

The Magistrate will consider the applicant's reasons and if he or she believes that the matter is urgent, may give a restraining order without a written application.

Service of the restraining order

If a restraining order is granted, the applicant must, or must arrange for someone else to, serve a copy of the restraining order on the defendant and any other party required to comply with the order.

What happens if the other party does not comply with a restraining order?

It is an offence for a person to fail to comply with a court order. If the other party does not comply with the restraining order, you should inform the police about this as soon as possible.

If the order is not followed by the other party, you can go back to the court to ask for another order to make sure that the other party follows the restraining order.

The court may **fine** the other party for not following the court order or it may order that the other party serve a jail term for a short time if they are not able to pay the fine.

Sometimes, the other party may not follow the restraining order because it was necessary for him or her to have some contact with the applicant. This will not be taken to be a breach of the order as the other person was forced not to follow the order by something that he or she had no control over.

What else do you need to know?

Sometimes it is difficult to show the court that the other party is threatening you or has caused harm to you. It may be helpful if other people will support your case, eg say that they saw the other party harm or threaten you.

If you have been harmed by the other party, you

should tell the police about this and make a police report. The police report can be used to support your case.

You should also try to get a medical report from the hospital if you have been hurt as a result of the other party's actions. This will help your case as it will show the Magistrate that you have been in danger because of the other party's actions.

For further information, contact:

The Public Solicitor's Office
PO Box 794, Port Vila
Phone: 23450
Fax: 23451

USP Community Legal Centre
USP Emalus Campus
PMB 9072, Port Vila
Phone: 27026
Fax: 25543

Produced with the generous
assistance of



Australian Agency for International
Development

The information contained in this brochure is only intended as a guide to the law and is not a substitute for obtaining legal advice. If you have any further questions we strongly suggest you seek legal advice.

Note: This information applies to people who live in, or are affected by, the law as it applies in Vanuatu.

The information in this brochure is current as at 30 June 2006.

University of the South Pacific Community Legal Centre
PMB 9072 Port Vila VANUATU Ph: 27026 Fax: 25543
<http://legalcentre.vanuatu.usp.ac.fj/>

UNIVERSITY OF THE
SOUTH PACIFIC



Restraining orders



**A USP COMMUNITY LEGAL
CENTRE PRODUCTION**

What is a restraining order?

A restraining order is an order of the court that stops a person from coming into contact with another person or their property.

A restraining order is an interlocutory order (an order of the court made during or before a proceeding that does not finally determine or end the proceeding). Restraining orders can be made without the other party being present in court.

A restraining order is usually given for a short time, but if the court believes that there may be continued harm to the person applying for the order, it can then make a permanent order.

If you need protection from a person who is a member of your family, you should see the brochures on *Domestic Violence* and *Applying for a Domestic Violence Protection Order*. Restraining orders are for people who can show the court that it is necessary to protect that person or their property from another person who is not their family member.

Who can apply for a restraining order?

A person (the applicant) can apply for an interlocutory order at any time during a proceeding or before a proceeding has started. However, it is not possible to apply for a restraining order unless it is related to a claim that the applicant is taking, or is going to take, to court. This means that the applicant must have already filed, or be going to file, a claim that is related to the application for a restraining order.

The claim is the case that the applicant is taking to court. The claim may be for property damage, injuries to the applicant or some other matter. This claim could be made at the same time when applying for a restraining order or at a later date. The time within which the claim has to be filed may be given by the court.

The applicant for a restraining order must be able to show that a restraining order is necessary for their pro-

tection and/or the protection of their property.

Where an applicant applies for a restraining order before a proceeding has commenced, they must show that:

- they have a serious question to be tried; and
- they would be seriously disadvantaged if the order is not made.

How to apply for a restraining order during a proceeding

If the proceeding has started, the application should, if possible, be made orally during a conference.

An application made at another time must be made by filing a written application. The application must be in Form 10 and must:

- state what the applicant applies for; and
- be accompanied by a sworn statement in Form 3 setting out the reasons why the order should be made.

Forms 3 and 10 may be found in Schedule 3 to the *Civil Procedure Rules 2002*. You may also obtain a copy of these forms from the USP Community Legal Centre or the Public Solicitor's Office. If you need help completing these documents, the USP Community Legal Centre or the Public Solicitor's Office may be able to help you.

The application and sworn statement then have to be filed with the Magistrate Court. The court will then give a date as to when the applicant has to go to court.

The application and sworn statement must be served on each other party to the proceeding unless the matter is so urgent that the court decides the application should be dealt with in the absence of the other party, or unless the court otherwise orders.

Unless the court otherwise orders, the application and sworn statement must be served at least 3 days before the time set for the hearing of the application.

How to apply for a restraining order before a proceeding has started

To apply for a restraining order before the proceeding has started, you must make a written application to the court.

As noted above, the application must be in Form 10 and must:

- set out the substance of the applicant's claim (ie the claim that the applicant will make);
- outline the evidence on which the applicant will rely;
- set out the reasons why the applicant will be disadvantaged if the order is not made; and
- have with it a sworn statement in Form 3 in support of the application.

The application and sworn statement must be served on each other party to the proceeding unless the matter is so urgent that the court decides the application should be dealt with in the absence of the other party, or unless the court otherwise orders.

The court may make the order if it is satisfied that:

- the applicant has a serious question to be tried and, if the evidence brought by the applicant remains as it is, the applicant is likely to succeed; and
- the applicant would be seriously disadvantaged if the order is not made.

When making the order, the court may also order that the applicant file a claim by a particular date.

Note that there is a fee of VT\$8,000 for filing a claim in the Magistrates Court.

Exceptions to procedures

An oral application may be made if the matter is urgent, provided that the applicant agrees to file the written application at a later date.