OLDER PEOPLE & THE LAW
A plain english guide for seniors in New South Wales

POWERS OF ATTORNEY
PRIVACY
ELDER ABUSE
ACCOMMODATION
MEDICARE
DISCRIMINATION
RETIREMENT
WILLS
ASSISTANCE
ACCIDENTS
MONEY
MEDICAL TREATMENT
HEALTH
FAMILY
NEIGHBOURS
SUPERANNUATION
GRANDCHILDREN
PENSIONS

Attorney General's
department of nsw
nsw Young Lawyers
A Fresh Perspective
Older People and the Law

Fourth Edition

Attorney General’s department of nsw

nsw YOUNG LAWYERS A Fresh Perspective
Older People and the Law

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Disclaimer

This publication is intended to provide older people with a simple guide to their current legal rights as well as information on other services available within the community. The material contained in this publication is general and is not intended as advice on any particular matter. No reader should act or fail to act on the basis of any material contained in this publication. NSW Young Lawyers, the Law Society of New South Wales, the NSW Attorney General's Department and the authors disclaim all liability for errors or omissions of any kind whatsoever, or for any loss or damage, in whole or in part, arising from any person relying on any information published in this publication.

While every care has been taken to ensure the accuracy of the information contained in this publication, readers should check the currency of information pertaining to a particular program and amounts awarded under a program or entitlements with the relevant government department, as these will vary from time to time.

The publication has been written according to the applicable laws in Australia relevant to an older person resident in New South Wales as at 1 September 2005.
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ABOUT NEW SOUTH WALES YOUNG LAWYERS

NSW Young Lawyers (NSWYL) is a vibrant organisation of lawyers under 36 years of age or in the first five years of practice, and all law students. While our organisation is a division of the Law Society of NSW, we are a very distinct group of lawyers with our own energy and voice in the profession and the community. Some of the goals of NSWYL are:

- to further the interests and objectives of lawyers generally, and in particular, young lawyers in New South Wales;
- to stimulate the interest of and promote the participation of young lawyers in the activities of lawyers in general; and
- to promote the benefit of the community and disadvantaged groups in general.

NSWYL is comprised of a number of committees and working groups. Our pro bono and community services work is organised through the Pro Bono and Community Services TaskForce (TaskForce) who wrote this edition of Older People and the Law.

The TaskForce, like its predecessor the Community Services Committee, brings together volunteer lawyers and law students from diverse backgrounds all of whom share a common goal of using their legal and personal skills to benefit the community.

We encourage you to visit our website (www.younglawyers.com.au) to find out more about our organisation and the Taskforce. Alternatively you can contact Poppy Drekis on (02) 9926 0269 or at ptd@lawsocnsw.asn.au.

In keeping with our philosophy of service to all Australians, this book has been made available to you free-of-charge. But as we have only been able to produce a limited number of copies of this book, we ask that if you find that you no longer need this book, then please pass it on to someone who you think could use it, or donate it to your local library, aged care facility or senior citizens group.

Alternatively you can access an electronic copy of this publication at the NSW Attorney General's Department website (www.lawlink.nsw.gov.au). If you do not have internet access at home, you can access the internet for free at your local library or you can access the internet at the growing numbers of internet cafes for a small charge.
PREFACE TO THE FOURTH EDITION

In the three years since the third Edition, both our society and the law have changed significantly. Therefore it will come as no surprise that the production of the fourth edition of this popular book has been a major effort with each chapter updated and new chapters written to cope with all the developments, particularly in the areas of privacy, employment, elder abuse, family law and taxation. In addition to responding to changes in the law, we have also responded to changes in how our community gains access to information and we are proud to be able to offer a dedicated companion website with this publication with the assistance Attorney-General's Department.

Of course, none of this would have been possible without the lawyers who have generously raised their hands to volunteer in doing the hard work. First and foremost, my sincerest thanks goes to Peta Dean, who co-edited this work with me, and all the Pro Bono and Community Services TaskForce (TaskForce) members who have contributed to various parts of this book - Peter Allsopp, Karen Criticos, Rebecca Dimaridis, Nick Eastman, Justine Field, Rebecca Flynn, Kelly Godfrey, Tamara Goodwin, Nick Gouliaditis, Alexandra Harland, Claire Hausler, Inoka Ho, Rosemarie Honore, Janette Kovacic, Van Le, Susannah Maclaren, Kelly Morgan, Kar Na Tan, Naomi Reiner, Renee Saibi, Gemma Saville, Marie Louise Scarf, Ekta Shandil, Louise Stone, Jenny Thrum, Molly Tregoning, John Truswell, Annette Urquijo and Christopher Wood. Without their collective efforts and enthusiasm for this project, its completion would not have been possible. I am particularly grateful for their efforts in light of the long hours demanded of young lawyers.

I extend my gratitude for Greg Barlow's assistance with the cover and Andrew Joyner for his illustrations which add some light hearted relief to our heavy text.

Next I must thank our external reviewers. This publication would not be of the standard it needs to be without their ability to cast a critical eye over our work. In that respect I am grateful to the Centre for Elder Law at the University of Western Sydney and in particular, Sue Field the Public Trustee of NSW Fellow in Elder Law for her review and comments. Likewise, I thank David Skidmore at the Combined Pensioners and Superannuants Association of NSW Inc for his suggestions and Meredith Osborne, Community Legal Education Officer at the Blue Mountains Community Legal Centre for her comments in relation to chapters 8 and 12. While I am indebted for their assistance, final responsibility for the text must lie with me.

I also acknowledge Bob Debus, the Attorney General of NSW for his endorsement of this book, Laurie Glanfield, Director General of the Attorney General’s Department of NSW and his staff for their support and funding the publication. The assistance of the President of NSW Young Lawyers Nathan Laird, Vice President Susannah Maclaren, Secretary Lester Fernandez, Treasurer Scott Alden, Executive Officer Poppy Drekis, Committees Co-ordinator Mel Domingo and office assistant Katrina Hall for their help getting this publication out to the community. Finally, I thank Albert Yuen and Jennifer McVicar, the immediate past Chairs of the Community Services Committee, for their guidance and assistance in getting this project started.

I, and each contributor, hope that this book and its companion website will be a useful reference for seniors and their families. If you have any comments or recommendations for how this book can be improved, please contact Katrina Hall on (02) 9926 0270 or kxh@lawsocnsw.asn.au or visit the Older People and the Law Handbook's companion website at www.lawlink.nsw.gov.au/seniors.

Davyd Wong
Director, Pro Bono and Community Services TaskForce
New South Wales Young Lawyers
October 2005
Sydney
FOREWORD

In our increasingly complex society, the need for accessible information about our legal rights is critical for everyone living in the community today. It can often be difficult to know where to start looking when you need legal assistance. The fourth edition of Older People and the Law book and its new companion website provides appropriate information to help older people make decisions about their legal rights and options.

It is a user-friendly and simple guide about the complex issues of the law affecting seniors. It is a useful resource and provides answers to the most common legal questions and where to turn for help when you need it.

I commend the NSW Young Lawyers Pro Bono and Community Services TaskForce who voluntarily gave their time to write this handbook.

Bob Debus
Attorney General of New South Wales
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.

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;

(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. 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.

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.
2 TAKING CONTROL OF YOUR HEALTH CARE DECISIONS

2.1 Introduction

As you get older, you are more likely to have to make major decisions about your health, including regular and ongoing treatment, emergency procedures, and long term health care. This chapter is divided into two main sections, the first regarding the making of decisions relating to medical treatments and the second relating to the Australian healthcare system.

2.2 Consent to medical treatment

You can validly consent to medical treatment only when your consent is given freely. For example, if you consent merely because you believe you will otherwise be refused further treatment then your consent has not been validly given. In addition, you should receive accurate and appropriate information about your condition, treatments and proposed procedures.

To ensure that your consent is valid, you should be provided with as much information as possible. Amongst other things, you should be told and understand:

(a) your condition, or illness, including its severity or the result of any tests which you undergo;
(b) the diagnosis of your condition and the accuracy of the assessment;
(c) the various treatments which are available and the relative advantages and disadvantages of each, the risks associated with these, including possible side effects and likely outcomes;
(d) what will be done, how long it will take and expected recovery time;
(e) the financial cost of any procedures or treatment; and
(f) the qualification and experience of doctors and others who may be treating you.

Consent must be given for the particular procedure or treatment. If you consent to a particular course of action, the doctor (unless special circumstances arise) cannot carry out a different treatment.

In emergencies, where treatment is urgent and life saving, consent is not required to prevent serious damage to a patient's health or to prevent the patient from suffering significant pain, and the consent cannot be obtained, for example if you are unconscious. In these cases doctors and other health workers are under a duty to act in your best interests. Also, consent is not required if the treatment has been authorised by the Guardianship Tribunal or with a Supreme Court order. Consent is also not required where treatment is authorised by legislation, for example, such as compulsory blood testing on traffic accident victims and certain treatments under the Mental Health Act 1990.

2.3 Withholding consent

Generally, a fully competent patient is capable of refusing treatment or medical procedures. You, as a patient, have a right to self-determination and personal autonomy. However, this is contingent upon whether you have capacity, which is explained below.

However, where a guardian is appointed for a patient, the failure to consent may be overridden by the Guardianship Tribunal or a Court.
2.4 What happens if you are unable to consent?

In most cases, a doctor can only give you medical treatment if you have consented to that treatment (except in emergencies, as set out above). If you lack capacity, you cannot give consent to that treatment, unless you have specified your wishes about the treatment before losing capacity.

2.5 Capacity

Decisions about your health care, whether it be immediate treatment, or long term health care, are only valid if you have capacity when you make the decision.

To 'have capacity', you must be capable of understanding the nature of the decision you are making and the effects that that decision will have on you and on others.

If you have capacity, you are described as being 'capable'.

2.6 How is capacity measured?

There are no numeric measures or tests which can be done to determine if you have capacity. Capacity is not determined by whether you can perform a certain task, or by whether your decision is seen as wise by the people around you.

Capacity is measured by your ability to understand the nature and consequences of a specific decision. For example, you may have capacity to make a decision about whether to be treated for a particular health problem, because you can understand what is wrong with you, what the treatment will involve, and what the long term consequences of the treatment will be, but at the same time not have capacity to manage your financial affairs, because you are not capable of understanding the extent and nature of your finances, and the consequences of the decisions you are making about your finances.

People with mild intellectual disabilities may still be capable. It is also possible that you may lose capacity temporarily, for example if you suffer from an illness, but later recover from it. People in the early stages of dementia may lose capacity on a temporary basis.

Your capacity to make a decision is assessed at the time that you need to make that decision. If you are assessed as not being capable, this does not necessarily mean that you will never have capacity again.

2.7 What happens if a person doesn't have capacity?

If you don't have capacity and you have not specified how you want to be treated before losing capacity, someone else will make the decision about whether you should receive medical treatment and, if so, what sort of treatment that should be.

The Guardianship Act 1987 sets out a list of people who will make that decision for you if you lack capacity. The decision will be made by a "person responsible" who will be either:

(a) a guardian or enduring guardian (see below for definitions of guardians and enduring guardians); or, if there is no guardian or enduring guardian,

(b) the most recent spouse, de facto spouse or same sex partner with whom you have a close and continuing relationship; or, if there is no spouse, de facto spouse or same sex partner,

(c) an unpaid carer who is now providing support to the patient or provided support before the patient entered residential care; or, if there is no carer,

(d) a relative or friend who has a close personal relationship with the patient.
2.8 Guardians

There are three types of guardians in NSW:

(a) enduring guardians – people appointed by the person with a disability, prior to that person’s loss of capacity, to be his or her guardian;

(b) private guardians – close family members and/or friends who are appointed by the Guardianship Tribunal to be the guardian of a person with a disability; and

(c) public guardians – the NSW Public Guardian is a public official who can be appointed by the Guardianship Tribunal to be guardian of a person with a disability when there is no other person suitable to be a guardian.

When appointing a public or private guardian the Guardianship Tribunal must be satisfied that the proposed guardian's personality is generally compatible with the person under guardianship, that there is no undue conflict between the interests, and that the guardian is willing and able to exercise his or her functions.

If there is no one falling within any of these categories, the Guardianship Tribunal may act as a substitute decision maker.

The decision maker gives consent if minor medical or dental treatment is required. If the decision maker is not available, the doctor or dentist can proceed with minor treatment without consent if they can see from the patient's record that the treatment is necessary to promote the patient's health and well being and that the patient is not objecting to the treatment.

For major medical treatment, only the decision maker or the Guardianship Tribunal can give consent.

Consent cannot be given for treatments that are administered for the benefit of health carers, or health professionals. For example, an aged care facility that is short of staff cannot ask a decision maker to consent to sedate residents to make it easier to care for them.

For persons having a public guardian, it is now possible to seek review of a decision made by the public guardian at the Administrative Decisions Tribunal.

People who have been appointed as a guardian by the Guardianship Tribunal or a Court can receive support and information from the Private Guardian Support Unit, the full contact details are set out in Chapter 14.

2.9 How can I retain control over my health care decisions if I lose capacity?

The important thing is to plan ahead.

As discussed above, every person has the right to refuse or accept medical treatment, but the difficulty arises when you wish to ensure that you receive the treatment that you desire, when you are not in a position to make your preferences and desires clear.

You need to make clear your wishes about your future health care while you still have capacity. Some informal ways of doing this are by making your wishes known to friends, relatives and your doctor, and by writing your wishes down.

There are also some formal legal steps that you can take to ensure that your wishes are respected. In this respect, you may consider the following possibilities:

(a) appointing an enduring guardian; and/or

(b) writing an advance health care directive - “living wills”.

New South Wales Young Lawyers
2.10 **Enduring guardians**

An enduring guardian is someone that you appoint to make personal and lifestyle decisions and/or decisions about medical treatment on your behalf, if you are unable to make those decisions yourself. Appointing an enduring guardian determines who can make a decision on your behalf, but it does not deal with the content of those decisions. You may choose to rely on your enduring guardian's ability to make decisions and have confidence that they will act in your best interests. Alternatively, you may prefer to write down your wishes in the form of an advance health care directive, which is discussed further below.

The appointment of an enduring guardian must be in writing and in an approved form. Both you and your appointed enduring guardian must sign the document in front of your solicitor, barrister or a clerk of a local court. The appointment will only take effect when you no longer have the capacity to make decisions and are incapable of understanding the general nature and effect of proposed treatment and incapable of indicating your consent or opposition to the proposed treatment. You may appoint more than one enduring guardian to act on your behalf, or different enduring guardians with separate functions. Your enduring guardian must be over 18 years of age and not directly or indirectly involved in any aspect of your medical treatment.

An enduring guardian appointed to consent to medical and dental treatment can only act under Part 5 of the *Guardianship Act*, which authorises them to consent to major and minor treatments that will promote and maintain the health and wellbeing of the person who has appointed them. An enduring guardian can consent to a medical or surgical procedure, operation, examination and any prophylactic, palliative or rehabilitative care customarily carried out by a medical practitioner. The authority to consent depends on the specific type of treatment. In particular, an enduring guardian cannot commit on your behalf for special treatment, which includes any new treatment that has not yet gained the support of a substantial number of medical practitioners or dentists specialising in that area.

The appointment should detail the functions the enduring guardian is to exercise, and any conditions or limitations you desire. An enduring guardian does not have the authority to override your objections. You can revoke the appointment in writing, but only while you have the capacity to understand your decisions. Any revocation must be witnessed by your solicitor, barrister or a clerk of the local court and be given to the person previously appointed as your enduring guardian.

An enduring guardianship appointment can be reviewed by the Guardianship Tribunal or the Supreme Court, which can suspend, confirm, revoke or vary the appointment.

2.11 **Advance Health Care Directives or "Living Wills"**

An advance health care directive or "living will" is a written statement that contains information about the medical treatment you desire. It comes into effect only when you are no longer able to make your own decisions. In NSW, advance health care directives are not supported by legislation (that is, they are not legally binding), unless they are part of the appointment of an enduring guardian. However, if a potential decision maker, such as a health care worker or guardian of the Guardianship Tribunal, is aware of the existence of your advance health care directive, it is likely to be influential when decisions about your health care are made. An advance health care directive should be kept up to date and consistent with anything you have said to the decision maker previously.

As an advance health care directive has no set format, you may wish to consult a solicitor about preparing one. (Best practice guidelines are available from NSW Health at [www.health.nsw.gov.au](http://www.health.nsw.gov.au).) You should provide copies to your doctor, health care worker, friends and family as well as discussing the contents with them.

If you do nothing about planning, as discussed above, the Guardianship Act will apply to you by identifying persons who are best able to make decisions on your behalf.
2.12 **Euthanasia**

Euthanasia is the active and deliberate intervention by a second party to end life, with the express wish of the first party. This is distinct from discontinuing treatment or failing to consent to the commencement of treatment at the patient's request. Euthanasia is currently illegal in all states and territories in Australia.

2.13 **No CPR orders**

A “No Cardiopulmonary Resuscitation” (No CPR) order is an instruction that no attempt be made to resuscitate a person if heart failure occurs in the future. It is not a form of euthanasia. It is usually used by terminally ill or infirm patients.

2.14 **The Australian health care system**

There are two health insurance schemes currently operating in Australia - the Medicare scheme and private health insurance.

2.15 **Private Patient versus Public Patient**

Regardless of whether or not you have private health insurance, every patient has the right to elect to be treated either as a private patient or as a public patient. As a private patient, you will be billed for accommodation (in any hospital) and medical services, but will have your choice of doctor. Private patients will also be charged fees by the treating doctors. Medicare will cover 85% of the schedule fee for services and procedures provided (but makes no contribution towards accommodation, theatre costs etc). Private health insurance, depending on the level of cover, will pay for some of the remaining costs.

As a public patient, you will not be billed for care, treatment or after-care, but you will only be treated by the doctor on duty at the time.

So, your decision to take out private health insurance will depend on whether you prefer to be treated as a private patient, and/or if you need medical services which are not covered by Medicare. However, you should be mindful, before taking out private health cover, that medical services which are not covered by Medicare may not be covered by private insurance. You should check with the private health insurer if you are unsure what services they cover.

2.16 **Who is covered under the Medicare scheme?**

Medicare was introduced in 1984 to provide basic health insurance for hospital and medical care for all Australian residents. It provides free treatment as a public patient in a public hospital, and a rebate on fees paid to general practitioners, specialists and optometrists.

All Australian residents, once registered with Medicare, are covered under the scheme provided they either:

(a) hold Australian citizenship;
(b) hold permanent resident status;
(c) hold New Zealand citizenship; or
(d) have applied for a permanent residency (restrictions apply to persons who have applied for a parent visa and other requirements are applicable).

Visitors from Finland, Italy, Malta, the Netherlands, New Zealand, Sweden and the United Kingdom can also access Medicare under reciprocal arrangements between Australia and their home governments, although this is usually limited to emergency medical treatment only.
2.17 How much does medical assistance cost under the Medicare scheme and how does 'bulk billing' work?

The government has prescribed a recommended fee (“the Schedule fee”) for all medical services under the Medicare scheme. When a health professional 'bulk bills', this means that the practitioner is billing the government directly and you will not have to pay anything. While they are not legally required to, most practitioners will bulk bill specific classes of patients, such as pensioners and health care cardholders. If your local doctor does not you should look around for one that does.

Where a health professional invoices you for services, you can claim these costs from Medicare (either in the form of a reimbursement if you have paid the invoice, or a cheque made out to the health professional if you have not paid). Medicare pays 85% of the Schedule fee or the Schedule fee less $52.50, whichever is the greater for outpatient services or, 75% of the Schedule fee for inpatient services. If the health professional charges more than the Schedule fee (which they frequently do) you will have to pay the 'gap amount' yourself. Once your gap payments per year total $280.30, you are eligible for the Safety Net. (However, the Safety Net total only comprises the gap between what Medicare pays and the Schedule fee. If your medical practitioner charges more than the Schedule fee, this will not count towards your Safety Net total).

2.18 What is the Medicare Safety Net?

The Medicare Safety Net operates once your gap payments have reached a certain level in a year. Medicare can keep a tally of your gap payments if you send them your receipts.

From that time on, Medicare benefits will increase from 85% of the Schedule fee to 100% of the Schedule fee for any further out-of-hospital services that year.

2.19 How do I register for the Safety Net?

As an individual you do not need to register for the Safety Net. Provided Medicare has all of your receipts, higher benefits will become available as soon as you reach the Safety Net.

If you claim through Medicare as a family or a couple, you will need to complete a Safety Net registration form available from Medicare.

2.20 What is the Medicare levy surcharge?

Although there is no direct charge to use the Medicare scheme, all taxpayers contribute via the Medicare levy in their annual tax return.

If you are single and earn over $50,000, (or $100,000 for couples/families) and do not have private health insurance, you will pay an additional 1% on top of the Medicare levy as part of your annual income tax return.

However, you will not be liable for the surcharge if your income does not exceed certain threshold for Medicare surcharge purposes. For the income year 2004/2005, the threshold for individuals is $15,902 and for a family is $26,834. Higher thresholds may apply to senior, pensioner and family with dependant children.

See Section 4.32 for more information on the Medicare levy.

2.21 What benefits does Medicare cover?

Medicare covers the cost of:

(a) consultation fees of doctors, including specialists;
(b) tests and examinations needed to treat illness, including x-rays and pathology tests;
(c) eye tests performed by optometrists;
(d) most surgical and therapeutic procedures performed by doctors;
(e) some surgical procedures performed by approved dentists; and
(f) specified items under the Cleft Lip and Palate Scheme.

2.22 **What is not covered by Medicare?**

Medicare does not cover benefits for:

(a) private patient hospital costs;
(b) dental examinations and treatment (though some limited free dental services are available to pensioners, you should contact your local Area Health service for more information);
(c) ambulance services;
(d) home nursing;
(e) physiotherapy, occupational therapy, speech therapy, eye therapy, chiropractic services, podiatry and psychology;
(f) glasses and contact lenses, hearing aids, prostheses and other appliances;
(g) acupuncture;
(h) medicine and hospital costs incurred overseas;
(i) medical costs for which someone else is responsible (e.g. workers compensation);
(j) surgery solely for cosmetic reasons; and
(k) examinations for life insurance / superannuation policies.

2.23 **How do I make a claim?**

You can claim in 5 different ways from Medicare.

(a) Bulk billing - where the medical practitioner claims payment directly from Medicare;
(b) Claiming by mail - where you send a completed claim form and original accounts/receipts to GPO Box 9822 in your capital city;
(c) Claiming in person at a Medicare office - where you present your Medicare card and original accounts/receipts for cash, cheque or EFTPOS benefit;
(d) Claiming by telephone - call 1300 360 460 with your Medicare card number, your account/receipt and the bank details for an electronic credit. You then post the original receipt/account to GPO Box 9847 in your capital city; and
(e) Easyclaim - This is a dedicated fax facility set up in a number of pharmacies across Australia where you fax claims direct to Medicare. Refunds are then provided by cheque or direct bank credit.
2.24  **Will I ever have to repay Medicare?**

The most common instance when you must reimburse Medicare is when benefits are paid for an injury and you subsequently receive a compensation payment (such as a work related injury, an injury sustained in a car accident or an injury received due to the negligence of another person).

You can claim Medicare benefits while a claim for compensation is being pursued. However, once the insurer has accepted liability for the injury you must cease to claim through Medicare and reimburse Medicare for the benefits paid up to that time from the compensation received. Therefore, before accepting any compensation offer you (or your adviser) should be sure to check with Medicare the amount which must be reimbursed and use this when evaluating the settlement offer being made to you. To obtain information on all services claimed as a result of the injury/illness call the Medicare information line or your nearest office, contact details are listed in Chapter 14 under "Medicare".

2.25  **What if I have a complaint about Medicare?**

Complaints against the Medicare scheme or health professionals misusing the scheme should be directed to the Health Insurance Commission.

Complaints about the professional conduct of individual health professionals (eg. doctors, nurses, dentists, chiropractors) or the clinical management or care of patients by a health service (eg. ambulance service, hospital, aged care facility) are handled by the NSW Health Care Complaints Commission and/or the relevant medical board for the profession involved. Complaints must be in writing and verified by a statutory declaration (witnessed by a Justice of the Peace or solicitor). Both of these bodies investigate complaints 'in the public interest' and can take disciplinary action against a health provider if necessary. Neither of these bodies deals with financial compensation for consumers. You should seek legal advice (such as through a private solicitor, legal aid or a community legal service) if you want to seek compensation for injuries suffered as a result of negligence by a medical practitioner.

Contact details for the Health Care Complaints Commission are listed in Chapter 14.

2.26  **The Pharmaceutical Benefits Scheme (PBS)**

This is a Commonwealth government scheme which subsidises certain prescriptions for all Australian residents and visitors from countries with whom Australia has a Reciprocal Health Agreement (eg. Finland, Italy, Malta, New Zealand, Norway, the Netherlands, Sweden and the United Kingdom).

If you hold a concession card issued by Centrelink or a Department of Veteran's Affairs treatment card, you are entitled to an additional subsidy for PBS medicines.

Generally, you should pay a maximum of $28.60 for a PBS medicine, or $4.60 if you are a concession card holder (note, figures are adjusted annually, in line with Consumer Price Index (CPI)). However, you may pay more if you choose a more expensive brand, and the difference for the more expensive brand does not count towards your Safety Net total.

2.27  **The PBS Safety Net**

Similar to the Medicare Safety Net, if you or your family (which includes spouses or de facto spouse, children under 16 years in your care and full-time dependant students) need a lot of medicines in a year, the PBS Safety Net will reduce the cost of these after a threshold has been reached. The threshold varies annually and from January 2005 is $874.90 for patients and their families in a year, or $239.20 (52 prescriptions) for concession cardholders and their families.

Once you reach the threshold, you can apply for a Safety Net card and your medicines will be $4.60 for each prescription for the rest of the year, or free if you are a concession card holder.

To be eligible for the PBS Safety Net you need to keep a record of your spending on PBS medicines. In some cases, your pharmacist may be able to help you keep a computer record of your spending, or you can use a Prescription Record Form available from your pharmacist and ask the pharmacist to complete it each time you make a purchase.
2.28 Private health insurance

Private health insurance provides cover for treatment as a private patient in a public or private hospital and for other out-of-hospital services not covered by Medicare. It differs from Medicare in that it:

(a) covers more out-of-hospital services (such as physiotherapy and dental care);
(b) covers some of the expenses associated with being able to choose your doctor;
(c) provides access to a better standard of meals and private room accommodation; and
(d) provides access to private hospitals for non-urgent procedures for which there may be a waiting list in public hospitals.

Private health insurance is not designed to, and does not necessarily, ensure priority of treatment over public patients.

2.29 What options are there?

(a) Basic hospital cover

This provides cover for treatment as a private patient in a public hospital. It will also provide a small contribution towards treatment in a private hospital, but the bulk of private hospital costs will be borne by you under this level of cover.

(b) Top hospital cover

This provides for cover in a private hospital. Under some policies, all costs associated with hospital treatment are covered, however this varies between funds and policies and should be checked out as any difference between the level of cover and the fees charged by the hospital will have to be paid by you.

(c) Ancillary services / extras

This is cover for services such as dental care, natural therapies and physiotherapy, which are not covered by Medicare. Matters you should be careful to check when determining if the policy looks like good value include:

(i) if there is a maximum annual benefit payable for extras you will be using frequently; and
(ii) what the waiting periods are for extras, such as dental and optical, and whether you will need to use these services before the waiting period expires.

(d) Ambulance cover

This type of cover is usually automatically included in the packages listed above, but it is worthwhile asking when choosing a package.

Private health funds also have combination packages available, with premium costs varying according to the level of hospital cover and the number of extras. Some packages also have a maximum annual benefit which can be claimed for certain extras.

2.30 What is an excess?

An excess is another option available to help reduce your premium. It involves agreeing to pay a set amount up front, should you need hospital treatment (such as the first $500 of hospital costs per year).
2.31 What is the ‘gap’ between benefits and fees charged and when will I have to pay it?

All consumers should be aware that even the top level of private cover may not cover all actual costs involved in a visit to hospital. You may be left having to pay out of your pocket the gap between the total charged by the doctors and hospital and what is covered by the health fund and Medicare. Before having any medical procedures undertaken, it is a good idea to check with your doctor about whether s/he charges above the government recommended fee (the Schedule Fee) for the procedure. If s/he does, then you should check with your health fund as to whether it will cover the full fee, or if you will have to pay the difference between the scheduled fee and what the doctor charges.

2.32 What is the Federal government Private Health Insurance Rebate?

Since January 1999, the Federal government has offered a 30% rebate on premiums paid for private health insurance. The rebate is not means tested and can be claimed:

(a) as a reduced premium when paying the fund (you need to register with your fund);
(b) as a tax rebate when you lodge your annual income tax return; and
(c) as a direct cash payment through Medicare.

Prior to purchasing private health insurance, you should be careful to check that your fund is registered to participate in the scheme as not all funds are registered and this is a prerequisite to you being able to claim the 30% rebate.

2.33 What if I have a complaint regarding my private health insurer?

Complaints concerning private health insurers, premiums, claims for refunds and other related matters can be made to the Private Health Insurance Ombudsman (contact details are set out in Chapter 14).
3 WILLS AND POWERS OF ATTORNEY

3.1 Introduction to Wills

A will is a written statement of the way in which you (the testator) wish to have your property distributed after your death. A will must comply with the formalities set out in the Wills Probate and Administration Act 1898 (the "Wills Act"). The Wills Act states that to be effective, a will must:

(a) be in writing - handwritten, typed or printed;

(b) identify the testator and display the testator’s testamentary intention i.e. that he or she intends the document to be a will;

(c) be properly signed - at the end of the will and on the bottom of each page; and

(d) be witnessed in accordance with the Wills Act - two witnesses must be present when you sign your will and they too must sign it in your presence. Not everyone can witness your will, as explained below. To avoid doubt later that the two witnesses were present when you signed the will, you and each of the witnesses should use the same pen.

If your will is not made in this manner it may not be enforceable; the court has a discretion to grant or not grant probate (a confirmation that the will is valid) and your property could be disposed of as if you had not made a will. In exercising its discretion, the court needs to be satisfied that the document sets out how you want your assets to be distributed. Normally, a paper on which a person has simply written their wishes has no validity, nor has a spoken request by a dying person.

3.2 Do I need to make a will?

Anyone over the age of 18 years who has the necessary capacity can make a will. Nearly everybody owns some property and would normally like to pass it on to relatives or friends when they die. The only way to ensure that your wishes are carried out after your death is to make a will.

To have the necessary capacity to make a will, you must:

(a) be of sound mind;

(b) be able to understand what it means to make a will;

(c) know what assets you have and have an idea of how much they are worth;

(d) be able to decide who should fairly receive your assets; and

(e) understand that your immediate family might need to take priority over other people to whom you may wish to leave your assets.

If there is any doubt about whether a person has the capacity to make a will (perhaps because of illness or extreme old age), it is advisable for one of the witnesses to be a doctor who can give a medical opinion if needed. Sometimes wills are challenged on the basis that the testator did not have sufficient understanding (or capacity) at the time to make a will.
A court can alter the provisions of your will, if someone who the law deems was entitled to receive something was left out of the will or did not receive enough for their education and advancement in life. If there is someone who would ordinarily expect to receive a large share under your will (such as one of your children) and you wish to leave them out, there is not a lot you can do to prevent a challenge. In fact, it is impossible to draft a will that cannot be challenged by a person who feels they were "entitled" to more. If you do want to leave someone out who ordinarily expects to receive something, consider allocating that person a small amount (rather than nothing) and explaining in the will why they did not receive as much as they might have expected.

3.3 When should I make a new will?

You must make a new will if you marry, as the act of marriage automatically revokes a will, unless your will specifically states that it is made in contemplation of that particular marriage. A new will should also be made if you divorce or experience any major change in circumstances which would make the provisions of a previous will no longer suitable. It is important to remember that a divorce does not automatically revoke a will, even though marriage does. It is a good idea, also, to revise a will on a regular basis, say every five years, to make sure that it still represents your wishes.

3.4 What happens if I don't make a will?

It is not compulsory to make a will. However, if you die intestate (without making a will) then your estate will be distributed according to a statutory chain of inheritance. This assumes that you would have intended to benefit your next of kin. So your spouse and children, if there are any, will be the primary beneficiaries. However, if your estate is less than $200,000, the whole of your estate goes to your surviving spouse. If you had no spouse and no children, or grandchildren, then the estate will be distributed to more remote family members, such as your parents, brothers and sisters, grandparents and uncles and aunts. Only if you have no living relatives at all in these categories will your estate then pass into the ownership of the state.

Of course, this scheme does not provide for specific items to be given to particular persons, or for particular relatives to receive a larger or smaller share (or no share at all).

To ensure that your property is passed on to the people you choose, you should take the time to make a will.

3.5 Can I make a will myself?

You can make your own will if you wish – a ‘Will Kit’ is available from newsagents and most Australia Post stores. However, a will is an important legal document and may not be in your best interests to draft it yourself. There have been many cases where homemade wills were either unclear, not properly drawn up or caused an unwanted tax liability. Some of these cases end up in court and caused significant expense to the deceased's estate.

Many solicitors are prepared to draft a will for a very reasonable charge. It is quite acceptable to ring several firms to obtain a quote before going ahead. Also, you may ring the Law Society of NSW for further information in finding a solicitor to assist you with a will. Some employee unions and other organisations can also refer you to a solicitor who will give a special rate to members.

You may also have a will drawn up at no charge by the Public Trustee at any of their statewide locations, provided the Public Trustee is appointed as executor. As well, you can commence your will online at www.pt.nsw.gov.au. The Public Trustee charges a fee only when administering your estate.

You should be particularly careful in drafting your will and seriously consider getting some legal advice on your will if any of the following circumstances apply to you:

(a) you have children to different marriages;

(b) you have step children who are or have been dependent on you;
(c) you have children who have died, leaving children of their own; or
(d) you are still technically married but are separated and in another relationship.

3.6 The form of the will

There is no specific form which must be used. However, there is a conventional format which includes all the necessary elements. This is as follows:

(a) the name, address and occupation of the testator (the person making the will) with a declaration that the document is intended to be a will;
(b) a revocation clause (ie a clause which revokes all previous wills);
(c) the appointment of executors and trustees (the person or people who administer and distribute your estate);
(d) disposition of specific property and pecuniary (money) legacies (if required);
(e) disposition of the residue (the rest of the estate);
(f) trustee powers;
(g) date; and
(h) formal execution of the will (ie, signing and having it witnessed).

A will can be handwritten, typewritten or prepared on a computer. A tape-recording or video is not sufficient.

3.7 Who should be a witness to a will?

Two witnesses are required to witness you signing the will. They must not be people who receive anything under the will, or spouses of people who receive something under the will. If these people are witnesses, they will normally lose their gift under the will. The will should not be witnessed by the executor or executors appointed by the will.

The witnesses should be over 18 and sighted, since blind people cannot see the testator sign, and this is essential. The witnesses do not need to read the will. Their function is merely to witness it (ie watch the testator sign it). The will is signed on each page, normally at the foot or end by the testator in the presence of the two witnesses who both see the testator sign, and then sign themselves as witnesses and print their names and addresses clearly under their signatures. This may be important in case they are called upon to give evidence about the signing of the will after the testator's death. The witnesses should use the same pen as the testator in signing the will, preferably a blue pen so the original can be easily distinguished from a photocopy.

3.8 Altering a will

You should take care in making changes to the will before you sign it. This often happens when something has been left out, and you want to make a small change by hand rather than printing out an amended version. Alterations must be initialled by you and your two witnesses. Otherwise, after your death, it will not be clear to the court who made the alteration, and whether it was made before or after your death.

If alterations are required to a will after it has been signed, you cannot simply make a change on the document. It is better that your solicitor prepares a codicil or a new will.
3.9 **What is a codicil?**

A codicil is a document which sets out alterations to an existing will. It must be executed in the same way as a will and must refer to the original will. With today's computer technology it is just as easy to make a few changes on the original and print out a new will. Codicils have therefore become much less common.

3.10 **Where should the will be kept after it is signed?**

Most solicitors are prepared to keep the original will in safe custody for a client. Alternatively, it may be kept in safe deposit in a bank or in a safe place at home. It is a good idea to keep a copy of the signed will somewhere else, and to give one to the executor (in a sealed envelope if you like) so that if the original is missing, the signed copy can be admitted to probate. Tell the executor where the original will is kept. There is also a national wills register run by a private organisation, The Wills Trust of Australia Pty Ltd, and the NSW Registry of Births Deaths and Marriages manages a government Wills Register. Contact details for the Registry are set out in Chapter 14.

