

## Apprehended Violence Orders

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### 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.

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### 2 Types of Apprehended Violence Order

There are two types of AVO:

#### 2.1 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.

#### 2.2 Apprehended Personal Violence Order (APVO)

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

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### 3 Terminology

**AVO:** Apprehended Violence Order

**ADVO:** Apprehended Domestic Violence Order

**APVO:** Apprehended Personal Violence Order

**Protected person (sometimes called the “person in need of protection (PINOP)”:** a person who is applying for an AVO or who has been granted an AVO by the court

**Applicant or complainant:** a person applying for an AVO

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

**Respondent or Defendant:** a person who has an AVO taken out against them

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

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### 4 Applying for an AVO

To get an AVO you must show that you have a fear (based on reasonable grounds) of future violence, 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.

Sometimes the person needing protection doesn’t actually need to hold any fears (eg. if they are under 18, or have an intellectual disability, or have been a victim of domestic violence). It’s enough that there are reasonable grounds for them to have fears.

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

#### 4.1 Through the police

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

- the applicant is under 18; or
- the applicant has a cognitive impairment, eg. intellectual disability; or
- there is a domestic violence situation; or
- there are related criminal charges.

***Sometimes the police may seek an AVO on your behalf even if you don’t want it.***

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.

#### 4.2 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 help with 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 at your nearest Local Court, call the Courts Service Centre between 8:30am and 4:30pm weekdays on 1300 679 272. Select option 2 to make an appointment.

If the respondent is under 18, contact your nearest Children's Court directly.

Details of Local and Children's Courts are at:

[http://www.localcourt.justice.nsw.gov.au/Pages/contact\\_us/court\\_locations/court\\_locations.aspx](http://www.localcourt.justice.nsw.gov.au/Pages/contact_us/court_locations/court_locations.aspx)

#### **4.3 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 is through the court.

In other situations, you have a choice.

If you apply directly through the court, you will have to represent yourself or organise your own lawyer.

If you apply through the police, a police prosecutor will run the case at court. However, this 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.

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## **5 After you have applied for an AVO**

### **5.1 Court listing**

The police or the Chamber Registrar will arrange for the AVO application to be listed in court, usually a few days 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

### **5.2 Provisional orders**

A **provisional order** is a temporary AVO to protect the victim for 28 days or until the first court date.

This may be made by a Magistrate, Registrar, or a senior police officer above the rank of Sergeant. 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 some situations when 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.

### **5.3 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.

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## 6 If the defendant is also charged with a criminal offence

### 6.1 Procedure

If someone is charged with a domestic violence offence (eg assaulting a family member or damaging their property), the police will usually make an ADVO application unless there is already an ADVO in place.

Usually (but not always!) the ADVO application is listed in court on the same day as the criminal charges, and will be adjourned until the criminal charges are finalised.

If someone is charged with a personal violence offence against someone who they are not in a domestic relationship with, the police will sometimes, but not always, make an APVO application

### 6.2 Interim orders

If there is an AVO application as well as criminal charges, the court will **usually** make an interim AVO until the criminal charges are finalised.

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

### 6.3 When the criminal charges are finalised

If the defendant is found guilty of the charge(s), the court will nearly always make a final AVO.

In some cases the court *must* make an AVO. 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 an AVO, unless the court is satisfied that an AVO is not required.***

If the defendant is found not guilty, the ADVO application will often be dismissed. However, sometimes the police prosecutor will continue with the AVO application. The standard of proof for an AVO application (the balance of probabilities) is lower than the standard of proof for a criminal charge (beyond reasonable doubt), so it is possible for the court to dismiss the criminal charge yet still make a final AVO.

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## 7 The first court date

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

- whether the respondent has been served with the application;
- whether the respondent has also been charged with any criminal offences;
- whether the application is made through the police or privately (through the court);
- who is present at court;
- whether it is an ADVO or APVO;
- whether or not the respondent agrees to an AVO being made.

## 7.1 Adjournment

In many cases, the application is not finalised on the first court date. The court may adjourn the matter for a number of reasons, including:

- if the defendant has also been charged with a criminal offence, the AVO application will usually be adjourned along with the criminal case, and will not usually be finalised until the criminal charges are dealt with;
- 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).

## 7.2 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 stay 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.

## 7.3 Final order

The court may make a final AVO on the first court date 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.

## 7.4 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 instead of proceeding with the AVO application.

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## 8 If the defendant does not agree to an AVO being made

### 8.1 If there is also a criminal charge

In many cases, the respondent to an AVO application is also charged with criminal offence (eg assault, intimidation).

See part 6 above, which sets out what happens if there are any related criminal charges.

### 8.2 If there is no criminal charge – written statements

If it's just an AVO application, without any criminal charge, the court will usually order both the applicant and the respondent to provide written witness statements to the court.

These statements must be provided to the other party (and sometimes filed with the court) according to the timetable set out by the court. Once the statements have been provided, the court will set the matter down for hearing.

For help preparing a statement, see *Instructions for Preparing a Witness Statement* at [http://www.lawaccess.nsw.gov.au/Pages/representing/lawassist\\_avo/lawassist\\_forms\\_avo/lawassist\\_instructions\\_statement\\_def.aspx](http://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_avo/lawassist_forms_avo/lawassist_instructions_statement_def.aspx).

