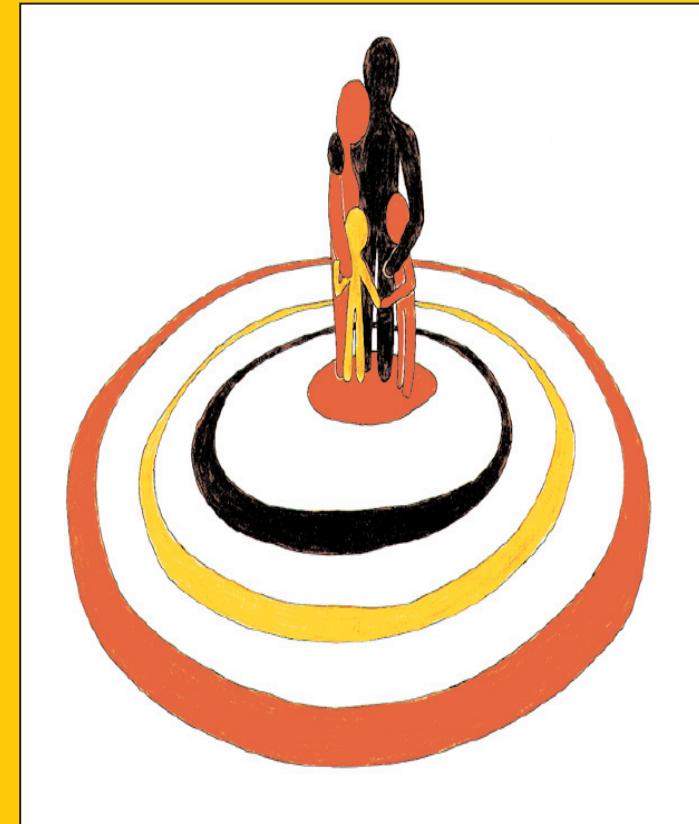


our dream...

STOPPING THE VIOLENCE



**An information booklet for Aboriginal women
on domestic violence and the law in NSW**

third edition 2015

PUBLISHED BY WOMEN'S LEGAL SERVICES NSW

WOMEN'S LEGAL SERVICES NSW

ACKNOWLEDGEMENTS to third edition 2015

Updated by Women's Legal Services NSW. With many thanks to Dixie Link-Gordon and Shannon Williams for providing cultural feedback on the updated edition.

Reprint was funded by WLS NSW

ISBN 978-0-9807623-2-7

© Women's Legal Services NSW 2015

PO Box 206, Lidcombe, New South Wales, Australia 1825

Ph:(+612) 8745 6900

<http://www.wlsnsw.org.au>

ACKNOWLEDGEMENTS to first edition 1999

Author: Anita Heiss

Artist: Gerard Scifo

Cover Design Concept and Title: Jean Webster

Design:Tania Edwards

Many thanks to:

- Project Steering Committee – Winsome Matthews, Cleonie Quayle, Jane Wangmann, Merrilyn Davis, Pam Foster, Louise Bond
- All the Aboriginal women who were part of this project,either by participating in our workshops (at Brewarrina, Coonamble, Condobolin, Coffs Harbour, Gilgandra, Griffith, Gunnedah and Orange) or by providing valuable feedback on the draft booklet.

This is a brief guide to the law concerning Apprehended Violence Orders and some related legal areas. It does not replace legal advice.

If you need further information, you should seek legal advice. Contact numbers are provided at the end of the booklet.

Remember also that the law often changes and that the information contained in this booklet is correct at the time of writing (December 2015).

Contents

Section One: What is domestic or family violence?	3
What does it all mean?	
Section Two: What can you do about it?	12
You can talk to someone who knows about domestic violence	
You can apply for an Apprehended Violence Order (AVO)	
What you need to know about AVOs	
You can also get counselling	
Section Three: You've applied for an AVO, what will happen when you go to Court?	23
Applying for an AVO	
What help is there at court?	
What happens at court?	
Who's who at court?	
What's what in the law?	
Section Four: Some Common Questions	33
What must the police do?	
What if the defendant ignores the AVO?	
What is victims support?	
Do you need somewhere to stay because of domestic violence?	
What about your kids?	
What are Family Law issues?	
What if the other person takes the kids?	
Where do you make a complaint when you feel the system has let you down?	
Section Five: Where can you get more info?	42



