

Applying for a Peace and Good Behaviour Order

What is a Peace and Good Behaviour Order?

A Peace and Good Behaviour Order ('PGBO') is an order of the Magistrates Court under the *Peace and Good Behaviour Act 1982* (Qld) ('The Act'). A PGBO requires a person to stop any activity that threatens to cause harm to you, your property, or any person under your care. This order does not include harassment and verbal abuse.

The purpose of a PGBO is to protect an individual's right to peace and quiet, undisturbed by threats to their wellbeing or quality of life. It also protects the community from any risks presented by people who participate in antisocial, disorderly or criminal conduct. The making of a PGBO is a civil process that must be initiated by you.

Who can make an Application for a PGBO?

You can make an application under the Act if you have a problem or dispute with a person who does not fall within the definition of a respondent under the *Domestic and Family Violence Protection Act*.

A PGBO can be applied for if threats are being made towards a person or a person's property from:

- A person they live next door to ie. a neighbour;
- A person they live with (a housemate);
- A person they work with; or
- Anyone else.

You may make a complaint to a justice of the peace that a person has:-

- threatened to assault or do bodily injury to you or someone under your care— or has threatened to have someone else injure you—and you fear this person because of this threat;
- threatened to destroy or damage your property— or threatened to have someone else damage your property—and you fear this person because of this threat; or
- displayed intentional conduct that has caused you to fear that the person will destroy or damage your property.

In summary, a PGBO can only be made if the court is satisfied that there have been threats made to a person or their property, or there has been intentional conduct which would cause them to fear destruction or damage to their property.

The orders are not intended to be used to deal with circumstances of minor disagreements between parties. The Court will not make an order under the Act if the evidence of the applicant is that they consider the threats to be a mere annoyance and not something which causes fear. The orders are designed to address very serious, repeated and ongoing misbehaviour that causes fear of future harm or damage.

What to do before you apply for a Peace and Good Behaviour Order

It is recommended that you seek legal advice before applying for a PGBO. You should obtain advice about the strength of your case and whether there are other more appropriate options available depending on the circumstances, such as contacting the police.

Alternatives to going to court

In some cases, there may be better alternatives to applying for a PGBO in the first instance. These include:

a. Communicating with and/or writing to the other party about the problem and making suggestions to resolve it.

This can be done directly (such as via letter or email). If you do not feel comfortable contacting the other person directly, you could seek the assistance of a solicitor to communicate with the other party on your behalf. The communication with the other party may include a request to refrain from certain behaviour.

b. Mediation (please also see our Mediation fact sheet). Mediators can try to help you reach an agreement. However, they will not make a decision for you, give you legal or other advice about your dispute or take sides.

Agreements reached through mediation are not usually legally binding. Mediation is often much cheaper than going to court.

You can contact a private mediator, Dispute Resolution Centre or BCLS Mediation Service if you want to try to settle the matter without legal action. It is recommended that you get legal advice prior to organising a mediation.

If you have been threatened and are in genuine fear of violence, mediation is unlikely to be appropriate.

c. Making a complaint to the Police. This may be a better alternative if the incident is a one off and satisfies the elements of a criminal charge. Harassment, verbal abuse or stalking can be considered criminal charges.

How to apply for a Peace and Good Behaviour Order

Firstly, you must fill out two forms:

- Form 1 – Complaint: and
- Form 2 – Summons:

These documents can be downloaded from the Qld Courts Website.

The information you provide must be accurate and true. There are penalties for making false statements under oath.

On the Complaint Form you must explain why you are making a complaint and clearly state the orders you want to make against the other person.

Once you have filled out both forms, you will need to provide the original forms, plus two copies, to a JP to be signed and sworn. If the JP believes you have reasonable grounds to fear the person, they can issue:

- A summons directing the defendant to appear before a Magistrates Court at a certain time, date, and place; or
- A warrant to apprehend the defendant and bring them before a Magistrates Court.

Once signed by a JP, file the two forms with your local Magistrate Court. There will be a fee of approximately \$107.95 to lodge your forms (current as at 6 July 2022) The court staff will keep the original forms and leave you with the two copies. You should retain a copy for your records.

Service of documents

You must then serve a copy of your Complaint form on the other party before the court hearing. Serving documents ensures that other involved parties are aware that there is a case being brought against them.

