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YOUR PRACTICAL GUIDE TO THE LAW IN NEW SOUTH WALES

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Domestic Violence

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What is domestic violence?

[19.10] Gender and language

While domestic violence can happen in any relationship, in the vast majority of reported domestic violence cases men are the perpetrators and women the victims.

For this reason this chapter uses “he” to refer to perpetrators and “she” to refer to victims. This is not intended to exclude other situations.

The term *domestic violence* describes a situation where one person in an intimate or family type relationship uses violent or intimidating tactics to gain power and control over the other.

Domestic violence is not restricted to physical assault. It also includes:

- sexual abuse
- emotional or psychological abuse
- verbal abuse
- stalking and intimidation
- social and geographical isolation
- financial abuse
- cruelty to pets.

Domestic violence is a crime. Police can charge an offender for domestic violence offences and the person experiencing violence can get a court order protecting them from continuing or future domestic violence.

Domestic violence in the community

The 2012 Personal Safety Survey conducted by the Australian Bureau of Statistics (found that 17% of women and 5.3% of men had experienced domestic violence since the age of 15 years. There had been no significant change in the proportion of men and women who experienced domestic violence since the 2005 Personal Safety Survey. The rate of reported domestic violence related assault in NSW has been increasing over the period 2010-11 to 2014-15 [NSW Bureau of Crime Statistics and Research, (2016)].

Involvement of children

The 2012 Personal Safety Survey found that 44% of women who had experienced current partner domestic violence, and 49% who had experienced previous partner violence, had children in their care at the time. In 18% of current partner cases, and 34% of previous partner cases, the children had witnessed the violence.

Increased risk

Women are at greater risk of violence at particular times, such as during pregnancy and at separation. The 2012 Personal Safety Survey found that 54% of women who had experienced violence from a partner during a relationship experienced it during pregnancy, and 25% experienced it for the first time during pregnancy.

Under-reporting

Despite increased knowledge about domestic violence and the legal remedies available, domestic violence is still substantially under-reported. In 2012 a study by BOCSAR found that less than 50% of victims of domestic violence reported to police. This is due to various factors, including:

- community attitudes
- the tendency of some women to blame themselves
- lack of awareness that help is available
- a desire to keep families intact
- dependence on the violent partner.

Lesbian and gay relationships

Domestic violence also occurs in lesbian and gay relationships. It is difficult to determine its extent because under-reporting is made worse by:

- the victim's fear of discrimination
- their unwillingness to reveal their sexuality if they are not already “out”
- a perceived lack of community understanding.

There is, however, increasing awareness and services to help victims of violence in same-sex relationships. The recently amended *Crimes (Domestic and Personal Violence) Act 2007* now recognises the particular impact of domestic violence on lesbian, gay, bisexual, transgender and intersex people (s 9(3)(f1)).

Legal remedies

[19.20] Legal action in response to domestic violence may include:

- getting help from police
- making an application for an apprehended domestic violence order
- amending family law contact orders to protect the victim or her children
- charging the perpetrator with a crime.

There are two types of apprehended violence orders (AVOs), apprehended domestic violence orders (ADVO) and apprehended personal violence orders (APVO). We refer to both as AVOs throughout the chapter.

[19.30] Getting help from police

The most immediate concern for a victim who has been, is being, or is about to be abused is her protection. Victims can seek protection by contacting local police or dialing 000. The NSW Police Force Response to Domestic and Family Violence (Code of Practice) requires police to take action in domestic violence cases.

What to tell police

When phoning the police a victim should:

- give their name and address
- emphasise the urgency of their situation
- ask for the name of the officer who takes the call.

Police powers to enter premises

The police have very wide powers to enter a private house to investigate a complaint of domestic violence.

Police can enter without a warrant:

- if invited to do so by a member of the household (including a child who appears to live there) to investigate whether an offence has been committed or prevent a further offence, as long as the *legal occupier* (the person who holds the lease or owns the house) does not expressly forbid entry, or
- if invited to do so by the apparent victim

of violence, even if the legal occupier objects.

If police are refused access

If the police are refused access, they can apply for a warrant immediately over the police car radio (a *telephone* or *radio warrant*) to enter the premises.

What police may do

When the police arrive, they may:

- refer the victim for support
- help the victim leave safely and take the victim (and any children) to a safe place
- remove the offender from the premises
- request a senior police officer make a Provisional Apprehended Domestic Violence Order (informally called an “On the Spot AVO”)
- give a direction to an offender to remain in a place or go to a place (usually the police station) so that an “On the Spot AVO” can be served
- search for and seize firearms
- in some circumstances, search for and seize dangerous implements or dangerous articles
- charge the offender with assault.

Referring victims for support

Police will administer a risk assessment tool called a Domestic Violence Safety Assessment Tool (DVSAT). NSW police automatically refer all victims of domestic violence when an AVO is sought or charges are laid, to a central electronic database called the Central Referral Point (CRP).

The CRP will refer female victims of domestic violence to a Local Coordination Point (LCP) provided through Women’s Domestic Violence Court Advocacy Services (WDVCAS); and male victims will be automatically referred to Victims Services NSW. Here, further risk assessment will be undertaken and services will be offered to all victims.

The WDVCAS operates in many courts in NSW. The WDVCAS offers support, information and referral to women in AVO proceedings. Many of the WDVCAS manage safe rooms for women and their children while they are at court, and some have a duty solicitor scheme (DVPS) to represent women in court on the day and provide legal advice about related issues. Both the

WDVCAS and duty solicitor may be able to assist female defendants who are primarily victims of domestic violence (see below paragraph "Can defendants get legal aid?").

Serious cases will be referred to a Safety Action Meeting (SAM) where a coordinated response will be facilitated between relevant government and non-government agencies. At May 2016, SAMs are held in Waverley, Orange, Tweed Heads, Parramatta, Bankstown and Broken Hill and will be rolled out around NSW over the next three years. Agencies are able to share information in cases where victims are deemed at serious threat, without their consent, within a legal framework. See Pt 13A of the *Crimes (Domestic and Personal Violence) Act* and associated Information Sharing Protocol; DVSA Guidelines; and Safety Action Meeting Manual for further information.

[19.40] Police application for an AVO

When police attend a domestic violence incident, or are informed by the victim that a domestic violence incident has occurred, they may apply for an AVO on the victim's behalf. See "Apprehended violence orders" below for more information about AVOs.

Police powers to demand information

Police can demand a person to disclose his or her identity where they suspect, on reasonable grounds, that an AVO has been made against the person. However, the power does not extend to defendants of AVOs where an application has been made but not served on the defendant.

Police powers to search for and seize firearms

Police have broad powers to search for firearms when attending a house, by invitation or warrant, to investigate a complaint of domestic violence.

Under s 85 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), police must ask if there are firearms on the premises and, if the answer is yes, "take all such action as is reasonably practicable to search for and seize" the firearms.

When police must apply for a warrant

If police are told there are no firearms on the premises, but have reason to suspect other-

wise (because, for example, the victim says there are, police records show that there have been in the past, or an occupant of the house has a firearms licence or permit), they must apply for a search warrant (s 86).

They must also apply for a search warrant if they believe that a person perpetrating domestic violence somewhere outside their home (such as a hotel) has a firearm at home.

Police powers to search for and seize dangerous implements or dangerous articles

Police also have powers to search for and seize dangerous implements or dangerous articles when attending a house, by invitation or warrant, if they believe, on reasonable grounds that the dangerous implement or dangerous article was, is, or may have been, used to commit a domestic violence offence.

Dangerous implements include:

- knives, spears, guns
- any implement made or adapted to cause injury
- anything belonging to a person who intends to use it to cause injury or to damage property.

When a firearms licence must be suspended

The police must suspend a firearms licence or permit if:

- the holder has been charged with a domestic violence offence
- the police believe the holder has committed or has threatened to commit such an offence.

In these circumstances the suspension is in force for up to 28 days.

The firearms licence of someone who is the subject of an interim AVO is suspended for the duration of the order (*Firearms Act 1996* (NSW), s 23).

If the police response is not satisfactory

If the police refuse to attend or do not come promptly, a victim should ring again and ask to speak to the duty sergeant. A counselor from a telephone crisis service such as

the Domestic Violence Line (1800 65 64 63, 24 hours a day) may also be able to call the police for the victim.

