

Are you
applying
for an **AVO?**



Information for applicants and
persons in need of protection.

Legal Aid
NEW SOUTH WALES

**An Apprehended
Violence Order
(AVO) is an Order
made by the
court against
a person who
makes you fear
for your safety.**

What is an Apprehended Violence Order?

An **Apprehended Violence Order (AVO)** is an Order made by a court against a person who makes you fear for your safety, to protect you from further violence, intimidation or harassment. All Apprehended Violence Orders made by the court prohibit the person who is causing these fears from assaulting, harassing, threatening, stalking, or intimidating you. Other conditions can be included.

The person you fear, known as the defendant, must obey the Order made by the court. You can contact the police to help you apply for an Order, or you can contact your Local Court or Legal Aid NSW for assistance. 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 or work together.

How do you apply for an Apprehended Violence Order?

You can contact the police and they can make the application for an Apprehended Violence Order on your behalf. If the police have fears for your safety following an incident, they may obtain a provisional or temporary Order for you. The police will let you know about the Order and tell you when to come to court.

Alternatively, you can make an application on your own at your Local Court. Legal Aid NSW may be able to assist you with your application. By law court staff must allow you to make an application for an apprehended Domestic Violence Order. You should make a note of the court date given to you at the time you make the application.

The application will tell the defendant (the person who is causing fears for your safety) the date and time they have to attend court. The application will be served on the defendant by the police. You should know that an application for an Apprehended Personal Violence Order may be refused if the court believes the application is frivolous, vexatious or has no reasonable chance of success. The court may advise you to seek mediation.

Do you need a lawyer?

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

There is a lawyer from the Domestic Violence Practitioner Scheme or Legal Aid NSW's Domestic Violence Unit available in a number of Local Courts to provide advice and assistance for some Apprehended Domestic Violence Order applicants. They can give advice regarding other legal problems and can be contacted through your local Women's Domestic Violence Court Advocacy Service (WDVCAS).

You can also contact Legal Aid NSW or Law Access to obtain advice and assistance with domestic violence as well as other legal problems.

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 their 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 the adjournment. The Magistrate may 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:

- the 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; or
- the defendant has been served but does not show up at court.

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 they have done anything wrong. In this case, your Order will be made that day.

Interim Orders and hearings

If the defendant does not consent to the Apprehended Violence Order, your case will be adjourned for the Magistrate to make a decision about whether there are grounds to make the Order. It is important that you ask the court for an Interim (temporary) Apprehended Violence Order to protect you until the hearing.

If your matter is adjourned for hearing, you may be told by the Magistrate to supply written statements to the court by a certain date. Directions about these statements will be provided by the court. Your matter will then be listed for mention to see if both you and the defendant have complied with the court's directions.

If you, the applicant, have failed to comply with these directions the application may be dismissed or the court may order you to file any outstanding statements. If the defendant does not comply with the direction they may not be able to give any evidence at the hearing. If neither of you comply with this direction the application will be dismissed.

Once both you and the defendant have complied with the court's direction the matter will be listed for hearing. It is important that you attend court for your matter. If you do not attend the application may be dismissed. If the defendant does not attend the Order may be made in their absence.

What happens at a hearing?

The hearing will be based on the evidence contained in the statements unless the court allows additional evidence or evidence to be given verbally. The police may also submit a video or audio recording taken at the time of an incident as your main evidence. If this happens, you must attend court in case the defendant or their lawyer want to ask you more questions.

The applicant presents their case first. The defendant or their lawyer will then have the opportunity to ask you and your witnesses questions about your evidence. The defendant then has the opportunity to present their case.

You or your lawyer (or the Police Prosecutor in a police application) will be able to ask the defendant and their witnesses questions about their evidence. It is up to the applicant to prove to the Magistrate on balance that an Order should be made.

You can talk to your WDVCS if you need to give evidence. Call **1800 WDVCS (1800 938 227)**.

