

# Responding to a restraining order application

This information is for people who have received:

- an interim (temporary) family violence restraining order (FVRO), or
- an interim (temporary) violence restraining order (VRO), or
- a summons to go to court for a restraining order hearing.

## Terms used

The person applying for a restraining order is called the 'applicant', or the 'protected person' if an order is made.

The person who has a restraining order application made against them is called the 'respondent', or the 'person bound' or 'person restrained' if the order is made.

## What are the types of restraining orders?

### Family violence restraining orders

A family violence restraining order (FVRO) is a court order against a person in a family relationship (for example, partner, ex-partner or other family member) designed to stop threats of violence, violence, or other behaviours that coerce or control the applicant or cause them to be fearful.

### How do I know if I am in a family relationship?

Family relationship is broadly defined and includes where the other person is:

- your spouse or former spouse
- your de facto or former de facto
- your girlfriend/boyfriend or former girlfriend /boyfriend

- someone you 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, or
- the former spouse or de facto partner of your current spouse or de facto partner (or someone related to them).

### Police orders

Police may make an on the spot violence restraining order called a 'police order' in situations of family violence.

The police order may apply for up to 72 hours. It is a criminal offence to breach the order.

### Violence restraining orders

A violence restraining order (VRO) is a court order made to protect an applicant who fears that an act of personal violence is likely to be committed against them in the future by the respondent, and they are not in a family relationship with that person.

### What is personal violence?

Personal violence means one of the following acts that a person commits against another person

when they are not, and have not been, in a family relationship:

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

Other acts that would be family violence if there was a family relationship may be personal violence if the respondent imagines they are in a personal relationship with the applicant.

## Misconduct restraining orders

A misconduct restraining order (MRO) is a court order made to protect someone who feels:

- intimidated or offended by another person's behaviour, or
- that the other person is likely to damage their property, or
- that the other person is likely to act in a way that would be a breach of the peace, or
- that the other person will commit an offence under *The Criminal Code* section 70A(2A) (this means commit an aggravated trespass on an animal source food production place)

and who is not in a family relationship with the other person.

For more information when an MRO can be made see the Legal Aid WA infosheet: *Misconduct restraining orders – information*.

## What restrictions can be imposed by the restraining order?

A restraining order will stop you, as the person bound, from being able to do things such as:

- being at or near the protected person's home or place of work
- being at or near another place

- coming within a certain distance of the protected person
- contacting or trying to contact the protected person – even through other people
- using property
- behaving in particular ways
- being in possession of firearms, ammunition or a firearms licence.

The court must also consider whether to restrain you from being in possession of any explosives or holding or obtaining an explosives licence.

An FVRO or VRO may also inform you that certain behaviours and activities are unlawful (breaking a criminal law).

## What happens next?

You may have received either:

- A summons asking you to appear in court to answer an application for a restraining order (this is not a restraining order), or
- An interim FVRO or VRO (this is a restraining order) that is in force until the court makes a decision about whether a final restraining order should be made (which will last for a longer period of time).

Read your paperwork carefully.

## What are my options if I have received an interim FVRO or VRO?

An interim FVRO or VRO is in force once it has been served on you. Breaching any of the conditions is a criminal offence.

If you have received an interim FVRO or VRO your options include:

### 1. Agree to the FVRO/VRO being made final

- Fill in the 'Consent' section on the back of the notice you received and return it to the court within 21 days.

- You do not need to go to court if you agree to the restraining order.
- The restraining order will be made final.

Before agreeing to the restraining order, check what you are not allowed to do. You may need to negotiate different terms before you agree to a final order being made.

## 2. Object to the FVRO/VRO being made final

- If you do not agree to a final order being made, fill in the 'Objection' section on the back of the notice and return it to the court within 21 days. The court must receive your Objection before the 21 days is up.
- You can also fill in a form at the court registry to ask for a copy of what was said at court during the interim application hearing and in the application for the order.

The interim FVRO remains in force (even if you have objected to it) until a negotiated agreement is reached and given to the court, or the court makes a final order or cancels the interim order. The court process from here may be different for FVROs and VROs.

### For FVROs

You can also say on the objection form if you will participate in an FVRO conference. Conferences are a type of mediation that take place at a court building. They are a way of trying to resolve disputes in family violence restraining order (FVRO) cases without having to go to a final order hearing at court.

If both you and the protected person agree to participate and a conference is available at your court, the court may set a court date for a conference. For more information see the Legal Aid WA webpage [Conferences in FVRO cases](#).

### For VROs

- You will need to go to court if you object.
- As courts do things differently, the first time you appear in court may be a 'mention' or directions hearing, or it may be a final order hearing date.

- You do not need to take witnesses to a 'mention' or directions hearing date.
- At the 'mention' or directions hearing the magistrate finds out if a final order hearing needs to be set. If so, they will ask how many witnesses you have to decide how long the final order hearing should take and to find a suitable final hearing court date.

