

Your Future Starts Now

A guide for the over 50s



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Disclaimer

The information, statements, advice and opinions provided in this booklet have been prepared with due care and are believed to be accurate at the time of printing. Where legal matters are concerned, the information is based on current legislation in New South Wales.

Your Future Starts Now is a guide only and you should seek professional advice concerning later life decisions.

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Your future starts now: a guide for the over 50's.

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Introduction

When you plan for your future, you take it for granted that you will be able to make your own decisions. But have you ever considered what would happen to your financial and personal affairs if you were involved in a car accident, or had a stroke, and ended up in a coma? Unforeseen circumstances could place you in a situation where you are unable to decide things for yourself.

The Benevolent Society has prepared this booklet to help you take control of later life decisions. This booklet is about taking steps to protect your interests, making sure your future is in good hands and things are done the way you want.

Your Future Starts Now contains important information about what you can do to make sure your wishes will be carried out.

It covers:

- > Wills
- > Powers of attorney
- > Enduring guardianship
- > Advance care directives

You will also find useful information about what types of things you may need to consider in planning your future and where you can go for more information and assistance. The Glossary of Terms at the end of this

booklet provides simple explanations of words and phrases used.

In compiling this booklet, The Benevolent Society has drawn information from many sources and wishes to gratefully acknowledge: the Public Trustee NSW, the NSW Ministerial Advisory Committee on Ageing, the NSW Department of Ageing, Disability and Home Care, and the Guardianship Tribunal.

Making a will

What is a will?

A will is a legal document that sets out how you want your assets to be distributed when you die. Making a will is good planning; it is not morbid or depressing. It takes away the doubts and difficulties that arise when there is no evidence of the deceased person's wishes.

Why do I need a will?

Most people would agree that making a will is good planning. If you die without having made a will, an administrator has to be appointed to distribute your assets according to a legal formula. This can cause delays, costs and difficulties. If you don't have a will, you don't have a say.

How do I make a will?

Making a will can be a simple process and need not be expensive. A solicitor or trustee company can help you avoid any misunderstandings and make sure your wishes are clearly and accurately recorded. If you would like to make a will or change your existing will, it is a good idea to consult a solicitor or a trustee company, such as the Public Trustee. There is no charge to make or update your will with the Public Trustee as your executor. Fees apply on estate administration only.

If your circumstances change

You may need to update your will if your circumstances change. For instance, if you marry, if children or grandchildren are born, or if your spouse dies. A solicitor can advise you on your options.

Appointing an executor

You will need to appoint at least one executor to carry out your wishes. Your executor will have a lot of responsibility, so you may choose to appoint a professional, such as the Public Trustee or a solicitor, in which case they will charge fees. You should make sure that your executor knows where your will is kept.

Where should I keep my will?

Most solicitors are prepared to keep the original will in safe custody for a client. Alternatively, it may be kept in a safety deposit box in a bank, or in a safe place at home. It is a good idea to keep a signed copy somewhere else, and to give one to the executor (in a sealed envelope if you prefer) so that if the original goes missing, the signed copy can be used. Tell the executor where the original is kept.

You can also record the details of where your will is stored with the Wills Register of the NSW Registry of Births, Deaths and Marriages (see page 35).

Invest in the future – leave a charitable bequest in your will

Leaving a charitable bequest, or a gift in your will, to a named charitable organisation, is a powerful way to express your support for a cause that is dear to you. It gives you an opportunity to leave a lasting legacy with a gift that may not have been possible during your lifetime.

There are several types of bequest. For example, you may choose to leave:

- > a residual bequest (whatever is left after all other gifts and costs have been deducted from your estate)
- > a percentage of your estate
- > a specific sum of money
- > a gift of property or shares.

The Public Trustee or your legal advisor will be able to advise you. It's important to get professional advice so that you are able to leave a gift to your favourite charity and still ensure that your loved ones are properly looked after.

Making a power of attorney

What is a power of attorney?

A power of attorney is a legal document which appoints a person (the attorney) to act on behalf of another (called the principal or donor) in areas of property and financial management.

An attorney in this sense does not necessarily mean a lawyer or solicitor. The attorney may be a family member, close friend or the Public Trustee.

You may want to appoint an attorney if:

- > you are going overseas or interstate
- > you are going to hospital
- > you are physically unable to look after your affairs
- > you are concerned you may lose your capacity to manage your financial affairs in the future
- > you want a particular matter to be dealt with in some other part of the country.

