



*Just a piece of paper?*

Making your AVO work for you



by the Southern Women's Group

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## **Note to the reader**

Readers should seek expert advice about dealing with specific problems. This booklet is intended to provide a guide to relevant law only and should not be used as a substitute for legal advice. This information applies to the people who live in, or are affected by the law as it applies in NSW, Australia.

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*Just a piece of paper?*

# **Making your AVO work for you**

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***Disclaimer:***

*This publication is not intended as legal advice and is not a substitute for proper legal advice tailored to the individual situation. Free legal advice is available through Law Access NSW, Women's Legal Services NSW and Legal Aid NSW.*

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# ***A letter to the reader***

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This publication is intended to help people who already have an AVO for their protection. For those readers who do not yet have an AVO but are considering seeking one, there are other useful resources to assist you. These resources are included in the contact list at the end of this booklet.

This publication refers to the law in NSW.

## ***About the words we use***

In this publication, the term 'AVO' is an abbreviation of the legal term Apprehended Violence Order. 'AVO' is used in this publication to describe Apprehended Domestic Violence Orders.

The terms 'domestic violence' and 'family violence' are often interchanged. In this publication, we use the term 'domestic violence' because it is used in the NSW AVO laws. However, when we discuss AVOs and family law, we use the term 'family violence' as this is the term used in the federal family law system.

This booklet was written for people who are experiencing or have experienced domestic violence and have obtained an AVO. The AVO refers to you as the 'protected person'.

Domestic violence cuts across all social and cultural lines. It can affect anyone regardless of their race, age, culture, economic status and sexuality. While women sometimes perpetrate violence, overwhelmingly, women and children are the victims of domestic violence and perpetrators are overwhelmingly male.

## ***But let's look forward...***

Most people find their AVOs to be highly effective in preventing violence, intimidation and harassment. You have every reason to be hopeful that the defendant to your AVO will take proper notice of your AVO, and that you will not experience further violence and harassment. An AVO is an order of the court, not 'just a piece of paper'. What gives an AVO power is the strength of the law but very importantly also, the action taken by various people to support it.

These people include you. You may need to take specific action to keep your AVO useful and strong. We hope that the ideas in this booklet will help you to do this.

We encourage you to take some time to read this booklet thoroughly, and to make sure that people close to you also read it and understand how they might need to help out.

But let's look forward positively. Your AVO is likely to be a major step towards reclaiming a sense of freedom, safety and the absence of fear. By getting an AVO you've taken a stand. We congratulate you on taking that step.

Please accept our best wishes for your more peaceful future.

*Southern Women's Group Inc*

## **LGBTIQ Relationships**

The acronym LGBTIQ means lesbian, gay, bisexual, transgender, intersex, queer. LGBTIQ is also used to refer collectively and inclusively to people of diverse genders, sexualities and intersex people who may or may not identify as LGBTIQ or as being in a same-sex or heterosexual relationship.

The majority of LGBTIQ relationships are based on love and respect.

However, threats, abuse and violence do occur in some LGBTIQ relationships. A number of international and local studies suggest that the general patterns and levels of domestic violence in LGBTIQ relationships are about the same as in cisgender\* heterosexual relationships.

### *Who is cisgender?*

*When a person is cisgender, they identify as the gender that matches the sex that they were assigned at birth. A transgender woman is a person who was assigned male at birth but who identifies as a female, while a cisgender woman is a person who was assigned female at birth and identifies as female.*

Perpetrators of domestic violence in LGBTIQ and cisgender heterosexual relationships use similar tactics to control their partners. One unique tactic of power and control that LGBTIQ perpetrators use to abuse their partner is the threat of “outing”. If the abused partner has not disclosed their sexuality, gender identity, intersex or HIV status to their family, friends, workmates, their cultural community, their ex-partners, or government agencies, the abusive partner may use ‘outing’ or the threat of ‘outing’ as a method of control.

### **LGBTIQ people are at greater risk of harm because:**

- LGBTIQ people are less likely to identify the experience as abuse.
- LGBTIQ people living in rural, regional and remote areas may feel they are unable to seek support from their local services because they are not “out” or have concerns about their privacy and confidentiality, or they may be geographically isolated.
- LGBTIQ people are less likely to report violence to the police, or seek assistance from domestic violence support services for fear of homophobia, transphobia or discrimination.
- Service providers may not understand the needs of a LGBTIQ person or the nature of their relationship, or may have preconceived ideas about a LGBTIQ person’s sex, gender, or sexuality, or their relationship or family structure.

Services and government agencies are increasingly improving their knowledge and understanding of how to work inclusively with LGBTIQ people. LGBTIQ people can report domestic violence to the NSW Police, domestic violence support services, and LGBTIQ organisations. The NSW Police has specialist Domestic Violence Liaison Officers (DVLOs) and Gay and Lesbian Liaison Officers (GLLOs) throughout NSW who are trained to work with LGBTIQ people.

# What is an Apprehended Violence Order?

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An Apprehended Violence Order (AVO) is an order made by a court restricting the behaviour of the person against whom the order is made (the 'defendant').

The purpose of an AVO is to protect you (the 'protected person') from violence and harassment in the future. All AVOs state that the defendant cannot assault, molest, harass, threaten, intimidate or stalk you or a person you have a domestic relationship with (such as children or a new partner). An AVO can also have orders such as the defendant cannot go within a certain distance of your home or workplace, must not contact you and must not damage or destroy your property.

## There are two types of Apprehended Violence Orders:

An **Apprehended Domestic Violence Order (ADVO)** is made where the people involved are related, living together in a relationship or previously in this situation.

An **Apprehended Personal Violence Order (APVO)** is made where the people involved are not related and do not have a domestic relationship eg neighbours or work colleagues.

Once made, the effect of an ADVO and APVO are the same. That is, they provide protection from behaviours that are prohibited under the AVO and a breach of the AVO may result in the defendant being charged.

## Is an AVO listed on a criminal record?

An AVO is not a criminal charge and will not appear on a defendant's criminal record. However, if a defendant is found guilty of a breach of an AVO, the breach may be listed on the defendant's criminal record.

