



## LGBTIQ Domestic & Family Violence and Going to Court

*This fact sheet is for lesbian, gay, bisexual, trans\*, intersex and queer (LGBTIQ) people who are experiencing or have experienced domestic or family violence. It provides information about what to expect when you go to court.*

**This fact sheet is only for people who are going to court.**

If you have experienced domestic or family violence, there may be a number of reasons why you are going to court, and you may attend a number of different courts. For example, you may be in the Local Court seeking an Apprehended Domestic Violence Order (ADVO), in the District Court as a witness to an assault, or you may be in the Family Law Courts seeking parenting orders or a property settlement. This fact sheet will focus on going to the Local Court in relation to an application for an ADVO made by the police on your behalf. If you need other information about going to court, you should see the 'More information' section below and seek legal advice.

### GETTING SUPPORT

It is a good idea to have a support person with you when you are going to court. Attending court can be a daunting and confusing experience. This may be even more so where the application for an ADVO (a civil matter) is being heard at the same time as criminal charges relating to the domestic or family violence. While the police prosecutor will present the case for an ADVO and usually call you as a witness, they will not be able to give you much support or encouragement before, during or after the time that you give evidence.

There are a number of services that provide court support for free. The Inner City Legal Centre's Safe Relationships Project (SRP) is a specialist domestic violence court assistance service for LGBTIQ people who have experienced domestic or family violence. The SRP provides support, advocacy, referral and information about the court process (in addition to other legal issues relating to domestic or family violence) and may be able to attend court with you.

The SRP has a LGBTIQ safe room at the Downing Centre for clients to wait in on court days.

The Women's Domestic Violence Court Advocacy Service (WDVCAS) operates in 108 Local Courts in NSW and assists women who are or have been experiencing

domestic or family violence in going through the court process.

### WHAT ARE THE STEPS IN THE COURT PROCESS?

Getting a Final ADVO may be a long process. If the defendant consents to the ADVO, the matter might be resolved at the first mention. However, if the application proceeds to a hearing it may take months to be resolved. You may be protected by an Interim or Provisional ADVO in the meantime.

#### Mentions

The first time you will attend court for an ADVO application is called a 'mention'. At the mention, the defendant might agree to the ADVO being made, tell the magistrate they want to defend the application, or ask for more time to get legal advice. It is important that you attend the first mention so that the police can confirm any details with you if necessary.

If the defendant tells the magistrate that they will be defending the application, the magistrate will make directions (orders) for written statements to be filed and served by the police and the defendant. There will be a further mention where the magistrate checks that the police and the defendant have followed these directions. It is important to attend the second mention in case a situation arises where the police or the magistrate need to speak to you. Speak with the police officer in charge of your matter or the Domestic Violence Liaison Officer to clarify this.

#### Hearing

If the directions have been followed, the matter will usually proceed to a hearing. You will be the police's most important witness in the proceedings, and you will need to give evidence. The police prosecutor will first present their case that the ADVO should be made, and then the defendant will present their case. The defendant may or may not be represented by a lawyer. If they are not, the defendant will get the opportunity to question you in court. This can be a very distressing experience, and it is important to contact a support service so they can assist you.

After hearing the evidence, the magistrate will often give their decision as to whether to make a Final ADVO straight away or after a short break. If a Final ADVO is not made, you may be able to appeal the decision in the



District Court. If this happens, it is a good idea to get legal advice before deciding to appeal.

### WHERE DO I SIT BEFORE COURT?

Different courts have different facilities. If you are going to the Downing Centre, the Safe Relationships Project (SRP) has a safe room for LGBTIQ victims of domestic or family violence. If you are attending another court the SRP may be able to assist you with court support or may be able to provide you with a safe and appropriate LGBTIQ court support referral.

### HOW TO BEHAVE IN COURT

The courtroom is a formal environment with some rules and rituals that you should follow. Try to remember to:

- Have a quiet and respectful manner.
- Refer to the magistrate as 'Your Honour'.
- Stand when the magistrate enters and leaves the courtroom.
- Bow to the magistrate's bench when you enter or leave the courtroom.
- Switch off your mobile phone before entering the courtroom.
- Dress appropriately in smart casual, comfortable and warm clothes.

### GIVING EVIDENCE IN COURT

Even though you have given the police your statement, you will need to give oral evidence in court and be cross-examined.

