




Speech By
Melissa McMahon

MEMBER FOR MACALISTER

Record of Proceedings, 26 March 2019

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

 **Mrs McMAHON** (Macalister—ALP) (12.23 pm): I rise today to speak in support of the Guardianship and Administration and Other Legislation Amendment Bill 2018. I would like to thank my fellow committee members on the Legal Affairs and Community Safety Committee as well as the committee secretariat. I note that it was under the committee constituted during the 55th Parliament under the stewardship of the member for Stretton that the public briefings and hearing were heard. I thank the former committee chair and committee members, for it is based largely on their work that our committee has made its considerations and reported to the House.

The amendment bill that we speak of today is substantial, and that is because it is based on some significant bodies of work by the Queensland Law Reform Commission and its review into guardianship laws and the 55th Parliament's inquiry into the adequacy of existing financial protections for Queensland seniors. The Queensland Law Reform Commission's review was quite significant, taking five years over two stages, resulting in their report tabled in parliament in 2010. The review, although it did not recommend a complete overhaul of Queensland's existing guardianship system, did make 317 recommendations to improve the system across a range of organisations, mechanisms and relevant pieces of legislation. Many of these recommendations are included in this bill. It should also be noted that, during the QLRC's review, another significant touchstone—the United Nations Convention on the Rights of Persons with Disabilities—came into effect and had a significant influence on the second stage of the review.

With respect to adult guardianship, the bill achieves its objectives in three distinct ways: to focus on contemporary practice and human rights for adults with impaired capacity, to enhance safeguards for adults with impaired capacity within the guardianship system and to improve the efficiency of Queensland's guardianship system or improve the clarity of Queensland's guardianship legislation.

There are 98 clauses contained in this bill, some of quite substantial detail. It is impossible to speak to all of them so I will concentrate on some of the proposed amendments. The first is clause 7. It replaces section 11 'Principles for adults with impaired capacity' with the new section 11, 'Application of presumption of capacity'. This provides clarity around the first of the general principles of the act—the presumption of capacity. All adults in our legal system are presumed to have the capacity to make decisions for themselves on a range of matters. The new section 11 provides guidance on how the act works around this principle when considering adults with a proven impaired capacity. Specifically, the Public Trustee and other administrators clearly have difficulty exercising their role when each decision must be considered from the presumption of capacity. It was recommendation 7-2 of the QLRC review that—

... if the Tribunal or the Supreme Court has appointed a guardian or an administrator for an adult for a matter, the guardian or administrator is not required to apply the presumption that the adult has capacity for that matter.

The remainder of the general principles set out in clause 8 of the bill largely follow the recommendations of the QLRC's review and are to be applied by a person or entity that performs a function or exercises a power under the act. Any person making a decision for an adult on an informal basis must also apply the general principles in making the decision. These principles, originally located in schedule 1 of the act, have now been moved to the front of the act, as argued by Queensland Advocacy Inc. in submissions to the parliamentary committee and also to the original QLRC review, where they stated—

The General Principles should be relocated to the body of the GAA. This will help to elevate their status and invigorate their effect. It will give them extra gravity. It will give them the weight they should have. It will impress upon the relevant people that the General Principles must be applied rather than regarded.

While the moving of the general principles may not have been a QLRC recommendation, the placing of these principles at the front of both the Guardianship and Administration Act and the Powers of Attorney Act demonstrates a clear intent by this government—one that echoes the introduction of the Human Rights Act in the previous sitting week. It is a clear declaration. We value all Queenslanders' inherent dignity and worth and understand that their equal and inalienable rights must be recognised and taken into account. This is never more important than when we legislate to protect our most vulnerable Queenslanders. I commend the bill to the House.