

Undertakings in restraining order proceedings

If you have a family violence restraining order (FVRO), violence restraining order (VRO) or misconduct restraining order (MRO) case at court, this infosheet may help you if you are thinking about resolving your problem using an undertaking.

What is an undertaking?

An undertaking is a promise to the court (either written or oral) by a party to act in a certain manner or not do certain things. An undertaking replaces any restraining order application or an interim FVRO or VRO if both the person seeking the restraining order and the person who would have been bound by the restraining order agree to resolve the case in this way.

What an undertaking is not!

An undertaking is not:

- a court order
- a conduct agreement order
- enforceable by the police or by criminal charges or
- a substitute for family court parenting or property orders.

Why are undertakings used?

Undertakings are an option that can be used to resolve FVRO, VRO or MRO applications. Undertakings are used to end the court proceedings without the need for any more hearings.

How is an undertaking made?

Undertakings can be oral or written.

Oral undertakings are given in court and recorded in the court transcript. Written undertakings should refer to the matter before the court (the court's reference number can be obtained from a copy of the FVRO, VRO, MRO or other court document), show the parties' names, contain details of the agreement reached between the parties, including how long the agreement will last, and be signed and dated by the parties.

Undertakings are made on a 'without admission of liability' basis. This means a party is not admitting to any wrongdoing by agreeing to an undertaking

Also, undertakings cannot be used in other court proceedings except for further FVRO, VRO or MRO applications if the undertaking is breached. The original undertaking is kept on the court file and each party should keep a copy. Written undertakings are preferred so the terms, and conditions of the undertaking are clear and there is no need to obtain a copy of the court transcript to work out those terms.

Both parties must agree voluntarily to make an undertaking. You cannot be forced or coerced into making an undertaking! However, you may receive advice that it is in your best interests to make an undertaking. This advice does not amount to coercion.

Either party, or their lawyer can offer undertakings. The other party's lawyer may approach you and suggest an undertaking. You do not have to speak

with the other party's lawyer, but it may be in your best interests to do so.

Duty lawyers can help to negotiate and prepare undertakings at some courts

When can an undertaking be made?

Undertakings can be made at any time during the proceedings prior to a magistrate handing down their decision at a final hearing of the application. Undertakings are commonly entered into in the period between the interim order being made and the final order hearing, or between the initial application being made and the mention or final order hearing. They can also be entered into at an FVRO conference.

What can an undertaking say?

The conditions undertakings include are usually very similar to the FVRO, VRO or MRO they replace. They can contain:

- things that the person who would have been bound by the FVRO/VRO/MRO cannot do (such as have contact by any means or be near the other person or their home or place of work).
- things the person who would have been bound by the FVRO/VRO/MRO can do. This may include agreement to allow attendance at mediation, or to allow a method of contact to make arrangements for children or deal with the parties' personal property.

Undertakings are flexible and can be worded to cover most situations. However, they are not intended to be a substitute for family court property or parenting orders.

Both parties can make undertakings if each has applied for an FVRO/VRO/MRO against the other party. This is known as a mutual undertaking.

An example of an undertaking by the person bound is included in this infosheet. You may need legal advice on the parts not needed in your case.

When are undertakings used?

Undertakings are used in various circumstances including:

- When the parties want to avoid more hearings/proceedings and the related financial and emotional costs.
- Where, in the circumstances of a particular matter, a final FVRO, VRO or MRO is unlikely to be made. This most often occurs where there is little or no admissible evidence that can be put to the court in support of the application.
- Where an FVRO or VRO may have an impact on a party's employment.
- The parties agree, for whatever reasons, that an undertaking is appropriate.

Are undertakings binding?

Undertakings are recorded on the court file, but they are not legally enforceable. There is no criminal offence of 'breach of an undertaking'. However, as an undertaking is a promise voluntarily given to the court, the court expects that the promise will be kept.

“Undertakings are recorded on the court file, but they are not legally enforceable.”

What happens if undertakings are breached?

While there is no charge of 'breach of an undertaking', you can still call the police if an undertaking is breached. The police can still move a person along, issue a police order, or charge them if their conduct amounts to an offence.