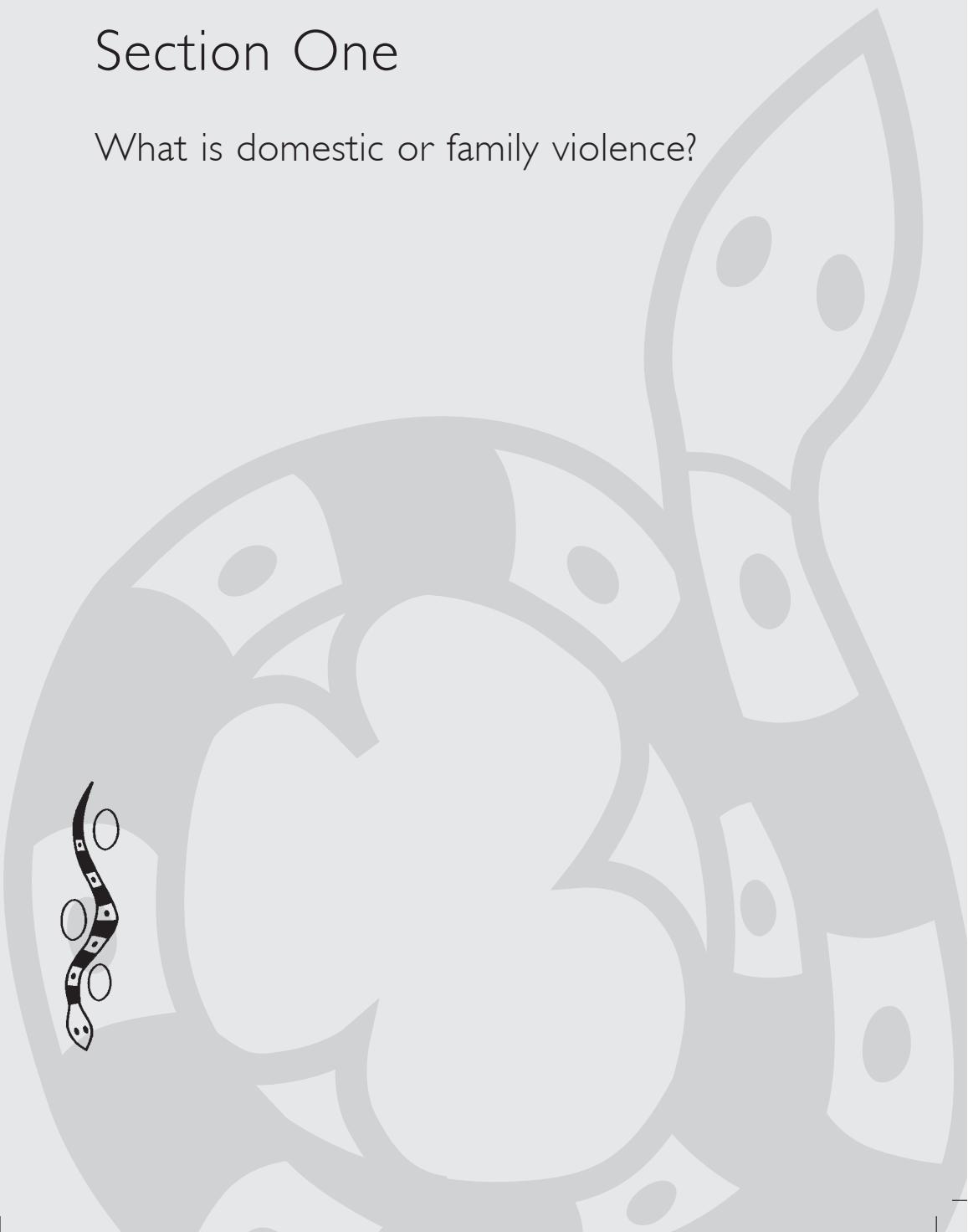


Women's Legal Services NSW acknowledges the impact of colonisation on Aboriginal society and culture and the negative history of relationships between Aboriginal people and welfare agencies, as well as the relationships between Aboriginal people and the police. We are also aware of the extra barriers Aboriginal women face in terms of accessing the legal system and support services. This booklet can't change the system, nor can it provide much-needed services where they are lacking. However, we hope it may assist you to access the services you are entitled to use, in order to change your situation if you are experiencing domestic violence.



Section One

What is domestic or family violence?





Domestic violence is:

- ▶ when someone makes you **afraid** of them
- ▶ when someone **roughs** you up
- ▶ when someone **makes you have sex** with them and you don't want to
- ▶ when someone **calls you names** and makes you feel bad about yourself
- ▶ when someone **says they'll hurt** you or pretends to throw things at you
- ▶ when someone **won't leave you alone** and follows you everywhere
- ▶ when someone **keeps calling you** on the phone or comes to your house when you've asked them not to
- ▶ when someone **won't let you see your mob** or let you leave the house
- ▶ when someone **won't give you money** to buy food and spends it all on themselves

Domestic violence can occur **in all types of relationships** – with your boyfriend / girlfriend, husband / wife, defacto, and other family members.

DOMESTIC VIOLENCE ISN'T YOUR FAULT



Physical violence is domestic violence



Emotional abuse is domestic violence

DON'T BE SHAME, DON'T TAKE THE BLAME





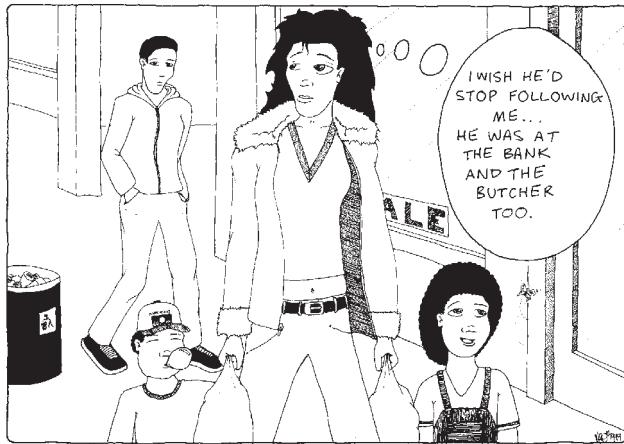
Sexual assault is domestic violence



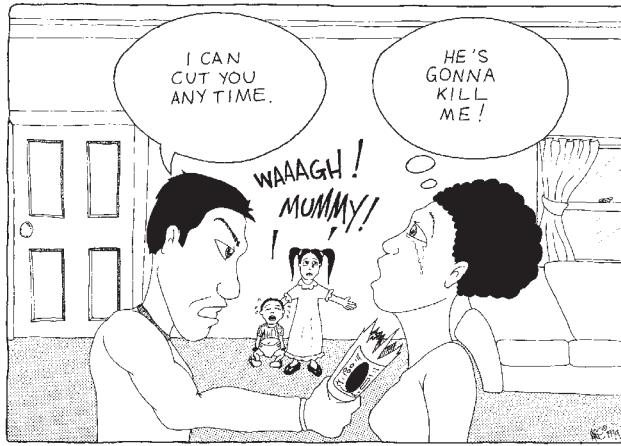
Psychological abuse is domestic violence

