



AVOs: Varying & Extending Orders

This fact sheet summarises the Ask LOIS webinar on this topic, presented by Gabrielle Craig, Senior Solicitor, Women's Legal Services NSW on 11 February 2016. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This factsheet looks at:

- Applying for a variation
- Who can apply for a variation
- Preparing a variation application
- Applying to have an AVO extended
- The court process in variation and extension applications
- Revocation applications
- Where to get help

Common terms

- **PINOP** = person in need of protection
- **Applicant** = person seeking the protection of an AVO. This can be the PINOP herself or a police officer applying for an order for the protection of a PINOP
- **Protected Person** = PINOP after an Order has been made for her protection
- **Defendant** = person who is subject to the AVO

Varying an AVO

- Varying an AVO includes:
 - Changing the conditions on an AVO;
 - Changing the length of an AVO; and
 - Revoking an AVO.

Who can apply to vary an AVO?

- An application to vary an AVO can be made by:
 - The protected person (if over 16 years of age);
 - The guardian of a protected person (if over 16 years of age);
 - A defendant; or
 - A police officer
- If there is more than one protected person, an application can be made to vary in relation to all or any one of the protected persons.

Can a child vary an AVO?

- The *Crimes (Domestic and Personal Violence) Act* defines a child as a person under the age of 16
- Where an AVO includes a PINOP who is under 16 years of age, only a police officer can make the application to vary an AVO

When can you apply to vary an AVO?

- You can apply to the court to vary an interim or final AVO at any time. This includes an application to:
 - Change the orders of an AVO;
 - Change the length of an AVO; or
 - Revoke an AVO.
- You can apply to revoke an AVO even after it has expired

Preparing an application to vary an AVO

- An application to vary an AVO must be filed in Court
- The application must set out the grounds / reasons for the variation and what variation is sought



- The application will be listed for a mention
- In most circumstances, the application will need to be served on all of the other parties to the AVO

Who needs to know about the application to vary?

- The application to vary the AVO needs to be served on each of the protected persons to whom it relates and on the defendant
- A court may make an order extending an AVO without requiring the application to be served on the defendant if the application was filed before the day on which the AVO is due to expire

What happens when it goes to Court?

- The court will conduct a hearing to determine whether the variation should be granted.
- What is the legal test for variation of an AVO?
- A court may vary an AVO if it is satisfied it is proper to do so in all the circumstances
- A court can refuse to hear an application to vary an AVO if there hasn't been any change in the circumstances on which the making of the AVO was based

Case study

Fran has a 2-year final AVO for her protection from her former partner David. Fran is feeling anxious that the AVO is due to expire in 2 months and that without the AVO David will start to assault and harass her again. To date, there have been no incidents during the time the AVO has been in force.

It is not likely that Fran will be successful in an application to extend her AVO because there haven't been any incidents since the AVO was made. If there had been breaches of the AVO, it is much more likely the AVO would be extended.

An example of a situation where Fran's AVO could be changed would be if David went to the school that their child attends and made threats. In that instance, Fran might be able to successfully apply to include an order that David is not to approach the child's place of schooling.

Another example would be if Fran and David reconciled and Fran wanted the continued protection of mandatory orders but wanted to remove an order that prohibited David from entering their shared home.

What if police won't apply for a variation?

- If you think that you have grounds for a variation and the police will not assist you may want to make a complaint. The options include:
 - Making a complaint to the Area Commander; or
 - NSW Ombudsman

Revocation of an AVO

- Revoking an AVO has the effect that it is as though the AVO was never made
- An application for revocation can be made even after an AVO has expired if the court is satisfied that had the order still been in place it is appropriate that it be revoked
- Applications to revoke are often made because the *Firearms Act* states that a firearms license must not be issued to a person who is subject to an AVO or a person who has had an AVO made against them at in the previous 10 years
- Once an AVO is revoked, the defendant can apply for a firearms license
- Commissioner of Police must be notified of an application for revocation
- Court must take into account the effect that revocation would have on the protected person
- Court can order that any future application for revocation must only be made with the leave of the Court



Costs

- It is important to remember that there may be a cost risk for private applications to vary an AVO.

Where to get help?

- Women's Legal Services NSW Domestic Violence Legal Advice Line: **1800 810 784** or **8745 6999**
- Women's Domestic Violence Court Advocacy Service: www.legalaid.nsw.gov.au/what-we-do/community-partnerships/womens-domestic-violence-court-advocacy-program/womens-domestic-violence-court-advocacy-service-locations-in-nsw
- Your local Community Legal Centre: www.clcnsw.org.au