### 8.3 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. If written statements have been provided, the court will read the witness's statement. 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. Again, the court will read their statements, and the applicant or their lawyer (who may be a police prosecutor) may then cross-examine the witness.

### 8.4 When the court will make an AVO

To make an AVO after a hearing, 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:

- (a) the protected person is under 16; or
- (b) the protected person has an intellectual disability; or
- (c) (ADVO applications only) the protected person 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; or
- (d) (ADVO applications only) the court is satisfied on the balance of probabilities that the person has reasonable grounds to fear the commission of a domestic violence offence against the person.

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## 9 Conditions of an AVO

### 9.1 Mandatory conditions

An AVO will **always** contain the following conditions, usually referred to as the “**statutory**” or “**mandatory**” orders. These will always appear on the AVO as condition number 1 (a), (b) and (c).

- (a) The defendant **must not assault or threaten** the protected person or any other person having a domestic relationship with the protected person.
- (b) The defendant **must not intentionally stalk, harass or intimidate** the protected person or any other person having a domestic relationship with the protected person.
- (c) The defendant **must not recklessly destroy or damage any property** that belongs to or is in the possession of the protected person or any other person having a domestic relationship with the protected person.

### 9.2 Additional conditions

An AVO **may** contain other types of conditions. These are numbered according to a standard system, so the applicant or the court can just tick the relevant boxes. For example, the court may order that the defendant must not:

2. Approach the protected person or contact them in any way, unless the contact is through a lawyer.
3. Approach:
  - the school or any other place the protected person might go to for study,
  - any place they might go to for childcare, or
  - any other place listed here\_\_\_\_.
4. Approach or be in the company of the protected person for at least 12 hours after drinking alcohol or taking illicit drugs.
5. Try to find the protected person except as ordered by a court.
6. Approach the protected person or contact them in any way, unless the contact is:
  - through a lawyer, or
  - to attend accredited or court-approved counselling, mediation and/or conciliation, or
  - as ordered by this or another court about contact with child/ren, or
  - as agreed in writing between you and the parent(s) about contact with child/ren, or
  - as agreed in writing between you and the parent(s) and the person with parental responsibility for the child/ren about contact with the child/ren.
7. Live at:
  - the same address as the protected person, or
  - any other place listed in the order.
8. Go into:
  - any place where the protected person lives, or
  - any place where they work, or
  - any other place listed in the order.

9. Go within \_\_\_ metres of:
- any place where the protected person lives, or
  - any place where they work or
  - any other place listed in the order.

10. Possess any firearms or prohibited weapons.

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

### 9.3 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 other relative).

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## 10 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.

Police will often seek an AVO for 2 years.

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

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## 11 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 in some types of jobs.

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

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## 12 Breach of an AVO

### 12.1 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.

### 12.2 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.

### 12.3 If the protected person agrees to the defendant breaching the AVO

**Consent is not a defence to breaching an AVO.** So, if the protected person and the defendant have sorted out their differences, they cannot simply ignore the 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 is still guilty of breaching the AVO.

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

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## 13 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 needs leave from the court.

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## 14 Appealing against an AVO

### 14.1 Appeal or annulment application 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. The time limit is 2 years.

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. The time limit is 28 days (or 3 months with the leave of the District Court).

### 14.2 Appeal or annulment application 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. The time limit is 2 years.

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. The time limit is 28 days (or 3 months with the leave of the District Court).

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## 15 Legal representation and court support

### 15.1 Court support for applicants and protected persons

There are **Women's Domestic Violence Court Advocacy Services (WDVCAS)** available at many courts, especially for women and their children.

For further information and contact details, call 1800 938 227, 1800 WDVCAS, or see <https://www.legalaid.nsw.gov.au/what-we-do/community-partnerships/womens-domestic-violence-court-advocacy-program/womens-domestic-violence-court-advocacy-service-locations-in-nsw>

## 15.2 Legal representation for applicants or protected persons

If the police are taking out the AVO on a person's behalf, the court case will be run 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** sometimes represents applicants for **ADVOs** through their Domestic Violence Unit: <https://www.legalaid.nsw.gov.au/what-we-do/family-law/domestic-violence-unit> or the Domestic Violence Practitioner Scheme: <https://www.legalaid.nsw.gov.au/what-we-do/services/domestic-violence-practitioner-scheme>. These can be contacted via the **WDVCAS** (see details above).

Other free legal services which might assist with **ADVOs** include the **Domestic Violence Legal Service**: 8745 6999, 1800 810 784, <http://www.wlsnsw.org.au/legal-services/domestic-violence-legal-service/>.

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.

## 15.3 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.

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## 16 Further information and resources

Legal Aid NSW has fact sheets for both protected persons and respondents: <https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources>

LawAccess has detailed information on AVOs, including how to make an application. How to defend an application, and how tips for representing yourself at court: [http://www.lawaccess.nsw.gov.au/Pages/representing/lawassist\\_avo/lawassist\\_avo.aspx](http://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_avo/lawassist_avo.aspx)

### The Shopfront Youth Legal Centre Updated June 2018

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

*This document was last updated in June 2018 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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