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Guardianship Review Forum

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Welcome to the guardianship review forum, where we ask you to tell us what you think about the proposals in our [consultation paper](#) on the review of the *Guardianship and Administration Act 1986*.

The Victorian Law Reform Commission was asked by the Attorney-General to review Victoria's guardianship laws to ensure they reflect modern standards and a changing population. The review aims to make sure that Victorian guardianship laws respond to the current and future needs of people with impaired decision-making capacity and promotes their rights. You can find out more about the project in the frequently asked questions section on the right.



The Commission has developed a [consultation paper](#) that describes a range of proposed reforms to these laws. There is also a [summary](#) and an [Easy English version](#) of the paper. All the documents are available in the library in the panel on the right-hand side of this page.

Please feel free to comment on any or all of the case studies below, they provide some examples of some our suggestions for:

- new supported decision-making arrangements
- new principles to guide decision makers
- enabling VCAT to make appointments before a decision needs to be made
- consenting to psychiatric treatment
- consenting to admission to residential facilities
- documenting wishes about your future.

In responding to the case studies below please be careful if you are describing situations that you or someone you know may be facing. Do not include any personal or identifying information about the people involved. Your comments may be moderated so that they do not do this.

To comment, just click on the heading or the comment bubble next to the heading. Then click on add your comment.

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Would an arrangement like supported decision making be helpful?

by VLRC Admin 11 Apr 2011, 3:47pm



Ricky is 24 years old and has an acquired brain injury. He lives and works independently, but struggles to manage his money by himself. He finds it difficult to understand money matters, especially when they are explained to him by bank staff or financial advisers, and, in most situations, he is unsure about what information to ask for anyway.

Ricky has a very good relationship with his parents and talks with them about this. He says that he would like them to help him with his money, but to do this his parents need to get information about Ricky's financial situation from his bank. Whenever his parents try to get this information, they are told that they are not entitled to it unless they have an administration order. Ricky does not want to have an administrator, because he feels this would mean too much of a loss of his control over his money.

Under current guardianship laws, the only legally enforceable options available for Ricky would either be for an administrator to be appointed by VCAT, or for Ricky himself to appoint an enduring attorney—if he was able to understand what the appointment meant. In both cases, the person appointed would have full legal authority to make decisions about Ricky's finances.

Under the Commission's proposals for supported decision-making agreements, Ricky could set up an agreement with his parents that would formally empower them to get financial information on his behalf and provide him with more assistance to make his own decisions.

Do you think an arrangement such as a supported decision-making agreement is likely to be useful for Ricky? Is it useful to have these sorts of agreements formally recognised in law, or is it better to keep them informal? Are there situations, such as particular types of financial transactions or decisions, where you think this sort of arrangement would not be practical for Ricky and his parents?

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Willy 4 May 2011, 2:02 PM

I believe that the supported decision making is a great idea – it allows all people involved to maintain the support/care systems that have worked well within the situation, while at the same time allowing and encouraging independence. It prevents the awful situations where caring people are excluded from doing what they do best and have done well over long periods of time.



annal 4 May 2011, 2:45 PM

One of my concerns re: these circumstances are the potential conflict that this may cause between Ricky and his parents and also, what happens if Ricky's parents are not acting in his best interests?



annal 4 May 2011, 2:55 PM

I would like to make a general comment about administration. I have found that people who have state trustees administering their finances experience a great deal of frustration. I work in the country and have asked state trustees advisers to come and meet with their "client" in person and discuss their role and budget breakdown IN PERSON! I have been told that this is not possible and find this extremely difficult to accept.

Similarly, it would be great if a person who has state trustees administering their affairs have access to one person (where possible) so they can build up a rapport and understand the persons needs, issues etc. I have met with regional state trustee people in the past who seem to be quite a bit more helpful and have greater resources to provide, and travel long distances for potential 'voluntary' clients.

Not meaning to have a go at state trustees but it seems there are some internal processes that require further investigation and could be improved.

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Swan 12 May 2011, 8:28 PM

I agree with Annal regarding the frustration clients, and sometimes their family, feel when dealing with the State Trustees. The call centre can be a nightmare. My mother has State Trustees as her administrator. On one occasion when I rang I was told I didn't know my mother's correct date of birth and another time I was told my mother was dead. I quite regularly request financial statements from them. I often have to ring a number of times before it is sent and I have found errors. One error was for an amount over \$3000 which had been deducted from my mother's account twice in different areas. My guess is most clients would not have a third party checking financial statements for them.



