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LAW REFORM COMMITTEE

Inquiry into powers of attorney

Melbourne — 1 October 2009

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Mr J. Billings, Deputy President, Guardianship List, Victorian Civil and Administrative Tribunal.

The CHAIR — Thank you very much for coming, John, and thank you very much for the submission that you sent; that has been well received. We have got 45 minutes. I have to go through some formalities first. You would be well aware that the evidence taken here is subject to parliamentary privilege, but that does not extend to outside this hearing. Hansard will be taking down the details and a transcript will be sent off to you. Having got all that out of the way, we will hand over to you to set us up and then we will ask you some questions by way of discussion and based on some things we have prepared.

Mr BILLINGS — Thank you. I am really in the Committee's hands as to the nature and length of my opening statement. I imagine you are more interested in questions than in what summary I might make of the submission I have already provided and the submissions as a whole, but perhaps I can just say a few things very briefly.

When I look through the whole of the submissions, I see that there are many recurring themes and that, generally speaking, any efforts to promote the further use of the powers of attorney and enduring powers especially are welcome, provided of course that there are adequate safeguards in place. It is generally recognised, I think, that there is scope for abuse at the point of making them or later when they are activated.

It seems to me that the Committee already has before it in the submissions a smorgasbord of options for how various powers of attorney and enduring powers could be improved in their composition. There are of course some difficult policy questions that legislators would ultimately have, looking at the cost and benefit in relation to some of those, and especially registration, which is certainly one of the themes that recurs throughout. Also from the point of view of the document itself, there are numerous choices that would need to be made because I think it is clear from the submissions — and I would certainly submit to the Committee — that the longer the document or documents are and the more complex they are, then probably the lower the take-up by members of the community.

There is a general view, which I support, that the take-up rate would be improved overall by reducing, if not eliminating, the problems that there are currently in the Victorian powers that arise due to the range of them, the form that they are in, the terminology, the witnessing provisions and so forth. I will perhaps make the particular point, and it is elaborated on in the submission by VCAT, that the idea of an omnibus form containing powers across the board is an attractive one, but I think there are some differences that may need to be maintained. It may be dangerous to think that there can be one form with one set of bases on which it operates, commences and so forth, and whether it includes provision for joint and several appointees needs to be thought through very carefully.

Something perhaps a bit closer to my heart is the theme that emerges in a number of submissions about the desirability of a national approach. I see that some submissions advocate Victoria really producing a model that ideally could be taken up in other places. I think one might well ask how that could be under the current terms of reference if the document or documents that might emerge as a result of this process did not include the full range of decision making, and obviously I am referring to decisions under the Medical Treatment Act when I make that point.

One alternative that I have mentioned that the Australian Guardianship and Administration Council has put forward is for there to be national legislation that more or less would sit alongside the current arrangements in the states and territories. If that were achievable and successful and popular, it could be that the arrangements that exist already in various parts of Australia would more or less fall into disuse and there would be a new comprehensive document — ideally, one that is registered — that would really take over.

They are the main points. There is so much detail along the way, as you are no doubt pretty well aware of. It does seem to me that at least in the relatively short term still there are some measures that Victoria could adopt, more or less within the existing frameworks, that would enhance the powers of attorney and the enduring powers that are under consideration by the Committee and that may lead to better safeguards and also a better or higher take-up rate. Some of those measures, from the point of view of VCAT, I think, relate to VCAT's powers and the possibility of VCAT having broader powers, whether it be to refer cases of abuse to the DPP or make orders for restitution against appointees who perhaps have abused the power and so forth.

To me, the other interesting theme that really arises from the submissions is the consensus of views about the desirability of education and promotion of these instruments, and not just to the elderly but also of course to the

young and to people from other cultural and linguistic backgrounds. I think there is scope for that, but of course when we talk about education and promotion of these instruments in that way there are obviously cost considerations, similar to with registration, which obviously will have an impact on all of that. Insofar as that cost is directed ultimately to the prevention of abuse, there is a good case to be made that that is a cost to the community that would be well worth bearing.

