LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr DA Pegg MP (Chair)
Ms N Boyd MP
Mr MJ Crandon MP
Mr JM Krause MP

Staff present:

Ms E Booth (Acting Committee Secretary)
Ms M Johns (Assistant Committee Secretary)

PUBLIC HEARING—EXAMINATION OF THE GUARDIANSHIP AND ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL 2017

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 11 OCTOBER 2017

Brisbane

WEDNESDAY, 11 OCTOBER 2017

Committee met at 10.21 am

CHAIR: I declare open the public hearing for the committee's examination of the Guardianship and Administration and Other Legislation Amendment Bill 2017. Thank you for your interest and for your attendance here today. I would like to acknowledge the traditional owners of the land on which we meet. I am Duncan Pegg, the member for Stretton and chair of the committee. With me here today are Michael Crandon, the member for Coomera and deputy chair; Nikki Boyd, the member for Pine Rivers; and Jon Krause, the member for Beaudesert.

On 5 September 2017, the Attorney-General and Minister for Justice and Minister for Training and Skills, the Honourable Yvette D'Ath, introduced the Guardianship and Administration and Other Legislation Amendment Bill 2017 to the parliament. The parliament referred the bill to the Legal Affairs and Community Safety Committee for examination, with a reporting date of 2 November 2017. The bill's primary objective is to amend Queensland's guardianship legislation to provide a focus on contemporary practice and human rights for adults with impaired capacity; enhance safeguards for adults with impaired capacity in the guardianship system; and improve the efficiency of Queensland's guardianship system or improve the clarity of Queensland's guardianship legislation. Further objectives involve amendments to the Integrity Act 2009, the Government Owned Corporations Act 1993 and the Public Interest Disclosure Act 2010.

The purpose of today's hearing is to gather further evidence to assist the committee in its inquiry into the bill. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the legislative assembly's standing rules and orders. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee.

The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Therefore, I ask you to please identify yourself when you first speak and to speak clearly and at a reasonable pace. The media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible that you might be filmed or photographed during the proceedings. I ask everyone present to please turn phones off or switch them to silent mode.

JENKINSON, Mr Chris, Private capacity

JENKINSON, Ms Debbie, Private capacity

MURRAY, Ms Roslyn, Appearing on behalf of Alison and Bill Semple

TRACEY, Mr John, Private capacity

WORLEY, Mr Richard, Private capacity

CHAIR: I welcome Roslyn Murray, Chris and Debbie Jenkinson, John Tracey and Richard Worley who are attending today in person. Good morning. I will give you each an opportunity to make a short opening statement before we open up for questions. I note that we have 30 minutes allocated for this particular session. We might start from left to right. Chris, would you like to kick off?

Mr Jenkinson: In my submission I have asked a lot of questions, et cetera. From what I understand, even from talking to the law people, the answers are not in this act and the act does not address the issues that I have raised. If the focus is to provide a viable and proper means to protect Queensland residents from abuse, no matter where they come from within Australia, then the act and the amendments fail.

The other issue is that I believe that if they fail, which they do, a Queensland government has the responsibility to protect all its residents, even from abuses coming from across the borders. If they are aware of that and they cannot fix it, they need to look at passing over that role to the federal act.

Some matters are already possible, like public trustees can be put under the federal act since 2010. That would resolve some areas where there is transparency and accountability under someone outside of the actual self-review process.

With the QCAT act and from what I understand and from talking to people about the process of asking for documents from administrators and enduring powers of attorney, et cetera – and even this morning I asked the question again - will there be a cost involved in that? With freedom of information, they can ask for a cost to administer that request. I received no answer today. It is unknown. At the moment, on the cost to get documents through the Supreme Court I have been quoted something like $50,000. An enduring power of attorney and administrator under the acts that they operate, whether it is here or in another state, are required to keep those documents and to provide accurate documents. If they do not want to provide those documents and the resident is a Queensland resident, there should be some means for QCAT to ask for those documents and not have to go through the Supreme Court. If you look at this, it is elder abuse of older people. When they die, it is their funds that are used to try to get justice for them. That is unreasonable. It is not appropriate in our society for them to basically use all their lifelong assets to try to fight and seek justice for them when something wrong is done to them earlier.

It is our government's responsibility to protect the people, no matter where the abuse comes from, particularly if it is coming from South Australia. That is not Nigeria; it is across the border. People keep saying, 'There's nothing we can do about it', 'We don't know what the law is', 'It's all too vague' and that is why QCAT does not do anything. This is an opportunity for this act to actually fix this problem.

CHAIR: Thank you, Chris. Debbie, did you have anything to add?

Mrs Jenkinson: May I read something out quickly, that I have summarised?

CHAIR: If it is brief.

Mrs Jenkinson: It is quite brief. Basically, it is a summary of how I have found various QCAT and South Australian Guardianship Board hearings. Over the past 13 years I have witnessed my mother-in-law's abuses by the so-called justice system that I wrongly presumed would protect her and uphold her rights and liberties. The system chose instead to bury the truth and protect its own misdemeanours and abuses, not only to my mother-in-law but also to her legally appointed South Australian Public Trustee liaison person and Queensland legally appointed guardian and caring son, my husband, Chris, who always only ever wanted what was best for his mother, respected her wishes and acted in her best interests, and also to myself—even though they knew the truth and had the proof through cogent evidence and facts, but chose to hide it all.

Tribunals demonstrated inconsistency in justice, process and management. They did not want to look at or hear the truth or cogent evidence and facts. I question cooperation and collaboration between government departments, organisations and states for preconceived, predetermined tribunal outcomes. From the tribunal's point of view, often academia and position do not necessarily equate to legislative knowledge nor personal understanding of the protected person's day-to-day capabilities, needs, wants or what is in their best interests, or the impact on their life and that of their caring families' lives from the government departments', organisations' and tribunals' bad reporting decisions. From what I observed, on the tribunal often there were egotistical power trips. It seemed that there was personal gratification of power and control where you get to be judge and jury for a day. Often they showed no compassion, empathy or interest in the wellbeing of the protected person and cared not if their decisions disadvantaged the protected person financially or otherwise.

Tribunal decisions appointing public trustees encourage financial disadvantage which often equates to abuse. Protected persons are not protected by the very government, department and organisations expected by the public to do so. Public Trustees are government cash cows at the abuse and expense of people labelled disabled or those who are vulnerable including the elderly. Complicity is rife and conflicts of interest play a greater role than justice.

Total disregard for the protected person's rights and liberties is evident. They do not care that the tribunal's decision or a government department's report that is not cross-checked with the truth and facts destroys a protected person's life, creating unnecessary emotional abuse and stress—also to the caring family members. A protected person's very existence is turned upside down, shaken and ruined, and any ounce of hope they may have held on to is also taken from them. Such despair impacts on their physical and psychological health and their will to go on living. To correct or turn around a bad tribunal decision is controlled by self-review. It is a travesty and a culture that needs correction before further powers are afforded to it.

CHAIR: Thanks, Debbie.

Ms Murray: My name is Roslyn Murray. I am the mother and sole carer of my 49-year-old daughter with multiple disabilities, one of which is an inability to communicate with others. I am appearing at this hearing today on behalf of long-time friends Bill and Alison Semple who are at present overseas and have asked me to be here on their behalf. During our long journey together, we have experienced many frustrations that the current position of the informal substitute decision-maker puts upon us, and I was very glad to see that matter brought up earlier. I believe you would have read their submission and asked whether anybody has any matters they would like clarified, or do I need to go further on my behalf?

CHAIR: Roslyn, you can take your submission as read. Thank you for your contribution.

Ms Murray: Do I need to submit as me or just as them? We have the same agenda. We want the same things. We want the recognition of informal decision-makers—

CHAIR: That is understood. We will move on and then we will open it up for questions.

Mr Worley: My name is Richard Worley. I would like to thank the committee for the opportunity to present my case. I have had some experience with regard to guardianship and enduring power of attorney. The legislation in its current form has many inadequacies in providing protection to vulnerable adults. I had three spinster aunts, two of whom were financially abused by their enduring power of attorney who was a trusted nephew. He opened new accounts in their names, closed investment portfolios and transferred the funds into those accounts. He was able to set up trust funds and had $2 companies as trustees and siphoned the money through them.

We were very lucky to come across some evidence which we were able to provide to the Adult Guardian and they assisted us in retrieving most of the money from one aunt. Unfortunately, it was only after the death of my second aunt that the full extent of the financial abuse was found. The Office of the Public Guardian was notified but it was very quick to inform us that it could not assist us because she had passed away and it would be left to the executors of that estate to manage. As this nephew was one of the two executors and not a beneficiary of that estate, this became a very expensive and drawn-out process.

Some changes that I believe should be made to the legislation as it stands now include a requirement that a cognitive assessment be made by a specialist in that field to determine whether an adult has capacity before an attorney can activate his role. A minimum of two attorneys should be required for a legal enduring power of attorney document. A minimum of two signatures should be required when acting as enduring power of attorney by those people. An enduring power of attorney document should be lodged on a state or national register that can be accessed by financial institutions or legal parties for verification. If an enduring power of attorney document is changed, including removal of an attorney, all parties involved should be notified.

A governing body should have the power to investigate financial abuse of an adult if it is discovered following their death. If an attorney or any other party is proven to have financially abused another person it should be seen for what it is, which is theft, and dealt with as a criminal offence. It should be a requirement for an existing will to be retained if it is replaced or amended. If a new will fails because it is later found to be illegal for whatever reason, the previous will can be referred to by the courts. Lastly, an executor of a will and an attorney for financial decision-making should not be the same person. I believe that if, those points were part of the legislation, financial abuse of my aunts may not have had happened or, at the very least, an early detection of the abuse would have occurred. Do not forget that this legislation is about protecting adults who do not have the capacity to protect themselves.

CHAIR: Thank you very much, Richard.

