

5.2. Using legal mechanisms to restrict access

5.2.1. Taking legal action

In extreme cases of unreasonable conduct, it might be necessary to consider supporting members of your staff to exercise their legal options. We believe legal mechanisms should be used sparingly, and only in situations of apprehended or actual violence, threats, intimidation, stalking, online defamation or other unlawful conduct by individuals. They should never be used to deal with a person who merely causes your staff some discomfort or whose behaviour your staff find difficult to manage.

However, if a staff member becomes a victim of any unlawful conduct, they have the right to exercise their legal rights in response to such conduct – including seeking a legal order such as an apprehended violence order (AVO).

In NSW, an AVO is a legal order that is issued by the Local Court under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). It aims to protect people from personal violence, threats, harassment or intimidation by restricting the conduct and movements of their aggressor.

For unlawful conduct that occurs on your organisation's premises – for example, a person assaults a member of your staff or damages property – it may be appropriate for your organisation to obtain a trespass order under the relevant legislation in your jurisdiction. For example, in NSW the *Inclosed Lands Protection Act 1901* (NSW) provides a basis for taking civil and/or criminal action in relation to trespass and empowers owners, occupiers, or people in charge of 'inclosed lands' to require another person to leave their premises in certain circumstances.

However, extreme caution needs to be used when deciding whether legal mechanisms are an appropriate course of action for dealing with unreasonable conduct. These options can have significant implications – particularly for the person who may become criminally liable or may be prevented from accessing services that they need for their health or welfare.

See – **Applying the provisions of the *Inclosed Lands Protection Act 1901* (NSW)**, NSW Ombudsman, available at www.ombo.nsw.gov.au.

Case study – Situations where legal action may be needed to deal with unreasonable conduct

A man complained to an Ombudsman's office in February 2009 and again in April 2009, January 2010 and February 2010 about his local council. His complaints generally concerned a local development application and the conduct of the General Manager of the council.

None of the Ombudsman's inquiries found any wrongdoing, but the person persisted in contacting the Ombudsman's office about his allegations. In the period between his first and last formal complaints in February 2010, the complainant sent more than 100 emails and made more than 16 phone calls about his issues with the council. He sent numerous copies of media articles relating to the council, copies of correspondence and complaints between him and the council, and copies of appeals he had made to the then Administrative Decisions Tribunal. He was asked to restrict his emails, but he refused. The Ombudsman's office blocked his email access and notified him by letter.

Upset that restrictions were placed on his access, the person tried to avoid the restrictions by changing his email address and sending more complaints. The Ombudsman's office did not respond and continued to block each new email address. Almost 90 of the person's emails were blocked.

The council involved had also placed restrictions on his email access after he sent them over 300 emails within a six-month period. The council were concerned about the impact of the person's conduct on their resources, as they had to dedicate a senior staff member two days a week to deal with his matters. The council were also worried about the content of the emails that the person had sent to their staff. The emails made intrusive personal observations about staff and threatened their jobs if they did not respond to his demands. A staff member who provided the person with her name when he approached the front counter subsequently received emails to her personal email account from him. It was not clear to council or the staff member how the person obtained this address.

After several incidents where the person approached council officers – particularly the General Manager and the Mayor (and their families) – in public places and was verbally abusive towards them, each of them sought and was granted AVOs against the person for five years, an unusually long period of time.

When granting the orders, the local magistrate made the following observations:

... The complaints relate to ... voluminous correspondence both written and electronic which appears to have been sufficient to justify the installation of a duress alarm in [the GM's] assistant's office, the back base home security at his own home and blocks on emails being received from [the person] to the Council. It is clear that there has been an attempt by [the person] to circumvent the processes to ... put himself in the company of [the GM] and [the Mayor] with a view to raising matters of council business

These contacts have been made not only at the business premises [of the council] but attempts also at [the Mayor's home] and it would seem, attempts to unsettle [the GM] by being in the vicinity of his private residence and making it very clearly conspicuous to [the GM] that [he] was in fact there.

...

With respect, I have formed the view that he is a person I believe possibly suffers from some form of mental disorder which has manifested itself in the form of persecution of two public figures for his own deluded gratification and to inflict elevated levels of concern not only on those two people directly, but also extending the concern to members of their respective families in the form of disturbing and unsolicited correspondence. Whilst those persons in public office must expect that their activities and performance of their various roles will be subject to the normal levels of scrutiny and review, what [the person] purports to do by presuming to be in a position to have the mayor and the general manager of the council respond to his voluminous requests and demands exceeds the broadest interpretation of reasonable accountability levels for public servants.

The magistrate granted the following AVO restrictions for the GM and Mayor respectively. The person could not:

- assault, molest, harass, threaten or otherwise interfere with
- engage in any other conduct that intimidates
- stalk
- enter the premises where [the GM] resides or works
- approach [the GM] by any means whatsoever except through a legal representative.

Part five

For the Mayor (and any person he has a domestic relationship with), the person could not:

- assault, molest, harass, threaten or otherwise interfere with
 - engage in any other conduct that intimidates
 - stalk
 - enter or loiter within 100 metres of any premises where [the Mayor] resides or works.
-