



Speech by

**Hon. M. FOLEY**

**MEMBER FOR YERONGA**

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Hansard 8 December 1999

**GUARDIANSHIP AND ADMINISTRATION BILL**

**Hon. M. J. FOLEY** (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (11.31 a.m.): I move—

"That the Bill be now read a second time."

People with disabilities share the same basic human rights common to us all. For too long, the legal system has failed to give effective recognition to those rights. This Bill establishes a tribunal and a Public Advocate to affirm the human rights of people with a decision-making disability and to empower such persons in the exercise of their rights. In doing so, the Beattie Labor Government is honouring its election promise.

I seek leave to incorporate the balance of my speech in Hansard.

Leave granted.

For the first time in this State, Queensland will have a legislative system by which the most vulnerable members of our society will be able to be supported in achieving autonomy in their decision making and in their lives in general.

In September 1990, the then Attorney-General, the Honourable Dean Wells, requested that the Queensland Law Reform Commission review existing laws concerning people with disabilities.

The commission focused its attention on the laws relating to decision-making by and for persons with impaired capacity.

In light of this reference, the Commission undertook an extensive process of consultation and deliberation with people with a range of decision-making disabilities, their families and carers, those concerned with providing advocacy for them and with relevant service providers.

The result was QLRC report number 49 of June 1996, entitled "assisted and substituted decisions: decision-making by and for people with a decision-making disability".

This Bill completes the process of implementation of the groundbreaking recommendations of that report.

For example, the report recommended the inclusion of principles which those who are empowered to make decisions for or in relation to persons with impaired capacity are required to apply.

These principles are reflected in Schedule 1 of the Bill and include :

- a presumption of capacity;
- a recognition that persons with impaired capacity have a right to the same basic human rights and the importance of empowering such persons to exercise those rights;
- a recognition of the need to encourage and support them in achieving their potential and in becoming self-reliant;
- a recognition of their right to participate in decisions that affect them and the need to include their views and wishes in any decision affecting them;
- a recognition of the need to maintain existing supportive relationships and their cultural and linguistic environment and values; and
- a recognition of the need to act in a way that is appropriate to their characteristics and needs.

This Bill introduces those elements of this regime recommended by the Queensland Law Reform Commission in its 1996 report that the previous Government failed to implement.

The previous Government failed to create a Guardianship and Administration Tribunal.

This tribunal will have the power to appoint guardians and administrators and review such appointments regularly.

Guardians will be given power by the tribunal for personal, including health matters while administrators will have power for financial matters.

This will mean, for example, that the family of a person with impaired capacity can look after the personal and financial affairs of that person without always having to depend on statutory bodies such as the public trustee.

Guardians and administrators will be bound by the principles underpinning the Bill in exercising powers for persons with impaired capacity and by specific responsibilities under the Bill to ensure that their powers are not abused.

Importantly, the Bill provides for the giving of health care to persons with impaired capacity.

It is of course essential in providing such health care that there is a balance between the need to ensure that an adult is not deprived of health care because of their impaired capacity while ensuring that, except in limited circumstances, such health care is not provided without appropriate substituted consent being given.

Under this Bill, only urgent or minor and uncontroversial health care will be able to be given without consent.

Other health care will have to be consented to by the substitute decision-maker, be it a guardian appointed by the tribunal, an attorney for personal matters appointed under an enduring power of attorney or a statutory health attorney.

The Bill also provides that the tribunal can consent to what is termed "special health care" for adults with impaired capacity.

The tribunal will offer an independent and user-friendly avenue for dealing with these issues which are of particular concern to adults with impaired capacity, their families and carers.

The Bill ensures that the tribunal will provide efficient and accessible processes for the appointment of guardians and administrators for adults with impaired capacity. The Bill requires that tribunal proceedings be informal, open, fair and expeditious.

The Bill requires that no filing fee be charged for applications to the tribunal.

The Bill ensures that all persons who may have some information or opinion to provide to the tribunal in relation to the adult with impaired capacity are given notice of the hearing and an opportunity to participate.

The Bill provides for the making of interim orders in emergency situations.

The tribunal will have the power to make declarations of capacity and ratify exercise of power by informal decision-makers.

The tribunal will have the power to issue entry and removal warrants on the application of the adult guardian where the tribunal is satisfied there are reasonable grounds for suspecting there is an immediate risk of harm, because of neglect (including self-neglect), exploitation or abuse to an adult with impaired capacity.

While non-contentious matters may be prescribed by regulation to be dealt with by the Registrar of the Tribunal, there is power for the tribunal to review such decisions.

Appeals from tribunal decisions are to the Supreme Court.

The Supreme Court will retain its *parens patriæ* jurisdiction.

The provisions which established the adult guardian under the Powers of Attorney Act 1998 have been transferred to this Bill.

The Bill also creates the Office of the Public Advocate, a key recommendation in the Queensland Law Reform Commission report.

The Public Advocate has the functions of promoting and protecting the rights of adults with impaired capacity and monitoring and reviewing the delivery of services and facilities to those adults.

The Public Advocate will also have the important role of intervening before a court, tribunal or official inquiry in order to represent the rights and interests of persons with impaired capacity.

The Bill creates a legislative scheme for the appointment of community visitors who will be tasked with safeguarding the interests of consumers at places where persons with mental and intellectual impairments live or receive services.

Upon commencement of this legislation, the Intellectually Disabled Citizens Act 1985 will be repealed and all appointments of the Public Trustee as the manager of the estate of a person will be converted to administration orders with the Public Trustee as administrator. These appointments will then have to be reviewed over the next 5 years.

Protection orders and involuntary certificates of disability under the Public Trustee Act 1978 will be converted into administration orders.

Voluntary certificates of disability will convert into enduring powers of attorney, with the Public Trustee appointed as attorney for all financial matters.

Appointments under the Mental Health Act 1974 of the Public Trustee as committee will convert to administration orders.

Where persons other than the Public Trustee have been appointed committee, such orders will remain in force for twelve months allowing those persons to apply to the tribunal to obtain an administration order, if required.

Committees of the person or estate appointed by the Supreme Court under section 201 of the Supreme Court Act 1995 will continue for twelve months allowing the appointed committee to apply to the tribunal for a guardianship or administration order.

No longer will persons with impaired capacity have their affairs managed under a variety of complex and convoluted legislation.

This Bill ensures that the scheme for the appointment of guardians and administrators is simple and accessible.

This legislative scheme is the culmination of many years' development and its introduction today is the result of much hard work, commitment and lobbying by the families and carers of persons with impaired capacity in Queensland.

In this regard I commend the role of the Intellectually Disabled Citizens Council of Queensland, not only for their exemplary efforts in supporting and assisting adults with an intellectual disability, but also for the strength of their consultation and forward planning in preparing for transition to the Guardianship and Administration Tribunal.

This scheme brings Queensland into line with the other States and Territories of Australia and introduces a more modern and comprehensive scheme of substituted decision-making.

This Bill is part of the Beattie Labor Government's commitment to uphold the rights and dignity of Queenslanders with a disability.

I commend the Bill to the House.

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