

# Making plans for your family and mob

When you have cancer, making plans in case you get very sick or pass away can make it easier for your family and mob.

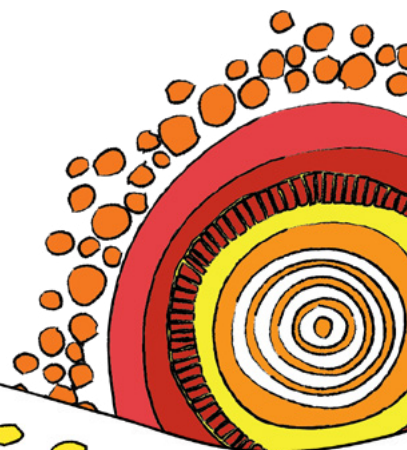
Planning ahead can mean getting paperwork that says:

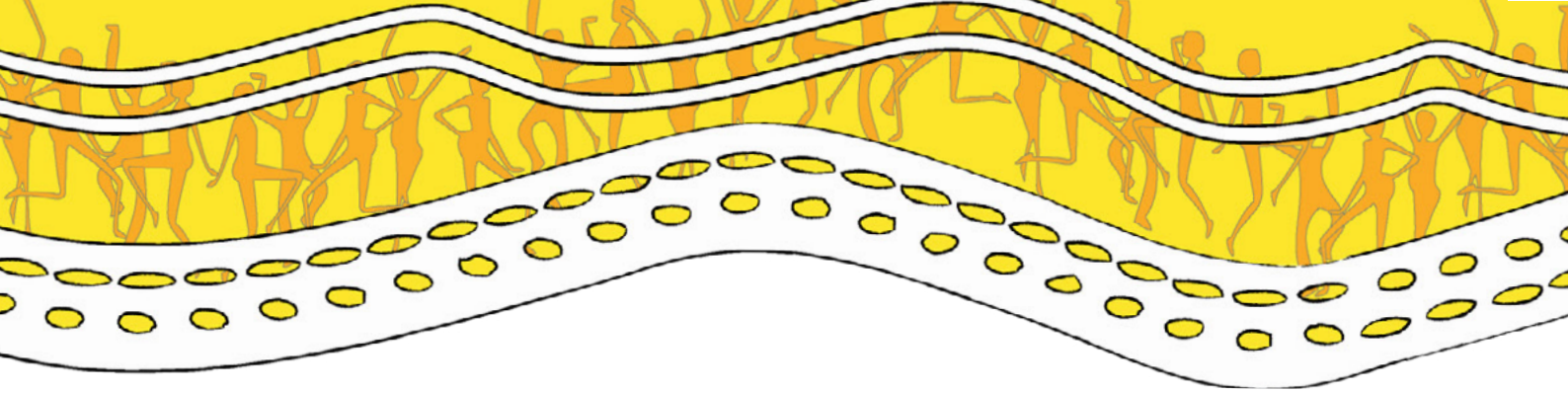
- who you want to leave your things to – like money or your house
- who you want to make medical and lifestyle decisions for you, if you can't do it yourself
- how you want your funeral to be and if you want to be buried or cremated.

You may choose to make some plans for the future including the following:

- a Will
- an Enduring Power of Attorney
- appointing an Enduring Guardian
- an Advance Care Directive.

Anyone can make a Will. You don't need to have lots of money or a house to leave to someone after you pass away.





# Making a Will

## What is a Will?

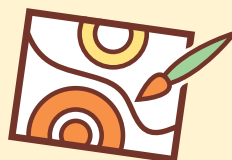
A Will is a legal document that says who you want to leave your money and anything else you own to after you pass away. It can also include how you want your funeral to be and if you want to be buried or cremated.