A power of attorney does not enable a person to make health or lifestyle decisions on behalf of someone else.

What is an enduring power of attorney?

You can make either an ordinary power of attorney or an enduring power of attorney. The difference is that an ordinary power of attorney ceases to have effect if a

person loses mental capacity but an enduring power of attorney continues in force after that time.

Who can make a power of attorney?

Any capable adult can make a power of attorney. If a person has a mild intellectual disability or is in the early stages of dementia, they may still be able to make a power of attorney. This will depend on their understanding of the nature and effect of the document. If a person has this understanding, then they have the capacity to make a power of attorney. If their capacity is in doubt, an assessment of the person's understanding needs to be made by an appropriate person, such as a medical practitioner, psychologist or psychiatrist.

If I make a power of attorney do I lose my rights?

No. As long as you retain mental capacity you still have authority to deal with your property and money just as you did beforehand. Also, you can state in the power of attorney that it is not to come into effect until and unless you become of unsound mind, or incapable of making your own decisions. You should get legal advice before doing this.

If I make a power of attorney does it affect my will?

No. A power of attorney does not affect your will as it only operates while you are alive.

What happens if I haven't made an enduring power of attorney?

If you lose your mental capacity and have not made an enduring power of attorney then there may be nobody with authority to manage your property and finances. Someone may need to apply to the Guardianship Tribunal or the Supreme Court to have a financial manager appointed for you.

You should make an enduring power of attorney while you are in good health. Make sure you do not leave it too late.

Who should I appoint as my attorney?

Your attorney will be able to do anything you could do in relation to your property and finances. You will need to choose a person who is suitable and who you trust not to take advantage of you. If you do not know a person whom you consider to be suitable then the Public Trustee can act as an attorney on your behalf. There will be a fee for this service.

Georgio

At 52, Georgio was diagnosed with a heart condition which required open heart surgery. His doctor said that he would be unable to work for six weeks and would then need to return to work on light duties. His doctor also pointed out the risks involved in surgery.

As a sub-contractor for a construction company, Georgio had some complicated financial arrangements and was worried about the possibility of not being able to attend to them himself following surgery. Georgio had already made a will but decided that he needed to plan carefully in the event he was not able to make decisions about his finances. Both Georgio and his wife Madeleine went to a solicitor, who gave them information on ordinary powers of attorney, and enduring powers of attorney. Georgio and Madeleine however felt that it was time to make some long term plans and Georgio chose to grant Madeleine an enduring power of attorney.

Fortunately, Georgio recovered full health after a few months, and the enduring power of attorney remained untouched in his solicitor's files. However, if things had not gone well and Madeleine had been faced with major business decisions, the enduring power of attorney would have enabled her to take control without needing to apply to the Guardianship Tribunal or the Supreme Court at a time when she already had many responsibilities.

Before you appoint someone you should be sure that they will do all the things that you want. Your attorney is legally bound to carry out the written instructions in the power of attorney document and any other instructions that you may give while you have mental capacity. You need to discuss the appointment with your chosen attorney and make sure that they are willing to take on this responsibility if you can no longer make decisions for yourself. The attorney has to accept their appointment in writing before they can act as attorney.

It would be wise to discuss the responsibilities of an attorney in detail, and make sure they clearly understand your wishes and any instructions you want to give. You may also wish to discuss the appointment with other significant people in your life.

Jean

Jean was in her early eighties and lived alone in her own home. She had two daughters. Carol lived in the next suburb and Sandra was interstate. Jean didn't need any help, but noticed she was becoming increasingly forgetful. When she discussed this with her doctor, he arranged for tests and confirmed that her memory was getting worse. Although she wanted to stay at home for as long as possible, Jean realised that one day she might need to move to some type of supported accommodation and so her house might need to be sold.

Jean wanted to be sure that if she ever became incapable of making her own financial arrangements, they would

be in the hands of someone she trusted and who could do the work involved. She told both her daughters of her intention to appoint Carol as her enduring power of attorney.

Sandra was upset that Carol had the power of attorney, fearing that this represented some kind of favouritism or that she might inherit less of the estate as a result. Jean was able to assure Sandra that it was more practical to appoint Carol, and Carol assured Jean that she would not seek to disadvantage Sandra in any way.

Can I appoint more than one attorney?

