

# CORRECTED VERSION

## LAW REFORM COMMITTEE

### Inquiry into powers of attorney

Melbourne — 30 March 2010

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#### Witnesses

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Witnesses

Mr J. Nicolaou, Reservoir Greek Elderly Citizens Club Inc and Northern Federation of Ethnic Senior Citizens;

Ms D. Trezise, Director, United Way Geelong; and

Ms M. Scott Simmons,

Ms V. Johnstone,

Ms P. Long,

Ms D. Davies,

Ms L. Richmond,

Mr D. Constantine,

Ms S. Birch,

Ms J. Thomas,

Ms J. Reynolds,

Ms J. Horn,

Mr J. Hogan,

Ms P. Whaley,

Mr K. Whaley,

Mrs J. Jeffs, and

Mr G. Haley; and

Ms M. Fitzpatrick, Policy Officer, Council on the Ageing.

**The CHAIR** — Thank you very much for joining us today to participate in this forum. The logistics are quite complex, so I will have to say a number of things. I would like to thank you all very sincerely for taking the time to come in and share your experiences on power-of-attorney documents with us this morning. We will use the evidence that we are gathering from you today to produce a report; we expect that to be completed by the end of August this year.

So far we have talked to a number of organisations that represent senior Victorians. We have talked to Seniors Rights Victoria, the Council on the Ageing, Elder Rights Advocacy, the Victorian division of the Association of Independent Retirees, the Ministerial Advisory Council of Senior Victorians, National Seniors Australia and the Combined Pensioners and Superannuants Association of Victoria. So we have heard from groups from peak organisations, but what is of particular value today is that you are talking directly from your experience, and that is very valuable and important to us.

We are conducting this forum today in conjunction with the Council on the Ageing, and on behalf of the Committee I would like to thank COTA very much for its participation in this and the really valuable work that it has done. It is terrific, and thank you, Margot, if you could take that message back to COTA for us.

The proceedings today will be recorded by Hansard. If you are uncomfortable about having your name in the Hansard transcript, then just indicate and we can make arrangements for you to be named 'Forum participant 1', or 'Forum participant 2' as the case may be. We have got a fantastic turnout today. It is really good to see that there is so much interest. We encourage each and every one of you to participate very fulsomely because we are very keen and interested to hear what you have to say. We have a number of questions that we will grill you on so that we gather some important information and evidence for our report.

We will now go around the room. You do not need to talk to us about the work that your organisation does or your experience at this point, because if we do that we will probably take up far too much time at this early stage of our hearing. Maybe we could start on this side with you, Val.

**Ms JOHNSTONE** — My name is Val Johnstone. I am here as an individual, but I am a member of COTA.

**Mr HALEY** — My name is Gary Haley. I am a participant with OM:NI, I go to as many community meetings at COTA as I can, and I also do a wad of work with the City of Whitehorse, particularly for the community groups and neighbourhood houses. I am here mainly to see if something can be done for seniors.

**Mr CONSTANTINE** — My name is D. Constantine from Melbourne. I am here primarily as an individual but also on behalf of my grandmother, who has Alzheimer's. I think people like her, and seniors more generally, need a voice on matters like this.

**Ms RICHMOND** — My name is L. Richmond. I have also been heavily involved in advocating for D's grandmother. I am also here on behalf of my grandmother. I think it is really important that the elderly, particularly those who have Alzheimer's and things like that and cannot have a voice at these things, are represented and their issues are discussed.

**Ms LONG** — Pat Long from Mount Martha. I am a member of COTA and also Dying with Dignity Victoria. I am retired.

**Mrs JEFFS** — Joyce Jeffs of Doncaster, a member of COTA.

**Ms REYNOLDS** — Janice Reynolds, a member of COTA.

**Ms SCOTT SIMMONS** — I am Margaret Scott Simmons from Gardiner Retirement Lodge, Glen Iris. I was formerly an active member of the residents committee there.

**Ms BIRCH** — I am Suzanne Birch. I am a member of COTA and also a member of the citizens advice bureau servicing Ringwood and Croydon.

**Ms TREZISE** — I am Dorothy Trezise. I am a member of COTA, I belong to a lot of community organisations and I live in Geelong.

**Ms HORN** — I am Janet Horn. I am a member of COTA with an interest in powers of attorney.

**Ms DAVIES** — I am Dorothy Davies. I am also a member of COTA and Dying with Dignity Victoria, and I was a community visitor in the elderly sector for a number of years.

**Mr HOGAN** — I am John Hogan. I live in Ringwood and I am a member of COTA.

**Ms THOMAS** — Jean Thomas, Mount Waverley. I am a member of COTA but have been a member of the over-50s association, now National Seniors Australia.

**Mr NICOLAOU** — My name is John Nicolaou. I represent the Northern Federation of Ethnic Senior Citizens and the Reservoir Greek Elderly Citizens Club Inc.

**The CHAIR** — Excellent. Thank you very much for that. By way of opening, we thought we would just get a show of hands — I know Hansard cannot record a show of hands so I will summarise it afterwards — to indicate if you have created a power of attorney. That is nearly everyone, I think, which is a good indication. The second part, so that we can see where you are coming from, is whether you have acted as an attorney for someone. That was fewer, but still probably about half.

I encourage you to indicate if you want to speak by holding your hand up and then we will move around the room. In our inquiry so far we have limited information about the level of use of power-of-attorney documents in this state. We have already asked how many of you participate, and there is a good level of that. What types of documents have you entered into? Is it general power of attorney; enduring power of attorney, financial; enduring power of attorney, guardianship? Could you talk a bit about that? Does anyone want to offer what sort of power-of-attorney documents you have used?

**Ms THOMAS** — I have used the enduring power of attorney both here and in Queensland for my mother, who is since deceased. The medical power of attorney I have in Victoria, but you could not have it in Queensland at the time. It is there now, but it had a limitation in the beginning, as I understood it, for three years and that was a distress to a lot of people whose health had deteriorated in that time and could not renew it. I do not know whether that is different now. I have not done the guardianship one, but I have used the financial power of attorney when my daughters have been overseas.

**Ms JOHNSTONE** — I do have an enduring power of attorney, that is the financial part of it, mainly because I am not with an independent body like State Trustees, but the reasoning behind that is basically because I do not have family members. I have a daughter who has a cognitive disability. Hence you have no other option.

It then brings up the whole issue of the medical power of attorney. There are a number of issues because if you think about Victoria, or Australia even, there are a number of elderly people who are living on their own, who might not have active family relationships, which brings up a whole lot of issues.

**Ms LONG** — I have an enduring power of attorney which was offered to me when I made my will with my solicitor and I thought that was a very good idea and so he promoted it along with the will. I have a medical power of attorney which my local doctor filled in with me and she said I must leave a copy with her practice so that if in fact her practice was called, then my medical power of attorney would be noted by the attending doctor, whomever it was. The promotion, firstly, of my enduring power of attorney, financial, by the legal profession was great, as indeed was the promotion of my medical power of attorney by my medical attendant. I think that both of those issues should be fostered.

**Mr HOGAN** — I have used my mother's enduring power of attorney which was made prior to 2004. The heading was enduring power of attorney and I thought that covered everything but I found out subsequently that it did not handle medical issues at all; it was only suitable for financial matters. I note under the more recent law the distinction between financial and other matters is much clearer.

**Mr HALEY** — Although I have been in the position of power of attorney I find that it is coming in as a second person because in the last 20 years access to information has jumped enormously. When you look at the age group of the people here, self included, versatility and access to the internet is not readily available. In a lot of cases senior people do not have even a computer. Although the internet provides a very comprehensive list of attorney powers and descriptions thereof, I have found that many people when they were appointed as a power of attorney to an individual, which is usually a friend, education was the big problem. When I finished school

the merit certificate was top dollar, but today it is a totally different story. For information to seniors, I believe, the problem is how do you get to it, how do you get them to understand it, because solicitors, if they see an easy path to dollars and cents, will jump on it immediately. I have had that experience.

**The CHAIR** — We will come back to that because that is a very important issue that you have raised, but just for the moment to get a sense of what types of power of attorney people are drawing on we would like a better picture of that.

We have some more people who have come along and they are very welcome. We will not go through all our preliminaries again, if you will forgive us. The podium is available for you if you wish to make a comment. Could you go to the podium and give your name.

