free to reproduce the copyright material in this document in line with the licence terms. You must keep the copyright notice on the copyright material and attribute the State of Queensland as the source of the copyright material. The copyright material must not be altered or used for commercial purposes.

Copyright enquiries about this publication should be directed to the Department of Premier and Cabinet by email to copyright@premiers.qld.gov.au or in writing to PO Box 15185, City East, Qld, 4002.

ISBN 978-0-9757732-3-9

1	Introduction	
1.1	Welcome to your JP guide	JUN17
1.2	Services for you	JUN17
2	Your role as a Justice of the Peace	
2.1	Historical and social context of your role	JUN17
2.2	Eligibility and conduct	OCT21
2.3	Your role and responsibilities in the community	JUN17
2.4	Record-keeping and logbooks	OCT21
2.5	Queensland courts	JUN17
2.6	Assisting people from culturally and linguistically diverse backgrounds	JUN17
2.7	Assisting people with disabilities	JUN17
3	Certifying copies	
3.1	Certifying copies of documents	NOV20
4	Witnessing	
4.1	Witnessing documents—general procedure	JUN17
4.2	Witnessing statutory declarations	JUN17
4.3	Camera-detected offence notice—statutory declarations	JUN17
4.4	Witnessing applications under the <i>Domestic and Family Violence Protection Act 2012</i>	JUN17
4.5	Witnessing blue card applications	JUN17
4.6	Administering oaths and affirmations	JUN17
4.7	Witnessing affidavits	JUN17
4.8	Witnessing family law documents	JUN17
4.9	Witnessing general powers of attorney, enduring powers of attorney and advance health directives documents	NOV20
4.10	Witnessing wills	JUN17
4.11	Witnessing Titles Registry forms	OCT21
4.12	Witnessing international, Commonwealth and interstate documents	JUN17
4.13	Witnessing the consent to the marriage of a minor	JUN17
5	Warrants, summonses and orders	
5.1	Issuing summonses	JUN17
5.2	Issuing a summons or warrant under the <i>Peace and Good Behaviour Act 1982</i>	JUN17
5.3	Issuing warrants under the <i>Animal Care and Protection Act 2001</i>	JUN17
5.4	Issuing search warrants	JUN17
5.5	Issuing arrest warrants	JUN17
6	Other times your services may be required	
6.1	Attending a record of interview	JUN17
6.2	Granting extensions of detention periods	JUN17
6.3	Your powers under the <i>Customs Act 1901</i>	JUN17
6.4	Granting and refusing bail	JUN17
6.5	Hearing a bail application	JUN17
6.6	Sureties and security	JUN17
7	References	
7.1	Further information	OCT21
7.2	Glossary of terms and acronyms	JUN17
8	Index	
8.1	Index	OCT21



SECTION 1

Introduction





SECTION 1

Introduction

1.1	Welcome to your JP guide	JUN17
1.2	Services for you	JUN17

1.1 Welcome to your JP guide

This handbook is a guide for Justices of the Peace (Qualified).

It has been written to provide you with a clear understanding of what is expected of you in your role and a day-to-day reference to help you perform your duties responsibly, correctly and consistently.

Justice of the Peace has, at times, been abbreviated to JP and Commissioner for Declarations to Cdec. The term JP may also refer to any number of the separate JP positions listed in section 2.1.

You'll note there are other abbreviations used throughout the handbook. Each is defined the first time it's used and it is also listed in the glossary in section 7.2.

How to use this handbook

The handbook describes your role in the community and then deals chapter by chapter with your duties, your special responsibilities and your conduct.

Each of the chapters dealing with your duties is divided into:

- 'What...?' (giving a definition of the subject)
- 'Why...?' (explaining the reason or purpose)
- 'How...?' (explaining the procedure).

You'll also find sections on things to bear in mind, frequently asked questions and where to find more information.

Table of contents

Number and name of section	Chapter names	Date stamp of last update
1 Introduction		
1.1	Welcome to your JP guide	JUN17
1.2	Services for you	JUN17
2 Your role as a Justice of the Peace		
2.1	Historical and social context of your role	JUN17
2.2	Eligibility and conduct	OCT21
2.3	Your role and responsibilities in the community	JUN17
2.4	Record-keeping and logbooks	OCT21
2.5	Queensland courts	JUN17
2.6	Assisting people from culturally and linguistically diverse backgrounds	JUN17
2.7	Assisting people with disabilities	JUN17
3 Certifying copies		
3.1	Certifying copies of documents	NOV20
4 Witnessing		
4.1	Witnessing documents—general procedure	JUN17
4.2	Witnessing statutory declarations	JUN17
4.3	Camera-detected offence notice—statutory declarations	JUN17
4.4	Witnessing applications under the <i>Domestic and Family Violence Protection Act 2012</i>	JUN17
4.5	Witnessing blue card applications	JUN17
4.6	Administering oaths and affirmations	JUN17

Section table of contents

SECTION 4 Witnessing

Section number	Chapter number	Chapter name	Date
4.1		Witnessing documents—general procedure	JUN17
4.2		Witnessing statutory declarations	JUN17
4.3		Camera-detected offence notice—statutory declarations	JUN17
4.4		Witnessing applications under the <i>Domestic and Family Violence Protection Act 2012</i>	JUN17
4.5		Witnessing blue card applications	JUN17
4.6		Administering oaths and affirmations	JUN17
4.7		Witnessing affidavits	JUN17
4.8		Witnessing family law documents	JUN17

This is the date of the last update to this chapter. When we update a chapter, we'll also update this contents page for you to replace.

Footer

9	initial them.
9	a. Check for annexures and mark them. a. If the annexures are for an affidavit under the <i>Uniform Civil Procedures Rules 1999</i> , then both you and the signatory must also sign them.
10	Warn the signatory they must tell the truth.
11	Administer the oath, affirmation or statutory declaration.
12	Ask the signatory to sign the document in front of you.
13	Sign the document and insert your registration number wherever a signature is required. Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature). a. If the signatory has asked you to not check the document, state this in writing before signing.
14	Enter all relevant details in your logbook.

1.2 Services for you

Justices of the Peace Branch

As regulator of the *Justices of the Peace and Commissioners for Declarations Act 1991*, the Justices of the Peace Branch (JP Branch) manages the application process for people seeking to be appointed as Justices of the Peace or Commissioners for Declarations throughout Queensland. Such appointments are then subject to the consideration of the Attorney-General and the Governor in Council.

The JP Branch is focused on compliance and support for all JPs and Cdecs and provides professional development and mentoring to enable this. It also administers the JPs in the Community program.

JP Branch provides best-practice witnessing procedures to all JPs and Cdecs. The branch is responsible for all official publications such as handbooks, technical bulletins, JP bulletins and other publications that assist JPs and Cdecs to provide a consistently high-quality service to the community.

JPs in the Community program

The JPs in the Community program was launched in 2003 for JPs and Cdecs to volunteer their services at community venues across the state.

JPs in the Community signing locations are at various venues throughout Queensland, including major shopping centres, libraries, courthouses and universities.

Volunteers who participate in this program are covered by the Queensland Government's liability insurance. Additionally, the JP Branch supplies resources such as stamps, logbooks and other items needed to witness documents to the sites.

Professional development

JP Branch holds free workshops and seminars throughout the year to help JPs and Cdecs improve their knowledge and keep their skills up to date.

Professional development workshops are also available from membership associations. Please refer to the respective website for details.

www.qld.gov.au/jpprofessionaldevelopment

Mentoring

The JPs in the Community mentoring program is an initiative designed to assist newly appointed JPs and Cdecs and those who are re-entering the system or refreshing their knowledge. An experienced JP or Cdec will sit with you while you undertake your duties, providing you with one-on-one mentoring.

www.qld.gov.au/jpmentor

JP bulletin

The *JP Bulletin* is published every quarter. It informs JPs and Cdecs in Queensland about changes in legislation and witnessing procedures, provides information and alerts, and recognises the work you do for the community.

www.qld.gov.au/jpbulletin

Technical bulletin

Technical bulletins are released periodically in response to changes in JP and Cdec responsibilities or legislation. They are also published ad-hoc in response to changes in witnessing procedures, issues and other items such as reminders about specific responsibilities.

www.qld.gov.au/jptechnicalbulletin

JP mobile app

JP Branch has its own JP app. Through this free mobile app, anyone can access valuable information, including how to register for workshops, the JP and Cdec handbooks, and technical bulletins.

www.justice.qld.gov.au/jpapp

JP and Cdec merchandise

As a JP or Cdec, you need items that identify you so the public knows the important role you carry out in our community.

The seal of office stamp is licensed to the Queensland Government and is only available from JP Branch. Other merchandise and stamps are available from a variety of organisations including JP Branch and membership associations. Please refer to the website for details.

www.qld.gov.au/jpshop

Update my JP or Cdec details

It is important you keep JP Branch up to date with your contact details. You can do this online.

Updating your details will mean JP Branch can keep you informed about dates and locations of professional development, updates related to your responsibilities, latest news and more.

www.qld.gov.au/updatejpdetails

Resign as a JP

If you are no longer able to be actively involved as a JP or Cdec due to time constraints, family commitments, illness or other reasons, you can advise us [here](#).

www.qld.gov.au/resignjp

JP associations that offer membership

Several associations exist across Queensland to provide additional peer support, professional development and networking opportunities to JPs and Cdecs.

Membership is entirely optional. JP associations are run independently from the JP Branch and the Department of Justice and Attorney-General, and may charge for membership. Some associations offer stamps and other goods for members to purchase.

In many locations, members of associations support the volunteer JPs in the Community program by coordinating rosters, mentoring and disseminating information to volunteers. The JP Branch works closely with all JP associations to ensure best witnessing practice is maintained.



SECTION 2

Your role as a Justice of the Peace



SECTION 2

Your role as a Justice of the Peace

2.1	Historical and social context of your role	JUN17
2.2	Eligibility and conduct	OCT21
2.3	Your role and responsibilities in the community	JUN17
2.4	Record-keeping and logbooks	OCT21
2.5	Queensland courts	JUN17
2.6	Assisting people from culturally and linguistically diverse backgrounds	JUN17
2.7	Assisting people with disabilities	JUN17

2.1 Historical and social context of your role

As a JP (Qual), you belong to a centuries-old system of voluntary legal officers known as Justices of the Peace.

In the year 1195, King Richard I introduced a system of peace officers to enforce the ‘King’s peace’. Any offence against the peace was considered to be an offence against the King himself and was therefore treated severely.

There were travelling judges to deal with offenders but, in 1327, King Edward III introduced the ‘peace officer’. Peace officers dealt with minor offences that allowed judges the time to concentrate on the more serious offences. These peace officers were allowed to use the title ‘justice’ and over the years became known as Justices of the Peace.

The role gradually evolved and spread to the colonies as the British Empire expanded. Traditionally, the people appointed to the office were highly respected members of the community and landed gentry.

Today, appointments are made from a wider section of the community. Justices of the Peace are citizens who are entrusted by their community to take on special responsibilities, from witnessing the signing of documents to hearing certain types of court matters.

Over time, the responsibilities of the JP have evolved. In recent years, with the passing of more complex and intricate legislation, the JP’s role has been taken over partly by the appointment of professionally qualified magistrates. This has not, however, diminished the importance of the JP in today’s society. In fact, contemporary legislation is imposing more responsibility upon the JP to ensure the objectives of legislation are properly carried out. Witnessing an enduring power of attorney is one example of this responsibility.

The JP still acts, on many occasions, as a check and balance on the powers of state authorities, including the Queensland Police Service. It is the JP’s responsibility to exercise discretion in all of their judicial functions, such as when determining to issue a summons or a warrant.

Qualifications and appointments

Before 1991, there was only one level of Justice of the Peace in the Queensland system. The position encompassed a very broad range of duties, including administrative (such as witnessing the signing of documents), ‘non-bench’ judicial (such as issuing summonses and warrants, and attending police records of interview) and ‘minor bench’ duties (such as adjournments and granting bail). As society and its laws have grown more complex, there has been an increasing need to streamline the JP system and ensure its officers are kept informed.

The *Justices of the Peace and Commissioners for Declarations Act 1991* (the Act) was part of this streamlining process. With this Act, the single role of Justice of the Peace was split into three separate positions.

Commissioner for Declarations (Cdec)

The Cdec is a purely administrative role. Cdecs do not have any judicial function—that is, they do not deal with any type of court process.

Justice of the Peace (Qualified)

As a JP (Qual), you have all of the responsibilities of Commissioners for Declarations and also several judicial duties, both ‘non-bench’ and ‘minor bench’. Two JPs (Qual) or one JP (Qual) and one JP (Mag Ct) can constitute a Magistrates Court to deal with specific matters.

Justice of the Peace (Magistrates Court)

This role has all of the duties and responsibilities of the previous two roles with an additional power. Two Justices of the Peace (Mag Ct) can constitute a Magistrates Court to deal with guilty pleas for simple offences.

Summary of duties

Position	Abbreviation	Duties
Commissioner for Declarations	Cdec	Administrative duties only
Justice of the Peace (Qualified)	JP (Qual)	Administrative duties Non-bench judicial duties Minor bench duties
Justice of the Peace (Magistrates Court)	JP (Mag Ct)	Administrative duties Non-bench judicial duties Some bench judicial duties
Justice of the Peace (Commissioner for Declarations)	JP Cdec	Administrative duties only
People who were appointed under the pre-1991 system are invited to upgrade to a Cdec or JP (Qual). If this applies to you, contact JP Branch.	JP Cdec	Administrative duties only

2.2 Eligibility and conduct

To become a JP (Qual) or Cdec, a person must meet the qualifications and standards outlined here.

Criminal and traffic convictions will be taken into account to determine eligibility, along with any bankruptcy proceedings. You may wish to check the list below before making a formal application.

Qualifications and disqualifications

Qualifications

A person wishing to be appointed as a JP or Cdec must be:

- 18 years of age or older
- an Australian citizen
- appropriately nominated, generally through your local State Member of Parliament
- correctly registered on the Queensland state electoral roll
- deemed competent and have received a Statement of Attainment through an approved training course delivered by a registered training organisation.

Disqualifications

Among the provisions of the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 17 provides disqualification provisions for prospective and current JPs and Cdecs. The list below includes:

(1) A person is not qualified to be appointed to, or to continue in, office under this Act as an appointed justice of the peace or as an appointed commissioner for declarations if the person—

- (a) is an insolvent under administration within the meaning of the Corporations Act, section 9; or*
- (b) is or has been convicted of an indictable offence, whether dealt with on indictment or summarily; or*
- (c) is or has been convicted of an offence against this Act; or*
- (d) is or has been convicted of more than 2 relevant offences; or*
- (e) within the last 5 years—*
 - (i) has been convicted of a relevant offence; or*
 - (ii) has been convicted of an offence under the Road Use Act, section 79 or 80; or*
- (f) within the last 4 years, has been convicted of more than 2 offences under the Road Use Act.*

(2) Also, if a person has been convicted of more than 6 offences under the Road Use Act in a 4 year period, the person is not qualified to be appointed to, or to continue in, office under this Act as an appointed justice of the peace or as an appointed commissioner for declarations for 5 years after the date of the last conviction.

(7) In this section -

relevant offence means an offence other than—

- (a) an offence under the Road Use Act; or*
- (b) an offence mentioned in subsection (1)(b) or (c).*

Road Use Act means the Transport Operations (Road Use Management) Act 1995.

JP and Cdec obligations for disqualification provisions

If you are subject to any of these disqualification provisions, you must immediately notify the registrar of JP Branch as per section 26 (1) of the Act. Alternatively, you can contact the JP Branch on 1300 301 147. Failure to notify the registrar is an offence under the Act with a maximum penalty of 10 penalty units.

Standards required for JP (Qual)

JPs play a very important role in the community and, in return, the community expects them to maintain a certain standard of professionalism.

There are multiple publications outlining guidelines for all JPs to follow. There are also statutory (or legislative) requirements to which JPs must adhere.

- You shall abide by the law and be of good behaviour at all times.
- You shall not accept any reward, gift or payment for services rendered as part of your official duties.
- You shall not repeat to another person any information that has been divulged to you in the course of your duties, unless required to do so in a court of law. All information must be treated with utmost confidentiality.
- You must not use any information you receive as a result of your official duties for your own or any other person's profit.
- You must never give legal advice.
- You must never witness any document unless the oath or declaration is authorised by an Act or other law, is stated on the document to be witnessed, and authorises you to sign the document.
- You must never witness a document unless it is substantially in the correct format and is an authorised or prescribed version for that type of document. Variations that are unusual and not provided for under an Act or other law should not be witnessed.
- You must never witness a document that the signatory has signed anywhere other than in your presence. These documents should be re-signed in your presence.
- You must never witness a blank document or a document that has blank spaces or unanswered questions in it.
- You must always warn the signatory of the consequences of making a false statement under declaration, oath or affirmation.
- When witnessing an oath, affirmation or declaration, always ensure the signatory takes it in the proper manner and that nothing is substituted for the Bible or Koran when they are required.
- You should never be pressured into signing a document. You must take the time to ensure the documentation is correct. If unsure, you can seek assistance from the JP Branch prior to witnessing.
- You must advise the Department of Justice and Attorney-General in writing within 30 days of any change to your contact details (address, email and phone).
- You must advise the department of any event that would disqualify you from holding office.

Code of conduct

Further to the standards, you are expected to abide by the *Code of conduct*.

The *Code of conduct's* main objective is to further promote a higher standard of practices, principles, professionalism and consistency of procedures.

1. JPs and Cdecs shall act and make decisions in a way that is compatible with human rights. This helps ensure their decisions are based on principles of human dignity, equality, freedom and rule of law.
2. JPs and Cdecs shall be prepared to contribute time and effort to the service of society pursuant to their solemn undertaking on application for appointment.

3. JPs and Cdecs shall, at all times, serve their fellow citizens with courtesy, dignity, consideration and compassion.
4. JPs and Cdecs shall not act with bias, prejudice, intolerance, bigotry, malice and ill will. They shall pursue the principles of equity and social justice as consistent criteria in all their dealings with the community.
5. JPs and Cdecs shall perform their functions with dignity, rationality and decorum. They shall not use their title where it is inappropriate, irrelevant or insensitive to do so, or in such a way as to bring the office into public disrepute or derision.
6. JPs and Cdecs shall not witness signatures of persons whose level of competence is questionable without first obtaining relevant independent advice (e.g. medical, educational and legal).
7. JPs shall always employ proper judicial discretion in their consideration of applications for the issue of summonses and warrants, being prepared to ask questions and put their minds to the issues, thereby seeking to be fully satisfied before the granting of any order sought. A summons or warrant shall not be approved without the sworn complaint or application first being thoroughly read and judicially considered by the JP.
8. JPs or Cdecs shall at all times observe confidentiality unless authorised by law to make disclosure, and must not share any information that comes to their knowledge while carrying out their duties in the course of serving the community.
9. JPs and Cdecs are not to use any private electronic recording machines without first advising the deponent and will respect the person's wishes to not record the witnessing process by electronic means if requested forthwith.
10. JPs and Cdecs shall give the appropriate warnings as to truth and honesty, and put the required formal questions when administering oaths, affirmations and solemn declarations.
11. A Bible shall be used when JPs or Cdecs are required to administer a Christian oath.
12. JPs and Cdecs are to check their details every six months on the general website of the Department of Justice and Attorney-General.

Conflict of interest

13. JPs and Cdecs shall not show favour to friends, relations and associates nor adopt procedures other than outlined in both the *Duties of Justices of the Peace* and *Duties of Commissioners for Declarations* handbooks and technical bulletins published by the Department of Justice and Attorney-General. They shall disqualify themselves from acting if they are faced by a conflict of interest situation.
14. JPs and Cdecs shall not make use of their position, title, seal of office or any other emblem of office of any kind of personal advantage including monetary gain or profit of any kind, direct or indirect, in carrying out their duties. It shall, however, be permissible for Justices of the Peace to inscribe their title on signs and business stationery in order to raise awareness throughout the public regarding their availability and readiness to serve the community.
15. JPs and Cdecs shall administer the law as it stands, with no right to decline to act because of personally held views about particular legislation.
16. JPs and Cdecs shall at all times separate their functions of office from any interpersonal or political considerations, influence and benefit.
17. JPs and Cdecs must retain their independence and must never regard themselves as servants of any law enforcement agency.

Competency and knowledge

18. With the changing nature of law and society, JPs and Cdecs shall endeavour to keep themselves up to date with legislative changes as provided by the Department of Justice and Attorney-General.

Notification

19. JPs and Cdecs are required to undertake the full range of administrative and judicial functions prescribed for their office and shall inform the police of their identity and availability.
20. JPs and Cdecs must notify the Department of Justice and Attorney-General in writing within 30 days of any changes to his or her name, address, contact numbers and email address.

Liability of JPs and Cdecs

As a JP, you carry out many functions as part of your official duties and the question of liability for those actions does arise on occasions.

The *Justices of the Peace and Commissioners for Declarations Act 1991* provides, in section 36, that:

(1) *A person injured—*

- (a) *by an act done by a justice of the peace or a commissioner for declarations purportedly in the performance of the functions of office but which the justice of the peace or commissioner for declarations knows is not authorised by law; or*
- (b) *by an act done by a justice of the peace or commissioner for declarations in the discharge of the functions of office but done maliciously and without reasonable cause;*
 - *May recover damages or loss sustained by the person by action against the justice of the peace or commissioner for declarations in any court of competent jurisdiction.*

(2) *Subject to subsection (1), action is not to be brought against a justice of the peace or commissioner for declarations in respect of anything done or omitted to be done in, or purportedly in, the performance of the functions of office.*

Section 36 of the *Justices of the Peace and Commissioners for Declarations Act 1991* provides protection for JPs and Cdecs against actions to recover damages or loss. There is, however, a clear exception to this protection—where a JP committed an act knowing that the act was not authorised by law, or that the act was done within the law but maliciously and without reasonable cause.

Requests for legal advice

Most JPs do not have any formal legal training, however, because of the nature of the position and the public esteem in which it is held, they are often asked for legal advice.

What should I do when asked for legal advice?

Under no circumstances should you give specific advice of the kind that is the concern of solicitors.

Be mindful not to take sides, or to be sympathetic one way or another, or to offer any opinion as to possible grounds of legal action or the likely success of such action. Instead, you should recommend the person contact a solicitor or refer them to the relevant government department. You should not refer to a private solicitor.

It is a good idea for you to build up a reference library of people and organisations to contact about different matters. Most government departments have brochures outlining their services and these are normally free of charge to the public or available on their webpage.

Assisting with document completion

You are an independent, unbiased witness. If you choose to assist someone to complete a document, you must not witness that document. The best practice is to refer the person to another JP or Cdec to witness the document.

2.3 Your role and responsibilities in the community

As a JP (Qual), your main role is to witness the signing of official documents. The community expects you to be constantly mindful that, as you discharge your duties, you are an integral part in the administration of justice.

The position of a JP (Qual) indicates you are trusted to act responsibly. When a JP witnesses documents, they have more legal weight than a document witnessed by someone without any official position. The community will expect you to have some understanding of the documents brought before you.

You have added responsibilities over those of a Cdec in that you have a quasi-judicial role. You may be requested to issue a warrant or a summons. On some occasions, particularly in the more remote areas of the state, you may also be called upon to sit on the Magistrates Court bench with a registrar of a court to deal with some procedural motions.

You have a duty of care to act within your scope of practice. You cannot provide legal advice in your role as a JP.

You must carry out your duties in a professional manner, ensure the *Code of conduct* is adhered to, and ensure consistent witnessing practices, procedural and legislative guidelines are always followed.

Why this role is important

The duties of a JP (Qual) are not to be taken lightly. You have a vital and responsible role to play in the general community. You will, at times, deal with matters of crucial importance to people's lives. For instance:

- Some of the documents you process will have substantial financial implications for the people involved.
- Some documents may ultimately be used in court proceedings where a person's liberty may be at stake.
- You have the authority to witness enduring power of attorney documents, which may ultimately control how a person is treated in hospital or in a nursing facility.
- You have the authority to issue summonses to direct people to attend at court.
- You also have the authority to issue warrants for a person's arrest or to search their property.
- You have the power to constitute a court either on your own or with another JP to carry out specific duties.

An outline of your duties as a JP (Qual)

Your duties fall into five main categories:

- witnessing people signing documents as prescribed by law
- certifying copies of documents as true copies, copies of a copy, or copy of a download
- issuing summonses and warrants
- minor bench duties
- attending police records of interviews.

Who will use my services?

The services of the JP (Qual) are in demand by commerce and industry, all levels of government, and the community in general.

You are appointed to serve all members of the community, not just a select few in the organisation in which you work or participate or for the organisation's customers. You should make yourself available to offer your services whenever possible.

Am I allowed to act as a JP (Qual) outside Queensland?

Yes, you may act outside Queensland, as long as the document you are witnessing or the duty you are fulfilling comes under Queensland law (and the document is to be used in Queensland) or Commonwealth law.

For example, you can witness a statutory declaration anywhere in the world, as long as it applies to matters under Queensland law and is intended for use in Queensland.

You can also generally witness a Commonwealth document anywhere in Australia for use anywhere in Australia, subject to any special provisions required by the legislation that covers such documents.

However, your power to constitute a court applies only within Queensland. You may not exercise this power if you are outside the state.

When should I be available?

You should be available to carry out your duties at all times, as people may contact you at any time of the day or night. If you are busy, you can make an appointment for a time that suits both you and the person seeking your services.

How can people who need my services find me?

The names and contact telephone numbers of all Cdecs and JPs are listed in a database maintained by the registrar of the JP Branch.

The department also has a directory of JPs who are willing to have their name, category, suburb and phone number listed on the internet.

The mobile website at www.justice.qld.gov.au/jpapp gives members of the community an easy way to locate witnessing services.

You may also wish to volunteer in the JPs in the Community program. Another way you can make yourself available is to contact your local police station, hospital and other organisations and advise them of your availability.

Resigning from office

If at any time you wish to resign from your position, you can do so by notifying the registrar of JP Branch in writing or online at www.qld.gov.au/resignJP.

If, after you resign, you wish to be reappointed as a JP or Cdec, you will need to reapply through your State Member of Parliament and undertake the mandatory training course again.

Moving interstate

There is no requirement for you to resign from your position if you move overseas or interstate, provided you remain registered on the Queensland electoral roll. There are times when Queensland JPs are requested by people living interstate or overseas to witness Queensland or Commonwealth documents.

If you are moving, whether within Queensland or beyond, please ensure you notify the registrar of the JP Branch.

How do I update my contact details?

You can update your details by contacting the JP Branch or online at www.qld.gov.au/updatejpdetails. Updating your details will mean JP Branch can keep you informed about dates and locations of professional development opportunities, updates related to your responsibilities, latest news and other matters relating to your role.

2.4 Record-keeping and logbooks

Why keep records?

JPs assist members of the community with a wide range of documentation. At times, the contents of documents or the capacity of a person to sign a document are challenged in a court of law and you may be called to a court or tribunal to give evidence about what occurred when the documents were witnessed.

Therefore, it is important that you make and retain thorough and consistent records of all the documents you witness and any action you may take. You should advise the signatory that certain particulars are required to be recorded in case the witnessing of the document is ever queried.

What information should I record?

You should keep accurate and consistent records, develop a standard procedure for dealing with a particular document and not deviate from this practice. Then, if a document you witnessed is challenged in court, you can honestly say that, though you may have no special recollection of this document, your normal witnessing practice is to proceed in a particular way and you do not deviate from this practice.

The information recorded may vary depending on the type of document witnessed. Your logbook should contain the following information:

- date
- name of the signatory
- type of document witnessed
- type of identification sighted
- location where the document was witnessed
- whether there were any special requirements you needed to take to ensure compliance with the document
- any questions asked and answers given to clarify the document contents and the signatory's understanding of the document
- if the signatory took a declaration, oath or affirmation.

Detailed records should also be kept when the document to be witnessed is unusual or there are circumstances when it is wise to keep more detailed records. These may include documents such as:

- applications for warrants
- documents under the *Powers of Attorney Act 1998*
- if an interpreter or translator was used, such as the language and dialect used, and the oath or affirmation of interpreter.
- Titles Registry forms.

If you decline to witness the document, the reasons for refusal should be noted in your logbook.

Confidentiality

Any information you record as a result of witnessing a document must remain confidential. You should never include specific details about the contents of a document as this may breach confidentiality between yourself and the signatory.

You are not permitted to record in your logbook any specific numbers appearing on the signatory's identification. This includes but is not limited to passport numbers, driver licence numbers or credit card numbers. All documents should be treated as confidential. However, in some circumstances, the relevant court or tribunal may require you to disclose information about the document. For example, you may be called to give evidence about the matter in court.

When should I make my records?

You should make your records at the time of the witnessing or as soon as practicable thereafter.

A court will not normally allow reference to records made a long time after the event.

Do I need to keep copies of documents that I witness?

No, you cannot keep copies of documents you witness. Your logbook should contain the details of the documents you have witnessed.

You do not have any authority to request, make or retain a copy of any document that will be or has been lodged in a court or tribunal. This includes but is not limited to:

- complaints and summonses
- warrants
- enduring documents
- matters before the courts where the named person is a juvenile.

However, at times, you may be requested to retain copies of documents such as applications for warrants and complaint and summonses.

Storage and security of retained documents

You should keep your records in a secure place where access by anyone else is restricted.

Retention and destruction of records

Generally there is no specific legislation that stipulates how long you should keep information obtained in exercising your duties of office.

An exception to this is recording of Titles Registry transactions. There is a mandatory requirement for witnesses to titles registry forms to keep, for a period of seven (7) years from the date of witnessing, a written record of how they verified the signatory's identity and their entitlement to sign the form. This means recording the types of documents that were sighted to verify the signatory's identity and their entitlement to sign the form. After that time has elapsed, the witness may securely destroy the record.

On other occasions, certain receiving agencies may require you to produce records of the following:

- what type of identification was sighted
- what questions were asked to confirm the person understood the document they were signing
- how you determined the outcome you reached to enable you to witness the document.

If you are no longer able to perform your official duties and resign from your role as a Justice of the Peace, you can dispose of any reference material at your local courthouse.

Never dispose of any documents or logbooks in household bins, business bins or public refuse disposal areas.

Example of register or logbook

Date	Document witnessed	Name of deponent	Identification sighted (e.g. drivers licence)	Location of signing	Comments
DD/MM/YY	National Mortgage form	Zaynah Eden Odling	QLD drivers licence Australian passport Marriage certificate	Stretton	Contract sighted. Title ref 41235491
DD/MM/YY	Statutory declaration	Rose Lillian Busch	QLD drivers licence	Teneriffe	Traffic statutory declaration – self nomination
DD/MM/YY	Statutory declaration	James Roberts	Passport – USA	Brisbane	Immigration statutory declaration form 888 visa application
DD/MM/YY	Search warrant	Sgt Joanne Smith	Qld Police ID # 7974	Brisbane	N P ROWE. Issued 2:15pm. Additional notes made on application
DD/MM/YY	Affidavit	Kofi Zhane Kaufman	Medicare card Birth certificate	Mt Gravatt	Family law application
DD/MM/YY	Enduring power of attorney	Romany Sahib Garza	Proof of age card	Logan	Additional notes retained in logbook
DD/MM/YY	Complaint – Sworn & Summons	Snr Sgt Glen Vickers	Qld Police ID #4321	Holland Park	Tauran re Motor vehicle accident
DD/MM/YY	Certified copies	Theresa Mary Green	QLD drivers licence	Brisbane	Birth certificate, medicare, D/L
DD/MM/YY	National Mortgage form	Sumayya Krista Rosas	SA drivers licence	Brisbane	Unable to witness. ID and property evidence not supplied at this time
DD/MM/YY	Statutory declaration	Cameron Mitchell	Medicare card Student card	Calamvale	

2.5 Queensland courts

The *Queensland Criminal Code* divides offences committed in Queensland into two categories: criminal offences and regulatory offences.

Criminal offences are further separated into crimes, misdemeanours and simple offences.

Of these three sub-categories, crimes and misdemeanours are indictable offences. This means the offender may be sent to trial before a judge and jury.

Pleas for simple offences and regulatory offences are usually dealt with by a Magistrates Court, which may be constituted by a Magistrate or two JPs (Mag Ct).

A simple offence is any offence not designated as any other type of offence. In other words, unless the Act (which creates the offence) states the offence is a crime, misdemeanour or regulatory offence, then it is a simple offence.

The following are examples of simple offences that may be dealt with by a Magistrates Court:

- speeding
- driving a motor vehicle while under the influence of liquor or a drug
- unlicensed driving
- Liquor Act offences
- resisting arrest
- using obscene language.

Some examples of regulatory offences are:

- unauthorised dealing with shop goods where the value is less than \$150 (such as shoplifting)
- failing to pay a restaurant or hotel bill where the value is less than \$150
- unauthorised damage to property where the value is less than \$250.

More serious offences are committed to a District Court or Supreme Court.

The following table lists various types of offences and shows which court usually deals with each type. It is a guide only, as some exceptions apply in different legislation.

Queensland Courts jurisdictions

Type of offence	Court of jurisdiction
Serious offence with penalty >20 years	Supreme Court
Serious offence with penalty <20 years	District Court
Certain serious offences under section 552 of <i>Criminal Code Act 1899</i> : <ul style="list-style-type: none"> • simple offences • regulatory offences • domestic violence applications • bail applications. 	Magistrates Court constituted by a Magistrate
Offences by children	Children’s Court constituted by a Magistrate
On a plea of guilty, certain serious offences under section 552 of <i>Criminal Code</i>	Magistrates Court constituted by two JPs (Mag Ct) appointed pursuant to section 552C <i>Criminal Code</i>
On a plea of guilty: <ul style="list-style-type: none"> • simple offences • regulatory offences • consent to domestic violence protection orders • temporary domestic violence protection orders • bail applications. 	Magistrates Court constituted by two JPs (Mag Ct)
Consent to domestic violence protection orders	Magistrates Court constituted by:
Temporary domestic violence protection orders	<ul style="list-style-type: none"> • two JP (Qual) or
Bail applications for children	<ul style="list-style-type: none"> • one JP (Qual) and one JP (Mag Ct) or
Bail application by adult	<ul style="list-style-type: none"> • two JP (Mag Ct).

Supreme Court

The Supreme Court is the highest level in the Queensland court system and includes the trial division and the Court of Appeal. Supreme Court judges are addressed as ‘Your Honour’.

The trial division hears the most serious criminal matters including murder, manslaughter and serious drug offences. Decisions, such as a penalty to be imposed, are made by a Supreme Court judge who presides over all cases. In the case of criminal matters, a trial and a jury of 12 people decide if an accused is guilty or not guilty based on the facts of the case. Sentencing may include but is not limited to a prison term, a fine or community-based orders.

In a civil trial, the judge sits alone and determines if the party bringing the action has proved the case on the balance of probabilities. These civil disputes may be between people and organisations over money or property involving amounts greater than \$750,000.

District Court

The District Court is the second tier in the court system and is presided over by a judge. Most jury trials take place in the District Court. District Court judges are addressed as ‘Your Honour’.

The District Court hears matters of a serious nature, including armed robbery, rape and dangerous driving. Decisions, such as a penalty to be imposed, are made by a District Court judge who presides over all cases. In the case of criminal matters, a trial and a jury of 12 people decide if an accused is guilty or not guilty based on the facts of the case. Sentencing may include but is not limited to a prison term, a fine or community-based orders.

In a civil trial, the judge sits alone and determines if the party bringing the action has proved the case on the balance of probabilities. These civil disputes may be between people and organisations over money or property involving amounts between \$150,000 and \$750,000.

Magistrates Court

The Magistrates Court is the first level of court jurisdiction in Queensland. Most criminal and civil cases are first heard in the Magistrates Court. Decisions are made by one magistrate who sits alone and makes all decisions and judgements. Magistrates are addressed as ‘Your Honour’.

The Magistrates Court deals with less serious offences called summary offences. These include assault, theft and minor traffic matters, committal hearings for more serious matters, and civil disputes between people or organisations about property and money involving amounts less than \$150,000. Sentencing may include but is not limited to a prison term, a fine or community-based orders.

As well as dealing with these offences, the Magistrates Court may occasionally hear cases involving indictable offences. Such indictable offences are referred to as being dealt with ‘summarily’ or ‘in the summary jurisdiction’. The offences that may be dealt with summarily are defined in the *Criminal Code* under section 652. However, the details of which offences are, and are not, indictable are beyond the scope of this handbook. You should simply be aware of the terminology used.

There are other offences under other state legislation and under Commonwealth legislation that may be dealt with either summarily or upon indictment. In each case, the Act specifies the required action.

Queensland Civil and Administrative Tribunal (QCAT)

The Queensland Civil and Administrative Tribunal (QCAT) is an independent tribunal that actively resolves disputes in a way that is fair, just, accessible, quick and inexpensive. The tribunal seeks to provide justice for all through expert decision-makers who work across a wide range of jurisdictions including:

- minor civil disputes
- protection of the elderly
- anti-discrimination
- building cases
- guardianship for adults
- residential tenancy disputes
- consumer and trader disputes.

What do I do if I receive a summons to appear in court?

You may be called to give evidence in relation to a document you have witnessed. This could occur for any of several reasons, such as doubt about if the:

- correct person signed the document
- document was sworn or affirmed correctly
- deponent was capable of making the declaration at the time.

Whatever the reason, you should not feel intimidated by the court process, provided you have exercised your powers with due care and professionalism.

What action should I take if I am summonsed to appear in court?

If you are required to appear in court to give evidence, you will receive what is legally called a court summons.

When you receive the summons, you should:

- Find out what the matter is about.
- Collect any records you have that relate to the matter.
- Before the court hearing, advise the prosecutor or defence solicitor (depending on whether you are a witness for the prosecution or defence, plaintiff or defendant) that you would like to refer to your records in court. They will explain that you may be allowed to refer to your records if you made them at the time of the document being witnessed but you must seek permission from the court.
- Take the records with you to court.

At the hearing:

You will be asked to take an oath or affirmation before giving evidence.

When questioned by the solicitor or barrister, you should ask the court for permission to refer to your records and then answer all questions fully and honestly.

You may then be cross-examined by the solicitor or barrister for the other party. These questions are usually intended to clarify a point or to double-check something you have already said in evidence.

Giving evidence in court can be a daunting experience for a novice, so it is important you have standardised procedures when witnessing documents and that you keep and retain consistent and accurate records. If you always follow these procedures, you can confidently go into court and relate what would have occurred at the time of witnessing the document.

Where can I get more information?

Queensland courts and tribunals

www.courts.qld.gov.au

Australian courts and tribunals

www.australia.gov.au/information-and-services/public-safety-and-law/courts-and-tribunals

2.6 Assisting people from culturally and linguistically diverse backgrounds

Communicating with persons from culturally and linguistically diverse (CALD) backgrounds

An inability to communicate can be one of the greatest forms of isolation for people from CALD backgrounds. Culturally diverse people may have limited awareness of relevant legislation, laws, regulations and processes.

