

COSTS

If the Court makes an Apprehended Violence Order, the Magistrate may tell the Defendant to pay the costs of bringing the case to court. However, if the AVO is not made, the Magistrate may tell you to pay the Defendant's costs, but only if the Defendant can convince the Magistrate that your complaint was frivolous or vexatious.

WHAT TYPES OF CONDITIONS CAN BE PUT IN AN APPREHENDED VIOLENCE ORDER?

If an Order is made, three conditions will always be included prohibiting the following behaviour:

- Assaulting, molesting, harassing, threatening or interfering with the Protected Person;
- Intimidating the Protected Person;
- Stalking the Protected Person.

Anyone in a domestic relationship with the Protected Person is also protected by these conditions.

In addition, extra conditions may be included in the Order prohibiting the Defendant from doing the following:

- Approaching the Protected Person;
- Approaching or entering places where the Protected Person may live, work or go to;
- Approaching the Protected Person, or places where the Protected Person may be, after drinking alcohol or taking illegal drugs;
- Damaging property;
- Any other conditions as agreed by both parties or decided by the Court which suit your situation.

IF YOU NEED TO GET YOUR PERSONAL PROPERTY

If an Application for an Apprehended Violence Order has been made, the Court can also make a Property Recovery Order.

This is an Order which allows either you or the Defendant to recover personal property from premises, for example, if you have had to leave your home due to domestic violence or there is some other reason preventing you or the Defendant from getting personal property safely. The Court can order the police to accompany the person recovering property for everyone's safety.

WHAT ARE THE CONSEQUENCES OF AN APPREHENDED VIOLENCE ORDER BEING MADE?

When an Apprehended Violence Order is made, the Defendant does not get a criminal conviction or a criminal record. The details of the Apprehended Violence Order are kept on a police database and the police will seize any firearms in the Defendant's possession or control.

If the Defendant has a firearms licence, the licence is automatically revoked for a period of 10 years. If the Order is revoked (cancelled), the Defendant can get his/her firearms licence back only if he/she is considered to be a fit and proper person to have a firearms licence.

WHAT HAPPENS IF THE DEFENDANT BREACHES AN APPREHENDED VIOLENCE ORDER?

An Apprehended Violence Order is a Court Order. If the Defendant breaches a condition of the Order, he/she will be charged with a criminal offence. If, for example, you invited the Defendant to your house when the Apprehended Violence Order prohibits the Defendant from coming to your house, this would still be a breach. As long as the Orders are in force, the Defendant must obey them.

You should keep a copy of your Apprehended Violence Order on you at all times and call the police if the Defendant breaches any of the conditions listed on it.

HOW LONG DOES AN APPREHENDED VIOLENCE ORDER LAST?

Your Apprehended Violence Order will last for a certain period of time, for example, two years. Before that period ends, you can apply for an extension of the Order, as long as you still have a reasonable fear of the Defendant.

CAN YOU CHANGE THE CONDITIONS ON THE APPREHENDED VIOLENCE ORDER?

Yes. If there is a change of circumstances, you can apply to the Local Court to have the Order changed or cancelled. The Chamber Registrar can assist you to do this.

FOR FURTHER INFORMATION AND HELP

LawAccess NSW: 1300 888 529

Women's Domestic Violence Court Advocacy Services are in many Local Courts to assist victims of domestic violence to get appropriate Orders and to provide information and advice about your situation.



Need an interpreter?

If you have difficulties communicating in English, phone the Translating and Interpreting Service (TIS) on 131 450 and ask them to call LawAccess NSW.



Hearing/speech impaired?

If you are hearing/speech impaired, you can communicate with us by calling the National Relay Service (NRS) on 133 677.

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APPREHENDED VIOLENCE ORDERS (AVOs)

Information for applicants and persons in need of protection

ARE YOU APPLYING FOR AN AVO?

ARE THE POLICE APPLYING FOR AN AVO TO PROTECT YOU?

This brochure provides information for persons in need of protection from domestic violence or personal violence.

Before deciding what to do you should understand the basis for courts making Apprehended Violence Orders and the meaning of an Order being made.

WHAT IS AN APPREHENDED VIOLENCE ORDER (AVO)?

An Apprehended Violence Order is an Order that a Court can make against a person who is causing fears for your safety to protect you from further violence, intimidation or harassment from that person. All Apprehended Violence Orders made by the Court prevent the person who is causing these fears from assaulting, harassing, threatening, stalking, or intimidating you. Other conditions can be included if necessary. The Defendant must obey the Order made by the Court.

You can ask your Local Court to assist you to apply for an Order yourself or you can ask the police to apply for the Order for you.

THERE ARE TWO TYPES OF APPREHENDED VIOLENCE ORDERS:

1. *Apprehended Domestic Violence Order (ADVO)*

An Apprehended Domestic Violence Order is made where the people involved are

related, living together or in an intimate relationship, or have previously been in this situation. In the case of an Aboriginal person or Torres Strait Islander, Apprehended Domestic Violence Orders can also be made where the people involved are part of the kin or extended family of the other person. Apprehended Domestic Violence Orders are also available to people who are or have been in a dependent care arrangement with another person, including paid carers, and to people living in the same residential facility.