Sarah 6 May 2011, 10:37 PM

Supported decision making could be of great benefit to individuals who have difficulty managing money as well as those who care for or support them. It must be frustrating to be a parent of someone who needs assistance to take control of their finances, yet to get this assistance they would need to sacrifice their decision-making rights to a stranger. Supported decision making should be arranged jointly by the individual and their family/carer in whatever way is most appropriate to the situation. However, it may be of value to implement a legal framework to protect individuals from misappropriation of their money and in order to prosecute those who engage in such actions.



bj2circeleb 9 May 2011, 10:53 PM

Supported decision making can help to alleviate the total either or situation that we currently have. People either loose control of everything or they are totally responsible for everything when they are not often able to manage everything. This will allow more people to have more control over their lives and be as independent as possible, while ensuring that they are able to get the help and support that they need.

I can see that there would be people who are currently under administration arrangements who would be able to manage quite well under supported decision making and it would give them more autonomy than they currently have and this is important.

As with anything there are always cases where vulnerable people will be able to be manipulated and it will be important to ensure that safeguards are put in place to ensure that people's best interests are met, and that those people supporting them are not able to manipulate them.



Jenny 17 May 2011, 4:27 PM

I am a Financial Counsellor and suggest the bank CAN give information to the parents or another party if they have provided the bank with a written authority to do so from Ricky with his signature. He doesn't need either an administrator or an enduring attorney. Another option would be to make the account a joint account with Ricky's parents. If there was no question of financial abuse this would also provide access to the information required.

This is not a good example because more options are already available.



PeterO 28 May 2011, 9:44 AM

Supported decision-making is so important in certain circumstances.

Please work on this aspect further.



Is co-decision making a good idea?

by VLRC Admin 12 Apr 2011, 1:31pm



Jenny has bipolar disorder and lives with her sister Sophie. Jenny is able to make her own decisions most of the time, but needs more support when she is unwell. When she is unwell she can become reckless, particularly when spending money. Jenny likes to go to the pokies. When she is well, she spends money on the pokies moderately but when she is unwell, typically, she loses quite a bit of money.

This concerns Sophie because it often means that Jenny no longer has money for other things. Though she acknowledges the problem when well, Jenny can become quite angry when Sophie tries to suggest that she should not go to the pokies. However Sophie does not want to stop her sister from going to the pokies altogether because she knows how much she enjoys it. She just wants Jenny to moderate her gambling when she is unwell.

Sophie seeks legal advice, and is told that the only way she can stop Jenny from spending money at the pokies is to become her administrator and restrict her access to her funds. Sophie is reluctant to do this, because she believes that Jenny is able to understand about money and that her only problem is moderating her spending when she is unwell.

Under current guardianship laws, the only legal option available would be, as suggested by her legal advice, to apply for an administration order to prevent Jenny having access to her money.

However, under the co-decision-making agreements proposed by the Commission, Jenny would retain some legal authority, but she would share this with her sister. The agreement could be tailored so that both Jenny and Sophie must agree to the release of funds for visits to the pokies whenever Jenny is unable to make her own decisions about money because of her illness. They would then make the decision together rather than Sophie making the decision solely on Jenny's behalf.



Would a co-decision-making arrangement be helpful in this situation?

Under such an arrangement, could the decisions about Jenny's spending at the pokies genuinely be joint decisions, or would it be more likely that Sophie would just end up making the decision herself?

Should Sophie simply apply to become an administrator so that it is clearer who has responsibility for the decision making?

Do you think these arrangements would work effectively between family members, or do you think it would create too many conflicts that could end up harming their relationship?

If Jenny and Sophie set up a co-decision-making-agreement, what should happen if they are unable to agree on how much money Jenny should have on a particular visit to the pokies?

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annal 4 May 2011, 2:49 PM

Perhaps Sophie and Jenny could have some individualised support via OPA so that they could consult someone when complex issues arise. This may help alleviate potential conflicts caused, ensure that Sophie is acting in Jenny's best interest. Provide support to both, therefore if the need for administrator is required in the future- they will have had appropriate support and also that the least restrictive options have been used.



bj2circeleb 9 May 2011, 11:00 PM

co-decision making like supported decision making will help to alleviate the total either or situation that currently exists. It allows people to be independent when they are well, but to have support when they are unwell, but to not be controlled when they are unwell. It is important for people to be supported, rather than controlled in most situations and this would allow for this.

