



DIGNITY, RESPECT, CHOICE: PLANNING FOR THE FINAL CHAPTER

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What is estate planning and why would you do it?

- ▶ Estate planning is taking control and organising your financial and medical affairs.
- ▶ There are 4 main parts that you need to consider whilst you are healthy and well to plan for when you may not be healthy and well:
 - ▶ Enduring Power of Attorney (EPOA) dealing with your money and assets
 - ▶ Enduring Guardianship (EG) dealing with health and lifestyle
 - ▶ Advanced Care Directive (ACD) dealing with your wishes when you die, particularly if you have detailed medical requests.
 - ▶ Your Will
- ▶ Your will then contains instructions for your executor to deal with your body and your assets when you die.
- ▶ This presentation mainly discusses the EPOA, EG and ACD.

The top 3 reasons for preparing a will:

1. To be prepared

2. To make it easier for my family when I'm gone

3. Don't want to die intestate

The top 3 reasons for not preparing a will:

1. Not sure where to start

2. Other – don't have anything to leave, haven't gotten around to it.

3. Cost

Source: Page 7 - COTA NSW 50+ Report / *Dignity, Respect, Choice: Planning for the final chapter*

On my reading of the report and experience in practice the reasons for not making a will or making a will are similar to that for power of attorney and guardianship documents.

I'm sure everyone here knows that you should make a will. It is a complicated area of law that is not particularly sexy to most solicitors in my view.

Enduring Power of Attorney (\$\$\$)

- ▶ Someone will have to make a decision about your financial affairs? Who would you trust your house with?
- ▶ If you lose capacity you cannot make an enduring power of attorney.
- ▶ Siblings often fight and greed/jealousy often occurs
- ▶ Elder abuse is prevalent
- ▶ There may be a contest at the guardianship tribunal as to whether a power of attorney was valid or should be revoked.
- ▶ An outcome could be financial manager could be appointed or lengthy litigation between family members.



NCAT Guardianship Division

Table 7 – 2018-2019 Guardianship Division workload and performance

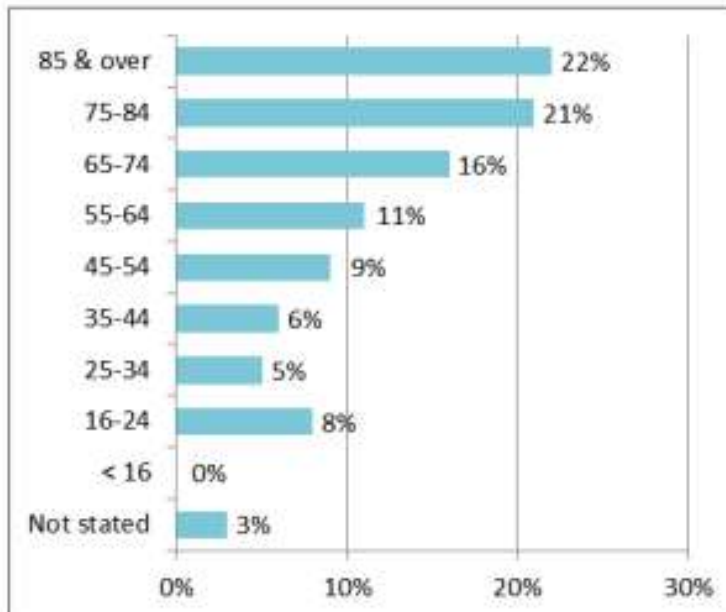
APPLICATION TYPE	APPLICATIONS	FINALISATIONS	CLEARANCE RATIO
Guardianship	3,666	3,674	100.2%
Requested Review of Guardianship	381	380	99.7%
Financial Management	3,166	3,157	99.7%
Requested Review of Financial Management	658	603	91.6%
Enduring Power of Attorney	256	261	102.0%
Enduring Guardianship	151	160	106.0%
Review/Revocation of an Enduring Power of Attorney	35	34	97.1%
Medical/Dental Consent	457	458	100.2%
Recognition of Interstate Appointment	66	70	106.1%
Clinical Trial	13	16	123.1%
Set Aside/Vary Decisions	4	5	125.0%
Statutory Reviews (falling due in the period)	2,863	2,844	99.3%
TOTAL	11,716	11,662	99.5%

