

Conduct agreement orders in FVRO proceedings

If you have a family violence restraining order (FVRO) case at court, this information may help you if you are considering resolving your case by agreeing to a court order without going to a final order hearing.

What is a conduct agreement order?

A conduct agreement order (CAO) is the name given to an FVRO that has been made with the consent of the respondent (the person bound), without making any admissions.

A CAO can include all the restraints and conditions that are included in an FVRO. If the respondent consents to a final order imposing restraints, the usual practice is for the respondent to agree to a CAO on those terms. If a CAO is made the case will not proceed to a final order hearing. Also, there will be no finding or admission of family violence.

The court may make the CAO without being satisfied there are grounds for making an FVRO in the same terms.

If the applicant does not agree with the respondent about the length or terms of the final CAO, the case can still proceed to a hearing for the court to decide whether to make an FVRO and with what terms and length. There is no guarantee that the court will make a final FVRO at the hearing.

The CAO will be in force immediately if the respondent is in court when it is made. Otherwise it will come into force when it is served on the respondent, or later if this is stated on the order.

What is the difference between 'without admission' and a 'finding of family violence'?

"Without admission" means a party is not agreeing with any of the allegations made against them by

the other party. This means the party does not agree that family violence occurred.

A "finding of family violence" means a court has decided that family violence occurred based on evidence presented in court where there has been an opportunity to test that evidence, such as through cross-examination.

If the respondent agrees to a CAO there is no finding by a court of family violence. The respondent does not admit to any of the matters alleged in the FVRO application and the court disregards any evidence/information given in the case.

Is a CAO an FVRO?

A CAO is the name given to the order made when a respondent consents to an FVRO on a without admission basis. It is taken to be an FVRO for the purposes of the *Restraining Orders Act 1997 (WA)*.

A CAO is not an undertaking because a CAO is a court order that is enforceable by the police and the courts.

Is a CAO a criminal charge?

A CAO is not a criminal charge. Notice of the order does not go on the respondent's criminal record.

Is a breach of a CAO a criminal offence?

Yes, it is an offence to breach a CAO. If a person breaches the CAO they may be arrested and charged with the offence of breaching an FVRO if there is enough evidence.

On conviction the maximum penalty for breaching the CAO is a fine of \$10,000 or imprisonment for 2 years. A conviction for a breach will go on their criminal record.

If the person has previously breached a police order or an FVRO, including a CAO, more than once in the last 2 years, they might be treated as a repeat offender. In this case, the court must impose a sentence that includes a term of suspended or immediate imprisonment, unless it would be clearly unjust to do so.

Are CAOs nationally recognised?

All CAOs made since 25 November 2017 will be automatically recognised nationally. If your CAO was made before then, you should get legal advice about whether you need to apply in the Magistrates Court to have it declared and recognised nationally.

How long can a CAO last?

It lasts as long as it says in the order. If no duration is stated in the order against an adult it expires after 2 years and against a child after 6 months.

If the respondent is in prison at the time of service, the CAO must have a minimum duration of 2 years and that is enforceable from the date that the CAO is made, with the duration starting to run from the date of the respondent's first release from prison.

Why are CAOs used?

There are many reasons why CAOs are used to resolve FVRO applications, these include where the respondent wants to avoid:

- admitting they committed family violence as alleged in the FVRO application

- a finding of family violence being made against them
- giving evidence in a final order hearing
- children or other potential witnesses being required to give evidence, whether for or against them
- the related financial and emotional costs of more proceedings or a hearing; or
- the risk of paying the applicant's legal costs, which can be substantial.

How is a CAO made?

At some courts, duty lawyers can help to negotiate the restraints on CAOs. The court will then make the CAO with the consent of the respondent. The CAO can be drafted and signed by both parties. An example of such a CAO is included below.

Respondents can also tell the magistrate that they consent to the CAO during court proceedings. When they do the magistrate can make the CAO without the requirement for the parties to sign it.

When can a CAO be made?

It can be made at any stage in proceedings under the *Restraining Orders Act 1997* (WA) relating to an FVRO including at an FVRO shuttle conference.

If the other party has a lawyer, you can contact them before the court date to discuss the conditions of a CAO.

What can a CAO say?

The restraints included in a CAO are usually very similar to the FVRO they replace. They can contain:

- conditions outlining what the respondent cannot do (such as have contact by any means or be near the other person or their home or place of work).
- conditions outlining what the respondent can do. This may include attending mediation, or allowing contact to make arrangements for children or deal with the parties' personal property.

