

PEACE AND GOOD BEHAVIOUR ORDER

A self-help kit to get a
Peace and Good Behaviour Order

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Disclaimer

This publication is intended to give general information about the subject of law that it deals with. While every effort has been made to ensure accuracy, the law is complex and constantly changing. No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.

Contents

Introduction	2
What is a Peace and Good Behaviour Order?	2
What order should I apply for?	2
Other options	3
What do I have to prove to get a Peace and Good Behaviour Order?	3
Do I need to go to court?	3
Try talking	3
Try writing	3
Try mediation	4
How to apply for a Peace and Good Behaviour Order	4
What do I do next?	4
What is service?	5
How do I serve the other party?	5
What about the Oath of Service?	5
What do I do then?	5
Do I need a solicitor to represent me when I go to court?	5
What do I call the Magistrate?	5
What if the person I am in dispute with does not turn up at court?	6
What if the other party comes to court?	6
What orders can the court make for me?	6
Costs	6
What happens after I have been to court?	6
How long will the order last?	7
When can the police assist me?	7
Checklist	7
Contact points	7
Example documents	8
Attachment A: Complaint form	8
Attachment B: Summons form	9
Attachment C: Oath of Service	10
Attachment D: Affidavit	11
Attachment E: Sample order	13

Introduction

There are situations when you can feel threatened by others in the community. There are a number of orders (decisions made by the court) available to help you in this situation, especially when someone has assaulted you or damaged your property or has threatened to do either of these things. The best way to respond to any of these types of conduct will depend on your relationship with the person by whom you feel threatened.

What is a Peace and Good Behaviour Order?

It is an order of the Magistrates Court, requiring a person to stop any activity that threatens to cause harm to you or your property or threatens any person under your care or charge. It does not include harassment and verbal abuse, for example a person calling you names or telephoning you. It also orders that person to be of good behaviour and keep the peace for a certain period of time (usually between 12 months and 2 years), although the length of time of the order is at the discretion of the Magistrate and may be for a shorter or longer period of time.

If you fear for your own safety or that of another person at any time you should immediately contact the police by calling 000.

What order should I apply for?

It is not uncommon for people to apply for the wrong type of order to protect themselves from another person. The type of order you should apply for is determined by what type of relationship you have with the other person.

Applications should be brought under the *Peace and Good Behaviour Act 1982* (Qld) if the person who is threatening you is one of the following:

- your neighbour
- your housemate
- your workmate
- any other associate.

There are some relationships that are covered by the *Domestic and Family Violence Protection Act 1989* (Qld) and these include:

- spousal relationships (i.e. relationships between people who are or were married, are living together in a de facto relationship and are the biological parents of a child, even if they were not living together)
- intimate personal relationships (i.e. relationships between people who are or were engaged, or people who dated and, although not living together, their relationship was so enmeshed that the actions of one affected the other)
- family relationships (i.e. relatives by blood or marriage and those regarded as a relative)
- informal care relationships (i.e. relationships between an unpaid carer and someone who, because of a disability, illness or impairment, is dependent on that carer for activities of daily living).

If the above relationships apply in your case, an application should be brought under the *Domestic and Family Violence Protection Act 1989* (Qld). A self-help kit called *How to apply for a domestic violence order* is available from Legal Aid Queensland.

Other options

The *Criminal Code Act 1899* (Qld) (s 359E) contains a provision that makes stalking a crime. This covers activities such as following, loitering near, watching or approaching another person or a place where they live, work or visit, contacting another person persistently by phone, fax, mail or email, any intimidating, harassing or threatening act and threats of violence against a person or their property (see s 359B for a more detailed explanation).

However, for the stalking offence to apply, the activity must have occurred on at least two separate occasions or on one occasion for a prolonged period of time. The act must also be directed at the person and must:

- cause apprehension or fear of harm to the stalked person, another person or to their property or
- cause detriment to the stalked person or another person.

Successful prosecution of criminal charges requires proof beyond reasonable doubt. The maximum penalty is seven years jail. A judge may also issue a Restraining Order whether or not a defendant is convicted, and breach of such an order is subject to a \$4000 fine or up to one year in jail.

What do I have to prove to get a Peace and Good Behaviour Order?

