




Speech By
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MEMBER FOR TOOWOOMBA SOUTH

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GUARDIAN AND ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL

 **Mr JANETZKI** (Toowoomba South—LNP) (11.46 am): I rise to address the Guardianship and Administration and Other Legislation Amendment Bill 2018. Let me start by saying that the LNP will not be opposing the bill. A clear and workable guardianship framework is paramount if Queenslanders with impaired capacity are to have strength and safeguards. The bill will have a practical impact on people who lack the cognitive capacity to consent and make decisions on their own, which is why it is so important to have workable and readable legislation. A person with impaired capacity is in so many ways vulnerable. That person and their family should be confident that the laws in this state will offer them safeguards and enhanced decision-making.

The policy objectives of the bill are to: amend the guardianship legislation 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 improve the efficiency and improve clarity of guardianship legislation. The second policy objective is to amend the Integrity Act 2009 to implement recommendations 1 and 2 of the Finance and Administration Committee report No. 19. The third is to 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 titled *Review of the Crime and Corruption Commission*.

As I stated, the opposition will not be opposing the bill; however, there are a range of issues that I will be raising during my second reading contribution. Let me start by saying that it is appropriate that a short passage through history is relevant in relation to this bill. I do say this because Labor and the government today have a shocking record in terms of responding to reports. Take the Queensland Law Reform Commission report titled *A review of Queensland's guardianship laws*, which prompted this bill. The report was completed in 2010. After the release of the report, the Bligh Labor government never implemented a single recommendation. In contrast, the LNP will always act swiftly when it comes to law reform.

The LNP will always support initiatives that have a positive influence on persons, particularly vulnerable persons, in need and their families. In 2012 the LNP enacted a recommendation of the review to retain and strengthen the independence of the Public Advocate and improve the ability of the Public Advocate to effectively perform its functions. The Public Advocate was granted additional powers to access information necessary to perform its function and report to the Attorney-General at any time on a systemic issue, which must be tabled in parliament. In 2014 the LNP government released its response to the review and committed to implementing the remainder of the review in two stages. The response dealt with 205 recommendations, with the other 112 more complex issues to undergo further consultation with key stakeholders.

One of the policy objectives of the bill is to improve the clarity of guardianship legislation. It seems, however, that the bill has, in some ways, created some uncertainty. This seems to be at odds with the intent of the policy. For example, the Public Advocate was concerned that the redrafting of the principles

has the effect of 'making them far less readable and accessible than the current version'. In particular, the Public Advocate elaborated that the new approach is more difficult to read and understand and that it has too many clauses and includes brackets, making it less acceptable to some people who are not accustomed to reading and interpreting legislation.

Of significance is the bill's proposal to amend section 31 of the Guardianship and Administration Act to clarify that when QCAT is reviewing an appointment of a guardian and the Public Guardian is the appointee, QCAT may remove the Public Guardian as appointee if there is an appropriate person available for appointment. This implements recommendation 14-14 of the review.

The Public Advocate supported the proposed amendment because it ensures that the Public Guardian remains the guardian of last resort and will help to ensure that a guardian who knows the person and understands their will and preferences will be appointed. However, the Public Guardian was confused as to why recommendation 14-13 has not been implemented in this bill. That recommendation proposed amending section 14 so that the tribunal should appoint the Public Trustee only if there is no other person who is appropriate and available for appointment as administrator, as is currently the case with the Public Guardian.

Another concern raised by a key stakeholder, Caxton Legal Centre, relates to the broadened power of the Public Guardian to investigate a complaint or allegation after an adult's death. Caxton Legal Centre raised concerns that the bill does not provide for information sharing between the Public Guardian and the office of the Coroner and commented that they propose sharing protocols be introduced to avoid the Coroner missing information or there being duplication of investigations.

TASC raised concerns that the bill does not recognise fluctuating capacity, breaching the United Nations Convention on the Rights of Persons with Disabilities and undermining both the objectives and principles of the bill. TASC considers that this concern would be addressed if recommendation 15-1 was implemented. This recommendation provides that a tribunal may limit the exercise of a guardian to periods when the person has impaired capacity. The LNP government previously agreed to implement this recommendation.

The bill provides that guidelines will be developed to assist with the assessment of capacity, but does not specify a date when the guidelines will be prepared. The Public Advocate raised concerns that the general and healthcare principles are difficult to understand and access. In particular, the Public Advocate said—

I am aware that there has been a suggestion that the department could produce a version of the principles after the legislation has been passed. That would require the department to be giving an interpretation of legislation, which is tantamount to giving legal advice and that is not what government agencies do.

There were also concerns raised by stakeholders in relation to interim orders. The bill amends section 129 of the Guardianship and Administration Act relating to the issuing of interim orders and the setting out of the grounds upon which QCAT could issue an interim order. Two key stakeholders—the Queensland Advocacy Inc. and Aged and Disability Advocacy Australia—were not satisfied with the clauses specific to interim orders. Of greatest concern was that the bill does not require QCAT to consult with the adult and their family when making interim orders. QAI commented that they were aware of cases where the adult and families were only made aware that an order had been made after the proceedings had been completed.

Throughout the committee process a number of individuals raised concerns about QCAT's handling of guardianship matters and the overall operation of the Public Trustee. The office of the Public Advocate raised concerns that 'I think a lot of government agencies struggle with applying the general principles'. QAI and ADA Australia raised concerns that the bill does not require QCAT to consult with the adult and family when making interim orders. QAI commented that they were aware of cases where the adult and families were only made aware that an order had been made after the proceedings had been completed.