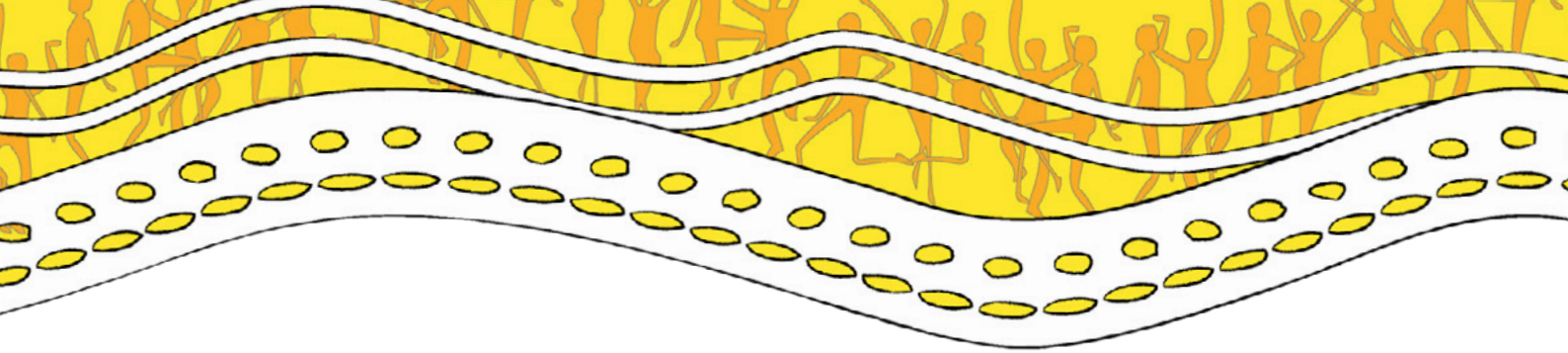
Making a Will isn't just for people who have lots of money or own a house. To make a Will, you do need to understand what a Will is, what you own, and how much your stuff is worth. This is called having "capacity".

A Will can also say who you want to take care of your kids if they're under 18. This helps the Court understand your wishes. It only matters if the other parent has also passed away, or if you want someone else to look after your kids instead of the other parent.

## Why do I need a Will?

- To make sure your money and things go to the people you want – your "beneficiaries". This includes big things like your house and small things like a special vase or royalties from artworks you have created (or under Indigenous Land Use Agreements).
- To choose someone you trust to be your Executor (see next page).
- To help stop arguments between your family and mob after you pass away. This may be about what happens to your things and where you'll be buried or your ashes placed.
- To set up a trust for someone who can't take care of money because they're under 18 or have a disability.
- To say who'll look after your kids if they're under 18. This person is called a "testamentary guardian".





## Who makes sure my Will is followed?

You can choose someone to make sure your Will is followed. This person is called your “Executor”. Pick someone you trust and who is 18 or over. It’s a good idea to choose more than one Executor. That way, if one Executor can’t do it when the time comes, there’s another person who can make decisions. Your Executor will follow your wishes about what you want done with your body after you pass away.



Planning ahead is a way to look after your family and mob. By preparing a few things now, you can help make sure your wishes are followed.

## When does my Will come into effect?

Your Will only comes into effect after you pass away. While you’re still alive, your Will has no power – that means you can still do what you like with your money and things. For example, you can sell property even if you have left it to someone in your Will. Your family and friends can’t take or claim your property before you pass away.

## Where should I keep my Will?

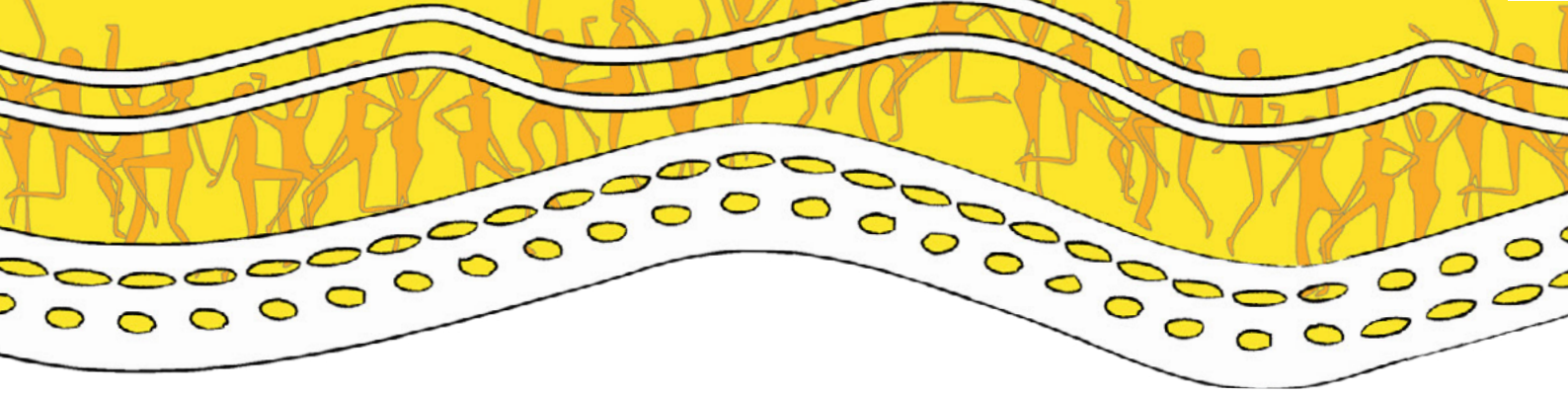
It’s important to keep your Will in a safe place and to tell your Executor where it is. You can also give them a copy. You can keep your Will in different places, including:

