

# CORRECTED VERSION

## LAW REFORM COMMITTEE

### Inquiry into powers of attorney

Melbourne — 1 October 2009

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#### Witnesses

Ms L. O'Brien, Policy Officer, and

Mr D. Reddick, Gippsland Community Legal Service, Federation of Community Legal Centres.

**The CHAIR** — Dale Reddick and Lucie O'Brien from the Federation of Community Legal Centres, thank you very much for your submission, which we received, and thank you for coming in to talk to us this afternoon. We value that a great deal.

I will just run through a quick formality. The evidence taken at this hearing is protected by parliamentary privilege as provided for under the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and legislation of other jurisdictions. Any comments that you make outside this hearing will not be afforded that privilege. That is one point.

Hansard will be taking down our conversation, and you will receive a copy of the transcript afterwards. You can make some slight changes to that but obviously not substantial changes. We have 45 minutes, or just under if you have to leave right on time, so we will put it over to you to set us up, and then we have some things we need to go through and some issues that will no doubt fall out of what you talk about. It is over to you.

**Ms O'BRIEN** — Thank you very much for inviting us to come and speak with you today. I hope we can add something of value to our written submission. Perhaps it would be best if we just firstly explain where we come from. I am a policy officer with the Federation, which is the peak body of all the community legal centres in Victoria. Dale works at one of those member centres. He could perhaps explain a bit about that.

**Mr REDDICK** — Yes, certainly, Lucie. I will give you a little bit of context as to how I have ended up in the mix of things back with the Federation. I am with the Rights Advocacy and Support Program which is now part of the Gippsland Community Legal Service. It started life about six years ago as a Department of Justice rural initiative to have a Gippsland contact for OPA, the Dispute Settlement Centre of Victoria and the then Equal Opportunity Commission. We have had six years of developing relationships around Gippsland and providing support and community education in those areas. By far and away we could jettison the rest and I could just do powers of attorney community education sessions to fill up my time. The review in July last year merged us with the Gippsland Community Legal Service, which was a return to a community legal service and then back with the Federation.

**Ms O'BRIEN** — I am here to speak about the process of writing our submission, because I understand there were some aspects of it that the Committee would like clarified, whereas Dale has much more practical, day-to-day experience in giving people information about powers of attorney and the problems that arise under the current legislation.

**The CHAIR** — It will all be very interesting to have on the record.

**Ms O'BRIEN** — I do not know if you would like us to give a brief overview of community legal centres and what they do or whether I can assume that you are familiar with that.

**The CHAIR** — I think we are across all that.

**Ms O'BRIEN** — Thank you. Perhaps then we will just reiterate the main points of our submission. The first point that we make is that the forms should be streamlined. I understand several other submissions have made this point. We believe the model adopted in Queensland is the preferable model, being where you have one form for general powers of attorney and another for all the different types of enduring powers of attorney, with clear sections referring to each one within the single form. I think the New South Wales form is a good example of what we mean by overzealous streamlining, whereby you have all the different powers that can potentially be created by one form.

We think the degree of difference in the legal ramifications between an enduring power and a general power justifies there being separate forms to try to make sure that people understand the significant difference between those two instruments. Apart from that, we generally think that aspects such as witnessing requirements could afford to be much simpler and more consistent, because at the moment there is quite a lot of confusion and inconvenience caused by the different requirements.

The second point is in regard to alternative attorneys and composite attorneys. We are just adding our voice to the Law Institute of Victoria's call for legislation to be amended, as we set out in our submission, to allow for those arrangements. Cross-jurisdictional recognition is also an issue which I understand several submissions

have raised. Dale has a better understanding of the specific provisions of this than I do. Would you like to speak quickly to that?

