



Legal issues bulletin

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Apprehended Violence Orders

This bulletin updates advice to staff on issues concerning Apprehended Violence Orders and replaces legal issues bulletins numbers 6 and 11.

What types of AVOs are available under the legislation?

There are two types of AVOs under the legislation:

- Apprehended Domestic Violence Orders. In the school and other departmental contexts these orders, which affect the way family members interact with each other, may regulate the degree of involvement of those family members in various school and other departmental activities.
- Apprehended Personal Violence Orders. In the school and other departmental contexts, these orders may impact on the way students, parents, teachers and community members interact with each other at school during school and other departmental activities.

What is the purpose of AVOs?

AVOs are designed to ensure the safety and protection of people who experience personal violence and other forms of seriously inappropriate behaviour both within and outside domestic relationships.

What types of behaviour can lead to the granting of an AVO?

The court can grant an AVO if it is satisfied the person in need of protection has been subjected to:

- a domestic or personal violence offence. This covers a wide range of different criminal offences including all forms of assault (sexual and non-sexual), certain firearms offences and some damage to property offences;
- intimidation;
- stalking.

What is meant by “intimidation”?

“Intimidation” is defined as:

- conduct amounting to harassment or molestation;
- any approach made to a person by telephone, text message, e-mail or other technological means (such as Facebook, Snapchat or Twitter) that causes the person to fear for his or her safety;
- any conduct that causes a reasonable apprehension of injury to a person or to anyone with whom the person has a domestic relationship;
- any conduct that causes a reasonable apprehension of violence or damage to any person or property.

The legislation does not include a definition of “harassment” or “molestation”. The usual dictionary meaning therefore applies.

The Act also provides for a separate offence if a person intimidates another person with the intention of causing the other person to fear physical or mental harm. The maximum penalty for this offence is 5 years imprisonment or \$5,500 fine or both.

What is meant by stalking?

Stalking is defined to include:

- following a person about;
- watching, frequenting the vicinity of, or approaching a person’s place of residence, business or work;
- watching, frequenting the vicinity of, or approaching any place that a person goes for social or leisure activity.

The Act also provides for a separate offence of stalking with the intention of causing another person to fear physical or mental harm. The maximum penalty for this offence is 5 years imprisonment or \$5,500 fine or both.

How do you apply for an AVO?

An application for an AVO can be made by the person in need of protection or a police officer on his or her behalf. If made in person, it is necessary to attend the nearest Local Court registry and speak with an authorised justice (i.e. a person at the registry who has the power to approve the commencement of proceedings). The authorised justice needs to be provided with an outline of the circumstances giving rise to the need for the AVO.

The authorised justice has a discretion whether or not to accept the application. If the application is accepted, the matter will then be listed for determination by the court at some stage in the future.

In what circumstances can the authorised justice refuse the application?

If he or she is satisfied the application:

- is frivolous, without substance or has no reasonable prospects of success;
- could be more appropriately dealt with by mediation or other alternative dispute resolution.

In determining whether or not to accept the application, the authorised justice is obliged to take a wide range of factors into account including the nature of the allegations, the relative bargaining powers of the parties, whether the parties have attempted other means to resolve the issue, the willingness and capacity of the parties to attempt alternate resolution processes and the availability and accessibility of such alternate resolution processes.

It should not be assumed a final order will be made because one or more of these factors apply in any particular matter.

An application cannot be refused if:

- it is made by a police officer;
- the behaviour complained of involves a personal violence offence;
- the behaviour complained of amounts to intimidation or stalking with the intent to cause fear of physical or mental harm;
- the behaviour complained of involves harassment relating to the person’s race, religion, homosexuality, transgender status, HIV/AIDS or disability.

What matters will the court take into account when considering whether or not to make an order?

The court should be satisfied that the applicant has reasonable grounds to fear (the objective test) and in fact fears (the subjective test) the commission of a domestic or personal violence offence, intimidation or harassment. Both grounds need to be established before the court will grant an order.

The court is also obliged to take into account the safety and protection of the person seeking the order and any child directly or indirectly affected by the conduct of the defendant. Any hardship that may arise in respect of the person seeking the order, or any child, by making or not making an order is also taken into account.

What orders can the court make?

All AVOs are presumed to include standard orders which prohibit the defendant from assaulting, threatening, stalking, harassing, intimidating or intentionally or recklessly destroying or damaging any property that belongs to or is in the possession of the protected person or any person with whom they have a domestic relationship (e.g. a spouse, children or parent).

The court can also refer the parties involved in a personal violence matter to mediation at a community justice centre (this cannot be done for domestic violence matters). A mediation order can be made prior to or after an AVO application has been granted. The community justice centre reports back to the court on the success or otherwise of any mediation and, on receipt of the report, the court is empowered to make such orders as it deems appropriate.