## Can I use my AVO outside of NSW?

An AVO made in NSW is only enforceable in NSW. However, if you wish to move to another state or territory in Australia or to New Zealand, you can register your NSW AVO in the new state or territory or in New Zealand so that it is enforceable there. Contact the Local Court or a community legal centre in the new location for help in registering your AVO.

## Can I use an AVO made in another state or territory in Australia or in New Zealand while I am in NSW?

If you move to NSW and have an AVO for your protection that was made in another state or territory in Australia or New Zealand, you can register it in NSW so that it is enforceable in NSW. Contact the Local Court or a community legal centre in the new location for help in registering your AVO.

## How do AVOs work?

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### When does my AVO provide me with protection?

An AVO is only enforceable once it has been served on (given to) the defendant.

If the defendant is in court when an order is made, it will provide protection

immediately. If the defendant is not in court, it will take effect as soon as police serve a copy on the defendant.

It is important that you understand all the conditions on your AVO so you know what the defendant cannot do. Keep a copy of the AVO with you at all times.

## **What is a breach?**

An AVO is breached when the defendant acts or behaves in a way that is not allowed under the orders in the AVO.

A breach can seem minor - especially to the defendant. But an act like sending a love note when the AVO orders the defendant 'not to approach or contact the protected person' is still a breach. Similarly, even if your AVO does not have a 'no contact' order, repeated telephone calls or messages passed through friends can be a breach of the order 'not to harass'.

There are no 'acceptable' breaches allowed by the law. Any breach of an AVO, whether major or minor, is a criminal act. This will have been clearly explained to the defendant at court when the order was made or by the police if they served the order on the defendant. Knowingly breaching an AVO is a criminal offence, punishable by a maximum penalty of two years in prison and/or a fine of \$5500. If a breach involves physical violence there is a presumption the defendant will go to jail if found guilty.

If your AVO is breached, it is important to report it to police. Police policy states that all breaches should be investigated. If police decide there is enough evidence

to suspect that the defendant knowingly breached the AVO the defendant should be charged with contravening an AVO. Depending on the circumstances surrounding the breach the defendant may also be charged with other offences such as assault or stalking.

Despite the police policy, it may be necessary for you to be insistent with the police so that they take action. You can get a support worker or advocate to help to do this. In the end, however, the decision to charge a defendant rests with the police, not with you.

### **What do I do if the defendant breaches the AVO?**

Report the breach to police. Resist the temptation to retaliate or respond to the breach in any other way than reporting to police. You cannot be held responsible for the defendant breaching the AVO, as there is no criminal offence of 'inciting a breach of AVO'.

*It is important to report all breaches of your AVO to the police.*

### **Why is reporting important?**

After an AVO has been made, a defendant may try to 'test the boundaries' of your AVO by continuing to act in ways which are prohibited by the order. It is important that you report all breaches, even those that seem minor. If repeated breaches are not recorded or acted upon, the frequency and severity of the breaches may increase over time.



## ***“But he only sent me flowers...”***

Although a small proportion of defendants may genuinely not have understood the AVO, most breaches of an AVO stem from a desire to continue their controlling behaviours and to make the AVO seem insignificant. If you are noticing small breaches, such as messages or gifts that you find intimidating or harassing or where there is a ‘no contact’ condition in the AVO, report these incidents to the police.

While you should do your best to explain to police what has happened, don’t worry about whether there is enough evidence about a breach before you call them. Even if the police decide not to charge the defendant, the history of reports will show a pattern of behaviour that may assist police in dealing with future incidents.

The attendance and investigation by police may be enough to set the defendant straight about which behaviours the AVO prohibits and to discourage the defendant from persisting in breaching the AVO. In some cases, it may be the threat or possibility of criminal punishment that makes a defendant comply with an AVO.

***‘Minor’ breaches may lead to increasing numbers of breaches or breaches that are more serious.***

***Your AVO can send a clear message about acceptable behavior and help you to reclaim your right to live free from violence.***

## **How do I report a breach?**

You can report a breach:

- in person at a police station; OR
- by telephoning a police station ; OR
- in an emergency, by calling ‘000’.

## **Reporting a breach at a police station**

If you go to a police station to report a breach of an AVO, police might record your report in a police notebook. You should read this record carefully, ask for any amendments to be made if it is incorrect or unclear and then sign it once you are happy with it.

Even if a record is made in a police notebook, your report should also be made on the police computer system. You should ask for an ‘Event number’ and the name of the Officer in Charge (OIC). Write down the Event number as this number allows any police officer to look up the details of that incident on the Police COPS computer system.

You can also tell the police officer that you would like to make a written statement about what happened. You can ask to see the Domestic Violence Liaison Officer (DVLO) if there is one at that station, and if you feel more comfortable you can ask to make a report with a female officer if one is available. If you can’t make a statement that day, make a time to come back to the police station in the following few days or ask for a police officer to come to see you.

Remember you can take along a support person with you to the police station to report the breach.

*A police witness statement is a document that may be used as evidence by the police to help prosecute the defendant in court for breaching the AVO.*

## **Reporting a breach by telephone**

In an emergency, dial '000' from a mobile phone or landline. Details reported on the '000' number are always recorded. If you have access to a mobile phone but are 'out of range', have poor reception, or if you can't unlock the keypad, try using the special emergency mobile call service number '112' instead.

If you call your local police station, you can ask to speak to an officer on duty to report a domestic violence offence. You may also be able to talk with the DVLO.

To make sure that your report is officially recorded, ask for an 'Event number' and the name of the Officer in Charge (OIC). Write down the Event number as this number allows any police officer to look up the details of that incident on the Police COPS computer system. You can also arrange a time to come in and make a statement to police or you can ask for a police officer to come to see you.

## **Your record of making a report**

It's a good idea to keep a written record of:

- When, where and how you have made each report of breach to the police
- The name of any police officer you deal with and the station at which they work
- The police 'Event number' for the incident (you may have to ask for this).

Women's Legal Services NSW has a publication called the AVO Breach Diary which can be used for recording breaches of AVOs.

