

Restraint Orders

What is a Restraint Order?

A Restraint Order is a court order that may restrict contact between people or impose conditions on their behaviour. The person who applies for the restraint order is known as the Applicant and the person who is to be restrained is known as the Respondent.

Restraint Orders provide for a fast and flexible method of obtaining legal protection from many forms of violence, which include:

- Physical abuse such as using physical force;
- Sexual abuse such as forced sexual activity;
- Psychological abuse such as humiliation and intimidation;
- Damage to property;
- Stalking.

Types of Restraint Orders

There are two types of Restraint Orders:

Interim Orders

Interim Orders are temporary orders. They may be issued in the absence of the party who is to be restrained. The interim orders will be in force until the next hearing stage or for such period of time as a magistrate may determine. There must also be a high level of risk.

Final Orders

Final Orders are orders made after a magistrate hears the application. Final Orders may be consented to by both parties or a magistrate can decide the orders that should be made. A Final Restraint Order will be in place for such period of time as consented to or ordered. This is usually 12 months, but can be longer.

Who can make an application?

There are a number of people who can make an application for a Restraint Order against another person.

A person who can show that the person whom they wish to restrain assaulted, threatened, damaged or threatened their property or harassed, or behaved offensively towards them can make an application. It must also be shown that this behaviour is likely to reoccur.

In addition, a police officer can make an application on behalf of an aggrieved party, a parent or guardian of a child, a Guardian or Administrator of a person pursuant to the *Guardianship and Administration Act, 1995*, or any other person who is granted leave.

Why make a Restraint Order application?

A Restraint Order should be made where a person will not stop the behaviour which causes the dispute or disturbance on their own accord. It is aimed at people who can only be compelled by an order of the court to stop doing the offending act.

Common situations for when a Restraint Order would apply include:

- Neighbourhood disputes;
- Disputes between siblings;
- Children and parents;
- Friends;
- Acquaintances.

There is no longer a need for Restraint Orders in domestic situations as a result of the introduction of Family Violence Orders.

Are there other options?

It is always preferable that the parties try to mediate their differences prior to court intervention. A Conciliation Conference provides an opportunity for parties to make a genuine effort to settle their disputes. Reaching an agreement prior to making a Restraint Order will save the need for further court time.

In place of a Restraint Order, the parties may agree to an undertaking. An undertaking is a formal pledge or promise to do or stop doing something. It is not enforceable in court. The offending party can offer the other party a written promise as assurance, placing conditions on their behaviour.

If an application for a Restraint Order has already commenced, the parties may elect to have it adjourned in order to proceed with an undertaking. If an undertaking is breached, the application for a Restraint Order can be brought back to court.

When is a Restraint Order made?

A Restraint Order is usually made where a magistrate determines there is a risk of continued:

- Physical violence;
- Threatening behaviour;
- Provocative or offensive behaviour likely to lead to a breach of the peace;
- Stalking;
- Damage to property; or
- Trespass.

The Respondent must be likely to:

- Cause the same or similar injury or damage;
- Carry out a threat, or;
- Behave in the same or similar provocative or offensive manner.

Urgent applications may be heard on the same day the application is lodged. In order to have an urgent hearing there must be a high level of risk and it is heard in the absence of the Respondent.

What are the types of orders, which a Restraint Order makes?

There are various orders, which can be made under a Restraint Order. These include:

- preventing the Respondent from stalking the Applicant;
- prohibiting the Respondent from acting in an offensive manner;
- prohibiting the Respondent from contacting or approaching the Applicant at home or work;
- limiting the contact between the parties;
- prohibiting the Respondent from damaging property;

- prohibiting the Respondent from possessing firearms.

How to apply for an order?

There are two ways of obtaining a Restraint Order against someone. First the police have the power to apply for a restraint order on behalf of a person. Secondly an individual can apply for a Restraint Order by filling in an application form and filing it at the Magistrates Court.

A Restraint Order application form can be obtained from the Magistrates Court website at <http://www.magistratescourt.tas.gov.au/forms>.

The form can be filled in by the applicant themselves or by/with the assistance of a solicitor, friend or support worker if the Applicant agrees.

The application must contain as much information as possible so that the Magistrate can be satisfied that the person the Applicant wishes to restrain has committed the acts and that they are likely to commit them again in the future.

What happens if an order is breached?

Breach of a Restraint Order can constitute a criminal offence. The police must be contacted if there is a breach of a Restraint Order. The police may arrest a person without a warrant. There is no difference in respect to a breach of an order in regards to interim and final orders. The penalty for breaching a Restraint Order is a maximum fine of \$1,000 or six months imprisonment.

Contacts

The Women's Legal Service can be contacted on **1800 682 468**

"Restraint Orders" is intended to give general information. Whilst we have made every effort to ensure the contents of this publication are accurate at the time of publication the law and services do change. Legal and service exactness is not possible in a publication of this nature. This publication should not be used as a substitute for legal advice.

Women's Legal Service (Tasmania) does not accept responsibility for any loss, damage or injury, financial or otherwise, suffered by any person acting on information contained in this publication or omitted from it.