**Mr REDDICK** — I think part of the changes in 2004 went a long way to having the cross-jurisdictional recognition, but I think there is a lot of confusion among people, especially with the growing grey nomad culture. People they see that as part of preparing for their journey but are worried that in a week's time they will be in New South Wales and in a month's time they will be in Queensland, and attorneys generally are not prepared for what restrictions there may be. I have never seen a practical application of the restriction coming into play, apart from doing some community education down at Metung and having people present their documents for me to have a look at, and for a while I thought I was reading a foreign language. They were people who had just retired over the border. A couple of those key areas, New South Wales, Queensland and the east coast — —

**The CHAIR** — Please talk about that; it is interesting to us as an on-the-ground view. There you are at Metung, people are there with their caravans or staying in the hotels there, and they come to you.

**Mr REDDICK** — Yes. A couple of them were children who still resided in the area, but their parents had retired across the border. In a couple of cases they were attorneys who had had parents move, and in a couple of cases they were donors who had moved.

**The CHAIR** — They brought you a range of documents, did they, that had been filled out in different places? How do you work with that?

**Mr REDDICK** — For the people who had retired and for whom that was going to be a permanent move, we suggested that they re-donate the powers in the state that they are going to be residing in.

**The CHAIR** — What sorts of problems does that confront them with if they then have to find an alternative?

**Mr REDDICK** — They have to start from scratch. Those people who were on the move said, 'We might be here for a few months but we will be heading back up north'. With the growing grey nomad culture, it is problematic for those people who are trying to do something to prepare for their trip and the various things that might happen, whereas in practical terms it is not being supported as they travel. A move towards uniform requirements and restrictions would be a great move for them.

**The CHAIR** — We have had witnesses talking about the generalities, but I think you are the first person who has come along that has actually dealt with someone over a table, so it is interesting. They might have different power-of-attorney arrangements in different states, so that they are running multiples, or they might have gaps where they have moved interstate and there is nothing for them. You advise them to select one or the other and just basically live with it because there is no other option.

**Mr REDDICK** — From my experience people have donated the power in their original home state, and then they are on the move and the original power is still in existence but, depending on where they will be, if and when anything happens, will determine how the power is directed or restricted.

Normally attendees at the community information sessions will say, 'What does that mean? I cannot tell from that'. We will just say that the powers are recognised across jurisdictions, but it may be subject to the limitations of that state. In practical terms we cannot tell people what that means so it creates that level of uncertainty. 'What is the point of donating power here in Victoria before I go off on a 12-month trip, because I do not know what is going to happen if I get crook in Queensland or the Northern Territory' is the number one response from attendees.

Year-to-date I have done — the Rights Centre, but that is me because I am a sole worker — 15 community education sessions, and that is with two and a bit months overseas, where there were none, and 200 attendees so far for the sessions. We have a Department of Veterans' Affairs forum in Bairnsdale next week with 90 attendees registered so far, and a multicultural women's group in Morwell the week after with 60 attendees.

**The CHAIR** — How do you promote this, because those are very big forums?

**Mr REDDICK** — Yes. With the inception of the Rights Centre we have a six-year history of building up those relationships across Gippsland and I think that has just been the key to it.

The key players with whom we would attend network meetings and plan sessions are mainly the seniors groups. We attend a couple of the local TAFEs where they have built it into the certificate III and certificate IV disability and aged care, which I think is a great step forward because we are helping to inform people who are then going out and working in the community; a couple of the hospitals and mental health services staff that we liaise with; Lifeline, Probus and Rotary groups and neighbourhood houses are a fantastic way of promoting it across Gippsland; even employee groups and trades and labour. I go to Hazelwood to do the employee staff and wellbeing, to try to move it out of the realm of the older Victorians; through the Victoria Law Foundation with the law talks and the Department of Veterans' Affairs. That has been a six-year history of building relationships and responding. I have not actively done any promotion of community education sessions for about 18 months. Everyone knows it is there. When they get my newsletter they are normally prompted to remember that I am about and the education bookings just come in.

**The CHAIR** — Lucie, you were in mid flight when we started asking questions. Did you want to continue?

**Ms O'BRIEN** — That is because I digressed. I deviated from our agreed running order so Dale is probably wondering when he is going to get a chance to talk.

