

Access to digital records upon death or incapacity: survey results

15

New South Wales
Law Reform Commission

RESEARCH
REPORT

December 2019



**New South Wales
Law Reform Commission**

Research Report

15

**Access to digital records
upon death or
incapacity: survey
results**

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**December 2019
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1. Introduction

In brief

The NSW Law Reform Commission has reviewed the laws that affect access to a NSW person’s digital assets when they die or become incapacitated. As part of the review, the Commission carried out two online surveys. This research report sets out the results of both surveys.

Purpose of this research..... 1

This research report..... 2

- 1.1 In May 2018, the Attorney General asked the NSW Law Reform Commission (“Commission”) to review and report on the laws that affect access to a NSW person’s digital assets when they die or are incapacitated. As part of the review, the Commission carried out two online surveys.
- 1.1 One survey, *What should happen to your social media when you die?* (“general survey”), was conducted among members of the public. A second survey, *Access to Digital Assets and Records after Death or Incapacity* (“lawyers’ survey”), was conducted among NSW legal practitioners who provide advice on estate planning and administration, enduring guardianship arrangements and enduring power of attorney arrangements.
- 1.2 This research report sets out the findings from both surveys.

Purpose of this research

- 1.3 The Commission developed a survey for NSW residents to find out about:
 - their use of social media and other online accounts, and
 - what they would like to happen to their accounts if something happened to them.
- 1.4 Similar studies have been conducted in Australia and elsewhere. For example, a national survey on estate planning was conducted in 2017, and some of the survey questions were about “online assets”.¹ A Western Australian study looked at how older people manage digital records.²
- 1.5 The UK Digital Legacy Association conducts annual surveys that gather information about attitudes and behaviours towards death in the digital world.³

1. A Steen and others, *Estate Planning in Australia* (Charles Sturt University and the University of Adelaide, 2017) 18–19.
2. D N Dissanayake, “The Challenges of Digital Legacy Management on the Value of Digital Objects to Older Australians” (Master of Science (Computer Science) Thesis, Edith Cowan University, 2019).
3. See, eg, Digital Legacy Association, *The Digital Death Report 2018* (c2019); Digital Legacy Association, *Digital Death Survey 2017: Overview report* (c2018).

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- 1.6 The results of other studies indicate that while many people have digital records of some kind, few make plans for the management of these records upon death or incapacity. The purpose of the Commission's survey was to find out if similar results would arise among NSW residents.
- 1.7 The Commission developed another survey, directed at NSW legal practitioners, to find out about how they deal with digital assets and records when advising about:
- estate planning and administration
 - enduring guardianship arrangements, and/or
 - enduring power of attorney arrangements.
- 1.8 The Commission is not aware of any similar studies conducted elsewhere.

This research report

- 1.9 Chapter 2 explains the methodology for both surveys, including the survey design and data collection processes. It also details the demographic information for the survey respondents.
- 1.10 Chapter 3 details the results for the general survey and compares them with the results of other studies
- 1.11 Chapter 4 sets out the results for the lawyers' survey.

2. Methodology and demographics

In brief

This chapter explains the methodology for both online surveys: one conducted among members of the public, and another conducted among NSW legal practitioners. It also sets out the demographic information for the survey respondents.

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General online survey: What should happen to your social media when you die?

Methodology

- 2.1 The survey conducted by the NSW Law Reform Commission (“Commission”) among members of the public was titled *What should happen to your social media when you die?* It gathered information about:
- people’s digital activity, and
 - what they would like to happen to their social media and other online accounts upon death or incapacity.
- 2.2 The survey was developed through SurveyMonkey. It opened on 20 December 2018 and closed on 21 October 2019. There were 488 responses.

Survey design

- 2.3 The survey contained 26 questions, including demographic questions.

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- 2.4 None of the questions was compulsory. Some respondents chose not to answer some questions.
- 2.5 Some respondents did not answer some questions because they had been automatically directed to a later section of the survey. For example, those who answered “No” to Question 10: *Have you ever shared your passwords for your social media accounts (or other online accounts) with someone else?* automatically skipped Question 11: *Why did you give your passwords to someone else?*
- 2.6 The questions were mostly closed questions, which asked respondents to answer “Yes” or “No”, or select particular options.
- 2.7 For some questions, respondents could provide comments. Some of these comments have been summarised in this research report.

Data collection

- 2.8 The Commission advertised the survey widely, including through its website and mailing list, on Twitter and on Facebook.
- 2.9 The Commission “boosted” Facebook posts about the survey in order to reach more people (including people who did not follow the Commission’s Facebook page). The boost targeted people over 18 years old and who live in NSW.
- 2.10 The majority of respondents (76.84%) accessed the survey through Facebook. 22.95% of respondents accessed the survey through the Commission’s website or mailing list, and 1 respondent accessed it through Twitter.

Demographics of survey respondents

Gender

- 2.11 Of the 488 respondents to this survey, 427 reported their gender identity. Of these, most (69.56%) said they identify as female. This overrepresentation of female respondents limits the application of the survey results to the general population.
- 2.12 8 respondents chose the “Other” option. In the comments section:
- 2 people said they identify as transgender
 - 1 person said they identify as gender neutral, and
 - 1 person said they identify as non-binary.

Table 2.1: Gender of respondents

Gender	Count	%
Female	297	69.56%
Male	122	28.57%
Other	8	1.87%
Total	427	

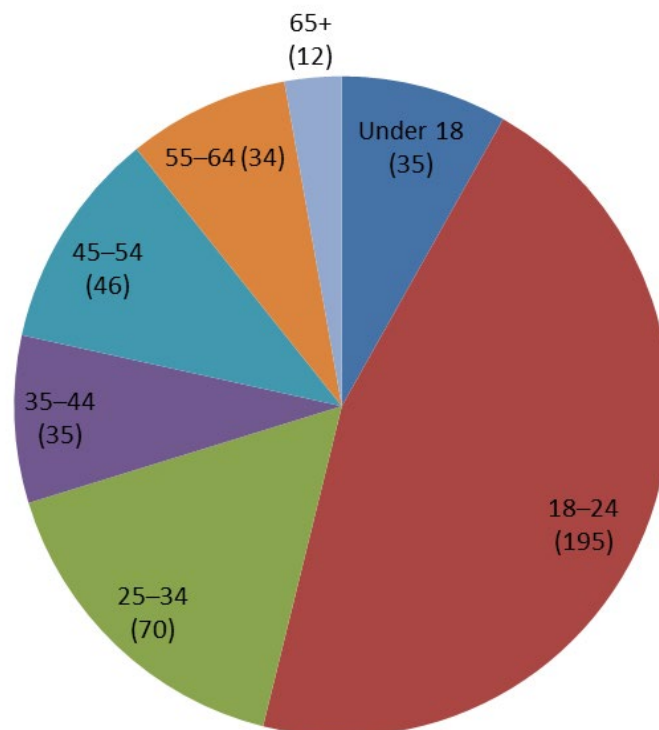
Age

2.13 427 people reported their age. Of these:

- 8.2% are under 18
- 45.67% are aged between 18 and 24, and
- 16.39% are aged between 25 and 34.

2.14 The overrepresentation of young respondents also limits the general application of the survey results.

Figure 2.1: Age of respondents (N=427)



Country of residence

- 2.15 426 respondents answered this question. Of these, the majority (99.3%) said they live in Australia.