- at your lawyer’s office
- in a safe place at home with your other important papers (like your birth certificate or bank records)
- with the NSW Trustee and Guardian – but you will need to pay a fee.

## Superannuation and your Will

Your superannuation (“super”) may not be part of your Will. You can tell your super fund who you want to receive your super. This is called a nomination. There are rules about who you can choose and different types of nominations – “binding” and “non-binding” (see glossary). It’s best to talk to your super fund to find out how to make a nomination, who you can nominate, and how long your nomination lasts (some only last for 3 years).





## What if I want to change my Will?

Changing a signed Will can make the Will invalid. If you want to change your Will, you should talk to a lawyer. They can help you make a new Will.



## What if I don't make a Will?

If you pass away without making a Will, this is called passing away “intestate”. In this case, the Court decides who gets your things. They do this using a specific order set out under the law. This means your things may not go to the people you wanted.

If you don't have a Will, your family may also not know if you want to be buried or cremated, and how or where you want your funeral.

Having a Will can make it easier and faster for your family to follow your wishes – even if you don't own a lot when you pass away. For example, it can help with closing your bank accounts.

When making your Will, it's good to also set up an Enduring Power of Attorney (for money decisions) and choose an Enduring Guardian (for medical and lifestyle decisions).

## Can someone challenge my Will?

Yes. Some close family or people who have depended on you may go to Court to challenge your Will if you didn't leave them anything, or if they believe they should have received more.

The Court can also think about Aboriginal and Torres Strait Islander customs and culture when making decisions.

## Can anything stop my Will from being followed?

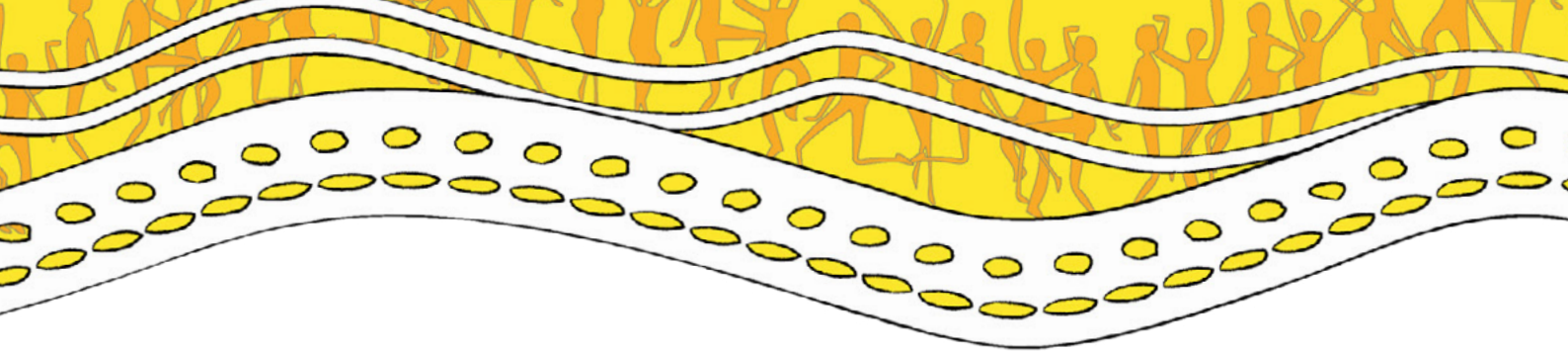
Yes. Sometimes the Court won't follow your Will if there are problems with it.

