Taking Care of Business
Planning Ahead in Aboriginal & Torres Strait Islander Communities
Taking Care of Business

Planning Ahead in Aboriginal and Torres Strait Islander Communities
• Have you been thinking about planning ahead?
• Does someone in your family need some help?
• Do you want to organise yourself but you don’t know where to start?

This booklet has been written to help you work out what you need to know, and who can help you. The booklet and the resources are designed to get people to start talking about planning ahead but if you have questions about your personal situation please contact the organisations listed in the back of this booklet.

This booklet should not be used as the only source of advice when making decisions that could affect a person’s rights and responsibilities.
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What is planning ahead?

“Planning Ahead” means planning for the future, in case you (or someone in your family) loses the ability to make decisions about:

- Money
- Health care
- Lifestyle

It’s not just about old age! Dementia is one reason people can’t make these decisions for themselves, but it could also happen because of an accident, sickness or disability, even when you’re still young.

There are lots of things you can put in place now to make sure that if something happens to you, your family will know exactly what you want them to do.

This booklet will talk about some of them, including:

- Wills
- Funeral funds
- Enduring guardianship
- Advance care directives
- Power of attorney
Why should we plan ahead?

Imagine you are looking after someone who’s just gotten sicker and can’t communicate anymore. What sort of medical treatment did they want? Where did they want to live? Who did they want to handle their money?

Now imagine what will happen when they pass away. Did they want to die at home, or in a hospice? What songs did they want at their funeral? Now, what’s going to happen with their house? Their belongings?

Maybe you know what that person wanted, but no one else knows. Now, while everyone’s grieving for that person, someone has to make all these choices. 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.

Not many Kooris, Murris or Islanders 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”

This booklet will help you find out about the things you can do now to make your wishes known, and how you can arrange for a person you trust to carry out your decisions.
Making a will

Everyone should have a will. It is important to update your will when things in your life change – like when you get married or split up with your partner.

A will is a legal document that says who you wish to leave your money and belongings to, after you die. It also helps your friends and family know of any special funeral arrangements you may want.

If you pass away without having made a will, an administrator will be appointed to decide how your money and belongings will be divided among your family and the government. This means your wishes might not be carried out.

Making a will can be easy and it doesn’t have to be expensive. Some of the things you need to think about when you are making a will are:

• Who do you want to leave something to in your will? This is your beneficiary. If there is more than one, you need to think about which assets each person should receive.

• If any of your beneficiaries are minors, they can’t inherit until they turn 18. Your will can make special arrangements for them.
Who do you want as your executor? This is the person who administers your estate until your assets are distributed to the beneficiaries. (Estate refers to the entire property, in land and other things, that you own).

The Executor will have a lot of responsibility, so make sure when you choose one they understand what they will have to do.

You should keep your will in a safe place, but someone needs to know where it is! There are many examples where family and friends know that the person made a will but they can’t find it.

**TIP:** If you name the Public Trustee as executor, or co-executor (with a family member) they will prepare and update your will for free. But you will be charged when the estate is administered. They will keep the original in their safe and you get a copy.
Grace

Grace is 70. Two years ago she suffered a stroke. Her 51 year old daughter Lyn now lives with her and cares for her full time.

Grace owns her own home in a small country town. She and her husband bought it years ago when their children were small. Grace also has a few odds and ends that are of value to her that she would like to leave to specific family members.

While still very alert Grace has noticed she is getting a little forgetful and she has also noticed that the effects of the stroke are taking their toll on her body.

While she is still alert and of sound mind Grace decides to put her will together so that her children and grandchildren are clear about who gets the house and other important items. Last time she saw her doctor she asked him if he could give her some information about how to make a will. He told her to talk to the local Community Legal Centre who could help her.

Grace has now made a will and had it signed by an appropriate witness. She asked her eldest son to be the executor of her will and he agreed.

Grace feels at peace. If anything happens to her, her affairs are in order and someone she trusts will take care of everything.
Funeral funds

The cost of funerals is another crisis for families to deal with at a 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:

- Contribute small regular payments which can be used to pay for all or part of a funeral service OR provide a cash benefit to pay for the 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.

