

Restraining orders – court process for applicants

This infosheet 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 or contact your local court.

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 or the *person restrained*.

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 if you tick the box for the application to be heard in the absence of the respondent.

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 (or sometimes called “directions” hearing). At some courts it may be the final order hearing date.

You do not need to bring witnesses on the mention/directions hearing 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 read your court paperwork carefully or ring the court before a court date to check if the first date is a ‘mention’ date or the final order hearing.

When does a restraining order come into force?

A restraining order, including an interim 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.

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 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. For FVROs made other than during criminal proceedings, 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, 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 the respondent objects after an interim VRO is made, the court will put the case off for a final order hearing.

A different process for FVROs may be available if the respondent objects to the FVRO

If an interim FVRO is made and the respondent objects to the order, an FVRO conference may be listed by the court if both you and the respondent have agreed to participate and one is available where your case is listed. Get legal advice before deciding not to participate in an FVRO conference.

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.

Both you and the respondent will be able to get free legal representation at the conference through Legal Aid WA or some community legal centres.

For more information see the [webpage Conferences in FVRO cases](#).

If no FVRO conference is listed your case will be put off for a final order hearing. You will need to check with the court if you need to bring your witnesses on that next court date.

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. If you choose to go on, the court will summons the other party and let you know your next hearing date.

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. You may want to pay for a private lawyer to represent you.

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

Legal Aid WA has an infosheet to help prepare for and represent yourself at a final order hearing for an FVRO. It should be used with legal advice and is 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 order 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. The court may also make these arrangements on the day of the hearing.

At court

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

How should I behave in court?

- 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 order 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 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 case can sometimes be resolved by the respondent agreeing to a *conduct agreement order* (CAO). Sometimes it is possible to resolve a restraining order case by the respondent agreeing to an *undertaking*. For more information see the Legal Aid WA infosheets: *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 after a final order hearing, your lawyer may ask for the court to order that the respondent pay for your legal costs.

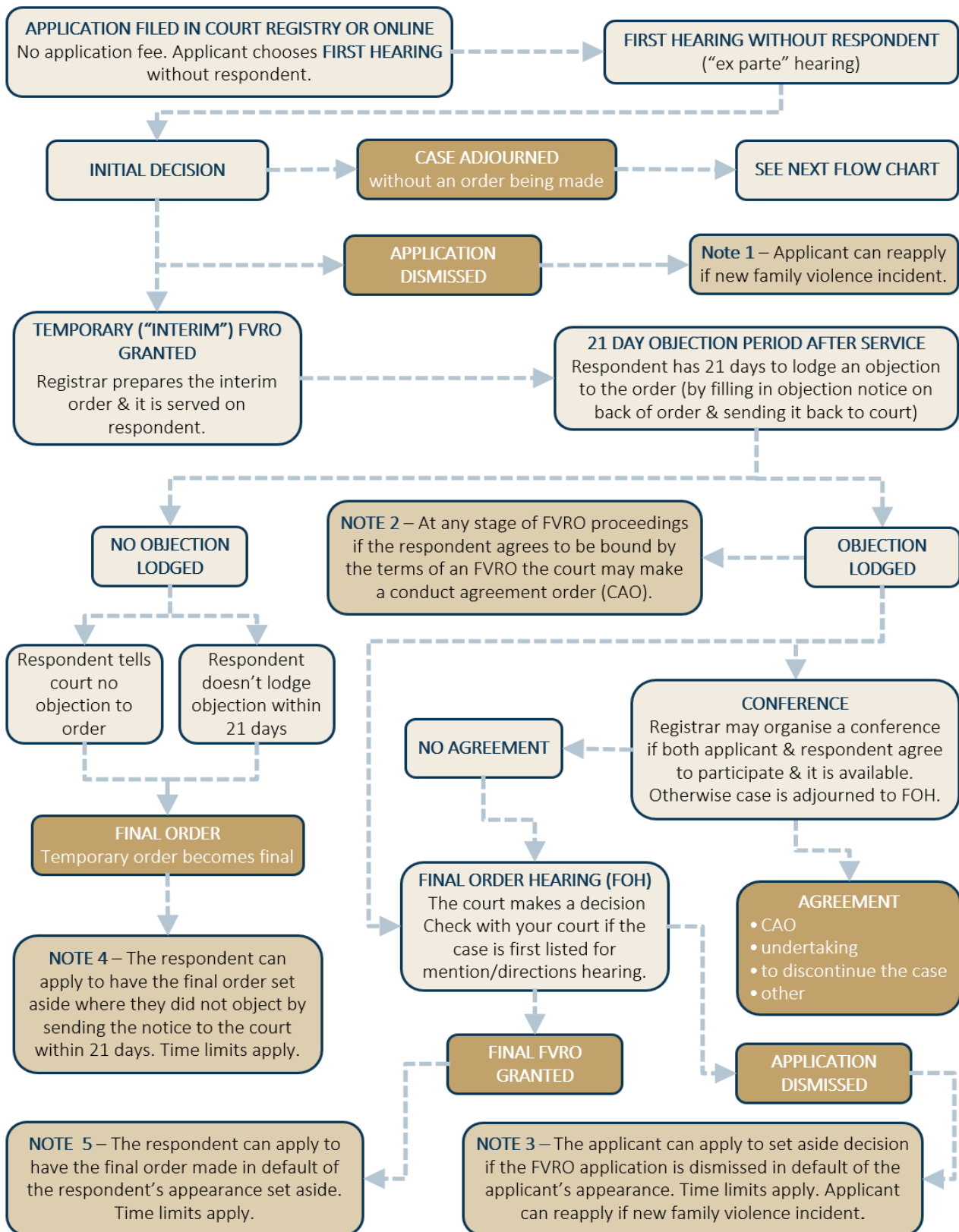
If the restraining order is not granted, the respondent's lawyer may ask for the court to order that you pay for the legal costs. In this case, you will only have to pay the respondent's legal costs if the court decides that your application was "frivolous or vexatious". An example of where costs might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

