Parliamentary Committees

Guardianship and Administration and Other Legislation Amendment Bill 2012

Report No. 14

Legal Affairs and Community Safety Committee

November 2012

Legal Affairs and Community Safety Committee

Chair	Mr Ray Hopper MP, Member for Condamine
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	Mrs Sharon Hunter, Principal Research Officer
	Mrs Ali Jarro, Principal Research Officer
	Ms Kelli Longworth, Principal Research Officer
	Mrs Gail Easton, Executive Assistant
Technical Scrutiny Secretariat	Ms Renée Easten, Research Director
	Ms Marissa Ker, Principal Research Officer
	Ms Tamara Vitale, Executive Assistant
Contact details	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7307
Fax	+61 7 3406 7070
Email	lacsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/lacsc

Acknowledgements

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Abbreviations

Attorney-General	Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Bill	Guardianship and Administration and Other Legislation Amendment Bill 2012
Committee	Legal Affairs and Community Safety Committee
Department	Department of Justice and Attorney-General
ETU	Electrical Trades Union
QCAT	Queensland Civil and Administrative Tribunal
QCAT Act	*Queensland Civil and Administrative Tribunal Act 2009*
QLRC	Queensland Law Reform Commission

Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's (the Committee) examination of the Guardianship and Administration and Other Legislation Amendment Bill 2012 (the Bill).

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat and the Department of Justice and Attorney-General.

I commend this Report to the House.

Mr Ray Hopper MP

Chair

November 2012

Recommendations

The Guardianship and Administration and Other Legislation Amendment Bill 2012 be passed.

1 Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (the Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Department of Police; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Guardianship and Administration and Other Legislation Amendment Bill 2012 (the Bill) was introduced into the House and referred to the Committee on 11 September 2012. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 6 November 2012.

1.2 Inquiry process

On 14 September 2012, the Committee wrote to the Department of Justice and Attorney-General (the Department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions. The Committee also issued a media release announcing its inquiry.

The Committee was briefed by the Department at a public hearing on 14 September 2012. The Committee is grateful to those officers who attended before the Committee on that date. A transcript of this briefing can be accessed on the Committee's webpage.

The Committee received written advice from the Department and received eight submissions (see **Appendix A**).

1.3 Policy objectives of the Guardianship and Administration and Other Legislation Amendment Bill 2012

As stated by the Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice (Attorney-General) in his introductory speech:

> *The amendments in this bill contribute towards this government's pledge to the people of Queensland to implement cost savings measures and improve efficiency and accountability in the systems and practices in government.*[2]

The Bill is an omnibus Bill and therefore contains a number of unrelated amendments to various Acts. However, the Bill's main objective is to amend the *Guardianship and Administration Act 2000*. As set out in the Explanatory Notes, the changes to the *Guardianship and Administration Act 2000*

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.
[2] *Transcript of Proceedings*, 11 September 2012, page 1804.

will "*provide additional powers to strengthen the independence of the Public Advocate to assist in the performance of systems advocacy*".[3]

Other objectives of the Bill relate to the other Acts which the Bill seeks to amend:

- *the* Electoral Act 1992 *to remove administrative funding for political parties and independent members;*
- *the* Electrical Safety Act 2002 *to remove the statutory 'Commissioner for Electrical Safety' position and replace this with a 'chairperson' role, and to remove the standing committee status of the Electrical Safety Education Committee and the Electrical Equipment Committee from being nominated statutory committees, with a consequential amendment to the* Work Health and Safety Act 2011*;*
- *the* Penalties and Sentences Act 1992 *to exclude an offence under section 33 of the* Bail Act 1980 *from the imposition of the offender levy;*
- *the* Queensland Civil and Administrative Tribunal Act 2009 *to: remove some restrictions on the exercise of stated tribunal's powers; and to enable former judges who are senior or ordinary members to sit as judicial members on a broader range of matters, with consequential amendments to the* Legal Profession Act 2007 *and the* Motor Accident Insurance Act 1994*; and*
- *the* Trustee Companies Act 1968 *to facilitate: voluntary transfers of trustee company business; and compulsory transfers of trustee company business to the Public Trustee of Queensland (with the consent of the Public Trustee of Queensland).*[4]

The Bill also makes some minor and technical amendments to other legislation within the justice portfolio.[5]

The Committee considers the Bill will achieve a number of positive outcomes across the justice portfolio area and therefore makes the following recommendation.

