



getting *legal advice*

talk things through with wire

Understanding your legal rights and obligations is very important when you are facing complex life decisions. Whether you need to protect yourself and your family from threatening or abusive behaviour, or ensure you receive your fair share in a property settlement, knowing what options are available and how the legal process works can help you decide what you need to do.

Seeing a lawyer doesn't automatically mean you will have to go to court. There may be many pathways open to you to help resolve your issue, and the earlier you know about these, the better. Don't wait for an issue to turn into a major problem before seeking legal advice.



So where do I go to get legal advice?

Anyone looking for legal advice can call Victoria Legal Aid for free legal information over the phone and to find out whether you may be eligible for further support. If you need ongoing legal assistance for your case and are unable to afford it, VLA may help you apply for a 'grant of legal assistance'. The amount of free legal assistance you are entitled to will vary depending on your financial situation and you may be required to pay a contribution at some stage.

Victoria Legal Aid focus on helping people with criminal law, family law and some civil law matters. If you are involved in a family law dispute, a grant of legal assistance is usually only given for cases that deal with children's residency and contact issues, not for divorces. Be aware that Victoria Legal Aid, just like all other law firms, cannot represent both people on opposite sides of a dispute because this is seen as a 'conflict of interest'.

The Women's Legal Service Victoria is a Legal Aid funded service that specialises in family law and the legal rights of women affected by violence. They offer a free telephone helpline service, as well as face-to-face consultations at their office in Melbourne.

For those who can afford to employ a private lawyer, always check that your lawyer is on the Register of Legal Practitioners. The Law Institute of Victoria (LIV) can help you to find a lawyer with the appropriate credentials and experience in the area of law relevant to your specific case. The LIV Legal Referral Service can also provide you with a referral letter that will entitle you to 30 minutes free of charge with a lawyer from a participating law firm.

How much will it cost?

You are entitled to an estimate of the costs likely to be involved, and there are penalties in place for lawyers who do not give you one. Always ask if the first appointment is free, whether the firm offers discounts for people on low incomes, and ways that you can keep the costs down. And just like finding a repairman or a plumber, it pays to take the time to shop around and find the best quote.

When it comes to calculating their fees, lawyer's in various areas of law employ different methods of billing. It can be confusing, so don't be too intimidated to ask questions.

The "no win-no fee" agreement that is sometimes used for personal injury cases cannot be used in family law or criminal cases. A common method of billing in straightforward divorces and conveyancing is a fixed fee arrangement.

In other matters it is common to have a "costs agreement", which is a formal arrangement detailing how costs will be calculated. This will often involve a set hourly rate for the lawyer's fee, in which costs are calculated in six minute 'units'. This means that every six minutes, or part thereof, that your lawyer spends working for you, you will be charged one-tenth of your lawyer's hourly fee. This includes phone calls and the time it takes to read letters or documents related to your case.

During the course of a legal matter your lawyer may have to pay external fees on your behalf - these are called 'disbursements'. You may be required to put funds in a trust account to be available in advance to pay disbursements, or for the barrister's fee, should your case require a barrister.



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What to expect from a lawyer

Having realistic expectations about what your lawyer can and can't do for you is vital. Many women go to see lawyers expecting something very different from what they get, leaving them feeling frustrated and anxious.

Some common misconceptions:

- My lawyer will tell me what decision to make.

Reality: Your lawyer will explain your options, explore the pros and cons, and may have some idea of their likelihood of success, but they will not tell you which one you should pick. Only you can know what will suit you best. They will then help you to implement the decision you make.

- My lawyer is the expert so I've just got to go along with everything they say.

Reality: It is important to ask lots of questions and to stand up for what you want. Miscommunication is the most common reason relations between a lawyer and a client break down. Being clear and consistent about exactly what you want makes your lawyer's job easier, and helps you get better results.

- If my lawyer cared about my case, they wouldn't rush our meetings so much.

Reality: If your lawyer seems rushed and abrupt it might be because they are trying to save you money while still managing to get the information they need from you.

- My lawyer will provide me with emotional support.

Reality: Women often need to seek legal advice at a time of great stress and can feel hurt when their lawyer doesn't seem to sympathise with their situation. Remember that lawyers generally do not have the time or the skills to adequately respond to your legitimate emotional needs. On the other hand, you should not feel you have to retain a lawyer who makes you feel uncomfortable, intimidated or disempowered. You may find it valuable to see a counsellor or call a service like WIRE to talk things through and get the emotional support you need. If you have been the victim of a crime you may be eligible for free counselling and other forms of assistance through the Victims Support Agency. You could also consider taking someone along with you to your meetings for extra support.

