

Have you been charged with a domestic violence offence?

Information for defendants



This brochure explains what happens in court if you have been charged with a domestic violence offence

What is a domestic violence offence?

You will commit a domestic violence offence if you have a 'domestic relationship' with another person and you:

- assault, or attempt to assault, that person
- destroy or damage their property (or threaten to do this)
- stalk or intimidate them, or
- breach an Apprehended Violence Order (AVO) that they have against you.

There are also some other types of behaviour that will be domestic violence offences.

What is a domestic relationship?

You will have a 'domestic relationship' with another person if you:

- are, or have been, married to them
- are in a de-facto relationship with them
- have, or have had, an intimate personal relationship (it doesn't need to be a sexual relationship)
- are living with them, or have lived with them in the past

- have (or have had in the past) a paid or unpaid dependant relationship with them,
- are, or have been, their relative, or
- if you are Aboriginal or Torres Strait Islander—if you are or have been part of the extended family or kin of the other person.

Two people also have a ‘domestic relationship’ with each other if they both have had a ‘domestic relationship’ with the same person. For example, if two people have been in a marriage, de facto or intimate relationship with the same person, but at different times.

What should I do if I have been charged with a domestic violence offence?

Domestic violence offences are serious. You should get legal advice as soon as you can. See *Where can I get legal help?*

What will happen when I go to court?

The police will 'serve' you with (give you) a 'mini brief'. This is the evidence the prosecution will use to try to prove the case against you.

The mini brief will have in it:

- what the police say happened
- a copy of the victim's statement, and
- any photographs of the victim's injuries or damaged property.

On the first date you go to court (called the first 'mention') you may be asked if you are pleading guilty or not guilty. You should get legal advice before you make this decision.

You can ask the court to adjourn your case (put it on hold) so you can get legal advice. If the court agrees to adjourn your case it will probably not be for longer than 14 days.

If you plead guilty, see *What happens if I plead guilty?*

What happens if I plead guilty?

If you plead **guilty**, the prosecution will give the Police Facts Sheet to the Court. This tells the magistrate what the police say happened. You should read it before the court case. The police will only give it to the magistrate if you agree with what's in it.

If you agree that you are guilty of the offence, but disagree with some of the things in the Police Fact Sheet, you should ask to speak to the prosecutor. If the things you don't agree with are quite small, it may be possible to make some changes. If they are big changes, you may have to go through with the hearing and call witnesses so that the magistrate can decide what really happened.

The prosecution will also give the magistrate a copy of your criminal record (if you have one) and also other documents, for example photographs of the victim's injuries and damaged property.

You can also give the magistrate some documents, for example character references. See the Legal Aid NSW brochure *Character References* for more information about this.

You (or your lawyer) will then give the Court an explanation about:

- how and why the offence(s) happened, and
- your personal circumstances (for example, if you are employed, if you have mental health or drug and alcohol issues and if you do, if you're getting treatment), your general character and background and maybe your current financial situation.

This is sometimes called a 'plea in mitigation'. The magistrate uses this information to decide what penalty would give you.

What will happen if I plead ‘not guilty’?

If you plead **not guilty** the case will be adjourned to a ‘hearing’ date.

If the prosecution wants to use any other evidence they will have to serve anything else they want in the brief on you (or your lawyer if you have one) no less than 14 days before the hearing.

The extra evidence may include written statements from witnesses or video recordings. You should read all statements and watch any video recordings as soon as you can. If you have a lawyer you should give your lawyer a copy of all the material the police give to you so they can prepare your case.

If you have a lawyer, they will have seven days after they get the brief to tell the prosecution which witnesses you want to cross examine (put questions to) at the hearing.

It is important to get legal advice about the brief of evidence before you go back to court. See *Where can I get legal help?*

I want to bring my witnesses to court—what should I do?

At the first mention you should tell the Court if you plan to call any of your own witnesses at the hearing.

If you or any of your witnesses need an interpreter you should tell the court so they can arrange for one to be there for the hearing.

Some witnesses may go to court if you ask them to, but some may need to be 'subpoenaed'. This means they will be given a document (a subpoena) that says they have to go to court. You may need to subpoena some witnesses so they can get the day off work.

If you do not have a lawyer you can ask the registrar at the Court about how to 'issue' a subpoena.

What will happen at the hearing?

Any witnesses—including the victim and the defendant—can give evidence in the witness box.

Other evidence, such as photographs or other documents, will be given to the magistrate.

The prosecution will tell the Court why they think the magistrate should find you guilty. You (or your lawyer) will tell the Court why the magistrate should find you not guilty.

The magistrate will then decide if the police have proved that you committed the offences you have been charged with.

If you are found not guilty, the magistrate will dismiss your case.