Table 2.2: Respondents' country of residence

Country	Count	%
Australia	423	99.3%
Other	3	0.7%
Total	426	

State or territory of residence

- 2.16 418 respondents answered this question. Of these, the majority (96.41%) said they live in NSW.

Table 2.3: Respondents' state or territory of residence

State or territory	Count	%
NSW	403	96.41%
Victoria	1	0.24%
ACT	3	0.72%
Queensland	1	0.24%
Tasmania	1	0.24%
South Australia	4	0.96%
Western Australia	4	0.96%
Northern Territory	1	0.24%
Total	418	

Lawyers' online survey: Access to digital assets and records after death or incapacity

Methodology

- 2.17 The Commission's survey of NSW legal practitioners was titled *Access to Digital Assets and Records after Death or Incapacity*. It gathered information about practitioners' experiences dealing with digital records when advising about:

- estate planning and administration
- enduring guardianship arrangements, and/or

- enduring power of attorney arrangements.
- 2.18 The survey was developed through SurveyMonkey. It opened in March 2019 and closed on 21 October 2019. There were 74 responses.

Survey design

- 2.19 The survey contained 43 questions, including demographic questions.
- 2.20 None of the survey questions was compulsory. Some respondents chose not to answer some questions.
- 2.21 Some respondents did not answer some questions because they had been automatically directed to a later section of the survey. For example, respondents who answered “No” to Question 1: *Is drafting wills part of your practice?* were not asked any further questions about wills, as they were automatically directed to Question 16: *Is advising personal representatives about administering deceased estates part of your practice?*
- 2.22 The questions were mostly closed questions asking respondents to answer “Yes” or “No”, or select particular options.
- 2.23 Some of the questions were open-ended. These questions asked respondents to share the wording of the clauses they have included in wills, enduring powers of attorney or enduring guardianship arrangements, which specifically authorise someone to manage or deal with a client’s digital records and/or digital assets. Some respondents gave the Commission permission to refer to these clauses in a publication.

Data collection

- 2.24 The Commission advertised the survey on its website, through its mailing list, and on Twitter. The survey was also advertised in the Law Society of NSW’s online publication, *Monday Briefs*, and shared among NSW Young Lawyers members.
- 2.25 39 respondents (52.7%) accessed the survey through the Commission’s website or mailing list, 34 respondents (45.95%) accessed it through *Monday Briefs*, and 1 respondent came from NSW Young Lawyers.

Demographics of survey respondents

Gender

- 2.26 Of the 74 people who answered this survey, 55 reported their gender identity. Of these, most (58.18%) said they identify as female.

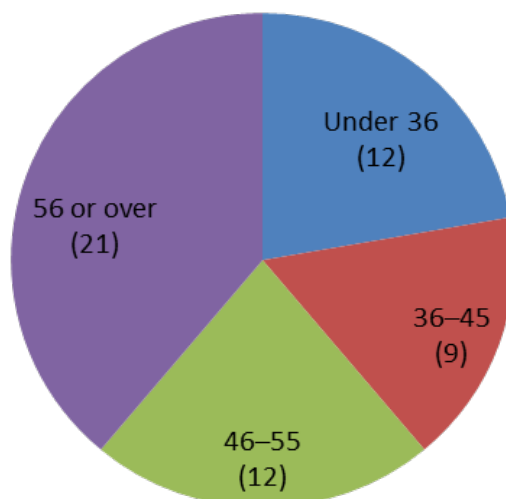
Table 2.4: Gender of respondents

Gender identity	Count	%
Male	23	41.82%
Female	32	58.18%
Other	0	-
Total	55	

Age

2.27 54 respondents reported their age. Of these, 21 (38.89%) said they are aged 56 or over.

Figure 2.2: Age of respondents (N=54)



Type of practice

2.28 55 respondents reported their type of practice. Of these, 23 (41.82%) said they work in a private firm of 2–4 solicitors.

2.29 1 respondent selected the “Other” option, and said they work in-house.

Table 2.5: Type of respondents’ practice

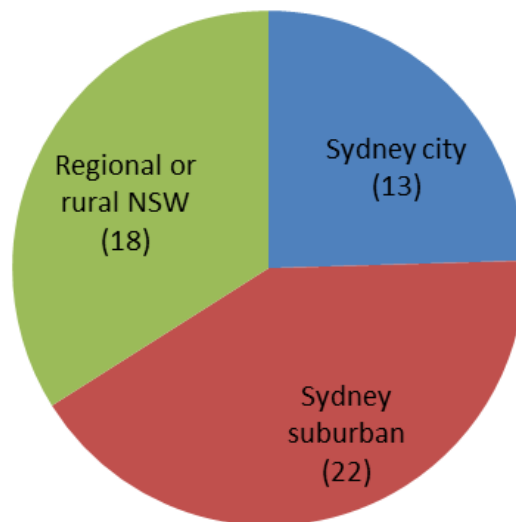
Type of practice	Count	%
Sole practitioner	10	18.18%
Private firm of 2–4 solicitors	23	41.82%
Private firm of 5–10 solicitors	13	23.64%
Private firm of 11–20 solicitors	3	5.45%

Private firm with over 20 solicitors	4	7.27%
Government	1	1.82%
Community legal centre	0	-
Other	1	1.82%
Total	55	

Location of practice

2.30 53 respondents reported the location of their practice. Of these, 22 (41.51%) said they work in suburban Sydney.

Figure 2.3: Location of respondents' practice (N=53)



3. General survey results: What should happen to your social media when you die?

In brief

The results of the survey conducted among members of the public indicate that many manage a number of different aspects of their lives online. However, few have made plans for how their digital records should be managed upon their death or incapacity.

Digital activity.....	12
Which social media platforms do you have an account with?.....	12
What year did you set up your first social media account?.....	13
Which social media platform do you currently use the most?	14
Do you have a website?.....	15
What is the website for?	15
Have you ever set up an account or website that you stopped using, but that still exists online?.....	16
Why does the account or website still exist?.....	16
Do you own Bitcoin or another kind of cryptocurrency?.....	17
Do you do your banking online?	17
Planning for when something happens to you.....	18
Have you ever shared your passwords with someone else?.....	18
Why did you give your passwords to someone else?.....	19
Have you nominated a “legacy” contact for your Facebook account?	20
Have you nominated an “Inactive Account Manager” for your Google+ account?.....	20
Have you ever downloaded copies of your social media account contents to store them on your computer or other device?	21
Do you use a password manager or vault?.....	21
Have you given anyone permission to access your password manager or vault if something happens to you?	21
Do you have a will?.....	22
If you have a will, what does it include?.....	22
Have you ever spoken to friends or family about your online accounts or profiles?....	23
What would you like to happen to your social media profiles/websites if you die or you can no longer manage them?	24

3.1 The aim of the NSW Law Reform Commission’s survey conducted among members of the public was to find out about:

- their digital activity, and
- what they would like to happen to their digital records upon their death or incapacity.

3.2 The results indicate that while many people have digital accounts and records, few have made specific arrangements for managing their digital records upon death or incapacity. This is similar to the findings of other studies conducted in Australia and overseas.