## **Does reporting a breach mean I will have to go to court?**

Giving a statement may mean that you are later required to give evidence in court proceedings for breach of the AVO as a witness against the defendant if they plead 'not guilty' to a charge. If this happens, you may be cross-examined by the defendant's solicitor, or by the defendant, if the defendant has no solicitor.

Appearing in court can be an unsettling experience. As the victim, you do not need your own solicitor. It may be possible to obtain the assistance of the Women's Domestic Violence Court Advocacy Service (WDVCAS) worker and use protective measures at court such as a safe room or giving evidence by video link or behind a screen. It is important however that you weigh the unpleasant aspects of the possibility of a court appearance against the advantages of providing a witness statement. These advantages include:

- A criminal case against the defendant for breach of an AVO is more likely to go ahead. Often the evidence in court you give is the only evidence against the defendant. A case can't be brought without evidence.
- The police may be more active in enforcing your AVO if you show that you intend to support their efforts.
- The defendant will be reminded of the power of the AVO and that they do not control you.

## ***How should Police respond to a breach of an AVO?***

### **Role of police**

The responsibilities of police in relation to domestic violence are to:

- investigate and charge the defendant where there is evidence of an offence
- take action to provide for the safety of victims
- bring offenders before the court
- work with local service providers towards prevention of domestic violence.

### **Helping the police to respond effectively**

Police procedures require police to investigate any breach of an AVO or domestic violence offence. If police investigate a breach and decide not to charge the defendant, they must make an official record in writing with their reason for this decision.

Though the police have legal and professional obligations to respond to your safety needs as a protected person, your AVO will be most effective where you:

- report all breaches as soon as they occur
- co-operate with police as they investigate your reports
- provide a statement and attend court as a witness, if necessary
- provide additional evidence, where possible, to back up your statement about what happened.

Remember you can take along a support person (such as a community worker or friend) when you speak with police or go to court.

If you need an interpreter, there are free interpreting services available to speak with police and in court for Non-English speakers and people with a hearing impairment.

## **Following-up on police action**

*If the police response to your report of a breach of your AVO does not seem right to you, or if you do not understand what police have said or done, or you have any questions about any aspect of your AVO, you can take steps to follow-up with police.*

*If you have concerns about taking these actions yourself and don't know what to do next, your WDVCS or domestic violence support service may be able to help. See the inside back cover for contact details.*

*Below are some general suggestions to help you to enforce your rights to protection under your AVO:*

**Step 1:** *Contact your local police station and ask if there is a Domestic Violence Liaison Officer (DVLO) in your area. A DVLO is a police officer who has been specially trained to assist and support victims of domestic violence. If there is a DVLO you should speak to them about your concerns. If you would be more comfortable speaking to a female police officer try to arrange this when you make the appointment. If the problem is not resolved, or your problem is with the DVLO, go to the next step.*

**Step 2:** *Contact the Duty Officer at your local police station and explain your concerns or, if you have one, ask your domestic violence worker or lawyer to do this on your behalf. If you are still not satisfied with the police response then you may wish to seek legal advice; and/or*

**Step 3:** *Send a complaint in writing to the Local Area Commander (addressed to your local police station).*

*In your letter, briefly outline what your complaint is about including all relevant names, dates and times and Event numbers (if possible). Politely state what action you want and need to be taken (such as an immediate investigation of a breach of your AVO and, for example, a variation of your AVO). Ask for a written response and follow-up with a phone call. Try to put a timeframe in for a response. Although this will depend on the urgency of your matter, a suggested timeframe is 14 days. Make sure you keep a copy of your letter.*

**Step 4:** *Contact the NSW Ombudsman for advice and help with complaints about police.*

*You can forward a copy of your written complaint prepared under Step 3 above to the NSW Ombudsman at the same time you send it to the Local Area Commander. While the Ombudsman generally asks people to try and resolve their complaints with Police first, they are also willing to be 'kept in the loop' with complaints and have a particular interest in police responses to domestic violence.*

*It is also possible to complain directly to the Ombudsman if there are good reasons for you not wanting to make a complaint directly to police. See the inside back cover for contact details for the Ombudsman.*

# Personal records and evidence

Your written statement about what happened may be enough evidence for police to prosecute the defendant for breach. However, any other relevant additional evidence, such as written, electronic and other forms of evidence may be used to support the police case.

## Keeping a journal

It is a good idea to keep a separate journal (perhaps in an exercise book or 'breach diary') of every instance of the defendant harassing, intimidating, abusing, stalking or hurting you, or otherwise breaching the conditions set out in your AVO, including events that you have not reported to police.

Important information to include in each entry:

- Date and time of the incident
- Description of events - who did what, when and where, in time (chronological) order, including what you saw, heard or otherwise perceived (eg smelt or felt)
- Names of children or other people (witnesses) at or near the incident
- Action taken by you after the incident, such as any medical treatment or who you spoke to (include name of doctor or hospital and a record of injuries)
- If the event was reported to police: detail whether it was reported by phone or in person, date, time, name of police officer and station reported to and 'Event number'.

## Answering machines and voicemail

A message left by the defendant on your answering machine, mobile phone or voicemail service may be evidence of a breach of your AVO. These messages can be played directly to the police and may be used as evidence in court. Be careful to save the message and get your phone to the police as soon as possible so they can record it to be used as evidence in court. In some cases police may ask to keep your telephone for a period of time to preserve the evidence. There are other methods of recording messages from 'smart phones' using technologically appropriate services. For more information about this ask the WDVCS or police for referrals. See the inside back cover for contact details.

It is a good idea to check the practices of your telephone carrier in relation to saving voicemail messages. Under some plans, saved messages are automatically deleted within a few days.

## Records of telephone calls made to your phone

Records of repetitive, harassing or abusive telephone calls can be used as evidence of breach of an AVO but it is necessary to identify the phone number of the incoming call. Once it is known where a call is being made from, calls can be investigated, by your telephone service carrier or by police (or both).

