

Submission Summary Guardianship & Administration Amendment Bill 2017

1. The Bill as presented constitutes an attempt to bypass common law, international law and human rights principles in respect of the presumption of capacity. Furthermore, it deliberately distorts and misconstrues Court of Appeal rulings in *Bucknall* QSC09-128 and *Bergmann* (QCA10-243) which provide that capacity must be assumed at each review. This situation is unacceptable and must be rectified immediately by amending the Bill to guarantee full recognition of common law, international law and human rights principles.

2. There is presently an abysmal lack of any semblance of true safeguards in QCAT. This is particularly concerning since poor decisions have destroyed the lives of numerous victims of the guardianship system. There is not one word in any legislation concerning QCAT which enforces compliance of QCAT members with the 'MUST' provisions of the GAA Act 2000 or which provides for penalties for non-compliance. This situation is unacceptable and must be rectified immediately by amending the Bill to provide genuine and readily available safeguards.

3. The policy of protection afforded to QCAT members has proven to be a dismal failure. QCAT members habitually claim 'we have immunity' on the numerous occasions it is alleged they breached legislation. This is especially relevant in view of the provisions regarding lack of rules of evidence and the ability of members to inform themselves any way they wish. This situation is unacceptable and must be rectified immediately by amending the Bill to remove all immunity presently afforded to tribunal members..

4. There is considerable evidence of collusion between QCAT, the OPG and the PTQ, which was inevitable due to ill-conceived legislation joining the OPG and PTQ to all guardianship matters. Note particularly that this joining constitutes a blatant and deliberate breach of the doctrine of separation of powers. This situation is unacceptable and must be rectified immediately to ensure there can be no collusion between QCAT, the OPG and PTQ, with breaches to be a criminal offence.

5. It has been the experience of a number of QCAT / OPG / PTQ victims that their assets have been partly or wholly lost due to PTQ ineptitude and malpractice. PTQ ineptitude was noted in the Costello Inquiry, and at least two former PTQ staff have been jailed for fraud and embezzlement, however QCAT refuses to acknowledge problems with the PTQ with the "PTQ is competent" mantra. It is imperative that proposed amendments regarding accountability of guardians and financial administrators apply equally to the Offices of the Public Guardian and Public Trustee of Qld.

6. 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. This situation is unacceptable and the Bill must be amended to give full recognition in Queensland law to all international law, as is Australia's responsibility.

7. QCAT constantly demonstrates utter contempt for legislation, including provisions of the GAA Act, the Disability Discrimination Act, common law, and international law generally. QCAT constantly fails to maintain the legislated experience, qualifications training and expertise, and it fails to comply with requirements that the president be a supreme court judge and the deputy president a district court judge. QCAT actually has a supreme court judge Tim Carmody who is being assigned trivial matters and who is

perfectly qualified to fill the position of president. Why has Carmody not been appointed president?

8. Since [REDACTED] QCA [REDACTED] in which the quality of decision-making of senior member [REDACTED] was described as 'appalling' tribunal members have adopted the practice of creating their own evidence, an issue this Bill apparently seeks to legitimize. This is manifestly unacceptable although typical of the malpractice endemic to QCAT. The Bill must be amended to criminalize any attempt by members to create evidence.

9. The mere existence of a tribunal empowered to destroy the lives of its victims, a tribunal which is not required to observe rules of evidence, which can inform itself any way it wishes (including lies and innuendo) and which is apparently not expected to determine the truth or otherwise, is a travesty of justice. It is contended that legislation creating QCAT is so badly flawed that it is unlikely even the aforementioned amendments will be sufficient to ensure justice is done in QCAT. It would be far preferable to abolish the QCAT Act, the GAA Act and various other legislation and start with a fresh slate, paying due attention to Australia's obligations as a member state of the United Nations.

Simone & Robert Lea

m. [REDACTED]
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We seek to attend the hearing on 11 October 2017.