

Representing yourself as an applicant in a family violence restraining order final hearing



This information sheet may help you if you are the applicant and representing yourself at a hearing (also called a trial) to decide whether there should be a final family violence restraining order (FVRO).

You should get legal advice before appearing at a final hearing.

Who's who in restraining orders

You are called the **"applicant"** or **"person (seeking to be) protected"**. The person you want the order against is called the **"respondent"** or the **"person bound"** if an order is made.

Family violence restraining orders (FVROs)

An FVRO is a court order against your partner, ex-partner or another family member designed to stop threats of violence or violence, or other sorts of behaviour that coerce or control you or cause you to be fearful.

A person is a **"family member"** of yours if they are in a family relationship.

A **"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 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 do I have to prove?

Final FVROs are granted where the court is satisfied:

- the respondent has committed family violence against you and the respondent is likely again to commit family violence against you, or
- you have reasonable grounds to apprehend that the respondent will commit family violence against you

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

Examples of behaviour towards a family member that may be family violence include:

- an assault
- a sexual assault or other sexually abusive behaviour
- stalking or cyber - stalking
- repeated insults
- damaging or destroying their property
- causing death or injury to their pets
- unreasonably not letting them have money for reasonable living expenses when they or their child depend on them for financial support
- stopping them seeing or keeping in contact with friends or family or culture
- kidnapping, or holding them or any person with whom the person has a family relationship against their will,
- threatening to or actually distributing or publishing intimate personal images
- causing any family member who is a child to be exposed to any of the behaviours listed above.

Also, if the person gets someone else to do these sorts of things they will be taken to have committed family violence.

Children

A parent or guardian can apply for an FVRO for a child. This application can be made to the

Children's Court or the Magistrates Court. If the respondent is a child, the application must be made to the Children's Court. An FVRO may also be extended to cover 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 committed by or against a person who is in a family relationship with the child, and
 - is likely to be exposed again, or
- you as the applicant, the child or a person with whom the child is in a family relationship have reasonable grounds to understand the child will be exposed to family violence committed by or against a person with whom the child is in a family relationship

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
- comforting or giving help to a person who has been assaulted
- cleaning up a place after property damage
- being present when police or ambulance officer attend an incident involving the violence.

Before making a restraining order against a child that might affect their care and wellbeing, the Children's Court has to be satisfied that appropriate arrangements have been made for their care and wellbeing.

How can I prepare before the court date?

- The trial, or final order hearing, will be held in the courthouse where you obtained your interim FVRO or applied for your FVRO. If you want to discuss the possibility of transfer to a different court you should seek legal advice.
- Some courts can arrange child care for children in some cases. Ring the court well

before your trial to organise it. At some courts at least a month's notice is required.

- Organise someone to pick up any children from school or day care as you may be at court all day.
- If you know that you will need an interpreter when you go to court, you should contact the court well before your court appearance to ask them to arrange one. They will need to know your court date and the specific language you speak. This interpreter will then be available on the morning of your court appearance and can assist you in court.
- If you feel you, or one of your witnesses, would be unable to give evidence well or at all eg, scared because of a long history of abuse, you can apply to the court to give evidence by closed circuit TV or with some sort of screen. You should make this application at least 14 days before the final hearing date.
 - You need to fill in a [Form 23 – Application](#).
 - You should complete an **affidavit (Form 2)** in support. This may contain a summary of the evidence you intend to give at the final order hearing.
 - You can get the Form 23 and the affidavit form from the Magistrates Court website or any court registry.
- However, if you are not able to apply before the hearing, you can still ask the court to do this on the day of the hearing.

You will need to:

Prepare a history sheet

- Think about the reasons you want an FVRO.
- Read the list above about what you have to prove to the court.
- If you have an interim order, think about what you said to get that order.
- Make a list of all the different times where there has been an act of family violence, including physical violence, and other kinds of abuse, threats or intimidation against you.
- For each event write down the time, date, place, describe what happened and what extra evidence (eg, a medical report) you have to show the court. (These notes are a history sheet). Start with the most recent events. You are not able to read from your

notes while you are in the witness box. However, 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 respondent and other witnesses.
- You can also use your history sheet for your summary to the court at the end of the evidence. (See below).
- If you want the FVRO to cover other people, eg your children, you need to write a history sheet for them. Keep in mind what the court looks at.

