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PREFACE

NSW Young Lawyers is an organisation of lawyers who are under 36 and/or in their first five years of practice, as well as law students. As a group we work towards positive change and seek to engage the wider community on matters of the law.

This project is one such method of engagement. The Human Rights Committee became aware that there was no resource for new migrants to access in order to understand and clarify their legal rights and obligations. The Committee was able to pool the wide range of practice areas of its members to create a publication that aims to provide that resource.

This publication is for the benefit of all new migrants, so in order to help as many people as possible, this publication is free of charge. This publication will also be available on the web at www.younglawyers.com.au. There is free internet access at public libraries in NSW as well as certain community centres. Please let friends know that our publication is on the internet if they have been unable to obtain a copy of this publication.

On behalf of the Committee, I sincerely hope that you find this publication a useful resource for finding your way through the legal system in NSW.

If you have any comments or recommendations on how this publication could be improved, please contact Elvira Abouhaidar on (02) 9926 0270 or email at exa@lawsocnsw.asn.au.

Renee Saibi

Chair, Human Rights Committee

NSW Young Lawyers

October 2003

Sydney

1

HOW TO FIND A LAWYER

If you want to speak to someone in your language, you can call the Translating and Interpreting Service on 131 450. They can connect you to one of the Legal Aid Commission's offices so that you can make an appointment.

Legal Information Access Centre (LIAC) – Legal Information Help at Your Library

Visit your local library and find:

The Legal Tool Kit – helpful for answering frequently asked questions about the law

Books and electronic resources about over 50 legal subjects

Hot Topics: legal issues in plain language – with up-to-date information on changes and issues in the law in student-friendly format

Free legal pamphlets – on a range of subjects and in languages other than English

Staff trained to help you find answers to legal questions, including locating legislation and cases on the Internet.

For help with any legal information inquiry you can always contact the specialist staff at the State Library LIAC where you will have access to the Library's comprehensive collection of legal resources.

State Library LIAC is located in the State Library of NSW, Macquarie Street, Sydney

Tel: (02) 9273 1558

Fax: (02) 9273 1250

Email: liac@sl.nsw.gov.au

Internet: www.liac.sl.nsw.gov.au

Open 6 days a week. Monday-Thursday 9.00am-6.00pm, Friday 9.00 am –5.00pm. Sunday 11.00am-5.00pm. Closed Saturday.

Legal Aid Commission of New South Wales

For free face-to-face legal advice you can call a Legal Aid Commission office near you. You need to make an appointment to see a lawyer to get free legal advice.

There are rules about whether the Legal Aid Commission can act for you in court. The Legal Aid Commission solicitor that you see at an appointment will let you know if the Legal Aid Commission can act for you (see Chapter 2: Court Procedure).

If you need an interpreter, an interpreter will be arranged for free when you make an appointment to see a Legal Aid Commission lawyer. If you are going to court, your legal aid lawyer will arrange an interpreter.

Sydney Legal Aid Commission offices

Head Office

Ground Floor
323 Castlereagh
Street
SYDNEY NSW
2000
Tel: (02) 9219
5000

Bankstown

Level 4, Civic
Tower
Cnr Rickard Rd &
Jacobs Sts
BANKSTOWN
2200
Tel: (02) 9707 4555

Blacktown

Level 3
85 Flushcombe
Road
BLACKTOWN
2148
Tel: (02) 9621
4800

Burwood

Level 4
74-76 Burwood
Road
BURWOOD 2134
Tel: (02) 9747
6155

Campbelltown

Suite1, Level 4
171-179 Queen
Street
CAMPBELLTOWN
2560
Tel: (02) 4628 2922

Fairfield

Level 2,
Fairfield Chase
25 Smart Street
FAIRFIELD
2165
Tel: (02) 9727
3777

Liverpool

Ground Floor

Manly

Suite 6, Level 4

Parramatta

Level 5

Interdell Centre 39 East Esplanade 91 Phillip Street
47 Scott Street MANLY 2095 PARRAMATTA
LIVERPOOL 2170 Tel: (02) 9977 1479 2150
Tel: (02) 9601 Tel: (02) 9891
1200 1600

Penrith

Level 1
95 Henry Street
PENRITH 2750
Tel: (02) 4732
3077

Sutherland

Ground Floor
3-5 Stapleton Ave
SUTHERLAND
2232
Tel: (02) 9521 3733

Regional offices

Coffs Harbour

4 Park Avenue
COFFS
HARBOUR 2450
Tel: (02) 6651
7899

Gosford

207 Albany Street
GOSFORD 2250
Tel: (02) 4324 5611

Lismore

Suite 6, Level 4
29 Molesworth
Street
LISMORE 2480
Tel: (02) 6621
2082

Newcastle

51-57 Bolton
Street
NEWCASTLE
2300
Tel: (02) 4929
5482

Orange

121 Byng Street
ORANGE 2800
Tel: (02) 6362 8022

Tamworth

Level 2
Mercantile
Mutual Building
454-456 Peel
St
TAMWORTH
2340
Tel: (02) 6766
6322

Civil Law Centre
300 King Street
NEWCASTLE
2300
Tel: (02) 4921
8666

Wagga Wagga

Suite F, Best
Place
235-241 Baylis
Street
WAGGA WAGGA
2650
Tel: (02) 6921
6588

Wollongong

73 Church Street
WOLLONGONG
2500
Tel: (02) 4228 8299

Dubbo

64 Talbragar
Street
DUBBO NSW
2830
Tel: (02) 6885
4233

Community Legal Centres

Community legal centres can give free legal advice and information. They also run legal education programs for people and communities across NSW.

If you need legal advice or assistance and cannot afford to pay a private solicitor contact a community legal centre. Interpreters can be arranged. No one else will be told about your case.

Here is a list of most of the community legal centres in New South Wales:

Blue Mountains Community Legal Centre

Tel: (02) 4782 4155

Central Coast Community Legal Service

Tel: (02) 4353 4988

Far West Community Legal Centre

Tel: 08 8088 2020, or

Tel: 1800 300 36 (free call)

Hawkesbury/Nepean Community Legal Centre

Tel: (02) 4588 5618

Hunter Community Legal Centre

Tel: (02) 4926 3220

Illawarra Legal Centre

Tel: (02) 4276 1939

TTY: 133677 (if you have hearing difficulties)

Inner City Legal Centre

Tel: (02) 9332 1966

TTY: (02) 9380 8053 (if you have hearing difficulties)

Kingsford Legal Centre

Tel: (02) 9398 6366

TTY: (02) 9314 6430 (if you have hearing difficulties)

Macarthur Legal Centre

Tel: (02) 4628 2042

Macquarie Legal Centre

Tel/TTY: (02) 9760 2211 (if you have hearing difficulties)

Marrickville Legal Centre

Tel: (02) 9559 2899

Mt Druitt and Area Community Legal Centre

Tel: (02) 9675 2009

Newcastle Legal Centre

Tel: (02) 4921 8666

North and North West Community Legal Service

Tel: (02) 6772 8100 or 1800 687 687 (free call)

Northern Rivers Community Legal Centre

Tel: (02) 6622 3386 or 1800 689 889 (free call)

Redfern Legal Centre

Tel: (02) 9698 7277

TTY: 9699 8037 (if you have hearing difficulties)

Shoal Coast Community Legal Centre

Tel: (02) 4422 9529 or 1800 229 529 (free call)

South West Sydney Legal Centre

Tel: (02) 9601 7777

TTY: (02) 9601 3835 (if you have hearing difficulties)

Western NSW Community Legal Centre

Tel: (02) 6884 9422 or 1800 655 927 (free call)

Special Interest Community Legal Centres

These Community Legal Centres deal with certain areas of the law.

Consumer Credit Legal Centre NSW Inc.

Tel: 02 9212 4216 or 1800 247 890 (free call)

The Consumer Credit Legal Centre provides free legal advice about borrower's rights and consumer credit and debt problems. The Centre might help you if you have problems such as banking disputes, bankruptcy, excessive interest rates, harassment, guarantees, repossessions, statements of claim and summonses, and unfair lending practices.

Court Support Scheme

Tel: (02) 9288 8700

The Court Support Scheme provides information, support and referrals to people attending local courts in NSW on criminal matters. The service is provided by volunteers. This service will provide help to you in court but does not provide legal advice.

Disability Discrimination Legal Centre (NSW)

Tel: (02) 9310 7722 or 1800 800 708 (free call)

TTY: (02) 9310 4320 (if you have hearing difficulties) or 1800 644 419 (free call)

The Disability Discrimination Centre provides free legal advice, representation and assistance for problems involving discrimination against people with disabilities and their associates.

Domestic Violence Advocacy Service

Tel: (02) 9637 3741 or 1800 810 784 (free call)

The Domestic Violence Advocacy Service provides free legal advice by telephone in NSW for women on issues relating to domestic violence. This service might also help you if you need to be represented in court when you are making an application for an Apprehended Violence Order.

HIV/AIDS Legal Centre

Tel: (02) 9206 2060

The HIV/AIDS Legal Centre provides advice and assistance to people living with or affected by HIV/AIDS in HIV related legal matters. You might receive help with superannuation, insurance, discrimination, medical issues, employment, immigration, wills, powers of attorney and enduring guardianship.

Immigration Advice and Rights Centre

Tel: (02) 9281 1609

The Immigration Advice and Rights Centre provides free immigration advice by telephone and drop-in centres. You might also be able to receive help with your court case.

Intellectual Disability Rights Service

Tel: (02) 9318 0144

Provides legal advice, education, resources and publications to people with a disability and their family, carers and friends.

National Children's and Youth Law Centre

Tel: (02) 9398 7488

A free, independent community legal centre for children and young people an emphasis on those most disadvantaged under the law. Provides legal information, advice and limited representation to individuals

Public Interest Advocacy Centre

Tel: (02) 9299 7833

Legal and policy centre promoting public interest issues, especially access to justice and the legal system, health, discrimination and accountability of government and the private sector.

Refugee Advice and Casework Service

Tel: (02) 9211 4001

If you face persecution in your country and seek asylum and protection in Australia then this service might be able to help you. Telephone advice is available Wednesdays from 1pm to 5pm. On Tuesday evenings you can make an appointment between 6pm - 9pm.

Tenants' Union of NSW

Tel: (02) 9247 3813

Welfare Rights Centre

Tel: (02) 9211 5300 or 1800 22 6028 (free call)

The Welfare Rights Centre is a community legal centre which specialises in social security law. The Centre provides advice and representation on all Social Security matters. For example, the Welfare Rights Centre might be able to help you if you have a problem with your Centrelink payments.

Womens' Legal Resources Centre

Tel: (02) 9749 5533 or 1800 801 501; TTY: 1800 67 4333

The Womens' Legal Resources Centre provides free telephone and face to face legal advice, information and referrals to women in NSW on all aspects of the law as it affects women and children.

The NSW Working Woman's Centre

Tel: (02) 955 95355 or 1800 062 166 (free call)

Private Solicitors

You can pay a private solicitor to act for you.

You can call the Law Society to find private solicitors in your local area. They can also tell you about private solicitors who do legal aid work.

Law Society's Community Assistance Department

Tel: (02) 9373 7300 if you live in Sydney

Tel: 1800 357 300 (free call) if you are calling from the country

At Court

(see Chapter 2: Court Procedure)

In most Local Courts, Chamber Magistrates can give you free legal help and they will help you fill out legal forms. You can ring your closest Local Court to find out when you can see the Chamber Magistrate.

Law Access New South Wales

Tel: 1300 888 LAW (1300 888 529) between 9 am and 5 pm, Monday to Friday (but not on public holidays).

Translating & Interpreter Service

You can speak to LawAccess NSW through an interpreter. Call 131 450 and ask the interpreter to ring LawAccess NSW for you. The interpreter service is free and confidential.

Law Talks

You can ring at any time and listen to taped legal information. The number to call is **1300 888 LAW (1300 888 529)**. Press '1' for Law Talks.

2

COURT PROCEDURE

New South Wales and Commonwealth Courts and Tribunals

There are a number of Courts and Tribunals where you can go to sort out a legal problem.

Australia is made up of a number of different states and territories. They have their own governments and court systems. There is also a Commonwealth government and court system. Some commonwealth courts have the power to change the decisions of state and territory courts and tribunals.

Court Structure

Courts in Australia are described as 'Superior Courts' or 'Inferior Courts'. The main Superior Courts are:

Commonwealth

- The High Court of Australia
- The Federal Court of Australia
- The Family Court of Australia

New South Wales

- The Supreme Court of New South Wales
- The Land and Environment Court of New South Wales; and
- The Industrial Relations Commission of New South Wales.

These Superior Courts have power over the Inferior Courts: they can change a decision made by an inferior court if someone appeals that decision.

Superior Courts and many Inferior Courts have powers to make rules about procedure and how the Court works. This is to make sure that the court's process is fair. These rules are called the 'rules' of court.

Unless the law says otherwise, all court proceedings must happen in public: you can go and watch most court cases. Some courts and some cases may be private, often because there are children involved. This means that you may not be allowed to watch the case unless you are involved.

A tribunal is similar to a court but usually has less formal processes.

Courts and Tribunals

Some courts and tribunals deal with special types of legal problems. These include:

The highest Court in New South Wales is the Supreme Court. It hears big civil cases and the most serious criminal matters. The Court of Appeal and Court of Criminal Appeal (which are divisions of the Supreme Court) hear appeals from decisions made in most of the Courts of New South Wales and appeals from decisions made by a single Judge of the Supreme Court.

The High Court of Australia hears appeals from other superior courts, including the Court of Appeal, the Court of Criminal Appeal, the Full Court of the Family Court and the Full Bench of the Industrial Relations Commission.. Those appeals must get special leave from the High Court to be heard.