Digital activity

- 3.3 The results of this survey indicate that many people manage a number of different aspects of their lives online, including social networking and banking. This is similar to the results of other studies.
- 3.4 For example, a 2017 national estate planning survey found that Australians own a significant number of “digital assets”, predominantly social media, email and banking records. Only 18.35% of respondents said they did not own any digital assets.¹
- 3.5 An online survey by the NSW Trustee and Guardian found that nine out of ten Australians have a social media account.² In a UK survey:
- 97% of respondents had an email account, and
 - 71% had social media.³

Which social media platforms do you have an account with?

- 3.6 484 respondents answered Question 1: *Which of the following social media platforms do you have an account with?* Of these, most (95.04%) said they have an account with Facebook. The second most popular platform was Instagram, as 81.61% said they have an Instagram account.
- 3.7 23 respondents (4.75%) chose the “Other” option. The other platforms mentioned in the comments section included Pinterest, Tinder, Line, Twitch, Kik, Viber, Vimeo and Quora.

1. A Steen and others, *Estate Planning in Australia* (Charles Sturt University, 2017) 18.

2. NSW Trustee and Guardian, “Digital Assets Webinar” (27 October 2015) <www.tag.nsw.gov.au/digital-assets.html> 07:41 (retrieved 18 December 2019).

3. A Lynn, “What Happens to Your Digital Assets When You Die?” (10 September 2019) *VWV* <www.vwv.co.uk/news-and-events/blog/private-client-law-brief/what-happens-to-your-digital-assets-when-you-die> (retrieved 20 December 2019).

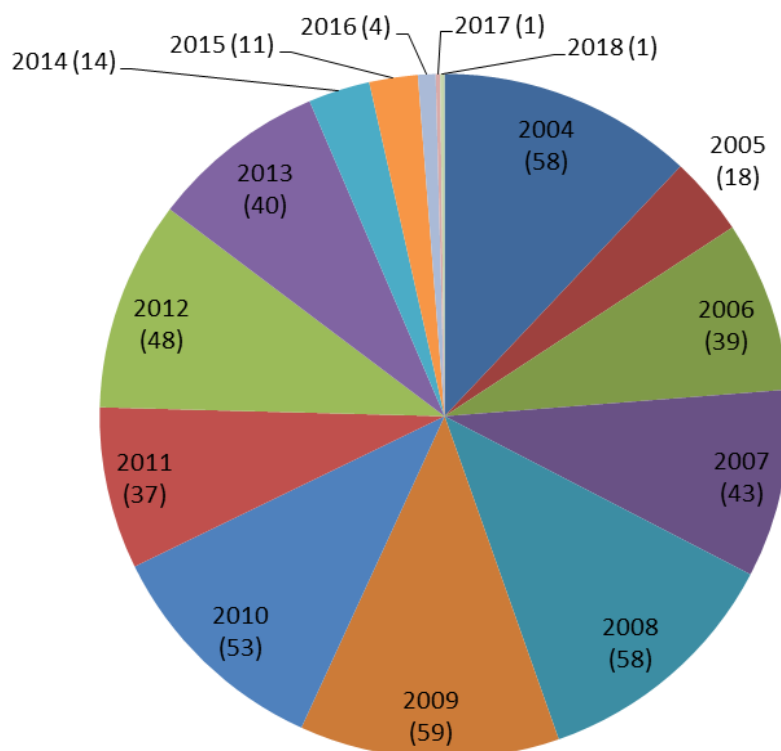
Table 3.1: Social media platforms

Social media platform	Count	%
Facebook	460	95.04%
Instagram	395	81.61%
Youtube	331	68.39%
Snapchat	322	66.53%
Twitter	225	46.49%
Google+	225	46.49%
LinkedIn	209	43.18%
WhatsApp	208	42.98%
Tumblr	141	29.13%
Reddit	99	20.45%
WeChat	22	4.55%
Other	23	4.75%
Total	484	

What year did you set up your first social media account?

- 3.8 484 respondents answered Question 2: *What year did you set up your first social media account? (If you can't remember, please take a guess)*. Of these, most said they had set up their first social media account in 2009 (12.19%), followed by 2008 (11.98%) and 2004 (11.98%).

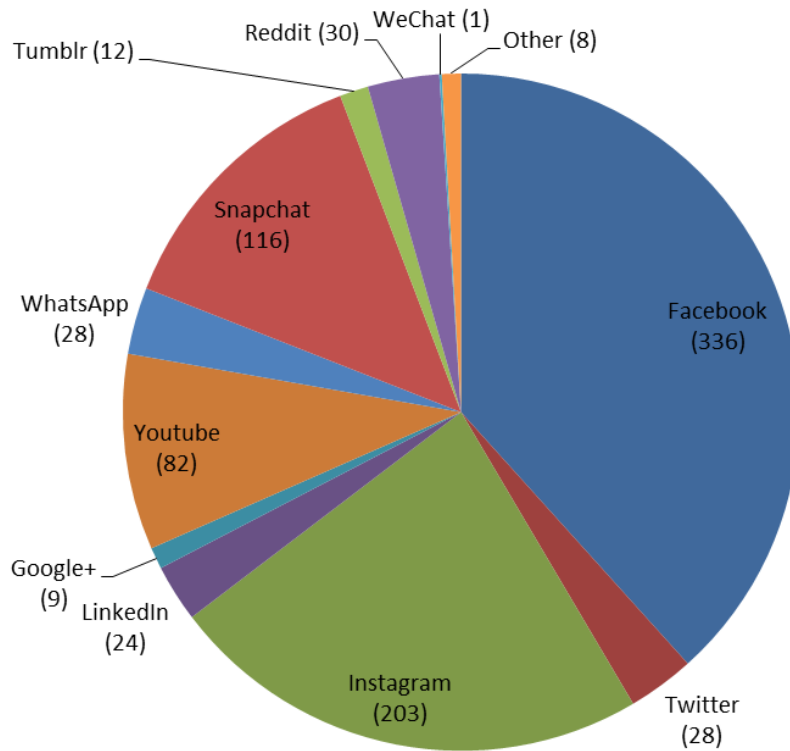
Figure 3.1: Year of first social media account (N=484)



Which social media platform do you currently use the most?

- 3.9 485 respondents answered Question 3: *Which social media platform do you currently use the most?* Of these, most (69.28%) said they use Facebook the most, followed by 41.86% who said they used Instagram the most.
- 3.10 8 respondents (1.65%) said they use “other” platforms the most. The other platforms mentioned in the comments section included Tinder, Kik, Pinterest, MSN, Bebo and Telegram.

Figure 3.2: Social media platform currently used the most (N=485)



Do you have a website?

3.11 480 respondents answered Question 4: *Do you have a website (including a blog)?* Of these, most (81.88%) said they do not have their own website.

Table 3.2: Website ownership

Answer	Count	%
Yes	87	18.13%
No	393	81.88%
Total	480	

What is the website for?

3.12 87 respondents answered Question 5: *What is the website for? Please check all that apply.* Of these, slightly more than half (54.02%) said their website is for personal use, while slightly less than half (44.83%) said their website is for business use.

3.13 15 chose the “Other” option. In the comments section:

- 6 people said the website was for school or a university course
- 2 people said it was for a blog

- 1 person said it was for experimentation
- 1 person said it was for a hobby
- 1 person said it was for a media publication
- 1 person said it was for a social club, and
- 1 person said it was for “mixed” uses.

Table 3.3: Website use

Answer	Count	%
Business use	39	44.83%
Personal use	47	54.02%
Other	15	17.24%
Total	87	

Have you ever set up an account or website that you stopped using, but that still exists online?