Where can I get more information?

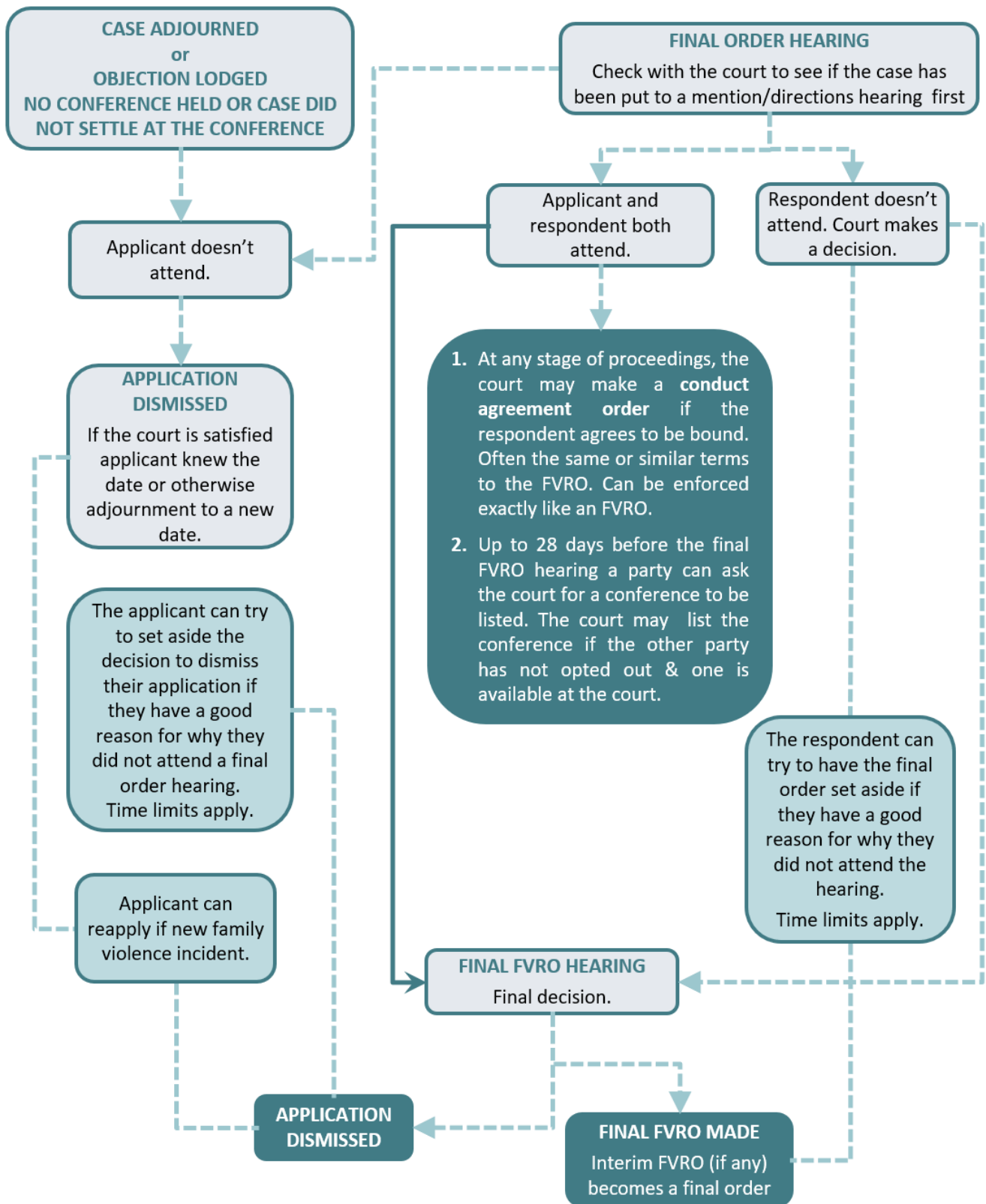
- The [Magistrates Court of WA](#) website or a registry for restraining order fact sheets, application forms and information on FVRO conferences.
- Call the Legal Aid WA Infoline on 1300 650 579 for information and referral and to get copies of an infosheet that may help you prepare for an FVRO final order hearing and infosheets on different types of restraining orders with flow charts on the court process. You can also go to the [Legal Aid WA](#) website to download these information sheets or to access an online Interim Family Violence Restraining Order guide.
- Your local community legal centre. Call (08) 9221 9322 to find the one nearest to you.

