

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

Information for defendants



What is an apprehended violence order (AVO)?

AVO's are court orders that aim to protect people from others who may be violent toward them, or cause them to fear for their safety.

They work by listing things that the defendant must not do – such as not assaulting, threatening, harassing or intimidating the protected person. These are called 'conditions' of the AVO.

There are two types of AVOs:

- apprehended **domestic** violence orders (ADVO) and
- apprehended **personal** violence orders (APVOs).

An **ADVO** is made if people have had a domestic relationship. Commonly, ADVOs involve relatives or current or former partners, spouses, or roommates. Under the law, the ex-partner and current partner of a protected person also have a domestic relationship with each other.

Who's who?

The person who the AVO is made for is called the 'protected person'.

If the police apply for an AVO on behalf of the protected person the police are called 'the applicant'.

You (the person the AVO is against) are called 'the defendant'. In court you and the protected person are called the 'parties'.

An **APVO** is made if the parties are not related and do not have any domestic or intimate relationship – for example if they are neighbours, friends or co-workers.

What types of conditions can be put in an AVO?

If an AVO is made, three conditions must be included. These are called mandatory conditions. They are that you must not:

- assault or threaten the protected person
- stalk, harass or intimidate the protected person or
- intentionally or recklessly destroy or damage the protected person's property or harm their animal.

These conditions will also cover anyone who has a domestic relationship with the protected person.

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 the protected person's home, work or other premises
- going near the protected person within 12 hours after you drink alcohol or use illicit substances.

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

Temporary AVO's

There are two different types of temporary AVOs that can be made to protect a person until a court decides whether to make a final AVO.

1. A provisional AVO is an order applied for by a police officer and granted by a court or senior police officer.
2. An interim AVO is made by the court to extend a provisional AVO or where the court agrees that it is necessary or appropriate for a protected person to have temporary protection.

Provisional AVOs

Police might apply for a provisional AVO after an incident between you and the protected person.

Police may do this if they have good reason to believe an immediate order is necessary to protect the person or prevent substantial damage to their property.

A provisional AVO can be made at any time of day or night and comes into immediate effect the moment it is served on the person the order is against.

A provisional AVO will continue until either it is revoked or another order is made by the court, such as an interim or final order, or the AVO application is withdrawn by police.

When can the court make an AVO?

The court can make an AVO if the court is satisfied that the protected person has 'reasonable grounds' to fear and in fact fears that you will be violent toward them, intimidate or stalk them. The court can also make an AVO in other circumstances (for example, if the person in need of protection is a child).

What happens when I go to court?

Once the application for an AVO has been made, your case will be listed for mention. The mention is the first date an application for an AVO is heard in court. You should turn up to court on the mention date or an AVO may be made without you there.

You can respond to the AVO in two ways.

- Consent (agree) to the AVO. You can do this even if you don't agree with the reasons written in the application. The AVO will be made for however long the parties agree to, or however long the court decides
- Not consent (not agree) to the AVO. The case will be adjourned (given another date) and the magistrate will direct you and the protected person to 'serve' your written statements and any of your witnesses' written statements on each other. You can do this by leaving the statements at the court registry to be collected by the other party.

The case will then be listed again so the magistrate can check you and the protected person have filed your statements. If you both have, the matter will be listed for a final hearing. At the final hearing, the court will hear all of the evidence, and then decide if it will make the AVO or not.

Interim AVOs

Before the case is adjourned, the court needs to decide if it should make an interim AVO against you to start immediately until the final hearing date. There may need to be an interim hearing to decide this.

If you have been charged with a serious offence, such as a domestic violence offence, the court will probably make an interim AVO against you to protect the alleged victim.

For more information about domestic violence offences, see our publication [*Have you been charged with a domestic violence offence?*](#)

What happens at an interim hearing?

An interim hearing is only to decide if an interim AVO should be made, and won't determine the final orders.

The court can look at:

- the reasons stated in the application about why the applicant says the order should be made against you

- any written statements
- any evidence that the protected person, you or other people give in the witness box and
- submissions that either party (or their lawyers) make.

If a witness gives evidence in the witness box, the other party (or their lawyer) can cross-examine them (ask them questions).

What happens if the court decides to make an interim AVO?

The court will decide what conditions to include in the interim AVO. See page 3 'What types of conditions can be put in an AVO?' The case will then be adjourned for a final hearing.

What happens if the court decides not to make an interim AVO?

The case will be adjourned for a final hearing.

The court will order you and the protected person to 'serve' your written statements and any of your witnesses' written statements on each other. You can do this by leaving the statements at the court registry to be collected by the other party.

You will usually have to serve your statements four weeks before the final hearing. The protected person will usually have to do this two weeks before.

What happens at the final hearing?

Anyone who made a written statement may be cross-examined about what is in their statement.

The court will look at the evidence from the witnesses, any documents and the submissions made by both sides, and then decide whether or not to make the final AVO.

If the court decides not to make the AVO, the application will be dismissed and the case will be over.

If the court decides it will make the AVO, it will then decide what conditions to put in it.

If you have pleaded guilty to or if a court has found you guilty of, a serious offence, the court will probably make a final AVO.

What will happen to me if an AVO is made against me?

If an AVO is made against you, you will not get a criminal record. However, if you have an AVO this could affect things like your future employment and any ongoing family law matters.

What happens if I don't follow a condition in an AVO?

If you don't follow a court order this is called 'breaching' an AVO. Breaching an AVO is a criminal offence and you may be charged. The maximum penalty

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for breaching an AVO is two years imprisonment, a fine of up to \$5,500, or both.

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

Can you represent me in court?

Legal Aid NSW does not usually represent defendants in AVO cases. We may be able to pay a lawyer to represent you in court if there are 'exceptional circumstances'.

Exceptional circumstances include if you are:

- an Aboriginal or Torres Strait Islander woman or
- at a 'special disadvantage' because of:
 - a psychiatric condition,
 - a developmental disability or
 - an intellectual impairment or a physical disability.

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 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 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

Aboriginal Legal Service (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.

More help

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.

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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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**.