
YOU AND THE POLICE

**Do the right thing –
see your lawyer first**



NEW ZEALAND
LAW SOCIETY

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1. | You and the police

This is a guide to what you can do and what you must do when you are questioned or arrested by the police.

If you are in trouble with the police and at a police station, you should ask to contact a lawyer as soon as possible. A lawyer's job is to help and advise you, to look after your rights and to see that you are treated according to the law, regardless of whether you've committed a crime. You can either ring your own lawyer or have the police provide you with a list of lawyers and their phone numbers, and the opportunity to call one of them. There is no cost to you for using a lawyer from this list at this stage.

2. | Contacts with the police

When a police officer stops you or questions you should:

- be satisfied that the person is, in fact, a member of the police. A police officer in plain clothes must show you proof of identity;
- be very careful that what you say to or write for the police is exactly what you mean – it could be very important for you or other people. Don't lie. If you are suspected of having committed a crime, you are entitled to say nothing about the matter until you've spoken to a lawyer. It won't help if you argue with a police officer. State clearly what you have to say and leave it at that.

If a friend is arrested or spoken to by the police, get help from a lawyer or from your friend's family. Do not interfere personally.

Children and young people (defined as being under 17 years) can be more vulnerable than adults in their contacts with the police and so have special rights – ask about them (see also page 3).

3. | Powers of the police

If the police:

Ask you to stop: You should stop. The driver must stop and whether or not you're driving, if asked you must give your name, address and all details required to identify you.

Question you: If you have been arrested, you must give your name, address, occupation and date and place of birth. If a vehicle is involved, you must give the name and details of its owner, hirer or driver, and if you are the owner or hirer, you must give the names and details of the driver and passengers. It's your decision whether you answer any other questions - you don't have to. You are entitled to talk to your lawyer before you answer any other questions or make a written or spoken statement.

Ask you to go with them: You don't have to go with the police unless:

- you agree to do so; or
- you are arrested; or
- a member of the police suspects you have been driving after drinking too much alcohol or under the influence of drugs (see our other pamphlet *Motor vehicles, accidents and alcohol*). If you are arrested or suspected of drinking and driving, go quietly or there may be more charges. Ask to talk to a lawyer as soon as possible – either your own or one from the list (see “You and the police” on page 1).

Want to search you or your home: They can search your home or other premises such as your office:

- if you agree; or
- if they have a warrant; or
- they can search you and your home with or without a search warrant if they are searching for such things as drugs, weapons or explosives.

Ask to talk to a lawyer as soon as possible for legal advice about whether you should agree to any search.

4. | Special rights for children and young people

The powers of the police to arrest and to question those under 17 are restricted.

A child or young person is entitled to have a lawyer or another adult (or both) present when the police are questioning or taking a statement from him or her.

The police officer must explain to the child or young person his or her rights in language they can understand.

The police must contact the child or young person's parents or guardians to tell them he or she has been arrested or is at the police station.

Ask the police officer about these rights and if you are uncertain, speak to a lawyer before a child or young person is interviewed.

5. | Fingerprints and photographs

If you're arrested, you must give your fingerprints and allow a photograph of yourself to be taken.

The police might also take your fingerprints as part of the routine investigation of a crime. This doesn't mean that you are under suspicion. The police may want to be able to rule out the fingerprints of innocent people where the fingerprints were found – for instance, your fingerprints in your own home. It's your decision whether you give your prints and if you do, the police should destroy those prints after they've finished checking. In some situations, and where the court orders it or you consent, the police may take blood samples for the purpose of DNA analysis.

6. | At the police station

If you are at the police station because the police suspect you might have committed a crime:

If you haven't been arrested:

- It's your decision whether you answer any questions or make any written or spoken statement – you don't have to do so. You do not need to have had a formal question and answer session for the police to record what you have said and for this possibly to be used as evidence against you. You're entitled to talk to your lawyer before you make any written or spoken statement, and it's always best to do so.
- The police are increasingly using videos for recording interviews and these can be played in court as part of the police case. You have a right to decline this and, as with any other statement, you should speak to a lawyer before deciding what to do.
- You may leave the police station when you wish. (But if you are there for a breath or blood/alcohol test and leave before the test has been completed you will commit an offence and probably be arrested.)
- There is no such thing as an “off the record” conversation or statement to the police.

If you have been arrested:

- Give your name, address, occupation and date and place of birth.
- The police have the right to search, fingerprint and photograph you.
- You have the right to consult and instruct a lawyer without delay in private and without cost if using one from the roster. The police should contact the lawyer you wish to see (although if that lawyer is not on the roster, there may be a cost). There should be a list of lawyers at the police station. If you don't have a lawyer, ask for the list and pick one. If that lawyer is not available, ring another one.

- Police rules state that normally a friend or a relative named by you is to be told by the police that you've been arrested. Also, normally a relative or friend may visit you.
- Ask to be released on bail. You don't have an automatic right to be bailed by the police but in many cases bail will be given. You'll then have to appear in court on the day mentioned on the summons form.

If you don't see a lawyer before you're taken to court, make sure you see the duty solicitor at court. This is another free legal service.

