

Family Violence Restraining Order

Restraining Orders Act 1997 (WA)

The relevant legislation which deals with a Family Violence Restraining Order ("FVRO") is the *Restraining Orders Act 1997 (WA)* ("the Act").

What is a FVRO?

In Western Australia, a FVRO is intended to restrain a person who has committed family violence against a family member and who is likely to commit family violence against that family member again or behaves in a way that makes the family member believe that family violence will be committed in the future.

A FVRO should be obtained if a party requires protection from a person whom they are, or were in a relationship. For example, the husband / wife, defacto partner and ex-partner.

"*Family violence*" is defined within the Restraining Orders Act 1997 (WA) ("the Act") to mean violence, or a threat of violence, by a person towards a family member of the person; or any other behaviour by the person that coerces or controls the family member or causes the member to be fearful. (See *section 5A (1) and (2) of the Act*)

Family Violence can be:

- (a) assault;
- (b) sexual assault;
- (c) stalking or cyber-stalking;
- (d) repeated derogatory remarks;
- (e) damaging or destroying property;
- (f) causing death or injury to an animal;
- (g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;
- (h) unreasonably withholding financial support needed to meet reasonable living expenses;
- (i) preventing the family member from making or keeping connections with the member's family, friends and culture;
- (j) kidnapping or deprivation of liberty;
- (k) distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member; or
- (l) causing any family member who is a child to be exposed to family violence.

Key provisions by the Court to grant a FVRO

A FVRO is to specify the name of the person for whose benefit the order is made and the name of the person whose lawful activities and behaviour restraints are imposed by the order. (See *Section 10C (a) and (b) of the Act*).

When applying for a FVRO, the Court needs to be satisfied that:

- (a) the respondent has committed family violence against a person seeking to be protected and the respondent is likely again to commit family violence against that person; or
- (b) a person seeking to be protected, or a person who has applied for the order on behalf of that person, has reasonable grounds to apprehend that the respondent will commit family violence against the person seeking to be protected. (See *section 10D (a) and (b) of the Act*)

Section 10E (1) of the Act permits the Court to make a FVRO for the benefit of a child if the Court is satisfied that:

- (a) the child has been exposed to family violence committed by or against a person with whom the child is in a family relationship and the child is likely again to be exposed to such violence; or
- (b) the applicant, the child or a person with whom the child is in a family relationship has reasonable grounds to apprehend that the child will be exposed to family violence committed by or against a person with whom the child is in a family relationship.

There are a number of matters to be considered by the Court if they are satisfied a FVRO should be made. The matters are outlined at *Section 10F (1) (a) to (n)* of the Act. The Court is to have regard to:

- (a) the need to ensure that the person seeking to be protected is protected from family violence;
- (b) the need to prevent behaviour that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have family violence committed against them;
- (c) the need to ensure the wellbeing of children by protecting them from family violence, behaviour referred to in paragraph (b) or otherwise being exposed to family violence;
- (d) the accommodation needs of the respondent and the person seeking to be protected;
- (e) the past history of the respondent and the person seeking to be protected with respect to applications under the Act, whether in relation to the same act or persons as are before the court or not;
- (f) hardship that may be caused to the respondent if the order is made;
- (g) any family orders;
- (h) other current legal proceedings involving the respondent or the person seeking to be protected;
- (i) any criminal convictions of the respondent;
- (j) any police orders made against the respondent;
- (k) any previous similar behaviour of the respondent whether in relation to the person seeking to be protected or otherwise;
- (l) any police incident reports relating to the respondent;
- (m) any risk assessment, or risk-relevant information, relating to the relationship between the respondent and the person seeking to be protected; and
- (n) other matters the court considers relevant.

It is noted at *section 10F (2) (1)(a) to (c)* of the Act that these matters are to be given primary importance by the Court when considering whether to make a FVRO and the terms of the order.

The Court is also required to obtain information from other sources. If there has been a past history of the respondent and the person seeking to be protected, a past history of applications under the Act is not to be regarded in itself as sufficient to give rise to any presumption as to the merits of the application (*see section 10F (3) of the Act*).

The Court also has the ability to be provided with information in the possession of the Police Force of Western Australian by the Commissioner of Police. This information relates to any criminal convictions of the respondent; and / or any previous similar behaviour of the respondent whether in relation to the person seeking to be protected or otherwise (*See section 10F (4) and section 10F (1) subsection (i), (j), (k) and (l)*).

The information is required to be in the form of a signed certificate. (See section 10F (5) to (8) of the Act as it relates to the provisions for the certificate and records)

Restraints on a FVRO

Once a Court is satisfied a FVRO should be made, a Court (at section 10G (1) of the Act) may impose such restraints on the lawful activities and behaviours of the respondent as the Court considers appropriate to prevent the respondent:

- (a) committing family violence against the person seeking to be protected; or
- (b) if the person seeking to be protected by the order is a child, exposing a child to any family violence committed by the respondent; or
- (c) behaving in a manner that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have family violence committed against them.