Every police local area command has a Domestic Violence Liaison Officer (DVLO) whose role is to assist people experiencing domestic violence and see that all officers in that patrol follow the Code of Practice. A victim who finds the police unresponsive should ask to speak to the DVLO.

There is usually only one DVLO at each patrol, and they may also be assigned to general duties, so their availability may be limited.

Complaints about police

If the police do not attend when called to a domestic violence incident, or do not act appropriately to protect the victim or investigate an offence, a complaint can be made to the police (usually to the DVLO or the Local Area Commander) and/or the NSW Ombudsman.

If the Police Service receives certain complaints in writing they are required to refer the matter to the NSW Ombudsman.

[19.50] Apprehended Violence Orders

AVOs provide legal protection against continuing or future domestic violence. AVOs are regulated by the *Crimes (Domestic and Personal Violence) Act*, which recognises the community's commitment to the elimination of violence between people in domestic relationships; supports the principles underlying the United Nations Declaration on the Elimination of Violence against Women and the United Nations Convention on the Rights of the Child (ss 9 and 10).

In 2016, changes were made to the *Crimes (Domestic and Personal Violence) Act*. These changes are due to take effect in October 2016. This chapter has been written to reflect the 2016 changes.

Do AVOs work?

Many people find an AVO helps in stopping or reducing violence at home. Once the defendant understands that their behaviour is to be made public and that the community will not tolerate it, they often choose to stop behaving violently.

A study on the effectiveness of the AVO scheme conducted by BOSCAR in 1997 found that "positive changes occurred in the lives of the majority" of the people involved in the study, and that there was a "reduction in the prevalence of each behaviour prohibited by the AVO legislation".

Domestic violence is a very serious matter and can result in serious injury, or murder. People who think an AVO may not be enough to prevent further violence should take steps to protect their safety. A women's refuge might be a safe place to begin as well as getting legal advice about family law and children. Services such as the Domestic Violence Line can also assist with developing a safety plan.

Types of AVOs

AVOs can be either *domestic* or *personal*.

Apprehended Domestic Violence Orders (ADVOs)

ADVOs are made when there is a *domestic relationship* between complainant and defendant. The definition is broad and covers not only people in an intimate relationship or who are related to each other but extends to flatmates, people living in the same residential care facility, carers and family or kin according to the Indigenous kinship system. The definition also includes the relationship between a current partner and former partner of a person as a domestic relationship (s 5(2)). This means a woman's ex-partner and current partner would have a domestic relationship for the purpose of the Act, even if they have never met each other.

Apprehended Personal Violence Orders (APVOs)

APVOs protect a person from someone where there is no domestic relationship linking the two people; for example, neighbours or work colleagues.

Are ADVOs and APVOs the same?

An ADVO and an APVO both have the same legal effect once they are made. There

are, however, some significant differences in the way the ADVO and APVO matters are initiated and progress through the courts:

- the police have a particular obligation to apply for an ADVO in domestic violence cases (see Police application for an AVO below)
- legal aid is only granted in APVO matters in exceptional circumstances
- parties involved in APVO matters may be referred to a community justice centre for mediation. This should not happen with ADVOs
- there is a different legal test for making a costs order. A court can only order an applicant in an ADVO matter to pay the other party's professional costs if it is decided that the application was frivolous or vexatious (s 99A). Whereas in APVO matters, costs are usually paid by the unsuccessful party.

Grounds for an ADVO

An ADVO is made by a court if satisfied, on the balance of probabilities, that the person seeking the order has reasonable grounds to fear, and in fact fears, that the defendant will:

- commit a domestic violence offence (s 16(1)(a)) (any form of assault), or
- engage in intimidation or stalking that is intended to cause fear of physical or mental harm, or
- abandon, expose or fail to provide a child under 7 with the necessities of life (s 4(a)).

Where proof of actual fear is not required

A person under 16 or a person who has an "appreciably below average general intellectual function" is not required to prove they are actually fearful of the defendant.

Proof of actual fear is also not required where, in the opinion of the court, a person has been the victim of a personal violence offence on more than one occasion (s 16(2)(c)(i)), there is a reasonable likelihood that a personal violence offence may be committed, and the making of the order is necessary to prevent further violence. The court can also make an AVO, with mandatory conditions only, if it is satisfied on the balance of probabilities that the person has

reasonable grounds to fear the commission of a domestic violence offence (ss 16(2) and (2A)).

What AVOs do

AVOs protect people against future acts of violence such as physical assault, non-physical abuse such as threats, harassment or intimidation, and damage or threatened damage to property

Who is protected by an AVO?

An AVO provides protection to the person named on the AVO as the protected person and automatically extends the mandatory orders to anyone with whom the protected person has a domestic relationship, whether they live with the person or not.

AVOs that specifically include another person

The law gives courts the power to extend the protection of an AVO to a person who has a domestic relationship with the person seeking protection. Where that other person is at risk of violence or other harassing or abusive behaviours from the defendant they can be specifically named on the AVO as a protected person. They then receive the protection of all orders made.

AVOs and children

The courts are required to include as a named protected person under an AVO any child with whom the adult seeking protection has a domestic relationship (unless there are good reasons for not doing so) (s 38).

If a child under 16 is the specific person in need of protection, or if their parent is not fearful of the defendant, or if the child's circumstances and needs are different from the parent's, the police must apply for the AVO to protect the child.

A court may refer an application for an AVO to the Commissioner of Police if the person in need of protection is a child and the police are not the applicant and the court considers it would be in the child's best interests for a police officer to appear in the application (s 48(4A)).

An application for an AVO, or the variation or revocation of an AVO, for a child under 16 must be heard in a closed court

unless the court orders otherwise. Even if the court is open to the public, it may direct any person (other than someone directly interested in the proceedings, such as the defendant) to leave the courtroom when any witness is giving evidence.

A child should not be required to give direct evidence unless the court believes that it is in the interests of justice for the child to do so. If a child gives evidence in AVO proceedings, including an application to vary or revoke an AVO, they can only be questioned by the defendant's solicitor or another suitable person appointed by the court, not by the defendant directly (s 41A).

Children have a right to have a support person with them while giving evidence in AVO proceedings.

If the defendant in AVO proceedings is under 18 years old, the case will be heard in the Children's Court.

The Children's Court can, during care proceedings and after notifying Police and Family and Community Services, make, vary or revoke an AVO for a child, or a person they live with, unless the defendant is subject to criminal proceedings in relation to the same circumstances (s 40A).

What orders can an AVO contain

An AVO can include a range of conditions that prevent the defendant from doing certain things. An AVO cannot make the defendant do anything, such as attend an anger management course.

What conditions should be included

A person seeking an AVO should discuss their circumstances with the police (or the Registrar for private applications) to work out the conditions that should be included in the AVO to make sure it provides the protection needed.

The court only makes orders it believes to be necessary; it will not make orders "just in case".

Standard conditions

All AVOs contain three standard conditions called the *mandatory orders*, so named because the law states that they must be included in every AVO (s 36).

These orders prohibit the defendant from:

- assaulting or threatening the protected person
- stalking, harassing or intimidating the protected person
- intentionally or recklessly destroying the protected person's property.

These three orders extend to anyone with whom the protected person has a domestic relationship. The mandatory orders do not prohibit contact between the protected person and the defendant. In fact, a protected person could still be living with the defendant or still in a relationship with the defendant and have an AVO in the mandatory terms only.

Other conditions

An AVO may also include conditions such as stopping the defendant from:

- entering the person's home or workplace
- contacting or approaching the person
- approaching the person's home for 12 hours after drinking alcohol or taking drugs
- destroying property
- approaching a school or other place of education
- locating or attempting to locating the person.

Must the order specify an address?

There is a presumption that a protected person's home address will not be included in an AVO, subject to certain exceptions (s 43).

A home or work address does not have to be specified to have protection under the terms of an AVO. For example, an order that does not specify an address could say: "Not to knowingly go within 200 metres of the premises at which the protected person may from time to time reside".

Nonetheless, many magistrates are unwilling to make an order in relation to home or work without a specific address being provided.

The court will not include the address of the person in need of protection in an order unless it is satisfied that:

- the defendant already knows the address, or
- it is necessary to achieve compliance with the order, and the person's personal

safety or property will not be seriously threatened or likely to be damaged, or

- the person (if over 16) consents to it being included.