**DOMESTIC VIOLENCE IS NOT
PART OF ABORIGINAL CULTURE**





Stalking is domestic violence



Using weapons is domestic violence

**DOMESTIC VIOLENCE IS SOMETIMES CALLED
'KOORI LOVE', BUT YOU DON'T HURT SOMEONE YOU LOVE**





Financial abuse is domestic violence



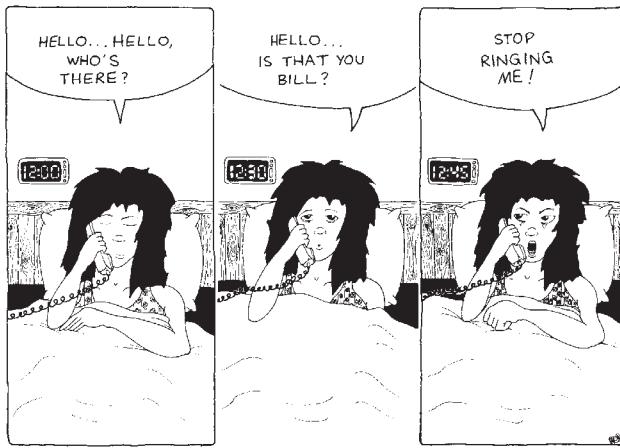
Intimidation is domestic violence

**DOMESTIC VIOLENCE IS A COMMUNITY PROBLEM,
NOT JUST WOMEN'S BUSINESS**





Social isolation is domestic violence



Harassment is domestic violence

HE DOESN'T HAVE TO BE CHARGED UP TO BE ABUSIVE





What does it all mean?

- ▶ **Physical violence** is when someone punches, hits, kicks, burns, slaps or shoves you, and when they pull your hair or try to choke you.
- ▶ **Sexual assault** is when someone has sex with you or does other sexual things to you without your consent (when you don't want to).
- ▶ **Use of weapons** is when someone uses a gun or a knife or boondi (bhundi) or anything else around the house to hurt you or threatens you with those weapons.
- ▶ **Psychological and emotional abuse** is when someone puts you down or makes fun of you or when they say they'll hurt you or your children. When someone says they'll kill themselves to make you feel sorry for them, this is also abuse.
- ▶ **Intimidation** is when someone throws things at you (or pretends to) or says they'll break your things or threatens to post your intimate photos on social media.
- ▶ **Stalking** is when someone follows you or waits for you outside your work or house or follows where abouts on social media or by remotely accessing your mobile phone.

WOMEN DON'T 'ASK' TO BE FLOGGED



- ▶ **Harassment** is when someone rings you or hassles you all the time.
- ▶ **Social isolation** is when someone stops you from leaving the house, using the phone or seeing your mob or timing you when you go out, e.g. when you go the doctors, to the shop or to the school.
- ▶ **Financial abuse** is when someone takes your money, or when they don't give you money to buy food and clothes or pay the rent and other bills, or when they hold your key card.
- ▶ **THREATS** to do these things to you or someone close to you is also domestic violence.



DOMESTIC VIOLENCE IS A CRIME



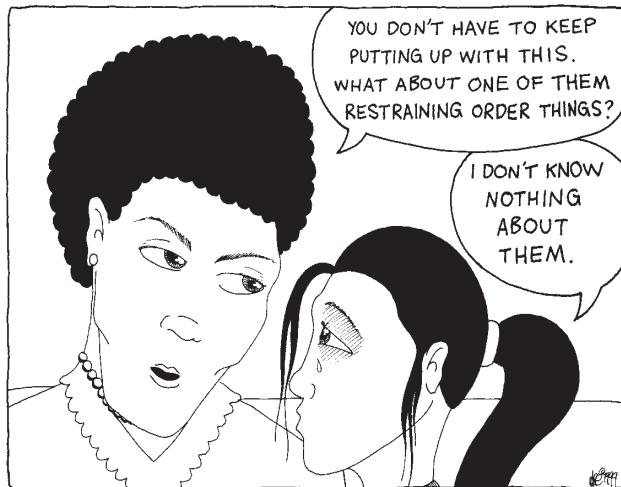
Section Two

What can you do about it?

- You can talk to someone who knows about domestic violence
- You can apply for an Apprehended Violence Order (AVO) through a Local Court Registrar yourself; OR the police can apply for an AVO for you
- What you need to know about AVOs
- You can also get counselling



You can talk to someone who knows
about domestic violence...



AVOs CAN HELP KEEP YOU SAFER



IT IS NOT YOUR JOB TO PROTECT VIOLENT MEN



You can apply for an Apprehended Violence Order (AVO)



YOU ARE NOT DOBBING YOUR MAN IN –
YOU ARE SAVING YOURSELF AND YOUR KIDS





Through a registrar yourself...



