Department of Justice and Attorney-General
Justices of the Peace Branch

The duties of

Justices of the Peace

(Qualified)

Queensland Government

Justices of the Peace Branch

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Background

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About this handbook

This handbook is a guide for a Justice of the Peace (Qualified)—abbreviated as JP (Qual). It has been written to give you, as a JP (Qual), a clear understanding of what is expected of you. It is also intended to be used as a day-to-day reference to help you to carry out your duties responsibly.

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 three main sections: 'What…?' (giving a defi nition of the subject), 'Why…?' (explaining the reason or purpose) and 'How…?' (explaining the procedure). This is usually followed by a section called 'Things to bear in mind…'.

At the end of each chapter is a list of frequently asked questions, with their answers.

How JPs (Qual) fit into the legal system

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

In the fourteenth century, a system of peace officers was introduced into England 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, by way of legislation, introduced the 'peace officer', to deal with minor offences and thus allow the judges the time to deal with the more serious offences. These peace officers were allowed to use the title 'Justice', and so, over the years, became known as Justices of the Peace.

The role evolved gradually 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 normally the landed gentry.

Today appointments are made from a wider section of the community. Justices of the Peace are respected 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. By dealing with routine matters, they have allowed lawyers and the courts to concentrate on cases that require professional legal training.

As the years passed, so did the responsibilities of the JP. In recent years, with the onset 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, recent legislation is imposing more responsibility upon the JP to ensure that the objectives of legislation are carried out properly. Enduring Powers of Attorney are one example of this responsibility.

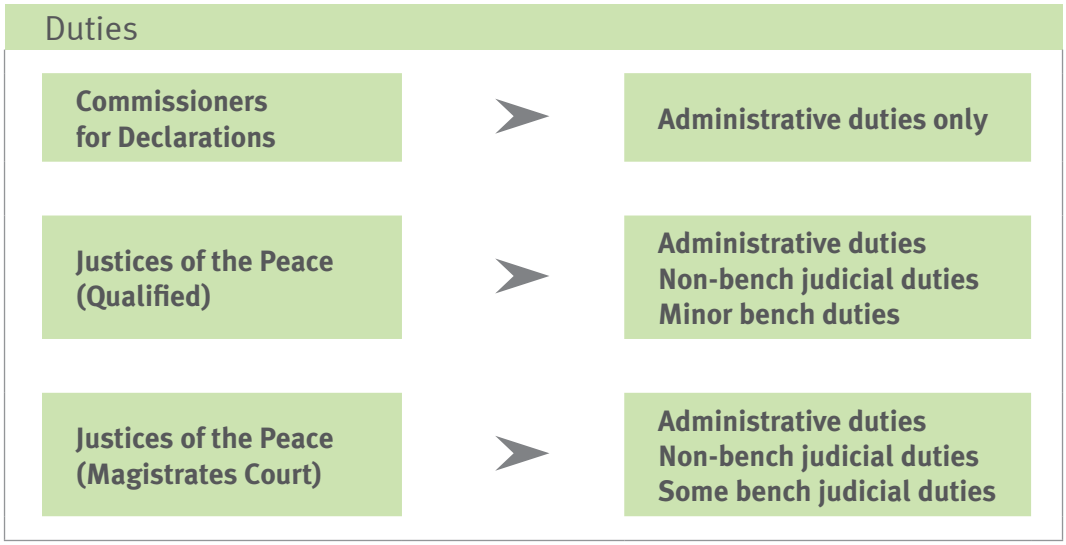
The JP still acts, on many occasions, as a check and balance on the powers of state authorities, including the Queensland Police Service. So it is your responsibility, in your role as a JP, to exercise your discretion in all judicial matters when determining issues such as a summons or a warrant.

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 the issuing of 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 Justice of the Peace system and ensure that its officers are kept informed.

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

- Commissioner for Declarations, a purely administrative role. Commissioners for Declarations 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 the Commissioner for Declarations and also several judicial duties, both 'non-bench' and minor 'bench'.
- Justice of the Peace (Magistrates Court), a role that has all of the duties and responsibilities of the previous two roles, with an additional power—two Justices of the Peace (Magistrates Court) together have the power to constitute a Magistrates Court to deal with pleas of guilty for simple offences.



People who were already Justices of the Peace before 1991, when the Act became law, had until 30 June 2000 to decide what role they would prefer. They could:

- do nothing and so automatically become a Justice of the Peace (Commissioner for Declarations)—abbreviated as JP (C.dec)—on 30 June 2000, or
- apply to become a Commissioner for Declarations—abbreviated as C.dec, or
- pass an examination and apply to become a Justice of the Peace (Qualified)— abbreviated as JP (Qual).

The position of JP (Qual):

Eligibility

To become a JP (Qual), you have to be over 18, of good character, an Australian citizen, correctly enrolled on the Electoral Roll, and have passed an approved JP (Qual) examination.

Criminal and traffic convictions will also be taken into account along with any bankruptcy proceedings in determining eligibility for appointment. Appendix A lists factors that would automatically disqualify you. You may wish to check these before making any formal application.

Applying

You make a formal application to the Queensland Department of Justice and Attorney-General for the position. Appendix B explains the application process in detail.

The JP's (Qual) role in the community

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

Your position as JP (Qual) indicates that you are trusted to act responsibly. This means that the documents you witness 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 that are brought before you.

You have added responsibilities over those of a Commissioner for Declarations in that you have a quasi-judicial role. You may be requested to issue a warrant or a summons for example. On some occasions, and particularly in the remoter areas of the State, you may also be called upon to sit on the Magistrates Court Bench with a registrar of a court to carry out some procedural motions.

Why this role is important

The duties of 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 be dealing 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 Powers 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 both on your own or with another Justice of the Peace to carry out specific duties.

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
- issuing summonses and warrants
- minor bench duties
- attending at police records of interviews.

The first of these, witnessing the signing of documents, is by far your most common duty.

The documents you will witness are likely to include:

- statutory declarations
- affidavits
- wills
- Powers of Attorney, Enduring Powers of Attorney and Advance Health Directives
- documents dealing with land titles
- documents giving consent to the marriage of a minor
- interstate, Commonwealth and some international documents.

Though less commonly used, your quasi-judicial powers—issuing summonses and warrants, minor bench duties and attending police records of interviews—require you to exercise a degree of discretion, so you need some familiarity with the types of offences with which you will be dealing.

Types of offences, asset down in the Queensland Criminal Code

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 that 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 Justices of the Peace (Magistrates Court).

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

The following are examples of simple offences, which may therefore be dealt with by a Magistrates Court (more serious offences are committed to a District or Supreme 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 $150.00 (such as shoplifting)
- failing to pay a restaurant or hotel bill where the value is less than $150.00
- unauthorised damage to property where the value is less than $250.00.

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 publication. You should just 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 which.

The table on page 15 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.

Frequently asked questions

Who will use my services?

The services of JP (Qual)s are in heavy 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.

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

YES, 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.

Type of offence	Court of jurisdiction
Serious offence with penalty >14 years	Supreme Court
Serious offence with penalty <14 years	District Court
Certain serious offences under s. 552 of Criminal Code Simple offences Regulatory offences Domestic violence applications Bail applications	Magistrates Court constituted by a magistrate
Offences by children	Childrens Court constituted by a magistrate
On a plea of guilty: » Certain serious offences under s. 552 of Criminal Code	Magistrates Court constituted by two JPs (Mag Ct) appointed pursuant to s. 552C Criminal Code.
On a plea of guilty: » 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 Temporary Domestic Violence Protection Orders Bail applications for children	Magistrates Court constituted by two JP (Qual)s, or one JP (Qual) and one JP (Mag Ct), or two JP (Mag Ct)s
Bail application by adult	Magistrates Court constituted by one or two JP (Qual)s and/or JP (Mag Ct)s

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.

Also, you can 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 (see chapter 10 for details).

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 C.decs, JP (Qual)s and JP (C.dec)s are listed in:

- a database maintained by the Office of the Registrar of Justices of the Peace and Commissioners for Declarations (your contact telephone numbers will be given to members of the public who phone the Office and ask for them)
- a register held by each local Member of State Parliament.
- the Department of Justice and Attorney-General website www.qld. gov.au/jps/ also has a directory of Justices of the Peace who are willing to have their details listed on the internet.

Your job

2 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.

Some documents, such as electoral enrolment forms, can be witnessed by any responsible adult who is not one of the principal signatories; they don't need the signature of a JP (Qual) or C.dec. Of course, you have the authority to witness these documents if you are asked to do so.

However, you do not have the authority to witness unlawful documents, such as defamatory statements or affidavits that are not properly set out. So if you are asked to witness a document of a kind that is unfamiliar to you, you should satisfy yourself that 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')

and then, if this fails,

- 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 that you can be sure you have the authority, as a JP, to witness it.)

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 C.dec powers
- part 4, sections 13–15 of the *Oaths Act 1867* which deals with statutory declarations, and section 41 which deals with affidavits.

WHY must some documents be witnessed?

Having a document witnessed is a way of establishing that the signature is authentic. This gives it some legal weight should the matter ever be disputed. With a JP (or C.dec) as witness, the document has still higher legal standing.

Certain documents are required by law to be witnessed by a JP or C.dec to encourage the honesty of the signatory (the person who signs the document), and in some cases to place the signatory on oath when signing. Such documents include an oath 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 that 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 below, or you may prefer to use it as a basis for developing your own.

The general procedure you should follow can be broken down into fourteen steps. If you deal with each in turn, you can be sure of covering everything and leaving nothing to chance.

Step 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, explain that it will have to be checked by a lawyer before you can agree to witness it.
- 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 that 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.)

Step 2 Check whether the document lists any special requirements, such as your personal knowledge of the signatory's identity or particular types of proof of his/her identity. If so, ensure that they are complied with before you sign.

Step 3 If the document is an affidavit or a statutory declaration, check that it is in the correct format. If it is not, explain that it will have to be drawn up again, and give your client a standard form to use as a guide.

Step 4 Check whether 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 (see chapters 3 and 4 for details).

Step 5 Check that 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 is one exception to this rule —when a person has appointed someone to act on their behalf as an Attorney under the Powers of Attorney Act 1998. This is covered in detail in chapter 7.)

Step 6 Ask for proof of identity. 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 good grounds for doubting the signatory's identity.)

Step 7 If the date of the document is given in more than one place (at the beginning, say, as well as where it is signed), check that 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.

Step 8 Check the contents of the document for:

- 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 products such as Tippex or Whiteout have been used over print.
- unanswered questions. Either cross them out or have the signatory complete them as the case requires, and then ensure that both you and the signatory initial them.
- material that 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.

Step 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.

Then 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 would have to sign the annexures.

Step 10 Issue a warning to the person that they need to tell the truth and that if they fail to do so they are committing a very serious offence.

Step 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 3 and 4.

Step 12 Ensure that the document is signed in front of you. You are witnessing a signature, not someone telling you that the signature on a document is their signature. If someone approaches you with a document already signed, ask them to sign the document again.

Step 13 Sign the document, affix your seal of office and insert your registration number. 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. (JPs (C.dec) do not have a seal of office or a registration number.)

Some documents, particularly land-title documents, require that you 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.

On the other hand, it is accepted practice for the seals of office of the three levels of JP to use three different colours.

Seal of office colours	
C.dec	Black
JP (Qual)	Red
JP (Mags Ct)	Blue

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

Step 14 Note the details of the document and the action you've taken in a register, or log book. 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 whether 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 at any time to give evidence in court about a particular document (an example of a page from a register is shown below).

Example of register/log book

Date	Name	Document	Proof of ID	Comments
01/09/2006	John Smith	Stat. dec.	Driver's licence	
31/10/2006	Sue Black	Certify copies	Student ID card	3 copies certified
07/11/2006	Jane Brown	Affidavit	Driver's licence	Family Law Court affidavit

Tip Keep a sheet of paper handy with these questions jotted down as a check list, and tick them off as you go.

Q1 Have you checked what type of document it is?

- Is it lawful?
- Do you have the authority to witness it?

Q2 Does it have any special requirements?

Q3 If it is an affidavit or statutory declaration, is it in the correct format?

Q4 Is it to be signed on oath or affirmation or by statutory declaration? If so, does it use the correct form of words?

Q5 Is the signatory the person named in the document?

Q6 Have you requested proof of identity?

Q7 Is the date correct?

Q8 Have you checked through the document for any alterations, spaces or omissions and ensured that they are initialled by both the signatory and yourself? Have you checked it for any unanswered questions and ensured that they are either crossed out or completed?

Q9 Have you checked the annexures and marked them properly?

Q10 Have you issued a warning about the importance of telling the truth?

Q11 Was the document signed in front of you?

Q12 Did you sign and seal the document where required?

Q13 Have you entered the particulars into your register?

Q14 Did you keep a record of any additional information supplied?

You may find it useful to keep this check list in your register, as evidence that 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 who is unable to write 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 C.dec 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 possibly witness their document, refer them to another JP or C.dec.
- Maintain confidentiality. The people you serve are entitled to their privacy. You will see many things 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 that 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 that a document is unlawful?

It means that the document is not able to be attested by a JP or C.dec—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.

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

Try to persuade them to change their mind. Explain that you only wish to check whether there are any alterations or omissions, or whether 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.

What is a seal of office?

Your seal of office is a rubber stamp showing your title—'Justice of the Peace (Qualified)'—with space for you to add your registration number. It is supplied to you when you are appointed as a JP (Qual) as proof of your official position.

The seal is not for general use. You should only use it when you are carrying out your role as a JP (Qual).

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

NO, you may not. This is a dangerous practice because your registration number, like a PIN number, is a unique identifying number that shows that you have signed the document.

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

May I use a signature stamp rather than signing by hand?

It depends. 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, and whether they will accept it. Keep your seal and signature stamp in a safe place at all times so that they cannot be used unlawfully.

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 that the signatory does the same. The final page must be witnessed in the normal manner.

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—for example: *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 entirely up to you. Normally a driver's licence, 18+ card 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?

(You are most likely to strike this on older-style forms.)

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.

Am I allowed to keep a copy of documents I witness for my records?

Not as a rule. As suggested earlier, you should maintain a register, which would contain 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.

However, if you believe that a document is particularly complex (a land-title document, for instance), it may be in your interests to keep a copy for your records. You should first obtain permission from the signatory before keeping a copy of any document, and then hold it in secure storage to ensure its confidentiality.

Am I allowed to witness the signatures of friends or relatives?

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

If you fail to follow this rule, you could be accused of bias, and you 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. Though it is not illegal for you, as a JP (Qual), to witness the will of a relative or friend, you should be aware that any benefit coming to you and/or your spouse from the will may not be effective. You may wish to seek legal advice in these circumstances.

However, some legislation may require the witness of the signature to have personal knowledge of the signatory.

Witnessing statutory declarations

3

WHAT are statutory declarations?

Statutory declarations are written statements declaring that 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*, and for Commonwealth matters they are made under the *Statutory Declarations Act 1959*.

Statutory declarations must be properly worded, and standard forms are available. 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.

Standard statutory declaration forms are shown at the end of this chapter.

WHY do people make statutory declarations?

A statutory declaration is intended to ensure that the statement being made is truthful. It has the effect of putting the signatory 'on notice' that the information they provide must be, in their conscientious opinion, entirely correct. If it is not, they will be liable to a penalty.

Some legislation requires that information 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 are of the view that the statement will carry more weight as a result.

(Note that the signatory to a statutory declaration is known as a deponent.)

HOW do you witness a statutory declaration?

You should follow the general procedure for witnessing signatures, as outlined in the previous chapter. It is shown there as steps 1 to 14.

For a statutory declaration, however, you should also:

- Warn the deponent, at the outset, about the penalty for making a false declaration. Explain that, if the declaration is found to be untruthful, the deponent may be charged under the Criminal Code and be liable to penalties, including imprisonment.
- Check that the deponent understands the declaration. When you come to step 10, before the declaration is signed, question the deponent closely about the contents of the declaration to ensure that they understand it. Warn them again about the penalties for making a false declaration.

If you are satisfied that the deponent 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 deponent 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 deponent 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) and used anywhere in Australia.

» Use the set format. Forms for statutory declaration are available in most larger stationery stores, post offices and from your local Magistrates Court office or can be downloaded from www.justice.qld.gov.au/forms/.

If the form is not available, however, the deponent can prepare the document, provided that it is substantially in the following format:

> *I,* [name], *do solemnly and sincerely declare that* [let the deponent 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 steps 7 to 9 of the set procedures.) You should do this as a matter of course. However, it is worth repeating here because you need to check that 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 should cross out any spaces that the deponent has deliberately left blank, and both you and the deponent must initial these blank spaces and any alterations.

WITNESSING traffic infringement statutory declarations

Advice when signing these documents:

» include your title, qualification, number and JP stamp

» date the declaration

» declare where the declaration was made

» ensure that the mandatory details are being provided and are legible

» ensure that any corrections (including whiteout corrections) are initialled by both the person making the declaration and the JP witnessing the signature

» check that the document being witnessed is the correct document (in some instances, JPs have witnessed already void stat decs).

» ensure that there is no conflict of interest.

Frequently asked questions

Do I need to use a Bible?

Only if the deponent wants to swear an oath (see chapter 4).

Queensland Statutory Declaration

Oaths Act 1867

Statutory Declaration.

QUEENSLAND }
TO WIT }

I,

of , in the State of Queensland,

do solemnly and sincerely declare

that,

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

Taken and Declared before me, at

this day of 20 }

A Justice of the Peace/Commissioner for Declarations

Commonwealth Statutory Declaration

Commonwealth of Australia

STATUTORY DECLARATION

Statutory Declarations Act 1959

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

I,[1]

make the following declaration under the *Statutory Declarations Act 1959:*

2 Set out matter declared to in numbered paragraphs

[2]

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]

4 Place
5 Day
6 Month and year

Declared at [4] on [5] of [6]

Before me,

7 Signature of person before whom the declaration is made (see over)

[7]

8 Full name, qualification and address of person before whom the declaration is made (in printed letters)

[8]

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*.

Witnessing oaths and affirmations

4

WHAT is an oath?

