

Representing yourself as a respondent in a restraining order final hearing



This information is for respondents who have received a summons to go to court for a restraining order final hearing and are representing themselves.

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 has to 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.

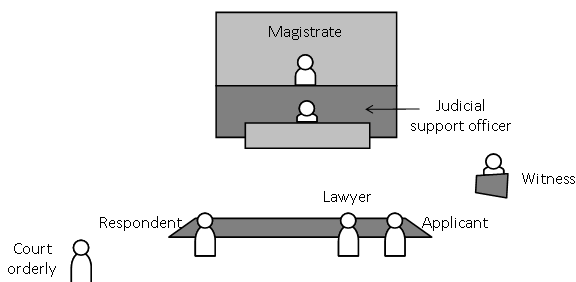
Nuts and bolts for appearing at court

- Try to get to the court early to be prepared.
- Be on time if you cannot be early.
- Dress neatly and appropriately. You will not be allowed into court in a singlet or without shoes.
- Bring all of your paperwork with you organised in a way you can easily find what you want.
- 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.
- Make child care arrangements **before** going to court. Contact the court well before to see if the court can help with child care. At some courts a month's notice is required.
- Organise someone to pick up any children from school or daycare as you may be at court all day.
- If you know you need an interpreter contact the court as soon as possible **before** the court date to ask them to arrange one.
- When you get to the court check the lists on the walls or ask staff at the court registry to tell you which courtroom you are in.
- As soon as you get to the courtroom you should tell the orderly in the court that you are here.
- The orderly will call the name of the applicant and your name when your case is ready to start.
- Do not have your mobile phone, pager or other electronic device on in court.
- Do not chew gum or eat in court.
- Bow to the magistrate when you enter and leave the courtroom.
- If the applicant 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 agreeing to the order or agreeing to conditions in the order but be realistic about what a magistrate may do after hearing the evidence.
- If you are prepared to agree to an undertaking (see the **Legal Aid WA information sheet – Undertakings in restraining order proceedings**), or for family violence restraining orders (FVRO), a “conduct agreement order” (CAO) which is made without admissions and is not an FVRO but is taken to be an FVRO and is enforceable as an FVRO (see the **Legal Aid WA information sheet – Conduct Agreement Orders**), or consent orders in VRO and MRO cases, you can speak to the lawyer about whether the applicant will accept an undertaking, a CAO (in an FVRO case) or consent orders in VRO or MRO cases. Otherwise raise this with the magistrate when your case is called into court.
- Try not to talk or whisper to others while you are waiting in the courtroom.

What happens at the final order hearing?

- You are called the respondent or the “person to be bound”.
- You sit on the left hand side of the table.
- The person who has applied for the restraining order against you will sit on the right hand side of the table.
- A picture of the courtroom is shown below.

Final order hearing, when applicant is legally represented and the respondent is not legally represented



- 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.
- Any documents you have summonsed go straight to the court. You should apply to the court **before the hearing date** to 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.

Order of evidence and questioning

What the witnesses say is “evidence”. The evidence is what the magistrate has to take into account in working out if a restraining order should be made.

You should take notes of what the applicant and each witness for the applicant says.

On one page write down things you agree with. On another page write down what you don’t agree with.

The applicant’s evidence

The applicant will be asked to tell their story first.

The applicant has to swear an oath or make an affirmation that they will tell the truth. They then tell the court:

- Their name.
- Their occupation.
- That their restraining order is sought against you.
- Their relationship or connection to you.
- The date they applied for and got the interim family violence restraining order (FVRO) or interim violence restraining order (VRO) (if applicable).

Your behaviour

They will tell the court:

- Full details of your behaviour and the effect it has had on them.
- Your criminal and police history if relevant.
- Your behaviour towards others if similar.

If it is an application for an FVRO they are likely to refer to any of the types of acts of family violence and for a VRO, acts of personal violence.

Action they have taken as a result of your behaviour

They may give details of action they have taken because of your behaviour, for example,

- Gone to counselling.
- Reported incidents to the police.
- Got medical attention.

Breaches of an interim FVRO/VRO

- Any times where you have breached the FVRO/VRO.
- Any information about what happened after you breached it, for example, police investigations.

Why they need the order

- Why they want and need the restraining order.
- What they are afraid of happening if they 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 yourself and the applicant.
- If they want the restraining order to cover other people, for example, your children, they will need to give evidence about what has happened to them.

Your questions of the applicant

When the applicant has finished giving their evidence you will be given a chance to put your **questions** to the applicant.

