

The Interactions of Apprehended Violence Orders and Parenting Orders

AskLOIS

Factsheet



This factsheet summarises the Ask LOIS webinar on this topic presented on 3 March 2021 by Amy Power and Rishika Pai, Solicitors, Women's Legal Service NSW. To view this webinar for free, or to access other resources, visit www.asklois.org.au

This factsheet will cover the following:

- [Apprehended Violence Orders \(AVOs\)](#)
- [Family law principle: the best interests of children](#)
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Apprehended Violence Orders (AVOs)

What is an AVO?

An AVO refers to a court order for *the future protection* of a person. There are two types of AVOs - ADVOs (domestic) and APVOs (personal).

What are the criteria for an AVO?

A person must *reasonably fear* (objective) and *in fact fear* (subjective) one of the following:

- a 'domestic/personal violence offence'; or
- intimidation (including harassment, molestation and now includes cyberbullying and approaching by technologically assisted means); or
- stalking (now includes approaching a person using the internet or by technologically assisted means).

AVOs and children

If the Court makes an ADVO (including an interim ADVO) for an adult (over 16 years), the Court MUST include as a protected person under the ADVO, any child with whom that person has a domestic relationship. The exception to this is if there are good reasons for not doing so. This applies to both police & private applications.

AVO Orders

Mandatory orders are orders about behaviour.

Order 1

You must not:

- Assault or threaten;
- Stalk, harass or intimidate; or
- Intentionally or recklessly destroy or damage property belonging to or in possession of

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

Additional orders include the following:

- Orders about contact
- Orders about family law and parenting
- Orders about where you cannot go
- Orders about weapons
- Other orders

More specifically:

- Order 2 - must not approach or contact except through lawyer
- Order 3 -
 - must not approach school
 - must not approach childcare
 - must not approach other place
- Order 4 – must not approach within 12 hours of drinking alcohol/ using drugs
- Order 5 – must not try to find

Orders about family law and parenting:

- Order 6 - must not approach or contact unless the contact is:
 - Through a lawyer
 - To attend accredited or court approved counselling, mediation or conciliation
 - As ordered by this or another court about contact with children
 - As agreed in writing between the parent(s) about contact with children

Additional orders:

- Order 7 – must not live at same address as protected person/another place _____.
- Order 8 – must not go into any place protected person lives/works/another place _____.
- Order 9 – not go within ____ metres of any place protected person lives/works/another place _____.

Orders about weapons:

- Order 10 – must not possess firearms or prohibited weapons

Any other as required:

- Order 11

Tip: It is important for your client to know and understand the orders on an AVO so they can work out what options are available to them.

Encourage your client to obtain a copy of their AVO. This can be done at the registry of the local court that made the order. If it is a police application, the police (and DVLO) can also provide a copy of the order. If your client is being assisted by the Women's Domestic Violence Court Advocacy Service (WDVCAS), they may also be able to provide a copy of the order.

Variation of AVOs

An AVO can be varied by:

- adding orders;
- removing orders;
- amending any existing orders;
- extending or reducing length of operation; or
- revoking the AVO.

It is important for clients to know that:

- there are special provisions for variations when a child is listed as a protected person;
- it is usually necessary to show a change in circumstances to vary an AVO;
- a variation is not a replacement for lodging an appeal;
- an application to extend the duration of an AVO must be made before the day on which the order is due to expire.

Family law

Best interests of children

The *Family Law Act* requires all decisions to be in the best interest of the child(ren).

There are two primary considerations:

- the need to protect the child from physical or psychological harm or exposure to abuse, neglect or family violence; and
- the benefit to the child of having a meaningful relationship with both parents.

When applying the primary considerations, the court must prioritise the first consideration which is the safety of the child(ren).