The Land and Environment Court of New South Wales can deal with civil and criminal cases about environmental planning and protection. The Court also hears appeals against building and development applications, land valuations, council rates, compensation claims for land resumption and claims and disputes under the *Aboriginal Land Rights Act 1983 (Cth)*.

The Industrial Relations Commission conciliates and arbitrates to resolve industrial problems, sets conditions of employment and fixes wages and salaries by making industrial awards, approves Enterprise Agreements and decides claims about unfair dismissal. (See Chapter 12: Employment Law.)

The Compensation Court of New South Wales has power under the *Workers Compensation Act 1987 (NSW)* to hear workers compensation cases about injuries or diseases suffered by a worker as a result of

their work in New South Wales. The Compensation Court is being replaced by the Workers Compensation Commission. This means that new cases will be heard at the Workers Compensation Commission.

Most of the more important courts and tribunals are listed below :

New South Wales	Commonwealth
Supreme Court	High Court of Australia
Land and Environment Court	Family Court of Australia
Industrial Relations Commission	Federal Court of Australia
Administrative Decisions Tribunal	Administrative Appeals Tribunal
District Court	Australian Industrial Relations Commission
Local Court	Human Rights and Equal Opportunity Commission
Children’s Court Clinic	Industrial Relations Court of Australia
Dust Diseases Tribunal	National Native Title Tribunal
Compensation Court	Refugee Review Tribunal
Drug Court	
Residential Tribunal	
Coroner’s Court	
Victims Compensation Tribunal	

Court structure in New South Wales

There are three levels in the Court structure in New South Wales:

Local Court

District Court

Supreme Court – Judges in this Court also sit on the Court of Appeal and Court of Criminal Appeal, which are divisions of the Supreme Court.

Local Court

There are 160 Local Courts in New South Wales that deal with cases such as:

simple criminal cases which can be decided without a jury and committal hearings;

children's criminal cases and cases about children's safety;

cases about driving a car illegally;

civil cases about money or property worth up to \$40,000.00;

apprehended violence orders;

some family law issues about children and de facto relationships; and coronial inquiries.

In the Local Courts, Magistrates hear criminal cases which do not need a Judge and jury. These are called 'summary offences' and include driving offences, minor stealing, offensive behaviour and some types of assault. Magistrates also hear applications for apprehended violence orders ('AVOs') where one person wants to stop another person harassing or hurting them (See Chapter 9: AVOs). A Magistrate also conducts committal proceedings to decide if a case should be heard in the District or Supreme Courts.

In Local Courts, Magistrates are called "Your Worship". Registrars, who also hear some matters in the Local Court are called "Registrar". If you are not sure what to call the person hearing your case, ask a Court Officer. The Court Officer is the person who calls the name of the case and helps in the Court room.

Community Justice Centres try to solve problems by mediation. They may be able to help with problems about things like family, neighbourhood, community and work. The mediation is informal and neutral. This means that the person mediating the case will not take either person's side, but they will listen to your legal problem and help you to make an agreement

about it. There are 6 Community Justice Centres in New South Wales. They are not courts or tribunals. The service is free.

District Court

The District Court of New South Wales hears more serious criminal cases, including those that need to be heard by a judge and jury. The District Court also hears civil cases about money or property worth between \$40,000 and \$750,000. It handles most of criminal cases, including criminal cases that are normally heard by a Judge and Jury. The Court can hear all claims for damages for personal injuries caused by a car accident. The District Court also deals with some other kinds of cases, for example when de facto (unmarried) couples break up and need to divide their property.

Judges in the District Court are addressed as "Your Honour".

Supreme Court

In New South Wales, the Supreme Court is divided into a number of sections. The main sections are the Common Law and Equity divisions.

The Common Law division deals with criminal and civil cases. It also reviews some decisions of government and tribunals.

The Equity Division is a complicated and very old institution based on the principle of fairness. Examples of cases heard in the equity division are cases about:

- wills and dividing up money after someone dies; and

- de facto relationships when unmarried couples break up and need to divide their property.

Judges in the Supreme Court are addressed as "Your Honour".

Civil and Criminal cases

In civil cases, one person (or organisation) brings a claim against another person (or organisation).

In criminal cases, a government agency, such as the Director of Public Prosecutions brings the case against the person accused of committing a crime.

Legal Aid

(See Chapter 1: How to find a Lawyer)

The Legal Aid Commission gets money from the State and the Commonwealth. You may be able to get legal help from Legal Aid if you can't afford to pay for a lawyer and you are eligible.

There are test to decide if you are eligible for Legal Aid, such as:

- what kind of case you have;
- how much money you earn;
- how much property you own; and
- how likely you are to win your case.

These tests may not apply if you need Legal Aid for special reasons.

To find out more about the tests for Legal Aid contact the Legal Policy Unit:

Legal Aid Commission: Legal Policy Unit

Tel: 02 9219 5882 or 02 9219 5034

Internet: www.legalaid.nsw.gov.au

3

IMMIGRATION

In Australia the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) looks after immigration and visas. DIMIA is your first contact for any questions about your visa.

However, the answers to some basic questions asked by new migrants are answered below.

What sort of visa have I got?

Have you got a permanent visa, or a temporary visa? This is the first thing to check. Permanent visas give you a right to many more benefits in Australia than temporary visas.

Examples of permanent visas include family migration (parents, brothers sisters, other relatives, fiancées and spouses), skilled/business migration visas, and some refugee/humanitarian visas. All of these have certain conditions attached.

Examples of temporary visas are “Temporary Protection Visas” (refugee/humanitarian) usually valid for three years, various student and business visas.

If you are given a permanent visa (which includes permanent residency) because of an application made overseas, your passport will show that you are a permanent resident. Usually there are no conditions on this type of visa.

If you have made an application for a visa in Australia then you have been granted a bridging visa. There are conditions on this kind of visa (for example: you cannot work, you cannot travel overseas, you cannot study) while your application is being processed. A bridging visa does not automatically give you a right to Medicare benefits and you will need to make sure you have private medical insurance to cover medical expenses if you get sick. Only some kinds of bridging visa give visa holders a right to Medicare benefits.

Do I need to 'report' my arrival to anyone?

If you arrive in Australia with a valid visa and want to apply for a protection visa (refugee or humanitarian) you need to apply within 28 days. This will allow you to get a bridging visa so that you can work while your application for a protection visa is being decided.

If you arrive on a humanitarian visa you should contact the “On Arrival Accommodation” Program or “Community Refugee Settlement Scheme” to get accommodation and other help.

If you have been given permanent residency, you can get Medicare and some social security help (most social security payments will not be available for 2 years there some few exceptions). You should apply for a Medicare card for yourself and your family at a Medicare office. You can also visit a Centrelink office to get information about what social security help you may be able to get (if any).

Immigration detention only applies to people who arrive in Australia without a visa (for example, by boat).

Are there any time limits or conditions on my visa?

With most types of permanent visas, even if you have been granted permanent residency, you need to renew your re-entry visa after five years. Prior to going on an overseas trip you should always ensure that you have a valid re-entry visa as it may be very difficult and time consuming to obtain it offshore.

If you have been granted permanent residency after being granted a bridging visa, you may be given a specific period of time within which to travel overseas and re-enter Australia to validate your permanent residency.

Although it is rare, it is possible to lose your permanent residency status (eg. it may be cancelled under a provision of the *Migration Act 1958*, or if you live overseas for extended periods and are no longer eligible for any resident return visa, or if you are deported for criminal/security reasons).

Diarise the time limit dates if any so that you do not contravene the dates or conditions

If there are any time limits on your visa as described above, be sure to diarise the relevant dates so that you do not contravene the time limits and risk losing your right to permanently remain in Australia.

If there are any conditions on your visa be sure you fully understand what they are. If you are unclear as to their meaning, seek clarification from DIMIA and try and get a written explanation of what your visa means, if you have not already received this from DIMIA.

Basic citizenship information

To be able to apply for citizenship you must have lived in Australia for 2 years out of the five years before applying for citizenship, provided that one of those 2 years was in the 2 years before the application. In addition, you must be over 18 years of age, be of good character, have adequate English language ability and understand the rights and obligations of becoming a citizen.

Please note that you will need to apply for an Australian Passport separately after you have been granted citizenship.

Rights of new migrants' children to citizenship - how does that work?

Children born in Australia with Australian Citizen parents or permanent resident parents are automatically granted Australian Citizenship and can apply for an Australian Passport.

Children born overseas with at least one Australian Citizen parent can be registered at the local embassy as Australian citizens.

Children under 16 can be included in their parents application for citizenship. Children over 18 must lodge an application in their own right. Children aged between 16 and 18 can apply for citizenship in their own right but require the consent of their parents.

Children born in Australia to parents who do not hold permanent visas automatically become Australian citizens after 10 years.

Benefits/obligations of citizenship

You can apply for an Australian passport.

You can vote at state and federal elections.

You can apply for any public office or stand for election as a member of parliament.

You will become eligible to apply for employment with most state and federal government departments.

You can be called for jury duty.

You can register children born overseas as Australian citizens.

You can serve in the armed forces.

Useful Contact Details

Department of Immigration and Multicultural and Indigenous Affairs

Tel: 131 881 (Visas)

Tel: 131 880 (Citizenship)

Tel: 131 450 (Translating & Interpreting Services)

Immigration Advice & Rights Centre (IARC)

Level 4, 414 Elizabeth St

Surry Hills

Tel: (02) 9281 8355

Migration Agents Registration Authority

Migration agents can be useful, but please check with the MARA Register of Agents to ensure that the agent is registered and is operating legally. If you have any concerns or complaints about a migration agent, contact MARA immediately

PO Box Q1551

QVB, NSW, 1230

Tel: (02) 9299 5446

Refugee Advice and Casework Service

Suite 8C, 4656 Kippax Street

Surry Hills NSW 2010

Tel: (02) 9211 400

4

DISCRIMINATION AND HARASSMENT

The law against discrimination is complicated. There is State and Federal legislation that makes discrimination against the law. There are also State and Federal agencies that handle complaints about Discrimination.

Discrimination can happen in two ways:

'Direct discrimination' when you are treated less favourably because of something, for example, your sex, ethnic origin, age;

An example of direct discrimination is a real estate agent that does not allow you to rent an apartment and tells you that its because he does not trust people of your race.

'Indirect discrimination' when you are unable to comply with a requirement or directive that is meant to apply to all employees but you can not comply with because of, for example, your sex, ethnic origin, age.

An example of indirect discrimination is a public building that can only be entered by climbing steps. People in wheelchairs or who are frail cannot enter the building. Everyone is required to do something to enter the building that some people, because of their age or disability, cannot do.

It is against the law to discriminate against you because of your:

sex, marital status, pregnancy;

sexual preference, transsexuality or transgender status;

race, colour, descent, nationality, national origin, ethnicity or religion;

disability or impairment;

age;

trade union membership or union or industrial activity; and

responsibilities as a carer.

It is also against the law to discriminate against you for the above reasons, even if it is not true.

For example, if somebody thinks you are pregnant and treats you badly, even though you are not pregnant, it may still be against the law.

Discrimination

It is against the law to discrimination against you because of the above reasons in the following areas of public life:

at work;

at school, TAFE or university;

in the provision of goods and services;

in accommodation; and

in registered clubs.

There are exceptions. Anti discrimination law is complicated. To get more information contact one of the organisations listed in this chapter.

Disability Discrimination - one form of discrimination

Disability discrimination is when people with a disability, or who are thought to have a disability, are treated less fairly than people without a disability. The types of disabilities that are covered by the law are: physical or intellectual disabilities, learning disabilities, or having a disease such as HIV/AIDS. Disability discrimination also occurs when people are treated less fairly because they are relatives, friends, carers, co-workers or associates of a person with a disability.

Harassment

Harassment is behaviour that is not wanted, not asked for, and that a reasonable person knows will:

- humiliate someone;
- offend someone; or
- intimidate someone.

The harassment must relate to one of the areas listed above.

Harassment might happen in the following ways:

- sexual harassment;
- verbal abuse or jokes;
- copying someone's accent or the habits of someone with a disability;
- ignoring or isolating a person or group;
- display or passing around offensive material, for example, pornography.

Sexual harassment - one form of harassment

You do not have to put up with any of the following:

- pressure or demands for dates or sexual act;
- unwanted physical contact;
- sexual jokes or innuendo;
- offensive telephone calls;
- offensive sexual gestures; and/or
- unwelcome comments or questions about sex.

Racial Vilification

Racial vilification is when someone encourages hatred or makes fun of others or threatens people because of their race. Vilification must be a public act. This includes speech, writing, gestures or any other behaviour that could be noticed in public. Racial vilification is against the law. If

someone threatens to physically harm someone or a group because of their race, or encourages someone else to, it is a crime and should be reported to the police.

What you can do

If you are being discriminated against or harassed you should not ignore it. There are different ways of handling the problem.

For example, if the discrimination or harassment is happening at work:

If you can, ask the person to stop. Explain to them how their behaviour makes you feel. Check to see if your employer has a policy. If they do, then there will be someone who is trained to handle these issues. If not, perhaps you can talk to your supervisor and ask for their advice or help in telling the person harassing you that their behaviour is right.

If your complaint is against your employer, you can approach someone from management as soon as possible. If you are a member of a union, you can contact the union and tell them what has happened to you. If you are afraid for your safety, you should contact the police.

Organisations that can help

If you think you have been discriminated against there are several organisations that can help.

Anti-Discrimination Board of New South Wales

The Anti-Discrimination Board is a State Agency.

