

Preparing for a restraining order final hearing – respondent

This information may help you if you are a respondent in restraining order proceedings, you do not have a lawyer and want information on how to prepare for a final hearing.

The following terms are used:

- **Applicant** – the person who wants the order.
- **Respondent** – the person against who the order is sought or made.
- **Person bound** – if a restraining order is made this is the person who must follow the order.
- **Person protected** – the person who has the benefit of the order if an order is made.

This information sheet should be used after seeing a lawyer for advice.

Is it too late to go to an FVRO conference to see if an agreement can be reached?

Get legal advice about this.

These conferences are only offered in FVRO cases at some courts. The conference is run by a registrar who goes back and forth or “shuttles” between your room and the room of the applicant to help you try and reach an agreement without the need for a trial.

You must contact the court at least 28 days before the final order hearing date to see if an FVRO conference can be arranged if the applicant has not opted out and one is available at your court.

Should I see a lawyer before going to court?

Although a restraining order is not a criminal charge it may affect you in the future.

You should get **legal advice** so that you understand:

- The legal process and what it means to you including the consequences of settling an

application with an undertaking, consent orders or, for a family violence restraining order (FVRO), a conduct agreement order.

- Legal costs you may have to pay.
- How to represent yourself if you don't have a lawyer.

Legal Aid WA, your local community legal centre or a private lawyer may be able to give you legal advice.

What if I need an interpreter or child care when I go to court?

Interpreter

If you know that you will need an interpreter when you go to court, you should contact the court as soon as possible before your court date to ask them to arrange an interpreter. The court will try to organise an interpreter to assist you at court.

To arrange an interpreter the court registry your court date and the specific language you speak.

Child care

It will be very difficult to represent yourself well in court at the final hearing if you need to look after young children. If you have children, try to arrange childcare. If you can't, take someone with you who can mind the children outside the court while your case is being dealt with. Some courts can help organise and pay for childcare. Ask at the court registry well before your final hearing date. At some courts a month's notice is required.

If you have children at school or daycare, make sure you have organised someone to pick them up in case the hearing goes all day – hearings can go until 4pm or even later.

Organising your documents for the hearing

- Gather all the information you can that helps your case.
- Keep any paperwork you need to bring to court together in a safe place, eg the transcript of what was said by the applicant, family court orders, photos of injuries, phone records, police reports, and medical reports.
- Organise your documents in a way you can easily find each of them on the day of the hearing, for example, in a folder divided under different headings.
- If you have SMS text messages or emails, type or print them out and take your phone to court.
- If you want to show the court evidence, such as emails, text messages or messages from Facebook you have printed out, you should print out 3 copies (1 for yourself, 1 for the applicant and another for the magistrate).
- If you have voicemail messages, CDs or DVDs, or electronic files you want to play as evidence in court, ring the court well before your hearing to make sure there is compatible court equipment that will play your evidence. If not, you will need to take your own equipment to the hearing to play the evidence.

What does the applicant have to prove to get a restraining order?

Before opposing the making of a restraining order you should think about:

- what the court will consider, and
- whether you will be able to successfully argue against the applicant's evidence in support of an order.

For example, does the applicant have evidence that goes to the grounds for getting a restraining order that you cannot argue against such as phone records of calls made by you that were threatening?

What has to be proved in a family violence restraining order (FVRO) application?

Final FVROs are granted where the court is satisfied:

- you have committed family violence against the applicant and are likely to do this again, or
- the applicant has reasonable grounds to fear you will commit family violence against them

unless there are special circumstances that would make the order inappropriate.

What is family violence?

It is not just assault and physical violence.

Examples of family violence behaviour covered by the law include:

- hitting the family member
- threatening to hit the family member
- threatening to share intimate images of the family member
- holding the family member against their will
- not letting the family member have money when they depend on you for financial support
- being cruel to family pets
- damaging property owned or jointly owned by the family member

- repeatedly sending the family member unwanted or offensive texts
- stopping the family member seeing or keeping in contact with friends or family.

If a person gets someone else to do these sorts of things against the family member, they will also be taken to have committed family violence.

How do I know if I was/am in a family relationship?

