

Domestic and Family Violence

Domestic violence is taken seriously in Australia. If you need to talk to someone, please get in touch with Student Legal Service on (02) 9685 4788 or email a completed SLS [request for help form](#) to studentlegalservices@westernsydney.edu.au.

Free, confidential and professional counselling is available for all students through the student [Counselling Service](#) on counselling@westernsydney.edu.au or 1300 668 370 (option 4 then option 1), Monday to Friday 9am – 4.30pm.

Western Sydney University is committed to the health, wellbeing and safety of its community. Support options available for students and staff experiencing family and domestic violence, including same sex partners may include:

- flexible work or study arrangements when reasonably possible.
- staff leave or study break options to manage matters related to family and domestic violence.
- referral to confidential counselling support services such as the Employee Assistance Program (EAP) or Student Counselling Services on campus.
- support from campus security

What is Domestic and Family Violence

This is a reliable informative guide for the benefit of all students on the law on domestic violence in NSW. It has been produced in collaboration between WSU Student Legal Services and CDLA, a team of experienced [domestic violence lawyers in Sydney](#).

The law and courts take all forms of domestic violence very seriously. It is not accepted in Australia, and can result in imprisonment with a criminal record.

The harsh stance taken by the law on domestic violence is reflected in its prevalence and detrimental impact it has on those vulnerable, including the victim and children who are exposed to it. This then has long-term harm on children in a psychological, physical and emotional perspective, and the community as reflected in research and statistics.

The Australian economy suffers an expense of approximately [\\$22m per year](#) from domestic violence against women. This includes second generation impacts on children, a reduction of productivity, rise in welfare, medical expenses and unemployment. Further, it encompasses the cost on the legal justice system, funerals, victims compensation and victims and survivors income tax loss.

Domestic violence is a 'personal violence offence' committed against another person, or persons, in circumstances there is a 'domestic relationship' between those parties. If there is no pre-existing or current domestic relationship, then it is not classified as domestic violence.

What is a 'Personal Violence Offence'?

A person violence offence includes any of the crimes outlined in [section 4](#) of the Crimes (Domestic and Personal Violence) Act 2007 (NSW). This includes:

- Intimidate/stalk with intent to cause fear of physical or mental harm
- Breach of AVO
- Assaults in the form of common assault, actual bodily harm, grievous bodily harm or murder. Choke or sexual assault
- Kidnap
- Damage property
- Distribute intimate images or threaten to do same

What is a 'Domestic Relationship'?

A domestic relationship here includes a current or previous relationship of marriage, de facto, family relative, personal relationship of an intimate nature, or someone you live with.

What are Some Defences to Domestic Violence?

The following are some general defences to domestic violence assault charges:

1. Self-defence: This is where person A assaults person B out of fear for the protection of him/herself (or another person), or protection of his/her property. This defence also requires the assault to have been a reasonable response to the circumstances person A perceived at the time ([section 418](#) of the Crimes Act 1900 (NSW)).
2. Duress or Necessity.
3. Mental Illness: This can include the McNaughton Defence (section 38 of the Mental Health (Forensic Provisions) Act 1990 (NSW)), or sane/insane automatism, or a section 32 application.
4. Citizens' arrest if the force applied was a reasonable one.
5. Where the physical force complained of was one that is considered incidental in everyday life and/or accepted by the community. This may include circumstances where any part of your body incidentally impacts upon another person's body part due to the motions inside a moving train carriage.

Can You Go to Jail for Domestic Violence?

Short answer is yes. In fact, section 4B of the Crimes (Sentencing Procedure) Act 1999 (NSW) requires courts to impose either full-time imprisonment or a supervised order to anyone guilty of a domestic violence offence. The only exception to this is if the court considers a different punishment is more appropriate, but a reason for this will be required.

A supervised order includes a conditional release order with or without conviction, community corrections order or intensive correction order.

Depending on the type of domestic violence offence, a court can impose a penalty on sentence ranging from a maximum of 2-years through to life imprisonment. The actual sentence handed down will also largely depend on the objective and subjective features of a case.

Can You Get a Criminal Record for Domestic Violence?

