



MAGISTRATES COURT OF SOUTH AUSTRALIA

Information for Persons Granted a Restraining Order

You may be wondering what happens now that a Magistrate has granted a Restraining Order for your benefit. This sheet provides information on some of the most commonly asked questions by people leaving the Court after an order has been granted.

When does the Restraining Order start?

The restraining order cannot be enforced until it is **personally served** on the person against whom it was made.

When the Court makes the order it will be issued to police to serve. You can assist police serve the order more quickly by providing information that would help them locate where the person lives, works or is known to frequent.

After two or three days, contact the Police Records Response Unit on 8204 2462 or 8204 2377 and ask an officer to check if the order has been served. If you live outside of the metropolitan area, contact your local police station.

How do I get a copy of the order?

You will receive three copies of the order. These will come to you in the post or you will be contacted by police to arrange delivery. If you do not receive copies of the order within 7 working days and you live within the metropolitan area, contact the Courts Registry on 8204 2444 and ask that a copy be forwarded to you. Persons living outside of the metropolitan area should contact their local Court Registry. Alternatively you can email your query to enquiry@courts.sa.gov.au.

Keep two copies of the order with you at all times. If the person against whom the order is granted appears at your home or place of work and the order has still not been served, you can call the police for assistance on 131 444 and ask that a patrol serve the order on the spot.

You may also photocopy the order as many times as you like. Place one in your bag, at home, in your car, at the school, wherever you think it would be helpful and aid police serve the order if the person appears. Keep track of your copies in the event the order is varied. This allows you to provide current copies to others and assists police if they are called to act on a breach.

What happens now?

When the Magistrate granted the restraining order, it included a summons for the person against whom the order was made to appear in Court. On this date, the person has an opportunity to indicate to the Magistrate whether they think the restraining order should remain in place.

If police have handled your application you do not have to be present in Court at this time. If you applied for the order through the Magistrates Court Registry, you will need to attend this hearing.

If the restraining order has been **served**, and the person against whom it was made does not attend, the order will be confirmed (remain in place).

What if the order has not been served?

If the restraining order **has not been served** by that date, the Magistrate will issue a further summons.

If the order remains unserved, the police will contact you to ask where else they may locate the person against whom the order is granted.

What if police still cannot serve the order?

The Court will issue a summons to serve the order a number of times. The order will be discharged if, after a number of summons, police cannot locate the person against whom the order was made to serve the order. You need to apply for a new Restraining Order in the same way that you did before, if the issues that led to your original application happen again.

What happens if the person against whom the order was made disagrees with the order?

If the order is disputed, the conditions listed in the current order will continue until the matter is determined in Court.

The person disputing the order may:

- **Agree to the order continuing, but not that the allegations against them are true.** The person may have noted on their file that they do not agree to the allegations made in the application
- **Contest the order and request the magistrate adjourn the matter to a pre trial conference.** If a resolution is not reached at the pre trial conference the matter is then listed for Trial
- **Agree to parts of, but not the whole order.** The person may discuss the matter with police prosecutions in an attempt to find a resolution. Police will contact you for your views on any variations proposed by the person against whom the order is sought

If police are acting on your behalf, they will attempt to negotiate a satisfactory resolution. If this cannot be achieved, you and the person will have to return to Court for a pre trial conference or Trial. The police will advise you of the date for the next Court hearing and explain how the negotiating process works.

At the Trial you will have an opportunity to tell the Magistrate your side of the story and why the order should remain. The police will assist you prepare for this appearance. It is helpful to the Court if there are witnesses or evidence to support what you are saying. After hearing from everyone and examining the evidence, the Magistrate will decide whether the order should remain in place and what the order should contain.

How long does the restraining order last?

When the order was made, the magistrate specified a time for which the order is binding. You will find this in your copy of the order.