Tel: (02) 9268 5555 or 1800 670 812 (free call)

TTY: (02) 9268 5522 (if you have hearing difficulties)

Address: Level 17, 201 Elizabeth Street, Sydney NSW 2000

Human Rights and Equal Opportunity Commission (HREOC)

The Human Rights and Equal Opportunity Commission is a Federal Agency.

Complaints Information line:

Tel: 1300 656 419 or (02) 9284 9600

TTY: 1800 620 241 (if you have hearing difficulties)
Post: Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney
NSW 2000
E-mail: www.complaintsinfo@humanrights.gov.au

You can call these agencies for information about discrimination, harassment, or vilification. You can also lodge a formal complaint with them. They will investigate your case and may try to set up a conference with you and the person or organisation that is treating you unfairly. The aim of the conference is to try to agree how the person or organisation can make up for the harm they did to you. If you are not satisfied by that meeting, the two agencies will refer you to a more formal hearing.

5

PRIVACY

You have a right to privacy. The law on privacy is in both State and Federal levels of government. It is based on either the Federal *Privacy Act 1988* (Cth) or the *Privacy and Personal Information Protection Act 1998* (NSW). You have the right to find out what information an organisation holds about you. You can also make sure that your personal information is not given to someone else or used in a way that you have not been told about. If someone holds information about you that is wrong, you can correct it. The types of organisations that may hold information about you include government agencies, banks or employers.

These organisations must tell you:

- why they want to collect your personal information;
- how they are going to use it;
- who they are going to give it to; and
- how you can get access to and correct the information they hold about you.

It is against the law to collect your personal information in a way that is unfair.

For example, it is against the law to lie to you or trick you to give your personal information. If you think that someone has not respected your right to privacy you should contact the Office of the Federal Privacy Commissioner:

Office of the Privacy Commissioner

- Tel:** 1300 363 992 (for the cost of a local call)
- TTY:** 1800 620 241 (if you have hearing difficulties)
- Post:** GPO Box 5218, Sydney NSW 2001
- E-mail:** privacy@privacy.gov.au
- Internet:** www.privacy.gov.au

You can also get useful information on privacy law in New South Wales from Privacy NSW:

Tel: (02) 9268 5588

Internet: www.lawlink.nsw.gov.au/privacynsw

6

TENANCY/ACCOMMODATION

There are many different types of housing that you can live in as a 'tenant'. A tenant is a person who pays to live in a property owned by another person, called a 'landlord'.

The most important thing is to choose housing that you can afford. You may choose to rent a house or apartment for you and your family to live in. You may decide to live with a group of people who share the costs of rent. You may need to apply for public housing. Public housing is provided by the State and is not very expensive. This involves getting your name on a list. It usually takes a long time to get public housing. Whatever type of accommodation you choose, unless you buy a house or apartment, you have certain rights as a tenant and responsibilities to your landlord.

Most tenancy problems in New South Wales are covered by the *Residential Tenancies Act 1987* (NSW). The most important parts of the Act are explained in *The Renting Guide*, a booklet written by the Department of Fair Trading. This Guide will be given to you when you rent a place to live. The Renting Guide is written in several languages. You can call the Department of Fair Trading for more information. The details are:

Department of Fair Trading

Tel: (02) 9895 0111

Internet: www.fairtrading.nsw.gov.au

Finding a house or apartment to rent **Finding Accommodation**

Houses and apartments to rent are advertised in most newspapers in the "to Let" section. Notices for places to rent can also be found at some community centres, TAFE and university campuses, and on notice boards out the front of real estate agent offices. You can also look on the internet.

You should arrange to see the property before you agree to rent it. There may be set times when you can view the property, but if you can't make

that inspection you should talk to the real estate agent or landlord and try to arrange another inspection time.

If you are applying to move into a share house you will probably need to arrange an interview to meet the other people living in the house.

Applying for a tenancy

If you find a property that you want to rent through a real estate agent you will have to complete an application form. You may have to provide the following details on the form:

- personal details such as age and previous address;
- details about your income; and/or
- references from people you know or from previous landlords.

Once you have completed the application it may take a week before the landlord decides whether you are able to rent the property.

The real estate agent or landlord is not allowed to discriminate against you because of things such as your race, gender or age. See chapter 4 on discrimination for more information about what you can do if you think you are being discriminated against by a real estate agent.

Signing the tenancy agreement

You and the landlord must sign a Residential Tenancy Agreement. This is a legal contract. It is very important that you understand the terms of the agreement before you sign it. In particular you should check the following:

- **The length of the agreement**

You should check how long the lease goes for. Will you be renting for 6 months, 12 months or longer? The amount of rent you pay cannot be changed during this term.

- **Special Conditions**

Check if there are any special conditions attached to the agreement, for example are you allowed to have pets or do you have to pay for advertising if you want to leave the property before the rental term is finished? The special conditions are usually on a separate page attached to the back of the agreement.

- **Bond**

What bond do you have to pay? A bond is a security deposit in case you stop paying rent, leave the premises early or damage the property. If the premises are not furnished, the maximum you can be asked to pay is 4 weeks rent. If the premises are furnished there is no limit to how much bond you have to pay. However, if the rent is less than \$250 per week the bond can be no more than 6 weeks rent.

The landlord must give the rental bond money to the Rental Bond Board, a government organisation. It is an offence for the landlord or agent not to do this. You will be sent a receipt and reference number by the Bond Board which you should keep so that you can get your bond back. While your bond is with the Board it will earn interest, as though it were in a bank.

- **Rent in Advance**

Real estate agents normally make you pay rent in advance. If your rent is less than \$300 each week you may have to pay up to 2 weeks rent in advance. If you rent is over \$300 per week you may have to pay up to 4 weeks rent in advance.

- **Paying Rent**

Make sure you check how often you have to pay rent. Is it every week, every fortnight or once a month? Also check how you have to pay rent. Many landlords and real estate agents want you to pay directly into a bank account, over the phone or at a post office. Make sure you understand how this works and that you are able to pay this way. For example if you have to pay at the post office, can you get to a post office during the day?

Make sure you get a receipt for **all** the money you pay to the landlord or real estate agent. Keep your receipts as they may help you if there is an argument about how much rent you have paid.

Guarantor

A guarantor is a person, usually a family member or a friend, who agrees to pay debts that you can not pay. It is now illegal for a real estate agent or a landlord to ask you to provide a guarantor, for example to meet rental payments if you can not pay. It is also illegal for the real estate agent or landlord to ask for money to give you the keys for the property, unless it is agreed that the money will be given back to you when you hand the keys back at the end of the tenancy.

Condition Report

Once you move in to the new property your real estate agent or landlord must give you a 'condition report'. You should fill out the condition report very carefully. It is a record of how the property looked when you moved in. The report is for your protection. If there is something wrong with the property when you move in and you write it on the condition report you will not have to pay for it when you leave. You should write on the report if anything does not work. You should also write down if there are marks on the walls or carpets.

You need to return the condition report to your real estate agent or landlord within 7 days. The agent or landlord should also complete the condition report to state the you have agreed as to the condition of the premises. You should be given a copy of the final report and this should be kept.

Your rights as a tenant

Your rights as a tenant are set out in *The Renting Guide*. Some of your rights include:

- to be given rent receipts;
- for the property to be clean when you move in;
- to have exclusive use of the premises, this means your landlord or real estate agent need to give you notice before entering the property; and
- to have the property fixed when needed.

You also have a right to apply to the Residential Tenancies Tribunal if your landlord has breached the lease agreement. Do not stop paying rent if you think your landlord or real estate agent has done the wrong thing.

Your responsibilities as a tenant

Your responsibilities to your landlord are also set out in *The Renting Guide*. Some of your responsibilities include:

- to pay rent on time;
- to look after the property and not damage it;
- not to make any additions to the property;

- not to interfere with the peace or privacy of your neighbours; and
- to leave the premises in the same condition as when you moved in.

Ending your tenancy

If your lease goes for a fixed time, such as 12 months, either you or your landlord can give notice that the tenancy will end 14 days after the notice is sent.

Once that time is over, your landlord may want you to sign another lease. If you do not, or are not asked to sign another lease, then the lease continues. If you want to end the lease you will be required to give at least 21 days notice. If your landlord asks you to leave after the fixed term has ended, they must give you at least 60 days notice.

However, if the landlord wants to sell the property they only need to give you 30 days notice.

Getting your bond back

At the end of your tenancy the landlord will inspect the property. It is a good idea to clean the property very well before this inspection. The landlord cannot take money from you for general wear and tear. If they believe there is any damage caused by you then they may claim some of the bond for themselves. If you disagree with your landlord about how much bond they can keep, you should contact the Department of Fair Trading (contact details above).

If your landlord does not want to keep any of your bond, you need to get your landlord to sign the bond claim form (they will give this to you). You should give the form to the Rental Bond Board to have your bond refunded.

Rental Bond Board

Tel: (02) 9377 9000 or 1800 422 021 (free call)

Address: Level 4, 234 Sussex Street
Sydney NSW 2000

Termination for a breach of the lease agreement

If the landlord claims you have gone against a term of your lease agreement they can give you a 'notice of termination' at any time. If you have not paid rent for more than 14 days after the due date, a notice of termination may also be given to you. If this happens you will only get 14 days notice before you have to move out.

If you want to end your lease agreement early

If you want to end your agreement early, you should write to your landlord or real estate agent and tell them when you want to leave.

It can be expensive to break a lease agreement before the end of the fixed term. You may have to pay the following costs:

- rent until new tenants move in or until the end of your lease;
- an agent's fee; and/or
- advertising costs.

Consumer, Trader and Tenancy Tribunal

Any tenant or landlord can apply to the tribunal to make a decision on certain matters. The tribunal has the power to look at a wide range of problems such as:

- terminations and evictions;
- arguments about bond money;
- if the landlord does not meet their obligations, for example, not providing good security or fixing the property when needed;
- rent increases; and
- payment of compensation.

Tribunal orders are as good as court orders. If the Tribunal orders the landlord to pay you money and they do not, you can go to the local court to make the landlord pay you. If the Tribunal orders you to pay money and you do not pay, you may get a \$5,000 fine, 12 months gaol or both.

You can also be fined if the Tribunal thinks you have brought a claim only to annoy your landlord or if the problem is not serious.

For more information about the Tribunal, or to get a Tribunal application form, you can contact a Renting Service, the Department of Fair Trading, Community Legal Centres to get a contact for your local tenants' advice and advocacy service or the Tribunal Registry.

Community Legal Centres

Tel: (02) 9318 2355

Internet: www.nswclc.org.au

Department of Fair Trading

Tel: (02) 9895 0111

Internet: www.fairtrading.nsw.gov.au

Consumer, Trader and Tenancy Tribunal Registry

Tel: 1300 135 399

Internet: www.fairtrading.nsw.gov.au/secondarymenus/cttt.html

Types of Housing

Share Housing

If you move into share housing you need to understand exactly how much money you have to pay. Make sure you know:

- The amount of the weekly rent
- The amount you have to pay as a bond
- If you have to pay rent in advance
- If you have to pay extra money for telephone, electricity and water bills.
- If you have to pay extra money for things like food or cleaning products

If you are asked to sign a Residential Tenancy Agreement in a share house it means you are a co-tenant and must have the responsibilities of a tenant explained above. If you are not asked to sign a lease you are a 'sub-

tenant'. You still have the same rights as other tenants if you are a sub-tenant.

For more information about your rights and responsibilities in a share house you can contact a tenants advice centre through the community legal centres:

Community Legal Centres

Tel: (02) 9318 2355

Internet: www.nswclc.org.au

Public Housing

Public housing is owned by the government and is rented to people on low incomes. You need to be an Australian citizen or approved person to apply for public housing.

To apply you should fill out an Application for Housing Assistance available at your local Department of Housing office. You may have to wait several years before a house is available for you. If you need accommodation urgently, you can complete an Immediate Housing Assistance form.

To find the closest Department of Housing office, or for more information, contact the Department of Housing:

Tel: 131571 (available 24 hours, 7 days a week)

Internet: www.housing.nsw.gov.au

Community Housing

Community houses are provided for people on low incomes who need secure housing. There are around 50 community housing associations in New South Wales. If you live in community housing you are still covered by the *Residential Tenancy Act*, but the community housing association may have special rules about how much rent you pay or how the tenancy can be ended.

For more information about community housing you can contact the NSW Federation of Housing Associations:

Tel: (02) 9281-7144

Internet: www.communityhousing.org.au/nswfha/

Buying or building you own home

If you plan to buy or build your own home, you will need to get financial advice from a bank or other financial institution. You will also need advice from a lawyer in relation to the building contract or contract for sale.

POLICE POWERS

Police in Australia get their powers through the common law and statutes such as the *Crimes Act 1900 (NSW)*, *Crimes (Forensic Procedures) Act 1999 (NSW)*, *Police Powers (Vehicles) Act 1998 (NSW)* and the *Police Powers (Drug Detection Dogs) Act 2001 (NSW)*. Below is a summary of the basic powers of police in New South Wales:

The ‘Move On’ Power

The police have the power in a public place (such on a street, on a railway station, in a childcare centre or a shop) to tell you to leave the area.

The police may use this power where they think someone might be offended by you in one of the following ways:

1. causing harassment, intimidation or fear in another person;
2. stopping people or cars from moving; and
3. if you are trying to buy or sell drugs.

Before a police officer can tell you to move on they must show you police identification, unless they are in uniform. They must tell you their name, place of duty and tell you the reason for asking you to move on. They must also warn you that disobeying their order may be an offence and may attract a penalty (such as a fine).

It is an offence to disobey a police order. This is only if the order is for a good reason and the police have followed correct procedures. You have a right to ask the police why they are giving you an order to move on.

Questioning by Police

If you are questioned by police you have the right to stay silent and do not have to answer any questions. If you choose to answer police questions anything you say can be written down and used against you in court.