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

A document made under oath is said to be a 'sworn document', 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 taking an oath is based in the historical signifi cance 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 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 to be used in court proceedings, oaths of office, requests for the replacement of certain lost documents and some statements of debt—must be made under oath or by affirmation.

WHY take an affirmation?

The *Oaths Act 1867* states that 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, or
- conscientious grounds, or
- such other grounds as are considered reasonable by the court, a judge, another presiding officer or 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 that 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 that the deponent is under oath if you ask any further questions.

It is your responsibility to make sure that 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 whether the document was signed under oath or affirmation.

The procedures for the different types of oaths are set out below. (Note that there are many religions not covered here, and that 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 the New Testament. 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 document], *so help me God*.

» Once the oath has been taken, ensure that the document is signed and witnessed in accordance with the normal procedure (see chapter 2).

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 that it is sacrilegious for an unbeliever to touch it.

» Ensure that 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 repeat these words after you:

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

» Ensure that 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 repeat these words after you:

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 repeat these words after you:

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 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 that it is wrong for an unbeliever to speak the words of their oath. So, before hearing the oath, check whether the deponent objects to your 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 personal 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 above.

Who provides the equipment (holy book, candle, plate, etc.)?

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

Witnessing affidavits

5

WHAT is an affidavit?

An affidavit is a written statement made on oath or solemn 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 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, and they must therefore be prepared and sworn as if they were evidence being given before a court. (The legislation governing administering oaths and witnessing affi davits 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 chapter 2. It is shown there as steps 1 to 14.

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

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

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

» Question the deponent. Check that they understand the nature and contents of the document.

» 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?

– 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.)

» 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?'

– 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, and then you 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 alterations or additions are made to the document?

As with all documents, any alterations or additions that are made to the document should be initialled by both you and the deponent, and 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.

What if the document has more than one page?

If the affidavit is a multiple-page document, each page should be signed by both the signatory and yourself. 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.

6 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. The will normally names the people who are to carry out the terms of the will (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 that a person will sign during their lifetime, so witnessing a will is an important task.

WHY should wills be witnessed?

Wills are among the most bitterly contested of all legal documents. Anything that helps establish 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 must be present to witness its signing—that is, they must both be there at the same time. Many people prefer a C.dec or JP (Qual) as one of their witnesses, though the law does not require it. So you are free to witness a will if asked to do so.

HOW do you witness a will?

A will is a very private document, so it is neither advisable nor ethical to read it unless the testator has a disability that affects their capacity to draft the will. (For wills made by people with disabilities, see chapter 26.)

There are conventions to follow when witnessing a will:

- Ask the testator to read through the will and check for any alterations or blank spaces. Any blank spaces should be crossed out, and these and any alterations should be initialled by the testator, yourself and the other witness.
- Satisfy yourself as to the identity of the testator.
- 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.
- Make sure the date shown on the will is the date of signing.
- Explain that the testator must sign first, and in full view of both yourself and the other witness at the same time.
- Sign the will with your normal signature in front of the testator and the other witness, and include your occupation and address.
- Ask the second witness to sign in the same way, in the presence of the testator and yourself.

(Ensure that the same pen is used by all three signatories.)

Things to bear in mind...

- The capacity of the testator. You may at some future time 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. You may wish to adopt a standard practice of making notes in your log book or engaging in general conversation with the testator to confi rm that they understand that they are signing a will that will direct how their estate is to be shared.
- Confidentiality. The contents of any will you witness should be kept confidential. Witnessing the signing of a will is not part of a JP's official duties, but you may be asked to do so because of your reputation for confidentiality.
- Do not give advice. You should never give advice about the wording, how to draft or the effect of a will.
- Pins. You should not pin or staple a will together, or to another piece of paper.

Frequently asked questions

What if the will is a multiple-page document?

If the will is a multiple-page document, the testator and both you and the other witness must sign all the pages.

Do not staple, pin or clip the pages together. (In most cases, the person preparing a multiple-page will binds it with tape or other bookbinding material so that there can be no doubt that all the pages of the original document are included.)

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.

Can I refuse to witness a will in any other circumstances?

YES. If you believe that the testator is under any form of duress or undue influence, you should refuse to witness the will and explain your reasons to the testator. You should immediately inform the Office of the Public Trustee of your concern.

YES. If the testator is infi rm or seems for any reason to be unable to fully comprehend the contents of the will, you should decline to witness it until you have obtained medical advice that the testator is competent to make the will.

Note, however, that you should not refuse to witness a will just because you are too busy or because it is inconvenient.

7 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) means a formal agreement whereby one person (the 'principal') grants another person (the 'attorney') the power to make decisions on their behalf. It usually relates to financial matters only. The document on which the agreement is made is an official form, with space for the principal to specify the terms. (Only this official form is acceptable.) It is signed by both parties and a witness.

Sometimes the document specifies a time or a circumstance when the attorney can begin to make decisions on the principal's behalf. Usually, however, the power begins as soon as the document is signed.

The power ends:

- at a time specified in the document, or
- when the principal revokes it, or
- if and when the principal loses the capacity to manage their own affairs.

Because a GPA comes to an end if the principal loses decision-making ability, it is often advisable to use an enduring power of attorney, which is not limited in this way.

A person may grant a GPA at any time, and the witness need not be a JP.

WHY would someone make a GPA?

Usually people grant GPAs if they want someone to handle their financial affairs while they are absent—if they are travelling overseas for an extended period, for example.

HOW do you witness a GPA?

Although any independent adult who meets the eligibility criteria set out in the Act can witness the document, most people believe that having it witnessed by a JP (Qual) or C.dec adds an air of authority to the document.

If you are asked to witness one of these documents, follow your general procedure for witnessing documents.

Enduring powers of attorney

WHAT is an enduring power of attorney?

An enduring power of attorney (EPA) is similar to a GPA in that it is a legal agreement whereby one person (the 'principal') gives someone else (the 'attorney') the power to make decisions on their behalf, and an official form must be used. The main difference is that an EPA continues even if the principal loses decision-making capacity. In fact, an EPA normally commences when the principal loses that capacity.

An EPA may relate to personal/health matters and/or to financial matters. The document nominates the areas that it covers.

Examples of personal/health matters are:

- where the principal lives and with whom
- day-to-day issues like diet and dress
- the type of health care that the principal receives. Examples of financial matters are:
- doing the banking
- paying bills
- decisions about investment.

The document also sets a time frame or nominates particular circumstances when the attorney can exercise his or her powers, and gives clear guidelines for the attorney to follow.

WHY would someone make an EPA?

People may not always be able to make decisions when they have the need. For example, they may be overseas when decisions must be made and documents signed about the sale of some property. They may be too ill to make choices about the medical treatment they receive or where they are to live. An injury could leave them with a disability that prevents them from making decisions or from telling other people what their decisions are.

People who give someone an EPA thereby ensure that their wishes will be carried out, even if they lose the capacity to make decisions themselves. Their attorney will have power to make decisions in their interests and sign all the necessary documents.

Clearly, decisions about personal/health matters will remain with the principal unless they lose the capacity to make those decisions. So the attorney's power will not begin until (if ever) the principal is incapable of handling their own decisions.

With fi nancial matters, the form may specify whether the power commences immediately, or on a specified date or occasion. However, the power commences immediately upon the principal's becoming incapable of making the necessary decisions. If no date or occasion is specified, the attorney can begin to make decisions on the principal's behalf immediately.

HOW do you witness an EPA?

Step 1 First check that everyone who needs to be involved is present.

They are:

- the principal (the person signing the EPA and granting power to another person)
- the witness (the person authorised by the Act to witness the making of an EPA—in this case yourself).

It is recommended that the attorney (the person who is being given the power to make decisions on the principal's behalf) be present as well, as he/she also has to sign an acceptance section of the document. However, the law allows this to be done at another time, if necessary.

Principals who are unable to sign the document themselves may appoint an 'eligible signer' to sign on their behalf. An eligible signer must be over 18 years of age and may 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 the witness at the same time. If an eligible signer signs the document on behalf of the principal, you must complete a certificate stating that:

- The principal, in the witness's presence, instructed the person to sign the enduring document for the principal, and
- The person signed it in the presence of the principal and witness, and
- The principal at the time appeared to the witness to have the capacity necessary to make the enduring document.

Step 2 Ensure that the principal has full understanding of the nature and effect of the EPA.

Because EPAs are so complex and deal with such critical matters as the power to make decisions about someone's personal life, extra safeguards have been built into the process.

To ensure there is no undue influence or pressure from anyone, including those accompanying the principal, the assessment of the principal's capacity is best done in private.

Anyone over 18 years of age may make an EPA at any time provided that they have the capacity to understand the contents and the effect of the document. If you have any doubts about the principal's decision-making capacity, you should refuse to witness the document.

You can make a referral to the Adult Guardian if you suspect that the adult is being abused, neglected, (including self neglect) exploited or there are inappropriate decision-making arrangements.

Step 3 Check that, as the witness, you meet the requirements of the *Powers of Attorney Act 1998*. Section 31 defines an 'eligible witness', and it includes a JP (Qual). However, as the witness, you must not be:

- the eligible signer (the person signing the document on the principal's behalf), or
- an attorney for the principal (someone appointed under this EPA or another Power of Attorney), or
- related to the principal or to the principal's attorney, or
- (if the EPA relates to personal matters) the principal's paid health carer or health-care provider.

Step 4 Explain to the principal that you will have to read through the document to check that they have completed it correctly and that nothing is missing.

Step 5 Read through the document, preferably with the principal.

Step 6 Follow the standard steps in witnessing documents, incorporating 7–10 (below). Because EPAs are so complex and deal with such critical matters as the power to make decisions about someone's personal life, extra safeguards have been built into the process.

Step 7 Under the *Powers of Attorney Act 1998*, no-one without such understanding is permitted to make an EPA. The Act states that this entails an understanding of the following matters:

- that the principal may specify or limit the power to be given to an attorney and instruct the attorney about the exercise of the power
- when the power begins
- that, once the attorney's power for a matter begins, he/she will have the power to make decisions about the matter and will have full control over it, subject to terms or information about exercising the power included in the document
- that the principal may revoke the EPA at any time so long as he/she is capable of making an EPA giving the same power
- that the power the principal has given continues even if his/her capacity to make decisions becomes impaired
- that if at any time the principal is incapable of revoking the EPA, he/she is also unable to effectively oversee the use of the power.

To check this understanding, you may need to question the principal closely. If you do so, keep a detailed record of the questions and answers in case the EPA is ever disputed. As this could occur many years later, it is essential that you keep accurate records to refresh your memory.

Your questions should be framed in such a way that Yes/No answers will not be sufficient in responding. For example, instead of asking:

Do you know when the power begins?,

you should ask:

When does the power begin?

(Though the principal must, by law, have the capacity to understand the nature and effect of the EPA, they do not have to prove their capacity. The onus of proof is on the person who disputes their capacity.)

Step 8 Ensure that the principal signs the document and that you witness their signature as specified in the document. This should be done only after you have satisfied yourself that the principal has the capacity to make the EPA.

Step 9 Read 'Important notice to the witness', and complete, sign and date the Witness's Certificate. This certificate states that the principal:

- Signed the enduring document in the witness's presence; and
- At the time, appeared to the witness to have the capacity necessary to make the enduring document.

Step 10 Ensure that the attorney reads the 'Important notice to the attorney' and completes the 'Attorney's acceptance'.

Advanced health directive

WHAT is an advance health directive?

An advance health directive (AHD) is a document where the principal sets out instructions about their future health care in case the time comes when they are unable to make such decisions or to speak for themselves. They only come into effect when (and if) the principal loses either decision-making capacity or the capacity to make their wishes known.

They are not the same as EPAs appointing an attorney for personal/health matters, because they give specific directions in relation to a range of medical conditions, including some that fall outside the authority of an attorney for health matters. For example, an attorney is not permitted to make decisions about 'special health matters', such as donation of body organs or tissues or experimental health care.

However, the official AHD form does include a section where the principal can appoint an attorney for personal/health matters if they have not already done so (and they wish to). They can use this section to give the attorney specifi c instructions about health care.

WHY do people make AHDs?

Every competent adult has the legal right to accept or refuse any recommended health-care treatment. This is relatively easy when people are well and can speak. Unfortunately, during severe illness people are often unconscious or otherwise unable to communicate their wishes—at the very time when many critical decisions need to be made. By completing an AHD, they can make their wishes known before this happens.

HOW are AHDs witnessed?

In general, you witness an AHD in the same way as you would an EPA. However, the directions in the approved form can be adapted to suit the person's circumstances.

Step 1 First check that you are eligible as a witness.

Additional restrictions apply to the witness for an AHD. You must be:

- over 21 years of age
- not a beneficiary under the principal's will.

These are in addition to the eligibility criteria for witnesses for EPAs, which are that you must not be:

- the eligible signer (the person signing the document on the principal's behalf), or an attorney for the principal (someone appointed under this EPA or another power of attorney), or
- an attorney for the principal (someone appointed under this EPA or another power of attorney), or
- related to the principal or to the principal's attorney, or
- (if the EPA relates to personal matters) the principal's paid health carer or health-care provider.

Step 2 Check that the principal has discussed the AHD with a medical practitioner.

It is strongly recommended that the principal talk to a doctor about all the issues involved so that any implications can be clarified and uncertainties settled.

Step 3 Ensure that a medical practitioner has signed and dated a certificate stating that, at the time of making the AHD, the principal appeared to have the necessary capacity to make the AHD.

The doctor may not be the witness, the eligible signer, an attorney of the principal, a relation of either the principal or the principal's attorney, or a beneficiary under the principal's will.

The Act provides that an AHD must include such a certificate.

Step 4 Check that the principal understands the options available when making an AHD in relation to the appointment of an attorney.

The principal may:

- appoint an attorney specifically for the AHD, or
- refer back to an attorney appointed under an EPA for personal/ health matters.

The principal may not appoint one attorney for personal/health matters under an EPA and another attorney for personal/health matters under an AHD.

There is no requirement that the principal appoint an attorney under the AHD, or to refer back to an attorney appointed under an EPA. However, they may make an AHD that does not give power to an attorney only if they understand:

- the nature and likely effects of each direction in the AHD
- that a direction in the AHD will be followed only while they have impaired capacity to deal with the matter that it covers
- that they may revoke a direction at any time while they have the capacity to make decisions about the matter covered by the direction
- that, at any time when they are not capable of revoking a direction, they are also unable to effectively oversee the implementation of the direction.

If the AHD also gives power to an attorney, the requirements of the Powers of Attorney Act 1998 regarding GPAs and EPAs also apply.

Step 5 Read the notice to witness carefully before signing and dating it.

Summary of procedures

- Determine whether the document is a GPA, an EPA or an AHD.
- If it is a GPA or an EPA, it must be on the approved form, and you should make a note in your records that the approved form has been used.
- Make sure that you meet all the criteria of an eligible witness, including the extra requirements if witnessing an AHD.
- Ask the principal for some form of identification sufficient to satisfy yourself of their identity.
- Explain to the principal that you will need to read through the document to ensure that it is correctly completed and that no parts have been left out.
- Read through the document, preferably with the principal.
- If the document is an AHD, ensure that a doctor has already signed it.
- Satisfy yourself that the principal has the necessary capacity under the requirements of the *Powers of Attorney Act 1998*. If necessary, check by questioning the principal, and record both questions and answers.
- Determine whether the principal is capable of signing the document themselves, or whether an eligible signer is to be used and, if so, whether the eligible signer meets the criteria specified.
- Ensure that the document is dated correctly as of the date of signing.
- Have the principal (or the eligible signer) sign the document.
- Complete the witness's certificate, and sign and date it.

Things to bear in mind...

- The Act places a very serious responsibility on your shoulders —one that far exceeds your normal duty in witnessing a document.
- *The Powers of Attorney Act 1998* mentions under 'General principles' the fact that a person is 'presumed to have capacity'—that is, principals are not obliged to prove, to the witness or anyone else, that they have the capacity to understand the nature and effect of the document they are signing. If there is a reasonable likelihood of doubt about the principal's capacity, you should make a written record of the evidence you relied on in concluding that the principal understood the nature and effect of the document, whether it is a GPA, an EPA or an AHD.

  If, as the witness, you are not satisfied that the principal has the capacity to appoint an attorney or make an AHD, you should decline to witness the document and decline to sign the witness's certificate.
- Obviously, because of the very nature of the document, you should satisfy yourself that the person asking you to witness the document is in fact the principal. Therefore it is quite reasonable, and highly recommended, that you require proof of identification before witnessing the document.
- AHDs have provision at the end for the principal to review the document periodically. No witness is required for the principal's signature on these reviews.
- You may be called upon to certify a copy of a power of attorney document. See chapter 11 for details about how to do this.

Frequently asked questions

Can more than one attorney be appointed?

YES. The principal may appoint separate attorneys for personal and fi nancial matters, or two or more attorneys for each type of matter.

However, they may not appoint one attorney for personal/health matters in an EPA and another attorney for personal/health matters in an AHD.

Which form should be used for an EPA?

Only approved forms are acceptable.

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/s for both financial and personal matters (including health care). This form can also be used to appoint an attorney/s for financial matters only or for personal matters (including health care) only.
- The long form is used when the principal wishes to appoint more than one attorney for financial and/or personal matters or 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. As discussed earlier, if you believe that the principal does not have the capacity to appoint an attorney or make an AHD, you must refuse to witness the document. You can make a referral to the Adult Guardian if you suspect that the adult is being abused, neglected, exploited or there are inappropriate decision-making arrangements.

YES. If you believe that the principal is under some form of duress to sign the document, you should refuse to witness it. In both circumstances you may refer to the Adult Guardian.

Where can the forms be obtained?

They are available at the Commonwealth Government Bookshop, newsagencies and most Australia Post offices.

The forms are also available free-of-charge on the Department of Justice and Attorney-General website www.justice.qld.gov.au/guardian/poa.htm.

Where can I get more information?

Factsheets are available on the Department of Justice and Attorney-General website www.publicguardian.qld.gov.au or telephone the Office of the Adult Guardian on 3234 0870 or 1300 653 187 (outside Brisbane).

