



# Taking care of business

Planning ahead for Aboriginal and Torres Strait Islander people in New South Wales



**Making a Will**



**Power of Attorney**



**Enduring Guardianship**



**NSW Trustee & Guardian**

# Acknowledgement of Country

NSW Trustee & Guardian acknowledge the Traditional Custodians of the lands where we work, learn and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this resource.

We advise this resource may contain images, case studies or names of deceased persons in photographs and in written form.

## Acknowledgements

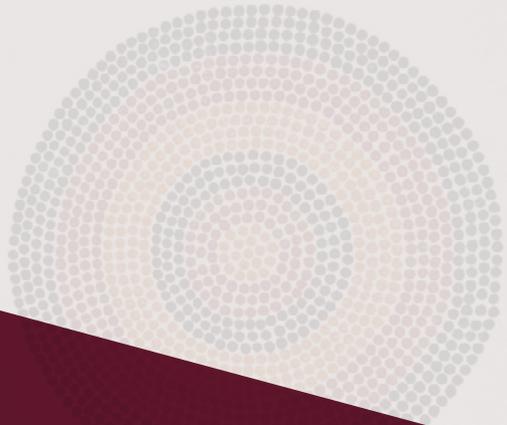
NSW Trustee & Guardian acknowledges the invaluable contribution of the Information & Support Branch, Public Guardian in developing this booklet. We would like to thank the Aboriginal elders, carers, community members and service providers who contributed their time and insights.

Legal Aid NSW, 2020, *Who gets my stuff when I die? Why wills are important for Aboriginal and Torres Strait Islander people.*

This booklet is a companion document to Vines, P 2019, *Aboriginal Wills Handbook: A Practical Guide to Making Culturally Appropriate Wills for Aboriginal People*, 3rd edn, NSW Trustee & Guardian

This resource is made available for information purposes only.

The information contained in this handbook is general only. It does not take into account your specific circumstances and needs. It is recommended that you obtain professional advice (from a Solicitor or from NSW Trustee and Guardian) when you are planning ahead so that your specific circumstances and needs can be considered.



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## About NSW Trustee & Guardian

NSW Trustee & Guardian protects, promotes and supports the rights, dignity, choices and wishes of the people of NSW, including some of the state's most vulnerable people.

We do this by providing a range of services including the making of Wills, powers of attorney, enduring guardianship appointments, acting as an executor, administrator, trustee and attorney. We also may be appointed by a court or tribunal as financial manager and guardian of last resort.

We offer independent and impartial services and have the expertise of solicitors, accountants, tax and investment specialists.

## Key terms used in this section

### Capacity

The term refers to an adult's ability to make a decision for themselves. Generally, it means that a person can understand the facts and choices they have, weigh up the consequences of those choices and be able to communicate the decision made about those choices.

### Consent

Permission for something to happen or agreement to do something.

### Estate

All the stuff you own including money, personal belongings, home and land.

### Executor

A person or organisation who carries out the wishes in your Will.

### Gifts

The stuff you leave to people in your Will.

### Intestate

Not having a valid Will when you pass.

### Solicitor

A legal professional who gives advice and helps people with various legal matters, such as buying or selling property, making a will, or dealing with disputes.

### Spouse/de facto

Husband, wife or partner.

## Introduction

As we get older we start to think about questions like:

- Who will take care of my mob if something happens to me?
- Who will take care of my business if I am not able to?
- Who will get my stuff after I pass away?
- Many people find legal documents confusing and hard to understand.

Taking care of business has been written to help you work out what you need to know, and where you can go for help.

This booklet has been made to get people talking about planning ahead. If you have questions about your personal situation please contact the organisations listed at the back of this booklet.

This booklet should not be used as your only source of advice when making decisions that could affect your rights and responsibilities.

You will find additional resources and contact details at the back of this book.



“By having a Will, I can make sure Gina (my non-biological daughter) doesn’t miss out.”

- Ruth, age 58 -

## These 4 documents help you plan ahead:



### 1. Will

Who will get my stuff when I pass away?



