

# Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

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# Apprehended violence orders

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## Apprehended violence orders

### What is an apprehended violence order?

An *apprehended violence order* (often abbreviated to 'AVO' and sometimes called a *restraining order*) is a court order designed to protect people from violence and harassment by other people.

An AVO sets out conditions to restrict a person's behaviour in the future. It is not a criminal charge and it doesn't give the person a criminal record. However, the police keep details of the AVO and may charge a person for breaching its conditions. A person who is found guilty of breaching an AVO can be fined or sent to prison, and might get a criminal record (see *If someone applies for an AVO against you* on page 82).

A court will generally grant an AVO if the *applicant* has a reasonable fear of violence, stalking, harassment etc from the *respondent*.

*Violence* doesn't just mean physical assault. It also includes:

- threats to injure someone or to damage their property
- using words or actions to intimidate someone
- following or stalking someone
- making constant and unwanted phone calls
- forcing unwanted sexual behaviour
- psychological abuse, such as making someone feel inadequate or worthless
- economic abuse, using access to money to isolate and control someone.

**Note:** A court is unlikely to grant an AVO just because of these last two points.

## There are two types of AVO

### Apprehended domestic violence order (ADVO)

An order taken out against a current or former partner (husband/wife, de facto, girl/boyfriend), a relative or household member.

### Apprehended personal violence order (APVO)

An order taken out against someone unrelated and not a member of the same household, for example, a neighbour, classmate or (former) friend.

## Some words to know

- *AVO*: apprehended violence order
- *ADVO*: apprehended domestic violence order
- *APVO*: apprehended personal violence order
- *applicant* or *complainant*: a person applying for an AVO
- *chamber registrar*: a court officer who can help you apply for an AVO
- *defendant* or *respondent*: the person who the AVO is taken out against
- *informant* or *officer in charge*: a police officer who takes out an AVO on someone's behalf
- *protected person*: a person who is applying for an AVO or who has been granted an AVO by the court (sometimes referred to as the *person in need of protection* or PINOP)
- *provisional* or *interim order*: a temporary AVO.

## Conditions of an AVO

There are many different conditions which may be part of an AVO.

There are standard conditions that are part of every AVO. These are known as *statutory* or *mandatory* orders and are:

- The defendant must not assault, molest, harass, intimidate, threaten or otherwise interfere with the protected person.
- The defendant must not stalk the protected person.

The court can also order the defendant not to:

- contact the protected person (either directly or through a third person)
- approach the protected person (either at any time, or while under the influence of alcohol or another drug)

- reside at, enter or go within a certain distance (eg 100 metres) of the protected person's home, school or workplace
- possess firearms (guns) or any prohibited weapon (including knives, slingshots, capsicum spray and laser pointers).

The AVO can order the defendant to leave the protected person's home, even if it is also the defendant's home. This is called an *exclusion order*, and it is another type of condition on the AVO. Exclusion orders are sometimes hard to get, especially if the defendant is under 18. Exclusion orders are easier to get if the defendant has somewhere else they can live, or if there has been physical violence.

The protected person's AVO can also protect anyone in a domestic relationship with them (eg their spouse, their child, or a relative) if the protected person asks for these people to be included.

## How long does an AVO last?

An AVO can be made for as long as the court thinks is necessary to protect the protected person. Usually it will be for 12 months or 2 years. If the court doesn't decide the duration, then the AVO remains in force for 12 months.

When the AVO is due to expire, the protected person can seek to have it renewed if they need further protection.

## Applying for an AVO

There are several steps to applying for an AVO, and it isn't always easy. But there are people who can help you.

### How to apply for an AVO

To get an AVO you must usually show that you have a fear (based on reasonable grounds) of future violence, harassment, stalking or intimidation. To establish a reasonable fear, there doesn't need to have been actual violence, but past violence is often good evidence that there are grounds to fear future violence.

Applying for an AVO is free.