3.11 **What is an executor?**

An executor is a person or persons appointed to handle the estate after you die and to ensure that your wishes are carried out. Anyone over the age of 18 who is of sound mind may be appointed executor, but you should be sure that the person concerned is willing to act as executor and has the ability to deal with the business matters which arise.

It is a good idea to appoint two executors, or alternative executors so that if one, for some reason, is not available, the other one can act. It is common practice for people to choose their spouse as executor, or a child, but it is also common for a solicitor to be appointed one of the executors as the solicitor will have the skills to manage the estate. An executor may be a beneficiary under the will. Another reason for choosing a solicitor, or some trusted person outside the family, as executor, is that they will be impartial and will be less likely to become embroiled in family disputes.

After your death it is the executor's job to look after funeral arrangements and then to ascertain all the assets and debts of the estate, and to ensure that the debts are paid. The executor makes an application for probate, if necessary. Frequently the executor will delegate matters concerning the estate to a solicitor.

3.12 **What property can be left in a will?**

Most kinds of property that you own outright can be left by will. Sometimes people wish to leave specific items to particular people. There is no problem with this so long as the items are clearly described and the beneficiaries are clearly identified.

If the property concerned is a car or a boat or some other item which you are likely to change from time to time, care must be exercised. If, for example, someone has left 'my Holden Commodore motor car' to a certain person, and if at the person's death, they no longer own that car but, say, a Ford Lancer, the gift will fail. You should either make a new will or a codicil every time the car is changed, or express the gift in general terms, eg 'any motor car which I own at the date of my death.'

The same principles apply to houses in the event that you move house. Real estate (houses and land) can also be left by will, provided that you are the sole owner or own the property with another person as 'tenant in common.' If a house is owned in joint tenancy, as is the case with many properties owned by married people, it will automatically go to the survivor when one person dies regardless of anything stated in that person's will. This cannot be changed by a provision in a will. If you do not know whether joint property is owned as 'tenants in common' or 'joint tenants' you can find this information on the title deed to the property or by contacting the Land and Property Information (LPI) office, details of which are set out in Chapter 14.

Care should also be exercised when dealing with life insurance policies and superannuation under your will. If you have nominated a beneficiary on your life insurance policy then the nomination may over-ride the terms of your will. Superannuation will be paid out in accordance with the superannuation fund's trust deed – either to your nominated beneficiary on the policy or to your estate (and therefore distributed in...
accordance with your will). Usually, if you have expressly included your superannuation as a gift in your will, then the trustee of the superannuation fund will take that into consideration in deciding who should get the proceeds of your policy, unless it is a binding nomination, in which case the trustee must abide by that nomination.

You should make sure that you dispose of the residue of the estate in the will. The residue is everything which is left after specific gifts and legacies have been paid. There have been cases in the past where testators have made a long list of specific gifts but have forgotten to state who gets what is left over. If this is the case there will be a partial intestacy, and the residue will be distributed according to the statutory formula which applies on intestacy (see above).

3.13 What happens if one of my beneficiaries dies before me?

It depends on the terms of the will, and also on whether the beneficiary is your child. The Wills Act provides that if a child predeceases the testator leaving children (i.e. the testator's grandchildren) then the gift to that child's estate will not fail, and the gift will be distributed according to the child’s will.

If the grandparent wishes the grandchildren to benefit in these circumstances, a specific clause must state that in the will.

In the case of other beneficiaries, it is common for testators to put a provision in their will that if a beneficiary predeceases the testator, then the gift will go to someone else instead.

3.14 What if a beneficiary is a child when the testator dies?

Normally, any gift to a person under the age of 18 will be held in trust until they reach that age. A will may provide that a beneficiary may not receive a gift until a specified age greater than 18, if that is what the testator wants, for example 21, or 25.

If it is likely that there will be infant beneficiaries, it is advisable to include trust powers in the will, which will enable the trustee to deal with the part of the estate held for the infant beneficiaries in the best way possible. You should seek advice from a solicitor about drafting suitable trust powers.

3.15 Can property be left to one person for life, and then to someone else?

It is possible to set up a life estate in a will. People may wish to do that when they want to provide a home for a spouse during their lifetime and then leave the house to the children, for example. Life estates can sometimes cause unforeseen difficulties, and it is better to avoid them if possible. If you wish to set up a life estate, you can consider setting up a trust instead, and you should seek advice from a solicitor.

3.16 Can provision be made in a will for my pets to be looked after?

Yes, it is possible to leave a sum of money in a will for the care of your pets either by an animal welfare organisation or a friend or relative.

3.17 Is there tax on the value of the estate a person leaves?

In NSW there is currently no tax payable on the value of the estate of a deceased person. (Death duties have been abolished.) Furthermore, there is no gift duty payable on gifts in wills. There is however a capital gains tax (CGT) which may be relevant to a deceased estate particularly if the assets being disposed were acquired after 20 September 1985. Because of the CGT implications, it is advisable for all wills to contain an appropriation clause which allows a tax liability to be postponed and gives the executor flexibility in dividing up assets fairly without selling assets likely to attract CGT (eg, investment properties). If there are likely to be assets affected by CGT it is advisable to get legal advice when drawing up your will.
3.18 Introduction to powers of attorney

A power of attorney is a legal document, by which you authorise someone (known as your "attorney") to make financial decisions and sign papers on your behalf.

3.19 When do I need a power of attorney?

If you are travelling overseas for a lengthy period you may want to give someone a power of attorney to manage things while you are away or you may also wish to grant one if your health has deteriorated (although a power of attorney does not enable your attorney to make decisions about your health and medical matters).

You do not need a power of attorney to deal with Centrelink for the social security pension or with a bank. However, they will require documentation authorising someone to act for you or explaining why you cannot act for yourself.

3.20 Can I just fill in a form?

The Powers of Attorney Act 2003 requires a power of attorney to be in a particular form different to that set out in older legislation. The new form contains information for you and for your attorney, particularly about the attorney's duties. The form also contains specific questions about the authority you are granting to your attorney, particularly in relation to your attorney's right to give gifts on your behalf and to use your money for their own benefit or the benefit of any other person. If you do not wish your attorney to have these rights, you should cross out these clauses on the form.

The new forms for a power of attorney are available from newsagents, Australia Post shops or on the Land & Property Information's website (see Chapter 14 for contact details). It is preferable to have a power of attorney tailored for you, especially where you intend it to be an enduring power of attorney (see the discussion of enduring attorneys below).

You should also be aware that the requirements for a valid power of attorney vary in each Australian state. There is no requirement for the attorney to sign the form for an ordinary power of attorney. Your solicitor can prepare the form so that it meets your personal circumstances or you can purchase commercial "power of attorney kits" to assist you to make a power of attorney yourself.

If you have an existing power of attorney made in a form set out by older legislation, it may still be valid and can be registered if it was signed and dated before 16 February 2004, the date the current Act came into force.

3.21 Can I place limits on the power of attorney?

Yes, you can place any restrictions on the power of attorney you choose. You may choose to grant the power of attorney for a specific purpose, or a specified time period. For example, a power of attorney could be given to sell certain real estate or to operate a specific bank account.

As discussed above, an attorney cannot make gifts on your behalf or use your money for their benefit or for the benefit of any other person unless you specifically grant them this power under the power of attorney.

3.22 Should I grant an enduring power of attorney?

If you lose capacity through unsoundness of mind, a power of attorney becomes invalid unless you have granted an enduring power of attorney. An enduring power of attorney can be made on the same form as an ordinary power of attorney, but it has a number of additional requirements:

(a) it must contain a statement that you want it to continue even if you lose your mental capacity;
(b) it must be signed by the attorney to show that they consent to act. Your attorney may sign the document at the same time as you do or at a later time. However, the enduring power of attorney will not come into effect until the attorney has signed it; and

(c) your signature must be witnessed by a "prescribed witness." A "prescribed witness" is a solicitor, a barrister, a Registrar of the Local Court in Australia, a licensed conveyancer, or an employee of the Public Trustee. The prescribed witness must sign a certificate on the form which states that they explained the enduring power of attorney to you and that you appeared to understand it.

3.23 **Whom should I appoint as my attorney?**

This is a very important decision which you should consider carefully. Usually a close friend or a relative is appointed. It must be someone you can trust. Sometimes a person's solicitor or accountant may be willing to act. Trustee companies and the NSW Public Trustee are also willing to carry out such duties. You may also appoint more than one attorney. It is possible for attorneys to charge for their services. If you agree to such a charge, you should check the Power of Attorney document carefully for what charges you are agreeing to. If you have not agreed that your attorney can charge for his or her services, you should also check that a charging clause has not been included in the document.

3.24 **How do I make a power of attorney?**

Although there is no legal obligation to see a solicitor to make a power of attorney, it is advisable to discuss the preparation of a power of attorney with your solicitor or a trustee company. Your solicitor will prepare the document and endeavour to ensure that the wording of the power of attorney reflects your wishes. It is not expensive to have a power of attorney prepared by your solicitor. The State Government does not charge stamp duty on the power of attorney.

3.25 **How much will it cost?**

Solicitors have ready-made powers of attorney which they can adapt to suit you. They generally charge between $100 and $150 + GST. You can also shop around.

3.26 **Do I have to register the power of attorney?**

A power of attorney must be registered if it will be used for dealing with land (such as leases for more than 3 years or sale of land).

Registering a power of attorney does not attract stamp duty, however it does attract a $77.25 lodgement fee with the Land & Property Information. If a solicitor lodges it for you they will charge for sending it to the Land & Property Information.


3.27 **Can I cancel the power of attorney?**

Yes, a power of attorney can be revoked or cancelled at any time if you have capacity to revoke (see Chapter 2 at 2.5). If you no longer wish a particular person to act for you, you can revoke the power of attorney and appoint someone else. You should write to your attorney to tell them you are revoking the power of attorney. If you had registered a power of attorney you should also have a written document revoking it, pay stamp duty on it (if necessary), and then register it at the Land & Property Information. However, if the power of attorney is expressed to be irrevocable, then you may not be able to revoke it. This is why it is strongly recommended that you seek legal advice if you are required to give an irrevocable power of attorney.
4 TAKING CONTROL OF YOUR FINANCES

4.1 Introduction

This chapter is designed to give you a summary of the way the Australian social services and tax systems operate in relation to older people. It also deals briefly with some new financial products which are aimed at retirees. Because of the complexity and the regularity of changes in this area of the law it is not possible to cover all of the detail that may be relevant to your situation. Once you are familiar with the general information contained here we recommend that you seek the advice of a qualified financial adviser or lawyer or make further inquiries to the government departments suggested within this chapter.

4.2 The Age Pension

The Age Pension is an income support payment from the government. Whether you are entitled to the Age Pension depends on your age, income, assets, and how long you have lived in Australia.

If you are a Veteran or a wife, widow or dependent of a Veteran, you may be entitled to receive a Service Pension or other entitlements from the Department of Veterans’ Affairs. You cannot receive a Service Pension from Veterans’ Affairs at the same time as receiving the Age Pension, but there are significant advantages to receiving the Pension from Veterans’ Affairs rather than the Age Pension. If you think there is a chance you may be eligible for the Pension from Veterans’ Affairs, you should contact the Department of Veterans’ Affairs or seek free independent legal advice from the Legal Aid Veterans Advocacy Service. Contact details are set out in Chapter 14.

4.3 How old do I have to be to qualify for the Age Pension?

Men qualify for the Age Pension at 65 years of age. Women qualify at different ages depending on their date of birth. For example, women born before 1 July 1935 qualify for the Age Pension at 60 years of age. Women born on 1 January 1949 or later qualify for the Age Pension at 65 years of age. You should seek advice from Centrelink if you were born between 1935 and 1949.

If you are under the Age Pension age there are other pensions, benefits and allowances to which you may be entitled, which are discussed under the heading “Other Allowances, Pensions and Benefits” below.

4.4 How long must I have lived in Australia?

Before you can claim the Age Pension, you must have had lived in Australia for a total of 10 years, and at least five of these must have been continuous.

There are exceptions for people who have:

(a) lived in New Zealand,
(b) arrived in Australia as refugees, or
(c) arrived from countries which have an agreement with Australia in relation to payment of pensions.

You should seek further advice from the International Services Branch of Centrelink on 131 673 if you fall into one of these categories. More Centrelink contact numbers are listed in Chapter 14.
4.5 How much do I receive for the Age Pension?

The amount of Age Pension you will receive (if any) will depend on your income and assets. The income and assets test applies to everyone who might be entitled to the Age Pension (except if you are blind). The income and assets test also takes into account the income and assets of your partner if you are a member of a couple.

The Age Pension increases each year in accordance with a special set of factors set by the government. As at 20 September 2005, if you are single, the maximum rate of the Age Pension is $488.90 per fortnight (or roughly $12,711.40 per annum). As at 25 September 2005, if you are a member of a couple, the maximum rate is $408.20 each (or roughly $10,613.20 per annum).

On top of the pension, you may also be entitled to additional entitlements, which are set out in the heading “Other Allowances” below.

4.6 Is the Aged Pension taxed?

The Age Pension is taxable. However, if the pension is your only source of income no tax will be paid. Income tax is also discussed later in this chapter.

4.7 Pension Bonus Scheme

If you work and defer claiming the Age Pension you may be entitled to earn a one-off tax-free lump sum bonus when you do finally claim the Age Pension. To be eligible, you must register for the scheme within 13 weeks of the day you first qualify for the Age Pension.

You must register before the bonus starts to accrue and you must defer the pension for a minimum of 12 months from the date you register. You cannot accrue a bonus after the age of 75. If you are approaching the Age Pension age or are working and are already over the Age Pension age, you should seek advice from Centrelink to ensure you are registered for the bonus.

4.8 Am I a member of a couple for Centrelink purposes?

The amount of money you are paid by Centrelink will be significantly reduced if you live as a “member of a couple”. It is Centrelink who must form a view of a particular relationship and it does not only depend on whether you are married or in a de facto relationship. Centrelink looks at financial and household arrangements, the social and sexual relationship and whether or not there is permanence to or commitment in the relationship.

The test affects older people in two important ways. Many older people live together for companionship but do not consider themselves as a couple. Other people may still be married, but are permanently separated from their partners, even if under the same roof.

In both cases, Centrelink must decide whether a person is in a “married-like relationship” and whether the person is living “separately and apart”. This will depend on many different factors and differs on a case by case basis. In other words, it will depend on the opinion the assessing Centrelink officer takes of your particular relationship.

If you disagree with the view of Centrelink, you can appeal the decision made and should seek legal advice from one of the agencies listed below. Members of same sex couples are not considered “members of a couple” for social security purposes.

4.9 The income test

The various income tests that apply to the Age Pension are complicated and you should not rely on the information below: seek advice from Centrelink in relation to any income you receive.

As a basic overview, you can earn income (except compensation income) up to certain limits without having your Age Pension payments reduced. As at 1 September 2005 the income limit for a single person is $124 per fortnight and for the combined income of a couple is $220 per fortnight.
Income you or your partner earn over these limits will reduce your payments by 40 cents in the dollar each if you are a member of a couple or 20 cents in the dollar if you are single.

Income includes all money gained from employment as well as income earned from assets, including financial investments such as money in bank accounts, term deposits, shares, gold and deferred annuities (if you are over the pension age). Income is treated differently depending on where it comes from:

- **Income from Employment**: Centrelink looks at your pre-tax income, or “Gross” income.
- **Income Financial Investments** (including money in bank accounts): Centrelink considers the “deemed” income. “Deemed” income means that Centrelink calculates what would be earned on a particular interest rate (which is set) and ignores what was actually earned on financial investments.
- **Income from Superannuation**: After you reach superannuation age, income is treated as normal income if it is paid to you by way of periodic instalments. If your superannuation is paid to you as a lump sum then it is considered in the same way as a financial investment asset and the “deeming” laws that apply to other financial investments will apply to the lump sum.
- **Income from Property Investments** (rent or board): Centrelink looks at the “Net” income. However, some deductions that are allowed in relation to investment properties to determine net income for Taxation purposes are not allowed for Centrelink purposes.
- **Income from Compensation payments**: Compensation income is treated very differently from other types of income unless you were already on the pension when you started receiving your compensation payments. If you were already receiving compensation payments when you apply for the Age Pension, each dollar of compensation paid to you will reduce your pension by a dollar.

Some payments that are not considered to be income include Medicare and lump sum private health care payments; social security benefits; certain veterans’ entitlements; insurance or compensation payments for property damage; rent assistance; first home buyers’ grants; periodical gifts from a child or parent; and jury or witness fees.

For more information, contact your local Centrelink office or a financial or legal adviser.

4.10 **The asset test**

Your principal place of residence is not included in the assets test. This includes fixtures and adjoining private land (up to 2 hectares) that is used for domestic purposes and is not occupied by persons other than close relatives. If there is another dwelling on your land and it is occupied by a person other than a close relative or carer, then that dwelling may be separately valued and included as an asset. If a person lives in a caravan or a boat, that can also be counted as that person’s principal place of residence.

You can sell your home and the proceeds won’t be counted in the assets test for up to 12 months but only if you intend to use the money to buy another principal place of residence. There are also special rules relating to your home and residential or aged care facility care - see below.

Assets that are counted in the test include the total amount of money you have in the bank as well as the value of any other assets such as real estate, businesses, farms, gifts and loans, motor cars, boats, caravans, household contents and personal effects.

The value of an asset is taken to be what you would get for it if it were sold (that is, the net market value). Generally, any debt owing on an asset is deducted from the value of that asset. The amount of assets you are able to hold before the amount of pension you are entitled to is affected varies depending on whether you are single or a member of a couple and whether you are a homeowner or non-homeowner.

If you are unable to sell or realise an asset for legal reasons or you are trying to sell your asset but no one will buy it and you are suffering severe financial hardship, then you can apply to Centrelink to have the “hardship” rules apply. In these situations Centrelink may disregard the value of an “unrealisable” asset for the purpose of the asset test.
The table below lists the asset test rates that were correct as at 1 September 2005. Check with Centrelink for current rates. Rates are not listed here for people who are members of couples that are separated due to illness: contact Centrelink for more information.

<table>
<thead>
<tr>
<th>Assets Test for Homeowners</th>
<th>For Full Pension</th>
<th>For Part Pension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>up to $157,000</td>
<td>less than $322,000</td>
</tr>
<tr>
<td>Couple (Combined)</td>
<td>up to $223,000</td>
<td>less than $497,500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assets Test for Non-Homeowners</th>
<th>For Full Pension</th>
<th>For Part Pension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>up to $270,500</td>
<td>less than $435,500</td>
</tr>
<tr>
<td>Couple (Combined)</td>
<td>up to $336,500</td>
<td>less than $611,000</td>
</tr>
</tbody>
</table>

If your total assets are more than the limits set out in this table, the rate of pension will be reduced. For every $1,000 in assets you have over the limit the pension will be reduced by $3 a fortnight. You can continue to get a part pension under the assets test until the value of your assets reach the limits set out in the table under the heading ‘part pension’. The amount of assets you can hold before it affects your pension will be higher if you have dependent children or receive Rent Assistance. Since 1 July 2005, accommodation bonds are exempt from your assets test.

4.11 What if I leave my home to move into an aged care facility or other residential care?

If you move into a “care situation”, then your home will not be considered as an asset for a period of 2 years. If you are a member of a couple, the two years will commence only from when you both move into residential care.

The period that the asset is exempt from the assets test may be extended indefinitely if you move into a residential aged care facility or other form of residential care in certain circumstances. For example, if you move into a residential aged care facility and are required to pay an accommodation charge or bond, and you rent your home, then your home may remain an exempt asset indefinitely. If you sell your home however, it will be immediately included in the assets test unless you intend to buy another home with the proceeds.

It is important to seek advice from Centrelink if you move into a temporary or permanent care situation to ensure that your situation is correctly assessed.

4.12 Can I give assets away?

Centrelink has rules that prevent people from giving assets away in order to manipulate their finances to receive a social security benefit. This means that if you give away assets and have not received a benefit in return or have received an “inadequate” benefit, then Centrelink may consider you to still have that asset for the purpose of both the asset test and the deeming provisions for the income test.

The rules in this area changed on 1 July 2002 and are now quite complicated. If you give away assets worth more than $10,000 in any one year then Centrelink will consider you to still possess that asset for the next 5 years. If you give away assets more than $30,000 over a rolling period of 5 years, then the amount over that $30,000 will also be considered to remain as an asset for another period of 5 years. Because the rules are complex, if you are considering gifting any assets that added up are worth more than $10,000 in one year or $30,000 over a 5 year period, you should contact Centrelink for the implications of that action or seek financial or legal advice.

If you sell or reduce your assets to meet normal expenses or to pay for holidays then these rules do not apply. If you are a low income farmer giving your farm to younger family members, special rules under the Retirement Assistance for Farmers Scheme may apply so that you do not lose your entitlement to the Age Pension.
You should also be aware that if you give away or sell assets other than money (for example; rental property, shares, etc.) that you acquired on or after September 1985, you may have to pay capital gains tax. Capital gains tax is discussed later in this chapter.

4.13 Other allowances, pensions and benefits

In addition to the Age Pension, there are additional allowance, payments and benefits that you may be eligible for:

(a) **Disability Support Pension:** If you are under Age Pension age but are unable to work because of a disability, you may be entitled to apply for the Disability Support Pension. There are complex rules governing whether you are entitled to this pension and you should seek advice from Centrelink. If you disagree with a decision made by Centrelink as to your level of disability, you should seek legal advice for your rights in appealing the decision. The Disability Support Pension is paid at the same rate as the Age Pension.

(b) **Newstart Allowance:** This is the unemployment benefit and is available if you are under the Age Pension age, unemployed, and available for and actively seeking work. The rate, if you are over 60 years of age and have been on Newstart for over 9 months as at 20 September 2005, was $443.40 per fortnight for singles or $365.00 per fortnight if you are a member of a couple. The rate is lower if you are under 60 or haven't been on Newstart for 9 months.

(c) **Carer’s Payment:** If you are under the Age Pension age and are not disabled, but spend a substantial amount of your time caring for someone who is on the Age Pension or the Disability Support Pension you may be eligible for the Carer’s Payment. The Carers Payment is paid at the same rate as the Age Pension and cannot be paid in conjunction with another pension.

(d) **Widow Allowance:** This allowance is being phased out and only applies to women born before 1 July 1955. It is available to women who were widowed, divorced or separated since turning 40 and who have no relevant workplace experience. The rate is paid at the same rate as the unemployment benefit and the women are required to attend an interview with a Centrelink “Personal Adviser” once a year.

(e) **Carer’s Allowance:** This payment is an income supplement that is available in addition to your Age Pension or other income if you provide daily care at home to a person with a disability. You must live with the person for whom you are caring to receive this allowance. There is no income or assets test for this allowance. The allowance is currently $92.40 a fortnight. This allowance is an additional payment to whatever other income or pension you are currently receiving. Note that “Carer’s Allowance” is different to the “Carer’s Payment”, which was discussed above.

(f) **Special Benefit:** If you are not eligible for any other payment and are experiencing financial hardship, then “Special Benefit” may be available. Contact Centrelink for details.

(g) **Pharmaceutical Allowance:** If you are in receipt of the Age Pension or the Disability Support Pension, you will automatically receive a Pharmaceutical Allowance. As at 1 September 2005, the Pharmaceutical Allowance is $5.80 per fortnight for singles and $2.90 per fortnight for a member of a couple.

(h) **Telephone Allowance:** This is paid quarterly to assist with the cost of maintaining a telephone service and is paid to pensioners and some holders of Seniors Health Cards. The rate as at 20 September 2005 is $20.40 per quarter.

(i) **Utilities Allowance:** This is paid to persons of pension age who receive income support. The rate as at 20 September 2005 is $50.60 for singles and $25.30 per member of a couple per year. It is paid every six months.
Rent Assistance: If you pay rent, and do not live in public housing, you may be eligible for rent assistance. The amount differs depending on your rent and situation and special rules apply to people living in retirement villages.

Abolished Payments: There are many payments which have been phased out for which no new claims are being accepted. However, if you are already in receipt of one of these payments, you may continue to receive it. Examples of a payment you may be on that is no longer being granted include the Mature Age Allowance, the Partner Allowance, the Widow B Pension and the Wife Pension.

4.14 How are pension payments made?

Centrelink pays the Age Pension or other social security benefit and any other allowances (such as the Pharmaceutical Allowance and Rent Assistance) directly to your bank, credit union or building society account. The payments are generally made fortnightly.

4.15 Concessions

A number of concessions are offered to pensioners. Some examples are: hearing aids, dental care, eye examinations and glasses, vehicle registration and driver licence fees, clubs, theatres and cinemas. In addition to the pensions and allowances already discussed there are other benefits, rebates and concessions to which you may be entitled. Some of these are listed below.

(a) Pensioner Concession Cards: These are issued automatically to all social security and Veteran’s Affairs pensioners. They are also issued to people who are above 60 years old who have been receiving a social security benefit for 9 months or more.

(b) Commonwealth Seniors Health Card and Seniors Concession Allowance: This card is aimed at self-funded retirees who do not qualify for a pension because of assets or income but who have an annual income of less than $50,000 for singles or $80,000 combined for couples (as at 1 September 2005). Holders of the Seniors Health Card are paid an allowance twice a year to assist in meeting household expenses. The rate at 1 September 2005 was $202.80. The card also allows access to cheaper medications through the Pharmaceutical Benefits Scheme.

(c) NSW Seniors Card: The NSW Government issues the Seniors Card to anyone 60 years of age or over provided they do not work more than 20 hours per week in paid employment and are permanent residents of NSW. A Seniors Card gives a number of concessions such as discounts and special offers from 4,000 businesses around Australia on things such as travel, insurance and goods and services, as well as public transport such as rail, ferries and buses. For more information call the Seniors Card information line on 1300 364 758 or visit the website at www.seniorscard.nsw.gov.au.

(d) Rebates: Your local council may offer pensioner concessions on land rate payments. Rebates are also offered by organisations such as Sydney Water and Telstra. In order for you to be eligible for pension rates on gas or electricity, you need to notify the relevant company that you are in receipt of a pension.

4.16 Disputes, advice and assistance

The rules for assessment of the correct amount which you should be paid are quite complex and mistakes do occur. If you think that you are being paid the wrong amount (either too much or too little) or your assets are being assessed incorrectly, you can contact Centrelink directly and ask for a review. An Authorised Review Officer (ARO) will investigate your complaint. The ARO will be another Centrelink employee, but one that was not involved in making the original decision.

If the problem cannot be resolved within Centrelink, you can apply to the Social Security Appeals Tribunal (or the Veterans Review Board in veteran’s related matters) for a review of the ARO’s decision. If you are not satisfied with the Social Security Appeals Tribunal’s decision, you can apply to the
Administrative Appeal's Tribunal for a further review. You should note the time limits that apply: this means you should also apply for a review as soon as possible after you receive notification of the decision.

At any of these stages, you may contact Welfare Rights NSW for assistance or the Veterans’ Advocacy Service may also assist you (see Chapter 14 for details). Another alternative is to contact the Commonwealth Ombudsman, which has a special unit dealing with complaints about Centrelink.

4.17 Superannuation

Superannuation is a form of savings designed to provide you with an income when you retire or if you become disabled and are unable to work. Special low rates of tax apply to superannuation contributions and earnings. The Government places some restrictions on your ability to withdraw your superannuation benefits prior to retirement. This is called preservation. From 1 July 1999 all future superannuation contributions are generally preserved until you retire and are 55 years old or older. The age limit is being increased to 60 by 2025 for those born after 30 June 1964 with phasing in for those born after 1 July 1960.

Higher taxation rates apply to most benefits paid prior to age 55. However, from 1 July 1997 the preserved component of your superannuation benefit can be paid out prior to the age of 55 and retiring if:

(a) you become permanently incapacitated;

(b) you die;

(c) in cases of severe financial hardship, you meet the criteria set by the government and the superannuation fund trustees agree to the early release of the funds;

(d) on compassionate grounds, if you meet the criteria set by the government and the fund trustees agree to the release of the funds; or

(e) if you change your employer and your superannuation account has a balance of less than $200.

Also from 1 July 2005 you have a choice as to which superannuation fund to pay your money into.

4.18 Disability and death benefits

Most superannuation policies automatically include insurance for death or disability. If you are disabled before retirement age and have been making superannuation contributions you may be entitled to a disability payout. This is different, and possibly in addition, to accessing your preserved component mentioned above. Disability payouts can be substantial sums of money and may be available if you are unfit to do your old job or other suitable employment that suits your training. If you think you might be eligible you should contact your superannuation company or seek legal advice.

4.19 Superannuation complaints

If a superannuation company refuses your claim for benefits or makes any other decision you disagree with, you have a right to ask for an internal review. If you still disagree with the decision you can take your complaint to the Superannuation Complaints Tribunal or seek legal advice. Contact details are set out in Chapter 14.

4.20 How is superannuation taxed?

The amount and timing of income taxation of superannuation and other retirement benefits depends on many factors including the nature of the benefit and your age when you retire. Tax concessions are given to complying superannuation funds and retirees of those funds. Superannuation Schemes must comply with certain prescribed standards which cover the level of contributions, retirement age for payment, composition of Trustees, preservation and portability of benefits, vesting of benefits, communication to
members about benefit entitlements and certain restrictions on fund investments. Tax concessions are generally denied to non-complying funds. You should enquire with your fund directly or financial adviser.

4.21 Income Tax

Australian residents are taxed on their income from various sources (other than exempt income) and their capital gains (capital gains tax is discussed in greater detail below). Income means total amounts received or accrued and includes ordinary income, for example, wages, salary and rental income, and statutory income (such as pensions). Some amounts such as windfall gains from lottery and betting wins, inheritances and gifts that do not arise from employment are exempt from income tax. In addition, you might not have to pay tax on any money you make from your hobby (if any) if you are not making a regular income from it.

If your allowable deductions exceed your assessable income and net exempt income in a particular financial year, then you will have a tax loss for that particular financial year, which can be carried forward indefinitely and offset against any future assessable income.

If part of your income is foreign income, for example income from rental on an overseas home, expenses in relation to that foreign income may be offset against certain other foreign income derived. Any expenses in excess of your foreign income can be carried forward to future income years. From 1 July 2001, excess interest paid on loans to purchase foreign income-producing assets can now be offset against assessable Australian income. If you are an Australian resident you may be entitled to certain tax rebates and credits for foreign tax paid.

Non-resident individuals are taxed only on income which has some connection with, or is produced directly or indirectly from, sources in Australia. Relief from Australian taxation may be provided to non-resident taxpayers under country-specific Double Tax Agreements to which Australia is a party. Whether a person is considered a resident or a non-resident will depend on their personal circumstances.

4.22 How is income tax calculated?

You are liable to pay income tax and therefore lodge a tax return at the end of financial year, if the total income you earned for that financial year is above a certain threshold. The relevant income threshold depends on your personal circumstances (e.g. whether you are employed, received a government allowance or pension and other income, or whether you received the Senior Australian's tax offset and other income during the relevant financial year).

Income tax is levied at progressive rates on the amount of your taxable income. Your taxable income is determined by deducting outgoings and losses from your income for the tax year. Outgoings and losses must be related to the income earned and cannot relate to private consumption or be capital in nature. You should make sure you keep records of your income, expenses incurred in respect of your income, investments and assets evidence for five years from 31 October of the year in which you lodge your tax return or, if you lodge later, for five years from the date you lodge it. These records could include rental and other income receipts, receipts and/or logbook entries of any expenses that relate to your income or investments, statements, contracts and records relating to your investments and all costs associated with purchasing and disposing of them.

4.23 How is income tax paid?

How income tax is paid depends upon whether you are employed or earn income from business or investments. If you are employed, then your employer will withhold tax from the payments they make to you and send those payments to the Australian Taxation Office (ATO). This system is called the Pay As You Go (PAYG) withholding. If you earn investment or business income you are required to make either annual or quarterly instalments towards your expected tax liability on your investment or business income under the PAYG instalments system. Regardless of which of the above systems you fall under, you are required to lodge an income tax return at the end of each income year.

If your annual income is above the tax free threshold and you do not pay any PAYG tax, you may be required to pay income tax on receipt of a notice of assessment after lodging your income tax return.
4.24 Capital Gains Tax

The law relating to CGT is detailed and complicated in its application. It is important to have an understanding of how the tax works so that you know when you are likely to need to keep accurate records of the value of taxable assets at the time they were acquired until they were disposed of. The information in this chapter is intended as an introduction only. You will need to seek detailed advice from the ATO, your accountant or lawyer on specific issues.

4.25 What is CGT?

CGT is the tax that you pay on any capital gain you make and include on your annual income tax return. It is a component of your income tax. You are taxed on your net capital gain at your marginal tax rate.

Your net capital gain = [ your total capital gains for the year ]
                        minus [ your total capital losses (including any net capital losses from previous years) ]
                        minus [ any CGT discount and small business CGT concessions to which you are entitled ].

In general, CGT applies to assets acquired after 19 September 1985, though in some situations it may apply to assets acquired before then. CGT affects the amount of income tax that you pay because your assessable income includes any net capital gain you have made during each income year.

Australian residents can make a capital gain (or capital loss) if a CGT event happens to any of their assets anywhere in the world.

4.26 Keeping accurate records

It is very important that you keep detailed and accurate records of the purchase or other acquisition (e.g. as part of divorce settlement, gifts and bequests) of CGT assets including valuations where assets were not purchased at market value. You should also keep records of the costs of holding, financing, maintaining and making improvements to CGT assets. Incomplete records could mean paying taxes when you dispose of the asset.

4.27 When does CGT apply?

You usually make a capital gain or a capital loss if a CGT event happens. CGT events are events defined in the Income Tax Assessment Act 1997 (the ITAA 1997) and are subject to CGT. For example, the sale or other disposal of an asset you own (e.g. an investment property) is a CGT event. The ITAA 1997 also sets out rules regarding when a CGT event is considered to have occurred. For example, the date on which the sale of an investment property would be considered to occur is the date the contract for the sale of the property is executed or if there is no contract then the date on which you cease to be the owner of the property.

With respect to disposals or sale of CGT assets, CGT is payable only when the asset is disposed of or deemed to have been disposed. Individual asset holders are entitled to a discount on assets held for 12 months or more. Accordingly, if you dispose (i.e. sell) an asset, e.g. shares in a public company, after holding those shares for longer than 12 months, you will be liable for CGT on only 50% of any gain you make on that disposal.

You can also make a capital gain if a managed fund or other trust distributes a capital gain to you. Normally, the fund’s manager or trustee will set out the amount of capital gains included in that distribution to you.

For most CGT events, your capital gain is the difference between your capital proceeds (i.e. what you receive from the sale or distribution) and the cost base of your CGT asset (i.e. what you paid for the asset including any maintenance and other eligible costs), for example, if you sell an asset for more than you paid for it, the difference is your capital gain. You make a capital loss if the reduced cost base of your
CGT asset is greater than your capital proceeds. The capital loss is the difference between the capital proceeds and the reduced cost base. Generally capital losses may be carried forward to future years and offset against your capital gains. For further information in relation to calculating your capital gain or loss, contact the ATO or, if you are able, your accountant or tax lawyer.

Any assets that you may give away as a gift are also subject to CGT. The gift recipient is treated as having acquired the asset at its fair market value (that is, at the price that a person would have paid for that asset if they had purchased the asset). Valuations should be obtained and kept as evidence of the market value. Assets passing on death will not be taxed at that point however, CGT will be payable when the asset is subsequently sold.

4.28 Do I have to pay CGT?

To determine whether you have to pay CGT, you will need to know if you have made a net capital gain. For this, you will need to know the following:

(a) whether a CGT event has happened;
(b) the date of the CGT event;
(c) what assets are subject to CGT;
(d) the date and amount of any expenditure you incurred that forms part of the cost base of the asset; and
(e) the amount of money and value of property you received or were entitled to receive for the asset.

4.29 CGT assets

CGT assets include:

(a) real estate (e.g. a holiday home);
(b) shares in a company;
(c) units in a unit trust or managed investment fund;
(d) collectables (e.g. jewellery);
(e) personal use assets (e.g. furniture);
(f) other CGT assets include contractual rights, options, foreign currency; and
(g) goodwill.

4.30 CGT events

CGT events are the different types of transactions or events that may result in a capital gain or capital loss. Many CGT events involve a CGT asset, for example, a sale of shares. Some of the more common CGT events or situations that may produce a capital gain or capital loss are:

(a) an asset you own is sold, lost or destroyed;
(b) you give an asset away;
(c) you enter into an agreement not to work in a particular industry for a set period of time;
(d) shares you own are cancelled, surrendered or redeemed;
(e) shares you own are declared worthless by a liquidator;
(f) you grant an option to someone to buy an asset that you own;

(g) you receive a non-assessable payment from a unit trust or managed fund;

(h) you dispose of a depreciating asset that you used for private purposes (e.g. a boat); or

(i) you stop being an Australian resident.

