

Restraining orders – court procedure



This information sheet may help you understand the court process if you have applied for a restraining order.

Please note during the COVID-19 pandemic, the magistrate may decide to allow restraining order hearings (other than final order hearings) by telephone. For more information go to the [Magistrates Court of WA](#) website.

Terms used

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

How should I behave in court?

- Be on time.
- Dress neatly and do not wear a hat or sunglasses.
- Do not have your mobile phone, pager or other electronic device on in court.
- Bow to the magistrate when you enter the courtroom.
- Call the magistrate "Your Honour". Stand when you speak to the magistrate or when you are being spoken to by the magistrate.

Make childcare arrangements before going to court. Contact the court well before the final hearing to see if you can get help with childcare. You may be there all day.

If you need an interpreter contact the court before your court date to ask them to arrange an interpreter.

What happens when I apply for a restraining order?

Family violence restraining orders (FVRO) and violence restraining orders (VRO)

When you apply for a FVRO or VRO the court will usually deal with the application as soon as

possible at what is called an "interim" hearing.

As applications may be handled a little differently by magistrates, talk to your local family violence service (for FVROs), or get legal advice if you can before you apply, to find out how your local court handles these applications.

You, as the applicant, give evidence at the interim hearing in writing and sometimes orally as well. Evidence in writing is called an "affidavit". The affidavit is your story of what happened and why you want the order. It is separate to what you put in your application form when you apply in person. In the affidavit, you are swearing on oath or making an affirmation to tell the truth. It is a criminal offence to knowingly give false evidence in an affidavit. If you apply online through an approved legal service provider, the information in your application becomes your affidavit when you declare it to be true.

Sometimes the magistrate will ask you to tell more of your story (or "give evidence") orally in court. You will be asked to swear on oath or make an affirmation to tell the truth before you tell your story in court.

A magistrate will listen to and read your evidence. They may ask you questions. The respondent is not at this interim hearing and is not told when it is happening. Later they can ask for a transcript or written record of what was said.

After hearing your evidence, the magistrate may do one of the following:

1. Grant an interim FVRO or VRO.
2. Make no decision and summons the respondent to appear to give evidence before they make a decision.
3. Dismiss the application and not grant an interim FVRO or VRO.

Misconduct restraining orders

Unlike in some FVRO or VRO applications, you cannot get an MRO straight away.

When you make your application, the court will set a date for your case.

The first court date is usually a “mention” date (sometimes called a “call over” date). You do not need to bring witnesses on the “mention” date. On that day the magistrate will want to:

- check if you still wish to go ahead with applying for the MRO or if the respondent still wants to oppose your application
- see how many witnesses you have, and
- decide how long the final order hearing will take.

The second court date is normally the final order hearing. On this date you bring any witnesses and come prepared to tell the court why you need an MRO.

Warning!

Different courts may have different systems. Always ring the court before a court date to check if the first date is a “mention” date or the final order hearing. See the flowcharts below.

When does a restraining order come into force?

A restraining order comes into force at the time it is served on the respondent or on the date stated in the order, whichever is later. If the order is not in force it means it does not apply.

If the respondent is in court at the time the order is made, the order is considered to be served.

Do I need to see a lawyer?

You should get legal advice so that you understand:

- The legal process and what it means to you.
- Legal costs you may have to pay.
- How to represent yourself if you don't have a lawyer.

Legal Aid WA or your local community legal centre may be able to assist you with legal advice.

If you have a final FVRO hearing date coming up and there is an interim FVRO in place, you should:

- **Contact Legal Aid WA as soon as possible to see if you are eligible for legal representation at your final order hearing.**
- **If you are not eligible for legal aid, get legal advice as soon as possible so you can be prepared for the hearing.**

What happens after an interim FVRO or VRO is granted?

If an interim FVRO or interim VRO is granted, the order is faxed to the police station nearest to the respondent's home, and the police will serve the order on the respondent. The interim FVRO or VRO comes into effect at the time it is served on the respondent or on the date stated in the order, whichever is later.

The respondent has 21 days to object to an FVRO or VRO being made by sending a notice to the court.

If the respondent does not object within 21 days, then a final order will be made. This will usually last for 2 years or, if the respondent is a child or young person, 6 months. If the respondent to an FVRO is in prison at the time of service of the order, the order is in force but the time the order lasts only starts to run from when they are released from prison.

When an interim order becomes a final order because the respondent did not object by sending the notice to the court within 21 days, the respondent can apply to have the final order set aside. Time limits apply for this application, but an extension is possible if the court thinks there is a reasonable excuse for being late.