**Ms WHALEY** — I am Pat Whaley. I work as a volunteer in aged care and so these are issues that I am vitally interested in.

**Mr WHALEY** — I am Keith Whaley, Pat's husband. I just work with her; we are both together.

**The CHAIR** — This is a formal hearing so we have got to go through certain procedures.

**Mr CONSTANTINE** — I can draw on two examples. My grandmother has an enduring power of attorney, although it has recently been suspended through an application to VCAT that I put in process.

**The CHAIR** — That was guardianship and financial?

**Mr CONSTANTINE** — It was an enduring power of attorney which did not include medical power and it was back in 1999 when her family solicitors executed that document and put in place two joint powers of attorney. I think, looking at that, I would say that there needs to be, as Gary Haley mentioned, more education in terms of what a power of attorney's obligations are and I think from my experience there needs to be more accountability and transparency.

If I could say, for a time there, it was assumed that there was a medical power of attorney and decisions were being made on behalf of my grandmother who, at that time as I mentioned, had dementia or Alzheimer's and I think that was completely inappropriate. There was no consent there, although at the time I think there was an honest belief that a medical power of attorney existed and I think the solicitor probably needed to be clear about what the obligations are. As lay people, most people are very unaware of their obligations.

**The CHAIR** — Any further comment?

**Ms TREZISE** — The Geelong Hospital has a program called Respecting Patient Choices where you can go and discuss your end-of-life issues or treatment issues. I have recently reviewed mine and I have to say it was somewhat like a Spanish Inquisition because I have very definite ideas. I signed my first enduring power of attorney, medical treatment, almost 20 years ago but they suggest that you review it every year. I am not sure whether it does expire or whether I really need to review it, but certainly I will be doing that because I have very strong ideas about my wishes. Copies of all these documents I have put in a hospital record, sent to the doctor, and certainly my family and my lawyers all have all of these things.

**Mr CLARK** — I have a very general question about whether people have encountered practical difficulties in using powers of attorney and where you would like to see improvements made, for example, in the way that you hand over copies to banks or doctors or other people. In the way in which powers of attorneys are registered would you like to see a place where you could register powers of attorney so that people could access them and these sort of practical day-to-day observations you may have about difficulties and how we could make the system work better?

**Mr HALEY** — I do not want to bore everybody to death, but moving into a declining age group, the use-by date is gone, I have got no hesitation in saying that a course should be introduced into schools because I have found in assisting some people with this difficulty with powers of attorney that the siblings, firstly, do not want to know about it, secondly, they do not think they will die, and thirdly, they do not understand the consequence of not having a power of attorney in the correct state and a stable state. But I believe with the power of attorney there should be a careful consideration given to siblings who are married where there may be a potential disaster of a divorce or separation from either one of the partners where you will suddenly find that you have a power of

attorney in the hands of two people who have since divorced or separated and that is where not only does it become expensive, but a lot of animosity arises.

I suggest that some sort of course be introduced into schools to more or less make kids aware of the fact that you do not live forever and there will be a time when you may be called on to adjudicate at a person's demise in the most appropriate manner.

**Ms JOHNSTONE** — I used the term 'active relationships' before and I did that quite deliberately because if you reflect on it in a number of families the person might have children, grandchildren, siblings, whatever, but they are not necessarily active relationships so therefore that person you are giving your POA to does not really know what your values, interests or needs are. How then can that person determine your situation if they really do not understand what you are on about? The point was made earlier about information. It is about all levels of education, I guess, and about understanding. It is not just about giving someone a power of attorney; it is about actively giving some thought and consideration as to whether that person really understands what you are on about.

**The CHAIR** — Going back to Robert's point about specific difficulties that people encounter, what is especially valuable about you being here is the examples you give us. I am not being critical. We understand quite a lot about the general issues, but it is the texture of your experience that is really useful to us, so if you could think about what happens to you day to day and how the matters relating to powers of attorney affect you, Val, again, and then we will move on.

**Ms JOHNSTONE** — I can add to that quickly. I used to travel a lot before, but I am a social worker by profession and have worked in the hospital system. Whilst you might see people on an assessment ward, which is the early days of planning for another level of care like the people up the other end are going to talk about, you would definitely come across instances where you know that it has been a hurried situation; where the person, cognitively, does not quite understand. So yes, I have seen inappropriate powers of attorney and you question them.

**Mr CONSTANTINE** — Many years ago my parents set up a power of attorney for me to deal with their finances when they were overseas from time to time and what I found quite frustrating was talking to their banks and effectively transferring funds across to other accounts while they were overseas and to pay for things and having people on the end of the line or even within the bank itself saying, 'You only have power of attorney for one particular account'. I went to great pains to explain to them that it was a general power of attorney and that meant I could deal with their finances the way I wanted to. I found that a very frustrating process. I think, as I mentioned before, there needs to be some sort of education.

One of the things that could improve the process is a registration system. If banks do not want to educate their staff that is fine, but it would be useful if at least they could call upon a central body to confirm whether or not a document is valid and whether that person who claims to be acting on a power of attorney can do so.

**Mr HOGAN** — One thing I have noticed with, say, financial powers of attorney is that in the days gone by people used to use passbooks coupled with cheque books so there was a need to have signatures. Anecdotally, amongst people I know, it is very common for them to give details of their PIN numbers or passwords on electronic-based accounts to members of family and you can virtually transact everything these days without a signature except for, say, real estate. You can transfer shares or pay huge bills. In these circumstances a lot of people are seeing that getting a financial power of attorney is too much effort when financial transactions can all be done electronically. A lot of people when they do transactions electronically do not realise the need for record-keeping and the need to justify what they have done; whereas if you go through a cheque process you are pretty aware of what you have done. I think anything you do in the financial area has to reflect the future which is moving towards electronic, ATM, internet-type systems. Today's people are becoming older; you need a system that caters for tomorrow rather than the past. A lot of our experiences relate to transactions that were all done with passbooks and cheques which, as I said, is yesterday's technology.

**The CHAIR** — Are there any further comments on that?

**Mrs JEFFS** — I have been working in a hospital where people are perhaps dying or wanting transplants and when you ask the family for the power of attorney they do not know where it is. If it was registered like births,

deaths and marriages we would be well ahead in looking for it because at the moment you ring up and find that the solicitor has died and whatever.

**Ms REYNOLDS** — My brother and I had power of attorney for my late mother. I thought it was good in one way in that either of us would sign or act on her behalf. That was because I was here in Melbourne and he was in the north of the state. I have heard of other people with arrangements where both parties must sign and they have had all sorts of trouble because they have had to get in touch with that other person and send documents backwards and forwards to them. We always discussed what we were going to do. We would not go ahead and do something without consulting the other. From my experience with powers of attorney I thought that was very good. I did not really have any problems and my brother did not either when he was acting on my mother's behalf when she was up in the north of the state.

**Ms RICHMOND** — I wanted to add to what Janice was saying. Some of our experience has shown that where there is a joint power of attorney and it is not joint and several there can be a very big impact on somebody who is highly dependent and has no capacity to make a decision — for example, where somebody has Alzheimer's and is in a nursing home and medical bills and podiatrist bills need to be paid, what can happen is that if the two parties to the power of attorney cannot be in the same place at the same time within a two-week period those bills cannot be paid and we have experienced a situation where the person they represent has not been able to have medical treatment. They have had it refused because a bill was not paid. Sometimes over a long period of time you can see a very big impact on people because it is such a complicated arrangement to get bills paid. Further to that, with the way technology is now how can a joint power of attorney where joint signatures are required work in an electronic world? Who authorises that transaction? Is it two people pressing a button at the same time? These are things that need to be considered. This is something we have had to think about recently.

**Mr HALEY** — This is getting back to the education side of it. Is it mandatory that any legal firm must have a person who is not only experienced in powers of attorney but has some sort of licence or certification to promote his expertise in this field? I say this because of the experience I have come across with physically handicapped people. It is a case of, 'We will look into it'. A lot of dollars later they still have not really understood what was available. With the power of the internet I found I knew more about it than they did, but it was a very expensive exercise. The question is: should there be a mandatory licensed or certified solicitor, lawyer or barrister who is a professional in advising or assisting with powers of attorney?