Recommendation 1

The Guardianship and Administration and Other Legislation Amendment Bill 2012 be passed.

[3] Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 1.
[4] Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, pages 1-2.
[5] Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 2.

2 Examination of the Guardianship and Administration and Other Legislation Amendment Bill 2012

2.1 Omnibus nature of the Bill

The Committee has previously expressed concerns in relation to the use of omnibus Bills to amend multiple items of legislation. This Bill amends a number of vastly different and distinctly unrelated Acts of Parliament across a diverse range of policy areas i.e. guardianship and advocacy issues, electoral funding, electrical safety, penalties and sentencing issues and other matters pertaining to the judiciary. It also makes a number of 'minor and consequential amendments'.

The Committee acknowledges that the Bill's short title contains the phrase 'and Other Legislation Amendment Bill' which will alert the Parliament (and others) to the fact that the Bill contains amendments unrelated to the subject area stated in the title of the Bill (in this case Guardianship and Administration).

This was also noted in the submission from the Queensland Law Society:

> *... the title of the Bill accords with fundamental legislative principles by clearly identifying it as an omnibus bill.* [Footnote reference: *By use of the words "… and Other Legislation Amendment Act*."] *Proper identification of the subject matter of an amending Bill is an issue the Society has previously advocated on and would like to commend the Attorney-General and the drafters of this Bill in that respect.*[6]

The Committee's concerns with omnibus Bills relate primarily to Members feeling their ability to vote for or against such a Bill in its entirety, may feel they are limited in their actions. It is possible there are issues when Bills such as this are presented and they may contain a number of unrelated matters and unrelated amendments of varying significance, some of which a Member may agree with and others with which the Member may disagree.

Arguably omnibus Bills may breach the fundamental legislative principle in ss.4(2)(b) of the *Legislative Standards Act 1992* because they fail to have sufficient regard to Parliament, forcing members to vote to support or oppose a Bill in its entirety when that (omnibus) Bill may contain a number of significant unrelated amendments to existing Acts that would more appropriately have been presented in topic-specific stand-alone Bills.

The Committee considers that the amendments to the range of Acts contained in the Bill, while diverse, are relatively non-controversial and would not appear to constrain Member's consideration of the Bill when debate occurs in the House.

The following parts of section 2, discusses the issues raised during the Committee's examination of the Bill, set out in the order they appear in the Bill.

2.2 *Guardianship and Administration Act 2000*

Overview

As set out in the Explanatory Notes, the Bill "*implements the Liberal National Party's pre-election commitment to draft legislative amendments to install the independent Public Advocate as a statutory authority*".[7]

[6] Queensland Law Society, Submission No. 4. Page 1.

[7] Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 2.

The Department provided additional information in a letter to the Committee dated 13 September 2012 concerning the proposed changes to the *Guardianship and Administration Act 2000*. The Committee notes, in particular, the following:

> *The Public Advocate is already an independent statutory officer established under the* Guardianship and Administration Act 2000 *(Guardianship Act) and is appointed by the Governor in Council. On 13 August 2012, Ms Jodie Cook commenced her term of appointment as the Public Advocate.*
>
> *The Adult Guardian is the other independent statutory officer established under the Guardianship Act. Both the Public Advocate and the Adult Guardian are integral to the guardianship system but they have separate and distinct roles. The guardianship system aims to protect the rights and interests of adults with impaired capacity. While the Adult Guardian's main function is focussed on the advocacy for, and protection of, individual adults who have impaired capacity from neglect, exploitation or abuse, the Public Advocate performs the function of systems advocacy.*
>
> *Systems advocacy involves exploring patterns of problems, gaps and needs in systems and suggesting workable solutions to government. It is not involved with individual advocacy but individual matters may help inform systemic issues. The focus is on influencing and changing legislation, policy or programs to better meet the needs of adults with impaired decision-making capacity.*
>
> *Queensland is the only jurisdiction where there is a separate statutory officer tasked with the function of systems advocacy. For most other jurisdictions, except New South Wales and the Northern Territory, one body performs the function of systemic advocacy, as well as guardianship, investigations and individual advocacy (which in Queensland is performed by the Adult Guardian). New South Wales and the Northern Territory do not have a body which performs systemic advocacy, although New South Wales is considering establishing this function and whether it should be a separate office.*
>
> *…*
>
> *Given the Public Advocate is already established as an independent statutory officer, the Bill strengthens the independence and role of the Public Advocate by giving the Public Advocate additional powers to effectively perform its systems advocacy role. The additional powers, based upon the recommendations of the Queensland Law Reform Commission in their final report:* A Review of Queensland's Guardianship Laws*, tabled in Parliament on 12 November 2010, include the powers to:*
>
> - *provide a report at any time to the Minister on a systemic issue, which must be tabled in Parliament;*
> - *require access to information or documents about systems advocacy in a person's control or custody, including personal and statistical information; and*
> - *include a penalty if a person does not comply with a notice requiring information to be given under the new provisions, unless they have a reasonable excuse.*
>
> *…*
>
> *The Bill includes provisions to protect the confidentiality of any personal information obtained by the Public Advocate and to also protect a person who has provided information in accordance with the new power from liability for giving the information.*[8]