A language interpreter should be used on all occasions when communicating with such deponents.

How do I ascertain a client's ability to communicate in English?

When a client who you believe may need assistance with the English language approaches you, you should always ask open-ended questions and avoid questions that can be answered with 'yes' or 'no'.

When would I need to use a qualified interpreter?

You may refer the client to JP Branch for interpreting assistance if the client:

- has difficulties communicating in English
- requests an interpreter, either verbally or by presenting a Queensland Interpreter's Card (QIC). (Speakers who have difficulty speaking English use the card to inform people that they require an interpreter and identifies the language for which an interpreter is required. Multicultural Affairs Queensland distributes the cards.)

What do I say to an interpreter?

'I am a Justice of the Peace (Qualified) and I have a person with me who wants me to witness their signature on a document. Because it is a legal document, I will need to ask you as interpreter to either swear an oath or make an affirmation and then I will need to ask the person here also to either swear an oath or make an affirmation with your assistance. Would you prefer to make an oath or affirmation?'

Ensure you also advise the interpreter of the type of document the person requires to be witnessed.

Oath of interpreter

I, (full name) swear by Almighty God that I understand the language of the deponent and am able to interpret between the deponent and the witness to this statement [add, if relevant: and any other persons speaking the English language or language of the deponent], and I shall, to the best of my skill and ability, truly and faithfully translate from the [language of signatory] language into the English language, and from the English language into the [language of signatory] language. So help me God.

Affirmation of interpreter

I, (full name) solemnly, sincerely and truly declare and affirm that I understand the language of the deponent and am able to interpret between the deponent and the witness to this statement [add, if relevant: and any other persons speaking the English language or language of the deponent], and I shall, to the best of my skill and ability, truly and faithfully translate from the [language of signatory] language into the English language, and from the English language into the [language of signatory] language.

Once the interpreter is sworn or affirmed, you can proceed with the document in the normal manner.

According to the Queensland Government's *Language Services Policy (2014)* and *Language Services Guidelines (2014)*, it is recommended that a National Accreditation Authority for Translators and Interpreters (NAATI) accredited interpreter be used. Family members or friends should not be used for reasons such as protecting privacy, avoiding conflict of interest, preventing embarrassment and ensuring accuracy. Some legislation prevents the person interpreting from being a party to the document or related to the signatory e.g. documents under the *Powers of Attorney Act 1998* or a beneficiary in a will.

It is also advised not to use drawings or hand signals as these forms of communication are highly subjective and significantly increase the risk of misunderstanding and misinterpretation. These could lead to unfavourable outcomes for the deponent.

If, in the course of the witnessing process, it is determined the deponent is having difficulty with understanding the language, you should contact JP Branch on 1300 301 147 for further assistance.

When qualified interpreters are crucial

Consistent with the *Language Services Policy (2014)*, qualified interpreters are crucial for people who have difficulty speaking English but must complete the following documents:

- court documents (e.g. affidavits)
- enduring powers of attorney, advance health directives and wills
- statutory declarations (deponent must be able to understand the document's contents, nature and effects of the document, and consequences of the warning).

Using qualified interpreters will help avoid costly mistakes as well as complaints or litigation that results from neglecting to provide an interpreter.

What do I need to consider when using an interpreter?

You will need to:

- determine the appropriateness of telephone and onsite interpreting and/or translation
- ensure there is enough time for the translation/interpreting and questioning period to avoid rushing
- ensure a quiet, comfortable environment with minimal distractions
- provide privacy during the interview and interpreting process.

According to the *Language Services Policy (2014)*, difficulties may occur that could impact on the outcome if these factors are not met.

Taking into account the busy, noisy, crowded, time-poor environs of where you may be volunteering your services, the use of a telephone interpreting service could be impractical and detrimental to the client. You should contact the JP Branch for further assistance.

This practice will reduce the stress on both you and the deponent caused by frustration and pressure experienced due to the language barrier.

Alternatives include:

- Make a booking for a quieter time.
- Propose an alternate venue.
- Direct the deponent to the JP website to find another JP or Cdec who may be able to assist.

Things to bear in mind

You should keep a record that an interpreter or translator has been used. Your logbook should contain the following information:

- date
- name of the signatory
- type of document witnessed
- type of identification sighted
- location where the document was witnessed
- whether there were any special requirements you needed to take to ensure compliance with the document
- any questions asked and answers given to clarify the document contents and the signatory's understanding of the document
- if the signatory took a declaration, oath or affirmation
- the language and dialect used and the oath or affirmation of the interpreter
- your reasons for declining to witness a document, if this occurred.

Where can I get more information?

Department of Communities, Child Safety and Disability Services
www.qld.gov.au/multicultural

2.7 Assisting people with disabilities

When assisting a person who has a disability, you should focus on the person rather than the disability.

Always treat people with disabilities with dignity and respect. If they are in the company of a carer (or a friend or colleague), address your remarks to the person with a disability. If the carer has to act as an interpreter, speak to the person and listen to the carer, maintaining eye contact with the person with the disability. A major complaint from people with disabilities is that they tend to be left out of the conversation when accompanied.

There are varying forms of disability and you must exercise a duty of care according to the disability. You must still maintain the procedures, integrity and independence of your office while offering additional help.

When you first meet the person, you should ascertain the type of disability and to what degree, if any, it will affect their ability to complete the presented documentation. Most people will be forthright and let you know at the outset what their disability is and if they require support.

It is important to communicate with a person who has a disability in the first instance and in the same way as you would with anyone else. Put the person before the disability. Be mindful of the pace and volume of your speech. Confirm your use of language and terminology is clearly understood by the person.

You must not complete the statements, sentences or questions for a person with a disability. Be patient and allow them to complete their words in their own time.

Assisting a person with a vision impairment

1. Ask the deponent for some form of identification.
2. Explain to the deponent, that though the contents of the document will remain confidential, it is necessary to read the document out aloud to be sure you have the correct one and that they have a thorough understanding of it.
3. Read the entire document to them, allowing time for them to ask questions if they need to clarify anything.
4. If the person wishes to make any alterations to the document, follow these steps:
 - a. Assist them to make the requested alterations. Both you and the person should initial all alterations in the margin or near to the alteration. However, you must not proceed to witnessing the document. The document will need to be witnessed by another JP.
 - b. Alternatively, refer the person to someone else for assistance to make the changes prior to you witnessing the document.
5. Complete a certification clause on the document, using the following or similar words:

I have read the contents of this document to the signatory, and they appeared to me to understand the contents, nature and effect of the document, and they have placed their signature or mark upon the document in my presence.

The person should then sign or place their mark on the document, and you should then surround their mark with this annotation as follows.

John Henry	His XXX mark	Smith
------------	--------------------	-------

You should then witness the signature or mark in the usual manner.

6. Enter the details in your logbook. Additional information to your standard records could include:
- if the document was read aloud to the person
 - if any alterations were made to the document
 - if there was an annotation made on the document
 - any other actions taken.

Assisting a person with a hearing impairment

If approached by a person with a hearing impairment, check if they need the services of a ‘signer’ to interpret between the signatory and yourself, or if they lip-read.

If an interpreter is available to assist, ask the interpreter to make an oath or affirmation for interpreters of signs prior to the document being witnessed.

Oath for interpreter of signs

I swear by Almighty God that I shall, to the best of my skill and ability, truly and faithfully communicate, by signs or other convenient means, words spoken in the English language, and translate, into the English language, statements made by signs. So help me God.

Affirmation for interpreter of signs

I solemnly, sincerely and truly declare and affirm that I shall, to the best of my skill and ability, truly and faithfully communicate, by signs or other convenient means, words spoken in the English language, and translate, into the English language, statements made by signs.

Where there is no interpreter to assist, it is possible to communicate with the signatory in writing—you may put questions to the signatory in writing and they may answer in writing. You should destroy these written questions and answers in front of the signatory once you have fulfilled your obligations and witnessed the documents.

When you have completed witnessing the document, enter the details in your logbook. Additional information to your standard records could include:

- interpreter’s name
- oath or affirmation for interpreter of signs completed
- any other actions taken.

Assisting a person with a speech language impairment

If approached by a person with a speech language impairment, ascertain how they wish to communicate e.g. they may wish to write or sign. It is possible they will present with a signer to interpret.

If an interpreter is available to assist, ask the interpreter to make an oath or affirmation for interpreters of signs prior to the document being witnessed.

Oath for interpreter of signs

I swear by Almighty God that I shall, to the best of my skill and ability, truly and faithfully communicate, by signs or other convenient means, words spoken in the English language, and translate, into the English language, statements made by signs. So help me God.

Affirmation for interpreter of signs

I solemnly, sincerely and truly declare and affirm that I shall, to the best of my skill and ability, truly and faithfully communicate, by signs or other convenient means, words spoken in the English language, and translate, into the English language, statements made by signs.

Where there is no interpreter to assist, it is possible to communicate with the signatory in writing—you may put questions to the signatory verbally or in writing, and they may answer in writing. You should destroy these written questions and answers in front of the signatory once you have fulfilled your obligations and witnessed the documents.

When you have completed witnessing the document, enter the details in your logbook. Additional information to your standard records could include:

- interpreter's name
- oath or affirmation for interpreter of signs completed
- any other actions taken.

Assisting a person with a physical disability

There are many types of physical disabilities. A physical disability can be described as a condition that permanently prevents normal body movement or control. Physical impairments impacting on the deponent's ability to complete documentation may include an inability to write, sign or hold a pen. A flat, comfortable writing surface should always be made available.

If the deponent is unable to hold a pen, you may make a mark on the document as long as they touch the end of the pen while it rests on the document, in acknowledgement of that mark. You should then make a certification on the document using this wording:

This is to certify that [deponent's name] is unable to make a mark or signature, and he or she agrees with the contents of this document, and has symbolically touched the pen which I have used to make a mark on his or her behalf.

When you have completed witnessing the document, enter the details in your logbook. Additional information to your standard records could include:

- if assistance was required to make a mark on the document
- any other actions taken.

Assisting a person with an intellectual disability

Every person should be treated as an individual with rights and responsibilities that are the same as anyone else. A person with an intellectual disability will usually have a guardian or attorney who is legally entitled to make decisions and sign documents on their behalf.

Under no circumstances should you witness a document if you are of the opinion that the person is not capable of understanding the document.

If a guardian or attorney is not present, it is recommended that you refer the matter to the Office of the Public Guardian. However, you should discuss the matter with the person prior to making a decision to refer to the Office of Public Guardian.

Note: If you are presented with a document to be signed on another person’s behalf by an attorney or guardian, proof of their authority to do so is required.

Assisting a person who is unable to read or write

1. Ask the deponent for some form of identification.
2. Explain to the deponent, that though the contents of the document will remain confidential, it is necessary to read the document out aloud to be sure that you have the correct one and that they have a thorough understanding of it.
3. Read the entire document to them, allowing time for them to ask questions if they need to clarify anything.
4. If the person wishes to make any alterations to the document, you can:
 - a. Assist to make the requested alterations and both you and the person initial all alterations in the margin or near to the alteration. However, you must not proceed to witnessing the document. The document will need to be witnessed by another JP.
 - b. Refer the person to someone else for assistance to make the changes prior to you witnessing the document.
5. Complete a certification clause on the document, using the following or similar words:

.....
I have read the contents of this document to the signatory, and they appeared to me to understand the contents, nature and effect of the document, and they have placed their signature or mark upon the document in my presence.
.....

The person should then sign or place their mark on the document, and you should then surround their mark with this annotation as follows.

	His	
John Henry	XXX	Smith
	mark	

You should then witness the signature or mark in the usual manner.

6. Enter the details in your logbook. Additional information to your standard records could include:
 - if the document was read aloud to the person
 - if any alterations were made to the document
 - if there was an annotation made on the document
 - any other actions taken.

Where can I get more information?

Information about disabilities

www.qld.gov.au/disability

Quick guide

Helping people with a vision impairment or those who are unable to read or write

- ① Ask for identification.
 - ② Explain the contents of the document will remain confidential.
 - ③ Read the entire document aloud, allowing time for questions and to check their understanding.
- If the person wishes to make changes, you can:
- a. Help them make alterations, and then you and the person should initial all of the changes. However, you now cannot witness the document.
 - b. Assist the person to find someone who can make the changes, and then have it returned to you for witnessing.
- ⑤ Complete the certification clause.
 - ⑥ Ask the person to sign or mark the document.
 - ⑦ Witness the signature.
 - ⑧ Enter the relevant details in your logbook.

Helping people with a hearing or speech language impairment

- Check if they need the services of an interpreter. A person with a hearing impairment may prefer to lip-read, and a person with a speech language impairment may prefer to write.
- An interpreter should make an oath or affirmation for interpreters of signs before the document is witnessed.
- Reflect these steps in the certification clause and in your logbook.

Helping people with a physical disability

- If a person is unable to hold a pen, you may make a mark on a document as long as the person touches the end of the pen while it rests on the document.
- Reflect this step in your certification clause and in your logbook.

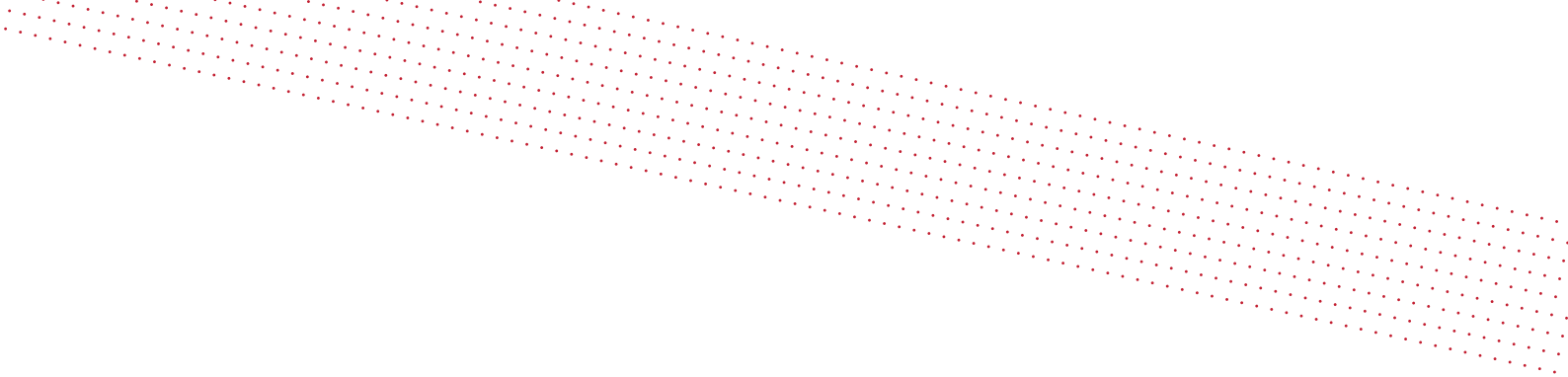
Helping people with an intellectual disability

- Treat every person with dignity but only witness the document if you believe the person can understand the document.
- Concerns can be raised with the Office of the Public Guardian.
- Reflect these steps in the certification clause and in your logbook.



SECTION 3

Certifying copies



SECTION 3

Certifying copies

3.1 Certifying copies of documents

NOV20



NOV20

3.1 Certifying copies of documents

What is certifying a copy?

Certifying a copy is stating that, in your opinion, the document is a true and complete copy of the original that you have sighted. It is a statement saying a particular document is an identical copy of the original. Certifying copies of documents is a common duty of JPs. It is not certifying the original document is authentic.

What can I certify?

Generally, there is no single piece of legislation in Queensland that dictates the types of original documents that may be certified, who may certify them and the process to be followed. Requirements will vary between documents depending on how they are to be used and the relevant legislation. However, the *Powers of Attorney Act 1998* is quite specific about the method that must be followed when certifying enduring documents.

Information about certifying enduring documents can be found further in this chapter.

In the case of electronic original documents, JPs must apply the same rigour and scrutiny to an electronic document as you would to an original paper copy to ensure the document is a true and complete copy of the original.

Why certify a copy?

It is a common occurrence that a document may need to be held by multiple parties. An example of this is the enduring power of attorney document. Copies of these are normally left with relatives, doctors, financial institutions and solicitors. However, doubt could be raised about whether or not a copy is genuine.

In some cases, a certified copy has the same legal status as the original. Documents certified as true copies of the original, copy or a download give the document more legal weight than an uncertified photocopy.

How to certify a copy?

You should take great care when certifying copies of documents and follow a set of procedures.

Take additional care if the document is in a foreign language. Check it appears the same as the original. Alternatively you may, if possible, photocopy the original yourself or witness the client photocopying the document.

Please ensure you provide your name when certifying documents. If you do not provide your name, the Justices of the Peace Branch may disclose your name to relevant third parties in order to verify the validity of the document(s) you have certified or witnessed.

Certifying a copy of an original

1. The client **must** provide you with the original document from which the copy was made.
2. Check to ensure there are no alterations to the copies.
3. Pay particular attention to names, dates and reference numbers.
4. Endorse the copy with the following certification and apply your seal and registration number.

.....
This is to certify that this is a true and complete copy of the original, which I have sighted.

Date:

Signed:

Name:

Certifying a copy of a copy

At times, clients will present you with copies of a document where the original may have been lost, stolen or damaged. The document presented may or may not have previously been certified as a copy of the original.

1. The client **must** provide you with the copy of the document from which the additional copy was made.
2. Check to ensure there are no alterations to the copies.
3. Pay particular attention to names, dates and reference numbers.
4. While it is appropriate to certify the documents, they can be certified as a copy of a copy.
5. Endorse the copy with the following certification and apply your seal and registration number.

.....
This is to certify that this is a true and complete copy of a copy. Original document not sighted.

Date:

Signed:

Name:
.....

Certifying copy of a download

If the document is a download from a website, you can certify the document as a true copy of a download.

1. The client **must** be able to access the official website where the document has been issued.
2. Observe the client accessing the official website.
3. View the original electronic document.
4. Check there are no alterations to the copies.
5. Pay particular attention to names, dates and reference numbers.
6. Endorse the copy with the following certification and apply your seal and registration number.

.....
This is to certify that this is a true and complete copy of the download, which I have sighted.

Date:

Signed:

Name:
.....

Certifying a printed copy of a document attached to an email

In this instance the certification is that the document which is attached to the email is the original, and the document provided is a copy. Once you have sighted the electronic version it can be certified as a copy of an original document.

In some circumstances a copy will still be a reliable copy even if the formatting of the copy is different to the electronic original. Each case will need to be determined on its own merits before you certify the copy.

Certifying multi-page documents

If the original document has multiple pages, every page must be certified as correct.

1. The client **must** provide you with the original document from which the copy was made.
2. Compare each page of the photocopy with the original document to verify that the photocopy is a true and complete copy of the original document (including any additional pages). Pay particular attention to names, dates and reference numbers in the document.
3. Initial the bottom of every page. If the document does not have numbered pages in the lower right-hand corner of each page, number the pages by inserting page 1 of 40, 2 of 40, and so on.

On the last page, endorse the copy with the following certification and apply your seal and registration number. Some documents, however, are many pages in length and it may not be possible to certify each page. In such cases, you must sign or initial every page and then amend the certification on the last page to read as follows.

.....

This is to certify that this <note the number of pages> page document (each page of which I have numbered and signed) is a true and complete copy of the original <note the number of pages> page document, which I have sighted.

Date:

Signed:

Name:

.....

Certifying copies of enduring powers of attorney, and advance health directives

You may be called upon to certify one or more copies of an enduring power of attorney (EPA) or an advance health directive (AHD). This will be used as proof of the validity of the document and will allow valid copies of the enduring document to be held by more than one person or at more than one place.

Section 45 of the *Powers of Attorney Act 1998* (the POA) provides that a person may prove the existence of an EPA or AHD by producing a certified copy of the original document. The POA provides that a properly certified copy must be certified to the effect that it is a **true and complete** copy of the original.

The following process is suggested to make a certified copy of an original enduring power of attorney or advance health directive:

1. The client **must** provide you with the original document from which the copy was made.
2. Compare each page of the photocopy with the original EPA or AHD to verify that the photocopy is a **true and complete** copy of the original document (including any additional pages). Pay particular attention to names, dates, commencement provisions, terms and reference numbers in the document.
3. Check that the number of pages (including any additional pages) corresponds with the number of pages indicated on the witness certificate in the document.
4. Sign or initial each page of the photocopy (including any additional pages), other than the page on which the certification below is made.
5. Make the following certification on the first or last page and apply your seal, full name and registration number, **including the number of pages** certified.

.....

This is to certify that this is a true and complete copy of the original EPA/AHD.

Date:

Signed:

Name:

.....

Note: Provided the certification is to the effect that the document is a **true and complete** copy of the original, there is no precise wording that must be used. Certification under section 45 could, for example, be achieved with any of the following:

- ...true and complete copy of the original
- ...true and complete copy of the original document
- ...true and complete copy of the original enduring power of attorney
- ...true and complete copy of the original EPA

Further, if you amend the wording on a certified copy stamp you must initial the amendment.

Certifying copies of general powers of attorney

Section 14 of the *Powers of Attorney Act 1998* provides that proof of a copy of a power of attorney must include a certification clause on **each page including the last**. The last page certification clause is slightly different to the other pages (see below).

1. The client **must** provide you with the original document from which the copy was made.
 2. Verify that the copy provided is a true and complete copy of the original and that no additional pages have been added or alterations made on the copy.
 3. Pay particular attention to names, dates and reference numbers.
 4. Check that the number of pages corresponds with the number of pages in the document.
 5. Endorse the copy with the following certifications and apply your seal, full name and registration number.
- Each page of the document except the last page must be certified as a true and complete copy of the corresponding page of the original.

.....
This is to certify that this is a true and complete copy of the corresponding page of the original document.

Date:

Signed:

Name:
.....

- The last page must show certification that the document is a true and complete copy of the original.

.....
This is to certify that this is a true and complete copy of the original document.

Date:

Signed:

Name:
.....

Things to bear in mind

- A copy can be reduced or enlarged in size in comparison to the original document.
- There should not be any:
 - alterations to the original document or the copies, such as words crossed out or changed.
 - use of white-out or correction fluid used in the document.
- Do not cross out or obliterate any reference numbers, bank details, credit card details or passport numbers on the copies for the client.

Frequently asked questions

My certified copy stamp does not have the words ‘and complete’. Can I apply my stamp and handwrite the words ‘and complete’ when certifying a copy of an enduring document?

Yes, you can use a combination of the stamp and handwriting when certifying a copy of an enduring document. You **must initial** the amendment to the stamp to demonstrate that the words ‘and complete’ were added by you at the time of certification.

It is recommended you also insert the **number of pages** you have certified on the copy. These actions will emphasise that the document is complete and the page numbers in the copy are the same as the original.

.....

and complete


This is to certify that this is a true ^{and complete} copy of the original which I have sighted.

Date.....

Signed.....

Name.....

initial this change and note the number of pages certified.



.....

Can I purchase certified copy stamps?

Certified copy stamps are available for purchase from the JP Branch online shop at www.qld.gov.au/jpshop.

What if there are multiple forms of identification on a page?

It is recommended you provide one seal for each form of identity that you sight, despite the fact that they are on one sheet of paper. You would provide a seal multiple times if they were on multiple sheets of paper, so attaching multiple seals complies with best practice.

Does the owner of the document need to be present before I can certify the copies?

JPs regularly certify copies of documents for third parties for legitimate reasons e.g. a family member presenting on behalf of another. The owner of the document does not have to be present for you to complete the certification of the copies.

If you have reasonable grounds for concern, it would be in order to query why the third party is presenting the document(s) for certification of copies, then use your judgement as to whether to proceed or not.

Do I need to sight identification when certifying copies?

It is advisable, but not always mandatory, to ask for proof of identity. Your role is certifying that the document is a true copy of what you have sighted.

Can I have some adhesive labels made and apply these to the documents instead of the certified copy stamp?

No. The use of adhesive labels is not sufficient nor permitted by some receiving agencies and could place the document in jeopardy. The certified copy stamps or handwriting the certification should be exercised.

Can I certify a document that will be sent overseas?

Yes. You can certify copies of documents regardless of where they will be presented. However, it is a good idea to check with the client they have confirmed with the receiving agency if a Queensland JP is authorised to complete the certification and if there are any special instructions for how the document is to be certified.

Do copies of coloured documents have to be photocopied in colour?

Unless the client has instructions that state the copies must be in colour, the copies can be made in colour or black and white.

How will I know if the receiving agency will accept the document?

You are not expected to be aware of the certification requirements of receiving agencies. It is a good idea to check with the client if they have any instructions with them that may require a modification to the usual certifications. The client should make enquiries with the receiving agency if they are unsure.

Should I make a note in my logbook when certifying copies?

You can include information in your logbook such as:

- date
- type of document certified, if the document is an EPA or AHD the number of pages certified.
- client's details
- type of identification sighted
- location of signing
- any other relevant details.

Quick guide

Follow these steps to certify any document

- ① You must always sight the source document from which a copy was made—the original, a copy, a web page and so on.
 - ② Check there are no alterations to the copies.
 - ③ Double-check the names, dates and reference numbers.
 - ④ Certify the copy and apply your seal and registration number.
-

Certifying a copy of a copy

- ① Sight the copy of the document from which the additional copy was made.
 - ② Follow the general process.
 - ③ Certify the documents as a copy of a copy.
-

Certifying a copy of a download

- ① Observe the client accessing the official website.
 - ② View the original electronic document.
 - ③ Follow the general process.
 - ④ Certify the documents as a true copy of a download.
-

Certifying multi-page documents

- ① Follow the general process.
 - ② Initial the bottom of every page.
 - ③ Number the lower right-hand corner of each page (e.g. 1 of 40, 2 of 40)
 - ④ Endorse and sign the back page.
-

Certifying copies of enduring powers of attorney and advance health directives

- ① Sight the original document from which the copy was made.

- ② Verify that the copy provided is a true and complete copy of the original.

- ③ Double-check the names, dates and reference numbers.

- ④ Check each page (including any additional pages) corresponds with the original.

- ⑤ Initial or sign the bottom of each page, including any additional pages.

- ⑥ On the first or last page certify the copy as being a true and complete copy of the original, including the number of pages certified and apply your seal, full name and registration number.

Certifying copies of general powers of attorney

- ① Sight the original document from which the copy was made.

- ② Check each page corresponds with the original.

- ③ Certify every page except the last as being a true and complete copy of the corresponding page of the original and apply your seal, full name and registration number.

- ④ Certify the final page as a true and complete copy of the original document and apply your seal, full name and registration number.



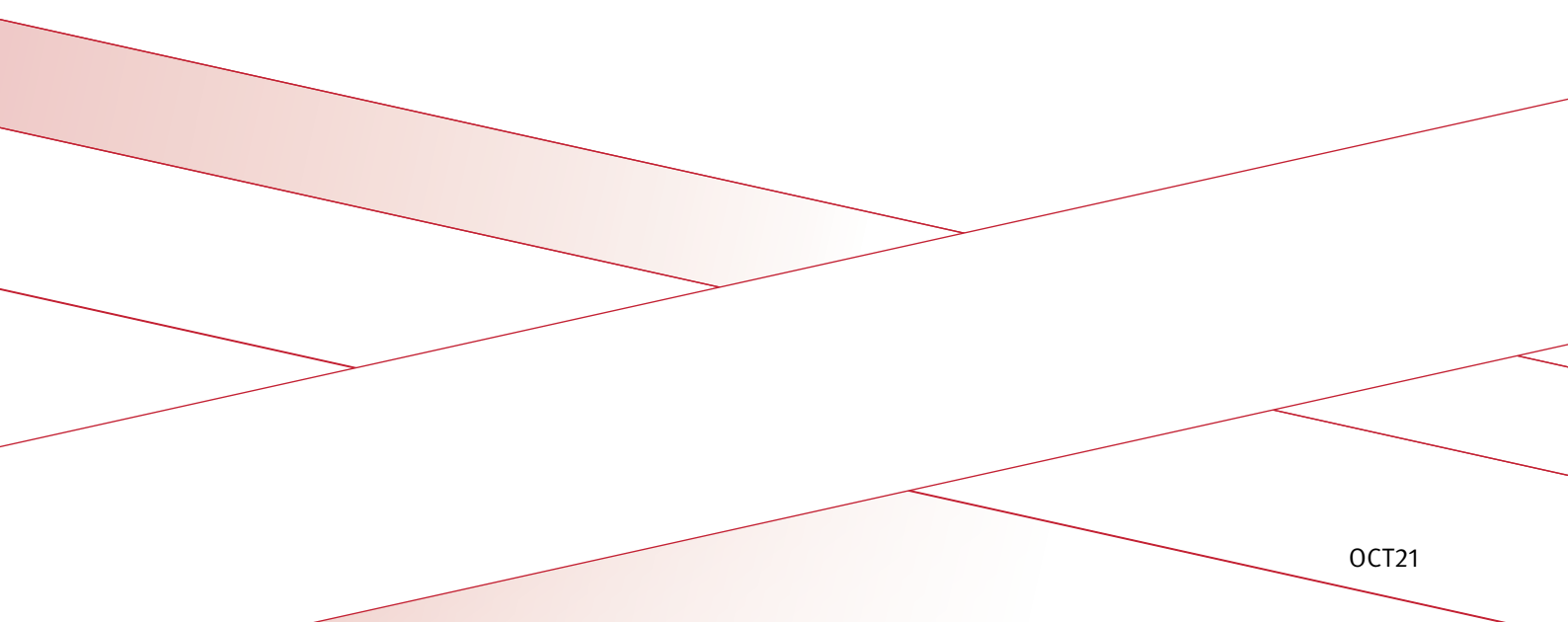
SECTION 4
Witnessing



SECTION 4

Witnessing

4.1	Witnessing documents—general procedure	JUN17
4.2	Witnessing statutory declarations	JUN17
4.3	Camera-detected offence notice—statutory declarations	JUN17
4.4	Witnessing applications under the <i>Domestic and Family Violence Protection Act 2012</i>	JUN17
4.5	Witnessing blue card applications	JUN17
4.6	Administering oaths and affirmations	JUN17
4.7	Witnessing affidavits	JUN17
4.8	Witnessing family law documents	JUN17
4.9	Witnessing general powers of attorney, enduring powers of attorney and advance health directives documents	NOV20
4.10	Witnessing wills	JUN17
4.11	Witnessing Titles Registry forms	OCT21
4.12	Witnessing international, Commonwealth and interstate documents	JUN17
4.13	Witnessing the consent to the marriage of a minor	JUN17



4.1 Witnessing documents—general procedure

What types of documents am I authorised to witness?

You have the authority to witness any lawful document, from commercial contracts to powers of attorney.

If you are asked to witness a document that is unfamiliar to you, you should satisfy yourself it is of a type that is authorised by law before you sign it. You can do this by:

- first, checking the document itself (most indicate at the top the Act under which it is ‘attested’)
- then, asking the person producing the document to name the Act. (It is this person’s responsibility, not yours, to name the authorising Act and, if necessary, to produce a copy so you can be sure you have the authority, as a JP, to witness it.)
- finally, contacting the JP Branch to seek further advice on 1300 301 147 or jp@justice.qld.gov.au.

If you have any doubt about your authority to witness the document, you should decline to do so. You may wish to refer the person to another JP (Qual) who is more familiar with that particular procedure or document.

It is advisable to make yourself familiar with some of the most relevant legislation, such as:

- section 29 of the *Justices of the Peace and Commissioners for Declarations Act 1991*, which gives a general description of JP and Cdec powers
- part 4, sections 13–15 of the *Oaths Act 1867*, which deals with statutory declarations, and section 41, which addresses affidavits.

Why must some documents be witnessed?

Having a document witnessed is a way of establishing the signature is authentic. Should the matter ever be disputed, the JP or Cdec can be contacted to confirm the correct process was followed. With a JP or Cdec as witness, the document has higher legal standing.

Certain documents are required by law to be witnessed by a JP or Cdec. This is to encourage the honesty of the signatory (the person who signs the document). In some cases, the process will require an oath or affirmation to be administered prior to the document being signed. Some documents include an oath or affirmation that all the information given in the document is ‘true and correct’.

How do you witness a document?

First, you need to choose a procedure that suits you. A procedure is necessary for two reasons:

- Following a set procedure guarantees you will carry out your duties properly.
- If people use your services frequently, before long you will have witnessed thousands of signatures. Occasionally, you may be called upon to verify a particular incident in court. Unless the incident occurred recently, you are unlikely to be able to recall all the particulars. Sticking faithfully to your set procedure gives you confidence even where your memory is hazy. It allows you to swear on oath in court, if need be, that the witnessing was done in a particular way.

So, whether the document you are asked to witness is a statutory declaration, an affidavit or some ‘one-off’ paper, you should follow the same general procedure, varying it only where the particular form of the document makes it necessary to do so.

You may wish to adopt the standard procedure suggested here or use it as a basis for developing your own.

The general procedure you should follow can be broken down into steps. If you deal with each in turn, you can cover everything and leave nothing to chance.

General witnessing steps

1. Check the document to find out what type of document it is.

If it is a type you have not seen before, explain this to the person and then examine it closely. Ask yourself these questions:

Is the document lawful? Look at the top of the document for the name of the Act that authorises it. If the document does not name the Act or you suspect that it fails to comply with the law in some way, decline to witness the document and suggest they contact the receiving agency for further advice.

Do you have the authority to witness it? A document usually carries instructions about who has the authority to witness its signing. If you decide you do not have the authority, explain this to your client. (International documents, for example, usually have to be witnessed by a notary public, consular or embassy official.)

2. Check if the document lists any special requirements, such as your personal knowledge of the signatory's identity for a stated period of time or particular types of proof of his/her identity. If so, ensure they are complied with before you sign.
3. If the document is a statutory declaration or an affidavit, check it is in the correct format (see chapters 4.2 and 4.7). If it is not, explain it will have to be drawn up again and the document will need to be amended appropriately.
4. Check if the document is to be signed under oath or affirmation, or by way of statutory declaration. This will be indicated at the place where it is to be signed. If it is to be sworn (that is, by oath or affirmation) it is advisable to place the signatory under oath or affirmation at the very start. You should decline to witness a document where the form of oath, affirmation or declaration is not substantially in the correct format or the format is not authorised by law.
5. Check the person signing the document is the person named in the document. It is not acceptable for one person to sign on behalf of another. There are some exceptions to this rule. This includes when a person has appointed someone to act on their behalf, such as acting as an attorney under the *Powers of Attorney Act 1998*. The person should be able to provide proof of their authority to act on another person's behalf.
6. Ask for proof of identity. Ask the declarant for identification and enter their name and the type of identification presented in your logbook.

It is advisable, but not always mandatory, to ask for proof of identity. It is particularly important to do so if you are not satisfied as to the identity of the person claiming to be the signatory or where the document relates to ownership of property. (Note that you can only *request*—not *demand*—proof of identity unless it is one of the requirements of the document itself or unless you have sufficient grounds to doubt the signatory's identity.)

7. If the date of the document is given in more than one place (e.g. at the beginning as well as where it is signed) check it is correct wherever it appears. The date of the document must always be the same as the date when it is signed and witnessed. Do not witness a document with the incorrect date as this may invalidate the document at a later time.
8. Check the contents of the document for:
 - a. **any alterations, spaces or omissions**, all of which should be initialled by both you and the signatory. Remember to check and initial any places where correction fluids or tapes have been used over any text.
 - b. **material you know to be false**. If you have personal knowledge that material in the document is false, then you should decline to witness it. Remember that you may not refuse to witness a document simply because you do not agree with the contents or the law under which the document is framed.
 - c. **unanswered questions**. Either cross them out or have the signatory complete them as the case requires, and then ensure both you and the signatory initial them.

Note: These are exceptions to witnessing a document with unanswered questions:

- Victim Assist Queensland (VAQ) financial applications
- domestic and family violence applications
- some family law documents.

9. Check any annexures to the document. Annexures are documents that are attached to the main document. Annexures are usually information supporting the main document and they will be referred to there.

Annexures are normally marked with the letters ‘A’, ‘B’, ‘C’ and so on.

Mark the annexures in the following fashion:

.....

This is the [type of document] or a copy of the [type of document] marked with the letter ‘A’ referred to in the [name of main document] sworn/taken/affirmed/solemnly declared before me this day of 20

Signed:

Title:

.....

Normally there is no need for the signatory to sign or initial these annexures. However, under the *Uniform Civil Procedures Rules 1999*, any annexures attached to an affidavit to be filed in a court for a civil proceeding must be accompanied by a ‘certificate of exhibit’ signed by both the witness and the person making the affidavit (the deponent). The documents to be filed under these rules would indicate that both the signatory and the witness should sign the annexures.

10. Issue a warning to the person that they need to tell the truth and, if they fail to do so, they are committing a very serious offence.
11. If you have not already done so, administer the oath, affirmation or statutory declaration as required. The taking of these oaths/affirmations and declarations is covered in detail in chapters 4.2 and 4.6.
12. Ensure the document is signed in front of you. You are witnessing a signature, not someone telling you the signature on a document is their signature. If someone approaches you with a document already signed, ask them to sign the document again. You can rule a line through the unwitnessed signature. Ensure both you and the person initial the alteration.
13. Once the signatory has signed in the appropriate place on the document, you should immediately sign your name, affix your seal of office and insert your registration number in the space provided on the impression of your seal. If there is more than one place to sign, you should witness each signature in turn.

Place your seal of office close to your signature, either immediately beneath or beside it. Do not place the seal over your signature, or sign over your seal.

The prescribed mark of office of your title is ‘Justice of the Peace (Qualified)’ or it can be abbreviated as ‘JP (Qual)’. You can use this mark of office if you do not have your seal of office with you when you witness the document. Please note that a JP (Cdec) does not have a seal of office or a registration number.

Section 31 *Proof of acts done in the performance of office* provides information regarding your seal of office and the prescribed mark of office for JPs and Cdecs.

(4) *The prescribed mark of office of each office specified in the first column of the following table is the mark specified in the second column opposite the office.*

<i>the office of justice of the peace preserved by section 41 or held under section 19(1)</i>	<i>“Justice of the Peace” or “JP”</i>
<i>justice of the peace (magistrates court)</i>	<i>“Justice of the Peace (Magistrates Court)” or “JP (Magistrates Court)” or “JP (Mag Crt.)”</i>
<i>justice of the peace (qualified)</i>	<i>“Justice of the Peace (Qualified)” or “JP (Qualified)” or “JP (Qual.)”</i>
<i>justice of the peace (commissioner for declarations)</i>	<i>“Justice of the Peace (Commissioner for Declarations)” or “JP (C.dec)”</i>
<i>commissioner for declarations</i>	<i>“Commissioner for Declarations” or “C.dec”</i>

Some documents, particularly land title documents, require you to print your full name on the document. This means your entire name, not just your initials.

