



Young People and the Legal System: an Overview

1 The Australian legal system

1.1 Commonwealth and State laws

The laws that govern us in Australia are a mixture of Commonwealth (also known as Federal) and State laws.

Commonwealth laws are made by the Federal parliament in Canberra, and apply all over Australia. The Constitution sets out the types of matters the Commonwealth Parliament may legislate on. Examples of matters covered by Commonwealth law include social security, family law, tax, foreign affairs, interstate trade, and telecommunications.

Legislation relating to other matters is made by State (or Territory) parliaments, and varies from State to State. Examples of matters covered by State law include most types of criminal offences, education, child welfare, and accident compensation.

In some areas there is an overlap between Commonwealth and State laws. Examples include employment law and discrimination.

Each State and Territory has its own system of courts and tribunals. In New South Wales, most matters are dealt with by either the Local, District or Supreme Court. There are also some specialist courts and tribunals such as the Consumer Trader and Tenancy Tribunal, Mental Health Review Tribunal, Land and Environment Court, and Children's Court.

The Commonwealth also has its own court and tribunal structure, including the Federal Court, Family Court, and a number of Tribunals.

The High Court hears appeals from Commonwealth and State courts.

1.2 Civil and criminal law

Our legal system is divided into two basic categories, criminal and civil law. It is important to understand the difference.

(a) Criminal law

Criminal law involves the prosecution of individuals for crimes (offences). Prosecutions are generally conducted by the police or the Director of Public Prosecutions (DPP) on behalf of the state (also referred to as the "Crown"). If a person is found guilty of an offence, a penalty (also referred to as a sentence) is imposed.

Matters involving on-the-spot fines (eg parking or railway infringements) are classified as criminal matters, even though they do not go to court and the offender does not get a criminal record.

In New South Wales, criminal law is mostly covered by the *Crimes Act*. Other Acts, such as the *Drug Misuse and Trafficking Act* and the *Summary Offences Act* are also

commonly applied. Cases are heard in the criminal divisions of the Children's, Local, District and Supreme Courts.

Some criminal law is covered by Commonwealth (Federal) legislation. This usually related to matters such as customs, taxation fraud and social security fraud.

(b) Civil law

Civil law generally involves disputes between individuals (including companies) over such things as contracts, debts, personal injuries and property. Whereas criminal law is about punishing people for offences, civil law is about sorting out disputes, enforcing legal rights and compensating people for past wrongs.

Civil matters are generally dealt with in the civil divisions of the Local, District and Supreme Courts, (or, if there is an interstate or national element to the dispute, in the Federal Court). Some civil matters may be dealt with by tribunals.

There are some special categories of civil law which are often regarded as their own legal systems, including special courts and tribunals. The main ones are:

(c) Family law

Family law covers disputes between married people about divorce, property and maintenance. It also encompasses disputes about matters relating to children, such as residence and contact (which used to be called custody and access), even if their parents have never been married to each other.

Most aspects of family law are covered by the *Family Law Act* (which is a Commonwealth law with Australia-wide application). Matters are heard in the Family Court, the Federal Magistrates Court, or (in some states) the Local Court.

In some cases, where there are allegations of child abuse or neglect, the child welfare authorities may step in and apply to have the child removed from their parent(s) and placed in alternate care. These cases are not covered by the *Family Law Act* but are covered by State laws. In New South Wales the relevant law is the *Children and Young Persons (Care and Protection) Act*, and matters will be dealt with by the Children's Court.

(d) Administrative law

Administrative law deals with disputes between individuals and government about government action or decision-making. Individuals have a right to expect that government decision-making will be fair and accountable. For people unsatisfied with a government decision, there is generally a right of review or appeal.

Administrative law covers matters such as social security (eg assessing eligibility for benefits), immigration (eg decisions on the grant of visas or residency permits) and freedom of information (eg decisions to grant or deny access to documents or records).

There are several specialist tribunals, both at Federal level (eg Social Security Appeals Tribunal, Refugee Review Tribunal, Administrative Appeals Tribunal) and at State level (eg Administrative Decisions Tribunal).