A matter is not permitted to be referred to mediation if:

- there has been a history of violence between the parties;
- the behaviour complained of amounts to a personal violence offence;
- the behaviour complained of amounts to intimidation or stalking with the intent to cause physical or mental harm;
- the behaviour complained of involves harassment relating to the person's race, religion, homosexuality, transgender status, HIV/AIDS or other disability;
- there has been a previous unsuccessful attempt at mediation in relation to the same matter.

How long does an AVO last?

Unless otherwise specified, an AVO is operative for 12 months. It is important principals check whether the AVO is still current and read it carefully before taking action in response to the AVO.

What other issues do I need to be aware of?

The relevant legislation also provides for the following:

- If the court considers the circumstances are sufficiently urgent, it can make an interim order. An interim order can be made in the absence of the defendant. It will remain in force until it is revoked, the application for a final AVO is withdrawn or dismissed or a final AVO is made.
- The Act will provide that in certain circumstances, a police officer can apply for a provisional order. An authorised officer (i.e. a magistrate, court registrar or other authorised officer such as a police officer of or above the rank of sergeant) can make a provisional order. A provisional order remains in force until it is revoked, the application for a final AVO is withdrawn or dismissed or an interim or final AVO is made.
- Even if the defendant does not agree with any or all of the allegations made in the application for the order, he or she can still consent to an AVO being granted by the court.
- Both the person in need of protection and the defendant are entitled to have a support person with them in court when giving evidence.
- A person who breaches the provisions of an AVO is liable to a maximum penalty of \$5,500 or imprisonment for 2 years or both.

What action should I take when I receive an AVO?

The AVO, and any statement made in support of the AVO (if available) should be reviewed to identify and respond to any foreseeable risks which arise to other persons on the school site (for example if the AVO was issued after a violent incident at the home, consideration should be given to whether it is necessary to limit the defendant's contact with staff at school).

A copy of an Apprehended Personal Violence Order should be provided to the school counsellor/school psychologist so they can assess the student's wellbeing needs and advise the principal of any necessary strategies to support the student at school. The need to provide the counselling service with a copy of an Apprehended Personal Violence Order will depend on whether a student has been directly affected by the circumstances that resulted in the APVO being taken out.

In what circumstances are AVOs relevant to schools or other departmental worksites?

AVOs will generally arise in one of the following ways:

- When parents of school students seek, or have, AVOs against each other or other parents.
- When students seek, or have, AVOs against other students.
- When students seek, or have, AVOs against teachers.

- When teachers seek, or have, AVOs against students, ex-students, parents or other members of the community.
- When students seek, or have, AVOs against their parent, other relatives or other members of the community.

If one parent has an AVO against the other, does that mean the defendant parent cannot come to the school or participate in school activities?

No, unless there is a specific provision within the order that prevents the defendant parent from doing so. An AVO in favour of one parent will automatically protect any children living with that parent in respect of the standard orders. The fact that an AVO may prevent one parent from assaulting, threatening, stalking, harassing, intimidating or damaging or destroying the property of the other parent (and any children living with that other parent) does not automatically mean the defendant parent cannot have contact with his or her children.

If:

- there is a specific provision in the orders that means a parent should not be on the school premises [e.g. an order not to approach or come within a certain distance of the school and/or the child(ren)];
- the child(ren) express apprehension or distress about the parent coming to the school to the principal or other member of the school staff;
- there are genuine safety concerns held about the presence of the parent on the school site,

principals should take action to prevent the defendant parent from coming to the school. This could include informing the police that the parent has come to the school in breach of the order or the principal invoking his or her powers under the Inclosed Lands Protection Act 1901.

In all cases, principals should obtain a copy of any orders made and give consideration about whether there is a need to place any restrictions or limitations on the defendant parent entering onto the school site.

What do I need to do if I become aware that students have AVOs against each other?

Again much depends on the terms of the particular order. If it is likely the students will have contact with each other during the course of the school day, the principal should determine if it is appropriate or possible to change timetable arrangements to remove or minimise such contact. Wellbeing support should be provided to both students. Depending on the orders it may be necessary to identify alternative education provision for the student.

It is also prudent for principals to speak separately to the students concerned and:

- advise the student in whose favour the AVO has been made that the other student is, subject to any order to the contrary, able to continue with his or her studies at the school;
- remind both of the need to behave appropriately towards each other while at the school. This includes staying away from each other as far as possible, not provoking one another or encouraging other people to provoke each other;
- advise the defendant student that if he or she acts inappropriately towards the other student while he or she is at school or on a school related activity it will be reported to the police and he or she risks being charged with breaching the AVO;
- suggest to the defendant student that he or she seek a variation of the orders to overcome any potential difficulties arising from attendance at school.

