




Speech By
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MEMBER FOR MACKAY

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

 **Mrs GILBERT** (Mackay—ALP) (3.23 pm): I rise to speak on this important bill before the House, the Guardianship and Administration and Other Legislation Amendment Bill. Queensland's guardianship system 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. This bill will 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 of Queensland's guardianship system or improve the clarity of Queensland's guardianship legislation.

After a stroke 12 years ago, my sister-in-law Annette needed a guardian and a power of attorney to look after her finances and health. Like the majority of the community, my family are of a similar mind in that we only find out about a process like this when we are thrown into a situation of need. Annette was in a fortunate position. She was a single woman and her eldest brother and her sister were more than capable and willing to take over her guardianship and be her attorney. Their only concern for her was that she be safe and well cared for. This situation sheeted home to all of us in our family how vulnerable some people are when they do not have the support of family or loved ones to look after them. This bill is much needed. It will provide guardians and those in a vulnerable situation with guidelines and structure so they are safe and everybody understands their situation.

This bill also progresses recommendations arising from the financial protections for seniors report. Those recommendations, for which the Department of Justice and Attorney-General has responsibility for implementation, have been incorporated into the action plan and implementation schedule for *Queensland: an age-friendly community*. It does this by: providing the Public Guardian with discretion to continue to investigate a complaint that an adult was subjected to abuse, neglect or exploitation even after the death of an adult; enhancing safeguards for older people who appoint attorneys under EPAs; and improving financial remedies for principals where attorneys fail to comply with their duties by allowing QCAT to order an attorney to account for any profit made.

Too often we hear stories of elder abuse where someone has basically stolen the funds of an older relative, abused their credit cards or made them sign over their home with a promise to take care of them in the home only for them to find themselves tossed out. Unfortunately, at the Seniors Week Expo in Mackay there are many people seeking information on this topic because they are worried about a neighbour, a friend or somebody from their family who is being taken advantage of. Financial abuse of elders is elder abuse.

Where the attorney, the administrator or the guardian fails to comply with their duties or obligations under guardianship legislation, the bill will provide for further clarification about the powers QCAT can exercise—and additional powers to QCAT—to improve accessibility for redress for victims

of financial abuse. The bill clarifies that QCAT can exercise the same jurisdiction as a court in relation to ordering attorneys, administrators or guardians, including former appointees, to pay compensation for loss caused by a former attorney. These amendments will mean that compensation claims against former appointees may proceed to QCAT, which may be less costly to an applicant than pursuing a claim in court. The bill also provides the Supreme Court and QCAT with an additional power to order that an attorney, guardian or administrator or former appointee account for any profits that the appointee has accrued as a result of the failure to comply with the GAA or a POA in the exercise of power. This is intended as an alternative remedy to an action for compensation.

Every day there are hundreds of dedicated carers looking after adults who can no longer live independently. They do an outstanding job giving our vulnerable adults dignity and a sound quality of life. A paid carer for an adult is defined by the guardianship legislation to mean someone who performs services for their adult's care; and receives remuneration from any source for the services, other than a government carer payment or another benefit, for providing home care for the adult or remuneration attributable to the principle that damages may be awarded by a court for voluntary services performed for the adult's care.

The explanatory notes state—

Clause 12 amends section 16 ... to expressly provide that a person who has agreed to a proposed appointment as a guardian or administrator for an adult must advise the tribunal before it makes an order appointing the person whether he or she is, or has ever been a paid carer for the adult.

These amendments are not intended to automatically prevent former paid carers from being appointed as guardians or administrators. Rather, they make it clear that QCAT must consider the extent that a person's status as a former paid carer of an adult may make the person unsuitable for an appointment; for example, if there are conflicts of interest between the person and the adult as a result of the person's past paid carer status. We must look after our vulnerable adults: that is why I commend the bill to the House.