

APPREHENDED VIOLENCE ORDERS (AVO)

Information for defendants

IS SOMEONE ASKING THE COURT TO MAKE AN AVO AGAINST YOU?

This brochure is for **defendants** in court proceedings about domestic violence. The defendant is the person **against** whom an Order is sought or made. Before deciding what to do you should understand the basis for courts making Apprehended Violence Orders and the consequences of an Order being made.

It helps to understand some of the legal terms which are used in court.

WHAT IS AN AVO?

AVOs are Orders that a court makes to protect people. AVOs protect people by ordering defendants not to do specific things. The AVO lists a number of things that the defendant must not do. The defendant must obey the Orders made by the Court. There are two types of AVOs:

APPREHENDED DOMESTIC VIOLENCE ORDERS OR ADVOS

An Apprehended Domestic Violence Order (ADVO) is made where the people involved are related or have had a domestic or intimate relationship.

APPREHENDED PERSONAL VIOLENCE ORDERS OR APVOS

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

IS LEGAL AID AVAILABLE?

Generally legal aid is **not** available to represent defendants in these matters. Legal aid is only available to defendants in Apprehended Personal Violence (APV) or Apprehended Domestic Violence (ADV) proceedings, if the defendant is a person seeking protection in other ADV proceedings involving the same parties, or if exceptional circumstances exist.

Exceptional circumstances may include that you are also a victim of domestic violence. You may wish to apply for legal aid to make sure. Legal aid will not be granted if there are no reasonable prospects of success in opposing the Order.

WHERE CAN I GET MORE INFORMATION?

It is a good idea to get legal advice before deciding what to do. You can get information from:

LawAccess NSW on 1300 888 529 (a local call from anywhere in NSW).

LawAccess NSW is a free government telephone service that provides legal help. It can also refer you to a lawyer.

Or contact the **Chamber Registrar** at your local court.



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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- The police keep a record of the Order on a database.
- If you have any firearms, you must give them to the police. Your licence or permit to own a firearm is automatically suspended by an interim Order and revoked by a final Order.
- You cannot be given a new firearms licence until 10 years after the Order has ended.
- You can apply for a licence if the Order is revoked.
- An Order can also affect licences to work as a security officer and other occupations where a security check is required.
- If the Order includes children, the Commission for Children and Young People may be notified. It may affect your ability to hold a job which involves contact with children.

WHAT HAPPENS IF YOU BREACH AN ORDER?

AVOs are Orders of the Court. If it is claimed that you breached a condition of the Order, you may be charged with a criminal offence. It may be difficult for you to get bail, particularly if it is claimed that the breach involved violence and you have a history of using violence. If you are found guilty of a breach of an Order, you are likely to get a criminal record.

If you are convicted of a breach of the Order which involves violence, then it is likely that you will receive a gaol sentence. The maximum penalty for breaking an Order is a fine of \$5,500 and/or up to two years in prison.* Even if the protected person wants or invites you to do something which would cause you to breach the Order, you can still be convicted of breaching an AVO. For this reason, if circumstances change between you and the protected person, it is very important for you to go back to court to apply to change or cancel the Order. The Order cannot be changed or cancelled without the knowledge of the protected person.

*Current penalties as of May 2008.

WHO'S WHO?

Defendant

The person against whom an Order is sought or made.

Protected Person

The person for whose protection an Order is sought or made.

WHEN CAN THE COURT MAKE AN ORDER?

The Magistrate can make an Apprehended Violence Order:

- if a defendant consents to an Order being made or;
- if evidence is heard and it is proved that the protected person fears violence, intimidation or stalking that justifies an Order being made or;
- there is enough evidence that the protected person has suffered violence from the defendant in the past and may suffer violence from the defendant again.

Intimidation includes harassment, molestation, causing the protected person to fear for his/her safety or for the safety of other people in a domestic relationship with him or her, or damage to property.

The Court **must** make an Order when a defendant has been charged with, or been found guilty of, or pleaded guilty to a domestic violence offence or an offence involving intimidation or stalking unless it considers an Order is not required.

WHAT CAN YOU DO?

You have two choices:

1. Consent to an Order. If you agree, the Order will start immediately and last for however long you agree to. You will not have to come back to court unless you are charged with breaching

Applicant

The person asking the court to make an Order is the applicant. This may be the person who wants the Order or a police officer acting on his or her behalf. The applicant starts the proceedings by making an application to a Chamber Registrar who issues an Application for an AVO. If the applicant is a police officer, the police prosecutor will appear in court.

the Order. By consenting to the Order you do not have to agree with what the applicant says happened. This is called *consenting without admissions*.

You should carefully consider the consequences of an Order being made, especially if you disagree with any of the allegations in the application. If an Order is made and it is alleged later that you have breached it, then you may be charged with a criminal offence. OR

2. Not consent to an Order. If you do not agree that the Order should be made, the court will adjourn the case to another day to hear the evidence. At the hearing, you can ask questions of the applicant and any witnesses. You can also give evidence yourself and the applicant (or their lawyer or police prosecutor) can ask you questions. The applicant will need to convince the Magistrate that an Order should be made.

If you do not consent to an Order, the court may make an Interim Order until the matter can be heard. The court can also consider any Family Law Orders that are in place.

After the Magistrate has made an Interim or other Order, such as an Order by Consent, you will be served with a copy of the Order. It is then enforceable.

COSTS

It is possible that if you defend an application for an Order and an Order is made, you will have to pay the applicant's costs. This would generally be if the applicant is represented by a lawyer.

WHAT TYPES OF CONDITIONS CAN BE PUT IN AN ORDER?

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

- Assaulting, molesting, harassing, threatening or interfering with the protected person;
- Intimidating the protected person;
- Stalking the protected person.

These three mandatory conditions apply to anyone in a domestic relationship with the protected person. In addition, extra conditions may be made prohibiting the following types of behaviour:

- Approaching the protected person;
- Approaching or entering places where the protected person may live, work or go to;
- Approaching the protected person, or places she/he may be, after drinking alcohol or taking drugs
- Preventing or restricting access to firearms by the defendant;
- Damaging property;
- Other conditions as agreed by both parties or decided by the court.

These Orders may also cover any person who has a domestic relationship with the protected person.

These Orders may affect your ability to spend time with your children. It is possible that any existing Family Law Orders you have for spending time with your children may be changed or suspended. If you have children with the protected person it is very important that you get legal advice.

WHAT ARE THE CONSEQUENCES OF AN ORDER BEING MADE?

An Order itself is not a criminal conviction. You will not get a criminal record if an Order is made. However, it is important that you know there are other consequences: