




Speech By  
**Stephen Bennett**

**MEMBER FOR BURNETT**

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Record of Proceedings, 26 March 2019

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

 **Mr BENNETT** (Burnett—LNP) (12.14 pm): At the outset I acknowledge that the bill is very technical and complicated in nature, but it is time today that we acknowledge those in our electorates who will benefit from the changes that we are going to make today. I want to mention Gennie Tracey and her sister, Ann, who have been advocating for a long time for changes to the guardianship laws. It is time I also give a shout-out to the public advocates and the public guardians whom we have been dealing with in our office who are doing a great job. They show a lot of empathy and do a lot of good work. We need to remember that what we are doing here today is about those people in our communities who are vulnerable.

I thank all the families who have continued to engage with us. I want to raise concerns with the clarity of some provisions of the bill as well as recommendations 14-13, 14-15 and 15-1 of *A review of Queensland's guardianship laws* by the Queensland Law Reform Commission; the Guidelines for the General Principles; and the Queensland Civil and Administrative Tribunal, which is under-resourced and overworked.

The Guardianship and Administration and Other Legislation Amendment Bill 2017 was introduced on 5 September 2017 and referred to the Legal Affairs and Community Safety Committee. Prior to the 2017 state election, the committee received submissions from stakeholders. The 2017 bill lapsed when the 2017 state election was called. The Guardianship and Administration and Other Legislation Amendment Bill 2018 is substantially the same as the 2017 bill with only minor changes to address drafting issues relating to healthcare principles. It will ensure a consistent approach to the authorisation of conflict transactions for administrators and attorneys. That addresses a recommendation made by the Queensland Law Society in its public briefing to the committee last year.

Like the 2017 bill, this bill amends Queensland's guardianship legislation—that is, the Guardianship and Administration Act 2000, the Powers of Attorney Act 1998 and the Public Guardian Act 2014 to provide a focus on contemporary practice and human rights for adults with impaired capacity; improve safeguards for adults with impaired capacity in the guardianship system; and improve the operational efficiency and clarity of our guardianship legislation.

Like the 2017 bill, this bill also implements a number of recommendations arising from the 2010 report of the Queensland Law Reform Commission, *A review of Queensland's guardianship laws*, which was tabled on 12 November 2010. I note previous submitters to the committee's inquiry raised some good points, generally accepting that many of the objectives are met with sections relating to health matters, decision-making processes and conflict of interest in financial matters. Several even stated they believe that the Queensland legislation is probably the best in Australia and the amendments will improve it further. However, there is one issue that has caused considerable difficulty that has not been addressed.

Submitters who have been making representations to the government over many years raised concerns about the lack of recognition of the legal status under the Queensland guardianship model of the informal substitute decision-maker trying to ensure the implementation of the express wishes of a person with impaired capacity, particularly with communication difficulties. This matter arises continually in four sectors: energy companies, telecommunications, financial institutions and health insurance, including Medicare. These issues are growing in urgency with the implementation of the NDIS and the need for people with impaired capacity to establish a relationship as consumers in their own right living in accommodation independent from their families.

In 2010 the Queensland Law Reform Commission delivered a report entitled *A review of Queensland's guardianship laws*. The review contained 317 recommendations. The previous Bligh government developed an initial response but no recommendations were implemented. In 2012 the LNP enacted the recommendations 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 functions 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.

I want to focus my contribution on amendments to 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 clarity of guardianship legislation. There are no proposals contained in this bill that the LNP government has previously rejected. I wish to reflect on some stakeholder views and recommendations of the Public Guardian and Public Trustee.

The bill implements recommendation 14-14 of the review to provide clarity around when QCAT may make an order removing the Public Guardian if another appropriate person exists. The bill does not implement recommendations 14-13 and 14-15 to provide a similar process for the Public Trustee, as I mentioned earlier. The Public Guardian stated—

It is unclear 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.

The bill broadens the 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 they stated, 'We propose sharing protocols be introduced to avoid the coroner missing information or duplication of investigations.'

When addressing the powers of guardians and administrators, there were concerns raised 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. Others also believe 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. We agreed to these previously and we know that will work in our electorates.

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. A number of individuals raised concerns about QCAT's handling of guardianship matters and the overall operation of the Public Trustee. I am sure we have all had advocacy on behalf of people dealing with the Public Trustee. As I did earlier, I give a shout-out to the public advocates who do such a good job.

Queensland Advocacy Inc. 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 are only made aware that an order had been made after the proceedings had been completed. Following the commencement of QCAT in 2009, a statutory review of QCAT commenced in 2012. The Attorney-General stated this review would be completed by the end of 2017. Another statutory review was meant to commence in 2017. This has never occurred. Considering the bill contains a number of provisions relating to QCAT, it would be reasonable for this review to be completed.

We will not be opposing the bill, but there are some areas that raise concern. Queensland's guardianship system actively supports people to make important decisions about their future health, persona and financial needs and seeks to safeguard the rights of adults. As the guardianship system is

involved in decisions that impact every aspect of an adult's life, it is important we have a system that meets their needs and requirements. It has to be asked why it has taken the government so long to implement any of the 317 recommendations of the Queensland Law Reform Commission report that was completed in 2010. The Bligh Labor government, of which the Premier was a senior minister, never implemented any of these recommendations. It has taken this Labor government three years to introduce any of these recommendations. Even then, this bill does not implement all of the 317 recommendations. What has been happening?

Half of the work on implementing the recommendations had already been done previously. The former LNP enacted some recommendations, including retaining and strengthening the independence of the Public Advocate and improving the ability of the Public Advocate to effectively perform its functions. It was also the former LNP that introduced the role of the Public Advocate. 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. However, we are concerned that the bill does not implement recommendations 14-13 and 14-15 to provide a similar process. Plenty has been said on that today.

Caxton Legal Centre raised concerns that, while the bill broadens the power of the Public Guardian to investigate a complaint or allegation after an adult's death, the bill does not provide for information sharing between the Public Guardian and the Coroner. Of course, we get that duplication issue. In closing, it is about time we stop the continual reviews and talkfests and get on with legislative reforms. We need to support QCAT in its funding and resourcing. This should be a priority for all of us.