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SOLICITORS & BARRISTERS

MORTGAGES & FINANCE

Apprehended Violence Orders

You may apply for an apprehended violence order and (AVO) the Magistrate will grant you one if satisfied that you have reasonable ground to fear, or fear, the following:

1. An act of personal violence against you.
2. Harassment or molestation.
3. Stalking.
4. Intimidation in the context of a domestic relationship.

If satisfied, the Magistrate may then prevent the person of whom you are fearful (the defendant) from approaching you, going to your home, workplace, or place of study; restrict the behaviour of the defendant; or restrict the possession of firearms by the defendant; for a period of two years maximum.

You may apply for an apprehended violence order yourself, or the police may apply on your behalf, particularly if there has been an incident in which the police have been involved.

To apply yourself, you need to lodge a complaint with the Clerk of the Local Court, who will prepare a summons, containing details of the orders you seek and the incident causing you to have fears for your safety. The application will be listed in court and a copy served on the defendant. You may represent yourself or have a private solicitor appear for you. Generally, the police prosecutor is able to appear for you if you wish.

Orders can be made by consent at the first court date. If the defendant does not consent to an order, the matter will be set down for hearing on the same day or at a later date. At that hearing, evidence will be given by each party and any supporting witnesses.

If you wish to defend against an application for an apprehended violence order being made against you by another person, this can be costly and time-consuming. You may choose to consent to the order sought, or to different orders as agreed, without admitting the allegations made by the applicant. If you do not consent to the orders sought, the matter will proceed to hearing. You will then be entitled to give evidence and to cross-examine the applicant. You are entitled to be represented at court by a solicitor.

The making of an AVO does not constitute a criminal offence. However, a breach of an AVO, if proved, **is** a criminal offence, so that a report of an alleged breach of an AVO will result in arrest and criminal charges being laid.

Depending on the terms of the AVO, an AVO may restrict contact by the defendant with their children. An order allowing contact between a parent and child will prevail over an AVO. However, a court is restricted in making a contact order that is inconsistent with an AVO. When making an AVO, a court is able to vary or discharge an earlier contact order.

One of the other consequences of an AVO is that it is likely to affect your gun licence.

The consequences of domestic violence can be broad. Domestic violence may result in an AVO; it may be the basis of criminal charges being laid; and it may allow the victim to seek compensation through the Victims' Compensation Tribunal. If an award of compensation is made, the Tribunal may seek contribution from the violent person. Separate from an application to the Victims' Compensation Tribunal, the victim may sue the violent person from damages arising from an incident of domestic violence.

Such claims for damages arising from domestic violence are increasingly being determined by the Family Court as part of Family Law property settlements (see article on DATE). In some Family Court property settlement cases, the court has found that a spouse may be entitled to a greater share of the property due to domestic violence from the other spouse during the relationship. Family violence is a factor to be taken into account by the Family Court when it is determining parenting orders and arrangements for the care of children following separation. This includes violence towards children and violence between parents, whether or not in the presence of the child or children.