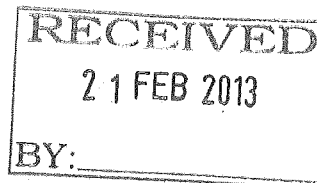


Submission No. 6

VCAT

victorian civil &
administrative
tribunal



19 February 2013

The Hon. P. D. Cummins
Chair
Victorian Law Reform Commission
GPO Box 4637
Melbourne VIC 3001

Dear Mr Cummins,

Review of succession laws

Thank you for your letter dated 25 January 2013 concerning the review of succession laws by the Victorian Law Reform Commission.

I have considered the Wills discussion paper and the Family Provision paper and comment as follows.

Access to a Person's Will

Under s 54 of the *Guardianship and Administration Act 1986* (the Act), VCAT has jurisdiction either before or after the death of a represented person to open and read the purported or alleged will of that person.

Section 58G of the Act gives the same authority without any order to an administrator, where the document is deposited with them.

Not infrequently, VCAT receives requests from administrators for access to the represented person's will not deposited with them.

If VCAT does not already hold a copy of the represented person's will, VCAT will ordinarily request a copy from the person with whom it is deposited. Thereafter, VCAT gives parties an opportunity to satisfy the Tribunal about whether access in whole or in part, should be granted.

If consideration is being given to providing some avenue for making access available to attorneys under an Enduring Power of Attorney, consideration could be given to giving VCAT jurisdiction in this area.

Statutory Wills

VCAT supports a proposal to give VCAT jurisdiction to authorize statutory wills for persons who do not have testamentary capacity.

The advantages are:

- **Greater accessibility** – VCAT conducts hearings throughout Victoria and has supported offices in a number of regional hubs.

- **Lower cost** – VCAT is a low cost jurisdiction in which generally parties bear their own costs.
- **Member expertise** – Members are assigned to various Lists in VCAT according to their expertise. Should VCAT receive this jurisdiction, it would most likely form part of the Guardianship List, and power to authorize the wills could be given only to legal members with demonstrated knowledge and expertise in the area. Members who sit in the Guardianship List have extensive experience dealing with people who have disabilities and who, because of their disabilities, do not have capacity to make reasonable judgments about their legal and financial affairs. They have extensive experience in determining a range of issues to do with capacity, including whether a person is able to make an Enduring Power of Attorney. They are skilled in eliciting a person's wishes, even though they may lack capacity.
- **Complementary with existing jurisdiction** – Given the powers already conferred on VCAT under the Act, which include opening and reading existing or purported wills, the grant of this additional jurisdiction is logical and appropriate.

Family Provision

Consideration should be given to giving VCAT jurisdiction to determine family provision applications. Potentially it could be concurrent jurisdiction with the Courts, or limited to estates of a particular value.

The consultation paper indicates that there are approximately 500 to 600 applications each year. It indicates that a high proportion, estimated as many as 95% of all family provision matters, settle.

VCAT is ideally placed to determine these applications, at the very least those where the estate involved is no greater than a set amount.

The advantages of jurisdiction in VCAT are its:

- **Accessibility** – as above.
- **Comprehensive existing alternative dispute resolution system** – VCAT is well regarded for its comprehensive alternative dispute resolution program. It has a standing that enables it to accredit mediators.
- **Lower cost** – as above.
- **Member expertise** – as above.
- **Complementary with existing jurisdiction** – as above.

Yours sincerely,


Justice Greg Garde AO RFD
President

cc Dr Ian Hardingham QC