The CHAIR — Perhaps if we could just start off with the statistical bit about take-up rates and so on. We heard from Professor Terry Carney from Sydney University and he told us that about 25 per cent of the community had availed themselves of these provisions and he thought that take-up rate was probably around about the upper limit of what you could expect. Very interestingly, he talked to us about attitudes in some of the non-English-speaking groups in the community where they tend to leave things to family rather than outside agencies and so forth. We have not been able to pick up much statistical sense other than those sorts of things. In your experience how do you see the situation?

Mr BILLINGS — It is very difficult because VCAT of course is passive. VCAT reacts to applications that are made to it. Our own statistics would indicate that the Guardianship List receives about 10 000 applications a year. It has been pretty steady in that 3 per cent of those applications have referred to enduring powers of attorney. That has crept up in the last financial year to 4 per cent — that is about 400 cases a year. That is not entirely reliable though because sometimes the existence of one of these powers does not emerge until much later in the proceedings; the applications do not actually refer to it.

I know that when the former Public Advocate made a submission that ultimately led to the new part XIA of the Instruments Act, much of the evidence that he and his office were relying on was mostly anecdotal, so I am interested in Professor Carney's figures. I think it is unknowable. Without a compulsory registration scheme it is unknowable, and even with a compulsory registration scheme there would be some who do not register so you do not really know anyway. The figure that he gave strikes me as perhaps a bit high, but, as I say, I think it is unknowable. Professor Carney of course has a very long and distinguished career in this area of law and social policy so I would defer very much to what he has to say. But it would surprise me to think that we have reached the limit of the take-up rate that there could be. If the barriers were removed — by which I mean normally the confusion surrounding them and the efficacy and ease of producing and registering these documents, if that is what has happened with them — and if there really were a concerted education campaign, the likes of which we probably have not seen yet, then my sense of it is that we could get well beyond 20 per cent. But that is unknowable too.

One of the reasons why I am personally attracted to the concept of a national approach is that you then get the cooperation of course of state, federal and territory governments and agencies throughout the country promoting really the one consistent line with it. I know that the money does not just materialise, but that may help provide, from a range of sources, the sort of funding that would be necessary to engage in public awareness on that sort of level.

The CHAIR — Of the cases that are brought to you, could you give us a bit of a picture of what they are and the spread of issues that are raised with you?

Mr BILLINGS — None concerning general powers of attorney, because we do not have jurisdiction in relation to those, although sometimes people do not appreciate that and we are asked to make orders in relation to them. Most relate to enduring powers of attorney. There are relatively few cases where they have it all including enduring power of guardianship or enduring power of attorney (medical treatment). Of the ones concerning enduring powers of attorney — the financial, so-called — most are cases of abuse, and often they are triggered by, for example, the proprietor of a nursing home whose fees are not being paid. Somehow that is often the way in which some problem is identified in relation to the enduring power of attorney. To a lesser extent, a significant number of applications relate to enduring powers of attorney where there is doubt as to the validity of them in the first place, that is the capacity of the donor to make the enduring power in the first place. Then there are simply cases where, say, an application has been made generally for a person who is thought to have lost capacity and after the application has been made there might be one or more family members who will take this person around and at that point try to get them to make an enduring power of attorney, which is often an interesting approach and does not really last very long. That is a very broad picture, I think, of applications.

Mr CLARK — Can I just clarify one reference you make, because it harks back to the things we have discussed in earlier evidence. You talked about enduring powers of attorney being financial powers, so-called. The question has arisen in a previous discussion as to whether it is in fact correct to label them as financial powers of attorney or whether it is more accurate to characterise them as giving general authority other than in relation to medical treatment. How would you describe the scope of the authority given to an appointee under an enduring power of attorney under the Instruments Act?