Be prepared

Being as organised as possible before seeing a lawyer will save you valuable time and money.

Write down a summary of your situation and all the details you might need – the who, what and when. Be completely honest and don't leave anything out, good or bad, as the more your lawyer knows the smoother your case is likely to run. Lawyers are under confidentiality agreements so they cannot release this information without you agreeing to it.

It's a good idea to write down all the questions you want to ask too, as it's common for people to get nervous at the first meeting and forget to ask about what they really wanted to know.

Make sure you have all the documents that might be relevant handy. This is a quick checklist of documents your lawyer might need to see.

- Passport
- Birth certificate
- Citizenship papers
- Marriage certificate
- Driver's licence
- Health care card
- Bank books, ATM and credit cards
- Bank statements
- Tax returns and tax records
- Titles of ownership and property deeds
- Partnership and company records
- Details of joint and personal debts
- Guarantees

Keep your lawyer up-to-date with any change in your personal details.

Take notes of what is said to you throughout meetings, and keep a copy of these and all other documents related to your case together in a safe place. Make sure you are kept informed about the progress of your case and any costs that are likely to change or increase.

What to do if things go wrong with your lawyer

You can change your lawyer at any time, although this may add extra time and expense to your case. Be aware that your lawyer can retain your file until you pay them your fee.

If you have a serious complaint about a lawyer's conduct your first step could be to approach the managing partner of their firm. If this doesn't help, you can take your complaint to the Legal Services Commissioner, an independent body responsible for dealing with disputes between clients and lawyers.

If you think your lawyer has made a serious mistake, suing for negligence could be an option. In this case you would need to seek independent legal advice from a lawyer who specialises in that area.

Alternative dispute resolution

Increasingly, the family law system is looking to people to resolve their disputes before going to court. Separating parents are expected to participate in family dispute resolution. This is where an independent third party facilitates discussion and negotiation. The aim is to find the best outcome for all parties involved, rather than a result where one side 'wins' and the other side 'loses'. People who have been subjected to violence by their partner are exempt from the need to participate in this process. See the WIRE information sheet *Separation and children* for more information.

Collaborative law is another approach to resolving legal disputes between people through negotiation and co-operation. In this type of dispute resolution, specially trained lawyers are in the room with you, which can make for a faster and more stream-lined process. Collaborative law may be a good option where it is important to maintain a working relationship with the other person, such as co-parenting, at work or in real estate disputes.

However, if your relationship with the other person in your dispute involved violence, abuse or controlling behaviour and you would feel intimidated or unsafe negotiating with them, then collaborative law, mediation and other forms of alternative dispute resolution may not be appropriate for you.

Going to court?

There are different courts for different types of cases; the main three in Victoria are the Supreme Court, the County Court and the Magistrates Court. The Magistrates Court deals with intervention orders and family law.

Courts can be daunting places for the inexperienced. But even if you do not have a lawyer, you don't have to go to court alone. The Court Network is an independent group dedicated solely to helping people through the experience of going to court. They provide information, programs, and volunteers who will go with you to your court date and offer personal support.

Where do I go for help?

- WIRE 1300 134 130
- Women's Legal Service Victoria 03 9642 0877 or 1800 133 302 for country callers
- Victoria Legal Aid 03 9629 0120 or 1800 677 402 for country callers www.legalaid.vic.gov.au
- Law Institute Victoria Legal Referral Service 03 9607 9550 www.legalreferrals.liv.asn.au
- Family Relationship Centre 1800 050 321 www.familyrelationships.gov.au
- Court Network 1800 681 614
- Legal Services Commissioner 1300 796 344
- Collaborative Professionals Victoria 03 9607 9365 www.liv.asn.au/collablav
- Community Legal Centres 03 9652 1500 www.communitylaw.org.au
- Victims Support Agency Helpline 1800 819 817
- Melbourne Magistrates Court www.magistratescourt.vic.gov.au
- Legal Online www.legalonline.vic.gov.au

Contact WIRE

For an up-to-date contact list of the services available:

1300 134 130 ▶ For the cost of a local call.
(Telephone Interpreter Service available)

13 36 77 ▶ (TTY National Relay Service for hearing impaired women)

Drop in to the Women's
Information Centre at:
210 Lonsdale Street, Melbourne
EMAIL: inforequests@wire.org.au
WEBSITE: www.wire.org.au

wire
women's information
WOMEN'S INFORMATION REFERRAL EXCHANGE INC.

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