There could be issues with family members being involved, but it would depend on the individual situation and what is put in place. It will be important for family members to be able to back out of the responsibility if they feel it is damaging the relationship without them being made to feel guilty.

There will need to be some form of legal safeguards in place about what should and would happen if an agreement is not able to be reached. Perhaps by allowing the OPA to make decisions in those instances.



Jenny 17 May 2011, 5:12 PM

While co-decision making is a good option, once again there are practical rather than legislative options. Automatic payments for rent/board can be made from Jenny's account on her pay day. She and Sophie could also use Centrepay to automatically pay Jenny's share of utility costs directly from her Centrelink payment before it gets to her bank. Jenny may well be entitled to concessions and or grants from DHS if the bills are in her name. This action would minimise the funds available to be recklessly gambled when Jenny is not well. This is also a good example where setting a limited "spend" on pokies would be helpful.



PeterO 28 May 2011, 9:48 AM

The problem here is there is NO way Jenny can be "managed" to limit her pokies spend, as she will use other cash to do it whether Sophie likes it or not. How these arrangements can be made to work with a sense of reality is on the table.

Nonetheless, I think there is need to move from the strict VCAT administration setting which is too cut and dried.



Who should be able to consent to admission to nursing homes?

by VLRC Admin 12 Apr 2011, 2:30pm



Ariella is 87 and has dementia. She is widowed and now lives with her eldest daughter Lena. Recently, Ariella's condition has progressed and she is now unable to care for herself. She is at times very distressed and aggressive towards people who are trying to help her and is no longer able to recognise her family. Lena thinks that the best thing would be for Ariella to go to an aged care home where staff can provide full-time nursing care.

There is an aged care home near Lena's house which has a place available for Ariella, where she would be staying in a unit that is locked to prevent residents from wandering unaccompanied from the facility. Lena talks to Ariella about moving to the aged care home. Ariella is very confused and does not understand Lena. She does not seem to object to going to the aged care home but because she does not understand, she cannot provide consent.

When Lena applies to the aged care home for Ariella to be admitted, the facility's manager asks who has authority to consent to Ariella living in a locked unit and being prevented from leaving.

Under current guardianship laws, the only people who can lawfully consent to Ariella's admission to the aged care home are herself or, if she is unable to consent, a guardian appointed either by VCAT or by Ariella herself if she had made an enduring guardianship appointment for accommodation decisions when she had capacity.

At present, arrangements such as Ariella's admission to locked nursing care are often made by relatives on an informal basis, but they are not made with any actual legal authority.



Giving someone's nearest relative authority to make the decision, if no guardian has been appointed already, would be similar to the law's current arrangements by which an automatically appointed 'person responsible' can consent to medical treatment.

Do you think that Lena should be able to consent to Ariella's admission to a care home without needing to be appointed as her guardian?

Should legislation formally provide the ability for family members to consent to the admission and residence of family members in a care home if the person does not have capacity to consent or object?

If Lena is Ariella's nearest relative, but is also providing her with care in her own home, does this create a conflict of interest for her? If so, are there any ways you think that Lena could be appointed in an automatic appointment system?

What safeguards to prevent abuse might be needed if legislation gives relatives the authority to consent to the admission and residence of family members in a care home when the person is unable to object or provide consent?

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annal 4 May 2011, 2:36 PM

This is a great example, I have been a hospital social worker in this situation quite a bit. For the most part, my rule of thumb is that if there is no conflict then no VCAT involvement required. However, I have been concerned that a person might change their mind or feel like they did not have a choice in the matter- especially considering the speed at which these decisions are made from the acute sector. If there are no concerns by the treating team (in a hospital setting) that the daughter is not acting in mum's best interest and that all avenues have been explored re: Ariella remaining in her own home I think giving consent to the daughter is the most appropriate option.



PETER 18 May 2011, 9:42 AM

I AM MOST CONCERNED AT THE WAY THIS CASE-STUDY IS FRAMED. THE TEXT IS COSTRUCTED AND EMBELISHED WITH CONCEPTUALLY INCONSISTENT TERMINOLOGY IN A WAY LEADING TO (AND PRE-SUPPOSING) A PARTICULAR RESPONSE FROM AN AVERAGE INEXPERIENCED READER, WHO IS UNAWARE OF THE FUNDAMENTAL CORRESPONDING RIGHTS AND ENTITLEMENTS OF ARIELLA, NOT TO MENTION THE CURLY HEADLINE !