You can appoint more than one attorney if you want, and in some circumstances that may be a good idea. However, you should choose people who are able to work together. You will need to see a solicitor to decide whether you want your attorneys to act jointly or separately.

What powers can I give in my power of attorney?

A power of attorney can be completely general in the powers and authority that it gives. You may give the widest possible powers, or you can limit the power you give. You might want to permit the power of attorney to do something specific, such as paying certain kinds of bills or selling your house.

Or you could limit the time over which the power will operate by, say, granting it for a year only. You could say

that the power will operate only while you are absent overseas, or only after you or some other person contacts the attorney on your behalf and tells them to begin carrying out duties.

You should discuss this with a solicitor or trustee company like the Public Trustee if you want to put limits or conditions on your attorney.

What are the responsibilities of the person with your power of attorney?

The person with your power of attorney must act in your best interests. They must:

- > avoid conflicts between their interests and yours
- > maintain proper records of their dealings with your money and property
- > keep your money and property separate from theirs
- > act in your best interest at all times.

What if your attorney acts dishonestly?

If your attorney acts dishonestly or improperly, it may be possible for the Guardianship Tribunal or the Supreme Court to protect your interests. This may be hard to prove so be careful about choosing your attorney. The Public Trustee provides an independent and impartial alternative choice of attorney.

Can I change my mind?

You can easily cancel your power of attorney at any time as long as you have the mental capacity to understand what you are doing. You must make sure that your attorney knows that you are cancelling the power of attorney. You can tell your attorney in person, over the phone or in writing. It is best to do it in writing so that your intention is clear to everyone. If the attorney is not told, they can continue to act and you would be liable for any actions by the attorney.

How do I make an enduring power of attorney?

You can use a form available from legal stationers (listed in the Yellow Pages under “Legal Stationery”), many newsagents or from the Guardianship Tribunal. A solicitor, barrister or Registrar of the Local Court must explain the form to you before you sign it, and that person must sign a certificate on the form.

Does my power of attorney need to be registered?

Your power of attorney must be registered if you want your attorney to sell or, in some cases, lease your land. To register a power of attorney you should take the completed form to the Land and Property Information Division of the NSW Department of Lands (see page 32). A fee is charged for this service.

The Land and Property Information Division will keep an official copy of your power of attorney. The original will be

stamped with a registration number, and returned to you. Your attorney should use this number when signing on your behalf.

The advantages of registering your power of attorney are that it will be:

- > on record as a public document
- > safe from loss or destruction
- > more easily accepted as evidence that your attorney has authority to deal with your property and financial affairs.

Enduring guardianship

What is an enduring guardian?

An enduring guardian is someone you choose to make personal or lifestyle decisions on your behalf when you are not capable of doing this for yourself.

Why appoint an enduring guardian?

Just as you can appoint someone to look after your property and financial affairs, you can also appoint someone to make decisions about your personal affairs.

We all prefer to decide for ourselves where we live, which doctor we go to, what medical treatment we will receive and what services we will have. Unfortunately, that is not always possible. Every day, people are involved in accidents or become sick. Sometimes this can lead to them being unable to make decisions for themselves.

What sort of functions can an enduring guardian have?

You can choose what type of decisions your guardian can make for you. These are called functions.

You can give your enduring guardian as many or as few functions as you like. The form you need to use to appoint your enduring guardian includes examples of possible functions:

- > to decide where you live

- > to decide what health care you receive
- > to decide what other personal services you receive (e.g. Meals on Wheels, Home Care)
- > to consent to medical or dental treatment for you.

You can cross out the functions you do not want your guardian to have and add others if you wish.

You may give your guardian directions about how to exercise the decision-making functions that you give them. For example, you can direct your guardian to consult with a family member or close friend on each function whenever possible.

Are there any decisions an enduring guardian cannot make?

An enduring guardian cannot make a will for you, vote on your behalf, consent to you getting married or manage your finances.

An enduring guardian cannot override your objection to medical treatment. Only the Guardianship Tribunal can do this (see page 32). The Guardianship Tribunal can also review an enduring guardianship appointment if you object to your guardian's decisions.

Who can appoint an enduring guardian?

If you are over 18 years, you can appoint one or more people to be your enduring guardian. When you appoint an enduring guardian, you must have the mental capacity to understand what you are doing.

