

Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

Jane Sanders

Youth Justice – Your Guide to Cops and Court in NSW is an ongoing project of Macquarie Legal Centre. This edition was produced in partnership with Shopfront Youth Legal Centre.

THE FEDERATION PRESS
2010

Published in Sydney by
The Federation Press
PO Box 45, Annandale NSW, 2038.
71 John St, Leichhardt, NSW, 2040.
Ph (02) 9552 2200. Fax (02) 9552 1681.
E-mail: info@federationpress.com.au
Website: <http://www.federationpress.com.au>

National Library of Australia
Cataloguing-in-Publication entry

Youth justice : your guide to cops and court in New South Wales / Macquarie Legal Centre.

4th ed
Includes index.
ISBN 978 186287 812 9 (pbk)

Juvenile justice, Administration of - New South Wales.
Juvenile delinquency - New South Wales.
Child welfare - New South Wales.
Youth - Legal status, laws, etc - New South Wales.
Children - Legal status, laws, etc - New South Wales.
Teenagers - Counselling of.

364.3609944

© Macquarie Legal Centre 2010.
This publication is copyright. Other than for the purposes of and subject to the conditions prescribed under the Copyright Act, no part of it may in any form or by any means (electronic, mechanical, microcopying, photocopying, recording or otherwise) be reproduced, stored in a retrieval system or transmitted without prior written permission. Enquiries should be addressed to the publisher.

Typeset by The Federation Press, Leichhardt, NSW.
Printed by Ligare Pty Ltd, Riverwood, NSW.

Getting legal advice and assistance

A guide to legal services and dealing with lawyers

Why should I get legal advice?

Youth Justice: your guide to cops and court in New South Wales explains the law and legal processes which affect young people who are caught up in the criminal justice system. We will explain your rights when dealing with the police or going to court on a criminal matter.

However, it is important to realise that the law is far broader than this, and you may have a legal problem which does not involve either the police or the criminal law.

Even if your legal problem involves one of the topics covered by this book, it is still important to get legal advice. Everyone's situation is different, and a lawyer can advise you as to what's best for you.

Do I have a legal problem? What should I do?

It is not always obvious if your problem is a legal one. Perhaps someone is treating you unfairly at work, you are being harassed at school or your Centrelink benefits have been cut off because you didn't go to a job interview. These are all examples of everyday problems, which do not involve the police or the courts, but may involve the law.

It is important that you recognise when you have a legal problem, and get legal advice. If you are not sure whether your problem is a legal one, contact a lawyer and find out. A lawyer can give you expert advice on what you should do and advocate on your behalf to achieve the best possible legal outcome.

The law can be very complex, and does not always follow common sense! Even where your situation seems straightforward, there may be legal rights and technicalities that affect your position. Regardless of whether you believe you are 'innocent' or 'guilty', 'right' or 'wrong', getting legal advice will ensure that you get a fair go within the legal system.

Different sorts of legal problems and areas of law

It is helpful to be aware of the way lawyers classify legal problems, especially when you are contacting lawyers and legal services to get help.

Lawyers often describe legal problems using the broad categories of criminal law, civil law, administrative law and family law.

Criminal law

The *criminal law* deals with *crimes*, also called *offences*. *Crimes* are things which are prohibited by law and will usually get you a penalty or punishment if you are guilty. The criminal law is usually enforced by the police and criminal cases are presented to the court by a *prosecutor*.

It is extremely important that you seek legal advice if you have a criminal law matter. You need to be aware of your rights, and ensure that you are treated fairly by the system.

The following are examples of situations where you should immediately seek advice:

- you have been arrested and taken into police custody
- you think there is a warrant for your arrest
- you are about to be interviewed by the police
- you are about to be cautioned or sent to a youth justice conference
- you have been accused of an offence and have an upcoming court appearance
- you have missed your court appearance
- you are on bail and having problems meeting your bail conditions
- you have received an on-the-spot fine (infringement notice).

Civil law

The *civil law* deals with disputes between individuals, private companies and occasionally government agencies. The disputes might be over rights and responsibilities which arise from an agreement or contract between the two parties, or from the law of negligence. Examples of civil disputes which might be experienced by young people include:

- debts (eg for mobile phones)
- disputes with landlords
- problems arising from motor vehicle accidents, where property has been damaged or someone has been injured
- problems at work, such as unfair dismissal, discrimination or harassment

- where you suffer some loss or an injury as a result of somebody else's negligence (carelessness).

