

# Family violence restraining orders – information



This information sheet covers family violence restraining order applications. If you made a violence restraining order (family and domestic) (VRO) application before 1 July 2017 contact Legal Aid WA to obtain a copy of the information sheet Violence restraining orders (applications made before 1 July 2017).

You can apply to the court for a family violence restraining order (FVRO) against a family member if you need protection because of the risk of family violence.

Before you apply for a family violence restraining order (FVRO) in WA, check whether you have a current domestic violence order against the same person from another state or territory. If you do, get urgent legal advice before applying for an FVRO in WA.

If your current domestic violence order (DVO) against the same person from another state or territory was made:

- on or after 25 November 2017, it will automatically apply in WA without you needing to do anything.
- before 25 November 2017, you can apply to the Magistrates Court in WA to have it nationally recognised. This may be simpler, quicker and safer than applying for a new FVRO.
- in Victoria, or was an interstate DVO varied in Victoria, or a New Zealand DVO registered in Victoria, it will automatically apply in WA.

If you move or travel interstate these provisions apply to any FVRO made in WA.

If you are at risk of family violence and want tips for staying safe, see the Legal Aid WA information sheet: [About your safety](#).

If you are applying for the order you are called “the applicant” or the “person seeking to be protected”. The person who you want the order against is called “the respondent” or if a restraining order is made, the “person who is bound”.

## What is family violence?

Family violence means:

- violence, or a threat of violence, by someone towards a family member, or
- any other behaviour that coerces or controls another family member, or causes them to be fearful.

Family violence is not just physical violence. It can include forms of physical, financial, emotional and psychological abuse.

Examples of family violence behaviour covered by the law include:

- hitting you
- threatening to hit you

- threatening to share or actually sharing intimate images
- holding you against your will
- not letting you have money when you depend on them for financial support
- causing death or injury to your pets
- damaging property you own or jointly own
- repeatedly sending you unwanted or offensive texts
- stopping you seeing or keeping in contact with friends, family or culture.

Even if the person gets someone else to do these sorts of things against you they will be taken to have committed family violence.

## What is a family violence restraining order?

It is a court order against your partner, ex-partner or another family member, (eg uncle, son, grandfather) designed to stop threats of violence or violence, behaviour that coerces controls, or causes you to be fearful.

It tells them to stay away from you and/or to stop behaving in certain ways towards you. The order can be worded to suit your situation.

There are other types of restraining orders:

- police orders
- violence restraining orders (VROs) (against a person you are not or have not been in a family relationship with), and
- misconduct restraining orders (MROs).

## What is a police order?

Police may make an on the spot FVRO called a “police order” in situations of family violence.

The police order may be made for up to 72 hours. A 72 hour order lapses if it is not served within 24 hours. If you want an ongoing FVRO you will have to apply to the court yourself or ask the police whether they can apply for you.

## Who can apply for an FVRO?

You can apply for an FVRO against someone you are or have been in a family relationship with.

The definition of **family member** is broad and covers current and former spouses, partners, siblings, children, parents, grandparents and step-family relationships, as well as other relatives.

Two people are in a family relationship with each other if:

- they are or were married
- they are or were in a de facto relationship
- they are or were in a personal relationship (for example, boyfriend/girlfriend)
- they are or were related (including by culture and relatives of a current/former spouse or partner), or
- one of them is a child who normally or regularly lives, or lived with, the other person.

If you are not sure whether you are or were in a family relationship with the person you want an FVRO against, seek legal advice.

An application can be made by:

- any person at least 16 years old seeking to be protected, or their guardian, if they have one
- the parent or guardian of a child or a child welfare officer (eg a Department of Communities Child Protection and Family Support case manager) for a child or young person under 18 years of age, or
- a police officer for any child or adult.

## How can I get an FVRO?

If the person to be protected by the FVRO is a child, you can apply in the Children’s Court or the Magistrates Court. But if you want a FVRO against a child or young person under 18 years old, you must apply to the Children’s Court. A restraining order cannot be made against a child less than 10 years of age.

If the application is not being brought for or against a child or young person under 18, you must apply in the Magistrates Court, unless you are aged 16 or 17 in which case you can also apply in the Children’s Court.

If you urgently need an FVRO, or it is not practical to apply in person at the court, a police officer can help you to apply for an FVRO over the telephone.

