Speech by

Hon. R. WELFORD

MEMBER FOR EVERTON

Hansard 17 October 2001

GUARDIANSHIP AND ADMINISTRATION AND OTHER ACTS AMENDMENT BILL

Hon. R. J. WELFORD (Everton—ALP) (Attorney-General and Minister for Justice) (11.41 a.m.): I move—

That the bill be now read a second time.

The purpose of this bill is to overcome a possible consequence in the Guardianship and Administration Act 2000 that could bring unintentional distress to families of people with impaired capacity. This bill amends both the Guardianship and Administration Act 2000 and the Powers of Attorney Act 1998, and clarifies when a guardian or attorney can consent to life-sustaining measures being stopped or not being commenced. Life-sustaining measures refer to medical treatment such as artificial nutrition and hydration, cardiopulmonary resuscitation and assisted ventilation.

The Guardianship and Administration Act 2000 was groundbreaking legislation, providing the most vulnerable members of society with support in achieving autonomy in decision making and in their lives in general. The act created the Guardianship and Administration Tribunal, an important reform for adults with impaired capacity, their families and carers.

The tribunal offers an independent and user-friendly avenue for dealing with a range of relevant issues. The act also gave the tribunal the sole power to consent to special health care. This was consistent with the fact that the tribunal was given the jurisdiction exercised previously by the Supreme Court for many similar decisions.

Special health care matters referred to the tribunal include consent to live organ donation, sterilisation, termination of pregnancy, participation in special medical research or experimental health care. The tribunal's exclusive jurisdiction to deal with these decisions is unaffected by the amending bill. The act also defined the withdrawal or withholding of special life-sustaining measures for people with impaired capacity as 'special health care'.

As a result of this definition, concern has been expressed that the Guardianship and Administration Act 2000 might be construed as requiring all decisions to stop life-sustaining measures to be made by the tribunal, where there was no advance health directive. In Queensland, health providers have never routinely sought the consent of the Supreme Court to stop or withhold futile life-sustaining measures. Decisions of this nature are routinely made in consultation with the family and acting in accordance with good medical practice.

Decisions to withhold or withdraw life-sustaining measures are of a different character to the other special health care decisions made by the tribunal. In the absence of specialist medical evidence to the contrary, it would be virtually impossible for the tribunal to reach a different view to that of the health providers and the guardian or attorney about the withholding or withdrawal of life-sustaining measures.

This bill clarifies when a guardian or attorney can consent to the life-sustaining measures being stopped or not being commenced. It amends the schedules of the Guardianship and Administration Act to define the withholding or withdrawing of life-sustaining measures as health care rather than special health care. The equivalent provisions of the Powers of Attorney Act are amended to ensure the two acts continue to be complementary.

The effect of this amendment is that the tribunal does not have to consent to all cases of withholding or withdrawing of life-sustaining measures. If a person does not have a guardian or a health attorney appointed after the bill becomes law, a statutory health attorney may make the decision. The term 'statutory health attorney' is defined in the Powers of Attorney Act and includes people who would generally be regarded as the next of kin. The Adult Guardian is also the statutory health attorney for anyone who does not have another person who can act as a decision maker.

The decision to withhold or withdraw life-sustaining measures affects the lives of the most vulnerable people in our community. For this reason the bill contains special procedures for when life-sustaining measures may be stopped or not commenced. The amending bill essentially reflects what all Queenslanders would expect to occur at the end of their life. That is, where the health provider considers that commencing or carrying on life-sustaining measures is inconsistent with good medical practice those measures may be stopped if a guardian or attorney has consented.

This bill allows for family based decision making so that instead of forcing family members to go to the tribunal to get consent for a decision that they and the adult's doctors have made, the family can consent to the doctor ceasing life-sustaining measures.

This bill also provides safe and transparent decision-making practices for those people with a disability, by ensuring a person independent of the health provider must be consulted, except in an emergency, when end-of-life decisions are made.

This bill is also concerned with ensuring that the accepted practices of the medical profession developed over a very long time, reflective of the highest ethical principles, are set out in the legislative scheme that protects the most vulnerable in our society. There are a series of common law decisions where the courts have stated plainly that a doctor commits no criminal offence when futile treatments, interfering with the dying process, are stopped. These legal decisions also reflect established theological and ethical teachings on these issues.

The bill also ensures that a health provider may act in an emergency to stop or not commence life-sustaining measures. Again, there is a requirement that the acts of the health provider be in accordance with good medical practice. The acute emergency provision will only apply to the life-sustaining measures of cardiopulmonary resuscitation or assisted ventilation. The acute emergency provision will ensure that adults with impaired capacity do not have to be subjected to invasive or unnecessary treatments when good medical practice demands that such treatment should cease immediately.

Recognising that people can differ about end-of-life decisions, the bill also provides for mechanisms to resolve disputes about the decisions to be taken. If there is a dispute between family members about what decision should be made, a health provider can refer the family to the Adult Guardian. The Adult Guardian can mediate between family members, take on the decision-making role, or seek instructions or help with his decision from the tribunal.

Any family member, or other interested person, can also make application to the tribunal for orders or directions. The bill expressly preserves to the tribunal the continuing power to consent to the withholding and withdrawing of life-sustaining measures.

Nothing in this bill will interfere with the inherent jurisdiction of the Supreme Court to make decisions and protect people who have impaired capacity. The bill provides that both the consent of the Adult Guardian and the tribunal, like the consent of guardians or attorneys, is only operative when the health provider reasonably considers that the commencing or carrying on of life-sustaining measures is inconsistent with good medical practice. The bill will require that all decisions be properly documented by the health provider in the patient's records. It also provides retrospective protection from liability under the Guardianship and Administration Act for health providers who have, in accordance with good medical practice, not commenced or stopped life-sustaining measures without reference to the tribunal in the past.

Good medical practice is defined in the bill to refer to the recognised medical standards, practices and procedures of the medical profession in Australia and also to the recognised ethical standards of the medical profession in this country.

Finally, the bill makes it clear that the 'health care principle' that sets out how the tribunal, guardian or attorney should make decisions for an adult with impaired capacity applies to all decisions that are made, including special health care decisions. The bill amends the health care principle to ensure that the exercise of a power is necessary and appropriate to maintain or promote the adult's health or wellbeing or is, in all the circumstances, in the adult's best interests. I commend the bill to the House.