

Applying for protection under the Peace and Good Behaviour Act

What is the Peace and Good Behaviour Act 1982?

This is an Act to protect your right to peace and quiet, undisturbed by threats to your wellbeing or your quality of life.

Who can make an application under this Act?

If you have a problem or dispute with someone who does not fall within the definition of a respondent under the Domestic and Family Violence Protection Act, you may request an Order under the Peace and Good Behaviour Act if the person has:

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

Is there anything I should consider before I make an application under the Act?

Before you start proceedings, it is wise to seek legal advice to discuss issues such as:

- **Costs:** If your case is unsuccessful before a court, be aware of how much it may cost you if court costs are awarded against you.
- **The strength of your case:** The onus is on you to prove in court that the allegation you make in your complaint is true.

Also be aware that all information you provide must be true and accurate. There are penalties for making false statements under oath.

Is there alternative action I can take?

If your problem or dispute does not match one or more of the above circumstances, but you believe you are being subjected to unacceptable behaviour,

you should contact the police or obtain legal advice about other options available to you.

If a crime has been committed, refer the matter to the police for action.

You may wish to consider mediation. Contact a Dispute Resolution Centre to arrange free mediation. Appointments are usually received within three weeks.

Mediation is a way to try and settle a dispute without having to take legal action. It involves you and the other person meeting with mediators who do not take sides, give advice or make decisions for you. The mediators' role is to help you work out an agreement that is acceptable to both of you. Mediation saves you time and money, and is successful in more than 90 percent of cases.

Mediation is suggested for all complaints but may not be an option depending on the alleged threats of violence involved.

For more information contact the Dispute Resolution Branch, Department of Justice and Attorney-General on (07) 3239 6007 or 1800 017 288.

How do I apply for an order?

Step 1 Pick up a complaint and summons form from your closest magistrates court.

Step 2 Complete the form. Provide details about the threats made against you (you are referred to as the 'complainant').

Step 3 An original and two copies of the form should be provided to a Justice of the Peace (JP) for your complaint to be signed and sworn. If you are unsure where to locate a JP, contact your nearest magistrates court of the JP Branch on 3239 6098 or (outside Brisbane) 1300 301 147.

Step 4 If the JP is satisfied there are reasonable grounds for you to be in fear of the person you have complained about (this person is referred to as the 'defendant') and that the defendant has a case to answer in court, he/she will:



- issue a summons directing the defendant to appear at a certain time, date and place before a magistrates court or
- issue a warrant to apprehend the defendant and bring him/her before a magistrates court.

Once a JP has issued the summons it is your responsibility to file the original complaint and summons with the magistrates court registry closest to where the defendant lives or where the incident or threat took place. You must pay the relevant filing fee when lodging your complaint.

You then need to organise for the complaint and summons to be served on the defendant. Check if the police can organise this service for you. If not, you will need to arrange for the summons to be served by the court bailiff or a private process server (this will incur a further fee).

Note: A JP may consider referring the matter to mediation instead.

Do I have to go to court?

Yes, you must attend court (with or without a legal representative). It is your responsibility to put your case to the magistrate.

What happens in court?

The first date is called a mention date. On this date a magistrate can make an order if (a) the defendant agrees or (b) if the defendant fails to appear and it is proven they have been served with a copy of the complaint and summons, and you can show the complaint falls into one or more of the previous mentioned categories.

Instead of making an order, the magistrate may refer the matter to mediation before proceeding.

If the defendant contests the complaint an adjournment will be given and a hearing date set.

On a hearing date it is the responsibility of both parties to present their version of events and substantiate their cases with evidence (witness/es or written material presented as a sworn affidavit).

The magistrate will make a determination on the evidence presented to the court.

Be prepared to answer all questions and give your reasons for making the application. You are under oath to provide true and honest statements.

If you don't appear, or the court finds that an application is filed vexatiously or maliciously, costs may be awarded against you.

Feel free to take a lawyer, friend or relative to court for support. If you need an interpreter or any other assistance, advise the court in advance. You will need to provide your own interpreter.

The court may dismiss the complaint or impose an order against the defendant. If the magistrate makes the order, both you and the defendant receive a copy. If the complaint is dismissed a magistrate may make an order for costs against you.

What happens if the defendant ignores the summons and doesn't appear in court?

If there is no doubt that the defendant received the summons, the magistrate may do one of the following:

- issue a warrant to apprehend the defendant and bring him/her before the court
- proceed with the hearing and make a determination without the defendant
- adjourn the hearing to another time.

What happens if the order is disobeyed?

If the defendant disobeys the order, you can make a further complaint under a breach of the order. You can also contact the local police who may take action on your behalf.

The defendant may be fined up to \$7500 or imprisoned for one year for breaching an Order.

For more information

For assistance with making a complaint, contact your nearest magistrates court.

Please note: This publication was produced prior to the current government.