In some cases during proceedings taking place in other courts, eg in the criminal courts you can ask the court to make an FVRO.

Ask at your nearest courthouse for the application form or, if there is no courthouse in your area, ask at the nearest police station. The application form can also be downloaded from the Magistrates Court of WA website.

## What does getting an FVRO involve?

- The first time you apply your case is in a closed court. The respondent is not there (if you ticked the box in your application for it to be dealt with in their absence).
- If the respondent does not already know your address the court will not pass it on.
- The court may be made up of a magistrate, or in some places, local community members, who are justices of the peace.

- If an interim order is made the police will give it to (“serve it on”) the respondent. It does not come into operation until it has been served. This is when they will find out about your application.
- The respondent can object within 21 days of receiving the order from police
- The respondent can order a copy from the court of the transcript of what was said at the interim FVRO hearing.
- If the respondent objects, before the final hearing date you can apply to give evidence by closed circuit TV or behind a screen if you feel you would be unable to give evidence in front of the respondent well or at all or would be distressed or intimidated in open court. You can do this by lodging a Form 23 and affidavit in support at least 14 days before the hearing.
- If an interim order is not made (and the application is not dismissed) you can choose to go on with your application or not continue it.

See the flow charts below for more information on the process.

### Can an FVRO cover my children?

The court can make an FVRO to help protect a child from being exposed to family violence if satisfied:

- the child has been exposed to family violence and they are likely to be exposed again, or
- there are reasonable grounds to fear the child will be exposed to family violence.

If satisfied in either of these two ways, the court may make an FVRO to benefit the child unless there are special circumstances that mean making the FVRO is inappropriate.

You can also apply for an FVRO for your children on a separate application form. You need to show the same things as if you wanted to add the children to your FVRO.

### What does “exposed” to family violence for a child mean?

A child is exposed to family violence or personal violence if:

- the child sees or hears the violence, or
- otherwise experiences the effects of violence.

Examples include:

- overhearing threats of death or personal injury
- seeing or hearing an assault
- comforting or giving help to a person who has been assaulted
- cleaning up a place after property damage
- being present when police or ambulance officers attend an incident involving the violence.

### What do I have to show to get an FVRO?

The court can make an FVRO to protect you if:

- the respondent has committed family violence against you and is likely to commit family violence against you in the future, or
- you (or the person who applied for the FVRO for you) have good reasons to fear that the respondent will commit family violence against you.

If the court is satisfied of either of those two things, it must make an FVRO against the respondent unless there are special circumstances that mean making the FVRO is inappropriate. Special circumstances do not exist simply because you, or the respondent, can apply, or have applied, for a particular family order.

If possible get legal advice before you make your application. Contact **Legal Aid WA’s Infoline** on **1300 650 579** for information and referral.

### What conditions can be included on an FVRO?

The restrictions in the FVRO can be shaped to suit your situation, based on what is appropriate.

- You don’t have to cut off all contact if you don’t want to.
- It does not have to mean the respondent cannot spend time with their children.
- The FVRO has to be consistent with existing family orders unless the magistrate making the FVRO temporarily suspends them.
- You can agree to the respondent only contacting you in certain ways or for certain

reasons (for example, by text message to arrange having contact with the children).

- You can ask for restrictions that let you see or speak with each other, but stop the respondent behaving in ways you find abusive, threatening or distressing.

An FVRO can have conditions which stop the person bound from doing certain things such as:

- coming to or near where you live or work
- being at or near a certain location or place
- coming within a certain distance of you
- contacting or trying to communicate with you in any way (including texts, phone calls, messages, emails, letters, or asking other people to contact you)
- sharing, or threatening to share, intimate personal images of you
- monitoring your movement or communications
- being in possession of firearms, ammunition or a firearms licence
- making or allowing someone else to do those things for them.

If the respondent breaks any of those restrictions, they may be committing a criminal offence.

Normally an FVRO prevents the respondent from having or getting a gun or a licence for a gun. Also, if a respondent already has a gun and/or a gun licence, they must give it up to the police. If the court is not going to order that the respondent must give up their gun they should tell you.

The court can include a condition that the respondent has one opportunity to collect their personal items from somewhere they used to live or work (usually in company with a police officer).

### How long does an FVRO last?

An interim FVRO stays in force until it is cancelled, dismissed or becomes final.