If you are not able to view the incoming phone number on your mobile phone or land-line, you can ask to have the calls traced through your telephone service provider or police. Your service provider can refer you to the person who

deals with unwelcome call complaints to discuss your particular needs. Remember to ask if fees apply to any investigations or tracing of unwanted calls.

On a land-line, you may be able to use 'call return' (e.g. for Telstra customers, ring \*10#) to identify the phone number of the last call to your phone. Alternatively, the incoming number may be able to be displayed on your telephone screen, using 'call number display'. You may have to speak to your telephone service provider to arrange for 'call return' and 'call number display' to be enabled on your phone. Remember to ask if fees apply for this service.

If you are having problems with your telephone service provider or are dissatisfied with their response you can contact the Telecommunications Industry Ombudsman. See the inside back cover for contact details.

### **SMS, MMS, email and social media**

If a defendant is breaching an AVO by sending you text messages, pictures or videos through email, MMS or SMS or through social media such as Facebook take care to save them or take 'screen shots' rather than delete the message. You should also contact the police to report the breach of

AVO and ask that they download or keep a record of the messages. It may also be possible to download the messages and print them out depending on the type of technology you are using.

### **Photographs and video**

A photograph, CCTV footage or other video may be valuable evidence of a breach, especially if it was taken with a digital camera or mobile phone which contains a record of the time and date it was taken. However if you only have a printed photo with no date or time, it may still be useful to show police or use in court proceedings.

### **Injuries**

Make sure you see a doctor or go to the hospital if the defendant injures you. If your injuries are visible, have them photographed in colour with the date and time recorded and have the size of your injuries measured. You can also request your medical records from your doctor or hospital as evidence in your case.

Inform the police if you have suffered any injuries and sought medical treatment.



## Recording a conversation

A recording of an abusive or intimidating conversation can be powerful evidence but it is important that you understand the legal situation.

If a conversation is not private you are able to record it. For example, if the defendant yells where neighbours could overhear, that would not be a private conversation. On the other hand, if the defendant threatens you over the phone or inside your home, that may be considered a private conversation.

Under the *Surveillance Devices Act 2007* (NSW), in general it is illegal to record a private conversation, even if you are a party to the conversation. Making an illegal recording is an offence punishable by fines or possibly imprisonment.

Where you are a party to a private conversation, there are some exceptions which allow recording. These include:

- Where all parties involved in the conversation give their consent to be recorded (think about your safety when doing this); and
- Where recording the conversation is reasonably necessary to protect your lawful interests (this can be hard to prove).

In certain circumstances, even if a private conversation was unlawfully recorded, a magistrate or judge may still take that evidence into account.

If you have a recording and you are unsure what to do or whether any of the exceptions apply, seek legal advice.

## Other witnesses

Evidence from other people who were present at the time of an incident can be very useful to corroborate (back up) your version of what happened. When police are investigating a breach, they will usually want to know about other witnesses and get their statements. However, memory tends to fade over time so it is a good idea to ask any witnesses to write down what they saw or heard and when, as soon as possible after the incident if this is practical for you. It is also important that witnesses arrange to make a statement to a police officer as soon as possible after the incident.

It is not advisable for you to collect witness statements from children as it may undermine the quality of evidence that can be presented in court. Police have special procedures for interviewing children.

You do not need to have witness statements to report a breach.

## AVOs and children

### Separate orders for children

The law states that each of your children under 16 years old of age should be named as a protected person on your AVO unless there are good reasons not to. However, even if they are not named, the mandatory orders in all AVOs still protect 'a person with whom the protected person has a domestic relationship'. This provision clearly includes your children. Intimidation, stalking, threatening or harassing your child(ren) would be a breach of the AVO.

If you think your children need a separate AVO for their protection and they are aged under 16 years, only a police officer can apply for an AVO for their protection.

A copy of an AVO naming your children should be given to their school or childcare centre.

### **Intimidation of children**

As well as behaviour directed towards the child, the child seeing or hearing domestic violence directed towards another person may be seen by a court to be intimidating for the child.

The definition of intimidation includes any conduct by the defendant that causes you to fear any injury or violence towards your child.

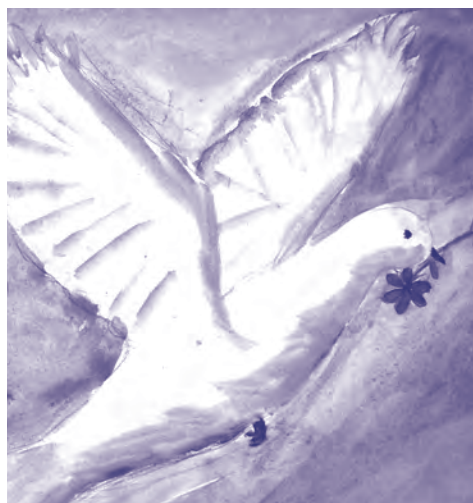
### **The effect of domestic violence on children**

The trauma of domestic violence can have serious short-term and long-term effects on a child's physical and emotional well-being.

A child who has experienced domestic violence - either as a victim or as a witness - may benefit from counselling. To find an experienced counsellor for your child in your area, contact your local Women's

Domestic Violence Court Advocacy Service, Family Support Service or Victims Services. See the inside back cover for contact details.

*"Intimidation" is defined as conduct amounting to harassment or molestation, or the making of repeated telephone calls, or any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.*



### **Women's Domestic Violence Court Advocacy Service**

*The Women's Domestic Violence Court Advocacy Service (WDVCAS) has workers attached to Local Courts across NSW. WDVCAS workers can support and assist you at court with applying for or varying your AVO. They can also assist you to obtain legal advice and with referrals to other helpful services in your area and provide support if you need to appear in court as a witness against the defendant. Contact LawAccess NSW or Legal Aid NSW to find out where your nearest WDVCAS is located. See the inside back cover for contact details.*



# Varying or revoking your AVO

## What is a variation?

Variations to an AVO can include:

- adding to or removing orders in the AVO;
- shortening or extending the duration of the AVO;
- revoking (removing) the AVO.