[8] Letter from the Department of Justice and Attorney-General, 13 September 2012, pages 2-3.

In relation to the power to require access to information or documents, at the public briefing on the Bill, Mr Terry Ryan, Acting Director-General, Department of Justice and Attorney-General, explained as follows:

> *For the Public Advocate to be able to carry out its systems advocacy function effectively, it needs to have access to personal and statistical information from a range of sources so that analysis of the systems and suggested solutions are well informed and accurate. The Public Advocate currently does not have a right to access information from an individual or agency and relies on information or material that is already in the public domain or information or material that is provided voluntarily.*
>
> *Where a person or agency does not provide this information or there is persistent noncooperation from a person or agency, the Public Advocate is frustrated from carrying out its important and valuable role. Under section 183 of the Guardianship Act, the Adult Guardian has broad investigation powers that authorise the Adult Guardian to access all information necessary to investigate a complaint or allegation. These broad investigation powers are required so the Adult Guardian can take action to protect the rights and interests of adults with impaired capacity from neglect, abuse or exploitation.*
>
> *The Queensland Law Reform Commission in its review of the guardianship system considered whether the systems advocate should also be given a similar right-to-information power. The QLRC's terms of reference were based on the assumption that at that stage the Public Advocate would be amalgamated with the office of the Adult Guardian so its recommendations referred to the systems advocacy role as it would have been performed by the Adult Guardian. That policy has shifted and the current government's election commitment is to maintain the independence of the Public Advocate.*
>
> *The QLRC's 2010 report was a review of Queensland's guardianship laws. The QLRC recommended that the systems advocate should be given a right to request information necessary to carry out its functions. It further recommended there should be a sanction against the person for noncompliance with a request for information. The QLRC also recommended that the systems advocate be given an additional power to prepare and provide a report at any time to the minister responsible for the guardianship act about a systemic issue it has a significant concern about. The minister is required to table the report in the parliament.* [9]

Historical Background

Queensland's Public Advocate is an independent statutory officer responsible for systemic advocacy on behalf of adults with impaired decision-making capacity. This position differs from the Adult Guardian, also an independent statutory officer, who primarily acts to protect the rights and interests of adults with impaired capacity.

The Office of the Public Advocate was established in Queensland in response to a recommendation by the Queensland Law Reform Commission (QLRC) in its 1996 report titled '*Assisted and Substituted Decisions: Decision-making by and for people with a decision-making disability*' (QLRC 1996 Report). The QLRC 1996 Report noted that Queensland was the only state or territory in Australia that did not have "*a comprehensive legislative scheme concerning decision-making by and for people with a decision-making disability*".[10] In the QLRC 1996 Report, the QLRC recommended the establishment of

[9] Transcript of Public Briefing, 14 September 2012, pages 1-2.

[10] Queensland Law Reform Commission, *Assisted and Substituted Decisions: Decision-making by and for people with a decision-making disability*, Chapter 12, page 410.

two independent statutory officers: the Public Advocate and the Adult Guardian.[11] It considered that a Public Advocate was needed in Queensland in light of such matters as the Townsville General Hospital Psychiatric Unit (Ward 10B) Inquiry and the Criminal Justice Commission investigation of the Basil Stafford Centre.[12] Consequently, the positions of the Public Advocate and the Adult Guardian were established in July 2000 under the *Guardianship and Administration Act 2000* (Qld).