Mr BILLINGS — I think 'financial' is perhaps too limited an expression. In the context of administration, when the Act talks about someone's estate we talk about it as being their financial and legal affairs, and then we give examples; that may include property, but it might include choses in action, a right to compensation and those sorts of things. When I used the expression 'so-called' before, I did that because I notice that in a number of submissions and in other places as well you often see 'enduring power of attorney (financial)'. That is why they are a so-called enduring power of attorney (financial), whereas that is not how they are named in the legislation. That was really all I meant by that. But legislation that would give clarity to exactly what is meant, beyond what we have now — that means lawfully can do whatever the donor can do — I think would be helpful.

Mr BROOKS — Just in relation to the issue of capacity I note the submission you have made talks about the possibility of the need for a medical practitioner to sign off on the donor's capacity, and it also talks about the Monash University report and generally cautions that people might be driven away from agreements because of the complexity or the perceived trouble of going to make these agreements. I was just wondering where you might see the balance as being a reasonable one.

Mr BILLINGS — I do not envy the Committee's task in that because it is difficult to know where to strike a balance. I suppose from VCAT's point of view we see the cases where there is a problem and where there is controversy about this. There is very often less likely to be that kind of controversy if more or less at the time the enduring power is made there is an assessment by an expert and that is documented. There is no doubt that it would be very helpful, but I am not sure whether that is really required across the board for the 100 per cent of cases there might be. For instance, if any of us wanted to make an enduring power of attorney today, we might be put off by the thought that we had to go to see a doctor or a neuropsychologist or whatever.

I note that some of the other submissions, I think the Public Advocate's in particular, really tend to say the balance should be struck at a point short of that requirement for there to be a contemporaneous medical assessment, and I would really not take issue with that. It is perhaps something that could be done less formally by an encouragement or prompt in the document itself, or in guidelines or accompanying material that go with it, to say that if there is doubt or if there is likely to be dispute later on, then donors are encouraged to go through that kind of process, rather than it being written in as a necessarily automatic thing.

The CHAIR — I needed to ask you before in relation to groups that take up the processes around powers of attorney, are there any groups in the community that you are aware of that have low levels of use?

Mr BILLINGS — It is very hard to say. I can think of many groups which seem to have taken it up. As a sweeping generalisation, some of the newest arrivals would be the least likely to, but that would be for reasons that are not specific to the issue we are talking about at the moment. I am not really sure the degree to which there is information in community languages for people about these instruments in any event. I just know from the experience that I have had doing the work that there are people from a range of cultural and linguistic backgrounds who have had these, and it is also true to say that there is a very significant number of people whose families have been here for many generations who have not taken them up.

By and large, when we make administration orders we are making them for people who do not already have a valid enduring power of attorney in place that is being exercised in their best interests. As I have said, we have 10 000 applications a year. There are currently about 16 000 administration orders in Victoria. Most of those would be for people who did not have an enduring power of attorney in the first place. The comment I would make about that is that these are people at all levels of education and what you might describe as sophistication, so it is not simply a matter of, 'We didn't know it was available', or whatever. It is just that we all know about the desirability of making a will because people talk about wills and about providing for what happens when we are not here; no-one seems to talk about providing for things that might happen while we are still here.

The CHAIR — The matter I want to raise now is: you talked about the desirability of having one piece of national legislation, and you speculated that over time the state legislation would atrophy and the federal one would remain. Of the different state regimes that are in operation at the moment, which one would you opt for as the one we might use as the best model?

Mr BILLINGS — It is obvious from the VCAT submission and some of the others that the Queensland and ACT models have things to commend them. My hesitation in responding fully to the question would be that unlike the Victorian statutes I have not lived with the interstate ones, so I really have only a passing familiarity with them. I regularly have meetings with my counterparts in other places, and my understanding from talking to them is that they are quite well satisfied with the legislation in those jurisdictions that I have mentioned.

Frankly I think the ideal model piece of legislation is yet to be drafted, and from those two that I have mentioned I would select something from the South Australian Act that I also refer to in the VCAT submission. It would select from this smorgasbord of concepts that I mentioned early on. The choices that would ultimately be made would not be ones that I would be having to make.

The CHAIR — So back to us.

Mr BILLINGS — Exactly.

The CHAIR — Very judiciously handled.