7. | Complaints about the police

If you have a complaint about the police, it's important to act quickly. You can:

- See a lawyer for advice and, if necessary, a doctor or photographer also.
- Discuss your complaint with the senior police officer of the main police station in the area.
- Make a formal complaint to the police.
- Make a formal complaint to the Independent Police Conduct Authority, PO Box 5025, Wellington 6145, telephone (04) 499 2050 or freephone 0800 503 728, enquiries@ipca.govt.nz or see the website www.ipca.govt.nz
- In appropriate cases, make a claim in the courts.

Find out the name or number of the police officer involved and write this down as soon as possible together with a description of what happened (including the time and place) of the incident you want to complain about. If your complaint is serious, you'll want a lawyer to help you and this statement will be important and valuable. See a lawyer as soon as you can.

8. | Do the right thing – see your lawyer first

Lawyers deal with many personal, family, business and property matters and transactions. No one else has the training and experience to advise you on matters relating to the law. If your lawyer can't help you with a particular matter, he or she will refer you to another specialist. Seeing a lawyer before a problem gets too big can save you anxiety and money.

Lawyers must follow certain standards of professional behaviour as set out in their rules of conduct and client care. When you instruct a lawyer, he or she must provide you with certain information, as outlined in our brochure *Seeing a lawyer – what can you expect?*

This includes informing you up front about the basis on which fees will be charged, and how and when they are to be paid. The fee, which must be fair and reasonable, will take into account the time taken and the lawyer's skill, specialised knowledge and experience. It may also depend on the importance, urgency and complexity of the matter. There could also be other costs to pay, such as court fees.

You should discuss with your lawyer how you will pay for the work and advise if you don't want to spend more than a certain sum without the lawyer checking with you. A lawyer is required to tell you if you might be entitled to legal aid.

The brochure *Seeing lawyer – what can you expect?* also outlines how you can help control your legal costs and get best value from your lawyer.

Choose your own lawyer for independent advice. You do not have to use the same lawyer as your partner or anyone else involved in the same legal matter. In fact, sometimes you must each get independent legal advice.

Lawyers must have a practising certificate issued by the New Zealand Law Society. You can call the Law Society on (04) 472 7837 (or at one of the offices listed below) or email registry@lawsociety.org.nz to see if the person you plan to consult holds a current practising certificate. You can also check this on the register accessible through the website www.lawsociety.org.nz

If you have a concern about a lawyer, you can talk to the Lawyers Complaints Service, tel 0800 261 801.

If you don't have a lawyer:

- ask friends or relatives to recommend one;
- look in the Yellow Pages under “lawyers” or “barristers and solicitors”;
- inquire at a Citizens Advice Bureau or Community Law Centre;
- check these websites:
 - www.lawsociety.org.nz/home/for_the_public/find_a_lawyer
 - www.familylaw.org.nz
 - www.propertylawyers.org.nz
- contact your local New Zealand Law Society branch:

Auckland (including Northland, South Auckland, Coromandel) (09) 304 1000

Waikato Bay of Plenty (including Taupo) (07) 838 0264

Gisborne (06) 867 1562

Hawke's Bay (06) 835 1254

Taranaki (06) 758 3238

Wanganui (06) 345 7092

Manawatu (06) 356 2214

Wellington (including Wairarapa) (04) 472 8978

Nelson (03) 545 2613

Marlborough (03) 578 7269

Canterbury-Westland (03) 366 9184

Otago (03) 477 0596

Southland (03) 218 8778

Law Awareness Programme

The New Zealand Law Society publishes this pamphlet as part of its *Law Awareness Programme* to inform you of your legal rights, the law and how lawyers can help you. The full list of titles in this series is:

- Buying or selling a property
- Over the fence ... are your neighbours
- Domestic violence
- What happens to your children when you part?
- Dividing up relationship property
- What happens when your relationship breaks up?
- Living together
- The family trust
- Making a will and estate administration
- Powers of attorney
- Motor vehicles, accidents and alcohol
- You and the police
- Giving evidence
- Going into business

Other brochures

The Law Society also publishes the following brochures outlining the standard of service that clients can expect from their lawyers and about the Lawyers Complaints Service:

- Seeing a lawyer – what can you expect?
- How to complain about a lawyer

Copies of the Law Awareness pamphlets and the other brochures may be obtained from the New Zealand Law Society, PO Box 5041, Lambton Quay, Wellington 6145, tel (04) 472 7837, fax (04) 463 2985, email pamphlets@lawsociety.org.nz or from Citizens Advice Bureaux or Community Law Centres. They are supplied free to individuals and non-profit community service organisations, and at a small charge to others. They are also available on the Law Society website – www.lawsociety.org.nz/home/for_the_public/how_can_we_help_you

Notes

All information in this pamphlet is to the best of the knowledge of the NZLS true and accurate as at the date below. However, no liability is assumed by the NZLS for any losses suffered by any person relying directly or indirectly on information in this pamphlet. It is recommended that readers consult a lawyer before acting on this information.

Reprinted May 2009



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