Additional considerations include (among others):

- any views expressed by the child;
- nature of the relationship of the child with each of their parents;
- capacity for each of the parents to provide for the needs of the child;
- any family violence involving the child or a member of the child's family; and
- any family violence order

Compulsory FDR and exemptions

Parents must participate in Family Dispute Resolution (FDR) before applying to court for orders, unless there is an exception. Exceptions include:

- an application for consent orders;
- abuse or family violence;
- some contravention applications;
- urgent applications; or
- a party is unable to participate effectively in FDR (e.g., incapacity of some kind, physical remoteness from dispute resolution services or for some other reason).

Parenting arrangements for children

It is useful to understand the language and terminology used in parenting matters as this will help your client work out what options are available to them.

When parents can agree the options can include:

- an informal verbal or written agreement;
- a Parenting Plan; or
- court orders made by consent.

When parents cannot agree, they can apply to the Federal Circuit Court of Australia or the Family Court of Australia for parenting orders made by a judge.

Parenting Plans

A Parenting Plan is a voluntary written agreement between parents. It sets out the future care arrangements for children such as:

- parental responsibility;
- living arrangements;
- arrangements for time and communication; and
- how to resolve future disputes.

A Parenting Plan cannot be enforced in court. However, the court may have regard to the Parenting Plan when considering what parenting orders to make.

Case Study

Sara has an ADVO that states her child's father is not to contact her in any way, unless that contact is through a lawyer. Sara has a parenting plan that says her child's father can speak to her child every Tuesday and Thursday between the hours of 7:00pm – 8:00pm.

Question: Will the father breach the ADVO if he calls Sara at 7:00pm on Tuesday and asks to speak with the child?

Answer: Yes. The ADVO does not allow the father to contact Sara in any way unless through a lawyer.

Question: Will the father breach the ADVO if he calls the child's mobile phone directly at 7:00pm on Tuesday?

Answer: No, provided the child is not also included as a protected person on the ADVO.

Parenting Orders

If parents can reach an agreement about what arrangements they would like in place for their children, they can formalise their agreement by applying for parenting orders by consent.

If parents cannot agree on arrangements for their children, a court will hear their dispute and make a decision.

Parenting orders:

- are enforceable through a Contravention Application to the Family Law Courts;
- are in place until the child turns 18; and
- can only be changed if there has been a significant change in circumstances.

Family and Domestic Violence Laws

Any later parenting orders that are inconsistent with an ADVO will override the relevant sections of the ADVO if:

- the parenting order states it is inconsistent with the ADVO and explains how the child will spend time with the other parent; and
- the parenting order is explained to all people affected and a copy is served on other parties the Police and Local Court.

If applying for an ADVO after parenting orders are in place, the Local Court has the power to vary the parenting orders to suit the conditions of the ADVO if it has new material or fresh evidence that the court that made the parenting order did not have when it made the order.

Got parenting orders but no ADVO?

- Get the ADVO in the Local Court and change the family law orders in the family courts, OR
- Get an ADVO and apply to vary / suspend the family law orders in the Local Court.

Got an ADVO & parenting orders but not enough protection?

- Vary the ADVO in the local court & change the family law orders in the family courts, OR
- Vary the ADVO and change the family law orders in the Local Court.

Case Study

Sara has an ADVO that states her child's father is to stay away from her home. Then a parenting order is made that states the father is to collect their child from Sara's home on Fridays at 4pm.

Question: Will the father breach the ADVO if he picks the child up from Sara's home at 4pm on Fridays?

Answer: It depends! The family law court needs to have turned its mind to the ADVO and specified that the orders are inconsistent with the ADVO. The parenting order will also need to be explained to all people affected by it and a copy served on other parties, the Police and Local Court. Provided this has occurred, then there is no breach.

Question: Will the father breach the ADVO if he shows up at Sara's house repeatedly during the week?

Answer: Yes, this would be a breach of the ADVO.

Useful resources

- Women's Legal Service NSW:
 - Website: wlsnsw.org.au
 - Women and Family Law
 - A Practitioner's Guide to Domestic Violence Law in NSW