Administrative law

Administrative law regulates government departments and government agencies, such as Centrelink and the Department of Immigration. Most legal problems which arise because of the actions or decisions of a government agency are described as administrative law. Examples common to young people include:

- problems with Centrelink
- immigration law
- tax/HECS debts.

Family law

Family law deals with issues arising from the breakdown of a marriage or de facto relationship. Family law is not just about the paperwork of divorce. There may be disputes about the children, assets or money.

If you have been in a relationship and had a child, there are a range of legal issues which may arise if you split up. For example:

- sorting out living and visiting arrangements for your children
- child support (the payment of money by one parent to the other towards the costs of raising the child).

What about if my parents are splitting up? As a young person you may become involved in legal issues relating to the separation of your parents. Your parents may not agree about where you should live. The court will always try to resolve the dispute with consideration of what is in your best interests. To help them do this, you may be asked to see a family court counsellor, who will then report back to the court. In some circumstances, the court also appoints a solicitor (called a separate representative) to represent you in your parents' dispute.

Care and protection law is a type of family law, dealing with children and young people who are in need of care. Care and protection matters involve the Department of Human Services – Community Services (DoCS) and are dealt with in the Children's Court.

What is the role of a lawyer?

A lawyer is a person who is skilled and qualified to:

- advise you on your legal rights and responsibilities
- advise you which course of action is in your best interests
- advocate, or act, on your behalf to resolve your legal problem
- represent you in court.

Your lawyer's job is to be on your side and defend you as well as they can. They must run the case the way you tell them to (as long as it is legal and ethical).

Lawyer? Solicitor? What's the difference?

A *lawyer* is a general description of someone who is qualified to practise in law. A lawyer may be admitted to practise as a solicitor or a barrister.

A *solicitor* is a lawyer who can provide a wide range of legal services. They can give legal advice, prepare legal documents, speak or act on your behalf to resolve your legal problem, prepare your case for court and represent you in court. Most of the lawyers you deal with will be solicitors.

The other type of lawyer is a *barrister*. Barristers specialise in representing clients in court, especially in more serious matters. Barristers usually run your court case on instructions from a solicitor, but some will act on a *direct access* basis without a solicitor.

Specialisation

Many lawyers focus on a particular area of law, such as criminal law or family law. While they are qualified to assist with any sort of legal problem, they have greater expertise and experience in a particular area. You can find this out by asking them what areas of law they practise in. It is always a good idea to ensure that you speak to a lawyer who is experienced in the relevant area.

Some lawyers go one step further and become *accredited specialists* in their area of practice. This means that they have done extra study and training in that area and have been formally *accredited* or registered with the Law Society as specialists.

When should I speak to a lawyer?

If you believe you have a legal problem, you should speak to a lawyer as soon as possible. This is important as there may be deadlines or time limits which apply. It also allows time for you or your lawyer to take all the steps necessary to prepare a good case and achieve the best outcome.

At the very least, you should speak to a solicitor *before* you:

- discuss your case with the other *party*, that is the person or organisation you are in a dispute with (in a criminal law matter, the other party is usually the police)
- sign any legal documents
- agree to anything which you don't fully understand
- go to court.

Confidentiality

Nearly everything you tell your lawyer is confidential. A lawyer has a special duty of confidentiality, sometimes referred to as *legal professional privilege*. Lawyers can get into very serious trouble if they break this rule. See *Confidentiality in lawyer interviews* on page 19.

Finding a lawyer: a guide to legal services in NSW

There are lots of places you can go to get legal advice and assistance. Your range of choices depends on where you live, what sort of legal problem you have and whether you can afford to pay. You can either pay a private lawyer to advise and represent you, or you can seek assistance from one of the free or government-funded legal services.

LAWACCESS –1300 888 529

A good place to start is LawAccess, a free telephone information and referral service, where you can get detailed information about Legal Aid and other free legal services. If you live in a remote area, you may be able to get telephone legal advice from a lawyer through LawAccess.

Legal Aid NSW

Legal Aid NSW is a government legal service which provides legal advice, assistance and representation to those who meet their eligibility criteria.

Face-to-face legal advice

Anyone can get free face-to-face legal advice from Legal Aid. There is no income test or other eligibility criteria.

Be aware that you may only be able to talk to a lawyer for a short period of time (usually around 15 minutes), unless you apply for a *grant* of legal aid.

Some offices have drop-in advice services, where an appointment is not required. These may cover family law, civil law, or legal issues specific to homeless people.

