

# Who was the victim? Women as AVO defendants



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Julia Mansour, Solicitor, Women's Legal Services NSW on 28 February 2014. This webinar can be downloaded for free at [www.asklois.org.au/webinars/past-webinars](http://www.asklois.org.au/webinars/past-webinars).

## This fact sheet covers:

- Who are women defendants and why are they important?
- Practical tips for workers dealing with AVO defendants
- Information on cross-applications
- Preparing statements
- The implications of AVOs for women defendants

## How do female victims become defendants in AVO proceedings?

Women defendants to AVOs are sometimes the primary victims of violence in their relationship. This can sometimes happen because of:

- Police error
- The perpetrator manipulating the court system

Female victims can become defendants to AVO proceedings where:

- (a) Woman defendant is primary victim of violence, but is served with application for other party's protection or
- (b) Woman files AVO for her protection (either Police or Private) and other party responds with cross application

## Case Study

### Background

X (the woman defendant), and Y (the male identified victim in a police application) were married for 8 years and had recently divorced. There was an extensive history of violence towards X and previous AVOs for her protection.

### Incident

The parties met in a car park to discuss an incident concerning the family home. Y became angry with X, and pushed her forcibly into her car, putting heavy pressure on her neck. As they were leaving the car park in their own cars, the parties continued yelling at each other and were stopped by a passing police car. Y told Police that he needed an AVO to stop X's verbal abuse.

### Result

After one court mention where Y did not turn up or give instructions to the Police, Y instructed Police to pursue the AVO. Not wanting the matter to continue any longer, X consented to a Final Order being made in the mandatory terms 1(a)(b)(c) for 12 months.

## Practical tips for female defendants

### 1. Time is of the essence

If a client has been served with an application for an AVO where she is the defendant and she doesn't turn up to Court on the first mention day, she runs the risk that the AVO will be made final on that day. Therefore, it is essential that you encourage the client not to ignore anything that she has been served with and to read the AVO very closely. Some AVOs, called 'provisional applications' take place as soon as they are served on your client, and before she goes to court, it is very important that your client knows if she is already subject to the conditions of an AVO, or if what she has been served with is only an application for an AVO.

### 2. Link with Women's Domestic Violence Court Advocacy Service (WDVCAS) if available

Find out where your client's matter will be heard, and to determine whether there is a WDVCAS present at that court. If there is, you can call that service with the client to flag that she will be coming in, and ask them to assist on the day. Many WDVCAS's are linked with Solicitors that will take instructions from clients and represent them at their mentions. Where a solicitor will not be available, the client should call a free legal service such as

[www.asklois.org.au](http://www.asklois.org.au)

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Women's Legal Services for telephone advice about her options, the process, and how to self-represent in an AVO matter.

### **3. Establish if client is in fear of other party: this may be important for a cross application**

Establish whether your client remains in fear of violence by the other party and if there have been any recent threats to her safety. If there have been incidents of violence, you can encourage your client to report these to police. It is also important for your client to talk to the WDVCS and a solicitor about the prospect of filing a cross application for her own protection. In this kind of matter, time is also of the essence, because AVOs are most likely to be made where they relate to recent incidents.

#### **Cross applications**

##### **→ Run separately from original application, but may be joined together if convenient for court**

Officially, a cross application runs completely separately from an original application. However, if the complaints relate to the same incidents or patterns of behaviour, for example, where the parties are both alleging violence against each other, AND the applications are made in the same time frame, then the court may elect to list and hear both matters concurrently.

##### **→ Can be private or police initiated**

Police are typically reluctant to pursue AVOs against both parties concurrently unless there are compelling circumstances. What that means is often, if the first complaint is police initiated, the cross application is likely to be a private cross application. Unlike a police application, where a police prosecutor will represent the applicant, in a private application a woman will need to either represent herself or secure legal representation.

##### **→ Very useful where woman defendant is primary victim**

Although this can be a daunting prospect for many clients, a cross application is a very worthwhile when a woman is in fear of further violence, particularly if she is still in the relationship. As well as giving a positive measure of protection, it also redresses the power imbalance that can result in a relationship from a violent partner threatening the other with making further reports to police once an AVO is in place.

#### **Preparing statements**

Make sure to assist in including:

- Full history of relationship and violence
- Any history of previous AVOs
- What happened in AVO incident
- Any fears held by woman defendant

#### **Impact of an AVO for women defendants**

Important to resist AVO because:

- Can lead to greater control over victim
- Can affect women in family court
- Can lead to FACS investigation
- Can affect employment

#### **Referrals**

- **WDVCAS** [www.wdvcasnw.org.au](http://www.wdvcasnw.org.au)
  - **Women's Legal Services NSW** [www.womenslegalsnw.asn.au](http://www.womenslegalsnw.asn.au)
- Domestic Violence Legal Advice Line: 02 8745 6999 or 1800 810 784 (rural)

Mondays: 1:30pm–4:30pm, Tuesdays: 9:30am–12:30pm, Thursdays: 1:30pm–4:30pm, Fridays: 9:30am–12:30pm

- **LawAccess** [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au) 1300 888 529