Family relationship includes where the other person is:

- your spouse or ex-spouse
- your de facto or ex-de facto
- your girlfriend/boyfriend or ex-girlfriend/boyfriend
- someone you had an intimate or other personal relationship with
- your child, step-child or grandchild
- your parent, step-parent or grandparent
- your sibling or step-sibling
- a person you were or are related to
- the ex -spouse or ex-de facto partner of your current spouse or de facto partner or a person related to them.

What is looked at by the court when making an FVRO covering a child?

A parent, police officer, guardian or Department of Communities, Child Protection worker can apply for an FVRO for a child. The application must be made to the Children’s Court if the respondent is a child.

The court may also extend an FVRO for the benefit of a child in addition to the person protected by the order. The court can make an FVRO to cover a child if the court is satisfied:

- the child has been exposed to family violence, and is likely to be exposed again, or
- there are reasonable grounds to fear the child will be exposed to family violence

and that there are not special circumstances that would make the order inappropriate.

A child is exposed to family violence if:

- the child sees or hears the violence, or

- otherwise experiences the effects of violence.

Examples include:

- overhearing threats of death or personal injury
- seeing or hearing an assault.

What has to be proved in a violence restraining order (VRO) application?

The court can make a VRO if it thinks that without it:

- you are likely to commit personal violence against the person to be protected (and have already committed personal violence against them), or
- the person to be protected has reasonable grounds to apprehend that you will commit personal violence against them

and the court thinks a VRO should be made.

What is personal violence?

Personal violence means one of the following acts that a person commits against another person they are not in a family relationship with:

- assaulting or causing injury
- kidnapping
- depriving the liberty of the person
- threatening to do any of the above
- stalking.

Even if the person gets someone else to do these sorts of things against the person to be protected they will be taken to have committed personal violence.

What has to be proved in a misconduct restraining order (MRO) application?

The court may make an MRO if the applicant can prove, on the balance of probabilities, that unless you are “restrained” (or restricted) you will:

- act in way that could reasonably make the person to be protected feel intimidated or offended
- cause damage to the property owned by or in the possession of the person to be protected,

- behave in a way that is likely to lead to a breach of the peace, or
- commit an offence under section 70A(2A) of the *Criminal Code* (this means commit an aggravated trespass on an animal source food production place) and the court is satisfied that it is appropriate in the circumstances.

For more information on offences under section 70A(2A) of the *Criminal Code* see the Legal Aid WA infosheet *Misconduct restraining orders - information*.

What does balance of probabilities mean?

The test that is used to weigh up the evidence in a restraining order final hearing is on the balance of probabilities, that is, “more likely than not” to be true.

This is a “lower” test than for a finding of guilt in a criminal matter where the test is “beyond reasonable doubt”.

What do I need to do if I am representing myself?

If an interim FVRO or VRO is in place

- If an interim FVRO or VRO is in place you can request a copy of the transcript of the interim hearing from the court. A transcript is a typed record of all that was said at the interim hearing. There is no charge for the transcript if you are the respondent. You can also ask the court for a copy of any affidavit received in evidence in relation to the order.
 - Fill in a *Form 1 Request to inspect or obtain copy of a court record* to obtain a copy of the transcript – Fill in the “Request for transcript” section.
 - You can get this form from the Magistrates Court of WA website or any Magistrates Court registry.
 - You need to get this as soon as possible to know what the applicant said about why they want the order before the hearing.
 - You must drop in, fax or post the completed forms to the relevant court registry.
- When you have the transcript or the affidavit you can write down any of the things that the applicant said at the interim order hearing that you disagree with.
- It is good to show the transcript and affidavit to a lawyer and get legal advice about your case.

In all cases

- Think carefully about:
 - the applicant’s reasons for wanting the restraining order, and
 - why you are objecting to a final restraining order being made.
- Think about which restrictions on the order that you want changed (if any) and why.
- Think about what the applicant must prove to the court to get a restraining order. What evidence (“proof”) do you have that goes against what the applicant might say?
 - You should write down some notes. This could be your history sheet or record of what has happened over time.
 - If an interim FVRO or VRO is in place and you have the transcript, or the affidavit, read it and make a list of:
 - all the things the applicant said that you disagree with, and
 - why you disagree.
 - For each event write down:
 - what happened from your point of view
 - what evidence you have to back up what you say to the court to support your case for why an order should not be made, eg your phone records, police incident reports if they support your story, people who have witnessed events that support your story.
- You are not able to read from your notes while you are in the witness box. You may be able to ask the court if you can use them to check a date or an incident that you can’t remember.
- Your history sheet will be useful in preparing the questions you need to ask the applicant and other witnesses.

