

The Shopfront

YOUTH LEGAL CENTRE

Apprehended Violence Orders

1 What is an Apprehended Violence Order?

Apprehended Violence Orders (**AVOs**) are court orders designed to protect people from violence and harassment by others. A court will usually make an AVO if the applicant has reasonable grounds to fear violence, stalking or harassment from the respondent.

An AVO sets out conditions to restrict a person's behaviour. It is not a criminal charge and does not give a person a criminal record, although the details will be kept on a police database and having an AVO against you can restrict you from certain activities (eg. getting a security licence, working with children).

Breaching an AVO is a criminal offence and can result in a criminal record.

There are two types of AVO:

1.1 Apprehended Domestic Violence Order (ADVO)

An ADVO is taken out against a person in a "domestic relationship" with the person seeking the AVO. "Domestic relationship" has a very wide definition and includes relationships such as:

- current or ex-spouses (including heterosexual and same-sex de facto partners)
- people who are or have been in an "intimate personal relationship" (ie partners who don't live together)
- household members (including at long-term residential facilities)
- carers (unpaid or paid)
- extended family members of Aboriginal or Torres Strait Islander people.

Where an application has been made for the protection of several people and at least one person is in a domestic relationship with the person against whom it is sought, the application will be treated as an ADVO.

1.2 Apprehended Personal Violence Order (APVO)

This is taken out against someone not in a domestic relationship (for example, a neighbour or classmate).

2 Terminology

ADVO: Apprehended Domestic Violence Order

APVO: Apprehended Personal Violence Order

AVO: Apprehended Violence Order

Applicant or complainant: a person applying for an AVO

Informant: a police officer who takes out an AVO on someone's behalf

Provisional or interim order: a temporary AVO, usually in force until the next court date

Protected person: a person who is applying for an AVO or who has been granted an AVO by the court

3 Applying for an AVO

To get an AVO you must usually show that you have a fear (based on reasonable grounds) of future violence, harassment, stalking or intimidation. There doesn't need to have been actual violence, but past violence is often good evidence that there are grounds to fear future violence.

There are two ways of applying, depending on your age and the type of AVO you are seeking.

3.1 Through the police

An application for an AVO can be made through the police if:

- The applicant is under 18; or
- The applicant is over 18 and has an intellectual disability; or
- It is a domestic violence situation and the applicant is seeking an ADVO; or
- There are related criminal charges.

In most cases, a police officer **must** make an AVO application on behalf of a person if the police officer suspects or believes that one of the following offences has recently been (or will be) committed:

- a domestic violence offence;
- an offence of stalking/intimidation with intent to cause fear of physical or mental harm; or
- an offence of child abuse.

In some cases the police may apply for an AVO on your behalf even if you do not want it.

3.2 Through the court

An application for an AVO can be made directly with the court if the applicant is 16 or over.

The application is made through the Chamber Registrar of a Local Court (or Children's Court if the respondent is under 18). There is no fee, and the Chamber Registrar will assist with all the paperwork.

Some courts have an appointment system to see the Chamber Registrar; at others, it is on a first-come first-served basis. To make an appointment, call your nearest Local Court (or Children's Court if the respondent is under 18). Details of Local Courts are at www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/pages/lc_index

3.3 Which is the best way to apply: police or court?

If you are **under 16**, the only way to apply for an AVO is through the police (unless an older family member such as a parent is applying to include you in their own AVO).

If you are **over 18** and applying for an **APVO**, and the police have not laid any criminal charges against the respondent, the only way to apply for an AVO is through the court.

In other situations, you have a choice.

If you apply through the police, a police prosecutor will usually represent you at court. If you apply directly through the court, you will have to represent yourself or organise your own lawyer.

On the other hand, applying through the police means you have less of a say in what happens. For example, if you decide you no longer want an AVO, the police might decide to go ahead with the application anyway.

4 After you have applied for an AVO

4.1 Court listing

The police or the Chamber Registrar will arrange for the AVO application to be listed in court, usually a couple of weeks away.

AVO applications are heard in the:

- **Local Court** – if the defendant is 18 or over at the time of the application
- **Children’s Court** – if the defendant is under 18 at the time of the application

4.2 Provisional orders

The Chamber Registrar may make a **provisional order**, which is a temporary AVO to protect the victim until the court date.

A police officer may apply for a provisional order by telephone to a magistrate or registrar at any time, whether or not the court is sitting. There are certain circumstances where a police officer **must** apply for a provisional order (eg. if the police officer believes that a domestic violence offence has recently been or is likely to be committed).

A provisional order is valid once it is served on the defendant. As with a final AVO, it is a criminal offence to breach a provisional AVO.

4.3 Serving the application on the respondent

Before the court date, the police or Chamber Registrar will arrange for a copy of the application and any provisional order to be served on (given to) the respondent. These documents will be served by a police officer.

If the respondent cannot be located, or is trying to avoid being served with the documents, the court may issue a warrant for the respondent’s arrest.

5 The first court date

What happens at court depends on a number of factors including:

- whether the respondent has been served with the application;
- who is present at court;
- whether the application is made through the police or directly through the court;
- whether it is an ADVO or APVO;
- whether or not the respondent agrees to an AVO being made.

