Q&A FOR LGBTI

Top Ten Legal issues to consider for older Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People.

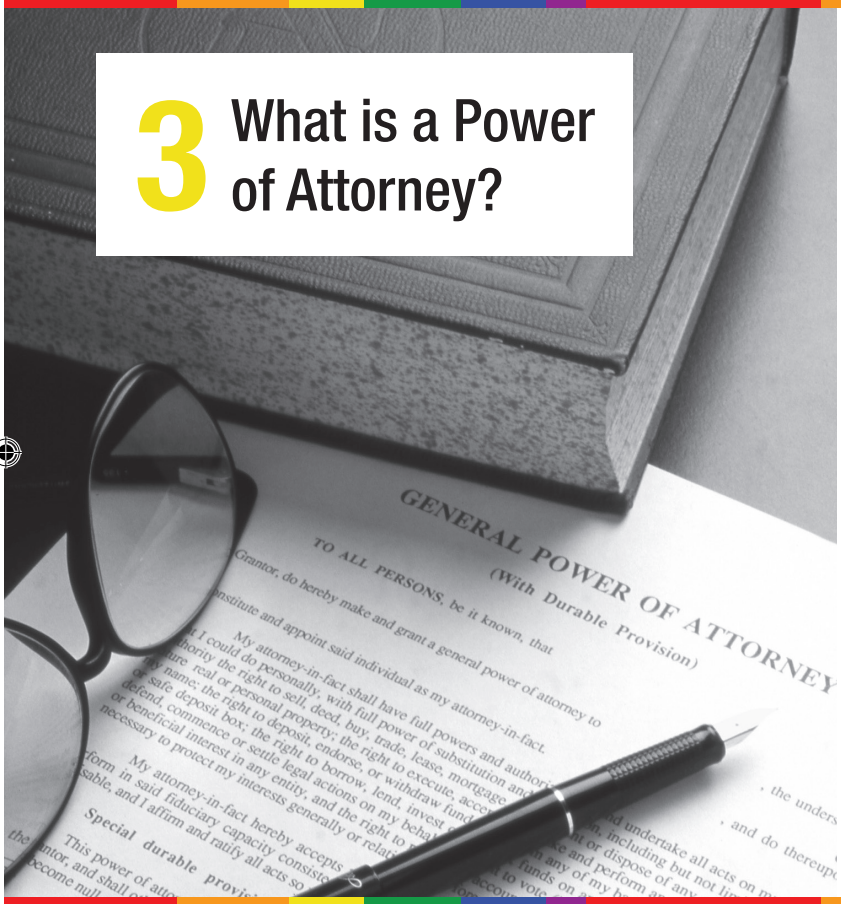
1 Why are the following documents particularly relevant for lesbian, gay, bisexual, transgender and intersex (LGBTI) people?

LGBTI people can be more vulnerable to having their wishes disregarded by relatives or carers when they make financial, property and medical decisions. To ensure your wishes are carried out and your partner's rights are protected (if you have one), you should have a Will, Power of Attorney, Guardianship document and Advanced Health 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 on your death. Without a will your estate will be distributed according to the Succession Act. The people you most want to benefit may receive nothing. Your will should be specific and up to date.