4.31 Exemptions & rollovers

Some of the main exemptions from CGT include:

(a) an asset you acquired before 20 September 1985;

(b) disposing of your main residence. This can change depending on how you came to own the residence, whether it is on more than 2 hectares of land and what you have done with it; for example, if you have rented it out, you may be liable to some tax when you sell it;

(c) cars, motorcycles and similar vehicles;

(d) compensation you received for personal injury;

(e) proceeds of life and superannuation policies, unless you were not the original owner (e.g., you were the beneficiary of your spouse’s superannuation policy);

(f) gains on light motor vehicles (cars, station wagons, utilities etc); and

(g) gains on ‘personal use’ assets acquired for $10,000 or less. These are assets kept for the personal use and the enjoyment for you and your family and include items such as clothing, white goods, furniture, sporting equipment, cameras and boats, but cars are excluded. The concession does not cover works of art, jewellery, rare books, stamps and coins and antiques (called “collectables”). Disposals of personal use assets can give rise to a taxable gain, but not an allowable loss. Disposal of collectables bought for more than $500 each give rise to taxable gains, but any losses made can only be offset against taxable gains on other listed assets. It is therefore important to keep records of the purchase and sale of both collectables and personal use assets that are likely to appreciate in value.

Provided you satisfy the relevant requirements you may be able to defer your CGT liability for example in relation to:

(a) any government compulsory acquisitions of your property or your property has been stolen or destroyed; or

(b) asset transfers following a marriage breakdown; or

(c) ownership changes following company restructures.

4.32 The Medicare levy

The Medicare levy funds the Medicare scheme, which scheme gives Australian residents access to health care. If you are resident in Australia or temporarily absent during the income year you will be liable to pay the Medicare levy unless your taxable income for the year is low or you are a prescribed person for the purposes of Medicare levy payments.

The amount of Medicare levy you pay is usually calculated at a rate of 1.5% of your taxable income and is payable in addition to your income tax (if any). This amount is not reduced by any tax offsets you may be entitled to unless they are refundable tax offsets. Note, the rate at which your Medicare levy is calculated may vary depending on your personal circumstances.
High income earners who do not have an appropriate level of private hospital insurance may also be liable to pay a Medicare levy surcharge at the rate of 1% of their taxable income. The Medicare levy surcharge is payable in addition to the Medicare levy.

4.33 Exemptions and reductions

You may be exempt from paying the Medicare levy or it may be reduced if you have low income or you are a prescribed person for the purposes of Medicare levy payments. To find out whether you fall within the low income category of taxpayers and to obtain information on current income thresholds for Medicare levy purposes you should contact the ATO or, if you are able, your accountant or tax lawyer. If you are a prescribed person you may be entitled to a full or half Medicare levy exemption for the period you are a prescribed person. Prescribed persons are:

(a) Defence Force members who are entitled to full free medical treatment for all conditions;
(b) Department of Veterans’ Affairs Repatriation Health Card (Gold Card) holders;
(c) blind pensioners;
(d) sickness allowance recipients;
(e) persons who are not residents of Australia for tax purposes;
(f) residents of Norfolk Island;
(g) persons who have a certificate from the Levy Exemption Certification Unit of the Health Insurance Commission showing they are not entitled to Medicare benefits; and
(h) members of a diplomatic mission or consular post who are not Australian citizens and do not ordinarily live in Australia.

4.34 Need more information on tax?

If you would like to find out more about whether your income is taxable, whether you need to lodge an income tax return, about CGT or the Medicare levy:

(a) phone the general public Personal Tax Info-line on 13 28 61. Keep your tax file number handy when you call this number. If you are a low income earner ask the consultant when you call if you qualify for free help to prepare your tax return (Tax Help);
(b) download information from the ATO website at www.ato.gov.au;
(c) order free information books, videos and fact sheets on topics which affect you on 1300 720 092;
(d) write to the ATO at PO Box 9935 in your capital city;
(e) obtain a copy of TaxPack (a print publication designed to help you to complete your individual income tax return) from the ATO, your accountant or check if your local newsagency stocks copies of TaxPack;
(f) the National Information Centre on Retirement Investments Inc (NICRI), which is an independent body funded by the Australian Government to provide the public with free information on planning and saving for retirement, investment options and effective use of financial resources in retirement; or
(g) see your accountant or tax lawyer.
4.35 **The Goods and Services Tax (GST)**

GST is a broad-based tax applied to most supplies of goods and services in Australia from 1 July 2000. In most cases, if an entity makes a supply of goods and/or services, then it will be liable to pay GST at a tax rate of 10% of the value of the supply. GST is generally included in the price paid by the recipient of the goods and services. Some goods and services are GST-free, for example, basic food, ambulance services, exports, education, hospital treatment and prescription medication.

GST is added to the cost of goods and services at each stage of the production and distribution chain, and the eventual cost including GST must be displayed on the price of the goods.

The total displayed price should include GST. Receipts will also show how much GST you paid. To calculate the amount of GST you are paying on fully taxable goods and services divide the price by 11. For example: Something costing $110 will include $10 GST.

4.36 **Do I need to register for GST?**

Registering for the GST allows you to claim a credit from the ATO for the GST component in the price you pay for goods and services. This is called an input tax credit and is netted off against your entity’s own liability to GST on its supplies to its customers. To obtain an Australian Business Number (ABN) you must first register with the ATO.

In general, if you are operating a business with an annual turnover of $50,000 or more or a non profit organisation with a turnover of $100,000 or more you will need to register for the GST. Businesses with a lower turnover may register for GST (but it is not compulsory to do so). If you are a taxi driver carrying on your own business then regardless of your annual turnover you must register for GST. You cannot charge GST or claim input tax credits if you are not registered for GST.

If you are a self-funded retiree you only need to register if you are an investment property owner and will need to claim back GST charged to you on goods (building materials) and services (by property agents, accountants, solicitors, builders, electricians, plumbers). Hobbyists and employees cannot register for the GST.

4.37 **How to register for GST**

Complete a registration form which can be obtained by calling the ATO Business Tax Enquiries Infoline on 132866 and request a registration package or register electronically through the Business Entry Point at [www.business.gov.au](http://www.business.gov.au). Alternatively, contact your lawyer or accountant who will be able to lodge your application for you.

4.38 **Land Tax**

Land tax is a state tax payable on the unimproved and unencumbered value of land you own in addition to land owned and occupied as a principal place of residence (your home) in NSW.

4.39 **Who needs to pay land tax?**

You may be liable for land tax if you own or part-own:

(a) vacant land, including vacant rural land;

(b) a holiday home;

(c) investment properties;

(d) company title units; or

(e) residential, commercial or industrial units.
4.40 How is land tax calculated?

Land tax is calculated on the combined value of all taxable land owned by you as at 31 December each year. The Office of State Revenue (OSR) Commissioner of Land Tax sets the rates for land tax each year for the following year.

Unlike income tax, which operates on the basis of a financial year (that is, from 1 July to 30 June each year), land tax operates on the basis of a calendar year (that is, 1 January to 31 December each year). For example, your land tax liability for 2006 would be based on all liable land held at midnight 31 December 2005.

4.41 How are valuations made?

The Valuer-General sets the land value of all land in NSW each year as at 1 July before the tax date 31 December. These valuations are different from those made approximately every three years for local government rating purposes.

The valuation does not take into account any improvements (such as houses etc) on the land, nor does it allow for a deduction of any mortgage of the land. That is, the valuation is based on the unimproved and unencumbered value of the land.

4.42 Exemptions and concessions

Exemptions from land tax include the following:

(a) Your principal place of residence

You can claim the principal place of residence exemption for land, including strata lots, that is used and occupied as your principal place of residence (i.e. your home). The area or land value of the property does not affect whether you qualify for the exemption or not. A family, including dependents under 18 years, can only claim the principal place of residence concession for one property. If there is more than one owner for the land, at least one owner must use and occupy the property as their principal place of residence.

To be eligible for this exemption you must:

(i) have continuously used and occupied the land since 1 July of the year prior to the current land tax year (eg. for 2005, you must have occupied the land since 1 July 2004). However, if you do not occupy the property until after 1 July, the Chief Commissioner of the Office of State Revenue may grant an exemption if he is satisfied that the property is used and occupied as your principal place of residence;

(ii) have used the land for residential purposes. However, if you have used the land for incidental business purposes (e.g., if one room is used as a home office or workshop) and the business is primarily conducted at a place outside of your land, you can still claim the exemption;

(iii) not have used any other land as your principal place of residence since the preceding 1 July; and

(iv) be a natural person (that is, not a company), a beneficiary of a concessional trust, a life tenant, or a person with a right to reside under the terms of a will.

Provided you satisfy the relevant eligibility criteria, you may also be able to claim a principal place of residence concession as follows:

(v) If you purchase vacant land on which you intend to build your principal place of residence, provided you do not own another property which is currently your exempt principal place of residence. This concession applies for two years from when you either acquired the vacant land or when the land became unoccupied.
and you commenced building works for your future principal place of residence. This two year period may be extended where there is a delay in completion due primarily to reasons beyond your control.

(vi) If you purchase a new residence prior to completing the sale of your former residence before 31 December, you may be able to claim an exemption for both residences.

(vii) If you move out of your principal place of residence (your home), and move into another residence that you do not own (for example, if you move overseas or interstate), you may be able to claim an exemption from land tax. This exemption is allowed for a maximum period of six years.

(viii) With respect to property which you have inherited, if the property in question was the deceased's principal place of residence it will be exempt from land tax for 12 months after the date of death, or until the deceased's interest is transferred in accordance with their will, whichever occurs first.

(ix) If you rent out part of your principal place of residence to another person/s (for example, a student boarder) and receive income from this, you may still be able to claim an exemption.

(b) Land used for primary production.

You can claim this exemption for land used primarily for primary production (i.e. farming) for the purpose of selling the produce of primary production. This exemption applies even if you do not use or occupy the land but you lease it to someone else who uses it for primary production purposes;

(c) property used for boarding houses;

(d) low cost accommodation;

(e) residential parks including caravan parks;

(f) land used and occupied as a retirement village or an aged care facility (e.g. an aged care facility); and

(g) land owned by non profit organisations.

4.43 Making Payments

If you own property other than your principal place of residence and you think you might be liable for land tax, you need to fill in a registration form (initial return) with the Office of State Revenue (OSR).

Once OSR receives your registration form, they will determine your land tax liability for that year (e.g. 2005) based on the property you owned at midnight on 31 December of the previous year (e.g. 2004). The OSR will send to you a notice of assessment which will set out all the land you own, including taxable and exempt land, and how much land tax you need to pay. If you do not receive a notice of assessment but believe you are liable to pay land tax you should seek advice from your lawyer or accountant.

Payment is generally made by instalments, however, an early payment discount is available if you pay upfront. If payment of a land tax assessment will cause you serious financial hardship, you can make an application to extend or defer payment.

4.44 Need more information on Land Tax?

To find out further information about land tax, you can visit the OSR website at www.osr.nsw.gov.au or contact the OSR by telephone on 1300 139 816 or email on the following address landtax@osr.nsw.gov.au or alternatively (if you are able to) contact your accountant or tax lawyer.
New financial products - Equity release products

You may have recently heard about 'equity release products'. This is the technical term for a range of financial products marketed under various names such as 'reverse mortgages', 'home reversion schemes' or 'shared appreciation mortgages'. These financial products are sold as a way for seniors to use their own homes to generate income and are increasingly popular among people who have accumulated fixed assets, but have little income when they retire. They work by allowing you to borrow money against your house in return even though you have little income.

However, as you will see below, the way these products work means that there are risks involved (such as eviction from your home) and you should see an independent financial adviser, lawyer or accountant before purchasing or entering into any of these products.

In Australia there are currently three general types of equity release products available. We will briefly explore each below, but we recommend you contact the Australian Securities and Investment's Commission (ASIC) or visit its website for further details about these products before purchasing (See chapter 14, listed under ‘ASIC’). ASIC have a special section dealing with consumer education and complaints about financial services.

(a) Reverse mortgages

Reverse mortgages allow older people to borrow money against their primary residence. However, unlike normal mortgages, repayments don't usually have to be made until you leave and move into care, sell your home or pass away. At that time, the loan ends and the home is sold. You, or your estate, must repay the loan, plus accrued interest and repayments owing out of the sale proceeds.

Each year the fees and interest you would ordinarily pay are added to the loan. Over time, you're charged interest on the interest, or compound interest, and that builds up the total amount that you owe.

So it is easy to see that over time and depending on the size of the loan, the amount owing can grow to eat away at the value of your property and may leave very little (or nothing) once the property is eventually sold. This will be reduced if the value of the property increases or if the reverse mortgage allows you to draw down amounts as needed rather than taking a lump sum upfront. You should check if this option exists.

If the amount owing grows to be greater than the value of your house when it is sold, then you have 'negative equity' in the home. Some, but not all, reverse mortgages guarantee that if this happens, you (or your estate) will not have to repay more than the value of your house when it is sold. However you should ask about this option and the conditions that will apply to it. For instance, you may lose this guarantee if you do not keep the house in good condition.

(b) Home Reversion Schemes

In a home reversion scheme you sell a part or all of your home to a home reversion company at a discounted price (usually between 35% and 60% of what your house is worth). But you have the right to keep living in your home until you pass away or decide you want to move.

There are two main types of home reversion schemes:

- **A sale and mortgage scheme**: You agree to sell your home, but final settlement is put off until you die or move out. A mortgage and caveat will then be placed on the property so you will not be able to deal with the property (eg lease, mortgage or sell it) without the home reversion provider's consent.
• **A sale and lease scheme** - where the home reversion provider owns the house and leases it back to you.

Home reversion schemes give best value for money for those that will be able to live in the house for a long period of time. However, if you pass away or have to go into aged care soon after entering such a scheme, you may have sold your home too cheaply compared with selling it on the market.

As with reverse mortgages you also need to be aware of the conditions that apply which will normally include an obligation on you to maintain and repair your home if it is a 'sale and mortgage scheme'. This means you must repair the property to the lender's standard and risk eviction if you don't. With a 'sale and lease scheme' it becomes the provider's obligation to repair the property, just as like in a landlord and tenant relationship. This means that you might think the house needs repair but the provider might disagree and refuse.

(c) **Shared Appreciation Mortgages (SAMs)**

With SAMs, you give up a right to some of the capital gain on your home in return for paying reduced or little interest on the loan. These types of products are relatively new and were first designed to assist home buyers by allowing them to borrow more in return for giving the provider a share of any future capital gain from the property. But some products can also be used by existing home owners to borrow money against their homes in return for giving up a share of any increase in the value of the property.

For instance, you will be able to borrow up to 20% of the value of your home and will not need to pay interest on this money. But when the property is ultimately sold, you repay up to 40% of capital gain on the property to the finance provider. If a loss is made (because the property has fallen in value over that period) then the provider will also share a percentage of that loss.

Like other equity release products, certain conditions will apply. Some common examples are that you must continue to occupy the house as your primary residence, you cannot lease the property or mortgage the property without the finance provider's consent and you may not improve or renovate without the finance provider's consent.

In considering any of these products, you should keep in mind that if someone else lives in your home with you, they must also sign up as they won't generally have any right to live there after you die unless they repay the loan.

### 4.46 Getting advice and asking questions

Make sure you get a lawyer to read the terms and conditions and explain exactly what you're signing up for. On the financial side, if you already use a licensed financial planning service, then talk the idea over with your adviser. If you don't use a financial planner, you could ask an accountant to help. You need someone who understands financial matters, knows your personal needs and will put your interests ahead of anything else. Always check how your adviser is being paid for the advice they give you.

In seeking advice, we have adapted a list of questions from ASIC's website, which you should discuss with your financial adviser, accountant or lawyer:

(a) What are the upfront and ongoing fees (including legal, valuation, application, maintenance, insurance, early repayment and ongoing costs)?

(b) What is the interest rate? Is it fixed or variable? (If interest rates rise, you may have much less equity in your home.)

(c) How will it affect my pension and tax?
(d) Could I be left owing more money than my house is worth (i.e. a ‘negative equity’ situation)? What are my obligations if this happens?

(e) Will I have enough money left to pay for aged care accommodation if I need it?

(f) What is the likely cost of future maintenance and repairs while I continue to live there? Can the provider evict me if I can’t repair and maintain the property?

(g) What are my rights if anything goes wrong? Can I get complaints resolved impartially and at low cost?

(h) What is the affect on other people living with me at my house?

(i) Would I be better off selling your home and moving to somewhere smaller?

(Sourced from: www.fido.gov.au/equityrelease with permission)

4.47 ‘Get Rich Quick’ schemes

While we are talking about financial products and services, we stress the need for you to be vigilant before buying or entering into them. While there are many new financial products and services legitimately aimed to assist the elderly to better manage their finances, there are also a few high risk or questionable products out there too. If something sounds too good to be true, it generally is.

If you are being asked to buy a product or financial service, we recommend you seek advice before proceeding. Do not let them push you into making a hurried decision. Some techniques to buy you time to make an informed and considered decision include taking their contact details and telling them that you will contact them once you have had a chance to think it over. Or you can also ask them to put their offer in writing before you make a decision. If they refuse, reinforce your legal right to quality advice and quality information before purchasing.

Once you have bought some time, you can then contact ASIC for information about financial products or see your accountant or licensed financial adviser.

There is no shortage of people offering you ‘once in a lifetime deals’ to financial security, whether it be a share in some unclaimed money they have discovered or property investment schemes with ‘absolutely guaranteed returns’. You can see some amusing, and tragic, examples of scams and shady financial products on ASIC’s consumer website www.fido.gov.au (see chapter 14 under ‘ASIC’ for full details)
5 HOUSING AND ACCOMMODATION

5.1 Introduction

The housing options for older people depend upon their financial resources. Home ownership continues to be an important focus for older Australians. Statistics show that older Australians prefer to stay in their own homes as they get older. Governments have acknowledged this preference and are giving increasing assistance to people who wish to remain in their own home.

This chapter aims to help older Australians and those who care for them, with important lifestyle and housing decisions. It includes information on how to make sure older people get the care they need, how to get help in the home, the accommodation choices that are available and how these choices may affect entitlements to payments and services.

5.2 Home Ownership

The buying and selling of a home is usually the most important transaction that people undertake. There are many financial and legal implications and a large amount of paperwork that must be completed. Most people employ agents to sell a home and a solicitor or conveyancer to make sure the ownership is legally transferred.

5.3 Buying and selling a home

(a) Agents

The first step you might take in selling your house is to engage a real estate agent. Before an agent can sell the property for you, you will need to enter into a contract with the agent called an agency agreement. This will give the agent authority to take steps such as advertising the property for sale and managing inspections. The agency agreement should set out the services the agent will provide you and details of all of the costs you will be liable for, including any commissions. While the agreement comes in a printed form, you still have the right to negotiate the terms before signing it.

(b) Auctions

Recent changes to the law mean that you are not able to bid at an auction of residential property in NSW unless you give the selling agent your name and address and show proof of your identity. Your details are recorded by the agent in the Bidders Record and at the auction you are given a bidder’s number. Registering for an auction does not mean you must bid. Registering simply gives you the right to bid.

The auction is conducted under certain conditions that are set by law. The auctioneer should have these conditions on display before the auction so that you can read them. The auction conditions include:

(i) the highest bidder is the purchaser, subject to any reserve price;
(ii) the seller of the property is entitled to one bid only;
(iii) before the auction, the auctioneer must announce if the seller has reserved the right to make a bid;
(iv) the auctioneer must announce when the seller’s bid is made (if it is used);
(v) the auctioneer can refuse a bid that is not in the interests of the seller;

(vi) the auctioneer has no authority to accept a late bid, that is, a bid after the fall of the hammer;

(vii) if there is a disputed bid, the auctioneer is the sole arbitrator and makes the final decision;

(viii) the successful buyer’s name must be given to the auctioneer as soon as possible;

(ix) it is an offence to collude with someone to interfere with free and open competition at the auction, for example, by arranging to make ‘dummy’ bids. Those involved may be prosecuted and fined up to $22,000.

If you want someone else to bid on your behalf, they must give the auctioneer a written authority from you, before the auction starts. The letter must include your name, address and details of proof of identity, such as your driver’s licence or passport number.

Before auctioning a property, the seller will nominate a ‘reserve’ price that is usually not told to the interested buyers. The reserve price is the lowest price that the seller is willing to accept. If the bidding continues beyond the reserve price, the property is sold at the fall of the hammer. If the highest bid is below the reserve price, the property will be ‘passed in’. The seller will then either try and negotiate a price with interested bidders or put the property back on the market.

If you are the successful buyer at auction, you must then sign the sale contract and pay the deposit on the spot (usually 10%). The cooling-off period (the period in which you can change your mind about purchasing the property) does not apply if you buy at auction (or if the property is passed in but you end up exchanging contacts on that same day). This means you will not be able to change your mind without incurring the loss of your 10% deposit, and possibly a claim by the seller for damages.

(c) Conveyancing

The legal work involved in preparing a sales contract, mortgage and other related documents is called conveyancing. It is possible to do your own conveyancing, however, most people get a licensed conveyancer or lawyer to do the work for them. The Office of Fair Trading issues licenses for conveyancers to do legal work such as preparing documents and explaining the implications of those documents. The following paragraphs explain what is involved in conveyancing.

While conveyancers and lawyers are equally qualified to do conveyancing work, lawyers can also give you legal advice about other matters. Both must have professional indemnity insurance to protect you in case they make a mistake or are negligent in their work.

A lawyer or conveyancer is professionally experienced at making sure that all relevant steps for your conveyance are completed. Most offer a fixed cost for the service. If you choose to do your own conveyancing, you will be taking responsibility for anything that goes wrong. As you will not have the insurance of a professional, you will not be covered for any loss suffered by the other party because of your negligent actions or omissions. The exercise to save some money may end up costing you significantly more.

You should not use the same lawyer as the seller in order to “save costs”, as the lawyer for the seller will have a conflict of interest if the transaction becomes complicated and your interests diverge from the seller’s.
(d) The contract

A residential property cannot be advertised for sale until a contract for sale of land has been drawn up. You have the right to examine the contract at any time during the buying process, even before you make an offer. Exchanging sale contracts is the legal part of buying a home. Before exchange, the agreement is usually just verbal and not enforceable.

After you have discussed the contract with your lawyer or conveyancer and all the proper enquiries have been made, you will be ready to exchange contracts. There will be two copies of the sale contract: one for the buyer and one for the seller. You each sign one copy before they are swapped or ‘exchanged’. This can be done by hand or post and is usually arranged by your lawyer, conveyancer or the agent. At the time of exchange you will be required to pay a deposit, usually 10% of the purchase price. You should discuss with your lawyer whether insurance over the new property should be taken out after exchange.

After you have exchanged contracts, you have five business days to change your mind and get out of the contract – this is known as the “cooling off period”. If you do change your mind after that time, the seller is entitled to keep 0.25% of the sale price. However, the parties can agree to waive this cooling-off period, in which case if you change your mind at any time after exchange, the seller will be entitled to keep 0.25% of the sale price.

(e) Settlement

Settlement usually takes place about six weeks after contracts are exchanged. This is when you become the legal owner of the property. The balance of the purchase price and other adjustments are paid on this date.

(f) Fees & Charges

Apart from the purchase price of the home, there are a variety of fees and charges involved in the transaction. These include:

(i) fees for the professional services of a lawyer or conveyancer (if you have used one);

(ii) disbursements (costs incurred on your behalf) by the lawyer or conveyancer. For a purchaser, these costs are likely to include the cost of obtaining building certificates, pest inspections and other searches that ensure the property is not encumbered by a mortgage or caveat etc;

(iii) stamp duty payable within three months of the making of the contract;

(iv) insurance, which should be arranged to be effective from exchange or settlement.

5.4 Strata Title Units

For some people, looking after the family home and garden becomes too much work. One alternative is to move into a strata title unit where some of the burdens of maintaining a residence are taken care of by the owners’ corporation.

If you choose to purchase a strata title unit you should become familiar with your rights and responsibilities as a unit owner. You will be purchasing a lot in a strata scheme. You will become a member of the owners’ corporation and will acquire an interest in the common property.

As a member of the owners’ corporation you are entitled to vote at an annual general meeting (AGM). The AGM is held each year and all lot owners in the strata scheme are entitled to attend. Important decisions are made regarding the management of your strata scheme at the AGM and you should attend to vote on decisions which may affect you.

As an owner you will be responsible for your own unit while the owners’ corporation will be responsible for the common property.
The common property is all the land and buildings which do not belong to any particular lot. This usually includes the outside walls of the building, stairways, hallways, gardens and any lifts. If you are uncertain as to which part is common property or lot property you should speak to your strata manager. It is important to know this because you cannot alter or do work to common property without the consent of the owners’ corporation. The owners’ corporation usually owns equipment necessary to maintain and repair the common property.

In a strata scheme all owners will periodically be required to contribute money into the administrative fund and sinking fund established by the owners’ corporation. This money is used for the general running of the scheme and includes payments for maintenance and upkeep of the common property and insurance policies.

As a member of the owners’ corporation you will be bound by the by-laws which apply to your scheme. By-laws are rules regulating the day-to-day living in strata schemes (such as whether pets are allowed). The developer of the strata scheme decides the initial by-laws. By-laws can be changed by the owners’ corporation when necessary. Changes in by-laws must be registered with Land and Property Information NSW. The change is then recorded on the Certificate of Title for the common property.

Many owners’ corporations appoint a managing agent to carry out the many duties imposed on owners’ corporations by legislation. A strata managing agent must be licensed.

The Strata Schemes and Mediation Services Branch of the Office of Fair Trading can provide assistance where there are disputes relating to strata properties and its contact details are listed in Chapter 14.

5.5 Building your own home

To protect consumers, the NSW Government has legislated to regulate contracts between consumers and builders for the performance of residential building work. The *Home Building Act 1989* deals with residential building contracts, the licensing of builders, home warranty insurance, and residential building disputes. Each of these is dealt with briefly below.

5.6 Residential building contracts

The *Home Building Act 1989* provides minimum requirements for contracts, including statutory warranties, or terms, that will form part of any residential building contract.

The *Home Building Act* applies to "a contract under which the holder of a licence undertakes to do, in person or by others, any residential building work". It also applies to contracts involving the supply of kit homes and to owner-builder work.

(a) Residential Building Work

Residential building work means any work involved in co-ordinating or supervising any work in the construction of a dwelling, the making of alterations or additions to a dwelling, or the repair, renovation, decoration or protective treatment of a dwelling.

It also includes specialist work such as plumbing, gasfitting or electrical work and may include certain refrigeration and air-conditioning work.

It is important to note that the legislation defines "dwelling" to mean a building or portion of a building that is designed, constructed or adapted for use as a dwelling, which is a wide definition. It also includes any swimming pool or spa constructed for use in conjunction with a dwelling.

(b) The contract

All contracts for residential building work must be in writing. The legislation also requires that the contract must include certain matters. For more information on these issues, you should read the Consumer Building Guide issued by the Office of Fair Trading, which must be attached to all contracts. Contact details for the Office of Fair Trading are located at Chapter 14.
(c) Cooling off period

Home building contracts must contain a cooling off period allowing a person to rescind a contract (i.e., act as though it were never in force) for residential building work within 5 days after the person signs the contract.

5.7 The licensing of builders

The Home Building Act prohibits any residential building work and specialist work unless the person, contracting to do the work, holds a licence which authorises him or her to do the building work. The Office of Fair Trading is responsible for issuing such licences.

Before entering into a contract with a builder for residential building work, including renovations and repairs, you should check that the builder is licenced to do the type of work that you want done. You can do a licence search through the Office of Fair Trading whose contact details are set out in Chapter 14. Additionally, if you do work as an owner builder you need to obtain a licence to do owner-builder work from the Office of Fair Trading, together with Home Warranty insurance.

5.8 The Home Warranty insurance scheme

The Home Warranty insurance scheme provides protection for homeowners against defective and incomplete building work that the builder is responsible for, including faulty design if provided by the builder. The scheme applies to work done, or to be done, under a contract entered into on or after 1 May 1997. A builder must not do residential work under a building contract valued above $12,000 unless a contract of insurance exists. The Home Warranty insurance scheme covers owners for seven years after the date the works are completed.

The beneficiaries of the insurance policy include the person who has contracted with builder, the person who buys off the plan from a developer; and subsequent owners of a property. A copy of the certificate of insurance should be attached to every contract for the sale of land where building work has been undertaken in the previous seven years. Accordingly, you should ensure that your conveyancer or solicitor obtains the certificate of insurance if you are purchasing a house or unit that is less than seven years old.

For policies issued after 1 July 2002, homeowners must pursue the builder in the event of defective or incomplete work. Home Warranty insurance can only be claimed if the builder becomes insolvent, dies, or disappears. However, since there are time limits for notifying an insurer of a potential claim, you should notify the insurer immediately of defective or incomplete work. This will protect your right to make a claim later on if you can no longer pursue the builder.

For multi-storey residential buildings, the scheme only applies to building work commenced prior to 31 December 2003. A multi storey building is one with more than 3 storeys and at least 2 separate dwellings.

Accommodation specially designed for the aged is excluded under the scheme unless it is provided in self-contained units. However, from 1 September 2004, self-contained units within a retirement village are also excluded from the scheme. Accordingly, the scheme may or may not apply to a retirement village unit depending on the circumstances and you should obtain legal advice as to whether your unit is covered.
5.9 Residential building disputes

Where a dispute arises between an owner and a builder in respect of defects to residential building work, an owner may refer the dispute to the Office of Fair Trading, which will appoint a building inspector. The building inspector will meet the owner and builder on site, inspect the works and help the parties reach a resolution. The building inspector may issue a rectification order requiring the builder to take steps to ensure that the work is completed or the defects or damage rectified.

The rectification order may also require the owner to comply with certain conditions including the payment of outstanding money by a specified date. Non-compliance with the rectification order by the builder may result in disciplinary action as well as other action taken by the owner.

If the building inspector has not been able to resolve the dispute, both the owner and builder can apply to Consumer Trader and Tenancy Tribunal (CTTT). You can also appeal directly to the CTTT against a denial of a home warranty insurance claim, however time limits do apply so be careful that any claim is made within time.

You may need to obtain legal advice as to whether a claim can be made against the builder and as to your rights generally.

5.10 Defects and damages

It is unrealistic to assume that your home will be perfect and free of defects.

Defective building work claims can be very complex and it is difficult to determine who is responsible for the defective building work and what the cost of rectification will be. It is usually necessary to obtain a building report from a suitably qualified expert who will itemise each defect, its cause, and estimated cost of rectification.

As a general rule, an owner is entitled to building work that conforms to the contract plans and specifications. Where the works are defective, the appropriate measure to determine damages is the cost to make the works conform to the contract.

The CTTT may deal with disputes if the amount claimed is less than $500,000. The District Court may hear claims up to $850,000, and the Supreme Court for any amount above that.

5.11 Private rentals

A tenancy is where a right to occupy premises is granted in exchange for rent. In NSW, the rights and obligations of landlords and tenants are heavily regulated by the Residential Tenancies Act 1987. This Act applies to about 645,000 households in NSW. It does not, however, apply to hotels, motels, educational institutions, clubs, hostels, nursing homes or hospitals. It also does not apply to boarders or lodgers, or holiday homes rented for less than 2 months.

Tenants can obtain free advice about the application of these laws from the Tenants’ Advice and Advocacy Service, or the Tenants’ Union. Landlords (and tenants) may obtain free advice from the Office of Fair Trading Renting Services. Contact details are set out in Chapter 14.

5.12 Residential tenancy agreements

An agreement between a landlord and tenant is called a “residential tenancy agreement”. There is a standard form of residential tenancy agreement available but it is possible to produce your own agreement. The landlord cannot remove or add terms that contradict the Residential Tenancies Act. For example, an agreement that provides for penalties for late payment of rent, or requires steam cleaning of carpets, will be void.
Each residential tenancy agreement must include a condition report (setting out any defects or damage to the rented premises or fixtures). The condition report is very important and can avoid many disputes at the end of your tenancy. You have seven days from when you receive the form to complete it and return it to the landlord. Make sure you keep a copy. It is also advisable to take photos at the commencement of the tenancy.

5.13 **Real estate agents**

Many landlords engage real estate agents to manage the rental property for them. If you own property that you wish to rent out, it can be a good idea to engage the service of a real estate agent who specialises in property management.

5.14 **Starting a tenancy**

When applying for a tenancy, you may be asked for a reservation fee. A landlord or real estate agent may charge this fee while your application to rent the property is considered. The maximum fee a landlord can charge is one week’s rent. They can also only hold one reservation fee at a time. If your application is granted then the fee automatically goes towards your rent. If you decide not to rent the property the landlord may keep some of the reservation fee. If your application is refused, you will be refunded the fee in full. If your application is conditional on the landlord doing repairs and landlord fails to do so. It is very important to request a receipt describing the reservation fee and any conditions attached.

Once you have been approved there are several costs that you will need to pay. They include: preparation of the residential tenancy agreement (maximum $15), rent in advance, and rental bond.

If your rent is less than $300 a week you can only be expected to pay 2 weeks rent in advance. If the rent is above this amount then you can be asked to pay a month’s rent in advance. It is an offence for the landlord to charge more than these amounts.

5.15 **Rental bond**

The rental bond is a security deposit paid by the tenant to the landlord. Bonds are regulated by the *Landlord and Tenant (Rental Bonds) Act 1977*. Bonds must be lodged with the Rental Bond Board by the landlord. If the landlord fails to do so he or she may be fined up to $2,200. If you rent unfurnished premises the maximum bond you have to pay is the equivalent of 4 weeks rent. If the place is furnished and your rent is less than $250 a week, you may be liable for an amount equivalent to 6 weeks rent. If the rent is above $250 (for a furnished place) there is no maximum bond and it is up to the landlord and tenant to negotiate a fair bond.

The tenant is entitled to the return of the bond on leaving the premises subject to the condition of the premises on vacating (fair wear and tear, however, cannot justify a deduction from the bond). For more information about rental bonds call the Rental Bond Board, which is part of the Office of Fair Trading. Contact details are set out in Chapter 14.

5.16 **Rights and obligations of landlords and tenants**

Tenants have the right to privacy and quiet enjoyment. In accordance with this right the landlord cannot enter the premises at any time without giving proper notice, unless in an emergency or to address urgent repairs (such as a burst water service or a gas leak). You must not alter, add to or renovate the premises without receiving the landlord’s permission. It is necessary to document any agreement in writing.

It is the landlord’s obligation to provide premises in a reasonable state of cleanliness and fit for habitation. The premises should also be reasonably secure. The landlord must do repairs. Put your repair request in writing. If the landlord refuses to do the repairs then you can make an application to the
CTTT within 30 days of the date of refusal. You, as the tenant, must in return keep the premises in a reasonable state of cleanliness and notify the landlord of any damage. Tenants should not cause or permit any damage to the premises and can also be liable for damage caused by their guests.

5.17 Rent increases

Rent increases are strictly regulated. If the tenancy agreement is for a fixed term the rent cannot be increased unless it is in accordance with the rental agreement. Where there is no fixed term tenants must be given at least 60 days notice in writing by the landlord before the rent can be increased. If the increase is excessive, you may apply to the CTTT within 30 days to review the increase. However, if you are a tenant of the Department of Housing and you receive a rent rebate, you cannot make an application to the CTTT about excessive rent.

5.18 Ending tenancies

A residential tenancy agreement may be terminated by either the landlord or the tenant by providing notice in writing. How long that notice period needs to be depends on the grounds of the termination. If the tenancy is for a fixed period, you or the landlord can end the agreement by giving 14 days’ notice prior to the end of the fixed period. The same notice is required if the landlord wants to end the agreement early because of a breach by you of the agreement (for example, if you are more than 14 days behind in rent).

If no notice is given at the end of a fixed term agreement, then the agreement becomes a “continuing” agreement. A landlord cannot ask you to leave the premises that you occupy under a continuing agreement without giving you at least 60 days’ notice (other than for a breach of the agreement). If the landlord is selling the property during a continuing agreement, the landlord must give you at least 30 days’ notice.

A termination notice is not final. If you do not leave when the notice of termination expires, the landlord must apply to the CTTT for orders of possession (that is, to remove you). The CTTT will then decide whether the tenancy will be terminated. You will be given a chance to be heard by the CTTT. A landlord cannot remove you without a CTTT order. A landlord who locks you out (ie, by changing the locks) without a CTTT orders may be liable for fines of up to $22,000. If this happens, you can apply to the CTTT for an urgent hearing to re-enter the premises. The landlord could be liable for compensation due to the illegal lockout in addition to being liable for fines.

