



Seniors Rights Service

Legal | Advocacy | Education

Your rights. Your voice.

Q&A for LGBTIQ+

Key issues to consider for older Lesbian, Gay, Bisexual, Transgender, Intersex, and/or Queer (LGBTIQ+) people.



SENIORS RIGHTS SERVICE IS LGBTIQ+ INCLUSIVE



1 Why are the documents discussed in this booklet particularly relevant for LGBTIQ+ people?

LGBTIQ+ people can be vulnerable to having their wishes disregarded by relatives or carers when financial, property and medical decisions are made on their behalf. To ensure your wishes are carried out and your partner's rights and/or the rights of your chosen family are protected, you should have a **will, power of attorney, guardianship document and advance care directive**. You should review these documents regularly after significant life events (end of relationship, major asset purchase etc).

2 Why do I need a will

Having a **will** ensures that your property and assets are distributed according to your wishes when you die. Without a will, your estate will be distributed according to the Succession Act, and the people you most want to benefit may receive nothing. Your will should be specific, up to date and reviewed regularly. A will is essential to inform people about your wishes.

Note: See the **Resources** section for where to get assistance on wills.





4 What is an enduring power of attorney?

An **enduring power of attorney (EPOA)** differs from a general power of attorney in that it gives an appointed person or persons the ability to make financial decisions on your behalf after you lose capacity,* for as long as you live. It is a powerful document and gives the person or persons access to your bank accounts and assets. On this basis, the person should be carefully chosen and be a person you trust and who has the ability to manage your estate and finances.

The power of attorney document needs to be properly registered with NSW Land and Property Information if real estate is to be bought or sold by the attorney.

An EPOA can be revoked (withdrawn) at any time while you still have capacity.

* Capacity is decision-specific: you may have capacity to make some decisions but not others. A solicitor is able to assess your capacity. If they have doubts they will seek an assessment from a health professional.

3 What is a power of attorney?

A **power of attorney** is a document which appoints one or more people to make financial and legal decisions on your behalf. It operates while you still have capacity.* It may be useful when you are overseas or temporarily unable to make the decision yourself.

* Capacity is a legal term for the ability to make decisions and means understanding the choices and the consequences of a decision.



5 What is guardianship?

A **guardian** is a person you choose to make decisions on your behalf in areas of health, welfare and accommodation. **Enduring guardianship** only comes into effect when you no longer have capacity. Your guardian will gain the power to make decisions for you when you can no longer make decisions for yourself due to physical or mental incapacity, or both. Physical incapacity involves physical frailty to the extent that your welfare is at risk by staying at home, even if you have services in place. A guardian may make decisions about where you live, what medical and dental treatment you receive and so on. They cannot make decisions about who can visit you unless you specifically allow that power. Your guardian is a substitute decision maker so should be someone you trust.

If you have no relatives it is really important that you have a guardian. Contact the NSW Trustee and Guardian for assistance on guardianship. See the **Resources** section in this booklet for more information.

6 What is an advance care directive?

An **advance care directive** sets out the medical care you wish to receive or NOT receive if you are no longer able to speak for or make decisions for yourself. It is particularly important to consider having such a document in place when you have a progressive, life-threatening illness. You can specify what treatment you want, including resuscitation, life support and artificial feeding. Your guardian should have a copy of the document and should make all your treating health professionals aware of it. An advance care directive should be drafted in consultation with your doctor, who should witness it and keep a copy.





7 Do I have to censor or 'de-gay' my home before services visit me?

No. You do NOT have to discuss what is on your bookshelf or your wall. You have the right to personal privacy over your possessions, sexuality, gender, identity, ethnicity and so on. Everyone has the right to live in their home as they choose. The Aged Care Act 1997 and Australian privacy laws are there to protect you. If you have concerns, talk to the service provider or contact an advocate at Seniors Rights Service to assist you.

8 Can health care practitioners discriminate against me because of my sexuality, gender or gender identity?

No. If they do discriminate against you, they are in breach of the NSW Anti-Discrimination Act 1977. You can report them to the NSW Anti-Discrimination Board and to their professional body, as their behaviour is likely to be in breach of their professional Code of Practice. If you are in hospital, ask to speak to the Patient Liaison Officer to discuss your concerns.



