



This article examines the protection victims of domestic violence may seek under the provisions of the *Crimes (Domestic and Personal Violence) Act 2007* (hereafter referred to as “the Act”).



A. WHAT IS DOMESTIC VIOLENCE?

When one person in a domestic relationship uses violent or intimidating tactics to control or intimidate the other, this is regarded as domestic violence. It is not necessary for an actual physical assault to have happened. Acts of domestic violence include sexual abuse, emotional or psychological abuse, financial abuse, verbal abuse, stalking and intimidation.

Therefore, it can be seen that assault can be committed even if there is no physical contact. Raising a knife, waving a clenched fist or drawing an index finger across one’s throat will be sufficient to demonstrate a threat of violence by the attacker which puts the victim in fear of such threat being carried out. The court will consider the facts and circumstances of each case to determine whether an act of domestic violence has occurred which merits the making of an Apprehended Violence Order (AVO).

B. WHAT IS A DOMESTIC RELATIONSHIP?

Under Section 5 of the Act, you have a “domestic relationship” with another person if you:

- a. are or have been married to the other person; or
- b. are or have been a de facto partner of the other person; or
- c. have or had an intimate personal relationship with the other person (whether or not this involves a sexual relationship); or
- d. are living or had lived in the same household as the other party; or
- e. are living or had lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (this does not include correctional centres or children detention centres); or
- f. have or had a relationship involving your dependence on the ongoing paid or unpaid care of the other person; or
- g. are or had been a relative of the other person; or
- h. in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the other person’s culture.

It is noted that Apprehended Violence Orders also provide protection to people in same sex relationships.

C. HOW CAN AN AVO PROTECT YOU?

In NSW, a victim of domestic violence can get protection by obtaining an Apprehended Domestic Violence Order under Section 15 of the Act. This order is made by the court to protect the victim from acts of violence by the other party (the defendant). The victim is considered to be a “person in need of protection” (a “pinop”) and is described as such in the court application papers.

Although the order does not give the defendant a criminal record, it is effective in that the defendant cannot breach the prohibitions and restrictions placed on him or her under the AVO. Breaching an AVO is a criminal offence resulting in the defendant being arrested and charged by the police.



D. GROUNDS FOR AN AVO

The court must be satisfied on the balance of probabilities that you have reasonable grounds to fear, and in fact fear that the defendant will commit a personal violence offence or fear harassment, molestation, intimidation or stalking. If the court is satisfied on the merits of the evidence that you need protection it will grant the application for an AVO and impose conditions to prevent the defendant from doing certain things.

E. PROHIBITIONS AND CONDITIONS IMPOSED

The AVO will include standard orders that prohibit the defendant from assaulting, molesting, harassing or threatening you. In addition to these standard orders, the AVO can also include conditions that prohibit the defendant from entering your home or workplace, contacting or approaching you and approaching your home for 12 hours after drinking or taking drugs.

The court may also make an exclusion order to prohibit the defendant from entering or living in the family home. Before making such order the court must consider the accommodation needs of both parties, the effect of the order on children who normally live there and the consequences for you and any children if the order is not made.

F. WHO CAN APPLY FOR AN AVO?

If you are a victim of domestic violence you may apply for an AVO from the local court. The court staff will assist you in making the application. Alternatively you can seek legal advice from a lawyer. Under Section 49 of the Act, if police attend a domestic violence incident or are informed by the victim that it has occurred the police must apply for an AVO on the victim's behalf if they suspect or believe that a domestic violence offence has recently been committed, is being committed, is imminent or is likely to be committed against the person for whose protection an order would be made.

Given all of the above scenarios, more often than not the police upon attending a domestic violence incident will commence an application for an AVO. However, an

application would not be made by the police if they believe that the victim intends to make the application.

G. AVO PROCEEDINGS

The court will issue an interim order and application notice to the defendant. These will have to be served on the defendant. If the police make the application they will carry out service on the defendant. Where the victim is the applicant, a process server will serve the interim order and application notice on the defendant. The application notice will have a return date which is the day the parties have to attend at the designated court. If the defendant pleads guilty on that day the court will grant the application for an AVO and impose conditions and prohibitions requested for in the application notice. If the defendant does not plead guilty the judge will fix a hearing date for a contested AVO application.

On the day fixed for hearing the judge will hear the evidence of both parties and arrive at a decision on whether to grant or to dismiss the application for an AVO.

H. DURATION OF AVO

An AVO will be of fixed duration usually for 12 months. It comes into effect from the moment the judge makes the order until the expiry date is reached. Breach of an AVO is a criminal offence for which there is a maximum penalty of 2 years imprisonment and/or a fine of up to \$5,500.00.

Comasters can help clients in Apprehended Violence Order (AVO) issues.

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