You, as a tenant, can end an agreement before the fixed term ends. However, you may be liable for any lost income and costs suffered by the landlord. The landlord has an obligation to minimise his or her losses (eg, by taking steps to find a new tenant). If the landlord is happy to end the agreement without recovering costs from you, it is vital that you get such an agreement in writing. You may be able to terminate a tenancy if the landlord breaches the agreement. The CTTT also has power to terminate tenancies, but may order you to pay the landlord’s costs. If you are thinking of ending your tenancy early, contact the Tenants’ Union or Renting Services. Contact details are set out in Chapter 14.

5.19 Tenancy disputes and the CTTT

If there is a tenancy dispute, you should seek advice and try to negotiate with the other party. Always get agreements or undertakings in writing and keep a tenancy diary. If the dispute cannot be resolved then you can have the CTTT hear the dispute. The CTTT will first try to resolve the dispute through a conciliation process. If you cannot reach an agreement through conciliation, the matter will progress to a hearing before a CTTT Member. You will then have your chance to state your case. The hearing is informal and generally it will be without lawyers. The CTTT also has power to terminate tenancies, but may order you to pay the landlord’s costs. If you are thinking of ending your tenancy early, contact the Tenants’ Union or Renting Services. Contact details are set out in Chapter 14. If you are unhappy with the CTTT’s decision, there may be scope to seek review of (or appeal) that decision before a court. You should seek legal advice on how to exercise those rights.
5.20 Special categories of tenants

(a) Protected tenants

Protected tenants live in premises controlled by the Landlord and Tenant (Amendment) Act 1948. They have greater protection against eviction and rental increases than tenants under the Residential Tenancies Act. However, landlords are under no obligation to undertake repairs to premises.

You may be a protected tenant if you moved into your home or flat before 1 January 1986, the building was built before 16 December 1954, and if your home was converted to a flat before 1 January 1969. If you have received an eviction notice or a rental increase or you are having trouble with repairs and you think you may be a protected tenant, contact the Tenants’ Union. Contact details are set out in Chapter 14.

(b) Residential park residents

Residential parks include caravan parks, manufactured home estates, and relocatable home parks. Permanent residents of residential parks are protected by the Residential Parks Act 1998. The majority of older residents own their own dwelling, however they do not own the land their dwelling is on.

Residential parks differ in quality and size. You should investigate what facilities are offered before settling in one. Although residents have similar rights and obligations to tenants under the Residential Tenancies Act, in reality the manager has considerable power over every aspect of a resident’s life (from roads and water to access to phones and newspapers).

Most parks have a set of park rules that deal with issues surrounding visitors, pets and recreational facilities. These rules cannot be inconsistent with the Residential Parks Act. The park owner must give you a copy of these rules before you enter the agreement. These rules can be amended by the park owner by giving 60 days written notice to the residents. If you live on a park with more than 20 sites then the park owner must convene and maintain a Park Liaison committee. This committee is made up of management and residents representatives.

Park closures are also governed by the Residential Parks Act. If you rent or live in a mobile home or caravan without a rigid annex you are entitled to 60 days’ notice. If you own a manufactured home or caravan with a rigid annex you are entitled to 180 days’ notice and the cost of relocation to a new residential park.

For advice and information, call the Parks and Village Service, which is part of the Tenants Advice & Advocacy Services. Contact details are set out in Chapter 14.

(c) Boarders and lodgers

Boarders and lodgers are exempt from the Residential Tenancies Act and therefore have only limited rights and protections. Whether a person is a tenant or a boarder/lodger is usually determined by the control they exercise over what they rent. Free legal advice is available to a person who wants to enquire about their status (call the Tenants’ Union, whose contact details are set out in Chapter 14).

In general terms, a lodger is someone that pays money to occupy a part of the premises, but the proprietor maintains general control. There are usually strict house rules, the room is furnished, linen may be provided, the proprietor or caretaker resides on the
premises and utilities are covered in your weekly payment. The main difference between a boarder and a lodger is that a boarder receives meals as a part of their agreement.

Boarders and lodgers have no security of tenure, no access to an affordable formal dispute body and are vulnerable to rent increases. It can be very difficult for a boarder to get repairs carried out or to maintain basic services. Boarders and lodgers can be evicted from their accommodation at any time with no notice and for no reason. The only protection is that there is an implied promise that the licence will not be revoked in a manner that is contrary to the intention of the parties.

5.21 Public housing

Public housing is government owned housing that provides accommodation to people on low incomes who cannot sustain a tenancy in the private market. Public housing tenants with low incomes can also apply for a rent subsidy. The Department of Housing is the State’s largest landlord. The waiting lists for public housing is very long and there are extensive eligibility criteria.

(a) Eligibility

Application forms are available from the Department. To be eligible you must be an Australian citizen (or permanent resident) who lives in NSW, have the ability to sustain a successful tenancy and repay any debts you might owe to the Department of Housing from a previous tenancy with them, and, most importantly, satisfy the income and assets test (see below).

Additional criteria apply to former public housing tenants who have a less than satisfactory or unsatisfactory tenancy history. (For more information, see Policy ALL0030A: “Eligibility for Public Housing”, available on the Department of Housing website or telephone the Department for a copy to be sent to you – contact details are set out in Chapter 14.)

To be eligible, the gross household income must be less than or equal to the weekly income limit listed in the table below.

<table>
<thead>
<tr>
<th>Household size</th>
<th>Weekly income limit</th>
</tr>
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<tbody>
<tr>
<td>1 person</td>
<td>$395</td>
</tr>
<tr>
<td>2 people</td>
<td>$500</td>
</tr>
<tr>
<td>3 people</td>
<td>$580</td>
</tr>
<tr>
<td>4 people</td>
<td>$665</td>
</tr>
<tr>
<td>5 people</td>
<td>$720</td>
</tr>
<tr>
<td>6 people</td>
<td>$775</td>
</tr>
</tbody>
</table>

Household income means the total gross income of all people included in the application for public housing, and includes wages, pensions and allowances, interest on investments, child support and maintenance payments. The Department will include in its calculations any Centrelink income you are eligible for, whether or not you apply for it.

(b) Housing assistance for elderly clients

Elderly clients are entitled to progress faster up the public housing waiting list if they meet the general eligibility criteria and are aged 80 years and over (or 55 years and over for Aborigines or Torres Strait Islanders). If you are an elderly person who has been approved for housing in a high demand zone, you are not required to satisfy the locational needs assessment.
(c) Priority housing

The Department of Housing also offers priority housing. You must prove that your housing need is more urgent than the needs of others on the waiting list. Generally, you will need to be facing homelessness or imminent risk of homelessness. To apply you need to complete both the general housing form and the priority housing form.

(d) Rights and responsibilities of public tenants

Public housing tenants have the same rights and obligations as other tenants under the Residential Tenancies Act. The Department, however, is exempt from some of the requirements. For example:

(i) the Department does not have to provide rent receipts;

(ii) when a tenant dies or moves out, the remaining occupant cannot apply to the CTTT to be recognised as a tenant;

(iii) the Department does not have to give 60 days' written notice of a rent increase; and

(iv) a tenant cannot challenge a change in rent when receiving a rent rebate.

Public housing tenants also have to comply with the Department's policies (such as providing income information in order to receive a rental subsidy). These policies can be found on the Department of Housing's website, contact details of which are set out in Chapter 14.

The Department of Housing must carry out reasonable repairs and maintenance, provide reasonable security and give proper notice to visit the premises. To get repairs done, call the maintenance line on 131 571 and lodge a complaint. It is important to keep a record of the job number and the date of the call. Also put the complaint in writing. If the Department of Housing does not carry out repairs, you can go to the CTTT to get orders forcing the Department to make the repairs.

The Department of Housing must provide proper notice for the tenant to vacate and apply to the CTTT if it wants to regain possession of the property. Most public tenants receive termination notices for rental arrears. The Department of Housing has additional powers to evict "anti-social" tenants. You may be responsible for the behaviour of other members of your household and guests. If you are facing eviction, free legal advice and assistance is available. Contact details for the Tenants' Union are set out in Chapter 14. Once you are evicted from public housing it can be extremely difficult to secure another public housing tenancy.

(e) Rental subsidies

The Department of Housing sets market rent for all its properties. If your household has a low income, then you can apply for a rental subsidy to reduce the amount of rent you need to pay.

Rental subsidies are not automatically granted. You must separately apply and provide evidence of the income received by all household members aged 18 and over. Most tenants will pay a maximum of 25% of the household income in rent. For more information contact the Department of Housing (Chapter 14 has contact details) and ask for a copy of its Policy SUB0044A: Rental Subsidies to be sent to you.
It is very important that you notify the Department of Housing within 28 days of any changes in household income. If you fail to do so the rental subsidy might be cancelled and the rent re-set to market levels. You may be required to pay back the difference from the point in time when the household income changed. This can leave you with a large amount of rental arrears. The Department can also pursue termination proceedings. If this happens to you, you should seek legal advice.

(f) Modifications to accommodate disabilities

The Department of Housing will modify its dwellings to suit people with disabilities if it is economically viable to do so. This may include handrails for the elderly. Modifications to homes owned by the Department are done at no cost to you.

(g) Rentstart

The Department also offers housing assistance such as Rentstart, which helps you establish a tenancy in the private rental market or assist you to maintain your existing tenancy. Rentstart assistance can only be sought once every 12 months, and is not available to public housing tenants. There are three types of assistance offered, the Department may: contribute up to 75% of the cost of the bond; up to 4 weeks rental arrears; or, in severe financial and housing circumstances, the full amount of bond and two weeks rent in advance. You should ask the Department about these alternatives.

(h) Public housing rental bonds

The Department of Housing has recently begun to request rental bonds for public housing.

5.22 Community Housing

Like public housing, community housing offers affordable, long-term rental housing which is supported by the government. The difference is that community housing is run by community housing organisations, which are non-government, not-for-profit organisations. Community housing properties are either rented from the private market or owned by the government.

The most common way for you to become a community housing tenant is to apply directly to a community housing organisation. If accepted, you will be placed on a waiting list, the length of which varies depending on the organisation and area. When applying for public housing, you can also nominate to be considered for community housing. The community housing provider will assess the housing needs of each applicant and determine who is best suited to the property.

Like any other landlord, a community housing organisation must follow the Residential Tenancies Act. This means you must be provided with a written residential tenancy agreement and the organisation must do repairs (including urgent repairs) and respect your right to privacy. For further information, see the Office of Community Housing (contact details are set out in Chapter 14).

5.23 Disputes involving social (public or community) housing

The CTTT can hear disputes between social housing providers and tenants regarding ordinary tenancy disputes. However, the CTTT does not hear disputes concerning housing applications, selection, transfers, or rental subsidy decisions. These matters can be dealt with through the Department’s internal appeals procedures.

There are two levels of appeal. You can ask for a decision to be reviewed if you believe that inadequate consideration has been given to your individual circumstances, the decision is contrary to policy or involves poor interpretation of policy, or the procedures used to reach the decision were incorrect. You
must request a review in writing within three months of the Department’s decision. The first level of appeal is an internal review carried out by a more senior officer than the one involved in making the original decision. If you are still dissatisfied, the matter can be taken to the second level of appeal: the Housing Appeals Committee (HAC). HAC is an independent review body. You must apply to HAC within 3 months of the first level of appeal decision. HAC is an advisory body only and does not have the power to overturn the Department’s original decision. It can only make recommendations.

You can also raise housing concerns at any time with the Department’s Client Feedback Unit, the Minister for Housing, your local Member of Parliament, or the NSW Ombudsman.

5.24 Retirement villages

A retirement village is a small community where retired people live in private accommodation and contribute financially to the purchase of shared services such as health, recreation, and property maintenance. The Retirement Villages Act 1999 is a state Act and sets out the rights and obligations of prospective residents, actual residents and village operators. The Act does not, however, cover nursing homes or aged care hostels.

There are various styles of retirement villages and you should investigate which one best suits your current and future requirements. Entry contributions and the level of services and facilities available can vary drastically between the various retirement villages. Some retirement villages have little or no facilities. It is imperative that you obtain trustworthy, independent advice about the possible financial and legal consequences of purchasing in a retirement village. The Office of Fair Trading has produced a booklet called “Retirement Village Living”. Copies are free and can be obtained from any Fair Trading Centre, contact details of which are set out in Chapter 14.

5.25 Types of retirement village accommodation and service packages

There are four different legal structures commonly used in retirement villages:

(a) Loan/Licence

Under this scheme, the village developer retains ownership of the village, and the licence gives you the right to live in the village and occupy your unit, subject to the conditions set out in your contract. The schemes are more affordable than other types of village schemes. A contribution (usually an interest free loan or donation) is generally required. You cannot transfer the licence to another person, and the right to occupy ends when you leave the village or pass away. A refund is generally made to you or to your estate; however the refund may be reduced by a departure fee.

(b) Lease

Under a lease arrangement, the village developer retains ownership of the village. You pay a contribution, in the form of a lease premium or prepaid rent, in turn for the use of the unit and the right to share the village amenities. The lease (which is a long-term lease) ends when you pass away, or give notice to surrender the lease. On surrender or death, a refund of the lease premium is made to you or to your estate, less a reduction for departure fees and other charges.

(c) Strata

Under this scheme you own the unit in which you live and are entitled to the sales proceeds when the unit is sold. However the village operator may be entitled to a departure fee and a portion of the capital gain acquired. There will usually be a service agreement between the village operator and the owners’ corporation which may limit the
voting powers of unit owners. As with other strata schemes, owners are required to pay outgoings during the period of ownership.

(d) Company title

Under this structure, the village property is owned by the village company, and shares in the company are sold to the residents of the village. The ownership of shares entitles you, as a shareholder, to live in the unit and to use village amenities. Residents under a company title are required to pay recurrent charges proportionate to the shares held. If you sell your shares, you will be entitled to the proceeds of the sale less a portion of the capital gain and a departure fee. The village company enters into a service agreement with an operator who is responsible for the day to day management of the village.

5.26 Disclosure statements and cooling off periods

The operator of a retirement village must, at least 14 days prior to entering into a village contract with a person, provide a prospective resident (or a person acting on behalf of a prospective resident) with a disclosure statement containing detailed information about the village.

You may, within the cooling off period (7 business days after entering into a village contract), back out of the contract.

5.27 The cost of living in a retirement village

Before entering into a retirement village, it is important to consider any capital gain or loss implications. Many people obtain the money to fund their entry to a retirement village by selling their homes. If you decide to move out of the village, you may find you will lose a substantial amount of your initial capital outlay. It is best to get detailed financial advice from an adviser to guard against this as far as is possible.

Some of the other costs you may have to pay when moving into a retirement village are listed below:

(a) **Entry contribution**: this is like (but not the same as) the cost of buying property. If it is a donation, you will not get it back if you decide to leave. If it is a bond, part of it will be returned to you if you leave. Bonds typically are not invested, so you will not get any interest paid on this amount.

(b) **Maintenance fees**: the weekly or fortnightly expenses levied for the services provided by the village and for administration costs.

(c) **Special levies**: one-off costs that management might require for special projects.

(d) **Deferred management fee** (usually only in privately owned villages, as opposed to those managed by, for example, charitable groups): a fee for deferred maintenance charges must be paid if you decide to leave the village.

(e) **Ongoing fees**: you might have to continue to pay ongoing fees after you move out (at least until management is able to find another person to occupy your unit).

5.28 Village residents’ rights

You cannot be made to leave the village unless an order has been made against you by the CTTT, and only in the following circumstances:

(a) you have breached a condition of the contract and, in the circumstances, it is justifiable to ask you to leave;
(b) you have injured other residents or staff, or have damaged the premises;
(c) you would cause the management “undue hardship” if you do not leave; or
(d) your health has deteriorated such that you can no longer look after yourself.

5.29 Information about the financial affairs of your village

Management must consult village residents about the village finances by giving them a draft budget for the next financial year. This budget cannot be finalised without the residents' agreement. The village must also provide you with an annual audited financial report for the previous financial year by 31 October of each year. If this does not happen contact the Office of Fair Trading (details are set out in Chapter 14).

5.30 Further information about retirement villages

The Aged-Care Rights Service can provide advice and assistance to retirement village residents. Contact details are set out in Chapter 14.

5.31 Residential aged care

Residential aged care homes provide accommodation as well as personal and nursing care (which includes staffing, meals, cleaning services, furniture and equipment) for people who can no longer manage to live in their own home.

5.32 Types of residential aged care

Residential aged care homes were previously called nursing homes and hostels. Levels of care provided range from low level care (equivalent to hostel care) to high level care (equivalent to nursing home care). Most aged care facilities (whether private or public) operate under the Aged Care Act 1997 (Cth) so they can receive federal subsidies. However in NSW, the Public Health Act 1991 also provides that aged care facilities must comply with certain minimum staffing requirements.

5.33 Finding residential aged care

An Aged Care Assessment Team (ACAT) is a group of aged care health professionals who will assess your need for care. Should you need residential care, they can assist you in finding an aged care facility to suit your needs. Usually, ACATs are based at hospitals, aged care centres or community health centres. Your doctor can refer you to an ACAT for an assessment.

5.34 Eviction from residential aged care facilities

There is little protection from eviction for residents of aged care facilities. If the premises operate under the Aged Care Act, the resident can challenge a decision to evict him or her, but it is the resident who must initiate the appeal. There is no such protection under the Nursing Homes Act, however the operator must assist in finding alternative accommodation if the resident requests it to do so.

5.35 Fees for residential aged care

Residents pay contribution fees for the ongoing and capital costs of residential care. Contracts with residential aged care operators can be very complex, and can lead to arrangements that are not in your best interest. For example, some contracts may allow the operator to transfer your property to the facility rather than to your family. Advice should be sought from a legal or financial adviser before entering into a residential aged care contract.

There are two main types of fees (daily care fees and accommodation payments) you will be expected to pay (determined according to your care needs, income and assets):
(a) **Daily care fees** include a basic fee (maximum $34.76 per day, or $27.86 per day for pensioners) and an additional fee (for non pensioners). The additional fee will depend both on your income and your care needs. The maximum amount anyone may be asked to pay each day is $83.58. To be required to pay the maximum amount you would need to have an annual income of $74,306 (for singles) or $147,884 (for couples).

(b) **Accommodation payments** are contributions which must be used by residential aged care facilities to improve building and accommodation standards and the services provided. This payment can take the form of a bond or a charge.

Accommodation bonds vary, but you cannot be charged a bond that would leave you with less than $30,000 (single person) or $60,000 (if married) in assets. A bond can be paid as a lump sum, or periodic payment, or a combination of both. When you leave, the bond is refunded less a maximum of $265.50 a month or $3,186 a year for up to five years. Interest may be charged in relation to outstanding bond payments at a rate not exceeding 9.68% per annum.

People needing high (nursing home) level care may be asked to pay an annual accommodation charge in periodic instalments. Whether you will need to pay a charge, and the size of the charge, will depend on your income and assets. The charge is capped at $16.63 a day to be paid no more than a month in advance.

**Deferring the accommodation charge:** You can agree with the residential care provider to defer the payment of the accommodation charge and have it paid from your estate. However, interest may be charged (at a maximum of 6% per annum).

If you are unable to make any form of accommodation payment, you will still be able to get a place. The government requires all aged care facilities to provide places for people who cannot afford to make an accommodation payment and provides additional funding for them.

### 5.36 Disputes involving residential aged care

Providers of aged care residential services that receive subsidies from the Commonwealth under the **Aged Care Act** must establish a process to deal with complaints at the first instance. If this is ineffective, complaints may be made to the Complaints Resolution Scheme (CRS) of the Commonwealth Department of Health and Ageing. Complaints may be made about anything relating to aged care services. The CRS has a three stage mechanism to resolve disputes, including negotiation, mediation and determination.

Complaints about the standard or service or care in facilities licensed under the **Nursing Homes Act** can be made to the NSW Private Health Care Branch (PHCB) of the NSW Department of Health. The PHCB may investigate complaints and has the power to enter facilities and examine documents. Complaints can be anonymous.

If you need advice, advocacy or other help and you are a resident of a facility which operated under the **Aged Care Act**, you can get free help from the NSW Aged Care Rights Service. Contact details can be found in Chapter 14.
5.37 **Staying at home**

If you decide that staying in your present home suits you better, there are services available which can make life easier for you. One such service is the Home and Community Care (HACC) Program. Some of the services available through HACC include:

(a) domestic assistance;
(b) home maintenance and modification;
(c) transport;
(d) meals;
(e) personal care;
(f) community nursing;
(g) allied health care;
(h) in home respite care;
(i) centre day respite care; and
(j) social support.

The type and availability of HACC services may vary depending on where you live, and depending on the resources available for the particular service you require. There are a range of providers with the majority being non-government organisations. The largest government provider is the Home Care Service of NSW. In addition to the government funded HACC program, there are a range of private agencies providing these services. Information on other community services available in your area can be obtained from your local Council or the ACAT at your local hospital.

5.38 **Staying with family**

Many older people live with their children under an informal agreement either in the same household, or in an adjoining granny flat. Sometimes the older person has transferred the property to their family under the condition that they will continue to reside there. If you enter into such an arrangement you may endanger your financial interests, security and independence as there is little security in these kinds of arrangements. You could even lose your home if there is a family breakdown.

You should seek legal advice regarding your ability to enforce any informal agreement you make with your children before moving in or letting your children move in. If the child you are living with is getting divorced, you may be able to intervene in any court proceedings under the *Family Law Act 1975* (Cth) to protect your interests. Unfortunately, the litigation process may further harm family relationships.
6 YOUR CONSUMER RIGHTS

6.1 Introduction

Governments consider consumer protection to be an important issue requiring legal regulation. There are a number of laws that set minimum standards for the suppliers of goods and services. It is important to note however that, despite laws regulating the actions of the providers, the consumer should always remember the maxim of “buyer beware”.

Consumer protection laws exist to assist in the regulation of contracts. This chapter describes the nature of a legal contract, looks at a number of specific examples of where the law protects consumers and describes how to go about resolving a consumer dispute.

6.2 Contracts

A contract is a legally binding agreement. It can be oral or in writing, or a mixture of the two. Every consumer transaction involves a contract.

A contract has five elements. These are:

(a) an offer;
(b) acceptance of the offer;
(c) the agreement must be intended to create legal obligations (e.g. not a family arrangement, although these can involve contracts);
(d) “consideration” (paying a price or promising to do or not to do something); and
(e) “privity” (under the law of contract, you can only sue the person with whom you made the contract, though you may be able to sue other people associated with the contract under other laws).

When you are making purchases, organising finance or requesting services, you should make sure that you are aware of your obligations as well as the obligations of the person you are paying. Read carefully all documents which you are asked to sign and do not sign them if you are concerned about the terms and conditions, or don’t understand them.

The Fair Trading Act 1987 (NSW) and the Trade Practices Act 1974 (Cth) outline certain standards which every consumer transaction must meet.

When entering into a consumer transaction, you should always make sure that you:

(i) are aware of your obligations;
(ii) consider carefully your options before making a decision;
(iii) are aware of your legal rights; and
(iv) read carefully and keep all documents you receive with the transaction.
6.3 Buying goods

When you buy a product, its quality and quantity must comply with certain guidelines set out in law. Amongst other things, the product must:

(a) be of a reasonable quality;
(b) be appropriate for the purpose for which it was intended when it was purchased;
(c) match any sample or description of the product which was given to you prior to the purchase (e.g. a label on a food product).

If the person selling you the product provides you with a product which does not comply with these requirements, you may be entitled to a refund. You should always keep your receipt, as you will probably need to produce it to obtain a refund.

6.4 Refunds

A seller does not have to give you a refund just because you decide that you do not like an item after purchasing it. You will only be entitled to a refund if there is something wrong with the product or it does not match the description which you were given of it before you purchased it. Some of the important points to remember about refunds are:

(a) it is illegal for a shop to display a “No Refunds” sign;
(b) in some situations, the seller will have a policy of giving people an exchange or in-store credit instead of a cash refund;
(c) some shops have a “no questions asked” refund policy. In these shops, as long as you have a receipt, credit card statement or some other proof of purchase, they will give you a refund;
(d) items such as computer and music compact discs can be easily copied, so shops will often not give you a refund for these goods;
(e) a seller does not have to refund you in cash if you paid for the goods by credit card or in some other way.

6.5 Sale items

When you buy a product on sale, the normal requirements of the law may not apply to the sale. Some sale goods are not refundable, so be aware of individual store policies on sale items.

It is an offence for a shop to advertise items as being on sale when they are actually being sold at the normal price.

6.6 Price tags

If an item has a price tag or a price displayed on a shelf, you are generally only required to pay that price. If may be an offence for a shopkeeper to charge you a higher price than that on display.

If there are two different prices shown on one item, you are entitled to purchase the goods for the lower price.

6.7 Warranties

(a) Special Warranties

Some goods are sold with a warranty which a retailer or manufacturer expressly tells you applies to the product. When purchasing goods you should be aware of such warranties,
and the conditions which can apply. To take advantage of the warranties, you may need to produce your receipt, so keep all documents associated with your purchase.

(b) General Warranties

There are some warranties which apply to all new goods sold, even when the retailer or manufacturer does not specifically tell you about them. If goods are bought second hand or at auction, different warranties will apply from those applying to goods bought new.

6.8 Lay-bys

When you lay-by goods you agree to pay for the goods over a period of time specified by the retailer, and only receive the goods when you have finished paying for them. Normally, the retailer will charge you a holding cost for holding the lay-bys.

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

You are allowed to cancel a lay-by at any time but be aware that the retailer may charge a cancellation fee. This cancellation fee will usually be a percentage of the total purchase, and if it is clearly outlined in the lay-by statement, then the retailer is entitled to subtract it from the money you have paid on the goods.

A retailer can only cancel your lay-by if they give you notice, and if they give you seven days in which to rectify the problem. The NSW Office of Fair Trading provides further information about lay-bys at www.fairtrading.nsw.gov.au/shopping/shoppingtips/lay-bys.html.

6.9 Consumer protection

The Fair Trading Act and the Trade Practices Act each provide that a retailer is not allowed to mislead or deceive you into making a purchase. This means that a retailer is not allowed to:

(a) accept payment for goods or services which they will not provide;
(b) make false claims about the quality, newness, origin or usefulness of a product;
(c) use physical force or harassment to induce you to buy a product; or
(d) sell you goods which are banned for safety reasons.

When a product is advertised as a sale item, the shop or seller must have that item available at the sale price for a reasonable length of time. It can be an offence for a shopkeeper to advertise a bargain which they cannot provide and subsequently sell you a more expensive item.

6.10 Purchasing services

You also have a right to a refund or a remedy if services which you purchase do not meet basic levels of quality and performance. All services which you buy must:

(a) be carried out with skill and care; and
(b) achieve the purpose for which they were intended.

If the service does not meet the required standards, you have the right to have the service performed again. It is the responsibility of the person providing the service to cover the costs involved in doing this.

6.11 Specific goods and services

Below is some more specific information about some types of goods and services that are commonly purchased by consumers.
(a) Travelling

Under the Travel Agents Act 1986, travel agents are prohibited from misleading or deceiving you about travel arrangements that you make through them. If a travel agent promises a service or standard of service that is not met during your journey or holiday, you may be entitled to seek compensation from the travel agent.

When planning and booking travel, you should:

(i) avoid last minute planning;

(ii) compare prices thoroughly before making any decisions about transport or accommodation;

(iii) read carefully any statements or conditions issued by the travel agent; and

(iv) make clear to the travel agent the standard of journey or holiday you expect.

The NSW Office of Fair Trading has produced an information sheet about booking a holiday through a travel agent (see Chapter 14 for details).

For further advice and information on a range of consumer issues and assistance in relation to travel, you can call the Traveller Consumer Helpline (see Chapter 14 for contact details).

(b) New Cars

It is an offence for motor dealers to make any false or misleading statements about a car that you are considering purchasing. Under the Motor Dealers Act 1974, when you purchase a new car, you are entitled to a warranty to repair defects and are entitled to have that warranty fulfilled. A new motor vehicle is classified as one that has been driven fewer than 15,000 kms at the time it is sold by the dealer.

The NRMA provides some useful tips on buying new cars, which can be found on their website (www.nrma.com.au).

It is a good idea to get an NRMA inspection of a car that you are thinking of purchasing. There are different types of NRMA inspections, but all inspections will look at a number of aspects of the car. If there are any faults, you should expect the owner or dealer to fix them before you buy the car. You should also look at a service log of work done on the car (especially any repairs which are made as a result of the NRMA inspection). For more information on NRMA vehicle inspections call 13 11 22.

The car market is very competitive. Many car dealers make a profit by offering finance packages to car purchasers. If you are looking for finance to buy a car, you should shop around with banks, credit unions and other lenders, to get the lowest interest rates, BEFORE you buy a car. Remember that the standard way to display an interest rate is per YEAR (“p.a.” meaning “per annum”). Some dealers quote monthly interest percentage rates, which means you should multiply that figure by 12. Before entering into a loan, you should receive written information about the loan amount, interest rate, and payment period.

(c) Second-hand cars

There are several different forms of warranties for second hand vehicles, so you should make sure you understand the length and terms of the warranty that applies to the car that you are purchasing. These will be based on the price and age of the vehicle. No warranty is available for cars that are more than 10 years old.
If you buy a second-hand car through a dealer, you are entitled to know the correct mileage, make, age and model of the vehicle. Dealers are responsible for ensuring that there is no money owing on the vehicle.

Dealers must also display a vehicle description form on the windscreen of the car stating the dealer’s name, price and relevant warranty, and engine and odometer details.

Be careful about the amount you are offered on a trade-in. A dealer may offer you a lot less for trade in than you would receive for selling your current car privately. Of course, when deciding whether to sell privately or through a trade in, you will need to remember that if you sell privately, you will have advertising expenses, waiting time (the time it takes to sell the car) and a risk of having the car stolen on a test drive. However, you should also look very closely at what you will be paying if you decide to trade-in your old car. Make sure you know the full price of the new car and whether any extras such as air conditioning are included and at a reasonable cost.

When you buy a second-hand car privately, the Consumer, Trader & Tenancy Tribunal recommends that you ask the person who is selling you the car for:

(i) a current certificate of registration;
(ii) a safety check report which is less than a month old; and
(iii) some proof that the seller owns the car.

Once you have these details, you should contact REVS (the Register of Encumbered Vehicles), who will check whether the car you are thinking of buying has money owing on it, has been reported stolen, has been written off by an insurer, or has been deregistered due to unpaid fines. Call REVS at the Department of Fair Trading (see Chapter 14 for details). REVS can provide you with a certificate showing that no money is owed on the vehicle. If you do not do a REVS check and you later find that money is owing on the car, the car could be repossessed by the person to whom the money is owed and you won’t be entitled to any reimbursement for what you paid for the car.

If you have other questions regarding the registration of a car which you are interested in, you can ring the Roads and Traffic Authority (RTA). See Chapter 14 for contact details.

(d) Repairers and Handymen

You have a right to have any repairs carried out with the appropriate level of skill and care. If you decide to use a repairer or handyman, always check their credentials. Some repairers, such as car mechanics, must have a licence in order to carry out repairs. Always ask for a receipt that fully outlines the details of the cost of a repair. Also, check that the repairer or handyman has an Australian Business Number (ABN) to ensure that the GST they charge you will be forwarded on to the Australian Taxation Office.

If the service which you are purchasing is building work with a labour component of over $1,000, the builder must give you a written quote and contract. The NSW Office of Fair Trading has a plain English standard contract that you can use. Different contracts are available depending on the total price of the work. You must pay the Goods & Services Tax (GST) of 10%. You can call the NSW Office of Fair Trading to check a builder or repairer’s licence details or you can do your own check online. See Chapter 14 for details.

(e) Door-to-Door Salespeople and Telemarketers

From 30 August 2004 new laws have been introduced to ensure you don’t get locked into a sale when buying goods and services from uninvited door-to-door sellers or telemarketers. Be aware:

(i) Sellers must not visit or phone you between 8pm and 9am.
(ii) You now have a 5-day ‘cooling-off’ period in which you can choose to cancel a sale over $100.

(iii) If you tell a door-to-door seller to leave, they must do so immediately.

The new laws do not apply in all circumstances. If you believe a seller is breaking these laws or to see if a seller is exempt, call the Office of Fair Trading (see Chapter 14 for details).

(f) Funerals

If you are called on to arrange a funeral there are a number of things to consider. Often the person who has passed away has made arrangements for their own funeral. An executor of someone’s will usually has the legal authority to make the funeral arrangements. This responsibility can pass to a family member or close friend by mutual agreement. If there is no will, family members will usually take on this responsibility. The will and personal papers may indicate whether the person has made funeral arrangements, belongs to a funeral fund or has other prepayment plans.

Funeral directors usually take care of the following details:

- Registering the death;
- Looking after the body;
- Placing death and funeral notices in the newspapers;
- Looking after transport, including transport for family members to the service;
- Supplying a coffin or casket;
- Paying the fees for the cemetery, crematorium and flowers on your behalf;
- Arranging a death certificate;
- Coordinating between the clergy and cemetery or crematorium.

As the consumer, you should be involved in the selection process for the coffin or casket, flowers and other details for the funeral and you should inquire about the fees that will be paid on your behalf. One of the biggest costs will be for the coffin or casket. There is often a range of selections with the costs rising based on the more elaborate fittings, linings or timbers.

It is always a sensible option when contacting funeral directors to first discuss the best prices and use this as a guide to your choice. The variation in costs, services and options can be significant. It is important to ask for itemised quotes to avoid surprises.

It is important to find out what funds are available before you sign an agreement with the funeral director. The funds for a funeral can come from a number of sources, namely:

- Most commonly, funeral funds will come from the estate (check with the bank if you are able to access moneys in the deceased’s bank account for this purpose);
- From a prepaid benefit or investment scheme;
- The Department of Veteran’s Affairs, for some returned service people;
- Centrelink, if they were receiving a pension or carer’s payment;
• The deceased’s health fund, trade union, pensioner’s association or another type of club in which they may have been involved.

Even where the person who has passed away has engaged in some form of prepayment scheme, it may not cover the entire costs of the funeral arrangements. Look in detail at any documents setting out the nature of the funeral fund and ask the funeral director about additional costs. The Office of Fair Trading regulates some of the funeral funds, and you can telephone them to check (see Chapter 14 for details).

If there is no money in the estate, friends and relatives may be willing to assist. If not, the NSW Government has some arrangements with funeral directors for the provision of basic services. For more information about this, talk to the public hospital, health facility or aged care facility where the person died.

If you have a dispute with a funeral director, the initial step should be to discuss the problem directly with them. Many funeral directors also belong to an industry association and will usually be required to adhere to a code of ethics. Often this is accompanied by a system for reporting complaints about members. If you have taken these steps and the dispute remains unresolved, you can then contact the Office of Fair Trading (details set out in Chapter 14). See also the general steps set out at the end of this chapter about how to go about resolving consumer disputes.

6.12 Credit

When you apply for credit cards, loans or mortgages, the contract that you sign is regulated (controlled) by the Consumer Credit Code. The Consumer Credit Code says that all credit contracts must be presented to you in a clear and easy to understand format. The company or person from whom you are obtaining credit must give you a signed, written statement, which clearly outlines, among other things:

(a) the amount of money involved;
(b) the rate of interest;
(c) how interest is to be calculated;
(d) how and when the debt is to be paid back; and
(e) the default interest rate (when you fail to make payments).

Visit the Consumer Credit Code’s website (see Chapter 14 for details).

A credit provider may be prosecuted if he or she misleads or deceives you into signing a credit contract. Such a contract may be void (ie of no effect).

If you sign a credit contract, but later become ill or suffer hardship and cannot continue payments, you have the right to request a change in your contract. You should make this request to the CTTT.

When applying for credit cards, loans, mortgages or other forms of finance, you should:

(f) compare finance companies for the package most suitable for you;
(g) always convert the interest rate into a YEARLY percentage;
(h) read carefully any documents before you sign them;
(i) understand your obligations; and
(j) be realistic about your ability to repay debts.

The NSW Office of Fair Trading has issued some helpful information sheets which can be found on the website (details set out in Chapter 14).
If you are experiencing financial difficulties or need information on debt and credit, a financial counsellor may be able to assist. The Financial Counsellors’ Association of NSW (contact details in Chapter 14) can provide a list of accredited financial services and some fact sheets. Members of the Association offer a free service.

6.13 More information for consumers

The Office of Fair Trading has published a free booklet called "The Little Black Book of Scams" which is a useful guide to common scams, swindles, schemes, rorts and rip-offs and how to protect yourself. It is available free of charge from your local Fair Trading Centre or on the Office of Fair Trading’s website (See Chapter 14 for details).