The colour of the pen used for signing documents is not prescribed by legislation but the normal colours are blue and black. Red denotes an error and should not be used. Non-conventional colours are not appropriate, and pencils should never be used because the signatures can be erased at any time. Use a ball-point pen, a fine felt-tipped pen or a fountain pen.

It is accepted practice, however, for the seals of office of the three levels of JP to use three different colours.

Seal of office colours

Commissioners for Declaration	Black
Justices of the Peace (Qualified)	Red
Justices of the Peace (Magistrates Court)	Blue

As a JP (Qual), you are supplied with a red stamp pad when you receive your seal of office.

- Note the details of the document and the action you’ve taken in a register or logbook. You should do this as soon as you’ve added your signature, seal and registration number. Don’t wait until the person has left as you need to be able to refer to the document directly.

If you have asked the person to supply further information, you should keep a record of this information, including what questions you asked, what form of identification was supplied and if the information was supplied on oath. This is of particular importance for enduring powers of attorney, advance health directives and land title documents.

Such a register provides you with a reliable record to refer to, should you be called upon to give evidence in court about a particular document.

Further information regarding record-keeping is covered in detail in chapter 2.4 of this handbook.

Summary of general witnessing steps

Keep a sheet of paper handy with these questions as a checklist. Tick them off as you go:

1. Check the document to find out what type of document it is:
 - a. Is the document lawful?
 - b. Do you have the authority to witness it?
2. Does it have any special requirements?
3. Is the document an affidavit or statutory declaration? If so, is it in the correct format?
4. Is it to be signed on oath or affirmation or by way of statutory declaration? If so, does it use the correct form of words?
5. Is the signatory the person named in the document?
6. Have you requested proof of identity?
7. Is the date correct?
8. Have you checked through the document for any alterations, spaces or omissions?
9. Have you checked the annexures and marked them properly?
10. Have you issued the warning about the importance of telling the truth?
11. Have you administered the oath, affirmation or statutory declaration?
12. Was the document signed in front of you?
13. Have you signed in the appropriate place on the document, applied your seal of office and inserted your registration number?
14. Did you keep a record of any additional information supplied?

You may find it useful to keep this checklist in your register as evidence you have followed the correct procedure.

Things to bear in mind

- **Do not complete the document yourself.** You should not, under any circumstances, act on the signatory's behalf by filling in the details of a document that you intend to witness. If a person is unable to write and asks for help in completing a document, you should ask them whether they want you to:
 - find someone else to help them complete it, or
 - give the help yourself, and then refer them to another JP or Cdec to witness the document.
- **Be courteous.** It is your responsibility to be courteous at all times, even with difficult people. If you find a particular person impossible to cope with and you cannot witness their document, refer them to another JP or Cdec.
- **Maintain confidentiality.** The people you serve are entitled to their privacy. You will see many documents in the course of your duties, some of which are intensely private. You must, at all times, respect the confidentiality of the documents you witness and of the information made available to you in your official capacity. This builds the trust of the general public in the role of the JP.
- **Never witness a blank document.** Always ensure a document is completed fully before you witness it. If a document contains blank spaces, cross them out, have the signatory initial them and initial them yourself before signing the document.

Frequently asked questions

What does it mean to say a document is unlawful?

It means a JP or Cdec cannot attest the document—in other words, it cannot be officially verified as true and correct.

Unlawful documents need not be *illegal* (that is, they may not break any law) but, because they cannot be attested, they do not carry much legal weight and are unlikely to be acceptable to official and commercial institutions.

What makes a document unlawful?

Documents are unlawful if:

- they are not authorised to be sworn under any Act, or
- the wording they use is not the wording that the authorising Act prescribes, or
- they include unlawful material, such as defamatory comments.

Can I decline to witness a document?

If you decline to witness a document, you should explain your reasons for refusal to the person and note your reasons in your logbook.

Note: Remember you cannot refuse to witness a document simply because you do not agree with the contents or the law under which the document is administered.

What if the signatory doesn't want me to peruse the document?

Try to persuade them to change their mind. Explain you only wish to check if there are any alterations or omissions or if the document includes any material that would cast doubt on its legality. Tell them you will treat the contents as confidential.

If the signatory cannot be persuaded, ask them to look through the document for any alterations or omissions and initial them. You should then witness the signature in the following fashion:

Signature only witnessed. Contents not disclosed.

This will protect you if the document is later found to be invalid or includes objectionable material.

How do I deal with multiple-page documents?

Number each of the pages 'page 1 of 4', 'page 2 of 4' and so on. (Although the position of this numbering on the page is not prescribed, it is normally done on the lower right-hand corner, in the same place on each page.)

Then initial each page and ensure the signatory does the same. The final page must be witnessed in the normal manner by signing your name.

Signature stamps

Using a signature stamp, rather than signing by hand, depends on the preference of the receiving agency. You should check with the department or agency where the document is to be filed to find out if a signature stamp satisfies their particular requirements.

What if the document is to be signed by other people?

You may only witness the signature of people who are present with you at the time of signing. If the document requires several people to sign it and not all those people are present to sign the document, you should write on the document that you are only witnessing the signature of a particular person or persons e.g. *The signature of John Smith only witnessed.*

What should I accept as proof of identity?

Unless the proof required is specified on the document, this is up to you. Normally a driver licence, proof of age card, student identification or passport would be sufficient. Photographic identification is ideal, however this may not always be possible. Be wary of service club ID cards.

What if the title 'Justice of the Peace' is printed on the document where I am to witness it?

Add '(Qualified)' after 'Justice of the Peace'. There is no need to initial this alteration.

If alternative titles are printed on the document, cross out the titles that do not apply. There is no need to initial this alteration.

Should I treat the documents I witness as confidential?

Generally, yes. However, in some circumstances, the law may require you to disclose information about the document. For example, you may be called to give evidence about the matter in court.

Can I witness documents for family or friends?

You should make it a rule never to witness a document signed by a friend or relative.

If you fail to follow this rule, they could be accused of bias and this could place the document in jeopardy if it is challenged at a later time.

With some documents, such as enduring powers of attorney, legislation prohibits you from being a witness if you are related to the signatory.

The case of wills is slightly different. Although it is not illegal for you as a JP to witness the will of a relative or friend, you should be aware that it may prohibit any benefit coming to you and/or your spouse from the will. You may wish to seek legal advice in these circumstances.

Some legislation may require the witness of the signature to have personal knowledge of the signatory e.g. you may have had to have known the signatory for 12 months or more. This will be specified on the documents.

What is a seal of office?

Your seal of office should only be used when discharging your services as a JP. It should not be used when it is insensitive or irrelevant to do so. It is supplied to you when you are appointed as proof of your official position.

Can I have a seal made that incorporates my registration number?

This is not a recommended practice as your registration number is a unique identifying number that shows you have signed the document. You should keep your seal of office as safe as practicable.

Section 31(1a) of the *Justices of the Peace and Commissioners for Declarations Act 1991* requires you to insert your registration number on the impression of your seal.

Do I need to write my full name on the documents I witness?

Generally, there is no requirement to insert your full name when witnessing a document for a member of the community unless this is otherwise stated on the document. If your full name is required, then the document will normally provide a space for this to be inserted, such as land titles forms and some statutory declarations.

At times, it is also stated in legislation or the regulations of an Act that the witnessing officer must place their full name on a document that they have witnessed. It is important to remember that when a document asks for your full name, you include your entire middle name, e.g. John James Smith and not initials.

Do I need to write my address on documents I witness?

Generally, there is no requirement for you to place an address on documents you witness. If the document requires an address, you can provide the address of Justices of the Peace Branch at Level 6, 154 Melbourne Street, South Brisbane, Qld, 4101.

Am I allowed to take copies of documents I witness for my records?

No, you cannot keep copies of documents you witness. You do not have any authority to request, retain, photocopy or photograph copies of documents.

As suggested earlier, you should maintain a register containing details of the documents you have witnessed.

Confidentiality of the documents you have witnessed is paramount and, if you hold copies of all documents you witness, keeping them secure could become a problem.

At times, however, you may be requested to retain copies of documents such as applications for warrants and applications for external body searches.

Am I allowed to witness a document via video link?

No. You can only witness documents that have been physically signed in your presence.

Quick guide

General steps to witness a document

-
- Check what type of document it is. Don't witness the document if:
- ①
 - a. You don't believe it's lawful.
 - b. You don't have authority to do so.
-
- ② Check if the document has special requirements e.g. proof of identity, personal knowledge of the signatory.
-
- ③ Confirm the document is properly formatted e.g. is it an affidavit or statutory declaration.
-
- ④ Check if the document is to be signed on oath, affirmation, or by way of statutory declaration.
-
- ⑤ Check the signatory is the person named in the document.
-
- ⑥ Ask for proof of identity.
-
- ⑦ Confirm the date throughout the document is the same as the date on which you're witnessing.
-
- Read through the document for alterations, spaces or omissions.
- ⑧
 - a. Both you and the signatory should initial any changes, including correction fluid or tape.
 - b. Decline to witness material you know to be false.
 - c. Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.
-
- Check for annexures and mark them.
- ⑨
 - a. If the annexures are for an affidavit under the *Uniform Civil Procedures Rules 1999*, then both you and the signatory must also sign them.
-
- ⑩ Warn the signatory they must tell the truth.
-
- ⑪ Administer the oath, affirmation or statutory declaration.
-
- ⑫ Ask the signatory to sign the document in front of you.
-
- Sign the document and insert your registration number wherever a signature is required. Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).
- ⑬
 - a. If the signatory has asked you to not check the document, state this in writing before signing.
-
- ⑭ Enter all relevant details in your logbook.
-

4.2 Witnessing statutory declarations

Definition of statutory declarations

Statutory declarations are written statements declaring something is true and correct. They carry a degree of formal authority that statements with only a signature do not. For matters dealt with by Queensland legislation, they are made under the *Oaths Act 1867*. For Commonwealth matters, they are made under the *Statutory Declarations Act 1959*.

There is no requirement for a statutory declaration to be sworn or affirmed as they are not generally used in a court of law.

Statutory declarations must be correctly worded and standard forms are available online at www.courts.qld.gov.au and at courthouses. However, most government department forms and many other forms required by a wide range of statutory authorities and businesses follow the format of a statutory declaration. Others, such as insurance claim forms, include a statutory declaration at the end.

Why do people make statutory declarations?

A statutory declaration is intended to ensure the statement being made is truthful. It has the effect of putting the signatory—called the declarant—on notice that the information they provide must be, in their conscientious opinion (i.e. to the best of their knowledge and belief), entirely correct. If it is not, they will be liable to a penalty.

Some legislation requires information to be supplied in the form of a statutory declaration. In some cases, people choose to make a statement by way of a statutory declaration—not because there is a legal requirement to do so, but because they believe the statement will carry more weight as a result.

How do you witness a statutory declaration?

You should follow the general procedure for witnessing signatures, as outlined in the general witnessing chapter 4.1.

For a statutory declaration, however, you should also:

- **Warn the declarant, at the outset, about the penalty for making a false declaration.** Explain that, if the declaration is found to be untruthful, the declarant may be charged under the *Criminal Code* and be liable to penalties including fines or imprisonment.
- **Check the declarant understands the declaration.** Question the declarant closely about the contents of the declaration to ensure they understand it. Warn them again about the penalties for making a false declaration.

If you are satisfied the declarant understands the declaration, ask them:

.....
Do you solemnly and sincerely declare that the contents of this declaration are true and correct to the best of your knowledge and belief?

Instruct the declarant to answer:

I solemnly and sincerely declare that the contents of this declaration are true and correct to the best of my knowledge and belief.

Or:

I do so declare.

.....

The declarant then signs the declaration and you witness the signature in the normal manner.

Things to bear in mind

Location

Under the *Oaths Act 1867*, you can witness the signing of a statutory declaration anywhere in the world: in Queensland, interstate or overseas. However, a statutory declaration under this Act will apply only to matters covered by Queensland law.

A statutory declaration under Commonwealth law (*Statutory Declarations Act 1959*) may be taken (witnessed) overseas and in Australia. Therefore, neither state nor national borders limit your powers as a witness for Commonwealth documents.

Use the set format

Statutory declarations (both Queensland and Commonwealth) should be in the correct format. Forms are available in most stationery stores, post offices and from your local Magistrates Court. They can also be downloaded from www.courts.qld.gov.au.

At times, you may be presented with statutory declarations that may not be in the correct format. If the form is not available, the declarant can prepare the document, provided it is substantially in the following format:

I, [name], do solemnly and sincerely declare that [let the declarant declare the facts here] and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1867.

If the actual format of the document is not substantially in accordance with the provisions of the *Oaths Act 1867* or another Act or law, then you should decline to witness the document.

Check over the declaration

This is covered in the general witnessing chapter 4.1 and you should do this as a matter of course. However, it is worth repeating here because you need to check there are no blank spaces, particularly in a document that requires the deponent to answer prepared questions. It is not possible to ‘declare’ a blank or unanswered question.

Remember, you must cross out any spaces the declarant has deliberately left blank, and both you and the declarant must initial these blank spaces and any other alterations made.

Note: The following are exceptions to witnessing a document with unanswered questions.

- Victim Assist Queensland (VAQ) financial applications
- domestic and family violence applications
- some family law documents.

Frequently asked questions

Do I need to use a Bible?

Bibles are not required for statutory declarations not sworn or affirmed. However, if a declarant wishes to swear a statutory declaration using a Bible, then they could, provided there is one available.

Is there an age limit of a person making a statutory declaration?

There is nothing in law that precludes someone who is under 18 making a statutory declaration. You would need to be satisfied the person understands the nature and content of the declaration and that they must tell the truth.

Can more than one person declare and sign on the same statutory declaration?

Sometimes the receiving agency requires more than one person to make a declaration. You can execute such a document, however it must be legible and the appropriate wording used, such as changing 'I' to 'we'. Alternatively, both parties can complete their own statutory declaration.

What if there are attachments to the statutory declaration?

Attachments must be referred to and described in the body of the declaration. Each attachment should be marked with the following:

.....
This is the [type of document] or copy of the [type of document] marked with the letter 'A' referred to in the [name of main document] declared before me on this day of 20

Should I keep a record of the statutory declarations I witness?

Yes. You should include information in your logbook such as:

- date
- document witnessed
- deponent's details
- type of identification sighted
- location of signing
- any other relevant details.

Where can I get more information?

Copies of statutory declarations

www.courts.qld.gov.au/forms

Queensland legislation

www.legislation.qld.gov.au

Commonwealth legislation

www.legislation.gov.au

Forms

Queensland statutory declaration

www.publications.qld.gov.au/dataset/statutory-declaration

Commonwealth statutory declaration

www.ag.gov.au/Publications/Pages/Statutorydeclarations.aspx

Sample form

Queensland Statutory Declaration (page 1 of 1)

Oaths Act 1867
Statutory Declaration

**QUEENSLAND
TO WIT**

I, **Insert full name** of **Insert address**, in the State of Queensland do solemnly and sincerely declare that

Insert matters to be declared

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1867.

Signature of the person making the declaration

Declarant

Taken and declared before me at **Town or suburb** this day of 20 ,
before me.

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

Justice of the Peace/Commissioner for Declarations

Sample form

Commonwealth Statutory Declaration (page 1 of 1)

Commonwealth of Australia
 STATUTORY DECLARATION
Statutory Declarations Act 1959

1 *Insert the name, address and occupation of person making the declaration* I, ¹ **Insert full name, address and occupation**

2 *Set out matter declared to in numbered paragraphs* make the following declaration under the *Statutory Declarations Act 1959*:

Insert matters to be declared

SAMPLE

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 *Signature of person making the declaration* ³ **Insert signature**

4 *Place* Declared at ⁴ **Town or suburb** on ⁵ **Insert day** of ⁶ **Insert month and year**

5 *Day*

6 *Month and year*

7 *Signature of person before whom the declaration is made (see over)* ⁷ **Insert your full name, seal of office or your prescribed mark of office and insert your registration number beside or below your signature**

8 *Full name, qualification and address of person before whom the declaration is made (in printed letters)* ⁸ **You can use the following address:
 Level 6, 154 Melbourne Street
 South Brisbane QLD 4101**

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

Quick guide

Follow these steps to witness statutory declarations

- ① Warn the declarant about the penalty for making a false declaration.

- ② Check the declarant understands the declaration.

- ③ Ask the declarant to make their declaration.

- ④ You must ensure there are no blank spaces. It is not possible to 'declare' a blank or unanswered question.

Then follow the general procedure for witnessing documents

- ① Check what type of document it is. Don't witness the document if:
 - a. You don't believe it's lawful.
 - b. You don't have authority to do so.

- ② Check if the document has special requirements e.g. proof of identity, personal knowledge of the signatory.

- ③ Confirm the document is properly formatted e.g. signing as a statutory declaration.

- ④ Check the signatory is the person named in the document.

- ⑤ Ask for proof of identity.

- ⑥ Confirm the date throughout the document is the same as the date on which you're witnessing.

Read through the document for alterations, spaces or omissions.
 - a. Both you and the signatory should initial any changes, including correction fluid or tape.
 - b. Decline to witness material you know to be false.
 - c. Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.

- ⑧ Number multiple page documents. You and the signatory should then initial each page.

- ⑨ Warn the signatory they must tell the truth.

- ⑩ Ask the signatory to sign the document in front of you.

- ⑪ Sign the document and insert your registration number wherever a signature is required.
 - a. If the signatory has asked you to not check the document, state this in writing before signing.

- ⑫ Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).

- ⑬ Enter all relevant details in your logbook.

4.3 Camera-detected offence notice—statutory declarations

What is a camera-detected offence notice?

A camera-detected offence notice is a fine issued from speed and red light cameras. These fines are issued in the name of the registered owner of the vehicle.

The *Transport Operations (Road Use Management) Act 1995* allows for the registered owner (which can be a person or a company) to transfer liability of a camera-detected offence. In other words, the person who was driving the vehicle receives the penalty—not the registered owner.

For the transfer of liability of the offence to occur, a statutory declaration must be completed.

Who can make this type of statutory declaration?

There are several options available as to who may make these types of declarations. These can include:

- the registered owner (the person whose name is printed on the infringement notice)
- an executive (owner, manager, secretary or supervisor) of the corporation/company named in the infringement notices
- the driver or person in charge of the vehicle at the time of the offence—this is referred to as a self-nomination
- a person who has control of another person's affairs such as power of attorney or an executor of an estate. Certified copies of the document authorising this person as the power of attorney must accompany the completed statutory declaration.

Sections 114 (3) and (4) of the *Transport Operations (Road Use Management) Act 1995* state:

(3) It is a defence to a camera-detected offence, other than an unregistered or uninsured offence, for a person to prove that—

- a. the person was not the driver of the vehicle at the time the offence happened; and*
- b. the person—*

(i) has notified the commissioner or chief executive of the name and address of the person in charge of the vehicle at the time the offence happened; or

(ii) has notified the commissioner or chief executive that the person did not know and could not, with reasonable diligence, have ascertained the name and address of the person in charge of the vehicle at the time the offence happened.

(4) A defence under subsection (3) or (3A) is available only if the person notifies the commissioner or chief executive about the matters in subsections (3) and (6), or subsection (3A), in a statutory declaration given within the required time.

How do you witness a camera-detected offence statutory declaration?

You should follow the general procedure for witnessing signatures, as outlined in the general witnessing chapter 4.1.

For a statutory declaration, however, you should also check it gives the following information.

Name and address of the declarant

The declarant is to complete this section if:

- They are the registered owner of the vehicle but were not the driver at the time of the offence.
- They are completing the statutory declaration on behalf of a company and they are authorised by the company to do so. (Note: The declarant must record their position/title within the company structure.)
- They were the driver of the vehicle at the time of the offence (self-nomination).

Particulars of person

If the declarant is the registered owner of the vehicle but was not the driver at the time of the offence, they nominate the driver here, providing as full details of the driver as possible. If the declarant is self-nominating, they must record their full particulars.

Residential address

This must be the residential street address of the person in charge of the vehicle at the time of the offence. A residential address is also where a corporation is located. Property names and unit or flat numbers can be included in the address details. A postal address is not acceptable.

Signature of declarant

The person named as the declarant must sign the statutory declaration.

Witnessing officer

Insert your signature, title and registration number. You must also print your full name (including middle name/s, not initials). If you apply your seal of office, this may be placed adjacent to this field. Please ensure your seal of office does not obscure or cover any information inserted into the document.

Enter the details in your logbook

You can include information in your logbook such as:

- date
- document witnessed
- declarant's details
- type of identification sighted
- location of signing
- other relevant details.

Things to bear in mind

- Ensure you and the person making the declaration initial any corrections (including any corrections using white-out or correction fluid).
- Ensure the deponent has written all names in full.
- Rule out irrelevant sections i.e. ‘stolen/sold vehicle’ and ‘both parties to initial’.
- Never void, cancel or decline to witness an expired infringement notice. It is the receiving body’s decision to reject or accept an expired notice. Advise the deponent of this.
- The declarant can record an overseas or international licence number on the declaration.
- If an executive officer is completing the infringement notice, they must record their position, title and company name (as per the infringement notice) next to their printed full name.

Where can I get more information?

Traffic infringement notices

www.police.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

Forms

Traffic infringement notice—statutory declaration

www.police.qld.gov.au/programs/roadSafety/infringement/notice.htm

Sample form

Statutory Declaration—Traffic Infringement Notice (page 1 of 1)

Your Options (select only one option and complete only one section)

No reminder will be issued. You have only 28 days from the notice date to choose a payment option, return the statutory declaration or elect to have the matter dealt with by a Magistrate's Court. If you do not take one of these actions within 28 days, enforcement action may be taken to recover the penalty amount and any additional fees payable. If relevant, any demerit points will be taken to be effective from the date of the offence.

- Option 1 - If you WERE NOT** in charge of the vehicle - **DO NOT** pay Infringement Notice - **complete and return** Statutory Declaration (see **Section A - Statutory Declaration**).
- Option 2 - Elect to have the matter** dealt with in court, **DO NOT** pay Infringement Notice (see **Section B - Election for Court Hearing**).
- Option 3 - If you WERE** in charge of the vehicle, payment of the fine in full or by way of instalments (see **Section C - Payment Methods**).

The *State Penalties Enforcement Act* provides this notice may be withdrawn before or after the fine is paid.

Section A - Statutory Declaration

DO NOT pay Infringement Notice. **Complete the Statutory Declaration below** and return **within 28 days** of the notice date. A new Infringement Notice will be issued to the person you nominate as the person in charge of the vehicle at the time of the offence, and that person will be advised of the particulars of the nomination.

Note: Person in charge includes the person driving, or responsible for the vehicle, or the new owner of the vehicle. When this notice is served on the registered owner, that person is taken to have committed the offence even though the person driving may have been someone else. The registered owner may transfer liability to the person in charge of the vehicle by correctly completing the below Statutory Declaration and returning it **within 28 days** of the notice date. If you are completing the declaration on behalf of a corporation, you must be an Executive Officer of that corporation and include your position title.

STATUTORY DECLARATION		Oaths Act 1867	
I, <u>o</u>	Given names	Family name	Position/title within the company (If corporation, position - must be an Executive Officer)
of, <u>Street address of the declarant</u>	Residential address		Postcode
Do solemnly and sincerely declare that at: <<hhmm>> on dd/mm/yyyy			
<input type="checkbox"/> THE PERSON IN CHARGE* OF THE VEHICLE REGISTRATION NUMBER <<rego number>> was:			
Particulars of Person	Given name/s	Family name	Date of birth Licence number (if known)
	<u>Street address of the person in charge at the time of offence</u>		
	Residential address		Postcode
<input type="checkbox"/> The vehicle was sold on (Date) _____ (new owner details must be inserted above)			
<input type="checkbox"/> The vehicle was stolen or illegally taken at the time of the offence and the matter was reported to _____ on ___/___/___.			
Queensland Police Service Crime Report Number _____			
And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the <i>Oaths Act</i> .			
Signature of Declarant		Taken and declared before me at _____	
In the state of _____		This _____ day of _____ 20____	
Signature of Justice of the Peace/Commissioner for Declarations		Printed name, title and qualification of witness	

Signature of the person making the declaration

Insert your signature, full name, qualification and registration number

Return this Statutory Declaration within 28 days of the notice date to: Director, Traffic Camera Office, Queensland Police Service, GPO Box 1440, BRISBANE QLD 4001.

Privacy Statement: The Department of Transport and Main Roads and Queensland Police Service collects the information on this form under the *State Penalties Enforcement Act* and the *Transport Operations (Road Use Management) Act* so that the identity of the person who is alleged to have committed the offence may be established. This information is accessible by the Queensland Police Service and may be used for law enforcement purposes. The information is also accessible by authorised departmental officers and some of this information may be disclosed to other Queensland government departments and interstate government authorities. The department will not disclose your personal details to other third parties without your consent unless authorised by law.

Section B - Election for Court Hearing

You have the right to elect to have this matter dealt with by a court. This Election for Court Hearing must be completed and the complete notice forwarded to the Department of Transport and Main Roads within the 28 day period from the date of issue of this Infringement Notice. **DO NOT** pay Infringement Notice.







I, _____

Given name/s Family name (If corporation, position - must be an Executive Officer)

elect to have this matter dealt with by a Court of Law and understand proceedings may be commenced. Send completed Court Election to:

Signature _____ Date ___/___/___ Department of Transport and Main Roads
PO Box 673, FORTITUDE VALLEY QLD 4006

Section C - Payment Methods

 In Person You can pay this notice in person at any customer service centre. For a full list, go to www.tmr.qld.gov.au .	 Internet Visit www.tmr.qld.gov.au . Select 'Pay a fine or infringement'. Use the Reference Number located on the front of this notice.	 iPAY Use the Biller Code and Reference Number located on the front of this notice. It may take several days for your payment to be accepted by us.	 By Phone Call 13 23 90** (Qld only 24/7) to make a self-service payment. Use the Reference Number located on the front of this notice. A receipt number will be issued.*	 Australia Post Payable by cash, cheque, VISA* or MasterCard* on or before the due date. Please retain notice/receipt as proof of payment.	 By Mail Cheque or money order, to Department of Transport and Main Roads. Send the front payment slip with payment to: PO Box 525, FORTITUDE VALLEY QLD 4006, AUSTRALIA
---	--	--	--	--	---

Voluntary Instalment Plan

If the fine is \$200 or more, you may make an application, within 28 days of the date of this notice, by signing and dating this section and returning the whole Infringement Notice to the Department of Transport and Main Roads, PO Box 525, FORTITUDE VALLEY QLD 4006 and paying a first instalment of at least \$60, to be followed by further instalments of not less than a fortnightly amount of \$30. If the application is approved, you may pay all remaining instalments to the State Penalties Enforcement Registry (SPER) in any way acceptable to them. If you default on your instalments, enforcement action may be taken to recover the amount, including SPER and any other additional fees payable. For more information see www.tmr.qld.gov.au.

Signature _____ Date ___/___/___

* Major credit cards accepted. A surcharge will apply for payments by credit card or where the credit card option is selected. For further information please go to www.tmr.qld.gov.au/creditcard.

** Higher rates apply from mobile phones and payphones.

Quick guide

Follow these steps to witness a camera-detected offence notice

Name and address section

Check the person should be a declarant:

- ①
 - a. They are the registered owner of the vehicle but weren't driving at the time of the offence.
 - b. They represent the company that owns the vehicle and can give you their company position.
 - c. They were driving the vehicle at the time of the offence.
-

Particulars of person section

- ②
 - a. The details about the person who was driving the vehicle at the time of the offence go here.
-

Residential address

- ③
 - a. This must be the full residential street address (not a PO box) of the person who was driving the vehicle at the time of the offence.
 - b. The address of a corporation can be put here, too.
-

Signature of declarant

- ④
 - a. The person named as the declarant must sign the statutory declaration.
-

Witness the signature

- ⑤
 - a. Insert your signature, title and registration number.
 - b. Print your full name (including full middle name and not initials).
 - c. If you choose to apply your seal of office, ensure it does not cover any handwritten information in the document.
-

- ⑥ Enter all relevant details in your logbook.
-

4.4 Witnessing applications under the *Domestic and Family Violence Protection Act 2012*

What is the *Domestic and Family Violence Protection Act 2012*?

This Act deals with violence committed or threatened to be committed by a person in a ‘relevant relationship’. Relevant relationships include:

- family relationship
- informal care relationship
- intimate personal relationship
- spousal relationship
- engagement relationship
- couple relationship.

Why would someone make an application under this Act?

Anyone has the right to make an application for a protection order if they are experiencing emotional, mental or physical abuse in a relationship.

What are the objectives of the Act?

The main objectives defined in the Act are:

- a. to maximise the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives
- b. to prevent or reduce domestic violence and the exposure of children to domestic violence
- c. to ensure that people who commit domestic violence are held accountable for their actions.

What is the definition of domestic violence?

The *Domestic and Family Violence Protection Act 2012* provides for a broader definition of domestic violence and the relationships that are protected by it.

Meaning of domestic violence

(1) Domestic violence means behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that—

- a. is physically or sexually abusive; or*
- b. is emotionally or psychologically abusive; or*
- c. is economically abusive; or*
- d. is threatening; or*
- e. is coercive; or*
- f. in any other way controls or dominates the second person and causes the second person to fear for the second person’s safety or wellbeing or that of someone else.*

Examples of domestic violence behaviours that are included in the Act are:

- causing personal injury to a person or threatening to do so
- coercing a person to engage in sexual activity or attempting to do so

- damaging a person’s property or threatening to do so
- depriving a person of the person’s liberty or threatening to do so
- threatening a person with the death or injury of the person, a child of the person or someone else
- threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed
- causing or threatening to cause the death of, or injury to, an animal—whether or not the animal belongs to the person to whom the behaviour is directed—so as to control, dominate or coerce the person
- unauthorised surveillance of a person
- unlawfully stalking a person.

How do I witness an application for a protection order under the Act?

1. Ask the applicant for identification and enter their name and the type of identification presented in your logbook.
2. Check the declarant understands the declaration.
3. Explain to the applicant you will have to read through the document to ensure it appears to be fully completed. Do not assist the person to complete the form and do not offer advice or opinions. Should the declarant require advice, you can assist by directing them to the DVConnect Service on 1800 811 811.
4. Issue the applicant with the warning that they need to tell the truth and take their declaration.
5. Ensure the document is signed in front of you. Place your signature, full name, seal and number on the statutory declaration.
6. Enter the details in your logbook. Details can include the:
 - a. date you witnessed the declaration
 - b. name of the signatory
 - c. type of document witnessed
 - d. type of identification sighted
 - e. location where the document was witnessed
 - f. whether there were any special requirements you needed to take to ensure compliance with the document
 - g. any questions asked and answers given to clarify the document’s contents and the signatory’s understanding of the document.

Frequently asked questions

Does the application need to be made by the aggrieved?

No. An application can be made by:

- a police officer
- an aggrieved person’s guardian appointed under the *Guardianship and Administration Act 2000*
- an attorney for the aggrieved appointed under an enduring power of attorney under the *Powers of Attorney Act 1998*
- any person 18 years of age and over who is authorised to appear by the aggrieved person (an authorised person). This person can be authorised in writing. If the authority is not in writing—such as for a person who has a disability and can’t write—then oral authority can be given.

Can additional pages be submitted with the application?

Yes. Additional pages can be submitted with the application. If there are attached statements, they should be prepared as statutory declarations or annexures to the original declaration and should be witnessed accordingly.

A domestic and family violence safety form may also accompany the application. If the person has concerns for their safety, this form should be completed by the aggrieved or a representative.

What applications can I witness?

There are several forms you might be asked to witness and where you will need to take the applicant's declaration. These include:

- *DV1 Application for a protection order*
- *DV4 Application to vary a domestic violence order*
- *DV9 Application to vary or revoke a voluntary intervention order*
- *DV14 Application for registration in Queensland of an interstate domestic violence order*
- *DV16 Application to vary or cancel a registered interstate order*
- *DV21 Affidavit of service.*

Do I have any powers to grant a protection order?

Not on your own. If there is no magistrate available, two JP (Qual) may be requested to constitute a Magistrates Court to deal with an application for a protection order. This may only be done at an existing Magistrates Court with an appointed registrar.

You are limited in your jurisdiction to dealing with the following applications:

- an application to make or vary a temporary protection order if a magistrate is not readily available to constitute a Magistrates Court
- an application to adjourn a proceeding taken with a view to the making of a domestic violence order against a respondent.

When making temporary protection orders, JPs (Qual) must adjourn the application to a date when a magistrate is available.

Where can I get more information?

Domestic and family violence

www.qld.gov.au/domesticviolence

Queensland Courts

www.courts.qld.gov.au/dfv

Violence Prevention Unit, Department of Communities, Child Safety and Disability Services

www.communities.qld.gov.au/communityservices/violence-prevention

For help and advice

DVConnect Womensline 1800 811 811 Mensline 1800 600 636 www.dvconnect.org

Kids Help Line

1800 55 1800 www.kidshelpline.com.au

Elder Abuse Helpline

1300 651 192 www.eapu.com.au

Forms

Application for a protection order (DV1)—statutory declaration

www.qld.gov.au/dfvorders

Sample form

Protection order application—statutory declaration (page 1 of 1)

<h4>12. Statutory Declaration</h4> <p>The applicant, except if a member of the Queensland Police Service, must sign this application in the presence of a Justice of the Peace, Commissioner for Declarations, or a Solicitor</p> <p>I, <input style="width: 300px;" type="text" value="Insert full name"/> the applicant in this application, do solemnly and sincerely declare:</p> <p>The information set out in this application, and any other attached statement, is true and correct to the best of my knowledge and belief. I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the <i>Oaths Act 1867</i>.</p> <p>Declared by <input style="width: 150px;" type="text" value="Insert full name"/> on <input style="width: 80px;" type="text" value="DD MM /YY"/> at <input style="width: 150px;" type="text" value="Town, suburb or state"/> in the presence of</p> <table style="width: 100%;"><tr><td style="width: 50%;"><p><i>(Signature of Applicant)</i></p><p>.....</p><p><i>(Full name of Applicant)</i></p><p><input style="width: 150px;" type="text" value="Insert full name"/></p><p>.....</p></td><td style="width: 50%;"><p><i>(Signature of person taking statement)</i></p><p>.....</p><p><i>(Full name and Qualification of Witness)</i></p><p><input style="width: 150px;" type="text" value="Insert full name"/></p><p>.....</p></td></tr></table> <div style="border: 1px solid red; padding: 5px; width: fit-content; margin-left: auto; margin-right: auto;"><p>Insert your seal of office or your prescribed mark of office and insert your registration number beside or below your signature</p></div>	<p><i>(Signature of Applicant)</i></p> <p>.....</p> <p><i>(Full name of Applicant)</i></p> <p><input style="width: 150px;" type="text" value="Insert full name"/></p> <p>.....</p>	<p><i>(Signature of person taking statement)</i></p> <p>.....</p> <p><i>(Full name and Qualification of Witness)</i></p> <p><input style="width: 150px;" type="text" value="Insert full name"/></p> <p>.....</p>						
<p><i>(Signature of Applicant)</i></p> <p>.....</p> <p><i>(Full name of Applicant)</i></p> <p><input style="width: 150px;" type="text" value="Insert full name"/></p> <p>.....</p>	<p><i>(Signature of person taking statement)</i></p> <p>.....</p> <p><i>(Full name and Qualification of Witness)</i></p> <p><input style="width: 150px;" type="text" value="Insert full name"/></p> <p>.....</p>							
<p>Queensland Police Service Applicant <i>The applicant, if a member of the Queensland Police Service, must sign this application and provide the details below:</i></p> <table style="width: 100%;"><tr><td style="width: 20%;">Full Name and Rank:</td><td><input style="width: 80%;" type="text"/></td></tr><tr><td>Registration No:</td><td><input style="width: 80%;" type="text"/></td></tr><tr><td>Signature:</td><td><input style="width: 80%;" type="text"/></td></tr><tr><td>Date:</td><td><input style="width: 80%;" type="text"/></td></tr></table>	Full Name and Rank:	<input style="width: 80%;" type="text"/>	Registration No:	<input style="width: 80%;" type="text"/>	Signature:	<input style="width: 80%;" type="text"/>	Date:	<input style="width: 80%;" type="text"/>
Full Name and Rank:	<input style="width: 80%;" type="text"/>							
Registration No:	<input style="width: 80%;" type="text"/>							
Signature:	<input style="width: 80%;" type="text"/>							
Date:	<input style="width: 80%;" type="text"/>							
<p>Notes to the respondent</p> <p>If you do not appear in court a domestic violence order may be made in your absence. The court may issue a warrant for you to be taken into custody by a police officer and brought before the court if the court believes that it is necessary for you to be heard.</p>								
<p>Office Use Only</p> <p>Court file number (if known) :</p> <p>YOU ARE NOTIFIED that this application will be heard at the time and place as follows:</p> <table style="width: 100%;"><tr><td style="width: 10%;">Court:</td><td><input style="width: 90%;" type="text"/></td></tr><tr><td>Place:</td><td><input style="width: 90%;" type="text"/></td></tr><tr><td>Date:</td><td><input style="width: 90%;" type="text"/></td></tr><tr><td>Time:</td><td><input style="width: 90%;" type="text"/></td></tr></table> <p>Signature Clerk of the Court/Queensland Police Service</p>	Court:	<input style="width: 90%;" type="text"/>	Place:	<input style="width: 90%;" type="text"/>	Date:	<input style="width: 90%;" type="text"/>	Time:	<input style="width: 90%;" type="text"/>
Court:	<input style="width: 90%;" type="text"/>							
Place:	<input style="width: 90%;" type="text"/>							
Date:	<input style="width: 90%;" type="text"/>							
Time:	<input style="width: 90%;" type="text"/>							

Domestic and Family Violence Protection Act 2012
Form DV1 – version 2 – 22 March 2016

Print

Page 8 of 8

Quick guide

Follow this process to witness an application for a protection order

① Ask the declarant for identification.

② Enter their name and type of identification in your logbook.

Explain you will have to read through the document to ensure it is fully completed.

③ a. Do not help the person complete the form.

b. Do not give advice or opinions.

c. Direct the declarant to DVConnect on 1800 811 811 if they need advice.

④ Warn the declarant they need to tell the truth.

⑤ Take their declaration.

⑥ Ask them to sign the document in front of you.

⑦ Place your signature, full name, seal and number on the statutory declaration.

⑧ Enter all relevant details in your logbook.

4.5 Witnessing blue card applications

What is the purpose of blue cards?

The purpose of the blue card system is to contribute towards creating safe and supportive environments for children and young people when receiving services and participating in activities that are essential to their development and wellbeing, such as child care, education, sport and cultural activities.

Blue cards are issued under the *Working with Children (Risk Management and Screening) Act 2000*. A JP (Qual) is a 'prescribed person' under the Act.

Why would someone apply for a blue card?