Gather any paperwork you need

- Keep any paperwork you need to bring to court together in a safe place, eg family court orders, photos of injuries, medical reports.
- If you have relevant emails or messages from Facebook, etc you should print these out and bring them to court. You should get these certified by a justice of the peace before your hearing.
- If you have relevant SMS text messages you should bring your phone to court. However, it is difficult for the court to look through numerous phone messages and you should type out the messages and print them off if possible to make it easier for the court. You should get these certified by a justice of the peace (JP) before your hearing.
- If you have voicemail messages, CDs, DVDs or electronic files as evidence you want to play in court, **ring the court well before your hearing to make sure these can be played on the court's equipment.** You may need to bring your own equipment to play them.

Get some paperwork certified

Some of your documents, such as emails and phone messages printed out, will need to be certified by a 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.

Police Information Certificate (PIC)

If it applies in your case, get a PIC sent to the court.

If the respondent has a criminal record and/or there has been similar behaviour by the respondent towards you or others you can ask the WA Police for a PIC. This Certificate gives very limited details of previous similar behaviour by the respondent. On the face of it the Certificate is evidence of the matters specified in it.

- You can email: IRC@police.wa.gov.au with the title Application for Police Information Certificate or send a form or a letter with the necessary information to the WA Police Information Release Centre, Locked Bag 20, Perth Business Centre WA 6849. If you can access email it is the best way to ask for the information. The application form is on the [WA Police website](#). A sample email is included in this information sheet.
- Although there is no time limit to make your request, you should request the Certificate at least 14 days before a hearing to allow time for the request to be processed.
- Depending on when your hearing is you may have time to delay applying for the Certificate if the respondent is facing charges which are yet to be dealt with. It is best to delay requesting a Certificate until about a month before your hearing in case circumstances change and new information becomes available.
- If you request a PIC, you should still get **legal advice** about whether you need to also summons the complete police records and/or any police witnesses to come in person.
- **If there are related criminal proceedings which are not finalised get legal advice about whether you should try to have the FVRO final hearing put off until they are finalised.**

Arrange witnesses to come:

- You should get **legal advice** on the benefit of summoning witnesses, in particular whether what you think they will say will help your case and about the possible costs of summoning witnesses.
- Your witness must come to court and say what happened.
- A letter or statement from a witness is **not** enough.
- In special circumstances the court might accept an affidavit from a witness. This is only if the respondent agrees to it being used. This is because the respondent has to have the

chance to ask your witnesses questions about what they saw or heard.

- If you want to show the court documents or photos, the person who wrote the document or took the photos must be in court. This is so that the respondent can ask them whether the document is correct. For example, the doctor must be there to hand their medical report to the court unless you get the respondent to let you use the report without the doctor being present.
- 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.
- 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.
- There are special rules about calling a child as a witness. See the heading below **Children as witnesses. Get legal advice if you think you need to summons a child to be a witness**
- 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 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.
- **A witness summons must be filed and given to ("served on") the witness at least 14 days before the final hearing date.**
- You can get an information sheet from Legal Aid WA with more information about

summonsing witnesses. You should get legal advice if you want to summons witnesses.