### 2. Power of Attorney

Who will make decisions about my property and legal matters?



### 3. Enduring Guardianship Appointment

Who will make decisions about my personal matters such as where I will live, my health care and access to services?



### 4. Advance Care Planning

What future health care do I want to receive?

## What is planning ahead?

Planning ahead means making plans for your future in case you lose the ability to make decisions for yourself about your belongings, money, where you live and health care. You can also have your say about medical treatment near the end of life.

## Why should Aboriginal and Torres Strait Islander people plan ahead?

Planning ahead is really important for everyone. Imagine you are looking after someone who's just got sick and can't communicate with you anymore.

What sort of medical treatment do they want? Where do they want to live? Who do they want to handle their money?

Now imagine what will happen when they near the end of their life. Do they want to pass away at home or in a hospice? Who do they want to look after their things?

Think about what will happen when they pass away. Where do they want to be buried? What songs do they want at their funeral?

What will happen to their house? Their belongings? Maybe you know what that person wanted, but nobody else knows.

While everyone's grieving, someone has to make all these decisions. The family could end up in big fights, even in court, just when you really need to pull together and be there for each other at sorry time.

When it comes to planning ahead, you may hear people say:

- 'I've got nothing so there's nothing to plan for'

- 'I can look after myself without help from anyone'

- 'It's family business'

However, by having these legal documents in place, your mob will know exactly what you want, in case something happens to you. This way, your mob won't end up in fights or court.





## Making a Will

### Who will get my stuff after I pass away?

Everyone aged 18 years and over should have a Will. You don't need a lot of money or stuff to make a Will.

It is important to make changes to your Will when things in your life change – like when you get married, have kids or split up with your partner.

### What is a Will?

A Will is a legal document that says who you want your stuff (money, personal belongings, home and land) to go to when you pass away.

It's a way you can look after people you care about or leave them something that reminds them of you.

You can also say in your Will where you want to be buried and what funeral arrangements you want.

### Wills aren't just for rich people

You can use your Will to leave stuff like photos, furniture, jewellery, artwork or copyright for an artwork to whoever you want to have it after you pass away.

Anyone who is 18 years old or over and who has capacity can make a Will.

Making a Will can be easy and doesn't have to be expensive.

### Who makes sure my wishes are carried out?

When writing a Will, you need to choose an executor. This is the person that will follow the wishes you have written down in your Will.

The executor will have a lot of responsibility, so make sure when you choose one, they understand what they have to do and that they want to do it. It is a good idea to choose someone who is younger than you and has an understanding of the law, tax rules and is used to handling money matters. If you do not know anybody who can do these things, or you do not want to burden family or friends, you can choose a professional executor like a solicitor, an accountant, or NSW Trustee & Guardian.

An advantage of a professional executor is that they will not take sides, so they are fair and can manage disputes between family members.

### Did you know?

NSW Trustee & Guardian can prepare these documents for you. Book an appointment on our website [www.tag.nsw.gov.au](http://www.tag.nsw.gov.au) or call 1300 10 20 30.

## Who gets my stuff if I pass away without a Will?

If you pass away without a Will your things may not go to who you want. When someone passes without a Will, this is known as dying intestate.

If there's no Will the law says who gets your stuff and some people you might want to give things to could miss out.

You might want to leave stuff to other people. Maybe to someone you raised or to your grandchildren or other family members. To do this you'll have to make a Will.

## Who will look after my kids?

A Will lets you make your wishes known about who you want to look after your kids if they are under 18 years of age. You can also put in your Will how you would like your kids to be taken care of if something happens to you.

This includes where they would live and what school you would like them to go to.

While this information is not binding it does help those making a decision about the care of your kids to know what you wanted when they are trying to work out what's best for your kids.

When considering a person to look after your children, it is important to ask them if they are happy to do this if something happens to you.

## Where will I be buried when I pass away?

*If you have a Will:*

You can say in your Will where and how you want to be buried. If there are fights about this the executor can show people your Will so they know what you wanted. Your executor has the final say.

*If you don't have a Will:*

There could be fights about where you should be buried.