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9 Can staff providing home care or residential care discriminate on the basis of sexuality or gender identity?

No. As of August 2013, the Sex Discrimination Act of 1984 states that any federally funded aged care service may not discriminate on the basis of sexual orientation, gender identity or intersex status. However, religious and other providers are still exempt if not federally funded. If you have a complaint, you can make a report to the manager of the service or call Seniors Rights Service, where an aged care advocate can assist you to make a report.

10 Can people discriminate against my partner, spouse or chosen family when they are visiting me?

No. Your partner, spouse or chosen family should be treated with respect and dignity, and should not be subject to discrimination. You also have the right to privacy during the visit. Call Seniors Rights Service if you are not afforded the respect you deserve.



Resources and Contacts

Wills, power of attorney and guardianship

NSW Trustee and Guardian **1300 364 103**
www.tag.nsw.gov.au

Council on the Ageing (COTA) Legal Pathways
1800 449 102 or **02 9286 3860** COTA has certain eligibility criteria.

The Law Society of NSW **02 9926 0333**

Advance care directive

NSW Health **02 9391 9000**
www.health.nsw.gov.au/patients/acp/Pages/default.aspx

Legal resources

Community Legal Centres (CLCs) are located throughout NSW. Visit www.naclc.org.au/clc_directory.php to find your local CLC

Law Access **1300 888 529**
www.lawaccess.nsw.gov.au

Inner City Legal Centre provides specialist LGBTIQ+ legal advice across NSW **1800 244 481**
www.iclc.org.au

Aboriginal Legal Service **1800 733 233**
www.alsnswact.org.au

Other resources

Health Care Complaints Commission **1800 043 159**
www.hccc.nsw.gov.au

Silver Rainbow LGBTIQ+ Ageing & Aged Care
www.LGBTIQ+health.org.au/ageing

NSW Capacity Toolkit available at
www.justice.nsw.gov.au



What does Seniors Rights Service do?

Seniors Rights Service is a multi-faceted and multi-disciplinary organisation working for the rights of older people. Our legal services give legal advice to people in NSW over 60 on a broad range of matters, including consumer issues (such as unfair contracts), human rights (elder abuse), financial issues (planning), substitute decision making (EPOA and enduring guardianship) and issues regarding retirement village managers or operators and strata property law.

Seniors Rights Service provides aged care advocacy to people receiving Commonwealth-funded aged care services, including residential aged care, home care packages and the Commonwealth Home Support Programme. Our advocacy service assists people to learn about and uphold their rights. We also raise concerns you might have with aged care service providers.

We provide targeted rights-based education to a diverse range of older people.

Seniors Rights Service produced this booklet with funding from Family and Community Services NSW.



Family &
Community
Services

Checklist

- I know what an enduring power of attorney is
- I have appointed a person I trust to be my attorney
- I understand what an enduring guardian is
- I have appointed an enduring guardian
- I have made my will
- I have included all beneficiaries
- I have specifically excluded person(s)
- I have told the people I have appointed where the documents are kept
- My will is stored safely and my executor knows where it is



Seniors Rights
Service



Seniors Rights Service

Contacts

Phone: (02) 9281 3600
1800 424 079

The Interpreter Service: 131 450

National Relay Service: 133 677

Email: info@seniorsrightsservice.org.au

Website: www.seniorsrightsservice.org.au

Office Hours: Monday to Friday
9.00am - 4.30pm

Postal Address: Level 4, 418A Elizabeth St
Surry Hills NSW 2010

Seniors Rights Service values diversity.

Our organisation welcomes all older people across NSW to access our Legal, Advocacy and Education services. We play an active role in delivering services to LGBTIQ+ people. Please make contact with us if you require advice or information based on the services we provide. We're here to help. **Your rights. Your voice.**

We welcome comments about our service. Please direct any feedback to the CEO either in writing or via email/ phone or through our website.

This is information only, not legal advice. If you have a legal problem, call our service directly or see your lawyer. Laws may vary from state to state.