

Misconduct Restraining Orders

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation.

What is a Misconduct Restraining Order (MRO)?

A MRO is different to a Violence Restraining Order. A Misconduct Restraining Order is an order made by the court to restrain a person (known as the **respondent** or **the person bound**) from either breaching the peace, causing fear, damaging property or intimidating another person (known as **the applicant** or **the person seeking to be protected**).

A Misconduct Restraining Order may be issued when a person behaves in an intimidating or offensive manner, which may lead to a breach of the peace or damage to property.

It cannot be used if people are in, or have been, in a relationship. In that case you must apply for a Violence Restraining Order.

A restraining order cannot be taken out against a child under 10.

A Misconduct Restraining Order remains in force for the period stated in the order, or, if no specific time is stated in the order, for one year from when it was served.

What can a MRO do?

The court can make a MRO if it thinks that without it, the respondent is likely to act in a way that could reasonably make the applicant feel intimidated or offended, or cause damage to the applicant's property or property the applicant has with them, or act in a way that is, or may lead to, a breach of the peace.

A **breach of the peace** is a legal concept meaning something that disturbs the public peace. For example:

- Regularly screaming and shouting in a public place.
- Protesting in a way that prevents people from carrying out their work.
- Intimidating people who are trying to use a public open space.

Where the court is trying to stop the respondent from being intimidating or offensive or damaging property, a MRO may prohibit the respondent from:

- Being on or near where an applicant lives or works.
- Being on or near a named building, locality or place.
- Coming within a certain distance of the applicant.
- Communicating or attempting to communicate in any way with the applicant.
- Entering into or remaining in a place even if the respondent ordinarily has a right to be at a place.
- Getting anyone else to do any of the above things.

- Having a gun or gun licence or applying for a gun licence (This must be asked for).
- The respondent will not automatically be banned from having a gun or a gun licence as happens for a VRO.

Who can apply?

There are a range of people who can apply for a MRO;

- A person seeking to be protected.
- A parent or guardian or the police or Department for Child Protection and DCP support workers.
- A police officer may apply for on your behalf.
- Police may also apply for a MRO for the public generally where there is no one person specifically named as having to be protected.
- A guardian may apply for a person over 18 years of age, if that person has had a guardian appointed by the State Administrative Tribunal under the *Guardianship and Administration Act 1990 (WA)*.

What will the court consider?

The court will consider:

- Protecting the applicant from the respondent's intimidating and offensive behaviour.
- Protecting the applicant's property.
- Children's wellbeing.
- Where the respondent and applicant have to live.
- Hardship that may be caused to the respondent if the order is made.
- Any other legal proceedings the respondent or applicant are involved in.
- The criminal record of the respondent.
- Whether the respondent has ever acted in a similar way in the past to any person.
- Anything else the court thinks is relevant (s 35).

The first two points are very important. If the MRO is to prevent a breach of the peace the court will look at all the above factors.

A court is not to make a restraining order against a child that might affect their care and wellbeing unless the court is satisfied that appropriate arrangements have been made for their care and wellbeing.

How do you apply for a MRO?

It is strongly advised that you get some legal advice before applying for a MRO.

To apply for a MRO take the following steps:

1. Go to your nearest **Magistrates Court** and ask at the registry office for a form. (or the Children's Court if the application is to be made on a child under 18 years of age) You can ask the staff for help if you are unsure which form you are required to fill out.

2. Once you have filled out the correct form, **hand it back to the Registry Office**. There is a fee to lodge the application. Note – if the respondent is a child, the application must be made at the Children’s Court.
3. You will then be given a **court date**. This is known as a ‘mention hearing’. You **MUST attend this court date** if you want to continue with your application.

Attending court

You have just lodged your application for a Misconduct Restraining Order (MRO) and a court date has been set. This first court date is **usually** called a ‘mention hearing’. **Note that different courts may have different systems. Clients should always ring the court before a court date to check if the first date is a “mention” date or the final order/defended hearing.**

Mention hearing

At the first mention hearing both parties must attend. It is not necessary for witnesses to attend a mention hearing.

If the applicant does not attend the mention hearing and the court is satisfied that they had been notified of the hearing date the application will be dismissed or adjourned.

If the respondent does not attend the mention hearing and the court is satisfied that they had been notified of the hearing date the court may proceed in the absence of the respondent. This could result in any of the following outcomes;

- Make a restraining order. The applicant would give evidence of why the order is needed. The magistrate would have to be satisfied the order should be made.
- Dismiss the application.
- Give a new hearing date and adjourn the matter to that new hearing date.

It is possible for the respondent to consent to a restraining order being made. They can do that even if they do not admit to any of the matters that have been alleged by the applicant. If the respondent consents then an order will be made.

If the respondent does not consent to the MRO being made the court will make a date for a final hearing.

Final hearing

For the final order hearing, you need to bring any witnesses you have and plan to be at the court for at least a couple of hours.

If you are the applicant, you must come prepared to tell the court why you need the MRO to be made.

The respondent is likely to come prepared to tell the court why they think the MRO is not needed.

At the final hearing the court will hear evidence from both parties and make a decision. It is possible at this hearing that the magistrate may make any orders that he thinks are required to protect the applicant. The magistrate may also consider that a Violence Restraining Order is required instead of a Misconduct Restraining Order.

It is still possible for the respondent to consent to a restraining order being made. They can do that even if they do not admit to any of the matters that have been alleged by the applicant.

Outcomes from the court hearing

At the end of the final hearing, the application will either be dismissed or granted.