Mr BILLINGS — That is one of the challenges for uniform legislation, because each state and territory will inevitably have its own ideas about which of these different measures is to be preferred and which they might see as heavy-handed. The example of a medical report on signing is one example. That might appeal to a small jurisdiction like Tasmania, which has registration, for instance. It is quite manageable in a population of Tasmania's size, but it becomes a very different issue when we are talking about Victoria and New South Wales, for instance.

The CHAIR — Have you had a look at their register, by the way?

Mr BILLINGS — The Tasmanian register?

The CHAIR — Yes.

Mr BILLINGS — I have not actually had a look at the register. I have had some communication with the President of the Guardianship Board in Tasmania, Anita Smith, about her experience of that, and she had some interesting comments to make about it. It is mandatory, and I think the registration fee is $90 or thereabouts, but their requirement is that the power not be registered on signing but on activation — at the time it is activated. She expressed reservation about that, because she told me that where there is a cost, some attorneys — some of the trustee companies — will hold off on registering for as long as they can because they want to avoid the fee if they can. There has been the experience that some attorneys have got cold feet and decided not to register at all and not to take up the power that the donor intended them to have. There are issues there too as to how this would be managed.

The CHAIR — What about privacy issues?

Mr BILLINGS — Again, that would be one that I would be happy to push back to the Committee. For this kind of measure to have any efficacy of course it would need to be a public record so that hospitals, banks or whoever could have access to the record. If it is private it can be useless, but for some people that will be a deterrent to making these powers and having them registered. Again, in any public awareness campaign these are among the pros and cons that need to be addressed. For instance, if it got to a point where an appointee before using one of these powers had to lodge, say, a medical certificate that showed that the person had lost their capacity, then people would be understandably very unwilling to have a system like that.

However, there are other mechanisms. One mechanism could be that before an appointee activated one of these powers the appointee could lodge, say, a medical certificate with VCAT, and VCAT could simply make a declaration or a finding — and it could be quite neutralised — to say that the Tribunal was satisfied that the basis had come into effect. That would say nothing about the person's disability, if any, or capacity or whatever. It would really be a check that there was a valid power and that according to the terms of the power itself the

preconditions for it coming into operation had been satisfied. That may well include that the person had ceased to have capacity. That is one way it could be approached.

Mr CLARK — That leads on to the issue I was going to raise with you, which is that of the merits of having a capacity threshold or trigger point in the first place. We have previously had evidence from a witness that in fact you would be better off not requiring incapacity as a threshold for enduring power to work; in other words, it could be exercised concurrently with someone being of legal capacity. Not only does it avoid that awkward threshold question, but it also helps with what I think is sometimes referred to as supported decision making or joint decision making with the donor when someone is certainly capable of being consulted and it is unclear whether or not they are still of legal capacity. Do you have any views on that?

Mr BILLINGS — I would agree with that. Many people make an enduring power now because they are really providing for the future, but they intend that they will be the ones managing their affairs for the time being, with or without the help of someone else. I had a hearing only this morning for a quite young man who had a very serious car accident at the beginning of the year. His parents were appointed as his administrators. He has been fortunate, I suppose, to have now recovered sufficient cognitive capacity where he can manage his affairs himself.

At the end of the hearing, after I revoked his administration order, we had a discussion about an enduring power of attorney. It is likely that he will now make one for his parents. He was physically injured as well as suffering a brain injury, and there will be times when he will want his parents to physically go to the bank or talk to Centrelink — or the TAC or whoever it is — to do some of those things that he cannot do, more for physical reasons than cognitive ones. Yes, I would say that generally to approach it in the way you have suggested would be what most people would want and what would work well for them.

Mr CLARK — I should ask about Gippsland. It was a witness who practises with a community legal centre in Gippsland who said that a lot of people at seminars he gave were anxious that a power could not commence to operate until they had become incapacitated, which certainly is surprising to me. Have you encountered that concern?