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 might have are:

- Can my contributions 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 business changes hands or goes out of business?
The Office of Fair Trading regulates these funds and you can phone them on 1800 502 042 for a list of registered funds and for more information.

**TIP:** If you are receiving a pension or carer’s payment from Centrelink, your estate may be eligible for a lump sum payment that may be enough to cover some funeral expenses.

**TIP:** Some airlines may provide a compassionate airfare to attend funerals but they have special conditions such as needing to see a letter from a funeral director or doctor.
Simon and his family

Simon is 32 and recently married. He recently lost his mother to cancer. When his mother passed away it was a huge financial strain on the family. None of his brothers or sisters had much money to put towards the funeral and his dad and mum had used up most of their savings when they had to travel to the city for his mother’s treatments. Simon and his wife Laura had a little bit of money saved but not enough to cover the whole funeral. So Simon’s dad ended up having to take out a small loan to cover the rest of the funeral expenses which the whole family are helping to pay off.

A few weeks after the funeral a close friend of Simon’s, who knew how expensive the funeral had been and the strain it had put on the entire family, suggested that they look into a funeral fund for themselves and other members of the family.

Simon and Laura thought it was a fantastic idea. They had seen an ad on TV and they had heard that a local Aboriginal organisation offered a fund. They looked into both and chose the one that suited them. They also encouraged other family members to join. Simon’s dad was one of the first to sign up.

Simon and Laura now have peace of mind. If anything were to happen to them they will not put a financial strain on the rest of the family. Their funerals will be taken care of and people can grieve instead of having to worry about money.
Enduring guardian

For some of us, the time might come when we start to lose our memory or have a bad accident or illness. We might not be able to make decisions anymore for ourselves.

An **enduring guardian** is someone you choose to make **personal and health decisions** on your behalf when you are not capable of doing this for yourself. You can choose what “functions” you want your enduring guardian to have, and these can include:

- Deciding where you live
- To consent to treatment prescribed by your doctor
- What personal services (such as Meals on Wheels Home Care) you receive.

There are some decisions that enduring guardians can’t make for you. They **can’t**:

- Manage your finances
- Make a will for you
- Vote on your behalf, or
- Consent to you getting married.
Appointing an enduring guardian is a legal process. You need to make sure the person you choose is willing to take it on, and understands what you want. It is a good idea to talk it over with the rest of your mob too, so everyone knows.

You, and the person you choose, need to fill in an “Appointment of Enduring Guardian” form. You can get more information and forms from the Office of the Public Guardian or the Guardianship Tribunal. Their contact details are in the back of this booklet.

**TIP:** The appointment of your enduring guardian will only take effect if you are no longer able to make your own personal or lifestyle decisions. Your guardian should talk to your doctor about your capacity to make decisions before acting on your behalf.

**TIP:** If something goes wrong with the appointment of the enduring guardian (eg. if they get sick) the Guardianship Tribunal can review the appointment and change it to protect the person with the disability.
Ellen

Ellen has recently been diagnosed with the early signs of dementia, which has made her have a good think about her future.

Ellen always knew her eldest daughter would take care of everything if she could no longer make decisions for herself or care for herself. She had talked to her daughter about what she wants on many occasions.

Ellen has a close friend Lois who also suffers from dementia and is at the point where she can no longer care for herself. Lois thought her daughter would take care of everything but when her memory got so bad she couldn’t do anything for herself anymore the family started arguing and challenged the daughter and her decisions. It caused all sorts of mess and now Ellen doesn’t want the same thing to happen to her when she can no longer function properly. She asked around about how she can prevent an uncomfortable situation and make sure her daughter is the only one who can make decisions for her.

Ellen made her daughter her enduring guardian. She talked it all through with her daughter and made sure her daughter is clear on her wishes. She then had the Appointment of Enduring Guardian formed signed by an appropriate witness.
Advance care directive

Some people have got strong ideas about what sort of medical treatment they want when something happens to them down the track. Other people don’t want to think about these things and would rather leave the decisions up to their family or carer at the time. The important thing is to talk with your family or doctor about what you want to happen.

