

# Family violence restraining orders

This infosheet provides information about family violence restraining orders (FVRO) including how to apply for an FVRO. You can apply to the court for an FVRO to protect you from a family member if you are at risk of family violence.

If you already have a domestic violence order which was made in another state, you do not need to apply for a new order in WA. This is because all restraining orders providing protection from family violence which were made in Australia after 24 November 2017 are nationally recognised and enforced by police and the courts anywhere in Australia.

There are some special rules about orders made in Victoria. A domestic violence order made or varied in Victoria at any time (including before November 2017) is automatically recognised across Australia. This includes orders originally made in New Zealand which have been registered in Victoria.

Restraining orders from the following countries can be enforced in Western Australia if they are nationally recognised, or are registered in Western Australia:

- New Zealand
- Canada
- Ireland
- the United Kingdom.

If the order relates to family violence concerns, you can apply to have it recognised under the National Scheme then you will not have to apply for a new order in WA. Any foreign order registered in WA before 25 November 2017 can still be enforced in WA if the order is current.

## Terms used

If you are applying for the order you are called 'the applicant' or if the order is made 'the protected person'. The person who you want the order against is called 'the respondent' or if a restraining order is made, the 'person 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.

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

Examples of family violence behaviour covered by the law include:

- hitting you
- threatening to hit you
- unwanted sexual behaviour that makes you feel shame, upset or scared
- threatening to share or 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
- threats, demands, or pressure from your husband or his family, to you or your family, in relation to money or gifts exchanged in return for marriage
- 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 the family member 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) (against a person you are not or have not been in a family relationship with).

## 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 and members of intimate or family-type relationships. It also covers the former spouse or de facto partner of the protected person's current spouse or de facto partner.

If you are not sure whether you are or were in a family relationship with the person you want an FVRO against, get 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 (for example, a Department of Communities, Child Protection case manager) for a child or young person under 18 years of age, or
- a police officer for any child or adult.

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

The court can make an FVRO to protect you against another family member (the respondent) 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.

You should try to get legal advice before you make your application. Contact Legal Aid WA's Infoline on 1300 650 579 for information and referral.

## How can I apply for an FVRO?

If the person to be protected by the FVRO is a child, you can apply to the Children's Court or the Magistrates Court. But if you want an 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 to the Magistrates Court, unless you are aged 16 or 17 in which case you can also apply to the Children's Court.

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

FVROs can be made during other cases and in other courts. This includes:

- In bail applications and court cases about criminal charges.
- When sentencing people for violent or sex offences.
- During a protection and care case in the Children's Court of WA; and
- During a Family Court case about children. However, in most cases, the Family Court will require you to go to the Magistrates Court to apply for an FVRO.

Get legal advice before applying for an FVRO in family court or child protection proceedings.

Ask at your nearest courthouse for the paperwork to apply for an FVRO or, if there is no courthouse in your area, ask at the nearest police station. The paperwork can also be downloaded from the Magistrates Court of WA website. Alternatively, you can apply online for an FVRO through an approved legal service provider such as Legal Aid WA.

## What does getting an FVRO involve?

### Interim Hearing

- When you apply for an FVRO, you can ask the court for an **interim FVRO**. This is a temporary order that can be made and enforced while you go through the court process to get a final (longer term) order. This first hearing is held in a closed court. This means it is not open to the public.
- An interim FVRO can be made without having to tell the other person that you are applying for a restraining order against them. You must tick 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 case will be heard before a magistrate.
- 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.
- 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 to the FVRO the court may offer an FVRO conference as a way to resolve the case.

### Conference

- When you apply for an FVRO there is a question you must complete about whether you agree to go to a conference if one is available at the court your case is listed at. Both you and the respondent must agree to go to a conference or one will not be held.
- Conferences are a type of mediation that take place at a court building. They are a way of trying to resolve disputes in FVRO cases

without having to go to a final order hearing at court.