If an interim order is not made

If an interim FVRO or VRO order is not made (and the application is not dismissed) you can choose to go on with your application or withdraw it.

What do I need to do if I am representing myself?

Legal Aid WA has information sheets to help prepare for and represent yourself at a final order hearing. They should be used with legal advice and are available on the Legal Aid WA website.

Before the hearing

Before the hearing date, contact the court to see what time you need to be there. It's best to get there about half an hour before the first court 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 properly, or at all, in front of the respondent, or would be distressed or intimidated in open court.

At court

Your case may not be heard straight away. Plan to be there for the whole day.

What happens if I didn't go to a court hearing and the court made a decision without me being there?

If for some reason you did not go to the hearing you may be able to ask the court to hear the matter again and change the decision to grant or not to grant an order. You must be able to show you had good reason for not being at court.

If you are not sure how to do this, get legal advice immediately.

Other ways to resolve a restraining order matter

An FVRO matter can sometimes be resolved by the respondent agreeing to a conduct agreement order. Sometimes it is possible to resolve a restraining order matter by the respondent agreeing to an undertaking. For more information on conduct agreement orders and undertakings see the **Legal Aid WA information sheets: Conduct Agreement Orders**; and **Undertakings in restraining order proceedings**.

Will I have to pay costs for going to court?

If the restraining order is granted, your lawyer may ask for the court to order that the respondent pay for your legal costs.

If the restraining order is not granted, the respondent's lawyer may ask for the court to order that you pay for the legal costs. In this case, you will only have to pay the respondent's legal costs if the court decides that your application was "frivolous or vexatious". An example of where costs might be ordered is if your case was so weak it was never going to succeed.

Where can I get more information?

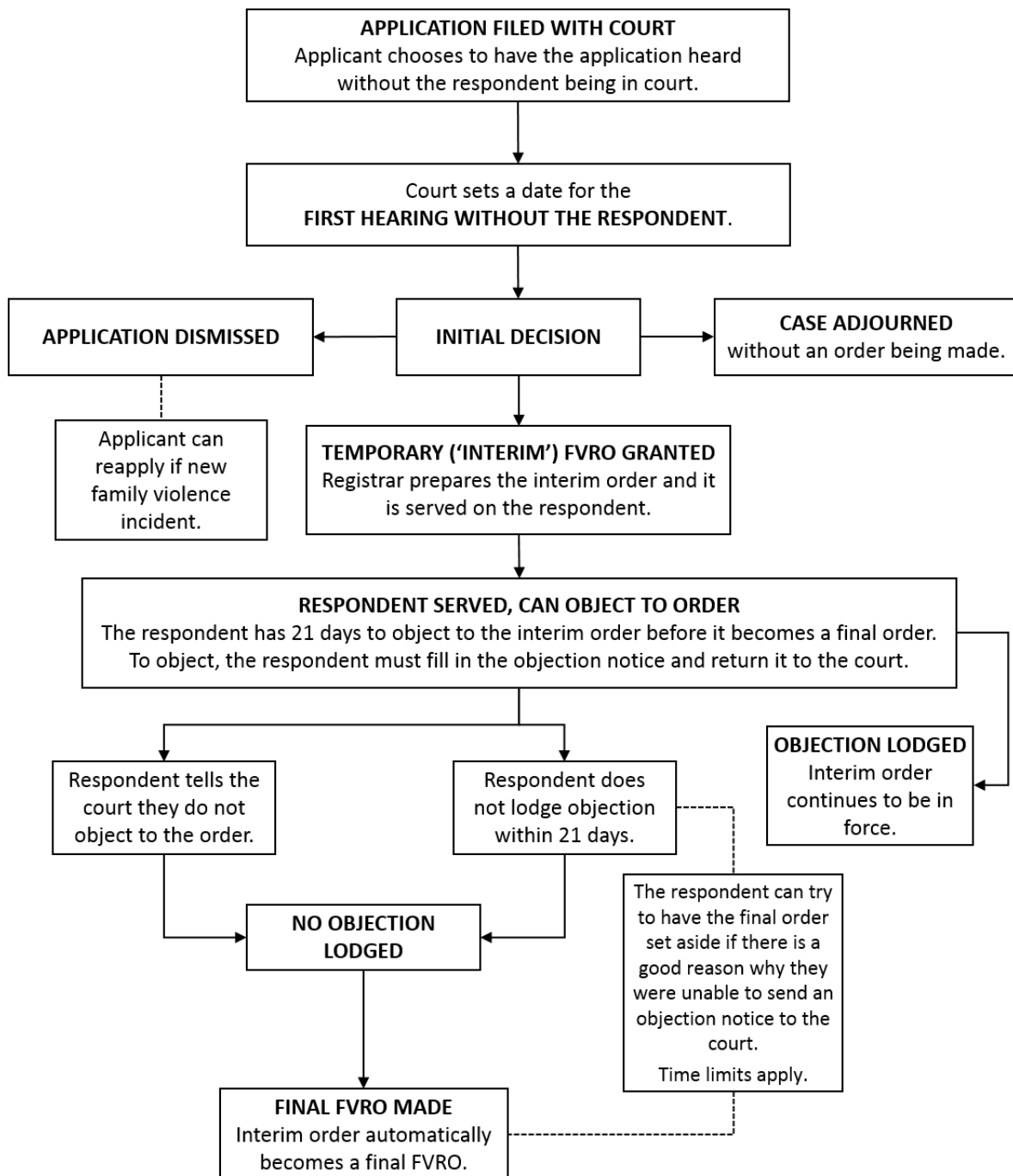
- The **Magistrates Court of WA** website or a registry for restraining order fact sheets and application forms.
- **Legal Aid WA** has an online [Interim Family Violence Restraining Order guide](#), or call the **Infoline** on **1300 650 579** for information and referral and to get copies of information sheets that may help you with a restraining order case.
- Your local community legal centre. Call **(08) 9221 9322** to find the one nearest to you.