People who provide services directed mainly at children and young people are required to hold a blue card. If a person works as a paid employee or volunteer with children and young people in any of the following areas, they may require a blue card:

- school boarding houses
- schools (other than teachers and parents)
- child care
- disability services workers
- churches, clubs and associations involving children
- private teaching and coaching
- education programs conducted outside of normal school hours
- student nurses and doctors
- sporting officiators.

A person's employer may require them to obtain a blue card prior to taking up employment in a particular organisation.

How do I witness an application?

The same general procedure to witnessing documents applies. While it is part of your normal duties to sight proof of identity documents at the time of witnessing, this legislation requires you to declare on the application form that you have complied with this requirement.

You should also make a note in your logbook.

Where can I get more information?

Blue card services
www.bluecard.qld.gov.au

4.6 Administering oaths and affirmations

What is an oath?

An oath is a solemn declaration or undertaking that calls upon God to witness the truthfulness of the statement a person is making.

A document made under oath is said to be ‘sworn under oath’, as the contents of the document are ‘sworn before God’.

What is an affirmation?

A solemn affirmation is the equivalent of an oath except that it does not call upon God to bear witness. It was introduced as a concession to people who object to taking an oath for religious or other conscientious reasons. Some religions do not accept the use of oaths, and the use of affirmations by people with no religious beliefs is now commonly accepted.

Why would a person take an oath?

The reason for making an oath is based in the historical significance of religion when swearing an oath before God was a very serious thing. The serious nature of an oath is still evident today, as any false statement under oath is a criminal offence and results in substantial penalties, including heavy fines or imprisonment.

However, in today’s multicultural society, the law recognises a person’s right to beliefs other than Christianity, and there are various oaths for people with other religious beliefs.

By law, certain statements—such as documents intended for use in court proceedings, oaths of office, requests for the replacement of certain lost documents and some statements of debt—must be sworn under oath or by affirmation.

Why take an affirmation?

The *Oaths Act 1867* states a person may make an affirmation in lieu of an oath if they regard the taking of an oath as objectionable. The *Oaths Act* also provides that the objection to being sworn may be based on:

- an absence of religious beliefs
- conscientious grounds
- other grounds considered reasonable by the court, a judge, another presiding officer or a person qualified to administer oaths or to take affidavits or depositions.

However, the law does not allow people to avoid taking an oath in the belief they are under a lesser obligation to tell the truth when making an affirmation.

How do you administer an oath or affirmation?

You should follow the general procedure for witnessing a document but you must administer the oath or affirmation before the document is signed. It is advisable to administer the oath or affirmation at the very beginning so the deponent is under oath if you ask any further questions.

It is your responsibility to make sure the oath or affirmation is taken correctly.

Before administering the oath or affirmation, be sure to warn the deponent of the necessity of telling the truth, and the consequences if the document is found to be false.

A document to be made under oath is set out as follows:

.....
I, [name] of [address], make oath and say [body of document].
.....

A document to be made under affirmation is set out as follows:

.....
I, [name] of [address], solemnly, sincerely and truly affirm and declare that [body of document].
.....

At the end of the document, before the space for your signature, there is provision for you to indicate if the document was signed under oath or affirmation.

The procedures for the different types of oaths are set out below.

Note: There are many religions not covered in this handbook and some branches of the major religions require variations in the wording. When in doubt, you should use whatever wording the deponent regards as solemn and binding.

Oaths

Christian oath

To administer a Christian oath, you must use a Bible that contains either a full Bible (Old Testament and New Testament together) or an Old Testament or a New Testament alone. A Christian oath cannot be taken without a Bible, and no substitute is allowable.

- Ask the deponent to take the Bible in their hand, either left or right, and repeat the following words after you:

.....
I swear that the contents of this document are true and correct to the best of my knowledge and belief, so help me God.

Or:

I swear that I will [as per the requirements of the documents], so help me God.
.....

- Once the oath has been taken, ensure the document is signed and witnessed in accordance with the normal procedure.

Jewish oath

The wording for the Jewish oath is the same as for the Christian oath except that the Old Testament, the Torah or Pentateuch is used instead of the Bible. If the deponent wears a hat, this may remain on during the administering of the oath. The Old Testament, Torah or Pentateuch is usually held high in the right hand.

Islamic oath

The Holy Koran, or Qur'an, is used when taking an Islamic oath. Care should be taken when handling the Koran, as some Islamic people believe it is sacrilegious for an unbeliever to touch it.

- Ensure the Koran has been wrapped, by a believer, in a piece of plain white material.
- Hand the Koran to the deponent, asking them to take the Koran in either hand and place the other hand on their forehead.
- Ask the deponent to state the following words:

.....

In the name of Allah, the Beneficent, the Merciful. By Almighty Allah, in whose hands are my life, I promise to give the facts completely, truthfully and sincerely to the best of my ability.

.....

- Ensure the deponent kisses the Koran at the completion of the oath.

Buddhist oath

There are no set procedures to follow. Simply ask the deponent to state the following words:

.....

I declare, as in the presence of Buddha, that I am unprejudiced, and if what I shall speak shall prove false, or if by colouring the truth others shall be led astray, then may the three Holy Existences—Buddha, Dhamma and Pro Sangha—in whose sight I now stand, together with the Devotees of the Twenty-two Firmaments, punish me and also my migrating soul.

.....

Chinese oath

- Light a candle or a match.
- Ask the deponent to blow out the flame and state the following words:

.....

I swear that I shall tell the truth, the whole truth, and nothing but the truth. This candle (or match) is now extinguished, and if I do not tell the truth, may my soul, in like manner, be extinguished forever hereafter.

.....

An older form of a Chinese oath includes the breaking of a plate rather than the lighting of a candle or match, and stating:

.....

I swear that I shall tell the truth, the whole truth and nothing but the truth. The plate is shattered and if I do not tell the truth may my soul, in like manner, be shattered like it.

.....

Affirmations

The procedures for administering an affirmation are the same as for an oath, except that no holy book (or candle, match or plate) is used, and the wording is different.

Secular affirmation

Either ask the deponent:

.....
Do you solemnly, sincerely and truly affirm and declare that the contents of this your [document] are true and correct to the best of your knowledge?

and then instruct the deponent to answer:

I do.

.....
Or ask the deponent to repeat these words after you:

.....
I solemnly, sincerely and truly affirm and declare that the contents of this my [document] are true and correct to the best of my knowledge.

.....
There are also prescribed affirmations under the *Oaths Act 1867* for people of certain religious persuasions.

Affirmation by Quakers

.....
I, [name], being one of the people called Quakers, do solemnly sincerely and truly affirm and declare that the contents of this my [document] are true.

Affirmation by Moravians

.....
I, [name], being of the united brethren called Moravians, do solemnly sincerely and truly affirm and declare that the contents of this my [document] are true.

Affirmation by Separatists

.....
I, [name], do in the presence of Almighty God solemnly, sincerely and truly affirm and declare that I am a member of the religious sect called Separatists and that the taking of an oath is contrary to my religious belief as well as essentially opposed to the tenets of that sect and I do also in the same solemn manner affirm and declare that the contents of this my [document] are true.

Things to bear in mind

Be careful: The followers of some faiths believe it is wrong for a non-believer to speak the words of their oath. So, before hearing the oath, check whether the deponent objects to you reading the words of the oath for them to follow. If they do object, you can hand them a written copy of the oath and ask them to read it out aloud.

Frequently asked questions

Am I precluded from administering a particular oath if it is contrary to my personal beliefs?

No. You have the authority to administer any kind of oath or affirmation, regardless of your own beliefs.

Can I refuse to administer an oath or affirmation?

You may not refuse to administer an oath or an affirmation simply because oaths or affirmations are contrary to your own beliefs.

However, you should refuse to attest a document where the form of oath or affirmation is not substantially in a format that is authorised by law—that is, as set out in this section.

Who provides the equipment?

The person making the oath or affirmation is expected to provide whatever equipment is necessary.

Bibles are supplied to the JPs in the Community program signing sites.

Should I keep a record of the oaths and affirmations I witness?

You can include information in your logbook such as:

- date
- document witnessed
- deponent's details
- type of identification sighted
- location of signing
- any other relevant details.

Where can I get more information?

Queensland legislation

www.legislation.qld.gov.au

4.7 Witnessing affidavits

What is an affidavit?

An affidavit is a written statement made and sworn under oath or affirmation and signed by the deponent for use as evidence in court.

The form of the affidavit varies according to the type of oath or affirmation.

Affidavits are used as means of giving evidence in court in lieu of appearing as a witness and giving oral evidence.

Affidavits made on oath

When the deponent is taking an oath on the Bible, the affidavit usually takes this form:

.....
 I, [insert deponent's name], of [insert deponent's address], make oath and say that [insert deponent's statement]

[Deponent's signature appears here]

Signed and sworn by the said deponent at [insert name of town or city and suburb where affidavit signed] this [insert date] day of [insert month] 20 [insert year], before me.

Justice of the Peace (Qualified).

.....

Affidavits made on solemn affirmation

When the deponent is making an affirmation, the affidavit usually takes this form:

.....
 I, [insert deponent's name], of [insert deponent's address], do solemnly, sincerely and truly affirm and declare that [insert deponent's statement]

[Deponent's signature appears here]

Signed and solemnly, sincerely and truly affirmed and declared by the said deponent at [insert name of town or city and suburb where affidavit signed] this [insert date] day of [insert month] 20 [insert year], before me.

Justice of the Peace (Qualified).

.....

Why are affidavits needed?

Affidavits are often intended for use as evidence in a court of law. They are usually tendered to the court in lieu of verbal evidence. They must, therefore, be prepared and sworn as if they were evidence being given before a court. (The legislation governing administering oaths and witnessing affidavits is the *Oaths Act 1867*.) Your role is to take the oath or affirmation and witness the deponent's signature.

How do you witness an affidavit?

Follow the general procedure for witnessing signatures as outlined in the general witnessing chapter 4.1.

For an affidavit, however, there are three extra steps you should follow:

1. **Warn the deponent.** A false statement made under oath or affirmation is a crime and the offender is liable to punishment, including imprisonment.

Ensure the deponent understands that swearing an oath or making an affirmation is a solemn matter.

2. **Question the deponent.** Check they understand the nature and contents of the document.
3. **Administer the oath or affirmation.**

In the case of a **Christian oath**, you ask the deponent to take the Bible in either of their hands and then ask:

.....
Do you swear that the contents of this affidavit are true and correct, so help you God?
.....

Then instruct the deponent to answer:

.....
I swear that the contents of the affidavit are true and correct, so help me God.

Or:

So help me God.
.....

(The forms of non-Christian oaths are given in chapter 4.6.)

In the case of an **affirmation**, you ask the deponent:

.....
Do you solemnly, sincerely and truly affirm and declare that the contents of the affidavit are true and correct?
.....

Then instruct the deponent to answer:

.....
I solemnly, sincerely and truly affirm and declare that the contents of the affidavit are true and correct.

Or:

I do.
.....

When you have administered the oath or the affirmation, ask the deponent to sign the form. You should then immediately witness the signature in the normal manner.

Things to bear in mind

Here is a summary of the changes you will need to make to the wording of the form if the document is to be affirmed rather than sworn:

For oath	For affirmation, replace with
Make oath and say	Solemnly, sincerely and truly affirm and declare
Signed and sworn	Signed and solemnly, sincerely and truly affirmed and declared
Sworn herein	Affirmed herein

(Note: For non-Christian oaths, the wording ‘make oath’ and ‘signed and sworn’ remains the same.)

Frequently asked questions

What if I administer the oath/affirmation at the start?

You will need to make a slight alteration to the standard oath or affirmation if you decide to administer it at the start. After the phrase ‘the contents of this document’, include the following words: ‘...and any further information I may supply either orally or in writing...’.

The standard written oath on the bottom of the document need not be altered.

What if the document has more than one page?

If the affidavit is a multiple-page document, you and the signatory should sign each page. Number each page ‘page 1 of 4’, ‘page 2 of 4’ and so on. Although the position of this numbering is not prescribed, it is normally done on the lower right-hand corner. The final page must be witnessed in the normal manner.

What if alterations or additions are made to the document?

As with all documents, any alterations or additions made to the document should be initialled by both you and the deponent. Any additional writings or documents referred to in the original document should be annexed to the original document and endorsed with the appropriate annexure endorsement.

Annexures are documents attached to the main document. They contain information referred to in the affidavit. Examples of annexures are financial statements, medical records, reports, photographs or other relevant copies of documents. Each document must be introduced and described in the body of the affidavit. Annexures are normally marked with the letters ‘A’, ‘B’, ‘C’ and so on, but other references are acceptable.

What if there is more than one affidavit to be witnessed?

You can administer an oath or affirmation simultaneously. Place the affidavits together and amend the oath or affirmation to:

In the case of a **Christian oath**, you ask the deponent to take the Bible in either of their hands and then ask:

.....
Do you swear that the contents of these, your affidavits, are true and correct, so help you God?

In the case of an **affirmation**, you ask the deponent:

.....
Do you solemnly, sincerely and truly affirm and declare that the contents of these, your affidavits, are true and correct?

How do I deal with annexures and certificates of exhibits?

A 'certificate of exhibit' may accompany annexures attached to affidavits for some court proceedings.

Annexure

If the annexure does not have a certificate of exhibit attached, you may mark the annexure with the following wording. Normally, there is no need for the deponent to sign or initial these annexures.

This page and pages to are the particulars marked “.....” referred to in the affidavit of

Sworn/Affirmed before me at this day of 20

Deponent

Justice of the Peace (Qualified)

Certificates of exhibit

Under the *Uniform Civil Procedures Rules 1999*, a document to be used with and mentioned in an affidavit is an exhibit. An exhibit to an affidavit must have a letter or other identifying mark on it, and the certificate in the approved form on it or bound with it. This Act requires that both you and the deponent must sign the certificate of exhibit as well as all of the annexures.

Should I keep a record of the affidavits I witness?

Yes. You can include information in your logbook such as:

- date
- document witnessed
- deponent's details
- type of identification sighted
- location of signing
- any other relevant details.

Where can I get more information?

Queensland Courts

www.courts.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

Legal Aid Queensland

www.legalaid.qld.gov.au

Forms

Affidavit

www.courts.qld.gov.au/forms

You will find the Affidavit form in the 'General' section

Sample form

Affidavit sample (page 1 of 1)

Affidavit

I, Insert full name, of Insert address,
 make oath and say / solemnly, sincerely and truly affirm and declare that

1.

SAMPLE

.....
Signature of the deponent

Signed and sworn / solemnly, sincerely and truly affirmed and declared by the said deponent
 at Town or suburb this _____ day of _____ 20____ ,
 before me.

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

Justice of the Peace (Qualified)/Commissioner for Declarations.

Cross out whichever
 does not apply to
 indicate if the document
 was sworn or affirmed

Cross out whichever
 does not apply to
 indicate if the document
 was sworn or affirmed

Sample form

Affidavit—Uniform Civil Procedures Rules 1999 (page 1 of 1)

SUPREME/DISTRICT/MAGISTRATES COURT OF QUEENSLAND

REGISTRY:
NUMBER:

Plaintiff: _____

AND

First Defendant: _____ *Names of the parties*

AND

Second Defendant _____

AFFIDAVIT

Full name of the deponent of *Address of the deponent* states on oath/ solemnly and sincerely affirms and declares:

- Insert matters to be sworn or affirmed in numbered paragraphs*
-

Page 1

Signed: *Signature of the deponent* Taken by: *Person taking the affidavit to sign*

Full name of the deponent
Sworn [or: Affirmed] by _____ on *Insert date* at *Town or suburb* in the presence of:

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

Signed: *Signature of the deponent*
Deponent _____ Justice of the Peace/Commissioner for Declarations

AFFIDAVIT
Filed on Behalf of the (party)
Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Name:
Address:
Phone No:
Fax No:

Court jurisdiction where the affidavit will be filed

Court registry and court file number

Footer at the end of each page

Jurat: the certification at the end of an affidavit that stipulates where, and when the affidavit was sworn or affirmed, and by whom

Cross out whichever does not apply to indicate if the document was sworn or affirmed

If the affidavit extends over more than one page this information must be included at the foot of the first and every other page except the last

Cross out whichever does not apply to indicate if the document was sworn or affirmed

Quick guide

Follow these steps to witness an affidavit

-
- Check what type of document it is. Don't witness the document if:
- ①
 - a. You don't believe it's lawful.
 - b. You don't have authority to do so.
-
- ② Check if the document has special requirements e.g. proof of identity, personal knowledge of the signatory.
-
- ③ Confirm the document is properly formatted e.g. signing by oath or affirmation, or as a statutory declaration.
-
- ④ Check the signatory is the person named in the document.
-
- ⑤ Ask for proof of identity.
-
- ⑥ Confirm the date throughout the document is the same as the date on which you're witnessing.
-
- Read through the document for alterations, spaces or omissions.
- ⑦
 - a. Both you and the signatory should initial any changes, including correction fluid or tape.
 - b. Decline to witness material you know to be false.
 - c. Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.
-
- If the affidavit has multiple pages:
- ⑧
 - a. Number each 'page 1 of 6', 'page 2 of 6' and so on.
 - b. You and the signatory should sign each page.
-
- If the affidavit has annexures:
- ⑨
 - a. Ensure each is referenced in the main affidavit.
 - b. Mark with appropriate wording as an annexure or certificate of exhibit, as needed.
-
- If the affidavit has a certificate of exhibit and annexures:
- ⑩
 - a. Ensure each is referenced in the main affidavit.
 - b. Mark with appropriate wording as an annexure or certificate of exhibit, as needed.
 - c. Ask the deponent to sign all certificates and annexures.
-

-
- 11 Warn the deponent that a false statement under oath or affirmation is a crime.

 - 12 Ask open-ended questions to ensure the deponent understands the nature and contents of the document.

 - 13 Administer the oath or affirmation.
 - a. If there is more than one affidavit, all can be sworn or affirmed together.

 - 14 If necessary, amend the wording of the form depending on whether an oath or affirmation was taken.

 - 15 Sign the document and insert your registration number wherever a signature is required.
 - a. If the signatory has asked you to not check the document, state this in writing before signing.

 - 16 Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).

 - 17 Enter all relevant details in your logbook.
-

4.8 Witnessing family law documents

What are the Family Law Courts?

The Family Law Courts comprise the Family Court of Australia and the Federal Circuit Court of Australia. Both courts have jurisdiction in family law matters in all states and territories except Western Australia, which has its own Family Court.

The Family Court of Australia is a specialist court, which deals with more complex matters and is the appellate court for decisions from the Federal Court of Australia.

What legislation governs family law documents?

The responsibilities that JPs have under the *Family Law Act 1975* accord, for most part, with the *Uniform Civil Procedure Rules 1999*.

The principles that apply generally with respect to witnessing documents apply to family law documents. Of particular note for family law documents is the necessity to properly witness annexures to affidavits for use in proceedings in the Family Court of Australia and the Federal Circuit Court of Australia.

The following family law forms differ from the protocols in other court jurisdictions:

- divorce application form
- affidavits
- application for consent orders
- financial statements.

What is an application for divorce?

A person who wishes to file for a divorce completes an application for divorce. It can be completed by one party to the marriage or as a joint application. The Federal Circuit Court will only grant a divorce once it is satisfied both parties have a copy of the application for the divorce and are aware of the court hearing date.

How do I witness an application for divorce?

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 are true and correct to the best of my knowledge and belief, so help me God.

.....

The affirmation for this application is:

.....

I solemnly and sincerely declare and affirm that the contents of this document are true and correct to the best of my knowledge and belief.

.....

3. Read over the application to ensure the form appears to be fully completed. Check:
 - a. Names and address details for both the husband and wife have been provided.
 - b. Any questions that cannot be answered are marked 'not known'.
 - c. The date of separation is at least 12 months.
 - d. A copy of the marriage certificate will accompany the application when it's filed at the court.
4. Witness the applicant's signature.
5. Enter the details in your logbook. Information that can be entered includes:
 - date
 - type of application presented for witnessing
 - applicant's details
 - type of identification sighted
 - location of signing
 - any other relevant details.

How do I witness an affidavit?

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

The form of basic oath for this situation is:

.....

I swear that the contents of this document are true and correct to the best of my knowledge and belief, so help me God.

.....

The affirmation for this affidavit is:

.....

I solemnly and sincerely declare and affirm that the contents of this document are true and correct to the best of my knowledge and belief.

.....

3. Read over the affidavit to ensure the form appears to be fully completed.
4. Check any annexures to the affidavit and sign the annexure statement.
5. Ensure any changes or alterations have been initialled by both you and the deponent.
6. Both you and the deponent sign the bottom of every page of the affidavit.
7. Witness the deponent's signature. Indicate if the affidavit was sworn or affirmed.
8. Sign the affidavit, write your full name, qualification and insert your registration number. Include the day and place where the affidavit was witnessed.

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

- date
- document witnessed
- deponent’s details
- type of identification sighted
- location of signing
- oath or affirmation taken
- any other relevant details.

Attachments and annexures

An affidavit is a written statement prepared by a litigant or a witness and is the only way for a litigant to present evidence to the court, in accordance with the rules of the courts. Both the Family Court and the Federal Circuit Court have their own affidavit forms, however the structure and witnessing requirements are the same.

When witnessing affidavits, both the deponent and the witness must sign the bottom of every page. Often the form of affidavit used in the courts does present with a footer on the first page for both parties to sign. Please ensure both you and the deponent sign the bottom of each and every page, as well as the last.

Definitions

‘Attached’

Inserted as an addendum within an affidavit, ‘attached’ means a continuation of evidence and is still part of the deponent’s affidavit. The bottom of each page is to be signed by the deponent and JP. All attached evidence is placed between the first page of the affidavit and the last.

‘Annexure’

Annexures are referenced as evidence. They include any documents provided to support the facts deposed in an application or affidavit, such as bank statements, bills, medical reports or school reports. Copies of these must accompany the affidavit at the time of witnessing. Annexures should be photocopies of the original documents. There is no requirement for these to be certified as copies.

Annexures must be referred to in the body of the affidavit and titled i.e. ‘annexure 1’ or ‘annexure A’.

If there is more than one annexure, they must be referenced consecutively i.e. annexure A, annexure B, annexure C and so on. The page numbers of all annexures must run consecutively—that is, from the first page of the first annexure to the last page of the last annexure.

Annexures should be marked in the following way to meet the requirements of the *Family Law Act 1975*:

.....
This and the following pages in the Annexure marked referred to in the Affidavit of
..... Sworn/Affirmed before me JP/Cdec.
This day of 20

Full-page photographs

In some circumstances, you may be asked to sign and complete a full-page photograph as an annexure. The most appropriate procedure to follow is to place a blank sheet of paper in front of the photograph and use the above wording. Certification on the back of the photograph is not acceptable.

What are service documents?

Service is the process of sending or giving court documents to a party after they have been filed, in accordance with the rules of the court. Service ensures all parties have received the documents filed with the court.

The court will only grant a divorce once it is satisfied that both parties have a copy of the application for divorce and are aware of the court hearing date. Service can be effected by either posting the documents or serving them by hand. Both methods require an affidavit of service to be witnessed. You can assist the deponent in this process.

For 'service by post', the applicant who posted the application is required to have the following forms witnessed:

- *Affidavit of Service by Post (Divorce)*
- *Acknowledgement of Service (Divorce)*.

Both the affidavit of service and the annexure note on the bottom of the acknowledgement of service **must** be witnessed by the same JP on the same day.

For 'service by hand', the applicant will need to arrange for a person over 18 years of age (the server) to serve the documents. When the documents have been served, the server is required to have the following forms witnessed:

- *Affidavit of Service by Hand (Divorce)* [compulsory]
- *Acknowledgment of Service (Divorce)* [only if signed by the former spouse].

Both the affidavit of service and the annexure note on the bottom of the acknowledgement of service **must** be witnessed by the same JP on the same day.

If the former spouse signed the acknowledgement of service, the applicant will also need the following form witnessed:

- *Affidavit Proving Signature (Divorce)—Applicant*.

Things to bear in mind

- Generally, three copies of documents are to be filed in the courts. Clients are instructed to file an original and two copies. It is reasonable to expect an applicant will present with one copy to be witnessed prior to making additional copies. However, if you are presented with three copies, there is no objection by the courts to having all three witnessed.
- There is no requirement for any annexures or additional copies of applications to be certified as copies of originals.
- An application for divorce can be electronically filed through the Commonwealth Courts Portal. The applicant is required to print off the application, called the *Affidavit for E-filing Application (Divorce)*. This application must be witnessed. The affidavit of e-filing only requires JPs to witness the signature of the applicant and/or respondent to the divorce application. The deponents are required to attest they have read the application identified by the noted transaction number. From the courts' position, JPs do not have to physically see the deponent read the application, nor do they need to read the application themselves.

Where can I get more information?

Queensland legislation
www.legislation.qld.gov.au

Family Court of Australia
www.familycourt.gov.au

Quick guide

Follow these steps to witness an application for divorce

-
- ① Ask the applicant for identification.

 - ② Immediately place the applicant on oath or affirmation.

Read over the application to ensure the form is complete:

 - a. names and address details for both husband and wife
 - ③
 - b. questions that can't be answered are marked 'not known'
 - c. date of separation is at least 12 months
 - d. copy of the marriage certificate will accompany the application when it's lodged at court.

 - ④ Witness the signature.

 - ⑤ Enter all relevant details in your logbook.

Follow these steps to witness a family law affidavit

-
- ① Ask for identification.

 - ② Immediately place the deponent on oath or affirmation.

 - ③ Read through the affidavit to ensure it is properly completed and numbered.

 - ④ Check any annexures in the affidavit, ensure they are marked appropriately and sign the annexure statement.

 - ⑤ Ensure any changes or alterations are initialled.

 - ⑥ Both you and the deponent must sign the bottom of every page of the affidavit.

 - ⑦ Witness the signature, and note if the document was sworn or affirmed.

Sign the affidavit, including your:

 - a. full name
 - ⑧
 - b. qualification
 - c. registration number
 - d. date and place of witnessing.

 - ⑨ Enter all relevant details in your logbook.

4.9 Witnessing general powers of attorney, enduring powers of attorney and advance health directives

General powers of attorney

What is a general power of attorney?

A general power of attorney (GPA) is a formal agreement whereby one person (the ‘principal’) grants another person (the ‘attorney’) the power to make financial decisions on their behalf, but only if the principal still has capacity to make that decision for themselves (unless the GPA is given as security). GPAs only relate to financial matters.

An enduring power of attorney (EPA), on the other hand, is able to make decisions about financial and personal matters for the principal while the principal has lost that capacity to make those decisions. You can find out more about the different powers of attorney and substitute decision making in Queensland by visiting www.qld.gov.au/guardianship-planahead

If the GPA is made under the *Powers of Attorney Act 1998* (the POA Act), it must be in the approved *Form 1– General Power of Attorney*. Only the principal and a witness sign this form. GPAs can also be made in other forms, such as by deed or under common law. GPAs can be made by individuals or corporations.

Sometimes the document specifies a time or a circumstance when the attorney can begin to make decisions on the principal’s behalf. However, unless specified in the document otherwise, the power begins as soon as the document is signed.

Generally, a GPA for an individual may be revoked (cancelled) if:

- the principal dies
- the terms of the GPA provide for its revocation
- the principal revokes it – for example by signing a *Form 5 – Revocation of General Power of Attorney*
- if the principal has impaired capacity for financial matters.

A GPA may also be revoked, to the extent that it gives power to an attorney, if the attorney:

- dies
- resigns
- does not have capacity for the matter for which they have been appointed
- is declared bankrupt—to the extent it gives power for financial matters to the attorney.

The important difference between GPAs and EPAs is that a GPA generally comes to an end if the principal has impaired capacity for the matter. An EPA carries more significant legal consequences because a principal can not effectively oversee the exercise of power by their attorney once they have lost capacity. It is recommended that principals seek independent legal advice before executing an EPA and they should only appoint an attorney they trust.

Why would someone make a GPA?

A person may decide to make a GPA for the following reasons:

- they want someone to handle their financial affairs while they are absent
- they are travelling overseas for an extended period
- Companies also regularly use GPAs to authorise particular people to sign documents for the company.

Who can witness a GPA?

Generally, any independent adult may witness a GPA (i.e. the witness does not have to be a JP (Qual)). However, if the GPA is required to be registered under the *Land Title Act 1994* (LTA) with the Titles Registry Office so that it can be used for a land transaction, section 161 of the LTA requires the GPA to be witnessed by certain qualified witnesses, which include a Justice of the Peace (JP (Qual)), a Commissioner for Declarations, a lawyer, or a notary public.

Some people consider having a GPA witnessed by a JP (Qual) makes the document more authentic or adds legal weight to the document and may therefore request a JP (Qual) to witness the document even if it is not strictly required.

If you are asked to witness one of these documents, follow the general procedure for witnessing documents in chapter 4.1 of your handbook.

Enduring documents – enduring powers of attorney and advance health directives

This section should be read in conjunction with the following documents:

- *Queensland Capacity Assessment Guidelines 2020* (capacity guidelines)
- *Form-9 Enduring power of attorney explanatory guide (EPA guide)*
- *Form 10-Advance health directive explanatory guide (AHD guide)*

What is an enduring power of attorney?

An enduring power of attorney (EPA) is a legal document which allows a person (the ‘principal’) to appoint another person they trust (the ‘attorney’) to make decisions on their behalf about personal (including health matters) and/or financial matters.

The approved *Form 2 – Enduring Power of Attorney – short form* and *Form 3 – Enduring Power of Attorney - long form* must always be used.

An EPA may, subject to the terms of the EPA, continue even if the principal has impaired capacity for the matter.

An attorney may be appointed under an EPA to make decisions about:

- personal (including health) matters only
- financial matters only
- personal (including health) matters and financial matters.

The terms of the EPA set out the types of decisions which an attorney can make.

Personal matters relate to the adult’s care and welfare, for example:

- where the principal lives and who they live with
- services and supports provided to the adult
- whether the adult works and, if so, their role, their workplace location and employer
- who the adult has contact with
- whether the adult applies for a license or permit
- day to day issues (e.g. diet and dress, daily activities)
- legal matters (e.g. seeking legal advice) other than financial or property matters.

Health care is a type of personal matter.

Decisions about health matters relate to the adult’s health care including medical treatments, procedures and services to treat both physical and mental conditions. Most commonly, decisions about health matters are about consenting to or refusing health care. For example, health decisions might include deciding whether or not to go to hospital, to have surgery, or to take a medication. When an adult is nearing the end of their life, health care also includes stopping treatments that are aimed at keeping the adult alive or delaying their death (life-sustaining treatments).

Financial matters relate to finances and property, for example:

- paying everyday expenses, such as rent and bills for electricity, gas and water
- arranging deposits or withdrawals from the adult’s bank account
- paying rates, taxes, insurance premiums or other outgoings for the adult’s property
- making or seeking advice about investment decisions
- seeking legal advice in relation to the adult’s financial or property matters
- carrying on a business or trade
- signing contracts on behalf of the adult and performing contracts entered into by the adult (e.g. signing agreements relating to aged care homes)
- selling, mortgaging or purchasing the adult’s property.

When can an attorney begin making decisions?

An attorney appointed by an EPA can only start to make decisions as an attorney when:

- the attorney has signed the ‘Attorney(s)’ acceptance’ in section 5 of the EPA guide
- for personal matters—during times when the principal does not have capacity to make decisions about the matters the attorney is appointed for
- for financial matters—immediately, or when the principal has specified in section 3 of the EPA guide ‘When does your attorney(s)’ power begin for financial matters?’.

What terms or instructions can a principal give to their attorney(s)?

A principal can set terms on how their attorney(s) are required to make decisions and/or give specific instructions that their attorney(s) must follow.

The following are some examples of terms or instructions to their attorney(s).

Example wording for personal (including health) matters:

1. My attorney can make all decisions about personal matters except for decisions about the friends and family members I have contact with.
2. I do not consent to my children or their families living in my home, with or without me.

Example wording for financial matters:

1. My attorney is not to sell my house unless they have exhausted all other options to pay for my aged care accommodation and services.
2. My attorney must not make any investments with my money.

Who can make an EPA?

To make an EPA, the principal must be at least 18 years old and have capacity to understand the document they are signing and the powers it gives. They must also be capable of making the EPA freely and voluntarily, not due to pressure from someone else. To find out more about the capacity to make an EPA see the capacity guidelines.

Why would someone make an EPA?

An adult with decision-making capacity, can make their own decisions about personal, health or financial matters.

At some point in the future, a situation may arise where the adult is unable to make their own decisions about these matters. This might be because of an accident, a medical condition or a mental illness. An EPA allows them to appoint people they trust to make decisions for them if they are unable to. It is a legal document that can significantly affect their legal rights. It is recommended that they seek independent legal advice before completing an EPA form.

Who can a principal appoint as their attorney under an EPA?

To be eligible to be an attorney, a person must:

- have capacity to make the decisions they are appointed for
- be 18 years or older
- not be a paid carer or have been a paid carer in the last three years for the principal
- not be a health provider for the principal
- not be a service provider for a residential service where the principal lives
- not be bankrupt or taking advantage of the laws of bankruptcy, if appointed for financial matters.

An attorney does not have to be a lawyer to carry out this role.

How many attorneys can a principal appoint under an EPA?

There is no limit on the number of attorneys a principal can appoint in an EPA, except that they can only appoint a maximum of four joint attorneys for a matter (i.e. they can only appoint a maximum of four people who must agree on all decisions). Having more than one attorney may be helpful, as it means more than one person may be able to make decisions for them if needed. If one of their attorneys is unavailable, another attorney could make the decision.

Examples of joint attorneys:

1. The principal appoints their spouse and four children and then specifies that their spouse is appointed first and their children will become appointed jointly if their spouse is unwilling or unable to act.
2. The principal appoints four people to act jointly for financial matters and another four people to act jointly for personal matters.

If they appoint more than one attorney, they will need to decide how those attorneys exercise their power (e.g. jointly, severally, by a majority, successively or alternatively—see ‘How must your attorneys make decisions?’ in the EPA guide.

If they need more space to appoint additional attorney(s), they can attach another page with those details to the form. See ‘How to add additional pages’ in the EPA guide for more information on how to do this. It is recommended that the Form 8 – Additional page be used to insert an additional page or pages.

Remember to always insert the total number of pages in the witness certificate section of the document, before signing.

Advance health directives

What is an advance health directive?

At some point in the future, a person may be unable to make decisions about their health care and special health care, even temporarily. This might be due to an accident, dementia, a stroke or a mental illness.

An advance health directive (AHD) lets a person (the ‘principal’) give directions about their future health care. It allows their wishes to be known and gives health professionals direction about the treatment they want.

A person can also use an AHD to appoint someone they trust to make decisions about their health care for them. That person is called their ‘attorney’ and they can appoint more than one if they choose. They don’t need any legal experience to carry out this role.

Who can make an AHD?

To make an AHD, the adult must be at least 18 years old and have capacity to understand the document they are signing and the powers it gives. They must also be able to make the AHD freely and voluntarily.

The adult must not be pressured into making it by someone else.

To find out more about capacity to make an AHD see the capacity guidelines.

When will an AHD be used?

An AHD can be used only during times when the principal does not have capacity to make their own healthcare decisions.

Having capacity to make a decision for a health care matter means that they are capable of:

- understanding the nature and effect of decisions about the matter
- freely and voluntarily making decisions about the matter
- communicating the decisions in some way.

For more information about capacity to make a decision for a health care matter, refer to the capacity guidelines.

Who can a principal appoint as their attorney under an AHD?

To be eligible to be an attorney a person must:

- have capacity to make healthcare decisions
- be 18 years or older
- not be a paid carer or health provider for the principal
- not be a service provider for a residential service where the principal lives.

How many attorneys can a principal appoint under an AHD?

A principal can appoint more than one attorney for health matters under an AHD. Having more than one attorney may be helpful, as it means more than one person may be able to make decisions if needed. If one of their attorneys is unavailable, another attorney could make the decision.

If they appoint more than one attorney, they will need to decide how those attorneys exercise their power (e.g. jointly, severally, by a majority, successively or alternatively—see ‘How must your attorneys make decisions?’ in the AHD guide for more information).

If they need more space to appoint additional attorney(s), they can attach another page with those details to the form. See ‘How to add additional pages’ in the *AHD guide* for more information on how to do this.

It is recommended that *Form 8 – Additional page* be used to insert an additional page or pages.

Remember to always insert the total number of pages in the witness certificate section of the document, before signing.

How do you assess a person’s capacity to make an enduring document?

It is recommended you refer to the capacity guidelines, section 6 ‘Assessing capacity to make an enduring document’. The following information has been extracted from these guidelines.

The legal test to apply

Under Queensland’s guardianship legislation there is a specific legal test of capacity for making an enduring document. In general terms the adult must be capable of:

- a. understanding the nature and effect of the document
- b. making the document freely and voluntarily.

Both criteria (a) and (b) must be met for an adult to have capacity to make an enduring document. To revoke (cancel) an enduring document, the adult must have capacity to make the enduring document that would give the same powers.

a. Understanding the nature and effect of the document

It is not enough for the adult to have a general understanding of the enduring document.

The law requires them to actually understand the nature and effect of the document, the powers that it gives, when it operates and how and when they can revoke (cancel) it.

Capacity to make an EPA

By making an EPA, an adult (the principal) may appoint one or more people they trust to make decisions about either personal (including health) matters or financial matters for them. These people are called ‘attorneys’. An attorney(s) may be given significant powers to make decisions about the adult’s personal or financial affairs. Therefore, it is very important that the adult is capable of understanding the nature and effect of the document, including the powers it gives.

The level of understanding which is required will also depend on the specific powers given under the EPA and the complexity of the adult’s financial and personal affairs. The adult doesn’t need to know all the complexities of the types of transactions the attorney could undertake on their behalf.

However, they should be able to generally understand:

- their own personal and financial affairs that will be managed by the attorney(s)
- the types of decisions which are likely to be made by the attorney(s)
- the scope of the power given to the attorney(s).

Generally, the more complex the adult’s personal and financial affairs are, the greater their understanding must be.

Capacity to make an AHD

By making an AHD an adult can give directions about their future health care and special health care. They can also appoint one or more people they trust to make decisions about health matters on their behalf if they do not have capacity to make the decision themselves. These people are called ‘attorneys’.

To appoint an attorney for health matters under an AHD, an adult must have the same capacity for making an EPA giving the same type of power.

a. Making the document freely and voluntarily

The adult must also be capable of making an enduring document free of coercion or undue influence.

It must be clear that the adult is not being pressured into making the enduring document. Sometimes a family member, friend or carer might behave in a manner that is domineering or overbearing, seeking to pressure the adult to make a decision a certain way.

The legal test in Queensland’s guardianship legislation

The POA Act sets out the test of capacity for making an EPA (section 41) and an AHD (section 42). These tests are reflected in the summary checklists in section 6 of the capacity guidelines.