You can also contact the local office of the Public Trustee or visit www.pt.qld.gov.au.

All the provisions relating to the granting of powers of attorney and the making of AHDs are in the *Powers of Attorney Act 1998*.

8 Witnessing land-title documents

WHAT are land-title documents?

They are documents that come under the *Land Act 1994* and *Land Title Act 1994* and they deal mainly with the ownership and use of property (these Acts deal only with property in Queensland).

Documents under the *Land Act 1994* relate to non-freehold land, for example leasehold land and deeds of grant in trust.

Documents under the *Land Title Act 1994* relate to freehold land.

WHY are land-title documents treated differently from other documents?

The *Land Title Act 1994* and the *Land Act 1994* have specific requirements that you must observe when you witness any documents that they cover:

- Both Acts have eligibility criteria for witnesses (which, as a JP (Qual), you fulfi l).
- In most cases when you witness a document, there is no mandatory requirement for the signatory to prove his or her identity to you. However, under this legislation there are mandatory proof-of-identity requirements that must be met before you may witness a document. This is because such documents affect people's title to land and could therefore have a substantial impact on their fi nancial security. The proof-of-identity requirements are there to ensure that the property-owner's rights are protected.
- Both Acts impose a strict onus on you to ensure that the person signing the document is entitled to do so—that is, that they are the holder of the relevant interest in land and they understand the nature and effect of the document.
- Both Acts require you to print your full name on the document where you sign it as witness. Your initials are not acceptable.

In other respects, however, documents coming under these Acts must be witnessed in accordance with the usual rules, such as ensuring that the signatory signs in the presence of the witness, and that the witness is not a party to the transaction covered by the document.

The legislative requirements are spelled out in the following extracts from these Acts:

Section 162 of the *Land Title Act 1994*

Obligations of witness for individual

- 162. A person who witnesses an instrument executed by an individual must—
  a. first take reasonable steps to ensure that the individual is the person entitled to sign the instrument; and
  b. have the individual execute the document in the presence of the person; and
  c. not be a party to the instrument.

Section 311 of the *Land Act 1994*

Witnessing documents for individuals

» A person who witnesses a document signed by an individual must—

a. first be satisfied the individual is the person entitled to sign the document; and

b. have the individual sign the document in the presence of the person; and

c. not be a party to the document.

HOW do you witness these documents?

Here are some steps that you might like to follow before you apply the usual procedure for witnessing documents:

Step 1 Have the signatory provide proof of identity.

Step 2 Ensure that the signatory is the holder of the relevant interest in the land.

Step 3 Question the signatory to confirm that they understand the nature and effect of the document to be signed. If you are not satisfied that the signatory has the capacity to sign the document, you should refuse to witness it.

Step 4 As always, ensure that the document is signed in front of you.

Step 5 Ensure that you are not a party to the transaction.

Step 6 Place your signature and print your FULL name on the document and remember DO NOT place your seal next to your signature when you witness the document. (Remember to insert your registration number.)

Things to bear in mind...

As with other documents, you should record the questions you asked and the answers the signatory gave, and note what documentation was supplied to you as proof. Remember: because of the significant nature of land-title documents it would be appropriate to take a copy of the document.

Further information on witnessing land registry forms

Concerns have been raised regarding the increasing number of occasions where JPs and C.decs who witness land registry mortgage forms are being presented with an additional document to certify the identity of the signatory and to also provide personal information regarding their identity and contact details.

It appears this practice has been adopted by some lenders (mortgages) in an effort to have the witness take steps that were intended to be taken by the mortgagee under recently introduced *Land Title Act 1994* (the Act) provisions. There is now a statutory obligation on mortgagees intending to take a mortgagee over land as security for a debt or liability to take 'reasonable steps' to ensure the person who executes the instrument as mortgagor (borrower) is identical with the person who is or is about to become the registered proprietor or owner of the lot.

Under the Act, the mortgagee takes 'reasonable steps' if they comply with the guidelines included in the Land Title Practice Manual which in essence reflect financial transactions. Under the 100 points regime, a birth certifi cate or current passport accounts for 70 points, a driver licence accounts for 40 points and a credit card accounts for 25 points.

The new law came about following several instances where a mortgagee (usually a 'lender of the last resort') advanced funds for a loan based on securing a registered mortgagee over freehold property without adopting prudent lending practices such as confi rming the borrower was in fact the registered owner and therefore entitled to deal with the property and also able to meet the agreed repayment schedule.

The Registrar of Titles' practice guidelines for mortgagees to meet the new requirements provide some flexibility to cover a range of scenarios. For example, if owing to special circumstances such as disability or because they reside in a remote part of Australia, a mortgagor is unable to attend at an office of the mortgagee (or their representative) during the loan application or approval process and the mortgagee receives and adopts from the JP or C.dec who witnessed the execution of the mortgagee instrument, a certificate confi rming the mortgagor's identity was verified by 100 point check and a record of the driver licence or other photo ID and other primary or secondary identification documents used for the verification, it is considered the mortgagee takes 'reasonable steps' for the purposes of the Act.

However, it is important to note that it is not the intention of the Registrar of Titles and not a land registry requirement that a JP or C.dec take on a pseudo-agent role for a mortgagee when witnessing the signature of a mortgagor on a land registry Form 2—Mortgage.

The intent of the provisions of the Act on mortgagee due diligence is that mortgagees accept responsibility for ensuring that when they advance loan funds in return for taking a mortgagee over property, they are in fact dealing with the person authorised to offer the property as security for the loan.

The obligations of a witness to the signature of an individual on a land registry form are provided in section 162 of the Act for freehold land (with similar provisions in section 311 of the *Land Act 1994* for non-freehold land). These obligations require the witness to have the individual sign the instrument in their presence, not to be a party to the instrument and, significantly, to take reasonable steps to ensure the individual is entitled to sign the instrument. The latter requires the witness to not only confi rm the identity of the signatory but also satisfy themselves that the person is entitled to deal with the property, for example, as the registered owner of the land by sighting a current title search or certificate of title or local government rates notice.

There is no statutory obligation for a JP or C.dec to complete a certificate, statement or declaration for, provided by, a mortgagee in association with a land registry instrument. It is a matter for each individual JP or C.dec as to whether or not

they complete such forms if provided, particularly where the witness is requested to provide their own personal information such as home address or driver licence details.

Therefore it is considered reasonable that a JP or C.dec may witness the signature on a land registry form but decline to complete a certificate provided by a mortgagee unless the mortgagee has entered into some form of agreement with the witness beforehand. Generally, should a mortgagee wish to confi rm the authenticity of an attestation clause on a land registry form they may contact the JP Branch with their enquiry.

Frequently asked questions

What proof of identity must the principal provide?

Even though the wording in the Acts varies as to the requirement of identification, the principle remains the same. You must satisfy yourself as to the identity of the person signing the document. If the identity is not proven to your satisfaction, then you must refuse to witness the document.

Though it is up to you to decide what form of identification you require, photographic identification, such as a driver's licence, is usually most reliable, and this is the type of identification that you should ask the signatory to supply.

Does a land-title document coming under this legislation have to be signed and witnessed in Queensland?

NO. You may witness a document under these Queensland Acts anywhere in Australia or overseas.

Witnessing consent to the marriage of a minor

9

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 that JPs (Qual) and C.decs 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 being 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 that 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, and
- of the relationship of the consenting authority with the minor (that is, parent or legal guardian), and
- that the document is correctly dated.

Things to bear in mind...

The Act states that a JP (Qual):

- *Shall not subscribe his or her name as a witness to the signature of a person to a consent to a marriage by a minor unless:*
- *He or she is satisfied on reasonable grounds as to the identity of that person; and*
- *That the consent bears the date on which he or she subscribes his or her name as a witness.*

If you fail to comply with this section, you will be liable to a fi ne or imprisonment under the Act, so you should take particular care when witnessing a Consent to marriage.

Frequently asked questions

Is there a set form?

YES. There are two types of forms. One is used to give the consent of both parents, and the other is used when only one parent is available to give consent.

They 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 that the correct form is being used and that the correct people are signing the form.

Can I refuse to witness a Consent to marriage?

YES. You should refuse to witness the document if you are not satisfied as to the identity of the person giving the consent, and that person's relationship with the minor.

It is recommended that 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.

Where can you witness a Consent to marriage?

You may 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 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.

As a JP (Qual), can I perform marriages?

NO. JPs (Qual) do not have the power to conduct marriages.

If someone wanting to be married approaches you, you should direct them to a marriage celebrant, or to the Registry of Births, Deaths and Marriages (Brisbane: phone 07 3247 9203), or to their local Magistrates Court registry.

Marriage celebrants are listed in the Yellow Pages. The Commonwealth Attorney-General's Office—the government agency responsible for marriage celebrants—can be contacted on 02 6250 5523.

10 Witnessing international, Commonwealth and interstate documents; witnessing Queensland documents while interrtstate or overseas

WHAT powers do I have for witnessing international, Commonwealth and interstate documents?

International documents

You have no authority to sign a document intended for use outside Australia.

International documents must be witnessed by Notaries Public, Consular or Embassy Officials unless the document specifies otherwise.

Commonwealth documents

You may witness Australian Commonwealth documents anywhere in Australia or overseas.

Commonwealth legislation recognises that your appointment as a JP (Qual) under state legislation 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

You may not witness interstate documents while you are outside 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, you should seek advice from the agency responsible for the document in that state.

Witnessed in Queensland

In some circumstances, however, you are able to witness interstate documents while you are in Queensland. It would be entirely up to the court or authority where the document is to be lodged whether you are acceptable as a witness. (You should try to ascertain this before 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*, and therefore your powers apply to all matters within the State of Queensland.

This means that you may perform your functions as a witness in another state or territory, or indeed internationally, provided that 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 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, you are approached by someone who wishes to have you 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 the limits on my powers to witness international and interstate documents?

As your appointment as a JP (Qual) is made under Queensland legislation, in general your powers pertain 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.

HOW do I witness...

...Queensland documents while interstate or overseas?

You must witness these documents in the normal manner, as set out in the standard procedures, and also the special requirements for oaths and affirmations.

...Commonwealth documents?

Wherever you are, whether in Queensland, interstate or overseas, you should follow the standard procedure.

...interstate documents while in Queensland?

Again, you should follow the standard procedure, except that you should also note next to your signature that you are a JP (Qual) 'for and in the State of Queensland'.

Frequently asked questions

Is a Queensland JP (Qual) recognised as a JP under other states' legislation?

NO. You are a JP for Queensland only. It is possible for someone appointed as a JP for Queensland to be also appointed to a class of JP for another state by and under the legislation of that other state.

Can I witness passport applications?

Though there is no longer a requirement for a passport application to be witnessed by a JP (Qual) or a C.dec, you are free to do so if asked.

As from 2 September 1998 there have been two types of applications, one for an adult and one for a child. Both applications contain a proof of identity declaration, which needs to be declared before any Australian who meets the following requirements:

- has known the applicant for at least 12 months, and
- is not related to the applicant, and
- is an adult holder of an Australian Passport, valid for more than two years and issued after 1 January 1987, or
- has been on the Australian Electoral Roll for the preceding 12 months, and is prepared to nominate his or her electoral roll registration details and date of birth.

The previous 26 categories of identifiers are no longer valid.

Certifying copies of documents

11

WHAT is 'certifying a copy'?

Certifying a copy is signing a certificate stating that a particular document is an identical copy of the original, which you have sighted. Certifying copies of documents is another common duty of JPs (Qual).

WHY certify a copy?

Frequently, several people or organisations need to hold a particular document. An example of this is the Enduring Power of Attorney document, copies of which are normally left with relatives, doctors and solicitors. However, doubt could be raised about whether or not a copy is genuine.

The solution is to certify the copies. In some cases, a certified copy has the same legal status as the original.

HOW do I certify a copy?

You should take care when certifying copies of documents, and follow a set procedure.

Step 1 Ensure that you have the original from which the copy was made. The original document must be supplied so that you can certify that the copy is an exact copy of the original.

Step 2 Check that the copy is accurate and that no alterations have been made. This can be time-consuming, particularly when the document is in a foreign language or is of a technical nature.

Step 3 Endorse the copy in the following fashion:

> *This is to certify that this is a true copy of the original, which I have sighted.*
>
> *Date*
>
> *Signed*
>
> *Title*

A stamp with this wording is available from the Justices of the Peace Branch for a fee.

Step 4 Multiple-page documents. If the original document has multiple pages, each page must be certified as correct.
Some documents, however, are many pages in length and it would not be possible to certify each page. In such cases, you must sign or initial each page and then amend the certification on the last page to read:

> *This is to certify that this* [number of pages]*-page document (each page of which I have numbered and signed) is a true copy of the original* [number of pages]*-page document that I have sighted.*
>
> *Date*
>
> *Signed*
>
> *Title*

Each page of the copy should be numbered as page 1 of 40, 2 of 40 and so on.

Copies of enduring powers of attorney

You may be called upon to certify a copy of an enduring power of attorney (EPA) or an advance health directive (AHD) for use as a proof that someone holds power of attorney for someone else or to allow copies to be held by more than one person or at more than one place.

Section 45 of the *Powers of Attorney Act 1998* provides that a person may prove the existence of an EPA or AHD by producing a copy of the original document, as long as it is properly certified. It further provides that, in a properly certified copy:

- each page of the document except the last page must be certifi ed as a true and complete copy of the corresponding page of the original, and
- the last page must show certification that the document is a true and complete copy of the original.

12 Change of name

As at 1 February 2004, it is no longer possible to change your name by deed poll in Queensland. If someone wishes to change their name, or their child's name, they are to contact the Registry of Births, Deaths and Marriages and put the new details on the 'Change of name register'.

The only requirement for JPs to witness is in regard to certifi ed copies of documents needed to satisfy the requirements of the Births, Deaths and Marriages Registrar. These documents will be the usual type, e.g. driver's licence, passport, Centrelink or Veteran Affairs cards.

If you have any questions, contact the Queensland Registry of Births, Deaths and Marriages on (07) 3247 9203 or email BDM-Mail@justice.qld.gov.au or visit the website at www.qld.gov.au/bdm.

13 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:

- the complaint—the information required to substantiate the issuing of the summons;
- the summons itself—the details about the person summonsed and the time and place of the court hearing; and
- the oath of service—an oath sworn before a JP to prove that 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.

Whereas an unsworn complaint and summons is a *Complaint—General purposes— Made, and summons*, and is typically used for simple offences. Samples of these forms are included at the end of this chapter.

WHY would a summons be issued?

Summonses are issued because the person is required:

- to answer a charge, or
- to give evidence at the trial of another person. (A summons of this kind is called a Summons to a witness—see end of chapter.)

The people most likely to ask you to issue a summons are the police. However, authorised officers of government departments and in some instances private individuals may also ask for a summons to be issued. (Private summonses come under the *Peace and Good Behaviour Act 1982* or the *Domestic Violence and Family Protection Act 1989* and are dealt with in chapters 17 and 18 respectively.)

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. However, you 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:

- that an offence has occurred within Queensland
- that the offence exists in Queensland law
- that all elements of the offence are included in the complaint.

So there are three people principally involved in the issue of a summons:

- the complainant—the person who requests the issue of a summons (known as the 'complainant' because they actually make a complaint before you)
- yourself as the JP (Qual) issuing the summons
- the defendant—the person being charged with an offence.

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

Step 1 Ask the complainant for some form of identification.

Step 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.*

(You may amend the wording of other forms of oaths and affirmations similarly—see chapter 4.)

Thus 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.

Step 3 Check that 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, and endorse the triplicate with the Oath of Service (which you or another JP will witness). It will then be filed with the court as proof that the summons has been served.

Step 4 Read the complaint section carefully. Check that:

- 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 wish.
- the material in the complaint is sufficient to satisfy you that 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 give the name and address of the defendant and the date, time and place of the offence, and mention the fact that the defendant is unlicensed. It should disclose details of the motor vehicle involved and where the incident occurred.
- the complaint covers 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.
- the complaint is made within one year of when the offence was committed if it is a simple offence or a breach of duty.

Step 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.

Here are some sample questions:

- 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? (Note: You may not ask this question with respect to matters covered by the *Drugs Misuse Act 1986*.)
- Is this informant reliable?

(This is not an exhaustive list.)

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, 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.

Step 6 Once you are satisfied that the summons is justified, have the complainant sign the complaint. Remind them that they are under oath.

Step 7 Witness the complainant's signature on the complaint by signing it, affixing your seal of office and entering your registration number.

Step 8 Read the summons section, and check through it carefully.

Ensure that:

- the summons gives the full name and address of the complainant
- it is dated the day you issue it
- it gives the full name, address, date of birth and occupation of the person to be served
- it shows the date, time and place of the court hearing.

Step 9 Contact the Magistrates Court to arrange a return date—that is, the date for the court hearing. Though the date, time and place of the hearing will be set by the court you should check that there are no obvious problems with these arrangements, such as coinciding with general public holidays, local public holidays (such as a show or exhibition) or the Christmas–New Year court closure.

Step 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.

When the summons is to be served on a witness

When you are approached to issue a summons to a witness, the person requesting the summons normally does not supply a written complaint or information to substantiate the summons. So the procedure you follow is somewhat simpler.

Step 1 Check that:

- the witness is within your jurisdiction—namely Queensland. You do not have the authority to issue a summons to anyone outside Queensland, and
- the witness is able to give material evidence at the hearing. The evidence the witness may give should be crucial to the case, especially if they live a considerable distance from the court, so that the cost of their attendance is justified.

You are permitted to ask questions to verify these points. 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.

Step 2 Then follow steps 8 to 10 (above).

The Oath of Service

The third part of the document is the Oath of Service. It normally is printed on the reverse of the form, but sometimes it is printed on the bottom.

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 that 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 that 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, exparte 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 that you must not act mechanically or as a mere rubber stamp. It is your duty to ensure that the issue of the summons is justifi ed and, in the case of the complaint, that 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, and indeed you would be failing in your duty if you did not.

Frequently asked questions

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* or the Domestic Violence and Family Protection Act 1989. These are covered in chapters 17 and 18 respectively.

Can a complaint and summons be affirmed, rather than sworn?