You do not need to go a police station to answer any questions unless you have been arrested.

You must, however, supply the police with your correct name and address and identification when:

4. you are the driver or a passenger of a car in an accident. You may have to supply details of the owner or passengers;
5. you may be able to help the police with finding out more about a crime;
6. the police are attempting to serve a court document or fine default warrant; or
7. you are on public transport

It is good to be polite and helpful with police at all times. Note that there are special rules that police must abide by regarding people under 18 years of age.

Arrest

You do not have to go anywhere with police unless you are under arrest. If you are not sure if you are under arrest then you should ask the police.

It is against the law to try and stop the police from arresting you by police even if you have not committed a crime. If you do not co-operate with the police the police are able to use as much force as is necessary to arrest you.

The police must tell you that you are under arrest and why you are being arrested.

Being under arrest means you are in police custody and are not free to go.

A police officer can arrest you with a warrant. If police have a warrant for your arrest it must be signed by a Magistrate and shown to you.

The police can also arrest you without a warrant if:

8. you have committed an offence or the police suspect you have committed an offence
9. the police suspect you have committed or will cause harm to a person or property or are likely to cause such harm; or
10. the police find you lying or loitering during the night and have a good reason to suspect you of being about to commit a crime.

What will happen if you are arrested by the Police

Once you have been arrested you will be taken to a police station. You do not have to say anything to police or answer their questions.

The police have the power to search you and your clothing and anything you may be carrying. The Police have the power to take property from you. If you are a woman you can only be searched by a female police officer, or if one is not available at the time, then by another woman asked by the police.

The police can detain you for a maximum of 12 hours if they think that you have committed a serious offence. This is so that the police can investigate the crime. After the first four hours of arrest they need to ask a Magistrate to grant them power to hold you for another 4 hours and again for another period of 4 hours (total of 12 hours).

Within this 12 hour period you must be brought before a justice, Magistrate or court or released.

Before any investigation takes place you have the right to contact a friend or relative and a solicitor. They can be with you at the police station. You have the right to an interpreter to assist you during any questioning by police, if you need one. You have the right to see a doctor if you are unwell, and a right to drinks and toilets.

If you are not an Australian citizen or a permanent Australian resident you have the right to contact a consular official from your country. This person can be with you at the police station.

If you are charged this means the police have made a legal complaint against you and you will need to appear in court.

If you are under arrest you should seek legal assistance – contact a solicitor.

If you are under 18 years of age you can obtain legal assistance by calling Legal Aid:

Tel: 1800 101 810 (free call)

TTY: 131 450 (to talk to someone in your language)

Internet: www.legalaid.nsw.gov.au

Medical Examination, Photographs and Finger Prints or Palm Prints

If you are under arrest and have been criminally charged the police might order that a doctor carry out a medical examination of you. The can only do this if they have good reasons to believe that an examination may give them evidence of a crime. This can include taking samples of your blood, saliva and hair without your consent.

The police can also do some things to identify you. They can take your fingerprints and palm-prints and your photograph without your consent. Before they do this they must show you evidence they are a police officer (unless they are in uniform). They must tell you their name, place of duty, their reasons for taking your photograph, finger or palm prints. They must also warn you that if you do not allow them to do these things you will be committing a crime and can be arrested for it.

Forensic Procedures

The police may carry out a forensic procedure on some people linked to crime in some way. This can include someone the police think have committed a crime and people in gaol. If you are over 18 or if you say no to this question, the police must apply for a court order to do these things.

If you are a suspect then the police must tell you about the way the forensic procedure will be done, let you know when it is going to start and allow you to talk to your solicitor.

A forensic procedure may involve taking samples of your blood, saliva, pubic hair, an external examination of the buttocks or breast. They can also take photographs of these areas of the body. However, it does not allow police to carry out internal body searches.

Enter and Search

Search Before Arrest

In some circumstances police also have the power to search before they arrest you, with or without a warrant.

Examples of when police have the power to search without a warrant are when they have a good reason to suspect you:

- have something which has been stolen;

have a dangerous weapon; and
have a prohibited plant or drug.

Sniffer Dogs

Police are allowed to use sniffer dogs to search people for illegal drugs. Without a warrant police can undertake these searches in such places as on public transport, at clubs, a concert or a dance party.

If the police want to carry out a random search of premises using sniffer dogs then they need a warrant.

When using sniffer dogs the police must keep the dog under control and try to stop the dog from touching you.

If a sniffer dog finds illegal drugs on you the police will then have the power to search you for those drugs.

Searches of your Home

Usually the police can not enter and search your home without your consent.

However, there are some situations where the police will be able to enter your home without your consent. These are:

- to prevent domestic violence;

- when they have a good reason to believe you have a weapon in your home, and that it has been or may be used to commit a crime;

- where they are going to arrest someone who they have a good reason to believe is in your home;

- to arrest a person who has escaped from the police or from gaol;

- to prevent a crime; or

- to carry out a search warrant or an arrest.

Search After Arrest

Once you have been arrested the police have the power to search you and any clothing or property you have. They may also take from you anything found in the search.

The police may give you a strip search. Before they do a strip search, the police must tell you why it is being done and cannot search any body cavities. The strip search can not be done in a public place. A search must also be done by a police officer that is the same sex as you.

Stop and Search a Vehicle

The police have powers to stop and search a car when they have a good reason to think the car was used in committing an offence, or there are drugs or stolen goods in the car.

Police also have the power to take anything found inside the car, which may be evidence of a crime.

The Terrorism (Police Powers) Act 2002 (NSW)

This Act gives police special powers to deal with imminent threats of terrorist acts and to respond to terrorist acts.

The Police can in certain areas:

- demand you to give them your name and address and ask for identification documents;
- search you, your car, or home without a warrant;
- keep anything they have a good reason to think might be used to commit a terrorist act, or might provide evidence of a serious offence;
- quarantine you if you might have been exposed to dangerous chemicals; and
- remove you and your car from a dangerous area

Complaints Against Police

A police officer is not allowed to use any violence against you or threaten you. However, the police do have the power to use whatever force is needed to arrest you.

If you want to make a complaint about a police officer, you should do so as soon as possible after the incident.

You can contact the following people or organizations to make a complaint.

Your solicitor

(See Chapter 1: How to Find a Lawyer)

The NSW Ombudsman

Tel: (02) 9286 1000

Or 1800 451 524 (free call)

Internet: www.nswombudsman.nsw.gov.au

The NSW Police Service

Tel: (02) 9339 0277

or 1800 622 571 (free call)

Internet: www.police.nsw.gov.au

The Police Integrity Commission

Tel: (02) 9321 6700
or 1800 657 079 (free call)
Internet: www.pic.nsw.gov.au

Legal Aid Hotline

Tel: 1800 101 810 (free call)
or 131 450 (to talk to someone in your language)
Internet: <http://www.legalaid.nsw.gov.au>

The NSW Police Serve Customer Assistance Unit

Tel: 1800 622 571 (free call)

NSW Community Legal Centres, State Office

Tel: (02) 9318 2355
Internet: www.nswclc.org.au

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CRIMINAL LAW

The Australian legal system provides everyone with a number of basic rights. This means that there are special rules governing the powers police have to arrest and lock up people. These issues are dealt with in a different chapter (See Chapter 7; Police Powers)

It is important to remember that you do not always have to answer police questions. It is always a good idea to get legal advice before answering police questions. (See Chapter 1; How to find a lawyer) If the police want to record an interview with you on tape or video, always say you want to speak to a lawyer first.

If you plead guilty to a charge against you, you will normally be sentenced at a later date. If you plead not guilty, the matter will also be decided at a later date. This gives you and the police time to prepare for the case. The police will give you or your lawyer a copy of the evidence that they have against you. Once you have received a copy of the police evidence, the case will be given a date for court and witnesses will be called to give evidence. At court, your lawyer will get an opportunity to question these witnesses and test their evidence against you. This will continue until all the prosecution witnesses have been called. You and any of your witnesses will then have a chance to give evidence and be questioned by the police. Once all the evidence is heard, the judge will give the jury a summary of the evidence and legal issues. The jury will decide the matter in a jury trial. Sometimes the judge alone will decide your case. If you are found guilty the judge will go on to sentence you. You can appeal the decision if you think there was a mistake or the sentence is too harsh.

Bail

Bail may be granted by the police or the courts.

Police Bail

If you have been charged with a criminal offence you can be given bail at the police station. This usually means you will have to pay some money and then will be allowed to go home for the time being. You have a right to contact a lawyer or another person, who may help you in getting bail.

When deciding whether to give you bail the police officer has to be consider

- whether you will appear at court;
- whether you will continue to break the law; and
- the protection of any victims and your interests.

The more serious the offence (murder, violence or sexual offences, drug matters) the less chance you have of getting bail by the police. You have a right to be released on bail for minor offences (minor driving matters, theft). Recent changes to the law have meant that your criminal record is more important for police and courts when on bail.

Court Bail

If your bail is refused by the police, then they must take you as soon as possible to a court. In most cases, this will be the next day. At the court, you will be able to make an application for bail. A solicitor from the Legal Aid Commission may be able to represent you. This will depend on the type of charge and your wages, assets and the strength of your case. If a solicitor cannot represent you, they are available to give you free advice and to refer you to someone who can help you (see Chapter 1, How to find a lawyer). You have a right to be represented by a solicitor from the Legal Aid Commission if you are in custody or if you are a child.

Legal Aid Commission

Phone: 1800 101 810
131 450 – to talk to someone in your language

Internet: www.legalaid.nsw.gov.au

Courts

The local court has the power to hear all small offences (most traffic offences and minor criminal cases). The local court can also hear many other offences. All charges begin in the local court. The maximum penalty the local court can give you is three years in gaol. The court can only give you impose a fine of 100 penalty units (one penalty unit equals \$110.00)

More serious cases will be heard in the District court such as robberies. Even more serious cases will be heard in the Supreme Court, such as murder and some sexual offences.

The Children's court will hear all offences committed by people under the age of 18. Crimes carrying a penalty of 25 years or more such as murder, manslaughter, robberies with guns or causing serious injuries and certain sexual offences will be heard in another Court. The children's Court is also not able to hear driving offences for young people old enough to have a licence (usually 16) unless they are charged with a another crime as well.

Possible Sentences

All references in this section relation to the *Crimes (Sentencing Procedure) Act 1999* (NSW)

Penalties other than gaol

Dismissal and Conditional Discharge (section 10)

Here, the court has found you guilty, but dismisses the charge. They can also do this with conditions such as a good behaviour bond. This means that you have to promise the court you will behave well for an agreed period of time. This is the only sentencing option where a conviction is not put on your record.

Fines (section 13)

The magistrate may order you to pay a fine. In deciding the amount the court will consider your finances. This means it is important to tell the court what your income is and also what your expenses are. A fine must

generally be paid in 28 days. However, you can ask the court for more time to pay if you need it.

Bonds (section 9)

Bonds can carry conditions. The most common are conditions to attend counselling or rehabilitation services or courses. A bond is a promise that can be broken by committing another offence or by not meeting with the conditions ordered by the court. They cannot go for more than five years.

Deferred sentence (section 11)

The Magistrate may decide not to sentence you until you have completed a course or rehabilitation. If you complete the course or rehabilitation you may receive a smaller sentence.

Community Service Orders (section 8)

The court can order you to complete up to 500 hours of community service instead of sentencing you to gaol. If you have a drug problem or have shown that you are not reliable then you will not be able to get a Community Service Order. If you do not complete the hours given you can be brought before the court and sentenced again for the original crime.

Gaol

Suspended Sentences (section 12)

The court can impose a sentence in gaol but allow you to serve this sentence out of gaol if you enter into a good behaviour bond. You are more likely to have your gaol term suspended if the court thinks that you may be rehabilitated. If you breach the bond by breaking the law again or by not meeting by the conditions imposed in your bond, you will have to serve the time in gaol.

Periodic Detention (section 6)

If you get a sentence of less than three years, the court may allow you to serve the sentence only part of the time. This means going to gaol on weekends. If you breach this sentence you will be arrested and will remain in gaol until your case is decided. You may be given another chance or you may have to serve the sentence full time or at home.

Prison/Gaol

Gaol terms are considered a last resort and will be given for serious offences or after most other options have failed. This sentence will be

divided in to non-parole (time actually spent in gaol) and parole (time spent in the community under some conditions).

Home detention

The court can consider if you are eligible for home detention once you have been sentenced to full time imprisonment. It takes about three weeks to make a decision on a home detention sentence. Home detention includes telephone checks and visits to make sure you are at home when you are meant to be. You may also be tested to see if you have been drinking alcohol or taking illegal drugs.

Children and criminal law

Special rules apply to children under the age of 18. The Children's Court is more focused on stopping criminal behaviour and is less concerned with punishment. The Children's Legal Service operates a hotline for children:

Children's Legal Service

Tel: 1800 101 810

Operating hours: 9 a.m. to 12 p.m. Monday to Thursday and 24 hours on Friday, Weekends and Public Holidays.

Internet: www.lawlink.nsw.gov.au/lac/lac.nsf/pages/cls_brochure

All children who are arrested for a criminal matter should ring the Hotline before speaking to a police officer. All children have a right to be represented by a solicitor free of charge (See Chapter 1, How to find a Lawyer).

A child under the age of 10 cannot be charged with a criminal offence. Children between the ages of 10 and 14 are in a special category. They are held to be incapable of crime unless the state can show that the child knew that their actions were seriously wrong rather than just naughty.

Children with little or no prior convictions can go before an alternative to court. They can be given a caution at the police station or go to a Youth Justice Conference. This is an chance for young people to say sorry to the victim.

