

Defending an AVO Against Police

If you have been served with an application for an Apprehended Violence Order (AVO) it can be stressful and you may not be sure what to do next.

AVOs can be made by police (called a 'police application'), or by the person who wants the protection of an AVO (called a 'private application').

AVOs are supposed to protect people who have a fear of assault, harassment, threats and interference. But sometimes they are misused for all kinds of inappropriate purposes like revenge, a strategy to strengthen other proceedings, extend or gain visas, gain advantages against former landlords or tenants or other vexatious or frivolous purposes.

According to the [law](#), the court cannot impose an AVO for any reason except to the extent that it is necessary for the safety and protection of the protected person and any child affected by the conduct of the defendant.

This means that if you intend on defending an AVO, the police or applicant will have to prove that on the balance of probabilities that the applicant has reasonable grounds to fear that the other person will intimidate, stalk or commit a violent offence against them.

This fear must be reasonable in the circumstances and the conduct must be serious enough to warrant the issuing of an AVO.

You should consider whether the applicant can prove there is a need for an AVO to be made.

Also keep in mind that a child of the protected person is

usually automatically included as a protected person, so consider if this could affect your children.

Depending on how you are planning to respond (whether you agree with the application or not) will depend on your course of action.

If you intend on defending an AVO against police or a private applicant, you have the following options:

- Go to the mention (the first hearing of the case)
- Ask for an adjournment (in order to get more time to prepare your case)
- Ask for a change of venue (if the court where the mention is held is far away)
- Make a cross application (if you also have fears about the person who lodged the application)

The NSW LawAssist [website](#) contains detailed information on what to do in each of these situations.

When the court is making an order they will consider the safety and protection of any person seeking the order as well as any child who might be affected by the defendant in the application. The court will look at:

- If the order would prohibit or restrict access to the defendant's residence – the effects and consequences on the safety of the protected person and any children living at the residence;
- Any hardship that may be caused by making or not making the order especially to the protected person and any children;
- The accommodation needs of all parties but particularly the protected person and any children; or
- Anything else the court considers relevant

The court can refer an applicant to mediation in some circumstances but not when:

- There is a history of physical violence by the defendant to the applicant;
- The protected person has been subject to conduct of the defendant constituting a [personal violence offence](#);
- The protected person has been subject to conduct by the defendant constituting stalking or intimidation with intent to cause fear or physical harm;
- The defendant has behaved in a way that constitutes harassment to the applicant's race, religion, homosexuality, transgender status, HIV/AIDS infection or disability; or
- There has been a previous attempt at mediation in relation to the same matter and it was unsuccessful.

If you have been served with a copy of an application of an AVO against you, and the police are the applicants, they may want to talk to you about what you want to do before the case is heard in court.

You should be very careful in what you say to the police officer (or Domestic Violence Liaison Officer) because anything that you tell them may become evidence in court and could be used against you. It is best to only tell them whether or not you agree to the AVO being made, without discussing other details about what happened, or your side of the story.

An AVO lasts for 12 months or as determined by the court, but it may be withdrawn or varied by the applicant. Remember that if you knowingly contravene an order, is an offence and carries the penalty of up to 2 years in jail and/or a large fine.

It is possible to represent yourself when [defending an AVO against police](#) or another applicant, but you may like to speak with an experienced lawyer who can go through your options with you because of the serious consequences that an AVO can have.