Mr BILLINGS — Not really, because obviously we are all different, and among the many advantages of the new part XIA that went into the Act in 2004 was that donors could specify when the power was to come into force. Some donors will specify that they do not want it to be activated until they have lost capacity, and they may further specify it be not only until they have lost capacity but that that has been established by the reports of X number of medical practitioners. There are many different ways of approaching it.

I can well understand somebody who is fit and well, has no cognitive impairment and is able to manage their affairs, saying, 'I want to appoint my son or daughter to be my attorney, but I do not want them in control until I cannot do it myself'. There will be others somewhere in the middle who will say, 'I do not want to lose control until I am incapacitated, but I know I am going to need help from time to time, so I want my attorney to be able to start doing things for me straightaway, provided it is in consultation with me and it is carrying out my wishes' and so on, which leads to the supported decision-making question I think you were about to ask me as well.

Mr CLARK — If you do want to engineer the capacity for someone to make some but not all decisions on your behalf while you retain legal capacity, it is probably quite difficult under the existing regime. I presume you could use an old-fashioned, common-law power of attorney.

Mr BILLINGS — If you are just talking about an enduring power of attorney, the form provides for putting restrictions and limitations on the power, so you could express on the form itself that you can manage the bank account and you can talk to Centrelink but you cannot sell the house, for instance.

Mr BROOKS — I am just asking for your opinion. Earlier you mentioned a part of the South Australian Act that might be something we could pick up, section 7. This is at page 7 of your submission. One part was that it imposes a liability on the donee to compensate the donor for a failure to exercise his or her powers with reasonable diligence, and section 8 makes it an offence not to keep proper records. I suppose one could say they would be fairly desirable things because they seem to be fair, but the question mark, which you point out later on, is over whether that discourages people from agreeing to be attorneys.

Mr BILLINGS — I think that is right. I know some of the submissions talk about specifying penalty units and criminal sanctions and so forth, and I think one needs to be very careful about that because I agree, with respect, that it would put a lot of people off. They think they are being asked to do something to help their aged parent, and then they start reading that they might go to jail or something if they slip up in some way. I also make the point that there needs to be discretion about what penalty there might be, because, for example, what does failure to keep records really mean, and what does failure to exercise due diligence really mean? What is the consequence of that? Does it mean that somebody has put their tax return in a week late or does it mean that somebody has divested considerable assets from the estate into their own pool?

Having said that, if as a community we are to be serious about financial abuse, not only of the elderly but of anyone who is cognitively impaired, then it seems to me that there need to be more sanctions and more avenues for redress than currently exist. I personally would not want to see that approached with a blunt instrument, but I would want to see more sanctions than currently exist.

The CHAIR — I am jumping around a bit now and wish to ask you something else on the subject of the registers we were talking about before. It was put to us again earlier today that a good location for such a register might be the Office of the Public Advocate, but others have also put the idea that perhaps it should be — in Tasmania I think it is the Land Titles Office.

Mr BILLINGS — Yes, correct.

The CHAIR — And, indeed, VCAT.

Mr BILLINGS — Yes, I read that with interest.

The CHAIR — Have you got a view on what might make sense?

Mr BILLINGS — I think one submission even suggests some new body to be the repository for these documents. As far as VCAT is concerned it is a question of resources. I obviously cannot speak for the President, and I cannot speak for the Chief Executive Officer, but I do not think it would be going beyond what I would be permitted to say when I say it would be possible for that to be VCAT, provided that it were resourced. I can give the illustration that for about half of the 16 000-odd administration orders we have a year the State Trustees would be the administrator, but most of the other half are private administrators who are required to lodge annual accounts. The number of annual accounts that would come in each year is about 7000, which we register in the sense that we lodge them, retain them, scan them and send them off to an examiner to be examined and so forth.

Within the registry there are mechanisms of the kind that could be fairly readily adapted to this kind of exercise, subject to that it would need the resourcing around it. I would not presume to speak for the Public Advocate or the Registrar of Titles as to whether they should take it on. It would obviously be a question for government as to whether there was some new, discrete body that would have this kind of function. I would say in summary that subject to the views of the President and the CEO, I could see VCAT taking on the role, if it were resourced.