The Australian Consumers’ Association is another great source of buying tips and assistance. It is a not-for-profit organisation which has been researching and campaigning on behalf of consumers since 1959 and publishes *Choice Magazine*. (See Chapter 14 for details).

6.14 How to resolve a consumer dispute

The first step to resolving a consumer problem is always to approach the person or company you are unhappy with. Explain your problem and outline what the company could do to fix it. Remember that the problem may be solved more quickly and easily if you have kept all the documents you received with your purchase, such as receipts or statements.

The next step to consider is to contact your consumer protection agency such as the Office of Fair Trading. In NSW, the Office of Fair Trading has 23 of these Fair Trading Centres (FTCs), where you can obtain information and advice. You can contact an FTC (see Chapter 14 for details) between 8.30am-5pm Monday to Friday. They may also be able to give you some help in negotiations.

A range of Fair Trading services are also available via Government Access Centres (GAC’s) and other agency locations throughout regional NSW. Visit the Office of Fair Trading’s website for a full list of GACs and contact details (see Chapter 14 for details).

The Consumer Credit Legal Centre (NSW) can provide assistance with consumer credit, banking and debt recovery (contact details are in Chapter 14). The Banking and Financial Services Ombudsman is a free and independent dispute resolution service which deals with disputes involving less than $150,000. If your dispute is with a credit union and involves less than $100,000, you can go to the Credit Union Dispute Resolution Centre (details in Chapter 14).

If after following all the above steps your complaint has not been resolved, you may wish to take your matter to a court or tribunal for formal resolution. Courts and tribunals can make decisions that will be legally binding. You should remember that going to court may require legal representation and can prove costly. However, to provide a convenient forum for quick and effective resolution of disputes, some specialist consumer tribunals have been established. In NSW, this is the Consumer, Trader & Tenancy Tribunal.

6.15 Other places to go to find assistance to resolve consumer disputes

If approaching the FTC has not solved your problem, the next step is to consider going to the CTTT. The CTTT works together with the NSW Office of Fair Trading. It is generally a quick and inexpensive way of resolving consumer problems. Any decision made by the CTTT is binding on both parties.

The CTTT was established as the specialist dispute resolution forum for consumer, trader and tenancy based matters. It has a relatively small application fee. In the majority of matters, legal representation is not allowed. This is because the role of the CTTT is to provide an independent, low cost and accessible dispute resolution forum to the people of NSW who are parties in consumer or tenancy disputes. The CTTT deals with: home building, residential parks, motor vehicle, retirement villages, tenancy, consumer claims, strata and community schemes and commercial. See Chapter 14 for contact details for the CTTT.

Apart from the CTTT, there are other agencies and government departments that may be able to help you, including:
(i) Department of Health and Aging;

(ii) Ministerial Council on Consumer Affairs;

(iii) the Australian Competition and Consumer Commission;

(iv) the Australian Direct Marketing Association;

(v) Consumers’ Federation of Australia;

(vi) Consumer Credit Legal Centre (NSW)

If you feel that you have been unfairly discriminated against in a consumer transaction because of your age, sex, nationality or other personal characteristics, you should contact the Anti-Discrimination Board, contact details are set out in Chapter 14. Also see chapter 8 of this book on Age discrimination for further information.

You may wish to bring legal action against the person who has sold or manufactured the goods or services that you have bought. Read Chapter 1 of this book for information on how to find a solicitor and what to consider before suing someone. Remember that legal action can be expensive and time consuming. Remember also that many legal remedies are only available if you take them to a court or tribunal within a specified period of time. Even if you win, your legal costs may not be completely covered by the losing person. And if you lose, you may have to pay most of the other person’s legal costs in addition to your own.
7 PRIVACY

7.1 What is Privacy?

Privacy has sometimes been described as:

(a) the right to be left alone, or
(b) the right to exercise control over one’s personal information, or
(c) a set of conditions necessary to protect our individual dignity and autonomy.

But we often think about privacy in different ways, for example:

(d) physical privacy - such as bag searching;
(e) information privacy – the way in which governments or organisations handle our personal information such as our age, address, sexual preference and so on;
(f) freedom from excessive surveillance – our right to go about our daily lives without being under surveillance or having all our actions caught on camera;

And in different situations we may prefer one or other definition. We may also choose to emphasise different aspects of privacy depending on the reasons why we think that privacy is important.

For instance, privacy is important because it is:

(g) a way of controlling the power which people or organisations gain through collecting and storing information about others,
(h) a means of securing the trust which people expect in return for providing accurate information about themselves,
(i) a necessary condition for living in a society which values freedom and diversity, and
(j) the basis on which we form meaningful relations with other people by deciding how much of ourselves to reveal or conceal to any given person.

Given the importance of privacy and the rapid speed of technological change in our world, the area of privacy is a growing area of both social concern and legal development.

7.2 What does the law say about privacy?

The invasion of privacy, including the misuse of personal information, is unlawful under various state and federal laws which govern both the NSW and the whole of Australia. In NSW, there are four main laws that protect the privacy of individuals. These are:

(a) the Privacy Act 1988 (Cth) which:
   (i) sets privacy standards for dealing with personal information;
   (ii) applies to Australian Government (Commonwealth) and ACT government agencies;
   (iii) applies to private sector organisations across Australia; and
(iv) is administered by the Office of the Federal Privacy Commissioner;

(b) the *Privacy and Personal Information Protection Act 1998 (NSW)* which

(i) sets privacy standards for dealing with personal information;

(ii) applies to NSW state and local government agencies; and

(iii) is administered by Privacy NSW;

(c) the *Health Records and Information Privacy Act 2002 (NSW)* which

(i) sets privacy standards for dealing with health information;

(ii) applies to NSW state and local government agencies;

(iii) applies to private sector persons and organisations in NSW; and

(iv) is administered by Privacy NSW;

(d) the *Workplace Surveillance Act 2005 (NSW)* which

(i) regulates public and private sector organisations as employers in NSW;

(ii) allows overt (obvious) surveillance of employees if it meets certain standards;

(iii) prohibits covert (hidden) surveillance except in certain circumstances; and

(iv) is administered by the NSW Attorney General’s Department.

There are also other laws which impact on particular aspects of privacy, such as privacy of communications, such as the *Listening Devices Act 1984 (NSW)* and the *Telecommunications (Interception) Act 1979 (Cth)* which, among other things, control the way verbal communications can be recorded or phone lines tapped.

Many organisations are covered by either state or federal privacy laws, which place limits on what personal information can be collected from you, and how your personal information can subsequently be used. If the organisation does record your personal information, these privacy laws may give you the right to access and correct your personal information held by government agencies or businesses.

7.3 How to make a complaint

Due to the patchwork of legislation in the field of privacy, not all privacy complaints can be dealt with by a single office. First, you need to know who your complaint is against. If you are complaining about a NSW public sector agency (eg. the RTA or a local council) you should direct your complaint to Privacy NSW.

If you are complaining about an Australian Government department (eg. Centrelink or a private sector organisation (eg. a bank or a private health service provider (eg. your GP), you should direct your complaint to the Office of the Federal Privacy Commissioner.

The contact details for Privacy NSW and the Office of the Federal Privacy Commissioner are listed in Chapter 14.
7.4 Direct marketing

Direct marketing organisations compile and match personal information including names, addresses and telephone numbers from a variety of sources such as phone directories, competition entries and customer records.

Since 1 July 2000, councils in NSW have been prevented from supplying their rates records for direct marketing purposes as a result of the Privacy and Personal Information Protection Act 1998 (NSW). Nevertheless, marketing organisations may have a database that relates to information collected from councils before 1 July 2000 or they may have access to property data through a commercial database provider. Commercial database operators are able to buy land title information from the Department of Lands. The provision of this information by the Department is exempt from the Privacy and Personal Information Protection Act 1998 (NSW).

You can write to the marketing organisation that contacted you and ask them to remove your details from their mailing lists. Most marketing organisations are members of the Australian Direct Marketing Association (ADMA). If you do not receive a satisfactory response from the company, you should write to the National Director of ADMA and ask for your name to be removed from certain mailing lists.

You cannot be removed from the mailing list of organisations of which you are a customer but ADMA will have the name of deceased persons removed from all mailing lists. More information about their free consumer "Do not Contact / Opt-out" services can be found at their website (see Chapter 14 for ADMA's contact details).
8 AGE DISCRIMINATION

8.1 Introduction

Age discrimination or 'ageism' occurs when a person is treated less favourably or is disadvantaged or harassed because of their age. Age discrimination also occurs when a person is treated less favourably or is disadvantaged or harassed because of the age of a member of their family, friend or work colleague.

Of course, some differential treatment on the basis of age is sensible, and properly takes account of the needs and circumstances of a certain age group. For instance, it is lawful that the law does not allow people under 16 to drive. Discrimination may be permitted when it meets a special need of a particular age group or if it protects a particular age group. This is why concessions and discounts offered to older people are not unlawful.

However, you may find that negative stereotypes about older people make it difficult for you to participate in the work force and the community, or to access certain amenities, goods and services as you get older. This is a significant problem that many older people encounter. Direct age discrimination happens when a person is treated less favourably because of their age than a person of another age group would be treated in the same or similar circumstances. For example, an older person may be refused employment because it is assumed that older people do not have adequate computer skills.

As with all types of discrimination, age discrimination can also be indirect, and it is not always easy to identify when it is happening. This is particularly so if you are in a position where you are confronting other types of discrimination as well, such as disability discrimination, or discrimination on the basis of race or sex. Indirect discrimination happens when there is a requirement, condition or practice that is the same for everyone but has an unfair effect on a person of particular age. For example, it could be indirect discrimination if an employer requires an older person to meet a physical fitness test which younger people can meet more easily, if the fitness standard is not reasonable for the job in question. This is because though everyone is subject to the same requirement, it is indirectly discriminatory because it has the practical effect of favouring younger applicants over older ones.

8.2 What does the law say?

Every state and territory in Australia has passed legislation prohibiting age discrimination in the areas of employment, education, the provision of goods and services, accommodation and registered clubs. In addition, the Commonwealth Government has recently passed the Aged Discrimination Act 2004 which addresses discrimination in those same areas as well as in the administration of Commonwealth laws and programs. As can be expected, there is some overlap between the prohibitions contained in the Commonwealth and state laws, so that in some matters, you will be able to choose whether to bring complaints under the Commonwealth or state laws.

8.3 Anti-Discrimination laws

In NSW, once you are 18 years of age or over, the Anti-Discrimination Act 1977 gives you the right not to be discriminated against on the basis of your age in the areas of employment, access to rental accommodation, state education, most goods and services and registered clubs. In addition, a variety of Commonwealth and State laws deal with some issues that can relate to age discrimination. These include:

- Disability Services Act 1993 (NSW);
- Privacy and Personal Information Protection Act 1998 (NSW);
• *Workplace Relations Act 1996 (Cth)*;

• *Human Rights and Equal Opportunity Commission Act 1986 (Cth)*; and

• *Disability Discrimination Act 1992 (Cth)*.

The following are some of the areas that are covered in both the Commonwealth and State laws:

### 8.4 Discrimination in employment

Employment includes recruitment, training, promotion, transfer, benefits, dismissal, redundancy and retirement.

The law states that you have the right to be fairly considered for most jobs and traineeships, and to be trained, promoted and receive work benefits regardless of your age. It is unlawful to force an employee to retire because of their age, threaten to retire a person because of their age, or to do anything that may result in the employee retiring because of their age. However, it is not unlawful to offer voluntary retirement or severance schemes. The law against compulsory retirement in NSW overrides State industrial awards and agreements and any other NSW Act or Regulation that stipulates compulsory retirement.

However, studies in age discrimination show that systemic problems exist in the area of employment. Employers are often reluctant to hire older people, or terminate them first when business slows or a restructure occurs because “they are likely to retire anyway”. This, coupled with the desire to “bow out gracefully”, means that few complaints are ever made and such practices continue unquestioned.

### 8.5 Rental accommodation

You have the right to rent houses, units or flats, hotel or motel rooms, caravans and commercial premises, and on the same terms as people of other ages. Generally, you may only be denied accommodation if it is not large enough for the number of people who are intending to live there, if you cannot afford it, or if your references are unfavourable.

If you are refused rental accommodation or treated differently when you are renting because of your age this may be discriminatory. However, retirement villages and hostels that are designed especially for older people, and comply with local government planning requirements, are not unlawful as they meet a special need.

### 8.6 State education

It is discriminatory for any State educational authority which administers a school, college, TAFE, or university to refuse to enrol you or to limit your access to educational resources and benefits because of your age. It is lawful for the institution to establish mature age admission schemes, or to provide benefits or concessions that are intended to meet the needs of people in specific age groups.

These age discrimination laws do not apply to independent educational institutions.

### 8.7 Purchase of goods and services

People providing goods and services must not discriminate on the basis of age in their provision of those goods and services. The main exception to this is that insurance, superannuation and credit providers can discriminate on the basis of age if there is statistical or actuarial evidence to support this, or if another law says that they must.

### 8.8 Registered clubs

Generally, a registered club may not refuse a membership application on the basis of age (once you are over eighteen years of age or over). Registered clubs are entitled to offer concessions to members because of their age. The main exception to this is when a registered club has as its principal object the provision of benefits for persons who are of a particular age or age group.
8.9 If you are experiencing age discrimination

If you believe that you are being discriminated against, try and resolve it directly by talking with the other party. If it is a work problem, and you belong to a union, the union may be able to assist.

If the direct approach is unsuccessful, you can contact the Anti-Discrimination Board (ADB) or the Human Rights and Equal Opportunity Commission (HREOC). The ADB handles matters under NSW law and HREOC looks after matters under Federal law.

Initially, you can make a general inquiry to see if the law covers your discrimination matter. The ADB and HREOC operate telephone and drop-in inquiry services that give advice on the law and how to make a complaint.

In some circumstances, you may be covered by both federal and state legislation and you will have to decide which jurisdiction you wish to proceed under as you cannot lodge a claim with both. You should enquire with both agencies as to what the differences are and how it may affect your claim.

If you wish to make a formal complaint then you must write to the ABD or HREOC. You should be aware that complaints made to the ADB must be made within 12 months of the discriminatory behaviour, though there is a discretion to investigate complaints made after 12 months from the conduct complained of.

Your letter of complaint should explain what type of discrimination you have suffered and request that the matter be investigated. If the matter is investigated, and warrants further action, an officer from ADB or HREOC will organise a meeting with the parties to the complaint and try to resolve it informally. This is called conciliation and the aim is to get the parties to reach a private settlement. This may be, for instance, an apology, the implementation of non-discriminatory policies and procedures, financial compensation or re-employment.

Most complaints are resolved successfully at conciliation, but if not then:

- in cases handled by the ADB, the President of the ADB can refer it to the Administrative Decisions Tribunal for hearing. The ADT will hear your complaint and can make a range of orders, including an order of compensation up to $40,000.00; or

- for complaints handled by HREOC, you can take the complaint to the Federal Court or Federal Magistrates Court for hearing. You should be aware that this must be done within 28 days from the date of the complaint termination notice issued by HREOC.

If you choose to make a complaint under the NSW legislation, you can contact the Anti-Discrimination Board, contact details of which are set out in Chapter 14.

8.10 Threats and victimisation

Both federal and state laws make it illegal to victimise or threaten someone who makes or intends to make, or has helped someone else make a complaint of discrimination, harassment or vilification. This includes people who have agreed to be witnesses in relation to your complaint.

This means that you must not be punished or receive further unfair treatment for complaining about treatment that you believe is discriminatory. If anyone tries to make trouble for you because you made a complaint or because they think you might make one, you should talk immediately to the ADB or HREOC.
9 OLDER PEOPLE IN THE WORKFORCE

9.1 Introduction

There are an increasing number of workers who continue to stay in the workforce as they get older or older workers looking for part time or casual employment. This chapter is intended to give a brief overview of the way the current industrial relations system currently works and possible issues to consider from your continuing or terminating employment.

At the time of writing, the Federal Government outlined some further (and dramatic) changes to the way employment issues are regulated. These changes will affect all employees working in a corporation or under a federal award. While the changes are beyond the scope of this text, an understanding of the basic principles discussed below will assist you in navigating the new system as implemented in 2006.

9.2 Minimum conditions of employment in NSW

In Australia, there are many laws which tell workers and their employers what they can and cannot do at work. Some are state laws, which only cover people in NSW, and others are federal laws which are nationwide. These laws set up a system to make agreements about the conditions of work and they sometimes overlap.

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) a contract of employment; or
(b) an Award; or
(c) a certified agreement; or
(d) an enterprise bargaining agreement; or
(e) an Australian Workplace Agreement.

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

Awards usually cover the following conditions of employment:

(a) minimum rates of pay and allowances;
(b) overtime and other penalty rates;
(c) hours of work; and
(d) 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. Both Awards and Agreements should also state what workers can do if their employer does not put these conditions in place.

Your employer might draw up policies about certain issues such as equal opportunity, sexual harassment, employee behaviour and redundancy. 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.

9.3 Leave

If you are a full time or part time worker, the Annual Holidays Act 1944 gives workers four weeks paid holiday after one year of work (pro rata if you are a part time worker). 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 gives workers two months paid holiday after ten years of work at the same place. If you are a casual worker your rate of pay may include an amount which takes into account the leave benefit you do not receive owing to the nature of your job.

The Industrial Relations Act 1996 gives you leave entitlements if you adopt a child or become the primary carer for a child.

9.4 Harassment and bullying

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 okay 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 person in a similar role 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.

9.5 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" or "termination without notice".

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. If you are employed under a Federal Award, you can approach the Australian Industrial Relations Commission under the Workplace Relations Act 1996. You cannot claim unfair dismissal if you earn more than $94,900 or if you are a casual employee.
Under federal legislation, there are two ways you can be fired unfairly:

(a) Unfair dismissal

Unfair dismissal happens when an employer has a valid reason for firing a worker but did it the wrong way, i.e., the termination was harsh, unjust or unreasonable in the particular circumstances of the matter.

(b) 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, age or gender.

9.6 Unfair contracts

Another possibility if you are terminated without reasonable notice, redundancy payment (if applicable) or severance is an unfair contract claim. An ‘unfair contract’ is either written or carried out unfairly, for example, in certain cases, by not providing you with entitlements such as notice of termination or severance payments. If your contract is unfair, you have twelve months to start your claim from the date of the termination of the contract. You can only start a claim if you earn less than $200,000.

It is important to talk to a lawyer, union official or industrial agent to find out what to do because they are more complicated and costly than an unfair dismissal claim. There may be other options available to you but it depends on your situation, but you should seek assistance as soon as you are fired.

Your contract or agreement will normally 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 or they may 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.

9.7 Occupational health and safety

Employers in NSW have health and safety obligations to their employees. These obligations come from the Occupational Health and Safety Act 2000. 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.
9.8 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.

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 employer 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 employer has to tell you before they stop paying you.

If your employer does not pay the weekly payments to you which they are meant to pay under the Act, then you may be able to start a court case against your employer to recover those payments. You can also start a case if your employer dies, if the company is wound up, if your employer moves and you cannot find them, or if you think that your employer will not send your claim to its insurance company for processing.
10 DISPUTES WITH NEIGHBOURS

10.1 Introduction

Disputes with neighbours can be distressing so it makes sense to try to avoid confrontation with neighbours. If talking with neighbours does not solve the dispute then you might like to seek the help of an independent person who can talk to you both and point the way to agreement. Community Justice Centres can help with this. You can find them by telephoning the main regional office and contact details are set out in Chapter 14.

If you are not in an area where there is a Community Justice Centre, then try asking a person who you both respect, like a religious leader or a member of a community organisation, to mediate. A solicitor could also mediate the dispute for you.

If you are unable to resolve the dispute amicably, you should try the remedies listed below.

Under the Access to Neighbouring Land Act 2000, Courts have power to make orders permitting access to land by persons not otherwise entitled to that access for the purpose of carrying out work on their own land or carrying out work on utility services on that land, and to provide for the payment of repair and maintenance costs relating to utility services by joint users of services.

10.2 Fence disputes

(a) My neighbour wants to erect a fence which is too expensive for me.

Under the Dividing Fences Act 1991 in NSW, owners of neighbouring land must share the cost of building and maintaining a sufficient dividing fence. However your neighbour should consult you first and obtain a quote. If the fencing suggested is too expensive then make your own suggestions and obtain your own quote.

If you are renting the property give the quote to your landlord since they will usually be responsible for the cost.

If you are unable to agree with your neighbour then they can ask the Local Court to order you to contribute towards the cost of the fence. If you receive a notice from the Court see a solicitor, Legal Aid or a Chamber Magistrate. Chamber Magistrates are at most Local Courts and can give you free advice.

(b) My neighbour wants to build a fence outside the true boundary between our land.

If you are worried about where the boundary lies you may find that when you bought your house your solicitor (if you retained one) organised a survey which will show you where the boundaries are. If you do not have a survey you can ask a surveyor to do one. The cost is likely to be $500 - $700. You could ask your neighbour to share the cost of employing a surveyor.

You may prefer to discuss the matter with your neighbour and agree where the fence should be placed. It is important to make sure that, in reaching this agreement, you do not lose land which rightly belongs to you.
(c) My neighbours wants to build an ugly fence.

If there is a dispute which cannot be resolved then the Local Court can make orders as to the type of fence to be built. The Court will consider your views as well as factors applying to your neighbourhood.

10.3 Noisy neighbours

(a) My neighbour cuts the lawn, revs his car engine and plays loud music at all times of the day.

The *Protection of the Environment Operations Act 1997* places restrictions on the times that certain activities can be conducted, and also deals with noise being made over long periods.

Generally, these noises are not acceptable before 7.00 am and after 8.00 pm, although music can be played until midnight. If your neighbour disregards these time limits, or the noise is very loud, and you have been unable to resolve the matter by discussion or mediation, then you can ring the police who have the power to issue a Noise Abatement Direction. It is an offence to disobey such a Direction. In some circumstances, you can also apply to the Local Court to obtain a Noise Abatement Order.

You can also complain to your Local Council who can issue a Noise Control Order which, if breached, can result in an on the spot fine.

10.4 Animals

(a) My neighbour's dog frightens me and I think I could be attacked.

If the dog enters your land uninvited you have the right to ask that it be removed and restrained from entering your land again. If the dog continually enters your land uninvited, makes a lot of noise, defecates on your property, damages your property or chases a person or another animal, it might be considered a 'nuisance dog'. A Local Council officer can issue a notice against a nuisance dog which requires the dog's owner to stop it causing the nuisance.

You could also seek a Court Order to stop the dog coming on your land. You would need to see a solicitor, Legal Aid or a Chamber Magistrate.

If the dog is outside your land and on a public street and your neighbour refuses to control it, then complain to the Local Council. This is another type of behaviour which is classified as a 'nuisance'.

You can also complain about cats which make a lot of noise or which damage property. You should make your complaint to the Local Council.

10.5 Overhanging branches

(a) My neighbour's tree overhangs into my backyard.

First, check with your Local Council that the tree is not a protected one. You may break or cut off any branches which overhang, as long as you do so from your property. It is better to warn your neighbour that you intend to do this - they might offer to cut the branches for you. In any event, speak to the Local Council to obtain approval.
10.6 **Unpleasant odours**

(a) My neighbour lights bonfires/barbecues in their backyard and the smoke blows onto my land.

First, contact your neighbour to ask them to stop. If that is not successful, you can complain to your Local Council or to the Environmental Protection Authority (see Chapter 14 for contact details).

10.7 **Objectionable behaviour**

(a) My neighbour parks his/her truck/car in front of his/her house and blocks my driveway.

You have the right to demand that your neighbour remove the obstruction. If he/she refuses you can get a Court Order to prevent them from continuing to do so. You would need to see a solicitor, Legal Aid or a Chamber Magistrate. You can also complain to your Local Council.

(b) My neighbour is repairing cars in his backyard or running a business which is interfering with my peace and quiet.

Check with your Local Council whether this activity is against the zoning for your land, especially if your area is zoned Residential. There might also be rules governing your area. When land is subdivided the developer often creates rules known as "covenants" preventing certain types of behaviour or use of that land. Check with a solicitor if you think covenants might apply.

10.8 **Strata title units**

(a) My neighbours and I live next to each other in a strata titled unit and their behaviour is objectionable.

Attend an Owners’ Corporation meeting and complain. Your neighbours’ behaviour may breach the Strata Title By-laws. There are clear procedures to be followed when a dispute arises within a strata scheme, including the Owners’ Corporation issuing a notice requiring your neighbour to stop their objectionable behaviour.

If the dispute cannot be resolved within the Owners’ Corporation, you can try to mediate the dispute. The Office of Fair Trading provides a mediation service through the Mediation Services Unit.

If the dispute cannot be settled by mediation, you can go to an Adjudicator at the Office of Fair Trading who will look at all the documents involved (you can make submissions to him or her) and make a ruling. If you are not happy with the outcome, then you can appeal to the Consumer, Tenancy and Trader Tribunal. You do not need legal representation at the Tribunal, though you can ask the Tribunal for permission to be represented if you prefer. Contact details are listed in Chapter 14.
11 ACCIDENTS

11.1 Accidents on private and public property

This chapter looks at the legal responsibilities of certain people for injury or damage caused by accidents on private and public property in NSW.

These include owners, occupiers, other people who control buildings and land; and owners or keepers of animals.

11.2 Injuries on private property

An occupier of private property must take reasonable care to prevent foreseeable risks of injury to those who may enter the land or premises. The standard of legal responsibility is what a reasonable owner or occupier would have done in the circumstances to prevent injury.

(a) Who is liable?

An occupier is the person with possession of the land, building or premises - the person with the power to decide who may come and go on the land. This could be an owner, a tenant, or a building site manager.

Tenants can be responsible for injuries caused by property defects even if it is the owner's duty to maintain the property. It is therefore important to be insured for contents and householders insurance with a clause covering liability for dangerous premises. If required this insurance can be taken separately from home or contents insurance.

11.3 Injury on public property

Again, the occupier must use reasonable care to make the premises safe for visitors. For example:

(i) A local council may be liable for a dangerous structure in a park, or for not having warning signs at its swimming pool;

(ii) Sydney Water may be liable for an injury caused by a danger its drains create;

(iii) State Rail may be liable for an injury caused by the condition of a railway station; and

(iv) Shopping centres are covered by the law concerning occupiers.

Please note that roads are a special situation and we strongly recommend legal advice if you are injured, or you injure someone, on a public road.

11.4 The Civil Liability Act

The Civil Liability Act 2002 has modified the way in which liability for negligence is determined. Under the Act, even if you are injured, you may not have a claim if that injury was caused by something which could have been avoided (eg, by walking around an oil spill which was clearly in view).
11.5 Injury or damage to property caused by animals

There are several ways to obtain compensation for this. If the owner or keeper is negligent you can bring civil proceedings. Negligence can be hard to prove. An ideal example would be where the animal is known to be dangerous; perhaps it caused an accident before. For example, in a case where a dog caused an accident by chasing a car, neighbours can give evidence that that particular dog was always chasing cars. If the owner has not taken reasonable precautions, eg, to keep the dog from getting out on the street, the owner may be negligent.

Make sure you have up-to-date insurance and check your policy closely as to whether it covers injury or damage caused by pets or other animals.

11.6 The Companion Animals Act

All dogs and cats are treated as companion animals under the Companion Animals Act 1998. A person who owns a dog or cat may be liable for injury caused by their cat or dog, even where there is no negligence. A person who suffers injury or loss from a dog attack may sue the owner or person in control of a dog for compensation.

For example, the owner or any person in control of a dog can be prosecuted if the dog rushes at, attacks, bites, harasses or chases any person or animal, whether or not it causes any injury.

There are exceptions, if the injury occurred because:

(a) the dog was provoked (teased, mistreated, attacked);
(b) the person or animal was trespassing on the property where the dog was kept;
(c) the dog was acting in reasonable defence of a person or property;
(d) the dog was being used in lawful hunting;
(e) the dog was working stock or training to work stock;
(f) it was a police dog.

Under the Victims’ Support and Rehabilitation Act 1996, a person who suffers injury or loss from a dog attack may obtain a direction for compensation of up to a maximum of $50,000 to be paid out of the property of the owner, after the owner has been convicted. An application for compensation can be commenced in the Local Court by filing a summons alleging the offence and claiming damages.

A Court or the Local Council may declare a particular dog to be dangerous. Also, certain dogs are classified as ‘restricted’ dogs. Owners of dangerous and restricted dogs must meet special requirements to control them, or the owners may be charged and the dog seized. Some breeds of restricted dogs include pit bull terriers, Japanese tosas, and Argentinean and Brazilian fighting dogs.

If you have a dog, you should make sure it is registered before it is six months old, or you may be found guilty of an offence and be fined. At the time of printing the maximum penalty is $500.00, or $2,000.00 if your dog is a dangerous or restricted dog.

11.7 Injuries to animals under the Prevention of Cruelty to Animals Act

Under the Prevention of Cruelty to Animals Act 1979, if you are in charge of an animal you must:

(a) exercise reasonable care, control or supervision of an animal to prevent cruelty to the animal;
(b) take reasonable steps to ease any pain being inflicted on the animal;
(c) provide the animal with veterinary treatment when necessary; and
(d) provide it with adequate exercise or in the case of a caged animal (except for a stock animal), it must not be confined in a cage that is too small to provide it with adequate exercise.

If you have accidentally struck an animal with your vehicle you must take reasonable steps to alleviate any pain inflicted and if the animal appears to be a domestic animal, you need to inform either an officer (for example a police officer, or an officer of the RSPCA) or a person in charge of the animal being injured.

The possible criminal offences include:

• not providing an animal with proper or adequate food, drink or shelter;
• tethering an animal for an unreasonable time or by using heavy or unreasonably short rope, chain or cord;
• animal baiting or fighting;
• purchasing, acquiring, keeping or selling (or offering for sale) an animal that is so severely injured, diseased or in such a condition that it is cruel to keep it alive.

Compensation can be claimed, and criminal prosecution may be possible.

Cruelty to animals may result in criminal penalties and the payment of compensation to the owner. Police can take action and you can also contact the RSPCA or the NSW Animal Welfare League.

11.8 Motor Vehicle Accidents

(a) Police should be called to the scene when:

• A person is killed or injured;
• A vehicle needs to be towed away;
• A driver does not stop or exchange details;
• A driver is believed to be under the influence of alcohol or drugs; or
• There is damage to property or animals.

(b) Legal obligations after an accident, where the vehicle damage is minor and no one is injured

You do not need to report the accident to the police. But if asked, you must provide certain details to:

• Other drivers involved in the crash;
• The owner of the property damaged in the crash;
• The information that must be provided is:

• Driver’s name and address;
- Vehicle owner's name and address;
- Vehicle registration number (licence plate); and
- Other details which may be needed to identify the vehicle.

(c) Legal obligations after an accident, where there personal injury or property damage is significant

Within 24 hours of the accident, all drivers involved must report the crash to the police station nearest to where the crash happened. You are not required to report the crash if injuries from the accident prevent you from doing so.

If you wish to make a personal injury claim you must report the accident to police within 28 days of the accident. Tell the police:

- The place and nature of the accident;
- Registration numbers of all involved vehicles;
- Names and addresses of all drivers and witnesses; and
- Extent of any injury or damage caused.

Drivers of vehicles involved in an accident must give all possible assistance to any injured person, including phoning 000 for an ambulance.

If you are injured you may have a claim against the driver of the other vehicle which caused you injury. You should go see your doctor about it and consult a solicitor who practices in personal injury law and in particular, in motor vehicle accidents, as soon as possible. You will need to fill in a personal injury claim form and the doctor will fill in the medical certificate that accompanies the personal injury claim form.

Your solicitor will then send your claim form and medical certificate to both the owner of the vehicle and the insurer of the vehicle. Your solicitor must do this within 6 months of the date of the accident otherwise you will be required to give a full and satisfactory explanation as to why it was not sent in this time. Your solicitor will then proceed to pursue your interests according to the Motor Accidents Compensation Act 1999 (NSW).

(d) Practical steps at the scene of the accident.

A driver should:

(i) Take necessary precautions to prevent further collisions;

(ii) Do not admit fault - it may invalidate insurance claims;

(iii) Obtain the names and addresses of any witnesses;

(iv) Make handwritten notes of any conversation with the other person involved in the accident;

(v) Make a sketch plan of the scene including distances, width of the street, land marks, and any other relevant details;

(vi) Take photographs of the scene (if possible);

(vii) Get the other driver's licence and address details, those of the owner (if different), the licence plate of the other vehicle, and the insurance company with which the vehicle is insured. The Motor Accidents Authority will give you details of their insurer if you have the licence plate number and the accident date.
(viii) Contact the insurer. Even if a driver is undecided about whether to claim on his/her insurance policy, it is best to report the accident to the insurer as soon as possible. If the accident is not reported to the insurance company immediately after the accident, then the insurer may try to deny a later claim for compensation;

(ix) Clean up the scene before you leave. If the driver cannot do so due to injury, the person removing the vehicle must do so.

(e) Compensation

Two types of damage may be suffered in a motor vehicle accident:

(i) Personal injury (cuts, bruises, broken bones); and

(ii) Property damage (to cars, motorcycles, clothing).

This will require you to make claims on two separate insurance policies. Both require you to prove that the other person was negligent, that is, that the damage was caused wholly or in part by the other person’s lack of reasonable care in driving, controlling or maintaining the vehicle.

It is possible to sue first for property damage only and then later sue for personal injury.

If the other driver is found guilty of a criminal offence for causing the accident (e.g. negligent driving) this does not mean that the court will decide this in a civil case. However, criminal cases have a higher standard or level of proof (beyond reasonable doubt) than civil cases (on the balance of probabilities).

If you are going to make a claim, you should do so quickly as there are time limits that apply to making court claims. For personal injury this time limit is 3 years from the motor vehicle accident (however you must still have your personal injury claim form sent within 6 months of the accident). For property damage, the time limit is 6 years from the date of the accident, however it is best to claim as soon as possible.

Again, we advise that you should contact your solicitor or, if you have trouble contacting your solicitor, contact the Law Society for contact details of solicitors in your area, or for information on making a complaint.

11.9 Property damage from motor accidents - Options

If the damaged vehicle is uninsured you can either:

(i) Pay for your own repairs; or

(ii) Demand payment from the other person and if necessary sue them within the 6 month time limit (see below).

If the damaged vehicle is insured, the owner has a third option, in addition to the above

(iii) Make a claim on his/her insurance policy.

11.10 Making a claim

Consider the factors such as type of insurance you have, how much "excess" you have to pay, the effect on your no-claim bonus/premium (if you make a claim), whether the other person is insured (and you can claim on their policy), and the amount of damages involved compared with legal costs of pursuing the matter.
(a) No-claim bonus

Insurance companies reward owners who have not made claims, by offering them a lower premium the next year. The reward of the lower premium may be lost if a claim is made later.

(b) No-fault claims

A number of insurance companies will allow you to keep your lower premium (no claim bonus) even if you have made a claim, if:

(i) the accident was not your fault (or whoever was driving your vehicle); and
(ii) the insurance company can identify the driver and recover damages from them.

If so, it will normally try to recover the excess from the other driver.

(c) Excess

This is the amount the insured person has to pay when a claim is made. It is stated in the insurance policy. The amount varies depending on the insurance company, the age of the driver and their driving history. All insurance companies insist on special age excess for drivers younger than 25 years (and, in some cases, 30 years). The standard excess for all drivers is around $350; for drivers under the age of 25, it may be as much as $1,000. If the insured has a previous claim, the excess may be increased.

Know what your excess is before making a claim. It is possible to reduce or remove the excess by paying a higher policy premium.

(d) Advantages of claiming

A major benefit is that your vehicle will be repaired quickly.

The insurance company can also sue the other driver for you, in your name. This is a common practice. The insurance company will pay all the costs of suing. If the insurance company receives more in damages than it paid you, it will generally deduct its legal costs and give what is left to you.

11.11 Suing for Damages

Going to court is expensive. Before suing someone it is important to check that he/she is insured and, if not, whether they can pay for the repairs. There is no point in throwing good money away. If the other party is not insured and cannot pay for the repairs you should seriously consider making a claim on your own insurance policy.

(a) Legal costs

Court cases can be expensive. Carefully consider likely legal costs (see Chapter 1 - You & Your Lawyer). To minimise costs, it is possible to handle all or part of a damages claim personally. However, in many cases this is not advisable especially where the claim is defended. It would be at least worthwhile discussing the matter with a solicitor before going to court.

If a solicitor handles a claim, some of the legal costs (between 50% - 60%) for the work done may be recovered from the defendant if the claim is successful, but this can depend on the amount of the claim. It is also possible that the solicitor’s charges may be more
than the costs the losing party is ordered to pay. The other party may not be able to pay your legal costs.