Mr Tracey: Thank you for the opportunity to talk to you. My name is John Tracey. I am the carer of my stepson Marley Creed, who has given me permission to talk to you today. I was recently appointed Marley's administrator and guardian for legal matters. There is so much I would like to tell you but I cannot tell you. I would like to submit a document which is our family's allegations and issues with the guardianship system, and I hope you might get a chance to read that after today. You do not need to read it now. I am not asking you to judge—

CHAIR: I will stop you there, John. We need to get leave of the committee to table this document. Is leave granted? There being no objection, leave is granted. Please continue, John.

Mr Tracey: I am not asking you to judge these allegations; I am asking you to understand that these allegations have been made, and have been made over and over again since 2004. It was not until I was appointed administrator and guardian for a legal matter a few months ago that we have been able to get legal advice about those matters.

We asked the Public Trustee if they could release money to get a lawyer to give legal advice on the allegations. The Public Trustee said no. We complained and complained and complained, and they sent it to QCAT. QCAT said that the Public Trustee, as substituted decision-maker, has exclusive power over legal decisions and they refused to allow Marley to have a lawyer. Marley appealed that QCAT decision and QCAT determined that he lacked legal capacity to appeal QCAT.

This is what is happening now when a person's legal capacity is removed, as this amendment is proposing to do. Their legal capacity is being removed illegally now routinely, and it means that people cannot complain against the Public Trustee and Adult Guardian because they have the authority to make legal decisions. They cannot get a lawyer. There was a discussion of section 125 earlier this morning. The tribunal uses that piece of legislation under section 125 to appoint separate best interest representatives. There is nothing in the guardianship and administration tribunal about appointing separate representatives for adults. There is for appointing separate representatives for children in line with the Family Court guidelines for independent representation of children, but the Guardianship and Administration Act as it stands now, if it is read on face value, fully conforms with the Convention on the Rights of Persons with Disabilities. General principle 1 is the presumption of capacity. General principle 2 is equal rights. Another general principle—I cannot remember which general principle it is—is maximum participation. At the moment we have legislation that is fully consistent. Even though it was passed eight years before the convention, the legislation is fully consistent with the convention except the tribunal has been interpreting the legislation differently and now the Attorney-General wants to change the legislation.

With regard to this question of equality, which is the second general principle of the Guardianship and Administration Act, and legal capacity under article 12 of the convention on legal capacity, everybody has legal capacity. Somebody asked before whether the guardianship laws conform to the convention. No, they do not. The United Nations Committee on the Rights of Persons with Disabilities has been very blatant and clear in telling the federal government that Australian guardianship laws do not conform with the convention. It seems to me the problem is—and this is across Australia and it happened when Australia could not ratify the convention in 2008—that, on the one hand, you have a consistent body of law that says everybody is equal—there is the Anti-Discrimination Act, there is the common law and there is international law that says everybody is equal—yet we have these institutions like the Public Trustee and the Adult Guardian and their equivalents around Australia that are substituted decision-makers. They are institutions with institutional momentum and they do not change.

The Public Trustee has not changed its basic model of dealing with disability since it was the Curator in Intestacy and Insanity Office in the 19th century. The same principle of substituted decision-making is what the institutions are locked into. We have equal rights under the law and we have the institution that is a patronising hierarchy. At some point we either have to change the institution to conform to the law. Instead what is happening now is the people behind these amendments are trying to change the law to conform to the institutions. Substituted decision-making is outlawed by the Convention on the Rights of Persons with Disabilities, and the United Nations has told Australia that.

CHAIR: John, I know you are very passionate about the issue but I will ask you to wind up.

Mr Tracey: The LNP's website under 'What we Believe' includes, among the precepts fundamental to LNP's philosophy, 'The rule of law with all citizens equal before the law'. The ALP's state platform for 2017 under the section called 'Our values' in point 1.2 states—

We value every member of our society – no matter their location, race, ethnicity, sex, gender, gender identity, intersex status, sexual orientation, age, religion, ability or educational qualification. We believe in, and work to achieve, a society that supports equality, acceptance and inclusion and a society that shuns discrimination. We believe firmly in social justice.

The Queensland Constitution begins with the words—

The people of Queensland, free and equal citizens of Australia …

Are you serious about this word 'equality?' Are you serious about equal rights or are you going to support a piece of legislation that throws us back into the Dark Ages and substituted decision-making?

CHAIR: Thank you, John. We will now move on to questions. I would remind everybody that the job of this committee is to examine the bill and make recommendations, and that is the purpose of our hearing today—to hear from you. I have a question for either Chris or Debbie in relation to interstate jurisdictional issues. Chris, I think you used the term 'across the borders'. Could you give the committee some examples of the practical interstate issues or barriers that you faced in particular?

Mr Jenkinson: In my submission I refer to a QCAT hearing where I explain the complicity that was occurring. The correspondence between Public Trustee of South Australia, Public Trustee of Queensland, Adult Guardian and QCAT has never been provided to me. I asked for that correspondence. It was blocked in South Australia in the court and I did not get it here.

The problem is that the current legislation is saying that an enduring power of attorney or administrator can be recognised in Queensland. That has been the case for a long time. I have a situation where the administrator is recognised in Queensland. Until 2014 it was not recognised. QCAT said that it was not going to recognise the South Australian Public Trustee administration for good reasons. When they did this complicity bit and allowed that to be pushed through a crown solicitor with no representation this end, QCAT said that it is not going to look at anything in South Australia. Then we had the situation where they accepted an administrator for the process of having that administration be able to revoke its own administration and Queensland to be appointed a public trustee administration. If you accept an administration in another state and you are giving it credibility, then all of this act where it says that QCAT will get this information from South Australia et cetera is meaningless.

During the break I spoke to the lady who was here a moment ago and asked that question and again we are in the situation where, no, it is not going to happen. I will give you an example. As an executor of the estate, you have a bit in this act that says six months for this and whatever. The time limits are meaningless because until a probate is done the will has no bearing and the beneficiaries do not exist. In my case the will took six months through probate in Queensland, and that was pushed through by the Queensland Public Trustee and there were no blocks or anything. The act says that you can do this within six months and I was told that QCAT can address that any time. That is what I was told verbally. It does not say it in the act that I could read, but it needs to be clear that these matters can be addressed at any time but particularly while an executor is in place so that something can be done.

I have asked for information from the Public Trustee Queensland who is the appointed administrator for a short period. They provided me with that information at no cost and no problems. They just gave it to me. They did not give me everything I do not think, but they gave me a fair bit of stuff and I am satisfied with that. I asked the same from the Public Trustee of South Australia. The Public Trustee of South Australia said that they will provide identification of some documents for $15,000 from the estate to be paid in advance. These are documents that are being withheld from the estate. They were withheld from the Queensland Public Trustee. Some of them are just bankbooks and stuff they receipted. They will not provide them to the executor, just as the enduring power of attorney will not in South Australia, so how can the executor do their role of identifying the estate before distribution? Under the act, I am required to do that. I signed a statutory declaration, as did the other executor who is blocking it, under Queensland law but nothing can be addressed. I think there is a real problem. QCAT had no intention of addressing South Australian matters, particularly when it was to do with a counterpart—the Guardianship Board of South Australia—and errors in their decision-making or a counterpart in the Public Trustee.

CHAIR: Thank you, Chris. I think you have provided a good overview of some of the issues that are causing you some obvious and understandable frustration.

Mr CRANDON: Roslyn, you are here representing Alison and Bill but you also—

Ms Murray: I also have the same issues that they had, yes.

Mr CRANDON: Did you hear my question earlier?

Ms Murray: I did hear your question and I thought that was wonderful.

Mr CRANDON: Okay. Could you give us some idea from your perspective what has happened in relation to the corporate sphere and access to it?

Ms Murray: I will give you an example of my daughter. We had a problem with Medicare, so I called Medicare to clarify it and they said, 'Do you have her EPA?', and I said, 'No.' I was asked, 'Why?' I said, 'Because she's not capable of giving one.' I was asked, 'Are you her guardian?' I said, 'No, I'm her informal substitute decision-maker.' They said, 'We can't speak to you.' I then took time off work and got Michelle and went up to Medicare and I stood her in the queue with the paperwork. When it was her turn, the lady said to me, 'What does she want?' I said, 'You wouldn't talk to me. You ask her what she wants.' Of course Michelle could not relay what she wanted, so she called the supervisor and we had a great big discussion. In the end I intervened on her behalf because she was getting very frustrated and so was I and we ultimately resolved the matter. If they had recognised me as her informal decision-maker, there would not have been a problem. That is all we are asking. I could have lied like I know lots of parents do, because I have done a lot of research on this. They ring up and they say that they are their daughter or whatever. I will not put my own integrity to that. I do not believe that I should have to lie to represent my daughter's rights.

Mr CRANDON: Thank you very much. I have a question for anyone and everyone if we have the time. What has been your experience of dealing with QCAT specifically? Chris, you have had a good go and, Debbie, you also had a good go at the beginning. Maybe John or Richard would like to respond and then perhaps we can go back to Roslyn if we have time in terms of your experience with QCAT.

Mr Tracey: With regard to QCAT and before that the Guardianship Administration Tribunal, our family has been before the tribunal almost every year since 2000. Because there are no rules of evidence, the tribunal has consistently rejected things that have been said by Marley and his family—by myself and his mother—and have consistently accepted the opinion of the Adult Guardian and Public Trustee as facts. When you get around to reading my submission, you will see that the Public Trustee made a clerical error in 2002 in saying that Marley had an acquired brain injury.

Mr CRANDON: Yes, I saw that.

Mr Tracey: There had never, ever been any documentation diagnosing a brain injury, yet QCAT and before it GAT consistently believes the Adult Guardian and the Public Trustee because on their files there is a brain injury.

Mr Worley: My experience with QCAT, I suppose, is that they would need to follow legislation requirements as well. In saying that, in our situation where an enduring power at attorney had done the wrong thing and was required to appear before QCAT, we were informed prior that more than likely his powers would be removed if he did not voluntarily remove himself. That led us to applying—myself and two sisters—to be new enduring powers of attorney for aunties. For some reason some of the family of the nephew who had financially abused them also applied, who, I must say, did have some involvement in the financial abuse process as well. Because two sides of the families had applied for enduring powers of attorney, I feel that QCAT did take an easy approach to this and said, 'Okay, we'll make sure that the Public Trustee is responsible for the financial affairs of the aunties,' which is expensive. It costs. Understandably it costs, but why should that have been able to be just said and done and us ignored?

