



EXCHANGE OF STATEMENTS IN APPREHENDED DOMESTIC VIOLENCE ORDER (ADVO) PROCEEDINGS

In this fact sheet we look at:

1. What goes into a statement (for applicants)
2. The process of exchanging statements for:
 - a. Police ADVO applications
 - b. Private ADVO applications
3. Female defendants
 - a. What goes into a statement (for defendants)

1. What needs to go in a statement?

📄 The statements must contain all of the information you want to tell the Magistrate at a hearing about why an AVO is necessary.

📄 The statements will be relied upon as your evidence.

📄 If there is further evidence that is not in the statements the Police Prosecutor will have to ask the Magistrate for permission to discuss the extra evidence.

📖 Need to prove s16 of the *Crimes (Domestic and Personal Violence) Act 2007*:

The court is satisfied on the balance of probabilities that a person who has or has had a domestic relationship with another person has reasonable grounds to fear and in fact fears a personal violence, conduct which intimidates or stalking and that the conduct is in the opinion of the court, sufficient to warrant the making of the order.

✓ Checklist for your statement:

1. Relationship between you and the defendant

- History of relationship
- Children of the relationship
- Separation date
- Family law orders or current or pending parenting arrangements as required by s42 (1) *Crimes (Domestic and Personal Violence) Act 2007*
- Prior AVOs
- Prior convictions for domestic violence breaches of AVO involving the defendant.

2. Background information and context of violence

History of previous domestic violence between you and the defendant (whether reported to the Police or not.) The objects of the *Crimes (Domestic and Personal Violence) Act s9 (3)(d)* state that Parliament recognises that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years.

3. Recent incidents

- Recent is a subjective term however we would consider the last three months as recent plus anything that particularly stood out over the last twelve months.
- Always use your own words.
- Try to give dates or approximate dates, day, or even month if you can't remember exact dates.
- Use direct speech "I said" "He said in quotation marks "xyz".
- Use exact words spoken including swear words. If you cannot remember exactly but does remember some words spoken you could use the phrase "something like ..." or 'words to the effect of ...'. Put



quotation marks around what was said.

6. How the recent incidents make you feel. What affect the recent incidents have had, including any injuries and how they have made you feel.
7. Fears for the future in relation to the defendant.
8. While not required, it is very useful to attach other information that the statement maker is intending to rely upon at a hearing eg. Photos, print out of emails, lists of text messages, Facebook page screen shots etc.

2(a). Protected Person in a Police AVO

The Police have applied for an AVO for your protection → the defendant has not agreed to the AVO → the Magistrate has given directions for exchange of statements

☺ You do **not** have to write your statement ☺

☞ There is no need for you to get a lawyer to represent you in a Police AVO. The Police Prosecutor will represent you in a Police AVO. However, you can of course get legal advice on any issues related to the AVO.

✍ Do not to sign the statement unless you agree with it ✍

Who will prepare my statements?

✍ The Police are responsible for preparing the statements in applications the Police have taken out and serving them in accordance with the directions given by the court. They will need to prepare a statement for each witness including you.

You do have to make sure the statements are accurate and up to date. How do you do this? Determine which of the three scenarios applies to your situation:

1. **Have Police only taken down a notebook entry that is the basis of the grounds in the AVO application?**

If this is the case then Police will have to prepare formal typed statements.

Things to consider:

- Are there any further incidents or important detail that you have not told the Police? If the answer is yes then you will have to give a further statement.
- Ask the WDVCS to liaise with the Officer in Charge (OIC) to arrange a good time for this to happen.
- Are there any people apart from you that heard or saw the events that form the grounds of the AVO application (they are witnesses)?
- If there are further witnesses that Police are not aware of, tell the OIC or see if the WDVCS can tell the OIC. All witnesses must provide a statement to be served in accordance with the directions.
- Do you need a support person while making the statement? Ask WDVCS if they can recommend someone suitable.

2. **Have Police already prepared statements in the matter?**

- Read the statement and check to see if the statements are thorough, accurate and contain all the evidence that you wish to put before the Magistrate to rely upon as reasons an AVO should be made.
- If you would like to add further detail to the statements you could ask the OIC or see if the WDVCS can speak to with the OIC to inform them that the statements are incomplete and arrange a time for you to come and make a thorough statement.