**The CHAIR** — Let us get you back on track. We will be fairly flexible about all that, but we do not want to cut you off, if you had a plan.

**Ms O'BRIEN** — If we can just keep going, and please interject whenever it is relevant. I apologise for that, Dale.

Apart from the cross-jurisdictional issue, the proof-of-incapacity issue is one that we think is very important, but it is one where there has been some controversy within our membership, and I am going to expand on this issue in relation to some other points.

Most of us, Dale and myself, Seniors Rights Victoria and pretty much everybody else I have spoken to other than the Mental Health Legal Centre, within our membership, believe there should be a requirement for some medical evidence that the person no longer has capacity before an enduring power can come into effect.

However, Mental Health Legal Centre does not adopt that view and as a membership-based organisation, as a representative body, we cannot categorically take a position that one of our member centres does not accept so we can only try to give you an idea of the varying views within our membership, and I understand you are going to meet with Seniors Rights and the Mental Health Legal Centre separately so they will be able to expand on the various reasons they have for adopting that view.

Dale, you would be in agreement that there is potential for abuse when the power takes effect immediately without a requirement for any medical evidence of incapacity?

**Mr REDDICK** — That is our third-most expressed concern. 'What is to stop my attorney from using that power while I still have capacity?' There is certainly a concern there that people do not want their attorney acting for them, or having any active power, while they still have capacity.

**Mr CLARK** — It is interesting that we have had previous witnesses who have argued to the contrary, that in fact you are better off getting rid of the incapacity threshold test and allowing an enduring power to operate from the time it is made, and rely on the reserved capacity of the donor to cancel the power if it is abused, rather than to have a complicated test about whether or not the donor has become incapacitated. Do I take it you would disagree with that view?

**Mr REDDICK** — Yes. The most common question or feedback we have — and this is just relaying what we are hearing most from people — is that there are always a couple of people who put their hands up and say, 'What is to stop the person from exercising the power?'. We normally speak about the three powers and say that the power can start immediately for enduring power of attorney financial, and people normally ask why, so I give the scenario of when I first started work. I had to get my pay packet, it was a cheque and I would take it to the bank, and then go and pay my bills. Years ago I donated general power of attorney a couple of times so that could happen while I am travelling. People tend to say, 'Why would you still need that?'. If people have mobility issues or trouble accessing the bank they can see that the power may need to be enacted immediately.

We compare that to guardianship and medical treatment where we say it would only ever start when you lose capacity and they say, 'Of course'. The feedback I get from people is, 'We would not want it'.

**The CHAIR** — Often people have a difficulty with something in the generality, but when it comes down to the particular individual to whom they have donated their power there is a pre-existing relationship, there is a trust that exists before, that is ongoing. Does that qualify that sense of anxiety about it at all, because the point that Robert has made that has been put to us today is that because the issue of capacity, for want of a better term, is being constructed as binary, on a given date you lose capacity and that is it, folks, the power has to be referred to some substitute for you. Given that it unfolds over time, it is better to have a relational situation with the person who has the power of attorney, and that was the argument that was put, so it solves one problem about definition and it builds a stronger relationship. I found that very attractive, to be honest, so what you say is very interesting. My question is: people in general might have a problem, but when it actually comes down to it they would feel more comfortable?

**Mr REDDICK** — In relation to relationship building, that is something that is reiterated on almost every stage of our PowerPoint presentation. That is addressed through people having those regular discussions with their attorneys. That relationship can be developed without the attorney having any power at that stage.

We are normally connected with making a will. I normally start by asking people if they have a will, if they have an enduring power of attorney and really connecting the concept of both. I ask, 'If you are thinking about making a will or have made a will, what will happen to the goods and chattels if you die?'. But if through that accident or illness you are still around — —

We sort of connect the idea of a will which you review every couple of years theoretically. In terms of power of attorney you have that conversation with your attorney regularly, so that builds that relationship without them having any power. I think in general terms people are worried about the concept of someone having power from the moment they sign the forms rather than their individual circumstances, whether they are thinking about a friend, family member, sibling or a child. That is how it comes back to me at the sessions.