Flow charts of the court process

1. Family violence restraining order – application heard in the absence of the respondent

Procedure for FVROs

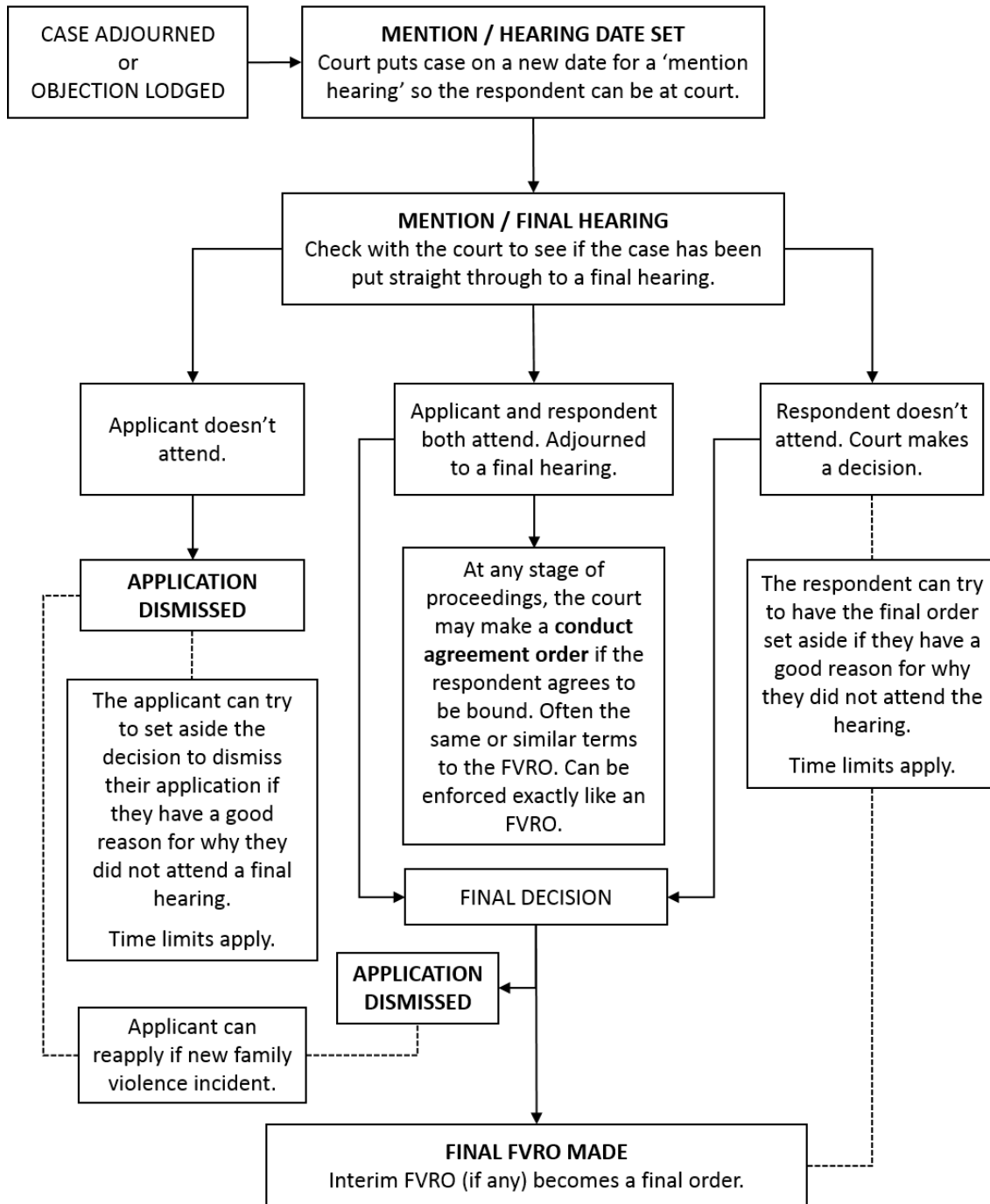
Application heard in the absence of the respondent