You must prove that someone has threatened to:

- assault or physically injure you or someone under your care or charge or
- have someone else assault or physically injure you or someone under your care or charge or
- destroy or damage any property belonging to you or
- have someone else destroy or damage any property belonging to you.

You must also prove that you fear the person against whom you are seeking the order.

Alternatively, your complaint may be that the intentional conduct of a person directed at you has caused you to fear that the person will destroy or damage your property.

The standard of proof required by the court is less than beyond reasonable doubt, but you must prove your case to the satisfaction of the court. You should still ensure you use the strongest possible evidence to support your case.

Do I need to go to court?

Sometimes disputes that result in arguments and threats are due to poor communication and misunderstanding. It may be worth trying to resolve the differences between you and the person with whom you have the dispute before taking action in court.

Try talking

If you feel safe to do so, talk to the person with whom you have a dispute. This may be enough to resolve your differences. You may want to meet in a place where you feel safe, such as a public space. You may also wish to take someone with you for support.

Try writing

If you feel that you can not talk to the person or you have tried talking and it has not been successful, it may be appropriate to write a letter explaining how you would like to resolve the problem.

Try mediation

It may be useful to suggest that you both attend mediation to try to resolve your dispute. Mediators can try to help you reach an agreement. 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.

Under the *Peace and Good Behaviour Act 1982* (Qld), if the court feels that the dispute can be best resolved by mediation, the court may order you to attend mediation, but only if you agree. The mediation can then only take place if the other person also agrees to participate.

If you have been threatened and are in genuine fear of violence, mediation is unlikely to be appropriate. Most mediation services will make sure that you feel safe and will only conduct mediation if you are comfortable with the process.

Mediation can be much cheaper than going to court. Details of a mediation service are set out at the end of this kit.

Remember, the best way to resolve a problem is to find a solution that works for both of you.

How to apply for a Peace and Good Behaviour Order

You need to apply at your local Magistrates Court. If you do not know where your local Magistrates Court is, contact the Magistrates Court in Brisbane (see the contact number at the end of this kit) and ask them for the address of your local court. The telephone book also has a list. Obtain a Complaint and a Summons form from the Magistrates Court. On the Complaint form you need to explain the reason for your complaint and clearly set out the orders that you want the court to make. Remember to include the details of why you are in fear. The form can be handwritten. A sample Complaint form is provided below. You can also download the form from the Queensland Courts website (www.courts.qld.gov.au).

You must sign the Complaint form in front of a qualified witness, such as a Justice of the Peace. There is usually a Justice of the Peace employed at each court, and it is best to sign off on the application at the court registry.

You will need one original and two copies.

What do I do next?

Go to your local Magistrates Court. Hand the Complaint form to the court staff and tell them you wish to file the form. There is a fee of \$81.10 for filing the form. A Justice of the Peace at the court registry can witness your signature and, after considering the information you have provided, will decide whether or not the summons (or a warrant) should be issued. You should

have the Summons form available for use in case the court decides it should be issued and complete the first two lines of the summons only. Providing that your complaint shows proper grounds, the summons will be issued by the court. The court staff will stamp the forms and will add the date of the hearing. The hearing is when you go to court and tell your story. If the other person attends the hearing, the court will also listen to their side of the story. The hearing date is also called the return date. Sometimes, a case may be 'adjourned' (deferred) to another date.

The court staff will keep the original complaint and summons and will give you the two copies. Keep one copy for yourself.

You (or another adult) must now give or serve the other copy to the person about whom you have made the complaint.

What is service?

The court has created special rules about the service of documents to ensure that each party named in a court action is aware of the case being brought against them by the other side. You must therefore serve a copy of your Complaint form on the other party before the court hearing. You should also serve any affidavit ahead of the court hearing.

Serving documents basically means that you are personally giving a document to someone or arranging to get a copy to them in accordance with the court rules. Take note that there are special rules for the service of children, prisoners and people with impaired capacity.

How do I serve the other party?

Service can be done by a person over the age of 18 handing a copy of the complaint and summons directly to the defendant. It is often a good idea to ask someone not directly involved with you or the defendant to serve the documents for you, especially if you are in fear of violence from the defendant.

You can also make inquiries at your local police station as to whether they will serve the documents for you.

