




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 5 September 2017

GUARDIANSHIP AND ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL

Introduction

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (12.40 pm): I present a bill for an act to amend the Government Owned Corporations Act 1993, the Guardianship and Administration Act 2000, the Integrity Act 2009, the Powers of Attorney Act 1998, the Public Guardian Act 2014 and the Public Interest Disclosure Act 2010 for particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Guardianship and Administration and Other Legislation Amendment Bill 2017 [[1571](#)].

Tabled paper: Guardianship and Administration and Other Legislation Amendment Bill 2017, explanatory notes [[1572](#)].

I am pleased to introduce the Guardianship and Administration and Other Legislation Amendment Bill 2017. This bill will amend Queensland's guardianship legislation—that is, the Guardianship and Administration Act 2000, the Powers of Attorney Act 1998 and the Public Guardian Act 2014.

The guardianship legislation will have relevance for most of us at some point in our lives. Many of us have an older parent or relative who can no longer make their own decisions because they have a cognitive impairment such as dementia. Sometimes an adult's capacity to make decisions may be impaired due to an acquired brain injury, intellectual disability or mental illness. Queensland's guardianship legislation establishes a scheme for substitute decision-making for adults with impaired decision-making capacity. The legislation provides for the Queensland Civil and Administrative Tribunal to appoint a guardian or an administrator to make personal and financial decisions on behalf of an adult with impaired capacity.

Under Queensland's guardianship legislation, a person is also able to plan for a time when they no longer have decision-making capacity. They can execute an enduring power of attorney to authorise another person to make personal and/or financial decisions, or they can sign an advance health directive to provide directions about their future health care.

Under the Public Guardian Act 2014 the Public Guardian also plays an important role, protecting the rights and interests of adults with impaired capacity by: investigating allegations of neglect, exploitation or abuse; acting as a guardian; and providing the Community Visitor Program. Overall, Queensland's guardianship legislation is working well. These amendments will make the law clearer and more user friendly; strengthen the safeguards for adults with impaired capacity; and better align the law with contemporary practice and human rights.

The amendments in the bill progress and support a number of actions in the *Queensland: an age-friendly community: action plan* launched by the Hon. Coralee O'Rourke MP. In particular, it strengthens safeguards and remedies for adults who have appointed attorneys under enduring documents to reduce the risk of financial abuse and exploitation. The amendments also implement a number of recommendations from the Queensland Law Reform Commission's report *A review of Queensland's guardianship laws*, tabled in parliament in 2010. The bill implements QLRC recommendations that strengthen the focus on contemporary practice and human rights for adults with impaired capacity; enhance safeguards for adults with impaired capacity; and improve the efficiency and clarity of Queensland's guardianship system.

The government has had strong support from a broad range of stakeholders from legal, medical and disability advocacy organisations on the amendments to guardianship legislation in this bill. I thank these organisations for their feedback, which has helped ensure that the amendments achieve their purpose.

One of the significant amendments included in this bill is the introduction of a statutory exception to ademption. Ademption occurs where the gift of a specific item of property in a will fails because prior to the testator's death, the property is sold or otherwise disposed of. A common example is where a person leaves their house as a specific testamentary gift in their will but then sells the house to fund their own aged care and the person does not update their will to reflect the changed circumstances. Upon the person's death, the gift is adeemed because it no longer forms part of the testator's estate. Any remaining proceeds from the sale fall into the residue of the estate and go to the residuary beneficiaries, potentially leaving the intended beneficiary of the specific gift of the house with no interest under the will. As such, the rule of ademption may significantly distort the testator's intention and/or result in unjust outcomes. This is especially the case if the testator is an adult with impaired capacity and it is an attorney or administrator who deals with the adult's property.

The bill will amend the Guardianship and Administration Act 2000 and the Powers of Attorney Act 1998 to create a statutory exception to ademption so that when an attorney under an enduring power of attorney or an administrator deals with the testator's property that is a gift under a will, the beneficiary is entitled to the same interest in any surplus money or other property arising from the sale or other dealing with the property. This will give effect to the testator's intentions before he or she lost capacity.