5.1 Final order

The court may make a final AVO if the respondent agrees to it. The respondent may consent to an AVO without admitting to any of the allegations made by the applicant. The respondent may be able to negotiate some changes to the conditions in the order.

Sometimes, instead of consenting to an AVO being made, a respondent may offer **undertakings** (promises) not to do certain things. These are not enforceable and do not give the same protection as an AVO. If the respondent breaches undertakings, the protected person will need to apply for an AVO all over again.

The court may also make a final order if the respondent has been served with the application but doesn't appear at court.

5.2 Dismissal of the application

The court may dismiss the AVO application if:

- the protected person does not appear without a good reason;
- the protected person (or the police officer applying on their behalf) no longer has any fears and does not want to proceed with the AVO application; or
- the protected person agrees to accept undertakings from the defendant.

5.3 Adjournment

The court may adjourn the matter in some situations, for example:

- if the application has not yet been served on the respondent;
- if the protected person does not appear at court, but the police are seeking an AVO on his/her behalf and wish to give them another chance to appear;
- if the court wants to give the parties a chance to sort out their differences – in APVO applications, the magistrate may adjourn the proceedings and send the parties to a Community Justice Centre for mediation; or
- if the defendant does not agree to an AVO being made, the matter may be adjourned for hearing on another day (see "Defended AVO applications" below).

5.4 Interim orders

If the matter is adjourned, the magistrate may decide to make an **interim order**. This is a temporary AVO to protect the victim before the application has been finalised by a court.

A magistrate or registrar can make an interim order if it appears that it is necessary or appropriate to do so. The order can be made whether or not the defendant is present or has notice of the proceedings.

The court **must** make an interim AVO if a person is charged with stalking, intimidation or a domestic violence offence, unless the court is satisfied that an interim AVO is not required.

The interim order will usually remain in force until the case is finalised. While in force, an interim AVO has the same effect as a final AVO. Breaching an interim order is a criminal offence.

6 Defended AVO applications

6.1 The hearing

A **hearing** is an opportunity for both parties to attend court, along with any other witnesses they wish to bring, and give evidence.

An AVO hearing is similar to a hearing for a criminal offence. The main difference is that the applicant only needs to prove the case on the balance of probabilities (not beyond reasonable doubt). It's also important to understand that having an AVO made against a person does not give them a criminal record.

The applicant gives evidence first, followed by whatever witnesses he or she wishes to call. The respondent or their lawyer will have the opportunity to cross-examine (question) each witness.

The respondent and his or her witnesses then have the opportunity to give evidence, and may be cross-examined by the applicant or their lawyer (who may be a police prosecutor).

6.2 When the court will make an AVO

To make an AVO, in most cases the magistrate must be satisfied that the applicant fears violence, harassment or intimidation from the defendant and that this fear is based on reasonable grounds.

However, the magistrate need not be satisfied that the protected person in fact fears the conduct of the defendant, if the protected person:

- (a) is under 16; or
- (b) has an intellectual disability; or
- (c) has been subjected at any time to conduct by the defendant amounting to a personal violence offence (eg. the defendant has assaulted or stalked the protected person, or damaged the protected person's property) and there is a reasonable likelihood that the defendant may commit a personal violence offence against the person, and the order is necessary in the circumstances to protect the protected person from further physical violence.

7 Circumstances where the court must make an AVO

In some cases, the court **must** make an AVO, even if no application has been made.

7.1 Interim AVO if defendant charged with stalking or domestic violence offence

If a person is charged with stalking, intimidation, a domestic violence offence, or a serious violent offence (eg attempted murder, malicious wounding, sexual assault), the court **must** make an interim AVO **unless** the court is satisfied that an interim AVO is **not** required.

7.2 Final AVO if defendant guilty of stalking or domestic violence offence

If the defendant pleads guilty to or is found guilty of stalking, intimidation or a domestic violence offence, and the victim (or police) wants an AVO, the court **must** make a final AVO, **unless** the court is satisfied that an AVO is not required.

8 Conditions of an AVO

8.1 Standard conditions

An AVO will **always** contain the following conditions, usually referred to as the “**statutory**” or “**mandatory**” orders:

- (a) The defendant **must not assault, molest, harass, threaten or otherwise interfere** with the protected person(s) or any other person having a domestic relationship with the protected person(s).
- (b) The defendant **must not engage in any conduct that intimidates** the protected person(s) or any other person having a domestic relationship with the protected person(s).
- (c) The defendant **must not stalk** the protected person or any other person having a domestic relationship with the protected person(s).

8.2 Additional conditions

An AVO **may** contain other types of conditions, including that the defendant must not:

- reside at the premises at which the protected person(s) resides
- enter the premises at which the protected person(s) resides or works
- go within a certain distance of the above premises
- approach, contact or telephone the protected person(s), except as agreed in writing or for the purpose of arranging contact with children, mediation etc
- approach the person within 12 hours of consuming alcohol or illicit drugs
- possess firearms
- destroy or deliberately damage or interfere with the protected person’s property
- engage in specified behaviour which might affect the protected person

Other conditions may be added by the court, where appropriate.