This can happen if:

- you make a new Will – this cancels the old one (which is called being “revoked”). You should destroy any copies of your old Will
- you have a major family event – for example, you get married or divorced
- you write on your Will or you destroy the original Will on purpose.

If any of these things happen, your Will is cancelled (“revoked”), or it may not be able to be used. This is called “invalid”.





## Where to get help with planning ahead

There are people and services that can support you to make a Will, an Enduring Power of Attorney, or choose an Enduring Guardian.

### Talk to a lawyer

A lawyer can help you legally draft and sign a Will, Enduring Power of Attorney (for money decisions), and Enduring Guardianship paperwork (for medical and lifestyle decisions).



### Get help from Cancer Council NSW's Legal Referral Service

If you can't afford to pay for a lawyer, Cancer Council NSW's Legal Referral Service may be able to connect you with one for free.

Visit [cancercouncil.com.au](http://cancercouncil.com.au)



### Contact the NSW Trustee and Guardian

This government service can help you prepare a Will, Enduring Power of Attorney and Enduring Guardianship paperwork. You will need to pay.

Visit [nsw.gov.au/trustee-guardian](http://nsw.gov.au/trustee-guardian)



### Talk to the Aboriginal Legal Service (NSW/ACT) or your local Community Legal Centre

These services may work with law firms to help mob make these documents for free.

Visit [alsnswact.org.au](http://alsnswact.org.au) and [clcnsw.org.au](http://clcnsw.org.au)

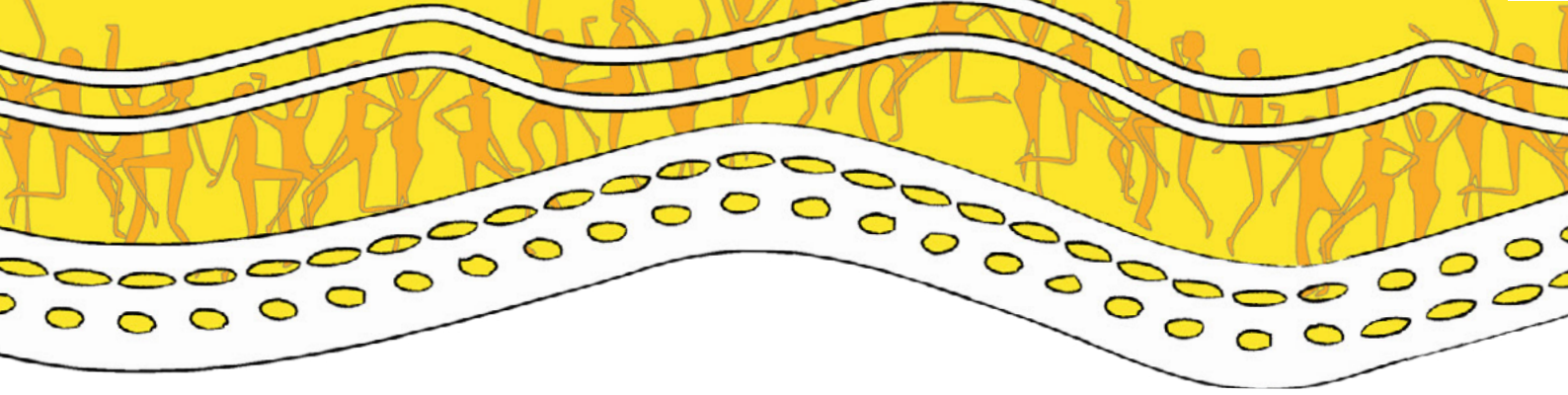


### Use an online Will service

You can make a Will online at a lower cost, but it's better to talk with a lawyer to make sure it's done properly.