2 Young people in the legal system

The young people who you work with will be affected by the legal system in many ways. The following are some of the more common:

2.1 Criminal law

- (a) As **offenders**: many young people, especially if homeless or drug-dependent, will be charged with criminal offences. They will usually need legal representation and support through the court process, and may also need assistance to deal with related matters such as unpaid fines.
- (b) As **victims**: many young people (often the same ones who end up being offenders) have been victims of crimes such as childhood sexual abuse or domestic violence. Many young people become homeless as a result and are liable to suffer assaults, thefts, etc while out on the streets. They may need support in making a complaint to the police, giving evidence in court, or applying for victims' compensation.

2.2 Civil law

- (a) As **tenants**: young people often live in private rental accommodation, boarding-house type situations, refuges or supported accommodation. Tenants in private rental accommodation have rights which can be enforced through the Consumer Trader and Tenancy Tribunal. Tenants in boarding houses or supported accommodation have basic rights too, but these are sometimes more difficult to enforce.
- (b) As **employees**: young people are particularly vulnerable to exploitation because of their lack of job experience or bargaining power. Their rights may be protected by unions and by State or Federal Industrial Relations Commissions.
- (c) As **debtors**: some young people will find themselves in substantial debt, eg because of loans taken out when they were studying, because of entering into contracts they couldn't understand or afford, or because of inexperience in budgeting. Debts can result in court proceedings, which in turn leads to extra costs, and even orders to repossess property or to deduct money from a person's bank account or pay. A lot of this can be avoided by helping the young person to negotiate some sort of repayment early on.
- (d) As **consumers**: young people are vulnerable to unscrupulous or heavy-handed retailers. Young people may need support and assistance to assert their rights as consumers (eg to get a refund for a faulty product or to get out of a mobile phone plan they didn't understand).

2.3 Family law

- (a) As **children** they may be at the centre of a dispute between their parents, or other parties such as the Department of Community Services (DOCS), about their care. The child's best interests are always paramount in any court decision, and a child will often have a separate legal representative to look after his or her interests.
- (b) As **parents**: young people may have young children of their own. They are often sole parents trying to claim child support, to negotiate contact with their children, or to resolve welfare issues with DOCS. Apart from a legal representative, if matters end up in court, an advocate or support person can be very helpful in negotiating a solution.

2.4 Administrative law

- (a) As **Social Security recipients**: young people are often on benefits and may have problems or disputes about their entitlements as they leave or return home, move in and out of formal education, or work in casual jobs with variable weekly earnings. People in this situation have access to internal review mechanisms and the Social Security Appeals Tribunal.
- (b) As **community service users**: many young people use services provided by DOCS or similar agencies, particularly if they are state wards or people with disabilities. They have a right to expect a certain level of service and are entitled to complain or appeal if dissatisfied.

3 Children's rights

In Australian law, a person aged under 18 is regarded as a "child" for most purposes. Children have legal rights and responsibilities just like adults, but the law recognises that children need guidance and protection. The law allows children to make their own decisions (or even be treated as equivalent to adults) at different ages.

The United Nations Convention on the Rights of the Child (often abbreviated to CROC) has been signed by all UN member nations, except the USA and Somalia. The Convention defines a child as anyone under the age of 18.

CROC covers a wide range of matters relating to children's rights and well-being. It covers social and economic rights (eg the right to life, education, cultural identity) as well as civil and political rights (eg the right to a fair trial, freedom from arbitrary arrest and detention).

CROC is sometimes criticised as being anti-family, as giving rights to children while taking rights away from parents. This is a misconception: CROC describes the family as "the fundamental group of society", and recognises the role of parents in providing guidance and direction to their children.

CROC supports the right of children to participate in decisions that affect them, and, if they are capable of forming their own views, to express those views.

Perhaps the most important principle of CROC is in any decision affecting a child, the best interests of the child must be a primary consideration.

Although Australia has not passed a special law to adopt CROC, the High Court has ruled that Australian laws should, as far as possible, be interpreted in a way that is consistent with CROC.

