

MAGISTRATES COURT *of* TASMANIA

Criminal and General Division

October 2022

**Information on Restraint Orders**

Restraint Orders are a court order designed to stop threats, property damage, violence, intimidating behaviour and emotional abuse in the future. The person who applies for a Restraint Order is known as the **Applicant** and the person who is to be restrained by an order is known as the **Respondent**.

You can apply to a Magistrate for a Restraint Order to be taken out against someone who:

* is violent towards you
* threatens you or your property
* harasses or intimidates you

and you are concerned this will continue and put you or your children at risk.

These orders aim to prevent further unwanted behaviours. They will often have conditions, which make it illegal for the person to:

* come near you or your family
* threaten, harass or assault you or your family
* stalk you
* come near or go on or damage your property
* contact you by mail, email, phone, SMS messages or Facebook or other social media
* use other people to contact you

Other people can also apply, including a police officer or solicitor.

You can seek assistance and representation from a lawyer if you wish. Assistance may also be obtained from the Legal Aid Commission of Tasmania.

To apply, complete an application form and take it to your local court and pay the filing fee. The court staff will provide you with a date and time for the application to be listed before a Magistrate.

If you do not want your address disclosed to the Respondent, this non-disclosure address form also needs to be completed and submitted at the time of lodgment. The link to the form is here [Do-Not-Disclose-Restraint-and-Family-Violence-Application.doc (live.com)](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.magistratescourt.tas.gov.au%2F__data%2Fassets%2Fword_doc%2F0005%2F681944%2FDo-Not-Disclose-Restraint-and-Family-Violence-Application.doc&wdOrigin=BROWSELINK)

Anything which is written on this form is for contact only purposes by the Court.

Please note when completing the application form the Respondent will be provided/served with a copy of that application, therefore address details should not be listed in the application if you do not wish them to be disclosed.

The Magistrate will make the order if they are satisfied that the person to be restrained has committed unwanted behaviour, and may do so again. The Magistrate will consider factors such as the safety and wellbeing of the Applicant.

Orders usually last about 12 months.

**What happens in Court?**

A Restraint Order application may follow several processes through the Court.

### Urgent hearing

* When an application is urgent, it can usually be heard on the same day it is lodged with the court.
* The Applicant will need to attend court even though the Respondent may not be there, because the Magistrate may want to ask questions.
* The purpose of the urgent hearing is to consider making interim orders and set a time for a formal hearing.

### First formal hearing

The purpose of a formal hearing is to give the Respondent the opportunity to say whether they consent to the orders or not.

Consent

to agree to or approve something

Contest

to not agree with or not approve something

* If the Respondent contests the application, the Magistrate may list the matter for mediation before the final hearing.
* The hearing is normally in an open court.
* The application will not be read out in court.
* The Magistrate may ask the Applicant questions to explain what they have said in their application.
* You should stand up to answer if the Magistrate asks you questions.
* You may answer from where you were sitting in the court unless the Magistrate asks you to stand at the end of the table.
* **The Magistrate will not expect you to behave as if you are a lawyer, just answer the questions in a straight-forward way.**

### Mediation

If a Respondent contests the application, the Magistrate may refer the application to mediation.

An independent person (mediator) will try to help the Applicant and the Respondent to reach an agreement. They can help the parties think about the issues and try to find the best outcome. Mediators do not make decisions in relation to the application.

If an application does not reach an agreement at mediation, the matter will be listed back before a Magistrate for a decision.

### Final hearing

* The matter may have to go to a final hearing if the Respondent contests the application.
* Before a final hearing, the matter may be listed for mention.
* A mention is to identify the issues, see if witnesses are going to be called and how long the hearing may take.
* You may have a lawyer represent you at a mention listing if you wish.
* If the Respondent still contests the application after a mention listing, the matter will be listed for a final hearing.
* You may have a lawyer represent you at this hearing if you wish, and you can give evidence and call witnesses.

The Magistrate may grant or dismiss the application.

* If the Magistrate **grants** the application
  + the Magistrate may make final orders and
  + the Applicant may wish to apply to the Magistrate for the recovery of their legal costs.
* If the Magistrate **dismisses** the application
  + no orders will be made and
  + the Respondent may apply to the Magistrate for the recovery of their legal costs.