GETTING HELP WILL KEEP YOU AND YOUR KIDS SAFER





THERE IS HELP AVAILABLE TO STOP THE VIOLENCE



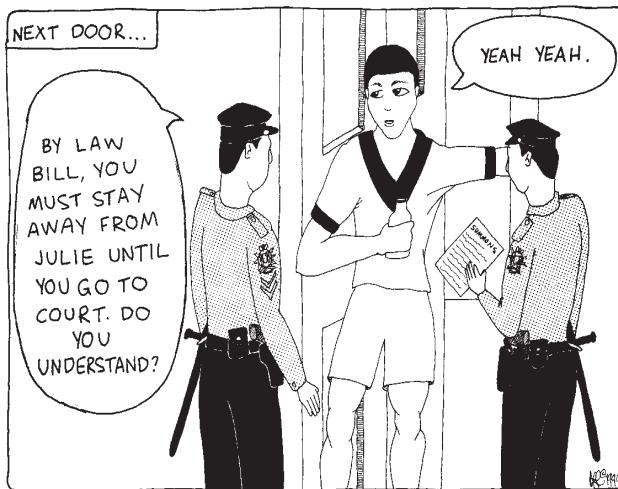


Or the police can apply for an AVO for you



GETTING AN AVO IS NOT A CRIMINAL CHARGE





YOU CAN LEAVE YOUR MAN WITHOUT
LEAVING YOUR MOB



What you need to know about AVOs

- ▶ An AVO is **not** a criminal conviction.
- ▶ There is no fee to apply for an AVO.
- ▶ Most police stations have a Domestic Violence Liaison Officer whose job it is to help you with your AVO – but any officer can help.
- ▶ AVOs are meant to protect you from violence, harassment, intimidation or stalking in the future.
If you are **in fear**, then you can apply for one.
- ▶ AVOs are legal, and if the defendant breaks the conditions of the AVO, then they are '**in breach**', **and that is breaking the law**. A breach is a criminal offence and there are penalties.
- ▶ You can apply for an AVO yourself through the Registrar at the local court or the police can apply for you.
- ▶ Your AVO can also protect anyone in your family or extended family including your **children** if they are at risk (or also being abused). This is called a 'domestic relationship' according to the law in NSW.





- ▶ If you are under 16 years and you want an AVO, only the police can get it for you.
- ▶ AVOs usually last for one to two years, but you can get them for longer or shorter.
- ▶ If you live in the same house and feel unsafe, an AVO can say that the other person must leave the house – this is called an 'exclusion order'.
- ▶ You can still live together and have an AVO if you want.
- ▶ You can change the conditions of your AVO if at a later date you think it is OK for the other person to call you or move back home. You can also change the conditions if you need to increase your protection. This is called a variation of your AVO. You have to go back to court to do this.
- ▶ If you move to another State or Territory and you still want protection, you must go to the local court there and take a copy of your original AVO to have it registered.



You can also get counselling to:

- ▶ talk about how you feel and what you're experiencing.
- ▶ talk about getting an AVO and what conditions you want in it (you may want to live in the same house, but still be safe from domestic violence, or you may feel safe for the other person to call you but not want to see them). REMEMBER – you can ask for the conditions you need to make you feel safe. It is also a good idea to speak to a lawyer or Women's Domestic Violence Court Advocacy Service about AVOs.
- ▶ talk about whether you want to save the relationship and if you still want to be with them.
- ▶ talk about whether or not your man is the sort of bloke who would go to counselling himself (**but counselling won't work for you and your man if he doesn't believe that what he is doing is wrong**).



REMEMBER IT'S YOUR CHOICE – YOU DECIDE
WHAT'S BEST FOR YOU, AND YOUR KIDS



Section Three

You've applied for an AVO, what will happen when you go to Court?

- Applying for an AVO
- What help is there at court?
- What happens at court?
- Who's who at court?
- What's what in the law?



You've applied for an AVO, what will happen when you go to court?

Most AVOs start by an **APPLICATION** being served on the other person telling them to come to court. The papers that the police will serve on them will include details about what has happened and the type of protection you want.

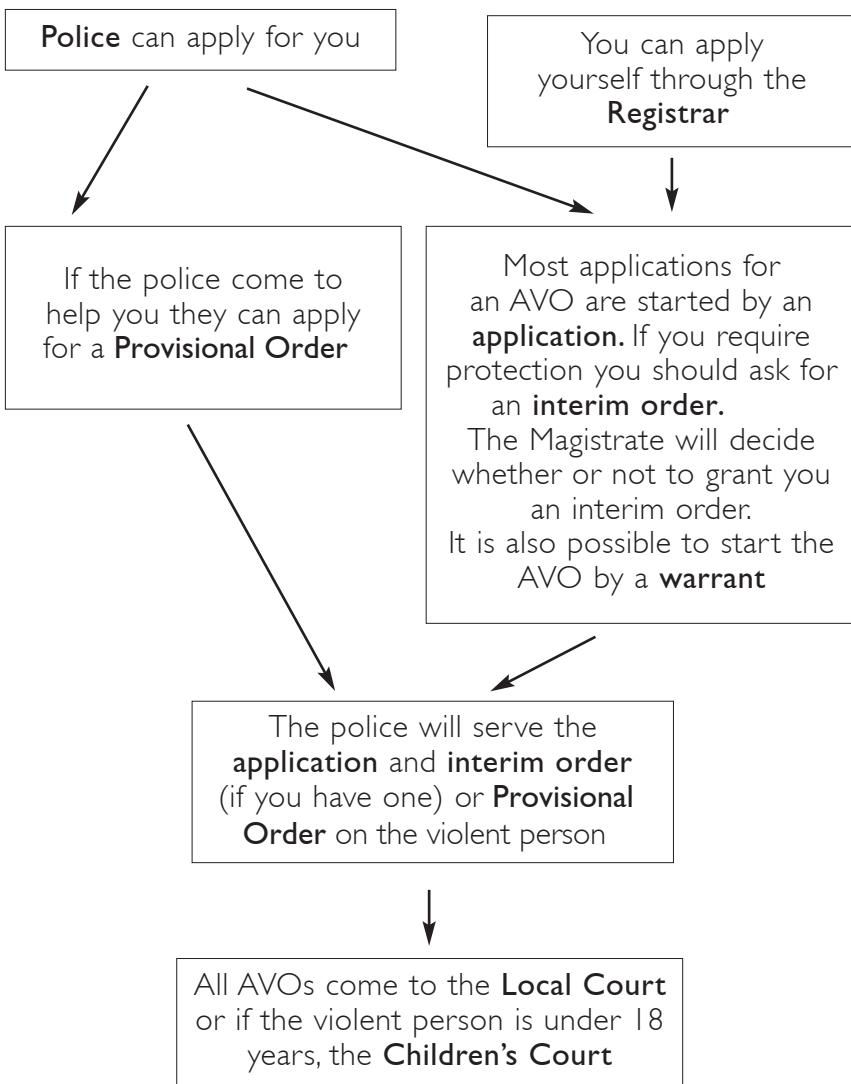
If you are scared that they will get angry because you have taken action, or you are scared that they will keep being violent to you, then you should tell the police or the Registrar that you want an **INTERIM ORDER**. This is an AVO which lasts for a short period of time until you have to come back to court. You will need to go into court to ask the Magistrate for an INTERIM ORDER. If the Magistrate makes an INTERIM ORDER, then the other person will be served with both the APPLICATION and INTERIM ORDER. This means that you will have protection from the other person as soon as they get served the interim order by the police.