During 2008-2009, an independent review, known as the Webbe-Weller Review (Part A Report and Part B Report) investigated 459 Queensland Government bodies to, amongst other things, identify which ones were working efficiently and which should be abolished. The Review considered a number of submissions, including a submission from the then Department of Justice and Attorney-General. In its submission, the then Department of Justice and Attorney-General argued against the retention of the Office of the Public Advocate on the ground that the Public Advocate had insufficient access to the information necessary to meet its objectives.[13] The Webbe-Weller Review concluded that "*the Public Advocate should be abolished and its functions transferred to the Adult Guardian*" unless the QLRC determined otherwise in its then pending review of Queensland's guardianship legislation.[14]

In April 2009, the then Labor Government issued an official response to the Webbe-Weller Review in a document titled '*Government Response to the Report; Brokering Balance: A Public Interest Map for Queensland Government Bodies – An Independent Review of Queensland Government Boards, Committees and Statutory Authorities'* (2009 Bligh Government Response). In the 2009 Bligh Government Response, the Bligh Government accepted the recommendation relating to the Public Advocate and noted that the recommendation was consistent with the position in some other Australian jurisdictions.[15] The legislative changes necessary to implement this decision were not, however, made to the *Guardianship and Administration Act 2000* (Qld) at that time.

Later in 2009, the QLRC published a '*Review of Queensland's Guardianship Laws Discussion Paper*' (QLRC 2009 Discussion Paper) which noted:

> *Although the guardianship legislation in all other Australian jurisdictions establishes a body with similar functions and powers to the Queensland Adult Guardian, … no other Australian jurisdiction includes, as part of its guardianship system, a body [like the Queensland Office of Public Advocate] with the sole function of systemic advocacy ...*[16]

The QLRC 2009 Discussion Paper also considered, amongst other things, the issue of the separation of the roles of the Public Advocate and the Adult Guardian.[17] The QLRC's preliminary view was that the position of the Public Advocate should not be abolished and its systemic advocacy function should not be transferred to the Adult Guardian.[18] The QLRC warned of a possible downgrading of the function of systemic advocacy if the position of the Public Advocate was abolished. The QLRC was also concerned that a conflict of interest may potentially occur if systemic issues arose relating to the

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[11] Queensland Law Reform Commission, *Assisted and Substituted Decisions: Decision-making by and for people with a decision-making disability*, Chapter 12, page 432.

[12] Queensland Law Reform Commission, *Assisted and Substituted Decisions: Decision-making by and for people with a decision-making disability*, Chapter 12, page 421.

[13] Webbe-Weller Review, Part B Report, page 142.

[14] Webbe-Weller Review, Part B Report, page 143.

[15] *Government Response to the Report; Brokering Balance: A Public Interest Map for Queensland Government Bodies – An Independent Review of Queensland Government Boards, Committees and Statutory Authorities*, page 31.

[16] *Review of Queensland's Guardianship Laws Discussion Paper*, Volume 2, page 194.

[17] *Review of Queensland's Guardianship Laws Discussion Paper*, Volume 2, pages 194-199.

[18] *Review of Queensland's Guardianship Laws Discussion Paper*, Volume 2, pages 205-206.

services provided by the Adult Guardian because it would be the Adult Guardian who would be responsible for advocating for the improvement of such services.[19]

The QLRC's Terms of Reference were subsequently limited to advising on how to maintain an independent systemic advocacy role upon the transfer of the Public Advocate's powers to the Adult Guardian rather than reporting on the adequacy of the Public Advocate's role and functions.