There might not be anyone in charge of burying you and if your family and friends disagree, a court may have to decide. This will be expensive and can cause big problems in your family and community.

## Secret knowledge

You may be able to use a Will as a way of passing on cultural information and secret knowledge after you pass away. You'll need to talk to a professional Will maker such as a local solicitor or NSW Trustee & Guardian if you want to do this.



## RUTH'S STORY

Ruth is a 58 year old Aboriginal woman.

She owns a house in a country town, which she has lived in all her life. She also owns a car and has some money saved in her bank account.

She has two sons from her marriage to Tom who passed away five years ago. She also raised Gina, who was her sister's child.

Ruth has always thought of Gina as her own child. If Ruth were to pass without a Will, whatever property she owns would go only to her sons. The general law will not recognise Gina as a person Ruth has raised, because Gina is not Ruth's blood/biological child, nor has she been legally adopted by Ruth. By having a Will, Ruth can make sure Gina doesn't miss out.

(Ruth's story was sourced from Prue Vines, 2019, *Aboriginal Wills Handbook*, 3rd edn, NSW Trustee & Guardian.)

## How do I make a Will?

People think it is easy to make a Will but there is a lot of law about how a Will should be worded. Your Will also needs to be signed and witnessed to avoid problems later.

A solicitor may charge a fee to prepare the Will. NSW Trustee & Guardian also charges a fee to prepare a Will.

### Did you know?

There is a Will preparation form which you can fill in and take with you when you make your Will with a solicitor or NSW Trustee & Guardian. It will help to save time, reflect your wishes and consider your culture. View this form on NSW Trustee & Guardian's website [www.tag.nsw.gov.au](http://www.tag.nsw.gov.au).

You can also give our friendly team a call on **1300 10 20 30** to find out more information or request an appointment.



## Can I change my Will?

You can change your Will at any time and as many times as you like as long as you can still understand what you are doing (have capacity). But if you want to change it you will need to do a new Will. It is always best to get a professional Will maker to help you like NSW Trustee & Guardian or a solicitor.

If there are any changes in your life, especially if you get married or divorced or if you begin or end a relationship, have children or buy something big like land or a house, you should do a new Will.

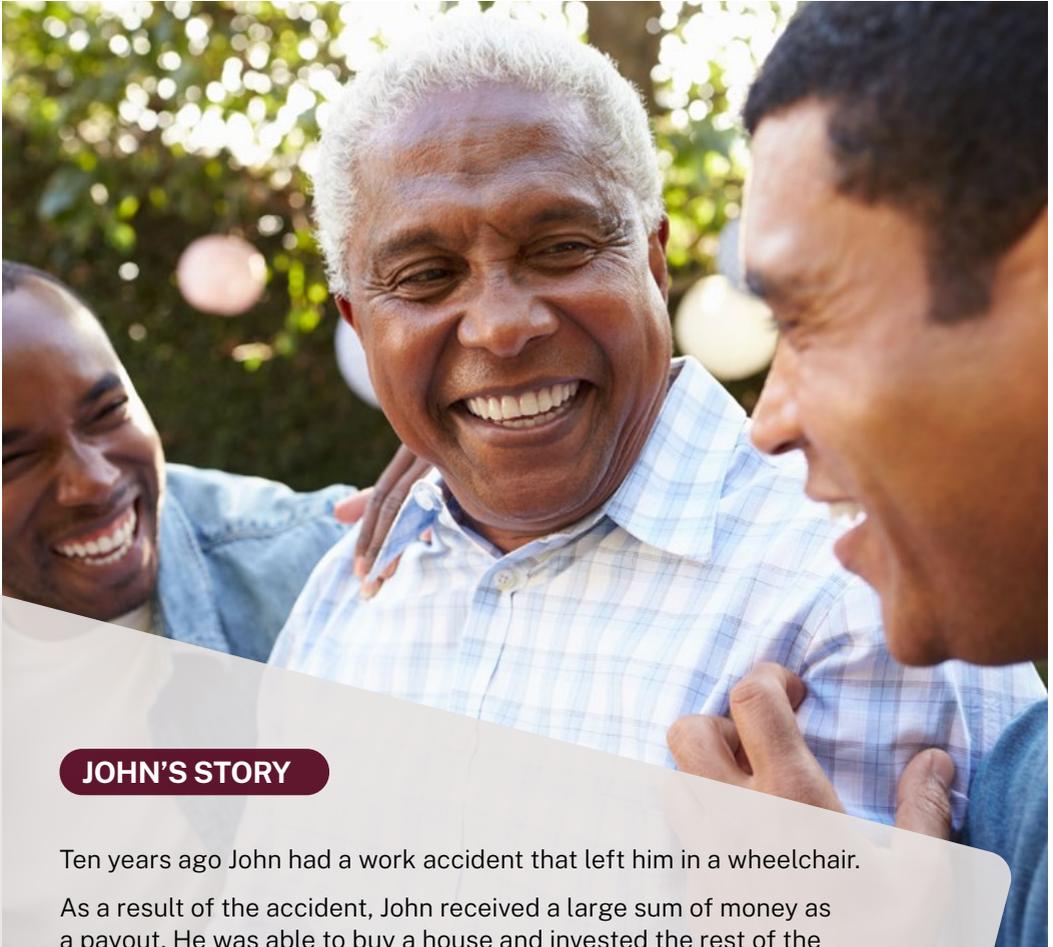
## Where should I keep my Will?