Flowcharts of the court process

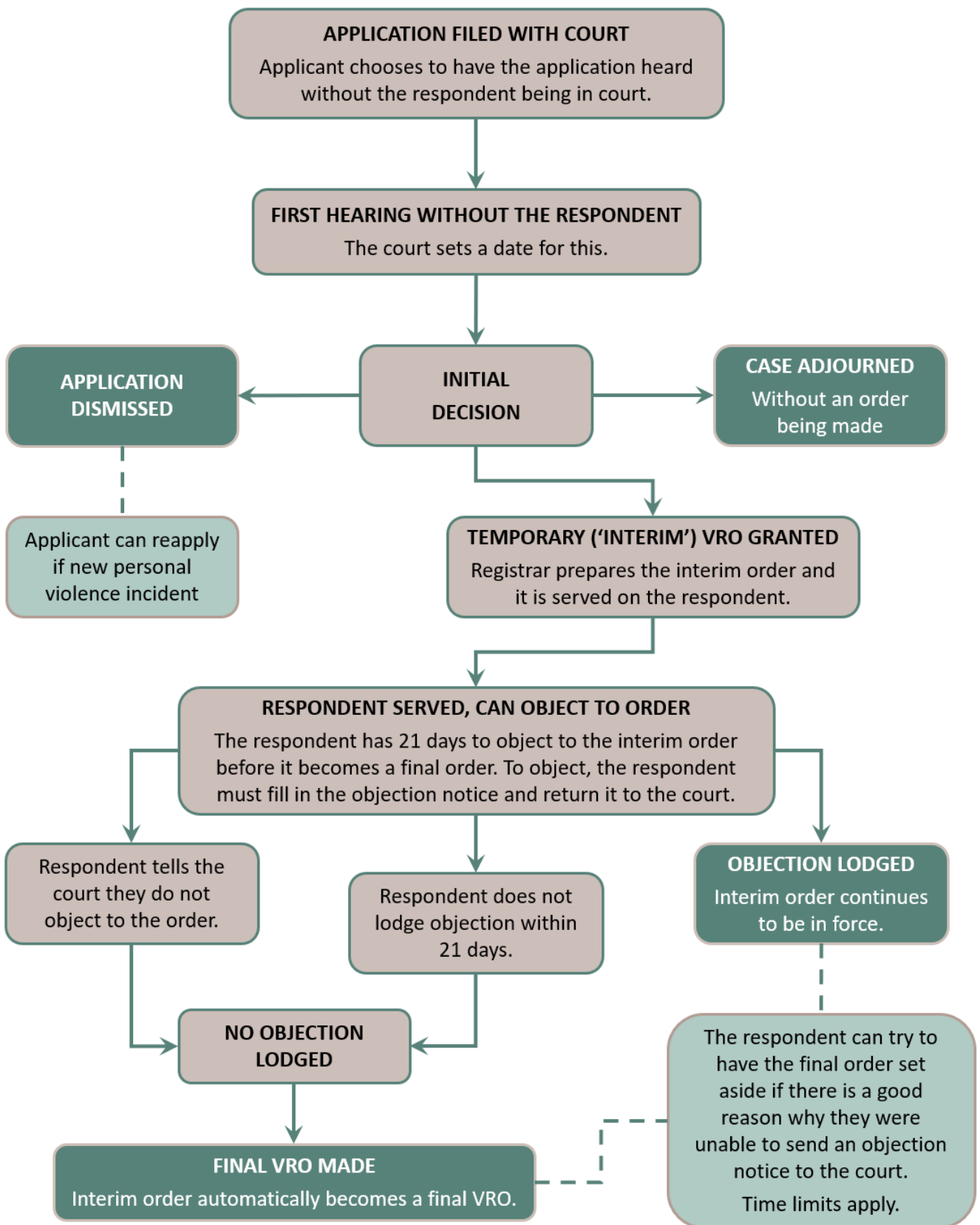
Family violence restraining order – application heard in the absence of the respondent