Mr CRANDON: Okay. Roslyn?

Ms Murray: I have had very few dealings with QCAT. Only at one time I was an advocate for someone who was appealing in the tribunal. My question with QCAT is that if all of the people in my position had to apply for formal guardianship it would put a very big financial drain on the government. I do not believe that some public servant could sit up there with an NDIS committee and express my daughter's needs. Therefore, I would like the right to be able to express her needs while I am able.

Mr CRANDON: Thank you.

CHAIR: Our time has expired. Thank you very much for your time this morning. It is much appreciated.

BOWEN, Mr Timothy, Senior Solicitor, Advocacy, Claims and Education, Medical Insurance Group Australia, via teleconference

COLES, Ms Klaire, Senior Lawyer, General Practice, Caxton Legal Centre Inc.

HERD, Mr Brian, Deputy Chair, Elder Law Committee, Queensland Law Society

KRULIN, Ms Vanessa, Senior Policy Solicitor, Queensland Law Society

SHEEHAN, Ms Michele, Deputy Chair, Succession Law Committee, Queensland Law Society

CHAIR: I welcome our witnesses from the Queensland Law Society, the Caxton Legal Centre and the Medical Insurance Group Australia, known by the acronym MIGA, who is attending by telephone link. Good morning. I invite each of you to make a short opening statement before the committee commences its questions. I might ask the Law Society to start us off.

Ms Krulin: Thank you for inviting the Queensland Law Society to appear at the public hearing on the Guardianship and Administration and Other Legislation Amendment Bill 2017. As you know, the society is the peak professional body for the state's nearly 12,000 legal practitioners and we are an independent, apolitical body upon which government and parliament can rely to provide advice which promotes good and evidence based law and policy. The Queensland Law Society supports the efforts to improve the efficiency of Queensland's guardianship system and we are pleased to see that several of the recommendations of the Queensland Law Reform Commission's 2010 report, *A review of Queensland's guardianship laws*, have been included in this bill. We have some issues which we wish to highlight, particularly the amendments regarding the avoidance of conflict transactions. We believe this should be strengthened, and Brian will speak to this briefly after I have spoken. We think there is also space for further clarification to the amendments to the Powers of Attorney Act, specifically regarding eligible witnesses, enduring powers of attorney and the appointment of eligible witnesses. We feel that there are some potential unintended consequences which could flow from the current proposed amendments. I will hand to Brian.

Mr Herd: Just as an additional comment about conflict transactions arising out of the proposed legislation, it creates effectively an anomaly between the status of an administrator and the status of an enduring power of attorney. Under the legislation an administrator can seek and obtain a retrospective authorisation for a conflict transaction. Under the legislation, an enduring power of attorney cannot. You need to ask yourself the question why that is given that they both have the same legal duties but one is given a right that another one is not. The consequence of that is there could be inadvertent and innocent unintended consequences when it comes to not giving to an enduring power of attorney the ability to seek retrospective authorisation.

I can give you a very little example of that involving a mum and dad. Mr and Mrs Brown have been married for 67 years. He loses capacity and has to go into aged care. They want a RAD of $200,000. They do not have $200,000. She is his enduring power of attorney. She is wearing two hats—she is Mrs Brown and she is Mrs Brown, enduring power of attorney for Mr Brown. In order to pay the bond or the RAD of $200,000, she decides to sell the house for $600,000 and pays $200,000 of that as the RAD for Mr Brown. Of the balance of $400,000 left, she uses that to buy another smaller home just in her name. A lawyer would tell you that that is Mrs Brown committing a conflict transaction on the basis that she has used some of Mr Brown's money for her own personal purposes. She did that to maintain their aged pension status.

If she had done the right thing, she would have done the wrong thing. The wrong thing would have been to take the $100,000 left for Mr Brown and put it into a bank account. That would have created an assessable asset. As a result of what she did, she maintained the exempt status of the assets. Their home was exempt. She then converted it into two exempt assets: the RAD and her new home. Under the law she has committed a conflict transaction and has, by doing the right thing, in fact acted against her and Mr Brown's own interests. The reality is we see little reason why there should be a discrepancy between the law as it applies to administrators and enduring powers of attorney when it comes to retrospective authorisation, bearing in mind it is not giving them the power to do whatever they want. It still requires the tribunal's approval for that authorisation to be obtained, which can be obtained by the administrator under this legislation but not by an enduring power of attorney.

Ms Coles: Good morning, and thank you for the invitation to provide evidence to you today. My name is Klaire Coles and I am a senior lawyer at Caxton Legal Centre. I am one of the lawyers working in our coronial assistance legal service. Our submission was made to your inquiry jointly with our

colleagues from the Townsville Community Legal Service, who were not able to appear today. Both Caxton Legal Centre and Townsville Community Legal Centre have a long history of assisting clients with guardianship and administration matters, and both centres have contributed to the development of the law in this area through casework and law reform activities over a number of years. Our submission to this inquiry, however, was limited to those areas of the bill which will impact clients accessing our coronial assistance legal service. This service is a new service funded by the Queensland government to provide advice and representation to bereaved families who are going through the coronial process.

We note that the bill gives power to QCAT to appoint an administrator for financial matters for a missing person if QCAT is satisfied that the adult is missing. We support the introduction of these provisions as they will allow families to more quickly deal with the estate of their missing family member; however, the bill does not specify how long the appointment is to be for or how often the appointment should be reviewed. Similar legislation in the ACT and Victoria provides that the appointment must not last longer than two years and can be extended for a further two years on application to the relevant tribunal. Legislation in the United Kingdom allows the appointment of a guardian, which is a similar position to an administrator, for up to four years with possible renewal after that period. We consider that it would allow greater certainty for those being appointed if the appointment was for a fixed period of time.

Our submission also concerns clause 87 of the bill, which broadens the power of the Public Guardian to investigate a complaint or allegation even after an adult's death. Currently the Public Guardian has power to investigate any complaint or allegation that an adult is being, or has been, neglected, exploited or abused or has inappropriate or inadequate decision-making arrangements in place. We are broadly supportive of the introduction of this new power for the Public Guardian to investigate a complaint or allegation after an adult's death; however, we consider the scope of this extended power requires further clarification, especially as the Public Guardian's investigation could, in some circumstances, overlap with an investigation undertaken by the Coroner. We also think that it would be appropriate for the Public Guardian to provide a copy of their written report to the Coroner if the person's death is a reportable death. We consider that there should be information-sharing protocols developed between the Public Guardian and the Coroner similar to those memoranda of understanding that the Coroner already has with organisations like the Office of the Health Ombudsman.

CHAIR: Mr Bowen, hopefully you are still on the line with us. We will give you an opportunity to make an opening statement.

Mr Bowen: Thank you very much, Chair. I thank the committee for allowing me to participate today. I apologise for not being able to be there in person.

MIGA is a medical defence organisation and a profession indemnity insurer—with 32,000 members around Australia. We assist, we advise and we educate doctors, medical students, certain privately practising midwives and heath care organisations. We appreciate the opportunity to contribute to this consultation and be part of this hearing today, because it raises important issues for our Queensland members who are working in hospital and community settings. Our input reflects the national experience we have had across the states and territories with similar issues and in participating in reviews, particularly in New South Wales and Victoria, around these issues as well.

As you will have seen in our submission, we have raised some issues, mostly around clarification in a healthcare context, dealing with capacity assessments, substitute decision-making roles, advance health directives and protections for doctors who are acting in good faith. We welcome the opportunity to explore these issues further today and answer any questions that the committee has.

CHAIR: Thank you very much, Mr Bowen. We will now move on to questions. Mr Bowen, I did have a question for you in relation to your submission regarding advance health directives under sections 100 and 102 of the Powers of Attorney Act; that is, that they do not extend to all issues around the validity of a directive made in Queensland such as scope and form. Can you assist the committee by explaining what you mean about the scope and form of a directive?

Mr Bowen: Yes, I am just clarifying in my mind what points we made in our submission. Does your question relate to the validity point?

CHAIR: Yes, the validity point on page 5 of your submission.

Mr Bowen: Some of this runs to—

CHAIR: Mr Bowen, hopefully you can hear me, but at the moment the committee cannot hear you. Are you there? We might try and retrieve Mr Bowen. We still cannot hear Mr Bowen. I will move on to the deputy chair.

Mr CRANDON: In view of time constraints, I had a good run at the last hearing so I do not have any questions.

Mr KRAUSE: I have a question for Mr Herd from the Law Society in relation to clause 63, which provides an option for an enduring power of attorney to include an advanced health directive with an enduring power of attorney. In relation to clause 63, the department advised that including those two documents together could be useful and provide comfort for a principal unable to foresee all circumstances that may arise and that an existing enduring power of attorney would be revoked to the extent of inconsistency with a later document. Noting this advice, do you have any other concerns with having a combined document?

Mr Herd: It is confusing. If a person wants to do an enduring power of attorney and an advanced health directive—which most people are inclined to do—having the ability to do an enduring power of attorney in the advanced health directive often results, from my own professional experience, in clients completing an enduring power of attorney, completing the first part of the advanced health directive with me as the witnessing lawyer, then taking the advanced health directive away to see a doctor and completing that part, and then also completing the enduring power of attorney part of the advanced health directive. The consequence is they have done two enduring powers of attorney within a short space of time in two different documents without realising it. When that happens you get adverse legal consequences, unintended consequences. They never meant to do another enduring power of attorney, not realising they had already done one to cover the same subject matter, which is personal health care. In my view and in my experience, it is very confusing for most people to see that in an enduring power of attorney, particularly where they have already done an enduring power of attorney in the advanced health directive.

Mr KRAUSE: Practically, have you ever come across the situation where the person appointed as an attorney under the first EPA has acted under that document even though, according to the department, it may have been revoked, and then it has resulted in a conflict between the two attorneys? I note this is just a proposal.