### For both FVROs (that don't settle at a conference or if a conference is not held) and VROs

- There will be a final order hearing where the magistrate will listen to the reasons why the applicant wants the order and your reasons for objecting.
- At the final order hearing both you and the applicant can present evidence and witnesses to support what you say.
- Some courts may list your case as a mention or directions hearing before the final hearing occurs. Others will not. If you are not sure what your court date is, ring the court to find out so that you are prepared and ready.
- If you have a good reason for not being able to attend court, contact the court as soon as possible. The court can make a final restraining order binding you if you don't attend court.

## 3. Do nothing

If you do not send back a notice of objection (or the consent section) to the court within 21 days after you were served, the interim FVRO or VRO will automatically become a final FVRO or VRO against you. For information on what to do when an interim order becomes a final order because you did not object and you want to apply to set aside the decision, see the Legal Aid WA infosheet: *After a restraining order is made*.

## What are my options if I have received a summons to a restraining order hearing?

A summons to attend an initial restraining order hearing when you have not been served with an

interim order usually means no restraining order is in place. Instead, you have the chance to go to court and have your say about whether an order should be made.

If you have received a summons you can:

## 1. Agree to the restraining order being made

- You do not need to attend court if you agree to the restraining order.
- The applicant will tell the court why they want the order. The court will decide if an order is needed.
- You can go to the mention hearing and consent to a final order being made. Consent does not mean you admit you did any of the things alleged. In an FVRO case you could consent by agreeing to a conduct agreement order (CAO). For more information on this see under the heading *Other ways of responding to a restraining order application*.

## 2. Object to the restraining order being made

- You will need to go to court if you object.
- The first time you appear in court may be a 'mention' or directions hearing. Or it might be the final order hearing.
- At a mention or directions hearing the magistrate finds out if the matter needs to go to a final order hearing and if so, how many witnesses you will have and how long the final order hearing should take. The final order hearing date will be set.
- At a final order hearing the magistrate will listen to the reasons why the applicant wants the order and your reasons for objecting to the order. Both you and the applicant can present evidence and witnesses to support what you say.
- Ring the court to find out whether your next court appearance is a 'mention', directions hearing or final order hearing if you are unsure.

If you have a good reason for not being able to attend court, contact the court as soon as possible.

For information on what to do when a final order is made because you did not go to the final order hearing and you want to apply to set aside the decision see the Legal Aid WA infosheet: *After a restraining order is made*.

## 3. Do nothing

If you do nothing a final restraining order may be made against you. The applicant will tell the court why they want the order. The court will decide if an order is needed.

## Other ways of responding to a restraining order application

At any stage in proceedings an FVRO application can be resolved by you agreeing to a conduct agreement order (CAO). A CAO is the name given to an FVRO that has been made with your consent without admitting that any family violence has occurred.

Breaching a CAO is an offence and the same as breaching an FVRO. If you are convicted of an offence of breaching a CAO it will go on your criminal record. See below for more information on breaches.

Sometimes an applicant may accept an undertaking from you to settle a restraining order application. An undertaking is a promise to the court (either written or oral) that you agree to act in a certain manner or not do certain things. The applicant withdraws their application for a restraining order because of the undertaking you have given. You can offer an undertaking at court at any time, but the applicant does not have to accept it. It's their choice. For more information see the Legal Aid WA infosheets: *Conduct agreement orders*; and *Undertakings in restraining order proceedings*.

## Do I need to see a lawyer?

A restraining order is not a criminal charge, but it may affect you in the future.

You should get legal advice so that you understand:

- The legal consequences, process and what the restraining order means for you.
- Legal costs you may have to pay.
- How to represent yourself if you don't have a lawyer.

## What can I do if I am representing myself?

If possible, get legal advice. If you do not have a lawyer see the Legal Aid WA infosheets: *Preparing for a restraining order final hearing - respondent*; and *Representing yourself in a restraining order final hearing - respondent*.

## Will I have to pay costs?

If the applicant at a final order hearing is represented by a lawyer and you are unsuccessful, the applicant's lawyer can ask the court to award costs against you. If a costs order is made it means that you will have to pay the applicant's legal costs.

## When does a restraining order come into force?

A restraining order comes into force when it is served on (given to) you or, if a later time is stated in the order, at that time.

It is taken as served if you are present in court when the order is made. Otherwise the police will serve it on you.

## How long does a restraining order last?

Usually a final FVRO or VRO against:

- an adult stays in force for 2 years, or whatever period is stated in the order.
- a child or young person under 18 years of age, stays in force for no more than 6 months.

If you are in prison at the time of service of the order, the time the order stays in force runs from when you are released from prison.

Police orders normally last for 72 hours or the time stated in the order.

A final MRO against:

- an adult, stays in force for 1 year, or whatever time is stated in the order.
- a child or young person under 18 years of age, stays in force for no more than 6 months.

The protected person can apply to extend the restraining order before the order ends.

## Other ways an FVRO or VRO can be made against you

If a person pleads guilty to, or is found guilty of certain criminal offences against a family member in the Magistrates Court, the family member can tell the court they want to be protected by an FVRO. Unless there are exceptional circumstances a court can make an FVRO.

If a person is convicted of certain violent offences in a criminal court, that court can automatically make a lifelong FVRO or VRO against an adult or a child unless the victim does not want it.