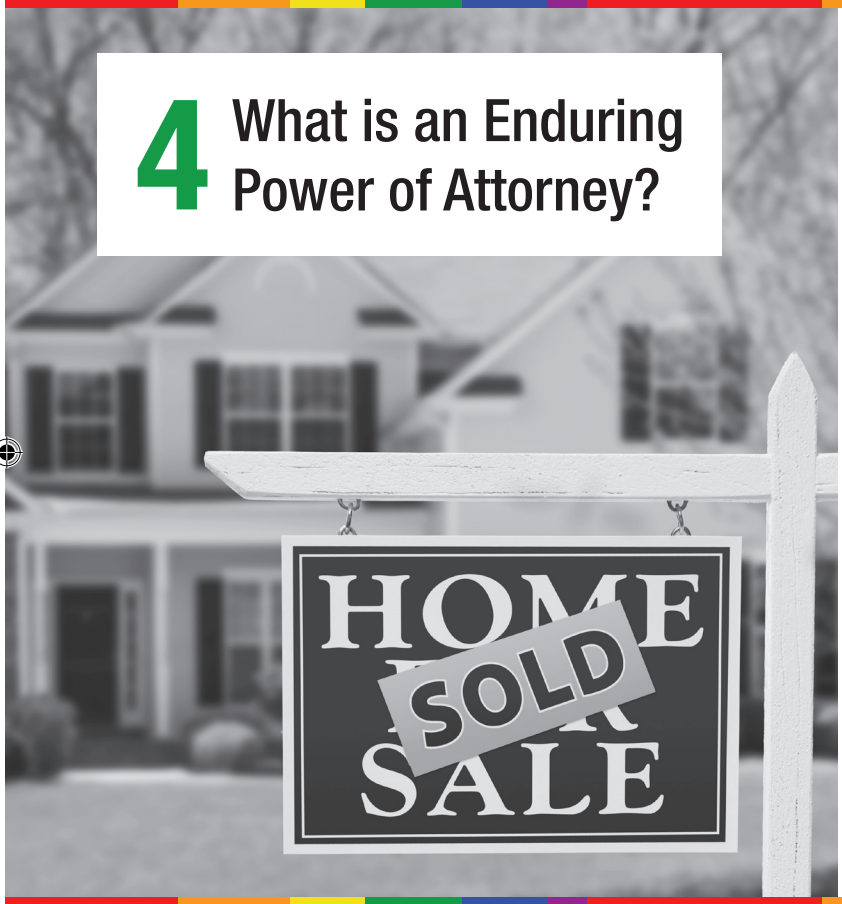
3 What is a Power of Attorney?



A Power of Attorney appoints one or more people to make financial and legal decisions on your behalf. It operates while you have capacity*. It may be useful when you are overseas or having a minor medical procedure.

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

4 What is an Enduring Power of Attorney?



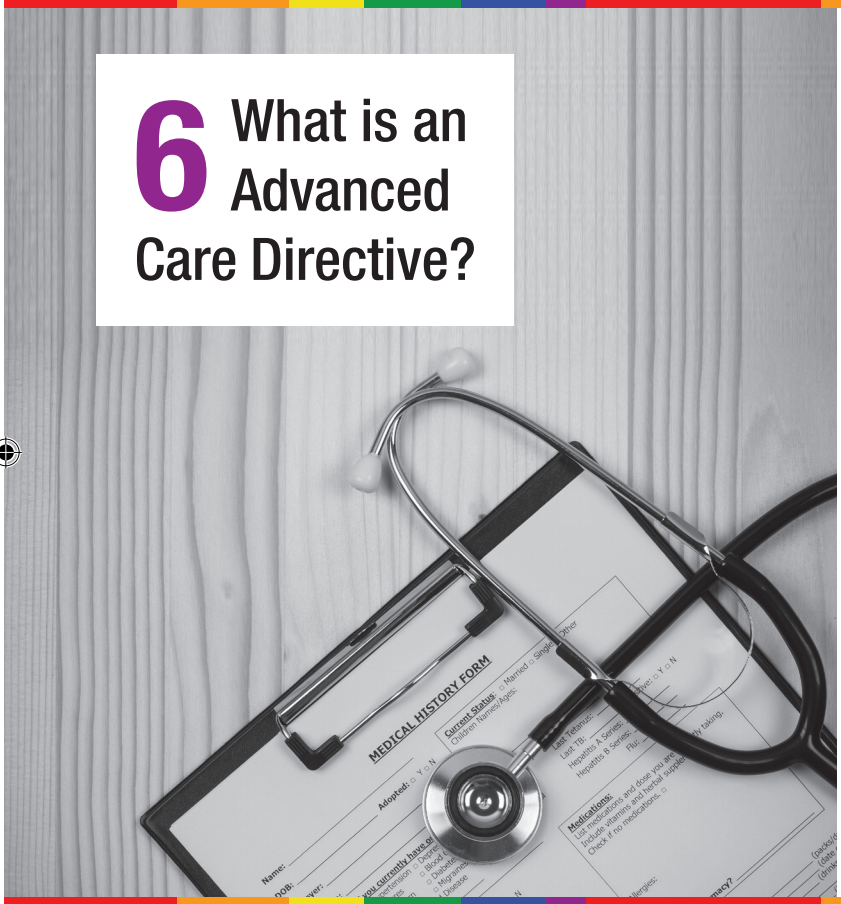
An Enduring Power of Attorney is ongoing and continues after you lose capacity for as long as you live. It is a powerful document and gives the person or persons access to your bank accounts and assets. On this basis the person should be carefully chosen.