There are two ways of applying, depending on your age and the type of AVO you are seeking.

#### Through the police

You can make an application for an AVO through the police if:

- you are under 18, or
- are over 18 and have an intellectual disability, or

- you are seeking an apprehended domestic violence order, or
- the defendant has been charged with an offence involving violence to you or damage to your property.

A police officer *must* make an AVO application on your behalf if he or she suspects or believes that one of the following offences has recently been (or will be) committed:

- a domestic violence offence
- an offence of stalking/intimidation with intent to cause fear of physical or mental harm
- an offence of child abuse

*unless* you are at least 16 years old and the police officer believes you intend to make an application yourself, or if there is a good reason not to make the application.

If you are under 16, the *only* way to apply for an AVO is through the police (unless an older family member such as a parent is applying to include you in their own AVO).

## Through the court

If you are 16 or over, you can apply for an AVO by going to the chamber registrar at the nearest Local Court (or Children's Court if the defendant is under 18).

If you are 18 or over, and are seeking an apprehended personal violence order, this is usually the only way to apply.

Phone the nearest Local Court and ask for an appointment with the chamber registrar. There is often a waiting list, but if it is urgent, most chamber registrars will see you the same day. Tell them if you need an interpreter.

There is no fee and the chamber registrar can help with the paperwork if necessary. The chamber registrar will ask you why you want the order and what conditions you want on it.

## After you have applied for an AVO

Once you have applied for an AVO (either through the police or the court), you will be given a court date, usually a couple of weeks away.

### Notice to defendant

Normally, the defendant will receive a copy of the application. This notice tells the defendant that you have applied for an AVO against them, why you say you need an AVO, what conditions you are seeking, and details of when and where the matter is listed in court.

The police are responsible for serving the application on the defendant. If the court has made a *provisional order* (see below), this will be served along with the application.

In some cases the chamber registrar may issue a warrant for the defendant's arrest. This is rare but it might happen if the defendant's address is unknown or if there is a high risk that more violence will occur before the case gets to court. When a warrant is issued, the police can arrest the defendant and bring them to court so that the court can make an AVO immediately.

## Provisional orders

In the meantime, the police or the chamber registrar can arrange a *provisional order* (temporary AVO) to protect you until the court date.

A police officer may apply for a provisional order by telephone to a magistrate or registrar at any time.

The provisional order lasts for 28 days from when it is made, unless the court makes an interim or final order, revokes the provisional order or dismisses your AVO application.

A provisional order is not legally effective until the defendant knows about it. Usually this is when a copy is served on (given to) the defendant.

## Legal representation and court support

### If police apply for an AVO on your behalf

If the police apply for the AVO on your behalf, the police prosecutor will represent you in court (free of charge).

### If you apply for an AVO through the chamber registrar

If you apply for an AVO through the chamber registrar, you don't have to have a lawyer, but it is usually a good idea, particularly if the defendant is likely to oppose the application.

You need to arrange for a lawyer before the day of court, unless there is an AVO duty lawyer scheme at the court house.

You can ring the Domestic Violence Hotline or the Domestic Violence Advocacy Service for help with finding a lawyer.

Legal Aid sometimes represents applicants for ADVOs (domestic violence orders) who are not represented by the police.

Legal Aid sometimes represents applicants for APVOs (personal violence orders) in special circumstances (eg if there are allegations of serious violence, or the applicant is a child), but more often you have to find a private lawyer if you want to be legally represented.

See *Getting legal advice and assistance* chapter and *Contacts* on page 405.

## Court support

Some courts have a women's domestic violence court assistance scheme for women who are victims of domestic violence (see *Contacts* on page 410).

## Interpreters

If you need an interpreter you should tell the police or the court as soon as possible. You can ask for a female interpreter if you wish, but a woman is not always available. The interpreter is free of charge in domestic violence applications.