- Free legal advice and representation is available for both applicants and respondents at a conference. This help is not means tested.
- During a conference you and the respondent are each in separate rooms in different locations in the court building and do not see each other during the conference. This type of conference is sometimes called a “shuttle conference”.
- A court person called a registrar runs the conference. The registrar will move back and forth between the room of the applicant and the room of the respondent. The registrar is independent. This means they are not on the side of the applicant or the respondent. Their role is to help the applicant and respondent to try and reach an agreement. Registrars are very experienced in helping people explore ways to try and resolve their disputes.
- If the respondent objects to your application and a conference is not held, or agreement is not reached at the conference, your case will be put off for a final order hearing.
- See the infosheet FVRO final hearing – applicant for more information on final order hearings.
- Before the final order hearing date you can apply to give evidence by closed circuit TV, one-way glass 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. The court will also consider on the day of hearing if these arrangements need to be made for you or any witness.
- The court will take whatever other steps that are reasonably practicable and appropriate to make sure that you feel safe during the FVRO proceedings.

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

## 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.

## What restrictions can be included in 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 must 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 things that they would normally be allowed to do, such as:

- coming to or near where you live or work
- being at or near a certain 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 explosives, or a firearms or explosives 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 firearm or a licence for a firearm. Also, if a respondent already has a firearm and/or a firearm licence, they must give it up to the police. If the court is not going to order that the respondent must give up their firearm, they should tell you. 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.

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 2 years, and up to 6 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. For FVROs made other than during criminal proceedings, if the respondent is in prison at the time of service of the order, 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 an 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 \$10,000 or imprisonment for up to 2 years or both.

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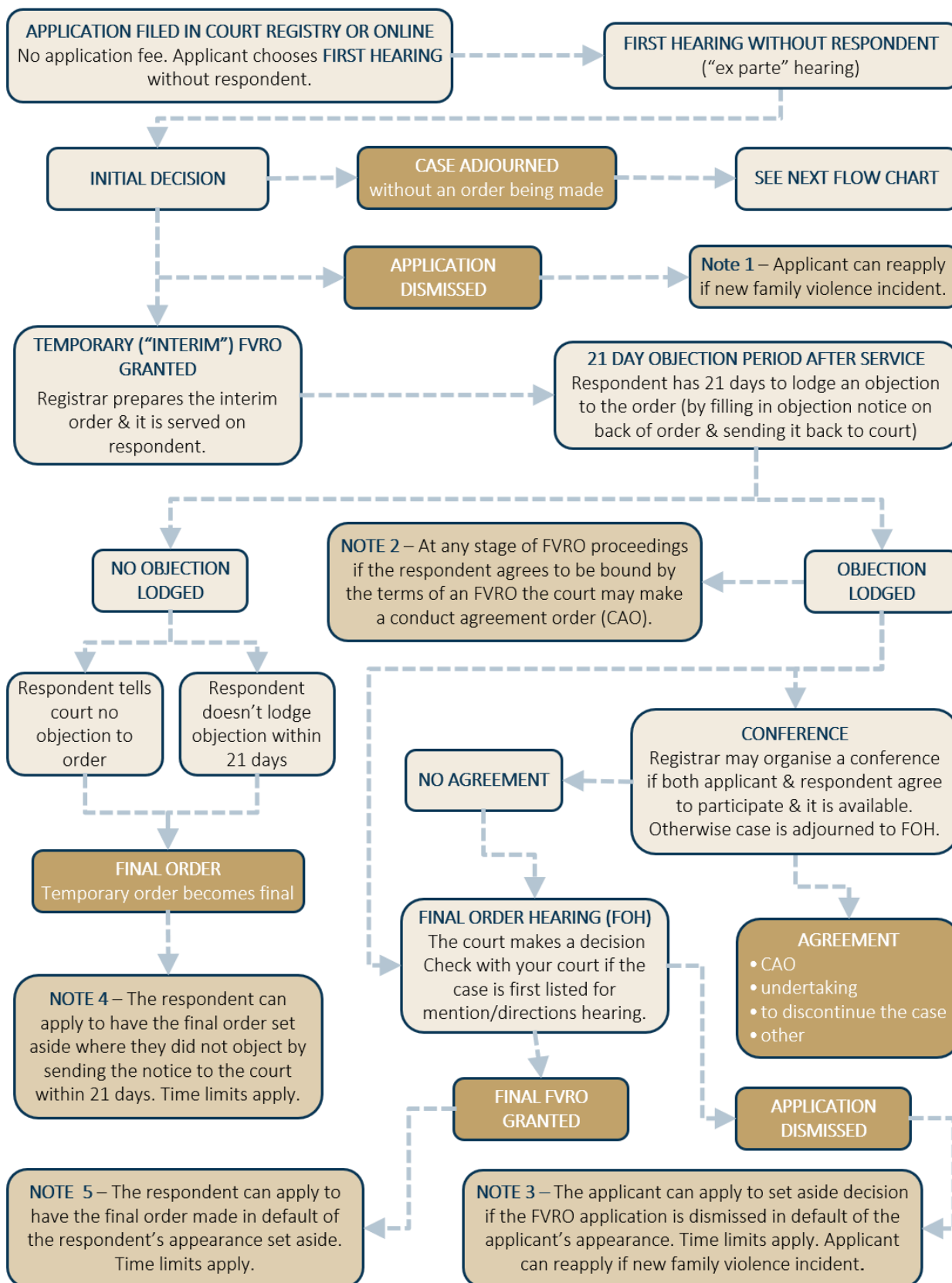
## Will I be protected by my FVRO if I travel to or move interstate?