**Mr CLARK** — Does it follow that you think they have a residual worry about trusting the person they appoint even though they have decided it is still the best option available? For example, I do not want my son putting me in a nursing home before my time, but I suppose when the time comes I have no choice so I will appoint him. Do you think it is that sort of thinking?

**Mr REDDICK** — I am not sure whether we just have a bit of a fatalistic population in Gippsland or not, but overwhelmingly we normally talk about the concept that life is unpredictable. A person will be found to make decisions for you one way or another. You can take control, fill out the forms now, or if something happens to you, VCAT will make that decision. The problem with the VCAT decision is that you will have little or no input into that. You would hope the member appoints the same person you would have chosen yourself but there is no guarantee. The pressure is on the family and friends of them having to go to a hearing while we are supporting you.

We then get to a difference between the accountability and reporting requirements. When we get to the point that there would be annual auditing and a maximum three-year appointment only anyway through VCAT, I would have to say about 50 to 60 per cent of people say, 'Why do we just let it happen then that way?'. They would rather go with the flow, as it were, as a lot of people would say, 'Let VCAT make its appointment because there will be a high-level of accountability and reporting through that process'. There would have to be about 50 to 60 per cent of people thinking, 'Oh well, I will just do it that way. If I appointed that person, that person is going to be able to do whatever they want for the rest of their life'. They then normally ask, 'How is anyone going to know if they are doing the wrong thing?'. We normally say we rely on family, friends, healthcare professionals coming to OPA or phoning to say, 'I am not sure if this is running quite well' and allowing whatever that inquiry needs to take place.

**The CHAIR** — Shall we go back to you?

**Ms O'BRIEN** — Yes, we are steadily making our way through the list.

**The CHAIR** — We are. That is all right. As long as you do not mind us jumping in like this.

**Ms O'BRIEN** — Not at all. The next point we made in our submission, and we would like to emphasise again, is the need for education. Again Dale has a lot of experience, as you have heard already, in running community education campaigns. But we also, in addition to that, believe there is a high level of need for targeted education to people perhaps working in banks, superannuation funds, Centrelink and other areas where they are relatively well placed to detect abuse of these kinds of instruments, to just make sure they understand what the different instruments are, what those powers are that are conferred, what the warning signs are and who should they go to if they suspect abuse. As well in our submission we mentioned the need for better legal education. A case study in our submission is again from Dale where the solicitor drew up a general power of attorney after being asked to create an instrument that would come into effect when or if the father lost capacity.

I would not think by any means that is a unique case. I did not study powers of attorney at university; I do not think I was the only one to know nothing at all about it on graduating from university. While there are some education programs run by the Law Institute of Victoria, they are not compulsory. It has been suggested by one of our members that information about powers of attorney could be part of a compulsory CPD unit for all solicitors that also included broader skill development about how to take instructions from people with disabilities or mental illnesses and just making them better lawyers and better able to serve the needs of those kinds of vulnerable clients.

**The CHAIR** — What are the issues there with a training program being compulsory or not because that has been raised with us earlier? It conforms with what you have just said to us. If, for argument's sake, the Committee were to recommend that, would that cause a problem?

**Ms O'BRIEN** — It may. There is already quite a lot of compulsory training that you have to do to keep your practising certificate. Arguably a lot of it is not that useful or relevant. You have to do compulsory units on legal ethics, practice management and professional skills and also substantive law. The substantive law elements can be about any kind of law that you like. So you can just refresh your knowledge of the area that you practise in or you can take units in something completely different.

In that respect there is a great deal of latitude. But there is no latitude about having to do it. Everyone has to do it. It is quite time-consuming; it is quite expensive. It seems to me to be a bit of a misuse of resources to have people paying hundreds of dollars for these classes every year and spending days at them and not necessarily learning anything new or anything that could benefit their clients. Probably some people like having the degree of choice that they currently have about the CPD units they take.

