

Family violence restraining orders – information



This information sheet covers family violence restraining order (FVRO) applications.

You can apply to the court for an 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.

Restraining orders relating to family violence (sometimes called domestic violence) can now be nationally recognised and enforced by police and the courts anywhere in Australia. An existing (current) family violence order will automatically apply across Australia if it:

- was made on or after 25 November 2017 (in any Australian state or territory, including WA)
- was made or varied in a Victorian court (on any date), or
- was made in New Zealand and registered in Victoria (on any date).

If your existing order is not automatically enforceable in WA, you can apply for national recognition. This may be simpler, quicker and safer than applying for a new FVRO.

You should get legal advice or contact a local court where your order was originally made to see if you need to apply for national recognition.

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 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 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
- 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 person to be protected'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 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 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 parenting cases in the Family Court of WA
- during protection and care cases in the Children's Court of WA.

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. 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?

- 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 case will be heard before a magistrate.
- 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.
- Before the final 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 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.
- 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 FRVO.

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 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.

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 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 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. 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 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 \$10,000 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 since 25 November 2017 is automatically recognised nationwide meaning you are protected nationwide.

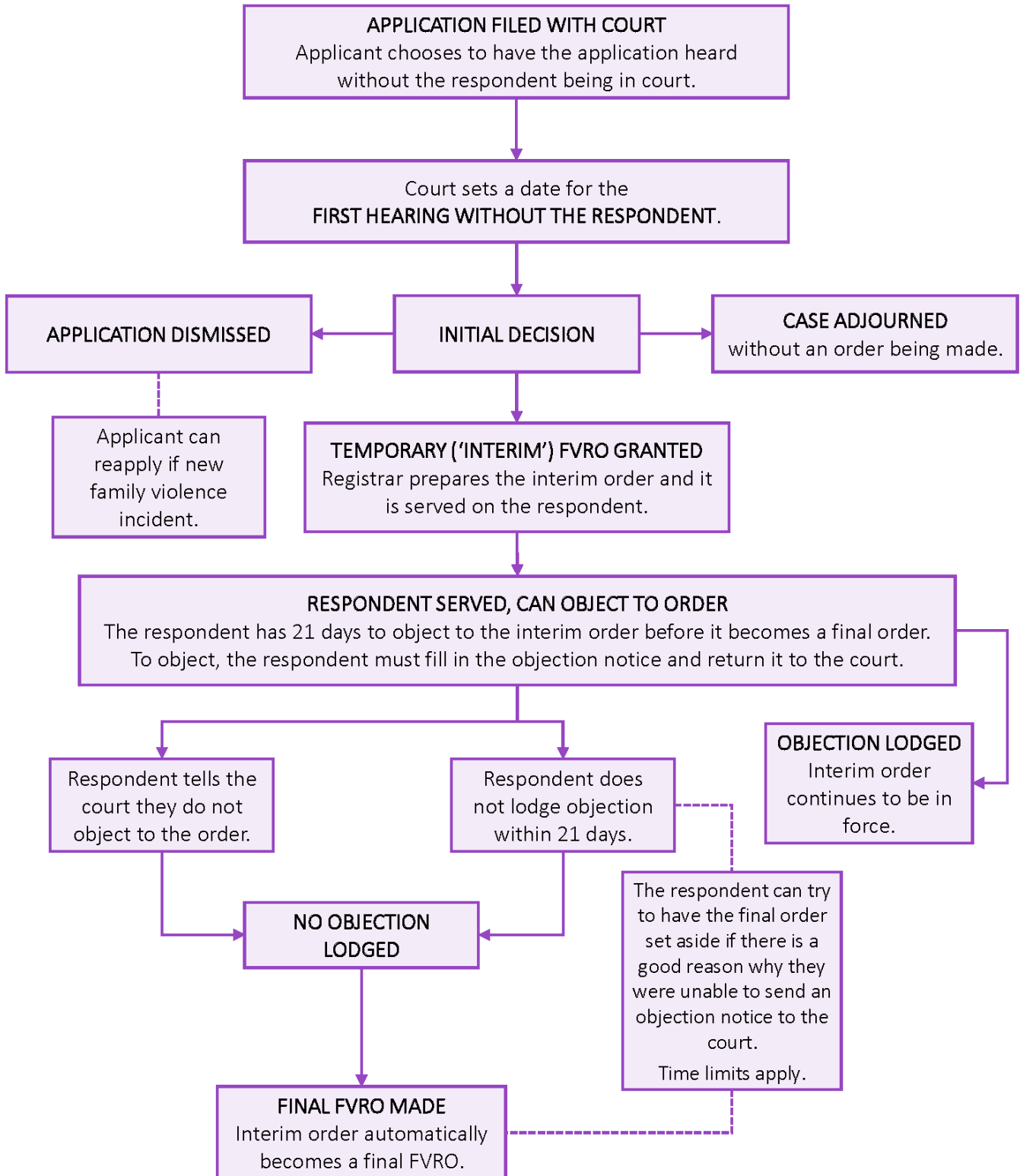
If your FVRO was made before 25 November 2017, you can apply to a local court (for example, the Magistrates Court in WA) to have the order 'declared' to be a nationally recognised order to have protection nationwide.