If you have a domestic violence restraining order and towards the end of the period you are still having problems with the person against whom it was made, contact your local Child and Family Investigations Unit to have the order extended. The numbers are listed on the bottom of this sheet. You should plan to do this approximately three months before the order is due to expire. This gives police time to extend the order to suit your needs and present the variation to Court before the original order expires.

Applicants with Summary Protection Orders may contact their local police to discuss their needs.

If no further action is taken, the order expires on the specified day.

What happens if the restraining order is ignored?

A restraining order is a Court order. The conditions listed in the order are binding. This applies equally to you and the person against whom the order has been granted.

Once the restraining order has been served, **breaching the conditions listed in the order is a criminal offence.**

What if a breach occurs?

If the breach is causing you to fear for your safety and you believe yourself to be in immediate danger, contact the police on 131 444 or 000 for emergencies.

If an incident has taken place or you have evidence of a breach, report the breach at your local police station in person.

Try to be as specific as you can. The more details and evidence you can provide the more helpful your statement will be to police. Keeping a diary is a useful way to remember what took place. For example, you may note the date, time and place the event occurred and what happened or was said. Keep any letters, SMS messages, emails, voice mail or answering machine tapes. Try to note who may have witnessed the breach – a neighbour, friend, shop owner. If you required medical assistance or went to a doctor include the details in your statement. Take photos of any physical damage to yourself or your property. Note the day and time, especially if you do not intend to have police act on the breach immediately. Keep any quotes or receipts you acquired for repairs or payment of accounts.

It is important to report **all** breaches so that the police are able to build a history of incidents. You do not have to have police act on a report if you are unsure about whether to proceed. However, recording breaches will assist you and the police when you are ready to proceed.

Record the police station and officer's name or number in your diary when you report a breach or attempt to report a breach. This will help you refer back to any situation should the need arise. For example, you will be able to supply information to police if they are following up matters such as an officer refusing to note a breach or dismissing an incident as a breach.

If you live in the metropolitan area and are dissatisfied with the police response or service received contact your local Child and Family Investigations Unit and ask for the officer in charge. Country residents may ring the officer in charge of the local policing area. You may also consider the option of lodging a complaint with the Police Complaints Authority. You may approach the Authority directly at 50 Grenfell Street, Adelaide or call them on 8226 8677. Complaint forms may also be obtained from your local police station.

Remember restraining orders provide protection to **both** parties in the event of a breach. This means that you may be charged with aiding in the breach of an order should the person listed in the order report you for breaching any conditions contained in the order.

Can I change the order?

You may apply to have an order varied or revoked if your circumstances change and the order no longer suits your needs. If you live in the metropolitan area, contact your local Child and Family Investigations Unit to discuss your situation. Those living outside of the metropolitan area may seek assistance from your local police.

If you are withdrawing or changing a domestic violence restraining order, the police may require a counsellor's report. The report assists police determine the circumstances of your situation and prepare material for the Court. You will need to convince the Court of your reasons for changing the order.

The police will provide you with information on how to contact a counsellor and what happens once the report has been completed.

Orders can also be tightened. Talk to the Child and Family Investigation Unit about the best way to address your needs.

The person against whom the restraining order was made is given the right to be heard before an order is varied or revoked.

Does this affect my Family Court Order?

Your restraining order will be subject to any Family Court orders. Orders issued by the Family Law Court take priority over restraining orders. However, a magistrate will consider your safety and attempt to have restraining orders coincide wherever possible.

Contact Numbers for Information and Support

Police Records Response Unit	8204 2462
	8204 2377
Courts Registry	8204 2444
Adelaide Child and Family Investigation Unit	8463 7090
Elizabeth Child and Family Investigation Unit	8207 9353
Holden Hill Child and Family Investigation Unit	8207 6034
Port Adelaide Child and Family Investigation Unit	8207 6388
South Coast Child and Family Investigation Unit	8392 9172
Sturt Child and Family Investigation Unit	8207 4801
Police Complaints Authority	8226 8677

Courts Administration Authority web site

http://www.courts.sa.gov.au/courts/magistrates/violence_intervention.html

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