If a Misconduct Restraining Order is made it will be delivered to the police for service on the respondent.

The order does not come into effect until it is served.

What about legal costs?

If the court gives the applicant a final MRO, the applicant can ask for an order for costs against the respondent.

This will cover the summons costs (receipts should be shown) or any legal costs they may have had to pay while preparing for the hearing. For example, the cost of their lawyer if they have one, photocopying costs, witness costs, and costs of getting medical reports or police reports, etc.

If the court decides that the applicant should not have a restraining order, the respondent may make an application to the court for costs against the applicant. Section 69 of the *Restraining Orders Act 1997 (WA)* says that the court is not to make a costs order against the applicant unless their application was “frivolous or vexatious”, that is, their application was completely hopeless and without merit or was not made for genuine reasons but was made for some other purpose.

I need more help

If you would like some legal advice specific to your application please make an appointment at the Fremantle Community Legal Centre on (08) 9432 9790.

We are located at:

Shop 11, Queensgate Building, 10 William Street, Fremantle
08 9432 9790 (9.00 am-4.00 pm weekdays)

You might also find the following services useful:

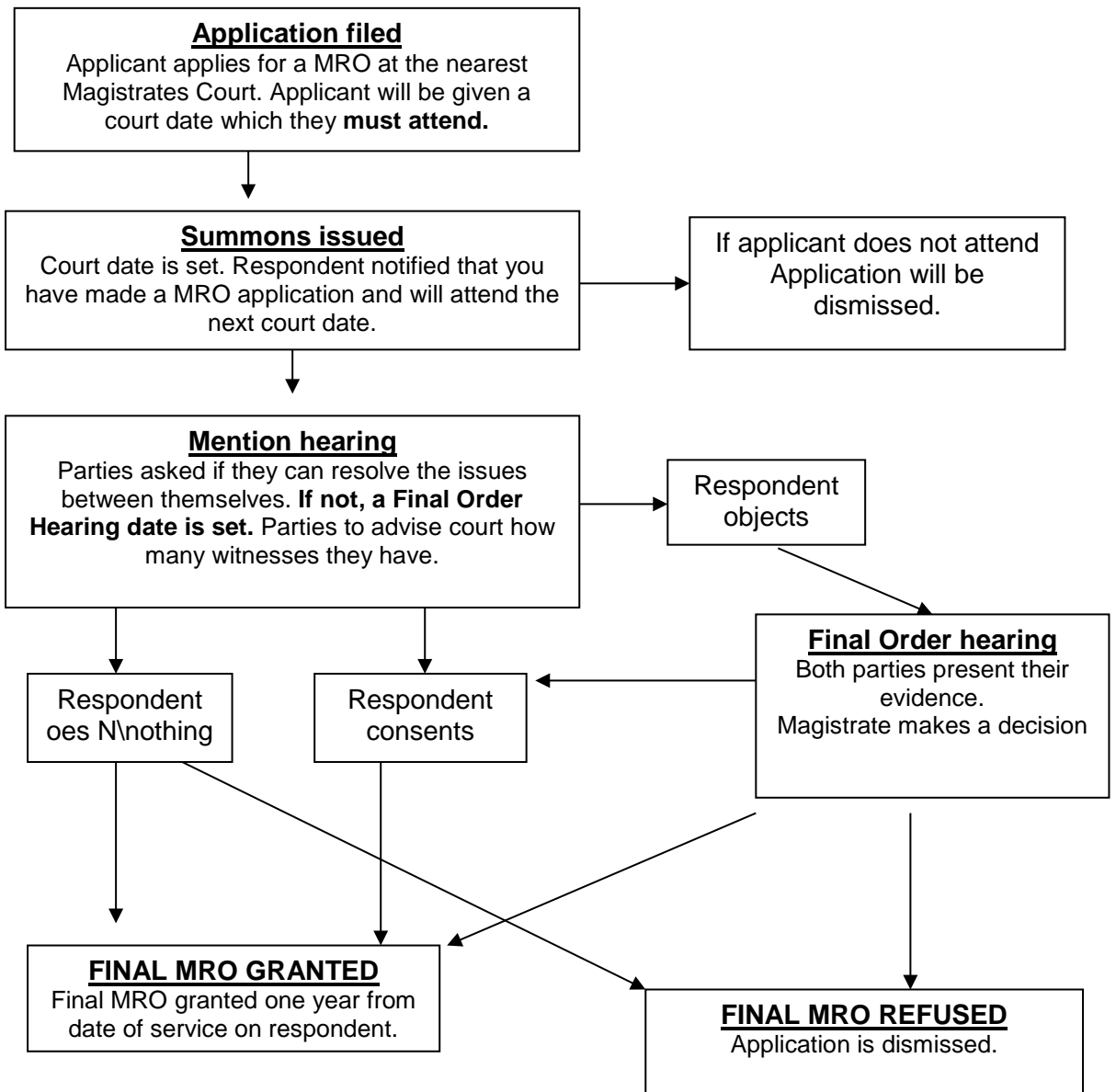
Legal Aid WA

Telephone infoline: 1300 650 579
(General Enquiries) Infoline open Monday to Friday 8.30 am to 4.30 pm (Australian Western Standard Time) except public holidays
Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677
www.legalaid.wa.gov.au

Fremantle Magistrates Court

8 Holdsworth Street, Fremantle
Open 8.30 am–4.30 pm weekdays
08 9431 0300
www.magistratescourt.wa.gov.au

Court process flow chart



Alternative formats available on request