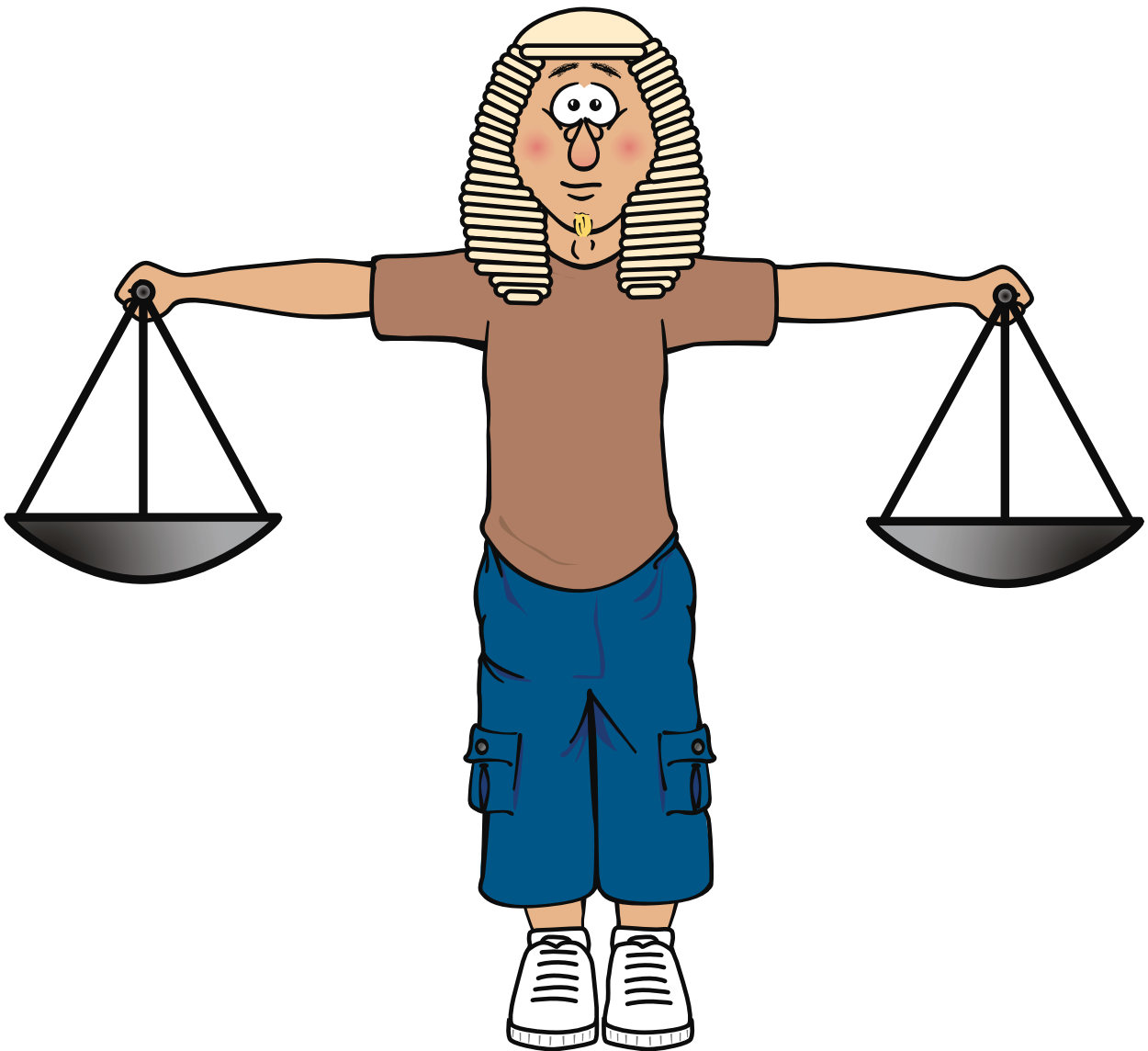


# Legal issues



Legal issues

# Legal Issues



LEGAL issues can be really hard to understand! Below there are some legal issues you might not have understood or did not even realise exist. The law is complex and there are many different types of legal issues. The most important thing to do when you have any legal questions is to speak with a lawyer about your particular case. Your lawyer can then advise you about your options.

