

# Legalquotes News

PROVIDED BY RANKIN NATHAN LAWYERS

## APPREHENDED VIOLENCE ORDERS - KNOW YOUR RIGHTS

Throughout Australia laws exist to protect people from threats, intimidation, harassment and stalking by people with whom they have a relationship, as well as people they do not know.

In New South Wales the Police on behalf of a person, or a person on their own, can apply to a Court for an Apprehended Domestic Violence Order ("ADVO") or Apprehended Personal Violence Order ("APVO"). An ADVO will be made in circumstances where the intimidation or stalking takes place between people who are in, or have been in, a relationship with each other, or if they are related by family. An APVO will be made where such conduct occurs between people who do not have a family relationship, for example, neighbours or complete strangers.

The law in New South Wales gives a broad definition of the terms intimidation and stalking. *Intimidation* means conduct amounting to harassment or molestation of a person, including contact by telephone, text messaging or other electronic communication that causes a person to fear for his or her safety. It also means any conduct that causes a reasonable apprehension of injury to a person, or a relative of that person, or of violence or damage to any person or property. *Stalking* means the following of a person, or the watching or frequenting in the vicinity of, or an approach to, a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity.

A person seeking protection can apply for an Apprehended Violence Order ("AVO") against someone who has committed an act of violence, intimidation or stalking against them, which causes the person to fear for their safety. A person seeking protection does not have to

sustain a physical injury before the Police or Courts will assist them. Once made, an AVO usually operates for one to two years and in most circumstances prevents one person from being permitted to contact, intimidate or stalk another. Specific conditions can be made through the AVO depending on the circumstances of the complaint. An AVO can remain in force between people who continue to live together.

The making of an AVO does not constitute a criminal offence. However, the breach of an AVO, where the person protected by an AVO is contacted or further intimidated or stalked by the person against whom the AVO was made, is a crime, punishable by fines, community service or imprisonment.

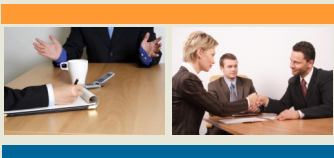
In New South Wales whether an AVO will be granted is a matter to be decided by a Magistrate in a Local Court. A Court may make an ADVO or APVO if it is satisfied on the *balance of probabilities*, that is, whether it is more likely than not, that a person has reasonable grounds to fear, and in fact actually fears, the commission by another person of personal violence against them, or intimidating conduct, or stalking. The conduct complained of must be, in the opinion of the court, sufficient to warrant the making of the AVO. The Court does not need to be convinced that a person actually fears for their safety in circumstances involving children or people with below average general intelligence.

Applications for AVOs are generally made by the Police after a complaint is made to them by the person seeking protection. The Police can apply to a Magistrate for an urgent interim AVO at very short notice and outside of Court working hours if they feel it is necessary for the protection of a person. Police



have some discretion as to whether they apply for an AVO. If the Police do not pursue the application, a person may privately prosecute an application for an AVO through the Chamber Magistrate at their Local Court. In all Court proceedings where an AVO is sought, the application, which sets out the alleged circumstances which warrant the making of the AVO, must be served on the person accused of the intimidating or stalking behaviour. A Hearing before a Magistrate must then take place to decide whether the AVO should be granted. Each party has the right to be legally represented at Court, whether this is by the Police or by a lawyer.

Everyone has the right to protection from threats and violence against them, their family or property. Each person also has the right to defend an application for AVO made against them. If you would like more information about this issue please contact Rankin Nathan Lawyers on 1300 727 813.



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