**The CHAIR** — Would the Federation's view be that it would be a good idea if it was mandated?

**Ms O'BRIEN** — I think so. That is not something that we have circulated widely to the membership because it only came up in the last few days in my discussions as I was preparing for this hearing. I would have to go back and consult everybody before I could say categorically that is the Federation's view. I cannot imagine that many of our members would be opposed to it. On the contrary, I think in general raising the level of awareness and skills in the legal profession as far as mental illness, disability, language barriers and how to overcome those problems is concerned would be strongly supported by most of our members.

**The CHAIR** — Okay.

**Ms O'BRIEN** — Dale, would you like to add anything about your community legal education work?

**Mr REDDICK** — I think we have covered the relationships we have built up around Gippsland that have led to such a demand for the enduring power of attorney community education sessions.

**Ms O'BRIEN** — The only other thing that I would add to that is the idea of a roadshow, a sort of travelling roadshow going around rural areas. That has been put to me as a potential avenue for raising community awareness about powers of attorney. But I think what Dale does in some ways is much better because it creates ongoing relationships rather than just sporadic bursts of information that you might get to or you might not. I think the model that Dale works in is probably preferable.

**The CHAIR** — I know it is probably quite involved, but could you just tell us a little bit about the elements of the program? One of the things we are interested in is what type of education is required. You are running these forums; what is actually in them?

**Mr REDDICK** — In terms of how I run the session and what they walk away with?

**The CHAIR** — Yes. What do people walk away with? What have they learnt by the time they walk out the door, as distinct from when they come in?

**Mr REDDICK** — I hope they have learnt a fair bit. It is hard to say sometimes. I suppose I start with the idea that life is unpredictable and someone will be found to make decisions for them one way or another. That tends to come as a bit of a shock first of all. I discuss the four powers of attorney but point out that the enduring one is the one that is the instrument to plan for the future.

I open up some ideas around thinking who they would trust with the power should they choose to donate it. I put forward the idea of having conversations with whomever they choose to create an ongoing relationship with them. I explain that they can revoke the power whenever they choose, that the signature on the form and the witnessing does not lock them into an arrangement. I suggest that they can make it part of their future planning if that is what they feel they need.

**The CHAIR** — Yes, okay.

**Ms O'BRIEN** — Just very quickly, if the Committee is interested in that issue of the CPD, I can certainly consult our members and make a supplementary submission on that point.

**The CHAIR** — Yes, that would be good.

**Ms O'BRIEN** — Lastly, there is the issue of safeguards against abuse. Again this issue has caused a little bit of controversy among our membership. On the one hand we have Seniors Rights Victoria which advocates much stronger safeguards and greater intervention to prevent the abuse of powers of attorney. On the other hand we have Mental Health Legal Centre, which does not want this process to become a pretext for further incursions on the freedom of people with mental illnesses. There are, I suppose, quite different issues at stake when you are talking about someone whose capacity fluctuates due to a mental illness as opposed to a person who is permanently in a state of dementia and realistically is never again going to be able to look after their own affairs.

On the one hand we have a lot of people who believe there should be a register, and you will note that in our submission we suggest that the Committee consider a register. That is my attempt to try to put the issue on the table without giving our unqualified endorsement for it, which we cannot. Certainly there is strong support within our organisation for a register.

**The CHAIR** — What are the concerns?

**Ms O'BRIEN** — As I understand it — and you will hear about this from Mental Health Legal Centre, no doubt — the concerns are that it would provide avenues for second-guessing the decisions of people with mental illnesses. While they may be a little bit unwise or a little bit risky, they are not necessarily symptoms of a lack of capacity. For example, if a person engages in sexual behaviour that most people might find a little bit inappropriate and potentially risky, which unfortunately a lot of people do, and they are mentally ill, does that take away the person's right to engage in that kind of risky behaviour? If you create a register, then you are effectively giving the government even more of an avenue to investigate the activities of mentally ill people, second-guess them and circumscribe their freedom.

**The CHAIR** — I thought the idea would be when a donor appoints an attorney and the documentation is then processed, that then would be registered, and not that some other party would nominate a person for whatever reason without their agreement to be registered as losing authority over themselves.