What types of conditions can be put in an Apprehended Violence Order?

If an Order is made, **three conditions** will always be included. These conditions prohibit the following behaviour:

- Assaulting, molesting, harassing, threatening or interfering with the Protected Person;
- Intimidating the Protected Person;
- Stalking the Protected Person; and
- Anyone in a domestic relationship with the Protected Person is also protected by these conditions. This may include your children.

Extra conditions may be included in the Order prohibiting the defendant from:

- 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; and/or
- Any other conditions as agreed by both parties or decided by the court.

Property Recovery Orders

If you need to get your personal property and an Apprehended Domestic Violence Order has been made, the court can at the same time make a **Property Recovery Order**. This should be done on the first date you go to court. A Property Recovery Order allows either you or the defendant to get personal property from premises. 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 (cancelled) for a period of 10 years. If the Order is revoked, the defendant can get their firearms licence back only if they are 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, they may be charged with a criminal offence. 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 apply to change the conditions on an Apprehended Violence Order?

Yes. If there is a change of circumstances, you can apply to the Local Court or the police to have the Order changed or cancelled.

However, only the police can apply to change or cancel an Order if children are named on it.

For more information and help

In an emergency, call the police on 000 or 112 from mobiles.

Women's Domestic Violence Court Advocacy Services (WDVCAS) – Information, court advocacy and referral for women in domestic violence situations and assistance with getting an ADVO. Call **1800 WDVCAS** or **1800 938 227**.

LawAccess NSW 1300 888 529 – Legal assistance and referral over the phone to applicants and defendants including assistance with applying for legal aid. Victims of domestic violence are priority customers for advice.

Department of Community Services Domestic Violence Line: 1800 656 463 – Assistance with emergency accommodation and referrals for counselling, health and legal services. 24 hours 7 days.

1800 RESPECT or 1800 737 732 24 hours, 7 days a week – Provides counselling, information and referral.

Womens Legal Service – Legal advice, assistance, referral and representation for women with a focus on family law, domestic violence and sexual assault. **(02) 8745 6900** or **1800 810 784**
Domestic Violence Legal Advice Line

Domestic Violence Unit, Legal Aid NSW – Legal advice, assistance, referral and representation as well as social work support to victims of domestic and family violence. **(02) 9219 6300**.

Link2Home – Referrals to homelessness services across NSW (24 hours, 7 days) **1800 152 152**

Victims Services – Support and assistance for victims of crime **1800 633 063**; Aboriginal Contact Line: **1800 019 123** (8am to 6pm, Monday to Friday, except public holidays).

The **Justice Journey website** contains useful information about the court process for people who have experienced crime: **www.victimsservices.justice.nsw.gov.au/Pages/vss/vs_justicejourney/VS_justicejourney.aspx**.

Other Legal Aid publications about Domestic Violence

- *So you want the violence to stop – Advice about domestic violence and help at court (WDVCAS services)*
- *Break your silence stop the violence (ATSI resource for WDVCAS services)*
- *Are you experiencing domestic violence?*
- *Advice about your visa if you have been hurt or harmed by your partner*
- *Are you experiencing violence or abuse? (elder abuse)*
- *Domestic violence: help at court (WDVCAS services in Easy English)*

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This publication is intended as a general guide to the law and should not be relied on as legal advice. We recommend that you talk to a lawyer about your particular situation. At the time of printing the information is correct, but may be subject to change. If you need more help, contact LawAccess on 1300 888 529.

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Do you need an interpreter?
If you need help to talk to us in your language, call the Translating and Interpreting Service (TIS) on 131 450 (9am–5pm)



Do you find it hard to hear or speak?
If you find it hard to hear or speak: call us through the National Relay Service on 133 677 or www.relayservice.gov.au or call LawAccess NSW on 1300 889 529

This publication is available in Arabic, Dari/Farsi and Simplified Chinese.

