



## WHAT TO DO ABOUT DISPUTES WITH NEIGHBOURS

### APPREHENDED PERSONAL VIOLENCE ORDERS

If you have a dispute with a neighbour and you haven't been able to resolve it by talking with them about it, then there are other options available to help you sort out the problem.

Firstly, you may be able to resolve the dispute with the help of a mediator. Community Justice Centres (CJCs) offer free mediation and conflict resolution services to help people to resolve their disputes. Mediators help people understand each other's point of view and reach an acceptable agreement. You can contact the Northern CJC s on Ph. 1800 990 777.

If you don't think mediation will help with your dispute or you are being harassed by a neighbour and their behaviour is causing you to fear for your safety, you can apply to the Local Court for an Apprehended Personal Violence Order (APVO).

An APVO is made where the people involved are not related or in a domestic or personal relationship. An APVO is an order made by the court restricting the behaviour of the person against whom you have taken out the order. The purpose of an APVO is to protect you from violence, harassment or intimidation in the future.

#### **How Do I Get An APVO?**

You need to apply for an APVO at your Local Court. The Court staff will give you an Application for an APVO that allows you to apply for an order to protect both yourself and, if necessary, your children. You will have to write your details ("Applicant Details"), the name of anyone you want to be protected by the order ("Protected Persons") and the other party's details ("Defendant Details").

You must set out the reasons why you need protection, e.g. what your neighbour has said or done to you that is causing you to fear for your safety or fear harassment (“Grounds of Application”).

Note: It is helpful to include the most *serious* incident and the most *recent* incident. Your evidence will be stronger if you can give dates and if you write exactly what was *said* or *done* by your neighbour.

The form contains “mandatory orders” and “additional orders” that you can ask the Court to make. You should discuss these orders with the Court staff when you lodge the application.

If the Local Court staff accept your application, you will be told the date to come to court. A copy of the application will be served on the Defendant by the police. There is no fee to pay.

The court staff may refuse your application if they believe it is frivolous, vexatious or has no reasonable chance of success.

### **What do I need to prove?**

You have to satisfy the Court that you fear assaults, threats, intimidation or harassment by the Defendant AND that your fear is reasonable. The Court will consider your application and the evidence you give of what your neighbour has said or done when making its decision.

You must prove your case on the “balance of probabilities”. This means that in order to grant your application, the Court must be satisfied that it is more likely than not, that what you say happened.

### **What Do I Do When I Get To Court?**

You should arrive ahead of the scheduled time and check the noticeboard to see in which Court room your matter is listed. Give the Court Officer your name so the Court knows that you are there. When your matter is called you should go to the microphone near the front table. You should address the Magistrate as “your Honour”.

The first court date is not a hearing but a ‘mention’. The Magistrate will ask the Defendant whether or not they will agree to an order being made. If the Defendant agrees to an order, then the Court will make consent orders.

The defendant may offer to give an “undertaking” to leave you alone. This is a promise but is not legally enforceable.

The Magistrate will encourage you to try mediation through the CJC.

If the Defendant does not agree to an order being made, the matter will be listed for hearing on a later date. If this happens, you should ask the Magistrate to make an Interim (temporary) Order to protect you until the hearing. The Magistrate may wish to hear some evidence from you before making an Interim Order.

If the Defendant has been served with the application but doesn't come to Court and does not have a good reason for not coming, then you can ask the Magistrate to make an order in the Defendant's absence. The Magistrate will read your application and may also ask you some questions to decide whether or not to grant your application.

### **What happens at the hearing?**

Before the hearing you should write down everything that you want to tell the Court so you don't forget anything. If you can give dates and tell the Magistrate exactly what was said it will make your case stronger. You should ask any witnesses who can support your application to come to the hearing to give evidence.

Firstly, you will be asked to give your evidence. The Defendant (or his/her solicitor) can ask questions of you and your witnesses. The Defendant presents their case after you and then you will be given an opportunity to ask questions of the Defendant and any witnesses the Defendant has.

After both sides have given their evidence, the Magistrate will make a decision.

### **What If I Lose?**

If you are not successful in getting the APVO and the Defendant was represented by a solicitor, then the Court is likely to order you to pay the Defendant's legal costs.

### **What If My Neighbour Breaches the APVO?**

An APVO is a Court Order and it is a criminal offence to breach a condition of the Order. If this happens, call the police. Make sure that you have a copy of the Order to show the police.

### **What Can I Do If My Neighbour Applies For an APVO Against Me?**

If you are served with an APVO application it will have the name of the court and date that the matter is listed for mention. The application will state briefly why your neighbour is applying and the orders being asked for.

If you do not go to court on the date in the application, the court may grant the APVO in your absence. Contact the court office if you are unable to attend due to medical or other important reasons. You can ask for the matter to be relisted so you can attend.

If you do not have a private solicitor then you will have to represent yourself as Legal Aid representation is usually not available in these matters.

At court there are the following 5 options:

1. Dismiss: if your neighbour (or their legal representative) does not come to court, you can ask the Magistrate to dismiss the application.
2. Adjourn: you can ask the court to postpone the matter so that you have time to get legal advice.
3. Consent: if you agree to the APVO then the Magistrate will make the orders. It will start immediately and usually last for one year. If you consent you do not have to agree with what the applicant says happened; you can consent without admissions.
4. Undertakings: you can offer to give an undertaking (that is, a promise) to the court in the same terms as the orders being asked for. If this is accepted by your neighbour the application will be withdrawn.
5. Contest the APVO: if you do not agree with the orders being made then the Magistrate will set another date for evidence to be heard. An interim (temporary) order may be made until the hearing and if you breach the order you may be charged with a criminal offence.

### **Where to get further information**

- [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au) - Crimes and Offences - AVOs
- [www.legalanswers.sl.nsw.gov.au/hot\\_topics/pdf/neighbours.pdf](http://www.legalanswers.sl.nsw.gov.au/hot_topics/pdf/neighbours.pdf)
- Community Justice Centres 1800 990 777 – free mediation service
- Law Access 1300 888 529
- Local Courts
- Local solicitors – [www.farnorthcoastlawyers.com.au](http://www.farnorthcoastlawyers.com.au)
- Law Assist (information on representing yourself)-  
[www.lawlink.nsw.gov.au/lawlink/LawAccess/ll\\_lawassist](http://www.lawlink.nsw.gov.au/lawlink/LawAccess/ll_lawassist)
- *Defend Yourself* by Tim Anderson –  
[www.legalanswers.sl.nsw.gov.au/guides/defend\\_yourself/index.cfm](http://www.legalanswers.sl.nsw.gov.au/guides/defend_yourself/index.cfm)