

LGBTIQ+ DOMESTIC & FAMILY VIOLENCE AND APPREHENDED DOMESTIC VIOLENCE ORDERS FACTSHEET

If you are a victim of domestic or family violence, but the police or your ex-partner are applying (or threatening to apply) for an ADVO against you, you should seek legal advice. Please refer to the 'For More Information' section below.

WHAT IS AN ADVO?

An ADVO is a special type of Apprehended Violence Order that is given if you have been in a domestic relationship with the perpetrator (eg de facto relationship, intimate partners, housemates and family). An ADVO can protect you if the other person has hurt, intimidated, harassed, or stalked you, or you are scared that they will (e.g. they have made threats).

Since July 2024, coercive control has been considered a criminal offence in NSW. It is referred to as 'abusive behaviour', under section 54D of the Crimes Act 1900 (NSW).

Coercive control is a form of domestic abuse where one person repeatedly uses behaviour that hurts, threatens, intimidates and/or isolates another person to control them. Coercive control covers a wide range of behaviours, such as physical and non-physical abuse, financial and economic abuse, tracking of movement etc. Please contact us if you would like to discuss what coercive control looks like, and whether it is applicable to your circumstances.

GETTING AN ADVO

An application for an ADVO will usually be made by a police officer on your behalf. The police can make an application if:

1. You report that you are experiencing, or fear, domestic or family violence; and
2. They have good reason to believe a provisional order needs to be made
 - a. To ensure the safety and protection of the person who would be protected by the provisional order; or
 - b. To prevent substantial damage to any property of that person.

To make a report, you can speak to any police officer. There are also specialist Domestic Violence Liaison Officers and Gay and Lesbian Liaison Officers who may be able to assist you. Where the police made the application for an ADVO, they will handle the court process, including preparing evidence. In terms of what you can do, it is always a good idea to write as much down as you can and bring any evidence you have to the police station with you.

Getting an ADVO to protect you may involve going to court and giving evidence.

You can also make a private application for an ADVO. A private application for an ADVO must be made through the Local Court registry and will be reviewed by the Registrar before it is accepted for service by the police.

Before making an application, you should contact the Inner City Legal Centre for assistance.

PROVISIONAL AND INTERIM ADVOs

Only police can obtain a Provisional (temporary) ADVO. A provisional order provides immediate protection. It will be in force until the court decides whether to make an Interim or Final ADVO (within 28 days).

If the police go to court and the perpetrator (called a 'defendant') does not agree to the application or there are other reasons for the case to be adjourned (postponed), a court may make an Interim ADVO. An Interim ADVO will be made where the court believes you need temporary protection. It will usually stay in place until the court decides whether to make a Final ADVO.

Both Provisional ADVOs and Interim ADVOs are temporary ADVOs. They are enforceable, and a defendant who breaches a Provisional or Interim ADVO can be charged with a criminal offence.

FINAL ADVOS

A judge can make a Final Apprehended Domestic Violence Order (ADVO) after a hearing if satisfied that it is more likely than not that a person who has, or has had, a domestic relationship with another person:

1. Has reasonable grounds to fear domestic violence, or conduct that intimidates or stalks them; and
2. In fact, fears such conduct.

This test does not apply if:

1. The victim is a child or has significantly below-average general intelligence;
2. The court believes the victim has been subjected to conduct by the defendant on more than one occasion that amounts to a personal violence offence, and there is a likelihood of it happening again. Conduct may amount to intimidation even if:
 - a. It does not involve actual or threatened violence against the person;
 - b. Or if it involves only actual or threatened damage to property of the person.

A final ADVO will last for a specified period, usually one to two years. You may be able to apply for an extension of the ADVO before that period ends if you still fear the defendant, and the court believes this fear is reasonable in the circumstances.

If there is a change of circumstances, you can apply to the Local Court or the police to have the ADVO's conditions changed.

WHAT CONDITIONS CAN BE PUT IN AN ADVO?

If an ADVO is made, orders about behaviour will always be included to prohibit the following behaviours:

- Assaulting or threatening you; and
- Stalking, harassment, and intimidation; and
- The intentional or reckless destruction or damage to any property or harming an animal that you own or possess.

Anyone in a domestic relationship with you will also be protected by these conditions. This may include your children. You can also ask that your children be included as protected persons on your ADVO.

The Court may make orders about family law and parenting matters.