Unless varied or cancelled, a final FVRO against an adult usually lasts for two years, and up to six months against a child or young person. You can ask for an order against an adult to be longer if you prove it is necessary, or it can be shorter. If the respondent is in prison when the order is made, the time the order stays in force runs from when they are released from prison.

Criminal courts can also make lifelong FVROs in some circumstances.

### What is a breach of a FVRO or police order?

A police order or an FVRO will prevent the person bound from doing certain things.

You should read the order carefully to know what behaviour is restricted.

If the person bound does something that the police order or FVRO says they can't do, they are "breaching" the order.

For example, if a police order or FVRO says the person bound is not allowed to communicate with you, the person bound must not:

- visit you
- call you on the phone
- send SMS or text messages to you
- send emails to you
- send letters to you
- send presents to you
- send messages to you, even through friends, family or your children.

**You should report any breaches of a police order or an FVRO to the police.**

### Is an FVRO a criminal charge?

An FVRO itself is not a criminal charge. Notice of an FVRO does not go on the person bound's criminal record.

However, if a person bound by an FVRO breaches that order, they may be charged with the criminal offence of breaching an FVRO. A conviction for breach of an FVRO or a police order will go on their criminal record.

Breaches of an FVRO or a police order can result in fines of up to \$6,000 or imprisonment for up to two years or both.

### How does an FVRO affect children spending time with either parent?

An FVRO can be made for a child as the person protected or an FVRO for an adult as the person protected can be extended by the court to protect a child or children. Read the restraining order

carefully as the court may include conditions about what contact the person bound by the order can have with their children.

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

If the court making the FVRO does not have the power to adjust a family court order the court cannot make an order that conflicts with the family court order. The court that grants the FVRO can in some circumstances change or cancel any parenting orders made by a family court. You should get legal advice about your situation.

#### **Will I be protected by my FVRO if I travel to or move interstate?**

Every new FVRO made from 25 November 2017 will be automatically recognised nationwide meaning you are protected nationwide.

If your FVRO was made before 25 November 2017, you can apply to a local court (eg the Magistrates Court in WA) to have the order 'declared' to be a nationally recognised order to have protection nationwide.

