

# After a restraining order is made



## This information covers:

- what it means for respondents to have a family violence restraining order (FVRO) in place
- the process for respondents, in limited circumstances, to apply to have a final restraining order set aside.
- appealing a decision about a restraining order.
- changing or cancelling a restraining order.
- correcting a minor error in a restraining order.

## What does it mean for me as a respondent to have an FVRO in place?

As the person bound by the FVRO, it means you must not commit any acts of family violence against the person protected by the order.

Read the order carefully to understand:

- Who it protects. It can protect children from seeing or hearing family violence.
- What you are not allowed to do.
- How long the order lasts.

If you don't understand what the order covers you should get legal advice or a support person to help you.

### Consequences of breaching an FVRO

The making of the order does not mean you have committed a criminal offence. If the court finds you breached the conditions of the order it is a criminal offence. In WA, the maximum penalty for breaching an FVRO (or VRO or Police Order) is 2 years imprisonment and a \$10,000 fine.

The order is recognised and enforceable in all Australian States and Territories. If you breach the order outside WA, the penalties from the place where you breach will apply.

### What if the person protected encourages me to breach the order?

If the person protected invites or encourages you, or tries to get you to breach the order, you will commit an offence if you breach the order. The

protected person will not commit an offence in doing this.

The court can vary or cancel the FVRO if it is satisfied that the person protected encouraged you to breach it, or tried to get you to breach it. This can be done when the court is sentencing you for breaching the FVRO, or you can make an application to have the order varied or cancelled. In this case court has to give the person protected a chance to have a say.

## Can I get a final order set aside?

In very limited circumstances

- if an interim FVRO or interim violence restraining order (VRO) has been made final because you did not return the respondent's endorsement copy to object within 21 days, or
- you did not go to the final hearing and a final restraining order was made

you can apply to have the order set aside. This means overturned or cancelled.

Time limits apply.

*How to apply to have a final FVRO or VRO set aside if you did not lodge an objection within 21 days*

You must apply to the court **within 21 days** of being notified that an interim FVRO or VRO has become a final FVRO or VRO.

An extension of time to apply is possible if the court thinks you have a **reasonable excuse** for applying late.

- You need to complete a **Form 17 Application to set aside final order under the Restraining Orders Act 1997 (WA) section 32(2)**. A copy can be obtained from the court registry.
  - Under the side heading **Details of final order** tick the FVRO or VRO box as applicable.
  - Under the side heading **Date of application** if your application is:
    - within 21 days of being notified of the interim order becoming final tick the first box
    - outside 21 days tick the second box.
  - Under the side heading **Application** tick:
    - both boxes if you need to seek the permission of the court because you are late in applying to set aside the decision
    - the second box if you are applying within 21 days.
  - Under **Grounds for application** give your reasons for applying late and for not putting in an objection to the original application within 21 days. You need to show you had **reasonable cause** (or reason).

- you may have had a **reasonable cause** for not putting in your notice of objection to the FVRO or VRO within 21 days, it will put off the hearing and send a summons to the protected person to inform them of the new hearing date to allow them to oppose your application.
- you did not have a **reasonable cause** for not putting in your notice of objection to the FVRO or VRO within 21 days it will dismiss your application.

If your application is not dismissed, on the next hearing date the court will hear your application to have the final FVRO or VRO set aside. You must attend. The protected person is also likely to attend if they want to oppose your application.

If the court decides:

- You had reasonable cause for not putting in the notice of objection within 21 days it will set aside the final order.
  - The court will make an interim order again if an interim order was in place. Check if the terms or restraints are the same as the first one.
  - The registrar will set a new final hearing date and let you know the date.
  - You will need to go to this hearing (see the **Legal Aid WA** information sheets – **Preparing as a respondent for a restraining order final hearing** and **Representing yourself as a respondent at a restraining order final hearing**).
- You did not have reasonable cause for not putting in your objection to the FVRO or VRO outside of 21 days, it will dismiss your application.

### *What happens after I put in the application?*

The registrar will set a hearing date. Only you are required to attend this hearing. The person protected by the FVRO or VRO will not attend.

If you do not go to this hearing and the court is satisfied you knew about it, your application will be dismissed.