Example -

A sues B for property damage arising from a motor accident. The court decides for A and orders B to pay $3,000 for damages to A’s car and $1,000 for legal costs.

However legal costs awarded by a court do not generally cover all of the actual legal costs. A’s solicitor charges him $2,000, which A has to pay whether or not B actually pays the court order for $4,000 total.

If B does pay the full amount, A would have $2000 after payment of his legal fees.

If A lost the case, A would have to pay for the repairs and legal costs, plus B’s legal costs and possibly for repairs to B’s car.

Alternatively, if the matter is in the local court, either party can request the court to refer motor vehicle property damage claims to an arbitrator.

(b) Repair costs

If the cost of repairing a car is small (say, under $250), it is often not worth claiming on insurance or getting a solicitor to pursue a claim. However, it may be worthwhile handling the claim personally to try and recover some of the cost.

If the damages are substantial and court proceedings are involved, seek legal advice.

If someone sues you for damage to his or her car, which s/he says is your fault, you should seek legal advice immediately.

(c) Contributory negligence

Deciding whether another driver was at fault (i.e. by being negligent, or not acting reasonably) is often quite difficult. A driver who is drunk at the time of the accident is generally negligent.

In other situations it is often not as clear-cut. If in doubt about who is at fault, obtain legal advice.

Often it is impossible to say that one driver was completely at fault. Courts can share the blame between the drivers according to the degree of responsibility. Where one driver shares responsibility for the accident they are said to contribute to the accident by their negligence. This is called contributory negligence.

An example of contributory negligence is an accident at an intersection where the driver of the vehicle with right of way may be held 25% responsible because every driver is supposed to drive safely in all circumstances. Likewise, a driver who did not take reasonable steps to avoid an accident may be held partly responsible.

In some cases, a person may recover 100% of their damages (e.g. if the car was parked at the side of the road and was hit by another car). However, the possibility of apportionment of the blame between drivers must be considered.
(d) Which court?

Court proceedings are often complicated and stressful. If you do proceed to court consider whether to instruct a solicitor particularly if the other party has a solicitor.

The first step is to establish which court will hear the claim. If the amount of damages claimed is more than $60,000, legal action is commenced in the District Court. Normally, where the claim is this large it is best to claim on an insurance policy and leave it to the insurance company to handle the claim.

For claims up to $60,000 legal action will start in the Local Court. The Local Court has a Small Claims Division for claims under $10,000. Small Claims proceedings are designed to be informal and to encourage conciliation of claims. Lawyers are allowed to represent drivers but, as outlined above under ‘Legal Costs’, there are limits on the legal costs recoverable.

11.12 Motor vehicle insurance

The price of compulsory third party insurance depends upon the type of vehicle, the area in which you live and other factors approved by the Motor Accidents Authority which may be applied by the insurers.

Insurance for pensioners is based on the number or types of claims that have been made. The pensioner category has been amalgamated with non-pensioners. However, insurers are permitted to provide an additional discount for vehicle owners 55 years old and over.

You should shop around for the insurance policy that meets your needs the most. The most common types of insurance are:

(a) Compulsory Third Party (CTP)

Compulsory third party insurance covers claims made against the owner of the vehicle for personal injury. It must be paid before registering a vehicle. The premium is paid to a licensed insurer when the vehicle’s registration is renewed. The certificate of insurance is the “green slip”. You must present the "green slip" to the RTA when you register your vehicle. CTP is often cheaper if you also have some other form of insurance with that company.

Contact the Motor Accidents Authority for further information.

(b) Third Party Property

Third party property insurance only covers damage to someone else's property. Every vehicle owner should have at least this type of insurance. It is usually taken out on vehicles not valuable enough to insure comprehensively or the owner feels they cannot afford to.

Policy holders must notify their insurance company of any accidents and resulting claims made against them.

(c) Comprehensive

Generally only covers claims for property damage. It is similar to Third Party Property Insurance but also covers damage to the policy holder's property arising from an accident. It may also cover hospital and medical expenses and a benefit if a person is killed or injured in an insured vehicle.
11.13 **Losing your insurance cover - Insurance conditions**

To avoid losing your insurance cover you **must** read your insurance policy carefully. Most comprehensive and third party property policies have special conditions, which must be met or the insurance company will reject a claim. Some common conditions imposed include:

(i) An obligation to report the accident as soon as possible;

(ii) No cover if the vehicle is driven by a person under the influence of alcohol or of another drug;

(iii) No cover if the vehicle is driven by an unlicensed driver. This includes the situation where the owner has given his/her permission;

(iv) Past history - When filling out an insurance application it is important to answer all questions truthfully. If, for example, your driving history is not declared, the insurance company may refuse your claim and your insurer could possibly cancel your policy altogether.
12 ELDER ABUSE AND VICTIMS OF CRIME

12.1 Elder Abuse

Elder abuse has been described as any pattern of behaviour which causes physical, psychological or financial harm to an older person by someone with whom they have a relationship of trust. Elder abuse may be intentional or unintentional (e.g., neglect) and covers a range of behaviour including physical, psychological, sexual, medical, and financial abuse. In many cases, it is often a continuation of a long-term pattern of violent or abusive behaviour in the relationship. For these reasons, elder abuse often fits within the framework of domestic or family violence.

It is difficult to measure the real extent of elder abuse in our community because it usually goes unreported. There are a number of reasons for this including issues of dependency, isolation and a lack of awareness of available services. Our current social welfare, health and legal systems have not always provided the assistance and support victims of elder abuse need, but this is starting to change as the issue gains increasing attention.

12.2 Talk about elder abuse

You should never feel ashamed about asking for help or discussing the abuse with friends, health care professionals, lawyers or the police. Your safety and well-being is always paramount and help and support is available. It is important to talk to health care professions or the police if you feel you are being physically abused, bullied or pressured to do things by someone you know, or if someone you rely on is neglecting you, threatening or failing to look after you as they promised.

Elder abuse includes financial abuse, for instance someone taking money from your savings or pension for themselves, or pressuring you to change your will, or getting you to be a guarantor for their debts without explaining to you all of the risks. In each of these circumstances, there may also be an element of standover tactics, emotional blackmail, pressure or undue influence based on your relationship with that person. While we have outlined steps you can take to look after your own estate and finances in chapters 3 and 4, they do not necessarily protect you against financial abuse at the hands of someone you trust.

The first step may be as simple as refusing to make a decision on the spot or buying time until you have the opportunity to talk to your doctor, accountant, your local nurse, solicitor or other professional and asking for help. If there is a threat of physical or physiological violence, you should call the police or a domestic violence service immediately (See paragraph 12.4 below).

Aged Care Assessment Teams (ACATs) at your local hospital can also provide assistance, or alternatively your doctor or local nursing home can refer you to an ACAT team. ACATs provide information on care options and can help arrange access or referral to appropriate residential or community care and other services.

12.3 Elder abuse and the aged care system

Generally, there are two ways in which services for victims of elder abuse can be grouped. The first is through the aged care system and the second is through the justice system. You should be aware of the services offered by both systems so you know and understand the options available to you.
The Aged Care perspective of elder abuse generally focuses on inadequate or inappropriate care given in the dependent relationship between the victim and carer.

From this perspective, acts such as unintentional neglect or omissions and financial abuse by carers become viewed as elder abuse.

In these situations, intervention or assistance in the form of social welfare and health services such as those provided by ACAT, are the normal response. In severe cases, the Guardianship Tribunal may intervene to remove the victim if the standard of care falls to an unacceptable level. Contact details for the Guardianship Tribunal are listed in Chapter 14.

12.4 Elder Abuse and the Justice System

In contrast to the Aged Care perspective, the justice system recognises that elder abuse often involves elements of criminal behaviour (such as physical or sexual assault, domestic violence, criminal neglect and theft) and directs victims to contact the police and/or domestic violence services.

The Department of Community Services runs a 24 hour Domestic Violence Assistance Line (Phone 1800 656 463 (toll free) or TTY 1800 671 442 (for callers with a hearing impairment)).

You can also get information about alternative accommodation options (both crisis and longer term) from the Domestic Violence Assistance Line or the NSW Women’s Refuge Resource Centre.

If you need legal advice or assistance, you should contact the Domestic Violence Advocacy Service, the Wirringa Baiya Aboriginal Women’s Legal Centre (for Aboriginal and Torres Strait Islander identifying women and children) or the Women’s Legal Resource Centre. Contact details are set out in Chapter 14.

Counselling services are also available if you need them. Contact the Victims Support Line for a referral (see contact details in Chapter 14). Women’s and Community Health Centre’s often provide counselling services as well.

12.5 Apprehended Domestic Violence Orders

Victims of elder abuse will often have the option of getting an Apprehended Domestic Violence Order for protection.

An Apprehended Violence Domestic Order (ADVO) is a restraining order designed to protect you in the future from harassment, abuse or assault and is like a warning in writing and is not a criminal charge.

An ADVO usually states that the person named in the order cannot assault, threaten, harass, or stalk you. It can also order that person not to do other things like to come near your home or your workplace or any other place you fear you may be assaulted or harassed.

The orders stated on an ADVO are called conditions. AVDOs can be tailored to suit your needs by adding various conditions. When you apply for an ADVO, make sure you talk over these conditions with the Police or the Chamber Magistrate so you get an order you are happy with, but the Magistrate will make the final decision about the conditions they believe are necessary to ensure your safety.

If the person named in the ADVO does any of the things they have been ordered not to do, then this is called a breach of the conditions of the ADVO. A breach of an ADVO is a criminal offence and you should call the police immediately.

12.6 How do I get an ADVO?

You should contact your local police and ask to speak to the Police Domestic Violence Liaison Officer (DVLO). A DVLO is attached to each of the 165 patrols across NSW and are trained to assist victims of domestic violence. See the listing under Police in chapter 14 for contact details.
Alternatively, if you don't want to involve the police you can apply for an ADVO yourself through the Chamber Magistrate at your local court. To apply on your own behalf, make an appointment to see the Chamber Magistrate at your local court. You will need to give brief details about what has happened and say why you are in fear of the person. A summary of what you have said will appear in the application, known as the complaint. You will be given a court date and the police will serve the complaint on the other person.

There is also a special service which can help women get an ADVO. They are called the Women’s Domestic Violence Court Assistance Schemes and operate state wide. A support worker at the court assistance scheme will:

- provide you with information about ADVOs and about domestic violence;
- make sure you know what will happen in court;
- organise a legal representative for you if you don’t have one to go with you to court and assist with the necessary legal orders;
- go with you to court to support you;
- refer you to other organisations that can help you.

Contact details for the closest assistance scheme to you are listed under Women's Domestic Violence Court Assistance Scheme in chapter 14, or you can contact your closest local court registry for contact details.

12.7 Under what circumstances can I apply for an ADVO?

You can apply for an ADVO if you are afraid of violence, harassment, molestation, intimidation, stalking or damage to your property from your partner or ex-partner, a relative, someone you have (or had) an intimate relationship with, someone you share (or shared) a house with or a carer.

You do not have to have experienced physical violence to be able to apply for an ADVO; fear of violence, harassment or damage to property can be sufficient. However, to be granted the protection of an ADVO, you will have to show the court you fear violence, harassment or stalking and that your fear is reasonable.

An ADVO can also provide protection for anyone you are in a domestic relationship with. For example, it could also protect your children, another family member or your current partner (if you are being harassed by a former partner). However, this is not automatic, so if you want the ADVO to protect others, you will have to ask for this when the application is made.

12.8 Non English speaking victims

Unfortunately there are few specialist services available for non English speaking victims of elder abuse.

This means that many non-English speakers will rely on the assistance of a family member or friend who is bilingual for information, assistance and referrals. They may be reluctant to tell the full story because of shame or fear of upsetting the rest of the family. A better option may be to use interpreter services available from the NSW Government's Community Relations Commission Language Services (phone 1300 651 500) or the Translating and Interpreter Service 24 hrs (phone 13 14 50).

Further assistance may be obtained from your local Migrant Resource Centres, a full list of which appears in chapter 14.

For women from culturally and linguistically diverse backgrounds, we can suggest two main contacts. The Immigrant Women's Support Service is a community based organisation which works with women
and children of non-English speaking backgrounds who are or have been in violent domestic situations and/or have experienced rape and/or sexual assault. It is based in Queensland and their contact details are in chapter 14.

Alternatively, you can call the Immigrant Women’s Speakout, an organisation that provides assistance with advocacy, lobbying, information, referral and policy for immigrant women. See chapter 14 for contact details.

12.9 Same sex relationships

If you are in a same sex relationship, you may wish to speak to the Gay and Lesbian Liaison Officer (GLLO) at your local police station for assistance, but the procedures for getting an AVDO are the same.

There are around 100 Police Gay and Lesbian Liaison Officers working across NSW. If you are not in immediate danger but you want to know what the police can do to help, you could call a GLLO and talk to them. They can talk to you about your relationship and help you work out if your relationship is abusive. They can also tell you about your options and what protection the law can give you. They can help you to work out what you want to do and how to proceed.

To contact your nearest Police Gay and Lesbian Liaison Officer, see the listing under Police in chapter 14 for contact details.

You could also ask to speak to a Domestic Violence Liaison Officer or call the Domestic Violence Line. You should also check out the full listing of resources at the Same Sex Domestic Violence Website. The details of each of these resources are listed in chapter 14 and as with anyone else suffering domestic violence, you should not fear to get help or report it.

12.10 Victims of crime and Government assistance

In this part, we move away from elder abuse and focus on the broader issue of what to do if you are the victim of a serious crime (whether it is or is not elder abuse).

The qualities of acceptance, respect, understanding, security and support are, for most people, what make our lives enjoyable and fulfilling. It is not surprising that many people become concerned when these qualities are threatened by crime and anti-social behaviour. If you are a victim of such actions, you may be able to get some assistance from the government.

12.11 How does the Government define a victim of crime?

You are a victim of crime if as a result of a criminal offence you suffer physical or mental harm, or loss or damage to property. Where the criminal offence results in the death of the person, a member of that person’s immediate family will also be included as a victim of crime.

A victim of crime can be of any age and, whilst victimisation can occur in all sorts of situations, this chapter is primarily concerned with victims of violent crimes, such as sexual assault, assault, homicide and those incidents of domestic violence that constitute a criminal offence (for example, battery).

12.12 What are my rights?

In NSW a victim of crime has certain rights, which are protected under the Charter of Victims Rights, which is set out in the Victims Rights Act 1996. The Charter aims to ensure a recognised position for victims within the NSW criminal justice system by requiring government agencies to ensure that a victim is treated with courtesy and compassion at all times and that their rights and dignity are respected. The Charter also includes rights to counselling, medical treatment, compensation for loss of property and personal injury as well as information about the investigation and prosecution of the accused.
12.13 **How do I get help?**

The NSW Attorney General has established a separate division called Victims Services to help victims of crime in NSW access services and entitlements to assist in their recovery.

Victims Services consists of:

(a) the Victims Compensation Tribunal, which processes and determines compensation and counselling claims;

(b) the Victims of Crime Bureau, which acts as a link between victims of crime and service providers in NSW. The Bureau runs the 24 hour Victims Support Line and administers the Approved Counselling Scheme discussed in this chapter;

(c) the Victims Advisory Board, which liaises with community and government agencies as well as the Attorney General’s Department on policies and reforms concerning victims of crime, and

(d) assisting clients where they feel a government agency has breached the Charter.

The Victims Advisory Board has established a useful website called “Victims of Crime – advice and information”. Contact Details for the Victims Advisory Board are set out in Chapter 14.
13 FAMILY LAW

13.1 Introduction

Family relations can be complex at the best of times whether you are involved directly or it is happening to your children or friends. In this chapter we look at the way the law deals with separation and the ending of a marriage as well as binding financial agreements between partners and what rights de facto couples have.

We also discuss how grandparents may get contact orders to see their grandchildren and also parenting orders in cases where grandparents may wish to become the primary caregiver for the grandchildren.

13.2 Separating from your spouse

(a) When does separation start?

Separation begins from the time you or your spouse considers the marriage over, tells the other spouse and proceed with that intention to separate, e.g. you or your spouse move out of the home or into a separate bedroom. You must be separated for 12 months. Imprisonment, illness, or job transfers do not necessarily mean separation for the purposes of a divorce unless the spouse is told. However, sometimes the court can treat separation as starting from a certain date, for example, when one spouse begins living with someone else or has applied for a sole parent pension (Parenting Payment) or has stopped visiting.

(b) Separation under one roof

You may regard yourself as separated but still be living in the same house. This might be for financial reasons. This may still be separation for the purposes of a divorce, however the couple will have to live independently despite living under the same roof. This is also known as separation under one roof. Evidence from you or your partner will be required that the usual aspects of married life are not taking place, whether it is sexual relations, household tasks such as cooking or washing, or social activities.

(c) Temporary reunion

If you and your partner reunite for less than three months, the clock does not stop for calculating the separation period. You can add the prior period of separation to the subsequent period of separation to build up the required period of 12 months. However, you can only do so if there has not been more than one reunion over the required 12 month period.

(d) Family Violence

If you have fears for your safety and welfare against your spouse or, you should contact your local police immediately. Ask to speak to the Police Domestic Violence Liaison Officers (DVLOs). A DVLO is attached to each of the 165 patrols across NSW and are specially trained to assist victims of domestic violence. See the listing under Police in Chapter 14 for contact details.
If there is a threat of violence against you, your children or grandchildren, you can also contact the Department of Community Services Domestic Violence Line for help.

You may also consider applying for an Apprehended Domestic Violence Order (ADVO) in NSW to prevent them from approaching you or from being at your place of residence or work. You should see your local police authority if you have concerns about your spouse’s behaviour towards you or if there have been incidents that have caused you to hold such fears. The police may be able to bring the application on your behalf in certain circumstances or assist you in doing so. Otherwise, you may apply for one on your own. You can see the Chamber Magistrate at the local court closest to you or your lawyer for this purpose. More information on domestic violence and abuse is found in Chapter 12.

13.3 Ending the marriage

In some circumstances a marriage may be ended by a decree of nullity, which states that the marriage was invalid because of illegality (e.g. bigamy, at least one spouse not old enough, incestuous), no consent (lack of capacity, fraud, duress, mistake), or procedural reasons. In most cases when the marriage has broken down it will end with a divorce.

13.4 Divorce

A divorce ends the marriage. It does not cover maintenance, property settlement, or arrangements for the children. You may get a divorce without dealing with these other issues in legal final form, although it would be wise to have at least some discussion on these issues, as you must apply to a court for a property settlement within 12 months of a divorce.

If you want a divorce, you need only show that you have been separated from your spouse for at least 12 months and that it is unlikely that you will reunite. You cannot apply for a divorce until you have been separated for 12 months. Whilst it is not necessary to obtain a divorce unless either one of you wishes to remarry, it is an option which many people feel finalises that part of their life.

13.5 Who can apply for a divorce in Australia?

Anyone can apply for a divorce, regardless of “fault” or whether the other spouse wants one, as long as they have been separated from their spouse for 12 months and the marriage has broken down. The court requires one spouse to have some substantial connection with Australia such as citizenship, permanent residency, or temporary residency of at least 12 months prior to the filing of the application.

13.6 Short marriages

If you have been married for less than two years, you must see a counsellor before you can divorce. The Family Court has a counselling service or you may see a private counsellor. Counselling is useful for reasons such as examining where the relationship failed and not wasting the court’s time. However, its main purpose is to establish that the relationship has totally broken down. A prescribed certificate evidencing counselling must be attached to the divorce application. If you do not have the certificate, you must obtain the court’s leave to proceed with the application. There are some exceptions to this requirement.

13.7 How do I apply for a divorce?

(a) Divorce Kit

You do not need your spouse’s consent in order to apply for divorce. As long as you have been separated for at least 12 months prior to the filing of your divorce application and
there is no likelihood of cohabitation (living together) resuming, either spouse can file for divorce.

All divorce applications are now lodged with the Federal Magistrates Court of Australia (except in Western Australia where they are lodged with the Family Court). However, the Federal Magistrates Court shares registry facilities with the Family Court. You need to complete and file an Application for Divorce (Form 3) with the Federal Magistrates Court. You can get a Divorce Kit which contains the relevant forms from the Registry, local courts, legal stationery shops, and online (details of which are located in Chapter 14). The Divorce Kit will have some information on how to complete the forms. The form is simple and you may complete it in handwriting.

After completing the form, you must “execute” it in the presence of a solicitor or a Justice of the Peace. This means they must have you swear an oath on a holy book or make an affirmation (depending on your religious or personal beliefs) that the document you are about to sign is true, and then sign the document in front of them. Do not sign it beforehand.

If there has been separation under the one roof, you will need to file an affidavit (i.e. a sworn statement) setting out the circumstances of that separation. The court will also require a corroborating affidavit from a third party. You may wish to seek legal advice in this respect.

A filing fee is payable when you lodge a divorce application. The fee is currently $288. You may apply not to pay the fee before you lodge the application if, for example, you are on a low income. It is very hard to get a refund after you have paid.

You will also need evidence in English that you were married. If you don't have the original marriage certificate, and were married in NSW, you may apply for a full copy of the certificate from the Registry of Births, Death and Marriages. Marriage certificates from overseas can be translated by the Immigration Department. Alternatively somebody who is officially qualified to translate may do so and supply an affidavit (i.e. a sworn statement) setting out their qualifications and attaching the translated marriage certificate.

Give the Court Registry the original and 2 copies. They will stamp them (giving you a hearing date) and return the copies to you.

(b) Online Applications

The Federal Magistrates Court has developed an online divorce application to simplify the divorce process. It is now possible to complete (but not lodge) divorce forms online – see Chapter 14 for details. Once the form is completed, you must print it and lodge it with the Registry.

(c) Joint applications

In some cases, both spouses may wish to apply for divorce together. This makes procedures very simple - it is almost a divorce by post. Filing fees can be shared and you do not have to formally "serve" the documents on your spouse. The same forms are used but you will need to indicate on the form that it is a joint application. Both spouses will then sign the form.

13.8 Serving the documents

A stamped copy of the application must be delivered to the other spouse. This is called "serving" the document. At the same time the document server must give a pamphlet from the Divorce Kit, which outlines the effects of divorce. An Acknowledgment of Service is also included. You must
serve the document at least 28 days before the hearing if your spouse is in Australia and at least 42 days before the hearing if your spouse lives overseas. Remember that this is not a full hearing in the sense of a criminal trial. We discuss this further below.

(a) Who can serve the documents?

Anyone over the age of 18 except the person applying for the divorce can hand over the documents. If there is a reasonable communication between your spouse and yourself, you may serve the documents by post. This is discussed in more detail below.

(b) How do you serve the documents?

A friend or relative may do this (you should not be present). Or you may wish to find a professional process server from the Yellow Pages. They may charge around $40-$100 depending on travel and the number of attempts needed to serve the documents.

The documents must be handed directly to the other spouse. The court needs strict proof that they received the papers, so they cannot be left with someone they share the house with or with a workmate. If the person serving the documents does not know the other spouse, it is useful if a photograph of that spouse is made available. The document server should identify the spouse by asking for that spouse’s full name. The document server then tells the respondent spouse that the applicant spouse is seeking a divorce and that the papers are from the Family Court for a hearing on a particular date (stamped on the papers).

Ideally, the respondent spouse will also sign an Acknowledgment of Service form from the Divorce Kit. This proves personal delivery.

(c) What if the respondent spouse won’t accept the papers?

The document server may put the documents down in their presence, explaining what they are and what they are doing.

(d) Affidavit of Service

The document server then completes an Affidavit of Service (i.e. a sworn statement) recording time, date, place of service, and any relevant conversation while serving. It is then signed on oath or affirmation before a Justice of the Peace or solicitor. The signed Acknowledgment of Service is attached if the respondent spouse has signed one.

(e) Service of documents by post

If it is likely that the respondent spouse will sign an Acknowledgment of Service, you can post the documents. Include a stamped self-addressed envelope for the respondent spouse to send the documents back to you. When you receive the documents back from your spouse, you complete an Affidavit of Service, detailing when you sent the documents, and stating that you recognise the respondent spouse’s signature because you have seen it on previous occasions. Attach the signed Acknowledgement of Service form.

(f) Opposing a divorce

There are limited legally acceptable reasons for opposing a divorce. The applicant spouse only has to show an irretrievable breakdown and separation of 12 months. Effectively the main valid dispute is separation period. The respondent spouse can correct errors such as this and other details by filing a Response.
(g) Arrangements for children

The divorce application asks for details about the children's living arrangements and housing, school progress, health, supervision, financial support, and how often they will see the parent they will not live with. The court will not make final divorce orders until it is satisfied that suitable arrangements have been made for the children (of the marriage or living as a family).

(h) Do we have to go to court?

If there are no children under 18, you do not have to go to court unless the respondent spouse files a Response.

If neither of these situations apply, the court may grant the divorce "in chambers", meaning that rather than hearing the divorce in open court, the judge will read the papers in his/her office and process them at a convenient time on the hearing day.

Some lawyers recommend that separating couples attend the divorce hearing and treat it as a ceremony to end that part of their life.

13.9 The hearing

The divorce hearing is fairly simple. The Family Court was set up to be less formal than other courts so that people would not feel intimidated in what can be a very personal and emotional situation. You may bring friends and relatives to court for support. There may also be free child minding facilities available but you should telephone the court beforehand to ascertain if such facilities are available prior to going to court.

If you fear that your spouse may be violent, notify the court. They will arrange for increased security measures for your safety as well as that of the judges and court staff, and the general public in and around the building. Again, we suggest that you provide a photograph identifying your spouse.

13.10 What is involved in a hearing?

You can appear in person at the hearing or have a barrister or solicitor represent you. The judge or registrar hearing your case is used to unrepresented people appearing in court. Family Court adjudicators specialise in this area.

The hearing is a simple procedure in which the judge or registrar will formally confirm that the grounds of divorce (relationship breakdown and 12 months separation) have been established. If there are children under the age of 18, then the court will also need to be satisfied that proper arrangements have been made for their care and welfare.

The Family Court is in a number of major locations in the NSW region. On the morning of your hearing, your case will be listed in the court notices section of the Sydney Morning Herald - you should make a note of the judge or registrar and courtroom. There will also be a list of cases outside the court. Arrive early and a court officer will note that you have arrived so that the court can organise its hearing time. They may also explain the procedures briefly. Wait outside the court until directed.

A court officer will call you inside the court. You should bow to the judge or registrar on entering and leaving the room. A registrar or a judge will hear your case. You should address the person on the bench (the judge or registrar) as "Your Honour" or "Registrar". You should stand whenever the registrar or judge speaks to you.
You will be asked for your name, whether there are any children under 18, and a few brief questions on the contents of the papers.

As there are normally only two or three issues to be proven in a divorce, the hearing may be very short. In some cases, it may take only a matter of minutes.

Even in the slightly more complicated case of separation under one roof, the adjudicator will generally rely on the documents the separated couple have filed. Normally there is not a formal witness examination, although the adjudicator may wish to speak to the people who made the statements.

You may appeal the decision. However, as there are limited legal grounds on which you may appeal, this is rare. You should seek legal advice if you would like to appeal the decision.

13.11 When do I get my divorce papers?

At the hearing, if the grounds for divorce are satisfied, the court will make an order called a *decree nisi*. This is a temporary order, which will be sent to you (or your solicitor) by the Court. While the order is temporary, objections could be made or new evidence could come to light. If your spouse passes away during this time, you should notify the court by filing the death certificate of the deceased spouse or an affidavit setting out details of the date and place of death.

Generally one month later, a *decree absolute* is made. This is the final order, which the Court will forward to you (or your solicitor). You are then able to legally marry someone else. If the decree nisi does not set down a date for when the final order is made, then the one-month rule applies.

13.12 So what does it mean now that I am divorced?

You will have indicated to the court that arrangements have been made for your children (if any). These arrangements do not have to be formal. However, there are advantages to making them formal. For example, if the children live with you and you are worried that your ex-spouse will try to take them away from you. If you have a court order stating the living and visiting arrangements, that can be shown to police if any problems arise and the police can then act on it. If there is no order, you will have to go through the courts.

Often financial arrangements are made between the parties (either court ordered or agreed between the separate parties), and usually relate to child support and spousal maintenance, which is less common.

There will also be a division of matrimonial property. You *must* apply to the court for a formal property settlement within 12 months of the decree absolute (final orders) or you would otherwise have to obtain the court’s permission to apply for a property settlement outside of that time.

13.13 Adjusting property interests

The Family Court can make orders on property settlement and maintenance arising from a marriage. Alternatively, parties can agree to sign a binding financial agreement or enter into consent orders in relation to the division of the matrimonial property and liabilities.
(a) Do I have to go to court?

Most family law cases are resolved by consent. However, if you are unable to agree, you can file an application in the court, setting out the orders that you want the court to make. If it is urgent you can also apply for interim orders at the same time as you file your application for final orders. Interim orders provide for arrangements to be in place before the final hearing, e.g. you require a certain sum of money released to you for living expenses in the short term.

(b) Which Court should I file my application in?

The Family Court of Australia, the Federal Magistrates Court and the local courts in each state and territory have the power to make decisions under the *Family Law Act*. The choice of court will depend on the issues involved and the availability of services where you live. The Federal Magistrates Court was set up to provide a simpler and less formal approach. It can deal with a number of the same types of matters as the Family Court with the exception of adoption, property disputes concerning property worth over $700,000 (unless it is by consent of the parties) and applications concerning nullity or validity of marriage.

(c) What do I need to know before filing an application?

The Family Court has introduced *Pre-Action Procedures*, a set of steps that people must follow before filing an application in the court. You and your ex-partner must genuinely try to resolve the dispute through the use of *Primary Dispute Resolution* (PDR). There are a number of exemptions for Pre-Action Procedures, for example matters involving allegations of child abuse or family violence. PDR includes methods such as negotiation, counselling, mediation, arbitration and conciliation and is provided by a range of organisations in addition to the Family Court. Discussions that take place during mediation or counselling are confidential and cannot be used in court. Agreements made through PDR can be filed with the Family Court as consent orders.

If you are unable to agree, either you or your ex-partner can commence proceedings by filing an application and the case moves into the resolution phase. On the first court date, both you and your ex-partner will attend an Information Session, a case assessment conference, a procedural hearing or a combination of these. The aim is to identify the issues in dispute, determine the next steps and if possible, reach an early agreement. Interim orders will often be made at this stage.

The court may also order mediation or counselling after court proceedings have begun. If an agreement is still not reached, the court issues a trial notice and the case enters the determination phase and the matter proceeds to final hearing. Assuming parties comply with the directions set out in the trial notice, there will be a Pre-Trial Conference where a date for the final hearing is determined.

(d) How does the court decide how we split the property?

The court applies a four-step approach in considering what property orders to make. This approach will also be useful in helping you assess how you should split the matrimonial assets and liabilities. Briefly, the four steps are as follows:

(i) Identify and value the matrimonial property and liabilities

In determining the net matrimonial property pool, the court will take into account all property and liabilities accumulated during the marriage. Property is anything owned by either you or your ex-partner. To a degree, the court may isolate or take
into account property owned before the marriage. Many spouses may also have all sorts of complicated financial arrangements such as companies and trusts. If a spouse owns shares in a company, those shares will be taken into account as part of the property pool. Further, if the court finds that a spouse controls a trust or otherwise enjoys the benefits of trust property, then that property may be included. If complicated financial arrangements are involved, you should seek advice from your lawyer about how to identify and value such property. Superannuation is now considered as property and the court is able to split superannuation interests.

(ii) Consider the contributions of the parties

The court will then assess the parties’ respective contributions to the “acquisition, conservation and improvement” of the matrimonial property. Contributions can be both financial and non-financial.

Examples of financial contributions include paying the mortgage or household expenses during the marriage. It also includes any gifts or inheritances received by a party to the marriage. The court can also take into account property owned by each party prior to the marriage.

Examples of non-financial contributions include caring for the children, performing household chores, and expending labour in renovating a property.

Details of the type of contributions the court takes into account are set out in section 79(4) of the Family Law Act 1975. At the end of its assessment at this stage, the court will generally determine a percentage division of the matrimonial asset pool.

(iii) Consider the future needs of the parties

The court will then consider whether it will need to make a further adjustment to the division of the matrimonial property pool to take into account the future needs of the parties. Such factors include the state of health, income earning capacity and financial resources of the respective parties. Those factors are further set out in section 75(2) of the Family Law Act 1975.

(iv) Consider whether the order proposed is just and equitable

Finally the court will consider if the orders it is going to make are just and equitable, as it may otherwise make a further adjustment.

(e) Will I have to sell the house?

If all the marriage assets are tied up in the house, the court may have no choice but to order that it be sold. If there are enough assets or a large superannuation entitlement, the court may give one party the home, particularly if they are looking after the children, and the other party would then get the other assets or their superannuation entitlement. Often one party can renegotiate a mortgage to raise money to pay out the other party and then they would be able to keep the house.

In some cases the court may postpone the sale and let the parent caring for the children stay in the house until the children grow up, if this is not too far off, and the other party has a cash flow or some money to go on with in the meantime. This type of order is rare.
(f) What if we can agree on how we split the property?

Spouses can make enforceable agreements about child arrangements, property, and maintenance (except Stage 2: Child Support). If you are both able to come to an agreement as to how you wish to divide the property pool, you can formalise that agreement by filing consent orders or by signing a financial agreement.

(g) Consent Orders

Consent orders are binding and enforceable court orders. Presumably they are even more likely to be followed as the spouses have worked through to an agreement and understand the other spouse's view.

Record the agreement on an Application for Consent Orders. You should get independent legal advice before signing any agreement.

If the property to be divided is worth less than $40,000, you may file the orders in the Local Court, otherwise you must file the orders in the Family Court or the Federal Magistrates Court. The orders can be the first and only document filed, or they can be filed after proceedings are started (at any time before the judgment is given).

A Registrar will decide whether it is a fair property settlement. If the orders include parenting orders, the Registrar will also consider whether the property settlement is in the best interests of the children. The Registrar will usually make the orders if both spouses have received independent legal advice. If at least one of them has not had independent legal advice, more information may be required about financial or parenting arrangements.

13.14 Binding financial agreements

It is possible to make a binding financial agreement with your spouse about what will happen with your property in case of marriage breakdown or after a marriage has broken down. A binding financial agreement can be made before, during or after a marriage and can cover both financial settlements for after the marriage as well as for maintenance.

A binding financial agreement does not need to be registered with a court but for it to be legally binding, it must comply with Part VIII A of the *Family Law Act 1975* that includes the following:

(a) The agreement must be in writing.

(b) The agreement must specify whether it is made under section 90B (i.e. before marriage), 90C (i.e. during marriage) or 90D (i.e. after marriage) of the *Family Law Act 1975*.

(c) Both you and your spouse have signed the agreement;

(d) Both you and your spouse have received independent legal advice before signing.

(e) The lawyers providing the advices have each signed a prescribed certificate and those certificates are annexed to the agreement.

(f) The agreement has not been terminated and has not been set aside by a court.

(g) After the agreement is signed, the original is given to one spouse and a copy is given to the other.

It is also now a requirement for parties to sign a separation declaration in order for certain parts of the binding financial agreement to become effective.
It is important that you get independent legal advice prior to signing any agreement as a concluded, valid and enforceable binding financial agreement removes the court’s jurisdiction to otherwise make orders for maintenance (except where the party seeking maintenance is unable to support him or herself without an income tested pension, allowance or benefit at the time of making the agreement) and property settlement.

A binding financial agreement can only be terminated by the parties entering into a termination agreement or be set aside by the court on those limited grounds set out in section 90K(1), e.g. fraud or material change in circumstances.

13.15 Stamp duty

If property is transferred from one spouse to another under a financial agreement or pursuant to court orders, no stamp duty has to be paid on that transfer if the parties are separated or divorced. You will need to show the financial agreement, court order or the divorce decree to the Office of State Revenue to get the exemption. The requirements to obtain the exemption may vary from state to state.

In some cases, capital gains tax (CGT) rollover relief may also be available to the spouse into whose name the property is being transferred. You should obtain advice from your accountant about that issue.

13.16 Spousal maintenance

In relation to spousal maintenance, the starting point is that each spouse is expected to try to support himself/herself after separation. Maintenance may be payable if you are unable to meet your own needs and your ex-partner has the capacity to assist (or vice versa). Common examples are a spouse having the care of young children or a spouse being unable to work because of a physical or mental disability.

13.17 Grandparents and family law – Parenting Orders

The Family Law Act provides for people who are significant in a child’s life to apply for parenting orders. For grandparents, this will often involve a desire to maintain contact with their grandchildren. However, in some circumstances, particularly where both parents are unable to look after the child, it may be appropriate for the child to live with a grandparent. Parenting orders specify who the child will live with and spend time with. These are known as residence orders and contact orders. Parenting orders may also include specific issues orders for example, relating to medical treatment, education or religion.