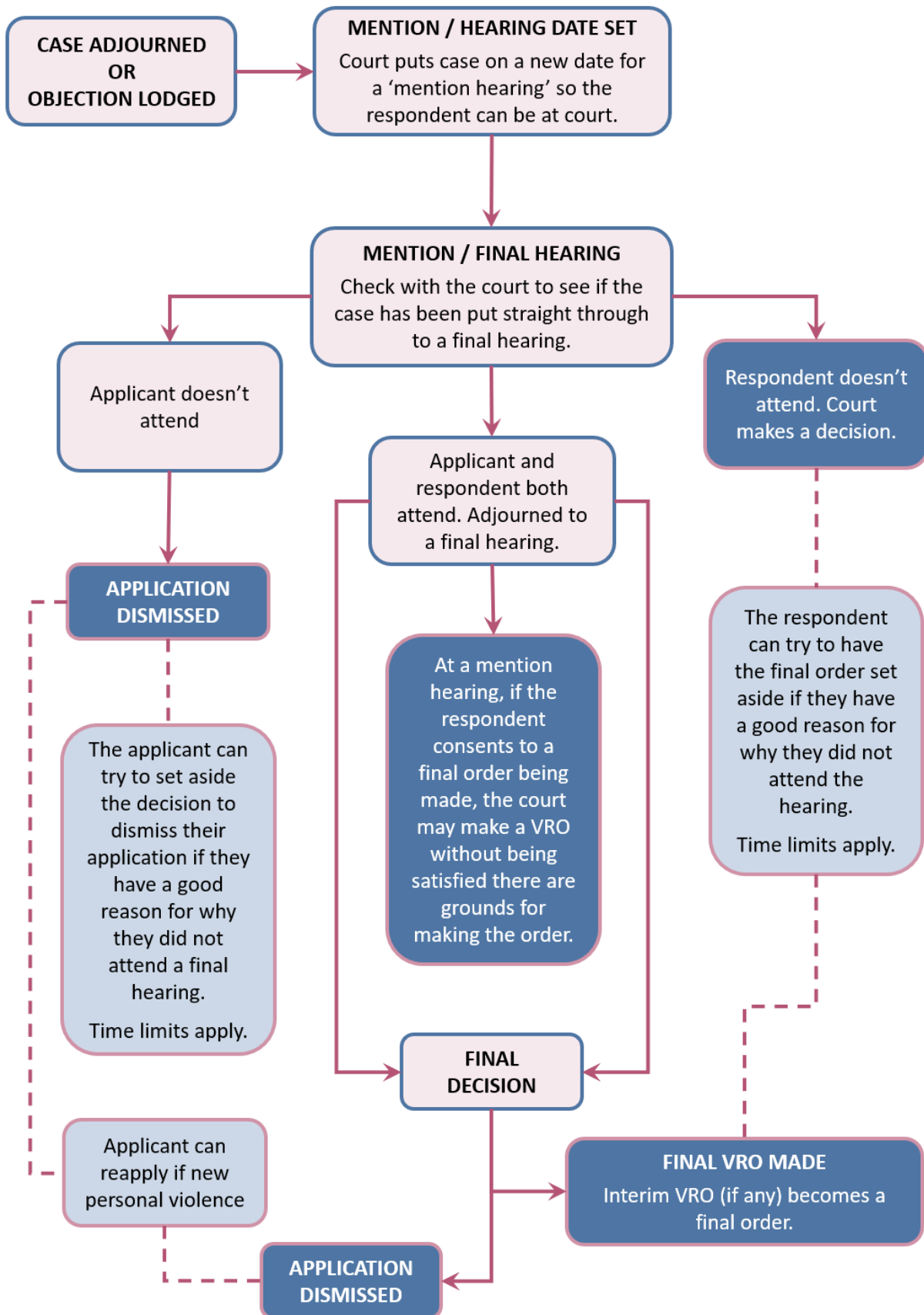
Family violence restraining order – procedure for adjourned/contested applications