If you do not know a suitable adult to serve the form and the police can not assist, you can use a professional 'process server'. Process servers charge fees, so make sure you ask in advance what the fee will be. The cost is approximately \$100 – \$200. You can find these services in the Yellow Pages under 'Process Servers'.

What about the Oath of Service?

No matter who serves the documents, once service has been completed, the Oath of Service (see below) must be completed by the person serving the complaint and summons.

What do I do then?

You then need to take the Oath of Service to the court and tell the court staff that you want to file the Oath of Service. Alternatively, you can take it to court with you on the day you are due to appear in court (the return date). When the Magistrate asks you if you have served the person you are in dispute with, you simply hand the Magistrate the Oath of Service. If the police serve the documents for you, they will complete the Oath of Service.

Do I need a solicitor to represent me when I go to court?

You can use a solicitor to represent you. You should talk with the solicitor about the costs involved and whether the bill will be a total fee or an hourly rate.

If you feel able to represent yourself, you should go to the court on the day your matter is listed. Your matter will be called by the Magistrate or the Clerk. You should tell the Magistrate your name. The person you have complained about is likely to be there. You should explain to the Magistrate why you want the order and what order you want. The person you have complained about will then be able to have their say, either personally or via their solicitor.

What do I call the Magistrate?

Magistrates are called 'Your Honour'.

What if the person I am in dispute with does not turn up at court?

If the other party has not contacted the court, and you have a properly completed and signed Oath of Service, which proves that the complaint and summons was served on the person with whom you are in dispute, then the court may:

- make the orders that you have asked for. These are commonly called 'Default Orders' (they are made because the other party defaulted by not turning up) or
- adjourn the matter to another date or
- issue a warrant to have the other party arrested and brought to court.

If the matter is adjourned or a warrant is issued, you will have to come back to court on another date to tell the court your story.

What if the other party comes to court?

If you do not have a solicitor, you must tell the court your story. You will be asked to step into the witness box, swear to tell the truth and tell your story.

It may be easier and less stressful for you to prepare your story in writing and have it available for the Magistrate and the person with whom you are in dispute. If you choose to do this, your story must be in the form of an affidavit (i.e. a sworn statement). Caxton Legal Centre Inc. has a kit called *Preparing an affidavit for the Magistrates Court* which can help you. A sample of a suitable affidavit is set out below.

While preparing an affidavit will help you to tell your story, you may still need to give oral (spoken) evidence (often called testimony) in the witness box. The other person normally will be allowed to ask you questions or cross-examine you about your story, and you or your legal representative will have the chance to do the same when the other side gives their evidence.

What orders can the court make for me?

The court can make orders preventing the other person from:

- threatening you
- contacting you
- coming to your home
- damaging your property
- arranging for anyone else to do any of the above.

A sample order is set out in Attachment E.

Costs

The Magistrate has the power to order either side pay some or all of the other party's costs in these proceedings. The Magistrate may do so where one party has been completely unsuccessful, or a party's disregard for court discretions or their delay has caused unnecessary legal costs. A costs order will only be made where mutual legal costs have been incurred and will rarely cover all of a client's costs charged by their lawyer.

What happens after I have been to court?

The court will send you a copy of the order. It will be stamped with the court's seal. It is a good idea to take a photocopy of this order and send it to the person you have complained about to make sure they are aware that the order was made. Keep a copy of the letter you sent with the order.

How long will the order last?

Usually, an order lasts for 12 months, although it may be made for a longer period. If at the end of 12 months you feel the need to extend the order, you must go back to court and start the process again.

When can the police assist me?

If the other person breaks the order, you should call the police and show them a copy of the order. The penalty for a breach is a fine of up to \$10 000 or imprisonment for one year. If the other party has committed a criminal act, such as an assault or deliberate property damage, the police can charge the other person with that crime. If the police will not assist you to take action for the breach of the Peace and Good Behaviour Order, you should contact a solicitor for assistance, as you will then have to bring a private prosecution.

Checklist

Before you take your Complaint and Summons forms to the Magistrates Court check that:

- you have signed the complaint and had your signature witnessed by a Justice of the Peace (it is sometimes possible to do this at the courthouse)
- you have made two photocopies of your complaint and summons to take with you
- you know what orders you want to ask for (e.g. for the other person [name] to stay away from your property).