2. Family violence restraining order – Procedure of adjourned/contested applications

Procedure for adjourned / contested applications

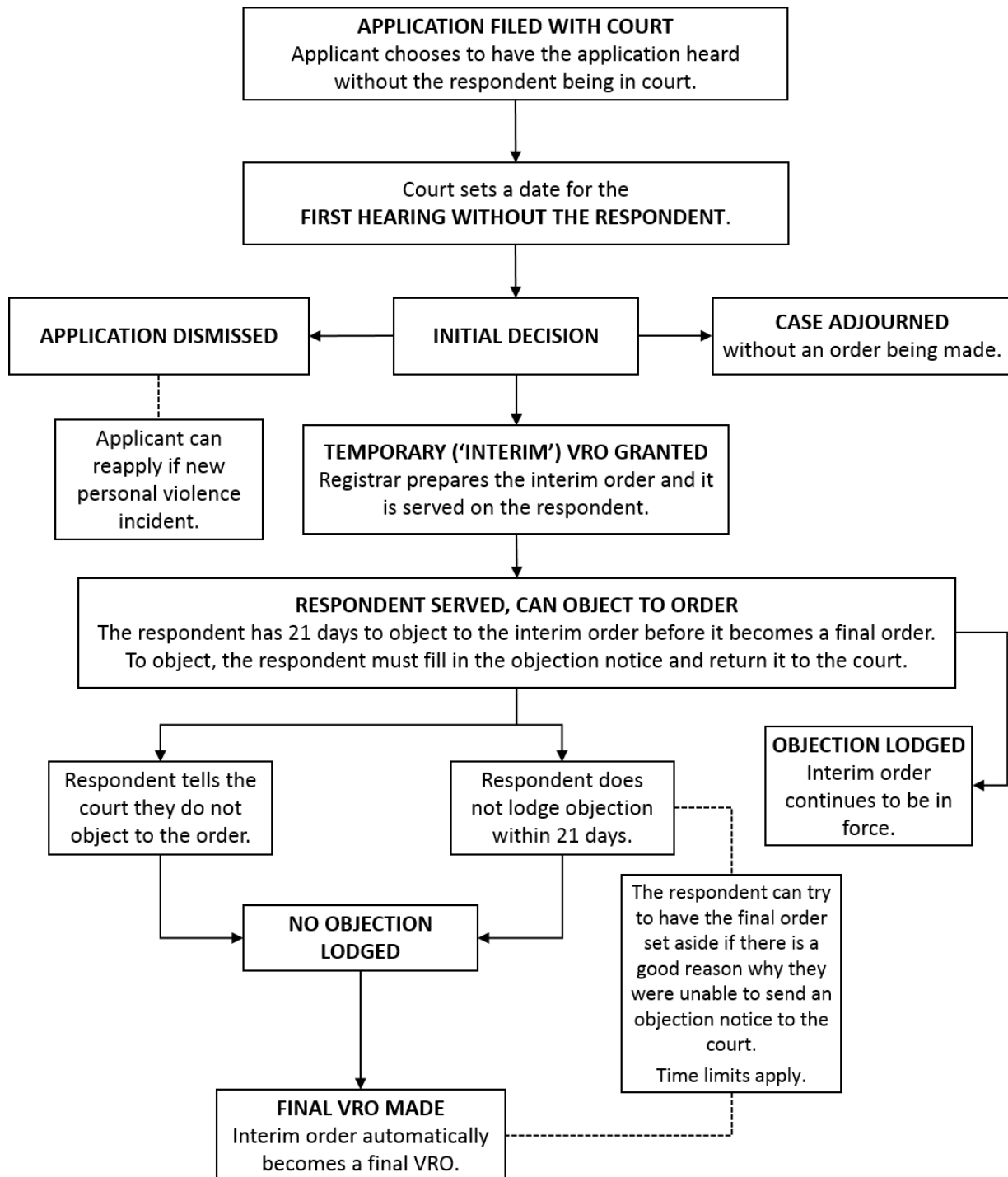
Application is adjourned, or respondent objects to interim FVRO becoming a final order