YES. A complaint may be solemnly affirmed instead of sworn.

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 that it does not actually refer to an offence under the law.

(Remember: If you refuse the summons, you must cross out the complaint and then, if the complaint was made by the Police, inform the officer in charge at the police station.)

Should I keep a record of the summonses issued?

YES. You should take a copy of the complaint and summons and keep it in a secure place for your own records. You should also maintain a register, or log book, detailing dates, times and people involved with the issuing of a summons. If you have asked any further questions to substantiate the complaint, you should also record the questions you ask and the answers you are given.

What do I do if the defendant is known to me personally?

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 summons. Direct the complainant to another JP (Qual).

You must not discuss this summons with the person, or with anyone else.

How is a 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 twenty-one 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, and 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?

NO. There is no requirement under the present legislation for JPs to print their full name on the document.

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:

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 – 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.
* Delete whichever is not applicable.
+ If applicable delete and insert "Justice taking an examination of witnesses in relation to an indictable offence".

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 his 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 by the said deponent at this day of , 200 .

Deponent Justice of the Peace

* Delete whichever is inapplicable
+ Here specify the Complainant's means of knowledge as to the defendant's last known address.

Form: Complaint–General purposes–Made and summonses *Pages 1 of 2*

Form 4
QUEENSLAND
JUSTICES ACT 1886

COMPLAINT – GENERAL PURPOSES – MADE, 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

***Made** 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:
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 – 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.
* Delete whichever is inapplicable.
+ If applicable delete and insert "Justice taking an examination of witnesses in relation to an indictable offence".

Form: Complaint–General purposes–Made and summonses *Pages 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 his 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 by the said deponent at this day of , 200 .

Deponent Justice of the Peace

* Delete whichever is inapplicable
+ Here specify the Complainant's means of knowledge as to the defendant's last known address.

FORM 10
QUEENSLAND
JUSTICES ACT 1886
SUMMONS OF A WITNESS

To

Of
in the State of Queensland.
Whereas a complaint was on the day of 200 , made before
a Justice of the Peace for the said State, that (offence in full)

These are therefore to require you to appear at:

Date: / / 200

Time:

Place:

before * a Magistrates Court/ * Justices taking an examination of witnesses in relation to an indictable offence
to testify what you know concerning the matter of the said complaint * (and you are further required to bring with you and produce at the time and place abovenamed: (here describe the documents to be produced)

Given under my hand at:
Place:
Date: / / 200

Justice of the Peace

Oath of Service

I, of

do swear that on the day of 200

I served the within-named

(Hereinafter referred to as the witness) with a copy of the within summons

* (a) By delivering a copy thereof to the witness personally
At

* (b) By leaving a copy thereof with
For the witness at
* residence
The usual place of * business of the witness who could not reasonably be found.

* (c) By leaving a copy thereof with

For the witness at
* residence
For place of * business last known to me of the witness who could not reasonably be found.

Signature _____

Signed and sworn by the said deponent at

this day of 200 , before me.

_____
Justice of the Peace

* Delete and initial whichever is inapplicable.

14 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 law.

The arrest warrant is usually in a prescribed form (see end of chapter) and consists of two parts:

- the complaint—the information required to substantiate the issuing of the warrant
- the warrant itself—the details about the person to be arrested and 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. (The issuing of search warrants is covered in chapter 15.)

WHY would an arrest warrant be issued?

An arrest warrant is issued to bring a person to court when a summons would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not surrender themselves into the custody of the court voluntarily, or
- the police are unable to fi nd 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), or
- it is considered that the defendant could harm someone (including him/ herself) if not placed into custody immediately.

If you believe that 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.

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

Most arrest warrants are issued when the charge is for an indictable offence. If the charge is for a simple offence, the court can usually proceed to hear and determine the matter without the defendant being present—it deals with the matter ex parte.

So, for most simple offences, you would not have the authority to issue an arrest warrant.

The legislation

The *Justices Act 1886* states that you have the authority to issue an arrest warrant for an indictable offence. However, it also states that 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 ask the police officer concerned to show you the part of the Act that authorises the issue of a warrant before you do so.

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.

(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) [that] for an offence other than an indictable offence, proceedings by way of complaint and summons, attendance notice or notice to appear for the offence would be ineffective.

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 that of issuing a summons. The same principle of exercising judicial discretion applies in both cases. Extra care should be taken with arrest warrants, however, because they permit police officers to take people into custody.

As with issuing a summons, 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:

- that an offence has occurred within Queensland
- that the offence exists in Queensland law
- that all elements of the offence are included in the complaint under which the warrant is issued.

Note: A JP can issue an arrest warrant where the offence was not committed in Queensland, but the person charged with committing the offence is suspected of being within the JP's jurisdiction.

So there are three people principally involved:

- the complainant—the person applying for an arrest warrant
- yourself as the JP issuing the warrant (or, if the warrant is requested in a magistrates court, a magistrate)
- the defendant—the person being charged with an offence.

When approached to issue an arrest warrant, you should:

Step 1 Ask the complainant for some form of identification.

Step 2 Immediately place the complainant on oath (or affirmation).

The form of basic oath/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.

(You may amend the wording of other forms of oaths and affirmations similarly—see chapter 4.)

Thus 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.

Step 3 Check that 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 complainant will give you a copy of the complaint. The original of the complaint will be fi led with the court by the police and the warrant will be shown to the defendant during the arrest.)

Step 4 Read the complaint section carefully. Check that it includes:

- the full name, rank and station of the complainant;
- full details of the offence and the legislation that creates it;
- the name, date of birth, occupation and address of the person named in the warrant; and
- 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.

Step 5 Ask the complainant any questions that are needed to clarify what offence is involved and what evidence there is that the defendant committed it.

If the offence is armed robbery, for example, the complaint should give the name and address of the defendant 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 sample questions to guide you:

- Where did your information come from?
- 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?
- Would a summons suffice on this occasion?

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 warrant, you should cross out the complaint and note your reasons on the form. You should then inform the officer in charge of the police station where the complainant is stationed.

Step 6 Once you are satisfied that the warrant is justified, have the complainant sign the complaint. Remind them that they are under oath.

Step 7 Witness the complainant's signature on the complaint by signing it, affixing your seal of office and entering your registration number.

Step 8 Ensure that the complainant gives you a copy of the complaint. Keep it in a secure place.

Step 9 Complete the warrant, and then check through it carefully. Ensure that:

- the warrant gives the full name and address of the complainant and the basis for the complaint;
- it is dated the day you issue it; and
- it gives the full name, address, date of birth and occupation of the defendant.

Step 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*.

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 that the issue of the warrant is
- necessary and, in the case of the complaint, that 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, and indeed you 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 that a summons would be sufficient to bring the defendant to court, you should issue a summons rather than an arrest warrant.

Can the complaint be solemnly affirmed instead of sworn?

YES. A complainant or an applicant can make a solemn affirmation in lieu of taking a sworn oath when requesting the issue of an arrest warrant.

Can I refuse to issue a warrant?

YES. You may refuse to issue the warrant if you believe that the complainant has not substantiated the offence or supplied you with sufficient information to justify its issue.

You should also refuse to issue a warrant if you believe that the defendant could be more appropriately dealt with by way of a summons.

Should I keep a record of the warrants I issue?

YES. 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 log book of the actions you take, including any questions you ask and the answers you are given.

What do I do if the defendant is known to me personally?

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 this warrant with the person, or with anyone else.

Do I have to print my name on the warrant?

NO. There is no requirement for you 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 justices to be dealt with according to law. This means that the person must appear before a magistrates court.

Form: Arrest warrant application

QUEENSLAND POLICE SERVICE

ARREST WARRANT APPLICATION

Police Powers and Responsibilities Act 2000

QP 0724
07.06
A1

Place where application is heard: _____

Details of applicant police officer:

Full name: _____

Rank: _____

Registered number: _____

Station: _____

Name of person: _____

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

† The offence in this case is other than an indictable offence and proceedings by way of complaint and summons, attendance notice or notice to appear for the offence would be ineffective.

The grounds on which the warrant is sought:

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

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

_____
(Applicant's signature)

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

_____
(Signature of Justice)

QUEENSLAND POLICE SERVICE

ARREST WARRANT

Police Powers and Responsibilities Act 2000

QP 0725
07/06
A1

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

I, a justice after hearing a sworn application by **(Rank and name of applicant officer)** am satisfied there are reasonable grounds for suspecting **(Name Of Person)** has committed the offence of

(Offence)

* **and proceedings by way of complaint and summons, attendance notice or notice to appear for the offence would be ineffective.**

Any police officer may arrest (Name Of Person), the person named in this warrant.

Given under my hand at **(Place)** on _____.

_____
(Signature of Justice)

Issuing search warrants

15

WHAT is a search warrant?

A search warrant is a document authorising police officers to enter and search a place for evidence that an offence has been committed.

The search warrant is usually in a prescribed form (see end of chapter) and consists of two parts:

- the application—the information required to substantiate the issuing of the warrant, such as the details about the suspected offence, why the occupier is suspected of having committed the offence and the type of evidence sought.
- the warrant itself—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 now issued under the *Police Powers and Responsibilities Act 2000*, though there is still power to issue warrants under other legislation, such as the *Justices Act 1886*. The following information is based on the *Police Powers and Responsibilities Act 2000*.

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

1. *That a police officer may exercise search warrant powers; and*
2. *Brief particulars of the offence for which the warrant is issued; and*
3. *Any evidence that may be seized under the warrant; and*
4. *If the warrant is to be executed at night, the hours when the place may be entered; and*
5. *The day and time the warrant ends.*

If it is suspected that the evidence sought is already on the premises, the warrant ends 7 days after it is issued. However, if the evidence is simply expected to be there shortly, the warrant expires 72 hours after it was issued (see section 155 of the Act).

Sometimes the police apply for warrants to search transport vehicles. In such cases, the police officer concerned has the power to search anyone or anything in or on the vehicle, or about to be in or on it.

WHY would a search warrant be issued?

To protect the rights of citizens, our laws are such that police officers do not generally have the power to enter and search private premises. They must apply for a search warrant first.

A search warrant would be issued if the police were able to show that a search is both necessary for the investigation of an offence and likely to produce the evidence they are seeking.

HOW do you issue a search warrant?

The process of issuing a search warrant is very similar to that of 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 (9.00pm–6.00am).

As with issuing a summons or an arrest warrant, when you issue a search 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:

- that an offence is suspected to have occurred within Queensland
- that the offence exists in Queensland law
- that all the 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. Such warrants are issued by a magistrate.

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

- the applicant—the person applying for a search warrant
- yourself as the JP issuing the warrant
- the occupier—if there is someone occupying the place to be searched.

When approached to issue a search warrant, you should:

Step 1 Ask the applicant for some form of identification.

Step 2 Immediately place the applicant on oath (or affirmation).

The form of basic oath/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.

(You may amend the wording of other forms of oaths and affirmations similarly—see chapter 4.)

Thus 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.

Step 3 Read the application carefully. Check that it gives:

- the applicant's name, rank, registered number and station
- a description of the place to be searched sufficient to identify the premises correctly
- (for an occupied place) the name of the occupier of the place, if known
- a brief description of the offence that the application relates to
- a description of the type of evidence sought
- why it is suspected that evidence of the offence is likely to be found on the premises
- whether the evidence is thought to be presently on the premises, or likely to be there within the next 72 hours
- full details of any previous search warrants, and

- the reasons for exercising the following 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 warrant at night (naming the proposed hour).

Step 4 Check with the applicant to ensure that the application has not been refused by any other JP. If it has, you do not have the power to grant it. Only a magistrate has that authority.

Step 5 Ask the applicant any questions that are needed to clarify why a search 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?
- Have you used this source before?
- What was the outcome of previous warrants from 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 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 warrant to be executed at night?

(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 you need it later.

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

Step 6 Once you are satisfied that the warrant is justified, have the applicant sign the application. Remind the applicant that they are under oath.

Step 7 Witness the applicant's signature on the application by signing it, affixing your seal of office and entering your registration number.

Step 8 Ensure that you retain the original of the application and keep it in a secure place.

Step 9 Complete the warrant, and then check through it carefully. Ensure that:

- the warrant gives the full name, rank, registered number and station of the applicant, and the basis for the application
- it is dated the day you issue it
- it gives the address of the premises to be searched and the full name, date of birth and occupation of the occupier
- it gives the date and time when the warrant ends.

Step 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*.

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

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

Frequently asked questions

Can I refuse to issue a warrant?

YES. You should refuse to issue the warrant if you believe that 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 warrant?

NO. There is no alternative to a search warrant.

Why are there different expiry times for warrants?

To protect the rights of the occupier, the legislation distinguishes between cases where the evidence sought is believed to be already on the premises, and cases where it is merely expected to be there in the future. (As explained earlier, a warrant to search for evidence already on the premises expires 7 days after it is issued, whereas a warrant to search for evidence that is expected to be there in the future expires after 72 hours.)

Can the information be solemnly affirmed instead of sworn?

YES. The applicant can make a solemn affirmation in lieu of taking a sworn oath when requesting the issue of a warrant.

Should I keep a record of the warrants I issue?

YES. 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 log book of the actions you take, including any questions you ask and the answers you are given.

What do I do if the occupier of the premises 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.

Do I have to print my name on the warrant?

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

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 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.

QUEENSLAND POLICE SERVICE

APPLICATION FOR SEARCH WARRANT

Police Powers and Responsibilities Act 2000

QP 0711 07/06 s1

Place where application is heard _____

Applicant details

Family name: _____ Given name(s): _____

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

Place to be searched

Address: _____

Suburb/Town: _____ State: _____ Postcode: _____

Description of place:

Occupier details (if known)

Family name: _____ Given name(s): _____

The offence, suspected offence or confiscation related activity or for a forfeiture proceeding, the Act under which the forfeiture proceeding may be started.
Insert full wording of charge or offence if known.

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.

Information or evidence that may be relied on to support a reasonable suspicion that evidence of the commission of an offence or the confiscation related evidence is at the place or is likely to be taken to the place in the next 72 hours.

Details of search warrants issued in the previous year:
- when and where each warrant was issued;

- the type of offence or confiscation related activity to which each warrant related;

- whether anything was seized during a search or proceeding after a search started;

_____ _____
(Magistrate/Justice) (Date)

The application is for one or more of the following:

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

_____ _____
(Applicant's signature) (Date)

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

_____
(Magistrate/Justice)

_____ _____
(Magistrate/Justice) (Date)

QUEENSLAND POLICE SERVICE

SEARCH WARRANT

Police Powers and Responsibilities Act 2000

QP 0712
07/06
+A4

To

Family name: _____ Given name(s): _____

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

or all police officers of the Queensland Police Service.

I, a , after hearing a sworn application by

_____ ,
(Rank and name of applicant officer)

am satisfied that there are reasonable grounds for suspecting that evidence of the commission of the offence:

Details of place: **Insert location of relevant place**

Details of evidence that may be seized under this warrant.
Insert details

This warrant authorises that a police officer may enter the place and exercise search warrant powers at the place, namely:

(a) power to enter the place stated in the warrant (the "relevant place") and to stay on it for the time reasonably necessary to exercise powers authorised under the warrant and this section;

(b) power to pass over, through, along or under another place to enter the relevant place;

(c) power to search the relevant place for anything sought under the warrant;

(d) power to open anything in the relevant place that is locked;

(e) 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;

(f) 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;

(g) power to dig up land;

(h) 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 evidence of the commission of an offence to which the warrant relates;

(i) power to muster, hold and inspect any animal the police officer reasonably suspects may provide evidence of the commission of an offence to which the warrant relates;

(j) power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence to which the warrant relates;

(k) power to remove wall or ceiling linings or floors of a building, or panels of a vehicle, to search for evidence of the commission of an offence.

This warrant also authorises a police officer to execute the warrant at night between hours of

_____ (Time) and _____ (Time) .

The warrant ends on _____ (Date) at _____ (Time) .

Given under my hand at _____
(Place)

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

The within warrant was executed at the within named premises
on the _____ day of _____ , _____ at _____ .
(Date) (Month) (Year) (Time)

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: _____

16 Issuing a justices examination order (JEO)

The *Mental Health Act 2000* was revised on 10 November 2006. The justices examination order under this Act replaces the warrant to remove someone to a place of safety under the old Act.

Mental Health Act 2000

WHAT is a JEO?

A JEO authorises a doctor or an authorised mental health practitioner to examine someone who is thought to be suffering from a mental illness in order to decide whether or not to recommend that they undergo a full psychiatric assessment. It allows the examination to go ahead whether or not the person concerned agrees.

The examination order *must* be in a prescribed form and consists of two parts:

- the application—the information required to substantiate the issuing of the order, such as details about the behaviour and medical history of the person concerned, and the relationship between this person and the applicant
- the order itself—giving the name, address, age and sex of the person concerned, the name, address and qualifications of the examining practitioner, identification details of the applicant, the proposed date and place of the examination, and the date when the order ends (not more than seven days after it is issued).

WHY would such an order be requested?

Requests for JEOs are usually made by people who have a near relative or close friend whom they suspect of being mentally ill, and who is unwilling to seek appropriate medical attention. The aim is to have the person concerned undergo a full psychiatric assessment so that they can be hospitalised if necessary.

Anyone in the community may apply for this order.

So the people involved are:

- the applicant—usually a close relative or friend of the subject of the examination
- you—the person issuing the order
- the examiner—a doctor or a mental health practitioner authorised under the legislation
- the subject—the person to be examined.

HOW do you issue the order?

The process of issuing a JEO is similar to that of issuing a warrant to the police. The same principle of exercising judicial discretion applies.

As with issuing a summons or a police warrant, when you issue a JEO 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.

You may issue the order only if you are satisfied on the grounds of the application that:

» the subject has a mental illness

» the subject should be examined by a doctor or authorised mental health practitioner to decide whether or not to recommend that they undergo a full assessment

» the examination cannot be properly carried out unless the order is made.

When approached to issue a JEO, you should:

Step 1 Ask the applicant for some form of identification.

Step 2 Immediately place the applicant on oath (or affirmation).

The form of basic oath/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.

You may amend the wording of other forms of oaths and affirmations similarly (see chapter 4).

