

# Preparing as a respondent for a restraining order final hearing



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.

## 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 or your local community legal centre may be able to assist you with 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. This interpreter will then be available on the morning of your court appearance and can assist you in court.

To arrange an interpreter for the Magistrates Court or the Children's Court you need to call the

court in which you are appearing and tell court registry that you need an interpreter. They will need to know your court date and the specific language you speak.

### Child care

It will be very difficult to represent yourself properly 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 that 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 as well as bringing your phone, as this makes it much easier for the court.
- Some of your documents, such as emails and SMS text messages printed out, will need to be certified by a justice of the peace (JP). You will need to take the original copies to show the JP. This might include taking your camera or phone. The JP will look at the original and the copy and sign the copy as proof that it is a true copy of the original.
- If you have voicemail messages, CDs or DVDs or electronic files as evidence you want to play in court, ring the court well before your hearing to make sure these are compatible and able to be played on the court's equipment. You may need to bring your own equipment to play them.

### 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 look at 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 you
- threatening to hit you
- threatening to share intimate images
- holding you against your will
- not letting you have money when you depend on them for financial support
- being cruel to your pets
- damaging property you own or jointly own
- repeatedly sending you unwanted or offensive texts
- stopping you seeing or keeping in contact with friends or family.

If the person gets someone else to do these sorts of things against you, they will 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 e -de facto
- your girlfriend/boyfriend or ex-girlfriend/boyfriend
- someone you have had an intimate personal relationship 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.

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

A parent, a police officer, a guardian or a Department of Communities, Child Protection and Family Support 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, or
- behave in a manner that is likely to lead to a breach of the peace

**and** the court is satisfied that it is appropriate in the circumstances.

### **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 from the court a copy of the transcript of the interim hearing. 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 these forms 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.
- 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 for 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.

### *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, if any restrictions on you that you want changed 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.

### *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.
- The court in special circumstances 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 doctor, then 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 send a witness summons.
- Any documents you have summonsed go straight to the court. The court will write to you to tell 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.

#### Where can I get more information?

- Contact **Legal Aid WA’s Infoline** on **1300 650 579** for information and referral. Other information sheets are available that may help you. These should be used with legal advice.
- Contact your local **community legal centre**. To find the one nearest to you phone **(08) 9221 9322**.



## 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

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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