Contact points

Caxton Legal Centre
1 Manning Street
SOUTH BRISBANE Q 4101
Tel: (07) 3214 6333
www.caxton.org.au

Legal Aid Queensland
44 Herschel Street
BRISBANE Q 4000
Tel: 1300 65 11 88
www.legalaid.qld.gov.au

Brisbane Magistrates Court
363 George Street
BRISBANE Q 4000
General Registry Tel: (07) 3247 5598

Mediation service

Dispute Resolution Branch
Department of Justice and Attorney-General
Level 1, 363 George Street
BRISBANE Q 4000
Tel: (07) 3239 6007 or 3006 2518
1800 017 288

Queensland Dispute Resolution Centres are listed at:
<http://www.justice.qld.gov.au/justice-services/dispute-resolution/dispute-resolution-centres>

The Queensland Courts also publish an information sheet called *Applying for protection under the Peace and Good Behaviour Act*. You can find this and other relevant forms at www.courts.qld.gov.au

Example documents – Attachment A: Complaint form

Form 1
QUEENSLAND PEACE AND GOOD BEHAVIOUR ACT 1982
(Section 4)
PEACE AND GOOD BEHAVIOUR REGULATION 2010
(Sections 8 and 12)

COMPLAINT

I, Peggy Lee Smith _____ (the complainant) of 1 Smith Street, South Brisbane
in the State of Queensland swear/affirm that Peter Robert Jones of _____

1. has threatened:

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

and the complainant is in fear of the person complained against namely _____
OR

2. that the intentional conduct of _____ (the defendant) directed at the complainant has
caused the complainant to fear that the defendant will destroy or damage any property of the complainant.

The grounds of the complaint are:

1. On 4 April 2012, Mr Jones was waiting for me outside XYZ when I left work at 5.30 pm. He walked up to me and said to me, 'You are a bitch. I will punch your head in. You stole my job.' Mr Jones then left.
2. On 8 April 2012 at about 2.30 pm, I was watering my front lawn. Mr Jones drove up in his car, jumped out and walked towards my house. He threw a rock through the front window, smashing it. Mr Jones then said to me, 'I will be back to do the rest of the house.' He then left.
3. On 10 April 2012, Mr Jones was again waiting for me when I left work. He was standing next to my car. As I approached my car he grabbed me by the wrist, hurting me. He then said, 'That's a taste of things to come.'
4. Because of these events, I am worried that he will continue to assault me or threaten to assault me. I am also frightened that he will continue to cause damage to my property.
5. I seek an order that the defendant keep the peace and be of good behaviour for a period of one year. I also seek an order that the defendant be prevented from: assaulting, threatening to assault, molesting or threatening to molest me and coming in or near my home or my place of work, communicating with me and damaging or threatening to damage my property.

I, _____ (the complainant) request that
_____ (name of Justice of the Peace) proceed according to law

(Signature of the complainant)

Sworn/Affirmed before me at _____ in the State of Queensland
on the _____ day of _____.

(Signature of Justice of the Peace)

Attachment B: Summons form

Form 2
PEACE AND GOOD BEHAVIOUR ACT 1982 (QLD)
(Section 4)
PEACE AND GOOD BEHAVIOUR REGULATION 2010
(Sections 9 and 12)

SUMMONS

To _____ (the defendant) of
_____ in the State of Queensland.

A complaint has been made before me and it has been substantiated to my satisfaction that on

_____ at _____

1. you threatened:

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

and the complainant is in fear of you.

OR

- 2. that the intentional conduct of the defendant directed at the complainant has caused the complainant to fear that the defendant will destroy or damage any property of the complainant.

You, the defendant, are hereby directed to appear before the Magistrates Court at:

Place: _____ Date: _____

Time: _____

to answer the complaint and to be further dealt with according to law.