Thus 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.

Step 3 Check that there are three copies of the document. There should be an original order application, as well as two copies.

Step 4 Read the application section carefully. Check that it gives:

- the applicant's name, address and relationship to the person concerned;
- details about the behaviour and medical history of the person concerned;
- the name, address and qualifications of the proposed examiner.

Step 5 Ask the applicant any questions that are needed to clarify why an order is necessary. You have to establish that there are sufficient grounds for the issuing of the order.

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 order, you should cross out the application and note your reasons on the form.

Step 6 Once you are satisfied that the order is justified, have the applicant sign the application. Remind the applicant that they are under oath.

Step 7 Witness the applicant's signature on the application by signing it, affixing your seal of office and entering your registration number.

Step 8 Ensure that the applicant gives you a copy of the application. Keep it in a secure place.

Step 9 Complete the order section by checking through it carefully.

Ensure that:

- it gives the name and address of the applicant, the identifi cation details and qualifications of the proposed examiner, the name, address, age and sex of the person concerned, and the time and place of the proposed examination
- it is dated the day you issue it
- it gives the date when it expires (no more than seven days after the date when it is issued).

Step 10 Sign the order, affix your seal of office and enter your registration number.\

Step 11 Send:

- the order and a copy of the application documents to the administrator of an authorised mental health service (if you fax them, you must also send the original order and copies of the application documents later, by mail or delivery)
- a copy of the order to the Registrar of the Magistrates Court named in the order.

Step 12 Return the original application and the documents supporting it to the applicant.

Things to bear in mind...

- It is for the doctor or authorised mental health practitioner to determine whether the person concerned has a mental illness. This is an important safeguard for you, as the order will not be activated if in their opinion the person is not in fact mentally ill and requiring hospitalisation.
- However, this safeguard does not mean that you may issue any order that you are asked for. For these orders, as for summonses and warrants, you must exercise a judicial discretion.
- You are obliged to read all the material supplied to you, and you are also entitled to ask the applicant further questions. You should keep a record of the questions you ask and the answers you receive in case you are later called upon to give evidence in court.
- You *must* read the entire document, and indeed you would be failing in your duty if you did not.
- Sometimes the applicant has a medical certificate supporting the application from the person's own doctor. A doctor who has examined the person within the preceding three days does not require a justices examination order to
- be able to make a recommendation for a full psychiatric assessment. If a doctor makes a recommendation for assessment, a person may be taken to an authorised mental health service for assessment only if a request for assessment for the person is also made (see section 19(1) of the *Mental Health Act 2000*).

Frequently asked questions

Does the order give the practitioner the power to enter the person's premises against their will?

YES. The order allows them to enter the place named in the order as the address of the person concerned, or any other place where they reasonably believe the person may be found.

When can the order be executed?

At any reasonable time of the day or night.

What if the person resists?

The practitioner is authorised to call for Police assistance, and they must, as soon as practicable, ensure that reasonable help is given. A police officer may detain the person at the place for the examination to be carried out by a doctor or authorised mental health practitioner.

The practitioner must, to the extent that is reasonable and practicable in the circumstances, explain to the person in general terms the nature and effect of the order and produce the order for the person to inspect (a facsimile copy of the order is sufficient).

Queensland Government

Request for assessment

Mental Health Act 2000 Queensland
Section 16(a)

- The person who makes this request for assessment **must not** be an employee or relative of the person who makes the recommendation for assessment.
- The request for assessment and recommendation for assessment must be made by **different** persons.

BLOCK LETTERS

The person who needs to be assessed

Do not use patient identification labels

Provide as much information as possible

Mark ☒ applicable box

Details of person who needs to be assessed

Given name/s	Family name
Also known as	
Address where person lives	
Town/suburb	State ☐☐☐ Postcode ☐☐☐☐
Phone No. ☐☐☐☐☐☐☐☐☐☐	
Date of birth ☐☐ / ☐☐ / ☐☐☐☐ **or** Age ☐☐☐	
Male ☐ Female ☐ Not stated/unknown ☐	

PLEASE PRINT

Explain in your own words why you believe the person has a mental illness that requires involuntary assessment

NB: **Penalties** apply for giving information the applicant knows is false or misleading (s522)

If you need to provide more information attach additional page/s

Reasons

BLOCK LETTERS

Your own details

Applicant's details

Given name	Family name
Address	
Town/suburb	State ☐☐☐ Postcode ☐☐☐☐
Phone No. ☐☐☐☐☐☐☐☐☐☐	

Declaration

I am 18 years of age or over;
I have observed the person within 3 days before making this request; and
I believe the person has a mental illness of a nature, or to an extent, that involuntary assessment is necessary.

Applicant's signature

Signature	Date ☐☐ / ☐☐ / ☐☐☐☐

To: **administrator, authorised mental health service**

dmh.016(a) version 1 February 2002

Queensland Government

Application for justices examination order

Mental Health Act 2000 Queensland
Section 27

- The person applying for a justices examination order may be the same person who makes a request for assessment.
- A justices examination order may be made even if the applicant has not made a request for assessment for the person.

BLOCK LETTERS

Details of person who needs to be examined

The person who needs to be examined

Given name/s	Family name
Also known as	

Where the person is likely to be found

Address		
Town/suburb	State ☐☐☐	Postcode ☐☐☐☐
Phone No. ☐☐☐☐☐☐☐☐☐☐		

Date of birth ☐☐/☐☐/☐☐☐☐ or Age ☐☐☐
Male ☐ Female ☐ Not stated/unknown ☐

Mark ☒ applicable box

PLEASE PRINT

Reasons

Explain in your own words why you believe the person has a mental illness that requires this order. For example:

- your relationship to the person and interest in having the order issued
- details of the situation or behaviour which is causing concern
- the length of time this has been occurring
- whether there are other people with the same concerns about the person
- what has caused you to provide information now
- what immediate fears or concerns are there in relation to their behaviour
- information about a previous history of mental illness in the person
- details of current or past treatment and/or name of a doctor to contact
- less restrictive alternatives which have been tried
- potential difficulties gaining access
- aspects of the person's behaviour which place the person in danger or endanger the community
- any knowledge of previous assaultive behaviour
- any information in relation to possession of firearms or other weapons.

NB: Penalties apply for giving information the applicant knows is false or misleading

continued over page...

dmh.027 version 2a May 2004

Form: Application for justices examination order

Pages 2 of 2

Person's name: DOB: / /

BLOCK LETTERS

Your own details

Applicant's details

Given name	Family name
Address	
Town/suburb	State ☐☐☐ Postcode ☐☐☐☐
Phone No. ☐☐☐☐☐☐☐☐☐☐	

Applicant's declaration

I am applying for a justices examination order on the grounds stated above.

Applicant's signature

Signature	Date ☐☐/☐☐/☐☐☐☐

Insert place

Sworn/affirmed before me at: _____

Magistrate / justice of the peace

Signature	Date ☐☐/☐☐/☐☐☐☐

To: **registrar magistrates court / justice of the peace**

dmh.027 version 2a May 2004

Queensland Government

Justices examination order

Mental Health Act 2000 Queensland
Section 28,32(1),32(2)

- Attach a copy of the justices examination order application.
- If these documents are sent by facsimile, an original of the order and a copy of the application must also be sent.

BLOCK LETTERS

Details of person to be examined

The person who needs to be examined

Given name/s	Family name
Also known as	

Where the person is likely to be found

Address		
Town/suburb	State ☐☐☐	Postcode ☐☐☐☐
Phone No. ☐☐☐☐☐☐☐☐☐☐		

Mark ☒ applicable box

Date of birth ☐☐/☐☐/☐☐☐☐	**or** Age ☐☐☐
Male ☐ Female ☐	Not stated/unknown ☐

Order

I believe that the person has a mental illness; and

- should be examined by a doctor or authorised mental health practitioner to decide whether a recommendation for assessment for the person can be made; and
- an examination can not be properly carried out unless a justices examination order is made.

I order that:

A doctor or authorised mental health practitioner is authorised to examine the person to decide whether a recommendation for assessment for the person should be made.

The doctor or authorised mental health practitioner is authorised to enter a place stated in the order or another place they believe the person may be found.

Refer over page for powers

The doctor or authorised mental health practitioner may exercise a power under this justices examination order with the help that is reasonable in the circumstances.

No more than 7 days after the order is made

This order expires at the end of ☐☐/☐☐/☐☐☐☐ at 12.00 midnight.

Mark ☒ applicable box

Justice of the Peace ☐ *or* Magistrate ☐

Signature	Date ☐☐/☐☐/☐☐☐☐
	Place
Print Name	

If made by magistrate

To: **administrator, authorised mental health service**— a copy of the order and a copy of the application documents

If made by justice of the peace

Write the name of the Magistrates Court

To: **administrator, authorised mental health service**— a copy of the order and a copy of the application documents
registrar of the Magistrates Court at _____
(normally the court nearest the person the subject of the order) — a copy of the order.

continued over page...➔

dmh.028,32(1),32(2) version 1 March 2002

Person's name: _____ DOB: ___/___/___

Examiner to complete this section if:

Mark ☒ applicable box

Recommendation for assessment not made under justices examination order – s32(1), OR ☐

Justices examination order ended before examination of person carried out – s32(2) ☐

PLEASE PRINT

Reasons

Provide reasons why:

- the recommendation for assessment was not made; OR
- the justices examination order ended before examination of the person was carried out

Mark ☒ applicable box

doctor ☐ authorised mental health practitioner ☐

Attach documents

Attached is a copy of the application documents.

Doctor / authorised mental health practitioner

Signature	Print name
	Date ☐☐/☐☐/☐☐☐☐

Business address

Town/suburb	State ☐☐☐	Postcode ☐☐☐☐

Phone No. ☐☐☐☐☐☐☐☐☐☐

To: administrator, authorised mental health service

To be completed by administrator, authorised mental health service

Notice

Attach documents

Attached is a copy of the application documents.

Administrator, authorised mental health service

Signature	Print name
	Date ☐☐/☐☐/☐☐☐☐

To: Director of Mental Health

IMPORTANT

Mental Health Act 2000

To enable the doctor or authorised mental health practitioner to exercise powers under the justices examination order they are public officials for the *Police Powers and Responsibilities Act 2000* section 14.
The powers of a police officer while helping a public official are listed below from the *Police Powers and Responsibilities Act 2000* section 14.

s30(4)(b) A police officer may detain the person at the place for the examination to be carried out by a doctor or authorised mental health practitioner. A police officer's entry and search powers from the *Police Powers and Responsibilities Act 2000* section 19 are as follows.

s30(5) If asked by the doctor or authorised mental health service, a police officer must, as soon as reasonably practicable, ensure reasonable help is given.

s30(6) For giving the help, a police officer is taken to have responded to a request by a public official under the *Police Powers and Responsibilities Act 2000*, section 14(3).

s30(7) In exercising a power under this section, the doctor or authorised mental health service must, to the extent that it is reasonable and practicable in the circumstances –
explain to the person, in general terms, the nature and effect of the order; and
produce the order to the person for inspection.

s30(8) Production by the doctor or authorised mental health service of a facsimile copy of the order is sufficient compliance with subsection (7)(b).

s30(9) Failure to comply with subsection (7) does not affect the validity of the exercise of the power.

s30(10) A power under this section may be exercised at any reasonable time of the day or night.

Police Powers and Responsibilities Act 2000

Division 2—Helping public officials

Helping public officials exercise powers under other Acts
14(1) This section applies if an Act (**"authorising law"**) authorises a public official to perform functions in relation to a person or thing.
(2) However, this section only applies to a police officer who is not a public official for the authorising law.
(3) If a public official asks, a police officer may help the public official perform the public official's functions under the authorising law.
(4) Before the police officer helps the public official, the public official must explain to the police officer the powers the public official has under the authorising law.
(5) If the public official is not present or will not be present when the help is to be given, the police officer may give the help only if the police officer is satisfied giving the help in the public official's absence is reasonably necessary in the particular circumstances.
(6) The police officer has, while helping a public official, the same powers and protection under the authorising law as the public official has.
(7) Subsection (6) is in addition to, and does not limit, the powers and protection a police officer has under this or any other Act.

General power to enter to arrest or detain someone or enforce warrant
19(1) A police officer may enter a place and stay for a reasonable time on the place—
(a) to arrest a person without warrant; or
(b) to arrest a person named in a warrant; or
(c) to detain a person under another Act.
(2) If the place contains a dwelling, a police officer may enter the dwelling without the consent of the occupier to arrest or detain a person only if the police officer reasonably suspects the person to be arrested or detained is at the dwelling.
(3) If the place is a vehicle, a police officer may stop and detain the vehicle and enter it to arrest or detain the person.
(4) A police officer who enters a place under this section may search the place for the person.
(5) In this section—
"arrest", a person named in a warrant, includes apprehend, take into custody, detain, and remove to another place for examination or treatment.

dmh.028,32(1),32(2) version 1 March 2002

17 Issuing warrants and summonses 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 well-being 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 forestall a threat made by the defendant and to allay the complainant's genuine fear.

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

When you issue a summons or warrant, you should apply the same principles that govern the witnessing of documents, such as verifying the identity of the signatory. However, you have added responsibilities.

Before issuing a summons or warrant, you must be satisfied that:

- the defendant has threatened to assault the complainant or someone in their care, or to damage or destroy their property, or to get someone else to assault the complainant or someone in their care, or to damage their property
- the complainant is genuinely in fear of the defendant.

  You should exercise a great deal of caution when dealing with 'old' threats when nothing has occurred in recent times.

(A sample of the complaint and summons form is included at the end of the chapter.)

The people involved with an application under this legislation are:

- the complainant—the person making the complaint and requesting the summons or warrant
- you as the JP issuing the summons or warrant
- the defendant—the person whom the complainant has named as causing the trouble.

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

Step 1 Ask the complainant for some form of identification.

Step 2 Immediately place the complainant on oath (or affirmation).

The form of basic oath/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.

(You may amend the wording of other forms of oaths and affirmations similarly. See chapter 4 for other forms of oaths and affirmations.)

Thus 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.

Step 3 Check that there are 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 will then arrange for the Police to serve a copy of the complaint and summons on the defendant. When the summons has been served, the remaining copy is sworn/affirmed as the Oath of Service before either yourself or another JP, by the police officer who served it. The police officer will then file this Oath of Service with the court as proof that it has been served.

For warrants, you need the original and one copy. Both the original and the copy of the warrant are filed with the Magistrates Court.

Step 4 Read the complaint section carefully. Check that:

- the Act or Regulation under which the summons or warrant 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 wish
- the material in the complaint is sufficient to satisfy you that a summons or warrant is justified—that is, that a threat has been made and that the complainant is genuinely afraid of the defendant
- the complaint is made within one year of the last threat.

Step 5 Ask the complainant any questions that are 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 refer them to the Registrar of the nearest Magistrates Court.

Step 6 Once you are satisfied that the complaint is justified, have the complainant sign it. Remind them that they are under oath.

Step 7 Witness the complainant's signature on the complaint by signing it, affixing your seal of office and entering your registration number.

Step 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 justifi ed 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.*

Step 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 that 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.

Step 10 Complete the summons or warrant, and then check through it carefully. Ensure that:

- it gives the full name and address of the complainant and the basis for the complaint
- it is dated the day you issue it
- it gives the full name, address, date of birth and occupation of the person to be served
- it shows the date, time and place of the court hearing.

Step 11 Sign the summons or 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*.

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.

Step 12 In the case of a summons, give the complainant the original and two copies, and check that they know how to deal with them. Explain that 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 police use their copies to serve the defendant with a copy of the complaint and summons, and to provide the oath of service to the court as proof that the summons has been served. Remind the complainant to arrange for 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.

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 and groundless, the defendant may be able to take legal action against the complainant.

If you consider that the threat to the complainant is so serious that you are contemplating issuing a warrant, you are entitled to ask the complainant whether 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 a 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 to issue a warrant or a summons.

» This is another occasion when you must read the entire documentation, and if you did not, you would be in breach of your duty.

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

Frequently asked questions

Am I permitted to fill out the details in 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. If the complaint relates to the quiet enjoyment of the complainant's property, and if you consider that the matter would be better dealt with by mediation, you may, with the consent of the complainant, order the matter to mediation. The complainant would then have to contact one of the Dispute Resolution Centres for mediation to be arranged.

Form: Peace and Good Behaviour Complaint and Summons *Pages 1 of 2*

Form 1
QUEENSLAND
PEACE AND GOOD BEHAVIOUR ACT 1982
(Section 4)

COMPLAINT

QUEENSLAND }

TO WIT }

THIS IS THE COMPLAINT OF _____

of _____ in the said State

SWORN/AFFIRMED on _____ before the undersigned, one of Her

Majesty's Justices of the Peace for the State of Queensland, and such Complainant says that

_____

of _____

1. **has threatened--**
   (a) to assault or to do any bodily injury to the said complainant or to any person under the care or charge of the said complainant
   (b) to procure any other person to assault or to do any bodily injury to the said complainant or to any person under the care or charge of the said complainant
   (c) to destroy or damage any property of the said complainant
   (d) to procure any other person to destroy or damage any property of the said complainant and the said 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:—

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

.....
(Signature of the Complainant)

WHEREUPON the said _____ prays that

I,

_____ the said Justice will proceed in the premises according to law.

SWORN/AFFIRMED before me in the State of Queensland on the date first abovementioned.

Form 1, Version 1, 21/2/05

.....

Form 2
QUEENSLAND
PEACE AND GOOD BEHAVIOUR ACT 1982
(Section 4)

SUMMONS

To_____

of _____ in the State of Queensland

WHEREAS a complaint has been made before the undersigned, one of Her Majesty's Justice of the Peace for the said State, that on _____ at _____

1. you threatened—

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

OR

2. That the Intentional conduct of a person (also 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 ARE HEREBY COMMANDED, in Her Majesty's name,

TO APPEAR at the Magistrates Court situated at in the said State,

on _____ at _____ o'clock in the forenoon/afternoon before a Magistrates Court to answer the said Complaint and to be further dealt with according to law.

GIVEN under my hand at **in the said State on** _____ .