- 3.14 476 respondents answered Question 6: *Have you ever set up an account or website that you stopped using, but that still exists online?* Of these, most (78.57%) said they have. This suggests it is common for people to have disused accounts that still exist online.

Table 3.4: Disused accounts that still exist online

Answer	Count	%
Yes	374	78.57%
No	60	12.61%
I don't know	42	8.82%
Total	476	

Why does the account or website still exist?

- 3.15 376 respondents answered Question 7: *Why does the account or website still exist?* Of these, most (52.39%) said their account or website still exists because they cannot be bothered deleting it.
- 3.16 28 respondents chose the “Other” option. In the comments section:
- 7 people said the account or website still exists because they have forgotten the password to access it
 - 6 people said the account or website was linked to an old email account, to which they no longer have access

- 3 people said they want to keep the account or website active
- 3 people said they were unable to delete the account or website
- 2 people said they attempted to delete the account, but it still exists online, and
- 1 person said the account was hacked and they can no longer access it.

Table 3.5: Reasons why disused websites still exist

Answer	Count	%
I can't be bothered deleting it	197	52.39%
I don't know how to delete it	100	26.60%
It still serves a purpose, even though I don't use it anymore	51	13.56%
Other	28	7.45%
Total	376	

Do you own Bitcoin or another kind of cryptocurrency?

- 3.17 467 respondents answered Question 8: *Do you own Bitcoin or another kind of cryptocurrency?* Of these, the majority (94%) said they do not. Only 6% said they do.
- 3.18 These results, and those of other surveys, suggest that cryptocurrency ownership is uncommon. For example, 86.27% of respondents to the UK Digital Legacy Association's 2018 survey said they do not have any cryptocurrency.⁴
- 3.19 In another survey among UK residents, only 5% of respondents said they had cryptocurrency such as Bitcoin.⁵

Table 3.6: Cryptocurrency ownership

Answer	Count	%
Yes	28	6%
No	439	94%
Total	467	

Do you do your banking online?

- 3.20 471 respondents answered Question 9: *Do you do your banking online?* Of these, the majority (93.21%) said they do. Only 6.79% said they do not.

4. Digital Legacy Association, *The Digital Death Report 2018* (c2019) 17.

5. A Lynn, "What Happens to Your Digital Assets When You Die?" (10 September 2019) [VWW <www.vww.co.uk/news-and-events/blog/private-client-law-brief/what-happens-to-your-digital-assets-when-you-die>](http://www.vww.co.uk/news-and-events/blog/private-client-law-brief/what-happens-to-your-digital-assets-when-you-die).

- 3.21 These results are similar to those of a Western Australian study of older people. The majority of participants (84%) said they use online banking.⁶

Table 3.7: Online banking

Answer	Count	%
Yes	439	93.21%
No	32	6.79%
Total	471	

Planning for when something happens to you

- 3.22 Overall, the results of this survey indicate that few people make specific plans about how their digital records should be managed upon their death or incapacity.
- 3.23 These findings are similar to those of other studies. For example, 84.8% of respondents to the UK Digital Legacy Association’s 2017 survey said they have not made any plans for any of their social media accounts in the event of their death.⁷
- 3.24 In the UK Digital Legacy Association’s 2018 survey:
- 20 respondents (5.93%) said they have documented what will happen to their social media accounts following their death
 - 9 (2.66%) said they have made plans for their personal website, and
 - 7 (2.07%) said they have made plans for their personal blog.⁸

Have you ever shared your passwords with someone else?

- 3.25 468 respondents answered Question 10: *Have you ever shared your passwords for your social media accounts (or other online accounts) with someone else?* Of these, 273 (58.33%) said they had not shared their passwords with someone else. 195 (41.67%) said they had done so.
- 3.26 These results, and those of other studies, suggest that it is common practice for people to share their passwords. For example, in a Western Australian study of older people, 44% of participants had shared their passwords with others.⁹
- 3.27 In the UK Digital Legacy Association’s 2018 survey:

6. D N Dissanayake, “The Challenges of Digital Legacy Management on the Value of Digital Objects to Older Australians” (Master of Science (Computer Science) Thesis, Edith Cowan University, 2019) 50.

7. Digital Legacy Association, *Digital Death Survey 2017: Overview report* (c2018) 3.

8. Digital Legacy Association, *The Digital Death Report 2018* (c2019) 13–14.

9. D N Dissanayake, “The Challenges of Digital Legacy Management on the Value of Digital Objects to Older Australians” (Master of Science (Computer Science) Thesis, Edith Cowan University, 2019) 94.

- 21.01% of respondents said that someone other than themselves knows the passwords for their social media accounts
- 25.66% said that someone else knows the passwords for their email account(s), and
- 30.09% said that someone else knows the passwords for their other online accounts (such as online banking accounts).¹⁰

Table 3.8: Password sharing

Answer	Count	%
Yes	195	41.67%
No	273	58.33%
Total	468	

Why did you give your passwords to someone else?

- 3.28 194 respondents answered Question 11: *Why did you give your passwords to someone else?* Of these, most (71.13%) said they did so to give that person access to their accounts. Some respondents (23.2%) said they did so to enable that person to access or operate their accounts if something happens to them.
- 3.29 35 (18.04%) respondents chose the “Other” option. In the comments section:
- 9 people said they shared their passwords with a partner or family member
 - 7 people said they shared their account password with another person so that person could manage it for a short time
 - 4 people said they shared their account password with another person so that person could access it on one occasion
 - 3 people said they shared their passwords with another person in case they forgot them, and
 - 1 person said they did so for “work”.

Table 3.9: Reasons to share passwords

Answer	Count	%
So they can access my accounts	138	71.13%
So they can access or operate my accounts if something happens to me	45	23.20%
Other	35	18.04%
Total	194	

10. Digital Legacy Association, *The Digital Death Report 2018* (c2019) 8–9.

Have you nominated a “legacy” contact for your Facebook account?

- 3.30 460 respondents answered Question 12: *Have you nominated a “legacy” contact to deal with your Facebook account?* Of these, most (76.96%) said they have not done so. Only 11.74% said they have.
- 3.31 These results are similar to those of the UK Digital Legacy Association’s 2018 survey. Only 11.18% of respondents to that survey said they have set up a Facebook Legacy Contact.¹¹

Table 3.10: Legacy Contact nominations

Answer	Count	%
Yes	54	11.74%
No	354	76.96%
I don't use Facebook	20	4.35%
I don't know	32	6.96%
Total	460	

Have you nominated an “Inactive Account Manager” for your Google+ account?

- 3.32 459 respondents answered Question 13: *Have you nominated an “Inactive Account Manager to deal with your Google+ account if something happens to you?* Of these, most (75.2%) said they have not done so. Only 1.74% said they have.
- 3.33 These results are similar to those of the UK Digital Legacy Association’s 2018 survey. Only 3.27% of respondents to that survey said they have set up an Inactive Account manager for their own account.¹²

Table 3.11: Respondents who have nominated Inactive Account Managers

Answer	Count	%
Yes	8	1.74%
No	345	75.2%
I don't use Google+ services	90	19.61%
I don't know	16	3.49%
Total	459	

11. Digital Legacy Association, *The Digital Death Report 2018* (c2019) 13–14.

12. Digital Legacy Association, *The Digital Death Report 2018* (c2019) 13–14.

Have you ever downloaded copies of your social media account contents to store them on your computer or other device?