PETER 26 May 2011, 7:27 AM

THE NOW PUBLICISED PROPOSAL TO EXPAND THE "POWERS" OF THE PUBLIC "ADVOCATE" IS A GRAVE ERROR AND WILL, IF IMPLEMENTED, PROVE TO BE EVEN MORE DISASTROUS THAN THE CURRENT SITUATION ALREADY IS.

THE COMMISSION SHOULD BE EVER MORE VIGILANT WHEN CONFRONTED BY ANYONE ATTEMPTING TO EXPAND THEIR "JURISDICTION" WITHOUT ANY OVERSIGHT, PARTICULARLY WHERE CITIZENS WITH VARIOUS DISABILITIES ARE INVOLVED.

THE EXPERIENCES OF THE 1930-S EUROPE WERE NOT TOO LONG AGO.



PeterO 28 May 2011, 9:51 AM

Family members who have demonstrated a familial connection and evident care for the old person should be respected under common law at all times to do these things. That statute law gets to intrude is a problem to many and there needs to be a better respect for the common "law of the land" by the courts and legal profession.

More work to do on this one too.



PeterO 28 May 2011, 9:57 AM

I notice there is a comment about the intention to give additional powers to the Public Advocate [OPA].

My experiences over three years with the OPA do not endear me to the public "authority" one bit!

A major problem is that the OPA is seen by the nursing home as THE authority, at the expense of other close family members.

Please do NOT provide the OPA with more power in these settings. Family and friends should be the base to work with.



Documenting wishes about your future

by VLRC Admin 12 Apr 2011, 2:38pm



Rahul is 91 and has relatively advanced Alzheimer's disease. He was diagnosed early and prepared for future lifestyle decisions by appointing his daughter Maya as his enduring guardian. In the document, Rahul made it plain that he wanted to remain at home, and under no circumstances would he want to end up in a nursing home.

As his Alzheimer's advances, Rahul remains in the family home, and Maya is his primary carer. Maya receives home help, and Rahul visits the day centre of a nearby aged care facility several days a week.

Maya is coping well with her father's care needs, but begins to feel that her father is not as happy at home as he might be in a more social and stimulating environment. She notices that her father seems to enjoy the day centre very much, and appears happiest when he is there. At home he is often bored and somewhat depressed.

Maya feels that when her father made the enduring power of guardianship he believed that all aged care facilities are awful depressing places. She feels that Rahul was not able to imagine that he might actually be quite content in a nursing home. She has asked her father where he now would like to live but she receives unclear and conflicting responses from him.

Maya only wants what is best for her father in his last years and is happy for him to stay at home if needed. She is torn about what decision she should make about his accommodation. She feels Rahul would be happier living at the aged care facility where she would visit him everyday.



Under the current law, Maya, in her role as Rahul's enduring guardian, is required to act in his best interests. This includes taking his wishes into account as far as possible. However, Maya is not bound to follow Rahul's advance statement if she believes that despite the wishes Rahul has expressed moving into aged care is in his best interests.

The Commission has proposed that the law should be clearer about the effect of advance statements. Advance statements could become legally binding on substitute decision makers like Maya, or there could be a requirement that Maya provide reasons for departing from advance statements.

What should Maya do in this situation?

What weight do you think Maya should place on Rahul's advance statement? Should this be binding on her?

If the law was to allow Maya to go against her father's written instruction, what, if anything should she be required to do to justify her reasons for doing this?

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ian 4 May 2011, 12:54 PM

These are really complicated issues. But they're also very important. I wonder what other people think about these questions.



bj2circeleb 9 May 2011, 11:07 PM

I do believe that the law should be much clearer about advanced statements, but it should be able to be reviewed by VCAT or something along those lines. I think there are times when we can make decisions that were not necessarily what will be best for us. It could also be, that Maya is a burnt out carer and while she would be happy to keep being his guardian and ensuring that his best interests are met, it may be that she is better able to do that from a distance. If she is forced to follow his wishes it could mean that she ends up giving up being his guardian and then a total stranger is left to try and decide what is best for him. Advanced statements are important, and they should as far as possible be binding, but there needs to be times when they are able to be overturned, and at an absolute minimum the person should have to justify the reasons for what they are doing and have that approved by either VCAT or the OPA.



PeterO 28 May 2011, 10:15 AM

The "best interest" of the person must always be kept to the fore, and if this means the definition for best interest has to be altered to permit wise and sound decisions which are not according to the wishes of the person under guardianship then their parameters for that should be provided.