For further information or to make an appointment, call LawAccess or your local Legal Aid office (see *Contacts – Legal Aid NSW* on page 408).

General services

Legal assistance and representation – applying for a grant of legal aid

You can apply for a grant of legal aid which usually means you will be allocated a Legal Aid solicitor to advise, assist and represent you.

Sometimes, if the in-house Legal Aid solicitors are not able to act for you, you may be able to use a private solicitor who will be paid by Legal Aid.

Grants of legal aid are only available to those who satisfy the eligibility test.

ELIGIBILITY FOR A GRANT OF LEGAL AID

The eligibility criteria for a grant of legal aid change frequently. The best place to find details is on the Legal Aid website at www.legalaid.nsw.gov.au.

As a basic guide, you must satisfy:

- The **jurisdiction test** – legal aid is only available for certain types of cases.
 - The **means test** – this looks at your income and assets. Only people on very low incomes (eg Centrelink) will be eligible. This means test is not applied to young people appearing in the Children’s Court.
 - The **merit test** – this looks at the likelihood that the case will succeed. The merit test is not applied in criminal law matters, except appeals and Supreme Court bail applications.
 - The **availability of funds test** – this looks at whether Legal Aid has the funds available to provide assistance at the time you apply.
-

How to apply

You can apply for a grant of legal aid by filling in a Legal Aid application form, which you can get from any Legal Aid office or their website at www.legalaid.nsw.gov.au.

If you want a private lawyer to represent you on a grant of legal aid, you must consult with the solicitor first and check that they are willing to do legal aid work. If you find a solicitor who is willing, get them to help you fill out the application form. Instead of paying your private lawyer to act for you, though, Legal Aid may decide to allocate you one of their in-house solicitors.

Do I have to pay anything?

If you receive a grant of legal aid this does not necessarily mean you get a lawyer for free. Most people over 18 will still have to pay some money. How much you have to pay depends on how much money you have and what kind of case it is (eg you may pay between \$75 to \$150 for criminal matters where you are pleading not guilty).

Local Court duty lawyer service

If you have a criminal matter at the Local Court, Legal Aid duty solicitors are available at most Local Courts on any day where there are criminal matters listed.

Ask court staff to direct you to the Legal Aid duty solicitor's office.

Legal advice on the day

The duty solicitors can give you legal advice on the day in court. You do not need an appointment to see the duty solicitor, but you should get to court early as they are busy.

Legal representation on the day

At most Local Courts, you can lodge an application for a grant of legal aid with the duty solicitors on the day. If you pass the eligibility test, they can represent you. This applies, for example, if you are pleading guilty to a criminal charge. If you intend to plead *not guilty*, your case will be adjourned for a *hearing* and you should apply for a grant of legal aid before you go back to court.

Specialist services

Legal Aid Hotline for under 18s – 1800 101 810 – for criminal law matters

If you are under 18 you can get free telephone legal advice on criminal law from the Legal Aid Hotline for under 18s. You can call this number:

- Monday to Friday 9am to midnight
- 24 hours on weekends (9am Friday to midnight Sunday night)
- 24 hours during public holidays.
- If you have been arrested by the police, they should have details of this service, and assist you in making a call to the Hotline.

You have the legal right to insist on calling the hotline before you make any statements or admissions to police (see *Police questioning of under 18s* on page 154).

Children's Legal Service

If you are under 18 you are entitled to free legal advice, assistance and representation in relation to criminal matters in the Children's Court.

There are currently Children's Legal Service branches in Sydney, Campbelltown and Parramatta. Each office is responsible for particular Children's Courts. See *Contacts – Legal Aid – Children's Legal Service* on page 409 for a list of the different offices and which courts they cover. Or call the Legal Aid Hotline for under 18s for further information.

Is there an eligibility test?

The services provided by the Children's Legal Service are available to *all* young people with matters listed in the Children's Court. There is no means test or any other eligibility criteria – it does not matter how much you or your parents earn.

Solicitors for the Children's Court

All young people are entitled to free legal representation for criminal matters heard in the Children's Court.

You can contact your local Children's Legal Service or the Legal Aid Hotline before your matter goes to the court, or you can simply show up on the day and speak to one of the duty children's solicitors. The duty solicitors generally start seeing people at about 9am. The earlier you get to court, the earlier you will see them.

At most Children's Courts in metropolitan Sydney, the duty solicitors are Legal Aid staff solicitors, and the same solicitors will be available on a regular basis. Sometimes, especially in rural and regional areas, the duty solicitors are private lawyers paid by Legal Aid.