Every new FVRO made after 24 November 2017 is automatically recognised nationwide meaning you are protected nationwide.

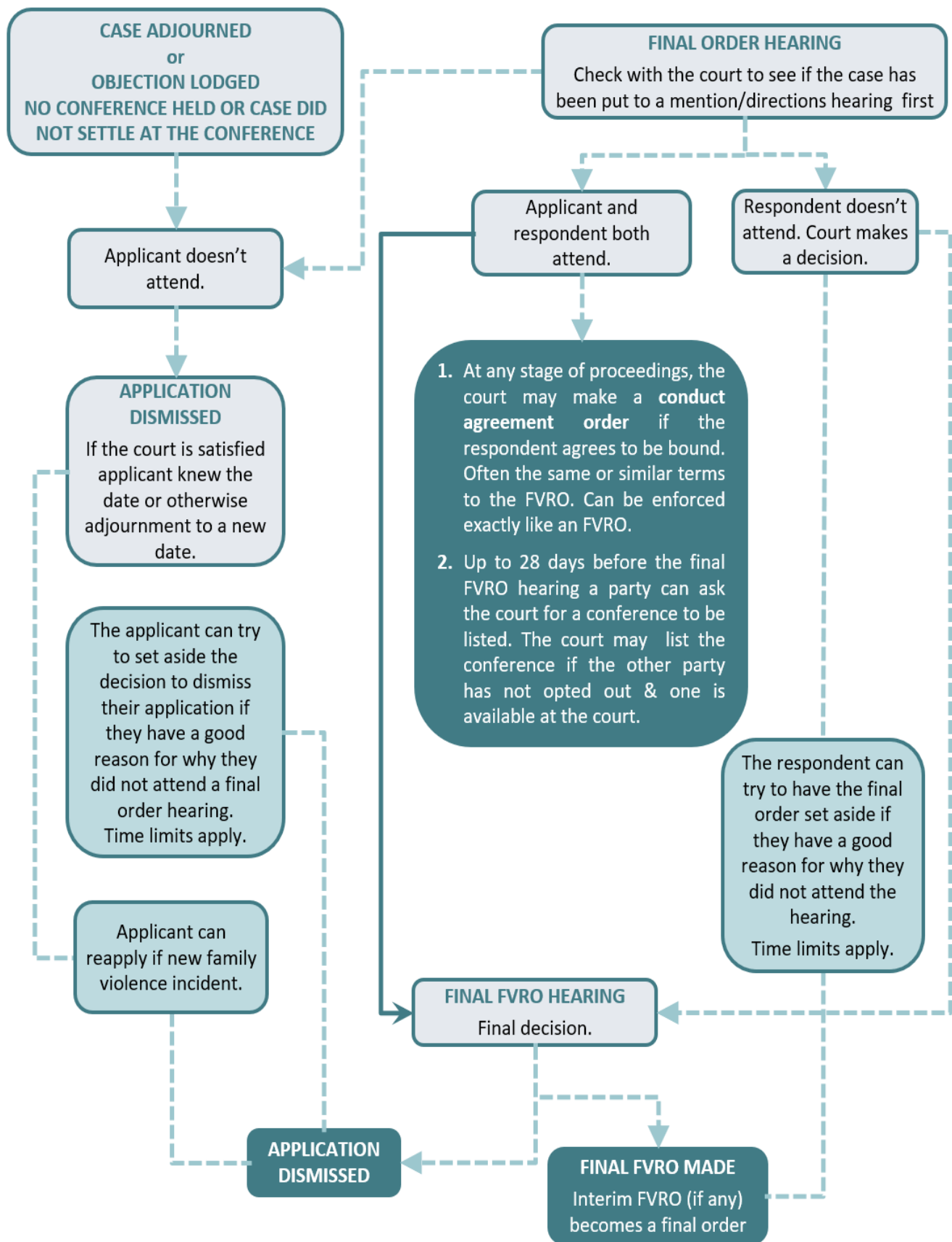
## Where can I get more information?