Exclusion orders

An order prohibiting a defendant from entering or living in the protected person's home is called an *exclusion order*. In deciding whether to grant an exclusion order the court considers:

- the accommodation needs of the protected person and the defendant
- the effect of the order on children who normally live at that address
- the consequences for the protected person and any children if the order is not made.

A court can make an exclusion order regardless of whether the defendant owns the premises or is the person named on the lease – it makes no difference whether the defendant has a legal or equitable interest in the property.

If the court decides not to make an exclusion order that has been sought, it must give reasons for not making that order.

Ancillary property recovery orders

An ancillary property recovery order can be made when either the person seeking the protection of an AVO or the defendant to the AVO has left personal property at the premises which the other person occupies. The ancillary property recovery order allows access to the relevant premises to remove the property. This is often in the company of police.

An order can only be made upon the making of an interim or final ADVO. The applicant needs to tell the court whether there are any family law property orders have been made or are pending (s 37(1C)). An order cannot be made for the defendant to retrieve personal property if the defendant is not present in court when it is made.

Do AVOs go on a criminal record?

It is possible to apply for an AVO against a person without bringing criminal charges. The AVO does not give the person a criminal record.

However, breaching an AVO is a criminal offence, for which a person may be arrested and charged.

[19.60] Police application for an AVO

Mandatory police AVOs

The police must apply for an AVO if they suspect or believe that one of the following offences has been, or is likely to be, committed:

- a domestic violence offence
- an offence of stalking or intimidation
- an offence against s 227 of the *Children and Young Persons (Care and Protection) Act* relating to abuse of a child under 16.

The police must apply for an AVO for a child under 16 when a domestic violence offence, or an offence of stalking, intimidation or child abuse has been committed or is likely to be committed.

There are no exceptions.

Only a police officer can apply for an AVO for a child under 16 if the child is the specific person in need of protection.

For example, a young person of 15 who is being stalked and harassed by an ex-boyfriend must contact the police to apply for an AVO to give her protection. She cannot make the application herself through the registrar at a Local Court, nor can a parent make an application on her behalf.

Police powers to give a direction and detain

Police have powers to direct and detain offenders for the purposes of applying for and serving provisional AVOs. The direction and detention powers (*Crimes (Domestic and Personal Violence) Act*, s 89) provide six options for a direction, and if a defendant refuses to comply they may be detained for up to two hours.

When police need not apply for an AVO

Police need not apply for an AVO where they believe that:

- the victim intends to make a complaint herself (see Private applications for an AVO below), or
- there is a "good reason" (which must be recorded in writing by the police officer) not to make the application.

Provisional AVOs (On the Spot AVOs)

A Provisional AVO (informally called an “On the Spot AVO”) is an interim AVO that the police may apply for by telephone, facsimile or other communication device. Senior police officers have the power to determine applications for provisional AVOs. Provisional AVOs are available at any time where the police believe an AVO “needs to be made immediately to ensure the safety of the person or to prevent substantial damage to any property of that person”.

Police must apply for a Provisional AVO if they attend an incident where they believe a domestic violence offence or an offence of child abuse against a child under 16 has been committed or is likely to be committed, unless, as with AVOs for adults generally, they believe the victim is going to apply for their own AVO or there is a good reason (which must be recorded in writing) not to apply. Only a Police officer may apply for an AVO for the protection of a person under the age of 16.

The terms that may be included in a Provisional AVO are the same as those available in an AVO made by a court. The police officer may direct the defendant to remain at the scene or another place such as the police station, so that the Provisional AVO may be served on them. If the defendant refuses to do so, the police may arrest and detain them for the purposes of serving the AVO.

It is not necessary for the police to make a further application for an AVO. The Provisional AVO contains a court attendance notice advising the defendant of the date and time to appear at court.

The provisional AVO ceases to have effect when:

- it is revoked, or
 - a court makes an AVO (interim or final) about the complaint, or
 - an AVO is served on the defendant (if the defendant is not in court).
-

[19.70] Private application for an AVO

If Police refuse to apply for an AVO, or if the victim does not want to ask police to apply for an AVO, they can make a private application for an AVO by attending their nearest Local Court. Court staff provides the victim with an AVO application kit, which includes an application for an AVO. The victim completes and returns the form to the Local Court. They will need to explain why they need an AVO and, if they are really frightened, ask the registrar to have the matter heard as soon as possible so that the

court can make an interim order. The Registrar will create and list the AVO application in court and will electronically transfer the AVO application to the police to serve on the defendant.

Commencement of AVO proceedings

AVO proceedings are commenced by either the police or a registrar at a Local Court issuing an *application notice* under Pt 10, Div 2 of the *Crimes (Domestic and Personal Violence) Act*.

The registrar initiates the proceedings by issuing an application that contains the grounds of the application and a Notice to the Defendant to attend court at a certain date and place. If an interim order has been made, this will also be served on the defendant.

A police officer can issue and serve an application without attending the courthouse.

Notifying the defendant

The defendant is legally notified when the documents (containing the application and the court attendance notice) are given to or *served upon* the defendant, which is done by a police officer. The notice sets out the date and time the defendant should attend court (the *first return date*).

The officer who gives the papers to the defendant must swear an affidavit that they did so, or provide a *statement of service*. The affidavit or statement must be sent to the court. Except in special circumstances, the court will not proceed to make a final AVO where there is no proof of service.

Substituted service

Where it is not reasonably practicable to serve the defendant personally, the court may order the application to be served in another way (*substituted service*). This means service on some other person who has contact with the defendant, such as their parents, or service by registered post. The court only orders substituted service if it is satisfied that regular service has been tried unsuccessfully.

The court may also order that a warrant be issued for the purpose of detaining the defendant in order to serve him with an application or provisional or interim order.

Applications served by a warrant

Warrants may be used where the defendant is unable to be located. For example, the defendant has no fixed address or is attempting to evade service.

[19.80] AVO proceedings

What happens when an AVO case is first in court (the first return date) depends on whether or not the defendant is present and, if they are, whether or not they agree to the order being made.

If the defendant is not present in court

There are several reasons why a defendant may not turn up at court on the first day. The defendant may not have received the application and court attendance notice telling them to come to court (that is, the defendant has not been served). Or the defendant may have advised the court that because of short notice (for example, the defendant was served the night before) the defendant cannot attend due to work commitments. In both these situations the case will be adjourned, provided the protected person still wants the order. If the protected person does not have an interim order they can ask for one on this date, or have the interim order continued if there already is one.

Orders made in the absence of the defendant

Interim AVO

Interim orders are granted where the court considers it is necessary or appropriate in the circumstances to give the person immediate protection. The court considers these applications very carefully, as it is possible for orders to be made against a defendant before he has been served with a copy of the application. If the defendant was not at court when the interim AVO was made, it will not be enforceable until the defendant is served with a copy.

The protected person should obtain a copy of the interim order or bail conditions before leaving the court and carry it at all times – it is useful to show it to the police if the defendant breaches it.

Final ex parte AVO

If the defendant does not appear in court after being served with an application, a final AVO may be obtained in the defendant's absence. This is called an *ex parte* order.

The protected person still has to satisfy the court, on the balance of probabilities, that they have a reasonable fear of the defendant. In most cases the protected person is asked to give evidence.

If the AVO is granted, it must be served on the defendant before it is enforceable. Once it is served the defendant may be charged with a breach if they contravene any of its terms.

If the defendant offers an undertaking

If the defendant attends court, they may offer to give an undertaking. An undertaking is a promise the defendant gives to the court. It can be in the same terms as an AVO, and it can be written or oral. If the victim accepts the undertaking and the magistrate also accepts it, the application for an AVO is withdrawn.

From the victim's point of view, it is always better to get an order from the court than an agreement or undertaking from the defendant. Under the law, the police can arrest a defendant for a breach of an AVO but they probably won't help if it is just an undertaking that has been breached, unless the breach involves a criminal offence such as assault or malicious damage.

If the victim accepts the defendant's undertaking, and the defendant breaches it, the victim can make another application for an AVO through the police or the registrar at any time.

If the defendant does not contest the order

If the defendant attends court, they will be asked if they agree to abide by the conditions of the AVO. If the defendant agrees, the AVO is made by consent, and it is not necessary to present evidence against the defendant or for them to admit any of the facts in the application.

The magistrate makes sure the defendant knows what is in the AVO and that they can be fined or imprisoned if the AVO is breached. The order comes into force immediately.