3. Violence restraining order– application heard in the absence of the respondent

Procedure for VROs

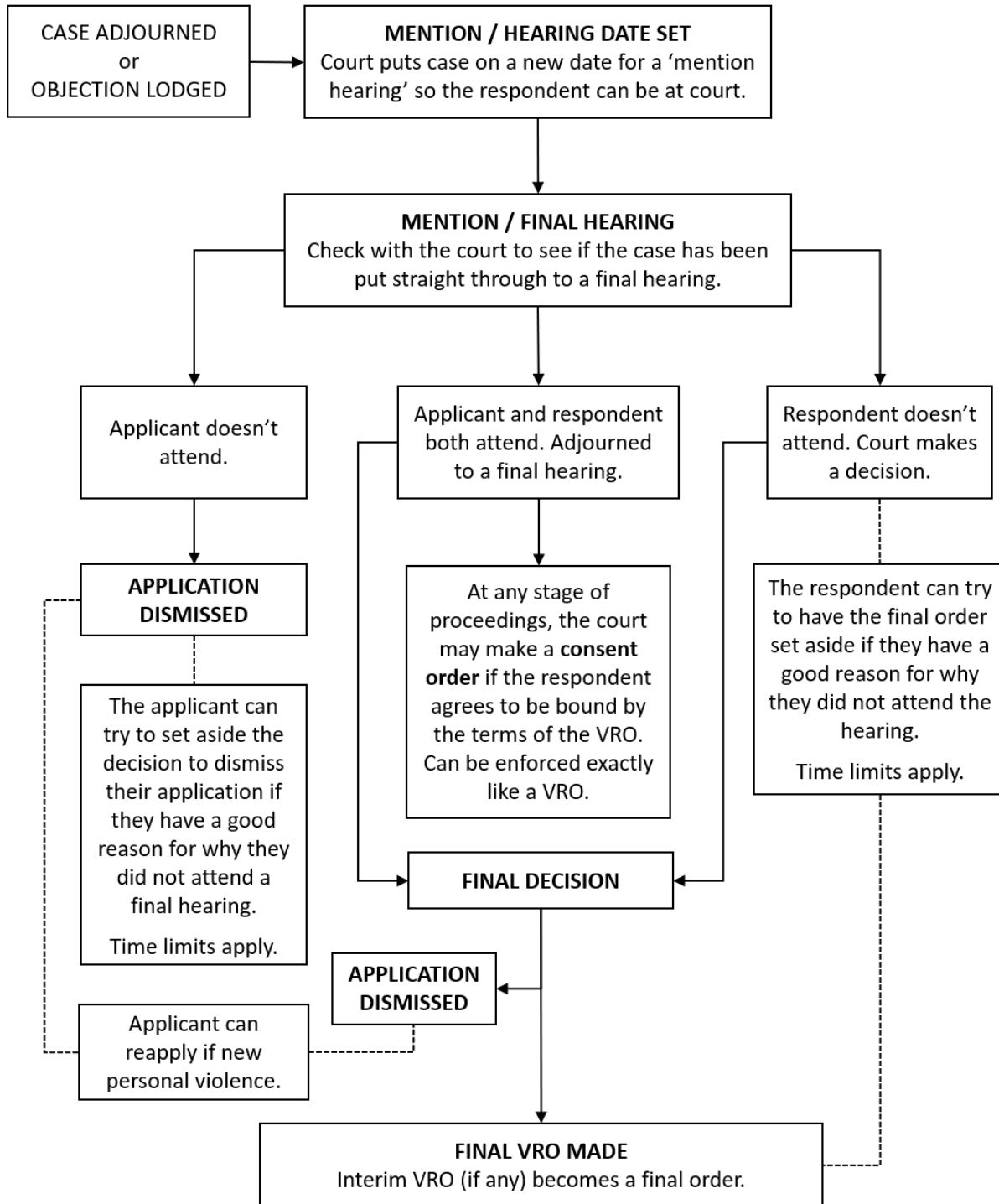
Application heard in the absence of the respondent