2. Apprehended Personal Violence Order (APVO)

An Apprehended Personal Violence Order is made where the people involved are not related and do not have a domestic relationship, for example, they are neighbours.

WHO'S WHO?

Protected Person

The Protected Person is the person for whose protection an Order is sought and/or made.

Applicant

The person asking the Court to make an Order is the Applicant. This is either the person who wants the Order (Applications for these Orders are called Private Applications), or a police officer acting on behalf of the person in need of protection (Applications for these Orders are called Police Applications). Police generally apply for an AVO if they have charged the Defendant with a domestic violence offence.

Defendant

The Defendant is the person against whom an Apprehended Domestic Violence Order is sought or made.

MAKING AN APPLICATION FOR AN APPREHENDED VIOLENCE ORDER?

If you want to make a Private Application, you should go to a Local Court and explain to the Chamber Registrar why you want an Order. The Chamber Registrar must, as a matter of law, allow you to make an Application for an Apprehended Domestic Violence Order.

You should make a note of the court date given to you by the Chamber Registrar. The Application will tell the Defendant (the person who is causing fears for your safety) the date and time he/she has to attend court. The Application will normally be served on the Defendant by police.

The Chamber Registrar may refuse to issue an Application for an Apprehended Personal Violence Order if he/she believes the Application is frivolous, vexatious or has no reasonable chance of success. In refusing to issue an Application, the Chamber Registrar may take into account whether the matter is suitable for mediation.

Alternatively, the police may make the Application on your behalf. You will need to attend court on the dates that the Court lists the Application.

DO YOU NEED A LAWYER?

If you have applied for an Apprehended Violence Order through the Local Court, it is a good idea to get a lawyer to represent you. You can represent yourself if you want to. Legal aid is available in Apprehended Violence Order matters (see panel, right).

If the police have applied for an Apprehended Violence Order on your behalf (Police Applications), you do not need a lawyer as the Police Prosecutor will present the matter in court.

There is a Domestic Violence Duty Solicitor available in a number of Local Courts to represent Private Applicants for Apprehended Domestic Violence Orders.

IS LEGAL AID AVAILABLE?

Yes! Legal aid is available for Applicants for Apprehended Domestic Violence Orders. If your Local Court has a Domestic Violence Duty Solicitor, that person will represent you in court. If your court does not have a Domestic Violence Duty Solicitor, you can apply for legal aid through your own solicitor. Contact LawAccess NSW for further information on 1300 888 529.

Legal aid is not available for an Apprehended Personal Violence Order, except in exceptional circumstances. You should get advice about whether there are exceptional circumstances in your case.

There is a means test for legal aid to be granted. A person receiving a maximum eligible Centrelink benefit will meet the income part of the means test. If you work, you may still be eligible for legal aid.

If you are unsure whether or not you qualify for legal aid, you should complete an application anyway. For more information on legal aid or whether or not you have a Domestic Violence Duty Solicitor at your Local Court, call LawAccess NSW.

If you are not eligible for legal aid, you can contact a Community Legal Centre or LawAccess NSW for further assistance.

WHAT HAPPENS WHEN YOU GO TO COURT?

If the Defendant has been served with the Application but does not come to court and does not have a good reason for not attending, the Court can make an Order in his or her absence. Sometimes the police are not able to serve the Defendant with the Application by the time you first go to court. If this happens, your case will be adjourned (postponed) to give the police more time to serve the Defendant. You can ask the Court to make an Interim (temporary) Order to protect you during the period of any

adjournment. The Magistrate will usually need to hear some evidence from you to make an Interim Order.

WHEN CAN THE COURT MAKE AN ORDER?

The Court can make an AVO if:

- a Defendant consents to an AVO being made or
- after hearing evidence the Magistrate is satisfied that there are fears for your safety and those fears are reasonable.

CONSENT ORDERS

The Magistrate can make an Apprehended Violence Order if the Defendant consents to the Order being made. The Defendant can consent (agree) to the Order being made, without admitting that he/she has done anything wrong. In this case, your Order will be made that day.

ORDERS MADE AFTER A HEARING

If the Defendant does not consent to the Apprehended Violence Order, your case will be adjourned until another day so that the Court can hear evidence from both sides. In this case, you can ask the Court for an Interim (temporary) Apprehended Violence Order to protect you until the hearing.

WHAT HAPPENS AT A HEARING?

You and any witnesses who can support your Application will give evidence and can be questioned by the Defendant or the Defendant's solicitor. Once you have presented your evidence, the Defendant and his/her witnesses will present their evidence. Your lawyer or you (or the Police Prosecutor in Police Applications) can ask the Defendant and any witnesses questions about their evidence.

The Magistrate then has to decide whether or not to make the AVO.