In September 2010, the QLRC issued its four volume report titled '*A Review of Queensland's Guardianship Laws*' (QLRC 2010 Review). The QLRC 2010 Review included recommendations that the Adult Guardian, as the systems advocate (given that the Public Advocate's powers as systems advocate were expected to be transferred to the Adult Guardian):

- *may, at any time, prepare a report to the Minister on a systemic issue and the Minister must table a copy of the report in the Legislative Assembly (Recommendation 24-2);*
- *should be given the power to require from an agency, or a person who has the custody or control of information or documents, information and access to documents about certain listed issues (Recommendation 24-5) and that sanctions for non-compliance be applicable (Recommendation 24-7).*[20]

The Government Response was tabled in October 2011.[21] Relevantly, in the Government's Response, the then Government determined that the function of systems advocacy would be transferred from the Office of the Public Advocate to the Office of the Adult Guardian.[22]

However, in February 2012, there was what could be considered a dramatic turn in events immediately prior to the 2012 Queensland state election. The then Attorney-General, the Honourable Paul Lucas MP announced at the "eleventh hour"[23], that the Government had decided to retain the Office of the Public Advocate as a "*separate, independent entity*" and co-locate it with other similar agencies to reduce costs.[24] The decision was made after the former Attorney-General met with stakeholders in December 2011, and it followed a number of articles in the *Courier Mail*[25]; an e-petition titled 'Save our Advocate – restore the Office of the Public Advocate' sponsored by the Independent member, Mr Peter Wellington MP (who is also a member of this Committee); and a "Save our Advocate" twitter campaign.

Submissions

Of the eight submissions received, four submissions included substantive comments about the specific amendments made by the Bill to the *Guardianship and Administration Act 2000* (Qld) (*i.e.* Part 2 of the Bill). Overall, the Committee notes that the comments in relation to Part 2 of the Bill are favourable and in support of the Bill. No controversial issues concerning Part 2 of the Bill were noted in the submissions.

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19 See *Review of Queensland's Guardianship Laws Discussion Paper*, Volume 2, page 205.

20 *A Review of Queensland's Guardianship Laws*, Volume 4, Chapter 24, pages 258-259.

21 Queensland Government initial response to the Queensland Law Reform Commission's Report: A Review of Queensland's Guardianship Laws.

22 2011 Bligh Government Response, pages 51-52.

23 Lucas a star for saving watchdog', *Courier Mail*, 29 February 2012.

24 Queensland Labor Government Media Statement, Independent role of the Office of the Public Advocate to continue, 27 February 2012.

25 'Plea to save Public Advocate' (Letter to the Editor) (K Wade); *Courier Mail*, 2 October 2011; 'Public advocate remains undefended', *Courier Mail*, 7 December 2011; Advocate escapes the axe', *Courier Mail*, 27 February 2012; 'Watchdog reprieve welcomed'; *Courier Mail*, 28 February 2012; and 'Lucas a star for saving watchdog', *Courier Mail*, 29 February 2012.

General Comments

Three submissions specifically mention being supportive of the relevant provisions in the Bill that relate to the strengthening of the role and function of the Public Advocate.[26] In his submission, the Public Trustee also notes its full support of the provisions relating to the independence of the Public Advocate.[27]

Right to provide report to the Minister (proposed s209A)

In relation to the proposed new right to report about a systemic matter that the Public Advocate may make to the Minister under proposed clause 209A, the Queensland Law Society commented as follows:

> *The Society supports the clarification set out in clause 209A(2) that a report must not contain confidential information of an adult with impaired capacity. The Society also supports in principle the insertion of clause 209A(3), which allows people's submissions* [Footnote reference: Which may be made as a result of the Public Advocate's proposal to include information which is adverse to that person – see clause 209A(3)] *to be fairly set out in the Public Advocate's report.*[28]

The National Seniors Australia is also supportive of this proposed new power for the Public Advocate:

> *National Seniors also believes that the additional power given to the Public Advocate to prepare and present reports on systemic issues to parliament will ensure political awareness of emerging issues and be conducive to good practice.*[29]

Right to information (proposed s210A)

In relation to the provisions concerning the Public Advocate's right to information, the Endeavour Foundation noted:

> *The Endeavour Foundation is satisfied, in good faith, that the detail publicly provided within the Bill allow for a balance of protections for individuals whose information may be required by the Public Advocate and organisations who will provide this information.*[30]

In its submission, the National Seniors Australia were also supportive of these provisions:

> *National Seniors supports the amendment, which gives the Public Advocate authorisation to access information regarding a client to better inform their systems advocacy work. This amendment places greater accountability on the service provider to provide information regarding a client of the Public Advocate, consequently enhancing the capacity of the Public Advocate to ensure system wide processes result in improved well-being and security for clients while also improving the standards and performance of the service provider.* [31]

[26] Public Trustee of Queensland, Submission No. 6, page 1; Endeavour Foundation, Submission No. 7, page 1; and National Seniors Australia, Submission No. 8, page 1.
[27] Public Trustee of Queensland, Submission No. 6, page 1.
[28] Queensland Law Society, Submission No. 4, page 2.
[29] National Seniors Australia, Submission No. 8, pages 1-2.
[30] Endeavour Foundation, Submission No. 7, page 1.
[31] National Seniors Australia, Submission No. 8, page 1.