## How is an AVO varied?

An AVO can only be varied by making an application to the court. As an order of the court, it cannot be changed by simple agreement between you and the defendant. An AVO can be varied by the court with the consent of the defendant.

Any of the following people can make an application to vary an AVO:

- a police officer;
- one of the protected persons under the AVO as long as they are aged 16 years or over;
- the defendant.

If an AVO has any protected people named on it who are under 16 years of age, only a police officer can apply for a variation.

An AVO will only be varied or removed if the court is satisfied that there has been a change of circumstances that justifies the variation or removal.

## Should I ask the police to vary my AVO?

If the police applied for your AVO, you can ask the police to apply to vary your AVO. You will need to explain to police why you want to vary your AVO. If you are

unsatisfied with the police response to your request, follow the steps outlined on page 10 to have your concerns resolved.

If you do not have any children under 16 years of age named on your AVO, and the police won't apply for a variation or if you'd prefer to make your own application, contact your Local Court to complete an application. The defendant (and the police if it was a police application for an AVO) must be notified of any application to vary.

If the defendant applies to vary the AVO, you (and the police if it was a police application for an AVO) must be notified of the application.

## Changing specific details on your AVO

If a specific place such as your address, workplace, educational institution (TAFE, University etc) or children's school or childcare centre is listed on the AVO and this changes while your AVO is in force, you may need to consider making a variation application to change these details.

Before making a decision about whether to make an application to vary your AVO, it is worth weighing up a number of factors, such as:

- does the defendant know where you have moved to?
- how much protection will the AVO give you without disclosing the new details?
- are up to date details essential for maintaining protection under the AVO?

It is advisable to get some legal advice on this issue before proceeding with an application.

## Getting back together

Depending on the terms of the AVO, you can still live with and have a relationship with the defendant.

If you decide to reconcile after an AVO is made, you may need to vary your AVO if the orders prevented the defendant from living with you, coming to your house or contacting you. You can keep conditions in the AVO that prohibit behaviour such as assault, harassment, threats and intimidation while at the same time allowing for day-to-day contact or allowing for living together. You might also consider applying for conditions tailored for the new living arrangements (eg that the defendant must not come near the house under the influence of alcohol or drugs).

## Extending the AVO

The AVO should state how long it is in force. If it does not state the period of time, then your AVO provides you with protection for 12 months.

If your AVO is due to expire and you still have fears for your safety, you can apply to extend it. Applications can be made through the Registrar at the Local Court or, if your AVO has children listed on it, police will need to apply on your behalf.

Your application will need to include your reasons for seeking an extension. In general you will need to show that breaches have occurred while the AVO has been in place. These do not necessarily need to be breaches where police have charged the defendant.

You should get started on your application for variation (for an extension) no later than six weeks before the expiry of your current AVO. The last day you can apply for an extension is on the last (business) day before your AVO expires.

If you are not able to get an extension of your AVO, you can apply for a new AVO for your protection if you need one.

## Staying in or leaving the home

### Should I stay in my home or leave?

The decision about staying in or leaving the home is individual to each person and their situation - there is no one 'right' approach. You might feel that you and any children living with you would be better off staying in your own home, or you might prefer to set up a new household.

If you own a home and move out, it does not affect your rights to that property if you separate and divide up the property.

It is a good idea to get legal advice about your rights to the property if you separate and want to divide up the property.



If you are in a private rental and you have left that property or wish to stay in the rental property and remove the defendant from the lease, you should contact your local Tenants Advice Service through Tenants NSW. See the inside back cover for contact details.

Sometimes moving into a refuge is the safer option for a time. If you need to find a refuge, the Domestic Violence Line can talk with you about options. See the inside back cover for contact details.

### **Exclusion orders in AVOs**

If you believe you are unsafe in your home, or that it would not be safe to return to your home without orders excluding the defendant, you can ask the court for an order that prohibits the defendant from living at, entering or approaching your home, even if the defendant's name is on the title or lease of the property.

Before making an order excluding the defendant from the home, the court must consider the accommodation needs of all parties and the safety of the protected person and children.

### **Property recovery order**

When an AVO is made the court can make an 'ancillary property recovery order'. This order enables you to collect personal belongings from your house if you are leaving the premises. For your safety, the court can order that the police or another person must go with you when you collect the property.

The court also has power to make orders for the defendant to be able to collect personal property from your residence in the company of police or an agreed person if they have been excluded from the premises.

### **Housing assistance**

If you are experiencing domestic violence, you may be eligible for priority housing assistance. This means that you could be offered a house ahead of other people if you are eligible for social housing, have an urgent need for medium-to-long term housing and are unable to find a private rental you can afford.

If you have an urgent housing need because of domestic violence, you may be eligible for emergency temporary accommodation. Housing NSW also has a program called Start Safely which can provide private rental subsidies for people who have experienced domestic violence.

If you currently live in public housing and have experienced domestic violence, you can contact Housing NSW to apply for a transfer to another property, temporary accommodation or for assistance in taking over the tenancy if your name is not already on the lease. For more information on social housing contact Housing Pathways. See the inside back cover for contact details.

### **Staying Home Leaving Violence Program**

The 'Staying Home Leaving Violence' (SHLV) program can assist you to remain

safely in your home by working with you to plan for your safety, liaise with police, pay to upgrade security in your home and change locks, provide court support and referrals to legal, financial, counselling, tenancy and other services.

The SHLV program is currently operating in 18 areas in NSW. Contact Family & Community Services NSW to see if there is a SHLV program in your area. See the inside back cover for contact details.

## ***Other supports***

### **Centrelink 'Crisis Payment'**

You may be eligible to receive a Centrelink 'Crisis Payment' if you are in severe financial hardship, and

- you have left your home because of domestic violence and intend to set up a new home, or
- you have remained in your home after experiencing domestic violence and the family member responsible has left the home.

In order to be eligible, you must apply to Centrelink for the payment within 7 days of either of these events. If you are unsure about your eligibility for the Crisis Payment or any other Centrelink benefits ask for an appointment with a Centrelink social worker.

### **Victims Support Scheme**

If you are a victim of an act of violence in NSW you can apply for assistance from Victims Services.