An interpreter is not always available on the first day at court, but must be ordered by the court. This usually means an adjournment. At some courts the police must order an interpreter for the first day at court.

It is better to use professional interpreters instead of family or friends, who often don't know how to interpret legal words. Family and friends may also be biased one way or the other. Professional interpreters must not tell anyone outside the court what they hear about you.

## What happens at court

AVO applications are heard in the Local Court (or the Children's Court, if the *defendant* is under 18).

To make an AVO, the magistrate must usually be satisfied that you fear violence, harassment or intimidation from the defendant, and that this fear is based on reasonable grounds.

However, the magistrate may make an AVO without being satisfied that *you* actually fear the conduct of the defendant, if the magistrate thinks there are reasonable grounds for an AVO and you:

- are under 16, or
- have an intellectual disability, or
- have been subjected to a personal violence offence (eg the defendant has assaulted or stalked you or damaged your property), there is a reasonable likelihood that the defendant may commit a personal violence offence against you, and the order is necessary to protect you from further physical violence.

## On the first return date

The first court appearance (usually called the *first return date*) is to find out what each person wants to do about the AVO. The possible outcomes of the first court date depend on whether both parties (the protected person and the defendant) appear in court on the day.

***If you are both present at court***

The magistrate will ask you if you still fear violence or harassment from the defendant. In some situations (eg if you are under 16 or have an intellectual disability) the magistrate will instead ask the police prosecutor if they hold fears on your behalf.

The magistrate will then ask the defendant if they consent (agree) to an AVO.

The possible outcomes are:

- If the defendant consents, the court makes a *final order* that includes the conditions you requested. Often the defendant consents because they can do so without admitting any of your allegations.
- Sometimes the defendant doesn't consent to an AVO, but offers *undertakings* (promises) not to do certain things. These are not legally enforceable and do not give the same protection as an AVO. As the applicant, you may accept these undertakings if you wish, but if the defendant breaches undertakings and you want something done about it, you will need to apply for an AVO all over again.
- If the defendant does not agree to the order, and you don't accept undertakings, the case is adjourned for a *hearing* on another day. In the meantime, the magistrate may make an *interim order*.
- In some cases (eg APVO cases where the allegations do not involve physical violence), some magistrates suggest that both sides go to a Community Justice Centre to *mediate* their dispute instead of having the matter heard in court.
- If you no longer fear the defendant (and the police do not hold any fears on your behalf), your application may be dismissed.

***If you are present at court but the defendant does not appear***

- If police haven't served the summons on the defendant, or the defendant has a good reason for not showing up to court, the magistrate usually adjourns your case to another date, and may make an interim order to protect you in the meantime.
- If the defendant was served with (given a copy of) the summons but does not turn up, the magistrate usually makes a final order *ex parte*, which means in the defendant's absence.

***If the defendant is present at court but you do not appear***

- If the application was made by you through the chamber registrar, and you do not appear in court, the application is likely to be dismissed unless you have a good reason for not turning up or there are serious allegations of violence.
- If it is a police application, the police prosecutor will usually get an adjournment to give you a chance to appear on another date.

If you know that you won't be able to turn up to court, try to contact the court beforehand and ask for an adjournment.

### ***If neither of you appears at court***

The application may be dismissed completely, or it may be adjourned to give the parties another chance to appear. It is more likely to be adjourned if it is a police application and/or involves serious allegations of violence.

### **Interim order**

If the AVO application is adjourned to another date, the court may make an *interim* (temporary) order to protect you until the next court date. An interim order is similar to a provisional order but is made by a magistrate in open court.

The court is more likely to make an interim order in domestic violence situations, or where the applicant is under 18.

The court *must* make an interim order if a person is charged with stalking, intimidation or a domestic violence offence, unless the court is satisfied that an interim order is not required.

Like a provisional order, the defendant must be aware of the interim order before it is legally effective. Either the defendant must be present in court when the interim order is made, or a copy must be served on (given to) the defendant.

