



RESTRAINING ORDERS

(ALSWA website version)

Aboriginal Legal Service of Western Australia (Inc)

Striving for justice for Aboriginal and Torres Strait Islander peoples for over thirty years

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What is a restraining order?

A restraining order is a Court order to stop a person being near or contacting someone else. Restraining orders are used to stop someone being violent or threatening to someone else, or interfering in their life.

It is an offence to disobey a restraining order, even if the other person consents. The penalty is a fine or prison.

These people can apply for restraining orders: a police officer (on behalf of a person or the public), an adult, a parent or guardian of a child, and a guardian of an adult person.

Types of restraining order

There are 3 types of restraining order:

1. Violence Restraining Orders
2. Misconduct Restraining Orders, and:
3. Police Orders.

Police Orders are made by police. The other types are made by courts. For domestic violence, you cannot get a misconduct restraining order.

The procedures for violence restraining orders and misconduct restraining orders are different, but for both you must give evidence to Court and if you can you should take to Court any witnesses and any letters, photographs, recorded phone or SMS messages, or other proof.

What the Court considers for each type is slightly different, but may include:

- What has happened and the need to protect you from a repeat of it
- The welfare of your children
- Accommodation needs
- Hardship to the other person if the order is made
- Any family law orders
- Any other legal proceedings involving you and the other person

- Any prior criminal record of the other person
- Any previous similar behaviour by the person against anyone else
- Any previous restraining orders
- Anything else the Court thinks is relevant. In particular, you should tell the Court if the person has a gun or firearms licence, as the Court has power to stop the person having access to firearms or having a firearms licence.

Both types can be changed or cancelled by the Court.

If the person is your partner and you reconcile, it is important to apply to Court for cancellation of the restraining order.

Violence restraining orders

To get a violence restraining order you have to show that the person has committed an “act of abuse” against you and unless the order is made, he is likely to do it again, or that you reasonably fear the person will commit an “act of abuse” on you, and that it is appropriate to make the order.

Examples of “acts of abuse” are assaulting or injuring the person (or threatening to), holding someone captive (or threatening to) and stalking. For people in a domestic or family relationship it also includes damaging someone’s property or pet (or threatening to) and ongoing behaviour that is intimidating, offensive or emotionally abusive to the person.

The Court can make a temporary order without the other person there that starts when the police give it to the other person. The other person then has 21 days to tell the Court if they want to defend the order. If they do, there will be a hearing and the Court will decide whether to make a longer order. If they decide not to defend the order, there will be no hearing and the order will automatically last for a longer time, usually 2 years.

Misconduct restraining orders

To get a misconduct restraining order you have to show that unless the order is made the person will likely damage your property, cause a breach of the peace, or act in a way reasonably expected to intimidate or offend you (and that does intimidate or offend you), and that it is appropriate for the Court to make the order.

You apply at Court. The Court will summons the other person, and then decide whether to make the order.

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The information contained in the website version of this ALSWA pamphlet is correct as at May 2008, HOWEVER the law may change at any time.

Material in this publication does not constitute legal advice, but is intended for information only.

For legal advice please contact your nearest office of the Aboriginal Legal Service of Western Australia (Inc). ALSWA’S Head Office is at 7 Aberdeen Street, Perth and other ALSWA offices are located at Albany, Broome, Bunbury, Carnarvon, Derby, Fitzroy Crossing, Geraldton, Halls Creek, Kalgoorlie, Kununurra, Laverton, Meekatharra, Newman, Northam, Roebourne, South Hedland and Warburton.



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