It is important to note that the terms “residence” and “contact” replaced the terms “custody” and “access” in 1996. Rather than the rights of parents or other adults, the Family Law Act is primarily concerned with the rights of children and the responsibilities parents have in relation to their children.

The underlying principles are:

(a) Children have the right to know and be cared for by both their parents;

(b) Children have the right of regular contact with both their parents and with other people significant to their care, welfare and development;

(c) Parents share duties and responsibilities concerning the care, welfare and development of their children; and

(d) Parents should agree about the future parenting of their children (section 60 B).
These principles are to be given effect unless it would be contrary to the best interests of the child, which must be regarded as paramount in all decisions on parenting orders (section 65E).

13.18 Residence orders for grandparents

A grandparent’s application for a residence order is only likely to succeed if the court decides that it is in the child’s best interests to live with a person other than their parents. In considering whether the grandparent is the best person to care for the child, the court will look at the amount of time the grandparent has spent caring for the child and the nature of the relationship with the grandparent.

Circumstances in which the court is likely to make a residence order in favour of a grandparent include where one or both of the parents have a serious health problem or drug/alcohol addiction, or the parents are not competent or willing to adequately care for the child. The Department of Community Services will often become involved in such circumstances. Rather than applying to the Children’s Court for the child to be placed into care and fostered, the Department may elect to support the grandparent’s residence application in the Family Court.

If someone other than a biological parent applies for a residence order, the Family Law Act requires the court to order a report from the court counselling service. This assists the court in deciding whether the order is in the child’s best interests. All parties must consent to the report being produced.

13.19 Contact Orders

As mentioned above, the Family Law Act recognises children’s right of contact with people other than their parents who are significant to their care, welfare and development. The Family Court generally takes the view that it is in children’s best interests to have contact with their wider family. However, in some circumstances, the court may decide that it is not in the child’s best interests to have contact with their grandparents because there is a risk of harm to the child.

Contact orders can be very brief or very detailed, depending on the ability of the parties to agree in the future. Contact may be face-to-face or by telephone, letters or other means. In some circumstances, the court requires contact to be supervised.

13.20 Factors that the Court considers in making parenting orders

As mentioned previously, in making a particular residence or contact order, the court must make the best interests of the child the paramount consideration. Section 68F of the Family Law Act sets out a list of factors that guide the court in determining a child’s best interests. They include:

(a) Any wishes expressed by the child and factors which might affect the weight given to those wishes (eg the age of the child);

(b) The nature of the relationship of the child with each of the child’s parents and with the child’s grandparents;

(c) The likely effect of any changes in the child’s circumstances including separation from either parent or from other people the child has been living with;

(d) The practical difficulty and expense of a child having contact with a grandparent;

(e) The capacity of each parent or grandparent to provide for the child’s needs including emotional and intellectual needs;

(f) The child’s maturity, sex and background;

(g) The need to protect the child from physical or psychological harm;
(h) The attitude of the child and to the responsibilities of parenthood demonstrated by each of the child’s parents or grandparents;

(i) Any family violence involving the child or member of the child’s family (including the child witnessing any family violence);

(j) The need to make the order that would be least likely to lead to further applications for parenting orders;

(k) Any other fact or circumstance that the court thinks is relevant, such as the age and health of the grandparents or their physical and mental fitness.

Example -

If a parent seeking a residence order proposes to move somewhere else with the child, the court will have to consider the likely impact on the child. Where there is a close relationship between the children and a grandparent, the court would look at the effect of separation from the grandparents. If a grandparent has applied for contact orders, the court would consider the feasibility of maintaining contact if the parent were to relocate. On the other hand, the court may decide that it is in the best interests of the child for the residence parent to move closer to the grandparent because of the financial and other support.

13.21 Variation of parenting orders

If circumstances change, for example to do with the child growing up or a parent’s living arrangements, there may be a need to vary the existing parenting orders. The parties may vary the arrangements by consent or may apply to court for variation of orders. However, the court is very reluctant to vary orders for residence unless there has been a significant change in circumstances.

13.22 Do I need to go to court?

It is not necessary to go to court when there is agreement between the parties. An agreement can be made between the parties and registered with the Family Court, Federal Magistrates Court or Local Court. These are known as consent orders and have the same force as orders made by a judge or magistrate. If the orders relate to children, the court will check that the child’s best interests are met and register the agreement. Your solicitor can assist you in preparing consent orders.

However, if you are unable to agree, you can file an application in court, setting out the orders that you want the court to make. We have discussed above how you decide which court to file your application in as well as the procedure after you have filed your application. As it can take up to 12-18 months before your application for final orders is heard, you can apply for interim orders in the short term, if necessary. In children’s matters, the court will normally make interim orders that maintain the existing arrangements, unless this would not be in the child’s best interests.

13.23 Can I get Legal Aid?

As a grandparent, you may be able to get legal aid funding for your family law matter. You will need to satisfy Legal Aid’s means test and merit test as well as their guidelines and policies.

Priority is given to urgent matters, for example, where a child is at risk. For non-urgent matters, there is a requirement that applicants use Primary Dispute Resolution (where appropriate) before receiving aid for court proceedings.

Contact your closest Legal Aid office or consult the Legal Aid Website for further information. Contact details are set out in Chapter 14.
13.24 De facto relationships

NSW legislation provides for rights for people in domestic relationships, which include de facto relationships as well as other types of personal relationships.

(a) What is a domestic relationship?

Under the *Property Relationships Act 1984*, a domestic relationship includes:

(i) A de facto relationship, that is, a relationship between two adult persons who live together as a couple and are not married or related by family. This definition includes same sex relationships.

(ii) A close personal relationship (other than a de facto relationship) between two adult persons, whether or not related by family, who are living together and providing domestic support and personal care.

Factors that determine whether a domestic relationship exists are as follows:

- The duration of the relationship
- Whether or not a sexual relationship exists
- The degree of financial interdependence between the parties
- The ownership, use and acquisition of property
- The degree of mutual commitment to a shared life
- The care and support of children
- The performance of household duties
- The reputation and public aspects of the relationship

(b) Property disputes on separation

Unless the dispute concerns children, de facto couples cannot go to the Family Court for property settlements; only people who are married can go to the Family Court for property settlements. Property disputes between domestic partners can be dealt with in the Supreme Court, the District Court or the Local Court, depending on the value of the property. However, a lawyer can assist you in making a legally binding agreement without going to court.

(c) Property agreements made before separation

It is also possible to make a binding financial agreement before or during a relationship. These can be made enforceable under the *Property Relationships Act*. This is known as a Domestic Relationship Agreement. It is a way of safeguarding assets, particularly those acquired prior to the relationship. The agreement may also provide for all property jointly acquired during the relationship to be divided equally on separation. You need to be aware that there are strict rules which must be satisfied, including a requirement that each party have independent legal advice.
13.25 **The Property (Relationships) Act**

In NSW, property of domestic partners is dealt with under the *Property (Relationships) Act* 1984. This Act allows courts to divide or adjust a person's interest in property in a 'just and equitable manner'.

But before a court can deal with property of the partners to the relationship, the partners must:

- Have lived in a domestic relationship for at least two years; or
- Have a had child together; or
- Have made a substantial financial or non-financial contribution to the relationship.

Additional requirements are that:

- The parties must have been resident in NSW for at least one third of the period of the relationship and the applicant must be resident at the time of making the application.
- The application must be made within two years of separation unless there are exceptional circumstances.

(a) **What property can the court deal with under the Act?**

Under the legislation, the court can make orders over 'property' of a person to the relationship. Property is defined to include anything owned by you and your partner (separately or jointly), as well as any debts. However, it does not include superannuation, retirement benefits or trusts, although the value of these items can be taken into account by the court in making orders.

(b) **What does the court consider 'just and equitable'?**

In determining a just and equitable division of the property the court considers:

(i) The types of contribution, financial and non-financial, which are made directly or indirectly to the purchase, maintenance or improvement of property.

(ii) The contribution to the welfare of the partner and/or family including as a homemaker and parent.

Compared with property settlements under the *Family Law Act*, under the *Property Relationships Act* non-financial contributions are given less consideration. Also, the future needs of either party are not taken into account as for married couples.

(c) **What types of orders can the court make?**

The aim of the court is to finalise the financial relationship between the parties and it can order any of the following:

(i) Transfer of property between parties;

(ii) Sale of property and distribution of proceeds;

(iii) Production of and signing of necessary documents to change ownership of assets;

(iv) Payment of money by one party to the other in a lump sum or by instalments; and/or
(v) Appointment or removal of trustees to protect the assets.

In the situation where one party is planning to hide, sell or dispose of assets, the court is able to make an injunction to prevent this happening. You should get legal advice if you become aware that your former partner is planning to deal with the assets of the relationship in this way.

(d) Maintenance

A domestic partner can apply for maintenance under the Property Relationships Act if they cannot work because of the care of children under 12 or a handicapped child under 16 or have experienced a loss of earning capacity because of the relationship. These rights are more limited than under the Family Law Act. However, child support, under the Child Support Assessment Act, is the same as for married parents.

In assessing maintenance under an application under the Property Relationships Act, the court will take into account:

(i) The income, property and financial resources of each party (including pensions, allowances or benefits);

(ii) The physical and mental capacity of each party for gainful employment;

(iii) The responsibilities of either party to support another person;

(iv) The terms of the proposed property order; and

(v) Any payments made in relation to maintenance of children.

You cannot make an application for maintenance if you have entered into a domestic relationship with another person or have remarried.

(e) Relationships that do not come under the Property Relationship Act

If you don’t meet the legislative requirements, you can still apply for division under the common law. The person claiming a share in property needs to prove that they acted to their detriment in the belief that they were going to receive an interest in the property. The court must be of the view that as a result, it would be unfair to deny the applicant a share in the property.

(f) Other issues on separation

(i) Children - Arrangements for children of a de facto relationship are dealt with under the Family Law Act in the same way as if the parents were married.

(ii) Family Violence - If you are experiencing violence from your partner in a de facto relationship, you can apply for an Apprehended Domestic Violence Order in the Local Court (see Chapter 12 for details).

Finally it is worth noting that there is a variety of NSW and Commonwealth legislation which impacts on the rights of de facto couples. It is important to note that the definition of de facto relationship varies among the legislation, particularly with regard to whether same sex relationships are included. You should see your solicitor or local community centre with any specific issues which may be of concern to you and your partner.
The following is a list of government departments, community legal centres, associations and other resources to obtain further assistance. It is to be used as an indicative guide only and does not claim to include all the organisations which represent and assist older persons in NSW. For opening hours and interview appointments, refer to the web site or telephone the organisation. Please note that 1800 numbers are generally for rural callers in NSW only. Details were correct at the time of writing.

ABILITY INCORPORATED ADVOCACY SERVICE
Provides assistance to all people with a disability, their Parents and Carers who live in the areas of Tweed to Taree including New England, Armidale, Glen Innes and Inverell.

Street Address: Shop 3, 106 Green Street, Alstone 2477
Postal address: PO Box 626, Ballina NSW 2478
Tel: (02) 6628 8188
Fax: (02) 6628 8199
Email: aiadvoc@bigpond.net.au

ABORIGINAL LEGAL SERVICES
Provide free advice and assistance to Indigenous people and their families (including people in custody), particularly in criminal matters. There are five regional organisations in NSW with 25 offices.

Postal address: PO Box 2257 Strawberry Hills 2012
Tel: (02) 9318 2122
Fax: (02) 9319 2630

ABOUT SENIORS
Provides links and contacts for information of relevance to seniors, veterans, retirees and those about to retire.

Internet: www.aboutseniors.com.au

AGED AND COMMUNITY SERVICES AUSTRALIA
The national peak body representing church and charitable organisations providing accommodation and care services to older Australians.

Office and postal address:
Level One, 36 Albert Road, South Melbourne VIC 3205
Tel: 03 9686 3460
Fax: 03 9686 3453
Email: info@agedcare.org.au
Internet: www.agedcare.org.au

AGED CARE STANDARDS AND ACCREDITATION AGENCY
The Agency manage the residential aged care accreditation process using the Accreditation Standards to promote high quality care.

Concerns about an aged care home should be directed to the Complaints Resolution Scheme.

General enquiries
Tel: 1800 288 025

Complaints Resolution Scheme: 1800 550 552.
Internet: www.accreditation.org.au

AGED CARE ALLIANCE (NSW)
Bi-monthly meeting of representatives of statewide organisations of older people and aged care service providers of all types who meet together to progress the issues and policies of aged care in NSW.

Address: 66 Albion Street Surry Hills NSW 2010
Tel: 9211 2599
Fax: 9281 1968
Internet: www.ncoss.org.au

AGED CARE ASSESSMENT TEAMS (ACATS)
ACATS assess older people for care needs and support at home, or in aged care facilities. They

Contact your local hospital for your local ACAT team.
are based at most local hospitals.

Or for information on about ACAT team call the Commonwealth Carelink Centres (Tel: 1800 052 222) or the Aged Care and Community Line on 1800 500 853 for information.

AGED CARE ASSOCIATION AUSTRALIA
The Aged Care Association Australia is a professional, national industry association for providers of quality residential and community aged care services.

Address:
Level 1, 25 Napier Close
Deakin ACT 2600

PO Box 335
Curtin ACT 2605

Tel: 02 6285 2615 or 03-9437 2121
Fax: 02 6281 5277
Email: office@agedcareassociation.com.au
Internet: www.agedcareassociation.com.au

AGED CARE RIGHTS SERVICE (TARS)
TARS provides advocacy services for residents of retirement villages, aged care facilities as well as providing information on aged care facilities.

Street and postal address: Level 4, 418a Elizabeth Street, Surry Hills NSW 2010
Tel: (02) 9281 3600 or 1800 424 079
Fax: (02) 9281 3672
Email: tars@tars.com.au
Internet: www.tars.com.au

AGED CARE STANDARDS AND ACCREDITATION AGENCY

ALBURY WODONGA COMMUNITY LEGAL CENTRE
Albury Wodonga Community Legal Centre
Provides initial general legal advice and referral and community legal education. Outreach to Northeast Victoria, and Southern Riverina.

Office address: 29 Stanley Street,
Wodonga, 3689
Postal address: PO Box 725,
Wodonga VIC 3689
Tel: (02) 6056 8210
Fax: 02 6056 2946

ALZHEIMERS ASSOCIATION OF NSW
Alzheimers Australia NSW represents the interests of people affected by dementia in NSW. It provides support, information, education, and community advocacy.

Office address: 120 Cox’s Road, North Ryde
NSW 2113
Postal address: PO Box 6042,
North Ryde NSW 1670
Tel: (02) 9805 0100 or 1800 639 331
Fax: (02) 9805 1665
Email: admin@alznsw.asn.au
Internet: www.alzheimers.org.au

ALZHEIMER'S AUSTRALIA
Alzheimers Australia is the national peak body for people living with dementia, their families and carers and provides leadership in policy and services.

Office address: Frewin Centre,
Frewin Place, Scullin ACT 2615
Postal address: PO Box 108,
Higgins ACT 2615
Tel: (02) 6254 4233
Fax: (02) 6254 2522
Email: secretariat@alzheimers.org.au
Internet: www.alzheimers.org.au

ANIMAL WELFARE LEAGUE OF NEW SOUTH WALES

Tel: (02) 9826 1555
Internet: www.animalwelfareleague.com.au

ANTI-DISCRIMINATION BOARD OF NSW
Investigates and conciliates complaints of discrimination, harassment and vilification.

HEAD OFFICE
Office address: Level 4, Stockland House,
175-183 Castlereagh Street, Sydney NSW 2000
Postal address: PO Box A2122,
ARTS LAW CENTRE OF AUSTRALIA
The Arts Law Centre is the national community legal centre for the arts. It provides specialised legal and business advice and referral services, professional development resources and advocacy for artists and arts organisations.

ASIC
The Australian Securities and Investment Commission is the consumer protection regulator for financial services. In this role, ASIC protects investors, superannuants, depositors and insurance policy holders. It also regulate and enforce laws that promote honesty and fairness in financial products and services, in financial markets, and in Australian companies.

ASSOCIATION TO RESOURCE CO-OPERATIVE HOUSING (ARCH)
ARCH is the peak-resourcing agency for Housing Co-operatives in NSW. It assists people to establish housing co-operatives, and undertakes representation and other services for NSW co-ops.

AUSTRALIAN COMPETITION CONSUMER COMMISSION (ACCC)
The ACCC's role is to prevent consumer exploitation and excessive profit taking. Price exploitation occurs where a business does not pass on savings that arise from tax reforms to consumers or where it increases prices unreasonably. If you have any concerns about GST pricing on goods or services you can contact the ACCC.

AUSTRALIAN CONSUMERS' ASSOCIATION (ACA)
The ACA is a not-for-profit organisation which has been researching and campaigning on behalf of consumers since 1959. It publishes CHOICE magazine and has many helpful tips for consumers on its website.
AUSTRALIAN DIRECT MARKETING ASSOCIATION (ADMA)
ADMA is Australia's principal body for information based marketing.
Office address: Suite 1 Level 5, 100 William Street
East Sydney NSW 2011
Postal Address: PO Box 464, NSW 1340
Tel: (02) 9368 0366 or 1800 646 664
Fax: 02 9368 0866
Email: info@adma.com.au
Internet: www.adma.com.au

AUSTRALIAN SENIORS COMPUTER CLUBS ASSOCIATION
The Australian Seniors Computer Clubs Association teaches seniors to use and enjoy the benefits of computer technology.
Street and Postal address: 4th Floor, 280 Pitt Street, Sydney NSW 2000
Tel: 02 9286 3871
Fax: 9286 3876
Email: ascca@seniorcomputing.org
Internet: www.seniorcomputing.org

AUSTRALIAN TAXATION OFFICE (ATO)
Tel: Personal Tax Info-line on 13 28 61

BANKING AND FINANCIAL SERVICES OMBUDSMAN
Free dispute resolution service for disputes involving less than $150 000.
Tel: 1300 78 08 08 (toll free)
Monday to Friday between 9 am and 5 pm
Internet: www.abio.gov.au

BENEVOLENT SOCIETY OF NSW
In the ageing area, the Benevolent Society provides home, community based and residential care for older people, people with dementia and carers, as well as financial planning advice.
Office address: Paddington House, Level 1, 188 Oxford Street, Paddington NSW 2021
Postal address: PO Box 171, Paddington NSW 2021
Tel: (02) 9339 8000
Fax: (02) 9360 2319
Donations: 1800 819 633
Email: mailben@bensoc.org.au
Internet: www.bensoc.org.au

BLUE MOUNTAINS COMMUNITY LEGAL SERVICE
Provides free generalist legal advice for problems including domestic violence, family law, consumer credit, social security matters, children's law and tenancy law to people in the Blue Mountains, Lithgow and Bathurst areas. Also provides financial counselling, domestic violence court assistance, and community legal education.
Office and postal address: 4 Station Street, Katoomba 2780
Tel: (02) 4782 4155
Fax: (02) 4782 4384
Email: Blue_MtnsCLC@fl.fls.asn.au

CARAVAN PARK AND VILLAGE TENANTS' ASSOCIATION
A voluntary service for tenants and owners living in caravan and relocatable housing parks.
Ph: (02) 4932 7291

CARER RESOURCE CENTRE
The NSW Commonwealth Carer Resource Centre is a telephone support service based in Sydney and is part of Carers NSW. It provides information, referrals, emotional support, counselling programs, Free Carer Support Kit and other resources.
Post Address: Level 17, 323 Castlereagh Street
Sydney NSW 2000
Tel: 9280 4744 or 1800 242 636
Fax: 9280 4755
Internet: www.carersnsw.asn.au

CARERS AUSTRALIA
Carers Australia is the national voice of carers. It engages in advocacy, conducts research and
Office address: Unit 2, 43-49 Geils Court, Deakin 2600
projects, gives presentations and participates in a wide range of inquiries, reviews and policy forums.

Postal address: PO Box 73, Deakin West ACT 2600 Australia
Tel: (02) 6122 9900
Fax: (02) 02 6122 9999

Commonwealth Carer Resource Centres: 1800 242 636

Carer Respite Centres: 1800 059 059
Email: caa@carersaustralia.com.au
Internet: www.carersaustralia.com.au

CARERS NSW
Carers NSW is an association for relatives and friends who are caring for people with a disability, mental illness, chronic condition or who are frail aged.

Office and postal address: Level 17, 323 Castlereagh Street, Sydney NSW 2000
Tel: (02) 9280 4744 or 1800 242 636
Fax: (02) 9280 4755
Email: contact@carersnsw.asn.au
Internet: www.carersnsw.asn.au

CENTRELINK
Centrelink is a government agency delivering a range of Commonwealth services to the Australian community. Centrelink is set up so people can get more of the help they need in one place.

Centrelink also publishes several useful guides including the following:

- Age Pension News Magazine
- Guide to Commonwealth Payments
- Age Pension: All You Need to Know
- Age Pension for Women
- Commonwealth Seniors Card Brochure
- Pensioner Education Supplement Brochure
- Securing Your Future
- How to save on the costs of your banking.

Copies may be obtained from your local Centrelink office or from their website.

Popular Numbers
To make appointments: 13 1021
Report Employment Income: 13 3276
Self Service: 136 240
Customer Relations: 1800 050 004
Centrelink Multilingual Call: 13 1202
TTY: 1800 810 586
TTY Customer Relations: 1800 000 567

Age pension & Retirement Services: 13 2300

Fraud Tip-off Line: 13 1524
Debt Recovery: 13 6330
Indigenous Debt Recovery: 1800 138 193
Employment Services: 13 2850
Disability, Sickness and Carers: 13 2717
Family Assistance Office: 13 6150
Financial Information National Seminar Booking Service: 13 6357

National Relay Service Numbers
13 3677 (Voice and TTY) for all calls within Australia
1800 555 677 (Voice and TTY) for all calls within Australia to 1800 numbers.

Internet: www.centrelink.gov.au

CENTRAL COAST COMMUNITY LEGAL CENTRE
Provides free legal advice, information and referral. Community Legal Education workshops, Law Reform work and in some instances legal representation to community workers and residents throughout the Central Coast.

Office address: Shop 22, Wyong Plaza, Alison Road, Wyong NSW 2259
Postal address: P.O. Box 246, Wyong, 2259
Tel: (02) 4353 4988
Fax: (02) 4353 4680
Email: Central_Coast_nsw@fcl.fl.asn.au

CENTRAL SOUTHERN ABORIGINAL CORPORATION FOR WIRADJURI ABORIGINAL LEGAL SERVICES, ACCOUNTING AND MANAGEMENT SERVICE (CSAC)
CSAC provides legal advice and limited representation for Aboriginal People, as well as

OFFICES
Address: 19 Trail Street
Wagga Wagga, 2650
Postal address: PO Box 5036, Wagga Wagga NSW 2650
assistance in Accounting and Management matters.

Fax: (02) 6921 9340
Email: statz1@dingoblue.net.au
Internet: www.coalsnsw.com.au

Street address: 2-131 Kendall Street, Cowra
NSW 2794
Postal address: PO Box 704,
Cowra NSW 2794
Tel: (02) 6341 4130
Fax: (02) 6341 4129
Email: csac@westserv.net.au

Street address: 67 Yanbil Street,
Griffith NSW 2680
Postal address: PO Box 1374,
Griffith NSW 2680
Tel: (02) 6962 7675
Fax: (02) 6962 5456
Email: csac@webfront.net.au

There is also a listing of all local courts at on the internet:

CHAMBER MAGISTRATES
Usually located in local courts, Chamber Magistrates provide free legal advice about legal options and court procedures (for example with debt problems). They will also help you fill out legal forms. They cannot represent you in Court. For the nearest Local Court look up Local Courts in the L-Z volume of the White Pages of the phone book. Hours and the need to make appointments vary from court to court.

COMBINED PENSIONERS AND SUPERANNUANTS ASSOCIATION (CPSA)
The CPSA serves pensioners of all ages, superannuants & low-income retirees. It has a broad mission to improve the living standards, community services and lifestyle choices of pensioners of all ages, superannuants and low income retirees, as well as promoting their rights and dignity.

Street and Postal Address: Level 3,
25 Cooper Street, Surry Hills NSW 2010
Tel: (02) 9281 3588 or 1800 451 488
Fax: (02) 9281 9716
Email: cpsa@cpsa.org.au
Internet: www.cpsa.org.au

COMMUNICATIONS LAW CENTRE (CLC)
The Communications Law Centre (CLC) provides advice in media, communications and online law and policy. It engages in research, teaching, public education and legal advice.

Office address: The White House
(Building C15),
The University of New South Wales
Gate 4 (Fig Tree Lane), High Street, Kensington
NSW 2033
Postal address: The White House, UNSW
Sydney NSW 2052
Tel: (02) 9385 7385
Fax: (02) 9385 7375
Email: admin@comslaw.org.au
Internet: www.comslaw.org.au

COMMUNITY JUSTICE CENTRES
Community Justice Centres provide mediation and conflict management services to help people resolve their own disputes. Their services are free, confidential, voluntary, timely and easy to use. Accredited community mediators conduct all mediations.

HEAD OFFICE
Street and postal address:
Level 8, Goodsell Building,
8-12 Chifley Square, Sydney 2000
Tel: (02) 9228 7455 or 1800 671 964
Fax: (02) 9228 7456
Email: cjc_info@agd.nsw.gov.au
COMMUNITY LEGAL CENTRES
Community Legal Centres are independent, non-profit organisations which provide legal advice and assistance for a range of individuals and groups in the community, especially those who are on low incomes or otherwise disadvantaged in their access to justice.

There is a full list of all Community Legal Centres in Australia on the internet http://www.nswclc.org.au/clcs.html or, in NSW you can ring the NSW Community Legal Centres Combined Group (02) 9318 2355.

COMMUNITY RELATIONS COMMISSION LANGUAGE SERVICE
NSW Government service for non-English speaking seniors who require a translator or interpreter to access government services. Fees may apply. See also Translating and Interpreter Service listed further below.

COMMUNITY RESTORATIVE CENTRE (CRC)
CRC supports prisoners, ex-prisoners, and their families and friends. It provides counselling, accommodation, referral, and a subsidised transport service, as well as a court support service and outreach to jails.

SYDNEY OFFICE:
Office and postal address: 174 Broadway (cnr Shepherd St), Broadway NSW 2007
Tel: (02) 9288 8700
Fax: (02) 9211 6518
Email: info@crcnsw.org.au
Internet: www.crcnsw.org.au

HUNTER OFFICE
Tel: 4961 4626
Email: hunter@crcnsw.org.au

CONSUMER CREDIT LEGAL CENTRE (NSW) INC
Consumer Credit Legal Centre provides telephone advice regarding financial services, particularly matters and policy issues related to consumer credit, banking and debt recovery.

Street address: Level 1, 72-80 Cooper Street, Surry Hills 2010
Postal address: PO Box 538 Surry Hills NSW 2010
Telephone advice: (02) 9212 4111 or 1800 808 488
Administration: (02) 9212 4216
Fax: 02 9212 4711
Email for caseworkers: CCLC_NSW@fcl.fl.asn.au
Internet: www.cclcnsw.org.au

CONSUMER, TRADER AND TENANCY TRIBUNAL
The CTTT provides a specialist dispute resolution forum for consumer, trader and tenancy matters throughout NSW

Tel: 1300 135 399
TTY 9641 6521

COTA NATIONAL SENIORS PARTNERSHIP
Council on the Ageing (Australia) and National Seniors have formed a national partnership. COTA is an independent consumer organisation run by and for older Australians which protects and promotes the well-being of all older people.

Office and postal address: Level 6, 189 Kent Street, Sydney NSW 2000
Tel: (02) 9251 6088
Fax: (02) 9251 6755
Email: l.cheetham@nationalseniors.com.au
Internet: www.cota.org.au

COUNCIL ON THE AGEING (NSW) INC
COTA (NSW) is a not-for-profit, community organisation serving all persons aged 50 and over in NSW. It aims to mobilise older people, those who work with them, government and the community towards achieving well-being and social justice for older people.

Office and postal address: Level 4, 280 Pitt St, SYDNEY NSW 2000
Tel: (02) 9286 3860 or 1800 449 102
Fax: (02) 9286 3872
Email: info@cotansw.com.au
Internet: www.cotansw.com.au
COUNSELLING SUPPORT LINE
The Counselling support line will assist victims of crime and elder abuse to discuss options for support and counselling.
Tel: (02) 9374 3000 or 1800 633 063 (toll free)
TTY: (02) 9374 3175 (for callers with a hearing impairment).

COURT SUPPORT SCHEME
Provides assistance to the community in relation to taking matters to court.
Address: 174 Broadway (Cnr Sheppard St)
Broadway NSW 2007
Tel: (02) 9288 8700

CREDIT LINE NSW
Credit Line provides counselling in relation to financial matters for individuals and families who are suffering financial difficulties, emotional trauma and distress.
Street address: 15 Belvoir Street,
Sydney NSW 2010
Postal address: Locked Bag 2700, Sydney
NSW 2012
Tel: 02 9951 5544 or 1800 808 488
Fax: 02 9951 5511
Email: creditline@wesleymission.org.au
Internet: www.wesleymission.org.au/centres/creditline/

CREDIT UNION DISPUTE RESOLUTION CENTRE
Offers a free dispute resolution service.
Tel: 1300 78 08 08 (toll free)

DEPARTMENT OF AGEING, DISABILITY AND HOME CARE (DADHC)
The Department provides services for older people including general housework, personal care (help with showering, eating, dressing), respite care, overnight care, home modification services, community nurses, meals on wheels, community transport, other respite care services, community options project, Dementia Advisory Services.
HEAD OFFICE
Street and postal address: Level 5, 83 Clarence Street, Sydney NSW 2000
Tel: (02) 8270 2000
TTY: (02) 8270 2167
Fax: (02) 9367 6850
Email: info@dadhc.nsw.gov.au
Internet: www.dadhc.nsw.gov.au

- CENTRAL OFFICE FOR THE HOME CARE SERVICE NSW
The Home Care Service is one of a number of Home and Community Care providers subsidised by the Australian and NSW governments to help people with a disability, older people and their carers to live independently in their own homes.
Street address: Level 3, 6 Parkes Street,
Parramatta NSW 2150
Postal address: PO Box 3004,
Parramatta NSW 2124
Tel: (02) 9689 2666
Fax: (02) 9689 2879
Email: Mail@Homecare.Nsw.Gov.Au

- REFERRAL & ASSESSMENT CENTRE
Street address: Level 4, 6 Parkes Street,
Parramatta NSW 2150
Postal address: PO Box 3004,
Parramatta NSW 2124
Tel: (02) 9633 8499
To Place A Referral: 1800 350 792
Fax: (02) 9891 6148
Email: Referrals@Homecare.Nsw.Gov.Au

DEPARTMENT OF COMMUNITY SERVICES (DoCS)
DoCS provides assistance for children, young people and families at risk; families with child care; building stronger communities; people with adoptions; and for people affected by natural disasters and other emergencies. You can contact DoCS through its Central Office, Regional Offices or through the Community Services Centres (CSC) found across NSW, usually in or near town
HEAD OFFICE
Street address: 4-6 Cavill Ave,
Ashfield NSW 2131
Postal address: Locked Bag 28,
Ashfield NSW 1800
Tel: (02) 9716 2222
Fax: (02) 9716 2999
Internet: www.community.nsw.gov.au
centres or in suburban shopping centres.

**- DoCS DOMESTIC VIOLENCE LINE**
If you or someone you know is experiencing domestic violence, you can ring DoCS Domestic Violence Line. It is a state wide free-call number and is available 24 hours, seven days a week.

Tel: 1800 656 463
TTY: 1800 671 442

**DEPARTMENT OF COMMERCE, OFFICE OF INDUSTRIAL RELATIONS (NSW)**
The Department provides information on employment rights.

Street address: 2-24 Rawson Place, Sydney NSW 2000
Postal Address: PO Box 847, Darlinghurst NSW 1300
Tel: 131 628
Fax: (02) 9020 4700
Internet: www.industrialrelations.nsw.gov.au

**DEPARTMENT OF HEALTH (NSW)**
The Department of Health is now encompassed in Health NSW. See the entry for Health NSW below.

**DEPARTMENT OF HEALTH AND AGEING (CTH)**
The Department of Health and Ageing manages federal health programs and provides information.

HEAD OFFICE
Postal address: GPO Box 9848, Canberra ACT 2601
Tel: (02) 6289 1555 or 1800 020 103
Fax: (02) 6281 6946
Internet: www.health.gov.au

**DEPARTMENT OF HOUSING**
The NSW Department of Housing provides a range of affordable housing opportunities for people on low incomes.

HEAD OFFICE
Street address: 223-239 Liverpool Road, Ashfield NSW 2131
Postal address: Locked Bag 4001, Ashfield BC NSW 1800
Tel: 13 1571
Internet: www.housing.nsw.gov.au

**- HOUSING CONTACT CENTRE**
This centre provides information on the services of the Department of Housing.

Postal address:
Locked Bag 7466, Liverpool BC NSW 1871
Tel: 131571 (24 hours, 7 days a week, 365 days a year)
Fax: (02) 9821 6288 Email: feedback@housing.nsw.gov.au
Internet: www.housing.nsw.gov.au

**DEPARTMENT OF FAMILY AND COMMUNITY SERVICES (CTH)**
The Department of Family and Community Services publishes Australian Retiree, Your Choices which contains information on the Commonwealth Seniors Card, local government services and concessions, organisations representing retirees interests, State Seniors Cards together with information concerning financial and health matters. The Department also publishes a guide called "Home and Residence Choices for Older People", this and other booklets are available from the Department and can also be downloaded from the Department's website.

NSW Office:
Level 5, 1 Oxford Street
SYDNEY NSW 2001

Postal address:
GPO Box 9820
SYDNEY NSW 2001

Tel: 1300 653 227 (local call cost only)
Fax: (02) 8255 1060
DISABILITY ADVOCACY SERVICE: HUNTER [DASH] INC
DASH provides education programs and advice to ensure that non-disabled people are aware of the rights and needs of people with a disability in Newcastle, Lake Macquarie, Port Stephens and the Hunter Valley.

Street address: Suite 3, Level 1, 408 King Street Newcastle
Postal address: PO Box 5135, Newcastle West 2302
Tel and TTY: (02) 4927 0111
Fax :(02) 4927 0114
Mobile: 0411 209 302
Email: dash@dash.org.au
Internet: www.dash.org.au

DISABILITY AND AGED INFORMATION SERVICE INC
Disability And Aged Information Service provides information on services and supports available to assist people with disabilities, aged people and their families, carers and advocates. It services the Far North Coast region from just North of Woolgoolga to Tweed Heads.

Street address: Suite 2, 109 Molesworth Street, Lismore NSW 2480
Postal address: P.O. Box 594, Lismore NSW 2480
Tel: (02) 6622 8002 or 1800 800 340
Fax: (02) 6622 8001
Email: info@daisi.asn.au
Internet: www.daisi.asn.au

DISABILITY DISCRIMINATION LEGAL CENTRE (NSW) (DDLc)
The DDLC gives legal advice, runs legal cases and represents people with disability discrimination complaints for people across NSW with any type of disability. Friends, family members or advocates who want to stop disability discrimination can also use the Centre.

Street address: Level 2, 52 Pitt Street, Redfern NSW 2016
Postal address: PO Box 989, Strawberry Hills, NSW 2012
Tel: 02 9310 7722 or 1800 800 708
TTY: 02 9310 4320 or 1800 644 419
Fax: 02 9310 7788
Email: info@ddlcnsw.org.au
Internet: www.ddlcnsw.org.au

DOMESTIC VIOLENCE ADVOCACY SERVICE (DVAS)
The DVAS provides free confidential legal service for women experiencing domestic violence. The service provides casework services, education and training for service providers and is actively involved in relevant policy and law reform.

Postal address: PO Box H154, Harris Park NSW 2150
Telephone advice: (02) 9637 3741 or 1800 810 784
TTY: 1800 626 267
Fax: (02) 9682 3844
Email: dvas@dvas.org.au
Internet: www.dvas.org.au

ELDER LAW@UWS (CENTRE FOR ELDER LAW)
The only centre in Australia specializing in law as it affects older people. This is a centre of the University of Western Sydney.

Tel: (02) 3018 4658
Internet: www.uws.edu.au

ENVIRONMENTAL DEFENDERS OFFICE (NSW) (EDO)
The EDO is a community legal centre specialising in public interest environmental law. It helps the individuals and community groups who are working to protect the natural and built environment.