Victims Services can assist you with some or all of the following:

1. Information, referrals and advice;
2. Accessing free counselling (generally up to 22 hours);
3. Financial assistance for immediate needs (eg changing locks);
4. Financial assistance for economic loss (eg medical expenses or loss of earnings);
5. Recognition payment (previously known as victims compensation).

Most applications for a recognition payment must be lodged within 2 years from the date of the act of violence, or 2 years from turning 18 for children.

**NOTE: For recognition payment applications relating to domestic violence, child abuse or sexual assault, claims must be lodged within 10 years after the act of violence, or 10 years from turning 18 for children.** However, there is no time limit at all for recognition payment applications made by victims of child sexual abuse.

Generally, applications for financial assistance must be lodged within 2 years from the date of the act of violence, or 2 years from turning 18 for children.

For most payments you will need to have documentary evidence of the act of violence (such as a report from police) and evidence of the injury (such as a medical or counselling report). The injury can be physical or psychological.

There is no time limit or documentary evidence required for making an application for counselling.

For more information contact Victims Services. See the back inside cover for contact details.

## Right to request flexible working arrangements

Victims of domestic violence have a right to request flexible working arrangements for a period of time. The change of working arrangements could be used to attend appointments with police, lawyers, counselling etc and can also be used to increase safety by, for example, changing hours of work (eg working less hours or changing start or finish times), changing patterns of work (eg working split shifts or job sharing), changing the place of work (eg working from another office or working from home). For more information contact the Working Women's Legal Service. See the inside back cover for contact details.

## *AVOs and family law*

### What is 'family dispute resolution'?

Many people with AVOs are also involved in disputes about parenting arrangements. Family dispute resolution (or 'FDR') is a form of mediation where parents in dispute can try to reach agreement about children with the help of a trained facilitator, also called a Family Dispute Resolution Practitioner (or 'FDRP'). It is usually compulsory to attend FDR to try to resolve issues before going to the family courts, however there is an exception to this requirement where there has been or is a risk of domestic violence.

## Going to family dispute resolution

FDR may not be appropriate where there has been domestic violence because the power imbalance means that you might be unable to negotiate effectively, might feel pressured to agree to certain arrangements, or you might feel scared or unsafe. If the court or a legal representative is talking to you about going to family dispute resolution, it is important they are aware there is domestic violence in your relationship.

However, the option of FDR may be easier, less daunting and financially better than going to court even where there has been violence in the relationship. If you decide to try FDR, here are some things to think about:

- If your AVO does not allow contact for family law purposes, you or the defendant should apply to the Local Court for a variation to the AVO so that the defendant can attend FDR without breaching the AVO.
- You should only attend FDR with an accredited practitioner. Often this is through a Family Relationship Centre (FRC). To find a FRC in your area call the Family Relationships Advice Line. See the inside back cover for contact details.
- The dispute resolution service must assess whether parties with a history of domestic violence should undertake mediation. They should also have procedures in place to ensure your safety.

- Special arrangements may be made such as shuttle mediation (where the parties sit in separate rooms and the mediator goes between them) or telephone mediation (where there could be two phone lines so the parties don't have to speak directly to each other). The FRC may also be able to arrange separate arrival and departure times for you and your ex partner. If these arrangements are not offered to you, ask for them.
- Legal Aid NSW and some FRCs offer conferencing/mediation where you can both have lawyers present. This is advisable where there has been violence and can help you reach a safe and just agreement. To find out if you can access these services contact Legal Aid NSW or your local FRC. See the inside back cover for contact details.

### **What if I don't want to try family dispute resolution?**

**IT IS NOT COMPULSORY** for parties to participate in FDR before starting a parenting matter at the family courts in cases where there has been or is a risk of family violence or abuse.

Your options are:

1. Go straight to court: Along with the usual application forms you must file a Form 4; which is a Notice of Child Abuse, Family Violence or Risk of Family Violence. This will require the court to take action in response to the allegations and to enable evidence to be gathered as quickly as possible.



2. Tell a FDRP that you have experienced domestic violence and you do not want to attend FDR. A certificate saying that the family dispute resolution is 'inappropriate' can be given. This certificate (called a section 60I certificate) enables you to file an application in court for parenting orders.

If you are unsure which path to take, it is strongly advisable to seek independent legal advice.

### **Family law orders vs AVOs**

Even though you may have an AVO, perhaps even an AVO that includes your children, it is important to find out if you need new or changed parenting (family law) orders that take into account the circumstances surrounding the AVO.

If you have an AVO, any later parenting orders that are inconsistent with your AVO will override those sections of your AVO.

For example:

- The AVO states the other parent is to stay away from your home.
- The parenting order states the other parent is to collect the child from your home on Fridays at 4pm.

The other parent will not be in breach of the AVO on Fridays at 4pm but they will be in breach if they go to the home at any other time. However, if the defendant harasses or intimidates you while collecting the child, this would still be a breach of the AVO.

Make sure your legal representative and the Family Court are aware of any history of domestic violence when you are talking to them about family law orders.

In family law proceedings, an AVO may be taken into account as evidence of family violence when the Court is deciding about the best interests of a child. This includes past and present AVOs including interim AVOs.

If you need family law parenting orders, you should get legal advice.

## ***Legal advice in Family Law matters***

*To obtain free legal advice for family law matters, you can contact Legal Aid NSW, Women's Legal Services NSW or LawAccess NSW. Many private family lawyers also offer a free appointment to discuss your options before starting legal matters. See the inside back cover for contact details.*

## Changing a parenting order

A magistrate in the Local Court has special powers to suspend, cancel or change a parenting order at the same time as making or varying an AVO. This is useful if a person has been exposed to domestic violence as a result of the operation of a parenting order, such as an assault or abusive behavior at a child change-over.

This can be a convenient and quick way to get your parenting orders to 'match' with your AVO (without needing to go to two courts). However, sometimes magistrates are reluctant to change parenting orders. You may need to be prepared to ask the Local Court or your lawyer about making changes to your parenting orders "under Section 68R of the *Family Law Act*" at the same time as getting or varying your AVO.