.....
(A Justice of the Peace)

Form 1, Version 1, 21/2/05

18 Witnessing a Statutory Declaration under the *Domestic and Family Violence Protection Act 2012*

The *Domestic and Family Violence Protection Act 2012* (the DFVP Act) was passed on 16 February 2012 and commenced in practice on 17 September 2012.

The main objectives of the DFVP Act are to:

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

The DFVP Act deals with violence committed or threatened to be committed by a person in a relevant relationship. A relevant relationship under this Act is:

- An intimate personal relationship—spousal, engagement relationship or a couple relationship (this can include a same sex relationship).
- A family relationship—a relative of a person is someone who is ordinarily understood to be or to have been connected to the person by blood or marriage. A relative of an aggrieved is also a person who is regarded as a relative. This incorporates people who may have a wider concept of a relative e.g. Aboriginal and Torres Strait Islander people or people with particular religious beliefs. Children under 18 years of age cannot be named as a respondent or aggrieved under the family relationship.
- An informal care relationship—a relationship that exists between two persons if one of them is or was dependent on the other person (the carer) for help in an activity of daily living. An informal care relationship does not exist between a child and a parent of a child; or where there is a commercial arrangement where a fee is paid.

However, the relationship can sometimes be difficult to establish. Unless it is obvious that a relevant relationship does not exist, the question of whether a relevant relationship does exist is a matter that must be determined by the courts.

One of the key changes to occur as a result of the commencement of the DFVP Act is the removal of the requirement to issue a summons. This means Justices of the Peace will no longer be required to consider Protection Order Applications and determine whether to issue a summons

The application form is called Form DV1, Application for a Protection Order. It should contain all 8 pages of the approved form.

The only section relevant to the JP or Cdec will be Part 12 of page 8–Statutory Declaration. You should follow the handbook procedures listed in Chapter 8 of the manual to ensure the statutory declaration is witnessed correctly. The following "Quick Check list" may assist you when witnessing this statutory declaration.

1. Ask the applicant for Identification.
2. Ensure the form has been completed. Do not assist the person to complete the form and do not offer advice or opinions. Should the applicant require advice, direct them to the DVconnect Service **1800 811 811**.
3. Issue the person with the warning that they need to tell the truth.
4. Ensure the document is signed in front of you. Place your signature, full name, seal and number

on the statutory declaration. The application does not need to be witnessed if the applicant is a police officer.

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 under an enduring power of attorney under the Powers of Attorney Act 1998
- an "authorised person" who can be an adult authorised by the aggrieved in writing to appear on behalf of the aggrieved or another adult person who "the court" believes is authorised by the aggrieved to make the application even thought the authority is not in writing (e.g. person with disability and can't write gives an oral authority).

Can additional pages be submitted with the application?

If there is an attached statement, this should also be prepared as either a statutory declaration or affidavit and should be witnessed accordingly.

A Domestic and Family Violence Safety form may also accompany the application. This form should be completed by the aggrieved or a representative if the person has concerns for their safety. The JP and aggrieved can sign this form as an attachment.

Why is the aggrieved not sworn?

Because the application is in the form of a statutory declaration it must be dealt with in the same way as a normal statutory declaration. An oath (or affirmation) is unnecessary.

What happens once the application is witnesses?

Once the statutory declaration is witnessed the applicant must file the application, as soon as practical, with the Magistrates court. The Clerk of the Court will note the place, date and time for the matter to be heard in the court.

Do I have any power to grant a protection order?

Not on your own. If there is no magistrate available, two JPs (Qual) or two JPs (Mag Ct) 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.

The JPs are limited in their jurisdiction to making consent protection orders and temporary protection orders:

- Consent orders may be made where both aggrieved and respondent agree to the order being made and to all the conditions contained therein.
- When making temporary protection orders, you must adjourn the application to a date when a magistrate is available.

For further information contact:

Violence Prevention Unit Department of Communities
Email violence_prevention_team@communities.qld.gov.au

Website www.
communities.
qld.gov.au/

FORM DV1

Domestic and Family Violence Protection Act 2012 (s.32)

Application for a Protection Order

Please note: A copy of this application will be given to the respondent

1. Aggrieved's details

If the aggrieved does not want the respondent to know their home address please either:

- **Give an address where court documents can be sent e.g. post office box or**
- **Complete an "Aggrieved Details Form" which will not be provided to the respondent**

Given Name/s | Family Name | Date of birth (/ /)

Address

Gender | Home Number | Mobile Number

Work Phone | Email | SPI # (QPS Only)

Does the aggrieved require an interpreter? No ☐ Yes ☐ Language/Dialect:

Does the aggrieved identify as: Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐

Does the aggrieved have a disability, illness or impairment where support and/or special arrangements are required? No ☐ Yes ☐

Is the aggrieved under 18 years of age? No ☐ Yes ☐

Please supply the details of a parent as all documents must be given to a parent of the aggrieved unless the court orders otherwise.

Parent's Name

Parent's Address

Proceed to Question 2

2. Respondent's Details

Given Name/s | Family Name | Date of birth (/ /)

Address

Gender | Home Number | Mobile Number

Work Phone | Email | SPI # (QPS Only)

Does the respondent require an interpreter? No ☐ Yes ☐ Language/Dialect:

Does the respondent identify as: Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐

Does the respondent have a disability, illness or impairment where support and/or special arrangements are required? No ☐ Yes ☐

Current place of employment | Vehicle Model: | Vehicle Registration

Is the respondent under 18 years of age? No ☐ Yes ☐
Please supply the details of a parent as all documents must be given to a parent of the respondent unless the court orders otherwise.
Parent's Name

Parent's Address

If you are the aggrieved, proceed to Question 4
If you are not the aggrieved proceed to Question 3

3. Applicant's Details

This section only applies if a person other than the aggrieved is making the application. Please complete either Part A, B, C or D.

PART A – A person being authorised by the Aggrieved

Given Name/s | Family Name | Gender

Address

Is the authorisation of the aggrieved in writing? No ☐ Yes ☐
If the authorisation is not in writing, how is authorisation communicated from the aggrieved?

PART B – A person acting under another Act for the Aggrieved

Name | Gender

Address

Who is the application being made by? A guardian ☐ Adult Guardian ☐ Enduring power of attorney ☐
Other, please specify:

PART C – A Police Officer

Full Name including Rank: | Registration #

Station | Police Occurrence #

Has the aggrieved been advised of this application? No ☐ Yes ☐

Has the application resulted from the detention of the respondent? No ☐ Yes ☐

Is this an application for an urgent temporary protection order under section 130? No ☐ Yes ☐

If yes, has an application for a domestic violence order already been made? No ☐ Yes ☐ Court File Number:

PART D – A party to a child protection proceeding

Given Name/s | Family Name | Gender

Address

What type of party to a child protection proceeding are you?
A child for whom an order is sought in a child protection proceeding ☐
A separate legal representative for a child for whom an order is sought in a child protection proceeding ☐
An applicant or respondent in a child protection proceeding ☐

Proceed to Question 4

4. Temporary Protection Order

Do you wish the court to make a temporary protection order? No ☐ Yes ☐
If you request a temporary protection order before the respondent has been served with a copy of the application, you will have to show the court that there are reasons why it is necessary or desirable for you or a named person to be protected by a temporary protection order before the respondent is served with a copy of the application.

Please state reasons below:

Proceed to Question 5

5. Relationships between the aggrieved and the respondent

What is the relationship of the aggrieved to the respondent?

☐ **Intimate Personal Relationship –** Please tick one
a) *Spousal Relationship*: Married ☐ Former Spouse ☐ De Facto ☐ Registered Relationship ☐
Parent/Former Parent of a Child ☐

b) Engaged ☐ Were Engaged ☐

c) Couple ☐ State the nature of the relationship including the level of dependency on each other whether financial or otherwise; length of time of the relationship; frequency of contact and degree of intimacy, if any.

☐ **Family Relationship**

Relation to respondent (for example parent, sibling, aunt, cousin, stepchild, a person is regarded as a relative)

☐ **Informal Care Relationship**

Nature of relationship

Proceed to Question 6

6. Grounds for a protection order

State grounds as to why a protection order is necessary or desirable to protect the aggrieved. It must be shown that domestic violence has occurred. Include specific example of behaviour by the respondent. *Attach extra pages if necessary*

Proceed to Question 7

7. Children of the aggrieved or children who usually live with the aggrieved

Full Name of **Child 1** | Gender | Date of birth

/ /

Address

Do you wish this child to be named on the order? No ☐ Yes ☐ SPI # (QPS Only)

Full Name of **Child 2** | Gender | Date of birth

/ /

Address

Do you wish this child to be named on the order? No ☐ Yes ☐ SPI # (QPS Only)

Full Name of **Child 3** | Gender | Date of birth / /

Address

Do you wish this child to be named on the order? No ☐ Yes ☐ SPI # (QPS Only)

State grounds as to why the child/children are to be named on the order

Proceed to Question 8

8. Relatives or associates you would like to be named on the order

Full Name of **Relative** | Gender | Date of birth / /

Address | SPI # (QPS only)

Full Name of **Relative** | Gender | Date of birth / /

Address | SPI # (QPS only)

Full Name of **Associate** | Gender | Date of birth / /

Address | SPI # (QPS only)

Full Name of **Associate** | Gender | Date of birth / /

Address | SPI # (QPS only)

State grounds as to why it is necessary or desirable to protect the relative/associate.

Proceed to Question 9

9. Weapons

Does the respondent have access to any weapons? No ☐ Yes ☐
State the number, type of weapon/s and all possible locations of the weapon

Did the respondent use, or threaten to use, a weapon or another thing used as a weapon, during any incident of domestic violence?
No ☐ Yes ☐ Provide details

Has the respondent been issued with a weapons or firearms licence? No ☐ Yes ☐
If the respondent has access to any weapons at their place of residence, please provide details

Proceed to Question 10

10. Details of any other orders

Has a court made any other order or are there other court proceedings that involve the aggrieved and the respondent? *Please attach copies*

Childrens Court orders	Current ☐	Not Current ☐
Queensland Domestic Violence Order	Current ☐	Not Current ☐
Police Protection Notice	Current ☐	Not Current ☐
Voluntary Intervention Order	Current ☐	Not Current ☐
Interstate Domestic Violence Order (including New Zealand)	Current ☐	Not Current ☐
Family Court Orders	Current ☐	Not Current ☐
Other relevant court order	Current ☐	Not Current ☐

Is there a current Protection Order application that has not been decided by the court? No ☐ Yes ☐ Attach a copy of the application

Proceed to Question 11

11. Conditions sought in the order

A court making a domestic violence order must impose a condition that the respondent –
Be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved.

If the order includes a named person who is an adult-
Be of good behaviour towards the named person and not commit associated domestic violence against the named person.

If the order includes a named person who is a child -
Be of good behaviour towards the child and not commit associated domestic violence against the child and not expose the child to domestic violence.

A court may also impose any other condition that the court considers necessary in the circumstances and desirable in the interests of the aggrieved, any named person or the respondent.
Do you want the court to consider any other conditions for inclusion in the protection order?
No ☐ Go to Q12 Yes ☐ Please indicate below

A) Do you want the respondent to leave specified premises? No ☐ Yes ☐
If yes, state address of premises and provide reasons:

B) Do you want to prohibit the respondent from remaining at; entering or attempting to enter or approaching premises? No ☐ Yes ☐
If yes, the premises to which the respondent is not to come or approach are:
The aggrieved's place of residence ☐ The aggrieved's place of employment ☐ The place the aggrieved is currently staying ☐
Places where the aggrieved frequents, namely ☐
Associates/relatives place of residence (if there is a named person at Question 8) ☐
Give reasons

C) Do you want to prohibit the respondent approaching the aggrieved? No ☐ Yes ☐
Does this include any associates or relatives (if there is a named person at Question 8)? ☐
Give reasons

D) Do you want to prohibit the respondent from contacting the aggrieved or asking someone else to contact the aggrieved? No ☐ Yes ☐
Does this include any associates or relatives (if there is a named person at Question 8)? No ☐ Yes ☐
Give reasons

E) Do you want to prohibit the respondent's presence at or in a place associated with any child *(e.g. school, day care etc)* No ☐ Yes ☐
Give reasons

F) If the respondent does not know the aggrieved's whereabouts, do you want to prohibit the respondent from trying to locate them or asking someone else to locate them? No ☐ Yes ☐
Give reasons

G) Does the aggrieved wish to recover essential property? No ☐ Yes ☐

Describe the property and state address where this property can be located.

H) Do you want the court to consider prohibiting any other conduct or behaviour on the part of the respondent? No ☐ Yes ☐
Specify that conduct or behaviour complain of and give reasons

12. Statutory Declaration

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

I, _____ the applicant in this application, do solemnly and sincerely declare:

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 *Oaths Act 1867*.

Declared by _____ on / / at _____ in the presence of

(Signature of Applicant)

……..

(Full name of Applicant))

……..

(Signature of person taking statement)

……..

(Full name and Qualification of Witness)

……..

……..

Queensland Police Service Applicant
The applicant, if a member of the Queensland Police Service, must sign this application and provide the details below:

Full Name and Rank: _____
Registration No: _____
Signature: _____
Date: _____

Notes to the respondent

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.

Office Use Only

Court file number (if known) :

YOU ARE NOTIFIED that this application will be heard at the time and place as follows:

Court: _____
Place: _____
Date: _____
Time: _____

Signature
Clerk of the Court/Queensland Police Service

Domestic and Family Violence Safety Form

Queensland Courts Service is committed to providing a safe environment in the courthouse. Courthouses have safety measures in place such as safe rooms (or other rooms or areas where a person seeking protection can wait separately). Most courthouses also have security officers and security cameras.

Court staff follow domestic violence protocols which place safety as top priority for all people seeking protection from domestic violence.

If you have safety concerns about attending court that should be brought to the attention of the court staff. The court staff will copy the form and give it to the security officer, domestic violence protection worker, registrar and any other relevant court staff to arrange for your safety. It will also be placed on your court file, but will not be part of the application and will not be served on the respondent.

If your safety concerns change for future court dates, you should complete another form for court staff.

1. Are you concerned that you may be in danger while attending court?

2. Are you concerned about your safety when leaving the court building?

Attending a record of interview

19

violenceprevention/

For help and advice call:

DVConnect womensline

1800 811 811
24 hours, 7 days a week

DVConnect mensline

1800 600 636
9 am to midnight, 7 days a week

Kids Help Line

1800 55 1800
24 hours, 7 days a week

WHAT is a record of interview?

Police conduct a record of interview when they are formally questioning a suspect about an offence that 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 occasionally be asked to attend such an interview by either the police or the suspect, and you need to understand what the law requires of you in such a situation.

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 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, though you are not obliged to.

If you do, it is as a private individual, not as a JP. There is no defined role for you in this situation.

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, as set out below:

For adult suspects, the Act provides for:

- a 'support person' to attend at 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 of 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:

Support person

(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; orif no-one mentioned in subparagraphs (i) to (iii) is available—a relative or friend of the child who is acceptable to the child; or

(iv) if the child is an Aborigine or Torres Strait Islander and no-one mentioned in subparagraphs (i) to (iv) is available —a person whose name is included in the list of interview friends and interpreters; or

(v) 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 (though you can, if other support people are not available, act as a support person for a juvenile Aborigine or Torres Strait Islander).

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 (though it is a role that you will only rarely have to take on).

When you arrive at the police station:

Step 1 Ask the duty officer to supply you with the following information:

- the suspect's name
- the suspect's age
- how long the suspect has been in custody
- whether the police have contacted any of the categories of support persons listed as (i) to (v) of schedule 6 of the *Police Powers and Responsibilities Act 2000* and what the outcome was

- whether the suspect has asked for a solicitor
- the reason for the interview (don't worry about full details; a brief outline is sufficient).

Step 2 Arrange 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:

- Introduce yourself.
- Immediately warn the suspect that they should not make any admissions to you, as you may be required to give evidence in court if they do confide in you. This is not the role of a JP.
- Explain that you are a JP and that you are attending as a support person—an independent person whose role is to ensure that correct procedures are followed.
- Ask the suspect whether they have been offered any of the support persons nominated in (i) to (v) of schedule 6 of the *Police Powers and Responsibilities Act 2000* and, if not, whether they would like any of them to be present. Emphasise that it would be in their interests to have legal representation at this time. If they ask for one of the other support persons to be present, make arrangements for this person to attend the interview, and 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 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.
- Try to determine the suspect's mental and physical condition at this time to decide whether 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 whether the child has been treated correctly, and that no threats have been made before your arrival. It is your responsibility to ensure that the interests of the suspect are looked after. If you are in doubt as to their mental or physical well-being, ask the officer in charge for the Government Medical Officer to attend and examine them.
- If the suspect requires the services of an interpreter, you should ensure that an interpreter is made available. Again, contact the officer in charge so that the necessary arrangements can be made.
- Explain to the suspect that you are not there to give legal advice, but that they are entitled to ask you questions, or request to speak to you in private, at any time during the interview.

You may tell them that they are under no obligation to answer the questions, but they may answer some or all of the questions if they desire.

Remind them that they may terminate the interview at any time.

You should then restate the advisability of having legal representation.

During the interview:

Your primary role during the interview is to ensure that the rights of the suspect are protected. You do this by checking that correct procedure is followed.

Step 1 Check that the police officer cautions the suspect, and that the caution is recorded electronically. This caution should substantially comply with the following:

> *Do you understand that you are not under arrest?*
>
> *Do you understand that 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?*

Step 2 If, during the interview, the child asks how he or she should answer a question, you must explain that you are unable to answer this and that they should have a legal representative present.

Step 3 Do not intervene unnecessarily. The police officer has the right to exclude you if he or she believes that you are unreasonably interfering. However, do ensure that the suspect understands the questions and is not having language problems.

Step 4 Ensure that the questioning by the police is not overbearing or intimidating. If you suspect that the child's mental or physical well-being is deteriorating, suspend the interview and, if necessary, request the Government Medical Officer to attend.

Step 5 If at any time you are of the opinion that the Police are mistreating the suspect, suspend the interview immediately and report the matter to the officer in charge of the police station. This officer has an obligation to take certain actions once a complaint is made, including reporting the complaint to the Crime and Misconduct Commission. The interview should not be recommenced at this time.