Punishments available in the Children's Court include fines, bonds and Community Service orders. These are similar to punishments given in the adult jurisdiction. Children can also be sentenced to time in detention. The court will only send a child to detention if it is satisfied that no other sentencing options are available. Juvenile detention centers are like gaols for children. Children cannot be sentenced to periodic or home detention.

For offences which carry 25 years or more time in gaol, the young person will be sentenced at the District or Supreme courts.

Convictions

If you are an adult, a conviction will be recorded after a finding of guilt unless your charges have been dismissed under section 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). A child under 16 cannot be convicted and therefore cannot have a criminal record. If a child is aged 16 to 18 the magistrate has choice whether to record a conviction. Generally magistrates in the Children's Court will not record a conviction for minor or first offences. Children's courts are private courts.

Convictions can affect visa status and it is not uncommon for people to be deported once they have served their sentences. Convictions for certain matters, particularly drug matters can affect entry into certain countries.

9

VICTIMS COMPENSATION

Are you a victim of violence?

Victims Services is a New South Wales State agency that looks after people who are victims of an act or acts of violence. If you have been physically, sexually or emotionally hurt because of violence, you may apply to Victims Services for someone to help you or money to help you with your injuries. Victims Services provide compensation and a counselling and a referral service for victims of violent crime in New South Wales.

Tel: (02) 9374 3111

TTY machine (for hearing impairments): (02) 9374 3175

Fax (Compensation & Counselling): (02) 9374 3120

Fax (Restitution & Appeals): (02) 9374 3160

Fax (Administration & Accounts): (02) 9374 3040

E-mail: vct@agd.nsw.gov.au

24 hour Victim Support Line (7 days a week)

Tel (Sydney Metropolitan area): (02) 9374 3000

Toll free (outside Sydney Metropolitan area): 1800 633 063

TTY machine: (02) 9374 3175

For enquiries by Approved Counsellors and for Victims of Crime Bureau Administration

Tel: (02) 9374 3005

Fax: (02) 9374 3020
E-mail: vcb@agd.nsw.gov.au
TTY machine: (02) 9374 3175

Street Address for all sections of Victims Services

Victims Services
Level 4, 5 & 6
299 Elizabeth Street
SYDNEY 2000

Postal Address for all sections of Victims Services

Victims Services
Locked Bag A5010
SYDNEY SOUTH NSW 1235

Community Languages

If you need help in another language, please telephone the Translating and Interpreting Service on 131 450 (24 hours a day - 7 days a week). State what language you speak. The operator will connect you to an interpreter who speaks your language.

When you are connected, ask the telephone interpreter to call Victims Services on (02) 9374 3111 or 1800 069 054 (Toll free) for assistance.

Information on telephone interpreter assistance for victims of violent crime is available in the following languages:

English, AUSLAN (signed English), Arabic, Chinese, Croation, Farsi, Greek, Hungarian, Italian, Japanese, Korean, Macedonian, Polish, Portugese, Russian, Serbian, Spanish, Thai, Turkish and Vietnamese.

http://www.agd.nsw.gov.au/vs/vs.nsf/pages/community_index

An act of violence...

Victims Services may be able to help you if **you** have been hurt because someone has committed a crime. (See Chapter 8, Criminal Law; Chapter 10, AVO's)

The violence must have happened in New South Wales. If it happened in another State, you should contact Victims Services in that State.

The violence must be against a person, not property like a car or house. Victims Services cannot pay to have your property replaced or fixed.

What Victims Services can offer...

Counselling

You can apply to Victims Services for 2 hours with a counsellor – someone trained to help you deal with what has happened to you. If you feel you need more time with a counsellor after 2 hours, you can apply for more time.

Compensation

You can apply to the Victims Compensation Tribunal (contacted through Victims Services) for compensation – money to help you while you are hurt.

How do I make an application for counselling?

Application forms for counselling are available on the Victims Services Website:

Internet: www.agd.nsw.gov.au/vs

You can also telephone Victims Services and they will send you a form (see above for contact details).

You should write in the application form what the act of violence was. If you are not the main victim, you should make it clear how you are a victim and/or how you were involved in the act of violence. If you are completing

the form for someone else, remember that the person claiming for counselling has to sign the form.

Who can apply for victims compensation?

You can apply to claim compensation if:

1. You are the victim of an act of violence and have been hurt as a result (a 'primary victim').

This means you could have been injured while trying to:

- prevent someone from committing an act of violence;
- arrest someone who was committing an act of violence;
- help or rescue someone who is the victim of an act of violence.

2. You were hurt as a result of witnessing an act of violence (a 'secondary victim').
3. You are the parent or guardian of a primary victim of an act of violence who was under the age of 18 years at the time of the violent act (a 'secondary victim').
4. You are an immediate family member of someone who has been killed (a 'family victim').

You cannot apply for compensation where:

- The act of violence did not occur in NSW;
- It cannot be proved that an act of violence occurred;
- The injury is not included on the Schedule of Injuries (see below);
- The crime is against property, for example, vandalism;
- The injuries are caused by a motor vehicle;
- You were injured while committing a crime;

The act of violence occurred when you were a convicted prisoner.

Can I apply for compensation?

This depends on how serious your injuries are. There is a Schedule of Injuries, which you or your lawyer must look at to find out how much money you may be entitled to. Once you have found the injury that matches what has happened to you, look for the amount of money next to that injury. The minimum claim you can make to the Tribunal is \$7,500 – this is called a ‘threshold’. If your combined injuries do not amount to \$7,500, you cannot make a claim for compensation.

You can look at the Schedule of Injuries on the Internet at:

<http://www.agd.NSW.gov.au/vs/vs.nsf/pages/vctsched>. You can get free access to the Internet at your local library or you can see a lawyer or call Victims Services and they will assist you.

What are compensable injuries?

Compensable injuries are the list of injuries in the Schedule of Injuries. The kinds of injuries included in the Schedule are:

Physical injuries

The Schedule lists a lot of different injuries to the body. Sometimes there will be notes about how serious the injury is.

Psychological or psychiatric disorders caused by an act of violence

The disorder must be ongoing and either moderately or severely disabling.

Sexual assault

There are 3 different categories of sexual assault covering crimes ranging from indecent assault to unlawful sexual intercourse where the offender uses an offensive weapon, such as a gun.

Domestic violence

These are injuries sustained because of personal violence committed against you by your spouse or partner, someone who lives with you, a relative or someone who you are in, or have been in, an intimate personal relationship with.

Burns and scarring

These can be claimed for if they are permanent.

What else can I claim for?

You can also make a claim for the following financial losses:

Medical and related expenses

These include fees paid for doctors, hospital, dental, chemist, physiotherapy and the cost of medical reports and photos. You must include receipts for all medical expenses with your application.

Actual loss of wages

The amount you can claim will not be how much you would have been paid if you were working. The amount of money will be calculated by rates used under the *Workers Compensation Act 1987* (NSW). This means that you will only have to give details of your employer, how many days you were away from work and whether you were paid sick or holiday leave. The most you can claim for financial loss, including loss of earnings and medical expenses is \$10,000.

Other losses and expenses

You can make a claim for personal items worn or carried at the time of the act of violence that were destroyed, damaged or lost. You should try to provide receipts, if you have them, and find out how much it would cost to buy the item now (include this replacement cost in your claim). To make a claim for personal items, you must be the primary victim. The maximum you can claim is \$1,000.

How do I add up my injuries?

Some injuries, like a small burn on your face (\$4,800), will not meet the threshold amount. But if you have more than one kind of injury, you may meet the threshold.

Injuries are added up in the following way:

- Take the most serious injury, for example, a broken jaw = \$7,200

• Add 10 per cent of the amount for the second most serious injury, for example, loss of 2 or 3 front teeth = \$4,800. Ten per cent of that injury would be \$480.

• Add 5 per cent for the third most serious injury, for example, loss of a tooth that is not a front tooth = \$2,400. Five per cent of that injury would be \$120.

$$\begin{array}{r} \$7,200 + \\ \$ 480 + \\ \$ 120 \\ \hline \$7,800 \\ \hline \end{array}$$

When added together, these injuries meet the threshold to apply to the Victims Compensation Tribunal for money.

How do I make an application for compensation?

Application forms are available on the Victims Services Website:

<http://www.agd.nsw.gov.au/vs>

You can also telephone Victims Services and they will send you a form (see below for contact details).

You can lodge the application yourself or a lawyer can do it for you. The Law Society can give you names of lawyers in your local area who will help you make your application.

Law Society of New South Wales

Phone: (02) 9926 0300 or 1800 422 713 (Toll Free Call outside metropolitan area).

Internet: www.lawsociety.com.au

The lawyer's fees will usually be paid by the Tribunal. These legal costs are paid separately to the amount of compensation awarded. Your lawyer cannot charge you any more than the amount the Tribunal gives you for legal costs.

If you fill in your application fully, the Tribunal should not need to contact you to find out more information. This means that the Tribunal staff can process your claim quickly so that you will not have to wait very long.

What do they need to know?

1. A short description of the act of violence.
2. The date or dates of the act of violence.
3. If the crime was reported to Police you should give the date it was reported, the name of the Police Officer who you complained to and where the police station was.
4. If the crime was not reported to Police, you will need to explain why it was not reported. You do not have to go to the Police to claim compensation, but it is easier to prove that you were hurt because of an act of violence if you do go to the Police.
5. If you went to court because of the crime, you will have to give details about the court case.
6. You will have to name your injuries using the language in the Schedule of injuries.
7. If you have suffered psychological or psychiatric disorders because of the act of violence, you will need to get a report by an Authorised Report Writer (ARW). The ARW cannot be the same person who is counselling you. For a list of ARWs, Victims Services.
8. If you are making a claim for burns or scarring, you will need to include photographs showing the injuries. Write the date the photos were taken on the back of each photograph.

What documents do I include with my application?

If you have complained to the Police, a copy of your statement, if you have made one.

Any medical reports from doctors or specialists .

Photographs of any permanent burns or scars with the date they were taken on the back.

If you are claiming for medical expenses, receipts or other evidence of payment or debt.

If you are claiming for actual loss of income, any documents you have to show loss of earnings.

If you are claiming for loss of personal items, receipts or quotes for replacement costs.

You will need to sign a statutory declaration

At the end of your application form, you will need to sign a statutory declaration. This is a solemn declaration that you have told the truth in your application for compensation. You must sign the declaration in front of a lawyer or Justice of the Peace (JP). You can usually find a JP at your local bank, post office or chemist. Ask around your local neighbourhood to find a JP. After you have signed the statutory declaration, you can submit your application to the Tribunal.

What happens next?

When the Tribunal receives your application they will check that you have given all the information they need to assess your claim. If your application is in order, they will send you or your lawyer a letter to let you know that they have registered it. This letter will include a claim number. You will need to tell them the claim number when you contact them for any reason.

After your application has been registered, they will gather information such as police reports, court transcripts and make any other inquiries they need to.

Once they have gathered all the information necessary to process your claim, the matter will be listed and a date chosen for deciding your claim by

an Assessor. You or your lawyer will be sent a letter telling you the listing date. At the first opportunity after the listing date, the Assessor will make a decision about your eligibility for an award of compensation.

On the decision date, an Assessor will look at your form and all your documents, and make a decision about your application. You do not need to attend on that day. Only in special circumstances will you be required to attend a hearing before the Tribunal.

Within a week of the decision, the Tribunal will send you or your lawyer a letter telling you the result of your application. If an award is made, they will send you or your lawyer an Application for Payment form, a form with conditions of the award and instructions. If you accept the Standard Conditions and the amount awarded, you will have to sign and return the Application for Payment form. In most cases, they will process the payment within 28 working days of receiving the signed Application for Payment form.

Appealing your decision

If you disagree with the Assessor's decision, you have a right to lodge an appeal to the Tribunal within 3 months of receiving the decision. The appeal Tribunal is comprised of a Chairperson and a number of Magistrates. You can represent yourself in an appeal or you can get a lawyer to represent you (see Chapter 1, How to find a Lawyer). If you disagree with that decision, you have a further right of appeal to the District Court. You can find out more about the appeal process by visiting:

http://www.agd.nsw.gov.au/vs/vs.nsf/pages/comp_appeals or by contacting Victims Services.

APPREHENDED VIOLENCE ORDERS ('AVO'S')

If you have experienced violence, threats or harassment and are worried about your safety you can apply for an Apprehended Violence Order (an AVO). An AVO is an order from the court telling a person not to do certain things in the future. An AVO is not a criminal charge. It is only if a person breaches the AVO that they can be charged with a criminal offence.

Applying for an AVO

There are two ways you may apply for an AVO:

1. tell the police about the violence so that the police can apply for an AVO for you (this is called a police complaint); or
2. see the chamber magistrate at the nearest local court and make your own application for an AVO (a private complaint).

On the AVO you will be referred to as the 'Protected Person' or the 'Person in Need of Protection ('PINOP')'. The other person will be referred to as the 'defendant'.

On the paperwork there will be a complaint which describes the things the defendant is doing to scare you. There will also be a notice, called a 'summons', which tells the defendant to go to court on a certain date. Attached to the complaint and summons will be the orders you are asking the court for.

Types of AVO orders

It is important for you to get an AVO that takes into account all the possible ways the defendant may scare or hurt you. You can ask for orders that stop the other person from:

going to your house, work or some other place where you go;

ringing you on the phone;
coming near you;
getting someone else to harass or threaten you; and/or
destroying your property.

You can ask for an AVO against any person who makes you worry about your safety because of violence, threats or harassment, including:

your husband, wife or partner;
your children;
your parents;
other relatives;
your neighbours and friends.

You can ask for an AVO against a person you still see, live with or work with.