If you are found guilty of a domestic violence offence, the court can impose any one of the following types of penalties/punishment if you're found guilty or plead guilty:

1. Imprisonment: Full-time imprisonment with a criminal record.
2. Imprisonment: Intensive Correction Order: alternative to full-time imprisonment where you do not go to jail. With a criminal record. This will usually be with supervision.
3. Community correction order. With a criminal record. Usually with supervision.
4. Conditional release order. Usually with supervision, with or without a criminal record.

Can You Avoid a Criminal Record for Domestic Violence?

Yes, you can avoid conviction in any one of the following ways:

1. You plead 'guilty' and convince the court to sentence you pursuant to a section 10 non-conviction penalty.
2. You plead 'not guilty', and successfully defend the charge(s), resulting in dismissal.
3. The charge(s) are withdrawn early by negotiating with the prosecution throughout the court proceedings, resulting in a dismissal of the charge(s).

Can Yelling at Someone Amount to Domestic Violence?

Yes, yelling can be a type of domestic violence abuse. Section 61 of the Crimes Act 1900 (NSW) and section 13 of the section 13 Crimes (Domestic and Personal Violence) prohibits this conduct if its elements are satisfied.

For example, it is a crime if you intentionally or recklessly yell at a person, in circumstance where that person fears immediate and unlawful violence if the person yelling realised that it may cause such fear at the time (even if no physical force is used or applied).

What Happens If You Get Convicted for Domestic Violence in Australia?

One of the impacts that a domestic violence conviction in court has is that the court can be requested by the police for any prior offences to be recorded as domestic violence offences if they were also of a domestic violence nature.

In addition, it can also have the following future consequences:

- A domestic violence conviction is recorded on a person's criminal record, and can be used against the person in any future bail applications.
- In the future, a court can then use any previous domestic violence convictions into account, adversely against you if you are ever defending a stalk or intimidation charge in the future.
- Police can take a domestic violence conviction into consideration when determining whether or not to issue an AVO in the future.
- A domestic violence conviction on your record will be used against you by the court if you are ever sentenced for an assault charge in the future, because it will be considered an aggravating feature.

- Any AVO carrying along the domestic violence charge proceedings in court will become final against you if convicted for a domestic violence offence.

Impact negatively upon any family court child custody disputes through the family court.

Changes to Domestic Violence Laws

Domestic violence laws have changes significantly over the years.

In NSW, laws have changed in order to be more responsive to domestic violence under the Crimes (Domestic and Personal Violence) Act 2007 (NSW) ('CDPV Act').

What are the changes?

- Senior police officer can immediately issue provisional apprehended violence orders (AVOs) when there is a domestic violence reported.
- Alleged victims can now give their evidence remotely out of court, via audio visual link (AVL). This avoids the embarrassment and intimidation complainants face otherwise giving evidence in the witness box in court, and having to face the alleged perpetrator and his/her family and friends in the court gallery.
- Interstate AVOs from other states and territories are now acknowledged and given force in NSW.
- As of December 2018, employees get 5-days unpaid family and domestic violence leave per year, in accordance with the National Employment Standards under the new changes to the *Fair Work Act 2009 (Cth)*.
- Consequences of having a DV conviction recorded?

Click here for more information on the law on [domestic violence](#) in Australia.

Can the Alleged Victim Contact the Alleged Offender in Domestic Violence Proceedings?

An alleged victim (complainant) in a domestic violence case is not prohibited from contacting or approaching the alleged offender. However, this should be avoided because it can result in the alleged offender getting into more trouble if he/she ends up responding in circumstances there is an AVO in place prohibiting such conduct. In addition, it may weaken the police case if the case ends up being defended in court.

In the event the alleged offender wishes to contact the alleged victim, this should also be avoided. Especially if an AVO is in place prohibiting such conduct. Breaching an AVO is a serious criminal offence, attracting heavy penalties, including imprisonment.

What to Expect in Court and How a Domestic Violence Charge is Proven in Court

Subsequent to an accused person (alleged offender) being charged for a domestic violence offence by police, the police prosecutor represents the police (and the alleged victim) in court, during the court proceedings.