- 3.34 452 respondents answered Question 14: *Have you ever downloaded copies of your social media account contents to store them on your computer or other device?* Of these, most (69.69%) said they have not done so.

Table 3.12: Respondents who have downloaded social media account contents

Answer	Count	%
Yes	105	23.23%
No	315	69.69%
I don't know	32	7.08%
Total	452	

Do you use a password manager or vault?

- 3.35 451 respondents answered Question 15: *Do you use a password manager or vault?* Of these, most (72.95%) said they do not.

Table 3.13: Respondents who use password managers or vaults

Answer	Count	%
Yes	122	27.05%
No	329	72.95%
Total	451	

Have you given anyone permission to access your password manager or vault if something happens to you?

- 3.36 122 respondents answered Question 16: *Have you given anyone permission to access your password manager or vault if something happens to you?* Of these, most (84.43%) said they have not done so.

Table 3.14: Permission to access password managers or vaults

Answer	Count	%
Yes	17	13.93%
No	103	84.43%
I don't know	2	1.64%
Total	122	

Do you have a will?

- 3.37 448 respondents answered Question 17: *Do you have a will?* Of these, most (79.24%) said they do not have a will. 20.76% said they do.
- 3.38 These results may be due, at least in part, to the overrepresentation of young respondents in this survey. Research indicates that the likelihood of a person having a will is influenced by their age.¹³

Table 3.15: Respondents with wills

Answer	Count	%
Yes	93	20.76%
No	355	79.24%
Total	448	

If you have a will, what does it include?

- 3.39 91 respondents answered Question 18: *If you have a will, what does it include? (Please tick the relevant boxes).* Of these, the majority (92.31%) said their will does not include any details about what they want to happen to their social media profiles or websites, the passwords to their computer, phone and/or online accounts, or details about their password manager or vault.
- 3.40 5 respondents to the survey chose the “Other” option. In the comments section:
- 1 respondent said their will gives their executor the power to access their “digital assets”, so far as the law allows
 - 2 respondents said they have a list of instructions, separate to their will, which sets out what they want to happen to their social media profiles, websites, online accounts and computer, and includes the passwords, and
 - 1 respondent said they are more likely to include details of their accounts in a password manager.
- 3.41 These results are similar to those of other studies. In the NSW Trustee and Guardian’s survey, only 3% of participants who have a will had specifically decided what to do with their social media accounts when they die.¹⁴ In a Western Australian study of older people, 87% of participants had a will but 84% had not considering including their “digital assets” in their will.¹⁵

13. See, eg, A Steen and others, *Estate Planning in Australia* (Charles Sturt University and The University of Adelaide, 2017) 7.

14. NSW Trustee and Guardian, *Digital Assets Webinar* (27 October 2015) <www.tag.nsw.gov.au/digital-assets.html> 09:28 (retrieved 18 December 2019).

15. D N Dissanayake, “The Challenges of Digital Legacy Management on the Value of Digital Objects to Older Australians” (Master of Science (Computer Science) Thesis, Edith Cowan University, 2019) 108.

Table 3.16: Inclusions in respondents' wills

Answer	Count	%
My will sets out what I want to happen to my social media profiles	4	4.40%
My will sets out what I want to happen to my website(s)	1	1.10%
My will sets out the passwords to my personal computer, phone and/or online accounts	1	1.10%
My will includes details about my password manager or vault	1	1.10%
My will includes no such details	84	92.31%
Other	5	5.49%
Total	91	

Have you ever spoken to friends or family about your online accounts or profiles?

- 3.42 349 respondents answered Question 19: *If you don't have a will, have you ever spoken to friends or family about what you'd like to happen to your online accounts or profiles, should anything happen to you?* Of these, the majority (89.68%) said they have not done this. Only 7.45% said they have.
- 3.43 These results are similar to those of the NSW Trustee and Guardian's survey. That survey found that:
- 83% of Australians have not discussed with their friends or relatives what they want to happen to their social media accounts when they die
 - 79% have not discussed access to emails, and
 - 95% have not discussed access to cloud storage accounts.¹⁶

Table 3.17: Respondents who have discussed their accounts and profiles with others

Answer	Count	%
Yes	26	7.45%
No	313	89.68%
I can't remember	10	2.87%
Total	349	

16. NSW Trustee and Guardian, "Digital Assets Webinar" (27 October 2015) <www.tag.nsw.gov.au/digital-assets.html> 09:28 (retrieved 18 December 2019).

What would you like to happen to your social media profiles/websites if you die or you can no longer manage them?

- 3.44 434 respondents answered Question 20: *What would you like to happen to your social media profiles/websites if you die or you can no longer manage them? Tick all that apply.* Of these, around half (51.84%) said they would like their social media profiles to be turned into a memorial so their friends and family can view them, but not make changes. By contrast, in a Western Australian study of older people, only 6% of participants wanted their social media to be memorialised.¹⁷
- 3.45 24 respondents to Question 20 chose the “Other” option. In the comments section:
- 11 people said they would like their online accounts or profiles to be deleted
 - 3 people said they would like a nominated person to have access to them
 - 3 people said they would like their online accounts or profiles to be left active
 - 2 people said they would like a nominated person to save the account contents and then delete the accounts
 - 2 people said they would like their family to decide what to do with their accounts or profiles
 - 2 people said they would like different accounts and profiles to be dealt with in different ways
 - 1 person said they do not care what happens to their accounts or profiles, and
 - 1 person said their accounts are registered with “mydigitalafterlife.com.au” and a nominated person has access to their instructions.

17. D N Dissanayake, “The Challenges of Digital Legacy Management on the Value of Digital Objects to Older Australians” (Master of Science (Computer Science) Thesis, Edith Cowan University, 2019) 107.

Table 3.18: Respondents' wishes for managing their accounts and profiles

Answer	Count	%
They should be automatically deleted by the provider	94	21.66%
A person of my choice should get access to them and keep them active	32	7.37%
A person of my choice should get access to them and delete them	90	20.74%
A person of my choice should get access to them and they should decide what to do with them	145	33.41%
I'd like my social media profiles to be turned into a memorial so my friends and family can view them, but not make changes	225	51.84%
I don't mind. If I don't make plans – my friends and family should get to decide	107	24.65%
My social media profiles/websites are a part of my business, so they should be accessible to my person of choice	36	8.29%
Other	24	5.53%
Total	434	

4. Lawyers' survey results: Access to digital assets and digital records on death or incapacity

In brief

The results of the survey conducted among NSW legal practitioners indicate that there is some awareness among practitioners about issues relating to digital records when drafting wills and advising about estate administration. However, few practitioners reported addressing these issues when drafting enduring powers of attorney or enduring guardianship arrangements.

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- 4.1 The survey conducted by the NSW Law Reform Commission (“Commission”) among NSW legal practitioners aimed to find out about practitioners’ experiences dealing with digital records when advising on:
- estate planning and administration
 - enduring guardianships, and
 - enduring powers of attorney.
- 4.2 The results suggest that some practitioners are aware of issues relating to digital records when drafting wills and advising about estate administration. However, few reported addressing these issues when drafting enduring powers of attorney or enduring guardianship arrangements. This suggests that practitioners would benefit from further education about managing a deceased or incapacitated person’s digital records.