Before you give evidence, the Magistrate will ask you to affirm or swear an oath that you will tell the truth.

Giving evidence can be a stressful experience, and it is a good idea to familiarise yourself with what will be required of you beforehand. A court support person can help you with this. Before giving evidence it is also a good idea to read your statement again (if you have it) and be familiar with it. The police prosecutor will give you a copy of your statement on the day of the hearing.

If you find it hard to understand or speak English an interpreter can be provided. Tell the police officer involved in your case as soon as possible before going to court and they can arrange an interpreter for you.

You may be able to receive reimbursement for your loss of wages, travelling, meals, accommodation and other expenses related to attending court. You should speak to the police at the hearing and fill in a witness expenses claim form.

### Stages in Giving Evidence

At the hearing, you will not be allowed to go into the courtroom until it is time to give your evidence. The court officer will come to where you are waiting and call your name. They will then take you and your support person, if you have one, into the courtroom.

You will give your evidence from a witness box. The police prosecutor and the defendant or their lawyer will stand up behind the 'bar table' when asking you questions. There may be three different stages in giving evidence:

- **Examination-in-chief** when you answer questions asked by the police prosecutor;
- **Cross-examination** when you answer questions asked by the defendant's lawyer (or the defendant if they are self-represented); and
- **Re-examination** when you answer more questions asked by the police prosecutor. However, the prosecutor may not have any more questions for you.

The questions asked in **examination-in-chief** will be based on what you told the police in your statement. You usually will not be allowed to look at your statement when you give evidence. Sometimes the defendant or their lawyer will say 'objection' about the way the prosecutor is asking you questions. The magistrate will decide if you can be asked the question and how it should be asked. Don't take objections personally, just wait and you will be told when to continue.

**Cross-examination** is when the defendant or their lawyer asks you questions about what you say happened. Sometimes the defendant or their lawyer may ask you questions you don't expect and may bring up things about your personal life. They may suggest you are mistaken, confused, exaggerating or not telling the truth. The questions asked might make you upset or angry, but you should try your best to stay calm and answer the questions. The police prosecutor might object to some of the questions asked. If this happens, you should wait until the magistrate decides whether you need to answer the question.

After the defence lawyer has finished asking you questions, the prosecutor may ask questions to get more information about what you said in cross-examination. This is known as **re-examination**.

### Tips for Giving Evidence

- Only give evidence about what you know – this means what you saw, said, felt, heard or did.
- If you don't know the answer to a question or you can't remember something, don't be afraid to say so. It's ok to say 'I don't know' and 'I can't remember'.
- Speak loudly, clearly and slowly. The microphone in the witness box is used for recording only, and will not project your voice. You should speak into the microphone so your voice can be recorded.
- Only respond with an answer to the question that you have been asked and use short sentences.
- When giving evidence about a conversation, try to use the actual words that were said. For example, say 'She said, "I'm not leaving"', not 'She told me she wasn't leaving', and say 'He said "I'm going to hit you"', not 'He threatened to hit me'.



- Listen carefully to the questions being asked. If you cannot hear or do not understand what the police prosecutor or defence is asking you, ask them to say the question again or rephrase it.
- Try not to get angry with the defendant or their lawyer even if you feel they are being aggressive or rude to you. The police prosecutor or magistrate may intervene.
- If you need to use the bathroom or feel unwell, ask the magistrate if you can have a break.
- You don't need to look at the defendant unless you are asked to.

## FOR MORE INFORMATION

### **The Safe Relationships Project (SRP) - Inner City Legal Centre**

The SRP is a state-wide domestic and family violence court support and legal advice service for LGBTIQ people.

[www.iclc.org.au/srp/](http://www.iclc.org.au/srp/)

T: (02) 9332 1966 or 1800 244 481

E: [srp@iclc.org.au](mailto:srp@iclc.org.au)

### **Women's Domestic Violence Court Advocacy Service**

This is a state-wide service for women. To find a WDVCA in your local area go to:

<http://www.legalaid.nsw.gov.au/what-we-do/community-partnerships/womens-domestic-violence-court-advocacy-program/womens-domestic-violence-court-advocacy-service-locations-in-nsw>

*This information is current to 26 September 2018 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on (02) 9332 1966*