When the accused person first appears in court to face the charge(s), he/she is required to either enter a plea of 'guilty' or 'not guilty' to the charge(s).

The accused person can either be self-represented or represented by a lawyer.

If the accused person enters a plea of 'not guilty' then the charges are to be defended, and the court will adjourn the case to another day for hearing, usually about 1-2 months, depending on the court's diary/availability and availability of witnesses to the case.

During hearing in court, all parties are required to appear. The Magistrate will hear both sides of the evidence before deciding on a verdict of either 'guilty' or 'not guilty'.

Before the Magistrate or Judge can return a verdict of 'guilty', the Magistrate or Judge must be satisfied 'beyond reasonable doubt' (not on the balance of probabilities) as to each of the elements that make up the charge(s). The onus of proof rests on the prosecution to discharge this standard of proof.

If the prosecutor fails to convince the court to that standard of proof, the court must return a verdict of 'not guilty'. Otherwise, if the court is satisfied, a verdict of 'guilty' will be returned.

If found 'not guilty' the charge(s) will be dismissed, and the case will be successfully defended.

If found guilty, the accused person will be sentenced by the court, where the Magistrate will allow the defence to adduce further evidence in support of a lenient penalty on sentence.

If the accused person enters a plea of 'guilty' on the first court date, he/she will receive a 25% utility discount on the penalty during sentence proceedings by the court. This will help reduce the penalty. The Magistrate or Judge will allow the defence to produce further evidence in support of a lenient penalty on sentence.

Each domestic violence charge will have different elements that make up the charge. Below is an outline of the types of domestic violence charges, their maximum penalties, and the elements that make up each of the charges.

Types of Domestic and Family Violence

Violence against woman is recognised as a serious and widespread problem in Australia, with enormous individual and community impacts and social costs.

Our watch, a nationwide organisation which has been established to drive change, provides the following facts and figures:

- On average, one woman a week is killed by her current or former partner.
- 1 in 3 Australian women have experienced physical violence since the age of 15.
- 1 in 5 Australian women has experienced sexual violence.
- There is growing evidence that women with disabilities are more likely to experience violence.
- In 2014/-15, indigenous women were 32 times as likely to be hospitalised due to family violence as non-indigenous women.

Further facts and figures can be found here: <https://www.ourwatch.org.au/Understanding-Violence/Facts-and-figures>

The below is an outline on some of the domestic violence charges, penalties and law in NSW.

1. Stalk or Intimidate

The offence of stalk or intimidate carries up to 5-years imprisonment and/or \$5,500 fine.

To be guilty of this charge, the police must first prove each of the following:

- a) Person A stalked or intimidated person B; and
- b) Person A did so to intentionally cause person B to fear mental or physical harm, or person A realised that his/her action are likely to cause this.

2. Breach of an Apprehended Domestic Violence Order (ADVO)

Breaching an existing AVO carries up to 2-years imprisonment and/or up to \$5,500 fine.

To be guilty of this charge, the police must first prove each of the following:

- a) The AVO condition(s) has been breached during the term of its existence; and
- b) The accused person knowingly breached it.

3. Common Assault

Common assault prescribes up to 2-years imprisonment and/or \$5,500 fine.

To be guilty of this charge, the police must first prove each of the following:

- a) Person A does something to person B without consent; and
- b) This causes person B to fear immediate and unlawful physical or non-physical force/violence; and
- c) Person A did this with the intention to cause this, or recklessly, namely, realising the possibility of causing this, but did it regardless.

4. Actual Bodily Harm

Actual bodily harm (ABH) carries up to 5-years imprisonment and/or \$5,500 fine.

To be guilty of this charge, the police must first prove each of the following:

- a) Person A assaulted person B without consent; and
- b) This caused person B to sustain actual bodily harm (injury that's more than merely transient or trifling i.e. scratch or bruise); and
- c) Person A did this either intentionally to cause ABH or recklessly, namely, while being aware of the possibility of causing person B to sustain unlawful force or an apprehension of immediate and unlawful violence.