## **When am I a child or an adult under the law?**

Legally in NSW you are considered a child when you are under 18 years old. This means that the law states that you need an adult to help make some decisions and care for you. Children can be charged with the same offences as adults and the evidence required to prove a criminal charge in the children's court is the same for adults. Once you reach 18 years old you are considered a legal adult and in most situations capable of making your own decisions.

## **What if the police want to question me?**

In general it is a good idea to cooperate with police. However, if you are suspected of having broken the law it is your right to say nothing that could incriminate you. If you are being questioned by the police, it is advisable to politely tell them that you would like to say nothing until you have a lawyer or a family member (or both) present to advise you.

There are laws to protect children who are arrested or being investigated by police. If you are under 18 years old, you should not answer any questions at the police station or sign anything unless a parent, lawyer or an independent adult whom you trust is present.

If you are arrested, it is a good idea not to resist. It is natural and normal to feel stressed and frightened, but try to remain calm. You must be brought to the Custody Manager of the police station and have your rights explained to you. No matter what age you are the police must tell you that you have the right to legal advice and where to get this legal advice. This must be done prior to asking you any questions.

The police have particular obligations towards people with a disability to ensure their protection and assist them when under arrest. People with a disability have the right to a support person being present during questioning. You should tell the police that you have a disability so they can provide you with this help.

## **What is a solicitor, a barrister or a lawyer?**

The term 'lawyer' refers to solicitors and barristers. All lawyers advise people on their options in their cases. Solicitors are the lawyers people deal with most. They handle a variety of legal issues and work from offices. Solicitors do appear in court, but if a case is complex they may advise the person to seek help from a barrister.

A barrister is a courtroom expert and often specialises in particular areas of the law. People can ask for a barrister's assistance but it is usually solicitors that advise a person to see a barrister.



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HOW to get legal advice?

- 1. Hiring a private lawyer** - It is worth looking for a lawyer who has experience in dealing with the area of law that your matter is about. You need to be able to trust and respect your lawyer. Ask family and friends for recommendations of good lawyers that they have used. It is OK to shop around for a lawyer before you decide on one. You need to keep in mind that all private lawyers cost money. Your lawyer will charge you for writing letters, negotiations or going to court. One of the most important issues you need to discuss with your lawyer is the cost. You should always ask what the cost of your first appointment will be before you see the lawyer.

When you see a lawyer for the first time, you should try to ask as many questions as possible and bring in all the relevant papers and information you have. The better prepared you are the more money you will save. Also be prepared to answer many questions that your lawyer will ask!

Ask your lawyer to write the important points down for you so you will not forget them.

What to ask your lawyer;

- Is the first appointment free? (ask this when you make the appointment).
- Can you start straight away?
- What are my chances of success?
- What other matters like mine have you handled?
- How do you charge- by the hour or a fixed amount?
- Can you estimate the overall cost?
- Will you send me a letter outlining how I will be charged?
- How long is the case likely to take?
- What possible delays or problems are there?
- Will you be handling the case personally?
- How will we communicate with each other?
- Will you send me an itemized bill?
- Can I pay in instalments?
- Do you think there will be any additional costs?
- What is the worst possible outcome if I lose?

The Law Handbook (2004), Redfern Legal Centre Publishing. p.121

It is worth seeing if you can get some free legal advice before you start paying for a lawyer to act on your behalf.



# Legal Issues

2. **Free legal advice** – is available to people who cannot afford a lawyer or who need some help getting started.

Free legal advice is provided by;

- **Community Legal Centers.**  
They offer free legal advice and can be a useful first contact point. They can also explain whether you might be eligible for legal assistance from other organisations. Phone your local community legal centre to make an appointment.
- **Chamber Magistrates**  
Offer free legal advice at most local courts in NSW.
- **Pro Bono Legal Work**  
The NSW Law Society coordinates a Pro Bono scheme, which provides contact information for lawyers who are prepared to work on certain matters for free or reduced fees because of their commitment to delivering legal services to the community. Information about the Pro Bono scheme can be obtained through Law Access.
- **Legal Aid Commission**  
The Legal Aid Commission provides answers to general legal questions free of charge. If you require more than basic advice you may need to make an application for legal aid to continue to get free legal services. To be eligible for legal aid you do need to meet certain criteria, such as earning below a certain level of income. The Legal Aid Commission can help you apply for free legal aid.