Step 6 If at any time you believe that the suspect is not coping with the interview process, remind them that they may have a legal representative present.

After the interview:

Under the legislation, the police are required, at the end of the interview, to ask the suspect certain questions and to ensure that 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:

- *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?*

As the interview is recorded electronically, there is no requirement for you to certify the record at the time. The suspect will be supplied a copy of the tape of the interview for their legal adviser.

Things to bear in mind...

Caution

- Remember that the *Police Powers and Responsibilities Act 2000* limits the role of the JP in attending police records of interview, and the list of other support persons must be exhausted first.
- Remember that 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 asked questions

May I take notes during the interview?

YES. You are permitted to take notes for your own records.

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 you took at the time of the interview.

20 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.

There are provisions for the extension of periods of detention under both State and Commonwealth legislation.

- Under state legislation, the initial period of detainment is for 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 for the conduct of other necessary administrative functions.
- Under Commonwealth legislation, the period of detainment is referred to as the 'period of investigation', the initial allowable maximum being four hours (for questioning). The equivalent of time-out under the state Act applies under Commonwealth law but is not included in the period of the detention. For someone aged 18 or under, or of Aboriginal or Torres Strait Islander descent, the initial investigation period is only two hours.
- Also, the offence being investigated must be a serious offence with a maximum penalty of a term of imprisonment exceeding 12 months.

State legislation

WHY am I, as a JP, concerned with detention periods under state legislation?

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) for an extension of a detention period.

The application has a prescribed form, listing:

- the details of the police officer making the application
- the details of the person being detained
- the details of the offence with which the person has been charged
- the reasons for extending the period of detention
- the desired length of the extension
- the amount of questioning time that will be needed
- the 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 the following and be satisfied that:

- the nature and seriousness of the offence require the extension
- further detention of the person is necessary:
  - to preserve or obtain evidence of the offence or another indictable offence, or
  - to complete the investigation into the offence or another indictable offence, or
  - to continue questioning the person about the offence or another indictable offence, and
- the investigation is being conducted properly and without unreasonable delay, and
- 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, and
  - ask the person or the person's lawyer if he/she agrees to the application or wants to oppose it, and wants to make submissions or say anything to the justice hearing the application.

Step 1 Check that 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.

Step 2 Check that 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.

Step 3 Ask the police officer for a copy of the section of the *Police Powers and Responsibilities Act 2000* that deals with detention periods.
Check that you are clear about your powers and responsibilities.

Step 4 Read through the application carefully, ensuring that all the necessary information has been provided and asking any questions that may be needed to clarify particular points. Check whether the information in the application is sufficient to convince you that the extension is necessary.

Step 5 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 you are determining whether to extend the period.

Step 6 Decide whether or not the extension is justified. If you decide that it is not, refuse to grant the extension, and write across the application 'Refused', with a brief summation of your reasons. If you decide that it is, complete the section granting the extension. Ensure that you include:

- how much time is to be allowed as time-out
- the length of time when the accused may be questioned (with a maximum of eight hours)
- the proviso that the suspect may continue to be detained for the total of the time allowed for time-out and question time.

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 (section 406(2)).

Commonwealth legislation

The provisions for extension of an investigation period under the *Commonwealth Crimes Act 1914* are very similar to those for the extension of detention periods under the *Police Powers and Responsibilities Act 2000*. In both cases, the accused person is detained while undergoing questioning.

WHY am I, as a JP, concerned with detention periods under Commonwealth legislation?

A police officer may apply to a JP (Qual) for an extension of an investigation period if a magistrate or a JP employed in a court of the state is not available. However, as there is provision under the legislation for a telephone application to be made, the application would in most cases be made to a magistrate.

HOW do I deal with an application for an extension of an investigation period?

Follow the guidelines given for applications under state legislation, making allowances for the differences in terminology, and in the initial period of investigation, the special provisions for juveniles and indigenous people, and the seriousness of the offence.

As with state legislation, you may only consider an application if there is no magistrate or JP employed in a court of the state available to approve the application.

You should ask the police officer for a copy of the section of the *Crimes Act 1914* dealing with investigation periods, and read it before proceeding.

You may extend the initial investigation period for a further eight hours. This period does not include time apart from the questioning time—or time-out, as it is referred to under state legislation.

Before extending the investigation period, you must consider the following and be reasonably satisfied that:

- the nature and seriousness of the offence require the extension, and
- the detention is necessary to:
  - preserve or obtain evidence, or
  - complete the investigation of the offence, or
  - continue questioning the person about the offence, and
- the investigation is being conducted properly and without unreasonable delay, and \
- the person or their legal representative has been given the opportunity to make submissions about the application for extension.

As under state legislation, you are required to listen to any submissions from the person or their legal representative about the application when you are determining whether to extend the period.

Frequently asked questions

Can I extend the detention period a second time?

NO. You only have authority to extend a detention period once.

21 Witnessing the destruction of identifying particulars

Under the *Police Powers and Responsibilities Act 2000*, the police have powers to obtain identifying particulars from an accused person in relation to an offence.

WHAT are identifying particulars?

Identifying particulars are palm prints, fingerprints, handwriting, voiceprints, footprints and *photographs of the person's identifying features*.

WHY are identifying particulars destroyed?

If the person is found not guilty or the police take no further action against them, the right to individual privacy demands that the identifying particulars be destroyed. The law requires that they be destroyed, within a reasonable time, in the presence of a JP.

HOW do I witness the destruction of identifying particulars?

The normal practice is for the police to provide a list of the identifying particulars, against which you check the actual items.

You will be required to certify that those identifying particulars have been destroyed in your presence, so a check of the list against the particulars is essential for you to carry out your role correctly.

Your powers under the *Customs Act 1901*

22

WHAT is the *Customs Act 1901*?

The *Customs Act 1901* is a Commonwealth Act designed to regulate the passage of goods and people into and out of Australia.

- The intention is to prevent:
- the smuggling of prohibited goods, such as illegal drugs or wildlife
- the entry of illegal immigrants
- the unauthorised entry or departure of criminals
- the entry of pests and diseases.

The Act is enforced by special customs officers. It gives them the power to search and detain suspects, and to seize goods.

WHY does this Act concern me, as a JP?

JPs (Qual) have 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), or
- 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*, a customs officer has the power to detain a person if they are suspected, on reasonable grounds, of carrying prohibited goods. The customs 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; and
- an examination of anything worn by the person that can be conveniently removed and is voluntarily removed by the person.

A customs officer may 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, or
- refuses to submit to a frisk search, or
- refuses to produce any goods located during a frisk search.

The Customs Service 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 Customs Service, an officer authorised by that Chief Executive Officer or a JP, the current practice for the Customs Service is to make the application to a JP.

The customs officer makes the application, and it must be made in writing and under oath or affirmation.

- An application may be made to you, the JP, if:
- the customs officer suspects on reasonable grounds that a person is carrying prohibited goods, or
- the customs officer is of the opinion that the person is in need of protection, or
- the detainee refuses to consent to the body search.

The customs officer may take the following things into consideration when determining reasonable grounds of suspicion:

- the person's travel itinerary
- arrival or departure declarations (made under Commonwealth law)
- documents in the person's possession
- unusual behaviour by the person
- the contents of or appearance of a person's luggage.

HOW do I deal with an application for an external body search?

Step 1 First ask the customs officer for identification. Step 2 Place the officer on oath or affirmation.

Step 3 Read through the application carefully. Ensure that there are reasonable grounds for the suspicion.

Step 4 Ask any questions of the customs officer that are necessary to clarify any points.

Step 5 Talk to the suspect and ensure they understand what is going on. Ask the suspect if there are any reasonable grounds for the suspect to be carrying 'suspicious' items. The suspect may be able to give you a satisfactory explanation for factors that led to the custom officer's suspicions.

Step 6 Decide whether or not to grant the application. When considering the application, you must determine whether there are reasonable grounds for the suspicion. (Consider the same factors as the customs officer is required to take into account.)

If you decide to grant the application, you should order that the external search be carried out by writing on the bottom of the application provided by the customs officer that you grant the application. Ensure that you keep a copy of the custom officer's application, any other information provided, and your approval for the search to be conducted. Make the necessary entry in your log book as well. If you believe that the suspect is in some need of protection, you must order that the search be carried out in the presence of the suspect's legal guardian or a specified person (not a customs 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 that the suspect be released immediately.

Frequently asked questions

What is an external body search?

An external body search is defined as:

- *a search of the body of, and of anything worn by or in the possession of the person;*

  (a) to determine whether the person is carrying any prohibited goods; and

  (b) to recover any such goods;

- *but does not include an internal examination of the person's body.*

23 Granting and refusing bail—An overview

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 that the defendant will appear in court on the adjourned date.

There is a general presumption that a person should be granted bail unless there is an unacceptable risk that the defendant will:

- fail to appear on the adjourned date
- commit further offences
- endanger other people
- be a danger to him/herself
- interfere with witnesses.

WHY is bail 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 must be 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*, 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 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
- 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 the police to deliver the defendant to the nearest remand centre, where they will be held until the date of the next court hearing.

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 not to 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 that the defendant will appear in court on the due date.

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).

In this situation, the onus is reversed, and the defence must prove that 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.

Things to bear in mind...

In most situations, the onus is on the prosecutor to demonstrate that the defendant should not be granted bail. In a 'show cause' situation, however, the onus is on the defendant or the defendant's representative to demonstrate why bail should not be refused.

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 that 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 1989*, you also have powers in the Magistrates Court. Your powers here consist of the authority, along with another JP (Qual), to make consent protection orders and temporary protection orders in the Magistrates Court.

Hearing a bail application

24

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 that two do so wherever possible.

When conducting the bail hearing, you should follow these procedures:

Step 1 Indicate to the prosecutor that you and your fellow JP are ready to commence.

Step 2 The prosecutor (or clerk in some cases) will open the court by stating, 'Silence, all stand please. This Magistrates Court is now open.'

Step 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.

Step 4 The prosecutor will then say, 'You may be seated', and the rest of the people in the courtroom will sit.

Step 5 Greet the parties before the court, and then request the parties to announce their appearance for the record. The prosecutor will say something like:

> *Good morning, Your Worships. My name is Smith, 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 Worships. My name is Brown, initials WT, Solicitor for the firm of Brown and Brown, and I appear representing the defendant.*

Step 6 You should reply 'Thank you', and then ask the prosecutor which matter is to be dealt with.

Step 7 Ensure that you have the necessary paperwork in front of you. This should either be a Bench charge sheet or a Bench complaint sheet.

Step 8 Read the charge to the defendant to ensure that 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.

Step 9 Inform the court that the matter has to be adjourned to a date when a magistrate is available. The defendant may at this time indicate whether a plea will be entered, and if it is you must note it on the fi le.

Step 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 that the court's time is limited and there must be a substantial reason for the defendant not to accept the next available date.

Step 11 Determine whether 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.

Step 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 whether you have the power to grant bail. (Defendants on some serious offences may only be granted bail by the Supreme Court.)

Step 13 If the prosecutor does not oppose bail, you should grant bail to the defendant with terms and conditions that you believe suitable, taking into account the nature of the offence and the defendant's character and antecedents.

Step 14 If bail is opposed, you should ask the prosecutor to outline the reasons for the opposition.

Step 15 The defendant or legal representative is then requested to address you on the reasons why bail should be granted.

Step 16 Once you have heard submissions from both the prosecution and the defendant, you 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 to grant bail and, if so, upon what terms.

Step 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 that 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.

Step 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.

Step 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.

Things to bear in mind...

You should be familiar with the terms used at bail hearings:

Court

a Magistrates Court, constituted by a magistrate, a JP (Mag Ct) or two JPs (Qual).

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 from the Office of the Director of Public Prosecutions, presents the evidence to the court.

Defendant

the person charged with the offence.

Remand

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 said to be '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

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

a condition of bail when the court orders something (usually cash) to be lodged with the court as a guarantee that the defendant will reappear on the due date.

Surety

condition of bail where the court orders a third person to guarantee that 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 defendant is called upon by the court 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. (See end of chapter for sample.)

Undertaking as to bail

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/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

Prosecutors

are addressed by their rank if they are a police officer; otherwise they are addressed as Mr, Mrs, Miss or Ms, as the case may be. They may also be addressed as Mr Prosecutor or Madam Prosecutor.

The defendant

can be addressed as 'defendant' but is normally addressed by his/her name. Their legal representative is called by his/her name.

When on the Bench, magistrates are addressed as 'Your Honour' and JPs are addressed as 'Your Worship/Worships' in the court.

Frequently asked questions

How is the defendant brought before the court?

Step 1 An offence is committed.

Step 2 Police investigate the offence.

Step 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.*

Step 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.

File:

FORM 7
QUEENSLAND
BAIL ACT 1980
(Section 20)

UNDERTAKING AS TO BAIL

Particulars of Defendant and Conditions of Bail

Defendant:

Residential Address:

Date of Birth:

Occupation:

Deposit:

Other Security:

Offence:

The conditions of Bail are that the defendant shall:-

(a) Appear and surrender into custody at:-

Time:
Date:
Place:

(b) Not depart from the Court, unless bail is enlarged, and, as often as bail is enlarged, return to the Court and surrender into custody.

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

Certificate of person before whom undertaking is made

I have satisfied myself that the defendant understood the nature and extent of his obligations under the conditions of bail and the consequences of failure to comply with them.

Undertaking entered into on:
Date:
Place:
in the State of Queensland before me.

_____
Signature
Title: Justice of the Peace

File No:

Form 8
QUEENSLAND
BAIL ACT 1980
(Section 20)

NOTICE TO DEFENDANT AND SURETY OR SURETIES OF UNDERTAKING AS TO BAIL

1. A defendant who fails to appear in accordance with his undertaking without reasonable cause therefore or who breaks any other condition of the undertaking commits an offence and is liable to a penalty of 40 penalty units* or imprisonment for two years.

2. Where a Court is satisfied that a defendant has failed to appear before the Court in accordance with his undertaking and surrender into custody, the Court may declare that the undertaking be forfeited. If forfeiture is declared, you may be required to pay the sum of money for which you are bound by the undertaking.

3. Where a deposit of money or other security is made by the defendant and/or the surety or sureties as a condition of bail and the undertaking has been declared to be forfeited because of the failure of the person released to appear in accordance with his undertaking, the deposit or other security may become forfeited and paid to Her Majesty.

4. A surety may make application to the Court at any time before a condition of the undertaking is broken by the defendant, or the defendant is apprehended pursuant to Section 29 of the *Bail Act 1980*, for discharge of his liability with respect to the undertaking.

5. If a surety believes that the defendant is likely to break the condition for his appearance and for that reason wishes to be relieved of his obligations and notifies a member of the police force in writing to that effect, that member of the police force may apprehend the defendant without a warrant.

6. **Information about effect of guilty plea**

The attention of the defendant is drawn to subsections 13(1) and (2) of the *Penalties and Sentences Act 1992* -

> **"Guilty plea to be taken into account**
> **13.(1)** In imposing a sentence on an offender who has pleaded guilty to an offence, a court -
> (a) must take the guilty plea into account; and (b) may reduce the sentence that it would have imposed had the offender not pleaded guilty.
>
> **(2)** A reduction under subsection 1(b) may be made having regard to the time at which the offender -
> (a) pleaded guilty; or
> (b) informed the relevant law enforcement agency or his or her intention to plead guilty."

Signature of person before whom undertaking is given

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*Penalty units are determined under the *Penalties and Sentences Act 1992*. As at 18th December 1995, 1 penalty unit equals $75.00

25 Sureties

WHAT is a surety?

A surety is a person who guarantees that the defendant will abide by the bail undertaking.

Every surety must:

- be at least 18 years of age
- have no conviction for an indictable offence
- not be detained subject to the Mental Health Act 2000
- not be insolvent
- not be charged or likely to be charged with an offence
- be worth more than the amount of bail in real or personal property
- not be a person for whom a guardian or administrator has been appointed under the *Guardianship and Administration Act 2000*.

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, or else may simply promise to pay such a sum if the defendant fails to appear at the hearing.

HOW do I enable a surety to become a party to a bail undertaking?

The surety must sign an affidavit of justification before a JP before becoming a party to the bail undertaking. There is a standard form for this procedure,

which you should read carefully. It is a sworn or affirmed document, and you are permitted to ask any questions, or see any evidence of ownership of property, when determining the person's suitability to act as a surety (see end of chapter 24).

You must be satisfied that the person wishing to be the surety meets the requirements listed above. You must also be satisfied that if the surety is forfeited, the loss of money is not ruinous or injurious to the person or their family.

If cash money is deposited as part of the bail undertaking, you should also be satisfied as to the origin of the money, as it may be the proceeds of a robbery and therefore have no value to the surety.

You should also take into account the surety's character and their relationship with the defendant.

Frequently asked questions

What happens if the defendant fails to appear at the hearing?

If this happens, the sum of money that the surety has either paid or promised to pay is forfeited to the Crown.

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 past .....years.

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**** .....

.....

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 commission 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 .....in the State of Queensland

this .....day of .....19 .....

.....
(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.

Your special responsibilities

26 Assisting people with disabilities

According to a statistical survey conducted in Australia in 1998, 19 per cent of the Australian population suffer from some form of disability. The degree of disability ranges from very minor conditions to major disabilities that have a serious effect on lifestyle. These statistics strongly suggest that, as a JP (Qual), you will at some time in your career need to give assistance to a member of the public with some form of disability.

Remember at all times to treat people with disabilities with dignity and respect. If they are in the company of a carer, or even just a friend or colleague, address your remarks to the person themselves, not to the carer or friend. If the carer has to act as an interpreter, still speak to the person, and listen to the carer. One of the major complaints from people with disabilities is that they tend to be left out of the conversation when an able-bodied person accompanies them.

There are varying forms of disability, and you must exercise a duty of care according to the disability—a duty of care that would not be necessary when dealing with an able-bodied person. You must still maintain the 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 it will affect their ability to complete the documentation that they have approached you about. Most people will be forthright, and let you know at the outset if they are unable to sign, or unable to read or hear, or whatever the issue is. If they do not volunteer the information, you should be mindful that some people with disabilities are very self-conscious and just require a little understanding. You may also need to modify the language and pace of speech you use to ensure they understand you.