You should keep your Will in a safe place at home, where it can be found after you pass away. It's a good idea to tell your executor where it's kept.

You can also keep it in a safety deposit box at a bank or with the solicitor who did your Will for you. NSW Trustee & Guardian also has a Will Safe service to store all of your planning ahead documents, for a small fee.



You may be able to use a Will as a way of passing on cultural information and secret knowledge after you pass away. You'll need to talk to a professional Will maker such as a local solicitor or NSW Trustee & Guardian if you want to do this.



## JOHN'S STORY

Ten years ago John had a work accident that left him in a wheelchair.

As a result of the accident, John received a large sum of money as a payout. He was able to buy a house and invested the rest of the money so he could be financially secure. John has two sons, Jason who lives in the next suburb and Dan who lives in Queensland.

Recently at the age of 60, John was diagnosed with cancer. John wanted to make sure that if he was unable to make his own decisions, they would be in the hands of someone he trusted. He decided that he would make Jason his attorney as he lives close. He went to a solicitor and made an enduring power of attorney appointing Jason as his attorney. John is happy that his property and legal matters will be taken care of properly.



## Power of Attorney

### Who will look after my property and legal matters if I can't?

There can be times when we might need other people to help us pay our bills and look after our money for us. This could be because we can't make those decisions for ourselves due to illness or disability. It may even be because we are going overseas or away for a long time.

A Power of Attorney is a document you sign to appoint someone (called your attorney) to look after your property and legal matters if you can't do it yourself. You can choose one or more friends or family. It needs to be someone that you trust.

Or you can choose NSW Trustee & Guardian to be your attorney.

You can choose to give the attorney as much or as little power as you like. For example, you might only want to give them the power to pay your bills.

When you make your Power of Attorney it's a good idea to make sure it's an 'enduring' Power of Attorney.

This means that the person you appoint as your attorney will be able to make decisions for you even if you are no longer able to tell them what you want done because you have lost capacity.

To make an Enduring Power of Attorney, you can contact your local community legal centre, NSW Trustee & Guardian, or a local solicitor. They can tell you more about how the Power of Attorney can be used.

### Did you know?

You can cancel your Power of Attorney at any time as long as you have the capacity to understand what you are doing. You need to tell your attorney in person or in writing that they are no longer your attorney.

If you have lost the capacity to make your own decisions and something goes wrong with your Power of Attorney, like they are not making good decisions for you, the Guardianship Division of NSW Civil and Administrative Tribunal (NCAT) may be able to help. Find the contact details at the back of this booklet.



## Enduring Guardianship

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### Who will make decisions about my personal matters such as where I live, my health care and what services I receive if I am unable to decide for myself?

