Speech by

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GUARDIANSHIP AND ADMINISTRATION BILL

Dr CLARK (Barron River—ALP) (12.34 p.m.): The Guardianship and Administration Bill represents the final stage of reforms initiated by the Labor Government back in 1990 to provide a comprehensive scheme for the appointment of guardians and administrators to manage the personal and financial affairs of adults with impaired capacity in Queensland. Not surprisingly, it had to wait for the re-election of the Labor Government for the completion of these reforms, which was an election promise of the Beattie Labor Government.

Specifically, the Bill established a Guardianship and Administration Tribunal and the Office of the Public Advocate and provides for a scheme of community visitors with inquiry and complaint functions for adults who live or receive services in residential care centres. The Office of the Adult Guardian, established under Chapter 7 of the Power of Attorney Act, is continued with the provisions regulating its operation being transferred to the proposed Guardianship and Administration Act.

The provisions of this Bill implement the remaining recommendations of the 1995 Queensland Law Reform Commission report titled "Assisted and Substituted Decisions: Decision making by and for people with a decision making disability", and which were not addressed in the Powers of Attorney Act of 1998.

As the Law Reform Commission noted at the time, making decisions is an important part of life. It empowers people by allowing them to express their individuality. It enables people to control their lives and gives them a sense of self-respect and dignity. However, for some decisions to be legally effective it is necessary that the person making the decision has a certain level of understanding. The reason for this requirement is very simple: it is to protect against abuse or exploitation of a person who may be made vulnerable by impaired decision-making capacity.

Protection from such abuse is all the more important when a person is totally unable to make a decision because of their level of impairment. In its report, the Law Reform Commission therefore advocated the adoption of a comprehensive legislative scheme to apply to all people who, because of a decision-making disability, need assistance to make their own decisions or a substitute decision maker to make decisions on their behalf.

Importantly, the Bill acknowledges a number of rights of adults with impaired decision-making capacity. They are as follows—

An adult's right to make decisions is fundamental to the adult's inherent dignity.

The right to make decisions includes the right to make decisions with which others may not agree.

The capacity of an adult with impaired capacity to make decisions may differ according to the nature and extent of the impairment, the type of decision to be made including its complexity and the support available from the adult's support network.

The right of an adult with impaired capacity to make decisions should be restricted and interfered with to the least possible extent.

An adult with impaired capacity has a right to adequate and appropriate support for decision making.

The Bill essentially seeks to provide an appropriate balance between the right of an adult with impaired capacity to the greatest possible degree of autonomy in decision making and the adult's right to adequate and appropriate support for that decision making. This long-awaited Bill will be welcomed by the family and friends of people with impaired decision making, be it through intellectual impairment, acquired brain injury, mental illness or, as in the case of a recent constituent who contacted me, diseases related to ageing such as Alzheimer's disease.

Thus the Guardianship and Administration Tribunal provided for in this legislation will have the power to appoint family and friends as guardians who can deal with personal and health matters and administrators who can have responsibility for financial matters on behalf of the person with impaired capacity without always having to depend on the Public Trustee.

While it is of course appropriate that family and friends should be entrusted with the responsibility for making decisions on behalf of a loved one, the Bill recognises the need to guard against abuse of these powers and requires that both administrators and guardians be bound by a set of principles underpinning the Bill when making decisions on behalf of the person concerned.

I would like to touch on these principles because they are so fundamental to the implementation of this legislation. They are reflected in Schedule 1 of the Bill and they 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.

Health care principles also spell out the way in which powers should be exercised, with promotion and maintenance of the person's health and wellbeing paramount. To further guard against abuse of the wide powers given to guardians and administrators, the Bill requires review of people appointed by the tribunal to carry out these roles at least every five years, either on its own initiative or on the application of an interested person who may have concern about the care of the person with reduced capacity. I acknowledge that at times it will be difficult for the tribunal to judge the competing claims it may hear from different family members. But we now have a forum in which those concerns can be raised, properly evaluated and discussed. Hopefully, an outcome can be arrived at that will be in the best interests of the person with reduced capacity.