Witnessing procedures

- It is a good idea to keep a copy of the capacity guidelines with you when conducting a capacity assessment and use the summary checklists from the guidelines.
- Ideally, try to meet with the adult alone. This allows you to have a discussion and develop a rapport with the person and to ensure the adult is not being pressured into making the document. It is a good idea to ask the adult directly whether they feel they have been pressured into making the enduring document.
- Ask the principal for some form of identification and note their name and identification document in your logbook.
- Determine if the document is a GPA, an EPA or an AHD and whether it must be in an approved form.
 - If a GPA is made under the POA Act it must be in the approved form (currently Form 1, Version 3)
 - An EPA must be in the approved form (currently Form 2 Version 4 (short form) or Form 3 Version 4 (long form))
 - An AHD must be written and may be in the approved form (currently Form 4 Version 5).

You should make a note in your logbook whether an approved form has been used.

Note: You can witness a document that has additional pages attached to it or is formatted in a way that increases the total number of pages, provided that you follow the ordinary witnessing guidelines.

- Ensure the document is signed in front of you. You are witnessing a signature, not someone telling you the signature on a document is their signature. If someone approaches you with a document already signed, ask them to sign the document again. You can rule a line through the unwitnessed signature. Ensure both you and the person initial the alteration.
- Ensure that everyone who needs to be present is present (e.g. the principal – the person making the document, witness (you) and the eligible signer or interpreter/translator, if required). If the principal is unable to read or understand the English language, you should ensure the interpreter/translator completes *Form 7 (Interpreter's/Translator's Statement)*. The attorney need not be present. In fact, ideally you should meet with the adult alone.

Note: Principals who are unable to sign the document themselves may instruct an 'eligible signer' to sign on their behalf. An eligible signer must confirm that the principal instructed them to sign the document, be 18 years or older and must not be either the witness for the document or an attorney for the principal. The eligible signer must sign the document in the presence of the principal and you as the witness at the same time. If an eligible signer signs the document on behalf of the principal, they must complete and sign the 'Person signing for the principal' section of the form which also must be witnessed by you.

- Make sure that you are eligible to witness the document. You must not be:
 - the eligible signer (the person signing the document on the principal's behalf)
 - an attorney for the principal (someone appointed under this EPA, AHD or another power of attorney)
 - related to the principal or to the principal's attorney
 - the principal's paid health carer or health-care provider (if the EPA or AHD appoints an attorney for to personal matters)
 - if the document is an AHD - a beneficiary under the principal's will.
- Set the scene and develop a rapport with the person. Tell the principal that you will be conducting a capacity assessment. Let them know in your own words that:

As a JP (Qual) you must be satisfied that they have the capacity to make the document. This means they must:

- understand the nature and effect of the document
- be capable of making the document freely and voluntarily.
- Tell them that you will ask them some questions to ensure they have capacity to make the document and that:
 - A written record of the process will be made
 - A decision about the person's capacity will be made at the end of the process
 - If you conclude they do have the capacity to make the document at the end of the process you may sign the document as the witness
 - If you conclude the person does not have capacity to make the document at the end of the process you will not sign the document
 - Your conclusion is your opinion only. They can seek a second opinion if they do not agree with your conclusion. This could mean seeking a finding by a tribunal (applying to the Queensland Civil and Administrative Tribunal (QCAT) or seeking an opinion or assessment from a medical professional.
- Explain to the principal the document will need to be read through to ensure that it is correctly completed.
- You must satisfy yourself that the principal has capacity to make the document.
- Read through the document, preferably with the principal. Ask the principal questions to ensure they have capacity to make the document. Refer to the capacity guidelines for examples of questions you can ask. It is recommended you start with open ended questions and then ask more specific questions.

- Check that the principal is not being pressured in any way to make the document.
- Document your conclusions and reasons in your logbook.
- If the document is an AHD, ensure a doctor has already signed the doctor's certificate in the document.
- Determine if the principal is physically capable of signing the document or if an eligible signer is to be used. Ensure the eligible signer meets the criteria specified.
- If you are satisfied that the principal has capacity to make the document, observe the principal (or the eligible signer) sign and date the document and any additional pages attached to the document.
- Complete the witness's certificate, and sign and date the document, including any additional pages. Remember to insert the total number of pages in the witness certificate section of the document, before signing.
- Remind the principal that any nominated attorney/s must read and complete the 'attorney's acceptance section', as soon as possible after the document has been signed and witnessed by both you and the principal for the document to be valid.
- If the principal or their attorney has any questions, you can refer them to the EPA or AHD guides or the capacity guidelines which are available on the Queensland Government publications website or recommend that they seek independent legal advice.

In addition to the notes about the capacity assessment, the information that should be entered into your logbook includes:

- date
- type of document witnessed
- principal's details and, if present, the eligible signer details
- type of identification sighted
- location of signing
- any other relevant details, including the total number of pages.

Things to bear in mind

- An EPA must be in the approved form and an AHD must be in writing and may be in the approved form. Enduring documents must comply with chapter 3, part 4 of the POA Act, and contain all the required information and be executed in accordance with the POA Act.
- Record all questions asked, any responses given and anything else relevant to in your logbook.
- The POA Act places a very serious responsibility on the witness, one that far exceeds your normal duty in witnessing other types of documents.
- If, as the witness, you are not satisfied that the principal has the capacity to make the EPA or AHD, you should refuse to witness the document and refuse to sign the witness's certificate.
- If an adult's capacity to make an EPA is called into question, after the document has been made, you may be required to provide evidence to either the Supreme Court or QCAT of the steps you took to assess the adult's capacity to understand the document.
- Due to the nature of the document, you must satisfy yourself the person asking you to witness the document is, in fact, the principal. Therefore, you must ask for proof of identification prior to witnessing the document.
- You may be called upon to certify a copy of an EPA or AHD as a true and complete copy of the original. Refer to the chapter on certifying copies in this handbook.

Frequently asked questions

The attorney has signed the document before the principal and witness, what should I do or say to the client?

If the attorney has already signed the document, you should not witness it.

When signing an EPA or AHD an attorney is stating they have read the EPA or AHD and understand that they must make decisions in accordance with the EPA or AHD. They can only do this once the document has been finalised, signed and witnessed.

Let the principal know that the attorney must only sign the original document, after both the principal and the witness have signed it.

The principal may wish to complete the document again and have it witnessed before the attorney signs it.

If the person requires further information about making the document, you can refer them to the EPA guide or AHD guide which are available on the Queensland Government publications website.

You could also suggest that they consider seeking independent legal advice about making the document.

A client has approached me to make changes to their signed enduring document. Can they attach a statutory declaration to do this?

No. An enduring document should not be amended after it has been signed and witnessed. It is not recommended to write on an EPA or AHD once it has been signed and witnessed. If changes are required, the client should make a new enduring document and revoke the old one.

For minor changes, like updating an address, the client may not need to make a new document.

What if the principal has an existing EPA or AHD in Queensland or another jurisdiction?

The first step in witnessing an enduring document requires you to ask the principal if they have an existing enduring document in Queensland or in another State or Territory. An interstate enduring document may be recognised in Queensland. Also, if they make a new EPA or AHD, the new EPA or AHD may fully or partially revoke the existing enduring document to the extent of any inconsistency. There may be reasons why the principal needs multiple enduring documents to operate in different jurisdictions. This can sometimes be complex and it is best to recommend that the principal seeks independent legal advice about the effect of making a new EPA or AHD on any existing enduring document.

When inserting additional pages in an enduring document, must *Form 8 – Additional page* be used?

No. It is not essential that *Form 8 – Additional page* be used. A client can add additional pages to the form on any document. The *Form 8 – Additional Page* should be used where possible.

If the additional pages are not on the *Form 8 – Additional page*, the principal should still sign and you should still witness each additional page. You should also ensure that the additional page contains the name of the enduring document that it relates to, the name of the principal and which part of the enduring document it provides additional information for.

Remember to insert the total number of pages (including any additional pages) in the witness certificate section of the document, before signing.

While certifying a copy of an enduring document I have found what I believe to be a discrepancy. Can I give them advice about what I think they should do?

When certifying a copy, you are simply certifying that the document is a true and complete copy of the original document. If there is a discrepancy between the original and the copy, you must not certify the copy.

If there is an obvious error in the original document that would render it and any certified copies invalid for their original purpose, you could suggest that the person consider seeking independent legal advice to ensure the original document is valid.

Note that a JP (Qual) cannot provide legal advice about the validity of a document.

When Solicitors and Public Trustee prepare enduring documents for their clients, sometimes the documents are different in page length. Can I still witness the enduring document if the number of pages is not the same as the form on the website?

Yes. You can witness a document that has additional pages attached to it or is formatted in a way that increases the total number of pages, provided that the document is substantially compliant with the approved form. This may occur because the terms and conditions are longer than the space allocated in the approved form which push back the remaining sections in the document, or if document appoints more than four attorneys. As with any enduring document, you should ensure that the total number of pages is inserted in the witness certificate section of the document, before signing.

If you are concerned that the form does not meet the legislative requirements, you could suggest that the person consider seeking independent legal advice about validity of the document.

Note that a JP (Qual) cannot provide legal advice about the validity of a document.

Is the witnessing officer required to keep a copy of the capacity assessment checklist?

The capacity guidelines provide useful information, checklists, hints and tips for assessing the capacity of a person to make an enduring document. There is no requirement to use the checklists or keep them. However, you may choose to do so if you wish. You should make notes about how you have conducted the assessment. Document the conclusion that you have reached and the reasons for that decision.

If a client is accompanied by a family member appears to be confused when the family member tries to put unwarranted pressure on the principal, can I tell the family member that I would like to be alone with the principal?

Yes. Ideally, you should meet with the adult alone. This allows you to have a discussion and develop a rapport with the person, assess their capacity to make the enduring document and satisfy yourself that they are making the document freely and voluntarily.

If you believe the person is being pressured into making the document, you should not sign the document.

If you suspect that an adult is being physically, financially or emotionally abused or pressured to make the enduring document, the priority must be to ensure the adult's health, safety and well-being.

See Appendix A of capacity guidelines for information about support services, including elder abuse support services. If you think the adult is in immediate danger, call the police.

Which form should be used for an EPA?

You should only use the approved short or long form when witnessing an EPA. All pages of the document must be present at the time of witnessing.

There are two types of EPA forms—a short form and a long form:

- The short form is used when the principal wishes to appoint the same attorney or attorneys for both financial and personal matters (including health care). This form can also be used to appoint an attorney or attorneys for financial matters only or for personal matters only (including only health care).
- The long form is used when the principal wishes to appoint more than one attorney for financial and/or personal matters or appoint separate attorneys for personal and financial matters, or even for specific matters.

Can I refuse to witness a GPA, an EPA or an AHD?

Yes. If you believe the principal does not have the capacity to make a GPA, EPA or AHD, you must refuse to witness the document. If you believe the principal is under some form of pressure to sign the document, you should also refuse to witness it.

If you suspect the adult is being abused, neglected or exploited, you can make a referral to the Office of the Public Guardian. See Appendix A in the capacity guidelines for information about support services, including elder abuse support services.

If you think the adult is in immediate danger, call the police.

Where can I find more information?

The *Queensland Capacity Assessment Guidelines 2020* are a guide to understanding capacity, capacity assessment and the legal tests of capacity under Queensland's guardianship legislation.

www.publications.qld.gov.au/dataset/capacity-assessment-guidelines

Queensland Government Power of Attorney and making decision for others website

www.qld.gov.au/guardianship-planahead

EPA and AHD forms and explanatory guides

www.publications.qld.gov.au/dataset/power-of-attorney-and-advance-health-directive-forms

Office of the Public Guardian

www.publicguardian.qld.gov.au/

Queensland legislation

www.legislation.qld.gov.au

Sample form

Enduring power of attorney—declaration and signatures (page 11)

SECTION 4: DECLARATIONS AND SIGNATURES

PRINCIPAL'S SIGNATURE

As the principal, you must sign this part in front of an eligible witness.

Refer to section 4, pages 15–16 of [Form 9 – Enduring power of attorney explanatory guide](#) and the [Queensland Capacity Assessment Guidelines 2020](#).

An eligible witness **must** be a:

- » justice of the peace (JP)
- » commissioner for declarations
- » lawyer
- » notary public.

The witness **must not** be:

- » the person signing for you
- » your attorney (e.g. under an enduring power of attorney or advance health directive)
- » related to you or your attorney
- » a paid carer or health provider for you (i.e. your health provider).

By signing this document, I confirm that:

- » I am making this enduring power of attorney freely and voluntarily.

AND

- » I understand the nature and effect of this enduring power of attorney, including:
 - » that I may specify or limit my attorney(s)' power and instruct my attorney(s) about the exercise of the power
 - » when the power given to my attorney(s) begins
 - » that once the power for a matter begins, my attorney(s) will have full control and power to make decisions about the matter, subject to any terms or information included in this enduring power of attorney
 - » that I may revoke this enduring power of attorney at any time if I am capable of making another enduring power of attorney giving the same power
 - » that the power I am giving to my attorney(s) continues even if I do not have capacity to make decisions about the matter
 - » that if I am not capable of revoking the enduring power of attorney, I am unable to effectively oversee the use of the power given to my attorney(s) by this document.

ONLY SIGN THIS PART IN FRONT OF AN ELIGIBLE WITNESS

Principal's signature: _____ **Date:** _____

Witness's signature: _____ **Date:** _____
(Witness must also sign page 12)

OR
 Insert your seal of office or your prescribed mark of office beside or below your signature and insert the date

Person signing for the principal

If you are physically unable to sign this form, another person who is eligible must sign the form for you.

Refer to section 4, page 16 of [Form 9 – Enduring power of attorney explanatory guide](#).

By signing this document, I confirm that:

- » the principal instructed me to sign this document
- » I am 18 years or older
- » I am not a witness for this enduring power of attorney
- » I am not an attorney of the principal.

Name of person signing for the principal			
Address	Suburb	State	Postcode
Phone number			
Email			

ONLY SIGN THIS PART IN FRONT OF THE PRINCIPAL AND AN ELIGIBLE WITNESS

Person signing for the principal signs here: _____ **Date:** _____

Witness's signature: _____ **Date:** _____
(Witness must also sign page 12)

Sample form

Enduring power of attorney—witness certificate (page 12)

WITNESS CERTIFICATE	
<p>This part must be filled in and signed by an eligible witness at the same time that you sign the enduring power of attorney.</p> <p>INFORMATION FOR THE WITNESS As a witness you are not simply witnessing the principal's signature.</p> <p>You must also be satisfied that the principal appears to have capacity to make the enduring power of attorney.</p> <p>Refer to section 4, page 16 and page 20 of Form 9 – Enduring power of attorney explanatory guide and the Queensland Capacity Assessment Guidelines 2020.</p>	<p>By signing this document, I certify that: <i>(Tick one box only)</i></p> <p><input type="checkbox"/> the principal signed this enduring power of attorney in my presence</p> <p>OR</p> <p><input type="checkbox"/> in my presence, the principal instructed another person to sign this enduring power of attorney for the principal, and that person signed it in my presence and in the presence of the principal.</p> <p>AND</p> <p>» I am a: <i>(Tick one box only)</i></p> <p><input type="checkbox"/> justice of the peace (JP)</p> <p><input type="checkbox"/> commissioner for declarations</p> <p><input type="checkbox"/> lawyer</p> <p><input type="checkbox"/> notary public.</p> <p>» I am not:</p> <ul style="list-style-type: none"> » the person signing the document for the principal » an attorney of the principal » a relation of the principal or relation of an attorney of the principal » if this enduring power of attorney appoints an attorney for personal (including health) matters, a paid carer or health provider of the principal. <p>» At the time of making this enduring power of attorney the principal appears to me to have the capacity to make the enduring power of attorney. The principal appears to:</p> <ul style="list-style-type: none"> » understand the nature and effect of this enduring power of attorney » be capable of making the enduring power of attorney freely and voluntarily. <p>This document (including any additional pages) has _____ pages.</p> <p>Witness's signature: _____ Date: _____ <i>(Witness must also sign page 11)</i></p> <p>Witness's name: _____</p>
<p><i>Insert your seal of office or your prescribed mark of office beside or below your signature and insert the date</i></p>	<p><i>Note the total page count here</i></p>
<p>If an interpreter assisted in the preparation of this document or if an interpreter is present when this document is witnessed, complete Form 7 – Interpreter's/translator's statement at www.publications.qld.gov.au</p>	
<p>Page 12 ENDURING POWER OF ATTORNEY – LONG FORM Version 4: approved for use from 30 November 2020.</p>	

Sample form

Advance health directive—declarations and signatures (page 11)

SECTION 7: DECLARATIONS AND SIGNATURES

PRINCIPAL'S SIGNATURE

As the principal you must sign this part in front of an eligible witness.

Refer to section 7, pages 14–15 of [Form 10 — Advance health directive explanatory guide](#) and the [Queensland Capacity Assessment Guidelines 2020](#).

An eligible witness **must** be a:

- » justice of the peace (JP)
- » commissioner for declarations
- » lawyer
- » notary public.

The witness **must not** be:

- » the person signing for you
- » your attorney (e.g. under an advance health directive or enduring power of attorney)
- » someone related to you or related to your attorney
- » a paid carer or health provider for you (i.e. your health provider)
- » a beneficiary under your will.

By signing this document, I confirm that:

- » I am making this advance health directive freely and voluntarily.

AND

- » I understand the nature and effect of this advance health directive including:
 - » the nature and likely effects of each direction in this advance health directive
 - » that a direction operates only while I do not have capacity for the health matter covered by the direction
 - » that I may revoke a direction at any time I have the capacity to make a decision about the health matter covered by the direction
 - » that at any time I do not have capacity to revoke a direction, I will be unable to effectively oversee the implementation of the direction.

AND

- » I understand that if I am appointing an attorney(s) for health matters that:
 - » I may specify or limit my attorney(s)' power and instruct my attorney(s) about the exercise of the power
 - » the power given to my attorney(s) begins when I lose capacity to make decisions for health matters
 - » once my attorney(s)' power begins, my attorney(s) will have full control over, and power to make decisions about, health matters subject to any terms or information included in this advance health directive
 - » I may revoke the power given to my attorney(s) in this advance health directive at any time I am capable of making an advance health directive giving the same power
 - » the power I am giving to my attorney(s) continues even if I do not have capacity to make decisions about health matters
 - » if I am not capable of revoking this advance health directive, I will not be able to oversee the use of the power given to my attorney(s) for health matters.

ONLY SIGN THIS PART IN FRONT OF AN ELIGIBLE WITNESS

Principal's signature: _____ Date: _____

Witness's signature: _____ Date: _____
(Witness must also sign page 12)

OR

Insert your seal of office or your prescribed mark of office beside or below your signature and insert the date

Person signing for the principal

If you are physically unable to sign this form another person who is eligible must sign the form for you.

Refer to section 7, page 15 of [Form 10 — Advance health directive explanatory guide](#).

By signing this document, I confirm that:

- » the principal instructed me to sign this document
- » I am 18 years or older
- » I am not a witness for this advance health directive
- » I am not an attorney of the principal.

Name			
Address			
Suburb	State	Postcode	

ONLY SIGN THIS PART IN FRONT OF THE PRINCIPAL AND AN ELIGIBLE WITNESS

Person signing for the principal signs here: _____ Date: _____

Witness's signature: _____ Date: _____

Sample form

Advance health directive—witness certificate (page 12)

WITNESS CERTIFICATE	
<p>This part must be filled in and signed by the eligible witness at the same time that you sign the advance health directive.</p> <p>INFORMATION FOR THE WITNESS</p> <p>As a witness you are not simply witnessing the principal's signature. You must also be satisfied that the principal appears to have capacity to make the advance health directive.</p> <p>Refer to section 7, page 16 and pages 20–21 of Form 10 — Advance health directive explanatory guide and the Queensland Capacity Assessment Guidelines 2020.</p>	<p>By signing this document, I certify that: <i>(Tick one box only)</i></p> <p><input type="checkbox"/> the principal signed this advance health directive in my presence</p> <p>OR</p> <p><input type="checkbox"/> in my presence, the principal instructed another person to sign this advance health directive for the principal, and that person signed it in my presence and in the presence of the principal.</p> <p>AND</p> <p>» I am a: <i>(Tick one box only)</i></p> <p><input type="checkbox"/> justice of the peace (JP)</p> <p><input type="checkbox"/> commissioner for declarations</p> <p><input type="checkbox"/> lawyer</p> <p><input type="checkbox"/> notary public.</p> <p>» I am not:</p> <p>» the person signing the document for the principal</p> <p>» an attorney of the principal</p> <p>» a relation of the principal or relation of an attorney of the principal</p> <p>» a paid carer or health provider of the principal</p> <p>» a beneficiary under the principal's will.</p> <p>» I have verified that section 5 of this advance health directive has been signed and dated by a doctor.</p> <p>» At the time of making this advance health directive the principal appears to me to have the capacity to make this advance health directive. The principal appears to:</p> <p>» understand the nature and effect of this advance health directive</p> <p>» be capable of making the advance health directive freely and voluntarily.</p>
<p>If an interpreter assisted in the preparation of this document or if an interpreter is present when this document is witnessed, complete Form 7 – Interpreter's/ translator's statement at www.publications.qld.gov.au</p>	<p>This document (including any additional pages) has _____ pages.</p> <div style="border: 1px solid red; padding: 2px; display: inline-block; font-size: small;">Note the total page count here</div>
<div style="border: 1px solid red; padding: 5px; font-size: small; color: red;"> Insert your seal of office or your prescribed mark of office beside or below your signature and insert the date </div>	<p>Witness's signature: _____ Date: _____</p> <p><i>(Witness must also sign page 11)</i></p> <p>Witness's name: _____</p>
<p>Page 12 ADVANCE HEALTH DIRECTIVE Version 5: approved for use from 30 November 2020.</p>	

Sample form

Form 8—additional page

Form 8	Additional page	Page _____ of _____ additional page(s)
<small>Powers of Attorney Act 1998 (section 161) Version 1: approved for use from 30 November 2020.</small>		
<hr/>		
This form can be used to attach additional pages to an Enduring power of attorney (Form 2 or 3) or Advance health directive (Form 4) .		
I am adding additional pages to: <i>(indicate the relevant form below)</i>		
<input type="checkbox"/> an enduring power of attorney	<input type="checkbox"/> an advance health directive	<i>Ensure the relevant box is ticked</i>
Name of principal: _____		
<div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%); opacity: 0.1; font-size: 100px; pointer-events: none;">SAMPLE</div> <div style="border: 1px solid red; padding: 5px; width: fit-content; margin: auto;"><i>Ensure this page and any other additional pages are noted in the page count</i></div>		
Principal's signature: _____		Date: _____
<small>(or person signing for the principal)</small>		
Witness's signature: _____		Date: _____
<div style="border: 1px solid red; padding: 2px;"><i>Insert your seal of office or your prescribed mark of office beside or below your signature and insert the date</i></div>		
Witness's name: _____		
<small>Forms and explanatory guides are available at www.qld.gov.au/guardianship-planahead</small>		
ADDITIONAL PAGE Version 1: approved for use from 30 November 2020.		



Quick guide

Follow these steps to witness a general power of attorney—they are similar to witnessing a general document

-
- ① Check the document is in the approved form.

 - ② Note this in your logbook.

 - ③ Make sure you meet the criteria of an eligible witness.

 - ④ Check the signatory is the person named in the document.

 - ⑤ Ask for proof of identity.

 - ⑥ Confirm for yourself the person has capacity to make the document and can physically sign the form.
 - a. If they are not physically capable of signing, do they have an eligible signer?

 - ⑦ Confirm the date throughout the document is the same as the date on which you're witnessing.

Explain you need to read through the form.
 - a. Read through the document for alterations, spaces or omissions.
 - b. Both you and the signatory should initial any changes, including correction fluid or tape.

 - ⑨ Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.

 - ⑩ Ask the signatory to sign the document in front of you.

 - ⑪ Complete the witness's certificate, and sign and date the document.

 - ⑫ Insert your registration number wherever a signature is required.

 - ⑬ Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).

 - ⑭ Enter all relevant details in your logbook.

Quick guide

Follow these steps for witnessing an enduring power of attorney

It is a good idea to keep a copy of the capacity guidelines with you when conducting a capacity assessment and to use the summary checklists from the guidelines.

Ask the principal if they have made an enduring power of attorney (EPA) in Queensland or in another state or territory.

- ① a. If yes, advise the principal that making a new EPA could affect the validity of the interstate EPA. recommend the principal seek independent legal advice on this issue. If the principal wishes to proceed with making the new EPA then continue with the steps below.

If no, continue with the steps below.

Check everyone who needs to be involved is present:

- ② a. Principal
- b. You, as the witness

The attorney may also be present but does not need to be (ideally you should meet with the principal alone).

Confirm for yourself the person is over 18 and has capacity to make the document and can physically sign the form.

- ③ a. If they are not physically capable of signing, do they have an eligible signer?
- b. If they do not understand or read English, is there an interpreter present? (You should use a *Form 7 Interpreter's/ Translator's Statement*.)

-
- ④ Check the document is in the approved form.

-
- ⑤ Note this in your logbook.

-
- ⑥ Make sure you meet the criteria of an eligible witness.

-
- ⑦ Check the principal is the person named in the document.

-
- ⑧ Confirm the date throughout the document is the same as the date on which you're witnessing.

-
- ⑨ Explain you will read through the form with them.

Read through the form with the principal for alterations, spaces or omissions.

- ⑩ a. Both you and the signatory should initial any changes.
- b. Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.

-
- ⑪ Question the principal on their understanding of the document, including the power being given to the attorney and when the power begins.

-
- ⑫ Ask the principal or eligible signer to sign the document in front of you. Sign and date on the same page to indicate that you witnessed the signature.

An eligible signer must confirm that the principal instructed them to sign the document.

-
- 13 Complete the witness's certificate, including inserting the total number of pages of the document, and sign and date the document (note that you need to sign twice, once under the principal's signature and once on the witness certificate page).
-
- 14 Witness the principal's signature on any additional pages and ensure the pages are numbered.
-
- 15 Insert your registration number wherever a signature is required.
-
- 16 Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).
-
- 17 If the attorney is not present, remind the principal that the attorney should read the notice and complete the acceptance as soon as possible after it has been witnessed.
-
- 18 Enter all relevant details in your logbook.
-

Quick guide

Follow these steps for witnessing an advance health directive

It is a good idea to keep a copy of the capacity guidelines with you when conducting a capacity assessment and to use the summary checklists from the guidelines.

-
- Ask the principal if they have made an advance health directive (AHD) in Queensland or in another state or territory
- 1 a. If yes, advise the principal that making an AHD could affect the validity of the interstate enduring document. Recommend the principal seek independent legal advice on this issue. If the principal wishes to proceed with making the new AHD then continue with the steps below.
b. If no, proceed with the next steps.
-
- 2 Check a medical practitioner has signed and dated a certificate that the person has capacity to make the AHD. This is essential.
-
- Check everyone who needs to be involved is present:
- 3 a. principal
b. you, as the witness
c. the attorney may also be present but does not need to be (ideally you should meet with the principal alone).
-
- Confirm for yourself the principal is over 18 and has capacity to make the document and can physically sign the form.
- 4 a. If they are not physically capable of signing, do they have an eligible signer?
b. If they do not understand or read English, is there an interpreter present? (*A Form 7 - Interpreter's/ Translator's Statement* is needed.)
-
- 5 Check the document is in the approved form.
-
- 6 Note this in your logbook.
-

-
- 7 Make sure you meet the criteria of an eligible witness.
-
- 8 Check the principal is the person named in the document.
-
- 9 Confirm the date throughout the document is the same as the date on which you're witnessing.
-
- 10 Explain you will read through the form with them.
-
- Read through the form with the principal for alterations, spaces or omissions.
- 11
- a. Both you and the signatory should initial any changes, including correction fluid or tape.
 - b. Cross out or ask the signatory to complete any unanswered fields, then both of you should initial them.
-
- 12 Question the principal on their understanding of the document.
-
- Ask the principal or eligible signer to sign the document in front of you. Sign and date on the same page to indicate that you witnessed the signature.
- 13
- a. An eligible signer must confirm that the principal instructed them to sign the document.
-
- 14 Complete the witness's certificate, including inserting the total number of pages of the document and sign and date the document (note that you need to sign twice, once under the principal's signature and once on the witness certificate page).
-
- 15 Witness the principal's signature on any additional pages ensure the pages are numbered.
-
- 16 Insert your registration number wherever a signature is required.
-
- 17 Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).
-
- 18 If the attorney is not present, remind the principal that the attorney should read the notice and complete the acceptance as soon as possible after the document has been witnessed.
-
- 19 Enter all relevant details in your logbook.
-

4.10 Witnessing wills

What is a will?

Wills are documents in which people, known as testators, give instructions about what is to happen to their property when they die. Normally, the will names the people who are to carry out the terms of the will—called the executors—and sometimes also gives instructions about funeral arrangements.

People who die intestate—without a will—lose the opportunity to give directions about how their property (their estate) will be apportioned.

Wills are often drawn up by legal practitioners but many people use legal will kits, which are available through stationers and other suppliers.

A will is one of the most important documents a person will sign during their lifetime, so witnessing a will is an important task.

Why should a will be witnessed?

Wills are among the most contested of all legal documents. Anything that assists in establishing a will's authenticity will reduce the grounds on which it can be challenged. A reliable, impartial witness is crucial for establishing a will's authenticity.

For a will to be valid, two independent people—that is, people who are not beneficiaries or the spouse of a beneficiary under the will—must be present to witness its signing. That is, they must both be there at the same time. Many people prefer a Cdec or JP (Qual) as one of their witnesses, although this is not a requirement. You are free to witness a will if you are asked to do so.

How do you witness a will?

A will is a private document, so it is not advisable nor ethical to read unless the testator has a disability that affects their capacity to draft the will.

There are conventions to follow when witnessing a will:

- Ask the testator for some form of identification and note their name and document type in your logbook.
- Ask the testator if the document is their will.
- Ask the testator if they understand the contents of their will.
- Ask the testator if they require you to witness the will.

Explain the testator must sign first, and in full view of both yourself and the other witness, and both witnesses include their occupation and address.

Note: Ensure the same pen is used by all signatories.

Avoid reading the will contents when perusing the document for alterations, errors or blank spaces.

Alternatively, you can ask the testator to read through the will and check for any alterations, errors or blank spaces. Any blank spaces must be crossed out. These and any other alterations, additions or corrections must be initialled by the testator and both witnesses at the same time.

1. Ensure the date shown on the will is the date of signing.
2. Sign the will with your normal signature in the presence of the testator and the other witness. You should include your occupation and the JP Branch address for contact details.
3. Ask the second witness to sign in the same way, in the presence of the testator and yourself.

4. Enter the details in your logbook. In addition to the notes mentioned above, the information that can be entered should include:
- date
 - document witnessed
 - testator's and details of the other witness
 - type of identification sighted
 - location of signing
 - any other relevant details.

Note: Ensure the pages of the will are not pinned or stapled together. However, if the testator has previously done this, do not remove the attachments.

Things to bear in mind

The capacity of the testator

You may, at some stage, be asked to recollect and perhaps to give evidence about the testator's capacity to make a will and/or their demeanour and understanding at the time of signing. Therefore, you should adopt a standard practice of making notes in your logbook.

Confidentiality

The contents of any will you witness must be kept confidential. Witnessing the signing of a will is not part of your official duties but you may be asked to do so as a qualified witness.

Pins and staples

You should not pin or staple a will together or to another piece of paper. Nor should you remove any existing staples, clips or pins from an original will, as any residual marks left on the will may indicate that a page has been removed and could raise concerns or affect the administration of the estate.

Frequently asked questions

What if I am asked for advice?

You should never give advice about the wording, how to draft or the effect of a will. Refer to their solicitor or the Public Trustee.

What if I'm related to the person making the will?

You should refrain from witnessing the will if you are related to the testator, or if you or your spouse is a beneficiary under the provisions of the will. The same restriction applies to any person witnessing a will.

If you witness a will in these circumstances, the entitlement that you or your spouse would have received from the will may be jeopardised.

What if the will is a multi-page document?

If the will is a multiple-page document, the testator and both you and the other witness must sign all the pages.

Is there a set format?

Wills are one of the few legal documents that have no specific format unless a will kit is used or the will is drawn up by a solicitor.

Can I refuse to witness a will?

If you believe the testator is under any form of duress or undue influence, you must refuse to witness the will and explain your reasons to the testator. You should immediately inform the Office of the Public Trustee of your concerns.

If the testator is infirm or seems for any reason to be unable to fully comprehend the contents of the will, you should decline to witness the will until the testator has obtained medical advice that he or she is competent to make the will.

Note: Being available to witness wills is an important JP (Qual) duty. If you are approached to witness a will and it is not possible for you to do so, please refer the person to find a JP online at www.qld.gov.au/findjp.

Where can I get more information?

Queensland legislation

www.legislation.qld.gov.au

Public Trustee

www.pt.qld.gov.au

Queensland Courts

www.courts.qld.gov.au

Quick guide

Follow these steps to witness a will

-
- ① Ensure there is a second person present to witness the will. The person cannot be a beneficiary of the will or a spouse.

 - ② Ask the testator for identification.

 - ③ Note the details in your logbook.

 - Ask the testator if:
 - a. the document is their will
 - b. they understand the contents of their will
 - c. they require you to witness the will.

 - Read through the document for alterations, spaces or omissions. Do not read the content.
 - a. As the content is confidential, you can ask the testator to do this for you.
 - ⑤
 - b. Cross out or ask the signatory to complete any unanswered fields.
 - c. Do not staple or pin the document, nor remove any that are already there.
 - d. You, the testator and the witness should initial any changes made.

 - ⑥ Number multiple page documents. You, the testator and the other witness should sign each page.

 - ⑦ Ask the testator to sign the will first.

 - ⑧ Then ask the other witness to sign the will with the same pen, including their occupation and address.

 - ⑨ Everyone must sign the document with the same pen.

 - ⑩ Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).

 - ⑪ Enter all relevant details in your logbook.

4.11 Witnessing Titles Registry forms

What are Titles Registry forms?

These are approved forms under the *Land Act 1994*, *Land Title Act 1994* and *Water Act 2000*. They deal mainly with the ownership and use of real estate property and water allocations in Queensland.

Forms under the *Land Act 1994* relate to non-freehold land titles such as State leasehold land and reserves and unallocated State land.

Forms under the *Land Title Act 1994* (LTA) relate to freehold land titles, while documents under the *Water Act 2000* relate to water allocation titles.

Why are Titles Registry forms treated differently from other documents?

These Acts have specific requirements that you must satisfy when you witness forms that they cover, particularly in relation to transfer of ownership and mortgage-related documents such as a *Form 1 – Transfer* and a *National Mortgage form*.

These Acts have eligibility criteria for witnesses which, as a JP (Qual), you fulfil. They impose a strict onus on you to take reasonable steps to verify the identity of the person signing the form and ensure they are entitled to do so—that is, they are the holder of the relevant interest in the property (e.g. the registered owner or are about to become the holder of the interest) and, by implication, they understand the nature and effect of the document they are signing. You are required to print your full name on Titles Registry forms where you sign it as a witness—your initials are not acceptable.

If you do not provide your **full name**, the Justices of the Peace Branch (JP Branch) may disclose your full name to relevant third parties in order to verify the validity of the document(s) you have certified or witnessed.

In other respects, however, forms coming under these Acts must be witnessed in accordance with the usual rules, such as ensuring the signatory signs in the presence of the witness and the witness is not a party to the transaction covered by the document.

The legislative requirements are spelled out in the following extract.

Section 162 of the *Land Title Act 1994*

162 Obligations of witness for individual

(1) *A person who witnesses an instrument executed by an individual must—*

- a. *first take reasonable steps to verify the identity of the individual and ensure the individual is the person entitled to sign the instrument; and*
- b. *have the individual execute the instrument in the presence of the person; and*
- c. *not be a party to the instrument.*

(3) *The person must, for 7 years after the person witnesses the signing of the instrument—*

- a. *keep a written record of the steps taken under subsection (1)(a).*

Note: Section 173 of the *Water Act 2000* provides that section 162 of the *Land Title Act 1994* also applies to documents under the *Water Act 2000*. Section 311 of the *Land Act 1994* contains provisions similar to section 162 of the *Land Title Act 1994*.

The Registrar of Titles can also request to inspect a copy of your written record for a period up to 7 years after witnessing. Failure to comply with a request without reasonable excuse carries a maximum penalty of 20 penalty units.

What are my obligations when witnessing a Titles Registry form?

Statutory obligation 1

Take reasonable steps to verify the identity of the individual and ensure the individual is the person entitled to sign the instrument.

‘Reasonable steps’ could be defined as steps an ordinary person would consider prudent and fair in the circumstances.

Verification of Identity

Unlike most cases when you witness a document, under this legislation there is a mandatory requirement for the signatory to prove their identity to you before you can witness the execution of the form.

You must be satisfied as to the identity of the person signing the form and to do this you will need to sight a combination of identity documents of an acceptable standard to help ensure the person is who they say they are.

Under the legislation, if a witness elects to follow the [National Verification of Identity Standard](#) (the VOI standard) to verify the signatory’s identity, they are considered to have taken “reasonable steps” in fulfilling that aspect of their statutory obligation. Verifying the identity of an individual in accordance with the VOI standard involves a face-to-face, in-person interview between the witness and the individual where the individual supplies **original** identity documents from one of the categories listed in the VOI standard. All identity documents must be current with the exception of passports which can be expired for up to 2 years. Each category includes a different combination of identity documents to cater for different situations, and the witness must be reasonably satisfied that a prior category cannot be met before using a subsequent category.

In circumstances where the VOI standard cannot be strictly adhered to, you would generally be regarded as meeting the s. 162(1)(a) “reasonable steps” requirement to verify the identity of the person signing the form provided you have first diligently sighted and compared evidence comprising of several established identity documents (equivalent to those mentioned in the VOI standard) and are fully satisfied the person is one and the same as named in the Titles Registry form.

Only after the signatory’s identity is satisfactorily confirmed and the other statutory obligations are fulfilled should the Titles Registry form be signed and witnessed.

Prior to witnessing, you may question the signatory to confirm they understand the nature and effect of the form. If you are not satisfied the signatory has this capacity, then you should decline to witness the Titles Registry form and record the details in a logbook.

Note: the VOI standard only apply to individuals (including Attorneys) executing Titles Registry forms.

Companies do not require their signature to be witnessed.

Entitlement to sign

You have a legal responsibility to take reasonable steps to ensure the person signing the form is entitled to do so—that is, they are the holder (registered owner or registered proprietor) or about to become the holder of the relevant interest in the property. This is to prevent fraud and other improper dealings.

How do I ensure the signatory is entitled to sign?