I am personally aware that the Office of the Public Advocate [OPA] has little or no regard for the "best interests" of one "client" on its books, and no regard for the original (family) guardian lawfully appointed, but unlawfully over-ridden by VCAT!!!

More work has to be done to unshackle the rigidity of the present VCAT system, and to deny VCAT opportunity to over-ride family arrangements.



Should guardians be able to consent to psychiatric treatment?

by VLRC Admin 12 Apr 2011, 2:15pm



Mai is a 35-year-old woman who has experienced bipolar disorder since she was about 19 years old. She has had a number of periods of illness over the years, some of which have resulted in involuntary admission to a psychiatric hospital.

Mai has always found these experiences very traumatic. Even when she is well, she feels that decisions about her treatment at the hospital are not always the right ones and feels that the psychiatrist is not always making decisions that are completely in her best interests, or in line with her wishes. However, Mai also acknowledges that when she is very ill she does not have the capacity to make her own decisions about her treatment.

Mai is very close to her brother, Tran, who she feels has a much better understanding of her wishes and interests than do the hospital staff. She respects his ability to weigh up psychiatric advice with Mai's own interests and wishes when she is unwell.

Mai wants to appoint Tran as her enduring guardian with power to make medical and psychiatric treatment decisions, as well as decisions about her accommodation, when she is unwell and unable to make those decisions herself.

Under current guardianship and mental health laws, a guardian cannot consent to psychiatric treatment where a person is mentally ill and unable to consent themselves. The consent can only be provided through the involuntary treatment regime of the Mental Health Act.



The Commission proposes that a guardian should be able to consent to psychiatric treatment, as well as make decisions about accommodation (such as whether a person will go into hospital or live in a community facility), where the person with the mental illness does not have the capacity to consent themselves (as opposed to simply refusing the treatment).

Do you think Mai should be able to appoint Tran as her enduring guardian to authorise psychiatric treatment for her when she is unable to make treatment decisions herself?

If Tran did have the authority to make these decisions, and decided to refuse treatment proposed by the psychiatrist, should there be procedures that allow the psychiatrist to administer the treatment if the psychiatrist believes Mai might be seriously harmed if she does not receive the treatment?

If Mai did not or could not make her own appointment, should VCAT be able to appoint a guardian for her to make these same decisions?

Do you think there could be problems for Mai's and Tran's relationship as brother and sister if Tran has the authority to make these sorts of decisions when she is unwell?

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bj2circeleb 17 May 2011, 8:37 PM

There is no reason at all why a person requiring psychiatric treatment should not be treated the same as everyone else. Sure there are times when people in this situation are unable to give informed consent, but a person having a heart attack cannot give informed consent either. Psychiatrists may have a right to keep us safe, but that does not and should not extend to the right to force electricity through someone's brain, give them toxic drugs and the like. People are allowed to refuse blood transfusions on the basis of religion and parents can refuse a blood transfusion for their child. Yet we operate on the basis that the only people who are capable of consenting to psychiatric treatment are Psychiatrists. Why are people deemed to be able to make informed decisions for loved ones on the basis of everything else, but not psychiatric care. There is absolutely no reason at all why psychiatry should operate under special and different laws. It is time that people were given the right to make their own decisions and if they are deemed not able to do so, that families be given the power to do that as they are with everything else.



PeterO 28 May 2011, 10:01 AM

There is good intention in this proposal and it needs to be fleshed out more.

I have assisted people out of the involuntary treatment provided by Mental Health, but it is a huge task as one is up against the "mental health system".

Trusted friends and/or family assisting as proposed would be a much better setting.



What principles should guide a person when they are making decisions for someone else?

by VLRC Admin 12 Apr 2011, 1:55pm



Barry, who is 47 years old, has recently had a stroke, leaving him with a major brain injury and severely impaired decision-making abilities. Prior to his stroke, Barry was a proudly reckless spender—buying very expensive clothes, going to expensive entertainment, indulging in expensive food and wine—often resulting in little money for bills and no money for savings. Shortly after his stroke, Barry inherited a large sum of money following the death of his parents, and his best mate Steve was appointed as his administrator.

Steve is unable to tell what Barry wants. While he thinks it is likely that Barry would still enjoy his former luxuries, he is also conscious that his inheritance will dwindle away quite quickly if he, Steve, continues to make the same sorts of financial decisions that Barry made before his stroke. This might mean that soon Barry would no longer be able to afford the quite expensive supports and services he now has. On the other hand, he is aware that Barry has a long history of giving a greater priority to luxury than to more routine needs.

