



# PUBLIC TRUSTEE AND GUARDIAN

## POLICY

DOCUMENT PROPERTIES	
Name of Policy	<b>Workplace Protection Orders*</b>
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(\*See also Policy 2017-4 - Staff Safety and Security)

### LEGISLATION

#### ***Domestic Violence and Protection Orders Act 2008***

- S 7(1)(c) provides that the paramount consideration for a workplace protection order is the need to ensure that employees and other people at the workplace are protected from personal violence in the workplace.
- S 7(2) provides that if a protection order is to be made under the Act, that the protection order be the least restrictive of the personal rights and liberties of the respondent as possible that still achieves the principles under S.7(1)(c).
- S 9(2) establishes two types of orders - domestic violence order and a personal protection order.
- S 11(1) provides for final or interim orders.
- S 11(2) provides that a personal protection order made as a final order may be made as a workplace order.
- S 11(3) provides that a workplace order may:
- a) restrain the respondent from engaging in conduct that constitutes personal violence in relation to the workplace; and
  - b) may include a prohibition of the kind referred to in S.54
- S 19(2) provides that a respondent with a legal disability to a non-emergency protection order must have a litigation guardian.
- S 44 provides that if the Court is considering an application for consent order and a party to the proceeding has a legal disability who is not represented by someone else; and it appears to the Court that the party should be separately represented; the Court must not make a consent order and may adjourn the matter to allow the party with a disability to get a litigation guardian.
- S 49 deals with Workplace Order definitions.

- S 50 establishes what is personal violence (refer to definition below).
- S 51 deals with the effect of workplace orders on employment relationships.
- S 52(1) provides for the grounds for making workplace protection orders including that the Court is satisfied that the respondent has:
- a) engaged in personal violence to the workplace; and
  - b) may engage in personal violence in relation to the workplace during the time the order is proposed to operate if the order is not made.
- S 53(1) provides that a court must consider the following before making a workplace order:
- a) the objects and principles set out in s 6 and 7;
  - b) any hardship that may be caused to the respondent;
  - c) if the respondent has previously engaged in conduct that is personal violence in relation to a workplace
  - d) if a protection has previously been made in relation to the respondent;
  - e) if the respondent has previously contravened a protection order;
  - f) the need to ensure that the property in the workplace is protected from damage.
- S 54(2) provides that a workplace order may contain 1 or more of the following prohibitions:
- a) prohibit the respondent from entering the workplace;
  - b) prohibit the respondent from being within a particular distance from the workplace;
  - c) prohibit the respondent from contacting, harassing, threatening, or intimidating an employee at the workplace;
  - d) prohibit the respondent from damaging property in the workplace;
  - e) prohibit the respondent from causing someone else to do something mentioned in paragraph (c) or (d);
  - f) state the condition on which the respondent may enter or approach the workplace, or approach or contact an employee.
- S 56 provides for the length of the protection orders.
- S 62 provides for the extension of the protection orders.

## DEFINITIONS

**Aggrieved person** - for a workplace order means the *employer* of the person against whom the conduct is directed (s 49).

**Personal violence** - relates to a person causing or threatening to cause personal injury to an employee of a workplace (s 50(a)); causes damage or threatens to cause damage to workplace property in a way that causes reasonable fear in an employee (s 50(b)); or is harassing or offensive to an employee in the workplace (s 50(c)).

## POLICY

This policy sets out Public Trustee and Guardian (PTG) Policy and Practice in dealing with Workplace Protection Orders.

PTG will make an application for a Workplace Protection Order as a last resort where PTG has exhausted all other means to limit a client's contact with the workplace, which may include but not limited to, written or verbal requests to cease engaging in personal violent behaviour or by limiting PTG services to the client.

If an application for a Workplace Protection Order is sought, the order should be as least restrictive to the client (as per s 7(2)) and an order can be sought to prevent or restrain contact with PTG by a person that has either engaged in personal violence in relation to the workplace or may engage in

personal violence in relation to the workplace by seeking prohibitions under s 54(2) according to the appropriate requirements of the individual client.

Before a Workplace Protection Order is sought, the following process for dealing with offensive behaviour by clients should be followed.

### **Process for dealing with offensive behaviour by clients**

It is PTG's responsibility to provide safe premises for staff, clients and visitors. The "virtual office" concept is encouraged so that clients who have known aggressive or violent behaviours are not encouraged to visit PTG and are managed remotely where possible. PTG encourages, where possible, that staff work with the client's mental health/support workers to minimise the client's contact with the workplace.

#### *Move-on Procedures*

In the first instance, where a person attends the office and has been requested to leave the premises by any of PTG's Authorised Officers under the *Crimes Act 1900*, this event should be recorded in the Register and in a folder under the client's name. A file note should be made of this action and the details be linked in the Register.

In the event that the person repeats the offence or fails to leave, PTG should advise the person that ACT Policing will be called. If the person refuses to leave, PTG will then request ACT Policing to attend. A signed report should be placed in the Register recording details of the offence.

#### *Formal Notice to restrict services*

If, following Police attendance, the person continues to attend and harass or threaten staff or behave offensively, PTG will seek to formally write to the client advising that, due to their behaviour, PTG has decided to restrict or limit the services offered to the client until the behaviour is rectified.

A template of the formal notice is attached.