If your case is adjourned, if possible, you will be given the same solicitor when you return to court. However, in some courts, solicitors work on a roster and this may not be possible.

If your case is already underway and is going to *hearing* (see *Going to court* chapter), you will need to contact the Children's Legal Service and make sure you have representation *before* the hearing date.

Solicitors to visit Juvenile Justice Centres

Lawyers from the Children's Legal Service visit the Juvenile Justice Centres (detention centres) across NSW on a regular basis.

See *Contacts – Juvenile Justice Visiting Legal Service* on page 408 to see which Children's Legal Service office is responsible for each detention centre.

Mental Health Advocacy Service

The Mental Health Advocacy Service gives free legal advice and assistance to people with mental health conditions who are detained for treatment in hospitals or are placed under community treatment orders. For further information see *Contacts – Mental Health Advocacy Service* on page 409.

Prisoners' Legal Service

The Prisoners' Legal Service provides advice and assistance to adult prisoners in NSW on issues such as bail, appeals, parole hearings and other prison issues. For further information see *Contacts – Prisoners' Legal Service* on page 409.

Women's Domestic Violence Court Assistance Schemes

The Women's Domestic Violence Court Assistance Schemes are funded by Legal Aid. They offer assistance and court support and sometimes legal advice and representation, to women applying for apprehended violence orders at Local Courts across the State. See *Contacts – Women's Domestic Violence Court Assistance Schemes* on page 410 for a full list of services across the State.

Aboriginal Legal Service (NSW/ACT)

There are specialist legal services available for Australians who are Aboriginal or Torres Strait Islander people.

See *Contacts – Aboriginal Legal Service (NSW/ACT) Limited* on page 405 for details of a service in your area.

Court representation

At many Local and Children's Courts, the Aboriginal Legal Service provides solicitors who will represent clients on a duty basis, a bit like Legal Aid. At other courts, if you want the Aboriginal Legal Service to act for you, you might have to contact them in advance to arrange for a solicitor to be there.

Custody hotlines

The Aboriginal Legal Service in NSW has a *custody hotline* to give advice to people being held at a police station.

The number is not given out to the general public, but police have the number and must call it for you if you are an Aboriginal or Torres Strait Islander person in police custody.

YOUNG PEOPLE IN RURAL AND REMOTE AREAS

It can be more difficult to access legal services if you are living in a remote area. There are Legal Aid offices, Aboriginal Legal Service offices and Community Legal Centres in many regional centres (see *Contacts* on pages 405 and 406).

If you are living in an isolated area and unable to travel to a service, you may need to get telephone legal advice through the closest Community Legal Centre or LawAccess (see *Contacts* on pages 406 and 408). While LawAccess is not usually an advice service, they make special provision for people in remote areas and have staff solicitors who can give you telephone advice.

Community Legal Centres

Community Legal Centres (CLCs) are organisations which provide free legal advice and assistance, as well as representation in some circumstances.

There are *generalist* legal centres across the State which give legal advice and assistance on a wide range of legal problems to residents of their local area.

There are also a limited number of *specialist* legal centres who target their services to particular disadvantaged groups within the community, or a particular area of law.

Most Community Legal Centres have eligibility criteria. For example, generalist centres only service residents of their particular geographical area. Most people who use Community Legal Centres are on low incomes, but only a few centres apply a formal means test.

For a full list of the generalist and specialist Community Legal Centres in NSW see *Contacts – Community Legal Centres* on page 406.

How are CLCs different from Legal Aid?

CLCs are independent *non-government* organisations, which means that they may be more flexible in what sort of legal issues they can assist with.

Legal Aid tends to focus its resources on providing legal representation in court matters, particularly criminal and family law. Community Legal Centres provide a range of services, including telephone legal advice, on a range of other legal issues.

There are also differences in the way legal services are offered. Most Community Legal Centres do not have income or means tests (although some do), and most do not apply strict merit and jurisdiction tests such as those of Legal Aid.

Community Legal Centres are also involved in providing legal education to the community and providing input to government on new laws or changes to the existing law.

Community Legal Centres with specialist youth services

All Community Legal Centres offer assistance to young people. However, some centres have specialist youth services.

You may be able to get help from a Community Legal Centre in situations where you were not eligible for assistance from the Legal Aid Children's Legal Service. For example, if you have a legal problem which falls outside the jurisdiction of the Children's Court, or if you are between 18 and 25 years of age. Some of the specialist youth legal services offered by legal centres are available for young people up to 25 years of age.