Further protection for people with impaired capacity is provided for in the form of the Adult Guardian—a powerful office created under the Powers of Attorney Act and which will continue under this legislation. There is also a new position, that of Public Advocate, which role includes the following functions in relation to adults with impaired capacity: promoting and protecting their rights; promoting their protection from neglect, exploitation or abuse; encouraging the development of programs to help them to reach the greatest practicable degree of autonomy; promoting the provision of services and facilities for them; and monitoring and reviewing the delivery of services to them.

Finally, the Bill establishes a scheme of community visitors to safeguard the rights and interests of consumers living in residential care and receiving treatment. However, I suggest that the role of community visitors could be extended in the future to give them power also to visit boarding houses, where many people with mild intellectual disabilities or a history of psychiatric illnesses live by themselves and, in most cases, are particularly vulnerable and need the support of a community visitor.

In this debate, concern has been expressed by the shadow Attorney-General with respect to the provisions of the Bill relating to special health care—in particular, sterilisation and the termination of pregnancy. I admit that this is a legitimate concern and that, in the past, we have had cases where it could be thought that sterilisation of young women has occurred perhaps not for the right reasons. In some instances, there could be a belief that their falling pregnant would leave them with a child for which they could not care properly. In some cases, the family does not wish to see disease-linked genes or intellectual disabilities continuing on. It is enormously important that those procedures, namely, sterilisation and termination of pregnancy, occur for the right reasons after very careful consideration.

I have looked at the Bill in some detail, given the concern that has been expressed. I am satisfied that there are sufficient safeguards to prevent the unwarranted use of these procedures. Firstly, they are matters that can be decided only by the tribunal itself. These difficult decisions are

taken out of the hands of the family. The Bill sets out very clearly under what conditions these procedures can and cannot take place. In relation to sterilisation, the Bill states—

> "The tribunal may consent, for an adult with impaired capacity for the special health matter concerned ..."

However, the sterilisation of the adult can occur only if the tribunal is satisfied that one of the following applies—

> "(i) the sterilisation is medically necessary;
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> (ii) the adult is, or is likely to be, sexually active and there is no method of contraception that could reasonably be expected to be successfully applied;
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> (iii) if the adult is female—the adult has problems with menstruation and cessation of menstruation by sterilisation is the only practicable way of overcoming the problems; and
>
> (b) the sterilisation can not reasonably be postponed; and
>
> (c) the adult is unlikely, in the foreseeable future, to have capacity for decisions about sterilisation."

Most importantly, the legislation spells out as follows—

> "(2) Sterilisation is not medically necessary if the sterilisation is—
>
> (a) for eugenic reasons; or
>
> (b) to remove the risk of pregnancy resulting from sexual abuse."

There are also further safeguards in determining the appropriateness of this procedure. For example, the Bill states—

> "... the tribunal must take into account—
>
> (a) alternative forms of health care, including other sterilisation procedures, available or likely to become available in the foreseeable future;
>
> (b) the nature and extent of short-term, or long-term, significant risks associated with the proposed procedure and available alternative forms of health care, including other sterilisation procedures."

With respect to termination of pregnancy, the legislation is again very clear. Proposed section 71(1) states—

> "The tribunal may consent, for an adult with impaired capacity for the special health care matter concerned, to termination of the adult's pregnancy only if the tribunal is satisfied the termination is necessary to preserve the adult from serious danger to her life or physical or mental health."

Those words are very clear. They are based on the recommendations of the Law Reform Commission. I do not think there can be any doubt about the intention of the legislation in respect of this matter. It states the law as it currently exists.

I have had a chance to look at the amendment proposed by the shadow Attorney-General. I cannot honestly see how those words provide any greater safeguards than what we are proposing in the Bill. It is my belief that the concerns expressed by the shadow Attorney-General, being those of the Right to Life Association, are misplaced. I understand why it is concerned, but I think the safeguards are in the legislation. People should have confidence in that legislation without the need for any further amendment.

In conclusion, the legislative scheme contained within the Guardianship and Administration Bill represents the combination of many years of hard work, commitment and lobbying by the families and carers of persons with impaired capacity. I pay tribute to the many parents and carers in my electorate for their dedication to their adult children with impaired capacity. We as members of Parliament all know people such as Colleen Dolan in my electorate, who has over many years dedicated herself to assisting not just her own daughter but also many other people, by establishing organisations and programs such as the Real Living Options Program to improve the quality of life for people with impaired capacity. I commend the Bill to the House.