Steve is unsure what to do. He believes that it would be in Barry's best interests to spend his money prudently, so that his needs can continue to be met, but he is also mindful of trying to do what Barry would want in the same circumstances. He also wonders whether Barry might make a different kind of decision if he turned his mind to all his current circumstances, including the risk he will be pension dependent if the money is squandered.

Under current guardianship laws, Steve would be required to make a decision that is in Barry's best interests. While there may be many different views on what Barry's best interests are, it is likely that Steve would interpret this as requiring a more prudent approach to Barry's finances than what Barry himself exercised before his stroke. But if Steve uses the principle of substituted judgment, he might be more inclined to continue spending Barry's money in the same ways that Barry did.



Do you think the principle of substituted judgment would be a useful guide to Steve in these circumstances?

Is it right for Steve to assume that Barry's preferences would be much the same after the stroke as before, given that he is unable to find out from Barry directly?

What other factors might guide Steve's decision making?

What should Steve do if he thinks the decision Barry would make would be seriously harmful to him?

What should Steve do if an issue arises and he has no idea what Barry would have wanted?

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PeterO 28 May 2011, 10:06 AM

This needs no further discussion, as Barry has different circumstances after the stroke.

Steve should be able to make decisions for the long term future of Barry, not for any immediate pleasures.



Should VCAT be able to make appointments before there are decisions that a guardian or administrator needs to make?

by VLRC Admin 12 Apr 2011, 2:10pm



Martha has recently turned 18 and has a profound intellectual disability. She lives at home with her parents. She attends a day service, which she enjoys, and the service has a good relationship with her parents who make most decisions for her informally. Martha's parents want to be appointed as her guardian so that they are formally recognised as her decision maker should anyone ever question their role in the future.

Under the current legislation, it is unlikely that Martha's parents would be appointed as her guardian because the circumstances do not seem to satisfy the legislation's requirement for there to be a need. Current informal arrangements are working well, and the appointment of a formal substitute decision maker is likely to be seen as a more restrictive option than is necessary.

Under the Commission's reform proposals, however, it might be possible to appoint Martha's parents as guardians in anticipation of future need if, in all other respects, they are appropriate for the role. The Commission proposes that this type of appointment could only be made where there is no reasonable likelihood that the person will have decision-making capacity in the future. If someone felt that Martha was likely to be able to make her own decisions, or make supported decisions, in the future, or that Martha's parents were not acting in her best interests, then this would need to be raised at the hearing, and the evidence weighed up by VCAT.

Should Martha's parents be able to be appointed as her guardian now?

Would this sort of appointment conflict with the idea that the law should aim to adopt the course of action that is least restrictive of the person's freedom?

Martha's parents are also concerned about who will take responsibility for her decision making when they are no longer able to do so themselves. They would like Martha's sister, Lisa, to take over that role because Lisa has said that she is happy to be Martha's guardian if anything should happen to their parents.

There is currently no formal way for Martha's parents to register their long-term wishes about Martha's decision-making arrangements. The Commission is considering whether the law should enable parents to register a formal document with VCAT that states their wishes about future guardianship or administration arrangements.

Do you think that Martha's parents should be able to formally register their wish to have Lisa appointed as their daughter's guardian if and when they can no longer carry out the role themselves?

How much weight should those wishes have when determining who Martha's guardian should be when that time arrives?

Martha's parents feel frustrated and insulted by the prospect of a formal VCAT hearing. They feel that they have always made decisions for Martha and that none of her circumstances have changed, even though she has turned 18. They accept that it is reasonable that there be some discussion about her future decision-making arrangements, but resent this being done in a formal hearing.

Under the current system, the only way for a guardian to be appointed for Martha is to hold a formal VCAT hearing.

The Commission is considering whether the process of appointing a guardian or administrator should include more informal discussions with families and friends prior to the hearing. These discussions would aim to reach a consensus about what would be the best outcome for the person with the disability. An independent person, such as a delegate of either OPA or VCAT, could attend these informal discussions and then report their outcome to VCAT. In situations where there is no conflict or controversy about the outcome, VCAT might be able to make an appointment without needing to conduct a formal hearing. If consensus could not be reached in this way, or there were concerns, VCAT could hold a formal hearing and then make its decision through that process.

Do you think that informal pre-hearing discussions could be a better way to make decisions about guardianship and administration in situations where there appears to be no controversy about the outcome?

What advantages and what problems could arise using this approach?

Where do you think these discussions could be held? Could they be held in the family home? Who do you think should be invited to them?