#### *Application for Workplace Protection Order*

If, following the Walk-On Procedures and Formal Notice to restrict services, the client continues to engage in personal violence behaviour, an application for a Workplace Order can be made pursuant to the *Domestic Violence and Protection Orders Act 2008*.

### **Offensive Behaviour Register**

PTG has established an Unwelcome Behaviour Register to ensure that all details of continuing or escalating offensive behaviour by particular clients are registered. This helps to ensure that, where a matter escalates to an application being made for a Workplace Protection Order, PTG has evidence to support the application.

It is important to ensure that the information entered into the Register is accurate and includes facts describing the event and/or behaviour and that the information is entered into the Register in a timely manner to avoid any doubt or discrepancies surrounding the event and/or behaviour.

The Register is located at: [G:\publictrustees\GROUPS\Section - Financial Management\\\_ TOOLS AND REPORTING \\_REGISTER OF INAPPROPRIATE CLIENT BEHAVIOURS](G:\publictrustees\GROUPS\Section - Financial Management\_ TOOLS AND REPORTING _REGISTER OF INAPPROPRIATE CLIENT BEHAVIOURS)

#### *Matters to be recorded in the Register*

This register should record reports and file notes by PTG staff about a particular client's offensive behaviour, video from PTG's CCTV recording offensive behaviour, photos to evidence any property damage, recordings of phone calls containing threats or offensive language as well as emails in which staff are harassed, threatened or where offensive language is used.

## **PROCESS FOR SEEKING A WORKPLACE PROTECTION ORDER**

### *Guardianship Order*

Check whether the person is subject to a Guardianship Order appointing either PTG or an individual. Contact the Guardian and advise of the proposed action. The Guardian may be able to seek legal representation for the person.

Where the person is not subject to a Guardianship Order, PTG will proceed directly to an application for an order.

### *ACT Government Solicitor (ACTGS)*

The ACT Government Solicitor represents the interests of the ACT Government. Any applications for Workplace Protection Orders should be made through ACTGS.

The application should be made in PTG's name and signed by the Public Trustee and Guardian.

A request for an application for Workplace Protection Order should be submitted to the Public Trustee and Guardian who will consider whether the request is appropriate on a case by case basis.

If the request is approved, then the Public Trustee and Guardian will request a PTG representative to liaise with the ACTGSO to make the application.

The representative must draft a Request for Legal Advice which will be signed by the Public Trustee and Guardian. The representative will also gather all the evidence required to support the application for a workplace protection order in an affidavit and will be the main contact person with the ACTGSO.

Once the Request for Legal Advice is submitted to the Practice Manager of the ACTGSO, a solicitor will be assigned to the matter and will be the main point of contact for the PTG representative.

Once the ACTGSO has submitted the application to the Magistrate's Court, the application will be listed for hearing to seek interim orders until a conference date can be set. PTG representatives ordinarily attend the hearing to assist the Registrar consider an order if required to do so.

### *Interim Orders*

Once an interim order is made and served upon the client, all PTG staff should be advised immediately. It is important also that staff be advised of the extent of the order. Any contravention of the interim orders by the client should be reported to ACT Policing and to the PTG representative who will also alert the ACTGSO. Any contravention of the interim orders should continue to be recorded in the Register.

### *Conference*

When a conference date has been set, PTG representatives will attend the conference and it is envisaged that the client or litigation guardian will also attend to negotiate the final orders or consent to final orders.

During this time, the interim orders remain in effect.

### *Final orders*

Once a final order is made and served upon the client, all PTG staff should be advised immediately. It is important also that staff be advised of the extent of the order.

Any contravention of the final orders by the client should be reported to ACT Policing and to the PTG representative who will also alert the ACTGSO. Any contravention of the final orders should continue to be recorded in the Register.

#### *Service of Orders*

It is important to note that the interim orders will only be effective once the orders have been served upon the client. Where the orders have not yet been served, the client may continue to contact PTG.

Service of orders is dependent upon ACT Policing and it is important to maintain contact with ACTGSO to check if the orders have been served. It has been the case that the orders have not been served for several weeks and it may be appropriate to adjourn the conference if the client has not been served with the orders. During this time until the client is served, the client may continue to maintain contact with PTG.

#### *Duration of Orders*

Pursuant to s 56, Workplace Protection Orders are usually sought for a period of one year. If necessary, PTG may seek to extend the orders before the expiry of the one year period.

#### **Conflict of Interest on the part of the PTG**

The Public Trustee and Guardian will often be appointed as Manager and Guardian by the ACT Civil and Administrative Tribunal (ACAT). PTG's Management function is normally the one that is most associated with the need for Orders. Should the person for whom the order is sought, be both a Management and a Guardianship client of PTG, the Guardianship Unit will seek to ensure that the offender has legal representation in respect to the Magistrates Court proceedings.

A conflict may arise as PTG may seek to restrain the person from attending or contacting the office but at the same time be the person's Guardian assisting them to respond to the application.

On order may be sought to ensure that the person refrains from attending or contacting the office. The order may however permit the person to contact their Guardian by email or by phone or through a supporter e.g. ACT Mental Health.

In the event that a conflict or perceived conflict occurs, the Public Trustee and Guardian may step down from the matter and be represented separately by the Deputy Public Trustee and Guardian/s as appropriate.

#### **END OF POLICY**