



Back to Basics

Apprehended Violence Orders

This fact sheet summarises the Ask LOIS webinar on this topic, presented Jessica Raffal, Lawyer, Women's Legal Service NSW on 18 August 2016.

This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This factsheet looks at:

What is an AVO?
What are the different kinds of AVOs?
What needs to be proved to get an AVO?
How to apply for an AVO
What orders can be included?
How to vary an AVO
Consequences of AVOs

What is an AVO and what is it not?

An Apprehended Violence Order is an order for the **future protection** of a person from another person against violence, intimidation or harassment.

An AVO is a **civil order** but breaching it may be a **criminal offence**.

An AVO is **not** a criminal charge.

An AVO **does not** give the defendant a criminal record.

An AVO **cannot order** a defendant **to do** something (e.g attend anger management course) – it can only restrain a defendant **from doing** something

An AVO **does not mean** that a woman needs to end her relationship with the defendant.

There are **two types** of AVOs:

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.

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 proved to get an AVO

The person seeking protection must fear:

- a 'personal violence offence' being committed against them; or
- intimidation (including harassment or molestation); or
- stalking,

by the other person (defendant).

Fear must be based on *reasonable* grounds.

How to apply for an AVO

There are two ways.

1. Report incident or behaviour to the Police. The Police may make an application on behalf of the person seeking protection. This is called a **Police application**.



2. The person seeking protection can apply privately through the Registrar at the Local Court. This is called a **Private application**.

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.

Police can make a provisional order before going to Court. Provisional orders last for 28 days. They can make a provisional order is:

- They have good reason to believe that an order needs to be made immediately to ensure the safety and protection of the person, or
- to prevent substantial damage to property of the protected person.

An application can be made at any time whether or not the court is sitting.

What orders can be included?

Mandatory orders

The defendant shall not:

- a. Assault, molest, harass, threaten or otherwise interfere with the protected person or a person with whom the protected person has a domestic relationship,
- b. Engage in any other conduct that intimidates the protected person or a person with whom the protected person has a domestic relationship,
- c. Stalk the protected person or a person with whom the protected person has a domestic relationship.

These are included in every order. They also protect children and other people 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 or work.

No contact orders

Prevents the defendant from contacting or limits method of contact.

Additional orders

The defendant must surrender all firearms

Exclusion from childcare and educational premises

No contact within 12 hours of consuming alcohol or drugs

Prohibiting damage or destruction of property

Other orders drafted as necessary

Variation of AVOs

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

An application to vary an AVO must set out:

- the reasons for seeking the variation; and
- the variation sought.

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.

Breach of an AVO

Any breach of an AVO should be reported to the Police as it is a breach of a court order and may be a criminal offence

- There is no such thing as a 'technical breach' ie. he only called to say I love you
- Her word is her evidence
- It is irrelevant if the protected person contacted the defendant – no offence of enticing a breach
- *Tips:* Make sure to record the event number when reporting to the Police AND to record breaches yourself

Consequences of AVO

Breach of AVO

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

Firearms

- Interim AVO - firearm suspended
- Final AVO - can't hold license for 10 years after expiry of AVO

Working with Children Check (WWCC)

AVO only relevant to WWCC if:

- it is a final AVO; and
- it was applied for by a police officer; and
- it has a child (or children) under 16 years *listed on the AVO as a protected person(s)*; and