The application will usually tell you and the other person to come to court about two weeks after you applied for your AVO (the time varies a bit from one court to another).

If your case is very serious (your personal safety is at risk) then the Registrar may issue a **WARRANT** (instead of an application) for the other person's arrest in order to bring them to court for your AVO. This does not mean that they have been charged - it is simply a more **urgent** way to get to court for your AVO.

Applying for an AVO

You can apply for your AVO in two ways.





What help is there at court?



DON'T WORRY – the staff at the court are there to help you and make it as easy for you as possible.

- ▶ If you applied for your AVO through the police then the POLICE PROSECUTOR will represent you in court.
- ▶ If you applied for your AVO through the Registrar, you will need to organise your own legal representation or get legal advice. If there is a **Women's Domestic Violence Court Advocacy Service (WDVCAS)** operating at your local court they will help you with this. You can also contact the Domestic Violence Legal Advice line on (02) 8745 6999 or (country freecall) 1800 810 784 or the Indigenous Women's Legal Contact Line on 1800 639 784 and they will give you legal advice and refer you to solicitors in your area.
- ▶ It might be possible to get Legal Aid if you have applied for your AVO through the Registrar.

The **WDVCAS** helps women go through the court process when applying for an AVO.

The **WDVCAS** helps by assisting you with **legal representation**, and providing **information** and **support**.

The **legal representative** might be a community legal centre solicitor, a police prosecutor or private lawyer who will go to court with you.

Don't be shame to ask for help. Some **WDVCAS** have Aboriginal Support Workers. Call LawAccess on 1300 888 529 for your local WDVCAS.



What happens at court?

The FIRST RETURN DATE (or MENTION) is when you go to court for the first time to tell the court what you want to do about the AVO. A number of things might happen:

- if the other person doesn't show up and has been served with the application, the Magistrate can still make an AVO. This is called an EX PARTE ORDER. This is a final order.
- if the other person doesn't show up because they haven't been served with the application, the case will be adjourned (put off to another date).
- if the other person does show up and consents to (agrees with) the AVO, then the court makes a final order.
- if the other person shows up but doesn't want the AVO, the case will be given a timetable and dates for each party to file written statements. The case will be listed for a further mention date after the exchange of statements.

For any adjournment you can ask for an INTERIM ORDER to protect you in the meantime.

The Magistrate decides whether to grant you an AVO on the 'balance of probabilities' (that it is more likely than not) that you are fearful of the other person and that your fears are reasonable.