If your undertaking is breached, you may also re-apply for an FVRO or VRO or MRO as applicable. You may use the breach of the undertaking to support your application, as well as any other evidence you may have. As mentioned above, the court expects parties who have made a promise to keep that promise and frowns upon breaches of undertakings.

Whether or not the other party will follow an undertaking is a key consideration in deciding if an undertaking should be entered into. Other considerations, such as the evidence available that can be used in court, may be of more importance in certain situations.

Should I get legal advice before agreeing to or signing an undertaking?

You should get legal advice on the nature and effect of any undertaking you are asked to sign before you agree to and sign the undertaking replacing the restraining order.

Who can help with an undertaking?

- You may be able to get help in negotiating or preparing an undertaking from duty lawyers at courts with a duty lawyer service.

- Contact Legal Aid WA's Infoline on 1300 650 579 for information and referral.
- You may be able to get advice from a community legal centre. Call (08) 9221 9322 to find the one nearest to you.
- Private lawyers – contact the Law Society of WA on (08) 9324 8600 for the names of lawyers who work in this area.

Where can I get more information?

- Legal Aid WA has other infosheets that may help you including: *Conduct agreement orders in FVRO proceedings* and *Responding to a restraining order*. Contact Legal Aid WA's Infoline on 1300 650 579 or go to any office to get a copy. See also the [Legal Aid WA](#) website for more information.

Minute of undertaking

Protected person: [Insert name]

("Protected person")

Person bound: [Insert name]

("Person bound")

The parties in this family violence/violence/misconduct [delete/strike through the ones that do not apply] restraining order matter have come to the following agreement.

The protected person agrees to withdraw her/his family violence/violence/misconduct [delete/strike through the ones that do not apply] restraining order application on the basis of the person bound providing to the Court the following written undertaking for a period of..... months/years without an admission of liability.

PART A: THE PERSON BOUND MUST NOT:

- (a) behave in an intimidatory, offensive or emotionally abusive manner towards the protected person.
- (b) cause or attempt to cause damage to any property of the person bound in the possession of the protected person.
- (c) behave in a manner towards the protected person that is likely to lead to a breach of the peace.
- (d) except as set out in Part B, communicate or attempt to communicate with the protected person by any means whatsoever, including SMS or text messages or any other electronic means, including Facebook.
- (e) harass the protected person by any electronic means to depict or refer in any offensive manner to the protected person.

- (f) enter, remain upon or loiter near or any other premises where the protected person lives, or works, or is educated; or be within metres of the nearest external boundary of those premises.
- (g) enter upon the street and adjoining road reserve known as
- (h) approach within metres of the protected person.
- (i) approach within metres of any property (including vehicles) of, or under the control of, the protected person.
- (j) prevent or hinder the protected person from using
- (k) distribute or publish, or threaten to publish, any intimate personal images of the protected person.
- (l) monitor the movement or communications of the protected person.
- (m) cause or allow any other person to engage in conduct of the type referred to in any of the preceding paragraphs of this undertaking for the person bound.

PART B: THIS UNDERTAKING WILL NOT BE BREACHED IF THE PERSON BOUND:

- (a) communicates with the protected person through an Australian legal practitioner as defined in the *Legal Profession Uniform Law (WA)* or a person acting under Section 48 of the *Aboriginal Affairs Planning Authority Act 1972 (WA)*;
- (b) participates with the protected person in family dispute resolution or family counselling, as defined in the *Family Court Act 1997 (WA)* and *Family Law Act 1975 (Cth)*; or
- (c) complies with a court order made under the *Family Court Act 1997 (WA)* and *Family Law Act 1975 (Cth)* allowing the person bound to live with, spend time with or communicate with a child or children named in that order;
- (d) communicates with the protected person by email or SMS or text message solely to make arrangements to spend time with, or communicate with any child or children of the protected person and the person bound;
- (e) instructs a process server or bailiff or other person to serve any legal process requiring service on the protected person; or
- (f) participates in and goes to court events in proceedings in which the protected person and the person bound are parties or witnesses and complies with an order or direction of a court.
- (g) attend at..... in the company of a police officer, once only, for the purposes of recovering personal or other property, at a time convenient to the protected person.

Signed: _____
 Person bound: _____

Dated: _____

Signed: _____
 Protected person: _____

Dated: _____

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