## Legal services to help manage your affairs

By the time you reach 18 years old, you are legally able to control of your own affairs (depending on your capacity to look after these affairs).

The Supreme Court of NSW has ruled that you are capable of managing your own affairs if you are able to manage more than your household bills now and in the future. You do not have to be able to manage complex financial affairs (Supreme Court of NSW HvH 20/3/00)

There are systems in place to help manage your affairs (such as your money) if you are finding it a bit difficult. Many people with a disability can be supported to manage their own money. You may find that a family member, friend or a disability worker can assist you to manage your finances. A family member could even become a joint signatory on your bank account (that means they can deposit or withdraw money from your account) or may receive your Centrelink payment on your behalf.



# Legal Issues

**9** If there is someone acting on your behalf there are strict legal rules for the management of your money.

The manager of your money must:

- Keep the money in a safe place.
- Not make any profit from being your money manager.
- Spend your money in a way that directly benefits you.
- Hand back your money if you ask for it, if you have a basic understanding of the value of money (even if they consider that you may spend it 'foolishly').

If your money manager breaks these rules they may be committing a crime.

If you have no informal arrangements (family or friends looking after your money) or if these people are not respecting the rules and you are not able to look after your money by yourself, a financial manager may be appointed. A guardian may also be appointed to make decisions for some people.

## **Guardians**

Guardians are people who are formally appointed by the NSW Guardianship Tribunal to make personal and lifestyle decisions for a person who is incapable of making these decisions for themselves because of their disability.

Guardians can be a family member, a friend or an official called the Public Guardian.

A written application for a guardianship order can be made by a person with a disability, the Public Guardian or anyone with a genuine concern for the welfare of a person.

A financial manager can be appointed by the Guardianship Tribunal.



# Legal Issues



LEGAL issues you may not be aware of:

**School Attendance** - Children between 6 – 15 years old must attend school. If a child misses a lot of school without a good reason this is called truancy.

**Employment** – It is an offence for a person to employ a child under 15 years old.

**Sexual relationships** – A person can legally consent to have sexual intercourse at 16 years old. A person who has sexual intercourse with someone younger than 16 years old is guilty of an offence. If someone has sex with you, without your consent this is also an offence.

**Leaving home** – A person under 18 years old has no absolute right to leave home, although a person over 16 years old would not be forced to return home against their wishes. The law may intervene if the child is considered in need of care due to violence or abuse.

**Marriage** – You can get married when you are 18 years old. People 16 – 17 years old need the consent of their parents or guardians and the authorisation of the local court to marry.

**Medical treatment** – A young person over 14 years old is considered capable of giving consent for medical and dental treatment. (This also includes refusing to undergo medical and dental treatment). If a health worker thinks a 14-15 year old lacks maturity to give consent they are likely to ask for the parent's permission for the medical treatment.

**Contraception** – There is no age limit for buying contraceptives like condoms and spermicides from a chemist.

**Alcohol** – It is an offence for a person under the age of 18 years old to have or drink alcohol in public places, unless they are with a responsible adult. A person under 18 years old cannot be sold alcohol. If there is a suspicion that the person is under 18 years old they may be asked for proof of age.

Proof of age cards are available for 18-24 year olds from the RTA.

**Cigarettes** – It is illegal to supply cigarettes to people under 18 years old.

**Driving** – A person can apply for a learner's permit at 16 years old. All drivers must obey the road rules.

**Voting** – Voting becomes compulsory at 18 years old for federal, state and local government elections.



# Legal Issues

If you need information about any legal matter contact:

**Legal Aid Commission of NSW** (02) 9219 5000 (*head office*)

**Legal Aid Hotline for under 18's** 1800 10 18 10  
(*Free legal advice 24 hours weekends & public holidays, 9am – midnight Mon-Fri*)

**The Guardianship Tribunal** 1800 463 928

**Law Access** 1300 888 529  
(*information on Pro Bono Scheme*)

**Local Council Magistrate**  
(*at your local court*)

**Community Legal Centre** 1800 101 810  
(*in your local area*) (to find centre closest to you)