## Family violence and the Family Law Act

In 2012, the *Family Law Act 1975* was changed to:

- Make the safety of children the top priority in parenting cases;
- Expand the definition of 'abuse' and 'family violence' to include more and different types of abusive and controlling behaviour;
- Make sure that the courts and people working in family law are more aware of family violence and give them obligations.

Alternatively, you can apply separately to a family law court for changes to your existing parenting orders. An example of a change might be if you hand the children over at your home or the defendant's home, you might ask to change the parenting orders so you can hand the children over at a public place.

It is a good idea to get legal advice as soon as possible if you need changes to your existing parenting orders.

## AVOs and immigration

*There are family violence protections to ensure that visa applicants do not remain in abusive relationships in order to get permanent residence in Australia. You may be entitled to get permanent residence even if your relationship has broken down and your sponsor has withdrawn support for the visa application.*

*If you have any concerns about your immigration status, contact LawAccess NSW or the Immigration Advice & Rights Centre. See the inside back cover for contact details*



## What can I do to stay safe?

There are practical steps to minimise risk to you and your children's safety, even after obtaining an AVO. Some of the steps you can take are:

- Tell trusted people at work about your AVO and if the defendant is not allowed to go near your workplace give them a picture of the defendant.
- Tell trusted neighbours about your AVO and ask them to call the police if they feel you may be in danger.
- Give a copy of the AVO to your children's school, preschool or childcare centre.
- Telephone and email:
  - Change your telephone number or get a silent number
  - Change the settings on your mobile phone or speak to your telephone service provider about:
    - a) 'Call Number Display' (so the numbers of all incoming calls are displayed on your phone screen)
    - b) 'Caller ID blocking' (so your new number doesn't appear on the defendant's call number display)
    - c) 'Selective Call Forward' (to re-direct calls from the defendant's phone)
    - d) 'Distinctive Ring' (so your phone has a special ring-tone when the call is from the defendant's telephone number.
  - Install an answering machine and screen incoming calls before answering
  - Change your email address
- Store an amount of money, a credit card and a copy of your AVO, details of bank accounts and some spare clothes with a trusted friend.
- Open a new bank account and revise automatic deductions and payments.
- Increase your home security.
  - Change door locks (if the defendant has a key); install window locks; install an internal door lock in a room with a window or external door.
  - Install motion-sensitive lighting systems, security doors and security alarms, if possible.
- Make sure your children know what to do and what not to do in an emergency.
- Keep a phone with you at all times.
- Change your normal routines, shopping destinations and travel routes.
- Complete a statutory declaration to be listed as silent on the electoral roll so that a perpetrator cannot make contact with you.

For further information, contact a Women's Domestic Violence Court Advocacy Service or the Staying Home Leaving Violence program. See the inside back cover for contact details.

## Living with an AVO

You may find that some friends or relatives react negatively when they discover you have an AVO against the defendant. This can feel harsh, unfair or even a bit lonely. It may make you wonder whether the AVO is a good idea at all. Unfortunately there are still many myths about domestic violence in the community and social isolation is a tool commonly used by domestic violence perpetrators.

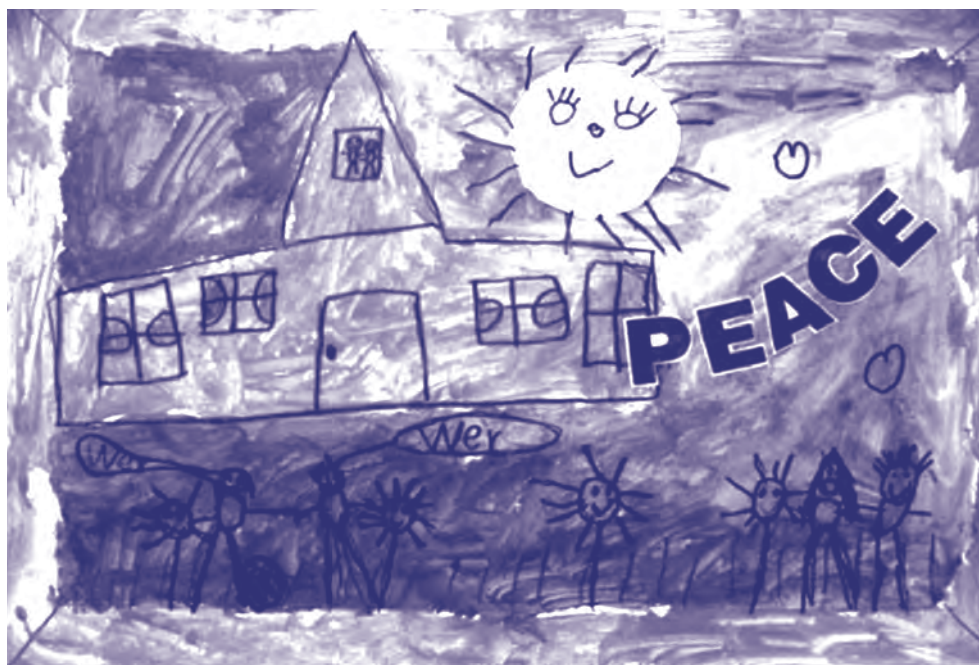
In the end you may need to decide, once and for all, that your safety and right to live in peace is more important than the opinions of a few people who may not have your best interests at heart.

So, as hard as it may be sometimes, it's important to stay strong in yourself, and continue to act to reinforce the strength of your AVO with some of the ideas contained in this booklet.

### Support is available

You don't have to try to stay strong all alone. There are people and organisations that understand what you're going through and can help you in the difficult times. Free or affordable specialist counselling is available through Medicare, Victims Services, Relationships Australia, CatholicCare (CentaCare) and Unifam. See the inside back cover for contact details.

To be strong then, don't stay silent! Keep the following list of contacts handy and call someone if you need support or information.