#### **Where can I get more information?**

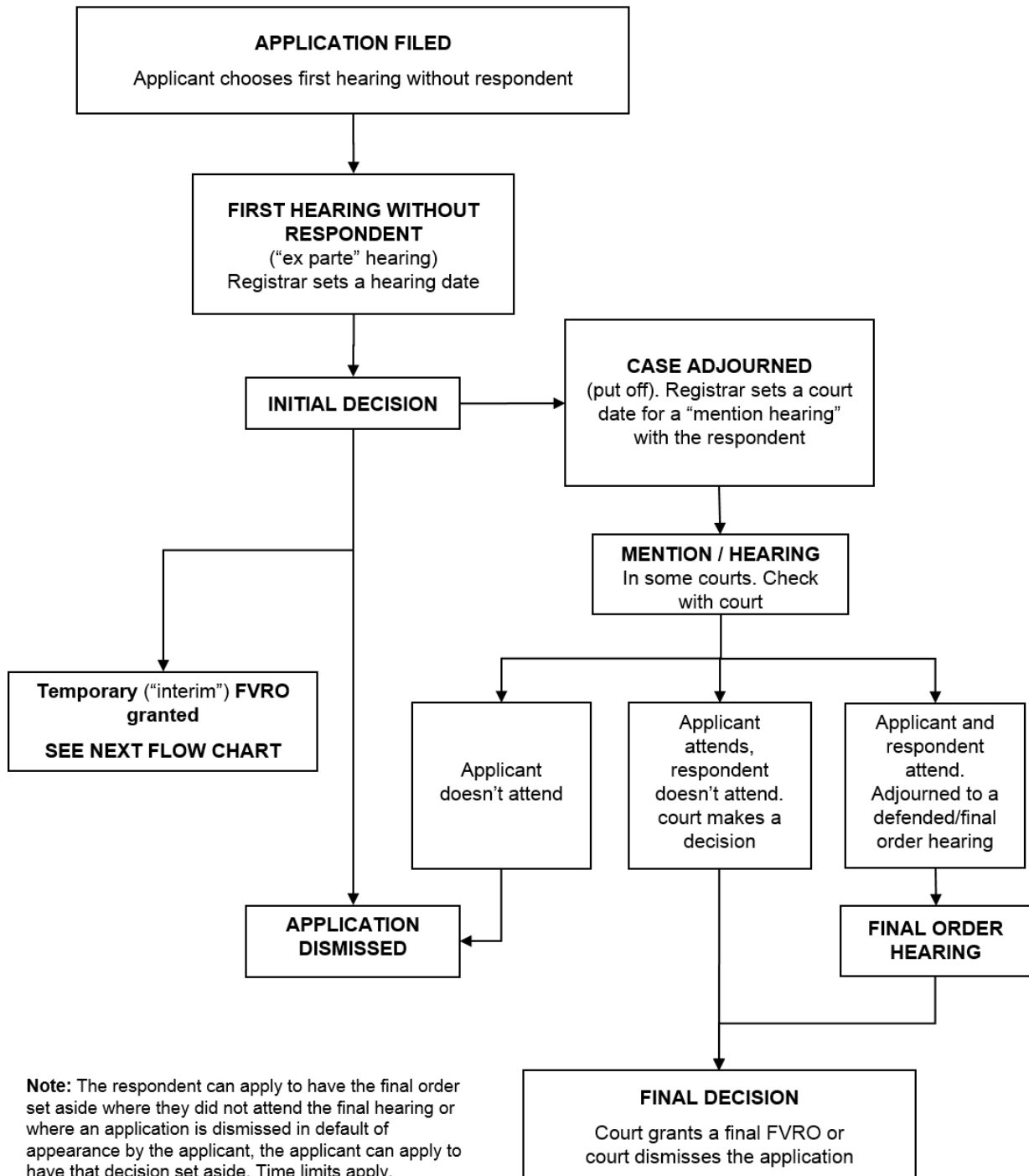
- View **Getting an Interim Family Violence Restraining Order (FVRO)**. It is an online self-help guide for people who need protection from violence or the threat of violence against them by a family member and want some information about how to apply for an FVRO. It contains practical information around four keys areas – keeping safe, how to apply for an FVRO, going to court and the next steps after court. Go the Legal Aid WA website at this link to <http://www.legalaid.wa.gov.au/LegalResources/Pages/CORE.aspx> to register to access the guide.
- Contact **Legal Aid WA's Infoline** on **1300 650 579** between 9.00am and 4.00pm Monday to Friday for information and referral, or to be sent a copy of other information sheets on restraining orders for both applicants and respondents. You can also pick up a copy from your nearest Legal Aid WA office. **These information sheets should be used with legal advice where possible.**
- For legal and counselling services for victims of family violence and/or sexual assault who are Aboriginal or Torres Strait Islander peoples, or whose partner or children are Aboriginal or Torres Strait Island peoples contact:
  - **Perth FVPLS (Djinda Services)** on **(08) 9200 2202**.
  - **Aboriginal Family Law Services** on **(08) 9355 1502** or **1800 469 246** (freecall) or go to its website: <http://www.afls.org.au/contact/> for the contact details of AFLS offices in regional areas.
  - **Albany Family Violence Prevention Legal Service** on **(08) 9842 7751**.
  - **Marninwarntikura Family Violence Prevention Legal Unit** on **(08) 9191 5284** or **9191 5417**.
- Police support is available from your local police station on **131 444**.
- Go to the [Magistrates Court of WA](http://www.magistratescourt.wa.gov.au) website or any registry to get copies of any forms needed.