When dealing with someone who is vision impaired:

Step 1 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.

Step 2 Then read the entire document to them, allowing time for them to ask questions if they need to clarify anything.

Step 3 Complete a certification on the statement, 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 placed their signature or mark upon the document in my presence.

The person should then sign or place their mark upon the document, and you should make the necessary annotations around the mark as follows:

His

John Henry *XXX Smith*

mark

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

When dealing with someone who is hearing-impaired:

If a person is hearing impaired, check if they need the services of a 'signer' to interpret between the signatory and yourself or whether they lip read. The signer should make an oath or affirmation that they will interpret correctly. The wording is as follows:

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.

Having the signer make an oath or affirmation is particularly important if the document to be witnessed is to be sworn or affirmed.

If there is no signer to interpret, 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 fulfi lled your obligations and witnessed the documents.

When dealing with someone who has speech language impairment:

Firstly check if they can hear and understand you. If so, ask them how they wish to communicate eg. they may wish to write or sign. It is possible they will present with a signer if that is the case. The signer should make an oath or affirmation that they will interpret correctly. The wording is as follows:

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.

Having the signer make an oath or affirmation is particularly important if the document to be witnessed is to be sworn or affirmed.

If there is no signer to interpret, 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 fulfi lled your obligations and witnessed the documents.

When dealing with someone who is unable to read or write:

Step 1 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.

Step 2 Then read the entire document to them, allowing time for them to ask questions if they need to clarify anything.

Step 3 Complete a certification on the statement, 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 placed their signature or mark upon the document in my presence.*

The deponent should then sign or place their mark upon the document, and you should make the necessary annotations around the mark as follows:

His

John Henry *XXX Smith*

mark

You should then witness the signature in the usual manner.

When dealing with someone who has motor or physical impairment:

There are many forms of such impairment, from lack of limbs to paralysis, and people's individual needs vary. Simple things like ensuring that a person in a wheelchair has a writing surface where they can comfortably sign the document are very helpful.

If, because of their disability, the deponent is unable to hold the 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.*

Then complete the document in the normal manner.

When dealing with a person who has an intellectual impairment:

Extreme caution should be taken when witnessing a document for someone who has an intellectual disability. In most cases, such a deponent would have a guardian or attorney who is legally entitled to make decisions on their behalf. If they do not appear to have a guardian, it is recommended that you refer the matter to the Adult Guardian, or the Guardianship and Administration Tribunal.

Under no circumstances should you witness a document if you are of the opinion that the deponent is not capable of understanding the document. If you are in doubt, you should obtain a professional opinion before witnessing the document. This could be a medical officer or a teacher.

Assisting people with non-English speaking backgrounds

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When dealing with someone who is a non-English-speaker:

You may need to use a language interpreter on all occasions when you are dealing with a non-English-speaker. Before you proceed to witness the document, ask the interpreter to make oath or affirmation in the following words:

Oath of interpreter

> *I 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 and all persons speaking the English language, 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 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 and all persons speaking the English language, 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 may proceed with the document in the normal manner, using the interpreter.

28 Keeping records

Why keep records?

As a JP (Qual), you will deal with a variety of documentation. Sometimes the contents of documents are challenged in a court of law, and you may be called to the court to give evidence about what occurred when the documents were witnessed.

It is therefore important to keep records, in some form, of the documents that you have witnessed.

How detailed should my records be?

This will depend on you and on the volume of work you undertake. At the very least, you should keep a register noting the date, name of deponent and type of document.

However, if you sign, say, twenty to thirty documents a week, it would be impossible to keep detailed records of every event.

For standard documents, stick to a standard procedure.

If you find yourself with a large volume of work, you would be well advised to follow a standard procedure for dealing with a particular form, and not to deviate from that procedure.

Then if a document you witnessed is challenged in court, you can honestly say that, though you have no special recollection of this document, your normal practice is to proceed in a particular way, and that you do not deviate from this practice.

For unusual documents, keep detailed records.

If the document to be witnessed is unusual, or there are unusual circumstances, it is wise to keep more-detailed records.

- Where the legislation demands that certain things be done (as with documents that fall under the *Land Act 1994* and *Land Title Act 1994*, where proof of identity is required), it may be advisable to keep a record of what was produced to prove identity.
- Detailed records should also be kept if you have anything to do with a power of attorney document.

Confidentiality

Any information that comes into your possession as a result of your offi ce as a JP (Qual) must remain confidential. Your records should therefore not include details about the contents of the document, as this may breach confi dentiality between yourself and the deponent.

Security

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

When should I make my records?

You should make them 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.

Example of Register/Log Book

Date	Name	Document	Proof of ID	Comments
01/09/2006	John Smith	Stat. dec.	Driver's licence	
31/10/2006	Sue Black	Certify copies	Student ID card	3 copies certified
07/11/2006	Jane Brown	Affidavit	Driver's licence	Family Law Court affidavit

29 Appearing in court

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

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

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

What are the correct forms of address?

There are several types of courts, and they are convened by different members of the judiciary. You should endeavour to address the judicial officer with the correct title when in court. The following is a guide:

Court convened by:	**Addressed as:**
Supreme Court Judge	Your Honour
District Court Judge	Your Honour
Magistrate	Your Honour
2 Justices of the Peace (Magistrates Court)	Your Worships
Registrar	Registrar

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

When you are summonsed to appear in court to give evidence, you should:

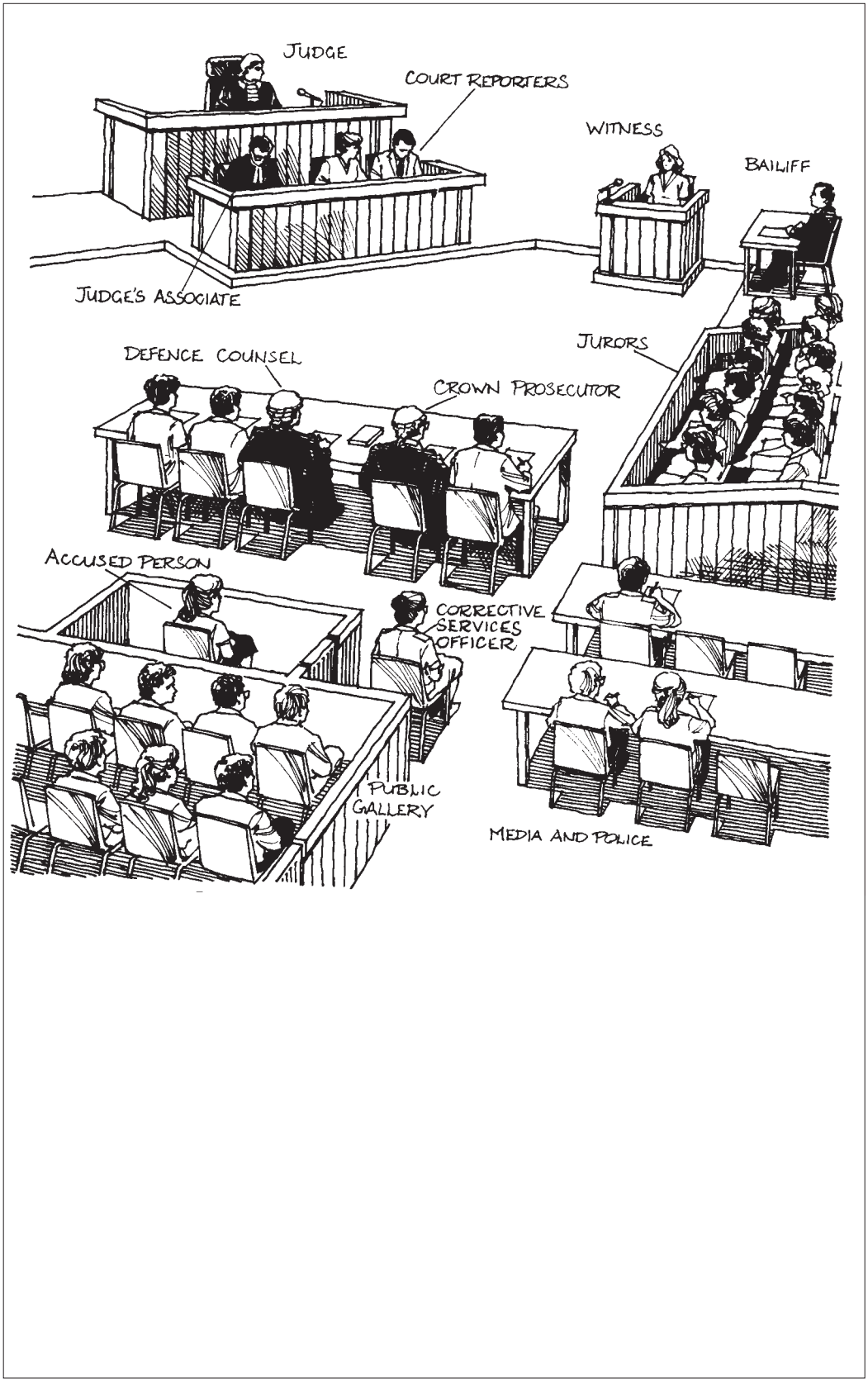
- Find out what the matter is about.
- Collect any records you have that relate to the matter.
- Before the court hearing, advise the prosecutor or defence solicitor (depending on whether you are a witness for the prosecution or defence, plaintiff or defendant) that you would like to refer to your records 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 that you have already said in evidence.

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

A typical courtroom



Your conduct

30 Request for legal advice

Most JPs (Qual) 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 I'm asked for legal advice?

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

Be careful not to take sides, or to be sympathetic one way or the other, or to offer an opinion as to possible grounds of legal action or the likely success of such an action.

Instead, you should recommend that the person contact a solicitor, or refer them to the relevant government department (a contact list is included in appendix C of this manual). You should not refer to a private solicitor.

It is a good idea 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.

Standards required for JPs (Qual)

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

There are also statutory requirements that, as a JP, you must follow. The following is not an exhaustive list, but you should use it as a guide.

Step 1 You shall abide by the law, and be of good behaviour at all times.

Step 2 You shall not accept any reward, gift or payment for services rendered as part of your official duties.

Step 3 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 should be treated with utmost confidentiality.

Step 4 You must not use any information you receive as a result of your official duties for your own, or any other person's, profit.

Step 5 You should never give legal advice.

Step 6 You should not witness any document unless the oath or declaration is authorised by an Act or other law.

Step 7 You should not witness a document unless it is substantially in the correct format for that type of document. Variations that are unusual and not provided for under an Act or other law should not be witnessed.

Step 8 You should never witness a document that the signatory has signed anywhere other than in your presence.

Step 9 You shall never witness a blank document, or a document that has blank spaces in it.

Step 10 You shall always warn the signatory of the consequences of making a false statement.

Step 11 When witnessing an oath, affirmation or declaration, you shall always ensure that the signatory takes it in the proper manner and that nothing is substituted for the Bible or Koran when they are required.

Step 12 You should not be pressured into signing a document. Take the time to ensure that the documentation is correct, and, if you do not know, find out before you sign it.

Step 13 You shall not refuse to sign a document unless it is blasphemous, seditious, obscene, known to be false, vindictive or vexatious.

Step 14 You should not have your registration number engraved on your seal of office.

Step 15 You shall advise the Department of Justice and Attorney-General of any change of address.

Step 16 You shall advise the Department of Justice and Attorney-General of any event that would disqualify you from holding office.

32

Liability of JP (Qual)

JPs (Qual) carry out many functions as part of their duties, and the question of liability for those actions has arisen on many occasions.

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

36.(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 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 is not authorised by law, or that the act was done within the law but maliciously, and without reasonable cause.

Appendices

A

Qualifications and disqualifications

Qualifications

A person wishing to be appointed as a JP (Qual) must be considered a '*fit and proper person*' (section 16(1)(a) *Justices of the Peace and Commissioners for Declarations Act 1991*). The applicant must also be 18 years of age or older, and an Australian citizen.

Disqualifications

Among the provisions of the *Justices of the Peace and Commissioners for Declarations Act 1991* and Justices of the Peace and Commissioners for Declarations Regulation 1991 is a list of people who are not qualified to be appointed to, or to continue in, the office of JP (Qual).

A person who:

1. is an undischarged bankrupt or is taking advantage, as a debtor, of the current laws relating to bankrupt or insolvent debtors; or
2. is convicted of an indictable offence (whether on indictment or summarily); or
3. is convicted of an offence of:
   - wrongfully acting as a JP (Qual), or
   - receiving a reward for the performance of their official duties as a JP (Qual); or
4. has been convicted of more than two offences other than an offence under the *Transport Operations (Road Use Management) Act 1995*; or
5. within five years before appointment, has been convicted of an offence other than an offence under the *Transport Operations (Road Use Management) Act 1995*; or
6. within five years before appointment, has been convicted of an offence under section 79 or 80 of the *Transport Operations (Road Use Management) Act 1995*; or
7. within four years before appointment has been convicted of more than two offences under the *Transport Operations (Road Use Management) Act 1995*; or
8. within five years before appointment, has been given a notice by the Registrar as outlined in section 10 of the Regulation, is not qualified to be appointed as a JP (Qual).
9. Furthermore, an applicant who has been convicted of more than six offences under the *Transport Operations (Road Use Management) Act 1995* within the previous four years is disqualified from appointment as a JP (Qual) for a further five years.

If you are subject to any of these provisions, you must immediately notify the Registrar of Justices of the Peace and Commissioners for Declarations in writing.

The *Justices of the Peace and Commissioners for Declarations Act 1991* also gives the Governor-in-Council the power to revoke the appointment of a JP (Qual) and to prohibit such a person from acting in office for a stipulated period, both by notification in the *Government Gazette*.

Resigning

If at any time you wish to resign from the position for any reason (such as the pressure of work, the demanding nature of the role, or health reasons), you can do so by notifying the Registrar of Justices of the Peace and Commissioners for Declarations in writing.

Moving interstate

There is no requirement for you to resign from your position just because you are moving interstate or overseas. In fact there may be times when Queensland JPs are needed by people living interstate or overseas to witness a Queensland or Commonwealth document.

If you are moving, whether within Queensland or outside, please ensure that you notify the Registrar of Justices of the Peace and Commissioners for Declarations of your new address within 30 days of moving.

Application for appointment

B

To be a JP (Qual), you need to pass a competency assessment test, which is set by the Department of Justice and Attorney-General, and then apply to the

Department for appointment. It is not compulsory to first apply and be appointed to the position of Commissioner for Declarations before being appointed a JP (Qual).

Appointment to the position of Justice of the Peace (Magistrates Court) is dependent on the need for the services of a Justice of the Peace (Magistrates Court) in a particular location. These appointments have been generally restricted to remote Aboriginal and Torres Strait Islander communities to improve access to justice.

To apply for appointment as a JP (Qual), follow these steps:

1. Sit for an examination set by the Department of Justice and Attorney-General for qualification as a JP (Qual) and attain a pass mark of eighty per cent or higher. You will receive a Letter of Assessment giving your results.
2. Approach your local State Member of Parliament and obtain an application form. There should also be two referee report forms attached to this form. These forms can also be downloaded from the Department of Justice and Attorney-General website www.justice.qld.gov.au/jps/forms.htm.
3. Complete and sign the application form as directed. Ensure that you complete the entire form, except for the section intended for your local State Member of Parliament.
4. Ask your two referees to complete the referee report forms. Your referees must have known you for a period of at least five years, and not be related to you either by birth or marriage.
5. Return the completed application form, the referee report forms and the Letter of Assessment to your local Member of Parliament, who will complete the nomination section on the back of the form and send it on to the Registrar of Justices of the Peace and Commissioners for Declarations.

Once the registrar has received the application, checks will be carried out to establish whether or not you are suitable for appointment.

If you are successful, you will be notified in writing of your appointment, and you must then make arrangements to take your oath of offi ce (or affirmation) before a magistrate.

If you are unsuccessful, you will also be advised in writing, and reasons will be given as to why the appointment cannot be made.

C

Further information

Contact details

Organisation	Phone	Email
Office of the Public Guardian www.publicguardian.qld.gov.au	1300 653 187	adult.guardian@justice.qld.gov.au
Anti Discrimination Commission www.adcq.qld.gov.au	1300 130 670	info@adcq.qld.gov.au
Brisbane Magistrates Court www.courts.qld.gov.au	07 3247 5598	courthouse.brisbane @justice.qld.gov.au
Dispute Resolution Branch www.justice.qld.gov.au/drb	1800 017 288	drb.admin@justice.qld.gov.au
Justices of the Peace Branch www.qld.gov.au/jps	1300 301 147	jp@justice.qld.gov.au
Electoral Commission of Queensland http://www.ecq.qld.gov.au	1300 881 665	ecq@ecq.qld.gov.au
Fair Trading Queensland www.qld.gov.au/law/fair-trading	13 74 68	brisbaneoft@deedi.qld.gov.au
Land Titles Registry Queensland http://www.derm.qld.gov.au	07 3405 6900 or 13 74 68	Online enquiries only
Queensland Law Society www.qls.com.au	1300 367 757	info@qls.com.au
Legal Aid Queensland www.legalaid.qld.gov.au	1300 651 188	No email enquiries accepted
Legal Services Commission www.lsc.qld.gov.au	1300 655 754	lsc@lsc.qld.gov.au
Mental Health Queensland www.health.qld.gov.au/mentalhealth	07 3234 0111	N/A
Public Trustee of Queensland www.pt.qld.gov.au	1300 360 044	clientenq@pt.qld.gov.au
Queensland Registry of Births, Deaths and Marriages www.qld.gov.au/bdm	1300 366 430	bdm-mail@justice.qld.gov.au
Queensland Civil and Administrative Tribunal www.qcat.qld.gov.au	1300 753 228	enquiries@qcat.qld.gov.au
Victim Assist Queensland www.qld.gov.au/victims	1300 546 587	victimslinkup@justice.qld.gov.au

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For more information go to

www.qld.gov.au/jps