



20 September 2017

Acting Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE 4000

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### **Guardianship and Administration and Other Legislation Amendment Bill 2017 Inquiry**

Townsville Community Legal Service (TCLS) and Caxton Legal Centre (Caxton) are pleased to have collaborated on the following submission to your inquiry. Both centres have a history of representing and advising bereaved families in the coronial jurisdiction. In mid-2017 TCLS and Caxton were successful in jointly obtaining funding from the Queensland Government to establish the Coronial Assistance Legal Service which formalises and expands our advice and representation programs for bereaved families who are going through the coronial process.

This submission will focus on clauses of the *Guardianship and Administration and Other Legislation Amendment Bill 2017 (Bill)* which are relevant to the clients we assist in the Coronial Assistance Legal Service.

#### **1. Missing Persons**

Clause 9 of the Bill inserts a new section 12A into the *Guardianship and Administration Act 2000 (GA Act)*. Section 12A provides power to the Queensland Civil and Administrative Tribunal (QCAT) to appoint an administrator for a financial matter if QCAT is satisfied:

- a. The adult is a missing person; and
- b. the adult usually resides in Queensland; and
- c. there is, or is likely to be, a need for a decision in relation to the matter; and
- d. without an appointment the adult's interests in the matter would be adversely affected.

Section 12A(2) goes on to say that QCAT may be satisfied an adult is a missing person only if the tribunal is satisfied that:

- a. It is not known if the adult is alive; and
- b. Reasonable efforts have been made to locate the adult; and

- c. For at least 90 days the adult has not contacted-
  - i. Anyone who lives at the adult's last-known home address; or
  - ii. Any relative or friend of the adult with whom the adult is likely to communicate.

We also note that clause 14 of the Bill amends section 26(2) of the GA Act to include circumstances where an appointment made under section 12A automatically ends. These circumstances include where:

- a. A coroner makes a finding under the *Coroners Act 2003* that the adult has died; or
- b. The court makes a declaration of death for the adult or grants a person leave to swear the death of the adult; or
- c. The adult's death is registered under the *Birth, Deaths and Marriages Registration Act 2003*.

QCAT must also revoke the order making the appointment if the tribunal is satisfied the adult is alive; or the adult has died; or the adult may be presumed to be dead.

We note that the proposed amendments outlined above are very similar to provisions in the Australian Capital Territory, New South Wales and Victoria. These provisions mirror 'Claudia's Law', so-named for Claudia Lawrence who went missing on her way to work in York, UK and whose case led to the drafting of specialised 'missing persons' guardianship laws.

We support the introduction of these provisions as they will allow families to more expeditiously deal with the estate of their missing family member.

The question of how long the appointment should be for, and or how often it should be reviewed is a question for the Committee. In the UK, the law allows appointment of a guardian for up to four (4) years with possible renewal after that period. While the Bill is silent on the duration of the orders, we note that section 28 of the GA Act requires review at least every five (5) years. Additionally, sub-section 12A(4) allows the appointment to be on terms considered appropriate by the tribunal.

Further, it isn't clear how the revocation in section 26 might be communicated to the acting Administrator as a matter of practicality. The interrelationship between these matters and the actions of a Coroner in a missing persons case might be a relevant inclusion in the State Coroners Guidelines.

## **2. Power for Public Guardian to continue to investigate a complaint after the death of the adult**

Clause 87 of the Bill amends section 19 of the *Public Guardian Act 2014 (PG Act)* to give the Public Guardian power to investigate a complaint or allegation even after an adult's death.

Section 19 of the PG Act currently provides the Public Guardian with broad powers to investigate "any complaint or allegation that an adult—

- (a) is being or has been neglected, exploited or abused; or

(b) has inappropriate or inadequate decision-making arrangements.”

There has been limited judicial consideration of the extent or operation of this power.<sup>1</sup> It appears to be limited to matters relating to “adults with impaired capacity for a matter” though this has not been confirmed by judicial finding.<sup>2</sup> The forerunner section 180 of the GA Act was explicit in this regard.

The purpose of the PG Act is set out at section 5 and includes “to establish the public guardian to promote and protect the rights and interests of adults with impaired capacity for a matter.” It appears that the extended power might be somewhat broader than just transactional investigations.