Visit [safewill.com](http://safewill.com)





## Enduring Power of Attorney and Enduring Guardian

### What is an Enduring Power of Attorney?

An Enduring Power of Attorney is legal paperwork that lets you choose someone to make money decisions for you. This paperwork is used while you're still alive but are too sick or no longer able to make these decisions for yourself ("lose capacity"). It can also be used if you just want help managing your money or paying your bills, even though you can still make decisions yourself.

Your Enduring Power of Attorney can:

- talk to the bank and manage your money
- pay your bills
- sell your house or other property
- deal with government departments like Centrelink.

You should pick a person you trust who is 18 or over. You can pick more than one person if you want. It's best to talk to a lawyer before you decide. Your Enduring Power of Attorney must follow your wishes and do what's best for you.

Having an Enduring Power of Attorney can help avoid any problems with banks, Centrelink or your housing. It can also help stop arguments in your family and mob about who looks after your money or property.

### What is an Enduring Guardian?

An Enduring Guardianship is legal paperwork that lets you choose someone who can make medical and lifestyle decisions for you. This paperwork is used while you're still alive but are too sick or no longer able to make these decisions for yourself ("lose capacity").

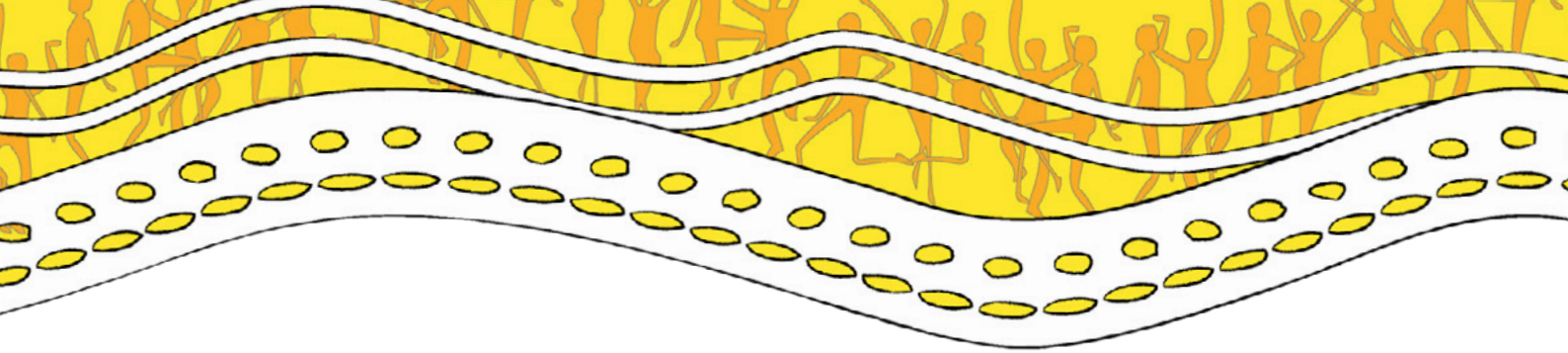
Your Enduring Guardian can help decide:

- what medical or dental treatment you have
- where you live
- what health care services you get.

You should choose someone you trust who is 18 or over. You can pick more than one person if you want. It's best to talk to a lawyer before you choose your Enduring Guardian.



You can choose to make an Advance Care Directive. This tells people what kind of medical care you want when you're very sick. It's best to talk to your treatment team about this document.



## What if I don't make an Enduring Power of Attorney or choose an Enduring Guardian?

If you get very sick and can't make your own decisions ("lose capacity"), someone will need to make these decisions for you.

If you haven't picked someone to be your Enduring Power of Attorney or Enduring Guardian yourself, then the Government, Court or Tribunal may choose someone for you. This may not be the person you want to make these decisions. That's why it's a good idea to choose someone you trust before you get sick.

## What if I want to change the Enduring Power of Attorney or Enduring Guardian?

You can change who you picked or what they can do at any time so long as you understand what you're doing ("have capacity"). If you want to make changes, you should talk to a lawyer.

### Glossary

**Advance Care Directive:** A way to say what treatments you would like to have or refuse if you become very sick.

**Beneficiaries:** The people you want to leave your things to.

**Binding nomination:** A nomination your super fund must follow.

**Capacity (mental capacity):** Being of sound mind and able to make decisions for yourself.

**Enduring Guardian:** A person you choose to make medical and lifestyle decisions if you are unable to.

**Enduring Power of Attorney:** A person you choose to make money and legal decisions for you if you are unable to make them yourself because you are too sick or lose capacity.

