




Speech By
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MEMBER FOR MANSFIELD

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GUARDIAN AND ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL

 **Ms McMILLAN** (Mansfield—ALP) (12.39 pm): I rise today to provide my contribution to this very important bill. This bill plays a significant role in the lives of those families who care for a person with a disability, serious health issue or impairment. It is legislation like this that goes some way to supporting not only families but individuals who live with a disability every day.

On 15 February 2018 the Guardianship and Administration and Other Legislation Amendment Bill 2018 was introduced into the Queensland parliament and referred to the Legal Affairs and Community Safety Committee. As we have heard, the bill is substantially the same as the Guardianship and Administration and Other Legislation Amendment Bill 2017, which was introduced into the Legislative Assembly on 5 September 2017 and referred to the Legal Affairs and Community Safety Committee of the previous parliament. The previous committee conducted an inquiry into the 2017 bill but did not report to the Legislative Assembly because the parliament was dissolved four days prior to its reporting date. As stated in the explanatory notes, the objectives of the bill are to—

- amend Queensland's guardianship legislation—

the GAA, POA Act and PGA—

to: provide a focus on contemporary practice and human rights for adults with impaired capacity; enhance safeguards for adults with impaired capacity in the guardianship system; and to improve the efficiency of Queensland's guardianship system or improve the clarity of Queensland's guardianship legislation;

- amend 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; and
- amend the Government Owned Corporations Act 1993 and the Public Interest Disclosure Act 2010 to implement recommendation 13 of the Parliamentary Crime and Corruption Committee Report No. 97, Review of the Crime and Corruption Commission (PCCC Report).

The department has advised that, apart from some minor drafting changes, the significant change is to ensure a consistent approach to the authorisation of conflict transactions for administrators and attorneys. That addresses a recommendation made by the Queensland Law Society last year in its public briefing to the Legal Affairs and Community Safety Committee on the 2017 bill. Further, the bill proposes to amend the guardianship legislation to reflect current thinking regarding people with disabilities, particularly as expressed in the United Nations Convention on the Rights of Persons with Disabilities.

The UNCRPD, which was ratified by Australia in 2008, gives preference to supported decision-making over substituted decision-making. Substituted decision-making means that a person is permitted by law to make decisions on behalf of another person. Supported decision-making embraces a wide range of models, theories and practices but essentially involves the participation of the adult in the decision that needs to be made rather than the decision being made for them by another person without their involvement. The department explained that while the proposed amendments to the guardianship legislation were particularly influenced by the UNCRPD, the UNCRPD's emphasis on

supported decision-making rather than substituted decision-making was not introduced. As a result, the proposed amendments to the guardianship legislation do not represent a fundamental change. Certain stakeholders considered that the bill should incorporate a supported decision-making approach.

While the state government's legislation could be seen as some of the most progressive in Australia, for a family in my community the lack of recognition of the legal status of the informal substitute decision-maker under the Queensland guardianship model poses a challenge as they try to ensure the implementation of the express wishes of their family member, particularly with regard to communication. For them, this matter arises when dealing with energy companies, telecommunication companies, financial institutions and health insurance, including Medicare. It is my hope that the insertion of the general principles and health principles, as well as the measures being taken by the Attorney-General and her department to assist with the implementation of this legislation, will increase public awareness with regard to the role of informal carers.

With the implementation of NDIS there is a need for people with impaired capacity, who often live in accommodation independent from their families, to establish a relationship as consumers in their own right. I will elaborate on an example provided by a family in my electorate of Mansfield. A couple's adult child sought an account with an energy provider in their own name in order to access discounts available to people in receipt of a pension. There was no issue in establishing the account online; however, the account needed to be verified by a phone call, which was not possible as their child is not verbal. The child's parents, as informal substitute decision-makers, were unable to achieve the desired outcome as their status was not recognised by the energy company and would therefore require formal guardianship. Many private companies have caused much angst for these parents and their nonverbal child. I am sure this is an ongoing issue which affects many families across our state. I understand there is a system of registration that operates in British Columbia whereby private companies formally recognise informal substitute decision-makers as legal representatives of people with a disability and impaired communication.

On the other hand, Aged and Disability Advocacy Australia, amongst other submitters, believes that the bill is a positive move towards supporting supported decision-making. As stated in their submission—

If passed through Parliament, it is believed that these amendments will provide adults with impaired capacity with more choice and less restrictive options whilst safeguarding their rights. The proposed amendments will also bring Queensland a step closer to achieving our obligations under the UN Conventions on the Rights of Persons with Disabilities.

New general principle 10 will provide a structured approach to decision-making. The approach involves supporting the adult to make a decision if possible and take into account any of the adult's views, wishes and preferences. The bill would extend the scope of section 5 of the GAA, as stated in the explanatory notes—

... to provide that the capacity of an adult (not just an adult with impaired capacity) to make decisions may differ according to:

- i. the type of decision to be made, including, for example the complexity of the decision that is to be made; and
- ii. the support available from members of the adult's existing support network.

The bill would require the minister to prepare guidelines to assist in assessments about the capacity of adults to make decisions.

The committee wishes to thank the previous committee for its work in relation to the 2017 bill. The previous committee received 18 submissions and held a public hearing at which more than a dozen individuals and organisations were represented. The committee notes that the bill proposes to implement a number of the recommendations relating to guardianships made by the QLRC in a review of Queensland's guardianship laws and certain actions arising from the Queensland government's response to the report of the Communities, Disability Services and Domestic and Family Violence Prevention Committee titled *Inquiry into the adequacy of existing financial protections for Queensland seniors*. The bill also proposes to implement recommendations made by the former FAC and PCCC.

The committee supports the proposed amendments. The committee considers that other amendments proposed to be made by the bill, such as enabling the appointment of an administrator for a missing person and providing a legislative exemption to redemption in certain circumstances, would also be beneficial. Further, any members of our Queensland community should contact the Office of the Public Guardian, which provides education about Queensland's guardianship laws and free information and advice to informal and formally appointed guardians for adults with impaired capacity. I commend this bill to the House.