8.3 Protected persons

An AVO can be made to include not only the protected person, but anyone **in a domestic relationship with the protected person** (for example, a spouse, child, or relative).

9 How long does an AVO last?

An AVO can be made for as **long as the court thinks is necessary** to ensure the safety and protection of the protected person.

If the court does not specify a duration, it will be in force for **12 months**.

10 Effect of an AVO

A person who has an AVO out against them **does not get a criminal record** because of this. However, it will be recorded on the police computer (COPS) system and may affect a person’s ability to do certain things such as get a security licence, own firearms, or work with children.

Breaching an AVO is a criminal offence (see below).

11 Breach of an AVO

11.1 Offence of breaching an AVO

Knowingly breaching a provisional, interim or final AVO is a **criminal offence**, with a maximum penalty of two years' imprisonment, or a \$5,500 fine, or both.

For there to be a breach, the defendant must have known about the AVO. This usually means that they must have been served with a copy of the order or been present in court when the order was made.

11.2 Imprisonment

If a person is **convicted of knowingly breaching an AVO**, and the breach consisted of an act of **violence** against the protected person, the defendant **must** be sentenced to **imprisonment, unless** the court otherwise orders or the defendant was under 18 at the time of the offence.

11.3 If the protected person agrees to you breaching the AVO

Often a protected person and defendant will sort out their differences and decide to ignore the AVO. However, **consent is not a defence to a breach of AVO**.

If there is an AVO that stops you from going to someone's place, and he/she says "It's OK, come over", it's not OK! In this situation the defendant can still be charged with (and found guilty of) breaching the AVO.

The protected person and/or defendant should apply to the court to get the AVO **revoked or varied** first (see next section of this document).

12 Revoking or varying an AVO

Either the protected person or the defendant can apply for the AVO to be **revoked**. The application is made to the court that made the AVO. Usually the AVO will not be revoked without a very good reason, for example, the parties have reconciled and the protected person no longer feels in need of protection.

An AVO can also be **varied**. For example, the protected person may still want an order stopping the defendant from harassing them, but might be happy for other conditions to be lifted (eg not to approach or contact).

If the protected person is under 16, any variation or revocation application must be made by the police.

13 Appealing against an AVO

13.1 Appeal by respondent

A respondent may apply to the Local Court or Children's Court to have an AVO **annulled** (set aside) if he or she was not present when the AVO was made and can show good reasons why the case should be re-opened.

Otherwise, the respondent may **appeal** to the District Court from a Local Court or Children's Court decision to: make an AVO, to vary or revoke an AVO, or to refuse to vary or revoke an AVO.

13.2 Appeal by the applicant

If the applicant was not present at court and the AVO application was dismissed, the applicant may apply to the Local Court or Children's Court to have this decision **annulled** (set aside), if he or she can show good reasons why the case should be re-opened.

Otherwise, the applicant or a police officer may **appeal** to the District Court against a Local or Children's Court's decision to dismiss an AVO application, to vary or revoke an AVO, or to refuse to vary an AVO.

14 Legal representation and court support

14.1 Applicants

If the police are taking out the AVO on a person's behalf, the protected person will be represented in court by the **police prosecutor**.

If a person applies for an AVO through the Chamber Registrar, it is not necessary to have a lawyer, but it is usually a good idea, particularly if the defendant is likely to oppose the application.

Legal Aid will sometimes represent applicants for **ADVOs**. Other free legal services which might assist with ADVOs include:

- **Domestic Violence Advocacy Service** (8745 6999 or 1800 810 784 (freecall))
- **Redfern Legal Centre** (9698 7277)
- **Inner City Legal Centre** (9332 1966)
- **Women's Legal Resource Centre** (9749 5533 or 1800 674 333 (freecall) or 1800 639 784 (for Indigenous women))
- **Wirringa Baiya Aboriginal Women's Legal Centre** (1800 686 587)

Applicants for **APVOs** can't obtain representation through Legal Aid. They will usually have to organise a private lawyer if they wish to be legally represented. Some Community Legal Centres or pro bono lawyers may agree to help.

14.2 Respondents

Unfortunately, it is not easy for respondents to obtain free legal representation. **Legal Aid is not usually available** for defendants in AVO proceedings unless the respondent is under 18 or there are related criminal charges. However, some Community Legal Centres or pro bono lawyers may agree to help.

14.3 Court support

There are domestic violence **court support services** available at many courts especially for women and their children. For further information and contact details, see <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=728&cid=971&id=660>

15 Further information and resources

15.1 For applicants

<http://www.legalaid.nsw.gov.au/data/portal/00000005/public/59742001262755419350.pdf>

<http://lacextra.legalaid.nsw.gov.au/Publications/FileUpload/Doc/ImprintFile445.pdf>

<http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=728&cid=971&id=660>

15.2 For respondents

<http://lacextra.legalaid.nsw.gov.au/Publications/FileUpload/Doc/ImprintFile290.pdf>

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The Shopfront Youth Legal Centre is a service provided by Freehills, in association with Mission Australia and the Salvation Army.

This document was last updated in February 2010 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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