**Ms O'BRIEN** — I suppose there are degrees to which regulation of this area can erode people's privacy and freedom. Simply the registration of the instrument would not necessarily be a gross infringement of people's privacy. From the perspective of Mental Health Legal Centre, as I understand it, even the decision as to whom you appoint as your attorney is a private one and should not necessarily be divulged to anyone else because that decision could be viewed by other interested parties as an unwise or inappropriate one.

**The CHAIR** — What would be the objection? It has been put to us that we might have a register that just acknowledges the date of the power being donated and whether there has been any rescission of that, whether it is current.

**Ms O'BRIEN** — Personally I do not have any objection to that, but Mental Health Legal Centre, as I understand it, for a range of reasons is strongly opposed to any greater infringement of people's privacy in this respect.

**The CHAIR** — Okay, we will talk to them.

**Mr REDDICK** — Registration is by far and away the hands-down top question from attendees. The first question is: where do I register it?

**The CHAIR** — They think that is a sensible thing to do, do you think?

**Mr REDDICK** — Absolutely, yes. When we go through how to donate the powers either at community education sessions or if they come in for help filling out the forms, they find the paperwork quite ponderous actually. They say, 'Where do I register it?'. You can just see a little hint of suspicion of it. Some of them will say, 'We have gone to all of this trouble' — regardless of who it is in their life — 'and we are giving this person all of this power. The government wants us to fill out these forms. Why don't we have to register some of them?'. We have had some discussions around the other mechanisms that could support them, and they require either a short education session once the attorney is registered.

Looking at the proof of loss of capacity, if my attorney gets the neuropsychology report that I have lost capacity, that could be registered by that professional with the register, so there is not a lot of paperwork and registration for the attorney to do which could be a deterrent. It could support education for an attorney's ongoing education and support for attorneys and the registration of a loss of capacity.

Hospitals that are trying to work out if a patient is not in a position to advise them of their EPA (medical treatment) could check that up. I did not bring any, but we developed some small wallet cards for Gippsland people. They were quite concerned if they went to a hospital and were not in a position to advise the doctors of their medical treatment and the difference between next of kin and the person responsible and, in some cases, the relationship between those two entities could be problematic.

If my ex-wife comes in and she is somehow my next of kin, but it is my brother who never got on with her who is really the person responsible for my EPA (medical treatment), how is the hospital going to know that? So we developed just a small wallet card with a sort of a message that says, 'Stop! I have a power of attorney (medical treatment)'. We put EPA (financial and guardianship) on the back, not that they are normally called on in the acute situation, but just to round out the information. They have been really well received by people.

**Mr BROOKS** — I was just going to say that you have suggested in the submission the Office of the Public Advocate could maintain a register. Is there any particular reason you selected that organisation? How would you see that working?

**Mr REDDICK** — That was just the first entity and the most obvious one I thought of.

**Ms O'BRIEN** — It seems to have the existing expertise and experience with some of the relevant issues. It just seemed that it would be a logical addition to the current powers it has. I think we mentioned in our submission it would require a significant resource — an addition of resources. That is obviously going to be a concern, I imagine, with the auditing proposal we also make in qualified terms. I realise that is going to bring significant resource issues as well. We certainly would not want the OPA to be saddled with all of these new responsibilities without being adequately resourced to carry them out.

**Mr BROOKS** — Yes, and alternatively if the cost was transferred to people registering agreements, there would perhaps be disincentive for them to register in the first place.

**Ms O'BRIEN** — A disincentive?

**Mr BROOKS** — Yes.

**Ms O'BRIEN** — As the gentleman who came before us mentioned and as I am sure others have mentioned too, all of the measures to improve accountability need to be weighed against making the risk that you will make powers of attorney so onerous that people will not enter into them any more which is obviously of concern.