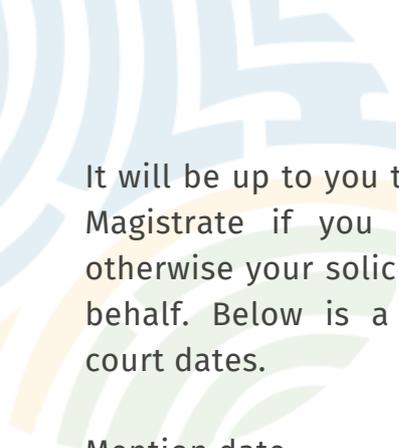
Service can be done by a person over the age of 18 handing a copy of the Complaint and Summons directly to the defendant. However, it is recommended you do not get someone directly involved with you or the defendant to serve the documents.

The police may be able to serve the document on the other party on your behalf. You can enquire at your local police station to see if they can help with serving the documents. If they cannot assist, you will need to engage a court bailiff or private process server to serve the documents for you. You can find process servers by searching online via the yellow pages website.

Once service has been effected, an Oath of Service must be completed by the person serving the complaint and summons.

What happens at court?

It is your responsibility to attend court to get an order. You can seek private solicitor representation if you wish. You can also bring a friend or relative to court for support.



It will be up to you to put your case to the Magistrate if you are self-representing, otherwise your solicitor will speak on your behalf. Below is a summary of the key court dates.

Mention date

This is the first date where a Magistrate can make an order if either the defendant agrees or fails to appear. If the defendant disagrees with the making of an order, the Magistrate will adjourn the matter for either a hearing date or another mention. The Magistrate may also refer the matter to mediation before proceeding to a Hearing.

Under the Act, if the court feels the dispute can be resolved by mediation, they can order you attend mediation, but only if both parties agree to participate.

Hearing date

On the date of the hearing both parties will present their version of events. This includes written material sworn as an Affidavit and can include material from other witnesses. You should serve any Affidavit filed prior to the Hearing date.

You will need to answer any questions and give reasons for the application. The onus is on you to prove that the allegations you make in your complaint are true. This is done under oath so will need to be truthful and honest as there are penalties for making false statements under oath.

The Magistrate will then decide on what you and the defendant have presented. In order for an application to be successful, you will need to show a real and genuine threat of harm, that the threat of harm is recent and that you believe it will continue to reoccur in the future.

What if the person I have complained about does not appear at court?

If there is no doubt the defendant has received your summons but failed to appear, the Magistrate may issue a warrant to apprehend the defendant to bring them before the court, proceed with the hearing and make an order without the defendant or adjourn the hearing to another date.

Outcomes of a Peace and Good Behaviour Order Application

The court can impose an order upon the defendant prohibiting them from contacting you, threatening you, attending your residence or workplace, damaging your property and/or arranging for someone else to do any of the above.

If an order is made the court will send you a copy of the order. An order ordinarily lasts for 1-2 years but it may be made for a longer period. After the order expires, if you feel the need to extend the order you must go back to court and start the process again.

On the other hand, the court might dismiss your complaint and not make an order. In this case, the Magistrate may make an order for you to pay costs. Costs come from the court's power to order either side pay some or all of the other party's costs from the proceedings. There may be further costs imposed upon you if the court decides your application was filed vexatiously or maliciously against the defendant. This is why obtaining legal advice before commencing proceedings is strongly recommended.

Consequences for breach of a PGBO

If the defendant disobeys the order, you can contact the police and they will criminally charge the defendant if their actions constitute a breach of the PGBO.

The matter then becomes a criminal matter and the maximum penalty is 1 year imprisonment or a fine of up to \$14,375 (current as at 6 July 2022).

Where can I get legal advice?

If you need legal advice about a PGBO matter, you can contact BCLS on 3162 3282 to organise an appointment. Our full contact details are below.

Bayside Community Legal Service acknowledges the traditional owners of the lands across Queensland, and in particular the Quandamooka peoples, the traditional owners of this land where our Bayside community is situated. We pay our respect to elders past, present and emerging.



Contact Bayside Community Legal Service

Website: www.bcls.org.au

email: info@bcls.org.au

Phone: (07) 3162 3282

Office Hours: 8:30am-4:30pm Monday to Thursday

Address: Wynnum Community Centre, 105 Florence Street, Wynnum QLD 4178
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