At the hearing:

- If your application to set aside the final FVRO or VRO was made outside of 21 days, the court will firstly decide if you may have had a **reasonable excuse** for putting in your application late and if so, let you go ahead with your application.
- If your application is allowed to go ahead, the court will then look at the grounds or reasons you have put in your application.
- If the court decides:

### *How to apply to have a final order set aside if you did not go to the final hearing*

You must apply to have the final FVRO/VRO set aside within **21 days** of the final FVRO/VRO being served on you. An extension of time to apply is possible if the court thinks you have a **reasonable excuse** for applying to set aside late.

- Complete a **Form 18 Application to have decision set aside under Section 42**. A copy can be obtained from the court registry.
  - Under the side heading **Order to which this application relates** tick the FVRO or VRO box as applicable.

- Under the side heading **Date of application** if your application is:
  - within 21 days of first becoming aware of/being served with a copy of the order tick the first box
  - outside 21 days of first becoming aware of/being served with a copy of the order tick the second box.
- Under the side heading **Application** tick:
  - both boxes if you need to seek the permission of the court because you are late in applying to set aside the decision
  - the second box if you are applying within time.
- Under **Grounds for application** give your reasons for applying late and for not attending the final hearing.

### *What happens after I put in the application?*

The registrar will set a hearing date. Only you are required to attend this hearing. The person protected by the FVRO/VRO will not attend.

If you do not go to this hearing and the court is satisfied you knew about it, your application to have the FVRO/VRO set aside will be dismissed.

At the hearing:

- If your application was made outside of 21 days, the court will firstly decide if you may have had a **reasonable excuse** for putting in your application late and if so let you go ahead with your application.
- If your application is allowed to go ahead, the court will then look at the grounds or reasons you put in your application why you say the final order should be set aside.
- If the court decides you may have had a reasonable cause to not go to the final FVRO/VRO hearing (eg, you had not been served with the application) it will set another hearing and send a summons to the person protected to inform them of the new hearing date.
- If the court decides you did not have a reasonable cause for missing the final FVRO/VRO hearing it will dismiss your application. The final FVRO/VRO will remain in place.

At the next hearing, the court will hear your application to have the final FVRO/VRO set aside. You will need to attend. The person protected may also attend.

- If the court decides you had a reasonable cause to not go to the final FVRO/VRO hearing it will set aside the final order.
  - The court will make an interim order. Usually it will have the same conditions as the original one. Check if any changes have been made.
  - The registrar will fix a new hearing date for the court will re-hear the case.
  - You must go to this final FVRO/VRO hearing if you want to have a say about why the order should not be made. For help in preparing see the Legal Aid WA Information sheets – **Preparing as a respondent for a restraining order hearing** and **Representing yourself as a respondent at a restraining order final hearing**.
- If the court decides you do not have a reasonable cause for not attending the final FVRO/VRO hearing, it will dismiss your application.

### **Can I appeal against a decision about a restraining order?**

It is possible to appeal against a decision to:

- dismiss a telephone application for a temporary (interim) restraining order
- dismiss an application made in the absence of the respondent for a temporary (interim) restraining order
- make, vary or cancel a final order
- refuse to make, vary or cancel a final order
- make any other order in relation to a final order.

If you wish to lodge an appeal you should seek legal advice about:

- whether you have a legal basis to appeal, and
- what costs would be involved.

There are time limits for appealing so you should obtain legal advice straight away.

You can get information on how to appeal a Magistrates Court decision about a restraining

order and the fees to start an appeal from the District Court of WA website at: [http://www.districtcourt.wa.gov.au/M/magistrate\\_court\\_restraining\\_orders.aspx?uid=1000-7865-4046-1622](http://www.districtcourt.wa.gov.au/M/magistrate_court_restraining_orders.aspx?uid=1000-7865-4046-1622).

### Can I apply to change or cancel a restraining order?

The person protected can apply to change (including to extend the duration of the order) or cancel a final order. They can also apply to change the conditions of an interim FVRO or VRO.

For respondents (person bound) the court will only give permission to change or cancel a restraining order in limited circumstances. The respondent can apply to the court to:

- cancel, or
- change the conditions of

a final restraining order, or to change the conditions of an interim FVRO or VRO.