Street and postal address: Level 9, 89 York Street, Sydney 2000
Tel: (02) 9262 6989 or 1800 626 239
Fax: (02) 9262 6998
Email: edonsw@edo.org.au
Internet: www.edo.org.au

FAIRFIELD MIGRANT RESOURCE CENTRE
The Centre provides settlement services to newly arrived immigrants and refugees to improve access to services, address special settlement needs and help develop skills and confidence. Services include: advice, support and information relating to employment, housing, education, Centrelink, health, domestic violence, immigration, refugee and humanitarian entrants support and aged care.

Street and postal address: Cnr of Railway Parade & McBurney Road, Cabramatta, NSW, 2166
Phone: (02) 8707 0619 (FMRC Admin)
Phone: (02) 9727 0477 (main Switch)
Fax: (02) 9728 6080
E-mail: info@fmrc.net
Internet: www.fmrc.net
FAR WEST COMMUNITY LEGAL CENTRE
Provides free legal advice and information as well as legal education for individuals across NSW.
FINANCIAL COUNSELLORS’ ASSOCIATION OF NSW
Accredits financial counsellors and publishes a list of accredited counsellors and fact sheets.

GUARDIANSHIP TRIBUNAL
The Guardianship Tribunal makes guardianship and financial management orders for people aged 16 years and over with decision-making disabilities. It may make a range of other orders as well.

HAWKESBURY NEPEAN COMMUNITY LEGAL CENTRE
The Hawkesbury Nepean Community Legal Centre provides legal advice and advocacy to people in the Hawkesbury/Penrith area. Domestic violence is a priority. Also generalist advice service covering most areas of law, also has an Aboriginal Legal Access worker, and the centre targets services to youth and caravan park residents.

HEALTH (NSW)
The NSW Health system comprises the NSW Minister for Health, the Minister Assisting the NSW Minister for Health (Cancer), the NSW Department of Health and Public health organisations. These organisations are responsible for providing services such as public and community health, public hospitals, psychiatric hospitals, emergency transport, acute care, rehabilitation, counselling, and many community support programs.

HEALTH CARE COMPLAINTS COMMISSION
Deals with complaints about anything to do with health care or a health care service in the state of NSW.

HIV/AIDS LEGAL CENTRE (HALC)
The HIV/AIDS Legal Centre (HALC) is a community legal centre that specialises in HIV related legal matters.
HOMELESS PERSONS INFORMATION CENTRE
Referral point for people who are homeless or at threat of homelessness.
Tel: 02 9265 9081 or Freecall: 1800 23 45 66

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION
Responsible for inquiring into alleged discrimination on the grounds of race, colour or ethnic origin, racial vilification, sex, sexual harassment, marital status, pregnancy, or disability.
Street address: Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney NSW 2000
Postal address: GPO Box 5218, SYDNEY NSW 2001
Tel: (02) 9284 9600
Complaints Infoline: 1300 656 419
Privacy Hotline: 1300 363 992
General enquiries and publications: 1300 369 711
TTY: 1800 620 241
Fax: (02) 9284 9611
Email: complaintsinfo@humanrights.gov.au
Internet: www.hreoc.gov.au

HUNTER COMMUNITY LEGAL CENTRE
Provides free legal advice and assistance in relation to domestic violence, credit and debt, family law, victim's compensation and tenancy for people in the Newcastle, Lake Macquarie, Port Stephens, Great Lakes, Taree and the Upper and Lower Hunter regions.
Postal address: PO Box 84, Newcastle 2300
Tel: (02) 4926 3329 or 1800 650 073
TTY: (02) 4927 8908
Fax (02) 4929 7996
Email: Hunter_NSW@fcl.fl.asn.au

ILLAWARRA LEGAL CENTRE
Provides free legal and related information, advice and representation to residents of the Illawarra Region and some surrounding areas. Specific services offered include general law, child support (residential parents only), welfare rights, tenancy, credit and debt.
Street address: 7 Greene Street, Warrawong 2502
Postal address: PO Box 139, Warrawong 2502
Tel: (02) 4276 1939 or 1800 807 225 (tenancy)
TTY: (02) 133 677
Fax: (02) 4276 1978
Email: Illawarra_NSW@fcl.fl.asn.au
Internet: www.illawarralegalcentre.org.au

IMMIGRANT WOMEN’S SUPPORT SERVICE
A community based organisation which works with women and children of non-English speaking background who are or have been in violent domestic situations and/or have experienced rape and/or sexual assault. Please note, this service is based in Queensland.
Tel: (07) 3846 5490 for domestic violence support; or (07) 3846 5400 for sexual assault support.
Email: mail@iwss.org.au

IMMIGRATION ADVICE AND RIGHTS CENTRE
Provides free immigration advice through telephone and drop-in centres and provides case assistance to clients who fit in casework guidelines.
Street and postal address: Level 4, 414 Elizabeth Street, Surry Hills NSW 2010
Tel: 02 9281 8355
Fax: 02 9281 1638

INNER CITY LEGAL CENTRE
Provides free legal advice, assistance and advocacy to people in the Sydney inner city, north shore and eastern suburbs for problems including crime, youth, unfair dismissals, domestic violence, debt, immigration and victims compensation. Conducts casework in domestic violence, discrimination, unfair dismissal, victims
Street and postal address: Level 2, Room 31-32, 94 Oxford Street, Darlinghurst 2010
Tel (02) 9332 1966 or (02) 9332 1982
Fax (02) 9360 5941
Email: inner_city@fcl.fl.asn.au
Internet: www.iclc.org.au

New South Wales Young Lawyers
compensation and adult and juvenile criminal justice. Provides free legal advice for gay, lesbian, bi-sexuals and transgendered people across NSW.

**INTELLECTUAL DISABILITY RIGHTS SERVICE (IDRS)**

IDRS assists people with an intellectual disability with legal advice, legal casework, education and training, and policy and law reform.

**IT'S YOUR LIFE RETIREMENT VILLAGE INFORMATION**

Information for prospective retirement village residents and their families.

**KAMILAROI ABORIGINAL LEGAL SERVICE (KALS)**

KALS provides legal advice and assistance to Aboriginal people in criminal matters as a priority. General advice in all legal matters is given wherever possible. Advice and assistance in some Family Law matters is also provided. KALS covers the North, Central West region of NSW.

**KINGSFORD LEGAL CENTRE**

Provides free legal advice for local residents of Botany and Randwick municipalities including consumer debt, criminal law, discrimination, employment, family law, mental health, motor traffic matters, social security problems, tenancy, and sexual harassment. Also provides Statewide legal advice in relation to discrimination.

**LAWACCESS NSW**

LawAccess NSW provides a single point of access to legal and related assistance services in NSW.
LAW SOCIETY OF NSW
The Solicitor Referral Service of the NSW Law Society refers clients who can pay for legal services to appropriate law firms within NSW.

Office and postal address: 170 Phillip Street, Sydney 2000
Tel: (02) 9926 0333 or 1800 422 713
Fax: (02) 9231 5809
Email: lawsociety@lawsocnsw.asn.au
Internet: www.lawsociety.com.au

LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES
The Law and Justice Foundation is a statutory body aimed at improving access to justice for the people of NSW and provides some useful reports and resources for the public. The Foundation's purpose is to advance the fairness and equity of the justice system, and to improve access to justice, especially for socially and economically disadvantaged people.

Street Address
Level 14, 130 Pitt Street
Sydney NSW 2000

Mailing Address
GPO Box 4264
Sydney NSW 2001
Email: lf@lawfoundation.net.au
Tel: 02 9221 3900
Fax: 61 2 9221 6280
TTY (02) 9223 4229
Internet: www.lawfoundation.net.au

LEGAL AID COMMISSION
Provides free legal advice and other legal assistance to disadvantaged people at the head office in Sydney as well as at 19 regional offices and numerous advice clinics located in various metropolitan and country centres and specialist services.

HEAD OFFICE
Street address: 323 Castlereagh Street, Sydney NSW 2000
Postal address: PO Box K847 Haymarket 1238
Tel: (02) 9219 5000 or 1300 888 529
TTY: (02) 9219 5126
Fax: (02) 9219 5935
Email: olsc@agd.nsw.gov.au

LEGAL AID VETERAN'S ADVOCACY CENTRE
Provides free independent legal advice for veterans.
Tel: (02) 9219 5148.

LEGAL SERVICES COMMISSIONER
The Legal Services Commissioner deals with complaints about legal practitioners and licensed practitioners.

Street address: Level 15, Goodsell Building, 8-12 Chifley Square, Sydney NSW 2000
Postal address: GPO Box 4460, Sydney NSW 2001
Tel: (02) 9377 1800 or 1800 242 958
TTY: (02) 9377 1855
Fax: (02) 9377 1888
Email: olsc@agd.nsw.gov.au

LIVERPOOL WOMEN'S RESOURCE CENTRE
The Liverpool Women's Resource Centre operates as an information and referral service that develops and implements a variety of programs and activities based on feminist principles and ideologies.

Street and Postal address: 23 Sheriff Street, Ashcroft NSW 2168
Tel: (02) 9607 7536
TTY: (02) 9607 7536
Facsimile: (02) 9608 4910
Email: lwrc@bigpond.com.au
Internet: www.isis.aust.com/lwrc

MACARTHUR LEGAL CENTRE
Provides legal advice to people on low incomes in the Macarthur area. Outreach services at Wollondilly, Macarthur Diversity Services, Trackside and Airds Neighbourhood Centre.

Office address: 4 Broughton Street, Campbelltown 2560
Postal address: PO Box 798, Campbelltown 2560
Tel: (02) 4628 2042
MACQUARIE LEGAL CENTRE
Macquarie Legal Centre provides legal advice for residents of Western Sydney in relation to family law, debt recovery/civil claims/VAT, employment, other legal matters. Other projects include the WDVCAS at Ryde and Parramatta courts, Court Assistance Scheme at Lidcombe Children's Court, Central West Contact Service, a supervised changeover service, and the Youth Education Project (provides training for youth workers).

MANLY COMMUNITY CENTRE INC.
The Manly Community Centre provides free community information and referral, as well as a range of community services.

MANY RIVERS ABORIGINAL LEGAL SERVICE (MRALS)
MRALS provides legal assistance to Koori people on the NSW North Coast region. It also has a Violence Prevention Unit in West Kempsey that assists with domestic violence and abuse issues.

MARRICKVILLE LEGAL CENTRE AND CHILDREN’S LEGAL SERVICE
Provides free legal advice and assistance to individuals and community organisations in the inner west area of Sydney. Services include a free tenants’ advice service, free children’s legal service for all persons under 18 in NSW and free Women’s Domestic Violence Court Assistance Scheme.

MEALS ON WHEELS ASSOCIATION INC (NSW)
The NSW Meals on Wheels Association develops meals on wheels and food services organisations and represents other community services organisations to ensure eligible clients have access to high quality services.
MEDICARE
Medicare provides access to Australians to free or low-cost medical, optometrical and hospital care.

MEDICARE AUSTRALIA (previously Health Insurance Commission)
Medicare Australia provides critical government services to the community, and incorporates Medicare, Pharmaceutical Benefits Scheme, Australian Childhood Immunisation Register, Australian Organ Donor Register and Family Assistance Office

MID COAST TENANTS ADVICE & ADVOCACY SERVICE
The Mid Coast Tenants Advice Service provides information, advice and advocacy to tenants, including private & Department of Housing tenants and caravan park residents, who live from Coffs Harbour to Taree.

MIGRANT RESOURCE CENTRES
Migrant Resource Centres offer settlement information, orientation and referral services to recently arrived migrants and refugees. They also provide coordinated effective service delivery that is responsive to the particular needs of the migrant and humanitarian entrant population in the target area and promote awareness of the needs of migrants and humanitarian entrants to mainstream providers.

Auburn Migrant Resource Centre
17 Macquarie Road, Auburn NSW 2144
Telephone: (02) 9649 6955
Fax: (02) 9649 4688
Email: reception@amrc.org.au
Internet: http://www.amrc.org.au

Baulkham Hills/Holroyd/Parramatta Migrant Resource Centre
15 Hunter Street, Parramatta NSW 2150
Telephone: (02) 9687 9901
Fax: (02) 9687 9990
Email: admin@bhhpmrc.org.au
Internet: http://www.bhhpmrc.org.au/

Blacktown Migrant Resource Centre
Level 2, 125 Main Street, Blacktown NSW 2148
Telephone: (02) 9621 6633
Fax: (02) 9831 5625
Email: bmrc@blacktownmrc.org.au

Fairfield Migrant Resource Centre (Cabramatta Community Centre)
Community Centre, Cnr Railway Parade and McBurney Road, Cabramatta NSW 2166
Telephone: (02) 9727 0477
Fax: (02) 9728 6080
Email: info@fmrc.net
Internet: http://www.fmrc.net

Canterbury/Bankstown Migrant Resource Centre
Level 2, 59 Evaline St Campsie NSW 2194
Telephone: (02) 9789 3744
Fax: (02) 9718 0236
Email: cbmrcnsw@cbmrc.org.au
Internet: http://www.cbmrc.org.au
MINISTERIAL ADVISORY COMMITTEE ON AGEING (NSW)
The NSW Ministerial Advisory Committee on Ageing is the official advisory body to the NSW Government on matters of interest to older people. The Committee provides advice to Government, conducts consultations and seminars and publishes research on ageing issues.

Street address: Chair, NSW Ministerial Advisory Committee on Ageing, Level 5, 83 Clarence Street, Sydney NSW 2000
Tel: (02) 8270 2154
Fax (02) 8270 2361
Email: maca_info@dadhc.nsw.gov.au
Internet: www.maca.nsw.gov.au

MOTOR ACCIDENTS AUTHORITY
The Motor Accidents Authority is a statutory corporation that regulates the NSW Motor Accidents Scheme.

Tel: 1300 137 131
Internet: www.maa.nsw.gov.au

MT DRUITT AND AREA COMMUNITY LEGAL CENTRE INC
The Mt Druitt and Area Community Legal Centre provides free legal advice, casework and referral to people who live in the Blacktown local government area and the East Ward of the Penrith

Street address: Shop 7, Daniel Thomas Plaza Mount Street, Mt Druitt 2770
Postal address: PO Box 471, Mt Druitt NSW 2770
local government area. The centre provides basic
general legal advice in areas of law including
domestic violence, family law, child support,
tenancy, financial services, wills, motor vehicle
accidents, neighbourhood disputes and complaints
against government departments.

MULTICULTURAL DISABILITY ADVOCACY
ASSOCIATION OF NSW (MDAA)
MDAA aims to promote, protect and secure the
rights and interests of people from a non-English
speaking background with disability and their
families and carers in NSW.

NATIONAL INFORMATION CENTRE ON
RETIREMENT INVESTMENTS (NICRI)
The NICR is a free, independent, confidential
service which aims to improve the level and quality
of investment information provided to people with
modest savings who are investing for retirement or
facing redundancy.

NATIONAL WELFARE RIGHTS NETWORK
(NWRN)
The NWRN is a network of services throughout
Australia that provides free and independent
information, advice and representation to
individuals about Social Security law and its
administration through Centrelink.

NEW ENGLAND & WESTERN TENANTS
ADVICE & ADVOCACY SERVICE
Provides advice and representation to all tenants
in residential accommodation in New England,
North West, West and Far West of NSW. Offices
also at Dubbo and Broken Hill.

NSW WOMEN’S REFUGE RESOURCE CENTRE
Information for women about domestic violence,
women’s refuges, Aboriginal issues, children and
counselling services available.

NORTH AND NORTH WEST COMMUNITY
LEGAL SERVICE (N&NWCLS)
Provides legal advice in New England and North
West of NSW. Solicitors also visit Tamworth,
Gunnedah, Narrabri, Moree, Inverell and Glen
Innes regularly.

NORTHERN BEACHES NEIGHBOURHOOD
SERVICE
The Northern Beaches Neighbourhood Service
Inc. is a community service, information and
community development organisation which acts
to meet community needs and improve quality of
life for the residents and workers in the Manly,
Warringah and Pittwater local government areas.

**NORTHERN REGIONAL TENANTS RESOURCE SERVICE (NRTRS)**
Providing support and advocacy for all tenants in social housing in New England, North West, Far North Coast, North Coast and Central Coast of NSW

Street and postal address: Minto Building
161 Rusden Street, Armidale 2350
Tel: (02) 6772 8100 or 1800 836 268
Fax: (02) 6772 2999

**NORTHERN RIVERS COMMUNITY LEGAL CENTRE**
Provides legal advice, education, information and referrals on general legal issues Limited filework and casework. Community legal education. Women's outreach solicitor. Court support. Northern Rivers area.

Postal address: PO Box 212, Lismore 2580
Tel: (02) 6621 1000 or 1800 689 889
Fax: (02) 6621 1011
Email: nrccl@spot.com.au

**NRMA LEGAL SERVICE**
Provides legal advice to Members of NRMA Motoring & Services relating to traffic and motoring issues in NSW.

Street and postal address: Level 7, 388 George Street, Sydney 2000
Tel: (02) 8741 6280 or 1800 427 426
Fax: (02) 9292 8529

**OFFICE FOR AN AGING AUSTRALIA (CTH)**
The Office for Older Australians has information on work and later life planning, positive and healthy ageing and health care together. This office is a part of the Department of Health and Aged Care home page.

Internet: www.ageing.health.gov.au/ofoa

**OFFICE OF COMMUNITY HOUSING**
The Office of Community Housing has the charter to undertake the strategic development of the community housing sector and promote client-focused and efficient service delivery.

Tel: 9849 8510
Internet: www.housing.nsw.gov.au/och/och

**OFFICE OF FAIR TRADING (NSW)**
Fair Trading deals with a range of consumer and trader issues including general consumer inquiries, residential leases, rental bonds, strata schemes, home building complaints, business names registration, co-operatives, associations, trade measurements and REVS. The Office also publishes a handbook called "The Seniors Guide to some basic Consumer Rights".

Parramatta Office
Street address: 1 Fitzwilliam Street, Parramatta NSW 2150
Postal address: PO Box 972, Parramatta NSW 2124
Tel: (02) 9895 0111 or 1800 451 301
TTY: (02) 9338 4949
Fax (02) 9895 0222
Email: enquiry@oft.commerce.nsw.gov.au
Internet: www.fairtrading.nsw.gov.au

Fair Trading Centres
Fair Trading Centres are located at a variety of regional and metropolitan locations.
Tel 13 32 20

Aboriginal Tenancy - Renting Services
Tel: (02) 9377 9200 or 1800 500 330

Building Contract Sales
Tel: 1800 639 722

Registry of Co-Operatives and Associations Tel: 6333 1400 or 1800 502 042

Rental Bond Board
Tel: (02) 9377 9000 or 1800 422 021
OFFICE OF THE FEDERAL PRIVACY COMMISSIONER
Provides assistance on privacy matters generally except where NSW government agencies or local councils are involved.

OFFICE OF THE PROTECTIVE COMMISSIONER
The Protective Commissioner is an independent public official legally appointed to protect and administer the financial affairs and property of people unable to make financial decisions for themselves and where there is no other person suitable or able to assist.

OFFICE OF THE PUBLIC GUARDIAN
The Office of the Public Guardian promotes the rights and interests of people with disabilities through the practice of guardianship, advocacy and education.

OFFICE OF STATE REVENUE
Collects state taxes, including stamp duty and land tax.

OLDER PERSONS TENANTS' SERVICE (OPTS)
A part of the Combined Pensioners' and Superannuants Association of New South Wales, this service provides tenancy and housing advice to superannuants, pensioners and older people. Assists in all tenancy related matters but with particular focus on protected tenants.
OLDER WOMEN’S NETWORK (OWN)
OWN Groups promote the rights, dignity and wellbeing of older women. Groups organise a wide range of activities and advocate on issues of concern to older women.

Postal address:
87 Lower Fort Street,
Millers Point NSW 2000
Tel: (02) 9247 7046
Fax: (02) 9247 4202
Email: office@own.org.au
Internet: www.own.org.au

OMBUDSMAN’S OFFICE (NSW)
Investigates complaints about the conduct of a NSW agency or their employees, including both government and some non-Government agencies.

Street and postal address:
NSW Ombudsman, Level 24, 580 George Street,
Sydney NSW 2000
Tel:(02) 9286 1000 or 1800 451 524
TTY:(02) 9264 8050
Fax:(02) 9283 2911
Email: nswombo@ombo.nsw.gov.au
Internet: www.nswombudsman.nsw.gov.au

PALLIATIVE CARE ASSOCIATION OF NSW
Provides information and referrals for palliative care for patients, their carers and their families.

Street address:
Level 11, 418A Elizabeth Street Surry Hills 2010
Postal address: P.O. Box 572, Kings Cross 1340
Tel: (02) 9282 6436
Fax: (02) 9212 1827
Email: info@palliativecarensw.org.au
Internet: www.palliativecarensw.org.au

PARK AND VILLAGE SERVICE (PAVS)
A part of the Combined Pensioners’ and Superannuants Association of New South Wales, this service provides training, resources advocacy and information on the rights and responsibilities of residential park and manufactured home estate residents.

Street and Postal Address:
Level 3,
25 Cooper Street, Surry Hills NSW 2010
Tel:(02) 9281 7967 OR 1800 451 488Fax: (02) 9281 9716
Email: cpsa@cpsa.org.au
Internet: www.cpsa.org.au/pavs

PHARMACEUTICAL BENEFITS SCHEME
The PBS provides reliable, timely and affordable access to a wide range of medicines for all Australians.

Post Address: GPO Box 9826 Sydney 2000
Tel: 1800 020 613
Email: pbs.enq@hic.gov.au

POLICE FORCE OF NEW SOUTH WALES
- Domestic Violence Liaison Officer (DVLO)
- Gay and Lesbian Liaison Officer (GLLO)
To contact your nearest Police Gay and Lesbian Liaison Officer or Domestic Violence Liaison Officer, call the Police service or visit its website for a full list of names and contact details for DVLO's and GLLO's.

Tel: 02 9281 0000 and ask for the contact phone number for the GLLO or DVLO nearest to you.

Internet: www.police.nsw.gov.au

PITTWATER LEGAL SERVICE
Provides legal assistance on most matters excluding immigration.

Street address: Mona Vale Memorial Hall,
Pittwater Road, Mona Vale, (behind Mona Vale Library)
Hours: 3rd Saturday of the month
10am-12 noon.
PRIVACY NSW
Provides assistance on privacy matters generally but more specifically where NSW government agencies or local councils are involved.
Office address: Goodsell Bldg, 1-2 Chifley Square, Sydney NSW 2011
Postal address: P.O. Box 6, Sydney NSW 2001
Tel: (02) 9228 8585
Fax: (02) 9228 8577
Email: privacy_nsw@agd.nsw.gov.au
Internet: www.lawlink.nsw.gov.au/privacynsw

PRIVATE GUARDIAN SUPPORT UNIT
Provides support and information to people appointed as a guardian by the Guardianship Tribunal or a Court.
Telephone: (02) 9265 1441 or 1800 451 510.
TTY: 1800 882 889.

PRIVATE HEALTH INSURANCE OMBUDSMAN
Provides private health insurance members with an independent service for health insurance problems and enquiries.
Street and postal address: Level 7, 362 Kent Street, Sydney NSW 2000
Tel: (02) 8235 8777 or 1800 640 695
Fax: (02) 8235 8778
Email: info@phio.org.au
Internet: www.phio.org.au

PUBLIC INTEREST ADVOCACY CENTRE
The Public Interest Advocacy Centre is an independent, non-profit legal and policy centre. Using its legal and policy skills, PIAC makes strategic interventions in public interest matters to foster a fair, just and democratic society and to empower citizens, consumers and communities.
Street and postal address: Level 9, 299 Elizabeth Street, Sydney 2000
Tel: (02) 8898 6500
Fax: (02) 8898 6555
Email: piac@piac.asn.au
Internet: www.piac.asn.au

PUBLIC TRUSTEE
The Public Trustee acts as an independent and impartial Executor, Administrator and Trustee for the people of NSW. It has 19 branches throughout metropolitan Sydney and regional areas across NSW. Additionally, where a Public Trustee Office is not accessible, the Clerk of the Local Court acts as the Agent of the Public Trustee.
Head Office and postal address:
Ground floor, 19 O'Connell Street, Sydney NSW 2000
Tel: (02) 9252 0523
Fax: (02) 9231 4296
Internet: www.pt.nsw.gov.au

REDFERN LEGAL CENTRE
Provides free legal advice and assistance for people who live or work in Sydney, South Sydney, Botany and Leichhardt local government areas. Also provides state-wide telephone advice and credit and debt service. Legal problems dealt with include domestic violence, family law, tenancy, credit and debt, victims compensation for sexual assault, unfair dismissal, discrimination, social security and legal issues that affect community groups.
Office and postal address: 73 Pitt Street, Redfern 2016
Tel: (02) 9698 7277
Fax: (02) 9310 3586
TTY: (02) 9699 8037
Email: info@rlc.org.au
Internet www.rlc.org.au

REGISTRY OF BIRTHS DEATHS AND MARRIAGES (NSW)
The Registry registers NSW life events accurately and securely for all time, ensuring their integrity and confidentiality. This includes the registration of births, death, marriages, official changes of name and sex. The Registry also maintains a register of wills.
Tel: 1300 655 236
Fax: (02) 9699 5120
TTY: 9310 5700 (for the hearing impaired)
RSPCA
The RSPCA is Australia's pre-eminent animal welfare organisation. Sydney Inspectorate
P.O Box 34
Yagoona 2199
Tel: (02) 9770 7555
Fax: (02) 9796 4346
Internet: www.rspcansw.org.au

SAME SEX DOMESTIC VIOLENCE WEBSITE

SENIOR LINK
Assists older people with computer and Internet problems, and acts as both a resource and meeting place for people over 55. PO Box 825
Mittagong 2575
Tel: 0418 444 690
Web: www.seniorlink.com.au

SENIORS CARD
The Seniors Card entitles older Australians to a range of benefits provided by commercial and retail businesses. The Card is free and is issued by every State and Territory Government around Australia. Office address: Level 5, 234 Sussex Street, Sydney NSW 2000
Postal address: Seniors Card Office, Locked Bag 16, Kingsgrove NSW 2208
Tel: 1300 364 758
Fax: (02) 8270 2470
Email: info@seniorscard.nsw.gov.au
Internet: www.seniorscard.nsw.gov.au

SENIORS INFORMATION SERVICE (SIS)
SIS provides confidential information on more than 8,000 organisations, services, support groups and on retirement accommodation. Street and postal address: Level 4
280 Pitt Street, Sydney 2000
Tel: 13 12 44 (local call charge from anywhere in NSW)
Fax: (02) 9286 3878
Email: sis1@bigpond.com.au
Internet: www.infoseniorsnsw.org.au

SHOALCOAST COMMUNITY LEGAL CENTRE INC
Provides free legal advice, advocacy, and legal education for the South Coast of NSW, including the Shoalhaven, Eurobodalla, and Bega Valley local government. Street address: 50 Junction Street
Nowra 2541
Postal address: PO Box 1496 Nowra 2541
Tel: (02) 4422 9529 or 1800 229 529
Fax: (02) 44227573
Email: info@shoalcoast.org.au
Internet: www.shoalcoast.org.au

SOCIAL SECURITY APPEALS TRIBUNAL (SSAT)
The SSAT reviews decisions made in relation to social security, education or training payments. Sydney Office
Street address: 11th Floor, 157 Liverpool St, Sydney
Postal address: GPO Box 9943, Sydney NSW 2001
Tel: (02) 9202 3400 or 1800 011 140
TTY 1800 060 116
Fax: (02) 9202 3499
E-mail address: sydney@ssat.gov.au
Web: www.ssat.gov.au

SOUTH WEST SYDNEY LEGAL CENTRE
The South West Sydney Legal Centre provides a range of free legal services to people living in the Address: 30 Pirie Street, Liverpool NSW 2170
Tel: (02) 9601 7777
South West area of Sydney, including Liverpool, Fairfield and Bankstown Local Government areas.

SOUTHERN EASTERN ABORIGINAL LEGAL SERVICE (SEALS)
SEAL provides legal advocacy and/or representation in legal proceedings. Its principal focus is to represent Aboriginal people in the criminal justice system. SEALS covers the ATSIC Queanbeyan Regional Council area of South Eastern NSW.

NOWRA OFFICE
Street address: 2/49 Berri Street,
Nowra NSW 2541
Postal address: PO Box 998,
Nowra NSW 2541
Tel: (02) 4472 8633
Fax: (02) 4422 3256
Email: sealsnow@flatearth.com.au
Internet: www.coalsnsw.com.au

CANBERRA OFFICE
Street and postal address: 54-58 Northbourne Avenue,
Canberra ACT 2601
Tel: (02) 6249 8488
Fax: (02) 6262 5226
Email: oliver.kickett@seals.org.au

MORUYA OFFICE
Street address: 8 Mirrabooka Avenue,
Moruya NSW 2537
Postal address: PO Box 604,
Moruya NSW 2537
Tel: (02) 4474 2400
Fax: (02) 4474 2091

SUPERANNUATION COMPLAINTS TRIBUNAL
The Superannuation Complaints Tribunal is an independent body set up by the Commonwealth Government to deal with complaints relating to superannuation, annuities and retirement savings accounts.

Tel: 1300 884 114
Internet: www.sct.gov.au

SUTHERLAND SHIRE COMMUNITY CARE NETWORK INC (SSCCN)
SSCCN works towards improving co-ordination and quality of care for frail older people, people with disabilities and their carers. It provides information about a range of community services.

Street Address: Stapleton Ave Community Centre, 3A Stapleton Ave, Sutherland
Postal Address: PO Box 409,
Sutherland NSW 1499
Tel: (02) 9545 6599
Fax: (02) 9542 6291
Email: ssccn@ssccn.org.au
Internet: www.ssccn.org.au

SYDNEY REGIONAL ABORIGINAL CORPORATION LEGAL SERVICE
Provides legal advice and assistance to Aboriginal and Torres Strait Islanders in criminal and family law matters.

Street address: 619 Elizabeth Street,
Redfern NSW 2012
Postal address: PO Box 2257,
Strawberry Hills NSW 2012
Tel: (02) 9318 2122
Fax: (02) 9319 2630
Internet: www.coalsnsw.com.au

TENANTS' ADVICE AND ADVOCACY SERVICES (NSW)
The Tenants Advice & Advocacy Services works with a number of organisations who also provide assistance and support to tenants in various ways.

Internet: www.tenants.org.au

Services in the following locations
Regional
Central Coast: (02) 4353 5515
Hunter Region: (02) 4929 6888 or 1800 654 504
Illawarra and South Coast: (02) 4274 3475 or 1800 807 225
Mid Coast: (02) 02 6583 9866 or 1800 777 722
New England: 1800 836 268
Northern Rivers: (02) 6621 1022 or 1800 649 135
South West (of the Dividing Range): 1800 642 609
Sydney
Eastern Sydney: (02) 9386 9147
Inner Sydney (02) 9698 5975
Inner Western Sydney (02) 9559 2899
South West Sydney (02) 4628 1678 or 1800 631 693
Southern Sydney (02) 9787 4679
Northern Sydney (02) 9884 9605
West Sydney (02) 9891 6377
Specialist
Aboriginal resource Unit: (02) 9589 1839
Greater Sydney Aboriginal Tenants Service (02) 9572 7066
North West NSW (02) 6643 4308
North & North West NSW Aboriginal Service (02) 6643 4426 or 1800 248 913
Older Persons Service (02) 9281 9804 or 1800 451 488
Parks & Village Service (02) 9281 7967
Southern NSW Aboriginal Service: (02) 4472 9363 or 1800 672 185
Western NSW Aboriginal Service (02) 6882 3611 or 1800 810 233

TENANTS' UNION OF NSW (TU)
The TU is a specialist Community Legal Centre that aims to represent the interests of all tenants in NSW. This includes private and public tenants, boarders and lodgers and residential park residents.

street and postal address:
68 Bettington Street,
Millers Point, Sydney 2000
Tel: (02) 9251 6590
Email: tunsw@fcl.fl.asn.au
Internet: www.tenants.org.au

TRANSLATING AND INTERPRETER SERVICE
NSW Government service for non-English speaking seniors who require a translator or interpreter to access services. Fees may apply.

Tel: 13 14 50 (24 hours)

UTS COMMUNITY LAW AND LEGAL RESEARCH CENTRE
The UTS Community Law and Legal Research Centre provides a free, accessible legal advice and referral service for UTS students and staff on a variety of issues.

Tel: 02 9514 2914
VETERANS’ AFFAIRS AUSTRALIA (DEPARTMENT OF)
The Department organises a range of issues affecting veterans and their families.

General inquiries: 13 32 54
Non-metropolitan: 1800 555 254
Internet: www.dva.gov.au

VICTIMS SERVICES
Victims Services help victims of crime in NSW access services and entitlements to assist in their recovery.

Tel: 02 9374 3111
TTY 02 9374 3175
Email: vct@agd.nsw.gov.au
Internet: www.lawlink.nsw.gov.au/vs

WELFARE RIGHTS CENTRE, SYDNEY
Advice and representation on all Social Security matters.

Level 5b, 414 Elizabeth St, Surry Hills, NSW 2010
Tel: (02) 9211 5300 and 1800 226 028 for people calling from outside the Sydney metropolitan area
TTY: (02) 9211 0238
Email: welfarerights@welfarerights.org.au

WELFARE RIGHTS AND LEGAL CENTRE
The Welfare Rights and Legal Centre is a free community legal service for low income earners in the Australian Capital Territory and its region.

Street address: Havelock House, Gould Street, Turner ACT 2612
Postal address: PO Box 337, Civic Square, ACT 2608
Tel: 02 6247 2177

WESTERN ABORIGINAL LEGAL SERVICE (WALS)
WALS provides legal assistance to Aboriginal people in the Central West, North West and Far West of NSW.

Head Office
Office address:
23-25 Carrington Ave Dubbo 2830
(Head Office)
Postal address: PO Box 446 Dubbo NSW 2830
Tel (02) 6882 6966 or (02) 6882 6880
Fax (02) 6882 0726
Email: principal_sol@bigpong.com
Internet: www.coalsnsw.com.au

WESTERN NSW COMMUNITY LEGAL CENTRE
Provides telephone advice, runs evening volunteer advice services and takes on some casework. Both the Rural Women’s Outreach service and the generalist service have a community legal education component. Focus on domestic violence and two special projects for the Aboriginal communities and for the youth of the Orana and Far West regions of NSW.

WIRRINGA BAIYA ABORIGINAL WOMEN’S LEGAL CENTRE
Aboriginal women’s legal service. Wirringa Baiya provides telephone advice in relation to domestic violence, sexual assault, care and protection and custody matters.

Street address: Wirringa Baiya Offices
Cnr Marrickville Road and Livingstone Road
Postal address: PO Box 785
Marrickville NSW 1475
Tel: (02) 9569 3847 or 1800 677 493
Fax: (02) 9569 4210
Email: info@wirringabaiya.org.au
Internet: www.wirringabaiya.org.au

WOMEN’S DOMESTIC VIOLENCE COURT ASSISTANCE SCHEME
Free service for women experiencing domestic violence. The aim is to give each woman in a DV situation, and/or seeking a restraining order (AVO), access to a solicitor and support worker. Schemes are available at many locations.

Tel:
Albury: (02) 6021 3059
Armidale: (02) 6771 4221
Bankstown: (02) 9709 5622
Bega: (02) 6492 5002

New South Wales Young Lawyers
throughout NSW. But if there is no scheme near where you live you can contact the Domestic Violence Advocacy Service, talk to the Chamber Magistrate at your local court or contact the police.

**WOMEN'S LEGAL CENTRE**
The Women’s Legal Centre is a community legal centre run by women, for women in Canberra and the surrounding area.

Postal address: PO Box 1726, Canberra City ACT 2601
Tel advice: (02) 6257 4499 or 1800 634 669
Indigenous Women's advice: 1800 639 784
TTY: 13 25 44 and ask for (02) 6257 4499
Fax: (02) 6247 0848
Internet: www.womenslegalact.org

**WOMEN'S LEGAL RESOURCES CENTRE**
Provides a voice for women in NSW and promotes access to justice, through the provision of legal services, law reform and community legal education, particularly for women who are disadvantaged by their social and economic circumstances.

Postal address: PO Box 206, Lidcombe North 1825
Telephone advice: (02) 9749 5533
Rural Free Call: 1800 801 501
Indigenous Women's advice: 1800 639 784
TTY: 1800 674 333
Fax: (02) 9749 4433

**OUTREACH SERVICES:**
Blacktown: (02) 9831 2070
Campbelltown: (02) 4627 2955
Fairfield: (02) 9726 4044
Liverpool: (02) 9601 3555
Penrith: (02) 4721 8749
Walgett: (02) 6828 3143