For some of us the time might come when we start to lose our memory due to age or dementia or have a bad accident or illness, like a stroke. This can affect capacity.

If you or someone in your mob is starting to find it hard to make decisions about personal matters, it might be time for a guardian to make those decisions. If you have planned ahead, a person of your choice, an Enduring Guardian can make these decisions for you. Otherwise, family or friends may be appointed as your guardian by a tribunal or court. If there is no one willing or able to be appointed as a guardian, then the Public Guardian may be appointed for a limited time.

### What is an Enduring Guardian?

An Enduring Guardian is someone you can choose now to make certain decisions for you, in case a time comes when you can't make these decisions for yourself.

An Enduring Guardian should be someone you trust. Your wishes can be put into a legal document and, if

needed, your Enduring Guardian can make decisions that they know you would want.

An Enduring Guardian can only make personal decisions. This means things like:

- deciding where you live
- saying 'yes' or 'no' to treatment prescribed by your doctor or dentist
- what kinds of services (like Meals on Wheels or Home Care) you get.

There are some decisions an Enduring Guardian can't make for you. They can't:

- make any decisions about money, property or legal matters (see section on Power of Attorney)
- make a Will for you
- vote for you
- agree to you getting married.

To appoint an Enduring Guardian, both you and the person need to be over 18.

You should choose someone that knows you well, who you trust and who understands your wishes.

You need to make sure that the person you choose is willing to take it on and understands what you want. To appoint your Enduring Guardian, visit the NSW

Trustee & Guardian website or speak to your solicitor who will give you a form to complete. Once you have filled out the details you will need to sign it and have it witnessed. The person you choose as your Enduring Guardian also needs to sign the form and have it witnessed.

You can change your mind about your Enduring Guardian at any time if you still have capacity. You simply fill out a different form to change your appointment. Your Enduring Guardian can also change their mind and resign from the appointment.

Your Enduring Guardian can only make decisions for you if you lose capacity and are no longer able to make decisions for yourself. Your Enduring Guardian should talk to your doctor about your capacity before starting to make decisions for you.

## Person responsible

What happens if I need medical or dental treatment, I can't decide for myself and I don't have a guardian to decide for me?

Your doctor or dentist will need to find your person responsible so they can decide for you.

Your person responsible is either your: **spouse/defacto, unpaid carer, family member, friend.**

If you are the person responsible for someone, the doctor or dentist will need to give you all the same information they would give any patient.

You have the right to ask questions or ask for a second opinion.

Consent means understanding treatment and saying 'yes' or 'no' to it.

If a patient says 'no' to treatment, the person responsible cannot give consent. Only the Guardianship Division can decide if treatment should go ahead.

There are some kinds of treatment that a person responsible cannot say 'yes' to. If the person is saying 'no' to treatment you can't say 'yes' for them. If the person is saying 'no' to treatment, only the Guardianship Division is able to decide the person should have the treatment.

In an emergency, like if your life is at risk or you are in a lot of pain, doctors and dentists don't need to wait for consent and can go ahead and treat you.

## What if something goes wrong?

If something goes wrong with your Enduring Guardian, like they get sick, or if the Enduring Guardian is not making good decisions for you, the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) can help.

If NCAT think your Enduring Guardian can't make decisions for you or is making bad decisions, they can cancel the appointment and appoint someone else as a private guardian or the Public Guardian if there is no one else that can do it.

Find out more information about appointing an Enduring Guardian on NSW Trustee & Guardian's website [www.tag.nsw.gov.au](http://www.tag.nsw.gov.au).

You can also give our friendly team a call on **1300 10 20 30** to ask questions or request an appointment.



## Advance Care Directives

### How can I make my end of life health wishes known?

While you have capacity, and understand your health issues, you can talk with your family, partner, friends and doctor about what is important to you. You should talk about your values, fears and the type of health care you would like to get if you were to become unwell. This is called advance care planning.

If a particular treatment is important to you, or there is a treatment you do not want, you can write down your wishes in an advance care directive.