Nuts and bolts for appearing at court

- There is a duty lawyer from **Legal Aid WA's Domestic Violence Legal Unit** at some metropolitan courts. The duty lawyer cannot represent you at a final order hearing, but they may be able to give you some advice before your matter is heard in court.
- Dress neatly and appropriately. You will not be allowed into court in a singlet or without shoes.
- Try to get to the court early to be prepared.
- Be on time if you cannot be early.
- Bring all your paperwork with you organised in a way you can easily find what you are looking for eg, in a folder divided under different headings.
- Make sure you have parking for the day or have transport home as you may have to wait a while before your case is heard.
- At the court check the lists on the walls or ask at the court registry which courtroom you are in.
- If you are worried about your safety approach a security guard and ask them to take you to your courtroom.
- As soon as you get to the courtroom you should tell the orderly, or the person who calls the list in the court that you are here.
- If you are worried about your safety, ask if there is a separate room where you can sit.
- The orderly will call your name when your case is ready to start.
- There are victim support services at most courts that can help you and be there for support. They cannot represent you in court.
- Turn off your mobile phone, pager or other electronic device and take off your sunglasses before going into court.
- If the respondent has a lawyer, they may want to talk to you. You do not have to talk to them if you do not want to. Do not be pressured into dropping the case, agreeing to an undertaking, or agreeing to different conditions in the order.
- Do not eat or drink or chew gum in court.

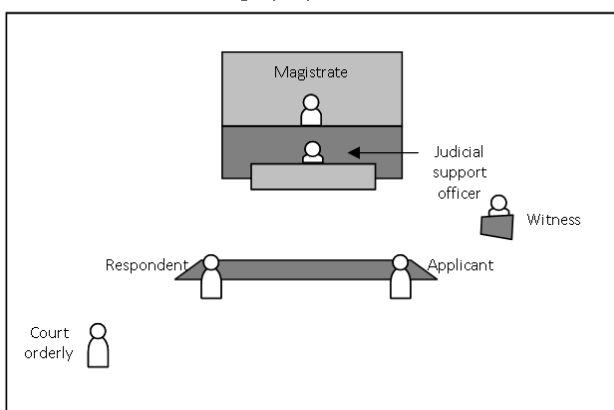
- It is polite to nod to the magistrate when you enter and leave the courtroom. You should stand up when the magistrate enters and leaves the courtroom. Also stand up when you are being spoken to or when you wish to speak, otherwise remain seated and keep quiet.

What happens at the trial?

- You are called the applicant or the “person seeking to be protected”.
- You sit on the right-hand side of the table.
- The person you have taken the restraining order against is called the “respondent”. They will sit on the left-hand side of the table.
- The final order hearing will be before a magistrate. You should call the magistrate “Your Honour”.
- Any witnesses should wait out of court until it is their turn to give evidence. Once they have given their evidence they are allowed to stay in the public gallery.
- Any documents you might have summonsed (for example, the respondent’s criminal record) go straight to the court.
- Before you give evidence, you should tell the magistrate that you have summonsed documents and ask to see them.

A picture of the courtroom is shown below.

Final order hearing, when applicant and respondent are not legally represented



1. Your evidence

You will be asked to give evidence first

You have to swear an oath (if you are religious) or make an affirmation (if you are not religious) that you will tell the truth.

- You then tell the court:
 - Your name.
 - Your occupation.
 - That your restraining order application is against the respondent.
 - Your relationship to the respondent.
 - The date you applied for and got your interim FVRO (if applicable).

You will also need to tell the court about the respondent’s behaviour:

- Tell the court full details of the respondent’s behaviour towards you and the effect it has had on you.
- You should refer to any of the types of acts of family violence mentioned above.

Things you have done as a result of the respondent’s behaviour

- Give details of things you have done because of the respondent’s behaviour, for example,
 - asked them to seek counselling
 - reporting incidents to the police
 - police callouts, including if any police orders have been made
 - times when you sought medical attention.

Breaches of the interim violence restraining order

- Any times where the respondent has breached the FVRO.
- Any information about what happened after the respondent breached it, eg police investigations and/or charges.

Why you need the order

- Why you want and need the FVRO.
- What you are afraid of happening if you do not get the order.

Children

- Whether there are any Children’s Court or family court orders, or any other orders or legal proceedings between you and the respondent. You must tell the court about these orders and you should bring copies to give to the court.
- If you want the restraining order to cover other people, eg your children, you need to give

evidence about what has happened to those people.

The respondent or their lawyer may then ask you some questions. This is called cross-examination

If the respondent doesn't have a lawyer, the respondent will ask the questions.

If you feel upset or intimidated by being asked questions by the respondent directly, you can tell this to the magistrate.

