



ALS

Aboriginal Legal Service (NSW/ACT) Limited

AVO's

What happens

AT COURT

- Information for both people involved in an AVO matter -

WHAT IS AN AVO?

An AVO is an order made by the court telling a person they must not do certain things that make another person fear for their safety.

An AVO is not a criminal charge. It is an order for a person's future protection and sets out conditions on what a person can and can't do.

WHAT AM I CALLED IN THE COURTROOM?

The person in need of protection is the Complainant.

The person having the AVO made against them is the Defendant.

DO I HAVE TO GO TO COURT?

Yes. Both the complainant and the defendant need to go to court.

WHO WILL REPRESENT ME AT COURT?

If you are the complainant (the person in need of protection) and:

- The Police applied for the AVO. The Police Prosecutor will represent you.
- You applied for the AVO yourself. You can represent yourself or get Legal Aid or another lawyer to represent you.

If you are the defendant (the person having an AVO made against you):

- You will have to represent yourself or get a lawyer to represent you.
- The ALS and Legal Aid are generally not available to represent you when an AVO is being made against you.
- If you have breached the AVO, this is a criminal offence and the ALS will represent you.

WHERE TO GET HELP AND INFORMATION

Wirringa Baiya Aboriginal Women's Legal Centre

Free legal advice to Aboriginal women
Call 1800 686 587 or (02) 9569 3847

Womens Legal Services

Domestic Violence Advice Line
Call 1800 810 784 or (02) 8745 6999

Community Legal Centres

Free legal advice. To find your nearest centre
Call (02) 9212 7333

Aboriginal Legal Service (NSW/ACT)

Free information and referral for Aboriginal men, women and children. To find your nearest office
Call 1800 765 767 or 1800 733 233

Law Access NSW

Free legal help over the phone
Call 1300 888 529

Legal Aid NSW

For free legal help over the phone
Call 1300 888 529

what happens at court?

FIRST COURT DATE

The first court date is called a MENTION.

If the defendant HAS been given a copy of the AVO application one of the following things will happen:

- The defendant comes to court and agrees to the AVO and conditions. The AVO will immediately be in place.

OR

- The defendant comes to court and disagrees to the AVO. The court will set a date for hearing. The hearing may be 2-3 months later. The complainant can ask the magistrate for an interim AVO which will protect them until the hearing.

OR

- The defendant does not come to court. An AVO can be made without the defendant being there. The AVO will only be effective after the police have notified the defendant.

If the defendant HAS NOT been given a copy of the AVO application they will not be at court.

- The defendant will not have known what day to come to court.
- The matter will be adjourned to another date.
- The complainant can ask the magistrate for an interim AVO which will protect them until the next court date.

THE AVO HEARING

- The AVO hearing is where the complainant and the defendant give reasons and evidence on why there should or should not be an AVO.
- The person needing protection will give reasons first.
- The person defending the AVO will give reasons second.
- Both the complainant and the defendant may be cross examined. This is where the other side asks you questions.

Do I need evidence or witnesses?

- Yes. The magistrate will need information to make a decision about the AVO.
- If there is information available, such as witnesses, medical records, or telephone or mobile phone records, the magistrate may want to see this information and it may help your case.
- If you have any witnesses, they must attend court to give their evidence in person.

What needs to be proved?

After hearing all the evidence the Magistrate will make a decision about whether to make the AVO.

The Magistrate will make an AVO if it is shown that:

- The complainant fears that the defendant will be violent towards them, harass them, intimidate them or stalk them
- AND
- The fear is based on reasonable grounds. This means the court believes that any other person in the complainant's position would feel the same way.

Are there costs involved?

- The court may order costs against the unsuccessful party.
- If you are applying for an ADVO (Apprehended Domestic Violence Order), the court can only order costs against you if your application was frivolous and vexatious. This means your application was not serious and you made it deliberately to cause trouble.

HOW LONG DOES AN AVO LAST?

- The AVO will last for a period of time decided by the court.
- The period of time will depend on what the Court thinks is necessary to protect the person asking for protection.
- It could be 6 months, 12 months or 2 years. Most AVOs last for 12 months.

CAN AN AVO BE CHANGED OR REMOVED AFTER IT HAS BEEN MADE?

An application can be made to the court to:

- Extend the length of the AVO
- Reduce the length of the AVO
- Change the conditions of the AVO
- Remove an AVO

Applications can be made by the complainant, the defendant or the police.

How to apply to change or remove an AVO:

- If you are making an application, you should get legal advice.
- You apply by filling out a form called 'Application to Vary or Revoke Apprehended Violence Order'.
- You will need to explain why you are asking the court to change or remove the AVO.
- You must file the application with the court and you will be given a date to come back to court.
- A copy of your application needs to be given to the other person which tells them when they have to come back to court.

What if I disagree about the Application?

- If either person disagrees to an application, the AVO will be listed for hearing.
- At the hearing you will both give evidence about why the AVO should or should not be changed or removed.
- If you are making an application, or you disagree with an application, you should get legal advice.
- Aboriginal Legal Service generally does not represent people in changing or removing AVOs.