The Power of Attorney document needs to be properly registered with the Land and Property Information Office if property is to be bought or sold by the Attorney. An EPOA can be revoked (withdrawn) at any time whilst you have capacity.

5 What is Guardianship?

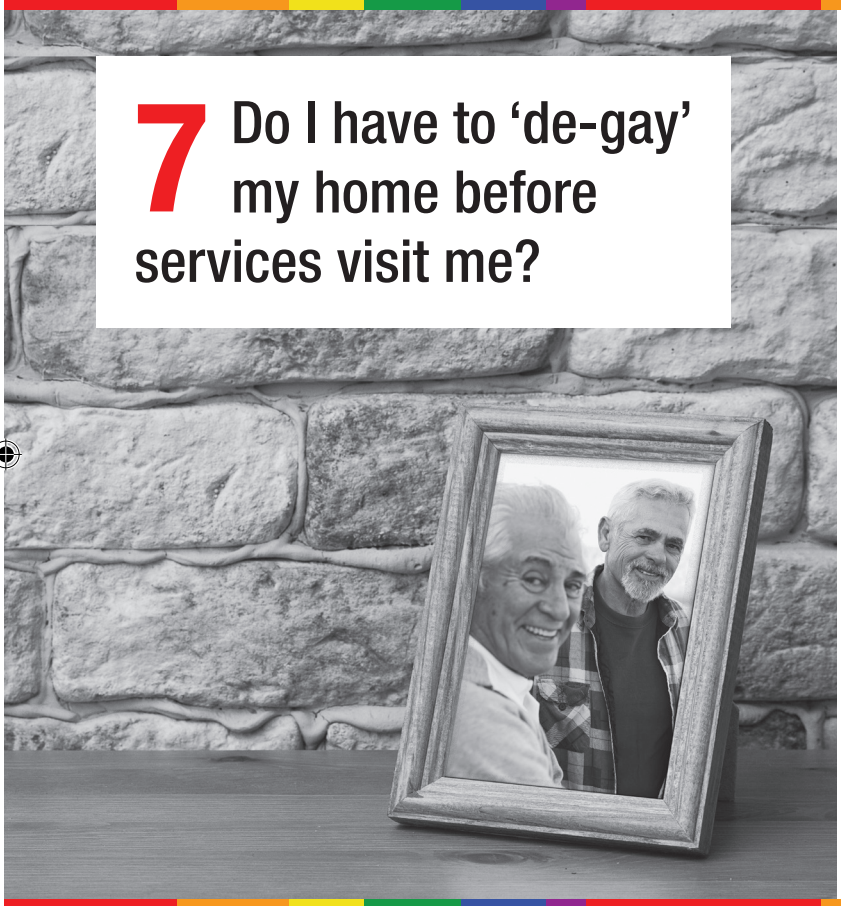
A Guardian is a person you choose to make decisions on your behalf in areas of health, welfare and accommodation. Enduring Guardianship only comes into effect when you can no longer make decisions for yourself due to incapacity (physical or mental). Your guardian is a substitute decision maker so should be someone you trust.

