

A Guide to Apprehended Domestic Violence Orders (ADVO) and Apprehended Violence Orders (AVO) in New South Wales

What is family violence?

Section 4AB(1) of the *Family Law Act 1975* (Cth) (the Act) defines family violence as “violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family, or causes the family member to be fearful.”

Examples of behaviours that the Act considers as acts of family violence include, but are not limited to the following:

- assault;
- sexual assault or other sexually abusive behaviour;
- stalking;
- repeated derogatory taunts;
- intentionally damaging or destroying of property;
- intentionally causing death or injury to an animal;
- unreasonably denying the family member financial autonomy that they would otherwise have had;
- unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or their child at a time when they are entirely, or predominately dependent on the person’s financial support;
- preventing the family member from making or keeping connections with family, friends or culture;
- unlawfully depriving the family member, or any other member of their family their liberty.

Family violence and children

Children may be particularly vulnerable to family violence, and the Act states that a child is exposed to family violence if they see, hear, or experience the effects of family violence. Some examples of situations where a child is exposed to family violence can include, but are not limited to:

- overhearing threats of death or personal injury by one member of the family towards another member of the child's family;
- seeing or hearing an assault of one family member of the child by another member of the family;
- comforting or providing assistance to a member of the child's family who has been assaulted by another member;
- cleaning up a site after a member of the child's family has intentionally damaged property of another family member;
- being present when police or ambulance officers are in attendance after an incident involving the assault of the child's family member by another family member.

Family violence orders (Apprehended Domestic Violence Order)

An Apprehended Domestic Violence Order (ADVO) is generally made to protect someone from family violence. An ADVO usually prohibits one family member from coming within a certain distance to the other parent, or stalking or harassing the other family member.

Under the provisions of the Act, upon the issuing of an ADVO, a person subject to such an order can usually only come into contact with the other person only under the following circumstances:

- delivering or collecting a child who is spending time with a parent or another person, as provided for by the Act; or
- allowing the person to attend family counselling, family dispute resolution, family consultant meetings or court during family law proceedings.

It should be highlighted that child protection orders differ from an ADVO in that such orders are issued by the Children's Court, if there is a belief that the child is in need of protection. However, children can be included in such orders.

If the person consents to an order to be made, a magistrate can issue an ADVO. Additionally, a person can agree to the ADVO, however, they may not need to admit any wrongdoing.

What is an Apprehended Violence Order?

Unlike an ADVO which is issued in matters involving family violence, an Apprehended Violence Order (AVO) is a court issued order for a person who fears for their safety. The order protects a person from further violence, intimidation or harassment.

If the court issues an AVO, the order will prohibit the person from assaulting, harassing, threatening, stalking, or intimidating the person who is in fear. Additional conditions can also be included in an AVO.

How to apply for an Apprehended Violence Order?

A person can contact the police, who can then make an application for an AVO on the person's behalf, otherwise, a person can make an application on their own accord at the local court. However, an ADVO should be made as a matter of law for any applications made at the local court.

There is no requirement to seek the assistance of a lawyer if the police have made the application for an AVO, nor is there a requirement for a lawyer to be present if a person makes an application personally to the local court. Although, it is a good idea to seek the help of a lawyer if an application is being made at the local court.

Steps to take after the application for an Apprehended Violence Order

Upon the making of an application for an order, it's essential to note the court date when the application is made. The application will then inform the person subject to the order the date and time when they are required to attend court, and it will be served by the police.

However, it should be noted that an application can be rejected if the court is of the belief that the application is frivolous, vexatious, or there is a reasonable chance that the application will not succeed.

When can a court issue an Apprehended Violence Order?

An AVO can be issued by the court under the following circumstances:

- the defendant consents to the order being made;
- after hearing all of the evidence, the magistrate is reasonably satisfied that there are fears for a person's safety;
- the person has been served with the application, but fails to show up to court.

What happens if a person does not consent to an Apprehended Violence Order?

If a person does not consent to an AVO, the matter will be adjourned so the magistrate can decide whether there are grounds to make an order. In such a circumstance, a person can request for an Interim Apprehended Violence Order to be made until the hearing.

If a matter is adjourned, the applicant may be required to provide written statements to the court by a certain date, and directions in regards to the statement will be provided by the court.

If all parties have complied with the directions of the court, the matter will be listed for mention.

Failure to comply with the court's directions can lead to a dismissal of the matter, or alternatively, the court may require any outstanding statements to be filed. A person who is subject to the application, but does not comply with the directions, may not be allowed to provide evidence at the hearing.

If all parties have complied with the court's directions, a hearing date will be set and it is essential to attend court or the application may be dismissed. Alternatively, if the person subject to the application fails to attend the hearing on the stipulated date, they may then be subject to an order – even if they are absent from the hearing.

What conditions can be included in an Apprehended Violence Order?

Upon the issuing of an AVO, the following conditions are included preventing the person subject to the order from:

- assaulting, molesting, harassing, or interfering with the Protected Person; and
- intimidating the Protected Person; and
- stalking the Protected Person, or any other person in a domestic relationship with that person, and who is also protected by the conditions.

Additional conditions can also be placed which can also prohibit the person subject to the order from:

- approaching or entering premises where the Protected Person lives, works, or goes to;
- approaching the Protected Person, or a place where the Protected Person may be after drinking alcohol, or taking illegal drugs;
- damaging property; and/or
- any further conditions agreed upon by both parties, or issued by the court.

The person subject to an order will not have a criminal conviction recorded, however, if the person breaches a condition, they may be charged with a criminal offence. If a person who is in fear feels that there has been a breach, they should inform the police of the breach.

The AVO will last for a certain period of time and can be extended if the person still has a reasonable fear from the person subject to the order. Alternatively, variation of the conditions of an order can be made upon an application to the local court, or the police can have the order

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changed or cancelled. However, it should be pointed out that only the police have the power to change or cancel an order if children are named in an order.