If the defendant contests the order

If the defendant does not agree to an order being made, the Magistrate will make

directions for the exchange of written statements, which is the main evidence the applicant and the defendant will rely on at the hearing (see Local Court Practice Note 2 of 2012).

Another court date is set down to check the written statements have been exchanged and if so, the court sets a hearing date, perhaps several weeks or even months away, when the court can hear the whole story.

At the hearing

At the hearing the protected person, the defendant and any witnesses give evidence based on their written statements and they may be cross-examined. If the court has audio visual link (AVL) facilities the protected person can ask to give evidence by AVL if they are afraid of giving evidence in front of the defendant.

In a police initiated application, the police prosecutor will speak for the protected person. This means she will not require her own solicitor. In a private application, the protected person will need to represent herself or engage a solicitor to act for her. In some circumstances, the protected person will be eligible for legal aid. The WDVCS or Women's Legal Service NSW may be able to assist with finding a solicitor.

The court must be told about any family law parenting orders or any application for such orders that is pending (see Children section in Chapter 24, Family Law). The court must consider family law orders, and make sure that the AVO does not affect contact between parent and child, unless there good reason to do so. For example, there is new material before the Local Court suggesting a child may be at risk spending time with a parent. Subsequent family law orders override any inconsistent order in AVOs. Failure to inform the court of existing or pending family law orders does not make the AVO invalid, but may weaken the protection for the victim if any of the AVO clauses are inconsistent with existing family law orders.

After considering all the evidence, the court decides, on the balance of probabilities, whether the person seeking protection has reasonable grounds to fear the defendant.

Explaining the order

When a court makes or varies an AVO it must explain the order to both the protected person and the defendant (if they are present in court).

The explanation must include:

- the effect of the order
- the consequences of a breach
- the rights of the protected person and the defendant in relation to the order.

The explanation should be in a language understood by both parties.

Both the protected person and the defendant must also receive a written explanation. Usually this is given to them when they collect the final AVO from the court office.

The AVO is valid, however, even if the court fails to do this.

When a firearms licence must be revoked

If a final AVO is made against the person, their firearms licence is revoked (*Firearms Act 1996* (NSW), s 24). There is no appeal against this revocation. A person who is subject to a final AVO may not obtain a firearms licence for ten years from the expiry date of the order, unless the AVO has been revoked (s 29(3)(c)).

If a licence is suspended or revoked

A person whose firearms licence is suspended or revoked must surrender the licence and any firearms to the police (s 25). It is an offence for a person to have a firearm without a licence (s 7).

Costs in ADVOs

In private applications for ADVOs, professional costs may only be awarded against the applicant if the application is dismissed, and the court is satisfied that the complaint was "frivolous or vexatious" (*Crimes (Domestic and Personal Violence) Act*, s 99A).

In police applications for ADVOs the court can only make a costs order against the police if satisfied "that the applicant made the application knowing that it contained matter that was false or misleading in a material particular or the applicant has deviated from the reasonable case management of the proceedings so significantly as to be inexcusable" (s 99A(2)). The case of

Constable Redman v Willcocks (2010) 79 NSWLR 226, decided that costs could be awarded against the police for “procedural misconduct”. In that case the police decided to withdraw an application for an AVO but did not let the defendant know and the defendant incurred costs in attending for a hearing.

Enforcing the order

The protected person should obtain a copy of the order before leaving court on the day it is made, and carry it at all times. The court also sends a copy to the local police station.

Details of AVOs are stored on the Police Service’s *Domestic Violence Central Data Bank*. The protected person should contact police immediately if the defendant breaches any of the terms of the order.

Penalties for breach

Breach of an AVO is a criminal offence. The police can arrest the person without a warrant and take them back before the court.

If the court decides *beyond reasonable doubt* that the defendant breached the order, the penalty is up to two years’ jail and/or a fine of \$5,500.

Keeping a record of breaches

If the defendant breaches the AVO there are a number of things a protected person can do:

- keep a record of all breaches of the AVO, no matter how small they may seem. This may help to establish a pattern of abusive behaviour over a period of time. Every time the defendant breaches the AVO, a record should be kept of:
 - the date and time of the incident
 - what happened, what the defendant did or said and how the protected person responded
 - any witnesses who saw or heard what happened, and
 - what the protected person did afterwards
- ask any witnesses to keep a record of the incident and write down what they saw or heard
- collect evidence of the breach:
 - a message from the defendant may be a breach of the AVO. Emails, text messages, messages on social media or voicemail messages should be kept. These messages can be shown or played to police
 - if the protected person is physically injured, they

should go to the doctor or hospital for medical care

- photographs of any injuries (eg bruises or scratches) should be taken
 - all breaches should be reported to police in person or over the phone. The protected person should use their notes to assist them in making a statement
 - a record of all reports made to police should be kept, including:
 - the date(s) of the report to the police
 - how the report was made (by telephone or in person)
 - the name of the police station where the report was made
 - the name of the police officer who took the report, and
 - the police event number. This is the number that records the incident on the police computer system.
-

Applying for an annulment

If an AVO is made *ex parte* against a defendant (where the defendant was not present at court), the defendant can make an application for the annulment of that order under s 4 of the *Crimes (Appeal and Review) Act 2001* (NSW) within two years of the order being made. The court can grant the annulment if the magistrate is satisfied that: the defendant was not aware of the proceedings until after the order was made, or the defendant was prevented from attending court due to illness, accident or some other misfortune, or it is in the interests of justice to annul the order.

The defendant can apply to annul the AVO through the registrar.

The AVO should not be annulled without the protected person being notified of the application.

If the AVO is annulled

If the AVO is annulled, the court must consider the victim’s application for an AVO as if the *ex parte* AVO was never made, and the defendant has the options outlined above – the defendant can consent to the AVO or contest it and ask for a hearing.

Variation or revocation of an AVO

It may be necessary to revoke or change the terms of an AVO when circumstances change, such as where violence or

harassment has increased, or the parties wish to resume living together and there is an order excluding the defendant from the home.

Changing an order may involve:

- adding further prohibitions or restrictions
- amending certain terms
- deleting terms
- extending the length of time it is in operation.

An application to vary or revoke an order is made by the protected person, the defendant or the police.

The applicant must state why they are applying for a change, as well as the change they are seeking (revocation, variation or extension).

The transcript and any evidence admitted in the District or Supreme Court in respect to a serious offence is admissible in the Local or Children's Court for purpose of determining whether to revoke or vary a final or interim AVO (s 40(4)).

The person affected by the application, whether the protected person or the defendant, is notified of the application and summoned to appear in court to answer it.

When the court may not hear the application

The court can refuse to hear the application if it is satisfied that there has been no change in the circumstances on which the AVO was granted in the first place, and that the application is in effect an appeal against the making of the order.

If the other party has not been served

It is not normally possible to vary an AVO in any way if the other party has not been served with the application.

The only exception to this is where the protected person wishes to extend an AVO but cannot serve the defendant before the AVO is due to expire. If the application to extend the AVO is lodged before the day on which it is due to expire, the court will extend it for up to 21 days beyond its expiry date (s 73).

Further orders can be made from time to time before the order ceases to have effect.

If there is more than one protected person

When more than one person over 16 is protected by the AVO, a variation or revoca-

tion application must be served on all persons protected by the AVO. A variation will only apply to the person applying to vary or revoke the order unless the court is satisfied that the other persons protected by the AVO have also consented to the application.

Police-initiated AVO where children are included

A person requires leave (permission) of the court to make an application to vary or revoke an AVO where a child is named as a protected person on the order. A court can grant leave if there has been a significant change in circumstances since the AVO was made (or last varied), or if a care plan is inconsistent with the AVO, or it is in the interests of justice to do so. The court must not grant leave if the child would be exposed to an increased risk of harm if the application were successful (s 72B) or the Commissioner of Police has not been notified of the application (s 72C).

Appeal to the District Court

The applicant or the defendant can appeal to the District Court against:

- the making of an AVO, or refusal to make an AVO, or
- the granting of an application to vary or revoke an AVO, or refusal to vary or revoke an AVO.

Time limits

Any appeal to the District Court must be made within 28 days of the decision.

If a person misses the 28 day deadline, it is possible in some cases to ask for leave to bring an appeal within three months of the decision.

How appeals are heard

Appeals are heard by way of a rehearing of the transcript of the Local Court evidence. The District Court will give leave to introduce new evidence only if it is satisfied that it is in the interests of justice to do so.