If you are found guilty, the magistrate will decide what ‘sentence’ (penalty) to give to you. They may do this on the same day, or they may adjourn the case to another day for a ‘sentence hearing’.

How does the magistrate decide what sentence to give me?

When the magistrate decides what sentence to give you they look at things like:

- the details of the offence
- how serious the offence is
- if you have a criminal history, particularly for domestic violence offences
- if you pleaded guilty or were found guilty after a hearing (if you pleaded guilty the magistrate can give you a lesser sentence), and
- how likely it is that you will commit another domestic violence again in the future.

If you have attended any courses, programs or counselling that show that you are trying to deal with your behaviour—such as domestic violence programs or drug and alcohol programs—you should tell the Court.

It would help to get a letter or report from your counsellor or course coordinator.

What sentence will I get?

You could get anything from a fine to jail. It depends on how serious the offence is. You can talk to a lawyer about what could happen in your case. The courts treat domestic violence as a very serious offence. It is important to understand that there is a real possibility that you could go to jail for domestic violence offences.

Will an Apprehended Domestic Violence Order (ADVO) be made against me?

If you have been charged with a domestic violence offence the magistrate will probably make an 'interim' (temporary) ADVO against you until the Court deals with your case.

If you plead guilty or are found guilty, the magistrate will probably make 'final orders' for an ADVO against you. It will include three 'mandatory' conditions. They are that you must not:

- assault or threaten the person the ADVO is for (the 'protected person')
- stalk, harass or intimidate that person, or
- intentionally or recklessly destroy or damage their property.

These conditions will also cover anyone who has a 'domestic relationship' with the victim. See *What is a domestic relationship?*

The Court can also make other orders, such as 'prohibiting or restricting' you from approaching the protected person. This can mean that you may be stopped from:

- going near the protected person at all
- going near their home, work or other premises
- going near them within 12 hours after you drink alcohol or use illicit substances, or
- contacting or communicating with them in any way. This means you must not do any of these things yourself, or get another person to do them, by calling, texting, emailing, or by using Facebook or other social media or GPS tracking.

The Court can also make any other orders it thinks are necessary for the safety and protection of the protected person.

Will I get bail?

If you are charged with a domestic violence offence the police will decide if they will release you on bail.

Bail means that if you are charged with a crime you will be given some conditions to meet (such as where to live, reporting to a police station and not to drink alcohol or the conditions in your ADVO) until the court hears your case.

If the police do release you on bail it is important to understand the bail conditions that you are given. You must do what your bail conditions say. If you don't, you could be arrested.

If the police do not give you bail they will take you to court and you can choose to apply for bail there. A magistrate will decide if you should be given bail. You can find more information about bail in the Legal Aid NSW brochure *A guide to bail*.

If I have an ADVO against me, can it affect me in other ways?

Having an ADVO may or may not affect your ability to see your children, work with children, own a firearm, or what happens with your immigration status. This will depend on your case.

You should get legal advice from a family lawyer or an immigration lawyer (or both) as soon as you can if you are worried about any of these things. See *Where can I get legal help?*

Where can I get legal help?

LawAccess NSW

A telephone helpline that gives free legal information, referrals to other services and legal advice in some cases. They can also refer you to other services for people who have family and other personal problems.

Call **1300 888 529** or visit **www.lawaccess.nsw.gov.au**

The 'Representing Yourself' section on that website has a step-by-step guide about responding to an AVO.

Legal Aid NSW

You can get free legal advice, and in some cases, representation in court from Legal Aid NSW. To find your closest office call **1300 888 529** or look under 'Get legal help' at **www.legalaid.nsw.gov.au**

If you want us to represent you at court you will need to apply for 'a grant of legal aid'. You can get an application form from the Legal Aid NSW 'duty solicitor' at court or from a Legal Aid NSW office.

You should apply for legal aid as soon as possible. You will not get legal aid on the day of your hearing if you have not arranged it beforehand, and the court may not let you adjourn your case.

Aboriginal Legal Service (ALS)

If you are Aboriginal or Torres Strait Islander you can also contact the ALS for free legal advice. To find your closest **ALS** office call **1800 765 767** or visit **www.alsnswact.org.au**

Where can I get other help?

If you would like help with other issues, like housing, counselling, mental health or drug and alcohol issues, or if you have been violent or abusive towards your partner or family member and would like to work towards respectful and caring relationships, you can:

- ask your lawyer how you can get help, or
- call the Men's Referral Service on **1300 766 491**.

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing. However it may change. For more information contact LawAccess NSW on **1300 888 529**.

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This brochure is also available in: Arabic, Simplified Chinese and Dari/Farsi.

For more information about Legal Aid NSW services:



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am – 5pm) and ask for LawAccess NSW.



If you find it hard to hear or speak, call the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit www.relayservice.gov.au