# Useful Contacts and Resources:

## **Emergency and crisis counselling**

Emergency (police or ambulance)..... 000  
or (from mobile phones)..... 112

Lifeline.....13 11 14  
[www.lifeline.org.au](http://www.lifeline.org.au)

Domestic Violence Line (24/7) ..... 1800 656 463  
[www.community.nsw.gov.au](http://www.community.nsw.gov.au)

Department of Family and Community Services  
Child Protection Helpline.....132 111  
[www.community.nsw.gov.au](http://www.community.nsw.gov.au)

Rape & Domestic Violence Services Australia  
(24/7 counselling and support)  
[www.rape-dvservices.org.au](http://www.rape-dvservices.org.au)

NSW Rape Crisis.....1800 424 017  
[www.nswrapecrisis.com.au](http://www.nswrapecrisis.com.au)

1800 RESPECT ..... 1800 737 732  
[www.1800respect.org.au](http://www.1800respect.org.au)

## **Translating services**

Translating and Interpreting Service..... 131 450  
[www.tisnational.gov.au](http://www.tisnational.gov.au)

National Relay Service (hearing impaired)  
.....133 677 (TTY/voice calls)  
.....1300 555 727 (speak and listen)  
.....0423 677 767 (SMS relay)  
[www.relayservice.gov.au](http://www.relayservice.gov.au)

## **Legal services**

LawAccess NSW (for Legal Aid NSW and WDVCS)  
..... 1300 888 529  
[www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au) &  
[www.lawassist.lawaccess.nsw.gov.au](http://www.lawassist.lawaccess.nsw.gov.au)

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

Women's Legal Services NSW  
[www.womenslegalnsw.asn.au](http://www.womenslegalnsw.asn.au)

1. Domestic Violence Legal Advice Line  
.....(02) 8745 6999 or 1800 810 784

2. Indigenous Women's Legal Contact Line  
.....(02) 8745 6977 or 1800 639 784

3. Women's Legal Contact Line  
.....(02) 8745 6988 or 1800 801 501

4. Working Women's Legal Service  
.....(02) 8745 6954

Local Court of NSW.. [www.localcourt.lawlink.nsw.gov.au](http://www.localcourt.lawlink.nsw.gov.au)

Find legal answers..... [www.legalanswers.sl.nsw.gov.au](http://www.legalanswers.sl.nsw.gov.au)  
for information and 'Hot topics' publications on  
'Domestic Violence' and 'Families'

## **LGBTIQ**

Safe Relationships Project, Inner City Legal Centre  
.....(02) 9332 1966 or 1800 244 481  
[www.iclc.org.au](http://www.iclc.org.au)

ACON, Anti Violence Project  
.....(02) 9206 2000 or 1800 063 060  
[www.acon.org.au](http://www.acon.org.au)

Twenty10 and the Gay and Lesbian Counselling Service  
.....(02) 8594 9555  
[www.twenty10.org.au](http://www.twenty10.org.au)

The Gender Centre .... (02) 9569 2366 or 1800 069 115  
[www.gendercentre.org.au](http://www.gendercentre.org.au)

QLife  
[www qlife.org.au](http://www qlife.org.au)  
..... 1800 184 527 (daily 5:30pm - 10:30pm)

Another Closet - LGBTIQ DFV Interagency  
[www.anothercloset.com.au](http://www.anothercloset.com.au)

## **Immigration**

Immigration Advice & Rights Centre ... (02) 8324 0799  
[www.iarc.asn.au](http://www.iarc.asn.au)

Immigrant Women's Speakout ..... (02) 9635 8022  
[www.speakout.org.au](http://www.speakout.org.au)

## **Family law**

Family Law Court ..... 1300 352 000  
[www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

Family Relationships Advice Line..... 1800 050 321  
[www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)

## **Young people**

Kids Help Line..... 1800 551 800  
[www.kidshelp.com.au](http://www.kidshelp.com.au)

Legal Aid Youth Hotline ..... 1800 101 810

Office of the Children's Guardian..... (02) 8219 3600  
[www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au)

## **Police and ombudsman**

NSW Police

Assistance Line..... 131 444

Customer Assistance Unit (complaints) ... 1800 622 571  
[www.police.nsw.gov.au](http://www.police.nsw.gov.au)

NSW Ombudsman

.....(02) 9286 1000 or 1800 451 524  
[www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

Telecommunications Industry Ombudsman

.....1800 062 058  
[www.tio.com.au](http://www.tio.com.au)

## **Housing**

Housing Pathways..... 1300 468 746  
[www.housingpathways.nsw.gov.au](http://www.housingpathways.nsw.gov.au)

Staying Home Leaving Violence -  
Family & Community Services NSW  
[www.community.nsw.gov.au](http://www.community.nsw.gov.au)

Tenants NSW  
[www.tenants.org.au](http://www.tenants.org.au)

## **Support for victims and Counselling Services**

Victims Services ..... 1800 633 063  
[www.victimsservices.justice.nsw.gov.au](http://www.victimsservices.justice.nsw.gov.au)

Women's Domestic Violence Court Advocacy Service  
.....1300 888 529 (Law Access)

Relationships Australia .....1300 364 277  
[www.relationships.org.au](http://www.relationships.org.au)

CatholicCare (CentaCare) ..... (02) 9390 5377  
[www.catholiccare.org](http://www.catholiccare.org)

Unifam Counselling and Mediation.....(02) 8830 0777  
[www.unifamcounselling.org](http://www.unifamcounselling.org)



### ***About Maree Livermore***

Maree Livermore is a lawyer, author and consultant on communications projects involving the law and access to justice. Her plain English guide to the new Australian family law system 'The Family Law Handbook' was published by Redfern Legal Centre Press in 2007.

### ***About Southern Women's Group Inc***

The Southern Women's Group Inc is a feminist organisation based on the far south coast of New South Wales working towards the empowerment of women and the elimination of sexism.

It auspices the Women's Resource Centre and the Far South Coast Women's Domestic Violence Court Advocacy Service.

**To order a copy of this booklet, download the text, or to provide feedback, go to [www.southernwomensgroup.org.au](http://www.southernwomensgroup.org.au) [www.womensresourcecentre.org](http://www.womensresourcecentre.org)**

