



Magistrates Court of Western Australia Civil Jurisdiction

Fact Sheet 39 – Misconduct Restraining Order

This fact sheet explains how you can apply for a Misconduct Restraining Order

What is a Misconduct Restraining Order?

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

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. A Misconduct Restraining Order only applies to people who are **not** in a domestic or family relationship.

How to apply for a Misconduct Restraining Order

You need to apply to a registry of the Magistrates Court and pay a fee. The application form can be obtained from any court registry or online by visiting www.magistratescourt.wa.gov.au.

If the respondent is a **child**, the application must be made to the **Children's Court**.

The hearing

The court will fix a date for a mention hearing that allows time for service of a summons on the respondent. The summons will be served by the police.

You will be given a copy of the application with the hearing date shown on it.

You **must attend** the hearing as the application may be dismissed if you do not.

If the respondent attends and agrees with the application the Court may make an order.

If the respondent attends the hearing and does not agree to the application, a future trial date will be allocated.

If the respondent is served with the summons and does not attend the mention hearing, the Court may hear the application in their absence.

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.

How long does a Misconduct Restraining Order last?

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.

Change of address

All parties must inform the Court of any change of address as notification of hearing dates may be posted to the parties.

Addresses of the parties will remain confidential.

Cancellation or variation of orders

If circumstances change, you can make an application to cancel or vary the order made by the Court.

If you make an application to cancel or vary a restraining order the Court will fix a hearing date (usually in about four weeks). The application can be heard in the absence of the bound person or, if required, a summons will be served on 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 served on you to attend court. It is important that you attend court when required as the order may be changed if you do not attend and have your say.

This is a guide only. The content is subject to change.

If you are unsure about any of the information in this fact sheet, contact your nearest registry or seek legal advice.