**Service of Applications and Orders**

Service

the process of sending or giving court documents to a party after they have been filed, in accordance with the rules of court. Service ensures that all parties have received the documents filed with a court.

* A Restraint Order Application can be served on the respondent by a process server or any other person over the age of 18 years.
* Orders and Applications must be served personally on the Respondent
* It is the responsibility of the Applicant to arrange service of the application.
* In some instances the Magistrate may order that the application is served by the Police
* The Respondent will find a 'Notice for Respondent' in the application. It shows the date and time of the formal hearing at which they should attend.
* If the Magistrate has already made interim orders, the Respondent will also be served with a copy of the interim orders. The interim orders take effect as soon as they are served. This interim order will also state the next court date.
* If the Respondent is in court when any orders are made, the orders take effect immediately.
* If an order is made by the Magistrate, the Applicant can request that the orders be served by Police, service by Police can only occur if ordered by a Magistrate.

**I have been served with an Application – what do I do now?**

Read carefully through all the documents you have been given.

In the application:

* Note the **date and time** for the formal hearing. This is in the 'Notice to Respondent' section of the application.
* Read the **orders the Applicant is seeking**. There are more than ten common types of orders, and often more than one order is sought in an application.
* Read the **reasons why** the Applicant is seeking the orders.
* If you have been served with any interim orders you must read them carefully and obey the orders immediately.
* Interim and final orders take effect immediately if you are in court when the orders are made.
* If you were not in court the orders take effect when you are given (served with) a copy of the orders.
* A Respondent to an application may file and serve an Affidavit (sworn declaration) relevant to the application.

**Your Options in Court**

### 1. Consent to orders

Consent

to agree to or approve something

* You can appear in court and consent to the order (either interim or final) being made. If you consent, the orders will be made and no further hearings will be necessary.
* If you consent it does not mean that you accept that everything in the application is true. You must state your denial of the allegation(s) to the Magistrate who will make a record of this on the file.

**2. Not appear**

* You do not have to come to court for any hearing of the application. However, if you don't appear, the matter may be heard in your absence and the Magistrate may make any orders he or she considers appropriate.

**3. Contest the application**

Contest

to say that you do not agree with or accept the application

* You can contest a Restraint Order application.
* If you do, you will need to put your case to the court at a final hearing. You may wish to talk to your lawyer or seek legal advice first.
* Even though you are contesting the application, a Magistrate may make interim orders which usually remain in force until a determination of the application is reached.

## Breaches of Restraint Orders

A Restraint Order, whether interim or final, is a court order.

If someone doesn’t comply with the conditions imposed by the order, they can be arrested and charged for the breach.

Contact the police if the respondent breaches the order.

Serious penalties can apply, such as being fined or imprisoned, depending on the seriousness of the breach and a Respondent’s history of breaching.

A person protected by an order must not encourage or assist a Respondent to breach an order.

**How to Vary a Restraint Order**

Should your circumstance change you will need to attend the Magistrates Court and complete an application to vary the restraint order.

Your application will be listed on a date before the court, and it is your responsibility to arrange a copy to be served on the other party.

**How to Extend a Restraint Order**

If you require a current Restraint Order to be extended you will need to attend the Magistrates Court and complete an application to extend the restraint order.

An application to extend a restraint order needs to be made at least 1 month prior to the expiry of your restraint order. You will need to attach a copy of your current restraint order to your application to extend.

Your application will be listed on a date before the court, and it is your responsibility to arrange a copy to be served on the other party.

### Contact Telephone Numbers

If you have any questions or require assistance you can contact one of the following services:

* Legal Aid Commission of Tasmania: 1300 366 611
* Hobart Community Legal Service - City: 6223 2500
* Hobart Community Legal Service - Bridgewater: 6263 4755
* North West Community Legal Centre 6424 8720
* Tasmanian Aboriginal Community Legal Service 1800 064 865
* Launceston Community Legal Centre 6334 1577
* Womens Legal Service 1800 682 468

**Magistrates’ Courts**

* Hobart: 61 657136
* Launceston: 67 772945
* Burnie: 64 777140
* Devonport: 64 784353