

# Is someone asking the court to make an AVO against you?

Information for defendants

## APPREHENDED VIOLENCE ORDERS (AVO)

This brochure helps explain some of the legal terms which are used in court and the consequences of an order being made.

**Legal Aid**  
NEW SOUTH WALES 

[www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

Before deciding what to do you should understand the basis for courts making Apprehended Violence Orders.

## 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.

## 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 their safety or for the safety of other people in a domestic relationship with them, 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 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 an Order should be made the court will adjourn the case to decide whether or not to make an order based on the available evidence. Prior to a matter being listed for hearing the Court may order that each party is to serve on the other party a written statement of the oral evidence that they wish to rely upon at the hearing. The Court will set a timetable which will specify the date by when each party is to serve their written statements on the other party.

**Please Note: If you disclose in a statement that you have committed a criminal offence, your statement may be used against you in criminal proceedings. If you are concerned about this happening, you can ask the Court to not direct you to file a statement on the grounds of possible self incrimination.**

**Statements may also be used in family law proceedings.**

The matter will then be listed for mention to ensure that each party has complied with the above direction.

It is important that you comply with the direction to serve statements prior to this date. If you have not complied you may not be able to call evidence at the hearing unless the Court is satisfied that it is in the interests of justice to dispense with compliance of the direction.

If you think that there is a possibility that you may be charged with a criminal offence (such as assault, sexual assault or damage to property) please seek legal advice from either Legal Aid NSW or Law Access (see contact details on the back of this brochure).

Both parties must attend the mention date. If the applicant does not attend, the application for ADVO/APVO may be dismissed. If you do not attend the order may be made in your absence.

If the direction has been complied with by both parties the matter will be listed for hearing. The hearing will be on the evidence contained in the statements unless the court gives leave to a party to call additional evidence or give evidence orally (in the witness box).

Each party will have the opportunity to cross examine the other party (if they choose to give evidence). The court may limit the time taken by each party in cross examination.

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 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?

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

- 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 if the breach is alleged to involve violence, and you have a history of using violence. If you are found guilty, you are likely to get a criminal record.

**Legal Aid NSW offices provide advice clinics for defendants in ADVO/APVO matters. Please contact your local Legal Aid NSW office. Contact details can be found on [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)**

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. You cannot apply to change an order if children have been specifically named in the order.

## 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 (APVO) or Apprehended Domestic Violence (ADVO) proceedings, if the defendant is a person seeking protection in other ADVO 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.

## Glossary of terms

**Defendant:** The person against whom an application for an AVO has been made.

**Applicant:** The person who has made the application for an AVO (This may be a Police Officer or the victim/PINOP).

**PINOP:** Person In Need of Protection.

**Interim AVO:** A temporary order until final decision of the Court.

**Final Order:** The final decision of the Court.

## 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.

**LawAssist** is a website that has a step-by-step guide about defending an AVO. Visit [www.lawlink.nsw.gov.au/lawlink/LawAccess/ll\\_lawassist.nsf/pages/lawassist\\_instructions\\_statement\\_def](http://www.lawlink.nsw.gov.au/lawlink/LawAccess/ll_lawassist.nsf/pages/lawassist_instructions_statement_def)

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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.



### Hearing/speech impaired?

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



### Need an interpreter?

Phone the Translating and Interpreting Service (TIS) on 13 14 50 and ask them to call LawAccess NSW.

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