4. Violence restraining order – adjourned / contested applications

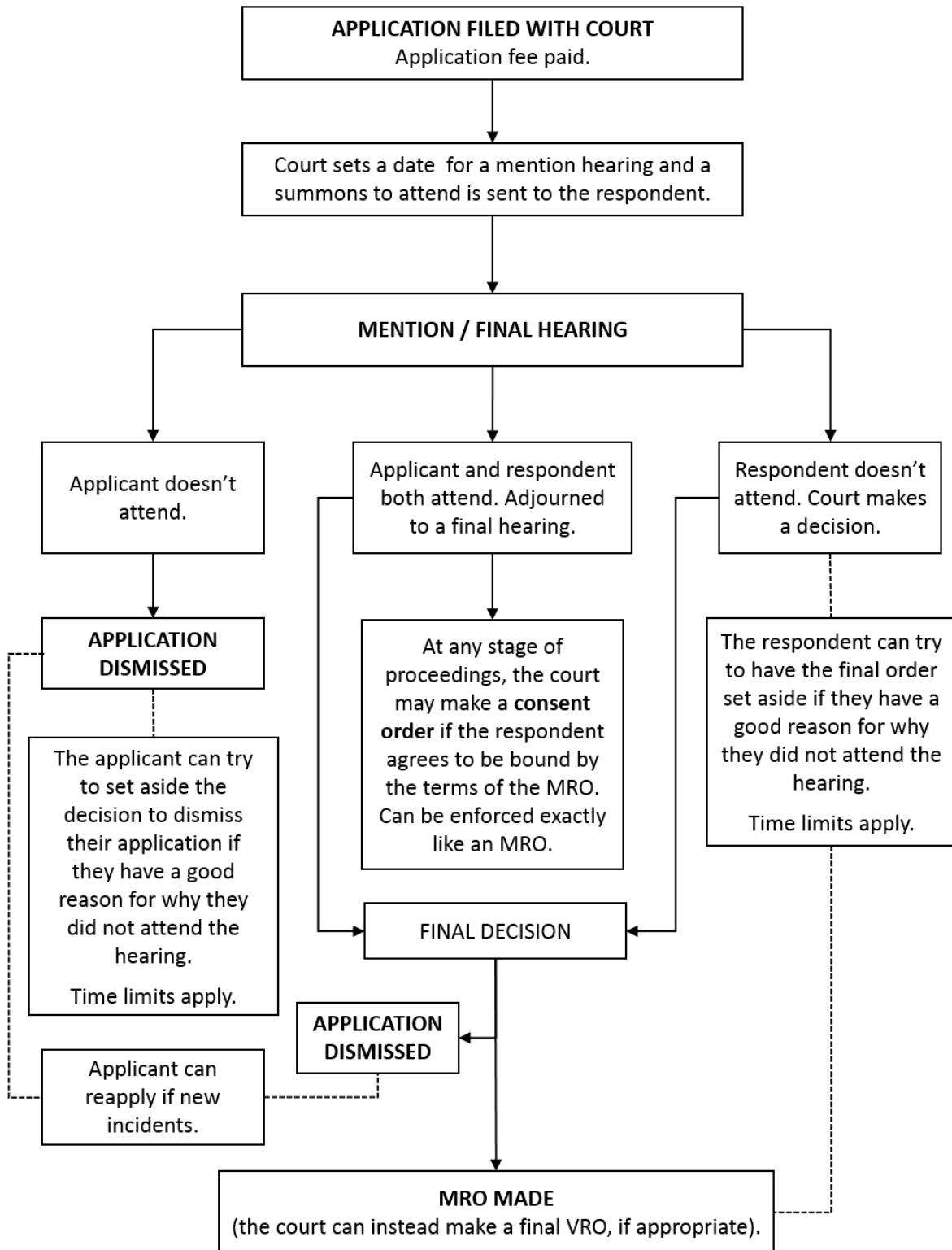
Procedure for adjourned / contested applications

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



5. Misconduct restraining order- court process

Procedure for MROs





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

Translating and Interpreting Service 131 450

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

Perth Office

32 St Georges Terrace, Perth, WA 6000

1300 650 579

(08) 9261 6222

Southwest Regional Office

7th 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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