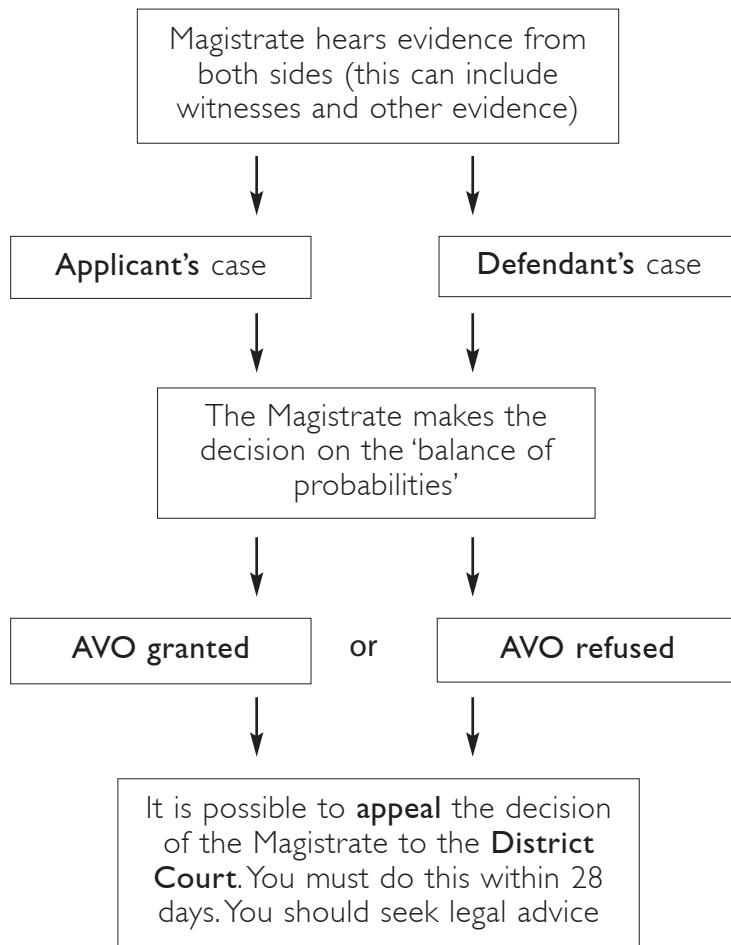




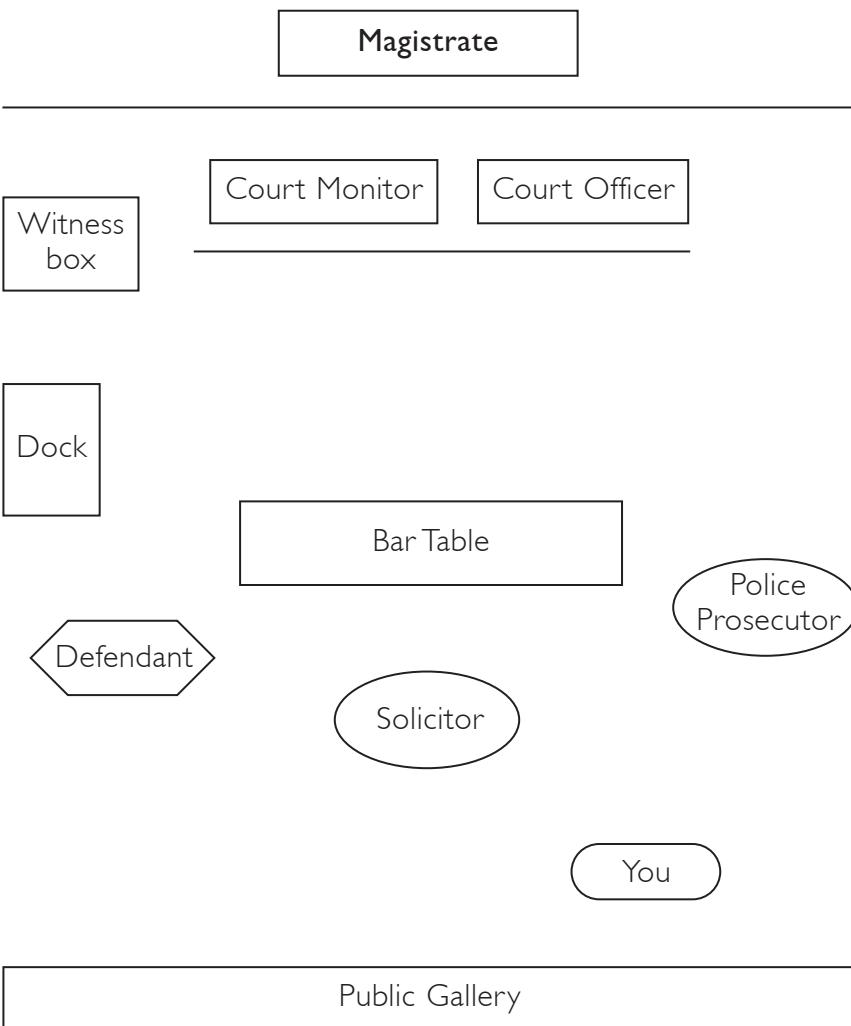
If you have a HEARING, the chart below shows what might happen.



HEARING



The picture below gives you a general idea of what the courtroom looks like when you go there to get your AVO.
(Your courtroom might be a bit different.)





Who's who at court?



The **Applicant** is you, the person applying for the AVO, or the police if they apply for it on your behalf.

The **Registrar** is someone employed at the local court who can help with preparing AVO applications.

The **Defendant** is the person who you want the AVO against.

Lawyer is another word for a **Barrister** or **Solicitor** and these people give advice about the law, and represent people in court.

The **Magistrate** is the person who hears the cases and makes decisions in the Local Court.

The **Protected Person** is the person in need of protection (YOU).

The **Police Prosecutor** is a police officer with legal training who acts in police AVO applications on behalf of the applicant.



What's what in the law?

An **Affidavit** is evidence in writing that tells the facts about something that happened. It is sworn as the truth in front of a solicitor or a Justice of the Peace.

An **Apprehended Violence Order (AVO)** is an order made in a Court that protects you from the defendant hurting you, harassing you or sometimes from coming near you.

A **domestic relationship** includes married and defacto partners, boyfriends and girlfriends, relatives and people living in the same household. In the case of Aboriginal and Torres Strait Islander people, domestic relationship also includes kin or extended family.

An **Ex Parte Order** is when the court makes an AVO when the other person hasn't turned up, but they have been served with the application.

A **Final Order** is when the AVO is made and the case is finished.

A **Hearing** happens when the defendant doesn't agree with the AVO, and the Magistrate listens to both sides of the story before deciding to make the AVO or not.

An **Interim Order** is a short-term order made until the Court makes a final order.

A **Mention** is where the court hears a case briefly. It is not a full hearing.





An **Application** is a notice that tells someone they must go to court.

A **Provisional Order** is an urgent Interim Order taken out by the police. It lasts for up to 28 days.

A **Warrant** gives the police the power to arrest someone and take that person to court.



Section Four

Some Common Questions

- What must the police do?
- What if the defendant ignores the AVO?
- What is victims support?
- Do you need somewhere to stay because of domestic violence?
- What about your kids?
- What are Family Law issues?
- What if the other person takes the kids?
- Where do you make a complaint when you feel the system has let you down?



What must the police do?