Mr Herd: I have never had that personal experience. I have had experiences where the attorney appointed in the advanced health directive a few days later is different to the person appointed in the enduring power of attorney, thereby revoking the former.

Mr KRAUSE: That is right. That could definitely lead to practical implications and difficulties.

Ms Sheehan: Particularly if they are going to restrict the number of attorneys to four. If there are appointments in the enduring power of attorney and then different appointments in the advanced health directive, that would be incredibly confusing.

Ms BOYD: My question is to the QLS. Thank you, Mr Herd, for talking through a practical example of a conflict transaction with us earlier on in your opening remarks. The Queensland Law Society's comments with regard to clauses 20 and 35, which amend sections 37 and 152 of the Guardianship and Administration Act, relate to these conflict transactions and suggest that the committee consider a stronger deterrent to an appointee entering into a conflict transaction. The department's advice in this regard included that a higher requirement on attorneys who apply for retrospective approval might unduly restrict the discretion of QCAT to authorise conflict transactions in scenarios. Why do you propose that a stronger deterrent should be applied? Do you have any response to the comments of the department?

Mr Herd: The proposed amendment to section 152, I think it is, of the amending legislation is a combination of two sections: section 37, which is amended very shortly; but more particularly section 152, which is—

Ms Krulin: We are having a little trouble locating it quickly.

CHAIR: If it assists, you can take the question on notice.

Mr Herd: It does not provide any guidance to the tribunal in the new section 152 in relation to how they might consider approving retrospectively. It simply says the tribunal has the power. Our proposal was that the tribunal be given some guidance and principles to act upon in determining whether something should be retrospectively authorised or not. They can be expressed as principles, not necessarily as requirements, or as inclusive, not necessarily exclusive, considerations for the tribunal for the purposes of creating some uniformity in the way they address these issues. I know that every situation is different, but the reality is if you have some objective principles or guidelines for the tribunal, that can assist both them in making appropriate decisions and ensuring consistency of decisions in certain cases.

CHAIR: We have Mr Bowen back on the line. Mr Bowen, I think you were about halfway through answering the question in relation to validity. We will give you another opportunity to finish your answer.

Mr Bowen: Just to clarify, I understood that your question related to explaining some of the issues that were raised on page 5 of our submission around the advance health directives, uncertainties around them and how they differ from elsewhere. The concern that we have—particularly relating to protections for doctors who are trying to interpret this—is that they are dealing with a regime in Queensland that has particular requirements around form and sometimes what matters you can make a directive for, which can be different to the powers and forms that must be followed in other states. You may have a Queensland patient presenting who falls under one regime; you have a patient from New South Wales, for instance, who presents and who falls under another regime that might be able to do a directive in a different way about different things. The concern we have is that a doctor is placed almost in the position of a lawyer of having to know how to interpret those things and what is valid. Moving on from that, we were concerned about whether there is sufficient protection for doctors and nurses—and whoever else is interpreting it—who are trying to do the right thing, but at the same time not being able to have that detailed knowledge or understanding of a variety of form and substance requirements they may encounter.

Mr KRAUSE: I have another question for the Law Society. One of the other submissions suggests in relation to powers of attorney that there be a minimum of two attorneys appointed and two acting for a power of attorney to be utilised and also that criminal offences be inserted into the regime where there is misuse of that enduring power of attorney. I just wanted to get your views on those proposals?

Mr Herd: I do not think that particular issue forms part of our submission.

Mr KRAUSE: No, I understand that. I am asking you about the submission of another submitter. If you do not feel you are able to do justice to that issue at the moment, is it something that you would consider taking on notice?

Mr Herd: Yes, please.

Mr KRAUSE: The other part to that question that I wanted to ask was about the issue around executors of estates not also being enduring powers of attorney.

Mr Herd: On notice, please.

Mr KRAUSE: I understand.

CHAIR: That question has been taken on notice.

Mr CRANDON: I wanted to seek a little bit of clarification. You talked about a simplistic example of a property sold for $600,000 and $200,000 being placed on deposit and $400,000 used for another property in the single individual's name. There are a couple of aspects to that? First of all, who owns the $200,000 deposit? Is that jointly joined?

Mr Herd: No, half of the value of the property is owned by Mr Brown and the other half by Mrs Brown. It does not matter how they hold the property. That is how the proceeds from sale would be split.

Mr CRANDON: So we have a $600,000 property sold and $200,000 goes into deposit. Is that regarded as jointly owned—

Mr Herd: It is Mr Browns' money.

Mr CRANDON: There will perhaps be a will in place to provide for his wife in that regard?

Mr Herd: Who knows.

Mr CRANDON: If there was an EPA in place could the property have been purchased in joint names?

Mr Herd: Yes, it could have been, but that is a problem if he is going to be residing in an aged-care facility. If a property is purchased by her in joint names, he will not be residing there. It will not be his principal place of residence. In fact, it will be an assessable asset in his name—half the value of that property. It would not be wise for Mrs Brown to do that because she would be creating an assessable asset for Mr Brown.

Mr CRANDON: I get that. If we go back to the original $600,000 property and Mr Brown goes into the care facility—therefore the property is no longer his principal place of residence, is it assessable?

Mr Herd: The $600,000 property?

Mr CRANDON: Yes.

Mr Herd: It is still a principal place of residence. It is still effectively his principal place of residence for two years after he leaves and goes into aged care, but it needs to be sold.

Mr CRANDON: Let us say for a moment that there was a capacity for him to enter into a care facility without having to place a deposit—that is, the property was not sold. He was married for 67 years to his darling wife. You are saying that it would only be maintained as his principal place of residence for asset test purposes for two years?

Mr Herd: Unless Mrs Brown continues to reside there.

Mr CRANDON: If she continued to reside there it would continue to be—

Mr Herd: It would continue to be an exempt asset.

Mr CRANDON: If she sold that property, bought another property in joint names and resided in that new property that would not be regarded as his principal place of residence for asset test purposes?

Mr Herd: Correct, because he is not residing there.

CHAIR: I have a question for Ms Coles. In your submission you raised concerns that the scope of the extended power of the Public Guardian to investigate complaints under section 19 of the Public Guardian Act needs to be clarified. I was just wondering if you could elaborate on those concerns?

Ms Coles: Yes. The current section 19 of the Public Guardian Act gives the Public Guardian those broad powers I mentioned earlier to investigate a compliant or allegation that an adult has been or is being exploited, abused or has inappropriate or inadequate decision-making arrangements in place. There has been limited judicial consideration of the extent or operation of that power. It appears to be limited to matters relating to adults with impaired capacity for a matter, although that has not been confirmed by a judicial finding. We are concerned that there will be confusion about whether the broadening of the power might also lead to confusion for the Public Guardian about what matters they can investigate after the death of an adult. That is set out in our submission.

CHAIR: I had a further question in relation to the concerns you raised in your submission with the cross over role of the Coroner. Could you explain those for the benefit of the committee?

Ms Coles: Our concern is that Coroner has jurisdiction to investigate a death which is reportable to the Coroner under the Coroners Act. We were concerned that the Public Guardian may collect information after a person has died where they discover that a death is reportable and has not been reported to the Coroner in which case they would have an obligation to report the death to the Coroner. Additionally, the Public Guardian may uncover information which is not passed onto the Coroner in the Coroner's investigation of that person's death.

There are lots of overlap in relation to things that a coroner would investigate and things that other organisations like the Office of the Health Ombudsman, for example, investigate in relation to reportable deaths. There are memorandums of understanding between the Coroner and the Office of the Health Ombudsman about information sharing and the timely notification of matters. If this power were to be given to the Public Guardian we propose that similar information protocols be introduced to avoid the Coroner missing information or a duplication of investigation where that is not necessary.

CHAIR: Thank you very much for your time and contribution this morning. Thank you for your detailed submissions. In relation to the questions taken on notice, your responses will be required by 5 pm on Friday, 13 October so that we can include them in our deliberations.

LEA, Ms Simone, Private capacity

LYELL, Ms Carolyn, Private capacity

YOUNG, Mr Doug, Private capacity

CHAIR: I welcome our next witnesses. Good morning and thank you for being here this morning. We will give each of you the opportunity to make an opening statement, after which I am sure committee members will have some questions.

Ms Lea: I am the wife of Robert Lea, who is a member of the Darrell Lea chocolates family. At the end of 2012, unbeknownst to us, his vexatious daughters decided to take out a declaration of capacity on their father when their father did not lack capacity. He was stripped of mental capacity by QCAT members, including [redacted], when there was no medical evidence to support this.

CHAIR: Simone, I ask you to keep it to the bill. I caution you about specifically naming individuals. I understand you are really passionate about this.

Ms Lea: That is my introduction and I will give you our statement regarding the bill.

Mr Young: My approach is a little bit out of left field. I would seek the committee's forbearance for coming out of left field to some extent with some of my points. I will show that they are relevant to the argument. The guardianship and administration bill was ill-conceived. Any action on the bill should be put on hold until a long overdue review of the QCAT Act has been completed. It is ridiculous to consider any amendment to the Guardianship and Administration Act when QCAT is the subject of numerous extremely serious issues. The Guardianship and Administration Act and QCAT cannot be considered in isolation. Attempts to do so amount to applying lipstick to an exceedingly ugly pig and expecting it to be transformed into Marilyn Monroe.

The QCAT Act provided for review of the act in 2011. The combination of decidedly critical submissions and the Court of Appeal findings in Maher, QCA 11-225, that the quality of decision-making in QCAT is deplorable resulted in the review being put on hold. An attempt to reactivate the review in 2014 also drew extremely hostile submissions, resulting in the review being put on hold indefinitely.

Other interesting issues of contention are as follows. The QCAT Act requirement that the president must be a Supreme Court judge and the deputy president a District Court judge has not been complied with for prolonged periods. The QCAT Act requirement that the tribunal must retain specialised expertise has barely been paid lip-service. Specialised expertise is defined as members with relevant education, qualifications, training and experience. QCAT deceptively promotes a QCAT member as a doctor when her only qualification is a PhD in English literature.

