

# Have you been charged with a domestic violence offence?

What happens in court



## **What is a domestic violence offence?**

A domestic violence offence is when you have a domestic relationship with another person and you:

- assault, or attempt or threaten to assault, that person
- destroy or damage their property or harm their animal (or threaten to do this)
- stalk, harass or intimidate them, or
- breach an Apprehended violence order (AVO) that they have against you.

There are also some other types of behaviours that are domestic violence offences.

## **What is a domestic relationship?**

You have a domestic relationship with another person if you:

- are, or have been, married to them
- are in a de-facto relationship with them
- have, or have had, an intimate personal relationship (it doesn't need to be a sexual relationship)
- are living with them, or have lived with them in the past

- were dependant on the other person, and they are or were your carer – if they were paid or not
- were an unpaid carer for the other person, and they are or were your dependant
- are, or have been, their relative, or
- if you are Aboriginal or Torres Strait Islander and are or have been part of the extended family or kin of the other person.

Under the law two people also have a 'domestic relationship' with each other if they both have had a 'domestic relationship' with the same person. For example, your ex-partner's new partner, or your partner's ex-partner.

## **What should I do if I have been charged with a domestic violence offence?**

Domestic violence offences are serious offences. You should get legal advice as soon as you can. See page 13, **Where can I get legal help?**

## Can I get a Legal Aid lawyer to represent me in my case?

If you want us to represent you at court you will need to apply for ‘a grant of legal aid’. It is best to get legal advice before you apply for legal aid. Call LawAccess NSW on **1300 888 529** for advice or to find a Legal Aid NSW office near you.

You should apply for legal aid as soon as possible. You will not get legal aid on the day of your hearing if you have not arranged it beforehand, and the court may not let you adjourn your case.

A grant of legal aid is not free. Most people will have to pay a contribution towards the legal costs of their case.

## What will happen when I go to court?

The police will ‘serve’ you with (give you) a ‘mini brief’. This is the evidence the prosecution will use to try to prove the case against you.

The mini brief will have in it:

- what they say happened
- a copy or recording of the victim’s statement, and
- any photographs—such as the victim’s injuries or damaged property.

On the first date you go to court (called the first ‘mention’) you may be asked if

you are pleading guilty or not guilty. You should get legal advice before you make this decision. You can ask the court to adjourn your case (put it on hold) so you can get legal advice. If the court agrees to adjourn your case it will probably not be for longer than 14 days.

## **What happens if I plead guilty?**

If you plead guilty, the prosecution will give the police facts sheet to the court. This tells the magistrate what the police say happened. You should read it before the court case. You should only plead guilty if you agree with what's in it.

If you agree that you are guilty of the offence, but disagree with some of the things in the police fact sheet, you should ask to speak to the prosecutor. If the things you don't agree with are quite small, it may be possible to make some changes. If you want to make big changes, you may have to go through with the hearing and call witnesses so that the magistrate can decide what really happened.

The prosecution will also give the magistrate a copy of your criminal record (if you have one) and some other documents, for example photographs of the victim's injuries and damaged property.

You can also give the magistrate some documents, for example character references. See our publication [Character References](#) for more information.

You (or your lawyer) will then give the court an explanation about:

- how and why the offence(s) happened, and
- some information about you and your personal circumstances (for example, if you are employed, if you have mental health or drug and alcohol issues and if you do, if you're getting treatment), your general character and background and maybe your current financial situation.

This is sometimes called a 'plea in mitigation'. The magistrate uses this information to decide what penalty would be appropriate to give you.

## **What will happen if I plead 'not guilty'?**

If you plead not guilty the case will be adjourned to a 'hearing' date.

If the prosecution wants to use any more evidence they will have to serve anything else they want in the brief on you (or your lawyer if you have one) no less than 14 days before the hearing.

The extra evidence may include written statements from witnesses

or video recordings. You should read all statements and watch any video recordings as soon as you can. If you have a lawyer you should give your lawyer a copy of all the material the police give to you so they can prepare your case.

If you have a lawyer, they will have seven days after they get the brief to tell the prosecution which witnesses you want to cross examine (ask questions of) at the hearing.

It is important to get legal advice about the brief of evidence before you go back to court. See page 13 **Where can I get legal help?**

## **I want to bring witnesses to court—what should I do?**

If you plan to call any of your own witnesses at the hearing you should tell the court at the first mention.

If you or any of your witnesses need an interpreter you should tell the court so they can arrange for one to be there for the hearing.

Some witnesses may go to court because you have asked them to, but some may need to be 'subpoenaed'. This means they will be given a document (a subpoena) that says they have to go to court. You may need to subpoena some witnesses so they can show their employer and get the day off work.

If you do not have a lawyer you can ask the registrar at the court about how to 'issue' a subpoena.

## **What will happen at the hearing?**

Any witnesses – including you, or the victim – can give evidence at the hearing.

Sometimes the police will have recorded the victim's evidence by video when they took their statement – this is called a Domestic Violence Evidence in Chief (DVEC ) and can be played in court. Other times, the victim might give evidence by video link or have a screen put up in court so that you cannot see them.

If you don't have a lawyer, you will not be able to ask the victim questions when the victim gives evidence. Someone will be appointed by the court to ask questions for you. The person appointed does not represent you or give you legal advice, they can only ask questions of the witness that you tell them to ask.

Other evidence, such as photographs or other documents, will be given to the magistrate.

The prosecution will tell the court why they think the magistrate should find you guilty. You (or your lawyer) will tell the court why the magistrate should find you not guilty.