Mr BROOKS — The previous witness we had in from the community legal service that was mentioned before cited from community information sessions they had run that the reason people did not take up the option of forming a power of attorney was that they were prepared to wait, put it off, if you like, and 'When something happens and I lose capacity, someone will look after that'. Importantly also, if it goes to VCAT and an administrator is appointed, there would be a level of accountability. Because annual statements have to be submitted and there is that level of accountability, the question is whether in your view it would be wise for us to look at making attorneys have to submit annual statements as well.

Mr BILLINGS — There are obvious benefits in doing that, and as you point out, there is a model that VCAT has in the case of administrators. Of course the question would always be to look at the cost and the benefit, which is for the Committee, and what would be the impact on donors and appointees. Would they really want to take it on if they thought that would be what they were required to do? Many people's affairs are so straightforward and their savings are so modest et cetera that one wonders whether the benefit would really be there, although having said that I acknowledge that for somebody whose income is, say, a pension only, if $50 goes missing for that person, it has a very substantial impact on that person.

When we talk about costs and benefit and these things I begin to think about perhaps the desirability of randomising that so that it is not everyone in every case who does it every year, in perpetuity. For instance, if VCAT were registering these, then VCAT could itself perhaps initiate through directions that particular attorneys lodge for this year; we have a look at that, and if everything is in order, perhaps we could leave them alone for the time being and move on to someone else. As it is, under the Instruments Act we do have power to require attorneys to lodge accounts for examination. There are already cases where we have done that, and we have some attorneys who, through the directions that we have given, are in a process of lodging accounts annually.

Mr BROOKS — What prompts VCAT to select those?

Mr BILLINGS — As I said, we are passive, so if no-one had ever made an application in respect of those donors, we would not know about them. But there might be cases, for instance, where there is family conflict surrounding the making of the power, who has got the power and how they are exercising it, and there is not sufficient evidence to say that the attorney is acting contrary to the best interests of the donor. Nevertheless, there may be some concerns that, unless put on strict terms, there might be problems, or there might be an issue about the capabilities of the donee. It is not so much a question of their honesty or integrity, but are they really capable of managing? So we will sometimes give directions that will put that to the proof over a period of time.

Mr CLARK — Can I follow on from that. Are you able, either now or on notice, to give us some sort of idea what cost is involved for VCAT in having the accounts lodged by administrators or guardians scanned and looked at, as you mentioned earlier, on an aggregate or per item basis, and of the proportion that are scrutinised, how many of those scrutinies lead to some sort of follow-up actions, such as follow-up questions to the lodging party or reviews and cancellations of their appointments?

Mr BILLINGS — I will have to take that on notice. I can say this much: it is a small but significant number that would result in reassessment and revocation of the appointment of administrators. It is certainly much more common that the examiner, usually State Trustees in its capacity as examiner, will provide a report back to the Tribunal that might ask where is the proof of the authority to make this gift, or where is the bank statement that verifies the closing bank balance, and things of that nature? They are far more common, but generally they can be dealt with through correspondence between the Tribunal and the administrator. As to the cost, I would have to find out and notify the Committee about that.

Mr CLARK — Is it fair to say that overall you think that review process does throw up sufficient cases of abuse to make it worthwhile?

Mr BILLINGS — I suppose the point might be made that all the cases that it does not throw up are proof of it being worthwhile too, because administrators know once that they are appointed they will have to justify their actions as administrators. Again, I cannot do this without knowing exactly what the costings are, but I can regrettably say there have been a few instances where quite serious abuse on the part of administrators appointed by VCAT has been unearthed through this kind of process. It is a very small number of cases, but, of course, any are troubling to the Tribunal given that it is the Tribunal that has entrusted these people with this responsibility in the first place.

Often the grounds for revoking an appointment are more that the administrator is clearly struggling with the reporting requirements and generally with the management of the person's affairs rather than it being deliberate abuse that has enriched the administrator in some way. I suppose I would say it is difficult to put a value on that and whether that is justified by the cost. My feeling about the matter is that it is well justified, but I will certainly provide that information to the Committee.