QCAT ignores the Public Service Act provisions regarding an internal complaints review facility. I will not mention the name, but a certain senior registrar has advised that there is no point sending complaints as we do not take any notice of them. The president's job description states that he is responsible to investigate complaints alleging misconduct of members. However, there is no indication that the president has ever observed this requirement. Attempts to bring the president and members to account have been laughed off with the comment that 'the president and members have immunity to prosecution for breach of the civil legislation'.

The Guardianship and Administration Act deliberately ignores the separation of powers doctrine by joining two executive entities to all guardianship matters. Together with the immunities conferred on QCAT members, the joining has led to a culture of extreme arrogance or bias on the part of QCAT, the OPG and PTQ, as was acknowledged by the Court of Appeal in its Maher decision.

QCAT demonstrates bias towards the PTQ by ignoring the Costello inquiry and the Cooper review regarding major issues with PTQ financial accounting procedures and the ASIC finding that preferred financial adviser Morgans financial services failed to comply with accepted standards. QCAT deliberately imposes financial disadvantage by preferring PTQ over low-cost or no-cost family administration, and conflict of interest with PTQ as a retailer of financial products and also as the appointed financial administrators of parties who are forced to purchase decidedly substandard financial products which return a profit to the state of Queensland. QCAT consistently overrules enduring powers of attorney with no cogent evidence of malpractice on the part of the attorney. The Guardianship and Administration Act stipulation that QCAT can only appoint the PTQ as a last resort, has rarely if ever been observed.

The Guardianship and Administration Act contains a number of provisions that tribunal members must observe. However, it fails to mention any recourse or penalties applying to instances of noncompliance. The combination of systemic extreme arrogance and immunity endowed on QCAT

members results in habitual ignorance of legislation, ostensibly intended to regulate their conduct. The president has ignored his responsibility to deal with malpractice. QCAT is able to nobble the internal appeal process, the Ombudsman, the CCC, the Anti-Discrimination Commission and Information Commissioner and refuse to deal with complaints against QCAT. The Attorney-General falls back on the separation of powers excuse despite provision in the act for intervention. All three arms of government unite to prevent judicial review of QCAT, the OPG and PTQ.

In view of the awareness of serious problems with QCAT, I allege that any attempt to proceed with the guardianship and administration amendment bill prior to completion of a longstanding review of the QCAT Act will constitute deliberate perversion of the course of justice.

CHAIR: Thank you very much, Doug, for the comprehensive statement that you put forward. Carolyn would you like to make an opening statement?

Ms Lyell: I am here more or less for myself as well as for a lot of other parents who have the same problem that I have in trying to get recognition for our sons and daughters to be able to access bank accounts and all of those sorts of things that I have heard from parents I talk to. I think there should be some way we can have a blue card or something that you can take along to the corporation and say, 'This is where we are at and this is why we are informal decision-making parents.' I wanted to have the opportunity to say that there are a lot of people out there with the same problem.

CHAIR: Thank you very much for joining us today, Carolyn, and for taking the time to come here and also for making a submission. We will now move on to questions. I had a question for all of you. Based on your submissions and your statements this morning, quite clearly you have some issues in relation to the way the system works currently. For the benefit of the committee, in a nutshell, if you could change the system what changes would you make?

Ms Lea: That is a very good question. When this first happened I wondered why a tribunal that does not rely on the normal rules of evidence and that can inform itself any way it sees fit handles guardianship when all of the other matters it handles are to do with neighbours arguing about fences or deck disputes. We know firsthand that was no evidence at all that my husband lacked capacity. There was no evidence at all that I was an abusive power of attorney, yet the two QCAT members stripped me of being my husband's enduring power of attorney. I ask any of you: do you want your siblings to do this to you, where you lose your life, you lose your money, you lose your human rights, you lose your dignity, you lose everything and it is controlled by the Public Trustee?

I allege that the big problem is that there is an incestuous relationship between QCAT, the Public Trustee and the Office of the Public Guardian. Everybody we have spoken to, from local politicians right up to the Premier, all cover the arse, excuse me, of the Public Trustee because it brings in probably around a trillion dollars or less than a trillion dollars Australia-wide and no-one wants to touch it. I question the practices of the people who are running the Public Trustee of Queensland. The conflict of interest transactions with my husband's money now amounts to around a million dollars gone.

The general principles have been ignored in my husband's case ever since he came under government control on 27 September 2013. Not one general principle is adhered to. I had Nash Te Ua, from the Public Trustee of Queensland, in the office of Michael Hart on 9 December last year say that they have regard for the general principles. I argued with this man. I got nowhere in that office. The general principles must apply, yet they are never applied.

My husband has had every bit of his money now taken from him without any consultation, yet we have to hand in a receipt—if I go to the chemist to buy a female hygiene item, I have to hand in a receipt to the government. Yet they spend my husband's money without one receipt, without one invoice and without consulting him. John Tracey spoke the truth and so did Debbie Jenkinson, and I can concur with them that this is an absolute racket. This country and every state ought to be ashamed of itself. Guardianship needs to be completely and utterly revamped. It needs to go into a court, whether that is the Supreme Court—and not with judges who are in the pocket of the Public Trustee either because they are all public servants—or the Family Court.

Let me say this: Robert's two surviving daughters did this to their father purely to preserve what they deemed to be their inheritance. This is what QCAT has become. It has become a modern avenue for vexatious family members to preserve what they deem to be their inheritance because they did not want their father, who now was sober, to spend his money. You, as politicians who write the legislation, need to get guardianship out of QCAT. I have personally lost $400,000. I have become bankrupt.

Another systemic human rights issue, like what John Tracy said, is that the Public Trustee have used my husband's money to perpetuate the elder abuse on him by the Queensland government and the abuse of his finances, yet they have not released his money for us to challenge any of the heinous—

and I mean heinous and I say this very passionately—crimes of humanity to the people under the guardianship racket. It may have been conceived many, many years ago as some way to protect vulnerable people, but now it has morphed into a way to fleece victims of their money. If my husband had been a regular Joe working in a factory with no money, there is no way his two daughters would have done this. It just so happens that he is a multimillionaire of Darrell Lea chocolates and, like I said, they wanted to preserve what they deemed to be their inheritance.

CHAIR: Thank you.

Ms Lea: My final comment is about the conflict of interest transactions. The greatest abuser of conflict of interest transactions—I allege there is fraud, exploitation and embezzlement by the Public Trustee of Queensland of victim's funds because they do conflict of interest transactions all the time with their bedfellows. Their bedfellows are particularly AustralianSuper and Morgans, which was found by ASIC to have issues—I have forgotten the term—back in 2014 and 2015 and the Public Trustee still uses that company. There are enormous conflict of interest transactions done by the Public Trustee of Queensland which any other attorney would not get away with. You need to know that the Public Trustee of Queensland are engaging in conflict of interest transactions that benefit the Queensland government and not their clients/victims—let me tell you they are not clients because when you have a client you do things in the client's best interest, and that is not happening under the guardianship racket.

CHAIR: Thank you, Simone.

Mr Young: My partner is fortunate enough to be one of three victims—and I use the word 'victims'—of the guardianship racket who were fortunate enough to get control of their life. There were only three people who have ever escaped out of this lobster pot. One is not here today—Hisako Bucknall. The Bucknall case was prior to QCAT. That is citation QSC09-128. The second was Rodney Maher. That is the Maher case—QCA11-225. The third case was one that did not get out of QCAT. We were trying to get it into the Court of Appeal. QCAT got cold feet and let us go. That is Marmin. The citation is QCAT-G29078.

In order to get clear, we did not have to go through the same process to get into the racket. We had to provide 40 medical reports from eight different medical and allied health professionals. We had the most supportive team ever seen in the kangaroo tribunal. We had intervention of the United Nations Human Rights Council and the International Criminal Court and a lawyer-barrister team who absolutely hate QCAT's guts. You should not have to go to that sort of trouble to get out of their clutches.

Notwithstanding that, the Public Trustee embezzled over $100,000 of her money in the 27 months that it was supposed to be protecting her interests—$100,000 to protect the interests of a very insignificant retiree. That was virtually her whole savings. As late as midday on the day that we had the win—about two o'clock in the afternoon on 10 May—the Public Trustee was still trying to get hold of her house worth about $400,000 and her super fund worth about $600,000. They were desperate to get their claws into that because they had almost used up all of her savings. There is nothing lower than organisations, essentially established to protect the rights of vulnerable people, which prey on their assets. It is absolutely disgusting.

Ms Lea: Please listen to that point.

CHAIR: Simone, you have had an opportunity. I am giving Doug and Carolyn a chance. Are you finished, Doug?

Mr Young: I am finished.

CHAIR: Carolyn?

Ms Lyell: Parents do got want to give up their right to be informal decision-makers. They do not want to go through the guardian process. They just need something to show that they have the right legally to speak on this other person's behalf. I think there must be a way of doing something about that problem.

Mr CRANDON: Thank you for your passion, Simone, Doug and Carolyn. Starting with you, Carolyn, and then going across the table to you, Simone, eventually, what in your opinion should parliament do to satisfy concerns regarding QCAT processes? What do you think we as parliamentarians—

Ms Lyell: Most parents avoid QCAT. They do not want to give up their right to be a parent, even if their daughter is 40 or 50 or whatever. Everybody I know has been told to avoid going through QCAT, so no-one is going down that path. As I said, we need some way of identifying ourselves as substitute informal decision-makers.

Mr Young: It is fairly simple. What we want is genuine, fair dinkum, ridgy-didge accountability. There is no accountability whatsoever in QCAT. They are accountable to nobody—absolutely nobody at all. There is no recourse whatsoever. In the act there is plenty of provisions that say must do this and must do that. There is no indication that QCAT has ever observed any of those 'must' provisions. They know full well they can do that because they have total protection. The members have immunity against civil matters. They laugh at you when you pick them up for breaches. They can nobble the internal appeal process, so it means absolutely nothing. In fact, they have done that ever since the Maher case. I have read every recorded matter on the Supreme Court case law website. Just for a matter of record, there are 562 cases recorded out of about 11,000 cases that QCAT has heard on guardianship. Why are only five per cent recorded? We have seen the number cases that are not recorded. We know why they are not recorded. They are picking cherries: they are picking the cases that make QCAT look good. There are a lot of cases, if you can get your hands on them, which will put the wind up you. They are scary.