[19.90] Domestic violence orders made in other states and territories of Australia and NZ

A domestic violence order (DVO) made in any Australian or New Zealand jurisdiction is recognised in NSW (s 98Y). A DVO is enforceable against a defendant in NSW when they are properly notified of the making of the DVO under the law of the jurisdiction in which the DVO was made (s 98ZD(3)).

Any variation or revocation of the DVO in any Australian or New Zealand jurisdiction outside NSW is recognised in NSW (ss 98Z and 98ZA). A new DVO made against a defendant in NSW supersedes and revokes any comparable DVO made earlier (s 98ZB).

Moving interstate

An AVO made, varied or revoked in NSW is recognised and enforceable in any other Australian or New Zealand jurisdiction.

[19.100] Protective orders under the Family Law Act

Under s 114 of the *Family Law Act* a person can apply to the Local Court, the Federal Circuit Court or the Family Court for an injunction. If a breach of the order is proved, the person in breach is regarded as being in contempt of the court and can be sentenced to imprisonment, put on a recognisance (good behaviour bond) or fined (Pt XIII A). Other injunctions under the Act can be sought in relation to children, and can give protection to either parent or child (s 68B).

Injunctions are used less often than AVOs, and can be more complicated to enforce, but they may be useful for people who are already involved in proceedings under the *Family Law Act 1975* (Cth).

[19.110] Family law arrangements

The *Family Law Act* recognises a child's legal right to have a meaningful relationship with both parents. The Act lists factors to be

considered in determining who a child will live with and how much time a child will spend with the other parent. The Act requires safety to have higher priority than "maintaining a meaningful relationship" with a parent.

The Act recognises that domestic violence is a relevant factor in considering whether arrangements are in the child's best interests.

Where spending time with a parent and protection are incompatible

The Family Court must make orders that are in the best interests of the child, which includes a consideration of family violence. The court should make sure its orders do not expose children or their primary carers to violence, and must also try to resolve any inconsistencies between the family law order and an AVO.

Where there are inconsistencies

If a family law order is inconsistent with an AVO it overrides the AVO, but only to the extent of the inconsistency; for example, where the AVO says a father must not contact a protected person and the family law order says he can contact her to arrange to see the children, he is permitted to contact her only for that purpose.

If there is already a family law order, the magistrate hearing the AVO can be asked to change or discharge the family law order if it conflicts with the AVO. The court may also do this on its own initiative (*Family Law Act 1975*, s 68P). For the Local Court to vary a family law order there must be new material before it that was not before the court making the original family law order.

A magistrate hearing an application for an AVO may change a family law order if satisfied that someone has been or is likely to be exposed to violence because of the order.

If only making an interim AVO, the court cannot discharge the family law order, but it may make other types of changes, including suspension. The changes last as long as the interim order or for 21 days, whichever is shorter.

Changes made to a family law order on the basis of an interim AVO cannot be appealed.

Changes made to a family law order because of a final AVO may be appealed.

[19.120] Criminal charges

Domestic violence is a crime. However, victims of domestic violence are often not aware that this is what they are experiencing, particularly when they are socially and geographically isolated. Domestic violence is a crime the same way as violence or assault between strangers.

Domestic violence offences

A domestic violence offence includes any form of assault, intimidation, stalking or any offence intended to coerce or control a person against whom it is committed or to cause that person to be intimidated or/and fearful, against a person who they have, or have had, a domestic relationship with (which is broadly defined) (ss 4, 5 and 11 of the *Crimes (Domestic and Personal Violence) Act*).

Assault

An assault can be committed without actual physical contact; for example, it is an assault if the attacker threatens violence and appears to be immediately capable of and willing to carry out the threat (for example, with a raised knife or a clenched fist). It is also an assault to intentionally push or spit on a person, even if it does not cause physical injury.

Technology facilitated domestic violence

It is an offence under the *Criminal Code Act 1995* (Cth) to make menacing, harassing or offensive phone calls.

Cyberbullying is posting embarrassing pictures, spreading false or misleading information on the internet.

Cyberstalking is using technology to harass, threaten or frighten.

Digitally assisted stalking is using technology such as mobile phone apps to track someone's whereabouts.

Strangulation

Strangulation is a very serious form of violence. It is common in cases of domestic violence and is considered an indicator of the risk of further harm and potential escalation of the violence.

There are separate offences relating to choking, suffocation and strangulation with a maximum penalty of 10 years imprisonment, or 25 years imprisonment for the aggravated offence. Under the *Crimes Act 1900* (NSW) a person is guilty of an offence if they choke, suffocate or strangle another person so as to render the other person unconscious, insensible or incapable of resistance.

What police must do

Police have a duty to arrest and charge anyone they reasonably suspect has committed a crime. Where an alleged offender is charged and released from police custody until the court hearing, police should apply for an AVO for the victim and consider putting the offender on conditional bail (see Bail in Chapter 14).

If the person is arrested and charged

When the alleged offender is arrested and charged, the police can indicate on the charge that the offence is specifically a domestic violence offence.

The police, not the victim, are responsible for deciding whether or not to proceed with a criminal case. Usually the police will consult with the victim and/or WDVCAS to let the victim know how the police intend to proceed. It is important for victims to be aware that the police can compel them to give evidence in a criminal prosecution. Conversely, the police can withdraw the matter and not prosecute the offender if the police assess there is insufficient evidence to prove the offender is guilty beyond a reasonable doubt. The police do not need the victim's consent to do this.

There is a Charter of Victims Rights in NSW which states that if possible, victims will be provided certain information about the prosecution and police investigation.

If a victim of domestic violence is defending a criminal charge and AVO

Sometimes a person who is primarily a victim of domestic violence is charged with a domestic violence offence, rather than the

primary aggressor. When police are called after a violent incident, the primary victim's version of events may not have been viewed as credible compared with the other person, due to the circumstances of their heightened stress and anxiety. The other person may have deliberately initiated AVO proceedings as a further mechanism of power and control, by threatening the victim with reports to police in the future. NSW Police policy requires police to look behind the presenting incident to investigate whether there is a history of violence, so that the primary victim can be identified and appropriately protected. For defendants in these circumstances, usually women, legal advice should be sought about defending the charges and the AVO; whether, legally, self defence can be established; and to also seek an AVO for their protection. In these circumstances, a defendant to criminal charge and/or an AVO may be eligible for legal aid.

Interim AVOs

When a person is charged with a serious offence, the court must make an interim AVO unless it is satisfied that it is not required – for example, there is already an AVO in place (s 40). A serious offence is defined in the *Crimes (Domestic and Personal Violence) Act* to include (among other things) murder, a domestic violence offence and stalking.

Going to court

If police arrest the defendant and he is not released, the case will go to court as soon as possible – usually the day the defendant was arrested or the following day.

If the defendant was not arrested, a *court attendance notice* to appear in the Local Court will be served upon the defendant and the case will go to court a week or two later. In either case, the first court appearance is called a *first return day* or a *mention* day. It is designed to allow the magistrate to find out what is happening in the matter – it is not a full hearing.

In the case of criminal charges, the defendant is asked whether they want to plead guilty or not guilty. The defendant may sometimes ask for the case to be *adjourned* so

that legal advice can be sought. Victims *may* be excused from attending on subsequent mention days, but it is important for victims to attend court, even if excused, especially on the first mention date. This is particularly important if there is an AVO application for the victim's protection along with the criminal charge.

If the defendant pleads guilty

If the defendant pleads guilty, the court listens to the prosecution's facts, hears what the defendant or their lawyer has to say about these facts (or about the appropriate sentence), then imposes a punishment (possibly on another day).

The court must also direct that the offence be recorded on the person's criminal record as a domestic violence offence.

An AVO must be made if the defendant pleads guilty.

If the defendant pleads not guilty

If the defendant pleads not guilty, the court sets a hearing date (which could be weeks or months away), and usually releases the defendant on bail until the hearing. The defendant can also be held in custody until the hearing date if bail is refused.

An interim AVO will be made and will continue until the criminal charges are finalised.

Giving evidence

The victim is usually the main witness to the violence and sometimes the only witness. The victim's evidence is vital to the prosecution case, and without it the case may be dismissed.

People can be called to give evidence against their married or de facto partners in cases of family violence (they are *compellable witnesses*), although the court also has discretion to excuse them (*Criminal Procedure Act 1986*, s 279(3)).