An interim AVO has the same effect as a final AVO while it remains in force. This means that breaching an interim AVO is a criminal offence.

### **On the hearing date**

If the defendant does not consent to an AVO being made, the matter may be set down for *hearing*. At the hearing, the applicant and respondent may give evidence and call whatever witnesses they wish (see *Pleading not guilty and going to hearing in the Local or Children's Court* on page 282 and *Appearing in court as a witness* on page 292).

A hearing for an AVO application is quite similar to a hearing for a criminal charge. The main difference is the *standard of proof*.

To find someone guilty of a criminal charge, the magistrate must be satisfied *beyond reasonable doubt* that the defendant is guilty.

To grant an AVO, the magistrate must be satisfied *on the balance of probabilities* that the applicant has a fear, based on reasonable grounds, of conduct by the defendant that is sufficient to justify an AVO. In some situations (outlined on page 78) the court does not have to be satisfied that the applicant actually fears the defendant's conduct.

It is possible that a magistrate might dismiss a criminal charge against the defendant, but be satisfied on the balance of probabilities that there is enough to justify an AVO.

## If the defendant is also charged with a Criminal offence

Often, a defendant to an AVO application will also be charged with a related criminal offence (eg assault, stalking). In this situation, the AVO application is usually adjourned until the end of the criminal proceedings, unless the defendant agrees to a final AVO before that.

If the defendant is charged with stalking, intimidation or a domestic violence offence, the court must make an interim AVO until the proceedings are finalised, unless the court thinks there is no need to make one (eg because there is already an order in place).

If the defendant is convicted (found guilty) of one of these offences, the court must make an AVO unless the court thinks there is no need for it.

## Breach of an AVO

A *breach* is when a person deliberately breaks a condition of the AVO. For example, if the AVO tells the defendant not to contact you, and they ring you, they have committed a breach.

If the defendant breaches the AVO, you should tell the police immediately. Also, write down the details such as exactly when and where it happened, in case you need to tell the court later.

Breaching an AVO is a criminal offence. The police can arrest and charge the defendant with breaching the AVO. If the breach involves physical violence, there is a strong chance that the defendant will not get bail.

At court the defendant might plead 'guilty' or 'not guilty'. If the plea is not guilty, the case is adjourned for hearing on another date. At the hearing, witnesses (probably including you) give evidence. Then the magistrate decides if the person is guilty or not guilty. The magistrate must be satisfied beyond reasonable doubt before they can find a person guilty (see *Pleading not guilty and going to hearing in the Local or Children's Court* on page 282).

## Consent to a breach

It is quite common for the protected person and the defendant to sort out their differences and decide to ignore the AVO.

It is important to remember that consent is not a defence to a charge of breaching an AVO. In other words, the defendant can still be guilty of breaching the AVO, even if you say it's OK!

For example, the AVO tells the defendant not to come to your place, and you invite them over. If the defendant comes over, he or she is still guilty of breaching the AVO.

In the past, the protected person could also be charged with *inciting* (or *aiding and abetting*) a breach. The police are no longer allowed to charge you with this.

## Cancelling (revoking) or Varying an AVO

If you have sorted out your conflicts, it is important to have the AVO varied or revoked (cancelled), especially if the AVO prohibits the defendant from visiting and contacting you. Don't just ignore it – this could get the defendant into trouble and cause hassles for you as well!

Either person can apply for the court to revoke or vary the AVO. See a lawyer, or contact the court where the AVO was made, to find out how to apply.

If the protected person applies to revoke or vary the AVO, the court will usually agree to this, unless the magistrate thinks the defendant has been pressuring the protected person to have the AVO removed. If the protected person is under 16 only the police can apply to have the AVO revoked or varied.

If the defendant applies to revoke or vary the AVO, the court would have to be satisfied that there are very good reasons for the AVO to be revoked or varied, and that the protected person is still adequately protected.