We definitely need to make them genuinely accountable to somebody, not independent in the political bureaucratic sense but in the dictionary meaning of independent, and victims, carers and advocates must be counted as stakeholders. I note that in the discussion here they say, 'We approached some of these stakeholders.' Stakeholders seem to be official entities. Aren't victims, advocates and carers stakeholders as well? Why are we never considered—never?

Accountability is the single biggest issue anybody who has dealt with QCAT would raise. I noticed that the submissions to the two aborted reviews—the 2011 and 2014 reviews—had a lot of comments, particularly from a certain person who is not in guardianship—David Paton, representing the demountable home park people. He has put in a lot of submissions as well—very scathing and all to do with accountability.

The second issue to do with guardianship matters is the incestuous relationship that Simone has remarked on between QCAT, the Public Trustee and the Office of Public Guardian. That is created illicitly by legislation totally ignoring the separation of powers doctrine. This business of joining the PTQ and the OPG to QCAT in every guardian decision is guaranteed to encourage bias and an incestuous relationship. That needs to be separated. The Public Trustee and the Public Guardian must be removed from being an inherent part of every guardianship decision.

Also, we need to remove from the members—bearing in mind they are not judges; most of them are not even legal practitioners—the immunity that they have. They need to be made properly accountable. You cannot make these turkeys accountable while they have immunity. I know it is standard practice right around the world for quasi-judges to have immunity. In this case, no. The damage they have done is too serious. Every single person who has been through the guardianship racket has been damaged by it. I have been damaged by it. I am only a carer. We have all been damaged psychologically. That is not good enough.

Mr CRANDON: Before we go on to you, Simone, to give me your views on what we should do, are the other 95 per cent of matters that you talk about accessible at all?

Mr Young: No.

Mr CRANDON: They are not accessible.

Mr Young: No. As a group, we have access to some of them because we are on Facebook and we are spread all over the internet. We have websites all over the place. We are getting quite a number of victims groups.

Mr CRANDON: Are they available to the individuals involved? Is that what you mean?

Mr Young: Yes. Those individuals come to us and they give us their cases.

Mr CRANDON: They do not become public but they are accessible through the individuals involved.

Mr Young: Through the individuals, if you can find it. All kangaroo tribunals throughout Australia have this concept that victims have to be protected. I allege that the real intent of this protection is to protect the guilty. It does not protect the victims. The victims have already had their assets stripped off them. The Public Trustee automatically comes in. In every single case in Queensland—not so much in the other states—virtually 100 per cent of victims go to the Public Trustee. This business of informal decision-making and informal financial administration does not occur in Queensland. If the Public Trustee gets hold of something, they will manufacture evidence of family conflict. This is one of the problems I have with the bill, because it seeks to legitimise or manufacture effectively the fabrication of evidence by QCAT members. I can prove fabrication, because we have an audio transcript. In the hearing that we won, the barrister was quizzing a certain senior member. He actually admitted on the audio transcript that he had created evidence. They have done it consistently since Maher.

After the Maher decision a certain senior member, the 'Queen of QCAT', was viciously slashed by the Court of Appeal which said that the quality of decision-making by QCAT is deplorable. You can notice very clearly that after that in the recorded matters they started this practice of creating evidence. It was not evident prior. If you had a matter come to QCAT prior to Maher and there was no medical evidence, the tribunal said, 'No, we can't proceed; there is no evidence'. It changed dramatically after Maher.

What happens is that the members interrogate the victims. In the case of my partner, she had a brain bleed. Earlier in the piece, she had quite pronounced aphasia. Aphasia is recognised medically to have no effect whatsoever on a person's intelligence. It is purely a verbal communication issue. In writing or if you have other multimodal communication, they are perfectly fine. But if you put them on the spot and interrogate them, they go to pieces. That is exactly what QCAT members do. Most people they deal with have probably had brain injuries of some sort. Most of them are probably suffering to some extent from aphasia.

One of the members that we struck in the first hearing claimed to be a speech pathologist. It is quite clear from the way she interrogated my partner that she was a dismal failure as a speech pathologist. I have spoken to the Speech Pathologists Board and they assured me that had she done that in a proper practice she would have been struck off. That is also a breach of the Commonwealth Disability Discrimination Act. It is discrimination on the basis of an attribute.

Mr CRANDON: Thanks, Doug. Simone, what is your answer to my question, what should we as parliamentarians do?

Ms Lea: Firstly, this bill needs to be thrown out. The main thing with my husband is like what happened after the Maher case, QCA 225 2011—and we do use that term, the 'Queen of QCAT', if you do not want her name, but you know who she is—decided that no judicial member would sit in on guardianship matters. That actually stifled people getting out into the Court of Appeal. Therefore, what we want from you as politicians is to scrap this bill, because, as John Tracey said, it is actually trying to legalise things that the UN absolutely opposes. We should have in Australia supported decision over substitute decision-making. The bill apparently attempts to disable as far as possible all of Australia's international human rights obligations as a member state of the United Nations. The situation is unacceptable and the bill must be thrown out to give full recognition in Queensland law to all international law as is Australia's responsibility.

I will finish by saying this: I could prove our case. You should get guardianship matters out of QCAT. I firmly believe they should never ever be in a tribunal that does not rely on the normal rules of evidence, because if I sat in the Family Court or the Supreme Court of Queensland today and my husband's daughters were asked the question, 'What evidence do you have that Simone is an abusive wife; what evidence do you have that your father does not lack capacity?', there is none. However, QCAT informed themselves on lies, innuendo and opinion and created evidence, just like they did in the [Marmin case and the Tracey case and the Maher case and all the other cases. They manufacture and create evidence; that is QCAT. Guardianship matters need to get out of QCAT.

Mr KRAUSE: Simone, you said before that some of the transactions being entered into by the Public Trustee were benefitting the state of Queensland. Could you elaborate on that, please?

Ms Lea: They transferred superannuation even though my husband has put it in writing and he has put it in verbally and he has put it in affidavits and it has breached the general principles that where his money was is where he wanted his money. Putting it into Australian Super suits the Public Trustee because, funnily enough, they do not support binding death nominations. Even as a wife, I was stripped of being my husband's binding death nomination, because the Public Trustee wants his superannuation when he dies. They do these statement of advices with Morgans, which was discredited. That was the term that I was trying to remember. If you look it up, you will see that Morgans has been discredited by ASIC, so what the hell is a government department using Morgans for and spending my husband's money on statement of advices when he has had proper statement of advices done by the St George bank with his superannuation where it is?

Just so that you know, Jon, and it is a good question that you are asking: in the past three months since the Public Trustee transferred my husband's superannuation against my husband's wishes—my husband's super had never lost a dollar. My husband never lost a dollar except for the money that he lent his two daughters. In the past three months, his superannuation has lost $14,000 after being transferred to Australian Super.

CHAIR: Thank you very much, Simone, Doug and Carolyn, for taking the time to join us this morning and assist us with our inquiries into this bill. We will now take a short five-minute break and resume at 11.55 am.

Mr Young: Will the committee be requiring hard copies of our oral submissions?

CHAIR: Yes. Could you hand those to Hansard, please.

Mr Young: There are a few alterations in editing. Can we provide it by email?

CHAIR: You can email the secretariat and also hand the submission to Hansard.

Proceedings suspended from 11.51 am to 11.57 am

CHAIR: We will resume. I welcome Ms Mary Burgess, Ms Michelle O'Flynn, Ms Emma Phillips, Ms Karen Williams, Mr Rob Hutchings and Ms Rebekah Leong.

BURGESS, Ms Mary, Public Advocate, Office of the Public Advocate

HUTCHINGS, Mr Rob, Director of Legal Services, Crime and Corruption Commission

LEONG, Ms Rebekah, Principal Solicitor, Queensland Advocacy Incorporated

O'FLYNN, Ms Michelle, Director, Queensland Advocacy Incorporated

PHILLIPS, Ms Emma, Systems Advocate, Queensland Advocacy Incorporated

WILLIAMS, Ms Karen, Manager, Guardianship Team, Aged and Disability Advocacy Australia

CHAIR: I invite each of you to make a short opening statement, after which I am sure we will have some questions for you. Ms Burgess, would you like to commence?

Ms Burgess: Thank you. I thank the committee for the invitation to appear at this hearing today. I am not sure how familiar the committee is with the role of my office, so I thought that it might be helpful if I gave you a brief outline of what it is that I am appointed to do.

The position of Public Advocate is a statutory appointment under the Guardianship and Administration Act. Under the act, I have a very specific role to undertake systemic advocacy to protect the rights and interests of people with impaired decision-making capacity. The types of issues that I am required to focus on in my systemic advocacy include promoting and protecting the rights of adults with impaired capacity; protecting them from neglect, exploitation and abuse; encouraging the development of programs to help people with impaired capacity to reach the greatest degree of autonomy; and promoting the provision of services and facilities for them and monitoring and reviewing the delivery of those services and facilities.

Before I commence, I congratulate the government on preparing the bill to progress the Queensland Law Reform Commission's recommendations for the reform of Queensland's guardianship and administration system. I support the majority of the legislative amendments in the bill. The main issue that I was proposing to speak to the committee about today relates to the changes to the general presence and the healthcare principles in the bill. There are a couple of issues that I want to raise in relation to them. I am aware that the committee is familiar with the issue that I have with that, because I understand that there were some questions asked earlier of the department about the concerns that I have.

The first is about the location of the general and healthcare principles. I know that there are differing views on this issue. In my view, the principles were better located in a separate schedule, because I think there is significant value in having them sitting alone and separate from the remainder of the act so that people who are not familiar with legislation can easily identify them and distinguish them from the other provisions. I am aware that you have had different views on that and that someone has suggested that placing the principles closer to the front of the bill to give them more prominence will assist. I recognise that, expressing them early in the bill, sets the tone in terms of the way the act is to be interpreted and applied. The principles themselves state that they want the community to apply them. I do not think that many ordinary people go to a piece of legislation to find this kind of stuff. If you want to make it accessible, you need to put it in a clear place for people to find them.