The victim's evidence may be enough to prove the case, but it will help if there is other evidence that supports the complaint. For example, evidence of bruising may be given by a treating doctor (this evidence will have more weight if the doctor was seen as soon as possible after the assault). Photographs may also be helpful. Blacktown, Mount Druitt and Nepean Hospitals operate

Forensic Medical Units (FMU), which conduct sexual assault and domestic violence examinations and collect forensic evidence. FMU workers can give expert evidence in court.

Police can take a domestic violence victim's statement by video or audio recording, and use this recording as all or part of the victim's evidence in chief (DVEC) (*Criminal Procedure Amendment (Domestic Violence Complainants) Act 2014* (NSW), ss 289C and 289F(1)). DVEC can only be used for defended hearings relating to criminal charge matters and ADVO applications connected to these charge matters (s 289H).

Unrepresented defendants are not given a copy of the recording, however must be served with the audio extract of the recording and police must, as far as is reasonably practicable, provide the unrepresented defendant with an opportunity to view the DVEC video recording at a police station (s 289M).

The victim's consent is not required to play the recording at court. While the recorded statement will form their evidence in chief, victims must still attend court for cross-examination (ss 289F(5) and 289G).

The court has discretion to order that evidence may be given by AVL if there is an AVL facility at the court.

If the defendant is found guilty

A defendant found guilty of a criminal offence, or who pleads guilty, may be:

- imprisoned, or
- fined, or
- put on a good behaviour bond with various conditions attached, or
- in certain circumstances, have the charge dismissed without a conviction recorded (*Crimes (Sentencing Procedure) Act 1999*, s 10).

The court must make an AVO against the defendant (*Crimes (Domestic and Personal Violence) Act*, s 39) who pleads guilty or is found guilty of a "serious offence" (s 40(5)), unless it is satisfied that it is not required – for example, because there is an existing AVO in place.

The court must also direct that the offence be recorded on the person's criminal record

as a domestic violence offence. The prosecution can also request that similar entries are noted on the criminal record in relation to previous offences that are domestic violence offences committed by that person.

If the offence was particularly serious

If the assault has caused serious injuries, the defendant may be charged with malicious wounding, or attempted murder or manslaughter. These are *indictable* offences, which carry higher penalties (see Chapter 14, Criminal Law).

The defendant is brought before a magistrate who decides whether there is enough evidence for the matter to go for a full hearing before a judge and jury in a higher court (either the District Court or the Supreme Court).

For these matters, the court may consider there is an unacceptable risk to release the defendant on bail so the defendant is kept in jail until the trial. Alternatively, the court may decide to release the defendant on bail or under an interim AVO until the trial.

Bail

Will the defendant get bail?

Bail involves a promise to attend court to answer a criminal charge.

Bail is decided based on whether there is an "unacceptable risk". Bail can be granted with or without conditions which must be appropriate to the unacceptable risk; or bail can be refused.

A defendant in AVO proceedings can be placed on bail conditions even if there is no criminal charge (*Crimes (Domestic and Personal Violence) Act*, s 83). Conditions may include that the defendant is not to:

- approach, harass or molest the protected person
- come within a certain distance of the protected person's home
- telephone or contact the protected person except through their lawyer (or some other person).

It is important to note that if a person in need of protection does not have an AVO for their protection because bail conditions reflect the AVO terms, the person in need of

protection may be left without protection if the court revokes or varies the bail conditions on a later date.

If the person breaches bail conditions

A person who breaches bail conditions can be arrested, held in police custody and brought again before the court.

Can bail be varied?

The prosecutor, the complainant and the protected person are all able to make an application to court or an authorised justice to vary bail conditions (*Bail Act 2013*, s 51).

If the victim wants police action dropped

Sometimes, the victim may want the police to drop criminal charges. That decision is made by the police, not the victim.

What the victim can do

The victim can write to police requesting that the charge be withdrawn and stating why. This process is called “making representations”.

What police may do

Police consider such matters very thoroughly, as there is a risk that an offender

may have pressured, coerced or threatened a victim to get them to drop the charges.

Sometimes, despite representations having been made, police will proceed with the charge.

What the victim should not say

A victim should not say that they made things up or lied in the original statement to the police in the hope that the charge will be withdrawn, as this can result in charges being laid against the victim for public mischief. Pressure can be put on victims by perpetrators of violence to withdraw complaints and police operating procedures require that great care must be taken in acting only on the admission of a victim that they lied. If there is no corroboration, the police are required not to proceed with charges against the victim without the approval of the crime manager.

Getting legal advice

Independent legal advice should always be sought before making representations or wanting to change a police statement.

Practical help

[19.130] The legal remedies available to victims of domestic violence may not be much use in a crisis. Practical steps taken by the victim can be much more important.

Health workers and other professionals, as well as family and friends, can support people who are experiencing domestic violence by giving them accurate information and referral to the following services:

- help with protecting children
- Aboriginal and Torres Strait Island specialist services
- specialist immigration services
- counselling
- housing support
- financial support
- information about employee rights
- legal advice.

Please see “Contact Points” at [19.190] for the contact details for the services referred to below.

[19.140] Protecting children

There is increasing recognition of the harm children suffer from living in a violent household, for example seeing or hearing their mother being assaulted, being caught in the cross-fire or intervening to help their mother, or actually being the subject of violence.

Parents who need help

Parents who need help for themselves may contact Department of Family and Community Services (FaCS).

Two 24-hour telephone lines may be contacted for advice and assistance. These are the Domestic Violence Line (for domestic violence) and the Child Protection Helpline (to report suspected child abuse or neglect).

Notification requirements

Who must report suspected child abuse

Some professionals (“a person who, in the course of his or her professional work or other paid employment, delivers health care, welfare, education, children’s services, residential services, or law enforcement to children”) are obliged by law to report that a child is at risk of significant harm, to FaCS Child Protection Helpline (*Children and Young Persons (Care and Protection) Act 1998*, s 27). They include medical practitioners, teachers, school principals, school counsellors and early childhood teachers. There are penalties for failing to do so (see Chapter 7, Children and Young People).

Reporting by the public

Anyone else (friends, family, neighbours, other workers) who suspects on reasonable grounds that a child is at risk of significant harm may also notify FaCS.

[19.150] Assistance for Aboriginal and Torres Strait Islander women

Aboriginal and Torres Strait Islander women often face particular problems when they suffer family violence in their communities. As well as the difficulties faced by all women in these situations, they may have to contend with racist attitudes. Historically, Aboriginal and Torres Strait Islander women have had negative experiences with mainstream services, and there are few Aboriginal and Torres Strait Islander workers employed by these services.

For many complex reasons, Aboriginal and Torres Strait Islander women may be reluctant to use the courts and the police to help them and their children when they face violence at home.

Aboriginal and Torres Strait Islander women may also hold fears about the

danger to Aboriginal and Torres Strait Islander men when police do intervene and they are held in police cells. However, the findings of the Royal Commission into Aboriginal Deaths in Custody must not be used by the police or the legal system as an excuse for not taking appropriate action to protect Aboriginal and Torres Strait Islander women and children.

The Aboriginal Medical Service

The Aboriginal Medical Service provides a child sexual assault service as well as medical and other services to adults.

Family Violence Prevention Legal Services

Family Violence Prevention Legal Services (FVPLS) provide services to respond to and reduce the level of violence in Aboriginal and Torres Strait Islander communities. These services have a holistic approach, such as providing community education and legal help for protection orders, and family law matters.

Women’s Legal Service NSW

The Indigenous Women’s Legal Program at Women’s Legal Service NSW provides legal advice, community education and referral to appropriate services.

The Wirringa Baiya Aboriginal Women’s Legal Centre

The Wirringa Baiya Aboriginal Women’s Legal Centre provides legal advice, community education and referral to other services to help victims of violence.

See also Chapter 2, Aboriginal People and the Law.

[19.160] Assistance for immigrant women

Immigrant women can experience particular difficulty reporting domestic violence, contacting support services and navigating the legal system. There may be language, cultural and social barriers for immigrant women. Some immigrant women have had negative experiences of the authorities in other countries and have a mistrust of police and fear of imprisonment for the perpetrator.

Sometimes a lack of knowledge about Australian laws and protections available, such as AVOs, means some women are unaware certain behaviour is even illegal.

Exemption from visa requirements

The “family violence provisions” in immigration law allow for some people who have been sponsored to live in Australia to continue with their application for permanent residence after the breakdown of the relationship, if they or a member of their family unit have experienced family violence by the sponsor.