Ted

Ted was in his sixties, had never married and lived in a country town. He got on very well with his next door neighbours, Max and Ada, whom he had known for many years. Ted's only relative was his older sister, Dorothy, who lived in Sydney. On her rare visits to him, she felt it was her right to tell him what to do and how to live his life.

When Ted had a heart attack, Dorothy rang his doctor daily to say it was time Ted went to a nursing home. Fortunately, Ted made a good recovery and was able to go home. He talked to his doctor, to Max and Ada, and to a solicitor, and decided to appoint Max and Ada as his enduring guardians. He gave them the functions of deciding where he would live, what health care and other services he would receive, and to consent to medical or dental treatment for him. He appointed them jointly so they would have to agree on decisions they made for him. He gave them directions that he wanted to stay at home as long as possible. However, if the time came when he was no longer able to make his own decisions, he would agree to going to a nursing home if they and his doctor thought it was necessary. He also directed that they should talk to Dorothy before making decisions. When he told Dorothy, she was not happy, but she agreed to cooperate with Max and Ada to make sure Ted's wishes would be respected.

Who can be an enduring guardian?

The person you appoint as your enduring guardian must be at least 18 years old and be willing to accept their appointment. Your chosen guardian should be someone you trust to make decisions in your best interests, if the time comes when you are not capable of making decisions for yourself. Your guardian must act within your best interests, and within the law. You cannot give your guardian a function or a direction which would involve them in an unlawful act.

The appointed guardian cannot be a person providing treatment or care to you on a professional basis at the time of the appointment. You can appoint more than one person. If you appoint more than one enduring guardian, you can appoint them to act jointly or separately.

How do I appoint an enduring guardian?

You need to discuss the appointment with your chosen guardian and make sure that they are willing to take on this responsibility if you can no longer make decisions for yourself. It would be wise to discuss the role of a guardian in detail, and make sure that your guardian clearly understands your wishes and any conditions associated with any function.

You may also wish to discuss the appointment with other significant people in your life. You need to complete an *Appointment of Enduring Guardian* form and have a solicitor, barrister or a Registrar of the Local Court witness you and your enduring guardian signing the form. The

signatures can be witnessed by different witnesses at different times.

What should I do with the appointment form?

Tell someone else where it is. Give a copy to your enduring guardian. You may also wish to give copies to significant people in your life, such as your doctor.

When does it take effect?

The appointment of your enduring guardian takes effect only if you become unable to make your own personal or lifestyle decisions. Your guardian may wish to seek the opinion of a medical practitioner about your capacity to make decisions before acting on your behalf.

Can I change my mind?

While you are capable of making your own decisions, you can revoke the appointment of an enduring guardian. To do this you need to complete a *Revocation of Appointment of Enduring Guardian* form, available from the Guardianship Tribunal (see page 32). This form will also need to be witnessed by a lawyer or the Registrar of the Local Court. You have to advise the enduring guardian in writing that their appointment has been revoked.

You can appoint a new person as your enduring guardian. You will need to complete a new form and have it witnessed as before.

If you are still capable of making your own decisions, you can amend the appointment by completing another form. If you lose the capacity to do this for yourself, only the Guardianship Tribunal or the Supreme Court can make changes to the appointment.

What if someone else has concerns about the actions of my enduring guardian?

If you have lost the capacity to make your own decisions and others are concerned about your welfare because of your enduring guardian's actions, they can apply to the Guardianship Tribunal for a review of the appointment. The Tribunal can revoke the appointment or confirm it. It may also change the functions in the appointment or make a guardianship order.

The Tribunal does not supervise enduring guardians and will only become involved if it receives an application or receives information indicating a review of your appointment of your enduring guardian may be necessary.

When does enduring guardianship end?

Enduring guardianship ends if you revoke the appointment, if the Tribunal makes a guardianship order or suspends the appointment, or when you die.

It also ends if you later marry someone other than your enduring guardian.

Where do I get a form?

You can get more information and an *Appointment of Enduring Guardian* form from the Guardianship Tribunal or Office of the Public Guardian (see pages 32 and 34).

Decisions about my health

Who can make decisions about my health?

If you have mental capacity then only you can make decisions about your health. All doctors and health care professionals must get your consent before they treat you.

If you are not able to give consent (for example if you are unconscious, or have lost your mental capacity through Alzheimer's disease), Part 5 of the *Guardianship Act* sets out how the doctor should proceed.

In most cases the doctor must get consent from your 'person responsible'. This will usually be your enduring guardian (if you have appointed one) or someone close to you, such as a partner, family member or friend.

