



# **Taking care of business**

Planning ahead for Aboriginal people  
in New South Wales



## Acknowledgements

This booklet is based on the following resources:

NSW Department of Ageing, Disability & Home Care, 2007, *Taking care of business: planning ahead in Aboriginal and Torres Strait Islander Communities*.

Legal Aid NSW, 2012, *Who gets my stuff after I die*.

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This booklet is a companion document to Vines, P 2015, *Aboriginal wills handbook: a practical guide to making culturally appropriate wills for Aboriginal people*, 2nd edn, NSW Trustee & Guardian.



**NSW Trustee  
& Guardian**

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# 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 die?

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.

# 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.

You can plan ahead by making 4 documents.

- 1.** **Will**  
Who will get my stuff when I die?
- 2.** **Power of Attorney**  
Who will make decisions about money if I can't?
- 3.** **Enduring Guardian**  
Who will make decisions about my health and where I live if I can't?
- 4.** **Advance Care Planning**  
What medical treatment and care do I want in the future?



## **Why should Aboriginal people plan ahead?**

Planning ahead is really important for Aboriginal people.

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 die 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 no one else knows. While everyone's grieving for that person, 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.





Not many Aboriginal people make these plans for the future. We say things like:

- ‘I’ve got nothing so there’s nothing to plan for’
- ‘I can look after myself without help from anyone’
- ‘It’s family business’

You can put these documents in place now to make sure that if something happens to you, your mob will know exactly what you want them to do.

### ***Did you know?***

**You can download all the forms you need for planning ahead from [www.planningaheadtools.com.au](http://www.planningaheadtools.com.au) or call 1300 554 791 to have them sent to you.**





# Making a Will

## Who will get my stuff after I die?

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 (your money, land or property and all your belongings) to go to when you die.

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, copyright for an artwork or anything else you want to whoever you want to have it after you die.

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.

## **What is capacity?**

Capacity means:

- being able to understand all the important things you need to think about when you make a decision
- understanding what will happen next after you have decided
- being able to tell others about your decision.

When you are not able to make decisions for yourself it is called losing capacity.

Dementia is one reason people can't make decisions for themselves, but it could also happen because of an accident, sickness or disability, even when you're still young.



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

When writing a Will you will 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 can manage disputes between family members.



## **Who gets my stuff if I die without a Will?**

If you die without a Will your things may not go to who you want. When someone dies 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.

### **Did you know?**

**The *Aboriginal wills handbook* has 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. Call 1300 554 791 to get a free copy.**



## **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.

If you die and don't have a Will, the court might decide that your kids should be looked after by someone not related to your mob. If you have a Will in which you have made your wishes known, the court will 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 die?

- **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 there's no Will**

There could be fights about where you should be buried if you didn't make a Will.

No one will be in charge of burying you so 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 die. You'll need to talk to a professional Will maker such as your local solicitor or NSW Trustee & Guardian if you want to do this.

## **How do I make a Will?**

It is simple and easy. It can be short and it doesn't need to cost a lot. You can do it yourself but the wording of a Will can cause problems. Something written which you think is clear and easy to understand might mean something very different to another person. Your Will also needs to be signed and witnessed to avoid problems later.

A solicitor may charge you a fee to prepare the Will. NSW Trustee & Guardian charges a set fee for preparing a Will unless you are on a full Centrelink pension and then it is free.

Some solicitors and NSW Trustee & Guardian also charge a fee to sort out (administer) the estate after you die. The fee comes out of your estate.



## **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. Its always best to get a professional Will maker to help you.

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 die. 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.



## **Ruth**

***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 died 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 die 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 Vines, P 2015, *Aboriginal wills handbook*, 2nd edn, NSW Trustee & Guardian.

## Should I have a funeral fund?

The cost of funerals is another challenge for families to deal with at sorry time. Some people decide to make payments towards the cost of their funeral by joining a funeral fund.


In a funeral fund you can either:

- make regular payments, which can be used to pay for all or part of a funeral service
- pre-pay a funeral with the funeral director you choose – then you can make decisions about what sort of funeral you like and pay for it at today's prices.

### **Tip**

**The NSW Aboriginal Land Council provides financial assistance for funerals. For more information call 1800 647 487.**

**The MoneySmart website has helpful information and a downloadable booklet called Paying for funerals. Find out more by visiting [www.moneysmart.gov.au](http://www.moneysmart.gov.au)**



It's a big decision to join a funeral fund and you should do your homework first. Think about what sort of benefits you and your family will get, and don't just settle for one because that's what everyone else uses.

Some questions you should ask:

- Can my payments go towards paying for a family member's funeral or only for my own funeral?
- What are my rights and obligations if I change my mind about the fund?
- What happens if the funeral director changes hands or goes out of business?
- What if I can't continue making payments?
- What happens if I miss a payment?
- Will the premiums rise as I get older?