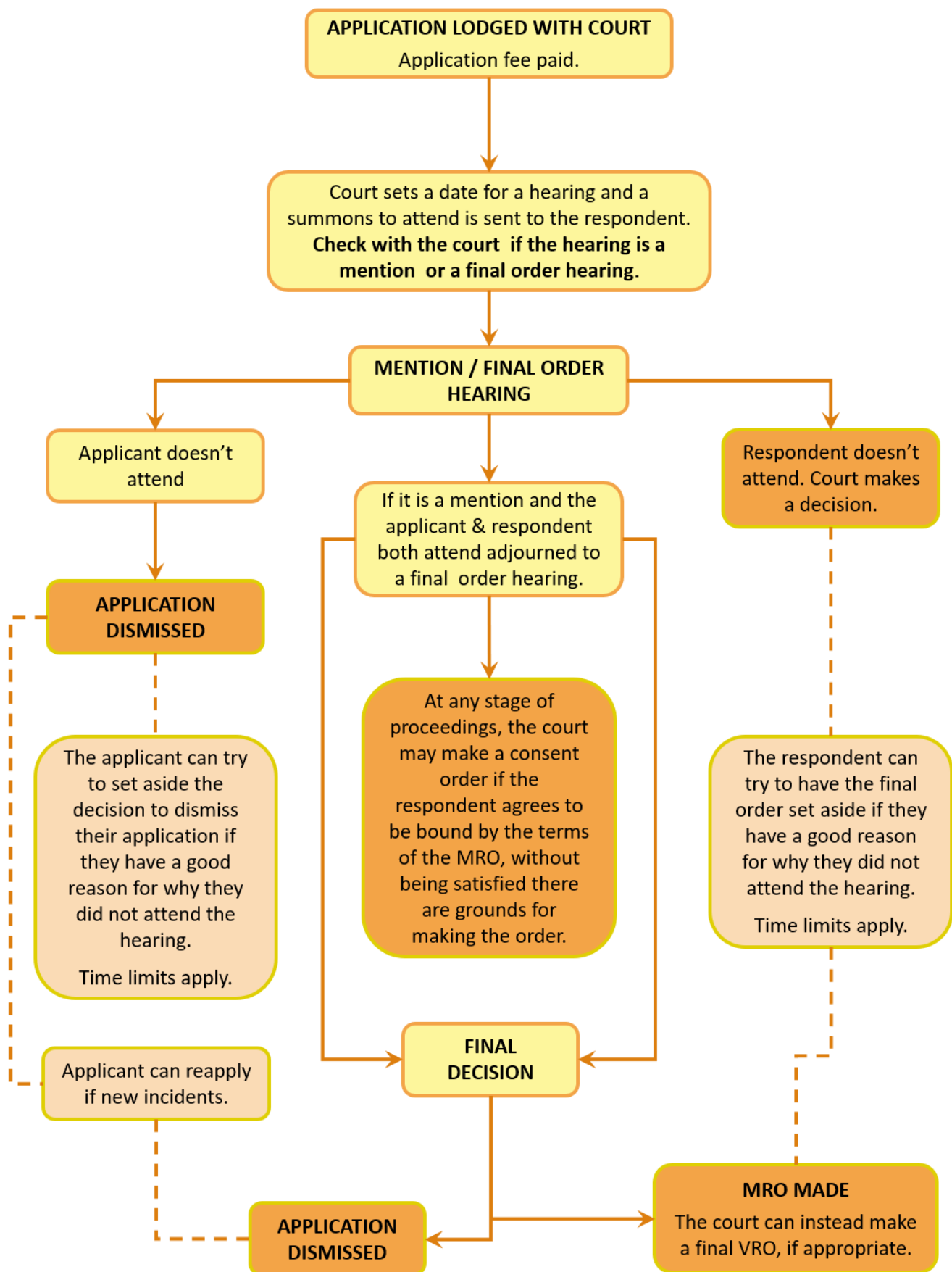
Violence restraining order – application heard in the absence of the respondent



Violence restraining order – adjourned/contested applications



Misconduct restraining order – court process



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