## Can I cancel or change a restraining order?

In limited circumstances you can apply to cancel or change a final or interim restraining order.

Get legal advice about this. See also the Legal Aid WA infosheet: *After a restraining order is made*.

## What is a breach of a restraining order?

A restraining order will prevent you from being able to do certain things.

READ THE ORDER CAREFULLY.

If you do something the restraining order says you can't do, you are 'breaching' the order and committing a criminal offence.

If the order prevents you from communicating or trying to communicate with the protected person,

you cannot try to contact them in any way, such as through:

- visits
- phone calls
- SMS or text messages
- emails
- letters
- sending presents
- sending messages (even through friends, family or your children).

You need to think carefully about all of your actions.

There are a number of services that can provide you with legal advice, information and support.

If the protected person makes contact with you, end the contact straight away (for example, immediately end the telephone call or walk away). If they persist in trying to make contact, you may be able to ask the court to vary or cancel the restraining order. Get legal advice.

If a protected person helps you breach a restraining order and you are charged with an offence, the criminal court can cancel or vary the restraining order after giving the protected person an opportunity to have a say.

## Is a restraining order a criminal charge?

No, a restraining order does not go on your criminal record.

But, if you breach a restraining order you could be charged with a criminal offence.

A conviction for breaching a restraining order will go on your criminal record.

Breaches of an FVRO (including a CAO), VRO or police order can result in fines of up to \$10,000, imprisonment for up to 2 years, or both. Repeated breaches are treated seriously and the law may automatically require imprisonment to be imposed.

Breaches of an MRO can result in a fine of up to \$1,000.

## Can I see my children if there is an FVRO in place?

An FVRO can extend to protect your children.

Read the restraining order carefully as it may include conditions about what contact you can have with your children.

**DO NOT CONTACT** the protected person to try and resolve this problem.

Remember, an FVRO cannot override a family court order.

If there is a restraining order against you, it is important to understand what you are legally allowed to do. Otherwise you could breach the restraining order.

If you are worried about having contact with your children:

- Speak to a lawyer.
- Contact Legal Aid WA's Infoline on 1300 650 579 for information and referral.
- Go to court on the next court date for the FVRO and say that you want to have contact with your children. You may need to apply to vary an interim FVRO if it stops you seeing your children.
- Get information about how you can get a family court order (if you don't already have one) through the Family Court of Western Australia (<https://www.familycourt.wa.gov.au/>).

## What about my property ?

The court can make an order that removes you from where you normally live even if you are the owner of that property.

If this happens the court must make an order about how you can collect your personal property. Usually you will be allowed to go back to the property once with the police - but check the terms of your restraining order carefully. If it is a condition of the order, ring the police on 131 444. The police will try to contact the protected person and arrange a time (convenient to them) for you to collect your property in the presence of a police officer.

If the court has not made an order, you will need to get legal advice.

You will breach the restraining order if you go to where the applicant lives to collect your property without an order.

A restraining order is not a court order about who owns the property. The Family Court makes orders about property settlement.

You may need to get legal advice from a family lawyer about how to get a court order about property settlement.

## Where can I get more information?

For legal advice:

- Aboriginal Legal Service WA on 1800 019 900 if you have been charged with breaching a restraining order or if you need family law advice about your children.
- Your local community legal centre. To find the one nearest to you phone (08) 9221 9322.
- There are free legal services for respondents appearing in court for FVRO conferences. The service providers and locations for respondents are:
  - Perth Magistrates Court – Sussex Street Community Law Service.

- Joondalup Magistrates Court – Northern Suburbs Community Legal Centre.
- Fremantle Magistrates Court – Family Advocacy Support Service/Legal Aid WA.

Bookings are not necessary to access legal services for FVRO conferences. Lawyers from these services will be available on the day to provide you with advice and legal support during the conferences.

For information and/or support:

- Legal Aid WA's Infoline on 1300 650 579 can help with information and referrals. Infosheets on restraining orders are available from any office or the website.
- Men's Domestic Violence Helpline on (08) 9223 1199 or 1800 000 599.
- If you have an FVRO conference listed, contact Legal Aid WA or your closest community legal centre for advice about the conference. Alternatively, you can read about FVRO conferences on the Magistrates Court website at this link: [https://www.magistratescourt.wa.gov.au/F/fvro\\_conferencing.aspx](https://www.magistratescourt.wa.gov.au/F/fvro_conferencing.aspx) or on the Legal Aid WA website under Find Legal Answers - Restraining orders – FVROs - [Conferences in FVRO cases](#).

# LEGAL AID WA OFFICES



**Infoline:** 1300 650 579



**Translating & Interpreting Service:**  
131 450



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



**National Relay Service:** 133 677  
(for hearing and speech impaired)

## **Perth Office**

32 St Georges Terrace,  
Perth, WA 6000  
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  
(08) 9025 1300

## **East Kimberley Office**

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

## **Southwest Office**

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

## **Pilbara Office**

28 Throssell Road,  
South Hedland, WA 6722  
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## **Indian Ocean Office**

Administration Building,  
20 Jalan Pantai, Christmas Island,  
Indian Ocean, WA 6798  
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