

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.

Who's who in restraining orders

The person applying for a restraining order is called the **'applicant'** or the **'person to be protected'**.

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

What are the types of restraining orders?

Family violence restraining order

A family violence restraining order (FVRO) is a court order against a person in a family relationship (for example, as the partner, ex-partner or another family member) designed to stop threats of violence or violence, or other sorts of behaviour 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 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.

Violence restraining order

A **violence restraining order** (VRO) is a court order made to protect an applicant who is in a non-family relationship who fears that an act of personal violence is likely to be committed against them in the future by the respondent or person to be bound.

What is personal violence?

Personal violence means one of the following acts that a person commits against another person with whom they are **not** 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 against may be personal violence if the person imagines they are in a personal relationship with the applicant.

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 be made for up to 72 hours.

Misconduct restraining order

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

- intimidated or offended by another person's behaviour, or

- thinks 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.

What restrictions can be imposed by the restraining order?

An interim or final restraining order will stop you from doing certain actions such as:

- being at or near the person bound's home or place of work
- being at or near a certain place
- coming within a certain distance of the person bound
- contacting or trying to contact the person bound - even through other people
- stopping the person bound from using property
- behaving in certain ways
- being in possession of firearms, ammunition or a firearms licence.

An FVRO or VRO may also inform you that certain behaviour and activities are unlawful, that is, they may break a criminal law.

What happens next?

By now you have received either:

- A summons from the police 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 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 = you can breach it if you do not comply with it.

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

1. Agreeing 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 FVRO or VRO, as applicable, will be made final.

Before agreeing to the restraining order being made final you should check what you are not allowed to do. You may need to negotiate different terms. See below for other ways to try to resolve an FVRO/VRO application.

2. Objecting to the FVRO/VRO being made final

- Fill in the 'Objection' section on the back of the notice and return it to the court within 21 days. You can fill in a form at the court registry ask for a copy of what was said at court during the interim application hearing and in the application for the order.
- You will need to go to court if you object.
- The first time you appear in court may be a 'mention' date.
- You do not need to take witnesses to a 'mention' date.
- At the 'mention' the magistrate finds out if the matter is still going to a final order hearing. They also check how many witnesses you will have and decide how long the final order hearing should take.
- 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.
- If you are not sure, ring the court to find out whether your next court appearance is a mention date or a final order hearing.
- If you have a good reason for not being able to attend court, contact the court as soon as possible.

3 Doing nothing

- In this case a restraining order will be made final 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 information sheet – After a restraining order is made.**

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

A **summons** for an MRO/VRO/FVRO hearing means no order is in place and 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 to a restraining order hearing your options include:

1 Agreeing that the restraining order be made

- You do **not** need to go to 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 would be 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 Objecting 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” date.
- You do not need to take witnesses to a “mention” date.
- At the “mention” the magistrate finds out if the matter is still going to a final order hearing. They also check how many witnesses you will

have and decide how long the final order hearing should take.

- 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.
- If you are not sure, ring the court to find out whether your next court appearance is a mention date or a final order hearing.

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 information sheet – After a restraining order is made.**

3 Doing nothing

In this case a final restraining order may be made final 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 making any admissions that any family violence has occurred. If the order is breached it is a criminal offence. 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. An undertaking replaces any restraining order that is in place. When the case comes to court you can offer an undertaking. The applicant does not have to accept an undertaking. It's their choice. For more information on conduct agreement orders and undertakings see the **Legal Aid WA information sheets: Conduct Agreement**

Orders and Undertakings in restraining order proceedings.

Do I need to see a lawyer?

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.
- 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 information sheets – Preparing as a respondent for a restraining order final hearing** and **Representing yourself as a respondent in a restraining order final hearing**.

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 the 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 (or 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 two 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 six months.

If you are in prison when an FVRO is made the order stays in force for two years or the period stated in the order 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 one 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 six months.

The person protected 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, such as common assault, the family member can tell the court they want to be protected by an FVRO. Unless there are exceptional circumstances a court is able to 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 information sheet – After a restraining order is made**.

What is a breach of a restraining order?

A restraining order will stop you from doing certain things.

READ THE ORDER CAREFULLY.

If you do something that the restraining order says you can't do you are 'breaching' the order.

Some kinds of contact that would breach an order that you not communicate or try to communicate with the person bound are:

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

No matter how angry or upset you are, your actions now are important.

You need to think carefully about what has happened, and what you want to happen in the future.

There are a number of services available to help you. They can provide legal advice, information and support.

In some cases you may have a legal defence to a charge of breaching a restraining order.

If the applicant makes contact with you, end the contact straight away (for example, put the telephone down, walk away, etc). If they persist in trying to make contact you may be able to have the order varied or cancelled. Get legal advice.

If a protected person helps you breach a restraining order, the criminal court dealing with the breach has the power to cancel or vary the restraining order.

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 will be charged.

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

Breaches of an FVRO (including a CAO) or VRO or a police order can result in fines of up to \$6,000 and/or imprisonment for up to two years.

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 include your children.

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

DO NOT CONTACT the person who got the restraining order 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 allowed to do legally otherwise you could breach the restraining order.

If you are worried about having contact with your children you need to:

- See 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 have to apply to vary any interim FVRO that 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. (Contact **Legal Aid WA's Infoline** on **1300 650 579** for information and referral or go to the **Family Court of WA** website <http://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, you can ring the police on **131 444**. The police will try to contact the protected person and arrange a convenient time to them to collect their 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 family court order about property settlement.

Where can I get more information?

For legal advice

- **Aboriginal Legal Service** on **1800 019 900**.
- Your **local community legal centre**. To find the one nearest to you phone **(08) 9221 9322**.

For information and/or support

- **Men's Domestic Violence Helpline** on **(08) 9223 1199** or **1800 000 599**.
- **Breathing Space** (a residential service for men) on **(08) 9439 5707**.
- **Legal Aid WA's Infoline** on **1300 650 579** can help with information and referrals. Information sheets on restraining orders are available from any office or the website.

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

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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

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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