**The CHAIR** — We are done on that one.

**Ms WHALEY** — I have two issues. One is that working within the nursing home system as a volunteer and supporting relatives I have come across several issues where there has been sibling financial abuse and elder abuse by members of the family trying to effect the sale of the house over the heads of these people. The second point is the thing that has come across to us. We are a team that also informs and equips seniors, and we run seminars every two years on power of attorney. This is our best-attended seminar. People are hungry for knowledge. I do not know how much education there is in the community, but I believe these seminars should be widespread. This is a way that sibling financial abuse, elder financial abuse, will be curbed.

**Mrs VICTORIA** — I have a question directed to all of you folks following on from your point about education. Obviously we have had it brought up here that not everybody in this age group has access to the internet. What is the best way for us to deliver that message to seniors about their rights, their responsibilities, about applying for powers of attorney, when they should kick in — all of that sort of thing. How would you see it as the best way to deliver that message and get the education out there?

**Mr CONSTANTINE** — I think it should be delivered through the seniors' doctors, their lawyers, Centrelink, even the nursing homes — anywhere where seniors have access to any professionals, I think, it is important. For doctors, I would say a medical power of attorney should be discussed as part of their appointments. I think it is also important that, as was said before, the lawyer should be educated in this aspect. People need to seek the advice of specialists or experts maybe in estate planning. You certainly would not go to a tax lawyer for this sort of issue, but there is a responsibility also on the family and the people who do take on those obligations as powers.

**Ms JOHNSTONE** — I think the education thing has to be tiered. If we are saying youngsters, it could be part of their legal studies course. A number of people take up legal studies or civic education. I think community centres have evolved, as have hospitals, local councils. A number of things are done these days with federal and state governments. Last week I went to something where there was quite a lot of involvement with the two levels, so it could be Centrelink. I think we have to have almost a program and a tiered approach

**Ms RICHMOND** — There are probably two main things that I think are really important. The legal profession should certainly be a lot more proactive in being educated about powers of attorney and really assisting the people involved, the donors and donees of these powers, so that they help them be educated.

I also think, given the seriousness of what can happen with elder abuse and in our experience with properties being divested, of people who have no capacity through the use of a power-of-attorney arrangement and where lawyers are involved and actively doing this as well, I think there really needs to be some introduction perhaps of a compulsory, very short, 3-hour seminar for the people who are given the power, so that the people who are given a power of attorney have to go to something to really have explained to them the seriousness of what can happen if you do these things. You cannot take somebody's property when you are a power of attorney. You should keep records of what you are doing. These are some of the issues that may come up during the power-of-attorney period, so people who are directly dealing with these issues must be educated.

It certainly is my experience that it seems to be sometimes as grandchildren we are educating our parents to look after their parents. I think that is partly because of the internet. We have access to a lot of resources and can help them access information, but perhaps there is this generation where it is going to be very hard for them. I think there needs to be some compulsory education at some point of people who have the power of attorney.

**The CHAIR** — To what extent do you think that might act as a disincentive for people to formally enter into a power of attorney arrangement and just do it all informally?

**Ms RICHMOND** — That is a very good point. I think practically some people would be put off by that. I am surprised at the number of people who, when you talk about these issues, have a family member, particularly people in nursing homes and people who have dementia or capacity issues whose properties have been transferred over by power of attorney. People are not aware of the level at which this is happening. There are people with powers of attorney who have not completed somebody's taxes or got their pension for them. These are basic things. It is important. There is always a balance. You have to have something that is practical and that people can access and do, but at the same time you have to protect very vulnerable people. In an ageing population I think there are going to be a lot more people who are a lot more vulnerable. When I am old I hope there is a better system in place.

**Ms THOMAS** — There is a group of lawyers accredited with the Law Institute that have specialist estate planning accreditation, so that would cover that, because your ordinary suburban lawyer may not have the full thoughts about it. A sister-in-law went and made a power of attorney and will with a suburban lawyer — it was the second marriage for both of them — and ran into all sorts of trouble on his death. They really need to go to an accredited person.

**Mr HALEY** — Sorry to get stuck into this all the time, but I believe and I am quite adamant that each qualified medical practitioner must have a preprinted form that when he or she encounters a case of dementia or a physical disability leading to death or a mental incapacity, that that form must be sent to the next of kin with a clause that it is a punishable offence if it is not addressed. On that form it should have a list of legal practitioners who are qualified to address the problems with powers of attorney. Although it is another burden on the taxpayer, for those who refuse to address this problem — because it only gets worse as it goes down the track — there should be a punishable offence by fine, and to take it further, imprisonment, for not addressing a problem that is basically their sole responsibility.

**Mr HOGAN** — I think to date a lot of our conversation has been around people at the top end who use lawyers and have English as their first language. The particular problems that I foresee are for people from an ethnic background whose command of English is between non-existent and very limited. I think that roughly about one-third of Victorian people come from an ethnic background. It is very important that these sorts of minority groups get catered for in the education program.

Most of our conversation today has been at the top end of the market — people who can afford to go to lawyers and are quite sophisticated — but there are a lot of Victorians who have very limited education and a very limited command of English, and Victorian law is a completely foreign concept to them. Those people have the same sorts of needs, wants and things like that as others. What we do not want to do is gild the lily and forget the people at the bottom end. I am quite concerned that the programs address the really disadvantaged in society and particularly those who are disadvantaged by their lack of knowledge of the English language.

**The CHAIR** — By way of information, this afternoon we are conducting a similar forum to this with members of culturally and linguistically diverse communities to pick up some of those issues. Thanks for that observation; it is true. Are there any further comments on Heidi Victoria's question?

**Mrs JEFFS** — If everybody has not read the book *Take control*, and there is a DVD from the Office of the Public Advocate, I think that is among the best education tools out for low-income earners. They worry about paying \$200 to a solicitor, and as you were saying, those people need help, but this book is particularly good. It is free.

**The CHAIR** — Yes, we will come back to that in a moment perhaps.

**Mr BROOKS** — I hope I am not jumping ahead too far here. On the topic of abuse of powers of attorney I was wondering if people had particular thoughts on whether there should be the introduction of a register for powers of attorney, whether it be a voluntary or mandated one; whether there should be a requirement for people who hold powers of attorney to submit annual returns or returns at a certain interval for their financial transactions; and also the possibility of their having to apply for permission to make major transactions — for example, selling a house or other large asset.

**Mr CONSTANTINE** — I think all of those ideas are quite good. It would be appropriate to have a register. We have registers for a lot of other property transactions and lots of other things. I do not see the difference here; you are really talking about people's rights and other people actually controlling them and making decisions. I guess in my experience a property had been transferred by power of attorney some years ago. Back at the time I was very uncomfortable about that. I raised it with one of the powers, who most certainly was the less dominant of the two. In effect the other, more dominant, power of attorney took control of the financial arrangements even before my grandfather had passed away in 1996.

There needs to be that accountability. There was no transparency, and that was the result. That is why it led to my having to take the matter to VCAT — to actually get some transparency. My grandmother's tax affairs had not been dealt with for eight years. With the changes to Centrelink you were able to effectively shelter assets by paying large amounts in accommodation bonds. That was never looked into. So in effect my grandmother was still maintaining a self-funded retiree income, whereas she could have put a lot of her assets into a bond and received a part-pension; and there were other things that I cannot recall right now. I think a register would definitely be an appropriate idea.

**Ms THOMAS** — It should be mandatory to have a register, not voluntary I think, because there is something with a power of attorney: if you want to revoke it, you have to get the paperwork back from the person you gave it to, and that can be very difficult if they do not want to. If there is a register, it should be one that you must participate in. Also there is the interstate problem. If in fact there was a register there, you could go to the register and say you want to revoke that one, whether it be a will, a power of attorney or whatever.

**The CHAIR** — Good point. Are there further comments on Colin Brooks's matter?

**Ms RICHMOND** — I guess just to the questions that you were asking about making powers of attorney file annual returns and things like that, I certainly think from our experience we would have benefited from that. Much earlier we would have been aware that the taxes had not been paid, that the pension had not been applied for and she had not been getting the pharmaceutical benefits she was entitled to for eight years.

