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Apprehended Violence Orders (AVOs): Advanced

This fact sheet summarises the Ask LOIS webinar on this topic, presented by Rebecca Frost, Solicitor, Women's Legal Services NSW. This webinar can be downloaded for free at www.asklois.org.au/webinars/past-webinars.

This fact sheet covers:

1. Mandatory Orders: what the minimum requirement is for AVO orders? Who is covered?
2. Additional Orders: What are the options for tailoring an AVO for your client's circumstances?
3. AVOs and children
4. AVO advocacy: how to get your client the most appropriate orders

Mandatory Orders

- Mandatory orders are the bare minimum that can be on an AVO.
- 1 (a), (b) & (c) must be written on every AVO.

1. The defendant must not:

- a) Assault, molest, harass, threaten or otherwise interfere with;
- b) Engage in conduct which intimidates; or
- c) Stalk,

the protected person or a person with whom the protected person has a domestic relationship.

Tip: when explaining mandatory orders to your client, highlight that they are no more onerous on the defendant than being a decent person. There are no restrictions on talking to each other, living with each other or anything else. Most of the conduct prohibited is criminal anyway and against the law!

- Mandatory orders not only cover the protected person but also anyone in a domestic relationship with the protected person.

Domestic Relationship:

The following people who are considered to be in a "domestic relationship" with the protected person and are automatically covered by a mandatory orders:

- Current/former **spouses**;
- Current/former **de facto partners** as per the *Property (Relationships) Act 1984*;
- Persons who are/were in an **intimate personal relationship** (whether or not of a sexual nature);
- Persons who live/have lived in the **same household** or other residential facility;
- A person who has/had a **relationship involving dependence** on the ongoing **paid or unpaid care** of the other person;
- Current or former **relatives (eg, children)**;
- If Aboriginal or Torres Strait Islander, is or has been part of the extended family or kin according to the **Indigenous Kinship System** of the person's culture.

Optional Orders

Unlike mandatory orders, additional orders only cover the listed protected persons. That is, people that are named specifically on the first or second page of the AVO as protected persons. Therefore,



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where additional orders are sought, it is important to list any children on the order, otherwise they won't be protected!

Tip: don't simply tick all the boxes for additional orders. Some orders are broader than others and make lesser orders unnecessary. Eg, by ticking order 4, you don't need order 2 or 3 - order 4 offers the most protection.

Exclusion orders – order 2, 3 & 4.

- The exclusion orders increase in terms of severity and protection.
- **NOTE:** if the protected person wants an exclusion order they must disclose their address to the defendant so the defendant knows where they are excluded from. If the defendant doesn't know where your client lives, one option is for the client to not disclose their address and not get an exclusion order. If in the future the defendant finds out their location, they can seek a variation of the order and add the exclusion order.
 - **Order 2:** The defendant must not **reside** at the premises at which the protected person(s) may from time to time reside, or other specified premises
 - This only restricts the defendant from living at the premises of the protected person. It does not restrict the defendant from being at the premises eg, visiting children / caring for children / having lunch or dinner with the protected person
 - **Order 3:** The defendant must not **enter the premises** at which the protected person may from time to time reside or work, or other specified premises
 - Unfortunately "premises" is not defined and it's meaning is ambiguous. Some people interpret the premises as the house others the gate or fence line
 - **Tip:** Err on the side of caution and take a liberal interpretation of premises as the fence line. In some cases, such as where pick-up/drop-off of kids is involved, it may be a good idea to redraft the order and specify an area (eg, letterbox at the top of the driveway) so all parties are clear as to where the "premises" begins
 - **Order 4:** The defendant must not **go within** __ metres of the premises at which the protected person may from time to time reside or work, or other specified premises
 - This is the strongest and strictest of the exclusion orders. It usually specifies 50 or 100m.
 - If the protected person lives on a main highway or on the same street as one of the defendant's relatives, a Magistrate will be unlikely to make order 4.

Orders relating to children and family law matters – order 5 & 6

- It is important to distinguish between whether order 5 or order 6 is more appropriate for your client
 - **Order 5:** The defendant must not must not approach or contact the protected person(s) by any means whatsoever, except through the **defendant's legal representative** or as **agreed in writing** or as **permitted** by an order or directions under the Family Law Act 1975, for the purposes of **counselling, conciliation or mediation**.
 - Order 5 is appropriate where the protected person and the defendant have no parenting orders. They may have a parenting plan (written agreement) or no parenting arrangements sorted out as they have just separated.
 - **Tip:** Sometimes a magistrate will not agree to order 5 unless the protected person makes a written agreement in relation to the defendant's contact with the children. We caution against this: it can be unfair and inappropriate for a protected person to be railroaded on AVO day with a request to come up with a parenting agreement. While any written parenting agreement does not become a part of the order, weight may be given the agreement in subsequent Family Law proceedings. Victims of domestic violence deserve legal advice from a family lawyer before agreeing to anything in writing in relation to the children.



