




Speech By  
**Bart Mellish**

**MEMBER FOR ASPLEY**

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Record of Proceedings, 26 March 2019


**GUARDIAN AND ADMINISTRATION AND OTHER LEGISLATION AMENDMENT  
BILL**

 **Mr MELLISH** (Aspley—ALP) (12.58 pm): There is a quote often misattributed to Mahatma Gandhi that a nation's greatness is measured by how it treats its weakest members. This guardianship legislation is, in a modest but tangible way, improving protections for those members of society who may, through no fault of their own, for a moment in their lives, indeed become some of its weakest members. I will focus on aspects of the bill relating directly to guardianship. This bill seeks to amend Queensland's guardianship legislation. It seeks to provide a focus on contemporary practice and human rights for adults with impaired capacity, to enhance safeguards for adults with impaired capacity in the guardianship system and to improve the efficiency of Queensland's guardianship system.

Queensland's guardianship system currently provides a scheme for individuals to be appointed to make personal, health and financial decisions on behalf of adults who no longer have capacity to make decisions about certain matters themselves. It also provides a scheme where adults can plan ahead and appoint individuals of their choice to make personal, health and financial decisions and give directions about their future health care.

Relevant to this bill, I have seen some of the great work the Queensland Public Trustee does in a range of areas related to ageing Queenslanders. I congratulate the Public Trustee and the Attorney-General in particular for ensuring they have an ongoing role in a range of services much valued by Queenslanders. Some of the services provided include enduring powers of attorney, free will making—they are the largest will maker in the Southern Hemisphere—deceased estate administration, management of investments and trusts, auctioning and sale of property and, importantly, financial administration for people with decision-making impairment, among a range of other functions.

This bill is substantially the same as the bill introduced to the previous parliament in September 2017. Minor changes have been made to the bill since it was introduced during the last parliament. 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.

 **Mr MELLISH** (Aspley—ALP) (2.56 pm), continuing: I will continue from where I left off. Guardianship legislation such as this will have relevance for most of us at some point in our lives. Many of us will know someone who can no longer make their own decisions because they have a cognitive impairment such as dementia. One day in the future many of us may well be one such person. There are also instances where an adult's capacity to make decisions may be impaired due to an acquired brain injury, intellectual disability or mental illness. Queensland's guardianship system establishes a scheme for substitute decision-making for adults with impaired decision-making capacity. 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.

One of the significant amendments included in this bill is the introduction of a statutory exception to ademption. Ademption occurs when the gift of a specific item or 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 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 who will not have the capacity to change their will to deal with the situation, and it is an attorney or administrator who deals with the adult's property. This will be amended 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 they have lost capacity to do so themselves.

Some of the other reforms that will enhance safeguards for adults with impaired capacity in the bill include requiring QCAT, when carrying out its functions or powers under the Guardianship and Administration Act 2000, to the greatest extent practicable to seek and take into account the views, wishes and preferences expressed or demonstrated by the adult and any members of the adult's support network.

It also includes strengthening the eligibility requirements for an attorney under an enduring power of attorney so that the eligible attorney must have capacity for a matter and must not have been a paid carer for the principal, being the adult, in the previous three years. It is sad to see that reforms such as the last one I mentioned, in particular, are required to protect vulnerable people. One can only imagine the exploitation of the individuals which has led to such a provision as that being required to be in the bill.

I know that some aspects of this bill support actions arising from the *Queensland: an age-friendly community—action plan*. These include providing the Public Guardian with the discretion to continue to investigate a complaint that an adult was subject to abuse, neglect or exploitation even after the death of the adult; enhancing the safeguards for older people who appoint attorneys under enduring power of attorneys; and improving financial remedies for adults with impaired capacity when attorneys fail to comply with their duties.

I note that the committee report outlines the broad consultation that has occurred over a number of years ahead of this bill and after its introduction. I also note that the committee chaired by my parliamentary neighbour the member for Toohey recommends that the bill be passed. I support the passing of the bill.