Unfortunately, Australian governments at all levels do record on children's rights is not good. Many Australian laws arguably breach CROC, for example mandatory sentencing of juvenile offenders and mandatory detention of asylum seekers.

CROC can be found at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

4 Your role as a youth worker or support person

Whatever a young person's involvement with the legal system, it helps them if you can understand what they are going through. This means not only having a basic grasp of the jargon and the process, but also an appreciation of the stress the young person may be under and the emotional effects a legal problem can cause.

In working with a young person with legal problems, you may sometimes find yourself in the role of an advocate, helping them to enforce their legal rights. There is a lot of practical advice, information and support you can give a young person, but remember that only a lawyer (a barrister or solicitor) is qualified to provide legal advice.

Part of your role, therefore, is to know what sort of legal services are available to assist young people.

5 Legal assistance

5.1 Legal Aid

Unfortunately, due to budget restrictions, legal aid is not available for all types of matters. However, it is available for:

- (a) Defendants in **criminal** cases. Children (ie under 18) can obtain legal aid whatever their income. Adults must satisfy a means test. For representation in appeals, a merits test also applies (ie aid will only be granted if the appeal has a reasonable prospect of success).
- (b) Children and parents in matters relating to **care and protection** of children. Again, children are not subject to a means test, but adults are.
- (c) Many **family law** matters. This depends on a means test and also a merits test.
- (d) Some **administrative** law matters (eg immigration); and
- (e) (in very special circumstances) **civil** cases.

For criminal matters in the Local and Children's Courts, legal aid is usually provided by **duty solicitors** who are based at the courts. A defendant can go and see the duty solicitor on the morning of their court case. If preparation is necessary, the matter will be adjourned and the client will probably be given an appointment with a Legal Aid solicitor.

For other types of matters (eg family and civil law, criminal matters which are going to the District or Supreme Court) a written application must be sent to the Legal Aid Commission.

The Legal Aid head office is at 323 Castlereagh Street, Sydney (corner of Hay Street opposite Belmore Park), Tel: 9219-5000. Anyone can go there (or make an appointment with their local Legal Aid office) for free legal advice.

5.2 Children's Legal Service and Hotline for Under 18s

The Legal Aid Commission has a specialist Children's Legal Service, which represents young people in Children's Court criminal matters.

There is also a Legal Aid Hotline for Under 18s, which provides free advice for juveniles who have been arrested by police or who are involved in criminal cases. The hotline number is **1800 10 18 10**. It is open from 9am to midnight weekdays and 24 hours weekends and public holidays.

5.3 Aboriginal Legal Services

Aboriginal Legal Services provide free legal advice and representation for Aboriginal people and their families. Most of their work involves criminal law, but some may offer assistance with family law and civil matters.

The main office of the Sydney Regional Aboriginal Corporation Legal Service is at 619 Elizabeth Street, Redfern, Tel: 9318-2122.

There are other Aboriginal Legal Services elsewhere in NSW.

5.4 Community Legal Centres

Where legal aid is not available (or is too inflexible to meet the client's needs), free legal advice (and, in special cases, representation) is often available from Community Legal Centres.

Community Legal Centres are generally government funded and have fairly stringent guidelines about who they will assist - according to the person's income, where they reside, what type of legal problem they have, or some other criteria (eg homeless, gay/lesbian, children).

For children and young people, specialist Community Legal Centres include:

- **Marrickville Legal Centre**, 338 Illawarra Road, Marrickville, Tel: 9559-2899
- **Inner City Legal Centre**, 94 Oxford Street, Darlinghurst, Tel: 9332-1966
- **Macarthur Legal Centre**, 4 Broughton St, Campbelltown.
Tel: 4628 2042
- **Macquarie Legal Centre**, Level 1, 250 Pitt St, Merrylands, Tel: 9760-0111 (Macquarie does not have a specialist children's solicitor but has a youth legal educator)
- **National Children's & Youth Law Centre**, 32 Botany Street, Randwick, Tel: 9398-7488
- **The Shopfront Youth Legal Centre**, 356 Victoria Street, Darlinghurst, Tel: 9360-1847 (the Shopfront is not officially a "Community Legal Centre" because its funding comes from elsewhere, but it specialises in providing free legal assistance to young people).