Irrespective of where you locate them, I recommend that the Department of Justice and Attorney-General needs to print and promote a version of both the general and healthcare principles separately for use by members of the public. A previous report from my office had highlighted significant concerns about the lack of awareness of the principles, particularly among the people who are expected to apply them when they are supporting people to make decisions or when they are the substitute decision-makers for people. They are just some views around that part of the general principles.

The other matter that I want to raise is about the way the principles are drafted. I support the proposal to redraft the principles to better align them with the UN Convention on the Rights of Persons with Disabilities, but to achieve this outcome it is really important that the general principles are readable and accessible for the ordinary person who is not accustomed to reading legislation. I am

concerned that the redrafting of the principles is really a risk of taking a step backwards in this space. I am concerned that it has the effect of making them far less readable and accessible than the current version. That is a missed opportunity if that is what happens.

I have in my submission to the committee outlined the current general principles and how simply they are articulated and contrasted them with the current bill. I was also wanting to demonstrate to the committee how we can articulate what is in the current drafting of the principles in a different but simpler way to make sure that, when someone is reading them, they get it. My job is to make sure that people with impaired decision-making capacity have all the opportunities to participate in life as much as possible. The way this is written, that is not going to necessarily further that. That is what I am concerned about. I have these suggestions about how we might want to revise them. Is this something that I can hand up to the committee?

CHAIR: You are seeking to table those documents?

Ms Burgess: Yes.

CHAIR: Leave is granted.

Ms Burgess: Thank you. I have one document that outlines the current general principle to subclause 3 that is in the bill and then a suggested alternative drafting of that principle. They are together. When you look at the way it is currently drafted in the bill, there are too many clauses, there is too much punctuation, there are brackets. For an ordinary person reading it, they are essentially reading a piece of legislation instead of what could be a simple statement of rights or principles that are to be applied.

To be most effective, I think they need to be expressed in simple language that is accessible and can be understood by people whose rights they are intended to protect. Article 9 of the Convention on the Rights of Persons with Disabilities deals with accessibility issues and recognises the right of every person with a disability to be able to access information on an equal basis. If we do not make this kind of information accessible and available, we are really missing an opportunity to get the best outcome from these amendments. We have waited a long time for this bill. We welcome it and I want to see it happen, but I think it is a pity to have it passed and not be the best that it could be.

I am aware that there has been a suggestion that the department could produce a version of the general and healthcare principles after the legislation has been passed. That would then require the department to be giving an interpretation of legislation, which is tantamount to giving legal advice and that is not what government agencies do. I think they will struggle with doing that. That is why I think we should get it right first up and do not ask to do it to a certain point and fix it later. I am concerned that, if we do not do this now, we are unlikely to come back and fix it in the short term, so we end up with general principles that are far less readable and useable than we have currently.

CHAIR: Thank you very much. We will now hear from Emma, the spokesperson for our friends from Queensland Advocacy Incorporated.

Ms Phillips: Thank you for the opportunity to make a written submission to this inquiry and also to appear at the public hearing today. Queensland Advocacy is an independent community based systems and individual advocacy organisation and a community legal service for the most vulnerable people with disabilities in Queensland. Through our individual legal advocacy, in particular our human rights legal service, and our systemic advocacy around issues of guardianship and administration we have extensive firsthand understanding of some of the relevant issues in this area.

The bill makes a number of positive improvements to the law in this area, which we support and which we address in detail in our written submission, so I am not proposing to outline those points now. Instead, I would like to touch briefly on five key issues that we think are particularly important for further consideration and discussion going forward.

Firstly, we think that the act must consistently express the importance of the presumption of capacity. This requires that the presumption of capacity and not incapacity is specifically designated as a starting point in all circumstances, including in the general principles. The act must specifically acknowledge and address the issue of fluctuating capacity and the relevance of time, domain, type of decision, and appropriate support for decision-making capacity. In considering whether an individual is capable of communicating decisions in some way, QCAT must investigate the use of all reasonable ways of facilitating communication.

Secondly, we are concerned that the proposed reforms fail to incorporate a supported decision-making approach when, having regard to the UN Convention on the Rights of Persons with Disabilities, this should be the overarching framework for the act. Although certain proposed reforms

are consistent with the supported decision-making approach, others are not. For example, we note with concern the proposed amendment to the fourth limb of general principle 10, which pertains to structured decision-making. This requires a person or other entity to merely recognise and take into account the best interpretation of the adult's views, wishes and preferences rather than to ensure that any decisions made prioritise and align with those preferences.

We support the amendments proposed by clause 17 of the bill to the appointment review process, which facilitates the removal of the Public Guardian where there is a more appropriate person to fill this role. We feel that this recognises that a person's circumstances can change over time. It acknowledges the importance of informal support networks and it will help to ensure that the Public Guardian is truly a guardian of last resort. We endorse the proposal of the Office of the Public Advocate in its written submission, which we note is also consistent with the recommendations of the Queensland Law Reform Commission on this point to extend this to the Public Trustee. Further to that, we recommend that, once the Public Trustee's appointment is revoked, the Public Trustee should not be permitted to attempt to initiate reappointment as an administrator regardless of prior knowledge of any estates or trusts.

Further, we are concerned that the proposed amendments do not oblige the tribunal to consult prior to the making of an interim order. We are aware that the human rights of a person facing a guardianship order are often given scant attention when an interim order is proposed, which is concerning given the tendency of interim orders to be confirmed and made into more permanent orders.

The final issue that I wanted to raise today is representation. Legal representation has a vitally important role to play in this jurisdiction, especially for vulnerable people who do not have the capacity to self-advocate, who do not have a support network and who are isolated, or whose fundamental human rights are at stake, particularly in relation to special health care, restrictive practices, seclusion and containment, which are complex areas of the law. In practice, we know that the appointment of lawyers is extremely limited. We suspect that that is mainly due to the lack of free legal services to refer people to. The 2015-16 QCAT report indicates that there were 11,623 guardianship and administration applications that year, representing a 12 per cent increase. This included 170 applications or reviews of restrictive practice guardians and a further 56 matters concerning containment and seclusion.

There are no statistics on legal representation in these matters but, knowing the availability of free legal and non-legal advocacy services in this area of the law and there being no grant of legal aid available, it is undoubtedly extremely low. We note that, until the Mental Health Act 2016 came into effect, which prescribed legal representation in certain matters before the Mental Health Review Tribunal, legal representation in this jurisdiction was also extremely low. We propose that consideration be given to the prescribed appointment of legal representation in guardianship and administration proceedings at least in relation to restrictive practices, special health care, seclusion and containment matters.

CHAIR: Thank you, Ms Phillips. Ms Williams, would you like to make an opening statement?

Ms Williams: Thank you. I thank the committee for extending an application for ADA Australia. ADA is a community not-for-profit organisation and the guardianship team is funded by the Department of Justice and Attorney-General. By way of context, in the last financial year, we provided assistance for just under 300 clients, half of whom were over 65 and half under—so they are all adults. I also note that, in the past 18 months or so, QCAT have made more referrals to us over time including—just to pick up on the point of representation—for appointment as representatives for people in complex matters. We assist people who are either under an existing order when they are wanting a review, or there is a fresh application, or there is a dispute, say, between enduring powers of attorney and it may result in an order to QCAT.

I do not want to go over the submissions that we have already made, but I will pick up on an earlier question, and that is the top three wish lists from our organisation. Firstly, I turn to the development of capacity guidelines, in particular to look at guidelines for issuing certificates for medical practitioners in relation to when an enduring power of attorney is activated. What often happens is that it is a very blunt instrument and a binary situation. Currently a one-line medical certificate might be issued that the person lacks capacity for everything, which is rarely the case, and the attorney starts to act. Better guidance could be given in relation to the capacity guidelines and forms for doctors. What areas does the person lack capacity? Capacity is fluctuating in nature. It can be short-term issues and the doctor might say, 'I recommend that the person come back before me for a review in a few months,' to see if the person might have regained capacity. They are things that could be included in the capacity guidelines.

I think it is key for procedural fairness in relation to interim orders that the views and wishes of the person themselves must be gained by QCAT prior to placing someone under an interim order. I know that this occurs in other jurisdictions in other states. What often happens is that the adult has no prior notice of an interim order. Not only do they not have notice in a technical sense; they have no idea in any practical sense either. Their views and wishes should be gained prior to the interim order.

In relation to financial matters particularly, it is a long-understood practice that the tribunal will rarely make plenary orders or orders over every aspect of someone's life for personal matters. They will break it up into accommodation, service provision or the like. I note there are provisions for the Public Trustee or for administrators to delegate some of their activities. In recognition of supported decision-making and in recognition of regaining capacity, I ask that the power be delegated to the person themselves for day-to-day decision-making. An order from the start could recognise that by QCAT; that day-to-day decision-making for financial matters is excluded so there is not automatically always a plenary order over all their finances if it is in recognition of a medical report. They are my three key issues.

Mr Hutchings: My appearance here today is in relation to proposed amendments to the Integrity Act and various amendments relating to a PCCC report—report 97—which was a five-year review of the Crime and Corruption Commission. I will not expand to any significant extent on what we put in our submission of 20 September except to say that all the proposed amendments are welcomed by the commission. In relation to the Integrity Act amendments, they are particularly welcomed to the extent that they might encourage further advice being sought by senior executives and senior officers within government. That can only be a good thing for the improvement of integrity throughout the public sector.

Those amendments allow senior officers to seek advice from the Integrity Commissioner without needing to get approval from the chief executive of their department. That can only be a good thing. Those Integrity Act amendments also allow a senior officer to continue to seek advice from the Integrity Commissioner for up to two years after they leave their position. That is also a welcome amendment.