These people can also apply:

- The person protected.
- A police officer for the person protected or the person bound (or for the public generally if the original order was for the benefit of the public generally).
- In an application during a criminal case, the prosecutor for the person protected.
- If a child is the person protected, their parent/guardian/Department of Communities, Child Protection and Family Support case manager.
- A guardian appointed for the person protected.

### What sort of changes can be made?

These are some common orders that the court may make to cover situations where a person without such an order may possibly breach the restraining order made. These include:

- Comply 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.
- Communicate with the protected person by email or SMS or text message only to make

arrangements to spend time with, or communicate with any child or children of yours and the person bound.

- Participate in and go to court events in proceedings in which the person protected and you are parties or witnesses, and which complies with an order or direction of a court.
- Go with a police officer to the protected person's residence to collect your personal or other property.

**Your circumstances may change after an order is made and then you may need to apply to vary the terms of your order. Get legal advice if you are unsure about your obligations under or the conditions of a restraining order.**

### How do I apply to vary or cancel a restraining order?

You can apply to a court that has the power to make a restraining order. This can be a court different to the court that made the order but it can't be a court lower than the court that made the order. For example, you can't apply to the Magistrates Court if the District Court made the order.

Generally, you need to fill in a form to vary or cancel a restraining order.

In the Magistrates Court it will be a Form 12 Application. Under the heading **Variation or Cancellation** tick the box for what you want.

- If you want the order changed write down the specific changes you want.
- Under **Grounds for Variation or Cancellation** put the reasons you either want it
  - cancelled or
  - varied.

Lodge the form with the court. .

Also the court sentencing a person for the breach of a restraining order, if it is satisfied that the person protected helped in the breach, can vary or cancel the restraining order. If this applies to you, you can ask the court to consider doing this. Generally during criminal proceedings like this you will not need to use a form to apply. Also in some criminal cases, the criminal court cannot vary or cancel a restraining order unless the person bound is present and both the person bound and

the person protected by the order have had an opportunity to make say what they think about the proposed change or cancellation.

*What happens after an application to vary or cancel is lodged?*

#### **For the respondents (person bound)**

The registrar will set a hearing date.

At the hearing the court will decide if you will get permission (leave) to continue your application. This hearing is held without the person for whose benefit the order was made being present.

If you do not go to this hearing and the court is satisfied you knew about the hearing your application will be dismissed. Otherwise it will be put off to another date.

*What the court takes into account in deciding whether to give you permission to apply to change or cancel a restraining order*

For a final order the court will give permission for you to keep going with your application if it is satisfied that:

- there is evidence to support a claim that a **person protected by the order has persistently invited or encouraged you to breach the order or has persistently tried to get you to breach the order**; or
- there has been a **substantial change in relevant circumstances since the order was made**.

For an **interim order variation** the court will give permission for you to continue your application if it is satisfied that there is evidence:

- the restraints are causing you **serious and unnecessary hardship, and**
- that it is appropriate your application is heard as a matter of urgency.

Otherwise, the court will dismiss the application.

Also in some criminal cases where violent offences have occurred and an FVRO or VRO has been made, the person bound by the order can apply to change or cancel the order on the ground that exceptional circumstances exist which justify the change or cancellation.

*What happens if the court gives me permission to go ahead with my application?*

The registrar will set a date for a hearing.

The person who is bound (or their parent/s or guardian or Department of Communities, Child Protection and Family Support case manager if they are a child) will be sent a summons for the hearing by the court.

The police will be notified for a misconduct restraining order (MRO) made for the public generally.

If you do not go to this hearing and the court is satisfied you knew about it your application will be dismissed.

If the person protected does not come to the hearing (or the police with an MRO for the benefit of the public generally) and the court is satisfied they knew about it, the court will hear your application in their absence. Otherwise the hearing of the application will be adjourned.

#### **For the person protected**

If you apply to cancel the order you can ask for the application to be heard in the absence of the person bound by the order. Otherwise a summons will be sent to the person bound to attend.

In the Magistrates Court, a [Form 12 Application](#) to vary or cancel a restraining order needs to be completed. The court will set a hearing date and a summons will be sent to the person bound.

If you are applying to change the order, including to extend the duration of the order, the summons has to be served on the person bound before the order expires. Otherwise a new application for a restraining order will have to be made.

The respondent will need to go to court if they do not agree to the change or an extension of the order.