Generally, a person selling or refinancing a property is the registered owner. To prove they are the registered owner and entitled to sign, the person should be able to provide you with one or more of the following documents in relation to the property.

Documentation to confirm a person is entitled to sign the form/s

If a person is selling property or are only refinancing	If a person is buying property and/or financing the purchase
<ul style="list-style-type: none"> • <i>a current local government rates notice; or</i> • <i>a current title search statement; or</i> • <i>a current land tax assessment notice.</i> 	<ul style="list-style-type: none"> • <i>a copy of the contract of sale; or</i> • <i>official loan documentation from their lender; or</i> • <i>a letter from a solicitor confirming they are entitled to sign the form.</i>

Each of these types of supporting evidence contains details about the property, such as the real property description (lot on plan or title reference) that should be compared to the Titles Registry form you have been asked to witness. If the details do not match, you should decline to witness the form.

Note: A new purchaser presenting a transfer and/or mortgage form for witnessing may not be able to provide the supporting evidence listed as they would not yet be recorded in the Title Registry. In such cases, they should provide a copy of the contract of sale or a letter from a solicitor that includes the real property description, confirming their entitlement to sign the form(s).

Importantly, the Lot on Plan (i.e. Real Property Description - RPD) must be shown on the form. However, in some cases (such as a purchase off-the-plan) the title reference may not be shown because the new survey plan has not yet been registered and a new title reference number not yet allocated to the lot.

See page 4.11/9 for examples of how the property description can be inserted on the Form1 Transfer and National Mortgage form

Statutory obligation 2

Have the individual execute the instrument in your presence.

This obligation is self-explanatory. Most Titles Registry forms provide spaces for each person to sign separately. The *Form 1 Transfer*, *Form 3 Release* and *National Mortgage form* require each signature to be witnessed separately. The date of execution must also be included in the space provided. Where only one space is provided and there are multiple signatories for the party (eg Form 9 Easement), and the signature of only one of them is being witnessed, it is good practice to include a statement “Signature of XX only witnessed”

Statutory obligation 3

The witness must not be a party to the instrument.

Any person with a vested interest in the transaction cannot also be a witness to the signing of the form. For example, if person A and person B own the land together and A is a JP (Qual), then A cannot witness B’s signature if they are both signing the form.

Care should also be taken when someone is signing under a power of attorney. Take this example, where person A and person B own the land together and person C is both an attorney for B and a JP (Qual). If A signs in their own right and C signs on behalf of B, then C cannot witness A’s signature as he or she is involved in the transaction.

Statutory obligation 4

Prescribed record keeping.

When witnessing Titles Registry forms, it is a mandatory requirement for you to keep, for a period of seven (7) years from the date of witnessing, a written record of how you verified the signatory’s identity and their entitlement to sign the form. After that time has elapsed, you may securely destroy the record.

How do you witness Titles Registry forms?

Here are some steps that are recommended before you apply the usual procedure for witnessing Titles Registry forms:

1. Ask the signatory for some form of identification, preferably photographic and issued by a government agency (e.g. a current driver licence or passport) and using the VOI standard, sight a combination of identity documents.
2. Ensure the signatory is the holder of the relevant interest in the property (e.g. sight evidence that they are the holder (registered proprietor) or about to become the holder of the relevant interest in the land:
 - a. Sight a current rates notice, utilities bills, title search, loan documentation or a sale contract for the land in question.
 - b. Compare the details on that evidence (lot on plan or title reference) with those on the form.
3. Question the signatory to confirm they understand the nature and effect of the form to be signed. If you are not satisfied the signatory has the capacity to sign the form, you should decline to witness it.
4. Ensure the form is fully completed with no blank panels or items. Decline to witness the form if there are incomplete items, especially *Item 2—lot on plan description*. Do not complete or rule through any blank spaces yourself.

For Item 2 on a *Transfer form* or the Land panel on a *National Mortgage Form* - it is a requirement that the Lot on Plan (i.e. Real Property Description - RPD) **must** be shown on the form. However, in some cases (such as a purchase off-the-plan) the title reference may not be shown because the new survey plan has not yet been registered and a new title reference number not yet allocated to the lot.

5. Ensure you are not a party to the transaction.
6. As always, ensure the form is signed in front of you in permanent, dense blue or black ink.
7. Place your signature and print your **full name** on the form. Be careful with the application of your seal of office to avoid obliterating other information on the form. Your qualification and registration number are required to be included. The execution date must also be completed.
8. Record the relevant details in your logbook. Information that can be entered includes:
 - a. date
 - b. Titles Registry form witnessed (ie. *Form 1 – Transfer, Form 7 – Lease*, etc.)
 - c. client's details
 - d. types of identification sighted
 - e. location of signing
 - f. the real property description and/or title reference of the property
 - g. questions you asked and answers given
 - h. any reason for declining to witness a Titles Registry form.

Note: You are required to retain for a period of 7 years a written record of the steps taken to verify the identity of the individual and ensure the individual was the person entitled to sign the Titles Registry form.

Things to bear in mind

The Registrar of Titles has extensive powers of formal inquiry and, in particular circumstances, may require a witness to produce records about Titles Registry forms they have witnessed.

Along with creating a record when you witness a Titles Registry form, it is also prudent to record information on any occasion when you decline to witness a form, and if the circumstances warrant it, consider advising the Registrar of Titles accordingly—for example, if you consider there are suspicious circumstances involved.

If you decline to witness a Titles Registry form because you believe it is not a legitimate transaction, notify the Titles Registry so the title records can be checked for any potential impropriety. Ideally, details such as current owners, lot on plan description and title reference should be provided. These details and why you declined to sign should also be recorded in your logbook.

Further information on witnessing Titles Registry forms

Witness certificates and identification forms

There may be occasions where a JP (Qual) who witnesses a *National Mortgage form* is presented with an additional document (usually called a witness certificate or client identification form) drafted by the lender (mortgagee).

Such certificates sometimes ask the witness to certify the identity of the signatory (mortgagor) and to also provide personal information regarding their own identity and contact details. Some have fields for your personal information such as driver licence details, home address or telephone number. You are not required to supply any information of a personal nature. In this instance, you can provide the address details of the JP Branch at PO Box 5894 West End Queensland 4101 and phone number 1300 301 147.

Some financial institutions have created certificates in an endeavour to meet their obligations under section 11A of the LTA in relation to confirming the identity of borrowers (mortgagors). These financial institutions usually give the borrower (mortgagor) a witness certificate and instruct them to ask a JP (Qual) to complete it. The obligations are quite distinct from and separate to the obligations under section 162 of the LTA that do apply to witnesses such as JP (Qual)s.

The Registrar of Titles provides practice guidelines in the *Land Title Practice Manual* to assist mortgagees to meet their section 11A requirements. The level of verification of identity required by these practice guidelines is more stringent than the level of verification of identity a JP (Qual) is required to follow under section 162 of the LTA.

Under s.11A of the LTA, it is the responsibility of the mortgagee to verify the identity of the mortgagor. If a mortgagee seeks to utilise the services of JP (Qual)s to perform an identification check of a mortgagor, this does not remove the mortgagee's obligations under s.11A.

Subsequently the Department of Justice and Attorney-General confirms that JP (Qual)s are not acting as agents or representatives of financial institutions by completing an identification form. Rather you are simply an independent 'identity verifier'. If you decide to complete an identification form you should insert the following disclaimer on the identification form:

.....
The Justice of the Peace/Commissioner for Declarations who has signed this identification form is unpaid and is not acting at the direction of, or as the agent for any party to any financial transaction, including any financial institution or entity requesting this identification form.

Note: **Never** apply this disclaimer to any Titles Registry forms.

Ensure you record details of the ID check and of the mortgaged property in your logbook and retain for a period of seven (7) years.

Generally, should a mortgagee wish to confirm the authenticity of an attestation clause on a Titles Registry form, they may contact the JP Branch with their inquiry.

Alterations to Titles Registry forms

Changes to information on the face of Titles Registry forms are categorised as either alterations or corrections.

Corrections are where minor typographical errors are corrected and do not affect the outcome or intent of the form. Examples include:

- changing a minor part of a name or detail—such as Ann to Anne
- changing RP to SP in the plan description field
- adding an Australian Company Number ACN to a company name.

Alterations are more significant changes that potentially alter the outcome and/or intent of the Titles Registry form. Examples include:

- changing the interest being dealt with
- adding or removing a lot on plan description
- adding or removing a party to the transaction (including a person's middle name)
- changing the tenancy type.

Where alterations (not corrections) are made and they impact upon your witnessing obligations under section 162 of the LTA, you and the parties affected by the alteration are required to initial the alteration. Alternatively, the Registrar of Titles will accept the alteration being initialled by an authorised person (being one of the affected parties, their legal representative or an appropriate person under a power of attorney) provided a statement of alteration is received from the authorised person that sets out who made the change, under what authority and the details of the actual alteration.

Note: An authorised person in this context **does not** include a JP (Qual).

What if I am witnessing signatures on a *Form 7 – Lease*?

For the registered owner **granting** the lease (lessor), you will need to be satisfied the usual proof of ID, proof of ownership and entitlement to sign requirements are fulfilled before witnessing their signature. The owner(s) should be able to provide a copy of a written lease agreement and a current title search/rates notice to match the *Form 7 – Lease* details.

For the person **taking out** the lease (lessee), there are the usual proof of ID requirements. However, evidence of entitlement to sign is not as readily available as the only basis is usually the lease agreement itself. The details of the lessee and real property description shown within the lease agreement should be compared to that shown on the *Form 7 – Lease* form and any attached sketch of the leased area.

Where the description of the leased premises in the agreement is a street address only, the parties may have other documentation (e.g. a letter from their solicitor) which has both the street address and real property description information in it.

Leases are not usually a target for fraudulent transactions and in this respect, unlike *Form 1 – Transfer* and the *National Mortgage form*, there is no requirement on the form for individual signatures to be separately witnessed. If there are multiple individuals acting either as lessor or lessee and you are witnessing only one of them, then it is recommended that you take the precaution of adding 'Signature of (name) only witnessed'.

What if the Titles Registry form is to be signed under a power of attorney?

There are two additional key checks that you will need to make if you have been asked to witness a form being signed under the authority of a power of attorney (POA).

The first is to see either the original or certified copy of the POA to verify the person's entitlement to sign as attorney on behalf of the principal as you will have already confirmed the principal's involvement in the transaction. The name of the attorney, including any middle names, shown in the POA must match the identity of the person signing the Titles Registry form.

The second step is to ensure reference is made to the POA in the execution clause on the Titles Registry form being witnessed. At a minimum, there should be a notation above the signature with the following, or similar, words:

.....
[Name of Principal] by their duly constituted attorney [Name of attorney and/or designation attorney] under Power of Attorney (dealing number of the registered power of attorney).
.....

It is not unusual for a Titles Registry form and a POA form to be lodged for registration at the same time. Therefore, the dealing number—the number assigned to POA documents when they are lodged for registration with the Titles Registry—does not have to be completed when the form is presented to you for witnessing. A POA document that has been lodged for registration in the Queensland Titles Registry will usually display a label containing information such as the date and time of lodgement as well as the unique dealing number.

Note: You do not need to determine if the POA document grants the attorney the authority to sign the particular form being presented to you. Titles Registry examiners will determine this when the form is lodged for registration.

Dealing with deceased estates: When the owner is deceased

The administrative process and Titles Registry form applicable for registering dealings after the death of a property owner and dealing with their estate will depend upon:

- how they held their ownership of the property e.g. as joint tenants or as tenants in common.

Note: It is not the role or responsibility of a JP (Qual) to advise parties about which Titles Registry form to use in the different circumstances.

- where an executor of the estate is involved, the intention of the personal representative in dealing with the property.

You must still be satisfied the person signing the form is, in fact, who they say they are and that they are entitled to deal with the property. Therefore, you should establish:

- who is presently the registered owner of the property (using a rates notice, title search or similar)
- the name of the deceased and the name on the evidence of the death (e.g. death certificate or grant of probate) agrees with the rates notice or title search
- a link between the name of the executors/beneficiaries in the supporting evidence and the person signing the form.

Witnessing a Form 4 – Request to Record Death [joint tenants]

A death certificate or grant of probate is usually satisfactory evidence. The surviving joint tenant(s) must still provide you with the usual proof of ID and proof of entitlement/ownership before signing the Form 4.

Witnessing a Form 5, 5A or 6 – Transmission by Death [tenant in common]

Peruse the evidence of death—such as death certificate plus original will, grant of probate bearing a court seal or letters of administration—to confirm who is entitled to act as executor or be the beneficiary. You will require proof of identity that the person named as executor/beneficiary is the person signing the form:

- *Form 5*—signed by the person(s) listed in the grant of probate
- *Form 5A*—signed by the executor(s) (personal representative) listed in the original will
- *Form 6*—signed by the beneficiaries listed in the original will.

Finalising a deceased estate

Where an executor has already transmitted the property into their name in their capacity as personal representative and then wishes to transfer ownership, a title search will show the registered owner as the executor 'as personal representative', and a rates notice will show either 'the estate of (deceased's name), deceased' or '(name) as personal representative'.

Usual proof of identity requirements apply to witnessing the *Form 1 – Transfer*. As they have already established the death of the previous registered owner, they do not need to produce a copy of the will or death certificate when signing a transfer form as transferor. The will may still be needed if the purchasers/transferees are acquiring the land pursuant to the terms of the will as this is their entitlement to enter into the transaction.

Original wills

You should not pin, staple or make any markings on an original will and you should not remove any existing staples, clips, pins or attachments from an original will. Any residual marks left on the will may indicate a page has been removed and could raise concerns or affect the administration of the estate.

Frequently asked questions

Can I witness the document if the title reference is missing?

Only if the Lot on Plan (i.e. Real Property Description - RPD) is shown on the form. For example, if the title reference is missing from Item 2 in a Transfer form or the Land panel in a National Mortgage Form, but the Lot on Plan is shown in that section it may be the case that this is a purchase off-the-plan and so the title reference may not be shown because the new survey plan has not yet been registered and a new title reference number not yet allocated to the lot.

Can a Titles Registry form be signed and witnessed outside Queensland?

Yes. Schedule 1 of the LTA provides that you may witness a Titles Registry form at any place in Australia or outside Australia.

What if a Titles Registry form is pre-signed?

As Titles Registry forms must be executed in your presence, pre-signed pages are not acceptable and the signature should be ruled though (not covered with correction fluid or correction tape), initialled by both parties and the form re-signed in your presence.

If there is insufficient room on the front of the page for the fresh signature, then a *Form 20 – Schedule* should be used with the item number and heading from the original form repeated in full on the Form 20. The title reference should also be included on the Form 20.

Can I witness more than one copy of a Titles Registry form?

Yes, you can assist a client and witness more than one copy of a Titles Registry form. Some financial institutions may provide two or more copies of Titles Registry forms to their client for witnessing. One copy will be lodged with the Titles Registry. The financial institution will retain the others in case anything happens to the first copy before the land title is registered.

What should I do if I am asked for legal advice?

As Titles Registry forms are legal documents, only a qualified legal practitioner should provide legal advice on their preparation or content. However, you may provide parties with guidance about how or where to find relevant information.

What if correction fluid or tape has been used on a Titles Registry form?

Do not use or witness any Titles Registry forms where correction fluid or correction tape has been used. Such practice is not acceptable to the Registrar of Titles as it may hide or alter information and could affect the intended outcome upon registration.

Each party affected by a change to information on the Titles Registry form should initial the change. Refer also to the information provided earlier in this chapter about corrections and alterations made to information on forms.

When can I accept electronically downloaded evidence?

You can accept electronically downloaded evidence if the evidence is being used to help verify a person's entitlement to sign a document (e.g. rates notice or a contract of sale). While the actual evidence presented this way is equally as valid as the paper format, it is up to you to satisfy yourself as to the validity and reliability of its source before accepting it.

For example, observing the client opening their email on a portable device and checking the email and attachment came from a legitimate source (e.g. local council or solicitor's office) could be more satisfactory than if it was on a pre-prepared desktop icon. Similarly, if the client telephoned their solicitor/bank in your presence and requested a scanned copy of the document be sent through to their email, this may also be acceptable.

Can a Titles Registry form be witnessed if the Title Reference is missing?

Yes. However the Lot on Plan (i.e. Real Property Description - RPD) must be shown on the form. In some cases (such as a purchase off-the-plan) the title reference may not be shown because the new survey plan has not yet been registered and a new title reference number not yet allocated to the lot.

Acceptable – documents can be witnessed

TRANSFER

2. Lot on Plan Description	Title Reference
LOT 16 ON RP 32336	154320991

MORTGAGE

Land Title Reference	Part Land Affected?	Land Description
12348019		LOT 16 ON RP188963

Acceptable if evidence is provided to demonstrate why the Title Reference has not been completed. (e.g. for a lot purchased 'off the plan; where the survey plan has not been registered yet and a title reference not assigned to the proposed lot. A copy of the contract or a letter from a solicitor which confirms a purchase off the plan).

TRANSFER

2. Lot on Plan Description	Title Reference
LOT 16 ON RP 32336	

MORTGAGE

Land Title Reference	Part Land Affected?	Land Description
		LOT 16 ON RP188963

Not Acceptable – documents cannot be witnessed

TRANSFER

2. Lot on Plan Description	Title Reference

MORTGAGE

Land Title Reference	Part Land Affected?	Land Description

Where can I get more information?

Titles Queensland, including the Land Title Practice Manual and forms) www.titlesqld.com.au

Queensland legislation www.legislation.qld.gov.au

Record of Titles Registry Forms Logbook www.qld.gov.au/jpshandbook

Sample form
Form 1—Transfer (page 1 of 1)


QUEENSLAND TITLES REGISTRY
 Land Title Act 1994, Land Act 1994 and Water Act 2000

TRANSFER

FORM 1 Version 5
 Page 1 of 1

Duty Imprint

Dealing Number



OFFICE USE ONLY

Privacy Statement
 Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Interest being transferred (if shares show as a fraction) **Lodger** (Name, address, E-mail & phone number) **Lodger Code**

Note: A Form 24 - Property Information (Transfer) must be attached to this Form where interest being transferred is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "Water Allocation" (Water Act 2000)

2. Lot on Plan Description **Title Reference**

3. Transferor

4. Consideration

5. Transferee Given names Surname/Company name and number (include tenancy if more than one)

6. Transfer/Execution The Transferor transfers to the Transferee the estate and interest described in item 1 for the consideration and in the case of monetary consideration acknowledges receipt thereof. The Transferor declares that the information contained in items 3 to 6 on the attached Form 24 is true and correct. The Transferee states the information contained in items 1, 2, 4 to 6 on the attached Form 24 is true and correct. Where a solicitor signs on behalf of the Transferee the information in items 1, 2, 4 to 6 on Form 24 is based on information supplied by the Transferee.

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.
 Separate executions are required for each transferor and transferee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

.....

..... / /

Witnessing Officer (signature, full name & qualification) **Execution Date** **Transferor's Signature**

.....

..... / /

Witnessing Officer (signature, full name & qualification) **Execution Date** **Transferor's Signature**

.....

..... / /

Witnessing Officer (signature, full name & qualification) **Execution Date** ***Transferee's or Solicitor's Signature**

.....

..... / /

Witnessing Officer (signature, full name & qualification) **Execution Date** ***Transferee's or Solicitor's Signature**

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

Insert your signature, full name, qualification and registration number. Be careful with the application of your seal of office to avoid obliterating other information on the form.

Sample form
National Mortgage form (page 1)

Mortgage Form version 1.5

Lodger Details

Lodger Code
 Name
 Address
 Lodger Box
 Phone
 Email
 Reference

For Office Use Only

**THE BACK OF THIS FORM
 MUST NOT BE USED**

MORTGAGE

Jurisdiction QUEENSLAND

Privacy Collection Statement
 The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or interest being mortgaged
 FEE SIMPLE

Land Title Reference	Part Land Affected?	Land Description
		The land description must be completed e.g: Lot 1 on RP 118983

Mortgagor

Given Name(s)
 Family Name

Mortgagee

Name

The mortgagor mortgages the estate and/or interest in land specified in this mortgage to the mortgagee as security for the debt or liability described in the terms and conditions set out or referred to in this mortgage, and covenants with the mortgagee to comply with those terms and conditions.

Terms and Conditions of this Mortgage

(a) Document Reference NIL
 (b) Additional terms and conditions NIL

Mortgagor Execution

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

	Executed on behalf of
	Signature Name _____
	Signature _____
Full Name of Witness _____	Execution Date _____
Witness Signature _____	
Witness Qualifications _____	

Insert your signature, full name, qualification and registration number. Be careful with the application of your seal of office to avoid obliterating other information on the form.

Reference: _____

Page 1 of 2

Quick guide

Follow these steps to witness a land title document

-
- ① Ask the signatory for some form of identification, preferably a combination of identity documents including photographic and government-issued, e.g. current driver licence or passport.

 - ② Check the signatory is the holder of the relevant interest in the property:
 - a. Sight a current rates notice, title search or sale contract for the land in question.

 - ③ Confirm you are not a party to the transaction.

 - ④ Question the signatory: Do they understand the nature and effect of the form to be signed?

 - ⑤ Check all parts of the form are filled out.

 - Decline to witness the form if:
 - ⑥ a. You do not think the signatory has the capacity to sign.
 - b. There are incomplete items, especially *Item 2—lot on plan* description.

 - ⑦ Do not complete or rule through any blank spaces yourself.

 - ⑧ Ensure the form is signed in front of you in permanent, dense blue or black ink.

 - ⑨ Place your signature and print your full name on the form, and include your execution date, qualification and registration number. Be careful with the application of your seal of office to avoid obliterating other information on the form.

 - ⑩ If required, complete the identification certificate and add the disclaimer.

 - ⑪ Enter all relevant details in your logbook and retain for 7 years.
-

4.12 Witnessing international, Commonwealth and interstate documents

What powers do I have for witnessing international, Commonwealth and interstate documents?

International documents

Generally, you have no authority to sign a document intended for use outside Australia. A notary public, consular staff or embassy officials should witness international documents, unless the document specifies otherwise.

Commonwealth documents

You may witness Australian (Commonwealth) documents anywhere in the world.

Commonwealth legislation recognises your appointment as a JP (Qual) under state legislation and authorises you as a witness for Commonwealth documents. Therefore, neither state nor national borders limit your powers as a witness for Commonwealth documents.

Interstate documents

Witnessed outside Queensland

JPs do not have authority to witness interstate documents while they are outside Queensland. However, a JP can witness Queensland documents anywhere, as long as the document is returning to Queensland.

However, some states have legislation authorising JPs from other states to witness certain documents in their particular state. Before agreeing to witness an interstate document while you are outside Queensland, seek advice from the agency responsible for the document in that state.

Witnessed in Queensland

In some circumstances, you can witness interstate documents while you are in Queensland. The court or authority where the document is to be lodged determines if you are acceptable as a witness, so you should try to ascertain this prior to witnessing the document.

Queensland documents witnessed outside Queensland

Your appointment as a JP (Qual) is made under Queensland legislation by virtue of the *Justices of the Peace and Commissioners for Declarations Act 1991*. This means your powers apply to all matters within the State of Queensland.

You may perform your functions as a witness in any state or territory, or indeed internationally, provided the document in question is to be used in Queensland.

The following examples may help to illustrate this limitation of power:

- You are in London, and someone approaches you with a statutory declaration to be witnessed. The document is to be tendered as evidence in a court hearing in Brisbane. You have the authority to witness this document. (If the document were to be used in England or anywhere else apart from Queensland, you would not have the authority to witness it).
- You are in Victoria, and someone approaches you to witness a statutory declaration under that state's legislation. You do not have authority to witness this document.
- You are in Brisbane, and someone approaches you to witness a family law form (a Commonwealth document), which is to be used in Western Australia. You have the authority to witness this document.
- You are still in Brisbane, and someone else approaches you with the same type of Commonwealth document,

a family law form, only this time it is to be used in Queensland. You have the authority to witness this document.

- In Queensland, someone asks you to witness a New South Wales document that is to be filed in the Supreme Court of New South Wales. You may witness this document, but you must note beside your signature that you are a JP (Qual) 'for and in the State of Queensland'. It will then be up to the New South Wales court to decide whether or not the document is acceptable.

Why are there limits on my powers to witness international and interstate documents?

As your appointment as a JP (Qual) is made under Queensland legislation, your powers generally relate to Queensland and Commonwealth documents.

Unless a particular document specifically allows it, you do not have the authority to deal with documents coming under the legislation of other states or other countries.

Where can I get more information?

JP Branch

www.qld.gov.au/jps

4.13 Witnessing the consent to the marriage of a minor

What is my role in giving consent to the marriage of a minor?

The marriage of minors is covered by Commonwealth legislation, the *Marriage Act 1961*. The Act provides you are eligible to witness a signature of a person who is authorised to give consent to the marriage of a minor.

Why is a consent form required?

Marriage is a serious and binding commitment. Society has generally taken the view that people under a certain age lack the maturity and experience to enter into it. Legislation has therefore set a minimum age below which people are not permitted to marry without the written consent of their parents or legal guardians.

In Australia, people of both sexes are free to marry without permission when they are 18 years old. If they are under 16, they may not marry, even with the permission of parents or guardians.

To protect young people from exploitation, the legislation requires anyone between the ages of 16 and 18 must obtain written consent from their parents or legal guardians before they marry, and they must also obtain authorisation from a judge or magistrate.

How do I witness a 'consent to marriage' document?

The same general procedure relating to witnessing documents applies in this instance.

However, the legislation does place further responsibilities on you, in that you must be sure:

- of the identity of the person/s giving consent
- of the relationship of the consenting authority with the minor (that is, the parent or legal guardian)
- that the document is correctly dated.

Things to bear in mind

You shall not subscribe your name as a witness to the signature of a person to a consent to a marriage by a minor unless:

- you are satisfied on reasonable grounds as to the identity of that person
- the consent bears the date on which you have witnessed the document as a witness.

If you fail to comply with the *Marriage Act 1961*, you may be liable to a fine or imprisonment under the Act. You should take particular care when witnessing a 'consent to marriage' form.

Frequently asked questions

Is there a prescribed form?

Yes. There are two types of forms for consent to marriage. One is used to give the consent of both parents, and the other is used when only one parent is available to give consent.

The forms both state who is supposed to sign the form, and which form is to be used in the circumstances. You should read the schedule on the form to ensure the correct form is being used and that the correct people are signing the form.

Can I refuse to witness a 'consent to marriage'?

You should refuse to witness the document if you are not satisfied as to the identity of the person giving the consent or that person's relationship with the minor.

It is recommended you keep a record of what was supplied as proof of identity in case of later actions. Remember, you are witnessing a document that will allow a minor to enter into a marriage contract, usually with an adult, and appropriate care should be taken.

Where can I witness a 'consent to a marriage'?

You are able to witness this document anywhere in Australia, but not outside Australia. There is another class of witness for people outside Australia who wish to give consent to the marriage of a minor.

Is the date of the document important?

Yes. A consent to marriage form lapses after three months so, to comply with the legislation, the consent must be given within the three months before the marriage, and the document must be dated on the day it is signed.

Am I able to perform marriages?

No. A JP does not have the power to perform marriages.

If someone wanting to be married approaches you, you should direct him or her to a marriage celebrant, the Registry of Births, Deaths and Marriages, or their local Magistrates Court registry.

Where can I get more information?

Registry of Births, Deaths and Marriages

www.qld.gov.au/rbdm

Attorney-General's Department

www.australia.gov.au



SECTION 5

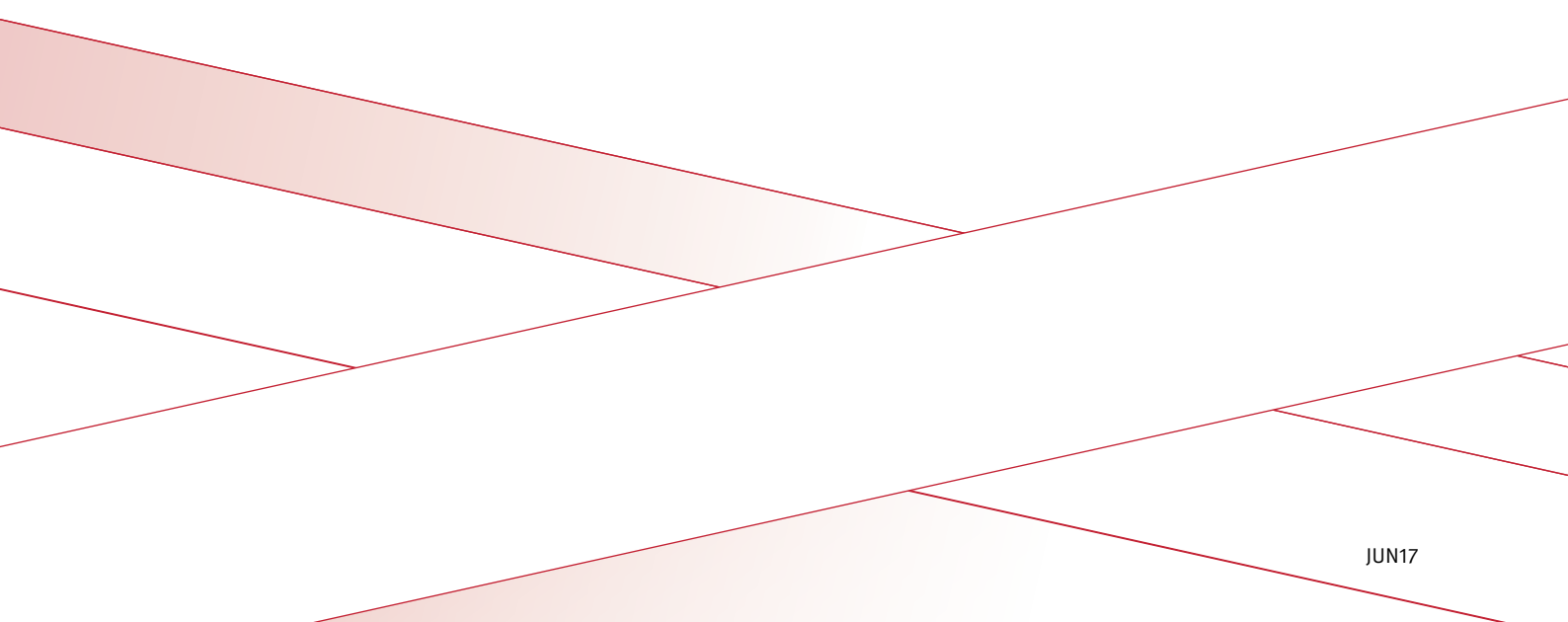
Warrants, summonses and orders



SECTION 5

Warrants, summonses and orders

5.1	Issuing summonses	JUN17
5.2	Issuing a summons or warrant under the <i>Peace and Good Behaviour Act 1982</i>	JUN17
5.3	Issuing warrants under the <i>Animal Care and Protection Act 2001</i>	JUN17
5.4	Issuing search warrants	JUN17
5.5	Issuing arrest warrants	JUN17



5.1 Issuing summonses

What is a summons?

A summons is a document, issued under the *Justices Act 1886*, that commands a person to attend a court at a prescribed time and place as set out in the form.

The summons is usually in a prescribed form and consists of three parts:

1. **Complaint**—the information required to substantiate the issuing of the summons
2. **Summons**—the details about the person summonsed and the time and place of the court hearing
3. **Oath of service**—sworn or affirmed before a JP to prove the summons was served (that is, presented to the person named in the summons).

Complaints may be either sworn or unsworn. A sworn complaint and summons is officially called a Complaint – sworn and summons and is generally used for indictable offences.

An unsworn complaint and summons is a Complaint – general purposes – made and summons, and it is typically used for simple offences.

Why would a summons be issued?

Summonses are issued because a person is required to:

- answer a charge
- give evidence at the trial of another person.

The people most likely to ask you to issue a summons are police officers. Authorised officers of other government departments and, in some instances, private individuals may also ask for a summons to be issued.

How do you issue a summons?

When you issue a summons, you should apply the same principles that govern the witnessing of documents, such as verifying the identity of the signatory. You also have added responsibilities.

When the summons is to be served on a defendant

Before you issue the summons, 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.

There are three people principally involved in the issue of a summons:

1. **Complainant**—the person who requests the issue of a summons (they are known as the ‘complainant’ because they actually make a complaint before you)
2. **JP (Qual)**—who issues the summons
3. **Defendant**—the person being charged with an offence.

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

1. Ask the complainant for some form of identification.
2. For a sworn summons, 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 are three copies of the document. When you have issued the summons, the complainant will file the original with the court. They will serve the duplicate on the defendant. When the summons has been served, the complainant will swear or affirm the oath of service (also known as the service copy) before either yourself or another JP. The complainant will then file this oath of service and a copy of the complaint as proof it has been served.
4. Read the entire complaint section, reviewing it thoroughly. 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. Ensure:
 - a. The Act or Regulation under which the summons is requested appears at the top of the complaints form. You are entitled to ask to see a copy of the relevant sections of the Act or Regulation if you require.
 - b. The material in the complaint must be sufficient to satisfy you an offence has been committed under Queensland legislation. It should cover all elements of the offence. For example, if the offence is 'unlicensed driving', the complaint should provide these details:
 - (i) name and address of the defendant
 - (ii) date, time and place of the offence
 - (iii) the fact the defendant is unlicensed
 - (iv) motor vehicle involved
 - (v) where the incident occurred.
 - c. The complaint should cover 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 as long as they are related and each offence is covered in a separate paragraph.
 - d. The complaint should be made within one year of when the offence was committed if it is a simple offence or a breach of duty.

5. Ask the complainant any questions that are needed to clarify what offence is involved and what evidence there is that the defendant is implicated.

Some sample questions that you could ask the complainant:

- What is the evidence on which you have made this complaint?
- Where did you obtain the details about the defendant?
- How did you identify the defendant as the offender?
- Who informed you about the offence? How reliable is this informant?

Record in your logbook all questions asked and answers given, and any further information supplied to you under oath. Keep this record in case it is required for future reference.

Note: If you decide to refuse to issue the summons, you should cross out the complaint and note your reasons on the form. In the instance of a police officer, you should then inform the officer in charge of the police station where the complainant is stationed.

6. Once you are satisfied the summons is justified, have the complainant sign the complaint. Remind them they are still under oath.

Note: *The complaint and summons must* be signed by the same JP. That is, if you witness the complaint, you must be the JP who issues the summons.

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*.

8. Read the entire summons section and check through it carefully. Ensure the summons includes these details:

- a. full name, address and date of birth of the defendant
- b. it is dated the day of issue
- c. full address of the court before which the defendant is to appear
- d. date and time of the court hearing.

9. If a private individual is requesting the summons, contact the Magistrates Court to arrange a return date—that is, the date for the court hearing. Though the court will set the date, time and place of the hearing, you should check there are no obvious problems with these arrangements, such as coinciding with general public holidays, local public holidays (show holidays) or the Easter, Christmas–New Year court closure.

10. Sign the summons, 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*.

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

11. Record 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.

When a summons is to be served on a witness

When you are approached to issue a summons to a witness to attend court for a matter that is listed for hearing, the person requesting the summons normally does not supply a written complaint or information to substantiate the summons. The procedure to follow is simple.

1. Check:
 - a. The witness is within your jurisdiction—namely Queensland. You do not have the authority to issue a summons to anyone outside Queensland.
 - b. The witness is able to give material evidence at the hearing. The evidence the witness may give should be relevant to the case, especially if they live a considerable distance from the court, to justify the cost of their attendance.

Note: You are permitted to ask questions to verify these points with the witness. As you have not been supplied with any sworn evidence, you may place the person requesting the summons on oath before you ask your questions.

2. Follow the general witnessing steps to complete the witnessing of the document. 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 summons to a witness.

The oath of service

The third part of the document is the oath of service. It is normally printed on the reverse of the form but can also be printed on the bottom of the actual document.

The oath of service does not have to be sworn before the same JP who issued the complaint and summons. It may be completed by any other JP.

The oath of service must be completed after the person named in the summons has been served. The person who served the summons completes the oath of service and swears or affirms this in front of you, specifying the manner of the service in the oath or affirmation.

This oath of service is then filed with the court by the complainant to prove the summons has been served on the defendant or witness. If the defendant or witness fails to appear at the hearing, the court may issue an arrest warrant for disobeying the summons. In some instances, the court may proceed with determining the matter in the absence of the defendant (the person named in the summons) if the court is satisfied the summons has been served correctly. Taking this into account, you should exercise your judicial function in these instances with a great deal of care.

Things to bear in mind

Though the principles are the same, the procedure for issuing a summons is very different from the procedure for witnessing a document.

In the case of *R v Peacock, ex parte Whelan (1971) Qd R 4*, the Supreme Court held that, in receiving a complaint and issuing a summons, the JP performed a duty that ‘although not a judicial act, required the exercise of their discretion in a judicial manner’. It went on to say: ‘The justice has a discretion as to whether or not he should issue a summons and he must exercise his discretion in a judicial manner’.

It is therefore apparent you must not act mechanically or as a mere rubber stamp. It is your duty to ensure the issue of the summons is justified and, in the case of the complaint, there is sufficient evidence to substantiate the allegations made by the complainant.

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

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. 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.

In what circumstances would a private individual request a summons?

Most requests for private summonses are made in relation to offences that are covered by the *Peace and Good Behaviour Act 1982*.

On what grounds can I refuse to issue a summons?

You may refuse to issue the summons if you find it unsubstantiated, malicious or vindictive, or it does not actually refer to an offence under the law.

Note: If you refuse the summons, you must cross out the complaint and, if a police officer made the complaint, inform the officer in charge at the police station.

What if the defendant is known to me?

If you personally know or are related to the person who is the subject of the complaint, it potentially creates a conflict for you. You should decline 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.

How is the summons served on the defendant or witness?

For a simple offence or a breach of duty, the summons may be posted to the address of the person named in the summons. In more serious cases, the summons must be personally delivered to (‘served on’) the person named or left at the person’s place of work or residence.

Occasionally, the complainant applies to the court for leave to serve the summons in some other way.

Service by post must be done at least 21 days before the date of the court hearing.

An oath of service by post must include a deposition on oath and in writing by the complainant that the address to which a copy of the summons was posted is the last known address of the person. The deposition must include how the complainant knew of that address.

Service is usually achieved by handing the summons directly to the person named in the summons.

Should I ever sign a blank summons?

Never. The document must be complete for you to carry out your quasi-judicial function in the issue of a summons. Never be rushed in the process. Always exercise your judicial discretion.

A JP's role is to protect the rights of the citizen. It is not just a signing function for the police or for government agencies.

Do I have to put my full name on the document?

There is no requirement under present legislation for JPs to print their full name on the document. However, you must affix your seal of office and registration number on complaints and summonses. This is a mandatory requirement under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Where can I get more information?

Queensland Courts

www.courts.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

Forms

Form 03 – Complaint – sworn and summons

www.courts.qld.gov.au/forms

Sample form

Complaint—Sworn and Summons (page 1 of 2)

File No
 Fee Paid.....
 Receipt No.....
 Initials.....