Interim AVOs

If you are in immediate danger of violence you should ask the court for an 'Interim AVO'. This is a temporary AVO that gives you protection until the next time the matter is before the court.

The police may apply for a telephone interim order ('TIO') if it is not possible to go to court straight away. This is important if you do not live near a court.

Service

The police must 'serve' the AVO, Interim AVO or TIO on the defendant. This means they have to give the document to the person.

AVO, Interim AVO or TIO cannot be enforced until it is served.

What happens if someone takes out an AVO against you

If someone applies for an AVO against you, the police will come to your house and give you a 'summons'. The summons will tell you to go to court

on a certain date. There may also be an Interim AVO against you. If there is an interim AVO against you, you must not do the things the AVO says you cannot do.

If you think that the AVO is unfair or untrue, you will have a chance to say so in court. The Magistrate will hear all the evidence at the hearing and may dismiss the AVO against you.

If you have an AVO against you, it does not mean that you have been charged with a criminal offence. An AVO is a complaint against you. If you do not obey the AVO, you may be charged with a criminal offence. There are serious penalties for breaching an AVO. If you have an AVO against you, it is best to obey it even if you think it is unfair.

Do I need a lawyer?

If the police applied for the AVO on your behalf a police officer called the 'Police Prosecutor' will represent you in court. You do not need a lawyer.

If you made the complaint to a chamber magistrate yourself, you should try to get a lawyer. (See Chapter 1: How to find a Lawyer.)

FAMILY LAW

Separation and Marriage Breakdown

Family law is mainly about separation and divorce. The most common cases in family law are about:

- how to divide property after relationships have ended, and
- what to do with children after their parents have separated.

If you are or have been married, any argument over property with your ex partner will be heard in the Federal Magistrates Court or the Family Court (See Chapter 2: Court Procedure).

If you have had a relationship with your partner for 2 years or have a child with them, they are your de facto spouse. If you separate from a de facto spouse any argument over property will be heard in the Local, District or Supreme Court of New South Wales.

All family law cases that involve what happens to your children after you separate are heard in the Federal Magistrates Court or the Family Court of Australia. It does not matter if you are married or not.

Divorce

There is no need to prove that the divorce is anyone's fault. Either the husband or wife can make an application for divorce if:

- one of the spouses lives in Australia, and
- your marriage has broken down and you cannot sort out your differences, and
- you have been separated for 12 months (you can be separated even though you are still living in the same house).

Divorce does not automatically settle everything that you may need to work out at the end of your marriage. If you need the Court to help you sort out arguments about:

- how your property will be divided;
- where the children will live, or
- when they will see the parent that they are not living with.

You will have to make separate applications to the Court on these issues.

Resolving disputes

Before a Judge or a Magistrate hears a family law dispute, the Court will ask you to try to make an agreement with your partner, and may ask you to go to counselling or mediation. The process will be much quicker and cheaper if you can settle the argument instead of going to Court.

Family law in Australia does not treat men and women differently in either property disputes or disputes regarding children.

Divorce and Property

If you have been married, the Court will divide the spouse's property by looking at three things. It is important to realise that each situation is different and each case will be decided by looking at the circumstances of the case. The Court can make orders about property that is owned by only the husband or the wife. The Court will not simply give each party back what they put into the relationship.

The Court will consider:

The total value of the property of the parties

This means valuing all the property of the husband and wife, including assets in joint names (such as a house), assets in separate names (such as a car), superannuation, and business interests the parties have.

Contributions

These include financial contributions (for example wages earned, inheritances from relatives and other property brought into the relationship by either spouse) and non-financial contributions (for example

housekeeping, care of children and unpaid help in the family business and so on).

Future needs

The Court can change the division of property after it takes into account the contributions of each spouse if there are any future needs that should be considered. Common factors include the health of one or both spouses, or if one of the parties has to take care of the children and will earn less money.

Just and equitable

Finally, the Court will check that the first three stages are fair to both spouses.

Once the Court has considered these things, it will decide how to divide the property. This can involve an order to divide any property that the parties own, and/or an order to sell property that the parties own, including houses, and so on.

If you have never been married, the Court will look only at stages 1,2 and 4. This means the Court will not consider the spouses' future needs when dividing the property.

Spouse maintenance

There is no automatic right to spouse maintenance under Australian law. To have an order made for maintenance, a spouse must show that:

- they cannot support themselves by working, and
- that the other spouse can afford to support them.

The Court treats men and women the same when considering applications for spouse maintenance.

An order for spouse maintenance is not common when you are not married.

Children (in a marriage breakdown)

The Court may decide arguments disputes about children about:

- 'residence' - who children should live with,

'contact' - how often and where they spend time with the parent that they do not live with, and

'specific issues' – other matters there may be an argument about. This can include things like the child's health and education.

When there are arguments about children, the Court will make a decision that is in the best interests of the child. The factors that the court will think about when deciding what is in the best interests of the child include:

any wishes of the child;

the relationship of the child with its parents and others;

the likely effect of any changes on the child;

any practical problems and expense of a child having contact with a parent;

the capacity of each parent to provide for the needs of the child including emotional and intellectual needs;

the child's maturity, sex and background and any other aspects of the child that the court thinks are important;

the need to protect the child from physical or psychological harm;

the attitudes of the parents to the child and the responsibilities of parenthood;

any family violence involving the child or the family;

any family violence order that applies to the child the family;

whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child; and

any other thing that the court thinks is important.

Unless it may cause harm to the child, the Court will not allow one parent to prevent the other from seeing their child. Under the *Family Law Act 1975* (C'th), each child has the right to see both of its parents.

However, where the child may be in danger from one of its parents, the Court may order that contact with the child is supervised. This supervision can be either by a friend or a relative, or in a special contact centre, or, in rare cases, that the child not have any contact with a parent.

Where it is not in the best interests of the child to see its parent, the Court can order that the child will not see that parent. The *Family Law Act*, states that it is the child that has a right to see its parents (a parent does not have a right to see their child). However, this is only if seeing the parents is in the best interests of the child.

Child Support

Child support paid by one parent to support a child who is living with someone else ('child support'). It is collected through an organisation called the Child Support Agency.

Every parent has a responsibility to financially support their child. This is the case no matter how much time they are able to spend with their child by Court order.

The amount of child support a parent must pay is worked out by taking into account the income of each spouse and the number of children that need to be supported.

If you think that the amount you have to pay in child support is unfair, you can apply for a departure order, and a different amount may be set.

To apply for child support or to get more information, contact the Child Support Agency.

Child Support Agency

Tel: 13 1272

Internet: www.csa.gov.au

Family Violence

If you don't want to be in the same court room as your former spouse, you should tell the Court straight away and they will arrange the Court hearing to avoid this.

When making orders about property and children, the Court may sometimes consider family violence. However, because the *Family Law Act* does not take into account who causes the violence the Family Court will not 'punish' spouses who have been violent. If you want compensation for your spouses violence, you can go through other courts or the Victims

Compensation Tribunal (See Chapter #: Victims Compensation). You should speak to a lawyer for advice about this (See Chapter 1: Finding a Lawyer).

When dealing with children's matters, family violence will be one factor considered when deciding what is in the child's best interests. This may affect which parent the child will live with, and if or how often the other parent will see the child.

When making property orders, the Court will only consider family violence if the violence has reduced the contributions that one spouse made because of the violence of the other spouse. For example, if the spouse could not work because their spouse prevented them from working. For further information relation to violence see Chapter 10: AVO's.

Family Law Contacts and further information

See Chapter 1: Finding a lawyer about how to contact Legal Aid or Community Legal Centres.

Information sessions

There are free information sessions run by the Family Court to provide you with information about how the Court operates. Contact the Registry nearest to you.

Department of Community Services

Tel: (02) 9716 2222

Internet: www.community.nsw.gov.au

Interpreters

If you have difficulty with English you can obtain the services of a qualified interpreter for free. You can arrange this by contacting the Department of Immigration and Ethnic Affairs' national interpreter service:

Tel: 13 1450

EMPLOYMENT PROBLEMS IN NSW

Conditions of employment in NSW

In Australia, there are many laws which tell workers and their employers what they can and can not do at work. These laws also set up a system to make agreements about the conditions of work. They include what workers can do if their employer does not put these conditions in place.

When you agree to work for someone, there should always be a document that contains your conditions and how much you will be paid. If your new employer does not tell you what this document is, you should ask. It might be:

- a contract of employment; or
- an Award; or
- a certified agreement; or
- an enterprise bargaining agreement; or
- an Australian Workplace Agreement.

It might also be a combination of some of these documents. If you are unsure, ask your employer.

Awards usually cover the following conditions of employment:

- minimum rates of pay and allowances;
- overtime and other penalty rates;
- hours of work; and
- leave provisions; eg sick/personal leave, recreation leave.

They may also include other specific issues such as superannuation or long service leave.

Agreements normally cover similar areas but are agreed in the workplace.

Your employer might draw up policies about certain issues such as equal opportunity, sexual harassment, or employee behaviour. (See Chapter 4, Discrimination) It is important that you read these and follow them, because your employer might be able to punish you if you do not follow them.

After you have signed the contract or letter of employment, your employer must follow the conditions set out in the agreement. You must also follow the agreement. If you are hired under an Award or other agreement, your employer must pay you the amounts agreed in the award. If they pay you less, speak to your employer and point out what the award or agreement says. If this does not work then speak to a lawyer or union official.

If you are a full time or part time worker, the *Annual Holidays Act 1944 (NSW)* gives workers four weeks paid holiday after one year of work. Sometimes you can take the holiday before you have worked for a full year, but this must be agreed to by your employer. The *Long Service Leave Act 1955 (NSW)* gives workers two months paid holiday after ten years of work at the same place.

The *Industrial Relations Act 1996 (NSW)* gives you leave if you have a baby or adopt a child. If you are the primary carer of your child, and you have worked at the same place for at least one year, you can take 52 weeks of unpaid leave for the birth of your child, if you have worked for your employer for more than one year. Your boss must keep your job for you until you return to work.

You may not always get along with your fellow workers, but you do not have to put up with behaviour such as bullying, harassment or discrimination. It is not alright for someone that you work with to yell at you, make sexual comments or threaten to hurt you. If this happens you can complain to your employer, your supervisor or union representative and ask for the behaviour to stop. If your employer or supervisor is the person you want to complain about, speak to another similar person if you can. They should take your complaint seriously and check what you say has happened.

It is against the law to discriminate in the workplace (see Chapter 4, Discrimination).

Ending your employment

Your contract, Award or agreement should say what will happen if you or your employer decide that you will no longer continue your job. If your employer decides to fire you, they must give you reasons. If the reason is that you have not been doing a good job, you should be given a chance to perform better. Your employer needs to be fair to you. However, your employer may be able to fire you on the spot if you deliberately do something wrong. To find out more about this, you should read your contract or agreement to see if there are any parts that talk about "Summary Dismissal".

If you think you were fired unfairly, you have 3 weeks to decide what to do. In NSW you can take legal action for Unfair Dismissal. Unfair dismissal happens when your employer is not fair in the way that they dismiss you. You can approach the NSW Industrial Relations Commission under the *Industrial Relations Act 1996 (NSW)*. If you are employed under a Federal Award, you can approach the Australian Industrial Relations Commission under the *Workplace Relations Act 1996 (Cth)*. You cannot claim unfair dismissal if you earn more than \$81,500 or if you are a casual employee.

Under federal legislation, there are two ways you can be fired unfairly.

Unfair dismissal

Unfair dismissal happens when an employer has a valid reason for firing a worker but did it the wrong way.

Unlawful dismissal

Unlawful dismissal happens when an employer fires a worker for an unlawful reason. For example, where a worker is sacked because of his or her ethnic background or gender. (See Chapter 4, Discrimination)

Unfair Contracts

You may have an 'Unfair Contract' claim. An 'unfair contract' is either written or carried out unfairly. If your contract is unfair, you have one year to start your claim. You can only start a claim if you earn less than \$200,000. You should speak to a lawyer, industrial agent or union official about an unfair contracts claim because they are more complicated than an unfair dismissal claim.

It is important to talk to a lawyer or union official or industrial agent to find out what to do. You should do this as soon as you are fired. There may be other options available to you but it depends on your situation.

Your contract or agreement will contain a notice period for when the employment comes to an end. Your employer can tell you that they want you to work during this notice period. They can ask you to stop work immediately but they must pay you until the end of the notice period.

When your job finishes, you must be paid for annual leave that you have earned but not used. If you have worked for more than five years with the same company, they have to pay you for long service leave you have earned but not used.

If you decide that you want to leave your job, then you will have to give your employer notice in advance. This will be in your contract or agreement. You will normally have to work for this period so that you can hand over your responsibilities to your replacement. But, you may be able to agree to take some or all of the notice period as annual leave.

Occupational Health and Safety

Employers in New South Wales have health and safety obligations to their employees. These obligations come from the *Occupational Health and Safety Act 2000 (NSW)*. This Act requires employers to make sure they have a safe workplace, safe methods of work in place, and they provide their workers with training about how to safely use any equipment in the workplace. There should also be general training on how to avoid workplace injuries.

Employers also need to talk to their workers about any safety problems in the workplace. This can be through talking to workers individually if the company is small, or through a committee for larger workplaces.

Under this Act, workers must also look after their own safety and health at work. Workers also have to consider how their actions will impact on other people in the workplace. Workers must co-operate with their employer to resolve any safety issues. This includes going to training, avoiding dangerous situations, and talking to employers about any safety problems in the workplace.