6 What is an Advanced Care Directive?



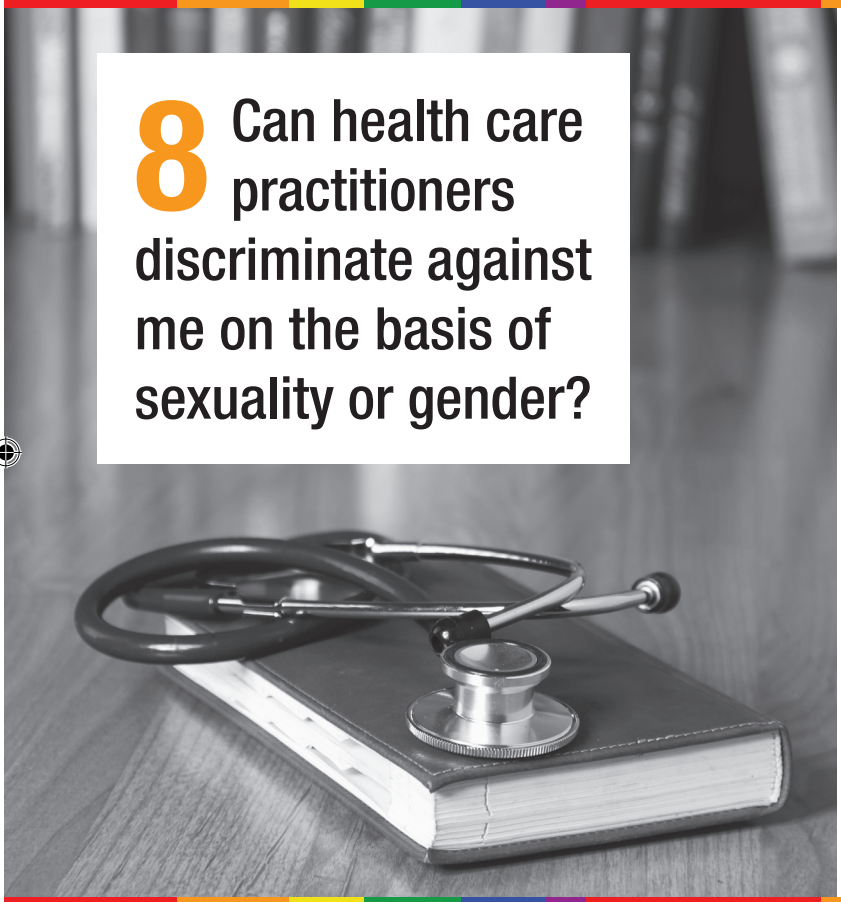
An Advanced Care Directive sets out the medical care you wish to receive or NOT receive in case you are no longer able to speak for or make decisions for yourself. It is particularly important when you have a progressive, life threatening illness. You can specify in regard to resuscitation, life support and artificial feeding. Your guardian should have a copy of the document and should make all health professionals aware of it. An Advanced Care Directive should be drafted in consultation with your doctor who should witness it and keep a copy.

7 Do I have to ‘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, ethnicity and so on. The Aged Care Act 1997 and Australian privacy laws are there to protect you.

8 Can health care practitioners discriminate against me on the basis of sexuality or gender?



No. If they do they are in breach of the NSW Anti-Discrimination Act 1977. You can also report them to their professional body as their behaviour is likely to be in breach of their professional Code of Practice.

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

No. A Bill amending the Sex Discrimination Act of 1984 came into effect in August 2013. 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. You can make a report to the manager of home care or call TARS advocates for assistance with this if you are not comfortable in doing so.

10 Can people discriminate against my partner when they are visiting me?

No. Your partner should be treated with respect and dignity without discrimination. You should also both have the right to privacy during the visit. Call TARS if you are not afforded the respect you deserve.

What does TARS do?

TARS provide a legal service called Older People Legal Service (OPLS). It gives legal advice to people over 60 in relation to a broad range of matters including consumer issues (such as unfair contracts), human rights (elder abuse), financial issues (planning), substitute decision making (the aforementioned documents) and issues regarding retirement village managers or operators.

TARS also provides advocacy in Residential Aged Care, Home Care and for Home and Community Care recipients. It assists them to uphold their rights and raise concerns.

This booklet was produced by TARS in NSW and funded by the Australian Government Department of Social Services. Laws may vary from state to state.

Resources

Wills

- NSW Trustee and Guardian -1300 364 103
- Southern Cross University (all documents) www.scu.edu.au/aslarc
- Legal Pathways COTA (certain eligibility criteria) 1800 449 102 or 02 9286 3860

Power of Attorney

- The Law Society of NSW 02 9926 0333 or
- Legal Aid www.legalaid.nsw.gov.au (Legal aid does not draft wills, POA or guardianship documents)

Guardianship

- NSW Trustee and Guardian -1300 364 103 www.planningaheadtools.com.au

Advanced Care Directive

- Australian Organ Donor Register- Donatelife.gov.au/decide or call 1800 777 203
- Community Legal Centres (CLCs) are also available especially in regional and rural communities

Phone: **02 9281 3600**
Country callers: **1800 424 079**
Fax: **02 9281 3672**
www.tars.com.au
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