



When a domestic violence incident (which need not be physical) occurs in a domestic relationship, what can the affected party do?

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



WHAT IS DOMESTIC VIOLENCE?

When one person in a domestic relationship uses violence 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 occurred. Raising a knife, waving a clenched fist or drawing an index finger across one’s throat will be sufficient in demonstrating a threat of violence by the attacker which puts the victim in fear of such threat being carried out.

Acts of domestic violence include sexual, emotional, psychological, financial or verbal abuse, stalking and intimidation. 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).

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 and at the same time as the other person (excluding 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

HOW CAN AN AVO PROTECT YOU?

In NSW, there are two types of AVOs which provide protection from different types of violence:

An **Apprehended Domestic Violence Order (ADVO)** protects a person from domestic violence by an individual where a domestic relationship exists– such as a spouse or ex-partner. This order is made by the court under Section 15 of the Act. 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 them under the ADVO. Breaching an ADVO is a criminal offence resulting in the defendant being arrested and charged by the police.

An **Apprehended Personal Violence Order (APVO)** protects a person from violence where a domestic relationship does not exist – such as a neighbour, co-worker or friend. This order is made by the court under Section 18 of the Act.

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 or is being committed, or is imminent or 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 or believe that there is a good reason not to do so, in which they must make a written record of such reason.



GROUNDS FOR AN AVO

The court must be satisfied on the balance of probabilities that the victim has reasonable grounds to fear and in fact fears, that the defendant will commit a personal violence offence, harassment, molestation, intimidation or stalking. Conduct does not need to involve actual or threatened violence or damage to property in order to amount to intimidation. If the court is satisfied on the merits of evidence that the victim requires protection, it will grant the application for an AVO and impose conditions on the defendant.

PROHIBITIONS AND CONDITIONS IMPOSED

The AVO will include standard orders that prohibit the defendant from assaulting, molesting, harassing or threatening the victim. In addition to these standard orders, the AVO may also include conditions that prohibit the defendant from entering the victim's home or workplace, contacting or approaching the victim and/or approaching the victim's home for 12 hours after consuming alcohol or other drugs.

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

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 – the day the parties must attend 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 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

DURATION OF AVO

An AVO will have varying lengths depending on the circumstance and matter before the court. It will generally operate for as long as it is deemed necessary to ensure adequate protection of the applicant's safety. Previously, an AVO had a typical period of twelve months before expiry. However, new amendments to the Act have ensured that a default period of two years applies if the court does not specify an alternative duration.

The protected person and applicant may also apply to vary the AVO and change the original orders made by the court. This may occur in situations where it is believed some of the original orders are no longer necessary or too restrictive. However, a prerequisite to varying an AVO is demonstrating to the court that there has been a change in circumstance. Before applying for this, it is strongly recommended to seek legal advice.

BREACH OF AN AVO

Section 14 of the Act stipulates the maximum penalty for a person who attempts to or knowingly breaches a prohibition or restriction set out in the AVO is imprisonment for 2 years and/or a penalty of \$5,500.00

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

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