For further information about any of these services, see *Contacts – Community Legal Centres* on page 407.

Marrickville Legal Centre

Employs a children's solicitor who can advise and assist young people up to 18 years of age. They will assist young people over 18 in some circumstances.

Macarthur Legal Centre

Can assist young people up to 25 years with a range of legal problems, including victim's compensation, complaints about the police and security guards, discrimination, employment law and credit and debt.

Macquarie Legal Centre

Has the Youth Legal Education Project which produces educational material and runs legal training for youth workers.

National Children's and Youth Law Centre

Has an excellent website Lawstuff, with legal information for under 18s, and also provides email advice through the Lawmail service (see *Resources* on page 418).

Other specialist Community Legal Centres which may be useful for young people

For contact details of these and other specialist legal centres, see *Contacts – Community Legal Centres* on page 407.

Consumer Credit Legal Centre

Can assist young people with debts and commercial credit contracts, such as mobile phone plans and loans.

Disability Discrimination Legal Centre

Can assist young people with disabilities who believe they have been discriminated against.

Homeless Persons' Legal Service

Homeless Persons' Legal Service (HPLS) runs legal advice sessions at different locations throughout Sydney. They advise on a range of matters including fines and debts.

The HPLS also has a criminal lawyer who appears for homeless people in courts throughout Sydney.

The HPLS generally does not provide services for people under 18 but will work with young adults.

Immigration Advice and Rights Centre

This service can advise young people regarding visa applications and any other issues relating to immigration.

Intellectual Disability Rights Service

The Intellectual Disability Rights Service (IDRS) provides legal assistance, including some court representation, for people with intellectual disabilities.

Linked with IDRS is the Criminal Justice Support Network (CJSN) which provides support people at police stations and courts for people with intellectual disabilities.

Tenancy services

There are several of these throughout NSW. They can assist young people who are tenants in both private rental properties and public housing.

Welfare Rights Centre

The Welfare Rights Centre can assist young people on Youth Allowance or other benefits in relation to breaches, penalties, debts and any disputes with Centrelink. They can also assist young people who are having trouble getting the benefit they believe they are entitled to.

Other free legal services

The following services are not Community Legal Centres, but are similar in some ways. All are non-government or not-for-profit organisations providing free or low-cost legal services. For contact details see *Contacts* on pages 409-410.

Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people up to 25 years of age.

It offers legal advice and court representation on a wide range of legal matters, especially criminal law, victims compensation and fines.

The Shopfront also has a website with a range of up-to-date factsheets on different legal topics (see *Resources* on page 418).

Wesley Community Legal Service

The Wesley Community Legal Service provides free legal advice and representation for people who have legal problems related to gambling (or someone else's gambling – eg if your partner is gambling away your money). Their lawyers can help with criminal and civil matters.

Youth and Enterprise Legal Centre (YELC)

The Youth and Enterprise Legal Centre (YELC) is a not-for-profit legal centre that aims to help 15-25 year olds with legal problems.

They provide an information service and free or low-cost advice in relation to:

- debt and credit matters causing financial hardship
- cases in the Consumer, Trader and Tenancy Tribunal
- some employment law matters.

ASK! A legal service for youth

This is a free legal advice and referral service for young people aged 14-21, provided by the law firm Mallesons Stephen Jaques in conjunction with the Ted Noffs Foundation.

Private solicitors and barristers

You can contact a law firm or a private solicitor of your choice to give you legal advice or to represent you. The fees for private lawyers vary, and you should be provided with a *costs agreement* when you hire a private lawyer.

COSTS AGREEMENT

The costs agreement will set out:

- the lawyer's fee structure
- an estimate of the total cost.

It will also describe other expenses which you may be charged for, such as:

- administration fees (for typing, phone calls, photocopies etc)
 - disbursements (or money paid to other professionals who work on your case, such as doctors who prepare medical reports etc)
 - barristers' fees.
-

How do I find a solicitor?

To find a solicitor contact the Law Society of NSW. The Law Society has a complete directory of all practising solicitors in NSW and can give you details of solicitors in your local area. They can also help you find a lawyer who is an accredited specialist.

Alternatively, you can ring LawAccess or your local Community Legal Centre for information about local solicitors. See *Contacts* on pages 406 and 408.

Do I need to find a barrister?

If you think you would prefer a barrister to represent you in court, you should still see a solicitor first. Barristers usually act on *instructions* from a solicitor who assesses and prepares the case before it gets to court. Your solicitor can advise you on whether a barrister is necessary and help you find a suitable one.