**Mr REDDICK** — I suppose we were thinking at RASP that if I donated to Lucie, I would register that with the OPA. That would be a mechanism for OPA to supply Lucie with some comprehensive support or even education to start and that ongoing support to formalise that ability to get support from OPA. That is why I suppose we were thinking of OPA as being an obvious choice.

**Mr BROOKS** — Assuming it will be compulsory registration for every agreement?

**Mr REDDICK** — Yes.

**Mr CLARK** — I suppose from this Committee's point of view we are charged with looking at powers of attorney right across the board from personal use through to commercial use. It is the corporates — people using attorneys to buy and sell homes et cetera as well for lifestyle, medical or aged-care decisions. Basically the question is: if there is going to be registration, which body would be best to handle all of those possibilities?

**Ms O'BRIEN** — Just on the auditing issue — and I realise we are probably running out of time — one thing we do not mention in our submission but that has come up subsequently is the possibility of telephone reporting rather than submitting written reports which we appreciate could be very difficult for some people, particularly people without high levels of literacy or for whom English is a second language. One alternative might be to make an annual telephone appointment to ring in to OPA, or to whichever other body is responsible for the regulation of this area, to report orally on how you are exercising your powers. If for any reason OPA has any concerns, they can then ask you to supply documentary evidence and possibly even refer it for investigation. That occurred to us as one possible means of making it less onerous for people to comply with reporting the obligations that we are talking about.

**Mr CLARK** — I have a quick question, and it might be one that you have not looked at in enough detail. At the outset you spoke about the Queensland model as being one worth consideration for us in Victoria. From a quick look at the Queensland Act I see there are a couple of subcategories in the general category, including security powers of attorney and a capacity to register powers of attorney. It may also allow for specific powers of attorney. Do you think further options are desirable, or do you think we would be better off keeping it as one universal power of attorney?

**Ms O'BRIEN** — I am afraid I could not express a view on that.

**Mr REDDICK** — Not without seeing it. I have seen the forms but not the Queensland Act.

**The CHAIR** — Some of the submissions we have received suggest that legislation should require attorneys to act in the best interests of the donor. You might have heard our previous speaker talking a little bit about the notion of best interests as being some sort of repository; that if you do not know what do to it is sort of open slather. I think it would be fair to say that in our questioning of other witnesses today we have tried to unpack what 'acting in the best interests of someone' might mean and how you might action that in a way that is transparent, demonstrable and objective. Do you have any thoughts on that? Is that too hard a concept? Is it a useful concept, and how do we do what it is aiming at?

**Mr REDDICK** — I agree with Terry around the concept of best interest.

**The CHAIR** — Patronising. That was what he was — —

**Mr REDDICK** — Yes, and it really opens the door to a paternalistic approach. I liked the scenario of getting a few stripes from Dad, and that 'It hurts me more than it hurts you' sort of thing. I think it opens the door, or allows the dignity of risk of the donor to be overwhelmed by the perceived duty of care of the attorney — the risky behaviour or some lifestyle choices or decisions of the donor. It might just be as basic as being values driven, and just being overwhelmed by the attorney's perceived duty of care and, 'This is in your best interests'.

**The CHAIR** — Just to argue the other way for a minute, and I do not take quite such a strident objection to the term itself but it depends what it means. Part of the line of my questioning is that everyone wants to act in the best interests of somebody else if they are charged with that responsibility. But it is how they arrive at what that really is. I would have thought that incorporated in the notion of ‘best interests’ is the protection of their rights, and having a rights-based model rather than a management model for them. Part of a rights-based model is that people need to take responsibility for risks, but the person who is in a care relationship needs to be mindful of that because sometimes a judgement can be impaired around that. So it is a delicate relationship.

**Mr REDDICK** — Absolutely.

**The CHAIR** — But I understand you are saying that you do need some structures?

**Mr REDDICK** — It is having a statement around best interests without some sort of qualification, a concept around that. I think the Mental Capacity Act from the UK that was mentioned has not really had any statements and some direction around that.

**Mr CLARK** — So you are saying that it is desirable but of itself it is not sufficient? Is that a fair way of summarising it?

