

Undertakings

A victim of domestic and family violence seeking a **protection order** may agree to withdraw their application on the basis that the perpetrator provides an undertaking to the court to do, or refrain from doing, certain things. The undertaking may include the same types of conditions and prohibitions as may be included in a protection order. Undertakings may be given orally or in writing and signed. There may be cases where both parties provide undertakings to the court [ALRC/NSWLRC 2010].

Concerns have been raised about the use of undertakings in domestic and family violence proceedings, including:

- An undertaking is no more than a promise (made to the court) by the perpetrator to refrain from further domestic and family violence. The perpetrator may have previously broken similar promises made to the victim and others [Vic FVBB 2014].
- A victim may feel pressured or intimidated by the perpetrator into accepting an undertaking rather than proceeding with their application for a protection order. This may be due to the victim's ongoing fear of the perpetrator who may **use the court process to continue to exercise control over the victim** [Vic FVBB 2014]; or, if the victim is **self-represented**, a lack of understanding of the process. There may also be pressures on the judicial officer to expedite the resolution of the matter [LRCWA 2014].
- Unlike a breach of a protection order, a breach of an undertaking is not a criminal offence and is unenforceable (although it may be considered by the court an act of contempt). Accepting an undertaking may therefore compromise the safety of a victim. If an undertaking is breached, and the victim still requires protection, they must return to the court and make a fresh application for a protection order [ALRC/NSWLRC 2010].
- In proceedings before the Family Court of Australia or the Federal Circuit Court of Australia, the court may give an undertaking little or no weight as it is not considered an order of the court [ALRC/NSWLRC 2010].

It is however also acknowledged that there may be circumstances where an undertaking is the most appropriate outcome in a particular case. For example:

- Accepting an undertaking may be the first step a victim is prepared to take in seeking protection against domestic and family violence. Should the violence continue, it may encourage the victim to seek a protection order.
- Where there is insufficient evidence to support the making of a protection order. A breach of the undertaking may however be evidentiary support in a subsequent protection order application [Vic FVBB 2014].

Where a judicial officer decides that an undertaking is the most appropriate outcome in a particular case, it is important that the victim understands the consequences of accepting an undertaking, especially where they are **self-represented** [\[ALRC/NSWLRC 2010\]](#).