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 key areas – keeping safe, how to apply for an FVRO, going to court and the next steps after court. Go to the Legal Aid WA website at this link <https://www.legalaid.wa.gov.au/resources> to access the guide.
- 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 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.**
- 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:
 - **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.
 - **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
- 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 to get copies of any forms needed. You can also go to any registry to apply or get the forms needed.

Flow charts of the court process

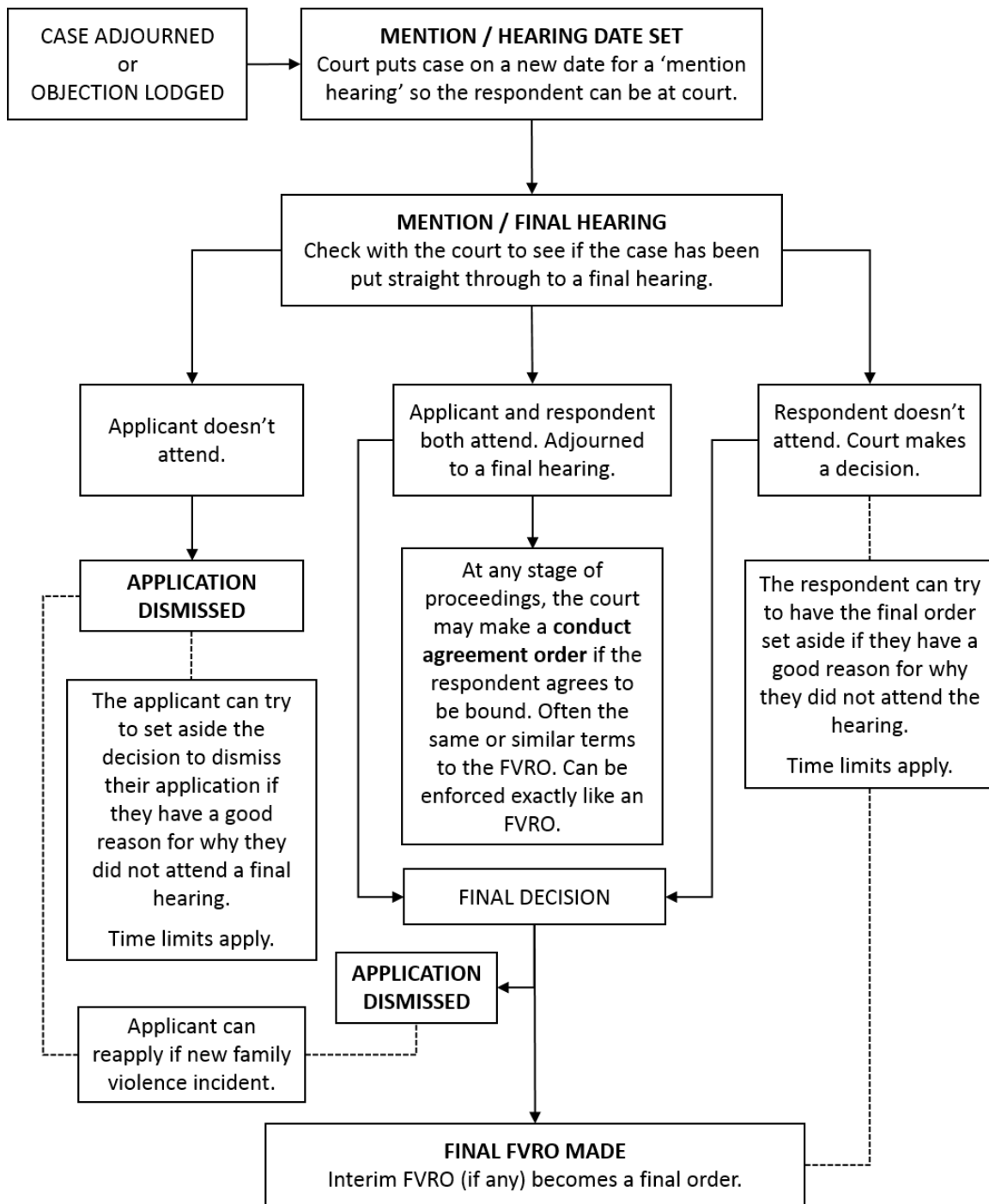
1. FVRO – procedure (interim order made) application heard in the absence of the respondent



2. FVRO- adjourned/contested application

Procedure for adjourned / contested applications

Application is adjourned, or respondent objects to interim FVRO becoming a final order





Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)

WEBSITE/INFOCHAT: www.legalaid.wa.gov.au

Infoline and InfoChat open Monday to Friday 9.00 am to 4.00 pm

(Australian Western Standard Time) except public holidays

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(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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