

DOMESTIC VIOLENCE OFFENCES



Information for defendants

HAVE YOU BEEN CHARGED WITH A DOMESTIC VIOLENCE OFFENCE?

A domestic violence offence includes any form of assault, intimidation, stalking or contravening an Apprehended Domestic Violence Order (ADVO) committed against a person with whom you have, or have had, a domestic relationship.

A domestic relationship includes a marriage; a de facto relationship; an intimate personal relationship; a relative, dependent care relationship such as carer and cared for person, persons who live or lived in the same residential facility and sometimes your extended family or others with whom you live or have lived and in the case of Aboriginal Persons or Torres Strait Islanders is or has been part of an extended kinship or family.

WHAT SHOULD YOU DO?

Domestic violence charges should be taken very seriously. It is a good idea to get legal advice as soon as you can. Please see the back of this brochure for details of some of the places where you may seek legal advice.

IS LEGAL AID AVAILABLE?

Legal aid may be available to assist you if you qualify under our means test. You may telephone your nearest Legal Aid NSW office to make an appointment to see a solicitor. You may also check our means test indicator on our website: www.legalaid.nsw.gov.au.

WHAT HAPPENS WHEN YOU GO TO COURT?

When you go to court you should be given a copy of the Police Fact Sheet, the statement of the person making the complaint against you and photographs of any injuries to that person. You will be asked to tell the court whether you are pleading Guilty or Not Guilty. You should get some legal advice before making this decision. You are entitled to an adjournment of seven days to get advice. Serious penalties, including imprisonment, may apply.

WHAT HAPPENS IF YOU PLEAD 'NOT GUILTY'?

If you plead not guilty your case will be listed for hearing. At least 14 days before the hearing, the police should serve a brief of evidence on you or your lawyer. If the police serve it on you and you have a lawyer you should take it to your lawyer as soon as possible. The brief may contain written statements of the evidence to be given by witnesses. Sometimes you may be given a recording of evidence, for example conversations between police and witnesses may have been recorded, or there may even be a video recording. You should read any statements, listen to any recordings or watch any video or DVD given to you.

It is important to get legal advice about the brief of evidence before you go back to court.

If you want Legal Aid NSW to represent you at a court hearing you should contact your nearest Legal Aid NSW office or the duty solicitor at your local court, and apply for legal aid.

You should do this as soon as possible. If you leave it too late you may not be granted legal aid. You will not get legal aid on the day of the hearing if you have not arranged it beforehand.

When you tell the court that you are pleading not guilty you will be asked how many witnesses you will be calling. If you, or any of your witnesses, need an interpreter you should tell the court. You must make sure that your witnesses know what day your hearing is on. Some may need a subpoena, for example, if they need to take a day off work. If you do not have a lawyer you should ask the Registrar of the court about how to issue a subpoena. The case will then be listed for a hearing.

At the hearing the police will call witnesses to give evidence against you. You, or your lawyer, can question the witnesses. In some circumstances it may be possible for the police to hand up statements of, or recordings by, witnesses (including the person alleged to have been assaulted) even if those persons are not present. You may also give evidence or call witnesses. The Magistrate will decide whether or not the police have proved the case against you. If the Magistrate is not satisfied that the police have proved the case it will be dismissed. If the magistrate is satisfied that you committed the offence you will be found guilty.

WHAT ARE THE PENALTIES?

Penalties could include fines, bonds to be of good behaviour, community service orders, intensive correction orders, suspended sentences, home detention or full-time gaol. Bonds could include conditions that you undertake courses or rehabilitation. Domestic violence is regarded very seriously. It is important to understand that gaol sentences are a real possibility in domestic violence cases.

APPREHENDED DOMESTIC VIOLENCE ORDERS (ADVO)

More information can be found in Legal Aid's brochure *Apprehended Domestic Violence Orders (ADVO)— Information for defendants*.

WILL AN ADVO BE MADE?

If you have been charged with a domestic violence offence an interim ADVO is likely to be made against you. If you are convicted of a domestic violence offence a final ADVO is likely to be made against you. The Magistrate will decide what conditions will be included in the ADVO.

There are three standard conditions in all ADVOs. These conditions prohibit you from intimidating, stalking, assaulting, molesting, harassing, threatening or otherwise interfering with the Protected Person or anyone he/she has a domestic relationship with.

Further conditions may be imposed restricting your contact with the Protected Person; attending or entering places where he/she may live, work or attend; contacting him/her either at all or subject to conditions.