If it is important to you, you can write down your wishes in an “advance care directive” (Some people call this a “living will”).

It’s a way of deciding now, what you want doctors and health care workers to do if the time comes that you can’t communicate or have lost the ability to make decisions for yourself.

TIP: There is no special form for that you have to use. You can write down your wishes in a letter. It’s a good idea to talk to your doctor about what you would like to put in it first.
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 how Leanne’s health could affect them.

When they told their doctor of their concerns he talked to them about an advance care directive (sometimes called a living will). He told them that Leanne could say how she would like to be treated if a time came when she couldn’t make those decisions herself.

Once Leanne and her husband put the advance care directive together they had it signed by an appropriate witness.

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 makes Leanne feel at ease.
Power of attorney

Sometimes we need other people to look after our money for us. This could be because we can’t make those decisions for ourselves, or it could be that we’re bedridden and physically can’t do it. It can even be because we’re going overseas or away for a long time.

A power of attorney is a document you can sign to appoint someone (called your attorney) to look after your financial affairs if you can’t do it yourself. You can choose one or more friends or family, or you can choose the Public Trustee NSW to be your attorney. It needs to be someone you trust.

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

There are two types of power of attorney, ordinary and enduring.

• An ordinary power of attorney stops being effective if you lose mental capacity.
• An enduring power of attorney means that person can continue to manage your financial affairs even if you later lose the capacity to make these decisions for yourself.
To make an enduring power of attorney, you should contact the local community legal centre, the Public Trustee NSW, or a solicitor and complete the form. 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 mental capacity to understand what you are doing. You need to tell your attorney in person, over the phone or in writing.
Peter

Fifteen years ago Peter was injured in a cotton chipping accident, which left him in a wheelchair. As a result of the accident Peter received a large compensation payout. He bought a house and was advised to invest some of the money so that he was financially secure, especially now he could no longer work.

Peter has two sons, Jason who lives only a few streets away and Adam who lives interstate.

Recently at the age of 60 Peter was diagnosed with cancer. Although he wanted to stay at his home for as long as possible, he realised that one day he might need to move to some type of supported accommodation and his house and investments might need to be sold.

Peter wanted to make sure that if he ever became incapable of making his own financial decisions, they would be in the hands of someone he trusted who could do the work. He told both of his sons that he was going to make Jason his enduring power of attorney.

Adam was upset at first because he thought his father was favouring Jason, but Peter explained that it was easier to give Jason enduring power of attorney as he lives in the same town. Adam then understood the reasoning behind his father’s decision. Peter is now satisfied that he and his finances will be taken care of properly.
Where can I get legal help?

Chamber Registrar
The chamber registrar provides information about legal options and court proceedings, but cannot represent people appearing before the court. In smaller courts, the chamber registrar service is often provided by the registrar of the court. Local court registrars can witness enduring guardianships and powers of attorney documents. The service is free. Local Courts can be found in the White Pages Business and Government under L. You’ll need to phone your local court to check available times.

Community Legal Centres
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 general information on planning ahead tools. Anyone needing legal advice or assistance that can’t afford the services of a private solicitor can contact a Community Legal Centre. (See below for the CLC nearest to you).

Legal Aid NSW
LawAccess NSW is a free government service that provides legal information, advice and referrals for people who have a legal problem in NSW.
They have Indigenous Customer Service Officers who can speak to you about your legal problem and refer you to the most appropriate service. They are aware of the range of Aboriginal Legal Services available in NSW and can help you to get in touch with these services.

If you are going to court, have a legal problem or have a question about the law, LawAccess NSW can help you to get the assistance you need. They have Customer Service Officers who can:

- Give you legal information to assist you with your legal problem.
- Arrange for one of their Legal Officers to provide you with legal advice over the telephone if you meet their guidelines for getting legal advice.
- Refer you to another legal or related service that will be best able to help you.
- Refer you to your nearest Aboriginal Legal Service or Legal Aid office.
- Send you out information that can help you with your legal problem.