In its guardianship jurisdiction, QCAT makes decisions for those who are unable to make decisions for themselves. The work of QCAT must be commended—for the members and staff work tirelessly for such a good cause. I want to reflect on the work of QCAT. I will turn briefly to the QCAT annual report released recently by Justice Daubney, the President of QCAT. What is abundantly clear from that annual report is that QCAT is in dire need of greater resourcing. QCAT stands as one of the most important quasi-judicial bodies in Queensland, exercising significant power over a range of different issues. It is worth reflecting on a couple of things that Justice Daubney related in what was quite an extraordinary annual report. Justice Daubney said in the 2017-18 annual report—

QCAT's members and registry staff have been stretched beyond all reasonable and proper levels of tolerance. Any further delay in appropriate resourcing for QCAT will inevitably result in the tribunal being unable to deliver anything like quick and accessible civil justice to Queenslanders.

What an extraordinary remark in an annual report from the head of QCAT, Justice Daubney. The president went on to say that he was hopeful that the executive government will recognise and urgently address these resourcing issues. We know that the executive government has no idea how to address these resourcing problems.

That was further amplified last week with the release of the annual reports of the District Court and the Supreme Court of Queensland. We know that in the last week or two we have had ministers protesting other ministers in this government. What is necessary by the look of it is for the Attorney-General to start protesting of her own accord. What we see across the justice system in Queensland is a dire lack of resourcing for what is a most important function.

It was the Chief Justice in the Supreme Court annual report who said quite clearly that with additional police resources there would be an additional need for judges in our higher courts. What we have seen is a lack of resourcing and a lack of support for the fine work that is done by judges, whether that be in the Magistrates Court, the District Court or the Supreme Court. I will again turn briefly to Justice Daubney's remarks in his annual report. In his president's message he states—

It is not hyperbolic to say that many of these proceedings are literally life-changing.

That is from the president of QCAT. We know how true that is right across a variety of areas of law.

We know, as I have already stated, that there is a dire lack of resourcing. The Attorney-General must stand up for our justice system to make sure they get their fair share. Chief Judge O'Brien in the District Court said, 'Per capita Queensland has the least number of District Court judges in Australia.' We know in the Supreme Court, the Chief Justice—

Mrs D'ATH: Mr Deputy Speaker, I rise to a point of order. I ask that the member be brought back to the substance of the bill.

Mr DEPUTY SPEAKER (Mr Stewart): Just one moment. I will seek advice from the Clerk. Member for Toowoomba South, I advise you to come back to the long title of the bill. I will listen intently. If you continue down this path, I will make a determination.

Mr JANETZKI: What Justice Daubney, president of QCAT, has said should ring alarm bells for the justice system in Queensland. We have seen now, with the release of the District Court and the Supreme Court annual reports last year, that there is a fundamental lack of resourcing in the justice system in Queensland. That is of great concern when looking at the bill.

Mrs D'ATH: Mr Deputy Speaker, I rise to a point of order on relevance. You have just instructed the member for Toowoomba South to come back to the bill and he has continued with the same line of debate which is around resourcing, which is not the subject of this bill.

Mr DEPUTY SPEAKER: Order! Member for Toowoomba South, I ask you to come back to the long title of the bill. I do not believe that the issues of resourcing are raised in the bill, or in fact in the committee report, or are associated with the long title of the bill. Otherwise I will ask you to resume your seat.

Mr JANETZKI: Thank you, Mr Deputy Speaker. I am happy to take your guidance in that regard. The resourcing question is important in respect of this bill because QCAT has such a large role to play in the determination of guardianship matters in Queensland. That makes the comments of Justice Daubney all the more relevant. If I return to them just for a moment, Justice Daubney went on to say—

A lack of appreciation in some quarters of the true ambit of QCAT's diverse jurisdictions has led to an unfortunate underappreciation of the resources necessary ...

Mrs D'ATH: Mr Deputy Speaker, I rise to a point of order. This is the third time I have risen on relevance on exactly the same substance of the debate by the member for Toowoomba South in which he is ignoring your instructions to come back to the substance of this bill. He is referring to annual reports that do not form part of this bill or the committee debate.

Mr DEPUTY SPEAKER: One moment, member for Toowoomba South. I will seek some further clarification. Member for Toowoomba South, you have made references, as we have said, around resourcing. Can you direct me to where you are quoting from?

Mr JANETZKI: The relevance of my contribution—

Mr DEPUTY SPEAKER: No, no. Can you direct me to where you are quoting from?

Mr JANETZKI: Not from the report.

Mr DEPUTY SPEAKER: Member for Toowoomba South, my final counsel will be that, if you continue to go down the road that you are going down now with QCAT and the resourcing issue, you will be asked to resume your seat.

Mr JANETZKI: Thank you, Mr Deputy Speaker. In respect of what QCAT has to do in respect of the guardianship aspects of this bill, it is entirely appropriate that the Attorney-General should seek those additional resources. I will not pursue the matter further. However, the Attorney-General can rest assured that I will not be silenced in respect of making sure QCAT gets its fair share. As this bill has proven again, whether it be the Public Advocate or guardianship administration in this state, QCAT plays a vital role in its due administration, and I will continue to fight for its fair share.