Does the provision for example, authorise the investigation of elder abuse<sup>3</sup> of an older person with disability,<sup>4</sup> or neglect of an older person, say as was the case in the *Inquest into the Death of Cynthia Thoresen*.<sup>5</sup> The Office of the Adult Guardian had some involvement of Ms Thoresen’s case, consenting to medical treatment 16 days prior to her death. How might the investigation of Ms Thoresen’s death differed if the power (as it existed then) was used to investigate the circumstances of neglect? What if the neglect, exploitation or abuse causes death, and is not merely incidental during life?

The proposed, extended power may also overlap with the Coroner’s role to investigate a reportable death under the *Coroners Act 2003 (Coroners Act)*. The extended provision may, in certain circumstances, provide an avenue of investigation not open to the Coroner, for example where a death is not reportable. Such an outcome may provide the community with increased accountability measures in this area of obvious vulnerability.

It isn’t clear from the Bill whether the power is intended to be supplementary, complementary or separate and distinct from that of the Coroner. The Queensland Law Reform Commission’s discussion on the extended power pointed out the utility to “investigate the conduct of a person who was an adult’s guardian, administrator or attorney, even though the adult has died.”<sup>6</sup> The Commission also contended the powers might have deterrent value.<sup>7</sup>

We recommend that scope of the extended power be clarified.

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<sup>1</sup> See *In the matter of MAB [2015] QMHC 10* where the Mental Health Court referred a matter to the Public Guardian for investigation pursuant to section 19 based on concerns of exploitation raised in a Court appointed expert’s report.

<sup>2</sup> Section 16 PG Act.

<sup>3</sup> Elder abuse is generally understood to be “a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.” (WHO)

<sup>4</sup> The Australian Bureau of Statistics has reported that In 2015, 50.7% of older people were living with disability: 2015 Survey of Disability, Ageing and Carers, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4430.0Main+Features902015?OpenDocument>

<sup>5</sup> *Inquest into the Death of Cynthia Thoresen* (22 May 2013).

<sup>6</sup> Queensland Law Reform Commission, *A Review of Queensland’s Guardianship Laws*, Report No. 67, September 2010, Volume 4, paragraphs 23.156-23.157.

<sup>7</sup> *Ibid.*

We note that Clause 90 of the Bill introduces a new section 31 of the PG Act. Section 31 requires the Public Guardian to make a written report of their investigation or audit in relation to an adult and then inform the following people of the results of the investigation or audit:

- a) The person at whose request the investigation or audit was carried out;
- b) every attorney, guardian or administrator for the adult; and
- c) if the adult has died – the adult's personal representative.

The amendments do not require the Public Guardian to inform the Coroner of their investigation or audit, nor do the amendments require that the Public Guardian provide a copy of their written report to the Coroner.

We note that there may be circumstances where the Public Guardian, in investigating a complaint or allegation after the death of an adult, may become aware that the death is a reportable death and will therefore, have a duty under section 7 of the Coroners Act to report the death to the coroner.

We consider that there could be significant overlap in the information obtained by the Coroner investigating the death of an adult and the Public Guardian's investigation under the proposed section 19 of the PG Act. This would be particularly so where the matters investigated by the Guardian were wholly or partly causes of death.

Section 71(3) of the Coroners Act allows the State Coroner to enter into an arrangement with a government entity to facilitate the entity's relationship with the coronial system.

Chapter 11 of the *State Coroner's Guidelines 2013* sets out Memoranda of Understanding (MOU) that the State Coroner has with various government entities, such as the Australian Defence Force, the Queensland Police Commissioner and the Health Ombudsman. These MOU's acknowledge that there can be a range of investigative responses to a reportable death and that there is often overlap between the Coroner's role and that of other investigative agencies.

Given the potential overlap we consider that it would be appropriate for a similar MOU to be implemented between the Coroner and the Public Guardian to ensure appropriate information sharing and timely notification of reportable deaths to the Coroner.

This submission was prepared by Klaire Coles, Senior Lawyer, Caxton Legal Centre and Bill Mitchell, Principal Solicitor, Townsville Community Legal Service. Should the Committee wish to discuss this submission please contact Ms Coles by telephone to [REDACTED] or Mr Mitchell by telephone to [REDACTED].

Yours faithfully,



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