The magistrate will then decide if the police have proved that you committed the offences you have been charged with.

**If you are found not guilty**—the magistrate will dismiss your case.

**If you are found guilty**—the magistrate will decide what ‘sentence’ (penalty) to give to you. They will either do this on the same day, or they will adjourn the case to another day for ‘a sentence hearing’.

## **How does the magistrate decide what sentence to give me?**

When the magistrates decides what sentence to give you they look at things like:

- the details of the offence
- how serious the offence is
- if you have a criminal history—particularly for domestic violence offences
- if you plead guilty or were found guilty after a hearing (if you plead guilty the magistrate can give you a lesser sentence), and
- how likely it is that you will commit another domestic violence offence in the future.

If you have attended any courses, programs or counselling that show that you are trying to deal with your behaviour—such as domestic

violence programs or drug and alcohol programs—you should tell the court.

You can also show them a letter or report from your counsellor or course coordinator.

## **What sentence will I get?**

You could get anything from a fine to gaol. It depends on how serious the offence is. You can talk to a lawyer about what could happen in your case. The courts treat domestic violence as a very serious offence. It is important to understand that there is a real possibility that you could go to gaol for domestic violence offences.

## **Will an apprehended domestic violence order (ADVO) be made against me?**

If you have been charged with a domestic violence offence the magistrate will probably make an interim (temporary) ADVO against you until the court deals with your case.

If you plead guilty or the court finds you guilty, the magistrate will probably make final orders for an ADVO against you. It will include three mandatory conditions. They are that you must not:

- assault or threaten the person the ADVO is for (the ‘protected person’)
- stalk, harass or intimidate that person, or

- intentionally or recklessly destroy or damage their property or harm their animal.

These conditions will also cover anyone who has a ‘domestic relationship’ with the victim.

The court can also make other orders—such as ‘prohibiting or restricting’ you from approaching the protected person. This can mean that you may be stopped from:

- going near the protected person at all,
- going near their home, work or other premises,
- going near them within 12 hours after you drink alcohol or use illicit substances, or
- contacting or communicating with them in any way.

This means you must not do any of these things yourself, or get another person to do them, by calling, texting, emailing, or by using Facebook or other social media or GPS tracking.

The court can also make any other orders it thinks are necessary for the safety and protection of the protected person.

For more information about AVOs, see our publication [\*Is someone asking the court to make an AVO against you?\*](#)

For help following an AVO, see our publication [\*Got an AVO? How to stick to your order.\*](#)

## **Will I get bail?**

If you are charged with a domestic violence offence the police will decide if they will release you on bail.

Bail means you will need to follow some conditions until the court hears your case. (These conditions could be the same as those in your ADVO, or they could be different, such as living at a certain location, reporting to a police station or not drinking alcohol).

If the police do release you on bail it is important to understand the bail conditions that you are given. You must do what your bail conditions say. If you don't, you could be arrested.

If the police do not give you bail they will take you to court and you can choose to apply for bail there. A magistrate will decide if you should be given bail.

For more information about bail, see [\*A guide to bail.\*](#)

## **If I have an ADVO against me— can it affect me in other ways?**

Having an ADVO may or may not affect your ability to see your children, work with children, own a firearm, or what happens with your immigration case. This will depend on your case.

You should get legal advice from a family lawyer or an immigration lawyer (or both) as soon as you can if you are worried about any of these things.

## **Where can I get legal help?**

### **LawAccess NSW**

LawAccess NSW is a free information service run by Legal Aid NSW. Anyone who has a legal problem in NSW can contact LawAccess NSW for legal help. Click on the Chat with us button at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au) or call **1300 888 529** between 9am and 5pm, Monday to Friday (excluding public holidays).

### **Legal Aid NSW**

Legal Aid NSW is a state-wide independent government agency that helps people in NSW with their legal problems. Our lawyers provide legal advice and representation at court to people who are eligible. Eligibility depends on the kind of legal issue you have, and your circumstances.

LawAccess NSW can tell you if you are eligible and can book an appointment for

you to speak with one of our lawyers. Click on the Chat with us button at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au) or call **1300 888 529** between 9am and 5pm, Monday to Friday (excluding public holidays).

The 'My problem is about' section of the Legal Aid NSW website has information about defending an AVO. See [www.legalaid.nsw.gov.au/my-problem-is-about/apprehended-violence-order-avo](http://www.legalaid.nsw.gov.au/my-problem-is-about/apprehended-violence-order-avo)

### **Aboriginal Legal Service (NSW/ACT) Ltd (ALS)**

If you are Aboriginal or Torres Strait Islander you can also contact the ALS for free legal advice. To find your closest ALS office call **1800 765 767** or visit [www.alsnswact.org.au](http://www.alsnswact.org.au).

### **Where can I get other help?**

If you would like help with other issues – like housing, counselling, mental health or drug and alcohol issues – or if you have been violent or abusive towards your partner or family member and would like to work towards respectful and caring relationships, you can:

- ask your lawyer how you can get help, or
- call the Men's Referral Service on **1300 766 491**.

### **Mensline**

Phone support and referrals for male victims and perpetrators of domestic violence. 24 hours, 7 days. Call **1300 789 978** or visit [www.mensline.org.au](http://www.mensline.org.au).



This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.

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



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For more information, visit:

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

## Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am–5pm) and ask for LawAccess NSW.

## Do you find it hard to hear or speak?



If you are deaf, or have a hearing or speech impairment, contact us through the [National Relay Service \(NRS\)](#). Ask for LawAccess NSW on **1300 888 529**.

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