Pro bono lawyers

If you are unable to pay for a private lawyer, you may be able to get *pro bono* or free assistance from a private lawyer. The term *pro bono* comes from the Latin phrase *pro bono publico*, which means ‘for the public good’.

Pro bono services are usually only available for those on low incomes who are *not* able to get a grant of Legal Aid. For further information call the Law Society or LawAccess.

What if English is not your first language?

It is really important that you understand what your lawyer is saying, and that they can understand you. If English is not your main language, you have two options: you can get an interpreter to help you communicate with your lawyer, or you can look for a lawyer who speaks your first language.

Interpreters

You can get a free telephone interpreter through the Translating and Interpreting Service (TIS) (see *Contacts* on page 417). Just call TIS, tell them what language you speak and who you want to call, and they will get an interpreter on the line. The phone call will be a three-way call, with you, the interpreter and the solicitor.

Lawyers who speak languages other than English

You may be able to find a lawyer who speaks your community language. If you are able to pay for a private solicitor, the Law Society (see *Contacts* on page 408) can help you find a solicitor in your area who speaks your language. If you are going through the Legal Aid Commission or a Community Legal Centre, your chances are more limited, but it is worth asking.

Representing yourself in court

Many people represent themselves in court because they can’t afford a lawyer, or because they want to speak for themselves. If you represent yourself, try to get advice from a lawyer before each appearance in court, especially before you *enter a plea* (say if you are guilty or not guilty – see *What to plead* on page 276). If you haven’t spoken to a lawyer when the magistrate asks you to enter a plea, ask for an adjournment (eg 3 weeks) so you can get legal advice.

You can sit in court before your case and listen to how other cases run. Of course, every case is different but sitting in will help you understand some basic procedures and become familiar with how people speak in court.

At some courts there are court support workers who can help explain the court process and make you feel more at ease (see *Contacts* section on page 406 for details of Court Assistance Schemes).

Lawyer interviews

Who should be in the lawyer interview?

It is your interview, and it is up to you who you have with you.

Your lawyer may encourage you to bring certain people to the interview (eg your parents if you are young). Or your family may insist on coming in. In the end *it's your choice* – but it might be hard to stick up for yourself! Tell your lawyer who you want in and who you want out.

Support people

You have the right to have a person of your choice (eg family, friend, youth worker) to support you in the interview.

If your lawyer doesn't want them there, explain that you need them there for support.

In some cases, though, your lawyer might have good reasons for not wanting anyone else in the interview – for example, if the support person is a potential witness or if the lawyer is concerned about *waiving privilege* (see *Confidentiality in lawyer interviews* below).

SOCIAL WORKERS, YOUTH WORKERS

If you want them to, a social welfare worker or a youth worker can attend your interview with your lawyer. They can remind you of any relevant information you haven't mentioned. With your permission, they can give the lawyer information that they think is important.

The worker should introduce themselves to the lawyer, explain their involvement with you and explain that you want them to sit in on the interview (see *Assisting young people in interviews with lawyers* on page 39).

Who should not be in the lawyer interview?

Certain people cannot be in the interview with you. These include:

- the victim of the crime that you are accused of committing (eg if the victim is a friend of yours, or your parents or carers)
- any witness (anyone who might have to give evidence in court)
- anyone who might get in the way of open communication.

The lawyer might not want someone in the interview if they slow things down or answer questions for you. The lawyer needs you to answer for yourself.

Confidentiality in lawyer interviews

Nearly everything you tell your lawyer is confidential. This means they can't tell the magistrate, the police, your family or anyone else anything you tell them without your permission. This is called *legal professional privilege*. Lawyers who break this confidentiality can get into a lot of trouble.

Lawyers don't have to keep your information confidential if this would help you to commit (or continue committing) a crime.

Lawyers don't have to keep your information confidential if you have *waived* privilege, meaning you have already disclosed the information to other people so it is no longer confidential.

If it is necessary to have someone else in the interview to enable communication between the client and the lawyer (eg an interpreter), legal professional privilege is maintained. The other person is not allowed to reveal what was said in the interview, unless you agree.

If the presence of a third person is not necessary for communication, it is arguable that privilege is waived by the presence of a third person in the interview. However, in many cases it could be said that a youth worker's presence is necessary to facilitate communication between the young person and their lawyer and, therefore, the conversation is privileged.

If you, as a young person or a support worker, are unsure about privilege or confidentiality, talk to the lawyer before starting the interview.