Section 10G (2) of the Act states that a Court may restrain the respondent from doing all or any of the following:

- (a) being on or near premises where the person seeking to be protected lives or works;
- (b) being on or near specified premises or in a specified locality or place;
- (c) approaching within a specified distance of the person seeking to be protected;
- (d) stalking or cyber-stalking the person seeking to be protected;
- (e) communicating, or attempting to communicate, (by whatever means) with the person seeking to be protected;
- (f) preventing the person seeking to be protected from obtaining and using personal property reasonably needed by the person seeking to be protected, even if the respondent is the owner of, or has a right to be in possession of, the property;
- (g) distributing or publishing, or threatening to distribute or publish, intimate personal images of the person seeking to be protected; and
- (h) causing or allowing another person to engage in conduct of a type referred to in paragraphs (d) and (g) above.

The Court has the power to restrain a person from attending or entering in a place, or restrict the respondent's access to a place, even if the respondent has a legal or equitable right to be at the place. (See section 10G (4) of the Act).

This restraint is included into the FVRO. If included, the Court will make provisions in the FVRO for either the person seeking to be protected or the respondent to be able to recover personal property. (See section 10G (5) of the Act)

A party seeking a FVRO should keep in mind that a FVRO may prevent them contacting the other side. A party may wish to seek an exception in the FVRO to communicate by email or text message only, depending on the circumstances of the case.

Firearm provisions for FVRO

Section 14 of the Act deals with orders relating to firearms.

Every FVRO includes a restraint prohibiting the person who is bound by the order from being in possession of a firearm or firearms licence and obtaining a firearms licence. (See section 14 (1) (a) and (b) of the Act)

If the respondent is bound by a FVRO and they are in possession of firearms, they must give up possession to a person and in a manner prescribed in the regulations, of all firearms and firearms licences held by them. (See section 14 (2) and (3) of the Act) If a person wants they can apply.

There are factors in which the Court will permit the respondent to have possession of a firearm, and if necessary, a firearms licence relating to it. See *section 14 (5)* of the Act as to the matters considered by the Court when such a request is sought by the respondent.

If this occurs, the Court is required under *section 14 (6)* of the Act to make the possession of the firearm/s subject to such conditions as the person seeking to be protected requests unless the Court consider the requested conditions to be unreasonable.

Duration of a FVRO generally

A FVRO will come into force when it is served on the person who is bound by the order, or if a later time is specified in the order, at that time. (See *section 16 (1) of the Act*)

If the FVRO is not served on a person who is bound by the order, either interim or final, within 2 years then it will lapse. (See *section 16 (2) of the Act*)

An interim order remains in force until of the following occurs:

- (a) a final order in respect of the matter comes into force; or
- (b) a final order hearing in respect of the matter is concluded without a final order being made; or
- (c) the interim order is cancelled or expires; or
- (d) in the case of a telephone order, 3 months elapse from the time the order came into force. (See *section 16 (4) of the Act*).

Unless varied or cancelled, a final order that is a FVRO remains in force for:

- (a) in the case of an order made at a final order hearing:
 - a. the period (of whatever duration) specified in the order from the date on which the final order came into force; or
 - b. if no period is specified, 2 years from the date on which the final order came into force; and
- (b) in the case of any other interim order which becomes a final order under section 32:
 - a. the period (of whatever duration) specified in it from the date on which the interim order came into force; or
 - b. if no period is specified, 2 years from the date on which the interim order came into force.

See *section 16A (2) (a) to (c) and 16B (a) to (c) of the Act* and note the provisions as they relate to telephone orders have not been discussed.

How to apply for a VRO

In order to apply for a FVRO, you need to complete and lodge an *Application – Family Violence Restraining Order*. The application can be downloaded from the Magistrates Court of Western Australia website. Once on the website, the form is located in the “*Restraining Orders*” tab. The application, once completed, is lodged at the Magistrate Court Registry. An ex-parte interim hearing is usually listed on the same day

There is no fee payable for lodging a FVRO application at the Magistrates Court of Western Australia.

If a person breaches the terms of a FVRO, they commit a criminal offence and may be fined or imprisoned.

The Magistrate Court website has a Fact Sheet 38 that relates to Violence Restraining Orders. The same provisions apply for a FVRO.

For review of the Fact Sheet please press on the link:
http://www.magistratescourt.wa.gov.au/files/Civil_factsheet_38.pdf

Cancellation or variation of orders

If circumstances change, a party can make an application to cancel or vary the order made by the Court. This is a separate application and can be found on the Magistrates Court of Western Australia website. (*See section 49 of the Act*)

If a party makes an application to cancel or vary a restraining order the Court will fix a hearing date (usually in about 4 weeks). The application can be heard in the absence of the bound person or a summons will be sent to the person bound to attend.

If the person bound by the order makes an application to cancel or vary a restraining order, a leave hearing to seek permission to proceed will be conducted in your absence. If the person bound is successful a summons will be sent to the party to attend Court. It is important that the party's attend Court when required as the order may be changed if the party does not attend and provide evidence to the Court.