If the magistrate thinks it is necessary, they can make the respondent ask the questions to them instead of directly to you. The magistrate will then ask you the questions. This means that you only have to speak to the magistrate, not the respondent.

What they will ask

- The respondent should ask you questions about anything they disagree with. This is so you can have a chance to respond to their version of what happened.
- If they don't ask you something the court will think they agree with you about that fact.
- If the respondent doesn't ask you about a particular fact, they are not meant to tell the court about it later when they give evidence. You need to tell the magistrate if this happens.
- The respondent should only ask you questions that relate to the restraining order application.
- If you think a question is not related to the restraining order application tell the magistrate and they will decide if you need to answer the question.

The magistrate may also ask you some questions.

Re-examination

Once the respondent is finished asking you questions you can ask to give some more evidence. This must only be about a particular issue you need to clarify. This is called "re-examination".

2. Questioning your witnesses

Calling your witnesses

Once you have finished giving evidence and being questioned you can leave the witness box to go back to your place at the table.

When you have finished giving evidence tell the court if you have any witnesses or not.

If you have a witness tell the court their name and the orderly will bring the witness into the courtroom. The person will go to the witness box and be sworn in or to affirm.

You are able to ask them questions about what they have seen or heard. You cannot put words in their mouth or suggest an answer.

You should ask the witness their name, address and occupation. Then ask:

- How do they know you?
- Whether they know the respondent and if so how and for how long?
- If the witness is there to give evidence about particular events, ask them:
 - Whether the witness remembers that date?
 - What happened on that day?
 - What the witness saw and heard?
 - What happened then?
 - Do this same process for every date for which the witness was present.
 - What has the respondent's behaviour towards the witness been like?

The respondent is allowed to ask your witnesses questions

Once you have finished asking your questions the respondent or their lawyer is allowed to ask your witnesses questions.

- If the respondent doesn't have a lawyer, the respondent will ask your witness questions.
- If your witness is in a family relationship with the respondent and feels intimidated by being asked questions by them directly, **you** can tell this to the magistrate.
- The magistrate can get the respondent to ask the questions through them instead of directly.
- This is up to the magistrate and they will not always do it.
- The respondent can only ask your witness questions about whether or not you need a restraining order.

- If the questions are not about this or are offensive you should stand up and say “objection”. Then say the question is offensive or irrelevant and the magistrate can decide whether the respondent is allowed to ask that question.

Re-examination

You can re-examine or re-question your witnesses if you need to clarify anything that was said when they were answering the respondent’s questions.

You follow the same procedure with all your witnesses. When you are finished with your witnesses you then tell the court that is all your evidence.

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 are allowed to use that child as a witness. There needs to be “exceptional or special reasons”. For example, if the child has seen something no one else has seen that is critical and disputed, or if it is an older teenager who can clearly explain what happened and the effect it had on them.
- If you are not allowed to or don’t want to get a child to come to court, you or your witness may be allowed to tell the court about what the child has seen or heard.
- You or your witness may also be allowed to say what the child has said or done in response to what they have seen or heard.

3. The respondent’s evidence

It will then be the respondent’s turn to give evidence.

You should take notes of what they say. On one page write down things they agree with you about.

On another page write down what they don’t agree with you about.

If they give evidence about things they did not ask you about interrupt by standing up and saying this. The magistrate will decide if they are allowed to give that evidence.

Once the respondent has given evidence you can ask them questions. You have to ask questions trying to get them to admit what you said in your evidence unless they have already admitted to it.

You should also ask questions about things they said that you disagree with.

Try to ask your questions so that the respondent can only say yes or no. For example: “On 23 March didn’t you smash my television set?”

Examples of questions include:

- “We had heated arguments, didn’t we?”
- “We have had several separations, haven’t we?”
- “You have mental health problems don’t you?”
- “You use drugs, don’t you?”
- “You have acted in a similar way towards other people?” Eg, assaulted, threatened, abused them

You will have to ask them directly whether they beat/hit/followed/emotionally abused you.

If they deny something you have proof of, you should show them the proof and see what they say.

For example, question “do you have a criminal record for assault?”

Answer “no”.

