

Information Fact Sheet 7

Search Warrants

1. What is a search warrant?

Search warrants are issued under various legislation including but not limited to the *Criminal Investigations Act 2006*, *Criminal Investigation (Identifying People) Act 2002*, *Misuse of Drugs Act 1981*, *Criminal Property Confiscation Act 2000*, and *Weapons Act 1999*. While the form and reason for each warrant will be different under each Act, essentially a warrant is a document which allows the person named in the document to carry out certain acts that, without the warrant, may be unlawful.

When determining whether it is appropriate to issue a warrant, the Justices of the Peace (JPs) must act independently and give consideration to each application. Proper procedure must always be followed.

Consider the High Court Decision in *George v Rockett* (1990) 170 CLR 104 which states:

“A search warrant thus authorises an invasion of premises without consent of persons in lawful possession or occupation thereof. The validity of such a warrant is necessarily dependent upon the fulfilment of the conditions governing its issue.”

A warrant is a serious matter, because it authorises interference with the privacy, rights and liberty of an individual, therefore JPs must be careful when exercising the judicial discretion to issue a warrant.

2. Who has authority to issue a search warrant?

Judicial Officers who include Judges, Magistrates and JPs appointed in Western Australia are authorised to issue search warrants.

However, JPs do not have the power to issue a “Warrant in the First Instance to Arrest a Person for an Alleged Offence”, or to issue search warrants in relation to offences committed in another state. Such warrants are issued by a magistrate.

A JP who has reached the age of 75 years must not issue any warrant or other document that authorises, or includes authorisation for the arrest, apprehension or detention of a person; the entry or search of a place, aircraft, vehicle/vessel or seizure of anything.

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Peace Act
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3. Matters to be considered when issuing a search warrant

When issuing a search warrant JPs should apply the same principles that govern the witnessing of documents, such as verifying the identity of the signatory. However, when issuing search warrants JPs have added responsibilities. Before issuing a warrant, you must be satisfied of three things:

- that an offence is suspected to have occurred within Western Australia
- that the offence exists in Western Australian/Commonwealth law
- that all the necessary details are included in the application.

4. Steps to be followed when issuing a search warrant

When approached to issue a search warrant, you should:

1. Ask the applicant for some form of identification.
2. Immediately place the applicant on oath (or affirmation). The general form of the Oath Affirmation and how to administer an Oath/Affirmation can be found in the *Oaths Affidavits and Statutory Declarations Act 2005*. Thus, if you ask any further questions about the application for a search warrant, the applicant's answers are considered to be under oath.
3. Read the application carefully and ensure that the following details are provided:
 - the applicant's full name, rank and registered number
 - a description of the place/vehicle etc to be searched sufficient to identify the premises/vehicle etc correctly
 - If 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/vehicle etc
 - if the search warrant is to be executed at night, the warrant should stipulate the proposed hour/ or range of hours in which the warrant is to be executed. (This is because things can come up in an investigation and execution may be delayed.)
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.

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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?
6. Record any further information supplied to you under oath in case you need it later. This information may be recorded in your log book
7. If you decide to refuse to issue the warrant, you should cross out the application and note your reasons on the form
8. Once you are satisfied that the warrant is justified, witness the applicant's signature on the application by signing it and printing under your signature your full name, title and registration number.
9. Ensure the warrant is dated with the date of issue and the time the warrant is authorised (use 24 hour clock).

Note: 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.

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 do not.

5. Notes for consideration when issuing a search warrant

- You should refuse to issue a search warrant if you believe that the 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.
- You should maintain and record details of documents witnessed including warrants in a log book. Your decision to approve/refuse the warrant should also be recorded in the log book.
- Conflict of Interest – you should decline to issue a warrant and refer the applicant to another JP:
 - If you know personally or are related to the person who is the subject to the warrant;
 - If you have a personal or private interests that may conflict or be perceived to conflict if you proceed to consider an application;
 - Could there be benefits for me now or in the future that could cast doubt on my objectivity when issuing a warrant?
 - Perception is important, how will my involvement in the decision or action in respect to the application for a warrant be viewed by others? Are there risks associated for me or my organisation?
 - Never attend the execution of a search warrant even if requested.

For more information on this Fact Sheet, please refer to the [Justice of the Peace Handbook](https://www.wa.gov.au/organisation/departments/department-of-justice/become-justice-of-the-peace) available on <https://www.wa.gov.au/organisation/departments/department-of-justice/become-justice-of-the-peace>.

Alternatively, you may contact:

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