Will drafting

Is drafting wills part of your practice?

- 4.3 73 respondents answered Question 1: *Is drafting wills part of your practice?* Of these, most (90.41%) answered “Yes”.
- 4.4 Those respondents who answered “No” to this question were not asked to answer any more questions about drafting wills, as they were automatically directed to Question 16.

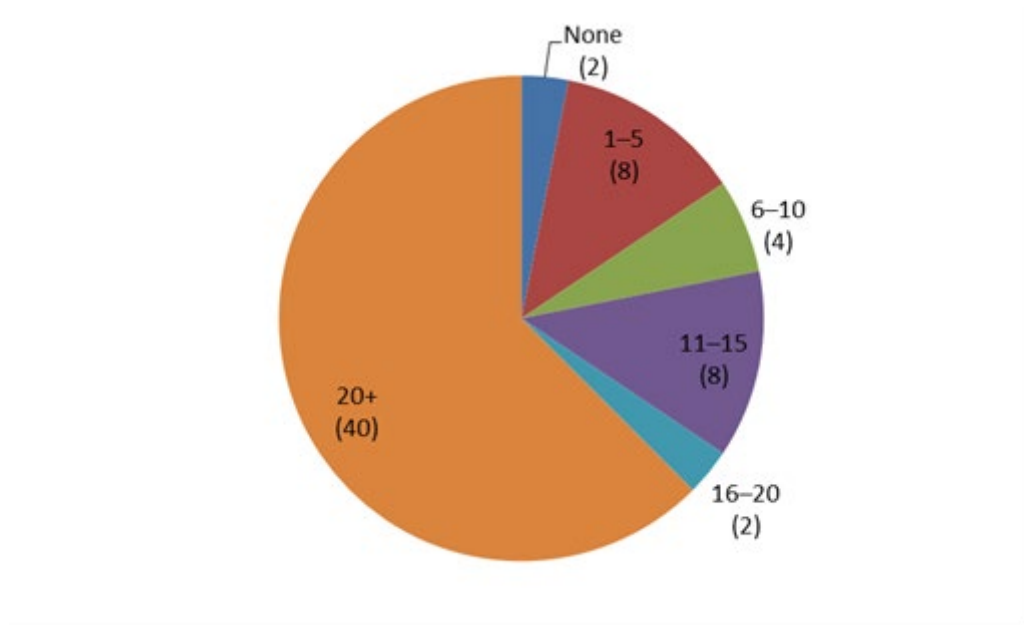
Table 4.1: Respondents who draft wills

Answer	Count	%
Yes	66	90.41%
No	7	9.59%
Total	73	

In the last 6 months, approximately how many wills have you drafted?

- 4.5 64 respondents answered Question 2: *In the last 6 months, approximately how many wills have you drafted?* Of these, most (62.5%) said they have drafted 20 or more wills in the last 6 months.

Figure 4.1: Number of wills drafted in the last 6 months (N=64)



Do you ask clients what they wish to do with their digital records?

- 4.6 63 respondents answered Question 3: *When taking instructions from clients about preparing their will, do you ever ask them what they wish to do with their digital records and/or digital assets?* Of these, around half (55.56%) said they do.
- 4.7 Those respondents who answered “No” to this question were automatically directed to Question 5.

Table 4.2: Respondents who ask clients about their digital records

Answer	Count	%
Yes	35	55.56%
No	28	44.44%
Total	63	

What specific actions do you take to deal with a client’s digital records?

- 4.8 34 respondents answered Question 4: *What specific actions do you take to deal with a client’s digital records/assets? (Tick all that apply).* Of these, most (76.47%) said they ask clients what they want to happen to their digital records or digital assets.
- 4.9 About half of those who answered said they:
 - advise clients to list their usernames and passwords in a document or password storage app (55.88%)

RR 15 Access to digital records upon death or incapacity: survey results

- ask clients if they want to appoint a specific person to manage or control their digital records (52.94%), and
- seek instructions on how to find and access their digital records/assets in the event of their death (44.12%).

Table 4.3: Dealing with clients' digital records

Answer	Count	%
I ask what they want to happen to their digital records/assets	26	76.47%
I ask if they want to appoint a specific person to manage or control their digital records/assets	18	52.94%
I seek instructions on how to find and access their digital records/assets in the event of their death	15	44.12%
I advise them to list their usernames and passwords in a document or password storage app	19	55.88%
I advise them to use an online tool (such as Facebook's Legacy Contact tool) to nominate someone to manage their accounts	10	29.41%
I advise them to download content from their online accounts so their executor or another person can find it	3	8.82%
I ask whether they want their computers and other devices cleared of content before they pass to beneficiaries	5	14.71%
Other	1	2.94%
Total	34	

Do you include a clause that authorises someone to manage a client's digital records?

- 4.10 62 respondents answered Question 5: *When drafting a will, do you ever include a clause that specifically authorises someone to manage or deal with a client's digital records and/or digital assets?* Of these, 29 (46.77%) said that they do.
- 4.11 Those respondents who answered "No" were automatically directed to Question 12.

Table 4.4: Respondents who include digital records clauses in wills

Answer	Count	%
Yes	29	46.77%
No	33	53.23%
Total	62	

How often do you include a standard clause authorising someone to manage a client's digital records?

- 4.12 29 respondents answered Question 6: *How often do you use a standard clause that specifically authorises someone to manage or deal with a client's digital records/assets?* Of these, 10 (34.48%) said they use a standard digital records clause in all wills.
- 4.13 Those who answered "Never" were automatically directed to Question 9.

Table 4.5: Frequency of standard digital records clauses in wills

Answer	Count	%
In all wills	10	34.48%
In most wills	8	27.59%
In about half the wills	4	13.79%
In some wills	6	20.69%
Never	1	3.45%
Total	29	

Please share the wording of any standard digital records clauses you use

- 4.14 17 respondents answered Question 7: *Please share the wording of any standard digital records/assets clause(s) that you use. We will not refer to them directly in any of our publications without your permission.* Of these, 8 gave the Commission permission to refer to the clause they use.¹
- 4.15 4 respondents use variations of the following clause:
- All digital rights, accounts, assets, and device content which is not otherwise personal property or the subject of a specific bequest, shall form part of the residue of my estate and my executor is empowered to deal with these assets.²
- 4.16 The other respondents use clauses which say that the executor has the power to take certain actions in relation to the person's digital assets and accounts, such as using, accessing, managing, modifying and deleting them. One of these clauses lists examples of "digital assets", such as phones, laptops, email accounts, digital music, digital photographs and social media accounts.

How often you include an individually tailored clause that authorises someone to manage a client's digital records?

- 4.17 26 people answered Question 9: *How often do you draft a clause that specifically authorises someone to manage or deal with the client's digital records/assets and is*

1. Question 8, *Do you give us permission to refer to the clause(s) in a publication?*

2. See M-A de Mestre and H Morrison, "Technology and Probate" (2016) 43 *Australian Bar Review* 8, 9.

tailored to client's individual circumstances? Of these, slightly less than half each said they:

- draft a clause that specifically authorises someone to manage or deal with the client's digital records/assets and is tailored to client's individual circumstances in some wills (42.31% chose this option), or
- never do so (42.31% chose this option).