It is important that you understand the conditions imposed in any ADVO made against you. Listen carefully to the Magistrate when the conditions are being discussed in court. You will have an opportunity to comment on the conditions imposed. If you have children with the Protected Person you need to tell the Magistrate. You also need to say if there are any family law orders or agreements about your children. If you are being excluded from your home you may need to ask for arrangements to collect some personal belongings. It may be that a condition will be made that you attend in company of police to collect belongings. It may be that someone else, for example a relative, could attend and collect your belongings. After court read the ADVO carefully. If you do not understand anything ask for advice.

WHAT HAPPENS IF YOU PLEAD ‘GUILTY’?

If you plead guilty, the police facts sheet will be provided to the court. This tells the Magistrate what the police say happened. You should read it before the court case. If you agree that you are guilty of the offence but disagree with some of the things said in the Fact Sheet you should ask to speak to the prosecutor. It may be possible to make some changes if they are fairly minor. If they are big changes you may have to have a hearing and call witnesses so that the Magistrate can decide what really happened.

The Magistrate may also be given other documents, for example statements from any witnesses, photographs of injuries to the person you assaulted and a copy of your criminal record if you have one. You may give the Magistrate some documents, for example character references. Legal Aid’s brochure *Character References* has more information.

You (if you are representing yourself) or your lawyer will then give an explanation about how and why the offence(s) happened and some information about yourself, your current financial situation, personal circumstances and general character. If you plead guilty, or if the Magistrate decides that you are guilty after a hearing, the Magistrate has to decide what penalty to give to you. The penalty will depend on a number of factors including:

- how serious the offence was;
- your previous character; whether you have a criminal history, particularly for domestic violence;
- whether you pleaded guilty or were found guilty after a hearing;
- your prospects of rehabilitation.

If you have attended any courses, programs or counselling that may be relevant to your rehabilitation you should provide details to the court. A letter or report from your counsellor or course coordinator would assist. These courses may involve anger management, domestic violence, drug and alcohol or personal development programs.

WHAT HAPPENS IF YOU BREACH AN ADVO?

If you breach an Apprehended Domestic Violence Order (ADVO) you are likely to be arrested by police and charged with a criminal charge.

BAIL

The police will decide whether to release you on bail. If the police release you it is important to understand the bail conditions that you have been given. If you break your bail conditions you could be arrested again and refused bail. If the police do not give you bail you will be taken to court and a Magistrate will decide whether you should be given bail. Further information about bail can be found in the Legal Aid NSW brochure *Understanding Bail*.

PENALTY

If you breach an ADVO by using violence, it is very likely that you will receive a gaol sentence.

FAMILY LAW ADVICE

If you have children with the Protected Person it is important that you get some family law advice as soon as possible. You may contact various services including Law Access, your closest Legal Aid NSW office, a family relationship centre, a community legal centre or a private lawyer. Contact details are on the back of this brochure.

The contact details also provide various websites where you can obtain information. Many of the services also provide brochures about various family law problems which may be helpful. You might wish to ask for a copy of the Legal Aid NSW brochure: *What happens when your relationship ends?*

OTHER SERVICES

There are many other services for people who have family and other personal problems. These include:

Centrelink	1800 050 004
Relationships Australia	1300 364 277
Lifeline	131 114
Unifam	8830 0700
CatholicCare	9725 7077
Family and Community Services	132 111
Child Support Agency	131 272

HELPFUL CONTACTS

LawAccess NSW 1300 888 529 www.lawaccess.nsw.gov.au
Information, referral and in some cases, advice.

Legal Aid NSW www.legalaid.nsw.gov.au

Aboriginal Legal Service www.alsnswact.org.au

Community Legal Centres 9212 7333 www.nswclc.org.au

Law Society of NSW 9926 0333 www.lawsociety.com.au

**Family Relationship Advice Line
1800 050 321** www.familyrelationships.gov.au

**Relationships Australia Mediation Service
1300 364 277** www.nsw.relationships.com.au



Need an interpreter?

If you have difficulties communicating in English, phone the Translating and Interpreting Service (TIS) on 13 14 50 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.

More copies can be ordered online at www.legalaid.nsw.gov.au/publications or email publications@legalaid.nsw.gov.au or call 9219 5028.

This publication is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation.

At the time of printing, the information shown is correct but may be subject to change.

For more information contact LawAccess NSW on 1300 888 529.