I know there are a lot of different arrangements and powers, but certainly making it compulsory for people to have to go through a certain process if they are going to transfer or have any dealings with somebody's property, particularly where you have an enduring power of attorney and the person has lost capacity, would put better protections in place for those people against someone transferring that property to themselves. Certainly undoing it is messy at the moment. We have probably spent six months dedicated to trying to undo a lot of the

problems that have arisen and make sure that D's grandmother is looked after appropriately. From discussions with people in the office or at dinner parties, the experiences we have had do not seem to be that unusual, and that is quite frightening.

**Mr FOLEY** — Whilst we are on the issue of registration, given the interstate examples, what are people's views on whether a registration fee might discourage older people from making powers of attorney? In some jurisdictions I understand it is up to about \$100 for registration. If a public registration system were introduced, what are people's views on any limitations on the private information that should be available on that register and, equally, who should have access to it?

**Mr HALEY** — I believe there should be registration to stop fraud, because I have seen over the last 15 to 20 years a number of cases of fraud, you could say, by malpractice in handling real estate. When it became pretty obvious, those who should have been doing their homework just threw up their hands and gave it away. They lost hundreds of thousands of dollars because nobody seemed to know exactly who was responsible and what exactly they were doing. I must admit that there was an input from the legal profession in these instances. A registration of who, what and where should be mandatory in the future, if not already.

**Ms JOHNSTONE** — Yes, I would certainly support registration. I think it should be mandatory. As to the question of costs being a disincentive, I think it is like with any measure: it is not just about selling the cost, it is about selling the benefit. It comes back to people being informed as to why they have a power of attorney. It is about the benefit of having registration. There was another point that was made about registration and doing returns.

**Mr BROOKS** — Annual statements.

**Ms JOHNSTONE** — I think that is a very valid way of getting accountability. However, in my mind I say, 'Where does that go to?'. You certainly do not want to create another bureaucracy. So long as it is circular and a nice, simple way of doing it and we can have accountability, I think that would be a great thing.

**Ms SCOTT SIMMONS** — In the past I was made power of attorney — it has now been cancelled — for a cousin who had a considerable estate and was also in a partnership. I am wondering whether the real problem is that a power of attorney may be too general. The power of attorney that was written in this case was exceedingly detailed on exactly what the people who had the power could do and could not do. I felt very secure in that because of the complex nature of the thing, but at the same time I wonder if a power of attorney, rather than registration, should be a more detailed thing to limit what the person can do and what they cannot do, like selling the home and so on. It is just a suggestion, but that is to my mind quite an important point.

**The CHAIR** — You have asked some questions there. Are there some responses to what has just been raised?

**Mr HOGAN** — I think one of the problems we will face if you add annual returns and an enormously onerous responsibility on people who accept powers of attorney is that you will finish up with things essentially being handled by solicitors or trustee companies. It seems to me that at the top end of the market the people with large amounts of money and complex estates need a much more sophisticated approach to their financial affairs than somebody who has limited resources.

You do not want a system that is too onerous for people at the bottom end of the market. If somebody is going to ask me to handle an annual return of how I spent every dollar for mum or dad or whatever and why I have done this and why I have done that, and I am doing it for nothing, it is a big ask. Obviously in situations where somebody has a complex estate or complex financial affairs they need a more sophisticated system, but you do not want to inflict such a sophisticated system on people who have very limited assets. It could be counterproductive.

**Ms TREZISE** — I think if you want people to use the system, then it has to be easily accessible and affordable. The more complicated and difficult it is, the more it is a turn-off I think particularly for older people. It has to be easily understood and perhaps very detailed, with 'tick boxes' or whatever, but it has to be something that people can cope with.

**The CHAIR** — So you would agree with John Hogan’s observation that it should be in proportion to the complexity of the assets?

**Ms TREZISE** — Yes, I do.

**Ms REYNOLDS** — I agree with Dorothy and John on the points they made. I feel that registration is great; that is a wonderful idea. But regarding the person they appoint as power of attorney, there has to be some reckoning about what their relationship is with this person and why they want the power of attorney or why they are willing to accept that role, because when you hear of a case where an elderly gentleman suddenly adopts a granddaughter who is much younger and there is one other surviving relative who does not want to upset the old gentleman by challenging this woman’s sudden role in this man’s life, you wonder whether there is an ulterior motive — you naturally have to think that — and whether the man really knows what powers he has given to this adopted granddaughter.

That is a real concern for me, because I have heard of this incident, and I wonder how many other people are placed in the situation where suddenly you have the vulnerability of the elderly person and this person ingratiate — —

**The CHAIR** — What would help a situation like that?

**Ms REYNOLDS** — I think perhaps if they contacted the man’s doctor and there was a consultation with the doctor about what sort of mental state he is in. The solicitor has obviously just drawn up this power of attorney for him, but does that solicitor realise that maybe this person has only come on the scene in recent times? Does the solicitor know that this person has perhaps not been in his life for a long time and is suddenly bending over backwards to help him? This person perhaps does not realise what he has given this stranger, and he could find himself in a lot of serious trouble if suddenly he has to go into a nursing home. He may not have the funds to go into a nursing home. That is really a concern.

**Ms RICHMOND** — On the point about simplicity, ease and low-cost, I think that is all really important when dealing with people who are competent, but at the point that you have somebody taking care of somebody who has no capacity and where, say, an enduring power of attorney has been put in place and at some point during that time the person then loses capacity and cannot make their own decisions, there needs to be a higher onus on the people taking care of them. It is important enough that no matter what people’s backgrounds are, if they have a non-English-speaking background or lower education, the community should help those people through funding things so that they can then get educated about what they need to do for people who do not have capacity and who need to be taken care of. The system will need to be a little bit more complex to protect those people, because I do not think it can protect them now.

**Mr CONSTANTINE** — Just following on from what a few other people have mentioned about having a particular threshold depending on the quantum of the estate, I think if you link it to the amount of the estate you get dangerously close to worrying more about the people that have more and worrying less about the people that have less, because ultimately you attribute less obligations to an estate that is worth \$300 000 as opposed to \$5 million or whatever. I think people deserve the right to have the same level of care afforded to them in these circumstances. It is a matter of good governance to actually see that that process is set in train.

**The CHAIR** — Any further comments?

**Mr FOLEY** — Yes, could I just extend that line of discussion a bit. On the one hand, as the estates get more complex there are issues around the details of which a power of attorney might be dealt with. Equally we have had evidence that there are all sorts of informal arrangements entered into, particularly where there are not such big estates or assets involved. We have heard evidence about informal arrangements: signatories being added to people’s existing bank accounts, sometimes willingly and sometimes not, as the evidence shows. What are people’s views as to how those informal arrangements operate, and if they operate well, are we at risk of regulating them out of existence and creating the level of complexity and difficulty that some people have referred to?

**Mr HALEY** — I was wondering if prenuptial agreements should be brought under closer scrutiny, particularly — and I know this from experience — when you find a number of people in their 60s, 70s and even as late as 83 who have brought in a partner for comfort or companionship. If there is a prenuptial agreement in

this relationship, should that come under more scrutiny in relation to power of attorney and the rights of either party?

**Mr FOLEY** — As a form of alternative arrangement?

**Mr HALEY** — As a form, yes.

**The CHAIR** — You have put that as a question. On balance, what would your view be?

**Mr HALEY** — I say prenuptial agreements should come under scrutiny simply because I have seen a number of cases — and I am not being facetious about it — where siblings and relatives get a little bit edgy and a little bit nasty, and then as a situation arises where death is imminent they become very nasty and create more confusion, costs and animosity, and the person concerned dies a virtual pauper. It is simply a case of understanding what are the rights and what are they obligated to. At the moment once one person gets into it, everybody thinks they should get their penny, and it develops into a nightmare.

**The CHAIR** — Martin's question related to the informal dimension; is there any further comment on that?

**Mr CONSTANTINE** — I was going to say I understand that there needs to be some flexibility and informality about getting these things done. It can be quite difficult, even when all parties are willing participants, to do the right thing and the best thing for the person who is the donor of the power. But at the same time that inflexibility can also lead to things not being done. Just the other day I rang up a bank and said, 'I am now the administrator of my grandmother's estate. I need to pay some significant bills'. I explained the situation: I am a joint administrator, but I am also auditing her estate from back until 1996.