Source page 38 NCAT Annual Report 2018-2019

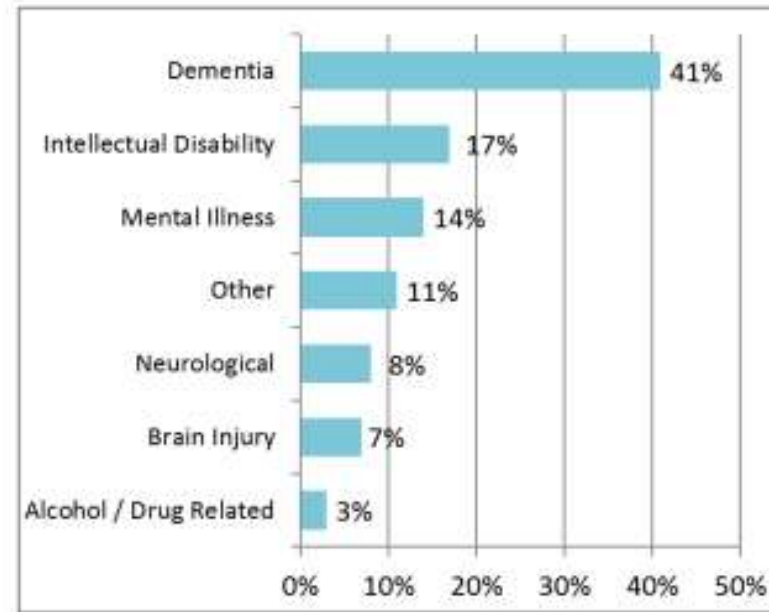
https://www.ncat.nsw.gov.au/documents/reports/ncat_annual_report_2018_2019.pdf

NCAT Guardianship Division - Age / Dis

Graph 1 –Age demographic of the people the subject of application 2018-2019



Graph 2 –Disability identified in applications 2018-2019

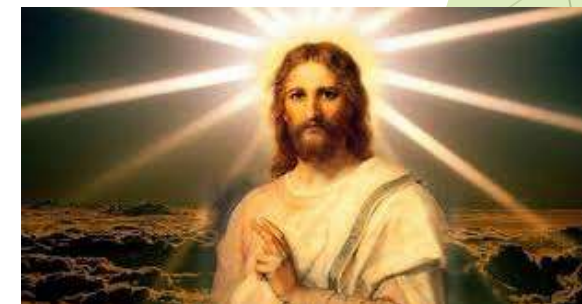


Source page 39 NCAT Annual Report 2018-2019

https://www.ncat.nsw.gov.au/documents/reports/ncat_annual_report_2018_2019.pdf

Enduring Guardian - War Stories

- ▶ From my experience there is a real need to discuss death.
- ▶ Don't want to go into a nursing home?
- ▶ In what circumstances do you want the plug pulled?
- ▶ Euthanasia is not legal (yet), however should you be brain dead, and then you have a heart attack and then there is no reasonable likelihood of returning to full health... do you want to remain on a ventilator and intubated or would you like pain medication and drift off to *(insert your worldview here)*?
- ▶ If you want the choice, you either need the appropriate wording in your enduring guardian document or you can prepare an advanced care directive.
- ▶ Otherwise your health professional generally must keep you alive.



Where to from here?

- ▶ COTA was offering \$55 estate planning documents but funding has ceased.
- ▶ Please visit our website for more information on estate planning
- ▶ And if you have a curly related problem you can email me after the seminar.
- ▶ paul@falzonlegal.com.au or (02) 9502 2922