Form 3
QUEENSLAND
JUSTICES ACT 1886
COMPLAINT – SWORN, and SUMMONS

THE COMPLAINT of
of
in the State of Queensland
made this day of , 200 , before the undersigned,
a Justice of the Peace for the said State, who says that on the day of 200 ,
at

contrary to the Acts in such case made and provided:
WHEREUPON the said
prays that I, the said Justice, will proceed in the premises according to law.

Complainant

*Sworn/Affirmed before me, the day and year first above mentioned at
in the said State

.....
Justice of the Peace

SUMMONS

To
of

Date of Birth: / /19 Place of Birth:

Indigenous: Aboriginal TSI Both Neither Unknown

WHEREAS the above complaint has been made before me:
YOU ARE HEREBY COMMANDED to appear at the Magistrates Court situated at:
Place:
Date: / /200
Time:
before + a Magistrates Court to answer the said Complaint and to be further dealt with according to law.

Given under my hand at:
Place
Date: / /200

.....
Justice of the Peace

PLEASE NOTE:
* This matter requires your personal appearance at Court. Failure to appear may result in the issue of a warrant for your arrest. If you plead guilty the case may be dealt with on the return date.
* If you appear and plead guilty or plead guilty in writing or fail to appear or enter a plea, the case will normally be dealt with on the return date.
If you wish to plead not guilty, the matter will be mentioned on the return day and a date of hearing will then be fixed. If you plead guilty or are found guilty by the Court, the Court may order, in addition to any fine imposed, that you shall pay to the complainant such costs as seem just and reasonable.
* Delete whichever is not applicable.
+ If applicable delete and insert "Justice taking an examination of witnesses in relation to an indictable offence".

v 5-20/12/02

SAMPLE

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

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

Oath of Service (page 2 of 2)

OATH OF SERVICE

I, _____ of _____ do swear that on the _____ day of _____, 200____, 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.

* (c) leaving a copy thereof at the Registered Office of the Company with a person apparently in the service of the Company and apparently of or above the age of 16 years.

* (d) posting a true copy of the within summons to appear to answer a complaint of a *simple offence/breach of duty to the defendant at _____ am/pm on the day of _____, 200____, at the post office at _____ addressed to the defendant at _____ being their place of *business/residence last known to the complainant, at least 21 days before the date on which the defendant is, by the summons, required to appear. The address to which a copy of the summons is posted being the address of the defendant last known to me by reason of + _____

Signed and *sworn/affirmed by the said deponent at _____ this _____ day of _____, 200____.

Deponent _____ Justice of the Peace _____

* Delete whichever is not applicable
+ Here specify the Complainant's means of knowledge as to the defendant's last known address

Indicate if the document was sworn or affirmed

Indicate if the document was sworn or affirmed

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

Sample form

Summons of a Witness (page 1 of 1)

FORM 10
QUEENSLAND
Justices Act 1886
Section 78

SUMMONS OF A WITNESS

To the witness: _____
(Name of witness)

of: _____
(Address of witness)

A complaint was made before a Justice of the Peace that:
(offence in full).
You are required to appear at:

Court: ***Magistrates / *Childrens**
Place: _____
Date: _____
Time: _____
*Court No: _____

to testify before the justices present about what you know concerning the complaint.
***And you are required to bring with you and produce all documents and writings in your possession or power, namely: [describe]**

#NOTICE TO WITNESS

You are required to give evidence in court for the Prosecution.
Arrangements for any long distance travel to the town where the Court sits will be made by the Queensland Police Service.
Arrangements for your accommodation if you are necessarily absent overnight will be made by the Queensland Police Service (if you require it).
The Queensland Police Service will pay your entitlement to:

- (1) an allowance towards your loss of income (if applicable);
- (2) an accommodation allowance which includes meals when you are required to be absent from your home overnight (if applicable); and
- (3) a travelling allowance (if applicable) – namely public transport or equivalent cost.

The allowances payable are approved under administrative arrangement. Expenses which exceed this allowance are to be paid by you. The current rate payable can be obtained from <http://www.police.qld.gov.au/services/forms/InfoWitness.htm>
All enquiries regarding your transport, accommodation or the court proceedings should be directed to the investigating Police Officer.

Police Officer: _____ Station: _____ Phone: _____

Given under my hand at:
Place: **Town or suburb**
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

Justice of the Peace

NOTE: If you neglect or refuse to appear at the time and place appointed by this summons, and no just excuse is offered for such neglect or refusal, the justices may then and there impose a fine upon you in your absence.. The justices may also issue their warrant to bring you before such justices at a later time and place to testify about what you know concerning the complaint.

*delete whichever is not applicable Form 10, Version 7, date of gazettal
This section applies to prosecution witnesses, summoned on behalf of Queensland Police Service. Delete if not applicable.

Page 1 of 2

Quick guide

Follow these steps to issue a summons to be served on a defendant

① Ask for identification.

② If it's a sworn summons, place the complainant on oath or affirmation.

③ Check there are three copies of the summons.

Thoroughly read the entire complaint section. Check:

- a. The Act or Regulation is at the top of the form. You can ask to see details.
 - b. The complaint is enough to satisfy you a particular offence has been committed e.g. name and address of defendant, and where and when the offence took place.
 - c. Check the form only includes one offence unless there are multiple offences that relate to the same incident. In that case, each offence should be covered in a separate paragraph.
 - d. The complaint is made within one year of a simple offence or breach of duty.
-

Ask questions to clarify the defendant is implicated.

- ⑤ a. Questions can focus on what the evidence is, how the details were obtained, how the defendant was identified and the source or informant.
-

⑥ If you are satisfied the summons is justified, remind the complainant they are under oath and then ask them to sign.

⑦ Witness the signature, and affix your seal of office and add your registration name and number.

Now read the entire summons section and check it carefully to see it includes:

- ⑧ a. defendant's full name, address and date of birth
 - b. today's date
 - c. full address, date and time of the court hearing.
-

If a private individual is requesting the summons, contact the Magistrates Court for a court hearing date.

- ⑨ a. Check there are no obvious issues with the date e.g. public holiday or court closure between Christmas and New Year.
-

⑩ Sign the summons, affix your seal of office and add your registration number.

⑪ Enter all relevant details in your logbook.

Quick guide

Follow these steps for when a summons is served on a witness

Ask questions to check:

- ① a. The witness is within Queensland.
b. The witness can give relevant evidence.
-

- ② *Note:* You may place the person requesting the summons on oath before you ask your questions, but this is not essential.
-

- ③ Follow the general witnessing steps to complete the witnessing of the document.
-

Check what type of document it is.

- ④ a. Don't witness the document if:
 - i. You don't believe it's lawful.
 - ii. You don't have authority to do so.
-

- ⑤ Check the signatory is the person named in the document.
-

- ⑥ Confirm the date throughout the document is the same as the date on which you're witnessing.
-

- ⑦ Ask the signatory to sign the document in front of you.
-

- ⑧ Sign the document and insert your registration number wherever a signature is required.
-

- ⑨ Place your seal of office closer to wherever you have signed (either beneath or beside, but never over the signature).
-

- ⑩ Enter all relevant details in your logbook.
-

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 _____

Indicate if the document was sworn or affirmed

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)

SWORN/AFFIRMED before me at _____ *Town or suburb* _____ *Insert day* _____ *month and year* _____
 in the State of Queensland on the _____ day of _____

Indicate if the document was sworn or affirmed

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

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

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
* Delete whichever is not applicable

.....
Justice of the Peace

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

Form 2, Version 2, 30/09/2010

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 Check there are three copies of the summons—an original and two copies.
 - a. For warrants, one original and one copy should be witnessed.

Thoroughly read the entire complaint section. Check:

 - a. The Act or Regulation is at the top of the form. You can ask to see details.
 - b. The complaint is enough to satisfy you the warrant or summons is justified, that is:
 - i. A threat has been made.
 - ii. The complainant is genuinely afraid of the defendant.
 - iii. The complaint is dated within one year of the last threat.
-
- ④ You may refer the complainant to a dispute resolution centre for mediation if these criteria are met.
 - i. You believe the complaint would be better dealt with by mediation than court.
 - ii. The complainant simply wishes to quietly enjoy their property.
 - iii. The complainant agrees the matter should go to mediation and wishes to attempt it.
 - iv. There is a convenient dispute resolution centre.
-
- ⑤ Ask questions to clarify how the threats have been made and the effect on the complainant.
 - a. Keep a record in your logbook of this information.
-
- If you are satisfied the complaint is justified, remind the complainant they are under oath and then ask them to sign.
- ⑥
 - 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.
-
- ⑦ Witness the signature, and affix your seal of office and add your full name and registration number.
-
- Now decide if you will issue a summons or a warrant.
- ⑧
 - 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.
-

-
- If you're issuing a summons, contact the Magistrates Court to arrange a mention date.
- ⑨ a. Check the date does not clash with public holidays or court closures, such as Christmas–New Year.
-

- Complete the summons or warrant and check it through carefully for:
- ⑩ a. the complainant's full name, address and details of complaint
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.
-

- 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.
-

- Give the complainant their copies back.
- ⑫ 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.
b. For a warrant, the complainant receives an original and a copy, and gives the original to police for the defendant to be arrested.
-

- ⑬ Enter all relevant details in your logbook.
-

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.

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)

	<p>QUEENSLAND POLICE SERVICE</p> <p>APPLICATION FOR SEARCH WARRANT</p> <p><i>Police Powers and Responsibilities Act 2000</i> Section 150</p>	 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 <input type="checkbox"/> No <input type="checkbox"/>		
If Yes – Is name of occupier known: Yes <input type="checkbox"/> No <input type="checkbox"/>		
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
<p><i>Insert your signature and date</i></p> <p>_____</p> <p>(Magistrate/Justice)</p>		<p>_____</p> <p>(Date)</p>

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

Sample form

Search Warrant (page 1 of 2)

	<p>QUEENSLAND POLICE SERVICE</p> <p>SEARCH WARRANT</p> <p><i>Police Powers and Responsibilities Act 2000</i></p> <p>Section 151(a)(i)</p>	 QP 0712 03/17 Δ1‡
<p>To</p> <p>Family name: _____ Given name(s): _____</p> <p>Rank: _____ Reg. no.: _____ Station/Est.: _____</p> <p>or all police officers of the Queensland Police Service.</p>		
<p>I, a Justice, after hearing a sworn application by <i>Ensure the term 'Justice' has been selected</i></p> <p>_____</p> <p style="text-align: center; font-size: small;">(Rank and name of applicant officer)</p>		
<p>am satisfied there are reasonable grounds for suspecting warrant evidence or property is at the below mentioned place.</p> <p>Details of place:</p> <p>A police officer may lawfully exercise the following powers under this search warrant:</p> <ul style="list-style-type: none"> • 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. <p>A police officer has the following power(s):</p> <p>This search warrant is issued in relation to –</p> <p>Details of warrant evidence or property that may be seized under this search warrant:</p>		
QP 0712 Search Warrant	<p><i>Insert your signature and date</i></p> <p>_____</p> <p style="font-size: x-small;">(Justice's signature)</p>	<p>_____</p> <p style="font-size: x-small;">(Date)</p>

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)

*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*

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.: _____


Insert your signature and date

(Justice's signature)

(Date)

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

QP 0713 Application for Post-Search Approval Order

Page 1 of 2

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.

-
- 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.

 - 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.

 - ③

 - 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.

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:

.....

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 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

Queensland Police Service


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: _____

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

The grounds on which the warrant is sought:

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)

Indicate if the document was sworn or affirmed

* Sworn / Affirmed before me on the _____ day of _____, _____.

(Day) (Month) (Year)

_____ (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

Insert full name

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]

QP 0725 Arrest Warrant Page 1 of 1

Indicate if the document was sworn or affirmed

SAMPLE

Quick guide

Follow these steps to issue an arrest warrant

-
- 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
- ④
 - 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
 - ⑩
 - 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.
-



SECTION 6

Other times your services may be required



SECTION 6

Other times your services may be required

6.1	Attending a record of interview	JUN17
6.2	Granting extensions of detention periods	JUN17
6.3	Your powers under the <i>Customs Act 1901</i>	JUN17
6.4	Granting and refusing bail	JUN17
6.5	Hearing a bail application	JUN17
6.6	Sureties and security	JUN17

6.1 Attending a record of interview

What is a record of interview?

Police conduct a record of interview when they are formally questioning a suspect about an offence they are alleged to have committed. These records of interview are normally conducted at a police station where there are proper facilities, including sound and, possibly, video-recording equipment. Sometimes the record of interview includes a visit to the alleged crime scene or other locations associated with the offence.

Why do records of interview concern me as a JP?

Because you may be asked to attend such an interview, you need to understand what the law requires of you.

If the suspect is a child, the police may, if there is no other suitable person available, ask you to act as a support person at the interview. In this situation, you are under an obligation to comply.

If the suspect is an adult, however, the situation is less clear. Generally speaking, an adult suspect has the right to ask for someone to be present. The person asked to attend is referred to as an ‘interview friend’.

You may also be asked to attend an interview of an adult suspect in another capacity—as a friend. Unlike ‘interview friend’, the word ‘friend’ is understood in its ordinary, everyday sense. Adult suspects have the right to have a friend present at the interview and, in this case, you are free to attend if you wish. If you do, it is as a private individual, not as a JP. There is no defined role for you in this situation and you are under no obligation to attend.

The *Police Powers and Responsibilities Act 2000* sets out the procedures to be adopted by the police when questioning suspects. The Act has different provisions for adult and juvenile suspects.

For adult suspects, the Act provides for:

- a ‘support person’ to attend records of interview where the suspect is an adult Aboriginal or Torres Strait Islander person
- a ‘friend’ to be present. (The law does not prohibit you from acting as a ‘friend’ at a record of interview, as long as you do not do so in your capacity as a JP but simply as a friend, relative or lawyer, as the case may be.)

For juvenile suspects, the Act requires the presence of a ‘support person’ during the questioning. ‘Support person’ is defined in schedule 6 of the Act as follows:

- (a) *for an Aborigine or Torres Strait Islander who is at least 17—*
- (i) *an adult relative or another adult chosen by the person; or*
 - (ii) *a lawyer acting for the person; or*
 - (iii) *a representative of a legal aid organisation; or*
 - (iv) *a person whose name is included in a list of support persons and interpreters; or*

(b) for a child—

(i) a parent or guardian of the child; or

(ii) a lawyer acting for the child; or

(iii) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or

(iv) an adult relative or friend of the child who is acceptable to the child; or

(v) if the child is an Aborigine or a Torres Strait Islander and no-one mentioned in subparagraphs (i) to (iv) is available—a person whose name is included in the list of support persons and interpreters; or

(vi) if no-one mentioned in subparagraphs (i) to (v) is available—a justice of the peace, other than a justice of the peace who is a member of the Queensland Police Service or a justice of the peace (commissioner for declarations).

For adult Aboriginal or Torres Strait Islander suspects, the Act provides for a ‘support person’ or an ‘interview friend’ to be present at the interview. As a JP, you cannot act as a support person or interview friend for an adult Aborigine or Torres Strait Islander. However, you can act as a support person for a juvenile Aborigine or Torres Strait Islander if other support people are not available.

How do I conduct myself at a record of interview?

There is a defined role for you as a support person at the interview of a juvenile suspect. The police will provide you with information in an approved form about your role as a support person during questioning. They will also ensure you understand your role and answer any questions relevant to your role. However, it is a role you will only rarely have to take on.

Before the interview

When you arrive at the police station:

1. Ask the duty officer to supply you with the following information:
 - a. the suspect’s name and age
 - b. how long the suspect has been in custody
 - c. if police have contacted any of the categories of support persons listed as (i) to (vi) of schedule 6 of the *Police Powers and Responsibilities Act 2000* and what the outcome was
 - d. if the suspect has asked for a solicitor
 - e. the reason for the interview (don’t worry about full details; a brief outline is sufficient).
2. Arrangements will be made for you to talk to the suspect in private. Under section 421(2) of the *Police Powers and Responsibilities Act 2000*, the police officer must allow the support person to talk to the suspect in private before the interview. At this time you should:
 - a. Introduce yourself.
 - b. Immediately warn the suspect they should not make any admissions to you, as you may be required to give evidence in court if the suspect does confide in you. This is not the role of a JP.
 - c. Explain that you are a JP and you are attending as a support person—an independent person whose role is to ensure correct procedures are followed.
 - d. Ask the suspect if they have been offered any of the support persons nominated in (i) to (vi) of schedule 6 of the *Police Powers and Responsibilities Act 2000* and, if not, if they would like any of them to be present.

- e. Emphasise to the suspect it would be in their interests to have legal representation at this time. If the suspect asks for one of the other support persons to be present, make arrangements for this person to attend the interview. You may leave when this person arrives. If the suspect does not want any of the other support persons to be present, ask if they want you to be present as a support person during the interview. You may only attend with the child's consent. If the child does not consent to your presence, and there is no other support person available, the police are unable to question the child.
- f. Try to determine the suspect's mental and physical condition at this time to decide if they are in a fit condition to be interviewed. Find out when they last had food and drink and whether they require anything, including access to toilet facilities. Determine if the child has been treated correctly, and that no threats were made before your arrival. It is your responsibility to ensure the interests of the suspect are looked after. If you are in doubt as to their mental or physical wellbeing, ask the officer in charge to arrange for the government medical officer to attend and examine the suspect.
- g. If the suspect requires the services of an interpreter, you should ensure an interpreter is made available. Contact the officer in charge so the necessary arrangements can be made.
- h. Explain to the suspect you are not there to give legal advice but they are entitled to ask you questions or request to speak to you in private at any time during the interview.
- i. You may tell the suspect they are under no obligation to answer the questions but they may answer some or all of the questions if they desire.
- j. Remind the suspect they may terminate the interview at any time.
- k. You should then restate the advisability of having legal representation.

During the interview

Your primary role during the interview is to ensure the rights of the suspect are protected. You do this by checking the correct procedure is followed.

1. Check the police officer cautions the suspect and that the caution is recorded electronically. This caution should substantially comply with the following:

.....

Do you understand you are not under arrest?

Do you understand you are free to leave at any time unless you are arrested?

Before I ask you any questions, I must tell you that you have the right to remain silent.

This means you do not have to say anything, or answer any questions, or make any statement, unless you wish to do so.

However, if you do say something or make any statement, it may later be used as evidence. Do you understand this warning?

.....

2. If, during the interview, the child asks how he or she should answer a question, you must explain you are unable to answer this for them and they should have a legal representative present.
3. Do not intervene unnecessarily. The police officer has the right to exclude you if he or she believes you are unreasonably interfering. However, do ensure the suspect understands the questions and is not having language problems.
4. Ensure the questioning by the police is not overbearing or intimidating. If you suspect the child's mental or physical wellbeing is deteriorating, suspend the interview and, if necessary, request the government medical officer to attend.

5. If at any time you are of the opinion the police are mistreating the suspect, suspend the interview immediately and report the matter to the officer in charge of the police station. The officer in charge has an obligation to take certain actions once a complaint is made, including reporting the complaint to the Crime and Corruption Commission. The interview should not be recommenced at this time.
6. If, at any time, you believe the suspect is not coping with the interview process, remind them they may have a legal representative present.

After the interview

Under the legislation, the police are required to ask the suspect certain questions at the end of the interview. This is to ensure both the questions and the answers are recorded. This precaution is intended to protect both the suspect and the police. The questions should substantially comply with the following:

- Is there anything further you wish to say relating to this matter?
- Did you take part in this interview of your own free will?
- Have you answered all questions truthfully?
- Do you have any complaints in relation to your treatment by the police?
- Was any threat or promise made to you to induce you to make this record of interview?
- Were you denied access to a support person or legal representation at any time?
- Did the police explain your rights to you at the beginning of the interview?
- Does anyone else present wish to say anything before the interview is concluded?

As the interview is recorded electronically, there is no requirement for you to certify the record at the time. The suspect will be supplied with a copy of the tape of the interview for their legal adviser.

Things to bear in mind

Caution

- Remember the *Police Powers and Responsibilities Act 2000* limits the role of the JP in attending police records of interview. The list of other support persons must be exhausted first.
- Remember you are there to protect the interests of the suspect. At all times, you should emphasise the importance of legal representation. You are not permitted to give legal advice to the suspect under any circumstances. The Queensland Court of Appeal determined a case where the role of the JP at the interview of a juvenile suspect was called into question. In this case, *R v C*, the court described the role of the JP as ‘obviously...intended to support the child’.

Frequently ask questions

May I take notes during the interview?

Yes, you are permitted to take notes for your own records. You should also record the relevant details in your logbook of your attendance at the record of interview.

What if the taped record of interview is challenged?

If the validity of the taped record of interview is questioned during the trial of the accused at a later date, you may be called to give evidence as to its accuracy. The tape will be replayed for you at the court and you may refer to any of the notes that you took at the time of the interview.

Should I keep a record of the interviews I attend?

You can include information in your logbook such as:

- date and time of the interview
- type of interview attended
- details of the officer requesting your attendance
- type of identification sighted
- location of interview
- questions you asked and answers given.

Where can I get more information?

Queensland Police Service

www.police.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

Quick guide

Follow these steps to attend a record of interview under the *Police Powers and Responsibilities Act 2000*

Your role is to help protect the suspect's rights by ensuring police follow the correct procedure.

Before the interview

Ask the duty officer:

- a. for the suspect's name, age and length of time in custody
- ① b. if police have contacted any of the support persons listed in the Act
- c. if the suspect has asked for a solicitor
- d. the reason for the interview.

Ask to speak to the suspect in private.

- a. Introduce yourself.
- b. Warn the suspect they should not make any admissions to you.
- c. Explain you're there as an independent support person to ensure correct procedures are followed.
- d. Ask if they have been offered or would like any of the support persons allowed under the Act.
- ② e. Emphasise they should have legal representation.
- f. Determine the suspect's physical and mental condition, including food, drink, access to toilet and threats. If you are in any doubt, ask the officer in charge to ask a government medical officer to visit.
- g. Arrange for an interpreter, if needed.
- h. Explain you cannot give legal advice but the suspect can ask you questions or ask to speak with you privately at any time.

During the interview

- ① You may take notes throughout the interview and enter these into your logbook—these notes may be questioned if the matter is brought before a court at a later date.
- ② Check the police cautions the suspect, and the caution is recorded electronically.
- ③ Do not answer a legal question from the suspect, and reinforce the need for legal representation.
- ④ Ensure the suspect understands the questions but do not intervene unnecessarily.
- ⑤ Ensure police are not overbearing or intimidating. If the suspect's wellbeing is deteriorating, suspend the interview and, if necessary, request medical help.
- ⑥ If you believe police are mistreating the suspect, suspend the interview immediately and report the matter to the officer in charge. Do not recommence the interview.
- ⑦ Reiterate the need for legal representation.

After the interview

- ① Ensure police ask set questions at the end of the interview e.g. Is there anything more you wish to say? Was any threat made to you before this interview?
 - ② Update your logbook as needed.
-

6.2 Granting extensions of detention periods

What is a detention period?

A police officer may hold a person for questioning for a set period if they have been arrested for an indictable offence. This period of time is referred to as a detention period.

- Under the *Police Powers and Responsibilities Act 2000*, the initial period of detainment is eight hours. The maximum amount of questioning time in this period is not more than four hours.
- The rest of the detention period, when the accused person is not being questioned, is referred to as 'time out'. Time out may be for more than four hours in the initial detention period if the questioning time is correspondingly less. Time out includes travel time, time waiting for a legal representative, rest periods and time to conduct other necessary administrative functions.
- The offence being investigated must be a serious offence with a maximum penalty of a term of imprisonment exceeding 12 months.

Why am I, as a JP, concerned with detention periods?

Under section 405 of the *Police Powers and Responsibilities Act 2000*, a police officer may, if a magistrate or a JP (Mag Ct) is not available, apply to a JP (Qual) to extend a detention period.

The application has a prescribed form, listing the:

- details of the police officer making the application
- details of the person being detained
- details of the offence with which the person has been charged
- reasons for extending the period of detention
- desired length of the extension
- amount of questioning time that will be needed
- date.

There is also a section on the application that you complete and sign to grant the extension.

How do I deal with an application for an extension of a detention period?

Before extending the detention period, you must consider and be satisfied of the following matters.

- The nature and seriousness of the offence require the extension.
- Further detention of the person is necessary for any of these reasons:
 - to preserve or obtain evidence of the offence or another indictable offence
 - to complete the investigation into the offence or another indictable offence
 - to continue questioning the person about the offence or another indictable offence.
- The investigation is being conducted properly and without unreasonable delay.
- The person or the person's lawyer has been given the opportunity to make submissions about the application for extension. Before an application to extend the detention period can be made by a police officer, they must:
 - inform the relevant person, or the person's lawyer, of the application
 - give the person a copy of the application
 - ask the person or the person's lawyer if he or she agrees to the application or wants to oppose it, and wants to make submissions or say anything to the justice hearing the application.

How do I issue the application for an extension of a detention period?

1. Ask the applicant for some form of identification.
2. Check the police officer has tried to find a magistrate or JP (Mag Ct) to grant the extension. You must only consider an application if there is no magistrate or JP (Mag Ct) available to approve the application.
3. Check the accused has either been arrested for an indictable offence or is suspected of having committed an indictable offence, whether or not it is the offence for which they have been arrested.
4. Ask the police officer for a copy of the section of the *Police Powers and Responsibilities Act 2000* that deals with detention periods. Check you are clear about your powers and responsibilities.
5. Read through the application carefully, ensuring all the necessary information has been provided and asking any questions that may be needed to clarify particular points. Check the information in the application is sufficient to consider the extension necessary.
6. Ask the accused or the accused's legal representative if they have any submissions to make. You are required to listen to any submissions from the person or their legal representative about the application when they are determining whether or not to extend the period.
7. Decide whether or not the extension is justified. If you decide it is not, then refuse to grant the extension and write 'refused' across the application, with a brief summation of your reasons. If you decide it is justified, complete the section granting the extension. Ensure you include:
 - a. how much time is to be allowed as time out
 - b. the length of time when the accused may be questioned (with a maximum of eight hours)
 - c. the proviso the suspect may continue to be detained for the total of the time allowed for time out and question time.

Under section 406(2) of the Act, you may extend the detention period for a reasonable time, with a maximum of eight hours of further questioning time included in the extended detention period.

Enter the details in your logbook. Include the:

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

Note: You do not have any authority to request, make or retain a copy of the application issued under this Act.

Frequently asked questions

Can I extend the detention period for a second time?

No. You only have authority to extend a detention period once. The matter must be referred to a magistrate for any further extensions.

Where can I get more information?

Queensland Police Service

www.police.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

Quick guide

Follow this procedure to grant extensions to detention periods under the *Police Powers and Responsibilities Act 2000*

-
- ① Ask the police officer for identification.

 - ② Check a magistrate or JP (Mag Ct) is not available to extend the detention period.

 - ③ Check the accused has been arrested for or is suspected of an indictable offence. (It does not need to be the offence for which they are arrested.)

 - ④ Ask the officer for a copy of the Act that deals with detention periods and check you understand your responsibilities.

 - ⑤ Carefully read through the application, checking the information is complete and justifies an extension.

 - ⑥ Ask the accused (or their representative) if they have any submissions about the detention period.
Decide if the extension is justified.
 - a. If you decide it is not, write 'refused' across the application with a brief summary of your reasons.
 - b. If you decide it is justified, complete the section to grant the extension, including length of 'time out' and questioning.

Note: You may only allow one extension and include a maximum of eight hours of questioning time.

 - ⑧ Update your logbook with the relevant information.
-

6.3 Your powers under the *Customs Act 1901*

What is the *Customs Act 1901*?

The *Customs Act 1901* (the Act) is a Commonwealth Act designed to regulate the passage of goods and people into and out of Australia.

The intention is to prevent the:

- importation of prohibited goods, such as illegal drugs, weapons or wildlife
- entry of illegal immigrants
- unauthorised entry or departure of criminals
- entry of pests and diseases.

Officers of the Australian Border Force enforce the Act. The Act gives them the power to search and detain suspects and to seize goods.

Why does this Act concern me as a JP?

A JP (Qual) has limited powers in relation to the Customs Act. Under this Act you may:

- determine an application for an external body search of a person detained under the same Act
- issue a summons
- constitute a Magistrates Court and determine a bail application for a person charged with an offence under this Act.

Note: You may not:

- issue a search warrant under this Act (only a magistrate or a JP employed in a court may do this)
- make or extend a detention period under this Act (only a magistrate may do this)
- authorise an internal search of a person detained under this Act (only a judge or a magistrate may make this order).

Under the *Customs Act 1901*, an officer has the power to detain a person if they are suspected, on reasonable grounds, of carrying prohibited goods. The officer may carry out a frisk search of the person that entails:

- a quick search of the person by the rapid and methodical running of hands over the person's outer garments
- an examination of anything worn by the person that can be conveniently and voluntarily removed by the person.

An officer may also apply to you for approval to carry out an external body search of a person who:

- is in need of protection, such as a child or an intellectually impaired adult
- refuses to consent to a frisk search
- refuses to produce any goods located during a frisk search.

The Australian Border Force maintains a register of JPs who live or work in the vicinity of international points of entry and who have indicated their willingness to undertake this role. It carries out specific training for this role from time to time, and normally only calls upon people who have undertaken the course. However, the time may come when you are called upon to undertake this role.

The person being detained is given a notice informing them of their rights, including the right to ask for a JP to adjudicate on the application for an external search.

Though applications can be made to the Chief Executive Officer of the Australian Border Force, an officer authorised by that Chief Executive Officer or a JP, the current practice for the Australian Border Force is to make the application to a JP.

The officer makes the application. It must be made in writing and taken under oath or affirmation.

An application may be made to you for any of these reasons:

- the officer suspects on reasonable grounds a person is carrying prohibited goods
- the officer is of the opinion the person is in need of protection
- the detainee refuses to consent to the body search
- the detainee refuses to produce a thing required to be produced during the body search.

The officer may take into consideration a wide variety of matters when determining reasonable grounds of suspicion, such as:

- the person's travel itinerary, including plans in relation to places that have been visited or are intended to be visited by the person
- arrival or departure declarations or statements (made under Commonwealth law)
- documents in the person's possession, or produced by the person, or the refusal or failure to produce documents
- unusual behaviour by the person
- the contents of or appearance of any visible item carried by the person or the person's luggage (whether or not carried by the person)
- the answers given by the person, or their failure to answer questions.

How do I deal with an application for an external body search?

You should talk to the officer and the suspect separately (if possible).

1. Ask the applicant for some form of identification.
2. Place the officer on oath or affirmation.
3. Read through the application carefully. Ensure there are reasonable grounds for the suspicion.
4. Ask any questions of the officer that are necessary to clarify any points.
5. Talk to the suspect and ensure they understand what is going on. Ask the suspect if there are any reasonable grounds for them to be carrying 'suspicious' items. The suspect may be able to provide a satisfactory explanation for factors that led to the officer's suspicions.
6. Decide whether or not to grant the application. When considering the application, you must determine if there are reasonable grounds for the suspicion. (Consider the same factors as the officer is required to take into account.)

If you decide to grant the application, you should order the external search to be carried out by granting the application. Do this by writing on the bottom of the application provided by the officer. Ensure you keep a copy of the officer's application, any other information provided and your approval for the search to be conducted. Make the necessary entry in your logbook as well.

If you believe the suspect is in some need of protection, you must order the search be carried out in the presence of the suspect's legal guardian or a specified person (not a border force officer or police officer). This person must be able to represent the suspect's interests and also be acceptable to the suspect.

If you do not consider the search is justified, you must order the suspect be immediately released.

7. Enter the details in your logbook. Information that can be entered includes:
- date and time the document was witnessed
 - type of application
 - details of the person requesting the order
 - type of identification sighted
 - location of signing
 - questions you asked and answers given.

Frequently asked questions

What is the definition of an external body search?

External body search means a search of the body of a person and of anything they are wearing or have in their possession:

- to determine if the person is carrying any prohibited goods
- to recover any such goods.

It does not include an internal examination of the person's body.

Where can I get more information?

Department of Immigration and Border Protection
www.border.gov.au

Quick guide

Follow these steps to approve an application for an external body search

- ① Ask the officer for identification.
- ② Place the officer on oath or affirmation.
- ③ Carefully read the application to ensure there are reasonable grounds for suspicion.
- ④ Ask questions to clarify.
- ⑤ Talk to the suspect and ensure they understand why they have been detained. Ask if there are any reasonable grounds for them to be carrying 'suspicious' items. The suspect may be able to provide a satisfactory explanation.
- ⑥ Determine if there are reasonable grounds for suspicion and decide whether or not to grant the application.
- ⑦ To grant the application, write on the bottom of the application. Keep a copy of the application, other information and your approval, and include this in your logbook.
- ⑧ If you believe the suspect needs protection, order the search to be carried out before a legal guardian or a person who can represent the suspect and the suspect approves of (not a border force or police officer).
- ⑨ If you do not believe the search is justified, order the suspect be immediately released.
- ⑩ Enter the relevant details in your logbook.

6.4 Granting and refusing bail

What is bail?

Bail is the system whereby a court allows a defendant to be released from custody while awaiting the determination of a charge. Usually courts release defendants on their own undertaking to reappear in court on the adjourned date. Sometimes a third person will give a 'surety'—a guarantee the defendant will appear in court on the adjourned date.

There is a general presumption a person should be granted bail unless there is an unacceptable risk the defendant will:

- fail to appear on the adjourned date
- commit further offences
- endanger other people
- be a danger to himself or herself
- interfere with witnesses.

Why is bail usually granted?

Bail is usually granted because there will be a period of time before the case can be heard. Being held in custody during this waiting period is a serious curtailment of the rights of the defendant, who is presumed innocent until proven guilty.

What powers do I have in relation to bail?

Under the *Justices of the Peace and Commissioners for Declarations Act 1991*, if no magistrate is available, you (usually with another JP) have the power to:

- hear applications for bail
- seek information about the defendant to enable you to decide whether or not it should be granted
- decide on any bail conditions
- hear 'show cause' applications, where the onus is on the defendant or the defendant's representative to demonstrate why bail should not be refused.

Deciding on the defendant's suitability for bail

You are authorised to make any necessary inquiries about the defendant to determine the defendant's suitability for bail. The following factors may be taken into account:

- the nature and seriousness of the offence
- the defendant's character, antecedents (such as a personal history including their criminal history), associations, home environment, employment and background, and their likelihood of committing further offences.
- the defendant's age
- the history of any previous grants of bail
- the strength of the evidence against the defendant
- any criminal history of the defendant
- whether a surety is necessary or a cash deposit.

You should refuse bail if, on any of these grounds, the defendant seems unsuitable, or if there has been insufficient time for you to obtain the information you need.

Refusing bail

If you refuse to grant bail, you must have the defendant remanded in custody, and a remand warrant must be prepared and signed by both you and the other JP who sits with you. This warrant authorises police to deliver the defendant to the nearest remand centre, where they will be held until the date of the next court hearing.

Bail should also be refused if there has been insufficient time for you to obtain the information required to make an informed decision. You should also refuse bail if there is an unacceptable risk the defendant will:

- fail to appear on the adjourned date
- commit further offences
- endanger other people
- be a danger to himself or herself
- interfere with witnesses.

Imposing bail conditions

If, on the other hand, you decide to grant bail, you may impose certain conditions. The *Bail Act 1980* allows many types of conditions to be a part of the bail undertaking. Some examples are:

- reporting condition—defendant has to report to a police station at set times
- residence condition—defendant must reside at a particular location
- no-contact condition—defendant must not have contact with certain people
- curfew condition—defendant must not leave residence between certain hours
- surrender passport—defendant ordered to surrender passport to court
- cash bail—defendant is ordered to pay cash into court
- surety—a third party is ordered to guarantee the defendant will appear in court on the due date
- security—a cash amount the defendant must pay before they can be released from custody.

Dealing with a ‘show cause’ situation

A ‘show cause’ situation is where a defendant is charged with an offence:

- while on bail for another offence
- that involves the use of firearms, offensive weapons or explosives
- against the *Bail Act 1980* (for example, failing to appear in court as required).

Things to bear in mind

In most situations, the onus is on the prosecutor to demonstrate the defendant should not be granted bail. However, in a ‘show cause’ situation, the onus is reversed, and the defence must prove the defendant is not an unacceptable risk for bail.

In the court proceedings, the defendant or legal representative speaks first, followed by the prosecutor. It may be more difficult for the defendant to obtain bail in these circumstances.

In circumstances where the defendant is in a ‘show cause’ situation and bail is granted, reasons must be given as to why bail has been granted. Also, bear in mind that in determining the issue of bail, a court may make such investigations on oath or affirmation concerning the defendant as ‘the court thinks fit’.

There is a restriction on this power as the defendant or other persons are not to be questioned or queried about the charge or charges before the court. This allows you to seek information, beyond that which has been put before the court, so a fully informed decision can be made.

For example:

- two ‘sitting’ JPs grant a defendant bail with a residential condition
- the JPs may adjourn the court, remanding the defendant in custody, so police may check the address as to its suitability
- the sitting JPs may also adjourn the court to allow the owner or occupant of the home to appear before the court so they can satisfy themselves the proposed address is suitable.

Frequently asked questions

What powers do I have with relation to court duties?

The *Justices of the Peace and Commissioners for Declarations Act 1991* states your power is limited to ‘taking or making a procedural action or order’.

Your power in the Magistrates Court is therefore limited to:

- determining bail for a person charged with an offence
- adjourning a matter to another date.

Under the *Domestic and Family Violence Protection Act 2012*, you also have powers in the Magistrates Court. Section 137 grants two JPs the authority to make consent protection orders and temporary protection orders in the Magistrates Court, namely:

- an application to make or vary a temporary protection order if a magistrate is not readily available to constitute a Magistrates Court
- an application to adjourn a proceeding taken with a view to making a domestic violence order against a respondent.

Two JP (Qual) may also deal with an existing application for a domestic violence order or make a domestic violence order relating to the offence and to which the offender is the respondent.

Where can I get more information?

Queensland Courts

www.courts.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

6.5 Hearing a bail application

How do I conduct a bail hearing?

Though one JP (Qual) can, in most circumstances, constitute a court to deal with a bail application, it is recommended two do so whenever possible.

1. Indicate to the prosecutor that you and your fellow JP are ready to commence. Sitting JPs are referred to as 'Your Honour' when convening a Magistrates Court.
2. The prosecutor (or clerk, in some cases) will open the court by stating, 'Silence, all stand please. This Magistrates Court is now open'.
3. Proceed to your places at the bench and face the body of the courtroom, bow slightly to the assembled persons and then take your seat.
4. The prosecutor will then say, 'You may be seated', and the rest of the people in the courtroom will sit.
5. Greet the parties before the court and then request the parties to announce their appearance for the record. The prosecutor will say words similar to:

.....