You can call LawAccess NSW on 1300 888 529 for the cost of a local call between 9am and 5pm, Monday to Friday (excluding public holidays). They also have a website at www.lawaccess.nsw.gov.au that contains plain language factsheets about the law.
Legal Aid NSW

Legal Aid NSW provides a range of services to people in NSW. It’s head office is in Haymarket and there are 21 regional offices.

Legal advice is free and available to everybody in family, civil and criminal law. Grants of legal aid are available in accordance with Legal Aid NSW’s policies and guidelines. Legal Aid NSW also provides community legal education and publishes pamphlets and tool kits to assist people deal with various legal problems.

Legal Aid NSW also works closely with the Aboriginal Legal Service (ALS). For example, legal aid lawyers visit some ALS offices to provide advice in civil law (such as problems with credit and debt, social security, discrimination, mental health and guardianship, and housing law). You can call LawAccess NSW on 1300 888 529 for a referral to your nearest Legal Aid office. You can also find the contact details for the Legal Aid regional offices on the Legal Aid NSW website at www.legalaid.nsw.gov.au.

We have Indigenous Customer Service Officers who can speak to you about your legal problem and refer you to the most appropriate service. We are aware of the range of Aboriginal Legal Services available in NSW and can help you to get in touch with these services.
PIAC Talkin’ Justice

The Public Interest Advocacy Centre is a legal and policy centre. PIAC works to protect and promote the rights of Aboriginal and Torres Strait Islander people through its Indigenous Justice Program: Talkin’ Justice, particularly in the following areas: Stolen Wages and Stolen Generations, Discrimination, Policing and Consumer issues. PIAC has Indigenous Justice Program Lawyers who can provide legal advice, explain options and how legal and complaint systems work, and represent people in these areas. PIAC works across NSW and is involved in national campaigns for Stolen Wages repayment and Stolen Generations reparations. The contact number for this program is (02) 8898 6527.

Public Interest Law Clearing House (PILCH)

PILCH can help by finding free legal assistance from its members (mainly private law firms and barristers) for individuals and community organisations. In particular, PILCH is working with PIAC to assist Aboriginal people in NSW make claims for the repayment of withheld wages under the Aboriginal Trust Fund Repayment Scheme. The contact number for PILCH is (02) 8898 6505.
**Private solicitors**

Many private solicitors will prepare a Will, power of attorney and enduring guardianship appointment for a fee. The Law Society can give you a list of lawyers in your area (see page 26).

**The Public Trustee NSW**

The Public Trustee will prepare a will or power of attorney at no cost on the condition that they are appointed as the executor or attorney. The Public Trustee will charge a fee for acting as your executor or attorney, but not for arranging to have the document signed.
# Community Legal Centres

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<thead>
<tr>
<th>Centre Name</th>
<th>Phone/TTY</th>
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<tbody>
<tr>
<td>Albury Wodonga Community Legal Service</td>
<td>Phone: (02) 6056 8210</td>
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<tr>
<td>Elizabeth Evatt Community Legal Centre (Blue Mountains)</td>
<td>Phone: (02) 4782 4155</td>
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<tr>
<td>Central Coast Community Legal Service</td>
<td>Phone: (02) 4353 4988</td>
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<tr>
<td>Far West Community Legal Centre</td>
<td>Phone: (08) 8088 2020</td>
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<tr>
<td>Hawkesbury/Nepean Community Legal Centre</td>
<td>Phone: (02) 4588 5618</td>
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<tr>
<td>Hunter Community Legal Centre</td>
<td>Phone: (02) 4926 3220</td>
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<tr>
<td>Illawarra Legal Centre</td>
<td>Phone: (02) 4276 1939</td>
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<tr>
<td>Inner City Legal Centre</td>
<td>Phone: (02) 9332 1966</td>
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<tr>
<td>Kingsford Legal Centre</td>
<td>Phone: (02) 9385 9566</td>
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<tr>
<td>Macarthur Legal Centre</td>
<td>Phone: (02) 4628 2042</td>
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<tr>
<td>Macquarie Legal Centre</td>
<td>Phone: (02) 9760 2211</td>
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<tr>
<td>Marrickville Legal Centre</td>
<td>Phone: (02) 9559 2899</td>
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</tbody>
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Mt Druitt and Area
Community Legal Centre
Phone: (02) 9675 2009