- ▶ Police have the power to go into a house to find out if there is any domestic violence, if someone who lives there or a victim invites them in.
- ▶ Even if they are not invited in but think that domestic violence has occurred or might occur, then they can apply for a warrant by radio or phone to enter the house.
- ▶ Police HAVE TO apply for an AVO to protect you in certain circumstances.
- ▶ When you call the police for help during domestic violence, they are obliged – it is their job – to help you. If that does not happen, you have the right to make a complaint.
- ▶ Most police stations have a Domestic Violence Liaison Officer (DVLO) whose job it is to check how the police respond in relation to domestic violence and to assist you.
- ▶ Some police stations also have Aboriginal Community Liaison Officers (ACLOs) whose job it is to assist Aboriginal people in their dealings with the police.



What if the defendant ignores the AVO?

- ▶ If the defendant breaks the conditions of your AVO, they are in **BREACH** of the AVO, and have broken the law.
- ▶ Report all breaches to the police straight away. The police should investigate all breaches and charge the defendant if there is enough evidence.
- ▶ If found guilty of breaching an AVO, the defendant could be imprisoned for up to two years and/or fined up to \$5,500. It depends on how serious the breach is.
- ▶ The AVO is there to protect you. If you want the defendant to take notice of it, then you must too. If you need to change (vary) your AVO then you must go back to court.



IF YOUR MAN CHOOSES TO BREACH THE AVO, HE CHOOSES TO MAKE IT A CRIMINAL MATTER, NOT YOU





What is victims support?



- ▶ If you have been injured by domestic violence in NSW then you may be able to get free counselling and financial support from Victims Services.
- ▶ To get financial support you will need a police report or a report from a government agency in addition to medical evidence.
- ▶ You have 10 years from the act of violence to make a claim in cases of domestic violence.
- ▶ You might be eligible for immediate financial assistance of up to \$5,000. You may also be eligible for a 'recognition payment' to acknowledge pain and suffering experienced.

If you think you might want to make a claim you can contact Victims Services on 1800 633 063 or their Aboriginal Contact Line on 1800 019 123. You can also seek legal advice about your options for victims support.



Do you need somewhere to stay because of domestic violence?

If so, then you have a couple of options:

- ▶ you can have included in your AVO that the defendant not live in the family home – this is called an ‘exclusion order’ and you have a right to ask for it. It is for the Magistrate to decide.
- ▶ If you want to stay living in your place safely, you can ask for help to change locks or get security doors etc. through Staying Home Leaving Violence. To find the nearest service ring the Domestic Violence Line on 1800 656 463.
- ▶ if you are renting and your name is on the lease, you should get urgent advice from a Tenant's Advice and Advocacy Service. To find your local service, go to www.tenants.org.au.

If you need to find other accommodation you can contact:

- ▶ the Domestic Violence Line on 1800 656 463 to find out where the nearest refuge is and if they can take you and your children. Often refuges cannot house pets: contact the RSPCA Safe Beds for Pets on (02) 9782 4408 if you need somewhere safe for your pet.





- ▶ Housing NSW can also help you find somewhere to stay, in either emergency housing or by helping with the costs of moving and renting somewhere else.

You can also contact the Indigenous Women's Legal Contact Line on freecall 1800 639 784 or (02) 8745 6977 or Link 2 Home, a 24 hour statewide homelessness service on 1800 152 152.

What about your kids?

The other person might not hit your children, but they are hurting the children every time they abuse you.

Your kids are being abused too if they:

- ▶ **are** being hit or yelled at
- ▶ **see you** being hit or yelled at
- ▶ **hear you** being hit or yelled at
- ▶ live where they **are afraid**

If you want to protect your kids from domestic violence in your home then think about contacting someone for help (e.g. a Family Support Service). The NSW Department of Family and Community Services (FaCS) can help in an emergency and put you in touch with support services you might need.

Witnessing domestic violence is considered a form of child abuse and is notifiable to FaCS (DoCS).



What are Family Law issues?

Family Law covers all the dealings between you and your partner and between you two and your kids (whether or not you were married).

We used to talk about 'residence' and 'contact'. Now we talk about '**parenting orders**'.

Different types of parenting orders include:

- ▶ **Lives with** – who the child lives with most of the time.
- ▶ **Spends time and communicates with** – how often the child sees the other parent (just like access or contact) and whether this should be supervised.
- ▶ **Parental Responsibility** - deals with the long term issues such as:
 - child's education (current and future)
 - child's religious and cultural upbringing
 - child's health
 - child's name
 - changes to the child's living arrangements that make it significantly more difficult for a child to spend time with a parent.



The Court must take into account any violence in a child's family when it makes these orders. If you have an AVO when you apply for parenting orders, the Court has to look at the AVO conditions. If you have parenting orders when you go for an AVO, the Court can change them so they fit with your AVO.

What if the other person takes the kids?

If the other person threatens to take off with the kids or actually takes them, **don't panic**. You can apply for what's called a '**recovery order**' that returns the kids to you.

You don't need any orders before you apply. All you need is an application for parenting orders, and you can fill that out when you apply for the recovery order.

If you don't know where they have gone, you can apply for a '**location order**' which forces anyone who knows where they are (like a boss, Centrelink or their mob) to tell the Court.

These are **urgent** orders, so if you don't act immediately the court won't grant the orders.

For more information call the Indigenous Women's Legal Contact Line on 1800 639 784 or (02) 8745 6977 or

If the kids are taken after 5pm or on the weekend, call the Family Court National Enquiry Centre on 1300 352 000.



Where do you make a complaint when you feel the system has let you down?

It takes a lot of strength and courage to stop the domestic violence in your life. If you think that the people who are meant to help you are not doing their job properly, then you have the right to make a complaint. Your complaint might make it a bit easier for other women in the future.