GIVEN under my hand at

Place: _____ Date: _____

(Signature of Justice of the Peace)

(Name of Justice of the Peace)

Attachment C: Oath of Service

OATH OF SERVICE

I _____ of _____
do swear that on the _____ day of _____ 20 _____

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 brought by the defendant under *The Peace and Good Behaviour Act 1982 (Qld)*, at _____ *am/pm on the day _____ of _____ 20 _____ 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 _____ 20 _____

Deponent

Justice of the Peace

* Delete whichever is not applicable

** Specify the complainant's means of knowledge as to the defendant's last known address here.

Attachment D: Affidavit

AFFIDAVIT

R 431

IN THE MAGISTRATES COURT OF QUEENSLAND

Registry: Brisbane

Number: BP40/12

Complainant: PEGGY LEE SMITH

AND

Defendant: PETER ROBERT JONES

AFFIDAVIT

I, PEGGY LEE SMITH of 1 Smith Street, South Brisbane, in the State of Queensland, Supervisor, make oath and say as follows.

1. I am the complainant in an application for a Peace and Good Behaviour Order against the defendant.
2. I seek an order that the defendant keep the peace and be of good behaviour for a period of one year. I also seek an order that the defendant be prevented from:
 - assaulting, threatening to assault, molesting or threatening to molest me
 - coming in or near my home or my place of work
 - communicating with me
 - damaging or threatening to damage my property.
3. I am a single mother aged 24 years. I live with my three children at 1 Smith Street, South Brisbane. I work as a supervisor at XYZ Manufacturers.
4. I have known the defendant for approximately three years. He worked with me at XYZ. When I first met the defendant we were both working as plant operators at XYZ.
5. In March 2012, a supervisor's position at XYZ became available. Both the defendant and I applied for the position.
6. On 1 April 2012, I was promoted to supervisor. The defendant resigned from XYZ on 2 April 2012.

FIRST PAGE

Deponent Justice of the Peace

AFFIDAVIT

Filed by the Complainant
Rule 46 Rule 431

Peggy Lee Smith
1 Smith Street
South Brisbane Qld 4005

continued

This is the standard last sentence for affidavits verifying the information is true and within your knowledge. It must be included at the end of the affidavit.

7. On 4 April 2012, the defendant was waiting for me outside XYZ when I left work at 5.30 pm. He walked up to me and said to me, 'You are a bitch. I will punch your head in. You stole my job.' The defendant then left.
8. On 8 April 2012 at about 2.30 pm, I was watering my front lawn. The defendant drove up in his car, jumped out and walked towards my house. He threw a rock through the front window, smashing it. The defendant said to me, 'I will be back to do the rest of the house.' He then left.
9. On 10 April 2012, the defendant was again waiting for me when I left work. He was standing next to my car. As I approached my car he grabbed me by the wrist, hurting me. He then said, 'That's a taste of things to come.'
10. Because of these events, I am worried that he will continue to assault me or threaten to assault me. I am also frightened that he will continue to cause damage to my property.
11. All the facts and circumstances are within my own knowledge, save such as are from information only, and my means of knowledge and sources of information appear on the face of the my affidavit.

SWORN by PEGGY LEE SMITH on the _____ day of _____ 2012

at Brisbane in the presence of:

Signed: *(deponent to sign)*

Taken by: *(person witnessing to sign)*

(Solicitor/Justice of the Peace)

Attachment E: Sample order

ORDER

R 661

IN THE MAGISTRATES COURT OF QUEENSLAND

Registry: Brisbane

Number: PB40/12

PEACE AND GOOD BEHAVIOUR ACT 1982 (Qld)

(Section 6)

Complainant: PEGGY LEE SMITH

AND

Defendant: PETER ROBERT JONES

ORDER

Before: Magistrate M. M. Smith

Date: 12 May 2012

Initiating document: Complaint and Summons

THE ORDER OF THE COURT IS THAT:

1. the defendant keep the peace and be of good behaviour towards the complainant for a period of 12 MONTHS
2. the defendant not assault, threaten to assault, molest or threaten to molest the complainant
3. the defendant not enter the premises of the complainant or come within 100 metres of her premises. This clause to take effect as of 6 pm 12/05/2012
4. the defendant have no contact with the complainant
5. the defendant not damage or threaten to damage the complainant's property.

ORDER

Filed by the Complainant

Name: Peggy Lee Smith

Address: 1 Smith Street

South Brisbane Qld 4005

Phone no: 3214 6333

Form 59 Rule 661

Fax no: 3846 7483

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