You may request additional orders from the court prohibiting the defendant from:

- Approaching or contacting you, unless contact is through a lawyer;
- Approaching your work, place of study, school or any relevant place you visit;
- Approaching you or be in your company within at least 12 hours after drinking alcohol or taking illicit drugs;
- Trying to locate you, except as ordered by a court;
- Residing at the same address as you;
- Approaching you from a specific distance; or

- Any other conditions as agreed by both parties, or decided by the court.

You should discuss with the police and/or your court support person any conditions you need to protect you. The court will send you a copy of the ADVO. If you do not receive it within 48 hours, contact the court registry and ask them to email it to you.

WHAT IF THE DEFENDANT BREACHES THE ADVO?

An ADVO is a court order. If the defendant breaches a condition of the ADVO, they may be charged with a criminal offence. The penalties of an ADVO breach are a fine of \$5,500.00 or up to 2 years imprisonment or both.

You should call the police if the defendant breaches the ADVO in any way. Details of the ADVO will be kept on a police database, and it is a good idea to keep a copy of the ADVO with you.

If you have any questions or concerns you can contact the Domestic Violence Liaison Officer or the Officer in Charge of your case (the officer who took your statement and whose name is at the top of the application).

PROPERTY RECOVERY ORDERS

If you need to get your personal property from the premises where the defendant is staying you should let the police know when they are **making an application for an ADVO.**

When the court considers the ADVO application, they can decide whether to make a Property Recovery Order to allow you to collect your personal property. A defendant can apply for a Property Recovery Order to collect their property from premises where you are staying.

The person with a Property Recovery Order will need to make arrangements with the police to collect their property. The court may also order that the police are to accompany the person when collecting their property.

PETS

The law treats pets as property, and they may be included in a Property Recovery Order. Recent amendments to the law have included harm to, or harm threatened to, animals as a form of intimidation. This form of intimidation is a standard condition in all AVDOs to protect pets.

If you are having difficulty obtaining pet-friendly accommodation, RSPCA's Safe Beds for Pets Program provides temporary housing for pets of people who are seeking refuge from domestic or family violence.

YOUR RIGHTS AS A VICTIM OF CRIME

If you are a victim of crime, the Charter of Victims Rights sets down requirements about how government agencies (e.g., the police) and a range of service providers should treat you.

Under the charter, as a victim of crime you have the right to:

- Be treated with respect, dignity and compassion;
- Be kept informed about the investigation and prosecution of the perpetrator, including:
 - What the charges are or why the perpetrator has not been charged;
 - Decisions to change or drop charges;
 - The date and place of the court hearing; and
 - The final court result, including any appeal or jail sentence given.
- Be told about, and have access to, the different services that can help you, including counselling, welfare, health and legal services; and
- Protection from the perpetrator while your case is in court.

If you are a victim of crime and seek information about an offender who is an adult or a young person in custody or a forensic patient, you may be eligible to be listed on the Victims Register.

Victims of crime are given the right to information about the offender's status in Section 6.15 of the Charter of Victims Rights:

"A victim will, on request, be kept informed of the offender's impending release or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody."
(Victims Rights and Support Act 2013)

If you believe that a government agency or service provider has not acted in accordance with the Charter, you can make a complaint:

1. You can first speak with the person you are dealing with from the agency/service provider about the problem. You should only do this if you feel comfortable.
2. If you are not satisfied with their response, you can ask the staff to tell you how to make a complaint to the agency/service provider.
3. If you are not satisfied by the agency or service provider's response (or you did not feel comfortable speaking to them), you can contact Victims Services.

Victims Services can help you make a complaint and give you information on what can be done about it. You can also submit a complaint using the Charter of Victims Rights complaint form located on the Victims Services website.

FOR MORE INFORMATION

LGBTQIA+ Domestic Violence Service

Inner City Legal Centre

The SRP is a state-wide domestic and family violence court support and legal advice service for LGBTIQ people.

www.iclc.org.au/lgbtqi-assistance/

T: (02) 9332 1966

E: iclc@iclc.org.au

RSPCA Safe Beds for Pets

RSPCA NSW offers a practical solution for pet owners leaving situations of domestic violence through providing safe housing and care for their pets.

www.rspcansw.org.au/what-we-do/working-in-communities/community-domestic-violence-program/

T: (02) 9782 4408

E: safebeds@rspcansw.org.au

Victims Services

Victims Services helps people who are victims of violent crime in NSW with information and referrals

www.victimsservices.justice.nsw.gov.au

T: 1800 633 063

AVO PROCESS

