

What happens in an AVO court hearing?

Okay, so you have read our blog on dealing with an AVO but now you are about to go to court to defend the order. Court rules can be confusing or perhaps you are just not sure what will happen.

What can you expect during your [AVO court hearing](#)?

Firstly, know that you can't get this done in just one day. If you are going to court for the first time ever in relation to the AVO, you wish to defend it, your matter won't be dealt with today. Defending the AVO means that not only will you have to show up for the initial hearing, known as a 'mention', but have to come back for a second mention date, called a 'compliance date', and then when the hearing properly starts generally on the third court date, called a 'hearing date'.

On the first court date, your matter will be adjourned for 5 weeks.

The Local Court 'Practice Note' says that the court will order both the applicant and the defendant of the AVO to file statements by particular dates.

Normally, the applicant will have to serve his or her statements within 2 weeks of the first 'mention' date, and the defendant will have to file his or her statements 2 weeks thereafter.

The next court date, the 'compliance date', will normally be one week thereafter.

On the compliance date, the court will ensure that both parties have complied with the court's order for service of statements. If they have, the court will then set the matter

down for a defended hearing.

It is important that you get the statements right as the other side will be able to rely on the things you say in it.

So it's quite a lengthy process. Although courts seek to provide quick, cheap justice, things unfortunately often don't always work out that way. This means that, if you do not have a lawyer, you may spend a few hours sitting in court awaiting your turn.

By the stage you arrive at a defended hearing, you (and your lawyer if you have one), should be fully prepared in terms of being ready to present your case.

In AVO cases, the Magistrate will read your statements which will essentially be the 'evidence' in your case. The other side (or their lawyer) will be able to ask you questions.

Similarly, the Magistrate will read the other side's statements and you (or your lawyer) will be able to ask that person questions.

If you are not, the matter may go ahead anyway or, if you seek an adjournment, you may have to pay the other side's legal costs that have been caused by the delay.

In any case, if you are served with an AVO or are pursuing one, you really should consider legal representation as the potential consequences of an adverse finding could be very serious, particularly if children are involved.

If you don't have the financial resources, it is worth seeing if you are eligible to receive Legal Aid or through the Law Society's 'pro bono' scheme.

Often it is much better to let a [lawyer who is experienced in AVO](#) cases do the talking in court if you have one.

As surprising as it may sound, defendant after defendant walks

into court thinking things will be settled if only they have the chance to 'explain everything' to the magistrate.

These people are often disappointed.

If the magistrate wants to hear your voice, they will ask you to speak.

If not, it is probably best to let your legal representative use their training and experience to do this for you. This is why you are paying them, isn't it?

If you are representing yourself, don't forget court etiquette – while you won't be expected you to know all the rules, you should dress conservatively, act humbly and refer to the magistrate as 'Your Honour'.

The applicant may not appear in the courtroom during proceedings – they may instead be in separate different room, known as a safe room.

When the court makes an order they will be looking at several factors.

If you are representing yourself, keep in mind you will be seeking to convince the magistrate to decide in your favour the following issues:

- Whether the order could prohibit or restrict access to the defendants residence
- The consequences on the safety of the protected person and children living at the residence
- Any hardship that may be caused by either 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 children

The magistrate can also consider all of the evidence that he or she considers relevant and make a decision accordingly.

Although a decision will usually be made that very day, in some cases it is possible for the outcome to be 'reserved' and you may have to come back to hear of the courts decision.

What are the possible outcomes?

The AVO could be upheld and this is what is known as a [Final AVO](#) (as opposed to an interim or provisional one).

This will normally be where the magistrate finds that on the balance of probabilities the applicant has reasonable grounds to fear, and in fact fears, that the other person will intimidate, stalk, or commit a violent offence against them.

These orders last for twelve months, unless the magistrate decides otherwise.

In the case that the magistrate uses their discretion, they can last for just a few months or even several years. You also have the option to appeal within 28 days.

It is also possible that you can successfully defend the AVO – meaning that the magistrate does not believe that on the balance of probabilities the protected person fears and is reasonable to fear you will physically hurt, distress, upset, annoy, intimidate or stalk.

Although this means that no AVO will apply, the protected person can appeal the decision within 28 days or reapply for an AVO at any time.

If you win, the magistrate can also order the applicant to pay for some or all of your costs!

If you lose, however, you may need to pay some or all of the applicant's costs.

A magistrate may also refer the applicant to mediation in some circumstances.