The CHAIR — We had a range of matters relating to attorneys and education matters. You have just raised the issue about inadvertent — not so much wrongdoing — doing of things that are not in the best interests of the person and also around their duties. The thing I want to ask you straight off is: currently attorneys can seek guidance from VCAT. Do they do that, and what sort of matters do they raise with you?

Mr BILLINGS — They do. It is more common for administrators to seek the Tribunal's advice, but certainly it is something that attorneys can do. Often it is where there is some issue that there may be a controversy about — for instance, selling a person's home is the classic one, where the person does not want their home sold or there might be other family members who say, 'We don't think the person is ready to enter

supported accommodation', or whatever, 'so we don't think that the property should be sold.' More likely an administrator, but sometimes an attorney, will seek the Tribunal's guidance about that.

The CHAIR — Sorry to interrupt you. How would that come to you? Say, if there is an aged person living in their home and the person with the power of attorney thinks it would be in their best interests to sell that property and have them better cared for, then it would be the donor who would have a problem with that and they would raise an action, but they are the ones who are relatively disempowered. How does that work?

Mr BILLINGS — They still might because, as you are well aware, there are levels of incapacity, and it may be somebody where there is a question mark about whether this particular donor has lost capacity in the first place. Even if the person has lost capacity in the sense that they cannot sign, do not understand a withdrawal slip or have lost the ability to differentiate between a $50 note and a $20 note and these sorts of things, it does not mean they cannot know where they want to live and express their wishes about that. It does not mean they cannot find out that there is a place called VCAT that you can go to if you want to stop something from happening that you do not want to happen.

Perhaps a more typical example is, say, where there is a handful of children, one is the attorney and the others think it is not time for mum or dad to go into a nursing home and do not want them to sell the property. At other times the person has already been put in a hostel, so they are already in low-level care, and after that the property needs to be sold so that a bond can be provided. Some family members might say, 'Why don't you rent the property? Why don't you let one of the grandchildren live there and pay the outgoings?', and this kind of thing.

Where there is some sort of controversy around a decision to be made, that is a typical example of where we are asked to give advice to an attorney or an administrator, but sometimes it is where there is a lack of clarity about the way the enduring power of attorney itself operates. Sometimes it is where there was one made before the new provisions came into effect. It might talk about alternative attorneys and that kind of thing, and no-one is really clear what it means or how it is meant to operate. They can come to VCAT to get advice about that kind of thing.

The CHAIR — Do you think that intersection, which is potentially a very rich one because it might affect not only that particular group of people, is an opportunity for VCAT to play an educative role? What is the potential there?

Mr BILLINGS — There are different ways in which we play an educative role, I suppose. We publish decisions of interest. If there is a decision about something like that that has a broader application, we would certainly publish that, and we do on AustLII. No-one is very interested in producing hard-copy reports of VCAT Guardianship List decisions, but AustLII certainly has many of them.

The CHAIR — But is there perhaps a potential to package those up in some way that gives ordinary folk an understanding without having to go to legal websites or whatever — perhaps a pamphlet in the doctor's office or at their local lawyer or community legal centre, some distribution like that?

Mr BILLINGS — The short answer is yes, but in my view the level at which you would want to produce a pamphlet is at the level that the Public Advocate, for instance, has already done and is capable of doing if there is new legislation in the future. The kind of example I gave you may be worth a mention or a reference in that kind of material, but usually the sorts of things we would write decisions about, even though they might have broad application, are perhaps usually more technical in nature. Certainly there is scope for more information — as you say, pamphlets in doctors' waiting rooms and that kind of thing. It really should be more open. I could say more about that if you are interested, but it might be off your topic.

The CHAIR — We are right on time. Thank you very much for your submission and for your generous time this afternoon. We appreciate it a lot.

Mr BILLINGS — You are very welcome.

The CHAIR — You will get a copy of the transcript.

Mr BILLINGS — Thank you very much, and I will send that other material to Ms Riseley.

Ms RISELEY — That would be great, thank you.

Committee adjourned.