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

- **Consumer Credit Legal Centre**, Tel: 9212-4111
- **Disability Discrimination Legal Centre**, 52 Pitt St, Redfern, Tel: 9310-7722
- **Welfare Rights Centre**, 414 Elizabeth St, Surry Hills, Tel: 9211-5300
- **Immigration Advice and Rights Centre**, 414 Elizabeth St, Surry Hills, Tel: 9281 8355
- **Tenants' Union of NSW**, Tel: 9247-3813

5.5 Private solicitors and barristers

Private lawyers are sometimes willing to take on matters on a *pro bono* ("for the public good") basis and not charge any fees.

The Law Society of New South Wales (tel: 9926 0300 or 1800 422 713) and the Bar Association of New South Wales (tel: 9232-4055) can help people find lawyers to act for them on a pro bono basis.

There is also the Public Interest Law Clearing House (PILCH) which finds lawyers to perform work of a "public interest" nature for individuals and community organisations (Tel: 9299 7833).

Obviously, private lawyers can't afford to forego their fees very often. However, they will often agree to act for a reduced fee, to give the client a free initial consultation, or not to require payment until later (eg when compensation comes through).

5.6 Finding out about legal services

Law Access (tel: 1800-888-529) is a NSW government service which provides information about, and referrals to, legal services. It's a useful number to call if you have no idea where to start.

6 Some Useful Books, Pamphlets and Websites

6.1 Books

The Law Handbook (Redfern Legal Centre Publishing): an easy-to-read, practical overview of almost all aspects of the law. Aimed at individuals & community groups.

Youth Justice: your guide to cops and court (Macquarie Legal Centre, Federation Press, 3^d Ed 2003): a very practical guide to criminal law for young people (under and over 18) and youth workers.

6.2 Pamphlets and booklets

Get Street Smart (Legal Aid Children's Legal Service): a wallet sized guide to police powers and young people's rights on the streets.

Hot Topics (Legal Information Access Centre/State Library of NSW): a series on current issues and changes in the law for community workers and the general public. Topics include juvenile justice, drugs, relationships, children and families, human rights, reconciliation, discrimination, and consumers.

If You are Arrested (NSW Council for Civil Liberties/Redfern Legal Centre Publishing): a booklet telling individuals about their rights if they are arrested, questioned, searched, etc by police. Now a bit out of date, but still a helpful introduction.

6.3 Websites

National Children's and Youth Law Centre (www.lawstuff.org.au): this website provides general information about legal rights and helpful legal contacts for people under 18 across Australia. Includes a "When Can I?" section, setting out the ages at which young people can legally drive, leave home, work full-time, etc.

LawAccess (www.lawaccess.nsw.gov.au): this is a NSW government site providing legal information, links to other sites, and information about legal services.

Legal Aid Commission of NSW (www.legalaid.nsw.gov.au): provides contact details for Legal Aid offices, information on eligibility for aid, useful legal information and brochures.

Coalition of Aboriginal Legal Services (www.coalsnsw.com.au): provides details about Aboriginal Legal Services throughout NSW.

National Association of Community Legal Centres (www.naclc.org.au): provides contact details for Community Legal Centres throughout Australia.

Shopfront Youth Legal Centre (www.theshopfront.org): provides information about the Shopfront's services, plus information on a variety of legal topics for youth workers and young people.

Legal Information and Access Centre (LIAC) (www.liac.sl.nsw.gov.au): based at the State Library of NSW, LIAC provides plain language legal information, including the "Hot Topics" series.

Shopfront Youth Legal Centre Updated January 2004

The Shopfront Youth Legal Centre is a service provided by Freehills, in association with the Sydney City Mission and the Salvation Army.

This document was last updated in January 2004 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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