The branch manager basically said, 'Can you wheel her in and get her to sign it?', because there was some difficulty about them giving me access to her funds. I said, 'I have just been telling you that she has no capacity to the extent of her finances'. I find that sort of inflexibility intolerable, and I think there needs to be a formality. Any organisation that is involved in this issue needs to be aware of its own obligations.

**The CHAIR** — So in that instance, what ought the bank have known specifically?

**Mr CONSTANTINE** — I would argue that the branch manager should have known what process should take place in terms of enabling me as a new administrator to gain access to my grandmother's funds as quickly as possible so that I could do the work on behalf of her. Instead I was told by the branch manager that he was not really sure what needed to be done and he would send it to their regulatory office, their in-house lawyers, and he suggested that I get a lawyer as well. I said, 'I don't need a lawyer. I've got a legal background myself. I know what needs to be done. It's just that the bank doesn't know what it needs to do'. So I am still waiting, and that was a week and a half ago.

**Mr HOGAN** — I have already raised this point before Martin came, that these days a lot of financial transactions can be done without a signature, and it is possibly only real estate where the issue of using a signature really comes in. If you make the new system too harsh, people will use informal procedures such as giving people PIN numbers and passwords, so I think you are between a rock and a hard place. If you make the system too hard, it will be too complicated for the average person to act as a power of attorney and people either enter into informal arrangements — I am finding it very hard to see how you get a balance, to be quite frank, but I am sure you eminent members up there will be able to do it with consummate ease.

**Ms RICHMOND** — I think you are right. It is really hard to strike a balance. You do not want something that is completely impractical. I think too there are probably families that function quite well with informal arrangements and for a very long time, and that works. You would not want to discourage that, but if the balance rests on the side of having a less complex system where people are free to do what they want and there is no registration or basically not much change from what we have now, there then needs to be something in place for dealing with situations where things do go wrong.

I mean you have VCAT and things like that, but it tears families apart. It is an awful process. It goes to State Trustees, or wherever when something goes wrong. Maybe there needs to be some easier system of regulating it if there is a problem. All agencies these days have complaints systems where you can make a complaint or get someone else to have a look into a situation, if it is an informal situation, and see whether it is being managed

properly. But without some protection, for me it really rests on the fact that you have people who do not have the capacity, and who is protecting them? If people really are not able to look after someone's finances, they should not be looking after that person's finances. It is not fair on that person.

**Ms JOHNSTONE** — I would certainly concur with some of those comments that were made, but as a person just listening to the question I thought, 'My goodness me, yes, it would be useful'. I think it is about striking a balance, because if you publicly acknowledge that, yes, there will be informal situations, you certainly do not want to institutionalise what could very well be some exploitation. Whilst we know that there are informal things that happen, it is about making things as simple as possible. I think the point that is always made, and I would agree with it, is that it is those vulnerable people that you really have to capture as to what goes on. The system has to be simple but not so simple that it can be thwarted.

**The CHAIR** — That is a very fertile area that Martin has raised. Some more comments about your experience of that informal level and how that works? Are there any further thoughts on that or are we all done?

**Mr CONSTANTINE** — I have one point I would like to make in relation to the two powers or the donees of the power of attorney. Often you will find, or you may find, that one donee exerts more authority over the other, makes the financial decisions and, at the end of the day, what happens to the other one? If the other donee relinquishes their involvement to a greater extent because the other person is looking after the financial affairs, what happens at the end of the day when they might be joint or joint and several powers or donees? In my particular situation I can see that one of the donees had absolutely no idea of what was going on, was reassured each year that things were being dealt with and undertaken, and they were not, and now this donee has found themselves in a situation where they are potentially liable to interest for the transfer of property that went to somebody else, and all sorts of things that that person was not aware of, and I would have to argue was less culpable for, notwithstanding that they had that obligation as a joint power of attorney or donee.

**Ms LONG** — In the majority of cases the present system works, but there have been abuses and they will continue. There will always be abuses of every system that we put in place. What generally is the way to address those abuses as they stand at the moment? For instance, if I was aware of some older person being abused by the power of attorney they had given to someone, I would get in touch with the Public Advocate's office and hope it would solve the problem? Does that happen now? How well does the system protect the abused person now?

**Mr FOLEY** — From the evidence we have heard, sometimes very well, sadly sometimes not so well. It gets to all these issues of where people are in their life, levels of capacity, the support they have — many of the issues that you have touched on and that we hope to strike that balance about.

**Ms WHALEY** — One case I heard about was the Public Advocate being called out and stopping a sale of a house which the son was trying to sell. He had no contact, no care of his mother and the daughter was not aware of this. She found out at the last moment, got the Public Advocate and that sale was stopped. But I think it all goes back to the fact that we need more community education. We need not only seminars but also workshops in community centres because people who do have the power of attorney can then hear of the issues and the way to deal with them. I think that it is a local council responsibility, it is local government, and I think that is something that is so lacking. In the seminars we have run the question time has gone for an hour and a half. People do not want to go home because they want to know more.

**The CHAIR** — When we started a number of you indicated that you were participants using power of attorney in various ways. By way of opening can I ask: when you signed the original document, did you use the *Take control* booklet or did you do this by discussing it with a lawyer? How did you come into it? What was your avenue into participating in a power-of-attorney arrangement at a personal level?

**Ms REYNOLDS** — My mother, while she was able to do this, consulted her family solicitor who had known her for years in the country. He drew up that contract, the power of attorney, for her. She appointed my brother and me. She did not even ask me.

**The CHAIR** — Do you know what motivated her to initiate this?

**Ms REYNOLDS** — I really do not know. She was not really old; she was only in her 70s. But I think she probably thought this was something she needed to do while she was capable of making decisions. We never

know what each day is going to bring. The next thing I knew was that I was going to be a power of attorney with my eldest brother.

**The CHAIR** — Did you investigate what that involved for you?

**Ms REYNOLDS** — I knew that I would have to act on her behalf with my brother, and we would consult each other. But I did not realise it was joint and severally that we could sign, which as I said, was an excellent idea because of the difficulty if we both had to sign a bank document, when I was down here and he was in the north of the state. That is what I find with a lot of people who are like that next generation up. They do not really discuss with family. The other thing we did not discuss was perhaps where she was in a situation where she did not want to stay on life support. Whereas with my sons at this age I am telling them to not do this or do that. That older generation did not talk about those sorts of things.

**Ms HORN** — We first made deeds of power of attorney when we were going overseas for an extended period. When we came home, we realised that an enduring power of attorney was a useful thing to have. So we came to it through the need for somebody to act on our behalf while we were away.

**The CHAIR** — When you say you realised, how did you realise that? Did you seek advice or did you find material somewhere that pointed you in that direction?

**Ms HORN** — I do not remember now, but I think probably it was the realisation it was a useful way to safeguard some of the problems of incompetence.

**The CHAIR** — Are there any other comments down the end of the table?

**Ms DAVIES** — I have given power of attorney to my daughters largely on the advice I got from the organisation Dying with Dignity.

**The CHAIR** — What sort of information did it give you?

**Ms DAVIES** — It gives you information about how to go about it. Actually I had it incorporated when I remade my will.

**Mr CONSTANTINE** — Just on something that Janet mentioned before about the general power of attorney and enduring power of attorney, I think whilst an enduring power of attorney is a good thing if in the right hands, it can also be a bit dangerous in that if someone loses capacity at a certain time that enduring power of attorney will carry on. That may not be in the best interests of that person. Who it is given to should be carefully looked at.

But in relation to your question, Chair, one that I have been involved in, as I mentioned before, was in relation to my parents. They were heading off overseas every so often. I drafted that one up for them. I made myself and my brother joint powers of attorney. The motivation was mine, but basically I explained to Mum and Dad that I was not about to do things, I was not able to do things, the things they wanted me to do, unless I had some sort of formal right to do that.

In relation to my grandmother's enduring power of attorney, I think that largely came about due to the fact that my grandmother was forgetful. She never had dealt with finances; her husband had always dealt with finances. I do not think she even knew how to write out a cheque. At that point the solicitor and whoever else was involved decided it was a good idea to have an enduring power of attorney.

