



Speech by

**LINDA LAVARCH**

**STATE MEMBER FOR KURWONGBAH**

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Hansard 11 April 2000

### **GUARDIANSHIP AND ADMINISTRATION BILL**

**Mrs LAVARCH** (Kurwongbah—ALP) (5.43 p.m.): Can I say that I am pleased to rise in support of the Guardianship and Administration Bill. In my lifetime, I have seen the changing community attitudes and changing community standards towards those who cannot make decisions for themselves, whether it be for mental health reasons, from an intellectual disability or an acquired brain injury. It is most pleasing and most welcome that we have moved away from institutionalising and the State being the carer and protector of those who cannot care for themselves.

As we have moved, I think there were major movements in this area in the 1980s. In that time we commenced promoting and upholding that those with intellectual disabilities have the right to live with their families and in their own community. What became very obvious was that the laws that governed those who could not make decisions for themselves had become very outdated and inadequate to meet their needs.

When the Goss Government was elected in 1989, it was very obvious to the then Attorney-General, the Honourable Dean Wells, that the laws of Queensland when it came to adult guardianship matters were very complex, fragmented, inflexible and intrusive. It was also very obvious to the then Attorney-General and to the Goss Government that the current laws had little regard for the principles of human rights, and they afforded little human dignity, respect and value to those with disabilities. It was as a result of this recognition that the then Attorney-General, the Honourable Dean Wells, who is to be congratulated in recognising the deficiencies, then referred to the Queensland Law Reform Commission in September 1999 terms of reference to review various aspects of existing laws concerning people with disabilities.

The Queensland Law Reform Commission then focused its attention on the laws relating to decision making by and for adults whose capacity to make their own decisions had been impaired. The inquiries and the review took a period of six years. In the six years to the presentation of its report, the commission held extensive public consultation, circulated an issues paper, held public forums and workshops, released a discussion paper and in February 1995 published a draft report. The Law Reform Commission in its review of these laws received over 100 submissions covering individuals, groups and organisations.

In its report it identified that the problems and deficiencies of the existing laws included, firstly, a lack of principles, there being insufficient provision embodied in current legislation to respect the rights of people with a decision-making disability. Secondly, it identified as a problem and deficiency the complexity in our current laws through the overlap of the three pieces of Queensland legislation applicable at that time, those being the Mental Health Act, the Intellectually Disabled Citizens Act and the Public Trustee Act and, of course, one could also throw in the Act existing at that time that dealt with powers of attorney, that is, the Property Law Act. The Queensland Law Reform Commission found people may well have been treated differently by these pieces of legislation which could then, in turn, result in uncertainty, inconsistency and injustice.

The third problem and deficiency the commission identified was that the current law concentrates substituted decision making in the hands of a public officer, that is, in the hands of the State and therefore severely limited choice. The fourth problem and deficiency identified was that there was little scope or flexibility given in powers to the substituted decision maker.

All in all, its report, recommendations and the draft Bill which formed part of the final report came about as a result of wide, lengthy and comprehensive consultation. The commission's proposed formulation of a streamlined legislative framework had been well received and its introduction had been awaited with anticipation from the time that the final report was presented. But what happened? When the final report was presented, the now Opposition was then in Government and the member for Indooroopilly was the then Attorney-General and Minister for Justice to whom the report was presented. In the dying days of the Borbidge/Sheldon Government, the then Attorney-General and Minister for Justice, the member for Indooroopilly, introduced a Bill into the House called the Powers of Attorney Bill, which was subsequently enacted and became the Powers of Attorney Act.

As I acknowledged in April 1998 when I spoke to the Powers of Attorney Bill, it was a good reform. However, the problem with the Powers of Attorney Act, which came about following the Queensland Law Reform Commission report, was that it was only half a reform. It did not contain all of the reforms of the Queensland Law Reform Commission; it contained only some of them. It still left those in need of an adult guardian wanting; their only option in certain areas was to have the State making decisions for them.

One of the welcome reforms under the Powers of Attorney Act was the establishment of the Office of the Adult Guardian. I commend the Adult Guardian for the work he is doing. I had the pleasure of hosting a morning tea at which the Adult Guardian gave a presentation to members of the community on the work he does in his office and the publications that are available. He also gave an extensive presentation on powers of attorney. I know from moving around my electorate that there is a lot of misunderstanding and that people are a little confused about powers of attorney, for example, what they contain and what signing requirements there are. This was also highlighted when we had a presentation to the justices of the peace in my electorate. The JPs also found that many questions were put to them about how powers of attorney operate. I thank the Adult Guardian for taking the time to visit my electorate and giving that presentation. Since that presentation, many people have contacted him, especially those who work in health fields, such as staff at the nursing and aged care facilities in our area, asking him to give presentations to the families of residents in relation to the role of the Adult Guardian and also to provide information in relation to powers of attorney. That has been well received. The Adult Guardian has pursued his education role vigorously. The more education there is on the role of the Adult Guardian the better it will be for the community.

When the Beattie Government was elected in June 1998, the previous Government left us the legacy of half a reform. I recall saying at the time that it was disappointing that, after so much work and effort had been put in by the Queensland Law Reform Commission, the previous Government did not see fit to implement the streamlined framework for assisted and substituted decision making proposed by the Queensland Law Reform Commission. I commend the Attorney-General and Minister for Justice, the Honourable Matt Foley, for attending to the much-needed other part of the Queensland Law Reform Commission's report by introducing this Bill into the House.

Another Bill before the House, the Mental Health Bill—hopefully, I will be able to speak on it later in the week—complements the provisions of this Bill in relation to guardianship and administration and will take away the complexities and fragmentation that is part of our current law. The Bill before the House picks up all of the recommendations in respect of the Adult Guardian of the Queensland Law Reform Commission and gives meaning to the principles as set out in Schedule 1. I acknowledge that Schedule 1 of this Bill is also Schedule 1 of the Powers of Attorney Act. When the Powers of Attorney Bill was introduced into the House, it was noted by speakers, including me, that the Schedule really had little meaning in that Bill, because the principles set out as underpinning the Powers of Attorney Bill really had no relevance to some of the provisions of the Bill. The Guardianship and Administration Bill now replicates that Schedule, and the principles in Schedule 1 to the Bill reflect the principles by which this Bill will operate. It is to be commended.

This Bill also proposes an independent tribunal to provide an accessible, affordable and simple yet flexible system of determining and reviewing adult guardianship. It also provides for the establishment of an independent public advocate to promote and protect the interests of people with decision-making disability. It also provides for community visitors. In this way, whilst acknowledging the principle that they can live independently, these people also have the support of the community and the officers monitoring them, and they are being provided for adequately.

The final point I wish to make about this Bill—and I commend the Attorney-General for its inclusion—is that the Bill picks up another deficiency in our law in relation to assisted and substituted decision making. Our current laws provide for decisions to be made only in relation to health and financial matters. This Bill contains excellent provisions in relation to personal matters. I commend the Bill to the House.

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