The National Seniors Australia did, however, highlight the following reservations about the use of this power:

> *However, we recommend that confidentiality of client information be maintained and information be used only for purposes as legislated for within the Act. Additionally, it is important to evaluate the effectiveness and efficiency of the amendments in delivering better outcomes.*[32]

In response to this, the Department of Justice and Attorney-General made the following comments:

> *Section 249A of the* Guardianship and Administration Act 2000 *currently prohibits the use of confidential information (which includes personal information) unless it is in accordance with the specific uses as detailed in section 249. Also, the amendments include safeguards to protect the use and publication of confidential information – for example, the Bill also inserts clause 210B that makes it unlawful for the Public Advocate to publish information leading to the identification of a person without a reasonable excuse.*
>
> *The amendments will provide an immediate practical benefit by allowing the Public Advocate to access information it does not currently have access to. The amendments are consistent with the recommendations made by the Queensland Law Reform Commission in their 2010 review of '*A review of Queensland's Guardianship Laws*' and should result in better systemic review outcomes.*
>
> *The Public Advocate supports the amendments. If the Public Advocate becomes concerned about the effectiveness and/or efficiency of the amendments in delivering better outcomes the Public Advocate is able to raise these concerns with the Attorney-General as responsible Minister in any report under proposed new section 209A of the* Guardianship and Administration Act 2000*, its annual report under existing section 220 of the* Guardianship and Administration Act 2000 *or otherwise.*[33]

In terms of whether any changes are required to the Bill based on the National Seniors Australia's comments, the Department of Justice and Attorney-General noted:

> *No amendment is required as sections 249A and clause 210B adequately address the issue of confidentiality.*[34]

The Committee goes into more detail on this aspect of the Bill in Section 3 of this Report (Fundamental Legislative Principles) however it is satisfied with the Department's response.

The Queensland Law Society also noted that it supports the practical examples of what constitutes a reasonable excuse for non-compliance with the notice in clause 210A and the insertion of clause 248B (*Protection from liability for giving information*).[35]

Committee comment

The Committee acknowledges the importance of the role of the Public Advocate and notes the recent history concerning the existence and role of the Public Advocate (see above discussion).

The Committee is pleased that the Bill proposes to implement a number of key recommendations of the QLRC 2010 Review in relation to the Public Advocate.

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[32] National Seniors Australia, Submission No. 8, page 2.

[33] Letter from the Department of Justice and Attorney-General, 10 October 2012, pages 3-4.

[34] Letter from the Department of Justice and Attorney-General, 10 October 2012, page 3.

[35] Queensland Law Society, Submission No. 4, page 2.

In particular, the Committee notes that the Bill intends to strengthen the powers of the Public Advocate in a number of ways, including:

- providing the Public Advocate with the ability to provide a report, which must not contain confidential information, at any time to the Attorney-General on a systemic issue, which must be tabled in Parliament;
- granting the Public Advocate power to access certain information or documents relating to systems advocacy in a person's custody or control, including personal and statistical information; and
- providing a penalty for non-compliance if a person or agency does not comply with an information request made by the Public Advocate under the new provisions, unless they have a reasonable excuse.

The Committee also notes the Bill has gathered general support with positive submissions being received relating to the changes to the Public Advocate's powers. No group has recommended that the role of the Public Advocate remain unchanged.

In conclusion, the Committee supports all of the proposals in the Bill which relate to the Public Advocate and considers this to be a positive step forward for all Queenslanders who are in the unfortunate position to have impaired decision making capacity.

2.3 *Electoral Act 1992*

Part 3 (clauses 11-16) of the Bill amends the *Electoral Act 1992* to remove administrative funding for political parties and independent members. Administrative funding, that is, expenditure for administrative and operating expenses, is provided for in part 11, division 5 of the Act.