**The CHAIR** — At the beginning, as I said, most people put their hands up. There is an overwhelming majority of people who are engaged in this process. My sense is that everyone around the table is an empowered person who knows their way around. So in a way you are a sample that may not be typical of a lot of people in the community. Nonetheless how many of you have used the document *Take control*? A few of you have used that. How many of you relied on the advice of a lawyer? It is only a few. How many relied on just the documents themselves? Everyone would have looked at those of course. Was that sufficient for a number of people? Yes, so you just worked that through yourself. Any further comments on that?

**Mr HALEY** — I relied on the documents themselves, but I was acting as a second party because the first party got so confused. I find the system is in place, but the education for individuals who are stuck with this

responsibility is not. Unfortunately I think that is going to be your biggest bugbear. But the information available today is quite adequate and very comprehensive. Ten years ago it was a nightmare understanding a power of attorney, who to go to, what to do and how to put it into effect.

**Ms RICHMOND** — I just would like to add that I have a grandmother as well. My grandmother is living independently and is 92 now. She lives in the country. As family members, we have all taken care of her. We recently have had a niece sort of turn up out of the blue. This niece helps her out, gets her some milk and drives her down to the bank — things like that. My father has power of attorney and I think my aunt does. They are just general powers. But we recently found out that a power of attorney has been given to this lady by my grandmother. The frightening thing is that upon asking my grandmother what power of attorney she has given, she does not know. I think the suggestion for the power of attorney came from this other person.

It is frightening to think that has happened. At the same time it seems that this lady has paid for a portion of my grandmother's land, which my grandmother says she wants to give to her. It never ceases to amaze me where these suggestions are sometimes coming from. That needs to be looked at. Is it from lawyers or concerned family members or is it from people a bit apart from the family? For me I think it is great that there is someone close by her, that lives next door now. She can get my grandmother her milk and drive her to the bank.

What scares me is that that document is probably a very broad document; for all I know it is an enduring power of attorney. People do not limit them enough. That document could be limited to say, 'She can drive me to the bank but not sign my bank cheques. She can do this, this and this'. You can limit them. Maybe if there were check boxes where you could pick exactly what you want them to do on the forms. At the moment they are very broad. You try to respect people's independence. My grandmother wants to live independently and continue like that but she is vulnerable because she is away from family; she lives in the country. I do not think it is good when someone does not really understand what they are given to sign. A lawyer was probably involved to set it up, and the niece, but my grandmother does not really know what she is being given.

**Mr HALEY** — Is it possible for legislation to be put in place so that when a power of attorney is arranged by a party outside of immediate kin or siblings the immediate family or immediate kin must be given access to that power of attorney so that they are totally aware of what is happening before it becomes a final document?

**The CHAIR** — We will take it as a recommendation from you rather than a question. I think that is fair enough.

**Mr CLARK** — The point I was going to raise follows on from the most recent remarks and that is to ask people about experiences you may have had yourself or may know of where people have tried to get the authorities to intervene where there is a problem situation that has developed with a power of attorney. Mention was made earlier of VCAT proceedings and going to the Public Advocate. Can people give us details of some examples they have had or know of where people have tried to get the authorities to do something in a situation of possible problems and what the results of those attempts have been. How well has the case been handled by the Public Advocate or VCAT or whoever else has been approached?

**Mr HALEY** — I am very strongly of the opinion that VCAT is not set up to address problems with powers of attorney. They rely on the current legislation to make the decision and when it comes to personal issues I find that their decisions are based on the emotion of those presenting their case. If you can get up before VCAT and sob the loudest you have a pretty good chance of getting through on a personal issue. But when it comes to other issues that have legislation in place it is cut and dried; there are no shades of grey in it. At this stage I believe VCAT is not in a position to address the problems of powers of attorney.

**Ms JOHNSTONE** — Thinking about legislation I do not have a specific comment except to say that I am aware that the Guardianship and Administration Act has been reviewed. A key part of that is supported decision making. The Mental Health Act, which was reviewed, has a key section in it which is about supported decision making so I think all of those pieces of the puzzle need to be fitted together.

**The CHAIR** — Just before we go on, Robert's question was about whether there were specific examples that you could share with us — de-identified. We would be very interested to know.

**Ms RICHMOND** — Towards the end of last year we started looking around at what our options were to deal with some of the problems that were happening. These related not only to the financial issues; there were

also some medical issues but there was no medical power of attorney in place. We had to move nursing homes and a whole lot of things. We were engaging with ACAS and the Department of Health and Ageing as well and we had to get across a lot of these issues very quickly. We then decided that the only option was to go to VCAT in terms of the financial issues to find out exactly what had happened in regard to a lot of the issues. That took a lot of work. We both worked very hard on preparing lots of documents and did a lot of work and I feel that a lot of people might not be able to or want to do that or have access to the resources to be able to do that. VCAT is informal but it is still relatively formal when people are facing it.

My feeling is that VCAT really does not want to make decisions a lot of the time. It wants everybody to work it out and come up with a solution. I felt that protecting the represented person, the elderly person we were dealing with, again was at the bottom of the list. It was a case of saying, 'Let's just get everyone to work together and figure out what's best for all of the family' — not her. We have still got some ongoing issues; that is an ongoing thing at the moment. It is certainly not the best answer for people to have to go to VCAT every time there is a problem. I do not know to what extent this inquiry is looking at the whole regulation of things. I guess it depends on what the legislation looks like in the end.

**Mrs VICTORIA** — My question is, I suppose, to all of you, and it is about the use of lawyers. I noticed that there were not an awful lot of hands that went up when the Chair asked how many of you used lawyers. I also note with interest that there have been some cases that have been brought up about abuse or potential abuse — or mismanagement, if we are erring on the side of caution. If it was suggested that to gain a power of attorney or to be a donor you had to go to a lawyer or at least have a lawyer witness those documents, do you think that would stand in the way of a lot of people getting these types of documents, or would it be a small price to pay to ensure that abuse was not as rife as it is, if that is where we are heading? Would that help protect the donor in this case, the donor of course being the person signing the papers saying, 'I am happy for you to come and help administer what I am doing'?

I am wondering if we might hear from some people we have not already heard from. I am sorry, but from where I am sitting I cannot see whether we have heard from everybody. All of your opinions are very valid, and we would very much like to hear from everybody, because you have made the effort to come along today.

**Mr HALEY** — This is when I said I believe it should be mandatory that any legal professional organisation must have a registered law clerk, barrister, solicitor or whatever as a person who is proficient in power of attorney documents. A lot of them, particularly the community legal service people, would not know chalk from cheese. It only adds confusion, and the person who is the potential power of attorney holder throws their arms up in disgust. It is usually, I find, women who are stuck with this. The male of the species does not really want to be responsible or become too involved with someone else's problems. You will find that women are always in the background in a care situation, in an advisory situation or assisting a person who is ill in one way or another. I believe that it should be mandatory that legal professionals have a certified or registered legal person who is proficient in this, and they should have to pass an exam on powers of attorney, because there are not just one or two documents; to my knowledge there are 12 of them.

**Mrs VICTORIA** — Gary, can I just go back a step and say that that is fine if you are seeking legal advice, but should it be mandatory that a person signing these documents actually seeks legal advice beforehand?

**Mr HALEY** — Yes, absolutely.

**The CHAIR** — Just before we come back to D, are there other views on that? Are people generally supportive of the proposition that you should need to seek legal advice prior to entering into a power of attorney arrangement?

**Ms SCOTT SIMMONS** — Sorry, I was just agreeing with the question.

**The CHAIR** — You were agreeing? No, we want answers.

**Ms REYNOLDS** — I am also agreeing with that. In our case I can only state that obviously we were not going to do the wrong thing by our mother. We had a good relationship, and you feel you are not going to do anything untoward or improper, but it would be nice to know what you are actually letting yourself in for. You are not going to refuse when your parent asks you to do something. You are not going to say, 'No, I'm not going to do that for you, because it's too hard'. Naturally you are going to accept. But it would be nice perhaps

for people who are not relatives and are probably not part of the family or the extended family and who have been made powers of attorney to be aware of what they are involving themselves in. I think that is a good point.

**Mrs VICTORIA** — Can I also ask: if you do not agree to legal advice being sought or for a lawyer to be present to witness these documents, why?