This is like a letter that sets out what kind of medical treatment you do or don't want, if you are sick and can no longer tell people yourself. An advance care directive sets out your instructions and wishes that need to be thought about before medical treatment decisions are made for you.



## LEANNE'S STORY

Leanne is 35 years old and has uncontrolled diabetes. She is married with three children – a seven year old, a five year old and a six-month old baby. Having her last baby really put a strain on her kidneys. With her sugars all over the place, the doctor has said it won't be long, maybe another three years, and she'll be on dialysis. He's also warned there could be other complications like strokes and heart attacks.

Leanne and her husband have decided it's important to look at their family's future and talk about how Leanne's health could affect them. When they told their doctor of their concerns he suggested they begin the advance care planning process. They discussed what was likely to happen, what the options were and what was important to Leanne in relation to the type of treatments and support she needed due to her condition.

The doctor told Leanne she could also say how she would like to be treated if a time came when she could not make decisions for herself. Leanne and her husband decided that she would like the maximum level of intervention if her condition became worse to minimise potential damage to significant organs. They wrote this down in front of the doctor and he kept a copy. This is considered to be Leanne's advance care directive.

Knowing that her husband and doctor are aware of what kind of health care she wants in the future, should she become unable to make decisions for herself, helps Leanne feel at ease.

## Did you know?

There is no special form that you have to use to make an advance care directive. You can write down your wishes in a letter. You do need to have capacity and it should be up-to-date with your health situation at the time you write it. Also, no one should persuade you to say or write something you don't really agree with or understand. It's a good idea to talk to your doctor first about what you would like to put in an advance care directive.

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## Where can I get more help and information?

*Aboriginal Wills Handbook – a practical guide for making culturally appropriate Wills for Aboriginal people*

This informative book contains Will preparation forms that can be filled out and taken to your Will making appointment.

Contact NSW Trustee & Guardian for a copy.

**Ph: 1300 10 20 30**

**[www.tag.nsw.gov.au](http://www.tag.nsw.gov.au)**

### **Aboriginal Legal Service (NSW/ACT)**

The Aboriginal Legal Service doesn't make Wills but can suggest solicitors close to where you live who can do a Will for free or for less money.

**Ph: 1800 765 767 (Mon-Fri 9am-5pm)**

**[www.alsnswact.org.au](http://www.alsnswact.org.au)**

## Community Legal Centres NSW

Community Legal Centres are independent community organisations providing free legal advice and information. Centres provide legal advice and assistance on a wide range of issues including Wills. Anyone needing legal advice or assistance that can't afford the services of a private solicitor can contact a Community Legal Centre.

**Ph: (02) 9212 7333**

(Mon-Fri 9.00am-5.00pm)

**For referrals to Community Legal Centres please refer to LawAccess NSW.**

**Email: [clcnsw@clcnsw.org.au](mailto:clcnsw@clcnsw.org.au)  
[www.clcnsw.org.au](http://www.clcnsw.org.au)**

## LawAccess NSW and Legal Aid NSW

LawAccess NSW is a free information service run by Legal Aid NSW. They can give free information and referrals about Wills, Powers of Attorney and Enduring Guardianship. They can refer you to places to make these documents. You can talk to an Aboriginal Information Officer.

**Ph: 1300 888 529**

(Mon-Fri 9.00am-5.00pm)

**[www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)**

## NSW Trustee & Guardian

NSW Trustee & Guardian is a government agency. It can make or update your Will, Power of Attorney and Enduring Guardianship documents, and act as your executor or attorney.

**Ph: 1300 10 20 30**

(Mon-Fri 9.00am-5.00pm)

**Email: [info@tag.nsw.gov.au](mailto:info@tag.nsw.gov.au)  
[www.tag.nsw.gov.au](http://www.tag.nsw.gov.au)**

## NSW Law Society

If you need to find a local solicitor you can contact the NSW Law Society Solicitor Referral Service.