4.18 Those who answered “Never” were automatically directed to Question 12.

Table 4.6: Frequency of individually tailored digital records clauses in wills

Answer	Count	%
In all wills	1	3.85%
In most wills	2	7.69%
In about half the wills	1	3.85%
In some wills	11	42.31%
Never	11	42.31%
Total	26	

4.19 No respondents shared the specific wording of any individually tailored digital records clause that they have used, nor gave the Commission permission to refer to the clause in an publication.³

Do you ever include a clause that purports to pass the client’s digital records?

4.20 59 respondents answered Question 12: *When drafting a will, do you ever include a clause that purports to pass the client's digital records and/or digital assets to their beneficiaries?* Of these, most (64.41%) said they do not include such a clause.

4.21 Those who answered “No” to this question were automatically directed to Question 16.

3. Question 10: *Please share the wording of any individually tailored digital records/assets clause(s) that you have used. We will not quote them directly in any of our publications without your permission;* Question 11: *Do you give us permission to quote the clause(s) in a publication?*

Table 4.7: Respondents who include clauses purporting to pass digital records

Answer	Count	%
Yes	21	35.59%
No	38	64.41%
Total	59	

How often do you include a clause that purports to pass a client's digital records?

- 4.22 21 respondents answered Question 13: *How often do you draft a clause that purports to pass the client's digital records/assets to their beneficiaries?* Of these, just under half (47.62%) said they draft such a clause in some wills.

Table 4.8: Frequency of clauses purporting to pass digital records in wills

Answer	Count	%
In some wills	10	47.62%
In about half the wills	5	23.81%
In most wills	1	4.76%
In all wills	5	23.81%
Total	21	

Please share the wording of the digital records clause(s) you use

- 4.23 7 respondents answered Question 14: *Please share the wording of the digital records/assets clause(s) you use. We will not refer to them directly in any of our publications without your permission.*
- 4.24 1 respondent gave the Commission permission to refer to the clause they use.⁴ This clause says that the person's executors and trustees are authorised do all things necessary to enable the use and enjoyment of the person's "digital rights, accounts, assets and device content".

Advising about administration of deceased estates

Is advising about estate administration part of your practice?

- 4.25 62 respondents answered Question 16: *Is advising personal representatives about administering deceased estates part of your practice?* Of these, the majority (83.87%) answered "Yes".

4. Question 15, *Do you give us permission to refer to the clause(s) in a publication?*

4.26 Those who answered “No” were not asked further questions about administration of deceased estates, as they were automatically directed to Question 20.

Table 4.9: Respondents who advise about estate administration

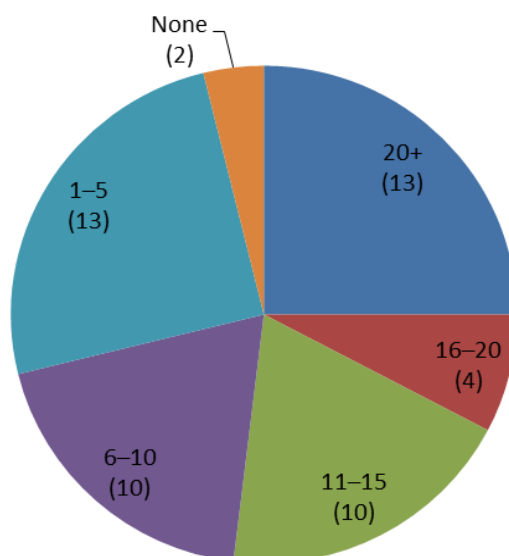
Answer	Count	%
Yes	52	83.87%
No	10	16.13%
Total	62	

How many personal representatives have you advised in the last 6 months?

4.27 52 people answered Question 17: *In the last 6 months, approximately how many personal representatives have you advised about administering a deceased person's estate?* Of these, 1 quarter each said that in the last 6 months, they have advised (approximately):

- 1–5 personal representatives (25% chose this option), or
- 20 or more personal representatives (25% chose this option).

Figure 4.2: Number of personal representatives advised in the last 6 months (N=52)



Do you deal with issues relating to digital records in the estate administration context?

4.28 51 respondents answered Question 18: *When advising personal representatives about estate administration, do you ever have to deal with issues relating to the deceased's digital records and/or digital assets?* Of these, 58.82% said they do not. 41.18% said they do.

4.29 Those respondents who answered “No” were automatically directed to Question 20.

Table 4.10: Respondents who deal with digital records when advising about estate administration

Answer	Count	%
Yes	21	41.18%
No	30	58.82%
Total	51	

What specific actions do you take to deal with the deceased's digital records?

4.30 20 respondents answered Question 19: *What specific actions do you take to deal with the deceased person's digital records? (Tick all that apply)*. Of these, most said they:

- ask whether the deceased person prepared a list of their digital assets/records (65% chose this option)
- advise on options for dealing with the deceased's digital assets (65% chose this option), and/or
- advise the personal representative to determine whether there are any liabilities relating to the online accounts, and pay them together with other liabilities (65% chose this option).

4.31 2 respondents chose the “Other” option. In the comments section, 1 respondent said they advise the personal representative to contact site administrators if this is necessary to make arrangements for the deceased person's digital records.

Table 4.11: Dealing with the deceased's digital records

Answer	Count	%
I ask whether the deceased person prepared a list of their digital assets/records	13	65%
I advise, if there is no list, that the personal representative creates one	7	35%
I advise on options for dealing with the deceased's digital assets (for example, deleting, selling or transferring them)	13	65%
I advise the personal representative to take steps to protect the privacy and security of individual assets/records (such as changing the passwords)	8	40%
I advise the personal representative to determine whether there are any liabilities relating to the online accounts, and pay them together with other liabilities	13	65%
I advise the personal representative to consider whether they need to download account content for distribution to beneficiaries, or other administrative purposes, before closing online accounts	9	45%
Other (please specify)	2	10%
Total	20	

Advising on enduring guardianship arrangements

Is advising on enduring guardianship arrangements part of your practice?

- 4.32 59 respondents answered Question 20: *Is advising on enduring guardianship arrangements part of your practice?* Of these, most (93.22%) answered “yes”.
- 4.33 Those respondents who answered “No” were asked no further questions about enduring guardianship, as they were automatically directed to Question 29.

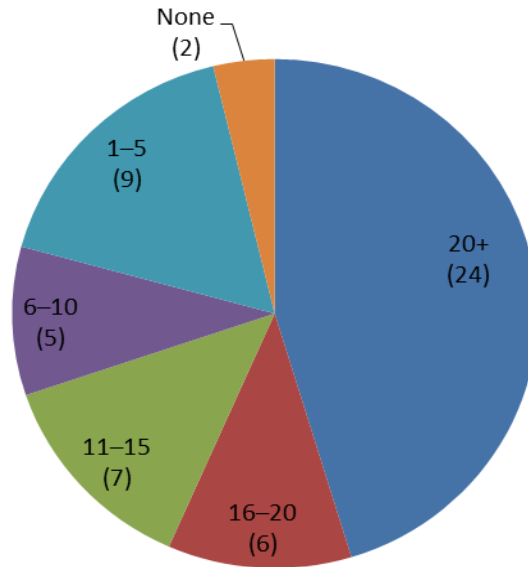
Table 4.12: Respondents who advise on enduring guardianship

Answer	Count	%
Yes	55	93.22%
No	4	6.78%
Total		

How many enduring guardianship arrangements have you drafted in the last 6 months?