Every CAO must have a firearms clause, unless the respondent satisfies the court that they need a firearm licence and firearm:

- for their employment, and
- no firearm was used to commit an alleged act of family violence, and
- the safety of any person, or their perception of their safety is not likely to be adversely affected by their possession of a firearm.

The court must also consider whether to include a restraint on the respondent being in possession of any explosives or having or getting an explosives licence.

A CAO can be worded to cover most situations. However, it is not intended to be a substitute for family court property or parenting orders.

An example of the restraints that can be included in a CAO is shown in this information sheet. You may need legal advice about the restraints on your CAO.

Can a CAO be changed or cancelled?

Either the person bound by the CAO or the protected person by it can apply to change or cancel the CAO in the same way as an FVRO.

What if there are family court orders in place regarding my children?

The applicant for an FVRO should have informed the court when they applied of any family court orders or pending applications.

The CAO will not usually override the family court order. The court that makes the CAO can change or cancel any family court orders in very limited circumstances. You should get legal advice about your situation before agreeing to a CAO.

Where can I get more information?

- Legal Aid WA has other infosheets that may help you, including *Responding to a restraining order* and *Undertakings in restraining order proceedings*. Contact Legal Aid WA's Infoline on 1300 650 579 or go to any office to get a copy. See also the [Legal Aid WA website](#) to download a copy and for more information.

Example of a conduct agreement order (agreed to by both applicant and respondent)

Protected Person:

("Protected Person")

Person bound:

("Person Bound")

The parties in this family violence restraining order matter have come to the following agreement.

The Protected Person agrees to settle her/his [delete/strike through the one that does not apply] family violence restraining order application on the basis of the Person Bound consenting to the following conduct agreement order:

The duration of this order is months/ years.

PART A: ORDERS: EXCEPT AS SET OUT IN PART B THE PERSON BOUND MUST NOT:

- (a) be in possession of a firearm, a firearms/explosives licence or obtain a firearms/explosives licence,
- (b) cause or attempt to cause damage to any property in the possession of the Protected Person,
- (c) except as set out in Part B, communicate or attempt to communicate with the Protected Person by any means whatsoever, including SMS or text messages or any other electronic means,

- (d) harass the Protected Person by any electronic means, including by using the internet and any social network application (such as "Facebook") to depict or refer in any offensive manner to the Protected Person,
- (e) enter, remain upon or any other premises where the Protected Person lives, or works, or is educated; or be within metres of the nearest external boundary of those premises,
- (f) enter upon the street and adjoining road reserve known as,
- (g) approach within metres of the Protected Person unless within the grounds of for the purposes of undertaking education,
- (h) approach within metres of any property (including vehicles) of, or under the control of, the Protected Person,
- (i) prevent or hinder the Protected Person from using,
- (j) prevent or hinder the Protected Person from attending at..... in the company of a police officer for the purposes of recovering personal or other property,
- (k) distribute or publish, or threaten to publish, any intimate personal images of the Protected Person,
- (l) monitor the movement or communications of the Protected Person,
- (m) cause or allow any other person to engage in conduct of the type referred to in any of the preceding paragraphs of this agreement for you.

PART B: THE PERSON BOUND WILL NOT BREACH THE ORDERS IN PART A IF SHE/HE/THEY [delete/strike through the one that does not apply]:

- (a) communicates with the Protected Person through an Australian legal practitioner as defined in the *Legal Profession Uniform Law (WA)* or a person acting under Section 48 of the *Aboriginal Affairs Planning Authority Act 1972 (WA)*,
- (b) complies with a court order or parenting plan made under the *Family Court Act 1997 (WA)* or *Family Law Act 1975 (Cth)* allowing the Person Bound to live with, spend time with or communicate with a child or children named in that order or the plan,
- (c) communicates with the Protected Person by email, SMS, text message or by any other written electronic means solely to make arrangements to spend time with, or communicate with any child or children of the Protected Person and the Person Bound,
- (d) participates with the Protected Person in family dispute resolution or family counselling, as defined in the *Family Court Act 1997 (WA)* or *Family Law Act 1975 (Cth)*,
- (e) instructs a process server or bailiff or other person to serve any legal process requiring service on the Protected Person,
- (f) participates in and go to court events in proceedings in which the Protected Person and the Person Bound are parties or witnesses, and to comply with any order or direction of a Court,
- (g) attends in the company of a police officer for the purposes of recovering personal or other property,
- (h) engages in any mediation as directed or ordered by a Court, or other mediation as agreed in writing by the parties and as arranged by a mutually agreed third party.

Signed: _____

Dated: _____

Person Bound:

Signed: _____

Dated: _____

Protected Person:

LEGAL AID WA OFFICES



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