As was explained to the Committee at the public briefing:

> *The bill also amends the* Electoral Act 1992*. It removes administrative funding for political parties and Independent members as provided for under part 11, division 5 of the* Electoral Act*. This funding was introduced in 2011 by the* Electoral Reform and Accountability Amendment Act*. On 2 August 2012 the Hon. Tim Nicholls MP, Treasurer and Minister for Trade, announced the government's intention to remove this funding. Payments for the period 1 July to 31 December 2012 will be the last administrative funding payments to political parties and Independent members. The Independent members will have a right to claim and be paid after commencement of the provisions for administrative expenditure during the period from 1 July to 31 December 2012.*[36]

The Bill does not affect the entitlement of registered political parties and candidates to claim election funding which is calculated as a proportion of their actual electoral expenditure for an election.[37] Therefore, public funding of electoral expenditure provided for under part 11, division 4 of the Act remains unaffected by the Bill.

As noted above, administrative funding was introduced in 2011 under the *Electoral Reform and Accountability Amendment Act 2011*. Further information about the payment of this funding was included in the Explanatory Notes:

> *For political parties, it is paid twice a year, before 31 January, for the period from 1 January to 30 June; and before 31 July, for the period from 1 July to 31 December. Independent members are also entitled to administrative funding. The initial administrative funding for a six month period was a maximum of $20,000 for each elected member (who received at least 4% of the formal first preference votes at the last general election). This amount is*

[36] Transcript of Public Briefing, 14 September 2012, page 2.

[37] Letter from the Department of Justice and Attorney-General, 19 September 2012.

> *increased annually on 1 July for movements in the consumer price index. Independent members are entitled to claim for actual administrative expenditure up to this amount within three months of the end of the relevant period.* [38]

If passed, the effect of the Bill will be that payments for the period 1 July to 31 December 2012 will be the last administrative funding payments to political parties and independent members. As independent members claim after the end of the relevant period, the Bill includes a transitional provision which allows those members to claim for that period despite the repeal of the provisions.

Committee comment

The Committee is not aware of any issues associated with this aspect of the Bill. Indeed, the Committee did not receive any submissions in relation to the removal of this funding. In relation to cost saving strategies implemented by the current Government, the Committee considers that this amendment clearly shows that the Government is leading by example.

The removal of these provisions will ensure that funds are directed to more appropriate areas and will achieve greater outcomes for the people of Queensland. The Committee commends the Government for taking this step and notes the comments from the Attorney-General at the recent Estimates hearing in this regard:

> *… the taxpayer was forking out $2 million a year for the Labor Party, $2 million a year for the Liberal National Party. You would think that an argument could be raised that, as the government has won the election, it would benefit us by having the administration funding available, because the Labor Party, with their reduction in members, means that they get about $240,000 a year administration funding whereas the Liberal National Party will still receive $1 million.*
>
> *We have cut it. We have completely cut it. So for the next four years, that is a direct hit to political parties, because the taxpayer should never have had to fork out administration funding to make sure that the Labor Party or the LNP could walk in and turn on the coffee machine or the espresso machine on in the morning. So I think that the government has made the right decision.*
>
> *In terms of the savings, it is quite easy to work out when a political party is receiving up to $2 million a year. The frightening part of this legislation was not that it was just wrong—and we, of course, opposed it at the time—but the political parties waltzed down to the ECQ every six months and they got a cheque for $1 million and then that administration money was not subject to any level of accountability. The political parties spent the $2 million a year on what they wanted to spend it on. We think that politics is above that. That is why in the first six months of this government we abolished the administration funding to political parties, saving for the 2013-14 period up to $3 million—about $2.8 million—in the 2013-14 period.*
>
> *I think this is a great win for Queensland. It has allowed us the capacity to do other things in the Department of Justice and Attorney-General. It also restores some element of accountability into political parties—that the taxpayer should not be funding the administration of political parties.*[39]

2.4 *Electrical Safety Act 2002*

Part 4 (clauses 17-32) of the Bill amends the *Electrical Safety Act 2002* to replace the statutory Commissioner for Electrical Safety with the position of Chairperson and to remove the standing

[38] Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, pages 2-3.
[39] Estimates Transcript (Proof)—Legal Affairs and Community Safety Committee, 11 October 2012, page 10.

committee's status of the Electrical Safety Education Committee and the Electrical Equipment Committee.