**Executor:** The person you choose to make sure your Will is followed.

**Intestate:** When someone passes away without making a Will.

**Invalid:** When a Will cannot be used.

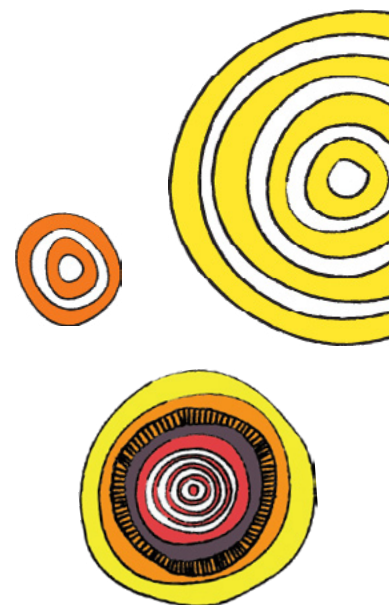
**Non-binding nomination:** A nomination you would like your super fund to follow, but they legally do not have to.

**Revoked:** When a Will is cancelled so it cannot be used anymore.

**Superannuation:** A government savings plan to help people save money for their retirement years. Also called "super".

**Testamentary Guardian:** Someone you choose to care for your kids if you pass away while they're under 18. This gives the Court an idea of what you want but it doesn't have to follow this (not binding).

**Will:** A legal document that says who will get your things after you pass away.







## How do I cope with cancer?



### Yarn with mob

Talking about your wishes can feel hard, but you might want to yarn with family, mob or Elders, or people you trust about your plans for the future when you pass away so they know what's important to you.



### Ask questions

You may have questions about making a Will, your funeral or making money, medical and lifestyle decisions. Your doctor, nurse, Aboriginal Health Worker or a lawyer can help answer any questions you may have.



### Get help with your money

If you need information or support about your money after being diagnosed, Cancer Council NSW's Financial Support Services may be able to help you. Call 13 11 20 for more information.

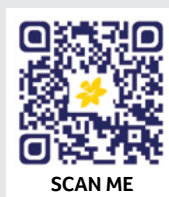


### Find support

Call 13 11 20 if you need someone to talk to or need help with making plans for the future.

## More information

- Call **Cancer Council** 13 11 20
- Visit **aboriginal.cancercouncil.com.au**
- Visit Aboriginal Legal Service **alsnswact.org.au**
- Your local Aboriginal Health Service or Aboriginal Health Worker



This fact sheet has been reviewed by legal experts and Aboriginal people with an experience of cancer. We thank all reviewers and acknowledge the generous sharing of cultural knowledge by: Bob Carnaby, descendant of the Gumbaynggirr people and leader of the Grafton Prostate Cancer Support Group and member of the Ngerrie Land Council and Aboriginal Men's Group; Promise Laupepa, Project Officer, Community Partnerships and Programs, Aboriginal Legal Service (NSW/ACT); Clarke Scott, Wiradjuri man and Aboriginal Drug and Alcohol Programs Manager at Nepean Blue Mountains Local Health District; Nicole Winters, Darug woman and Senior Aboriginal Education Officer – Supportive and Palliative Care, Western Sydney Local Health District, and other community members. We also thank our legal reviewers: Andrew Banks, Pro Bono Lawyer at Gilbert and Tobin; Michelle Hannon, Partner at Gilbert and Tobin; Promise Laupepa (see above); Professor Prue Vines, Co-Director, Private Law Research and Policy Group, UNSW.

The design features elements from the artwork *Healing Journey* by Carissa Paglino. Carissa was born and raised in Awabakal country (Newcastle) and is a descendant of the Wanaruah people from the Upper Hunter Valley in NSW. Cancer Council NSW's respect symbol (below) was designed by Marcus Lee, a descendant of the Karajarri people.



Cancer Council NSW acknowledges Traditional Custodians of Country and recognises the continuing connection to lands, waters and communities. We pay our respects to Aboriginal and Torres Strait Islander cultures and to Elders past and present.