North and North West
Community Legal Service
Phone: (02) 6772 8100
Toll free: 1800 687 687

Northern Rivers
Community Legal Centre
Phone: (02) 6621 1000
Toll free: 1800 689 889

Redfern Legal Centre
Phone: (02) 9698 7277
TTY: 02 9699 8037

Shoalcoast Community
Legal Centre
Phone: (02) 4422 9529
Toll free: 1800 229 529
(Ulladulla to Bega)

South West Sydney
Legal Centre
Phone: (02) 9601 7777

Western NSW Community
Legal Centre
Phone: (02) 6884 9422
Toll free: 1800 655 927

The Aged-Care
Rights Service
Phone: (02) 9281 3600
Toll free: 1800 424 079
(country callers)

Public Interest
Advocacy Centre
Phone: (02) 8898 6500

Welfare Rights Centre
Phone: (02) 9211 5300
Hotline: 1800 226 028

Wirringa Baiya Aboriginal
Woman’s Legal Centre
Phone: (02) 9569 3847
Toll free: 1800 686 587
(NSW only)

Indigenous Women’s
Legal Contact Line
Toll free: 1800 639 784
Getting more information

Alzheimer’s Australia NSW
Dementia Helpline: 1800 100 500
Website: www.alzheimers.org.au

Carers NSW
An association for relatives and friends who are caring for people with a disability, mental illness, chronic condition or who are frail aged.
Phone: (02) 9280 4744
Fax: (02) 9280 4755

Department of Ageing, Disability and Home Care (DADHC)
Phone: (02) 8270 2000
TTY: (02) 8270 2167
Email: info@dadhc.nsw.gov.au
Website: www.dadhc.nsw.gov.au

Guardianship Tribunal
Information and various forms are available from the Guardianship Tribunal.
Phone: (02) 9555 8500 (metropolitan area)
Toll free: 1800 463 928 (outside metropolitan area)
Fax: (02) 9555 9049
Email: gt@gt.nsw.gov.au
Website: www.gt.nsw.gov.au
Law Society of NSW

The Solicitor Referral Service of the Law Society of NSW can provide the names of private solicitors and legal services in your area.
Phone: (02) 9926 0300 (metropolitan area)
Freecall: 1800 422 713 (outside metropolitan area)
Website: www.lawsociety.com.au

The Solicitor Referral Service also operates a recorded information line offering legal information, including *Powers of Attorney and Making a Will.*
Phone: 1300 888 529

NSW Department of Health

Phone: (02) 9391 9000
Fax: (02) 9391 9101
Email: nswhealth@doh.health.nsw.gov.au
Website: www.health.nsw.gov.au

Office of Fair Trading

Phone: (02) 9895 0111
Fax: (02) 9895 0222
Website: www.fairtrading.nsw.gov.au
Phone the Office of Fair Trading on 1800 502 042 for a list of registered funeral funds.
Office of the Public Guardian

The Office of the Public Guardian can provide information, including a booklet and form, on enduring guardianship.
Phone: (02) 9265 3184 (metropolitan area)
Freecall: 1800 451 510 (outside metropolitan area)
Website: www.lawlink.nsw.gov.au
(Numbers for Blacktown and Gosford offices available on website)

Public Trustee NSW (Head Office)

There are offices at Bankstown, Blacktown, Bondi Junction, 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.
Phone: (02) 9252 0523
Fax: (02) 9231 4527
Website: www.pt.nsw.gov.au

Seniors Information Service

Phone: 13 12 44
Website: www.seniorsinfo.nsw.gov.au
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