NSW Fair Trading regulates these funds. You can phone them on 1800 502 042, or visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) for a list of registered funds and more information.

# Power of Attorney

## Who will look after my money 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 money (financial affairs) if you can't do it yourself. You can choose one or more friends or family, or you can choose NSW Trustee & Guardian to be your attorney.

It needs to be someone you trust.

### Tip

**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.**



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 your local solicitor. They can tell you more about how the Power of Attorney can be used.

### **Tip**

**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.**



## **John**

***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 financial 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 filled in the form appointing Jason as his enduring Power of Attorney. John is happy that his finances will be taken care of properly.***



# Enduring Guardianship

## **Who will make decisions about my health and where I live?**

Who will make decisions for you about your health care, where you live or what services you need if you can't decide for yourself?

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, which is a legal term used to describe someone's ability to make decisions for themselves.

If you or someone in your mob is starting to find it hard to make decisions about health care, services or where to live, it might be time for a legal 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 guardian by a 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.

## Who 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 lifestyle 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.



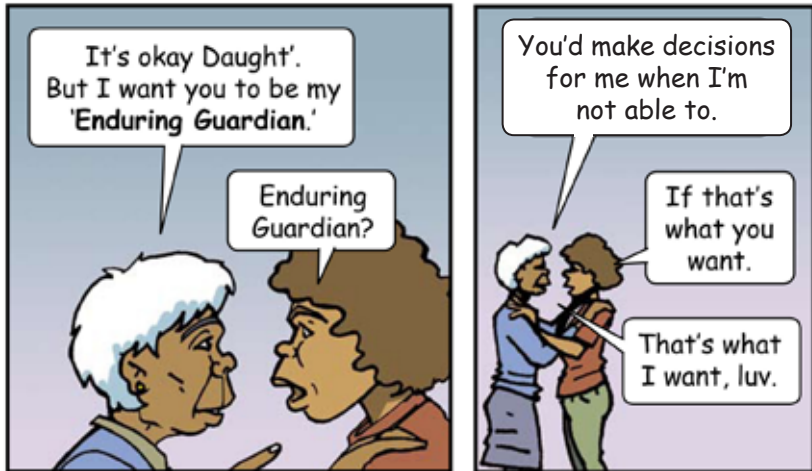



There are some decisions an Enduring Guardian can't make for you. They can't:

- make any decisions about money or property (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 you fill in a form of appointment, 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.

## **Tip**

**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 NCAT can help.**

**This means they will look at it and if they 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.**

**There is a free Enduring Guardianship booklet available from the Public Guardian that includes a form to appoint your guardian. Call 1800 451 510 to get a copy.**



## **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.



## **Advance Care Directives**

### **How can I make my end of life health and medical 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.



## **Tip**

**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. To be valid, 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.**




## **Leanne**

*Leanne is 35 years old and has uncontrolled diabetes. She is married with three children – a five year old, a two 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.***

## **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 554 791**

**[www.tag.nsw.gov.au/aboriginal-planning-ahead.html](http://www.tag.nsw.gov.au/aboriginal-planning-ahead.html)**

### **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 or (02) 8303 6600**

**[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.

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



### **LawAccess NSW and Legal Aid NSW**

LawAccess and Legal Aid give free information 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**

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

**[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 planning ahead documents, and act as your executor or attorney.

**Ph: 1300 554 791**

**Email: [tagenquiries@tag.nsw.gov.au](mailto:tagenquiries@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**

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



### **Planning Ahead Tools website**

The Planning Ahead Tools website provides simple information about making a Will, Power of Attorney and Enduring Guardianship.

**[www.planningaheadtools.com.au](http://www.planningaheadtools.com.au)**

**Ph: 1300 554 791**

### **NSW Public Guardian**

The Public Guardian's Information & Support Unit can provide information on Enduring Guardianship including a booklet and free education sessions.

**Ph: (02) 8688 6070 Toll free: 1800 451 510**

**Email: [informationssupport@opg.nsw.gov.au](mailto:informationssupport@opg.nsw.gov.au)**

**[www.publicguardian.justice.nsw.gov.au](http://www.publicguardian.justice.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**

**[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**

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



### **MoneySmart website**

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**

**[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**

### **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 (press 2)**

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



## Notes





**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 die?**

**Many people find legal documents confusing and hard to understand.**

**This booklet has been written to help you work out what you need to know, and where you can go for help.**

**To order copies of this booklet contact NSW Trustee & Guardian  
ph: 1300 554 791 or email  
[tagequiries@tag.nsw.gov.au](mailto:tagequiries@tag.nsw.gov.au)**



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