'Good morning, Your Honours. My name is Prentis, initials WJ, a Senior Constable of police stationed at the Brisbane Prosecution Corps, and I appear for the prosecution.'

.....

The defendant's legal representative should then announce his or her appearance in the following manner:

.....

'Good morning, Your Honours. My name is McKenzie, initials BA. Solicitor for the firm of McKenzie and McKenzie, and I appear representing the defendant.'

.....

6. You should reply 'thank you', and then ask the prosecutor which matter is to be dealt with.
7. Ensure the necessary paperwork is in front of you. This should either be a bench charge sheet or a bench complaint sheet.
8. Read the charge/s to the defendant to ensure the defendant and their legal representative are fully aware of the charge. The defendant's legal representative may waive this right by stating, 'We take the charge as read'. If the defendant is not represented, you must read the charge in full and ask the defendant if they understand the charge.
9. Inform the court the matter must be adjourned to a date when a magistrate is available. The defendant may at this time indicate whether or not a plea will be entered and, if it is, you must note it on the court file.
10. Request a date from the prosecutor when a magistrate will be available to deal with the defendant. Check with the defendant as to the suitability of the date. Remember the court's time is limited, so there must be a substantial reason for the defendant not to accept the next available date.
11. Determine if the defendant is already on bail from either the watch-house or a previous appearance in court. If the defendant is already on bail, it is normal to extend the bail undertaking until the next available date as advised by the prosecutor.

12. Address the prosecutor in the following terms:

.....
‘Mr/Madam Prosecutor, has this court jurisdiction to grant bail, and what is the position in relation to bail for this defendant?’
.....

The prosecutor will then advise the court whether or not bail is opposed, and if you have the power to grant bail. There are some serious offences for which only the Supreme Court can grant bail.

13. If the prosecutor does not oppose bail, you should grant bail to the defendant with terms and conditions you believe are suitable—not just what the police are asking for. You should take into account the nature of the offence and the defendant’s character and antecedents.
14. If bail is opposed, you should ask the prosecutor to outline the reasons for their opposition to the defendant’s release.
15. The defendant or legal representative is requested to address you on the reasons why bail should be granted.
16. Once you have heard submissions from both the prosecution and the defendant, they should stand the matter down and adjourn the court for a short time. You and your fellow JP should leave the courtroom to discuss in private whether or not to grant bail and, if so, upon what terms.
17. You should then remand the defendant to the next available date for the charge to be determined, and grant bail accordingly. If you decided bail is not to be granted, you and your fellow JP must issue a warrant remanding the defendant in custody to appear before the court at the date, time and place appointed in the warrant. Your reasons for refusing bail must be written on the court records. You must advise the defendant, if bail is refused, they may make further application to a magistrate.
18. Note on the court records all the actions you have taken, and keep notes of the proceedings if bail was opposed, including submissions by both the prosecution and the defence.
19. Unless there are more defendants, the court should be closed by the prosecutor in the following terms: ‘Silence. All stand please. This Magistrates Court is now closed.’ You should then leave the courtroom and arrange with the courthouse staff to deal with any other paperwork to be completed before you leave the courthouse.
20. Make an entry in your logbook of your appearance on the bench.

Things to bear in mind

You should be familiar with the terms used at bail hearings.

Court

A magistrate, a JP (Mag Ct) or two JPs (Qual) can constitute a Magistrates Court.

Prosecutor

The person who acts on behalf of the Crown in the case before the court is called the prosecutor. The prosecutor—who will either be a police officer, a private prosecutor employed by police or an officer from the Office of the Director of Public Prosecutions—presents the evidence to the court.

Defendant

The person charged with the offence is called the defendant.

Remand

Remand is the term used when a defendant’s case is put off to another time. The defendant is said to be ‘remanded’.

Adjournment

The matter is 'adjourned' when the court puts it off until another day. The court grants an adjournment when it postpones the hearing of the matter. The matter is adjourned and the defendant is remanded.

Bail

Bail is an undertaking by a defendant who is released from custody to observe certain conditions and to reappear before the court when required to do so.

Security

This is a condition of bail when the court orders something (usually cash) to be lodged with the court as a guarantee the defendant will reappear on the due date.

Surety

This is a condition of bail where the court orders a third person to guarantee the defendant will appear in the court on the due date. It also orders the third person to forfeit a sum of money if the defendant fails to honour their bail.

Show cause

The court calls upon the defendant to show cause why their bail should not be revoked and why they should not be placed in custody if they fail to keep any of the conditions of the bail.

Affidavit of justification

A person providing a surety for the defendant must also provide an affidavit of justification to the court before the court will accept that person's surety. An affidavit of justification is a document that sets out the person's relationship to the defendant and their financial status, and includes a declaration that, if the court subsequently requires the forfeit of the surety, the loss of the sum of money forfeited would not be ruinous or injurious to their livelihood.

Undertaking as to bail

This is the formal document whereby the defendant undertakes to follow the conditions of bail, including surrendering to the court on the date set for the resumed hearing of the matter (see end of chapter for sample).

Enlarging bail

A court may enlarge an existing bail by extending the date of appearance to another date in the future.

Breach of bail

A defendant is said to 'breach' his or her bail by failing to obey one of the conditions of the bail. This would include failing to appear on the due date for the continuation of the hearing.

You should also be familiar with how the people involved are addressed.

Prosecutor

A prosecutor is addressed by his or her rank if they are a police officer, otherwise they are addressed as Mr, Mrs, Miss or Ms. They may also be addressed as Mr Prosecutor or Madam Prosecutor.

Defendant

The defendant can be addressed as 'defendant' but is normally addressed by his or her name. Their legal representative is called by his or her name.

When on the bench, magistrates are addressed as 'Your Honour' and JPs are addressed as 'Your Honours' or 'Honours in the court'.

Frequently asked questions

How is the defendant brought before the court?

1. An offence is committed.
2. Police investigate the offence.
3. A suspect may be brought before the court by:
 - a. arrest with or without a warrant (either in custody or on bail granted by the watchhouse)
 - b. the issue of a summons by a JP
 - c. the issue of a notice to appear by the police.
4. On the first appearance in court, the defendant will either be in custody if arrested, on bail from the watchhouse, or responding to a summons or a notice to appear.

The matter must be adjourned to a date when a magistrate is available to constitute a court.

What if I know the defendant?

If you know the defendant personally or are related to them, you must disqualify yourself from hearing the matter.

Where can I get more information?

Queensland Courts
www.courts.qld.gov.au

Queensland legislation
www.legislation.qld.gov.au

Forms

These forms are not publicly available.

Sample form**Form 7—Undertaking as to Bail (page 1 of 2)**

FORM 7
QUEENSLAND
Bail Act 1980
Section 20(1)

File Number:

UNDERTAKING AS TO BAIL

Particulars of Defendant and Conditions of Bail

Defendant:
Date of Birth:
Residential Address:
Occupation:

Offence/s:

File No.	Chg No.	Section	Act/Legislation	Offence	Date of Offence	Place of Offence
The conditions of bail are :						
(a) I must appear and surrender into custody of the Magistrates Court at:-						
Place:						
Date:						
Time:						
(b) I must not depart from the Court, unless bail is enlarged.						
(c) I must obey the directions of the Court in relation to any further appearance whether the directions are given to me personally or to my counsel or solicitor						

Undertaking of Defendant

I enter into this Undertaking as to Bail and acknowledge receipt of a notice in Form 8 setting forth the nature and extent of my obligations under the conditions of my bail and the consequence of my failure to comply with these conditions.

Signature of Defendant

Section 20(5)(a)
Certificate of person before whom undertaking is made

I have satisfied myself that the defendant understands the nature and extent of the obligations under the conditions of the bail and the consequences of the defendant's failure to comply with them.

Undertaking entered into on:
Date:
Place:
In the State of Queensland before me:

Signature
Justice of the Peace

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

Form 7, Version 2, 30 July 2007

Page 1 of 2

Sample form

Form 8—Notice to Defendant of Undertaking as to Bail (page 2 of 2)

Form 8
QUEENSLAND
Bail Act 1980
Section 20(5)(b)

NOTICE TO DEFENDANT OF UNDERTAKING AS TO BAIL

If you fail to appear and surrender into custody in accordance with the undertaking without reasonable cause or break any other condition of the undertaking you will commit an offence that is punishable by fine or imprisonment. A warrant may issue for your apprehension.

Where a court is satisfied that you failed to appear and surrender into custody before the court in accordance with the undertaking, the court may declare the undertaking to be forfeited. If forfeiture is declared, any deposit of money or other security provided by you as stated in the undertaking may be forfeited and paid to Her Majesty. In addition, any deposit of money or other security provided by the surety or sureties as a condition of bail may become forfeited and paid to Her Majesty.

It is lawful for a police officer to arrest you, without warrant, if a police officer reasonably suspects –

- (i) you are likely to contravene, are contravening or have contravened a condition of the undertaking;
- (ii) a surety has given to a police officer written notice stating the surety wishes to be relieved of the obligation of being a surety for you because the surety believes you are likely to contravene the condition for your appearance;
- (iii) you are directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which you have been released on bail

A surety may, with the assistance of a police officer, at any time before you are required to appear and surrender into custody in accordance with your undertaking, apprehend you and bring you before the court before which you are required to appear if the surety is concerned you may not honour your undertaking as to bail or has become aware of a breach by you of a condition of your undertaking

NOTICE TO SURETY OR SURETIES OF UNDERTAKING AS TO BAIL

[This section only applies to matters involving a surety or sureties.]

The custody of the defendant has been entrusted to you on the essential obligation to produce him/her before the court to answer the complaint or charge. It is a serious obligation and one that should not be treated lightly. If you fail to take all reasonable steps to secure the attendance of the defendant before the court, any deposit of money or other security provided by you as a surety may become forfeited and paid to Her Majesty.

Where a court is satisfied that the defendant has failed to appear and surrender into custody before the court in accordance with the undertaking, the court may declare the undertaking to be forfeited. If forfeiture is declared, any deposit of money or other security provided by you as a surety may become forfeited and paid to Her Majesty.

If you are seeking to be discharged from liability with respect to the undertaking you may apply to the court at any time before a condition of the undertaking is broken by the defendant, or the defendant is arrested pursuant to section 367 of the *Police Powers and Responsibilities Act 2000*.

If you are concerned that the defendant may not honour his/her undertaking as to bail or you become aware of a breach by the defendant of a condition of his/her undertaking you may, at any time before the defendant is required to appear and surrender into custody in accordance with his/her undertaking apprehend the defendant and bring the defendant before the court before which the defendant is required to appear. A police officer shall, if required by the surety to do so, assist the surety in the apprehension.

Signature of person before whom undertaking is given

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

Quick guide

Follow these steps to conduct a bail hearing

- ① Tell the prosecutor or clerk that you and your fellow JP are ready to commence.
- ② The prosecutor or clerk will open court.
- ③ Take your seat after bowing slightly.
- ④ The prosecutor or clerk will invite people in the courtroom to sit.
- ⑤ Greet the parties before the court and ask them to announce themselves.
- ⑥ Thank the parties and ask the prosecutor for the matter to be dealt with.
- ⑦ Check you have the relevant bench charge sheet or bench complaint sheet.
Read the charge to the defendant to ensure the defendant understands the charge.
- ⑧
 - a. If the defendant has legal representation, they can waive the right to read the charge.
 - b. If the defendant does not have legal representation, you must read the charge out loud in full and check they understand it.
- ⑨ Announce the matter will be adjourned to a date when a magistrate is available.
- ⑩ Ask the defendant if they wish to enter a plea, and note the answer on the court file.
- ⑪ Determine if the defendant is presently on bail.
- ⑫ Ask the prosecutor if bail is opposed or if you have the power to grant it.
- ⑬ If the prosecutor does not oppose bail, grant bail with terms and conditions you believe are suitable for the offence and the defendant's character.
- ⑭ If the prosecutor opposes bail, ask why.
- ⑮ Ask the defendant or their legal representative to explain why bail should be granted.
- ⑯ Adjourn with your fellow JP to consider the submissions.
- ⑰
 - a. It is common practice to continue bail if bail has already been granted.
 Remand the defendant to the next available court date and announce your decision regarding bail.
 - a. If you decide not to grant bail, you must issue a warrant remanding the defendant in custody, note your reasons and invite the defendant to apply to a magistrate.
- ⑱ Note on the court record all of your actions and note submissions if bail was opposed.
- ⑲ Unless there are more defendants, the prosecutor or clerk should close court.
- ⑳ Enter relevant details in your logbook.

6.6 Sureties and security

What is a surety?

A surety is a person, other than the defendant, who guarantees the defendant will abide by the bail undertaking.

The surety may be required to pay a sum of money (the amount being determined by the court) to be held by the court until the court hearing. They may otherwise simply promise to pay such a sum if the defendant fails to appear at the hearing.

In addition to completing and signing the necessary documents, the surety must either pay the relevant sum of money to the Court or satisfy you they have sufficient equity or other property to cover the amount of the surety.

What is security?

Security is a cash amount the defendant must pay before they can be released from custody. It is a payment as a personal security they will comply with the conditions of bail.

It must be their own money and documentary evidence will need to be produced to prove that it is. Under no circumstances can it be money that has been lent to them by another person simply to enable them to meet their bail.

When considering a surety, there are some things you will need to take into account before the surety enters into the undertaking. Pursuant to section 21 of the *Bail Act 1980*:

Every surety to an undertaking must be a person who:

- (a) has attained the age of 18 years; and*
- (b) has not been convicted of an indictable offence; and*
- (c) is not—*
 - (i) an involuntary patient under the Mental Health Act 2016 who is, or is liable to be detained in an authorised mental health service under that Act; or*
 - (ii) a forensic disability client within the meaning of the Forensic Disability Act 2011; or*
 - (iii) a person for whom a guardian or administrator has been appointed under the Guardianship and Administration Act 2000; and*
- (d) is not an insolvent under administration; and*
- (e) has not been, and is not likely to be, charged; and is worth not less than the amount of bail in real or personal property*
- (f) is not worth less than the amount of bail in real or personal property.*

How do I enable a surety to become a party to a bail undertaking?

The surety must sign an Affidavit of Justification (Form 11) before you prior to becoming a party to the bail undertaking. This is a prescribed form for this procedure and you must read it carefully. The affidavit can be sworn or affirmed, and you are permitted to ask any questions and see any evidence of ownership of property when determining the person's suitability to act as a surety.

In addition to the general procedure for witnessing document, you must:

1. Obtain a copy of the bail undertaking from the relevant court registry. Explain in detail to the surety all charges the defendant has been charged with and any bail conditions, including the necessity to attend all necessary court dates and to comply with any such conditions. Explain they will become personally liable for ensuring the defendant complies with all conditions of the bail.
2. If the surety is still prepared to proceed, ensure the Form 11—Affidavit of Justification is completed in full.
3. Ask relevant questions to ensure the sufficiency of the person's means to meet the surety. Consider a person's financial resources, character and antecedents, proximity to the defendant and any other matters considered relevant and reasonable.
4. The surety must produce evidence of ownership or interest in any real estate or personal property. Evidence of ownership may include any document considered relevant, for example, a current rates notice of the property or a current certificate of title.
5. Ensure the surety has sufficient equity in any property to meet the means of the surety by requesting any relevant document, for example, a valuation certificate or mortgage account statement.
6. Record on the affidavit details of the property or document and return the property or document to the surety.
7. If you accept a cash surety, you must instruct the applicant to pay the surety amount to the relevant court registry and ensure the court registry has the original documentation.
8. You cannot accept a person as a surety if they advise you it would be damaging to them or their family if the undertaking is forfeited.
9. You must ensure the surety has not been indemnified by the defendant i.e the defendant or any other person has not agreed to make good any loss that may be suffered as a result of the forfeiture of the bail at a later time for any reason.
10. Obtain the undertaking of the surety and Form 8—Notice to Surety documents from the relevant court registry. Explain the details in full and have the surety sign the 'undertaking of surety' portion of the document (all copies). You must then sign the Form 8—Notice to Defendant of Undertaking as to Bail/Notice to Surety or Sureties of Undertaking as to Bail.
11. Enter relevant details in your logbook. This could include the following:
 - name of the surety
 - identification sighted
 - evidence of equity, possession or ownership of the type of surety provided.

Frequently asked questions

What are the different types of sureties?

Cash: A magistrate may require a cash surety. If this occurs, cash will need to be paid to the registrar of the courthouse. Bank cheques and real estate are not acceptable.

General: Cash, real estate or personal property can be used as general sureties. If cash is not provided, the most common and practical way of satisfying a surety is using real estate.

What are the responsibilities of the surety?

The surety:

- is responsible for ensuring the defendant's attendance at all court appearances
- is responsible for ensuring the defendant complies with all conditions of the bail undertaking
- remains responsible until the charge is finally dealt with or until a court grants them discharge of their liability.

What happens if the defendant fails to appear at the hearing?

If this happens, the sum of money the surety has either paid or promised to pay may be forfeited to the Crown and an arrest warrant may be issued.

Where can I get more information?

Queensland Courts

www.courts.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

Forms

Queensland Courts

www.courts.qld.gov.au/forms

Sample form

Bail Act—Affidavit of Justification (page 1 of 2)

Form 11
QUEENSLAND
Bail Act 1980 (S. 21 (4))

AFFIDAVIT OF JUSTIFICATION

I,
(surname) (christian names)

of, in the State of
Queensland make oath and say as follows:

1. That I offer myself as surety for
(name of defendant)
who has been charged with the offence
of:.....
2. That my occupation is
3. That I reside at the above address and have resided there for the pastyears.
4. That I am a person who has attained the age of 18 years.
5. That my real estate consists of*
6. That my real estate is not encumbered except by**.....
7. That my personal property consists of ***.....
8. That the total of my just debts and liabilities amounts to \$
9. That I am worth not less than the amount of bail in real or personal property.
10. That I am aware that I become bound, upon forfeiture of the undertaking entered into, to pay to Her Majesty the amount of \$..... The forfeiture of this sum would not be ruinous or injurious to myself or my family.
11. I have not been indemnified as to bail, that is to say that the person to be bailed or any other person has not agreed to make good a loss which I may suffer in consequence of any act or default on the part of the person to be bailed.
12. That I am not a party to an undertaking as to bail in any other criminal proceedings***

Bail Act—Affidavit of Justification (page 2 of 2)

- 13. That I have never been convicted in Queensland of an indictable offence or elsewhere than in Queensland in respect of an act or omission that if done or made by me in Queensland would have constituted an indictable offence.
- 14. That I am not detained in a hospital, as a patient or otherwise, for treatment for mental illness pursuant to the Mental Health Services Act 1974-1988 nor am I a protected person within the meaning of the Public Trustee Act 1978-1988.
- 15. That I am not an insolvent under administration.
- 16. That I have not been, nor am I likely to be, charged with the same offence or with another offence as a consequence of the omission of the offence with which the defendant has been charged.
- 17. That my proximity to the defendant (whether by kinship, place of residence or otherwise) is as follows:.....

.....
(Signature of Surety)

TAKEN AND SWORN before me at *Town or suburb* in the
State of Queensland this day of 20.....

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

.....
(Justice of the Peace)

Details of any property or document produced and returned to surety:
.....
.....

* Insert address and description of land and details of improvements.
** If encumbered state nature of encumbrances and give value of equity.
*** If money on deposit give name and address of bank etc.
**** To be suitably altered if necessary.

Quick guide

Follow these steps to approve a surety

-
- ① Start with the general procedure for witnessing documents.

 - ② Obtain a copy of the bail undertaking from the court and explain in detail to the surety:
 - a. all of the charges
 - b. bail conditions
 - c. necessity to attend all court dates
 - d. that they will become personally liable for ensuring the defendant complies with conditions.

 - ③ If the surety is prepared to proceed, ensure they have fully completed a Form 11—Affidavit of Justification.

 - ④ Ask questions to ensure the person can meet surety, including finances, character, proximity to defendant and other matters.

 - ⑤ Ask the surety for evidence of ownership or interest in real estate or personal property, such as a rates notice or certificate of title.

 - ⑥ Ensure the surety has sufficient equity in any property, such as a valuation certificate or mortgage account statement.

 - ⑦ Record the property or document details on the affidavit, then return them to the surety.

 - ⑧ If it is a cash surety, ask the applicant to pay the relevant court registry and to give the court the original documents.

 - ⑨ Do not accept a surety if they advise you it would damage them or their family if it was forfeited.

 - ⑩ Ensure the defendant has not promised to make good any loss suffered as a result of forfeiting bail.

 - ⑪ Obtain the surety undertaking and Form 8—Notice to Surety documents from the court. Explain the details in full and ask the surety to sign the ‘undertaking of surety’ portion of all copies of the document.

 - ⑫ Sign the documents.

 - ⑬ Enter the relevant details in your logbook.
-



SECTION 7
References



SECTION 7

References

7.1	Further information	OCT21
7.2	Glossary of terms and acronyms	JUN17

7.1 Further information

Queensland Human rights Commission

www.qhrc.qld.gov.au

Australian Border Force

www.border.gov.au

Department of Agriculture and Fisheries

www.daf.qld.gov.au

Disability Services

www.qld.gov.au/disability

Dispute Resolution Branch

www.qld.gov.au/disputeresolution

www.qld.gov.au/disputeresolutioncentres

Electoral Commission of Queensland

www.ecq.qld.gov.au

Fair Trading Queensland

www.qld.gov.au/fairtrading

Justices of the Peace Branch

www.qld.gov.au/jps

Land Titles Registry Queensland

www.titlesqld.com.au

Legal Aid Queensland

www.legalaid.qld.gov.au

Legal Services Commission

www.lsc.qld.gov.au

Multicultural Services

www.cyjma.qld.gov.au/multicultural-affairs

Office of the Public Guardian

www.publicguardian.qld.gov.au

Public Trustee of Queensland

www.pt.qld.gov.au

Queensland Civil and Administrative Tribunal

www.qld.gov.au/qcat

Queensland Courts

www.courts.qld.gov.au

Queensland Law Society

www.qls.com.au

Queensland Police Service

www.police.qld.gov.au

Queensland Registry of Births, Deaths and Marriages

www.qld.gov.au/rbdm

Violence Prevention Team

www.communities.qld.gov.au/communityservices/violence-prevention

Victim Assist Queensland

www.qld.gov.au/victims

7.2 Glossary of terms and acronyms

This glossary of terms and acronyms is a basic guide to those most commonly used throughout the handbook.

Glossary of terms

Adjourn

Defer or postpone a court event to another day.

Advance health directive (AHD)

A document where a person states their wishes or directions regarding their future health care for various medical conditions. It comes into effect only if they are unable to make their own decisions.

Advice

Legal advice is a written or oral statement that interprets some aspect of the law, court rules or court procedures. It recommends a specific course of conduct or strategy a person should take in an actual or potential legal proceeding.

Affidavit

A written statement made on oath or affirmation and signed by the witness or deponent before a JP. It is used in court instead of oral evidence when the personal appearance of the deponent is not required.

Affidavit of justification

A document that sets out the relationship between the surety and the defendant, and the surety's financial status. It includes a declaration that, if the court requires the surety to forfeit, the loss would not be detrimental to their livelihood.

Affirmation

The act of confirming something to be true, or is a written or oral statement that confirms something is true.

Aggrieved

A person who is the victim of domestic or family violence or the person that a domestic violence order is made to protect.

Annexure

Document(s) that are affirmed or sworn to and referred to in the affidavit. These can be attached or separate to an affidavit.

Arrest warrant

A document authorising a police officer to arrest a particular person and take them before a court to be dealt with according to law.

Bail

A written undertaking upon release from custody that a person will appear in court at a certain date, time and place while awaiting the determination of a charge. It is signed by a defendant and witnessed by a JP.

Bailiff

A court officer who may serve documents, carry out court orders and assist in court.

Certified copy

A certificate or endorsement stating a document is a true copy of the main document sighted. It does not certify the main document is authentic, only that it is a true copy of the main document.

Childrens Court of Queensland

Deals with serious offences committed by juveniles under 17 years of age. This court also deals with matters of child protection.

Complainant

A person who makes a formal complaint.

Complaint and summons

A charge in writing which has been sworn or affirmed before a JP.

Declarant

The individual who is seeking to have their document formally witnessed by a JP or Cdec.

Defendant

A person against whom legal action is taken, including criminal charges.

Deponent

A person who makes an affidavit and is then seeking to have their document witnessed by a JP.

District Court

The second tier of the court system. This court deals with offences of a more serious nature than the Magistrates Court, including armed robbery and dangerous driving. Civil matters between \$150,000 and \$750,000 are dealt with in this jurisdiction.

Enduring power of attorney

A formal document where a person delegates to another person the power to make legally binding personal and/or financial decisions on his or her behalf.

Executor

Individual(s) appointed to administer and carry out the instructions of a will.

General power of attorney

A formal document where a person delegates to another to make financial decisions on his or her behalf for a specific period or event while the principal person has capacity.

Judge

A judicial officer appointed to hear matters in the Supreme and District Court.

Jurat

The certification at the end of the body of an affidavit that stipulates where or when the affidavit was sworn or affirmed and by whom. Signatures are also of the deponent and the JP, and the name and title of the JP before whom the affidavit was sworn or affirmed.

Magistrate

A judicial officer appointed to hear and decide matters in the Magistrates Court.

Magistrates Court

The first tier of the court system. This court deals with less serious offences such as assault, theft and minor traffic matters. Civil matters less than \$150,000 are also dealt with here.

Notary public

Usually a practising solicitor or attorney, appointed by an English Archbishop in the case of Queensland, and given statutory powers to witness documents, administer oaths and perform other wide-ranging administrative functions of a national and international nature.

Notice to appear

Provides a general description of the accused charged, rather than the formally worded charge in a summons. It is not sworn on oath, and is issued 'on the spot' by a police officer.

Oath

A solemn declaration or undertaking that calls upon God to witness the truthfulness of the statement a person is making.

Prescribed mark of office

This is the title 'Justice of the Peace (Qualified)' or 'Commissioner for Declarations'. This mark may be handwritten if you do not have your seal of office with you, except in the case of a JP issuing any warrants, complaints or summonses.

Prosecutor

The person who acts on behalf of the Crown in the case before the court. The prosecutor, who will either be a police officer or an officer for the Office of the Director of Public Prosecutions, presents evidence to the court.

Registration number

A unique number issued to JPs and Cdecs upon appointment and is to be applied to all documents witnessed along with their signature and seal of office.

Respondent—domestic violence

A person who is the alleged perpetrator of the domestic or family violence or the person the domestic violence order is made against.

Seal of office

Issued to all JPs and Cdecs upon appointment and is to be applied to all documents, along with their signature and registration number.

Search warrant

A document authorising a police officer to search a specified property within a specified timeframe.

State Member of Parliament

A member of the Legislative Assembly who is elected at least every three years by the people of Queensland. They are often referred to as an MP.

Statutory declaration

A document containing statements that are declared true and correct. Please note these forms can come in a wide variety of versions as different organisations have created their own formats.

Summons

A document that commands a person to attend a court at a prescribed date, time and place as set out on the form.

Supreme Court

The third tier in the court system. This court deals with the most serious criminal matters such as murder and major drug offences. Civil matters involving amounts greater than \$750,000 are dealt with in this jurisdiction.

Surety

A condition of bail where the court orders a third person to guarantee the defendant will abide by the bail undertaking.

Sworn

A person swearing to the contents of a document is an individual who places his or her hand on the Bible and makes a solemn declaration the contents are true and correct.

Testator

Someone who makes a will.

Witness

Some documents do not require a JP or Cdec. If the document is not being sworn or affirmed to, then the witness can be an ordinary member of the public (often not a relative or a friend, depending on the nature of the document) who will merely sign, recognising the document was signed in front of them. A JP or Cdec can still sign these documents, even though their official designation is not essential.

Acronyms and abbreviations

AHD	Advance health directive
Cdec	Commissioner for Declaration
DJAG	Department of Justice and Attorney-General
DRB	Dispute Resolution Branch
DV1	Domestic and family violence protection order application
EPA	Enduring power of attorney
GPA	General power of attorney
JP	Justice of the Peace
JP Branch	Justices of the Peace Branch
JP (Mag Ct)	Justice of the Peace (Magistrates Court)
JP (Qual)	Justice of the Peace (Qualified)
OPG	Office of the Public Guardian
QCAT	Queensland Civil and Administrative Tribunal
RBDM	Registry of Births, Deaths and Marriages
VAQ	Victim Assist Queensland



SECTION 8
Index



SECTION 8

Index

8.1 Index

OCT21



OCT21

8.1 Index

Advance health directive (AHD)	2.6/2; 3.1/3; 4.1/4; 4.9/1
Advance Health Directive Explanatory Guide	4.9/2
Affidavits	4.1/1; 4.4/3; 4.7/1; 4.8/2; 6.5/3; 6.6/2
Affirmation	2.2/2; 2.4/1; 2.5/4; 2.6/1; 2.7/2; 4.1/1; 4.6/1; 4.7/1; 4.8/1; 5.1/2; 5.2/1; 5.3/1; 5.4/2; 5.5/1; 6.3/2; 6.4/3
Agent	4.11/5
AHD Guide	4.9/2
Alterations	2.7/1; 3.1/1; 4.1/2; 4.2/2; 4.7/3; 4.8/2; 4.10/1; 4.11/5
Annexure	4.1/3; 4.1/5; 4.4/3; 4.7/4; 4.8/3
Annotation	2.7/1
Appearing in court	2.3/1; 2.4/1; 2.5/4; 4.1/1; 6.4/1; 6.5/1; also see Summons
Applying to become a JP	2.2/1
Applying your seal	2.2/3; 3.1/1; 4.1/3; 4.1/7; 4.3/2; 4.9/12; 4.11/4; 5.1/3; 5.2/2; 5.3/2; 5.4/3; 5.5/4
Arrest warrant	2.3/1; 5.1/4; 5.4/1; 5.5/1
Availability	2.2/3; 2.3/1; 4.10/3
Bail	2.5/2; 6.3/1; 6.4/1; 6.5/1; 6.6/1
Beneficiary	2.6/2; 4.9/7; 4.10/1; 4.11/7
Bible	2.2/2; 4.2/3; 4.6/2; 4.7/1
Blank documents and blank spaces	2.2/2; 4.1/5; 4.2/2; 4.10/1; 4.11/4; 5.1/6
Buddhist oath	4.6/3
Capacity	2.4/1; 4.9/1; 4.10/1; 4.11/2; 5.2/4
Capacity Guidelines	4.9/2
Certified copy	3.1/1; 4.8/4; 4.9/8; 4.11/6
Certifying copies of enduring documents	3.1/3
Certifying copies of general powers of attorney	3.1/4
Change of name	2.2/4
Christian oath	2.2/3; 4.6/2; 4.7/2
Code of conduct	2.2/2; 2.3/1
Commonwealth documents	see Witnessing
Commonwealth statutory declaration form	4.2/2

Commissioners for Declarations	1.2/1; 2.1/1; 2.2/1; 4.1/4
Confidentiality	2.2/2; 2.4/1; 4.1/5; 4.10/2
Conflict of interest	2.2/3; 2.6/2
Contact details	1.2/2; 2.2/2; 2.3/2
Correction fluid	4.1/2; 4.11/8
Court	2.1/1; 2.3/1; 2.4/1; 2.5/1; 4.1/1; 4.1/4; 4.7/1; 5.1/1; 5.2/2; 6.4/1; 6.5/1
Court jurisdictions	2.5/2
<i>Criminal Code</i>	2.5/1; 4.2/1; 5.2/3
<i>Customs Act 1901</i>	6.3/1
Deponent	2.2/3; 2.6/1; 2.7/1; 4.1/3; 4.2/2; 4.6/2; 4.7/1; 4.8/2
Detention periods	6.2/1; 6.3/1
Deceased Estate	4.11/7
Disabilities	2.7/1; 4.4/2; 4.10/1
Disclose	4.11/1
Domestic and family violence	4.1/3; 4.2/2
<i>Domestic and Family Violence Protection Act 2012</i>	4.4/1; 6.4/4
Download	3.1/2
Duties of Cdecs, JPs(Qual) and JPs(Mag Ct)	2.1/1; 2.3/1
Eligibility	2.2/1; 4.9/4
Electronic documents	3.1/1; 3.1/2
Enduring powers of attorney (EPA)	2.1/1; 2.3/1; 3.1/3; 4.1/4; 4.1/7; 4.3/1; 4.9/1; 4.11/3
Enduring Powers of Attorney Explanatoy Guide	4.9/2
EPA Guide	4.9/2
External body search	4.1/8; 6.3/1
False statement	2.2/2; 4.1/2; 4.2/1; 4.6/1; 4.7/2; 5.1/2; 5.2/1; 5.3/1; 5.4/2; 5.5/3
Financial decisions	4.9/3
Financial matters	2.3/1; 4.9/1; 5.4/5
Freehold land	4.11/1
Friends or relatives	2.2/3; 2.6/2; 4.1/7; 6.1/1
Full name	4.11/1
Guardian	2.7/3; 4.4/2; 4.9/1; 4.13/1; 6.1/2; 6.3/2; 6.6/1
General powers of attorney (GPA)	3.1/4; 4.9/1
Health care decisions	4.9/2
Hearing impaired	2.7/2

Historical context	2.1/1
Identity	2.4/2; 4.1/2
Impaired capacity	4.9/1
Intellectual impairment	2.7/3; 6.3/1
International documents	see Witnessing
Interpreter	2.4/1; 2.6/1; 2.7/1; 4.9/7; 6.1/1
Interstate documents	see Witnessing
Islamic oath	4.6/3
Jewish oath	4.6/3
Justice of the Peace (Qualified)	1.1/1; 2.1/1; 2.5/2; 4.1/3
Justice of the Peace (Magistrates Court)	2.1/1; 2.2/1; 2.5/2; 4.1/4
<i>Justices of the Peace and Commissioners for Declarations Act 1991</i>	1.2/1; 2.1/1; 2.2/1; 4.1/1; 4.12/1; 5.1/3; 5.2/2; 5.4/3; 5.5/4; 6.4/1; 6.4/4
Juvenile suspect	2.4/2; 6.1/1
Keeping copies of documents	2.4/2; 4.1/8; 5.1/5; 5.2/4; 5.3/2; 5.4/6; 5.5/5; 6.2/3
Keeping records	2.4/1
Koran	2.2/2; 4.6/3
<i>Land Title Act 1994</i>	2.4/2; 4.9/2; 4.11/1
Land title documents	4.1/8; 4.11/1
Legal advice	2.2/2; 2.2/4; 2.3/1; 4.1/7; 4.10/2; 4.11/8; 4.9/1; 6.1/3
Legal Test	4.9/5
Legal will kits	4.10/1
Liability	1.2/1; 2.2/4; 4.3/1; 4.13/1; 6.6/3
Logbook	2.4/1
Malicious act	2.2/4; 5.1/5
<i>Marriage Act 1961</i>	4.13/1
Marriage of a minor	4.13/1
Medical practitioner	4.9/8; 6.1/3
<i>Mental Health Act 2016</i>	6.6/1
Moravians	4.6/4
Mortgagor	4.11/5
Moving	1.2/2; 2.3/2
Multiple-page documents	3.1/5; 4.1/6; 4.7/3; 4.10/2
National Mortgage Form	4.11/1

New Testament	see Bible
Non-English-speaking persons	2.6/1; 4.9/7
Notary public	4.1/2; 4.12/1
Notice to appear	5.5/1; 6.5/4
Oaths	4.1/1; 4.6/1
<i>Oaths Act 1867</i>	4.1/1; 4.2/1; 4.6/1; 4.6/4; 4.7/1
Oath of service	5.1/1; 5.2/2
Offences	see Court
Old Testament	see Bible, also see Jewish oath
Paid Carer	4.9/4
<i>Peace and Good Behaviour Act 1982</i>	5.1/5; 5.2/1
Physical impairment	2.7/3
<i>Powers of Attorney Act 1998</i>	2.4/1; 2.6/2; 4.1/2; 4.1/7; 4.9/1
Proof of identity	3.1/5; 4.1/2; 4.1/7; 4.5/1; 4.9/8; 4.11/1; 4.13/1
Prosecutor	2.5/4; 6.4/3; 6.5/1
Public Trustee	4.10/2
Qualifications and disqualifications	2.1/1; 2.2/1
Quakers	4.6/4
Queensland Capacity Assessment Guidelines	4.9/2
Qur'an	see Koran
Record of interview	6.1/1
Record keeping	2.4/1
Registration number	3.1/1; 4.1/3; 4.1/7; 4.9/17; 4.11/4; 5.1/3; 5.1/6; 5.2/2; 5.3/2
Relatives	4.1/7; 4.10/2; 5.1/5; 5.2/4; 5.4/6; 5.5/3; 6.1/1
Retention and destruction of records	2.4/2
Role of JP in community	2.3/1
Seals of office	1.2/2; 2.2/3; 3.1/1; 4.1/4; 4.1/7; 5.1/3; 5.2/2; 5.4/3; 5.5/4
Search warrant	5.3/1; 5.4/1
Secular affirmation	4.6/4
Security	5.5/4; 6.4/2; 6.5/3; 6.6/1
Separatist affirmation	4.6/4
Signatory	2.2/2; 2.4/1; 2.7/1; 4.1/1; 4.2/1; 4.11/1; 5.1/1; 5.4/1; 5.5/2
Speech language impairment	2.7/2

Standards	2.2/2
State Member of Parliament	2.2/1; 2.3/2
Statutory declarations	2.3/2; 2.6/2; 4.1/1; 4.2/1; 4.3/1; 4.12/1
<i>Statutory Declarations Act 1959</i>	4.2/1
Summonses	2.1/1; 2.2/3; 2.3/1; 2.4/2; 2.5/4; 5.1/1; 5.2/1; 5.4/6; 5.5/1; 6.3/1; 6.5/4
Sureties	6.4/1; 6.5/3; 6.6/1
Testator	4.10/1
Traffic infringement statutory declarations	4.3/1
Training	2.2/1; 2.3/2
<i>Transport Operations (Road Use Management) Act 1995</i>	2.2/1; 4.3/1
True and complete	3.1/1
Unable to read or write	2.7/4
Unlawful documents	4.1/6
Vexatious	5.2/3
Vindictive	5.1/5
Vision impaired	2.7/1
Warning	2.2/3; 4.1/3; 4.4/2; 6.1/3
Wills	4.1/7; 4.10/1; 4.11/7
Witnessing	2.4/1; 4.1/1
• Commonwealth documents	2.3/2; 4.2/2; 4.12/1
• Documents while overseas	2.3/2; 4.2/2; 4.11/7; 4.12/1
• International documents	4.1/2; 4.12/1
• Interstate documents	2.3/2; 4.2/2; 4.12/1
Witness certificate	4.11/5; 4.9/4
Witnessing steps	4.1/2