So far as the other amendments are concerned to the GOC Act and the Public Interest Disclosure Act, the commission welcomes them. They are amendments that we have been proposing since 2012. They will permit clarity in the law for government owned corporations. Stanwell Corporation, for example, quite rightly we think, was concerned that it was not able to meet its obligations under the CC Act as well as the Corporations Law obligations when it came to whistleblowing. This amendment will clarify that GOCs will now need to comply with the CC Act in Queensland even though they are subject to concurrent obligations under the Corporations Law. There was going to be a conflict of laws there, and this amendment will resolve that conflict. I do not propose to add anything further. Thanks for the opportunity.

CHAIR: We will now move on to questions. Ms Burgess, I have a question in relation to your submission which stated that the Public Trustee should be appointed as a last resort. Noting the relevant recommendations by the QLRC, the department advises that these recommendations are not being implemented because of the complex nature of an adult's financial and property affairs which increase accountability and risk factors. What is your comment in relation to that?

Ms Burgess: I have specifically addressed that in the submission to the committee. There are plenty of people in the community who look after their family's affairs very well under enduring power of attorney documents. That can also happen under an appointment as an administrator. We wondered why the public guardian is always the appointment of last resort and yet the Public Trustee is not.

You have heard some of the complaints this morning from people who have had experiences with the Public Trustee. I hear a lot of them myself in my role. We are a very small office. We have not been able to undertake any detailed investigation of that at this time, but it does concern us that the appointment of the trustee is not really consistent with the general principles anyway. What we really want to do is appoint people as much as possible who know the person they are being appointed to care for, or make decisions for, and understand their views and wishes. Then we expect them along the road to be actively seeking their views and wishes and their participation in these decisions.

I think a lot of government agencies struggle with applying the general principles in their day-to-day operations. From my point of view, if you can appoint a person closer to the person who is appropriate—and I am not suggesting we should be making appointments of people who are not responsible or who might have improper motives in terms of handling someone's money; in those cases we always want to appoint the Public Trustee or an appropriate trustee company—it seems to me that the possibility should always be explored at the time of any appointment. Certainly the QLRC thought the same thing. I think it is more consistent with the general principles to be always looking at someone closer to the person to make the appointment.

Mr CRANDON: On the same issue of the Public Trustee being appointed as the last resort, I want to clarify, first of all, whether you consider your office as independent.

Ms Burgess: Yes, I do.

Mr CRANDON: Are there any relationships between you and the trustee and the public guardian?

Ms Burgess: No. I did hear comments earlier by Doug Young about his feeling that there are inappropriate relationships. I think what happens is that over time organisations do develop working relationships, and that is a good thing. We want that. We want people and agencies to work out ways of working better together and more smoothly together to get the right outcomes for people. From the point of view of Doug and the other people who made submissions in his segment, I think they feel that the relationship looks uncomfortably close. I do not have a comment to make about that. I have a robust and honest working relationship with both the Public Trustee and the public guardian, and part of my role is to monitor the way they are doing their jobs and delivering their services

Mr CRANDON: Except you do not have the money to do it?

Ms Burgess: Not really, no.

Mr CRANDON: There is a bit of an issue there, is there not?

Ms Burgess: They are much bigger than me. I have a whole six people.

Mr CRANDON: They have the money through the fees that are charged to the estates of the people that they are administering and you do not have that.

Ms Burgess: Yes.

Mr CRANDON: To return to the discussion around independence, it seems like you are of the view that the relationship should be close between the individual who is being advocated for and the advocate. My background until almost a decade ago is financial planning, and it appeared then as it appears to these people now that the Public Trustee wants the relationship to be as far apart as it can be. Can you give us your position versus—

Ms Burgess: The staff of the Public Trustee and I have had some very robust discussions about this. I do have concerns at times that they could be more actively engaged with the client about what they want and why they want it. There tends to be: 'You don't need that.' They have a difficult role, though, because they have to make sure that the person's property is not being run down over time by a person who perhaps lacks capacity, who does not consider the consequences of their decision-making and who wants things that they cannot afford. They have to be a bit of a gatekeeper in that space. At the same time I do hear stories of micro-nitpicking where family members say that the person needs a new bed and it is a drama to go and buy a bed. They have to get three quotes for a bed and things like that. It all makes life a bit difficult.

Mr CRANDON: Just day-to-day stuff where you and I would just go and buy another bed.

Ms Burgess: Exactly.

Mr WILLIAMS: Tracksuit pants was another one.

Ms Burgess: Yes, and that is a problem. Doug and his friends kept mentioning a particular investment advisory firm today. It seems to me that a government agency should have a panel of providers who they might seek financial advice from. I have not had this conversation with the Public Trustee—

Mr CRANDON: Do they have a panel or is it just the one?

Ms Burgess: I do not think so.

Mr CRANDON: As far as you are aware, it is just the one?

Ms Burgess: Yes.

Mr CRANDON: That is a very good point that you make.

Ms Burgess: What they are saying is that that relationship is too close. Certainly when you are paying for services I think it raises some alarm bells. I am not suggesting that there is anything improper happening, but it should be an obviously arms-length process where they make submissions and through a process of selection get on to a panel. They then should rotate through the panel and review that panel maybe every three years. That, to me, looks like a much more defensible, accountable system. Also, it seems to me the that Public Trustee is the holder of a lot of high-quality, high-level experience and information about investment generally. It surprises me that people get charged for the Public Trustee to administer their money. They are charged like they are being administered by—

Mr CRANDON: Wounded bulls is a term that comes to mind.

Ms Burgess: Members of the Law Society have expressed these views and we know lawyers do not undercharge. Being a lawyer myself, I can say that. They charge quite significant fees and then there are more fees charged on top to get specialist financial advice. As Doug and his friends were complaining this morning, the client is not asked if they want that. It seems to me that if the client expresses a view that they want that then they should be paying for it; but if they have not expressed the view that they want that specialist advice, I have some reservations about that. I am wanting to raise some of these things with the Public Trustee, but they are on a long list of things that I have to get to. Since it has been raised in this forum—

Mr CRANDON: Send us a copy. We will prosecute it through the House.

Ms Williams: In relation to the complexity and to promote, people usually prefer decision-makers they know and trust. That is the whole point of the enduring power of attorney regime. Particularly people from a range of different cultural backgrounds, and for very good reason, are very concerned about having government step in as first resort rather than last resort.

We have recently had the Australian Law Reform Commission inquire into elder abuse. One of the practical things that came out of that, and it sort of taps into the point about complexity of financial matters these days, is that there was a suggestion from the ALRC that a basic record pro forma be developed, because attorneys are often tripping over this aspect about keeping records and keeping property separate. If there was a basic pro forma—here, this is what you are actually expected to do—it is much easier to meet it, rather than a vague concept of these principles. I am tying those two points together. That would reduce complexity and make it clearer for people exactly what is expected of them in the role.

Ms O'Flynn: While we support absolutely everything that Karen and the Public Advocate have said about enduring powers of attorney, we would not like to see that then become a pseudo guardianship means for people who may have the need for supported decision-making from informal supporters and that should not be overridden or displaced in this conversation. Given the concerns expressed by Carolyn earlier about having the supporters listened to both as substitute but also as supported decision-makers, being understood, being respected and having what they are trying to do to expedite and support their family members who may have capacity decision-making issues, there are processes that they can take that should not require another document or pseudo guardianship. That is our concern there.

There are ways that both the state and federal governments can intervene by doing your own upper-level advocacy with telephone companies and with banking institutions around this. We know that people who have actually helped people to bank and save money have had issues with banking institutions. They have assisted somebody to access their own ATM and had the accounts frozen. Then the person who actually holds a job and catches public transport and pays their own rent has had their account frozen for months at a time, despite the fact that they have saved several thousand dollars, because of this imposition that 'you must have guardianship or we will not let you even talk to us'.

Ms BOYD: My question is to Queensland Advocacy Incorporated. Your submission suggests the introduction of safeguards to ensure entities do not give selective weighting to general principles set out in clause 7. As drafted, it does not appear that weighting can be given to one principle over another and that the rights, et cetera, of adults are required to be taken into account in decision-making. What do you propose would be an adequate safeguard in this space?

Ms O'Flynn: For me, the views and wishes of the person must always come first and that includes their informal supporters. For example, I would hate to see that service providers will apply for guardianship if they dispute a decision that may be made by the person or their family members. The service provider can apply for guardianship. This may be to have a public guardian instated, whether it is about accommodation or the use of restrictive practices. Even where there is a family member appointed as a guardian for restrictive practices, they can be challenged by a service provider who just wants to use restrictive practices. I think that, if there is any weighting, a safeguard is that the views and wishes of the person and their informal supporters must be more weighted than any other party.

Ms Phillips: I think the example we have provided in the written submission helps to explain some of our concerns. If we look at principle 10, which is appropriate to the circumstances, you can see how potentially that can be weighed. If that is given a heavy weighting, that can potentially distort what the person's wishes are, even though the other principles, like the same human rights principle, for example, should protect against that. That is our concern there.

Mr KRAUSE: I have a question for the Public Advocate. In your submission you outline or mention some concerns you have about there being two different definitions of 'capacity' for the Powers of Attorney Act. Can you elaborate on those concerns, and that may prompt some other discussion.

Ms Burgess: I think this is a difficult area. I suspect that QAI might have a completely different view from me on this issue. Guardianship is one of these really difficult areas of law where it impacts on people's lives in such a personal way. It is really important that in the way you approach the law and the application of the law you make it as accessible as possible for ordinary people. It seems to me that, if you have different definitions for different but very similar purposes in the legislation, there is the potential to create confusion and to have a bit of a loss of confidence for a definition that is for that and that for this, but why?

It would have been good if I had suggested a definition that you could have used across-the-board. I suppose we could go back and think about that, if the committee was interested. It just seems to me that you do not want anything too convoluted in this space if you can make it simpler, but you do not make it simpler at the risk of things not working very well. I do not think it is impossible to have a single test for capacity and for executing enduring documents.

CHAIR: That concludes the hearing. I thank all the witnesses who participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be emailed to all witnesses and published on the committee's parliamentary web page in due course. I declare this public hearing for the committee's inquiry into the Guardianship and Administration and Other Legislation Amendment Bill 2017 closed.

Committee adjourned at 12.38 pm