What sort of things will we talk about in the interview?

Your lawyer will generally ask you for your version of events about your legal matter. They might also ask you about yourself, your family and your life. They aren't being nosy, but rather just trying to get information that might help you in court.

Sometimes when your lawyer questions you about a criminal matter, they can sound like the police, trying to trick you or show that you are guilty. Lawyers ask questions like this because the magistrate or prosecutor might ask you similar questions in court, and your lawyer wants to be well prepared in advance.

For more information see *Things to tell your lawyer* below.

Who makes the decisions about your case – you or your lawyer?

Lawyers are there to advise you about how to run your case. That's their job. But you make the final decisions – this is called *giving the lawyer instructions* – for example, to plead guilty or not guilty.

These things are not your family's decision, or your welfare worker's decision. They are your decision, and your lawyer must do what you instruct them to. However, there are two situations where your lawyer is not legally able to follow your instructions.

Situations where your lawyer cannot follow your instructions

I'm not guilty but I want to plead guilty

In a criminal matter, you usually have to plead *guilty* or *not guilty*. It's your decision how you plead.

If you tell your lawyer that you are not guilty but you will plead guilty (eg because you want to get it over and done with), the lawyer may not be able to represent you. This is because lawyers must not intentionally mislead the court.

Some lawyers may be willing to represent you on a plea of guilty, even if you tell them you are not guilty, as long as you acknowledge that you understand what you are doing and that you will be admitting to the court that you are guilty.

I'm guilty but I want to plead not guilty

If you have told your lawyer you are guilty, but want to plead not guilty, he or she might not be able to represent you. However, saying 'I did it' is not always the same as saying you are guilty. You might have a legal defence for the charge.

If you tell your lawyer that you are guilty but you want to plead not guilty, they can still represent you but it will be harder for them to defend you in the hearing. The lawyer can try to show the court any weaknesses in the police prosecution evidence, but they cannot tell the court things that they know are false.

Your lawyer cannot let you give evidence if they know you are lying. For example, if you tell your lawyer that you committed the crime, you cannot tell the court that you were somewhere else at the time. Your lawyer won't let you say this, because then they would be misleading the court.

Things to tell your lawyer

Your lawyer is there to help you. In order to do this, your lawyer needs to know some things about you and why you have a legal problem. Below is a list of some of the things you should tell your lawyer.

- Your name, age, address and the best way for your lawyer to contact you.
- Something about your family and home situation.
- Do you have any medical conditions, including any psychiatric or psychological problems? Do you take any medication?
- Were you ever in a special class or a school for children with learning disabilities? Did you ever receive a Disability Support Pension? Were you ever diagnosed with dyslexia or a learning disability? Do you have a developmental or intellectual disability?
- Do you have a youth worker, case worker or other support person and would you be happy for them to talk to your lawyer?

If you have been charged with something, you should also tell your lawyer

- What you are being charged with. If you have any court or police papers about the charges, it is important to give these to your lawyer.
- Is it your first time at court for this offence, or, has it already been adjourned?
- Have the police interviewed you? If so, tell your lawyer who was present at the interview apart from the police. If you have a copy of the interview CD give this to your lawyer.
- How long did the police keep you at the police station? Did they treat you fairly? Did they let you get legal advice before interviewing you? Did you understand that you didn't have to answer any questions?
- Have you read your police fact sheet? (See *The police fact sheet* on page 277 or *Go through the facts with your lawyer* on page 278.) The fact sheet is a short summary of what the police say you did. If you don't have a copy of this, the lawyer can get you one from the police prosecutor before you go into court.
- Do you agree with the police facts? If not, why not?
- Do you intend to plead guilty or not guilty to the charges? Often you will not know how you want to plead, or you may have decided how to plead without understanding the law. Discuss this with your lawyer (see *What to plead?* on page 276).

If you want to plead guilty, or are found guilty

The following information may affect the penalty (sentence) you get. This information is important, because your lawyer will know what to tell the court to help you get the best possible outcome.

Things to tell your lawyer about the offence

- How and why the offence happened.
- Were other people involved? Did they influence you? Did someone else push you into doing it?
- Were you affected by drugs or alcohol at the time?
- Did you realise it was the wrong thing to do?
- Did you cooperate with the police? Did you willingly answer questions? Did you voluntarily go with the police to the station? Did you admit the offence?
- Have you done anything to make up for what happened? For example, have you apologised to the victim? Have you agreed with the victim to do something to make up for what has happened?
- Would you agree to meet with the victim to talk about the offence? (If you are under 18, sometimes the court can send you to a *conference* to do this. See *Youth justice conferences* on page 231).
- Have you already been punished in any way for what has happened? For example, were you grounded by your parents, or suspended from school?
- How do you feel about what has happened?