If you haven't written down your wishes and discussed them with your family and friends, it is going to be harder for your family and doctor to do what you would have wanted.

What is an advance care directive?

An advance care directive (sometimes called a 'living will') is a way of recording your wishes or instructions for the future for doctors and health care workers. It is only used in situations when you are unable to communicate or have lost the ability to make decisions for yourself.

It can provide a way of setting out exactly what you want done in particular circumstances or it could be used to provide a general description of how you would like to be treated.

How should I record or communicate my wishes?

Unlike enduring powers of attorney and enduring guardianship, there is no special form that you must use. However, the NSW Department of Health has published guidelines on the best way to document an advance care directive (see page 34).

These guidelines recommend that an advance care directive should follow these four principles:

1. It needs to be **specific** – it can include your preferences for treatment for a health condition you have now or one you may develop in the future. It is a good idea to talk to your doctor about your wishes.
2. It needs to be kept **current** – your wishes may change in the future, so it is important to review your advance care directive regularly or if there is a big change in your health. It is a good idea to note on it when you last reviewed it and whether or not you made any changes.
3. You must be mentally **competent** – you can only make an advance care directive while you still have the mental ability to understand the choices you are making.
4. It is good idea to have it **witnessed**. If you choose to make an advance care directive as part of appointing an enduring guardian, it will need to be witnessed by a solicitor, barrister or Registrar of the Local Court. If you choose to make a “stand alone” advance care directive, you can choose who you ask to witness it.

Does the doctor have to follow my wishes?

Yes. Although there is no special legislation in NSW which deals with advance care directives, the NSW Health Department's guidelines to doctors make it clear that if an advance care directive meets the four principles set out above, doctors are legally bound to follow it.

For example, you may say in your advance care directive that if you are unable to communicate with or recognise your family, and there is no possibility that you will ever improve or recover, you do not want CPR (Cardio Pulmonary Resuscitation) if your heart stops, but you only want to be kept comfortable and free from pain.

However, you cannot use your advance care directive to demand treatment that your doctors think would be futile (e.g. a heart transplant). Nor can you ask someone to actively and deliberately end your life. That would be euthanasia, which is illegal in all Australian states and territories, and has nothing to do with advance care directives.

Does everyone need an advance care directive?

No. It is up to you. Everyone is different, and you may not want to think about what may happen to your health in the future. You may prefer to leave such decisions to your partner, a person caring for you, or a relative or close friend who knows you well and you trust to make decisions for you. Talking over what you want will at least help them to know what you would have wanted if they ever have to make such decisions for you.

Where can I get a form?

There is no special form that you must use. You could write your advance care directive as an open letter, or use a form produced by one of a number of organisations (see page 31). What is important is that however you write it, your advance care directive should meet the NSW Health Department's four principles set out on previous page.

Elsie

American born Elsie had been living in Sydney for over 30 years. She had never married or had children. She had no family in Australia although she had some special friends. She had been a music teacher all her life, and soon after she retired she found out she had terminal cancer.

Elsie talked to her doctor and her friends and told them that she wanted to enjoy her music and time with her friends as long as possible. However, if the time came that she couldn't communicate with her friends, and showed no pleasure in listening to music, she did not want her life prolonged in any way. She wrote in her advance care directive that if that time came, she only wanted to be kept as comfortable and free from pain as possible.

Where can I get legal assistance?

Community Legal Centres

Community Legal Centres are independent non-profit organisations that provide free legal advice and information. Anyone needing advice or assistance who cannot afford a private solicitor can contact a Community Legal Centre (see page 33)

Private Solicitors

Many private solicitors will prepare a will, power of attorney and enduring guardianship appointment for a fee. You should ask the solicitor what the cost will be. The Law Society can give you a list of lawyers and legal centres in your area (see page 33).

Public Trustee NSW

The Public Trustee prepares wills at no cost when they are appointed executor. Fees apply on estate administration only.

The Public Trustee also prepares powers of attorney at no cost when they are appointed attorney. Fees apply only if they are required to act as your attorney.

Registrar of the Local Court (formerly Chamber Magistrates)

The Registrar of the Local Court can witness the appointment of an attorney under an enduring power of attorney, and of an enduring guardian. This service is free. Ring the court office in your area first to check available times. Local Courts can be found in the 'White Pages Business & Government' under "L" for Local Courts.