- Bring any relevant evidence such as phone with text messages, emails, facebook screen shots, letters, photos.
- Are there any witnesses that may also need to give a statement who saw, heard things etc?

☹ Trouble getting in touch with the OIC? See the DVLO or the Prosecutor.

2(b). Applicant / Protected Person in a private ADVO

You have applied for an AVO for your protection → the defendant has not agreed to the AVO → the Magistrate has given directions for exchange of statements

Who can assist you with your statement?

You should discuss the options outlined below with the workers from the Women's Domestic Violence Court Advocacy Service (WDVCAS) in your Local Court. They may be able to advocate for you to find legal help with preparing the statements.

There are four options for legal assistance to write the statements:

1. Eligible for Legal Aid?

- Are you on a Centrelink payment?
- Do you have a low income?

A grant of legal aid is available for applicants in private ADVO's provided you can meet the means test. If you are eligible for legal aid then Legal Aid pay a lawyer to prepare your statements and represent you at a hearing. You can apply for a grant of Legal Aid called the *Start Up Grant – Defended hearings*.

You can request a specific lawyer that you have asked and has agreed to do the hearing. Your lawyer can apply for a grant of legal aid online. WDVCAS may be able to recommend a lawyer in your area that does AVO hearings. If you do not specify which lawyer you want Legal Aid can appoint one for you.

- You can ask WDVCAS if they can help you fill out the Legal Aid application.

2. Not eligible for Legal Aid?

If you are not eligible for legal aid (because for example you earn too much money) then there are three other options for assistance with the statements:

i. Domestic Violence Practitioner Scheme (DVPS)

Some courts have a duty lawyer from the DVPS to represent DV victims in AVO proceedings on certain days. In some instances the lawyer may be able to write the statements after they are finished with the duty court work for that day.

- Ask your WDVCAS if they have a lawyer that assists them at court.
- Ask your WDVCAS if you can come to the court on a day the lawyer will be there (before your statements are due) so the lawyer can write them for you. Be aware this may involve you waiting at the court.

ii. Community Legal Centres

If your Local Court does not have a duty lawyer from the DVPS or they cannot assist, you could call a Community Legal Centre and ask if they can help you with the statements. You could:



- Ask your WDVCS to call your local Community Legal Centre.
- Ask your WDVCS to call Women's Legal Services.

iii. **Private Lawyer**

If you have enough money you could go to a private lawyer and pay them to write the statements.

- Ask your WDVCS for referrals to lawyers in your area.
- Contact the NSW Law Society Solicitor Referral Service on 9926 0300.

3. Female Defendants

An AVO has been taken out against you → you did not agree to the AVO → the Magistrate has given directions for exchange of statements

It is not uncommon for victims of violence to end up on the receiving end of an AVO. This may be because the perpetrator of violence has told their version of events to the Police first OR they may have taken out an AVO against you after the Police took out the AVO for your protection. This is called a cross application.

✖ Please note: If there are criminal charges against you associated with the AVO you should NOT be required to provide a statement.

📄 CROSS APPLICATIONS PLEASE NOTE: Even if the Police have taken an AVO out for your protection and the Police are writing statements to support the AVO for your protection YOU still need to write reply statements for the AVO that has been taken out against you – these are two different things. Police will write the statements in their application for you. A lawyer or you will write the statements in the application against you.

What do you need to do?

👉 You (or a solicitor on your behalf) **must** write reply statements and file them in accordance with the directions given by the Magistrate. If you do not file statements the AVO may be made against you 🙅

📄 The statements **must** contain all of the information you wish to put before the Magistrate at a hearing about why an AVO is not necessary.

📄 The statements will be relied upon as your evidence.

📄 If there is further evidence that is not in the statements you will only be able to tell the Magistrate at a hearing if you have permission from the Magistrate to discuss the extra evidence.

📄 You must also provide any statements by people who saw or heard something that might support your version of events (called a witness) that you intend to give evidence at a hearing.

Who can help you with your statement?