Workers Compensation

If you are injured at work, your employer should pay for your medical treatment, and help you return to work as soon as possible. This is an obligation under the *Workplace Injury Management and Workers Compensation Act 1998 NSW*

If you are injured at work, you should tell your supervisor straight away. If it is a serious injury, your employer must make sure you get the proper medical treatment and help you get back to work as soon as possible. You do not have to go back to your old job if your injuries make it too difficult to do. You can be given different work to do. However, you must be given the same standard of work as before your accident. For example, if you were a Level 4 Supervisor before your accident, your employer should not make you do Level 2 Data Entry.

If you are injured at work, the law makes you return to work if you are able to. However, if your injury is very bad, you may not have to go back to work. You must also co-operate with your employer about your medical treatment and your return to work. This means telling your employer who your doctor is. You and your boss need to work together to plan your return to work. If you do not, your employer will be able to stop paying you money. If this happens, your boss has to tell you before they stop paying you.

If your employer does not pay the weekly payments that the Act says they should, then you may be able to start a court case. You can also start a case if your employer dies, if the company is wound up, if you can not find your employer or if you think that your employer will not send your claim to its insurance company.

Helpful addresses:

Department of Commerce, Office of Industrial Relations - NSW - to ask about NSW awards and agreements

1 Oxford Street, Darlinghurst NSW 2010

Postal Address: PO Box 847, Darlinghurst NSW 1300 AUSTRALIA

Tel: 131 628

Fax: (02) 9020 4700

Award Enquiry Service: 131 628 (anywhere within NSW)

Internet: www.dir.nsw.gov.au

Department of Employment and Workplace Relations - Federal

SYDNEY (State Office)

7th Fl, North Wing
Sydney Central Building
477 Pitt St, SYDNEY NSW 2000
Tel: (02) 9246 0600

Newcastle

1st Fl
24 Beaumont St
HAMILTON NSW 2303
Tel: (02) 4974 1700

Orange

189 Anson Street
ORANGE NSW 2800
Tel: (02) 6392 6750

Internet: www.dewr.gov.au

Industrial Relations Commission of NSW

Street Address

Level 1, 50 Phillip Street
SYDNEY NSW 2000

Postal Address

GPO Box 3670
Sydney NSW 1044

Tel: (02) 9258 0066
Fax: (02) 9258 0058
Internet: www.lawlink.nsw.gov.au/irc

Telephone Interpreter Service

Tel: 131 450

Australian Industrial Relations Commission

Level 8, Terrace Towers
80 William Street, East Sydney, NSW 2011
Tel : (02) 83746666

Fax: (02) 93806990
Internet: www.airc.gov.au

Wagenet - Office of Workplace Services

If you want to make a claim because you have not been paid enough money. You can also ask about Federal Awards and agreements.

OWS Sydney
7th Floor, North Wing
477 Pitt Street
(GPO Box 9879
SYDNEY NSW 2001)
Internet: www.wagenet.gov.au

Wageline - to enquire about Federal awards or agreements

Tel: 1300 363 264

Australian Council of Trade Unions (ACTU) (Located in Melbourne)

Tel: (03) 9663 5266
Internet: www.actu.asn.au

Labor Council of NSW

10th Floor, 377-383 Sussex Street,
Sydney NSW 2000
Tel: (02) 9264 1691

Fax: (02) 9261 3505
Internet: www.council.labor.net.au

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DEBT

A "debt" is something you owe someone, usually money. When you borrow money, the money you need to pay back is a debt. Borrowing money can be very useful. Debt is essential for most people at some time in their lives, for example taking out a loan to buy a house or a car. However, getting into debt can be a big problem if you cannot afford to repay a loan. This chapter may assist you with managing debt.

Getting into Debt

If you have just moved to Australia, you might need to borrow some money to get set up. You may want to start your own business, buy a car or purchase a house.

You can apply for a loan at a bank. There are also other organisations that can lend you money, for example credit unions and community banks. These places may charge lower interest rates and can be more flexible about paying off debts.

Always check that the place you are borrowing from is registered with the Australian Prudential Regulation Authority (APRA) because there are dishonest lenders who may charge you very high interest rates.

Australian Prudential Regulation Authority

Tel: 1300 131 060

Internet: www.apra.gov.au

If you need to make a complaint against a financial organisation, you can call the Australian Banking Industry Ombudsman:

Australian Banking Industry Ombudsman

Tel: 1800 337 444 (free call)

Internet: www.abio.org.au

If you want to buy a house or land, and you are not an Australian citizen or permanent resident, you will need permission from the Foreign Investment Review Board (FIRB).

Foreign Investment Review Board

Tel: (02) 6263 3795

Internet: www.firb.gov.au

If you buy business real estate you may need to get foreign investment permission. Buying shares or other assets of businesses may also need to be approved by FIRB. You should look at FIRB's website (see above) if you are thinking of buying any property or investments in Australia.

Credit cards

Credit cards can be very useful but make sure you can make the payments due on your credit card by the due date. Credit cards have high interest rates, usually between 13.5% and 21% per annum. Paying a high rate of interest can be a big waste of money. It is best if you can pay off the total amount owing each month. If you can pay off the total each month you may not have to pay any interest. If you can't pay the total amount, make sure you pay regular amounts. If you can, pay more than the minimum amount shown on your bill so that you are paying back your debt and not just the interest.

If you need to buy something expensive, like furniture or appliances, you might be able to get a loan with a lower interest rate or finance through the shop where you bought it at a lower interest rate.

If you have a high credit card debt you can try these things to help pay it off:

Contact the credit card company and ask them to lower the interest rate for you. This may work because they would rather help you pay the money back than have to take legal action against you to get the money back if you can not pay.

Some credit cards have a lower rate of interest for the first few months. You can transfer the debt from other credit cards to a new credit card with a lower interest rate. You must try to pay off the debt while the interest rate is low.

You may be able to get a loan from a bank that has a lower rate than your credit cards. You can use the bank loan to pay off all the credit

cards so that you have one debt to the bank with the lower interest rate.

Credit Checks

As soon as you get a credit card or loan, credit reporting agencies will begin to keep a track on how you manage your debts. You can find out your credit rating by contacting any of these credit reporting agencies:

Baycorp Advantage

Tel: (02) 9464 6000

Website: www.services.au.baycorpadvantage.com

Legalco Business Information

Tel: (02) 9283 5111

Internet: www.lexis.legalco.com

CRA Financial Services

Tel: (02) 9600 8601

Internet: www.craa.com.au

Getting out of debt

Getting into debt is much easier than getting out of debt. Many people run into trouble when they cannot pay money they owe. There are websites that give advice on getting out of debt:

Money Manager- Sydney Morning Herald

Internet: www.moneymanager.smh.com.au

The Motely Fool

Internet: www.fool.com

NSW Young Lawyers Community Services Committee will soon put out a handbook entitled *Getting out of Debt* which set out three steps getting out of the debt cycle.

Budgeting

If you really want to make your debt smaller, you need to make a budget and stick to it.

First, you need to work out how much you can pay your creditors. You can make your situation worse if a collection agent calls if you promise to pay money you cannot afford to pay. If you do this, the collection agent may not believe you in the future.

Second, you need to decide which debts are most important pay them first. Your most important debts may include: rent/mortgage, electricity, telephone, gas, food, car payments and secured debts. A secured debt is a debt where if you do not pay, the lender will sell the "security" you have given for the debt, like your house, car or furniture. Unsecured debts such as credit cards are the last priority.

Communicate with your creditors

If you have more debt than you can manage, you may be able to talk with your creditors to get more time or agree to pay a smaller amount than what you owe.

If you talk with your creditors you may:

get more time to pay;

get late fees dropped; and/or

pay off less than the full amount of your debts.

For example, if you owe \$200, the creditor might accept \$150 instead of \$200 if you can pay it straight away so they don't have to keep chasing you.

If a creditor does not agree to giving you more time or accepting a smaller amount you may be able to:

get a counsellor to speak to them for you; or

If the debt is large or you have many debts, you could ask lawyer to write a letter asking for extra time. This will cost some money, but it may be worth it.

There are many organisations that can help you get out of debt if you are in this situation, including Community Centres.

The *Getting out of Debt Handbook* will be available free from NSW Young Lawyers.

Tel: (02) 9926 0270

Internet: www.younglawyers.com.au

CONSUMER PROTECTION

When buying products you should find out:

- what are the common mistakes when buying a product or service?
- what are the benefits and disadvantages of the product or service?
- what can you do if you have any worries about the product or service?

These are some of your rights as a consumer.

Buying in a shop

What to look for before you buy a product?

When you buy a product its quality and quantity must match certain guidelines that the law outlines. A product must:

1. not be broken (unless you knew this before you bought the product);
2. do what the shop says it will do;
3. match the product you were shown; and
4. not be different to how it was described

If you buy something, you should:

- compare prices in other shops before buying a product;
- always ask a salesperson to explain to you anything you do not understand about the product, including warranties, return policy etc.
- find out about shop policies on sale goods, and second hand goods; and
- always keep your receipt, quotes, warranties and contracts.

Consumer Protection

A seller is not allowed to be dishonest or deceive you when you are buying a product or service.

This means that sellers are not allowed to:

- accept payment for goods or services they will not provide;
- tell lies about the quality, newness, or origin of a product or service;
- use violence or harassment to make you to buy a product or service; or
- sell goods to you that are banned for safety reasons.

What should you pay for a product?

If an product has a price tag, you are only required to pay that price. If the salesperson informs you that the price is actually higher, it may be against the law to charge you the higher price. If there are two different prices on one item, you have a right to pay the lower price. You should always check your receipt.

What if the product is a 'sale' item?

It is against the law for a shop to advertise products as being on sale when they are actually being sold at the normal retail price. When a product is advertised as a sale item, the shop must have that product available at the sale price for a reasonable length of time. It may be against the law for a shop to advertise a sale price on a product that they cannot provide, and subsequently sell you a more expensive item.

When you buy a product on sale, the rules are different. Some sale goods are not refundable, so make sure you know about the shop policy on sale items before you buy goods from there.

What are Lay-bys?

Lay-bys are purchases where you pay for the product over a period of time set by the shop. You receive the product when you have finished paying for it. Normally there is no holding cost. This helps you pay for a more expensive item slowly.

You should always receive a written statement with the obligations of the lay-by.

If you lay-by, you should:

1. make sure you receive and keep a written statement about the terms of the lay-by;
2. make sure you understand the terms of the lay-by, especially the cancellation fee and length of the lay-by period;
3. try to make regular payments. Usually, a shop will have a right to cancel your lay-by and keep some or all of the money you have paid if you can not make regular payments or pay for the product within the lay-by period.

What can you do if you have concerns about the product?

If a salesperson sells you a product that does not meet their obligations, you usually have a right to get your money back when you return the item. This is called a refund. It is against the law to display a "no refunds" sign. Remember that you should always keep your receipt to get a refund.

Sometimes the salesperson may choose to have a policy of exchange or in-shop credit (that is, they will not give you your money back but will give you another product of equal value to what you paid). Some shops have a "no questions asked" refund policy, and will refund your money as long as you have a receipt or some other proof of purchase. It is important to make sure you understand what the refund policy is of the shop before you make a purchase.

The seller does not have to refund your money just because you decide later on that you do not like or no longer want the product. Some shops allow you to swap the product for something else but they do not have to. You do not have a right to a refund for damage to the product caused by you. To get a refund there needs to be something wrong with the product or the way it was described.

Warranties

Some products are sold with a warranty that applies to that product. A warranty usually means that the retailer or manufacturer will replace or repair any defects in the product for a period after it is bought.

When you buy a product you should check if there is a warranty and if any conditions apply. Warranties for products usually depend on you showing your receipt, so keep all receipts or proof of purchase associated with your product. Some warranties may require you to send a card that they provide to the manufacturer to start the warranty. Warranties are usually written in legal language and can be quite long. You can ask the salesperson to

explain the warranty and conditions before you buy the product if you do not understand.

All new products should have a warranty. If you buy products second hand or at an auction, different warranties will apply. It is important that you check second hand products or products bought at auctions very carefully before you buy them.

Buying services

You also have rights if services you buy do not meet basic levels of quality and performance. Services you buy must:

1. be carried out with skill and care;
2. achieve the purpose they are suppose to; and
3. meet any specifications, descriptions or quotations provided by the service provider.

If the service is not what you were promised, you have a right to ask for additional services to fix the situation. You can ask that the services are performed again without charging you more money.

You can get a written quote for the total cost of the services and a detailed description of the services before you agree to the services to be performed. This will make it easier for you if you need to complain about the services provided to you. Sometimes, service providers will only give a quote of the costs for a fee. When you ask for a quotation, remember to ask if it is provided free of charge or whether there is a fee. You should not have to pay for any services you did not ask for or did not agree to. Remember, always get a receipt for any amount of money paid for the service provided.

Consumer Protection for specific issues

When you buy some products or services, special laws apply to avoid problems. You can find about your consumer rights for common products or services from the services listed below. Fact sheets are available on your consumer rights about:

- buying a car or motorbike (new or second hand);
- getting services from repairers and handymen;

getting services from builders;
buying and selling at auctions;
door-to-door salespersons;
getting credit or finance; and
signing a contract. (See also Chapter 15; Contracts)

Problem Solving and Further Information

If you have a problem with your product or a service you have bought, it is your responsibility to act quickly. You should speak to a senior person in the shop or the service provider where you purchased the product or service. It is better if you can put your complaint or problem about the product or service in writing to the shop or service provider as well. You can ask someone else to help you write this letter.

If your problem cannot be settled by the shop or service provider, you can find further help from an industry body or professional association which may help you solve your problem.

If problem is still not resolved, you may find help from NSW and Federal government agencies including:

NSW Office of Fair Trading

Tel: 13 32 20

Internet: www.fairtrading.nsw.gov.au

Law Access NSW

Tel: 1300 888 LAW (1300 888 529)

Internet: www.lawaccess.nsw.gov.au

Consumer, Trading & Tenancy Tribunal (CTTT)

You can contact the CTTT if the matter involves home buildings, residential parks, motor vehicles, retirement villages, tenancy, commercial or strata and community schemes.