Getting information

a resource and contact list

Advance Care Directive Association Inc.

18/113 Johnston Street, Annandale NSW 2038

The Advance Care Directive Association Inc. has a book called *My Health, My Future, My Choice* for sale. It includes an advance care directive form. You can write to this address, or leave a message on **0423 157 003**, to get an order form. If you have access to the internet, you can print an order form from the website.

Website: **www.advancedirectives.org.au**

Aged Care Page (Telstra White Pages)

In the Government Section of the White Pages Business & Government.

Alzheimer's Australia NSW

PO Box 6042, North Ryde NSW 1670

Tel: **(02) 9805 0100**

Fax: **(02) 9805 1665**

National 24-hour Dementia Helpline: Freecall **1800 100 500**

Alzheimer's Australia NSW provides information about legal planning and legal issues related to dementia.

Website: **www.alzheimers.org.au**

Department of Ageing, Disability and Home Care (DADHC)

Level 5, 83 Clarence Street, Sydney NSW 2000

Tel: (02) 8270 2000

TTY: (02) 8270 2167

The *Planning Ahead Kit* gives more detailed information about enduring powers of attorney and enduring guardianship. It is only available on DADHC's website. Go to Publications and Policies – Ageing.

Website: www.dadhc.nsw.gov.au

Guardianship Tribunal

Level 3, 2A Rowntree Street, Balmain NSW 2041

Tel: (02) 9555 8500 (metropolitan area)

Freecall: 1800 463 928 (outside metropolitan area)

Fax: (02) 9555 9049

Information and various forms are available from the Guardianship Tribunal.

Website: www.gt.nsw.gov.au

Land and Property Information Division (NSW Department of Lands)

1 Prince Albert Road, Queens Square, Sydney NSW 2000

Tel: 1300 052 637

Fax: (02) 9233 4357

Provides information about registering a power of attorney and the fees involved. If you have access to the internet, you can get a copy of the power of attorney form from their website.

Website: **www.lands.nsw.gov.au**

LawAccess

Tel: **1300 888 529**

Website: **www.lawaccess.nsw.gov.au**

Information about legal services in NSW. Contact LawAccess for information, assistance, referrals and contact details of your nearest Community Legal Centre.

Law Society of NSW

170 Phillip Street, Sydney NSW 2000

Tel: **(02) 9926 0333** (main switchboard)

Fax: **(02) 9231 5809**

The Solicitor Referral Service of the Law Society of NSW can provide the names of private solicitors and legal services in your area.

Tel: **(02) 9926 0300** (metropolitan area)

Freecall: **1800 422 713** (outside the metropolitan area)

Office hours: 9.00am to 12.00pm and 1.00pm to 4.00pm
Monday - Friday.

The Solicitor Referral Service also operates a recorded information line, offering legal information, including

powers of attorney and making a will.

Tel: **1300 888 529**

Website: **www.lawsociety.com.au**

NSW Department of Health

To get a free copy of *Using Advance Care Directives: New South Wales*, contact:

Better Health Centre – Publications Warehouse
Locked Mail Bag 5003, Gladesville NSW 2111

Tel: **(02) 9816 0452**

Fax: **(02) 9816 0492**

If you have access to the internet, you can print a copy of the booklet by going to

http://www.health.nsw.gov.au/pubs/2004/adcare_directives.html

Office of the Public Guardian

160 Marsden Street, Parramatta NSW 2124

Tel: **(02) 8688 2650** (within metropolitan area)

Freecall **1800 451 510** (outside metropolitan area)

Fax: **(02) 8688 9797**

The Office of the Public Guardian can provide information, including a booklet and form, on enduring guardianship.

Website: **www.lawlink.nsw.gov.au/opg**

Public Trustee NSW

19 O’Connell Street, Sydney NSW 2000

Tel: **1300 364 103** (Tollfree)

Fax: **(02) 9231 4296**

There are offices at Bankstown, Blacktown, Burwood, Chatswood, Dee Why, Hurstville, Liverpool, Miranda, Parramatta, Sydney and in major regional centres. Where there is no Public Trustee office, there is an agent of the Public Trustee at the Local Court.

Public Trustee NSW can provide information including *A Guide for Wills* and *A Guide for Attorney Services*.