What should I do if a student seeks to take out an AVO against me?

If the circumstances giving rise to the application for the AVO arise directly from your employment, you can contact Legal Services to discuss potential options regarding legal representation in the matter. General legal advice is also available from Legal Services about the impact of an AVO on a staff member's employment.

Representation and advice about options to overturn the AVO will generally not be provided if there are reasonable grounds to believe a staff member has committed an offence or engaged in other misconduct giving rise to the AVO application. In these circumstances it may be prudent to seek advice from your union.

Depending on the circumstances you can also contact Legal Aid, the Aboriginal Legal Service or arrange your own private legal representation at your own expense if you prefer.

What do I do if I fear for my safety and wish to take out an AVO against a person?

If you are subject to any behaviour (e.g. stalking, intimidation, threats, and harassment) that causes you to fear for your safety or wellbeing, you should immediately report the matter to police. In doing so you should seek the assistance of police to obtain an AVO on your behalf.

If police decline to seek an AVO and the circumstances giving rise to your fears arise directly from your employment (e.g. from the teacher/parent/student relationship at school, during school related activities and other locations such as the local shopping centre), you should contact Legal Services. If, following consultation with you, it is considered that an application for an AVO is the appropriate course of action, arrangements will be made for legal support and representation in court, either by legal officers in the directorate or a private solicitor. The costs of any legal representation provided by private solicitors in these circumstances will be met by Legal Services.

Prompt contact should also be made with the Health & Safety directorate to obtain advice and support, including information about how to access the Employee Assistance Program by calling 1800 811 523.

When considering whether or not to seek an AVO, staff should note the following:

- You should discuss your concerns with your principal and keep him or her informed in the event that legal proceedings are commenced.
- Legal assistance is generally not provided for staff who seek orders against other staff unless it is clear a staff member has engaged in serious misconduct.
- Other strategies should be considered before making any application for an AVO.
- AVOs are not to be used by staff to circumvent procedures relating to the discipline of students.
- AVOs cannot be taken out on behalf of a school or another departmental workplace as a whole.

Is it possible to use powers under the Inclosed Lands Protection Act 1901 instead of seeking an AVO?

The types of behaviours that warrant seeking an AVO may also give rise to the use of powers under the Inclosed Lands Protection Act 1901. Information about the Act is found in [legal issues bulletin 58](#). Advice about whether to seek an AVO or use powers under the Inclosed Lands Protection Act 1901 is available from Legal Services on 9561 8538.

Is any other support available from the department?

Yes. A line manager (for example the relevant Directors Educational Leadership) should be notified for guidance and support. The Incident Support unit of the Health and Safety directorate can provide advice and support to staff. They should be notified of the incident that has resulted in an AVO being sought by ringing 1800 811 523.

What legal rights or obligations could arise under child protection legislation when an AVO is received by a school contemplated against a parent?

On rare occasions a parent's behaviour on the school site could give rise to a reasonable suspicion that their child is at risk of harm. This may relate to an actual incident, but other risk factors may also be present. School staff should inform their principal of any concerns that a student may be at risk of harm. Concerns about a child may also arise from the circumstances in which an AVO has been taken out to protect them.

Principals need to consider whether to report to Family and Community Services, contact the Child Wellbeing unit or some other action is required. The [Mandatory Reporter Guide](#) can help with this decision. If in doubt or assistance is required contact the [Child Wellbeing unit](#) on 9269 9400.

The department's [Protecting and Supporting Children and Young People](#) policy also provides guidance about responding to child protection issues.

What should a principal do if he or she is concerned a parent or other community member may be at risk of domestic violence?

If a principal has reasonable grounds to believe a parent or other community member may be at risk of domestic violence, the matter can be raised sensitively and he or she can be provided with contact details of sources of potential support.

Concerns about a child may also arise from these circumstances. Principals need to consider whether to report to Family and Community Services, contact the Child Wellbeing unit or some other action is required. The [Mandatory Reporter Guide](#) can help with this decision. If in doubt or assistance is required contact the [Child Wellbeing unit](#) on 9269 9400.

The department's [Protecting and Supporting Children and Young People](#) policy also provides guidance about responding to child protection issues.

What record keeping requirements apply to this situation?

It is important to maintain appropriate official records when seeking an AVO. These include records of:

- the incident which resulted in the AVO being sought;
- contact with the NSW Police Force in relation to the incident; and
- compliance with any reporting requirements under the department's Incident Reporting Procedures or for child protection purposes.

Schools must observe any requirements imposed by privacy legislation with records being kept secure and accessible only to those staff that need to see them. Staff should contact the Records Management centre of expertise on 1300 32 32 32 if they have specific records-related inquiries.

About Legal Services

Legal Services is here to support our government schools. **Staff can contact Legal Services by email or phone.**

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.