- You can also use your history sheet for your summary to the court.
- If the applicant wants an FVRO or VRO to cover other people, eg your children in an FVRO application, you need to write notes about why the order should not extend to cover them if you disagree with anything the applicant has said. Think about what the applicant must prove to the court to get an order covering your children and what evidence you have to argue against the order being made.
- Get the evidence you have to back up what you say so you can take it to court. See below for how to summons people and documents to court.

Arranging for your witnesses to come to court

- Your witnesses must come to court for the final order hearing and say what happened. You have to arrange this.
- You should get legal advice on the merit of summoning witnesses, in particular whether what you think they will say will help your case and about the possible costs involved.
- A letter or statement from a witness is not enough.
- In special circumstances the court might accept an affidavit (a sworn or affirmed document) from a witness. This is only if the applicant or the applicant's lawyer agrees to it being used. This is because the applicant must have the chance to ask your witnesses questions about what they say.
- If you want to show the court documents, the person who wrote the document must be in court. This is so that the applicant can ask them whether the document is correct.
- If you have witnesses, you should speak to them and ask them to come.
 - If they are happy to come tell them the court date and details of where it is.
 - If they don't want to come or can't get out of work, you can summons them. This will force them to come to court. Employers must allow workers to go to court when

summonsed. If possible get legal advice on how to do this.

- Witnesses are entitled to be paid their cost of getting to court. This is usually just the amount of a bus/train fare. If your witness is from somewhere far away or is a professional (such as a doctor), you should get legal advice about the costs that may be involved.
- A witness summons must be filed and given to ("served on") the witness at least 14 days before the final hearing date.

Children as witnesses

- Children are not normally allowed to give evidence in restraining order hearings in the Magistrates Court. There are special rules about calling a child as a witness.
- A child cannot be summonsed to a hearing in the Magistrates Court unless the court makes an order allowing this. You should make this application at least 14 days before the final hearing date and earlier if possible.
- If any of your witnesses are children, you will need to tell the court the age of the child and why you want to call them as a witness. The court will then decide whether you can use that child as a witness. There needs to be "exceptional or special reasons".
- Get legal advice if you think you need to summons a child to be a witness.

Arranging for documents to be at court

- If you want to summons someone to provide a thing or document to the court, you will need to get the court to issue a witness summons.
- Any documents you have summonsed go straight to the court. The court will write to you to tell you when they are received. You should apply to the court before the hearing date to see ("inspect") the documents. You need to fill in a *Form 1 Request to inspect or obtain a copy of a court record*. If you have not inspected the documents before the final hearing date you will need to ask for your case to be mentioned in front of the magistrate as

early as possible so that you can ask to see the documents before the hearing starts.

<https://www.legalaid.wa.gov.au/> to chat online, or to be sent a copy of other infosheets on restraining orders for both applicants and respondents. You can also pick up a copy from your nearest Legal Aid WA office.

Where can I get more information?

- Contact Legal Aid WA's Infoline on 1300 650 579 for information and referral. Other infosheets are available that may help you. These should be used with legal advice where possible. Visit the website at:
- Contact your local community legal centre. To find the one nearest to you phone (08) 9221 9322 or visit the website: <https://www.communitylegalwa.org.au/>.

LEGAL AID WA OFFICES



Infoline: 1300 650 579



Translating & Interpreting Service:
131 450



Website/InfoChat:
www.legalaid.wa.gov.au



National Relay Service: 133 677
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1300 650 579
(08) 9261 6222

Midwest & Gascoyne Office

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

West Kimberley Office

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

Great Southern Office

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

Goldfields Office

Suite 3, 120 Egan Street,
Kalgoorlie, WA 6430
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East Kimberley Office

98 Konkerberry Drive,
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Southwest Office

7th Floor, Bunbury Tower,
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(08) 9721 2277

Pilbara Office

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(08) 9172 3733

Indian Ocean Office

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