**Flow charts of the court process**

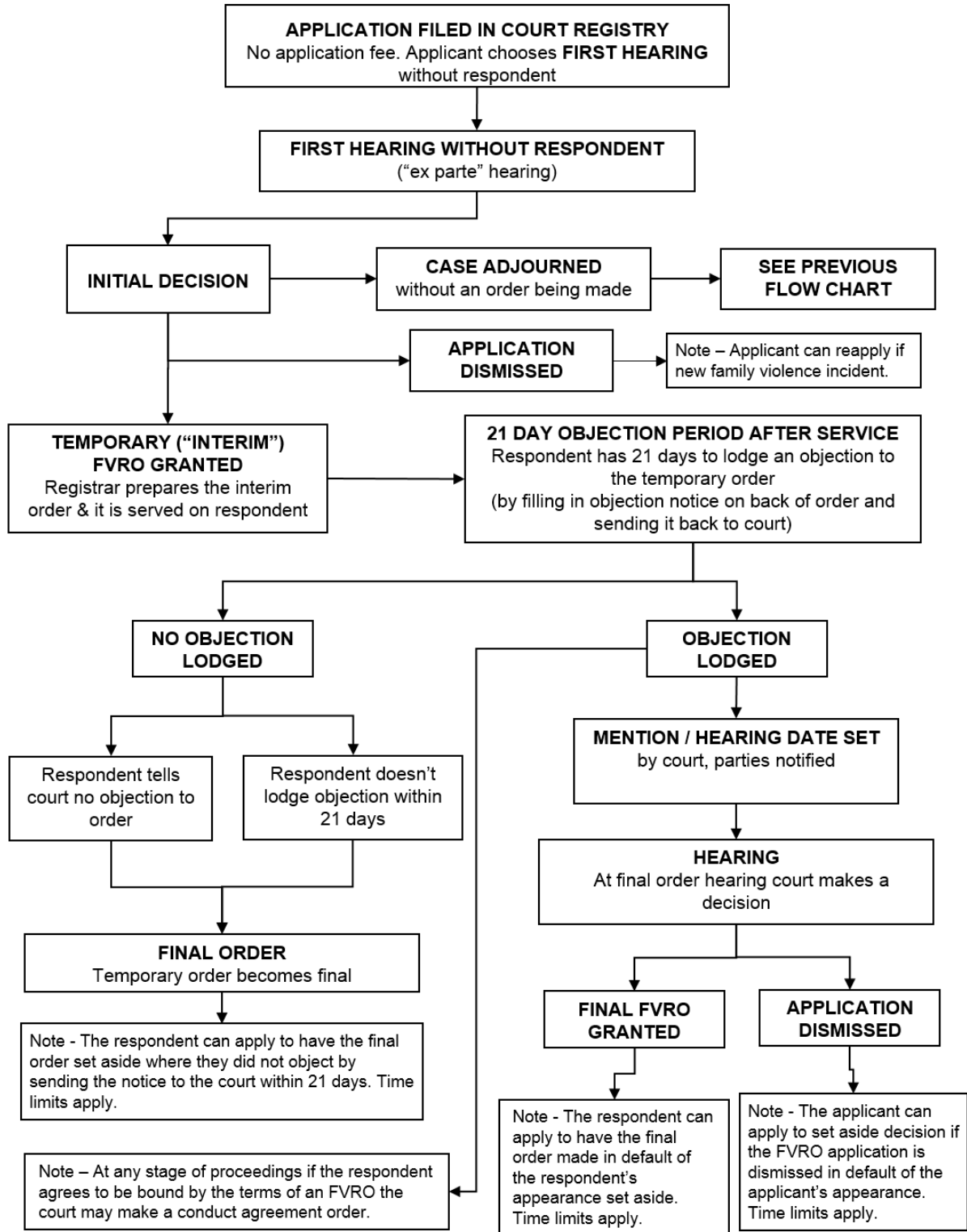
**1. Family violence restraining order**

## Procedure (no interim order made)



**2. Family violence restraining order**

## Procedure (interim order made)



## Legal Aid WA Offices

**TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)**

Infoline open Monday to Friday 9.00 am to 4.00 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](http://www.legalaid.wa.gov.au)

### **Perth Office**

32 St Georges Terrace, Perth, WA 6000

1300 650 579

(08) 9261 6222

### **Southwest Regional Office**

7<sup>th</sup> Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230

(08) 9721 2277

### **Great Southern Regional Office**

Unit 3, 43-47 Duke Street, Albany, WA 6330

(08) 9892 9700

### **Goldfields Regional Office**

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430

(08) 9025 1300

### **Midwest & Gascoyne Regional Office**

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530

(08) 9921 0200

### **Pilbara Regional Office**

28 Throssell Road, South Hedland, WA 6722

(08) 9172 3733

### **West Kimberley Regional Office**

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725

(08) 9195 5888

### **East Kimberley Regional Office**

98 Konkerberry Drive, Kununurra, WA 6743

(08) 9166 5800

### **Indian Ocean Office**

Administration Building, 20 Jalan Pantai

Christmas Island, Indian Ocean, WA 6798

(08) 9164 7529

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. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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