

Apprehended Violence Orders - Basics



This factsheet summarises the Ask LOIS webinar on this topic, presented by Alicia Jillard, Solicitor, Women's Legal Services NSW on 14 November 2012. This webinar can be viewed at www.asklois.org.au/webinars/past-webinars

This fact sheet covers:

- What is domestic violence?
- What is an AVO?
- How to apply for an AVO
- AVO orders and varying them
- Breaching AVO's and consequences from breach

What is Domestic Violence?

- Domestic violence is behaviour in a domestic relationship that:
 - Involves an **abuse of power, coercion and control**; and
 - Is usually, (but not always) perpetrated by men against women
- Domestic violence includes a range of behaviours:
 - Intimidation
 - Coercion
 - Emotional and psychological abuse
 - Financial abuse
 - Sexual abuse
 - Physical abuse
 - Spiritual abuse
 - Isolation

What is an AVO?

- An Apprehended Violence Order (also known as a 'restraining' or 'intervention' order in other states) is an order for the **future protection** of a person from another person
- An AVO is **not** a criminal charge
- An AVO **does not** automatically give the defendant a criminal record
- An AVO **cannot order** a defendant to do something (e.g attend anger management course)
- An AVO **does not mean** that a woman needs to end her relationship with the defendant

Types of AVOs

1. **ADVO (Apprehended Domestic Violence Order)**
 - There is a 'domestic relationship' between the person seeking protection and the defendant
 - E.g. spouse, de facto partner, girl/boy friend, relative, housemate
2. **APVO (Apprehended Personal Violence Order)**
 - The person seeking protection and the defendant do not have a domestic relationship
 - E.g. work colleagues, neighbours, friends

What must be proven?

- The person seeking protection must fear:
 - A 'personal violence offence' being committed against them; or
 - Intimidation (including harassment or molestation); or
 - StalkingBy the other person (defendant)
- Fear must be based on *reasonable* grounds

How to apply for an AVO

1. Report incident or behaviour to the **Police** who may make an application on behalf of the person seeking protection (Police application). Always go to the police first where possible! OR

2. The person seeking protection can apply **privately** through the Registrar at the Local Court (Private application)



Police Applications:

- Police must apply for an ADVO if an officer suspects or believes that:
 - A **domestic violence** offence or a **stalking** and/or **intimidation** offence *has* or *will* be committed; or
 - Child abuse of a child under 16; or
 - The police have charged someone with a domestic violence offence, stalking, intimidation or child abuse
- Only a police officer can apply for an ADVO for someone under 16 years

What if Immediate Protection is needed?

- Police can apply for a **provisional order** if they have good reason to believe that an order needs to be made **immediately** to ensure the safety and protection of the person to prevent substantial damage to property of the protected person
- Since 20 May 2014, senior police officers have the power to determine provisional AVO applications, meaning they can be made at any time of the day without needing to go to an authorised justice (Judge)
- Since 20 May 2014, police also have added powers to direct and detain defendants such as directing them to leave the scene or to accompany the police to the police station and remain there

AVO Orders

- Mandatory orders
 - Automatically apply in every order – not to harass, intimidate, stalk or assault
 - Automatically protects children living with the person seeking protection
- Exclusion orders
 - Prevents the defendant from residing, or entering, or going within a certain distance of a person's home of work
- Additional orders
 - Family law matters
 - No contact
 - Firearms
 - Childcare and educational premises
 - Alcohol and drugs
 - Damage or destroy property

Variations of an AVO

- **An AVO can be varied by:**
 - Adding orders
 - Deleting orders
 - Amending any existing orders
 - Extending or reducing its length of operation; or
 - Revoking the AVO

To vary an AVO, you will need an application

- **An application to vary an AVO must set out:**
 - The reasons for seeking the variation; and
 - The variation sought
- **Note:** If any of the protected persons are a child under 16, only the police can apply to vary the AVO
- **The court can decline to hear an application to vary an AVO if:**
 - There has been no change in circumstances since the AVO was made; and
 - The application is really an appeal against the AVO



Breaching an AVO

- Any breach of an AVO should be reported to the Police, as it is a breach of a court order
 - It is a **criminal offence** to breach an AVO
- Where there is a no contact order there is no such thing as a 'technical breach':
 - Eg, if you have a no contact order, it's still a breach even if someone only calls to say "I love you"
- When reporting a breach of an AVO, a woman's word is her evidence
 - If there is written evidence, that can also be used
- It is irrelevant if the protected person contacted the defendant – this will not be an offence of 'enticing' a breach. The responsibility remains with the defendant to follow the order(s).
- **Tip:** Make sure to record the event number, Officer's name, date and time when reporting to the Police

Consequences of Breaching an AVO

Breach of AVO

- Criminal offence
- Penalties
 - Fine of up to \$5,500
 - Imprisonment for up to 2 years for more serious offences

What happens to your firearms if you get an AVO?

- If an Interim AVO is made – your gun license is suspended
- If it is a final AVO – the defendant can't hold licence for 10 years after expiry of AVO

Affect on Working with Children Check

- An AVO by itself will not automatically affect a NSW Working with Children Check
- A person will only be subject to a risk assessment to evaluate their eligibility for child related work if:
 - They have been charged or convicted with a offence of the type listed in Schedule 1 of the *Child Protection (Working with Children) Act 2012 (NSW)*; or
 - If they have convictions or pending charges that indicate a pattern of behaviour that warrants investigation because of child safety concerns.
- A person will be automatically barred from working with children if they are convicted of or in proceedings for offences listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012 (NSW)*. For example, murder of a child, sexual assault or intentional wounding of a child.
- For more information, please see www.kidsguardian.nsw.gov.au/working-with-children

Example Scenarios

Scenario 1:

Mum wants to extend her AVO as she is still afraid and the AVO is about to expire. The AVO has herself and her two children listed as protected persons. The father is the defendant. How can she vary the AVO?

Answer: The only way she can vary the AVO is asking the police to make an application to vary. She can speak with the Domestic Violence Liaison Officer or a more senior officer if she is having difficulties

Scenario 2:

A woman has agreed to a private AVO against herself for the protection of her ex partner. They have no children together and the AVO is only for his protection and is only in the mandatory terms. She agreed to this AVO as she plans to have nothing to do with him in the future and is confident that she won't breach the AVO. She wants to retrain as a primary school teacher. Will the AVO be relevant under a Working with Children Check?

Answer: No, because the AVO has not been applied for by Police and there are no children listed on the AVO

Resources

- For more information look at our AVOs Advanced webinars and factsheets!
- You can also visit www.lawassist.lawaccess.nsw.gov.au/lawassist/lawassist_avo.html