Things to tell your lawyer about yourself

- Who do you live with? Are you or have you been homeless?
- What support do you have in your life (eg family, welfare workers)? Is it all right for your lawyer to discuss your case with them?
- Do you have any family problems (including abuse)? Or have you had problems in the past?
- Are you a student? If yes, which school or college? Which course and year are you in? What are your marks like?
- Are you employed? If so, who by, in what position, for how long, and what is your employment history? How much do you get paid?
- If unemployed, what are you doing to get a job? Is there any reason why you are not looking for work?

- Any activities you are involved in (eg sport, youth or community groups, church, voluntary work).
- Do you have any alcohol or other drug problems? If so what are you using and how long have you been using it? Have you had any treatment or counselling? Do you want to do anything about it? Does anyone help you or are you involved in any sort of program?
- Are you having any counselling, or have you had counselling in the past? What for, who by and for how long?
- Have you been to court before, and what happened? Have you ever been cautioned by the police or been to a youth justice conference?
- Is there anyone who could write you a court report or reference (eg youth worker, teacher, sports coach or counsellor)?

If there is anything else you think is important or that you want the magistrate to know about you, tell your lawyer.

If you are not happy with your lawyer

For a range of reasons, you may not be happy with your lawyer. Lawyers are very busy and sometimes hard to contact. At court they may be rushed, and may not have time to explain clearly what is happening with your case. And when you are able to track them down, they seem to speak another language which nobody can understand! They use lots of jargon and technical legal words.

At the other end of the scale, you may have more serious problems with your lawyer. You may have been overcharged or feel that your solicitor has failed to represent you properly.

You have a range of options in how you deal with these situations.

Talk to your lawyer about your concerns

It is usually a good idea to talk to your lawyer about your concerns before you take further action. If you make them aware of the problem, they may be able to fix it. This is especially true if the problem is about lack of communication or your lawyer's communication style. It is important to remember that many lawyers work under extreme pressure and are representing a large number of people at one time. They may only have a limited amount of time they can spend with each client. This is why it's a good idea to have someone to support you at court, to help you understand what is going on (see *Role of support people in court* on page 44).

While you have a right to know what's happening with your case, you need to make sure that your expectations of your lawyer are reasonable. Sometimes the problem

is not your lawyer's fault. Many people complain about the delays involved in their case, but legal processes can be painfully slow and the delays may have nothing to do with your lawyer. It may turn out that your complaint is more about the legal system than your lawyer!

Change your lawyer

If you have a private lawyer

If you are paying a private lawyer to represent you, you can change your lawyer any time – you just need to find a new one.

A private lawyer may refuse to hand over your file to your new lawyer until you have paid all outstanding fees to them.

If you have a matter in the Children's Court, Legal Aid's Children's Legal Service (see page 409) is free and will always take over the case on request. You may also be able to get Legal Aid if you are an adult appearing in the Local or District Court.

If you have a Legal Aid lawyer

It is not always possible to change Legal Aid lawyers. It depends on the circumstances and whether there is another lawyer available.

Changing duty solicitors on the day

If there is more than one Legal Aid duty solicitor at court that day, you can ask to swap to another lawyer. You don't have to give the first lawyer a reason. You need to check that the second lawyer has no problems representing you. It helps to tell the second lawyer the reason why you want to swap.

Changing lawyers for a future hearing or sentencing

If your case is adjourned to a hearing and you were unhappy with your original Legal Aid lawyer, you can ring Legal Aid and ask them to give you a different lawyer. You should do this well before the date of the hearing.

For more serious cases, Legal Aid may agree to pay a private lawyer of your choice to come to court, especially on your hearing or sentencing date.

Complain about your lawyer

If you believe that your lawyer has overcharged you or has behaved in a way that seems really dishonest, unethical or unprofessional you can make a complaint inquiry to the Office of the Legal Services Commissioner (OLSC). See *Contacts* on page 411.

Making a complaint to the OLSC can have very serious outcomes for your lawyer; he or she can be fined, publicly reprimanded (told off) or even lose his or her job and

never be able to work as a lawyer again. Even though the OLSC has a lot of power to punish dodgy lawyers, the OLSC *cannot*:

- investigate or change court findings
- handle complaints against judges
- give you legal advice or representation.