Website: **www.pt.nsw.gov.au**

Registry of Births, Deaths and Marriages – NSW Wills Register

35 Regent Street, Chippendale NSW 2001

Tel: **1300 655 236**

Fax: **(02) 9699 5120**

The Registry does not store your will, but you can record the location of your will so that it can be found when required. Registration is free.

Website: **www.bdm.nsw.gov.au**

Seniors Information Service

Tel: **13 12 44**

This service is an excellent starting point for anyone with enquiries about information for older people. The service provides confidential information about pensions, care services, housing options, health services and many other topics. Callers are referred to the appropriate service when more detail is needed.

Website: **www.seniorsinfo.nsw.gov.au**

Glossary of terms

Advance care directive is a means for recording your future wishes or instructions to doctors and health care workers, for situations where you are unable to communicate with them or have lost the ability to make decisions for yourself.

Capacity (competence) is determined by whether an individual can understand the nature and effect of the decision they are making. It is not determined by whether an individual can perform a certain task or the wisdom of the decisions they make. Capacity and incapacity (incompetence) are not absolute concepts. A capable adult can include someone with a mild intellectual disability or in the early stages of dementia. In general, the more complex the legal document or decision, the greater the capacity to reason would need to be.

Enduring guardian is someone that a person appoints to make personal or lifestyle decisions and/or decisions about medical treatment on their behalf, when they are not capable of making those decisions themselves.

Enduring power of attorney is a legal document signed by a person appointing someone else as their agent with authority to conduct their business, property or financial affairs. Unlike an ordinary power of attorney, it remains in force even if the person becomes unable to make their own decisions.

Estate refers to the entire property, in land and other things, owned by a person.

Executor is the person appointed to carry out the wishes in your will.

Guardian is a person appointed to make certain lifestyle decisions for an adult with decision making disabilities.

Guardianship Tribunal is a legal tribunal. It appoints guardians and financial managers for people aged 16 years and over who are incapable of managing their persons or affairs and who have no appropriate or safe informal mechanisms in place for this purpose. The Tribunal may also act as a substitute decision-maker in relation to medical and dental treatment for adults who cannot give a valid consent to their own treatment.

Intestate is the term that is used when a person dies without a will. Their estate is divided up according to government legislation.

NSW Guardianship Act (1987) is the legislation that deals with all matters relating to guardianship, enduring guardianship and financial management.

Person responsible is a substitute consent provider for medical and dental treatment for a person aged 16 years old, or over, who is unable to give valid consent for their own medical or dental treatment.

Power of attorney is a legal document signed by a person appointing someone else as their agent with authority to

carry out those transactions to do with their business, property and financial affairs that the person has asked them to carry out. It ceases to have effect when the person loses the capacity to make decisions for themselves, unless it is an enduring power of attorney.

The Public Guardian is an independent statutory official, separate from the Guardianship Tribunal, who can be appointed as a guardian for a person with a disability in circumstances where it is not appropriate to appoint some other person as guardian.

The Protective Commissioner can be appointed as the financial manager for a person with a disability in appropriate circumstances.

The Public Trustee was established by the NSW government and is responsible for the making of wills, the management of trust funds, administration of deceased estates, acting under powers of attorney and other related products and services.

Will is a legal document that a person capable of making such decisions signs to direct how their property and other assets are to be disposed of after they die.



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The Benevolent Society

The Benevolent Society is Australia's oldest charity, established in 1813. For almost 200 years we have been leaders in pioneering vital social reforms and services. We are a non-profit, non-religious, independent organisation working to bring about positive social change in response to community needs. We help the most vulnerable people in society: children, women, older people, carers and disadvantaged communities. Our purpose is to create caring and inclusive communities and a just society. We work in metropolitan, regional and rural New South Wales and in Queensland, supporting people across the lifespan to build on their strengths and lead happy and fulfilling lives. We connect communities through support groups, volunteer visiting programs and community projects. Our vision is that every person is healthy, safe, connected and has a meaningful and productive role in their community.

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The Public Trustee has operated under an Act of Parliament since 1913, acting as an independent and impartial Executor, Administrator, Attorney and Trustee for the people of NSW, specialising in Will making, Estate Administration, Trusts and Attorney Services. As the leading Will-maker in NSW, we have made 900,000 Wills and been the executor of over 220,000 estates. We are experts in Powers of Attorney, estate planning and management. Our in-house solicitors, accountants, Trust officers, tax and investment specialists are well-versed in the many complexities of asset management and estate administration.

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