How your questions are put to the applicant

If you don't have a lawyer and you are in a family relationship the magistrate will usually order that you cannot ask direct questions to the person to be protected. You will be allowed to ask your questions to the person to be protected by stating the questions to the magistrate who will then ask the person to be protected the questions.

In cases where there is not a family relationship and you don't have a lawyer, if the applicant feels intimidated by being asked questions by you directly, they can tell this to the magistrate. If the magistrate thinks it is necessary they can make you ask the questions through the court instead of directly to the applicant.

Your questions of the applicant (cross-examination)

- **You should ask the applicant or any of their witnesses questions about anything you disagree with.** This is so they can have a chance to have a say about your version of what happened. For example, that you did not make calls to the applicant they say you did.
- If the applicant denies something you have proof of you should show the proof and see what they say, for example, your phone records if they say you called from your phone and you say you didn't.
- If you don't ask the applicant about something you disagree with the court may think you agree with the applicant about that fact.
- If you don't ask the applicant about a particular fact you disagree with you are not meant to tell the court about it later when you

give evidence. The applicant can tell the magistrate if this happens.

- You should only ask the applicant questions that are about the restraining order application.
- Do not make statements.
- If the applicant thinks a question is not about the restraining order application they can tell the magistrate and the magistrate will decide if they need to answer the question.

The magistrate may also ask you some questions.

More questions from the applicant (re-examination)

Once you have finished asking your questions the applicant can ask to give some more evidence. This must only be about particular issues they need to clarify. This is called "re-examination". You cannot question the applicant again after this.

The applicant's other witnesses

Once the applicant has finished giving their evidence and being questioned they leave the witness box, and go back to their place at the table.

When the applicant has finished giving their evidence they, or their lawyer if they have one, will tell the court if they have any witnesses or not.

If they have a witness they tell the court their name and the orderly will bring the witness into the courtroom and the person will go to the witness box and be sworn in or to make an affirmation.

The applicant is able to ask them questions about what they have seen or heard. They cannot put words in their mouth or suggest an answer.

The applicant or their lawyer will ask the witness their name, address and occupation.

Then they are likely to ask questions such as:

- How do they know the applicant?
- Whether they know you and if so how?

If the witness is there to give evidence about particular events they may be asked:

- Whether the witness remembers particular dates or events?
- What happened on that day?
- What the witness saw and heard?
- What happened then?

They will probably follow this same process for every date for which the witness was present.

- What your behaviour towards the applicant has been like?

You are allowed to ask the applicant's witnesses questions (cross-examination)

- Once the applicant has finished asking their questions you are allowed to ask the witnesses questions.
- You will ask the witness questions, except if the witness is a child. If the witness is a child you will have to give your question to the magistrate or a person approved by the court who will ask the child the question.
- You can only ask the witness questions about whether or not the applicant needs a restraining order.
- If the questions are not about this or are offensive, the applicant or their lawyer can stand up and say "objection". Then they can say the question is offensive or irrelevant and the magistrate can decide whether or not you are allowed to ask that question.

Re-examination

The applicant, or their lawyer if they have one, can re-examine the applicant's witnesses if they need to.

This procedure is followed for all the of the applicant's witnesses. When the applicant is finished with their witnesses they then tell the court that their evidence is completed.

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. See the **Information sheet – Preparing as a respondent for a restraining order final hearing**.
- If they are not allowed to or the applicant doesn't want to get a child to come to court the applicant can tell the court about what the child has seen or heard when they were present. The applicant can also say what the child has said or done in response to what they have seen or heard.
- If you are not represented by a lawyer and want to cross-examine a child, the questions will have to be asked through the court and the magistrate will ask the questions.

Your evidence

It will be your turn to give evidence at the end of the applicant's evidence.

- You are not meant to give evidence about things you did not ask the applicant about. If the applicant, or their lawyer if they have one, interrupts and says this, the magistrate will decide if you are allowed to give that evidence.
- Once you have given evidence the applicant, or their lawyer, if they have one can ask you questions.
- The applicant will ask questions trying to get you to admit what the applicant said in their evidence unless you have already admitted to it.
- They are also likely to ask questions about things you said that they disagree with.

Your witnesses

- You are also allowed to call witnesses.
- You should also ask them about anything they have seen that might help your case.
- The applicant can question your witnesses.
- The applicant is likely to question them about anything they have said that they disagree with.

Summary to the court

When all the evidence has been given the applicant will be given a chance to summarise why the order should be made and you will be given a chance to summarise why the restraining order should not be granted.

