

# Apprehended Violence Orders

An Apprehended Violence Order (AVO) is an order through the court to protect victims of violence when they are fearful of future violence or threats to their safety.

There are two types of AVOs:

1. ADVO (Apprehended Domestic Violence Order).
2. APVO (Apprehended Personal Violence Order).

An ADVO relates to the protection of a person/s where a domestic relationship exists between the parties. An APVO relates to the protection of a person/s where there is no domestic relationship between the parties, e.g. co-workers and neighbours. Every AVO in NSW must include mandatory conditions. This applies to AVOs applied for by the individual and AVO's applied for by the Police. Mandatory conditions include:

- prohibits the defendant from assaulting or threatening the protected person/s or a person with whom the protected person has a domestic relationship.
- prohibits the defendant from stalking, harassing, or intimidating the protected person or a person with whom the protected person has a domestic relationship.
- prohibits the defendant from intentionally damaging property that belongs to the person that's protected, or is in the protected persons possession, or a person with whom the protected person has a domestic relationship (NSW Police, n.d.)

The *Crimes (Domestic and Personal Violence) Act 2007* permits the Court to enforce additional conditions. Further conditions may be pursued by the applicant to the AVO and are enforced by the judgment of the Court. Additional conditions can include how far the defendant must stay away from the protected person or outline the conditions for contact (if contact must occur). The Act provides the Court the authority to enforce broad conditions. Extra clauses can be requested by the applicant or the Police. The Magistrate can add extra clauses on an AVO, this is done on a case-by-case basis.

## How do I apply for an AVO?

An AVO application can be made in New South Wales on an individual's behalf by the police or an individual can apply at the local court. If the individual is under the age of 16, the police can only apply (NSW Police, n.d.).

Parties applying for the order are known as the “applicant”, the person to be protected by the AVO is called the “protected person”. The person from who the applicant needs protection is called the defendant. If the protected person needs to be protected from more than one person a separate application for each will have to be made. If a Court makes an AVO to protect an adult, the Court must include any child that has a domestic relationship with that adult as a protected person.

Police can apply for an AVO on behalf of an individual when:

- the individual is a victim of domestic violence
- the individual and/or their child is being intimidated, harassed or stalked
- someone has hurt yourself or your child.

## What Happens at Court?

When an application is first presented at Court and if the defendant does not agree, the matter will be adjourned for a hearing. The court will make a Directions Order about the exchange of evidence to be relied upon at the hearing. Both parties could be asked to file witness statements in support of his or her application at the court by a certain day. If the applicant doesn't, they could be granted an extension to file their statements, or the court may reject the application. If the defendant does not give a statement, they could not be permitted to present evidence at a hearing. If the applicant and the defendant file a statement, the matter will be granted a hearing date.

If the applicant does not attend the hearing, their application could be rejected. If the defendant does not attend, the AVO could be done in their absence. Police Prosecutor's would represent the applicant if they applied for the AVO on the applicant's behalf. If the applicant applied for the AVO themselves, they could represent themselves at court or they can get a lawyer.

## Provisional AVOs, Interim AVOs and Final AVOs

A provisional AVO can be sought by the police and granted by a court or senior police officer when a person needs immediate protection until they can attend court. The court then has the opportunity to consider making an interim AVO. An interim AVO is made by a

court either to extend a provisional AVO or where the court agrees someone needs temporary protection. If the charges are of a serious nature, the court will make an interim order for the victim's protection. This can happen even if an application for an AVO isn't made.

A final AVO could be prepared if:

- a defendant was served the AVO application but did not attend court and has no reasonable reason for not attending
- a defendant accepts the application, this can be done without acknowledging any wrongdoing
- the Magistrate decides there are sufficient concerns for the applicant's welfare (Legal Aid NSW, n.d.)

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“The NSW Police Force encourages police to give the strongest consideration to arrest offenders of domestic and family violence... The safety, protection and wellbeing of victims are of paramount concern to police.”

- [NSW Police Domestic and Family Violence Policy, \(2018\)](#)

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## What are the Impacts of Breaching an AVO?

A defendant will not get a criminal record when a AVO is granted against them, however, a breach of an order is a criminal offence. A defendant will breach an AVO if they intentionally do something that the AVO says they are not allowed to do.

The police can arrest and charge a defendant if:

- the criminal offence of contravening the AVO (breaching the AVO)
- other criminal offences, for example, assault or malicious damage.

You can't be convicted of breaching an AVO if:

- you were not in court when the order was made, unless you were served with a copy of the order in accordance with the requirements of the Act ([s.14\(2\)](#)).

- you went to mediation referred by the Court
- you were following a Property Recovery Order.

If the defendant has a firearms licence, it will be cancelled under the [\*Firearms Act 1996\*](#), if the defendant has a firearms licence it will be cancelled for 10 years and any firearms will be seized by the police. An AVO can prohibit a defendant from residing at a specific premise. The [\*Residential Tenancies Act 2010\*](#) enables the defendants name to be taken off the lease.

## Care Proceedings and AVOs

The Children's Court can make an AVO in care proceedings to protect the child and any relative who lives with the child. The Children's Court can make an AVO on its own or after one of the parties applies for an AVO. The Children's Court can also change (vary) and cancel (revoke) AVOs. The Children's Court is not authorised to vary or revoke the AVO if there are criminal proceedings related to the circumstances that lead to the AVO being made. The police and DCJ must be notified before the Court varies or revokes an AVO in a care matter (Legal Aid NSW, n.d).

## Varying and Extending AVOs

An application to extend, reduce, vary, or revoke an interim or final AVO can be made by the protected person, an applicant, or a defendant. This can be made at the local court. The police can make an application to vary, extend, reduce, or revoke an AVO where the protected person is under the age of 16 when the application was made. DCJ can make an application for children under the parental responsibility of the Minister and has standing as an interested party if the person in need of protection is a child.

## How Long do AVOs Last For?

The timeframe will be specified on the AVO, but the usual time frame is anywhere from 6-12 months with 6 months being the minimum. AVOs can be granted for longer than 2 years at the discretion of the Magistrate.

## References

Legal Aid NSW. (n.d). Types of Apprehended Violence Orders. Retrieved from <https://www.legalaid.nsw.gov.au/my-problem-is-about/apprehended-violence-order-avo/types-of-avos#accordion-ff76861ad1-item-254588f247>

NSW Police. (n.d). Apprehended Violence Orders (AVO). Retrieved from [https://www.police.nsw.gov.au/crime/domestic\\_and\\_family\\_violence/apprehended\\_violence\\_orders\\_avo](https://www.police.nsw.gov.au/crime/domestic_and_family_violence/apprehended_violence_orders_avo)