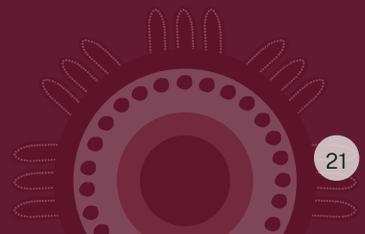
**Ph: 02 9926 0300**

(Mon-Fri 9.00am-5.00pm)

**Email: [lawsociety@lawsociety.com.au](mailto:lawsociety@lawsociety.com.au)  
[www.lawsociety.com.au](http://www.lawsociety.com.au)**

**“I am happy that my property and legal matters will be taken care of properly.”**

- John, age 60 -



## Guardian Support Unit

The Public Guardian's Guardian Support Unit can provide information on Enduring Guardianship and free education sessions.

**Ph: 1300 361 389**

(Mon-Fri 9.00am-5.00pm)

**Email:**

[pg.engagement@opg.nsw.gov.au](mailto:pg.engagement@opg.nsw.gov.au)

[www.tag.nsw.gov.au](http://www.tag.nsw.gov.au)

## Advance Care Planning

Advance care planning prepares a person for future health care, for a time when the person may no longer be able to communicate those decisions themselves.

**Ph: 1300 208 582**

(Mon-Fri 9.00am-5.00pm)

[www.advancecareplanning.org.au](http://www.advancecareplanning.org.au)

## Seniors Rights Service

Seniors Rights Service is a community legal centre that protects the rights of older people. They provide telephone advice, advocacy, legal advice and educational services.

**Ph: (02) 9281 3600 or 1800 424 079**

(Mon-Fri 8.00am-5.00pm & Sat 8.00am-2pm)

**Email:**

[info@seniorsrightsservice.org.au](mailto:info@seniorsrightsservice.org.au)

[www.seniorsrightsservice.org.au](http://www.seniorsrightsservice.org.au)

## MoneySmart

The MoneySmart website provides tips to help you make better financial decisions from the Australian Securities & Investment Commission (ASIC) and the Australian Government. ASIC have produced an Indigenous resource called *Paying for Funerals*. To get a copy, call the ASIC Indigenous helpline.

**Ph: 1300 365 957**

(Mon-Fri 9.30am-4.30pm)

[www.moneysmart.gov.au](http://www.moneysmart.gov.au)

## NSW Elder Abuse Helpline

This is a confidential helpline offering information, advice and referrals for people who experience, witness or suspect the abuse of older people in NSW. Elder Abuse is any act within a relationship of trust, which harms an older person. It includes, financial, psychological, physical, verbal, sexual abuse, and neglect.

**Ph: 1800 628 221**

(Mon-Fri 8.30am-5.00pm)

**Email: [eapu@uccommunity.org.au](mailto:eapu@uccommunity.org.au)**

[www.eapu.com.au](http://www.eapu.com.au)

## NSW Civil & Administrative Tribunal Guardianship Division (NCAT)

If a person does not have legal capacity or there are concerns about whether someone had capacity when a Power of Attorney/Enduring Guardianship was prepared, an application can be made to the Guardianship Division.

**Ph: 1300 006 228 (and press 2)**

**(Mon-Fri 8.30am-4.30pm)**

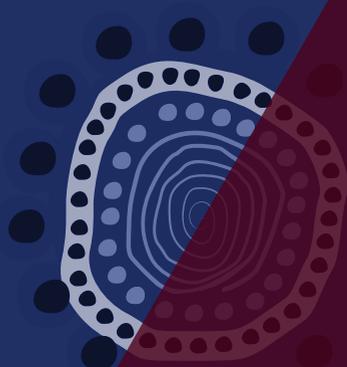
**Email: [gd@ncat.nsw.gov.au](mailto:gd@ncat.nsw.gov.au)**

**[www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)**

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1300 10 20 30



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## Our locations

- Bathurst
- Broken Hill
- Lismore
- Newcastle
- Parramatta
- Port Macquarie
- Sydney CBD
- Wagga Wagga
- Wollongong

## Services

- Will Making
- Will Safe Storage
- Power of Attorney
- Enduring Guardianship
- Trust Administration
- Estate Administration
- Financial Management



**NSW Trustee  
& Guardian**