Visa applicants need to provide evidence to prove the family violence. Evidence against the violent partner can include judicial or non-judicial evidence such as:

- an AVO, where the alleged perpetrator had an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter
- an injunction under the *Family Law Act 1975*
- a conviction for an act of violence committed against the visa applicant or their dependant
- a joint undertaking filed in court proceedings where there was an allegation of violence
- a statutory declaration from the applicant, and
- at least two types of evidence from a list of acceptable evidence. For example, a doctor’s report, statutory declaration by registered psychologist, report by registered nurse, statutory declaration by social worker, statutory declaration by family consultant, letter from a women’s refuge or statutory declaration from school counsellor or principal detailing that family violence has been perpetrated against the applicant by the sponsoring partner.

Although not required, it is recommended that statutory declarations are made using the Department of Immigration and Border Protection Form 1410 – *Statutory declaration for family violence claim*.

When the victim is a child, evidence may also be accepted from the state child protection authority (in NSW, this is Family and Community Services).

For more information or advice about the family violence provisions contact the Immigration Advice and Rights Centre or the Immigrant Women’s Speakout Association.

[19.170] Counselling

Counselling for victims

Early engagement with trauma informed counselling services can be beneficial for women escaping domestic violence. Women’s health centres and community health centres provide both individual counselling and opportunities for women to speak to others who have had similar experiences. The Domestic Violence Line can provide counselling and referrals 24 hours a day. Victims Services NSW provides access to an initial 10 hours of free counselling and a further 12 hours if required, for all victims of violent crimes.

Counselling for perpetrators

Counselling is available through services such as Mensline Australia. There are some men’s behaviour change programs available in NSW. Check to ensure that the minimum standards set by NSW government are adhered to. It is important that counselling and men’s behaviour change programs do not detract from or minimise keeping men who use violence accountable, and they must keep the safety of women and children as the highest priority. The efficacy of men’s behaviour change programs is yet to be proven.

Housing

There are a number of refuges in NSW providing crisis accommodation and a supportive, safe environment for women and their children who are escaping domestic violence. Most are open 24 hours a day. For a referral to a refuge call the Domestic Violence Line.

Refuge staff can assist women with information about their legal and welfare needs and help them apply for social security benefits and legal aid.

Many women's refuges are unable to accommodate pets but there are some temporary housing options for pets of people who have escaped domestic violence. One program is "Safe Beds for Pets" through the RSPCA.

If a victim of domestic violence leaves home

A victim of domestic violence will not jeopardise their rights in a later property settlement or maintenance application if they have left the home in circumstances of domestic violence. If the legal title to the real property is held in the perpetrator's sole name, the victim should seek timely advice regarding how best to protect their interest in the property.

Renting

A person may want to stay at the rented premises and have the perpetrator leave, or to leave and end their legal liability. There are several different options to assist the victim under tenancy laws however; they do depend on the whether they are a sole or co-tenant or occupant and whether they have a fixed term or periodic residential tenancy agreement.

Tenants with a final AVO with an exclusion order can stay in the property or leave a fixed term tenancy by giving two weeks written notice, without needing to compensate the landlord.

Co-tenants without a final AVO with an exclusion order can make an application to the NSW Civil and Administrative Tribunal to end their tenancy or the offender's tenancy due to the special circumstances of their case. Women's Legal Service NSW can be contacted for advice.

A tenant can change the locks, without the landlord's consent, if any occupant has an AVO with exclusion order (interim, provisional or final) against them. The tenant can also withhold copies of the new keys from the excluded occupant.

Housing NSW

Staying Home Leaving Violence (SHLV)

SHLV is a Housing NSW initiative, which aims to increase safety and prevent homelessness by enabling the person experienc-

ing domestic or family violence and their children to remain in their home. The service includes outreach support, risk assessment, safety planning, security modifications and equipment, court support and casework and advocacy.

Start Safely

Housing NSW has also developed Start Safely, a rental subsidy program to provide short to medium term financial help to women, including those with children, who have experienced domestic or family violence so that they can secure private rental accommodation.

[19.180] Financial assistance

Centrelink

Anyone on an income support payment from Centrelink can apply for a crisis payment within seven days of "the crisis" – for example, if a victim of domestic violence has left her home and cannot return because of domestic violence. A social worker at Centrelink can make an assessment for a crisis payment.

Victims Support

Victims Services NSW provides:

- **Immediate needs payment** of up to \$5,000 to victims of violent crimes. This can be for the costs of relocating to a safer location; changing locks or other safety measures; emergency medical and dental expenses. Applicants need a police or medical report plus receipts or other evidence of the expenditure. Claims must be made within two years of the incident, or within two years of turning 18 for children.
- **Financial assistance** of up to \$30,000 for victims of violent crimes. This can be for loss of wages (up to \$20,000); living expenses for rent, furniture, child care, bills (up to \$5,000) for victims who were not employed; travel, medical and dental expenses; damage to personal effects (up to \$1,500). Claims must be made within two years of the incident, or within two years of turning 18 for children (but no time limit if the crime was child sexual assault).

- **Recognition payments** of \$1,500 or \$5,000 for victims of domestic violence (depending on the degree of injury) or \$5,000 or \$10,000 for victims of a sexual assault (depending on the nature of the assault). Claims for domestic violence assault, sexual assaults and child physical abuse must be lodged within 10 years of the incident or within 10 years of turning 18 for children. There is no limit time for claims for child sexual abuse (see Chapter 39 on Victims Support for full information).

Other resources

Community Services and charities such as the Smith Family, Salvation Army and St Vincent de Paul may be able to offer emergency financial help.

Employment information

The *Fair Work Act 2009* (Cth) provides victims of domestic violence and those caring for an immediate family member or member of their household who is a victim of domestic violence with a *right to request* flexible working arrangements. These may include changing hours of work (eg working less hours or changing start or finish times), changing patterns of work (eg working split shifts) and/or changing the place of work (eg moving office or working from home).

However, an employer is not obliged to agree to the request and can refuse on "reasonable business grounds". While there are limitations in the flexible working arrangements provisions contained in the Act, these protections still play an important role in increasing the safety and job security of victims of violence and the people supporting them.

Legal advice

LawAccess NSW

LawAccess NSW is a free, government telephone service that provides legal information, referrals, including to community legal centres and Legal Aid and in some cases provides advice for people who have a legal problem in NSW.

Women's Legal Service NSW

Women's Legal Service NSW gives free legal advice and information to women experiencing domestic violence in NSW over the telephone and face to face at various outreach locations.

Legal Aid NSW

Free legal advice and representation for AVO matters may be obtained from Legal Aid.

Legal aid may be available in domestic violence proceedings, subject to means test and availability of funds test. It is not necessary to go through a Legal Aid office to get legal aid. A grant of legal aid may be assigned to private legal practitioners willing to accept legal aid rates of payment.

If police have applied for an AVO on behalf of a protected person, the police prosecutor represents the protected person in court and they do not need their own lawyer for that application.

Can a victim of domestic violence making a private application get legal aid?

Legal aid is available to victims of domestic violence making a private application, subject to the means and merits test.

Can defendants get legal aid?

Legal aid is generally not available to defendants in AVO proceedings. There are exceptions in some circumstances; for example, where Legal Aid is satisfied that the defendant in the AVO proceedings is a primarily a victim of domestic violence, or where they meet the special disadvantage guidelines, for example, have a cognitive impairment.

Assistance in dealing with the courts

The Women's Domestic Violence Court Advocacy Service (WDVCAS) operates in many courts in NSW. The WDVCAS offers support, information and referral to women in Apprehended Violence Order proceedings. Many of the WDVCAS operate a safe rooms for women and their children while they are at court, and many have a duty solicitor scheme (DVPS) to represent women in court

on the day and provide legal advice about related issues. Both the WDVCS and duty solicitor may be able to assist defendants who are primarily victims of domestic violence (see above paragraph "Can defendants get legal aid?").

Contact points

[19.190] If you have a hearing or speech impairment and/or you use a TTY, you can ring any number through the National Relay Service by phoning **133 677** (TTY users, chargeable calls) or **1800 555 677** (TTY users, to call an 1800 number) or **1300 555 727** (Speak and Listen, chargeable calls) or **1800 555 727** (Speak and Listen, to call an 1800 number). For more information, see www.relayservice.gov.au.