A criminal court hearing an application to change or cancel a restraining order made as part of criminal proceedings must have the person bound present and allow them and you to have your say about the change or cancellation.

**How do I apply to fix a small error?**

When a restraining order contains:

- a clerical mistake
- an error from an accidental slip or leaving something out
- an important mistake in describing a person or something else covered by the order

either the person protected or the person bound can apply to the court to have the restraining order corrected.

If the error is in a restraining order made in the Magistrates Court:

- You need to fill in a [Form 23 Application](#).
  - In the section NATURE OF ORDER SOUGHT fill in details of the error that has to be fixed.
- Lodge the form with the court.

An application by a person bound will usually initially be heard in the absence of the person protected.

The court may then decide to adjourn the hearing and give notice of the hearing to the person protected.

### Can a restraining order made interstate apply in WA?

Australia now has a system of national recognition for FVROs (sometimes called Domestic Violence Orders).

This means that once a new DVO comes into force (normally when it is served on the Respondent), it automatically applies in all places across Australia, without having to be registered in every individual state or territory.

Your current DVO will automatically apply in WA and throughout Australia if it:

- was made on or after 25 November 2017 (in any Australian state or territory, including WA)
- was made or varied in a Victorian court (on any date), or
- was made in New Zealand and registered in Victoria (on any date).

If your DVO was made before 25 November 2017, you can apply to a Magistrates Court in WA to have it nationally recognised and enforced across Australia. This may be simpler, quicker and safer than applying for a new FVRO.

Call our **Infoline** on **1300 650 579** for information or referral.

### Can a restraining order made in WA apply interstate?

Yes, given the system for national recognition of FVROs.

If your current FVRO was made before 25 November 2017, you can apply to the Magistrates Court in WA or the equivalent court in any other state or territory to have it nationally recognised.

If you have a current VRO with a domestic concern made before 1 July 2017 you can apply to the court to have the order declared to be nationally recognised.

### Where can I get more information?

- All forms referred to can be obtained from a Magistrates Court registry office and most also from the [Magistrates Court of WA](#) website.
- **Legal Aid WA's Infoline** on **1300 650 579** for information and referral.
- Your local [community legal centre](#). To find the one nearest to you phone **(08) 9221 9322**.
- **Family Violence Prevention Legal Services** (FVPLSs) offer legal and counselling services for victims of family violence and/or sexual assault who are Aboriginal or Torres Strait Islander peoples, or whose partner or children are Aboriginal or Torres Strait Islander peoples. Contact:
  - [Djinda Services](#) on **(08) 9200 2202** for legal information and advice or, for advocacy and support **(08) 6164 0650**.
  - **Aboriginal Family Law Services (AFLS)** on **(08) 9355 1502** or **1800 469 246** (freecall) or go to this website: <http://www.afls.org.au/> for the contact details of other AFLS offices in regional areas.
  - the [Family Violence Prevention Legal Service](#) in Albany on **(08) 9842 7751**.
  - the [Marninwarntikura Family Violence Prevention Legal Unit](#) on **(08) 9191 5284**.

## Legal Aid WA Offices

**TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)**  
Infoline open Monday to Friday 9.00 am to 4.00 pm  
(Australian Western Standard Time) except public holidays

**Translating and Interpreting Service 131 450**  
**National Relay Service (for hearing and speech impaired) 133 677**

[www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

### **Perth Office**

32 St Georges Terrace, Perth, WA 6000  
1300 650 579  
(08) 9261 6222

### **Southwest Regional Office**

7<sup>th</sup> Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230  
(08) 9721 2277

### **Great Southern Regional Office**

Unit 3, 43-47 Duke Street, Albany, WA 6330  
(08) 9892 9700

### **Goldfields Regional Office**

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430  
(08) 9025 1300

### **Midwest & Gascoyne Regional Office**

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530  
(08) 9921 0200

### **Pilbara Regional Office**

28 Throssell Road, South Hedland, WA 6722  
(08) 9172 3733

### **West Kimberley Regional Office**

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725  
(08) 9195 5888

### **East Kimberley Regional Office**

98 Konkerberry Drive, Kununurra, WA 6743  
(08) 9166 5800

### **Indian Ocean Office**

Administration Building, 20 Jalan Pantai  
Christmas Island, Indian Ocean, WA 6798  
(08) 9164 7529

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