## If someone applies for an AVO against you

If someone applies for an AVO against you, you have to go to court. The case is heard in the Local Court, or the Children's Court if you are under 18.

## Summonses and provisional orders

If someone applies for an AVO against you, the court will issue a summons which is served on you (given to you) by a police officer. The summons tells you to go to court on a particular day (usually about a week or two away).

If the police or the chamber registrar think that there is a high risk of violence before the court date, or if it is very difficult for them to serve a summons on you, they may issue a warrant for your arrest, so the police can bring you straight to court.

In the meantime, the court may make a provisional order (temporary AVO) to protect the applicant until the court date. A provisional order is more likely to be granted in cases of domestic violence or very serious personal violence (*personal violence* means non-domestic violence, eg between neighbours).

If a provisional order has been made, you will get a copy of it with the summons. Once a provisional order has been served on you, it is a crime to break the conditions.

## Legal representation at court

The person applying for the AVO (called the *applicant*, *complainant* or *protected person*) often has legal representation. Either the police prosecutor or Legal Aid will represent most applicants for ADVOs (domestic violence orders) and some applicants for APVOs (personal violence orders).

### Local Court

Unfortunately, it is not so easy for defendants to obtain free legal representation in the Local Court. Legal Aid is not usually available for you in AVO proceedings unless you are also charged with related criminal offences. If you can't get a lawyer to represent you in court, at least Legal Aid can give you some free advice.

Some courts have a duty lawyer scheme where private lawyers might represent you for free (*pro bono*) or for a small fee. Some Community Legal Centres might act for you. See *Getting legal advice and assistance* chapter and *Contacts* on page 405.

### Children's Court

In the Children's Court, Legal Aid represents young people who are having an AVO taken out against them.

## What happens at court

At the first court appearance, the magistrate asks the applicant if they still fear violence, harassment, etc. If the applicant isn't scared any more, or doesn't turn up without a good reason, the magistrate may dismiss the application.

If the applicant is still scared, the magistrate asks you (if you are present in court) if you consent (agree) to the AVO.

The possible outcomes are:

### If you consent to the order

If you consent (agree to the order), the magistrate makes a *final order*, including the conditions requested by the applicant. The order starts immediately and lasts for however long you agree to. You won't have to come back to court during that time unless you are charged with breaching the order.

Many defendants do consent to the order, because you can consent without admitting any of the applicant's allegations. But think about the conditions on the order and what might happen to you if you are found guilty of breaching a condition.

You can negotiate about the conditions before you consent to the order. For example, if the applicant doesn't want you within 500 metres of his or her house, but you think this is unreasonable because you live nearby, you can suggest something like 50 metres.

## If you don't consent to the order

If you don't consent, the case may be adjourned (put off) for *hearing* on another day.

In the meantime, the court often makes an interim (temporary) order. An interim order is like a provisional order. Once it has been served on you, it is a crime to break the conditions.

At the hearing, you or your lawyer can question the applicant and any of the applicant's witnesses. You can also give evidence yourself and call other witnesses. The applicant or their lawyer can question you and any of the witnesses (see *Pleading not guilty and going to hearing in the Local or Children's Court* on page 282).

The magistrate must decide (on the balance of probabilities) if the applicant has a reasonable fear of your behaviour that is sufficient to justify an AVO:

- If so, the magistrate grants the AVO. The order starts immediately and lasts for however long the magistrate says. You won't have to come back to court during that time unless you are charged with breaching the order.
- If not, the application is dismissed.

## You both go to mediation

In APVO (personal violence order) cases where the allegations do not involve physical violence, the magistrate may suggest that you both go to a Community Justice Centre to mediate your dispute instead of court. *Mediation* means talking to each other to resolve the conflict with the help of a neutral person (a mediator) from the Community Justice Centre.