If you feel that you are actually the victim of violence you should discuss the options outlined below with the workers from the Women's Domestic Violence Court Advocacy Service (WDVCAS) in your Local Court. They may be able to help you to find legal assistance to write the statements for you.

There are three options for legal assistance to write the statements:

1. Eligible for Legal Aid?

- Are you on a Centrelink payment?



Do you have a low income?

Legal Aid may be available for defendants in ADVOs in some exceptional circumstances:

- The application is supported by a WDV CAS co-ordinator or DVPS solicitor
- You have previously been an applicant in an ADVO matter
- You are currently living in a women's refuge or alternative accommodation due to domestic violence
- You provide evidence to support your Legal Aid application, or
- You are at 'special disadvantage' (specific definition in Legal Aid Policy)

If you have ticked yes to any of the above boxes you may be eligible for Legal Aid.

WDV CAS may help you to fill out the legal aid application.

You should apply for a grant of Legal Aid called the *Start Up Grant – Defended hearings*. You can request a specific lawyer that you have asked and has agreed to do the hearing. Your lawyer can apply for a grant of legal aid online. WDV CAS may be able to recommend a lawyer in your area that does AVO hearings. If you do not specify which lawyer you want Legal Aid can appoint one for you.

If you are eligible for a grant of legal aid then Legal Aid will pay the lawyer to write your statements and represent you at a hearing.

2. Not eligible for Legal Aid?

If you are not eligible for a grant of legal Aid (because for example your income is too high) then there are three other options for assistance with the statements:

iv. Domestic Violence Practitioner Scheme (DVPS)

Some courts have a duty solicitor from the DVPS to represent DV victims and defendants who in the exceptional circumstances on certain days. In some instances the lawyer may be able to write the statements after they are finished with the duty court work for that day.

- Ask your WDV CAS if they have a lawyer that assists them at court.
- Ask your WDV CAS if you can come to the court on a day the lawyer will be there (before your statements are due) so the lawyer can write them for you. Be aware this may involve you waiting at court.

v. Community Legal Centres

If your Local Court does not have a duty lawyer from the DVPS or they cannot assist, you could call a Community Legal Centre and ask if they can help you with statements.


- Ask your WDV CAS to call your local Community Legal Centre.
- Ask your WDV CAS to call Women's Legal Services NSW.

vi. Private Lawyer

If you have enough money you could go to a private lawyer and pay them to write the statements.

- Ask your WDV CAS for referrals to solicitors in your area.
- Contact the NSW Law Society Solicitor Referral Service on 9926 0300.

3(a) What you need to include in your statements

 The defendant must try and put information before the Court to persuade the Magistrate that the protected person does not in fact have fears of a personal violence offence, stalking or intimidation or if they do, they are not reasonable and/ or it is not conduct that is sufficient to warrant the making of an order. A



court will make its decision based on whether it is satisfied 'on the balance of probabilities' (ie. Is it more likely than not) that the protected person has reasonable fears and in fact fears.

✓ **Checklist:**

Relationship between you and the protected person

1. History of relationship

- Children of the relationship
- Separation date
- Family law orders or current parenting arrangements
- Prior AVOs (usually only if they were for your protection)
- Background
- Previous DV between you and the protected person reported to the Police or not where you were the victim

2. Alleged incident/s that forms the basis of the AVO application


- Make sure you respond to each allegation.
- Correct any inaccurate statements in the applicants or protected persons statement.
- Explain your version of events.
- Refer to exact dates where possible or approximate dates, day, month if can't remember exact dates.
- Use direct speech "I said" "He said"
- Use exact words spoken or as close as possible and write 'words to the effect of ...'.
- Include any motive, for example, retaliation that the protected person may have to seek an AVO.

3. Recent relevant contact or communication or other conduct from applicant/protected person to you, for example have they been calling or visiting you. This information goes towards establishing if they in fact do have fears of you.

Statements by Witnesses

- Should write a statement containing only what they directly saw, heard or otherwise perceived themselves relevant to your case.
- Direct speech, and quotations as best they can recall.
- Do not include their address.

Concerned you might be admitting to a criminal offence in your statement?

 If you think that you may be admitting to something that could be against the law in your statement it is *crucial that you get legal advice before signing* it and handing it to the court or the other party. A signed statement could be used against you.