**Ms TREZISE** — I think for some people it would just make it too hard. As has been said, we are a very select group here. I do not think we represent Joe Blow or whoever. For a lot of people it might be too hard. I do not know the solution. I think there has to be some protection, but I do not know how you go about it. I think mandating that might be very difficult for a lot of people.

**Mrs VICTORIA** — Do you think that hurdle would be financial for most of those people or a lack of knowledge? Because that comes back to education.

**Ms TREZISE** — I think a lot of them would be frightened of lawyers. They have not had dealings with them and perhaps mistrust them. I think finances are another consideration. In this day and age, older people particularly are not all that financial and are not sure of their future financially. I think that would perhaps play a part. But, as I said, there is general unfamiliarity with professional people, lawyers in particular. It might be very difficult for people.

**Ms WHALEY** — I would agree with that. I think that we have to make things more accessible at a community level. A lot of the people I work with do not really deal with solicitors or lawyers. I think they do go to community centres. I think that we need to — and this is not patronising — make it more accessible. I think we have to have workshops. I think we could have workshops at retirement villages. I just think there is a great need here to prevent abuse. Let us not be too high powered. I am not putting people down, but there are a lot of people out there who are a bit nervous about the legal profession. A lot of them are pensioners without a lot of financial resources. Let us make it more accessible. Thank you.

**Mr CONSTANTINE** — I think also — something that Dorothy mentioned before — another reason why some people in the community do not want to seek legal advice is that they might be embarrassed to even suggest going to a lawyer to their family member who wants to set up a power of attorney. It could suggest that they do not trust their family. Anything involving an external party might create an impediment. Nonetheless, in terms of your first question, Heidi, I think it is important that such documents and such an exercise should go through an appropriately qualified legal practitioner, not just any lawyer but somebody who has the experience. To some extent the responsibility is on the clients themselves to go and seek the best advice that they can get. Yes, there may be a financial impediment, but as with anything in society, we pay for all our services to some extent. I am not saying there should not be subsidies for the elderly, particularly people on a pension. I think that would be a good idea.

To get the message across to people within the community there are advocacy groups that should be promoting this as well as translating and interpreting services that could get to the ethnic groups or non-English-speaking groups. I think it is essential that you use lawyers, but I do not think that ensures that things are done correctly. One example: in the case of my grandmother, the family lawyer undertook to create a document that I think, arguably, was probably invalid at the time because she had dementia.

Another example I can give is where I know somebody who, as a power of attorney, had recently transferred a property of his uncle's over to his name, and I suggested to him that was inappropriate. His response was, 'No, I got an independent lawyer involved who certified that this person was fully competent'. He may be fully competent, but the fact is that there is a breach of the obligation in relation to the power of attorney. To answer your question, I do not think it ensures that things are done correctly. People need to be vigilant.

**Mr NICOLAOU** — I think there should be more workshops organised for the community. There are a lot of people out there from a non-English-speaking background. They have got no idea of what the power of attorney means. If you are going to do workshops presented by people with good knowledge like Gary, and maybe people from the legal profession, it would be good to explain to those people that it might be useful for information to be printed and publicised in different languages. There are a lot of people from Greek, Italian and other nationalities who do not understand the law and do not know what is going on.

**Mr HOGAN** — There is one thing that has not been mentioned in relation to the witnesses to the power of attorney: I think you have got to have one from a prescribed list and one outside. It would seem to me that some people on the list, if you go along to them, you sign it, they just countersign it and do not take any more interest in it. They take no more interest in witnessing the document than if you were buying a newspaper.

It seems to me that there is an opportunity for the person who is witnessing it to test that the person is competent and actually knows what they are getting into, for want of a better word, because as I said, at the present time it is simply a case of saying, 'I've got a minute. Sign this' and away it goes.

You could put that extra little bit of a test in there so that people are much more aware that it is not an insignificant thing when you give a person a power of attorney and of what the implications are, and obviously as a witness you have a responsibility to make sure that the person is competent to actually sign the document. There just does not seem to be any test, as far as I am concerned or that I am aware of, that addresses this.

**Mrs VICTORIA** — Can I ask, just on what you have said, John, say for example if I was witnessing a document as an MP and as a non-medical professional in my former life before I came into Parliament, how is it that I would assess whether this person has competency?

**Mr HOGAN** — Obviously only a specialist medical practitioner could legally say that you are medically competent, and not even your GP could possibly say that. You might have to go through every tunnel of love known to mankind before that could be assessed. I think that as a witness you could say, 'Do you realise what you are getting into? You do realise that this is happening?', and if the person shows no knowledge of what they are getting themselves into, you would have to have grave doubts about whether that person is competent to sign the document. I know it is a chicken-and-egg thing, but I think if someone puts a document in front of you, instead of just signing it with no inquiry at all, perhaps you could put that extra step in at minimal cost and just have a simple additional safeguard, as I said, at low cost.

**Mr HALEY** — I agree with John in total, because my experience with seniors is that on the surface they make tea, sweep the floor, clean up and keep the place reasonably clean, but when it comes to legal attributes, you can see the look of dismay; the eyes open wide, and you do not even dare mention the fact that there is a need for some sort of control or power of attorney over their estate. Who is the person or who is the professional person, academic or otherwise, to assess these people and say, 'You are in a situation where you need to sign documents to the effect that your health, wellbeing and assets will be looked after'? Because then immediately — and I say this from recent experience — the hair on the back of their neck goes up and they say, 'There's nothing wrong with me' and so on.

I agree with what John says. Who is the individual or who is the person to say, 'I'm sorry to tell you this, but age is catching up with you. You need a power of attorney or someone to sign on your behalf'. It is a very difficult situation.

**Ms RICHMOND** — It keeps coming back to the point that there needs to be consideration of the differences between the enduring power and general power, and perhaps there can be more flexible arrangements with the general power of attorney so that maybe you do not need to go to a lawyer. With an enduring power of attorney somebody may become incompetent, and sometimes the instigating factor why someone goes off to make an enduring power of attorney is because they have been diagnosed with Alzheimer's, and at that point, although some people can have Alzheimer's and still have capacity in certain areas, others may not. I know D's grandmother in particular has been assessed medically but is quite skilled at being able to fool people into thinking that she is quite fine. It can be quite dangerous sometimes for her.

I do not think lawyers are infallible, and there are a lot of bad lawyers out there, but there needs to be some point at which there is some contact with people and then they can refer them. A lawyer can say, 'I think this person needs to be medically assessed before I am willing to execute this document, and I need to know that this person fully understands what they are doing', because a lot of people just take their family member or their friend along and say that this is the best thing. They might not even honestly know that that person's competency could be at issue. I think it is a very hard thing, and only medical people can decide that.

**The CHAIR** — Okay. Perhaps we will move on then.

**Mr BROOKS** — I would like to go back a step, if I could, in particular to the start of the hearing when a number of people indicated that they were, themselves, acting as attorneys. I want to draw out some of the experiences, issues, challenges and problems those people have had in acting as an attorney for somebody else. That might be something such as the example earlier from D about problems dealing with a bank, or it might be in dealing with the medical profession, or it could be a whole range of issues such as family members and third parties. Could the people who have acted as attorneys give us some indication of the experiences they have had?

**Ms THOMAS** — I have had no trouble dealing with the powers of attorney financial when my family has been overseas. The bank just accepts it and my signature is registered there, but that is about all I have done on that side of things. They have all got the financial power of attorney.

**Ms REYNOLDS** — In my instance I used to take my mother to the bank and she would sign the form for her fees for the nursing home. When it got to the stage when she could no longer sign, I just produced the document and the bank accepted that I was the person to sign the withdrawal forms for the cheques for the nursing home. There were no problems at all.

**The CHAIR** — Right, so no-one has had particular issues that have arisen around the matters relating to powers of attorney?

**Ms THOMAS** — Not simple ones.

**The CHAIR** — We do not care if they are simple; some complex issues will do.

**Ms THOMAS** — I meant just dealing with plain bank accounts and that sort of thing.

**Mr HALEY** — I have found in assisting others to do this, whenever you go to the bank make sure you have got the right documents, because the bank managers — and I say this without reservation — do not know enough about powers of attorney. The only thing they are interested in — and I say this from experience with three different banks, of which Westpac is the worst — is that they are only interested in customers. They are not interested in issuing a bank cheque or any other form of money to pay a person's bills or whatever is needed. You need the right document to say, 'This is the document for this person acting as the power of attorney for this individual'. Then they have got to think and very reluctantly cough up.