Non-English speakers can contact the Translating and Interpreting Service (TIS National) on **131 450** to use an interpreter over the telephone to ring any number. For more information or to book an interpreter online see www.tisnational.gov.au.

Police

Call 000 for all emergencies
Call the Police Assistance Line on 131 444 if you are a victim of a crime, other than life threatening or time critical emergency situations.

Child Protection

Child Protection Helpline (to report child abuse and neglect, 24 hrs)
ph: 132 111 (TTY 1800 212 936)

Counselling and crisis support

AVERT Family Violence
www.avertfamilyviolence.com.au

Digital-Trust (Helping Victims of Digital and Cyber Abuse)
www.digital-trust.org

Domestic Violence Line (for counselling, information and refuge accommodation 24hrs)
www.domesticviolence.nsw.gov.au
ph: 1800 656 463

Education Centre Against Violence
www.ecav.health.nsw.gov.au
ph: 9840 3735

Immigrant Women's Speakout
www.speakout.org.au
ph: 9635 8022

Lifeline Telephone Counselling Service
www.lifeline.org.au
ph: 131 114 (24 hrs)

Mens Referral Service

www.mrs.org.au
ph:1300 766 491
Mensline Australia
www.mensline.org.au
ph: 1300 78 99 78 (24 hrs)

National Sexual Assault, Domestic Family Violence Counselling Service (1800 Respect)
www.1800respect.org.au
Ph: 1800 737 732

No to Violence – Male Family Violence Prevention Association
www.ntv.org.au
ph: (03) 9487 4500

RSPCA Safe Beds for Pets
www.rspcansw.org.au
ph: 9782 4408

Salvos Counselling
www.salvoscounselling.salvos.org.au
ph: (02) 9743 2831

Smith Family
www.thesmithfamily.com.au
ph: 1300 326 459 or 9085 7222

A list of metropolitan and regional offices is in Contact points for Chapter 15, Debt.

St Vincent de Paul Society
www.vinnies.org.au
ph: 9568 0262

Technology Safety Planning
www.smartsafe.org.au/tech-safety-hub/technology-safety-planning

Victims Services NSW

www.victimsservices.justice.nsw.gov.au
ph: 1800 633 063 or 8688 5511
Aboriginal Contact Line ph: 1800 019 123

White Ribbon Australia
www.whiteribbon.org.au
ph: 9045 8444

Women's Health NSW
www.whnsw.asn.au
ph: 9560 0866

Blacktown/Mt Druitt Forensic Medical Unit
Call hospital main switch ph: (02) 9881 8000

For a full list of Women's Health Centres in NSW, see Contact points in Chapter 24, Family Law.

Staying Home Leaving Violence

A program to help women escaping domestic violence to remain safely in their homes.

Bega: 6492 6239
Blacktown: 9677 1962
Broken Hill: (08) 8088 2020
Campbelltown: 1800 077 760
Dubbo: 6883 1561
Eastern Sydney: 0439 414 673
Fairfield/Liverpool: 9602 7795
Kempsey: 6562 2272
Lake Macquarie: 4943 9255
Maitland/Cessnock: 4937 1927
Moree: 6752 4536
Newcastle: 4926 3577
Nowra/Shoalhaven: 4421 7400

Parramatta/Holroyd: 9636 8437
 Penrith: 4721 2499
 Redfern: 9699 9036
 Tamworth: 0418 598 556
 Wollongong: 4256 7333
 Wyong/Gosford: 4356 2600

Legal Assistance

Community Legal Centres NSW
www.clcnsw.org.au

Family Violence Prevention Legal Services

Assistance and advice for
 Aboriginal and Torres Strait
 Islander victims of family violence
 Bourke/Brewarrina ph: 6872 2440
 Broken Hill ph: (08) 8087 6766 or
 1800 812 800
 Forbes ph: 6850 1234 or 1800 700
 218

Kempsey ph: 6562 5856
 Moree ph: 6751 1400
 Walgett ph: 6828 3143

Help to represent yourself in court

[www.localcourt.justice.nsw.gov.au/
 Pages/what_to_expect/
 representing_yourself.aspx](http://www.localcourt.justice.nsw.gov.au/Pages/what_to_expect/representing_yourself.aspx)

Immigration Advice and Rights Centre (IARC)

www.iarc.asn.au
 Admin ph: 8234 0700
 Advice ph: 8234 0799 (Tues and
 Thurs 2-4 pm)

LawAccess NSW

www.lawaccess.nsw.gov.au
 ph: 1300 888 529

Legal Aid NSW

www.legalaid.nsw.gov.au
 For contacts, call LawAccess ph:
 1300 888 529

Legal Information Access Centre (State Library)

www.legalanswers.sl.nsw.gov.au

Wirringa Baiya Aboriginal Women's Legal Centre

www.wirringabaiya.org.au
 ph: 1800 686 587 or 9569 3847

Women's Legal Services NSW
www.wlsnsw.org.au

Women's Legal Contact Line
 ph: 1800 801 501 or 8745 6988
Domestic Violence Legal Advice Line

ph: 1800 810 784 or 8745 6999
Indigenous Women's Legal Contact Line

ph: 1800 639 784 or 8745 6977
Working Women's Legal Service
 ph: (02) 8745 6954

Care and Protection Legal Advice Line
 ph: (02) 8745 6908

Evening Telephone Advice Service
 Available by appointment [www.wlsnsw.org.au/
 evening-telephone-
 advice-service](http://www.wlsnsw.org.au/evening-telephone-advice-service)

Interpreter service: 131 450 (ask
 the interpreter to contact 8745
 6900)

Men's Domestic Violence Behaviour Change Programs

Programs that comply with the
 minimum standards

Men's Behaviour Change Network (MBCN)

www.mbcn-nsw.net
 ph: (02) 4624 8700

BaptistCare

Bankstown
 ph: 1300 130 225 or 8713 4333
 Campbelltown
 ph: 1300 130 225 or 4624 8700
 Tuggerah
 ph: 1300 130 225 or 4352 7900

CatholicCare Sydney

Fairfield
 ph: 8723 2222

Hastings Women and Children's Refuge

Port Macquarie
 ph: 6583 2155

Kempsey Family Support Service

Kempsey
 ph: 6563 1588 or 0437 737 818

Men and Family Centre

Lismore

ph: 6622 6116

Tweed Heads

ph: 5536 8868

Relationships Australia

Broadmeadow / Maitland
 ph: 4940 1500 or 1300 364 277

Macquarie Park

ph: 9418 8800 or 1300 364 277

Penrith

ph: 4728 4800 or 1300 364 277

Sydney CBD

ph: 8362 2888 or 1300 364 277

Wollongong

ph: 4221 2000 or 1300 364 277

Westmead

ph: 9806 3299 or 1300 364 277

Court Support

Women's Domestic Violence Court Advocacy Services

Blue Mountains: 6352 2052 or 0405
 901 207

Burwood: 9744 2461

Central Coast: 4321 0099 or 4350
 3064

Central West: 6361 3345

Far South Coast: 6492 5002

Far West: (08) 8087 2053

Hunter: 4940 8766

Hunter Valley: 4934 2906

Illawarra: 4229 4604

Macarthur: 4640 7333

Macquarie: 8833 0922

Mid North Coast: 6584 0053

New England: 1800 613 083 or
 6761 2434

North Coast: 1800 174 466 or 6650
 0302

North West: 1800 004 022 or 6752
 4882

North West Sydney: 9831 5482

Northern Rivers: 6621 1044

Northern Sydney: 8425 8707

Riverina: 6964 4804

South Coast: 4423 8507

South Eastern: 6299 3835

South West Sydney: 9601 6988

Southern: 1800 120 320 or 6021
 3059

Southern Sydney: 9589 1200
Sydney: 9287 7505 or 0447 174 698
Wagga Wagga: 6921 6227
Western: 6884 7388
Western Sydney: 4731 5098

Lesbian and gay support

ACON (previously AIDS Council of NSW)

(Incorporating the Lesbian and Gay Anti-Violence Project)

www.acon.org.au

ph: 1800 063 060 or 9206 2000

Another Closet: Domestic Violence in Gay and Lesbian Relationships

www.anothercloset.com.au

ph: 1800 65 64 63

Inner City Legal Centre

(Incorporating legal services, including court assistance for Lesbian, Gay, Transgender and Intersex people experiencing domestic and family violence.)

www.iclc.org.au

ph: 9332 1966 or 1800 244 481