**Mr REDDICK** — It is, I suppose, the guardianship and financial power of attorney version of quality of life. What is quality of life to me? What is in my best interests? They are vacuous statements. Without some sort of qualification or direction from me, they mean exactly the same thing.

**Mr CLARK** — Sure. I suppose ‘best interests of the appointor’ means ‘not in my own personal interest’. It is saying you have to be not misusing it for an ulterior motive. But then what is in the best interests of the person requires a lot more specification after that.

**Mr REDDICK** — Yes.

**The CHAIR** — On the back of Robert’s point, are you familiar with the UK Mental Capacity Act, where it has a section 4 — —

**Mr REDDICK** — Yes.

**The CHAIR** — Are you, in general, in support of that? Do you think that starts heading towards what Robert is — —

**Mr REDDICK** — In general, yes. In general I would give some sort of statement around, though, supporting concepts under best interests.

**Ms O’BRIEN** — Generally we think that is a useful model to put, yes.

**The CHAIR** — Because they do use that concept of best interests there.

**Mr BROOKS** — At the education sessions what are the most common questions you get asked? You have mentioned registration and the fear of people acting early. What other things — —

**Mr REDDICK** — I am glad you asked that. Here is one I had prepared earlier. We have had 200 attendees to date and have between 60 and 70 clients for whom we have provided advice and information. The responses are a reluctance to complete the paperwork. They just look at it and say, ‘Oh, there are three lots of forms’. As we said earlier, there is a reluctance to donate the powers rather than have VCAT appointment, because of that level of accountability and supervision. The most frequently asked questions are one, ‘Where do I register this?’, and they are shocked when I say, ‘You don’t’. That is normally accompanied by ‘How much will it cost?’. There is shock and surprise when we say, ‘It costs nothing’. So they normally say, ‘Where do I register this?’ and we say, ‘Nowhere’ and then ‘How much will it cost me?’.

**Mr BROOKS** — Do you get a perception of what level of costs people would expect to pay, or is that not discussed?

**Mr REDDICK** — No, we have never got that far. Once we say, ‘Nothing’, they say, ‘Okay, we will leave well enough alone, in case — —

**The CHAIR** — Are you happy with that?

**Mr REDDICK** — About 80 per cent of the people who come to me also say, ‘How much do I owe you for the information session?’. So there is a perception that there is going to be some degree of cost for it. The second most commonly asked question is, ‘Does my attorney have to prove that I have lost capacity before they start using their power?’. The third one is, ‘What is to stop the attorney from using the power while I still have the capacity?’. They are the three most common responses.

**The CHAIR** — You have talked about the work you have done in Gippsland and you use that as the base. Gippsland has an extraordinarily fine group of people.

**Mr REDDICK** — It has.

**The CHAIR** — However, you have colleagues who work in other parts of Victoria?

**Mr REDDICK** — No.

**The CHAIR** — People do not do the equivalent work you do elsewhere?

**Mr REDDICK** — The Rights Centre was started as the pilot with the idea that they would be rolled out around Victoria and co-located with each of the CAVs. That never happened. There were originally two workers, but with the merging of the GCLS I am the sole worker. So there is not enough — —

**The CHAIR** — So you do not have a comparison of how some of those issues might be reflected in other parts of Victoria?

**Mr REDDICK** — No.

**The CHAIR** — Okay.

**Mr REDDICK** — It is a completely one-sided view to a response — —

**The CHAIR** — Not a bad — —

**Mr REDDICK** — We have land mass of about 21 per cent of the state, so I do not know how we go population-wise.

**The CHAIR** — No, I can live with that, that is fine. There are no further questions. We have gone over time, but we did start a bit late. Once again, thank you for your submission and for your very generous contribution today. You will be sent a copy of the Hansard transcript. If there are other things, there is still time for them to be lodged; I think you mentioned some other information. If we need to know other things, we might be in touch with you. Thank you very much.

**Ms O’BRIEN** — Thank you.

**Mr REDDICK** — That was great; thanks for your time.

**Witnesses withdrew.**