**Mr BROOKS** — As a follow-up question to those people who have just responded: what about knowing or having confidence in your knowledge about the extent of the powers that you hold — knowing what you can and cannot do?

**Ms SCOTT SIMMONS** — I had a very good power of attorney. It was spelt out very clearly what you can and what you cannot do. It was very helpful because of the complexity of the situation, but at the same time before that was withdrawn because of the circumstances, the partner of my cousin had stated that he would not have the three people who had been appointed her power of attorney interfering as powers of attorney, which was rather high handed. As the matter was withdrawn later it did not matter, but it was a very good thing to know just what your responsibilities were and what they were not.

**Ms JOHNSTONE** — This is just an observation of a situation that occurred with my neighbour who was reasonably elderly. Financially she was on a limited income but her asset was basically her house. She only had one son and two grandsons. There is that emotional entanglement which needs to be acknowledged. Her son had a power of attorney.

As her health situation deteriorated it was — these are my words — almost criminal to see that her health-care needs were certainly not attended to, basically to keep the asset intact. She was almost allowed to deteriorate to a great extent instead of just nipping it in the bud and putting her into some sort of care situation, but that would have meant her asset would have to be sold. To them the priority was keeping the asset intact.

The whole issue of who has the power of attorney and how you then ensure that the welfare, not just the needs, of the person is actually attended to is a big issue.

**Mr FOLEY** — I return to the discussion earlier, and I want to flesh it out a bit. We were talking about the registration of the power of attorney documents, who has got them and all the rest of it, and having them at some level publicly available; although I say publicly, I do not mean to everyone.

We have had evidence, even as recently as this morning, that they should be on the internet and available for various institutions, banks et cetera that need them. We have had suggestions in times gone by about material being layered through various firewalls and levels of protection for different agencies that need them.

As people who are active in this field, do you have views as to whether your own personal information or that of others who are attorneys should be available at that level to people — who may be in banks or who may be in any number of other institutions — who have called for some of these measures? Would you feel comfortable about that; if so, at what level? Should everything be available; should limited amounts be available? Given the power of the internet as a tool in our communities these days, what would be your views around, if there were a registration system, to what degree the information should be available?

**Mrs JEFFS** — What I am more interested in is: where is the power of attorney? When you have got somebody in an accident case or something and someone says they have got a power of attorney, the location of it is what is needed.

**Mr FOLEY** — It might be on the internet.

**Mrs JEFFS** — If you had a registry, yes.

**Mr FOLEY** — It might be registered somewhere with a particular government institution. We have had lots of suggestions. One suggestion is the actual physical document might be stored somewhere — the Office of the Public Advocate has been one suggestion; there have been a variety of suggestions — but that it is then copied and made available. It deals with issues of interstateness and deals with the international demands that are regularly being made as well.

**Mrs JEFFS** — Yes. That is right. It is a big thing, but if only everybody would keep it in the one place. People come from interstate, and they say, ‘Mum’s got one’. We say, ‘Where?’. They say, ‘I’ll get the solicitor’. Then by the time we have finished the poor patient has gone, and we may have been having a donation because she would have wanted it. That is what I am on about.

**Mr CONSTANTINE** — I have not given it enough thought, but I would think we could have a system similar to maybe the titles registry office, but obviously a watered-down version. Within that people can access information to title documents and see who currently owns a property and who has got a mortgage out on that property et cetera. That information is out there already. That is a reality. I do not like my personal information strewn across the internet or for public use, but the reality is that is the case. I think you have got to balance that with the rights of the person who gives that power of attorney, and I think it is a fair balance.

In terms of what you were saying before, Joyce, I imagine that the document should be with the solicitor who executes it and that should be registered. The location of it possibly should be registered with the appropriate organisation.

**Ms TREZISE** — Could I say for me personally I certainly would not want that information to be publicly available. I would very much like to choose who has it and where it is, but I would not, for me, like that to be general knowledge one little bit.

**The CHAIR** — How far would you go with that?

**Ms TREZISE** — I would not want it on the net or anything like that.

**The CHAIR** — Minimally if it was said that there was a power of attorney relating to a particular person, you would not want that at all — nothing at all on the internet?

**Ms TREZISE** — No. As long as my family, my lawyer, my doctor — all of those — are taken care of, and I would not want anybody else to have access to that sort of information. But I am from the archaic Dark Ages, I think!

**The CHAIR** — You are not the only one.

**Mrs VICTORIA** — Can I just ask you a hypothetical on that? If we are talking about different tiers of security on the internet, I certainly would not want my information out there publicly either, but if it were, for example, that you were rushed to hospital and your family were not contactable and neither was your GP and it was the middle of the night, if the administrator of a hospital or the head medico at a hospital had access to just find out that there was a particular person they could call, would you think that that was useful?

**Ms TREZISE** — Yes, I do, if the hospital or the emergency services have a name or whatever, but I would not go further than that.

**Mrs VICTORIA** — So the registration of a name and contact details or something like that would be suitable, do you think?

**Ms TREZISE** — Yes. I could cope with that.

**Mr HALEY** — I believe it would be a big help, but I do believe that you would not want to disclose personal assets, financial arrangements and what have you — a name, a file number, your medical practitioner, who you are, but not necessarily your address. I know it gets a bit difficult, but I believe the solution will come eventually. Five years ago I would have jumped off a cliff rather than have my name on the internet, but with the complexity of state laws, issues in tax and the ATO rules and regulations changing daily, it is necessary to reduce the confusion and chaos that comes with a power of attorney caused by someone who does not have the education. I am not trying to belittle anyone, but it is not easy once you get into a power of attorney, because it takes two or three days to read through just a small amount to understand what you are going to be responsible for, and a lot of people just do not want that. But if something is on the internet with the essential data — not personal assets, finances et cetera, or banks — it would be a tremendous help.

Centrelink should make arrangements to have this sort of information well and truly displayed in their offices, because you should have seen the — well, there is no other word for it — enormous chaos and trouble that Centrelink had with online detailing; it was unbelievable. The big problem was that the system was A-OK but it was the people who were using it, because Centrelink times out. People went into total confusion and played on the keyboard and upset the software back at Centrelink. I do believe that the internet is a good source, particularly for the younger generation. For old people in my age group it is a bit difficult to hit it.

**The CHAIR** — Okay. Thanks, Gary.

**Ms RICHMOND** — I think I have got a bit more of a conservative approach to the release of information everywhere on the internet. I certainly think there are some dangers in this kind of field and making documents publicly available. You are talking about people who often do not have capacity. Certainly I work in a background in regulation and things like that, and the internet and people's personal information is very valuable, and I would hate to see that kind of information being misused by people targeting marketing activities to people who do not have capacity. You would certainly have access to that through a list of people who have enduring powers of attorney in place and things like that.

I think it would be beneficial to have a register, and I do think that certain organisations like hospitals should be able to access that register very easily. I think banks should be able to access it to protect people or to make sure that they are handing over money to the right people. I think there could be an option where other interested people could apply for access to information from it, and I think that would be the safest way. But there may be family members like myself who might want to know who my grandmother has given power of attorney to and whether that is appropriate so we can help her understand what she has actually given. I think that you could have a system where certain bodies could have access to it automatically, as could other people if they can show cause, and that the person involved — the person who has given the power — could be notified that someone, perhaps a family member, has accessed that information.

**The CHAIR** — Dorothy, would that satisfy your concerns?

**Ms TREZISE** — I would have to think about it, but it sounds reasonable.

**The CHAIR** — A very judicious answer.

**Ms TREZISE** — Yes. It sounds reasonable.

**The CHAIR** — On behalf of the Committee I thank each of you very much for your very significant time outlay this morning. It has been a long discussion, but I think a very fruitful one. I would also like to again thank COTA for joining with us in organising this forum this morning. As I said at the beginning, you will all receive a copy of the transcript relating to today, and you can make some comments to adjust some things on it, but obviously the substance of it is what it is. I think that is all I need to do other than thank you very much. Enjoy the rest of the day.

**Witnesses withdrew.**