Tel: 1300 135 399
Internet: www.cttt.nsw.gov.au

Australian Competition and Consumer Commission (ACCC)

Tel: 1300 302 502
Internet: www.accc.gov.au

Consume Online

This is an Internet site that provided lots of general information about consumer rights in Australia.

Internet: www.consumersonline.gov.au

A community legal centre

(see Chapter 1, How to find a lawyer).

CONTRACT

What is a contract?

“Contract” is a word that describes agreements between two or more people which the law in Australia will enforce.

Contracts can be made by individual people, groups of people including partnerships, companies and the Government. Normally, the law in Australia will recognise agreements as contracts only if the person who wants to enforce the agreement has to give or do something which has value under the contract.

If a person fails to do what they have promised to do in a contract, and the other person to the contract is disadvantaged, then the law may require that person to compensate the disadvantaged person. This can be by the payment of money or in rare cases by forcing the other person to do what they promised to do in the contract.

The most common type of contract is where one person promises to provide goods and/or services to a second person and in return, the second person agrees to pay money to the first person.

Example

If you promise to pay someone money for a car and the person gives you the car, then you must pay them the money you agreed to pay.

Example

If you promise to give tax advice to someone for money, and they pay you, you must give the tax advice.

How can a contract be made?

Contracts can be made in different ways:

1. A contract can be a document signed by everyone involved that records what each person has promised to do. It is also possible for only part of a contract to be in writing and for the remainder of it to be made orally.

Example

A contract for the sale of a horse is signed by the person buying the horse and the person selling the horse.

2. A contract can be made orally when people tell each other what they promise to do.

Example

A fruit seller might tell you they will sell you a kilogram of oranges for \$3.00. If you say you agree to buy a kilogram of oranges for \$3.00, you will have made a contract with the fruit seller to buy a kilogram of oranges for \$3.00.

There is no general requirement for a contract to be in writing - only in exceptional cases will the law require this.

3. A contract can be made by conduct. Although it is rare it is possible to make a contract by something you do. That is, if the behaviour of both parties shows they have an agreement, sometimes the law will recognise this as making a contract. More often, behaviour is only part of the way in which a contract is made in combination with one of the other two ways.

How do I know if I have made a contract?

It is important to know when you have made a contract because if you have you have rights and obligations under the contract. You make a contract when you and another person (or persons) have made an agreement to give or do something which has value. There is no contract until you have agreement. There needs to be agreement on the important matters in the contract. For example, if you have not agreed on the price of the goods and/or services, there is no contract.

Some special features a contract may have

In some cases, the law will only recognise a contract if it is in writing. Examples of these include contracts for the sale of land and contracts for the building of houses. If you are considering entering into a contract for either of these reasons, you should get advice from a lawyer first (see *Chapter 1: How to find a Lawyer*).

It is important when you are in the process of making a contract that you are honest. If you tell the other person something you know is wrong or you intentionally encourage them to believe something which you know is wrong, you may have trouble enforcing the contract. Also the other party may be able to take legal action against you.

CIVIL LIABILITY - PUBLIC LIABILITY, COMPENSATION TO RELATIVES, MEDICAL NEGLIGENCE

Personal Injury - Public Liability Claims

If you suffer injury due to the negligence of another person or property owner, and it can be proven that that person or property owner owed you a duty of care, and that they were negligent, you may be able to make a personal injury claim.

If you have suffered personal injury outside the course of your employment, you may be able to make a public liability claim which will be subject to the *Civil Liability Act 2002* (NSW). This Act applies to all public liability claims lodged after 20 March 2002.

As part of a public liability claim you may be able to recover damages (financial compensation) for pain and suffering, loss of past or future economic loss, and cost of care provided to you gratuitously as a result of your injuries. You may also be able to claim interest, that is payable on damages, should damages be awarded to you.

Compensation to Relatives

If your relative has been killed due to the negligence of another person or property owner, and it can be proven that that person or property owner owed your relative a duty of care, and that they were negligent, you may be able to make a compensation to relatives claim.

Only close relatives (wife, husband, de facto partner, brother, sister, half-brother, half-sister, parent or child) who were financially dependant on the deceased relative may make a claim.

Only one claim may be made on behalf of all close financially dependant relatives. If there is more than one dependant spouse, each will be an independent party to the claim.

Damages that may be recovered pursuant to a compensation to relatives claim are:-

Loss of financial support that the deceased relative would have provided to close dependant relatives if they had not died.

Loss of services, such as services provided by a parent to a child.

Loss of financial income the deceased person suffered prior to their death.

Funeral expenses paid by close relatives.

Hospital and other medical expenses associated with the injury and death.

If the deceased person is found to have contributed (has been at fault, or partly at fault), in causing the accident and related injury/death, the Court will consider this and damages to be awarded may be reduced.

Medical Negligence

A medical treatment provider (that is, a doctor, nurse, dentist, midwife, chiropractor, and so forth) is required to exercise reasonable skill and care in the provision of information, provision of advice, diagnosis and treatment of patients.

If you have suffered physical, psychological or financial harm due to a medical treatment provider having failed to exercise reasonable skill and care, you may be entitled to be compensated by damages (financial payment) for medical and treatment expenses, loss of income, pain and suffering and domestic assistance needed by you.

How much time do you have to make a claim?

Public liability, compensation to relatives and medical negligence claims must be filed with a NSW court within 3 years after the date of the accident that caused injury or death.

Children may make a claim for personal injury suffered by them until they reach the age of eighteen.

To determine if you are able to make any of the above claims, and what damages you are able to claim, it is important that you obtain legal advice from a solicitor sooner rather than later.

TORTS

A tort is a wrong done by one person to another person, or to another person's belongings or land. Under Australian law, sometimes people may have to pay money to other people as compensation for a 'tort'. A tort is a civil claim, by one person against another person.

Sometimes, torts are also crimes. If a tort is also a crime, it may be dealt with in the criminal courts, as well as the civil courts. In the criminal courts, the person who committed the crime may be punished. In the civil courts, a person may "sue" a person who committed a tort and caused them harm by claiming money as compensation.

A company may be a 'person' for the purposes of tort law.

A person can commit a tort without knowing they are harming another person.

Money to be paid to a person as compensation for a tort is different to money owed under a contract which has been breached by that person. (See Chapter 15: Contracts).

This summary does not include all the law about torts. If you think that someone has committed a tort against you, or someone is claiming that you have committed a tort, you should not rely on this handbook for advice about your rights and responsibilities. You should see a lawyer who can advise you about any compensation you may be able to claim for the tort committed against you, or paying damages to another person. (See Chapter 1: How to find a Lawyer).

Negligence

Because some relationships between people involve trust and responsibility, the law creates an obligation on one person to use reasonable care to avoid harm to the other person. This obligation is known as "a duty of care".

If a person has breached a duty of care they owed to someone else, the court may decide they have been "negligent". The person harmed may have a claim against the person who was negligent.

Examples relationships of duty of care include:

employers owe a duty of care to their employees;
doctors owe a duty of care to their patients;
lawyers and accountants owe a duty of care to their clients;
users of the road owe a duty of care to each other; and
occupiers of buildings owe a duty of care to people who visit those buildings.

A person may breach their duty of care to another person if:

1. they do not use reasonable care in the way they deal with that person; and
2. that other person suffers harm as a result of the breach of the duty of care.

For example, if you see a doctor and the doctor does not find out what is wrong with you because they did not use reasonable care and you suffer harm, the doctor breached the duty of care they owed to you. (See Chapter 16: Public Liability)

A person claiming for damages in negligence must prove three things:

1. that the person they are claiming against owed them a duty of care at the time they suffered loss or damage;
2. that the person they are claiming against breached their duty of care; and
3. that the loss or damage was caused by the other person's breach of a duty of care.

In deciding whether someone has breached their duty of care, the court looks at what a reasonable person would do to limit the risk of harm to a

person. This is how the courts try to include community standards in the law of negligence.

A person making a claim in negligence must have taken reasonable care for their own safety. If they did not take reasonable care for their own safety, the court may find they were partly responsible for the harm done to them. If they were partly responsible and another person has to pay then damages for negligence, the amount of money will be reduced by the amount the court thinks they are responsible.

For example, if the court thinks the person was responsible for half of their own injury, the court will order that half the amount is paid to them.

Other aspects of the law of negligence are discussed in Chapter 16: Public Liability.

Damages

If a court decides a person is negligent, that person may have to pay compensation to the person they treated negligently. This sum of money paid in compensation is known as "damages".

Damages try to compensate a person for the harm caused by negligence. The money awarded by the court tries to put the person in the position they were in before the harm.

For example if a person suffers a physical injury because of negligence, the injured person might receive money for:

medical expenses;

lost wages up to the time of the court hearing; and/or

any future economic loss (for example, if they can not work in the future).

For some types of negligence you can also claim money for 'pain and suffering'. In Australia, the government has passed laws that limit 'pain and suffering' for injuries caused by car accidents or at work.

Damages for negligence may be given when there is damage to a person or a person's property. If the claim is for damage to a person's property, then the amount will be to repair or replace the property.

You should get advice from a lawyer as soon as possible if:

- you think you have been the victim of negligence; or
- someone is suing you for negligence.

You are usually allowed 3 years to make a claim for compensation. If there is a very good reason for delay you may be able to make a claim after 3 years. A lawyer will be able to help you work out the timing. (See Chapter 1: How to find a Lawyer)

If someone sues you for negligence you must respond to the court quickly.

Personal Property Damage

'Personal property' are things that you own that are not buildings or land, for example property like cars or computers. Buildings and land are called 'real property'.

The law protects people's rights to their personal property. The law about personal property is quite complicated. It is based on the idea that it is wrong to steal, damage or sell someone else's property.

For example, if you sell another person's car without their permission then (apart from this possibly being a crime) a court might make you pay the person who owns the car money or "damages" equal to the value of the car.

If someone has damaged or taken your property, you should see a lawyer for advice.

Damage to land

It is also a tort to use someone else's land as if it is your own. For example, it may be tort if branches from a neighbour's tree hang over the fence onto your land.

Damages to land are calculated in the same way as damages for negligence. If your land is damaged by another person, you may be entitled to compensation.

If your land is not damaged by the person who used it, they may have to pay you money for using it, like rent. The amount of money claimed will probably be very small. Claims like this are very rare.

GLOSSARY

- Affirmation** In court, an affirmation is a binding promise by a witness to tell the truth. It is like an oath for people who do not believe in God (see also Oath).
- Arrest** When the police arrest a person, they can take them away from where they are without permission. They normally take the person to a police station.
- Bail** To be granted bail means to be released from prison or detention while waiting for the outcome of a criminal charge or trial. There are normally conditions attached to bail.
- Centrelink** The body which manages State social security payments and benefits.
- Charge** In a criminal case, 'charge' is used to describe the crime a person is accused of committing
- Charged** A person is charged when they are arrested and formally accused by police of committing a crime.
- Civil Law** Is a term used to describe areas of the law that are not criminal. For example, Tort Law and Family Law are areas of civil law.
- Common Law** Law developed through decisions made by judges in court. It is different to legislation made by Parliament.
- Consolidate** To group or bring together.
- Contract** A legally binding agreement between two or more people. A contract can be spoken, written down or made by actions that show you have agreed with other people (or sometimes a combination of these).
- Conviction** A decision by a Court that the person is guilty of a crime. This can only happen after a criminal trial or making a plea of guilty.

Creditor	A person who is owed money.
Cross-examine	To ask a witness for the other side questions after they have given their evidence the first time. This tests the truth or reliability of their evidence. Cross-examination happens in both civil and criminal trials.
Custodial	Used to describe a sentence for a crime. It means a time spent in prison.
Damages	In a civil court, this is an amount of money to cover loss or damage to a person or their property when someone does something wrong or negligent (see also Negligence).
Equity	Fairness or natural justice. Equity is the flexible application of the law to get a fair and just result.
Jurisdiction	<ol style="list-style-type: none"> 1. The area or issue of law in which a Court or Tribunal has power to make decisions. 2. The sentences or orders a Court or Tribunal has power to make (for example, the Administrative Decisions Tribunal has jurisdiction to order up \$40,000 in a discrimination case). 3. The limits of geographical area in which a Court's or Tribunal's power can be used (for example, the Supreme Court has jurisdiction in New South Wales).
Medicare	The body which manages State-paid or subsidised health care.
Negligence	A failure to do something (or take steps to avoid something happening) when a person has a duty of care to do so. Negligence can cause loss or damage to a person or their property.
Oath	In courts, a binding promise by a witness to tell the truth for people who believe in a God. An oath is sworn on a religious book, such as a bible or a Koran (see also affirmation).

Onshore Application

In migration law - an application for a visa made while in Australian territory.

Person	A reference to a person in this glossary may include reference to a company or other organisation.
Plea	In a criminal case, a plea is the statement by the accused to the Court in answer to the charge against them. An accused can plead 'guilty' or 'not guilty.'
Sentence	Court ordered punishment for a crime. For example, criminal courts can order a custodial sentence.
Social Security	Government payments for financial support and some welfare services. It is managed by the State authority, Centrelink.
Statutory	Relating to a statute or legislation. These are laws made by Parliament.
Summary Offence	Most motor vehicle/traffic offences and minor crimes are summary offences.
Tort	A wrong or negligence that creates a victim's right to sue for damages and other remedies. Some examples of torts are: trespass, negligence, theft and assault.
Warrant	An authority by a judge or magistrate for police to do something, such as search a place or arrest a person.