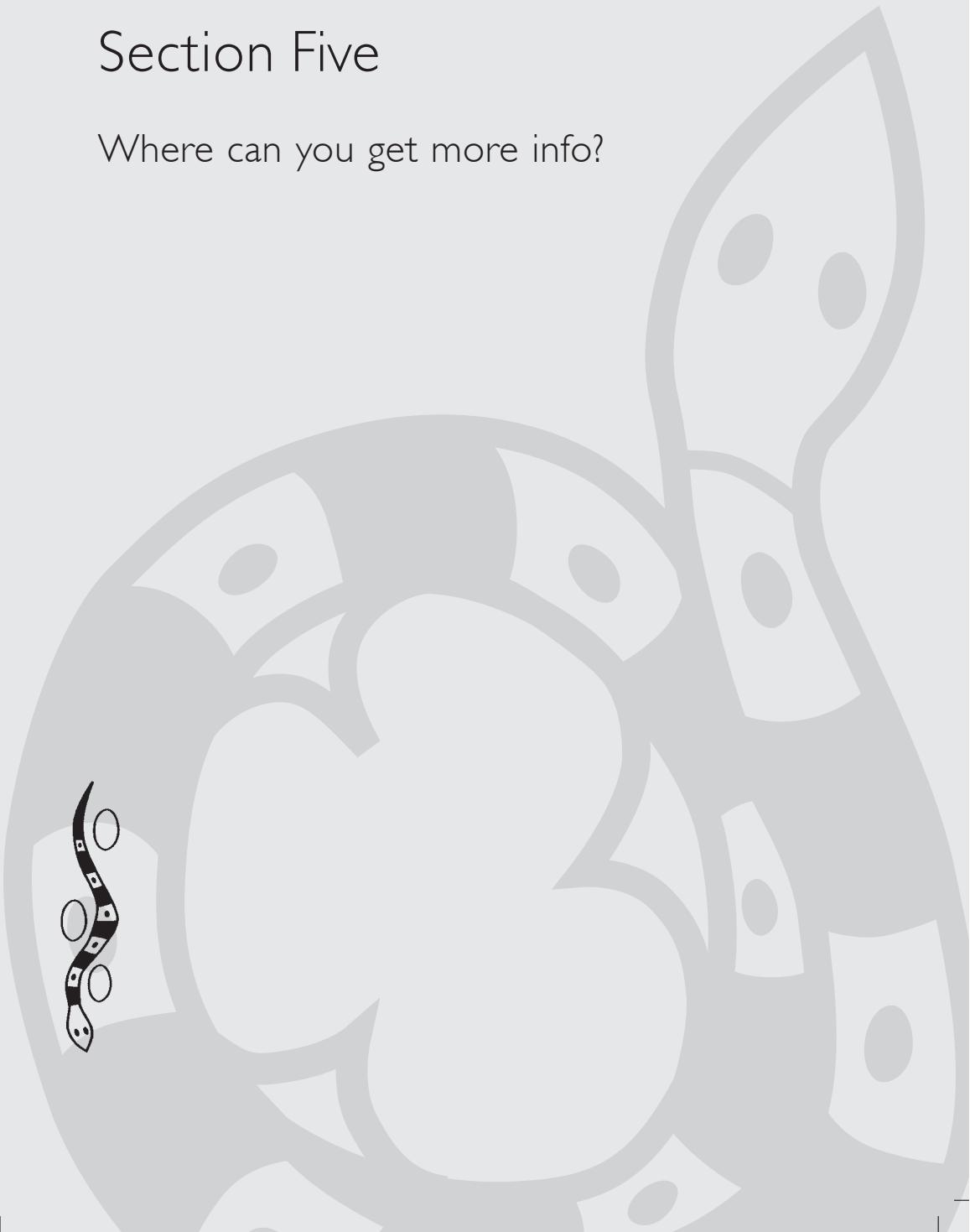
It will help if you know the name of the person you are complaining about. If you want to make your complaint in writing, or just want some help in making one, call the Domestic Violence Legal Advice Line on (02) 8745 6999 or 1800 810 784 or the Indigenous Women's Legal Contact Line on (02) 8745 6977 or 1800 639 784 for help.

- ▶ Complaints about the POLICE should be made to the Domestic Violence Liaison Officer, the shift supervisor or the patrol commander at the local police station. Or call the NSW POLICE CUSTOMER ASSISTANCE UNIT on 1800 622 571 or the NSW OMBUDSMAN on country freecall 1800 451 524 or (02) 9286 1000.
- ▶ To complain about the way your SOLICITOR represented or advised you, contact the Office of the Legal Services Commissioner on 1800 242 958.



Section Five

Where can you get more info?





For free legal advice and information, call

Women's Legal Services NSW:

- ▶ Domestic Violence Legal Advice Line on 1800 810 784 or (02) 8745 6999
- ▶ Indigenous Women's Legal Contact Line on 1800 639 784 or (02) 8745 6977
- ▶ Women's Legal Contact Line on 1800 801 501 or (02) 8745 6988
- ▶ Wirringa Baiya Aboriginal Women's Legal Centre on 1800 686 587 or (02) 9569 3847
- ▶ LawAccess on 1300 888 529. Call LawAccess for legal information and advice and to contact Legal Aid and WDVCAS

In an emergency call 000 for the police. If you call your local station, ask for the Domestic Violence Liaison Officer.

Other numbers you might need are:

- ▶ 1800 RESPECT National domestic violence and sexual assault line on 1800 737 732 - operates 24 hours a day
- ▶ NSW Domestic Violence Line on 1800 656 463 – operates 24 hours a day
- ▶ Family Law Courts' National Enquiry Centre on 1300 352 000
- ▶ Kid's Helpline on 1800 551 800
- ▶ Victims Services Access Line on 1800 633 063 or Aboriginal Contact Line on 1800 019 123

More information is available from the Women's Legal Services NSW website at www.wlsnsw.org.au