5. Grievous Bodily Harm or Wounding

Grievous bodily harm (GBH) is any really serious injury i.e. permanent or serious disfiguring such as broken bones. It includes destroying a foetus or HIV. Wounding is broken skin i.e. split lip.

The penalties for this vary depending on whether it is intentionally causing GBH or wounding, recklessly causing GBH, recklessly causing wounding, or any of same 'in company'. The maximum penalties range from 7-years to 25 years imprisonment, each one also carrying a standard non-parole period ranging from 3-years to 7-years.

To be guilty of this charge, the police must first prove each of the following:

- a) Person A's conduct causes person B to inflict either GBH or wounding; and
- b) Person A either did this with the intention to cause GBH or wounding, or did this recklessly, namely, with the awareness of the possibility of causing actual bodily harm, but did it regardless.

6. Using a Carriage Service to Threaten, Harass, Offend or Menace

Texting, calling, social media platforms, emails etc are all carriage services. If any such form of carriage services is used (either by its contents or method) in a way to communicate, that a reasonable person considers offensive, menacing or harassing, the law prescribes up to 3-years imprisonment.

Using a carriage service to harass, offend or menace involving private sexual material carries up to 5-years imprisonment.

Using a carriage service for a hoax threat or to make a threat to kill carry up to 10-years imprisonment.

In addition, using a carriage service to make a threat to cause serious harm carries up to 7-years imprisonment.

To be guilty of this charge, the Commonwealth police must first prove:

- a) Person A used a carriage service; and did this in a way:
 - i. That a reasonable person would regard it as offensive, harassing or menacing; or
 - ii. To transmit, advertise, make available, publish, or promote private sexual material; or
 - iii. To threaten to kill or cause serious harm to a person with the intent of causing such person top fear that it'll be carried out; or
 - iv. To send communication with the intention of inducing a false belief that there's (or there will be) an explosive or dangerous substance left in a place.

7. Suffocate, Choke or Strangulate

The offence of choking, suffocating or strangulating a person carries penalties varying from 5-years through to 25-years imprisonment, depending on the type of this offence a person has committed.

To be guilty of intentionally choking, suffocating or strangulating, the police must first prove each of the following:

- a) Person A intentionally choked, suffocated or strangled person B; and
- b) Did so without consent

It is a more serious version of this offence if person A intentionally chokes, strangles or suffocates a person, causing that person to be unconscious, insensible or incapable of resistance; or as this is occurring, the person realised the possibility of causing the victim to go unconscious, insensible or incapable of resistance.

8. Damage or Destroy Property

The maximum penalties for damaging or destroying property in a domestic violence context depends on the type of destroy/damage property charge, and ranged from 2-years imprisonment and/or \$2,200 fine to 12-years imprisonment and/or \$11,000 fine.

To be guilty of this charge, the police must first prove each of the following:

- a) Person A has damaged or destroyed property belonging to someone else; and
- b) Person A did this with the intention to damage or destroy the property, or did this recklessly, namely, being aware that the kind of damage caused may have been caused at the time, but committed the act that caused it regardless.

There are various kinds of what the law considers to be “damage”, including temporary functional derangement; physical harm or impairment to value or usefulness; property being imperfect or inoperative; or an alteration to physical integrity of the property. A leading case on this is [Grajewski v DOO\(NSW\) \[2019\] HCA 8](#).

9. Murder or Manslaughter

Domestic violence murder carries up to life imprisonment, and unlike the above domestic violence offences, it is dealt with in the Supreme Court instead of the Local or District Court. If the maximum life imprisonment is not imposed by the court, it carries a standard non-parole period of 20-years imprisonment.

To be guilty of this charge, the police must first prove each of the following:

- a) Person A voluntarily committed an act causing death to another person; and
- b) At such time, at least one of the following apply:
 - Person A intended to cause really serious injury or permanent or serious disfigurement.
 - Person A intended to kill the other person.
 - Person A was aware as to the probability of his/her conduct causing death but did it regardless.
 - Person A was committing a crime (carrying a maximum penalty of at least 25-years imprisonment, and it was during such time that another person ended up dying.