## You offer undertakings

You can disagree with an AVO, but offer *undertakings* (promises) to the applicant not to do certain things. The applicant might decide to accept your undertakings instead of an AVO. It is not a criminal offence to breach undertakings.

## If you don't turn up to court

If you don't turn up, a final order may be made in your absence.

If the summons has not been served on you, or there are other good reasons for you not turning up, the case would usually be adjourned to give you a chance to appear at court. An interim order may be made in your absence.

## Circumstances where the court must make an AVO

There are some situations where the court must make an AVO, even where no application has been made.

The court must make an *interim* AVO if you are charged with stalking, intimidation or a domestic violence offence, unless the court is satisfied that an interim AVO is not required (for example, if there is already an AVO in place).

The court must make a *final* AVO if you are found guilty of a stalking, intimidation or a domestic violence offence, and the victim (or police) wants an AVO, unless the court is satisfied that it is not required.

## AVOs between students

If someone at your school or college applies for an AVO against you, you should give very clear instructions to your lawyer, or to the magistrate, about what conditions you can follow without unreasonably disrupting your studies and other school activities. If it is difficult or impossible for you to stay a certain distance away from the person, especially if you are in the same class, make sure the magistrate hears this. Also make sure the court takes into account that if your timetable changes later in the course, it might be harder for you to avoid the other person.

## Effects of an AVO

You do not get a criminal record from an AVO. However, it is recorded on the police COPS computer system and it might affect some things such as certain jobs, getting a security licence or owning firearms (guns).

An AVO against you is not a criminal conviction, so it shouldn't affect your job prospects in most situations. Employers won't have access to any records of the AVO and they won't usually ask you to disclose this information.

However, if you are applying for certain jobs such as being a security guard or working with children, the employer may require you to disclose whether you have, or have ever had, an AVO against you.

Under child protection laws, anyone who wants a job working with children must undergo a background check. This brings up information not only about criminal convictions, but about AVOs or allegations against you. If these have anything to do with abuse or violence against children, you will have trouble getting work in this field.

## Breaching the AVO

If you break a condition of a provisional, interim or final AVO, this is called a *breach*. For example, if the AVO says that you must not contact the protected person, but you ring them, this is a *breach*.

Breaching an AVO (provisional, interim or final) is a criminal offence.

Consent to the breach is not a defence. In other words, even if the protected person actually wants or invites you to do something (eg come over to their place), if the AVO says you mustn't do it, don't! You will still be guilty of breaching the AVO.

The police can arrest and charge you with breaching the AVO. If the alleged breach involves physical violence or intimidation, there is no *presumption in favour of bail* (so bail is a lot harder to get).

You can plead guilty or not guilty to a charge of breaching an AVO. If you plead not guilty, your case is adjourned (put off) to another date for a hearing. At the hearing, witnesses give evidence (see *Pleading not guilty and going to hearing in the Local or Children's Court* on page 282), then the magistrate decides if you are guilty or not guilty of breaching the AVO. The magistrate must be satisfied *beyond reasonable doubt* to find you guilty.

If you are found guilty of (or plead guilty to) breaching an AVO, the maximum penalty is 2 years in prison and/or a fine of up to \$5500. It is unlikely that the magistrate will give you the maximum prison term unless the breach is very serious, or unless you keep breaching the AVO. But if you are over 18 and the breach involved violence, the magistrate will lock you up unless there are special circumstances.

## Cancelling (revoking) or changing an order

You can apply for an AVO against you to be *revoked* (cancelled) or varied. Usually there must be very good reasons for an AVO to be revoked. The best reason is that both sides have *reconciled* (made up) and the protected person no longer feels in need of protection.

The court might agree to vary the conditions of an AVO in some situations, for example:

- if the protected person agrees, or
- if the condition has turned out to be unworkable or unreasonable (eg because the protected person and the defendant go to the same school), or
- perhaps if the protected person frustrates the order by deliberately putting himself or herself in your path all the time.