The participants raised concerns about the roles of guardians in choosing where someone should live and the impact on the hospital system, and therefore other patients needing acute care.

The problem that exists is that some frail aged people are remaining in an acute hospital better for 12 months or more, for a range of reasons, often to do with the operation of guardianship.

For example, where guardians believe the hospital provides better care to their loved one, or the guardian (or the person under guardianship) wants to go into a particular facility which has a waiting list, then sometimes the person remains in acute care (with all its inherent patient safety risks eg infection and lack of social stimulation). In some cases, there are concerns about the person being left in hospital care for financial reasons, as they can get high level nursing care without the family having to pay for aged accommodation.

The participants believed that these guardians and other advocates were not acting in the best interests of the person or the community. They suggested that, where someone was in an acute facility for an extended period and this was not necessary for their medical condition, but rather from a guardians failure to decide an appropriate living situation for the person, that there should be a power somewhere to override the guardian’s decision or non-decision, both for the person’s and the public and community’s interest (ie in having acute beds available for those whose medical conditions required acute care, and having those with lower care needs in appropriate accommodation with appropriate care)

The participants also raised concerns about the lack of requirement for registration of an Enduring power of attorney. They provided an example of someone who had revoked two earlier powers of attorney and then purported to appoint a different person, when there was a question about the person’s competence at each point. As the last one had occurred in her current illness, this was particularly problematic.

While theoretically, there is a power to go to the ACAT to sort out this confusion, the participants thought that perhaps a registration process might be a more proactive way of avoiding the problem. They also thought a speedy way of getting a decision was needed, particularly in relation to urgent medical decisions.