Reply “Would you look at this document?”

“Would you tell the court what it is?”

“Is that your name on the record?”

“Do you agree that the content of the record is correct?”

“Can you tell the court what the conviction on X date related to?”

When you have finished asking them about it tell the court you want to “tender” it. This means give it to the court as part of the evidence.

The respondent is also allowed to call witnesses. You should take notes of anything they say that you disagree with.

You can question the respondent's witnesses. You should question them so they can only say yes or no. For example, "you saw him smash the television on the 23 March, didn't you?"

You should question them about anything they have said that you disagree with. You should also ask them about anything they have seen that might help your case.

4. Summary to the court

When all the evidence has been given you and the respondent will be given a chance to summarise your cases focussing on whether the restraining order should be granted.

You can do this by:

- Briefly summarising the evidence you and your witnesses have given about incidents that support your case.
- Summarising anything the respondent or their witnesses have admitted that helps your case.
- Then saying that you feel the respondent will continue to behave like this, or that you reasonably fear they will act abusively in the future, if the order is not granted (if you believe this is true).

You have to prove your case on the balance of probabilities. This means you have to prove that it is more probable than not that unless the order is granted the respondent will commit an act of family violence.

5. The decision

The court will then make its decision. It can:

- Grant the FVRO or make the FVRO final.
 - The court can put any conditions on the FVRO that it thinks are necessary. Listen carefully to make sure the conditions are OK. You can ask the magistrate to make changes.
 - FVROs usually stay in place for two years however you can ask for this to be longer if you can prove this is necessary, or it can be shorter.

Or

- Refuse to grant the FVRO or cancel the interim FVRO.

What about legal costs?

If the court gives you a final FVRO, you can ask for an order for costs against the respondent. This will cover the summons costs (show receipts) or any legal costs you may have had to pay while preparing for your trial. For example, photocopying costs, witness costs, the costs of getting medical reports or police reports, and the costs of legal appointments.

If the court decides that you should not have an FVRO, the respondent may make an application to the court for costs against you.

Section 69 of the *Restraining Orders Act 1997* (WA) says that the court cannot make a costs order against you unless your application was completely hopeless and without merit or was not made for genuine reasons.

After the final order hearing, you can ask the orderly to organise for security to see you safely out of the building.

Where can I get more information?

- The **Magistrates Court of WA** website or any registry for fact sheets and other forms.
- **Legal Aid WA's Infoline** on **1300 650 579** for information and referral and to get copies of information sheets that may help.
- Your local community legal centre. Call **(08) 9221 9322** to find the one nearest to you.
- **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 (ATSI) peoples, or whose partner or children are ATSI peoples. Contact:
 - **Perth FVPLS (Djinda Services)** on **(08) 9200 2202**.
 - **Aboriginal Family Law Services** (AFLS) on **(08) 9355 1502** or **1800 469 246** (freecall) or website <http://www.afls.org.au/contact/> for the contact details of other AFLS offices in regional areas.
 - **Albany FVPLS** on **(08) 9842 7751**.
 - **Marninwarntikura Family Violence Prevention Legal Unit** on **(08) 9191 5284** or **(08) 9191 5417** (direct line).

Sample email request for a Police Information Certificate

Subject heading: Request for Police Information Certificate

Dear Sir/Madam

Request for Police Information Certificate

Family Violence Restraining Order

_____ (insert court number, that is, **MC/CIV/MID/RO/0000/2019**)

My name is _____ (insert name), born _____ (insert date of birth). I am the Applicant in this Family Violence Restraining Order matter.

The Respondent to my application is _____ (insert name), born _____ (insert date of birth).

My case is next in _____ (insert Court location) Magistrates Court on _____ (insert date) for a final order hearing.

I request that you provide the Police Information Certificate to the court for this hearing. The certificate should include:

- Any criminal convictions of the Respondent;
- Any police orders against the Respondent; and
- Any police incident reports relating to the Respondent.

Please let me know when you have complied with my request and provided the court with the certificate.

Regards

(insert your name)

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

Perth Office

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

Southwest Regional Office

7th 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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