

Restraint Orders

What is a Restraint Order?

A Restraint Order is an order of the court that may restrict contact between people and impose conditions on their behaviour. Restraint Orders are an effective way of getting legal protection from many forms of violence including:

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

The person who applies for the Restraint Order is called the Applicant. The person who is to be restrained is called the Respondent. Common situations where a Restraint Order would apply include:

- Neighbourhood disputes;
- Disputes between siblings;
- Disputes between children and parents; and
- Disputes between friends and acquaintances.

If the violence is occurring between members of a couple or former couple, then a Family Violence Order is used rather than a Restraint Order. See our fact sheet 'Family Violence and Family Violence Orders.'

Types of Restraint Orders

1. Interim Orders (Temporary Orders)

Where there is a high level of risk, an Interim Order may be issued in the absence of the Respondent. The order will be in force until the next hearing or for as long as the Magistrate determines.

2. Final Orders

A Final Order is made after the Magistrate considers the application. The Final Order may be agreed to by both parties (the Applicant and Respondent) or decided by the Magistrate. This order will be in force for as long as agreed to by both parties or as ordered by the Magistrate. This is usually 12 months but can be longer.

Why make an application?

A Restraint Order should be made to stop behaviour by another person that is causing a dispute or disturbance in cases where they will not stop that behaviour. A Restraint Order is aimed at people who will only stop if they are forced to by an order from the court.

Who can apply?

People who can apply for a Restraint Order are those who can show that the person they wish to restrain has:

- Assaulted them;
- Threatened them;
- Damaged or threatened their property; or
- Harassed them or behaved offensively towards them.

It must be shown that this behaviour is likely to happen again.

A police officer can make an application on behalf of:

- An affected person (the person seeking to restrain the other person);
- A parent or guardian of a child;
- A guardian or administrator of a person that falls under the *Guardianship and Administration Act 1995*;
- Or any other person who is permitted to make an application by the Magistrate.

How to apply for a Restraint Order

The police have the power to apply for a Restraint Order on behalf of an affected person.

An individual can apply by filling in an application form and filing it at the Magistrates Court.

This can be done by the Applicant themselves or, if the Applicant agrees, by or with help from a solicitor, a friend or support worker. The application form is available from the Magistrates Court website at <http://www.magistratescourt.tas.gov.au/forms>.

Applications must include as much information as possible so the Magistrate can be satisfied that the Respondent has committed the acts and is likely to do them again. The Applicant should include detailed information about dates and times, and an outline of the conduct.

When will a Restraint Order be made?

A Restraint Order will be made if the Magistrate is satisfied that there is a continued risk of:

- Physical violence;
- Threatening behaviour, such as stalking;
- Offensive behaviour that may lead to a breach of the peace;
- Damage to property; or
- Trespass.

The Magistrate must be satisfied that the Respondent is likely to cause the same or similar injury or damage, or carry out a threat, or continue to behave in the same or similar offensive manner.

The Magistrate may then include various restrictions as part of the Restraint Order including preventing the Respondent from stalking, acting in an offensive manner, or making contact with or approaching the Applicant.

Are there any other options?

It is generally preferred that parties try to mediate in an effort to resolve their dispute before going to court. Mediation, or another facilitated dispute resolution process, may help the parties to reach an agreement. Even if an application is made to the

court, the Magistrate will usually refer the matter to mediation as a first step.

Instead of a Restraint Order the Applicant may agree to settle the matter if the Respondent gives what is called an 'Undertaking'. An Undertaking is a formal pledge or promise to do – or to stop doing – something, however it is not enforceable by the court.

Where a person enters into an Undertaking to resolve an application for a Restraint Order, then the application may be brought back before the Magistrate, if the Respondent acts in a way that is goes against the Undertaking.

What happens if an Order is breached?

If a person breaches a Restraint Order, and police are called, they can be charged with a criminal offence. Police have the power to arrest a person without a warrant if the person has breached either Interim or Final Orders. The offender can be given a fine, or imprisoned in cases of a serious breach.

Contact

- In an emergency call Police - **000**
- For advice and information call Women's Legal Service – **1800 682 468**

'Restraint Orders' is intended to give general information. While we have made every effort to ensure the contents of this document 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.

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April 2020