

There are still some legal inequities for LGBTI people, which is why it's important to understand your legal rights and the significance of documentation. Changes to legislation in 2013 have made it unlawful for any provider of aged care services, who is a recipient of federal funding, to discriminate against anyone on the grounds of their sexual orientation, gender identity or intersex status. This applies to all service providers, regardless of whether they are faith based or secular.

This fact sheet aims to provide an outline of important legal steps to take when planning for your future.

Writing a Will

A will is a legal document that legally sets out who will receive your assets, money and property when you die. Approximately two out of five Australians don't have a valid will. Under existing rules, if a person dies interstate (without a will), the assets go the closest relative. Defacto relationships can be hard to prove, and unfortunately two people who are legally the same gender or sex can't get married in Australia. This highlights the importance of writing an inclusive will for your partner or other close friends.

You can prepare your own will, but it's not advisable as precise wording is essential. You may want to consider using LGBTI friendly services such as The Aged Care Rights Service (TARS) and getting the legal preparation done by a NSW Trustee who will ensure it meets the current legal requirements.

Executor of a Will

An executor of a Will is the person you nominate as responsible for deciding what is to be done with your estate as set out in your will. These duties include:

- Locating the Will
- Applying to the Supreme Court for a Grant of Probate of the last Will (Probate is a formal document that confirms the executor and gives them permission to administer the estate)
- Determining the beneficiaries
- Collecting the assets
- Making sure all claims and debts are received, assessed and paid if substantiated
- Distributing assets according to the terms of the Will, including managing longer term trusts
- Preparation and management of accounts
- Lodging taxation returns
- Defending litigation

When choosing an executor, ensure they understand the role they are agreeing to take on and be prepared to update and change your executor as you (and they) get older to ensure the person you first chose is still confident in carrying out this role.



Power of Attorney and Enduring Guardianship

A Power of Attorney is a legal document that deals with property and financial matters. It does not mean you lose control over your financial affairs it simply means that someone is assigned to manage your finances, following your instructions, in the event of you no longer being able to do so. It must be written with a legal representative present such as a solicitor, barrister, registrar of a NSW Local Court, a licensed conveyancer, an employee of NSW Trustee and Guardian or a Private Trustee Company.

- **Enduring Power of Attorney**

An Enduring Power of Attorney enables the Power of Attorney to continue making decisions relating to your lifestyle, medical treatment or welfare after you have lost capacity.

- **Enduring Guardianship**

An Enduring Guardianship is very similar to an Enduring Power of Attorney except that they can't make decisions about your money or assets.

Resources

ACON
acon.org.au

NSW Trustee and Guardian
Attorney General and Justice
tag.nsw.gov.au

Advanced Care Directives
Association
advancecaredirectives.org.au

Get it in Black and White
planningaheadtools.com.au

HIV/AIDS Legal Centre
(NSW). Legal information for
people with HIV.
halc.org.au

Aged-Care Rights Service.
Including Older Persons'
Legal Service
tars.com.au

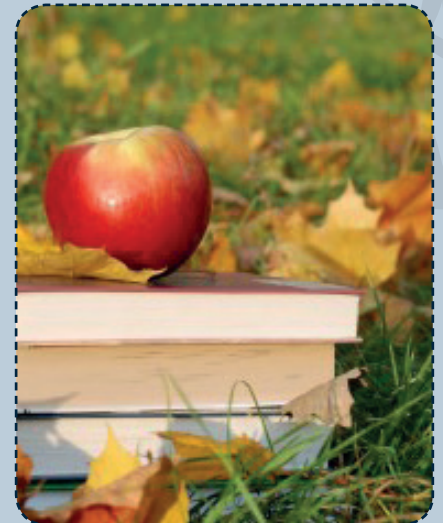
National LGBTI Health
Alliance
lgbthealth.org.au

Advance Care Planning

Advance Care Planning is a process that sets up a plan for future medical care. This involves considering your values, beliefs and wishes for medical care if you were to lose the capacity to make your own decisions. It is important to discuss wishes with your family, friends and perhaps your general practitioner.

You may also choose to write down an Advance Care Directive also known as a "Living Will". It is about making sure those involved in your life have an understanding of your wishes about medical treatment and care. It is important to think about what 'living well' means to you and what kind of treatments you would like to have and which ones you wouldn't. It is also important to be able to appoint a person responsible to ensure your wishes are carried out.

One important consideration is to make sure to write your directive before you lose the capacity to do so. Make sure it has specific details, it is current and that you were not influenced or pressured by anyone else when you wrote it. Lastly you need to ensure the people intended for this planning, including family, friends or doctors receive a copy.



Superannuation

Same sex couples are now treated in a similar way to a married or de facto heterosexual couples. A same sex partner now meets the definition of 'spouse' under superannuation laws. This means in the event of a death, any superannuation benefits paid out as a death benefit, will be tax free as a lump sum.

A beneficiary nomination can be made by the superannuation member to advise the Trustee as to the benefit distribution at death. In the event that no nomination is made, your benefit will be paid at the discretion of the Trustee to one or more of your dependants and/or your legal personal representative.

The LOVE Project is an ACON initiative aimed at creating better conversations and improved social engagement with older LGBTI community members. By understanding people's needs and preferences the LOVE project aims to facilitate greater social connectivity, improve social inclusion and provide appropriate health information for LGBTI elders.

facebook.com/LivingOlderVisiblyEngaged | twitter.com/LOVEproject | Loveproject.org.au

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