- View **Getting an Interim Family Violence Restraining Order (FVRO)**. It is an online self-help guide. It contains practical information around four key areas – keeping safe, how to apply for an FVRO, going to court and the next steps after court. To access the guide go to the Legal Aid WA website at this link: <https://www.legalaid.wa.gov.au/resources>.
- Contact **Legal Aid WA's Infoline** on **1300 650 579** for information and referral, or visit the website at: <https://www.legalaid.wa.gov.au/> to chat online, or to be sent a copy of other infosheets on restraining orders for both applicants and respondents. You can also pick up a copy from your nearest Legal Aid WA office. **These infosheets should be used with legal advice where possible.**
- Your local **community legal centre** may be able to help. Visit this website to find the one nearest to you: <https://www.communitylegalwa.org.au/>.
- 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 Islander peoples contact:
  - **Aboriginal Family Legal Services** on **(08) 9355 1502** or **1800 469 246** (freecall) or go to its website: <https://www.afls.org.au/contact/> for the contact details of the AFLS office in Perth and those in regional areas.
  - **Family Violence Prevention Legal Service (Albany)** on **(08) 9842 7751**.
  - **Marnin Family Support & Legal Unit** on **(08) 9191 5284** or email [solicitor@mwrc.com.au](mailto:solicitor@mwrc.com.au).
- Police support is available from your local police station on **131 444**.
- Go to the [Magistrates Court of WA](https://www.magistratescourt.wa.gov.au/) website to get copies of any forms needed and to view a video for applicants on FVROs. You can also go to any registry to apply or get the forms needed including to apply to register a foreign order.

# 1. FVRO – procedure (interim order made) application heard in the absence of the respondent



## 2. FVRO – adjourned/contested application





# LEGAL AID WA OFFICES



**Infoline:** 1300 650 579  
**Legal Yarn:** 1800 319 803  
(for First Nations callers)



**Translating & Interpreting Service:**  
131 450



**Website/InfoChat:**  
[www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)



**National Relay Service:** 133 677  
(for hearing and speech impaired)

## Perth Office

32 St Georges Terrace,  
Perth, WA 6000  
1300 650 579  
(08) 9261 6222

## Midwest & Gascoyne Office

Unit 8, The Boardwalk,  
273 Foreshore Drive,  
Geraldton, WA 6530  
(08) 9921 0200

## West Kimberley Office

Upper Level, Woody's Arcade,  
15-17 Dampier Terrace,  
Broome, WA 6725  
(08) 9195 5888

## Great Southern Office

Unit 3, 43-47 Duke Street,  
Albany, WA 6330  
(08) 9892 9700

## Goldfields Office

Suite 3, 120 Egan Street,  
Kalgoorlie, WA 6430  
(08) 9025 1300

## East Kimberley Office

98 Konkerberry Drive,  
Kununurra, WA 6743  
(08) 9166 5800

## Southwest Office

7th Floor, Bunbury Tower,  
61 Victoria Street,  
Bunbury, WA 6230  
(08) 9721 2277

## Pilbara Office

28 Throssell Road,  
South Hedland, WA 6722  
(08) 9172 3733

## Indian Ocean Office

Administration Building,  
20 Jalan Pantai, Christmas Island,  
Indian Ocean, WA 6798  
(08) 9164 7529

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