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- **Order 6:** The defendant must not approach or contact the protected person(s) by any means whatsoever, except through the **defendant's legal representative** or as authorised by a **parenting order** under the Family Law Act 1975 unless the parenting order has been varied, suspended or discharged under section 68R of the Family Court Act 1975.
 - Order 6 applies where there are already parenting orders in place between the protected person and the defendant.

No contact – order 7

- **Order 7:** The defendant must not approach or contact the protected person(s) except through the **defendant's legal representative**
 - Order 7 is the strictest no contact order. It is usually only used where the parties don't have children and there is no need for them to have any contact in the future.

Firearms – order 8

- **Order 8:** The defendant must **surrender all firearms** and related licenses to the police.
 - Order 8 is interesting because even without this order, a defendant's firearms licence is automatically suspended upon the making of an interim AVO. If a final AVO is granted, the defendant's firearms licence is revoked for 10 years from the expiry of the AVO.

Exclusion from school or childcare premises – order 9

- **Order 9:** The defendant **must not approach** the **school** or other premises at which the protected person(s) may from time to time attend for the purposes of **education or childcare** or other specified premises
 - **NOTE:** Your client may want order 9 if they're concerned the defendant may abduct the children from school. While you should ask for this order, be aware that Magistrates can be reluctant to make order 9 unless the children were direct victims of violence by the defendant or if an incident previously occurred at the school. The rationale is that if your client wants to restrict the other party's contact with the children, they should get family law orders or a parenting plan rather than using an AVO

Contact after using alcohol/ drugs – order 10

- **Order 10:** The defendant **must not approach** the protected person(s) or any such premises or place at which the protected person(s) from time to time reside or work **within 12 hours of consuming intoxicating liquor or illicit drugs**
 - Order 10 is often used in place of a no contact order where the protected person and defendant are still living together. 12 hours is a long time and even one drink will prohibit the defendant coming home for 12 hours. Therefore, a single drink at 6pm means a 6am lock out.

Property damage – order 11

- **Order 11:** The defendant **must not destroy** or deliberately **damage or interfere** with the **property** of the protected person(s)
 - As destroying property is against the law anyway, some magistrates may be reluctant to make this order
 - This can be interpreted to cover pets who are considered "property" under Australian law

Any other as required – often referred to as order 12

- **Order 12** – is a catch all order that can be drafted specifically to meet your clients needs if none of the standard additional orders are sufficient.



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AVOs and Children

- If the Court makes an ADVO (including an interim ADVO) for the protection of a person over 16 years, the Court **MUST** include as a protected person under the order, **any child** with whom that person has a domestic relationship (s38). This applies to both police & private applications.
- The broad exception to this is if there are good reasons for not doing so.
- However, in our experience, children are not always listed on AVOs by the police or Magistrate because they are automatically covered for mandatory orders. It is important to push for children to be listed as protected persons on an AVO because otherwise the additional orders will not cover them.

How to get the right orders for your client

You and your client should feel comfortable asking the police or court registrar what orders your client wants:

Police applications

- **Tip:** protected persons often don't disclose their entire history of domestic violence to the police meaning the police will often only apply for the minimum mandatory orders. It is important to make the police aware of any history of domestic violence or other relevant circumstances so they include additional orders on an AVO
- If your client hasn't gone to the police yet to request an AVO, first discuss with them the different types of orders and ask which ones they think would best protect them and their children
 - Circle the relevant orders (*see our AVO Order list*) so your client can take them to the police station and tell them which orders they want
- If the police have already made an interim AVO application for your client, don't hesitate to talk to the police on your client's behalf if there are any additional orders your client wants added
 - Try to talk to the Domestic Violence Liaison Officer (DVLO) before the first mention date or write to them stating what orders your client would like added and why. You can contact the DVLO by calling or writing to the police station that issued the interim AVO
 - Alternatively, you or your client can liaise with the DVLO or the police prosecutor at the first mention at court and ask them to amend the AVO on the day by adding any additional orders

Private applications

- The same information as above applies for when your client is making a private application for an AVO. The only difference is that they (or you on their behalf) should contact the Registrar of the court rather than the DVLO to specify what orders they want added

Further Resources

- For more resources on AVOs including fact sheets, brochures and videos, visit <http://www.asklois.org.au/library/domestic-violence/avos>
- If you need a refresher course, we also have a past webinar on **AVO Basics** which is available at <http://www.asklois.org.au/webinars/past-webinars#AVObasics>