- The applicant will go first.
- When it is your turn you should briefly summarise the evidence you and your witnesses have given that shows why an order does not need to be made.
 - If the applicant or their witnesses have admitted anything that helps your case you should say this in the summary.
- The responsibility is on the applicant to prove their case on the balance of probabilities. This means they have to prove, by the evidence they have given the court, that there is a real possibility that:
 - in an FVRO application

- you have committed family violence against the person seeking to be protected and are likely to again, or
- the applicant has reasonable grounds to fear that you will commit family violence against them

unless you are restrained.

You should tell the court if there are special circumstances that would make the order inappropriate.

- in a VRO application, that
 - you have committed personal violence against the person seeking to be protected and are likely to again, or
 - the person seeking to be protected has reasonable grounds to fear you will commit personal violence against them

unless you are restrained.

- in a misconduct restraining order (MRO) application, you will breach the peace, cause fear, damage property or intimidate the person seeking to be protected unless you are restrained.

Also with both VRO and MRO applications, the court must think it is appropriate in the circumstances to make the order.

What does the court look at before making an order?

FVROs

Before making an FVRO the court has to think about:

- protecting the person seeking to be protected from family violence
- the need to prevent behaviour that could reasonably be expected to cause the person seeking to be protected to fear that they will have family violence committed against them
- the need to ensure the wellbeing of children by protecting them from family violence, reasonable fear of family violence, or being exposed to family violence
- the accommodation needs of you and the person seeking to be protected
- your past history and that of the person seeking to be protected in relation to restraining orders applications

- hardship that may be caused to you if the order is made
- any family orders
- other current legal proceedings involving you and the person seeking to be protected
- your criminal convictions if any
- any police orders made against you
- any previous similar behaviour by you towards the person seeking to be protected or otherwise
- any police incident reports about you
- any risk assessment, or risk-relevant information relating to the relationship between you and the person seeking to be protected
- any other matters the courts considers relevant.

VROs

Before making a VRO, the court has to think about a number of factors. These include:

- protecting the person seeking to be protected from personal violence
- the need to prevent behaviour that could reasonably be expected to cause the person seeking to be protected to fear that they will have personal violence committed against them
- the need to ensure the wellbeing of children by protecting them from personal violence, reasonable fear of it, or being exposed to personal violence
- hardship that may be caused to you if the order is made
- the past history of the person seeking to be protected and you in relation to applications for restraining orders
- any other court matter in which the applicant or you are involved
- your criminal convictions (if any)
- whether you have ever acted in a similar way in the past to any person
- anything else the court thinks is relevant.

MROs

Before making a MRO, the court has to think about:

- protecting the person seeking to be protected from your alleged intimidating and offensive behaviour
- protecting the public from breaches of the peace (if the police seek one for the benefit of the public)
- protecting the property of the person seeking to be protected
- the welfare of children who are likely to be affected by your behaviour or the operation of the MRO
- where you and the person seeking to be protected have to live
- hardship that may be caused to you if the order is made
- any other legal proceedings you or the person seeking to be protected are involved in
- your criminal record (if any)
- whether you have ever acted in a similar way in the past to any person
- anything else the court thinks is relevant.

Restraining orders against a child or young person (aged between 10 and under 18)

If the restraining order sought is against a child or young person aged between 10 and under 18, the Children's Court magistrate has to be satisfied that appropriate arrangements have been made for the care and wellbeing of the child before it can make an order.

The decision

The court will then make its decision. It can:

- Make the FVRO/VRO/MRO.
 - The court can put any conditions/prohibitions/restrictions on the order that it thinks are necessary.
 - Listen carefully to make sure what the conditions are. You can ask the magistrate to make changes, for example, to allow you to collect your property on one

occasion usually in the company of the police, to allow you to see or communicate with your children if there are family court orders in place.

or

- Refuse to make an order.

What about legal costs? Will I have to pay?

If the court gives the applicant a final FVRO/VRO/MRO, **they can ask for an order for costs against you**. This will cover the summons costs (receipts should be shown) or any legal costs they may have had to pay while preparing for the hearing. For example, the cost of their lawyer if they have one, photocopying costs, witness costs, and costs of getting medical reports or police reports, etc.

If the court decides that the applicant should not have a restraining order, you may make an application to the court for costs against the applicant.

Section 69 of the *Restraining Orders Act 1997* (WA) says that the court is not to make a costs order against the applicant unless their application was "frivolous or vexatious", that is, their application was completely hopeless and without merit or was not made for genuine reasons.

Where can I get more information?

- Contact **Legal Aid WA** 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

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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

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28 Throssell Road, South Hedland, WA 6722

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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

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Indian Ocean Office

Administration Building, 20 Jalan Pantai

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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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