

# Planning Ahead Tools for your future legal, health and financial decisions

Get it in black & white

## Prepare a Will

### **What is a Will and who should have one?**

A Will is a legal document that clearly sets out how you want your estate (property, finances and belongings) to be distributed when you die. It is recommended that everyone 18 years and over should make a Will.

### **Can I change my Will?**

You should review and update your Will when there are major changes in your life – such as getting married or divorced, having children, buying a house or business.

### **What is an executor?**

An executor is the person who administers your estate after you die. They carry out your wishes outlined in your Will. They should be someone you consider as capable, trustworthy and reliable, as well having the ability to remain independent in the event of a dispute.

### **Can I write my own Will?**

Yes, but there are certain legal requirements to make it valid. You should seek the assistance of a professional such as your local solicitor or NSW Trustee & Guardian to help prepare your Will and make sure your intentions are clearly documented.

### **What happens to my estate if I die without a Will?**

If you die without a Will (called intestate), your assets will be divided up by a pre-determined government formula, with certain family members receiving a defined percentage of your assets. If you die intestate and have no surviving relatives, as defined by the government formula, the State government will receive your estate.

### **What happens if I don't clearly outline in my Will what my wishes are for my children?**

Not providing adequately for children could result in your Will being contested. Not nominating

guardian/s for any children aged under 18 could also mean that the Court decides their care.

### **If I have moved to NSW from overseas or interstate and made a Will where I previously lived, should I make a new Will?**

Due to differences in laws overseas and interstate, you should have a Will made in your country or state of permanent residence to include all your assets.

## Make a Power of Attorney

### **What is a Power of Attorney?**

A Power of Attorney is a legal document where you appoint an Attorney to manage your financial and certain legal affairs, such as signing legally binding documents on your behalf. An Attorney cannot make decisions about your lifestyle, medical treatment or welfare. A Power of Attorney ceases when you die.

### **What is the difference between an ordinary Power of Attorney and Enduring Power of Attorney?**

An ordinary Power of Attorney ceases to have effect if a person loses mental capacity. An Enduring Power of Attorney continues to be in force after you lose the capacity to manage your own affairs. You can make either, but you should consider an Enduring Power of Attorney in case of future incapacity or as you age. It is too late to appoint someone you choose once you lose mental capacity. If you're no longer able to manage your financial affairs and you don't have an enduring Power of Attorney then an application to the Guardianship Tribunal or the Supreme Court may be required to appoint a financial manager of your affairs.

### **When can an Attorney manage my financial affairs?**

Your Attorney can be activated either by choice (for example, if you are travelling overseas for an extended period) or if you lose the ability to make these decisions yourself due to illness.



### **Who can I appoint as my Attorney?**

It is important to choose someone you trust and who understands your wishes. An attorney should have the skills and ability to manage your finances and act in your best interests. You can appoint your solicitor, a trustee organisation or someone in your life you trust.

### **Once I have a Power of Attorney, will I lose control of my finances?**

No. The appointment of an Attorney gives formal authority for the chosen individual to manage your financial and legal affairs, according to your instructions.

### **How and when can I cancel a Power of Attorney?**

You can cancel (revoke) it at any time if you have the capacity to do so. There is no formal process, you should write a letter to your Attorney to inform them that their appointment is ending. Keep a copy of the letter yourself and notify your bank or other financial institutions of the changes. If you have registered your Power of Attorney for real estate purposes, you should also register any changes to your Power of Attorney.

## **Appoint an Enduring Guardian**

### **What is an Enduring Guardian and why should I appoint one?**

An Enduring Guardian is a person you choose to make decisions on your behalf in areas of lifestyle and health such as accommodation and services. An Enduring Guardian only comes into effect if you can no longer make decisions

for yourself due to incapacity. Appointing an Enduring Guardian can avoid conflict and distress for you and your family and ensures you are in control of who makes decisions on your behalf. An Enduring Guardian cannot make or alter a Will for you, they cannot make decisions about your money or assets, and they cannot consent to medical or dental treatment if you are refusing it.

### **How can I appoint an Enduring Guardian?**

To appoint an Enduring Guardian, you need to complete a 'Form of Appointment', which is available at [planningaheadtools.com.au](http://planningaheadtools.com.au). You and your Enduring Guardian/s have to sign the form and have your signatures certified by witnesses (as outlined on the forms). You can appoint more than one person.

### **Who can be an Enduring Guardian?**

Given the important nature of this decision making role, the person you appoint should understand their responsibilities as a substitute decision maker. Your Enduring Guardian should be someone you trust to be able to take into account your views and previous lifestyle choices and to make decisions in your best interests.

### **Can my nominated Guardian be changed or cancelled?**

You can cancel (revoke) your Enduring Guardian while you still have capacity by completing a revocation form and giving it to your guardian. If you don't have capacity, only the NSW Guardianship Tribunal or the Supreme Court can revoke the guardianship. There is an automatic revocation if you marry and you will need to complete a new form of appointment.

### **What is legal capacity?**

NSW law assumes that everyone has the mental capacity to make decisions. That is, they can understand and weigh up information presented to them, make an appropriate decision, and clearly communicate their choices. Capacity can however be affected temporarily because of illness or the effects of medication, or permanently affected due to conditions such as intellectual disability, dementia, mental illness or brain injury. It is important not to assume that just because someone has memory problems or a disability, they can't make their own decisions. If you have concerns about a person's capacity, you should request an assessment by a health professional. You should ask the person's doctor about a referral for this type of assessment. To plan ahead, you must be deemed to have capacity.