4.34 53 respondents answered Question 21: *In the last 6 months, approximately how many enduring guardianship arrangements have you drafted?* Of these, 24 (45.28%) said they have drafted 20 or more in the last 6 months.

Figure 4.3: Number of enduring guardianships drafted in the last 6 months (N=53)



Do you ever include a clause that authorises the guardian to manage digital records?

4.35 52 respondents answered Question 22: *When drafting an enduring guardianship arrangement, do you ever include a clause that specifically authorises the guardian to manage or deal with the person's digital records and/or digital assets?* Of these, most (88.46%) said they do not include such a clause.

Table 4.13: Respondents who include digital records clauses in enduring guardianships

Answer	Count	%
Yes	6	11.54%
No	46	88.46%
Total	52	

How often do you use a standard clause that authorises a guardian to manage the person's digital records?

4.36 Six people answered Question 23: *How often do you use a standard clause that specifically authorises a guardian to manage or deal with the person's digital records/assets?* Two people each said they include such a clause:

- in all enduring guardianships
- in most enduring guardianships, and
- in some enduring guardianships.

Table 4.14: Frequency of standard digital records clauses in enduring guardianships

Answer	Count	%
In all enduring guardianships	2	33.33%
In most enduring guardianships	2	33.33%
In about half the enduring guardianships	0	-
In some enduring guardianships	2	33.33%
Never	0	-
Total	6	

4.37 1 respondent answered Question 24: *Please share the wording of any standard digital assets/records clause(s) you use. We will not refer to them directly in any of our publications without your permission.* However, they did not give the Commission permission to refer to the clause they use.⁵

How often do you include an individually tailored clause that authorises a guardian to manage the person’s digital records?

4.38 6 respondents answered Question 26: *How often do you include a clause that specifically authorises a guardian to manage or deal with the person's digital records/assets and is tailored to the person's individual circumstances?* Of these, half (50%) said they never do so.

Table 4.15: Frequency of individually tailored digital records clauses in enduring guardianships

Answer	Count	%
Never	3	50%
In some enduring guardianships	1	16.67%
In about half the enduring guardianships	0	-
In most enduring guardianships	0	-
In all enduring guardianships	2	33.33%
Total	6	

5. Question 25: *Do you give us permission to quote the clause(s) in a publication?*

- 4.39 No respondents shared the wording of any individually tailored digital records clauses they use, nor gave the Commission permission to refer to them in a publication.⁶

Advising on enduring power of attorney arrangements

Is advising on enduring power of attorney arrangements part of your practice?

- 4.40 56 respondents answered Question 29: *Is advising on enduring power of attorney arrangements part of your practice?* Of these, the majority (92.86%) answered "Yes".

Table 4.16: Respondents who advise on enduring power of attorney arrangements

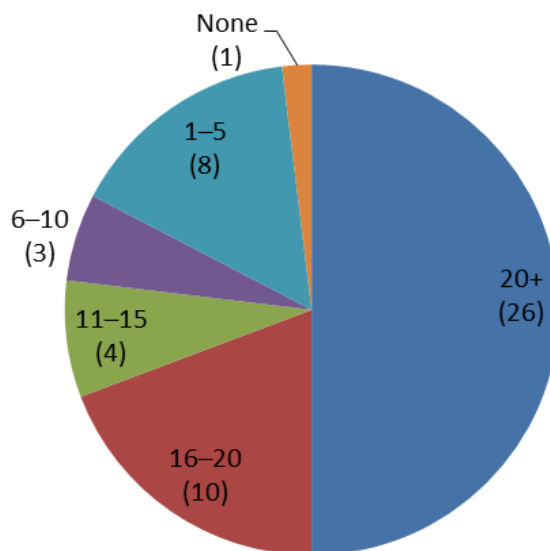
Answer	Count	%
Yes	52	92.86%
No	4	7.14%
Total	56	

How many enduring power of attorney arrangements have you drafted in the last 6 months?

- 4.41 52 respondents answered Question 30: *In the last 6 months, approximately how many enduring power of attorney arrangements have you drafted?* Of these, half (50%) said they have drafted (approximately) 20 or more.

6. Question 27: *Please share the wording of any individually tailored digital records/assets clause(s) you have used. We will not quote them directly in any of our publications without your permission;* Question 28: *Do you give us permission to quote the clause in a publication?*

Figure 4.4: Number of enduring power of attorney arrangements drafted in the last 6 months (N=52)



Have you ever included a clause authorising the agent to manage the principal's digital records?

4.42 52 respondents answered Question 31: *When drafting an enduring power of attorney arrangement, have you ever included a clause that specifically authorises the agent to manage or deal with the principal's digital records and/or digital assets?* Of these, most (71.15%) said they have never included such a clause.

Table 4.17: Respondents who include digital records clauses in enduring powers of attorney

Answer	Count	%
Yes	15	28.85%
No	37	71.15%
Total	52	

How often do you use a standard digital records clause?

4.43 15 respondents answered Question 32: *How often do you use a standard clause that specifically authorises the agent to manage or deal with the principal's digital assets/records?* Of these, 6 (40%) said they use a standard digital records clause in some powers of attorney.

Table 4.18: Frequency of standard digital records clauses in enduring powers of attorney

Answer	Count	%
In all powers of attorney	4	26.67%
In most powers of attorney	3	20.00%
In about half the powers of attorney	0	-
In some powers of attorney	6	40.00%
Never	2	13.33%
Total	15	

Please share the wording of any standard digital records clause(s) you use

- 4.44 4 respondents answered Question 33: *Please share the wording of any standard digital records/assets clause(s) you use. We will not quote them directly in any of our publications without your permission. 2 gave the Commission permission to refer to the clauses they use.*⁷
- 4.45 1 respondent uses a clause that authorises the person's attorneys to take certain actions in relation to their "Digital Accounts and Digital Assets", such as accessing, modifying, deleting or transferring them. The clause includes definitions of "Digital Accounts" and "Digital Assets". The clause also instructs the attorneys to implement the terms of a "letter of wishes" or "digital asset inventory" that the person may have compiled.
- 4.46 Another respondent uses a clause that authorises the person's attorney to exercise "all rights and interests" relating to the person's digital accounts, devices and resources, "to the extent permitted by law". The clause also includes a list of examples, including email accounts, audio files, digital photographs, digital books, file sharing accounts, laptops and mobile phones.

How often do you include an individually tailored clause that authorises the agent to manage the principal's digital records?

- 4.47 16 respondents answered Question 35: *How often do you include a clause that specifically authorises the agent to manage or deal with the principal's digital records/assets and is tailored to the principal's individual circumstances? Of these, around half (56.3%) said they never do so.*

7. Question 34: *Do you give us permission to refer to the clause(s) in a publication?*

Table 4.19: Frequency of individually tailored digital records clauses in enduring powers of attorney

Answer	Count	%
Never	9	56.25%
In some powers of attorney	3	18.75%
In about half the powers of attorney	1	6.25%
In most powers of attorney	1	6.25%
In all powers of attorney	2	12.50%
Total	16	

- 4.48 No respondents shared the wording of any individually tailored digital records clauses they use, nor gave the Commission permission to refer to them in a publication.⁸

8. Question 36: *Please share the wording of any individually tailored digital records/assets clause(s) that you use. We will not refer to them directly in any of our publications without your permission*; Question 37: *Do you give us permission to quote the clause(s) in a publication?*