

# 1 YOU AND YOUR LAWYER

## 1.1 Introduction

This book outlines some of the issues you may face and decisions you may need to make as you become older. To make these decisions, you may need to seek advice or assistance from a lawyer. You may also need advice or assistance from a lawyer in other day to day situations, such as conflict with neighbours and property transactions.



## 1.2 How do I find a lawyer?

There are a number of ways to find a lawyer in New South Wales:

- (a) Word of mouth: ask your friends, family and colleagues if they can recommend a good lawyer to you; and
- (b) The Law Society of New South Wales: keeps a register of hundreds of solicitors in NSW and the areas of law in which they specialise. You can telephone the Law Society Community Assistance Help Line on (02) 9926 0333 to provide you with details of a lawyer who can assist you with your problem. Alternatively, if you have access to the internet you can go to the Law Society website located at: [www.lawsociety.com.au](http://www.lawsociety.com.au).

If you cannot afford to pay for a lawyer, you may be eligible for free assistance by contacting one of the following organisations:

- (c) LawAccess NSW Help Line on 1300 888 529 or visit LawAccess NSW's website located at: [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au);
- (d) Legal Aid Commission of New South Wales on (02) 9219 5000 or 1300 888 529 or visit the Commission's website [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au). The Commission provides subsidised legal services in some circumstances. The Commission uses guidelines to assess whether a person is entitled to free or subsidised legal assistance. Those guidelines take into account your income and the nature of your case;
- (e) Law Society of New South Wales Pro Bono Assistance Scheme on (02) 9926 0333; or
- (f) Your nearest Community Legal Centre. Community Legal Centres are independent non profit organisations set up to provide free legal advice, representation and information to the public. Many Community Legal Centres deal only with certain types of cases, and may refer you to another organisation or solicitor if they do not have the resources to deal with your case. To find your nearest legal centre call the National Community Legal Centres Association on (02) 9264 9595 or visit its website at [www.naclc.org.au](http://www.naclc.org.au).

Full contact details for all of these organisations are located in Chapter 14.

## 1.3 What should I expect from my lawyer?

All lawyers in NSW must follow the *Legal Profession Act 2004*, its accompanying Rules, and the Statement of Ethics for Solicitors of New South Wales.

Your lawyer should:

- (a) Tell you how much they will charge you before they start work including the rate which they charge per hour, the likely expenses they may incur in advising or representing you, and an overall estimate of what they think it will cost to provide you with that advice and representation. This information should be presented in written form for you to approve, and should be updated for your approval if there are any changes.
- (b) Send you regular bills for their services, setting out the work performed, and the charge for each service.

There are some situations where lawyers do not have to disclose their costs, when advising an individual and total costs are expected to be below \$750 (excluding expenses).

- (c) Regularly account to you for all money held in trust: many lawyers will ask you to pay some upfront fees to cover any expenses they may incur while they are providing services to you. This money must be held in trust, and cannot be paid to anybody for any expenses without your specific permission. You may have given this permission in your original agreement. When the lawyer finishes providing services to you, any unspent money remaining in trust for you must be returned to you.
- (d) Provide regular updates on the progress of your case: preferably in writing. Your lawyer cannot make any decisions without your instructions, and should provide sufficient advice for you to make those instructions in full knowledge of all your options.
- (e) Communicate clearly with you: providing advice about your options, including advice on your best course of action. If you do not understand the lawyer, it is very important that you continue to ask questions until you do so. Many lawyers use very technical language when explaining legal issues, without realising that their client may not understand what they are saying.
- (f) Treat you with respect: including being polite, patient, and taking as much time as is necessary to explain legal matters to you.
- (g) Keep your affairs confidential: all conversations and correspondence between you and your lawyer are confidential and can only be revealed to someone with your permission, or under an order from a Court. Similarly, the nature and details of your case are confidential, and should not be revealed to anyone without your permission. The only exceptions are where someone approaches a lawyer to assist them to commit a crime or where a client's actions would mislead the court.
- (h) Avoid any conflict of interest: your lawyer must not act for you if they have previously provided legal advice to a person you are in dispute with. They should make you aware of a potential conflict as soon as they themselves become aware of it. If you have any reason to suspect that your lawyer may have a conflict, you should raise this with them.

#### 1.4 How can I help my lawyer to do a good job for me?

You can help your lawyer to assist you in the most efficient and effective way by:

- (a) Giving your lawyer full and clear instructions about the history of your matter, and what you are trying to achieve. One way to do this is to write down the major points of your case before you first meet with your lawyer, and bring your notes to the meeting. Do not try to hide details for fear of embarrassment, it is important your lawyer knows all the details upfront, rather than being surprised by a revelation in court. In order to give you

accurate advice it is important for your lawyer to be fully aware of the circumstances of your matter. Remember, your communications with your lawyer are confidential.

- (b) Letting your lawyer know if the circumstances of your matter change, or if your contact details change.
- (c) Showing your lawyer any documents which you think might be relevant to the matter. If you are not sure whether a document is relevant, let your lawyer decide. It is better for your lawyer to see too much documentation than to see a selected range and maybe miss out on the most important document.
- (d) Letting your lawyer know if you do not understand what is being said to you, particularly if they use unfamiliar legal words.
- (e) Keeping notes of your meeting with your lawyer in case there is a question later, and you need to review the details of your meeting.
- (f) Keeping all correspondence and documents you receive from your lawyer.
- (g) Listening to your lawyer and thinking carefully about what they have said.

### **1.5 What can I do if I have a complaint about my lawyer?**

If you are having difficulties with your lawyer or are unhappy with the service being provided, you should let your lawyer know, setting out the problems you are having, to give them a chance to rectify these problems. If the problems do not improve, you can complain to the Office of the Legal Services Commissioner, which receives and oversees investigation of all complaints against legal practitioners in NSW. Contact details of the Office of the Legal Services Commissioner are set out in Chapter 14.