The bill will also create a limited missing person's jurisdiction for QCAT. When a person goes missing it may be some time before they are presumed to be dead at law or a coroner makes a finding that the person has died. The bill will provide that when a person is missing and there is a pressing need to preserve the adult's assets and property, QCAT will be specifically empowered to appoint an administrator to exercise financial decision-making powers on behalf of the adult. The bill will also make it clear that QCAT can order a current or former attorney or administrator to compensate a person for loss caused by the attorney or administrator's failure to comply with their duties under the guardianship legislation.

Previously, it was not clear if QCAT could exercise this jurisdiction in relation to former attorneys and administrators—for example, after the appointment had ended, the enduring power of attorney had been revoked or the adult had died. This amendment will enhance the availability of financial compensation for people subject to financial elder abuse. This is an action in the *Queensland: an age-friendly community: action plan*. The reforms will also require QCAT, when carrying out its functions or powers under the Guardianship and Administration Act 2000, to seek and take into account the views, wishes and preferences of the adult and their support network to the greatest extent practicable. The reforms also strengthen the eligibility requirements for an enduring power of attorney so that an attorney must have capacity for a matter and must not have been a paid carer for the adult in the previous three years.

This bill clarifies the capacity needed for an adult to execute an advance health directive or an enduring power of attorney. It strengthens the prohibition on attorneys and administrators entering into transactions where their interests are in conflict with the adult for whom they are making financial decisions. The reforms provide that both a court and QCAT can order a current or former attorney, administrator or guardian to account for any profits they have accrued as a result of their failure to comply with their duties. The bill also broadens the protection available to whistleblowers who disclose confidential information when making a disclosure about conduct they believe could involve abuse, neglect or exploitation of an adult with impaired capacity.

To ensure Queensland's guardianship legislation is more consistent with contemporary practice and human rights, the bill also redrafts the general principles and the healthcare principle to be more consistent with the United Nations Convention on the Rights of Persons with Disabilities. It also

relocates the new general principles and healthcare principles to the beginning of both the Guardianship and Administration Act 2000 and the Powers of Attorney Act 1998 to highlight the new principled approach and encourage the exercise of functions and powers under the acts in a way that is more consistent with human rights and contemporary practice. The bill provides that the minister is to prepare guidelines to assist persons required to make assessments about an adult's capacity.

Finally, to improve the efficiency and clarity of Queensland's guardianship legislation the bill also clarifies how the presumption of capacity is to be applied in certain circumstances; simplifies the certification process required for proving copies of enduring documents; and clarifies that an advance health directive or an enduring power of attorney made under the Powers of Attorney Act 1998 by an adult residing interstate is effective in Queensland. The bill also includes other non-guardianship related amendments that implement recommendations from two parliamentary committee reports.

The bill includes amendments to the Integrity Act 2009 to implement recommendations 1 and 2 of the Finance and Administration Committee report No. 19, *Inquiry into the report on the strategic review of the functions of the Integrity Commissioner*. These amendments streamline the process for senior executives and senior officers obtaining advice from the Integrity Commissioner by removing the requirement for managerial consent and allow former designated persons—that is, former members of the Legislative Assembly, statutory office holders, statutory executives, senior executives or officers and staff members employed in the office of a minister or assistant minister—to seek access to the advice services of the Integrity Commissioner for a period of two years after leaving office.

The bill also implements recommendation 13 of the Parliamentary Crime and Corruption Committee report No. 97 *Review of the Crime and Corruption Commission* by making amendments to the Government Owned Corporations Act 1993 and the Public Interest Disclosure Act 2010. These amendments will resolve conflicting statutory obligations in state and Commonwealth legislation to ensure that an officer or employee of a government owned corporation who discloses information in accordance with the requirements of the Crime and Corruption Act 2000 is afforded whistleblower protection.

An effective guardianship system is vital for upholding the rights and interests of adults with impaired capacity. This bill makes important and practical changes that will make meaningful improvements to the lives of some of our most vulnerable Queenslanders. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (12.51 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Mr DEPUTY SPEAKER (Mr Crawford): In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.