As was explained to the Committee at the public briefing:

> *The proposed amendments recognise the diminishing role for the statutory office of commissioner and the two named committees and delivers significant cost savings while continuing to support electrical safety outcomes. A related consequential amendment to the Work Health and Safety Act is also required to align an uncommenced provision that would otherwise seek to amend a provision of the Electrical Safety Act which is being omitted by this bill.*[40]

The related consequential amendment to the *Work Health and Safety Act 2011* (Part 10 of the Bill) is discussed in part 2.9 of this Report.

Further information about these proposed changes were contained in a written briefing provided by the Department:

> *The statutory position of Electrical Safety Commissioner was established under the* Electrical Safety Act 2002 *(the ES Act) to provide advice to the Minister on all matters affecting electrical safety and to manage the activities of the Electrical Safety Board and to act as Chairperson for the Board and its Committees.*
>
> *These Committees are:*
>
> - *the Electrical Licensing Committee, which provides advice to the Board on matters relating to electrical licensing and is also the body responsible for review of decisions of the regulator and the undertaking of disciplinary action against electrical licence holders.*
> - *The Electrical Safety Education Committee, which provides advice and recommendations to the Board on the promotion of electrical safety in workplaces and the broader community; and*
> - *The Electrical Equipment Committee, which provides advice to the Board on matters related to the safety and energy efficiency of electrical equipment.*
>
> *In the decade since the commencement of the ES Act, the role and functions of the Electrical Safety Board and three statutory standing committees has been well integrated and the Commissioner for Electrical Safety has overseen any necessary fine tuning of the legislation resulting in a diminishing workload for the statutory Commissioner position.*
>
> *Many functions of two of the three statutory standing committees under the ES Act (the Electrical Safety Education and Electrical Equipment committees) have been increasingly addressed as part of the Community Engagement and Equipment Safety functions within the Electrical Safety Office (ESO) in the Department of Justice and Attorney-General.*
>
> *Furthermore, a range of electrical safety matters including safety education and safety of electrical equipment are also addressed as part of the department's representation on the Electrical Regulatory Authorities Council, a body corporate comprised of representatives from electrical safety regulators in all Australian jurisdictions and New Zealand.*
>
> *Proposed amendments to the ES Act seek to remove: (i) the statutory 'Commissioner for Electrical Safety' position and replace this with a 'Chairperson', based on the model contained in the* Work Health and Safety Act 2011 *(the WHS Act); and (ii) the standing committee status of the Electrical Safety Education Committee and the Electrical Equipment Committee, with the named committees to be removed from the legislation.*

[40] Transcript of Public Briefing, 14 September 2012, page 2.

> *No reduction to electrical safety outcomes is expected, as under existing 'advisory committee' provisions, these committees may be subsequently established by the Minister as advisory committees as and when required.*[41]

In relation to the savings associated with these amendments, the Explanatory Notes provide:

> *Under current Electrical Safety Act provisions, the person appointed as Commissioner is entitled to the salary and allowances decided by the Governor in Council, who may set conditions of employment equivalent to those of a person appointed at a comparable level under the* Public Service Act 2008*. The appointee must enter into a written contract of employment with the Chief Executive. The employment package currently includes a CBD based office and car park and payment of telephone charges.*
>
> *The term of the Commissioner's appointment is for not longer than five years. The current Commissioner's term will expire on 4 November 2012 and he has indicated he will not be seeking reappointment. It is therefore appropriate to consider alternatives to the statutory Commissioner position and associated standing committee arrangements.*
>
> *…*
>
> *Under the current Electrical Safety Act, the safety education and equipment committees consist of a chairperson (currently the Commissioner) and at least six others and must meet a minimum of four times annually, though may meet more frequently. There are significant expenses (especially travel) associated with safety education and equipment committee meetings.*
>
> *…*
>
> *In terms of workload in a revised Chairperson role, it is estimated that the functions could be discharged on the basis of 1-2 days per licensing committee and Board meeting with no requirement for dedicated office accommodation.*[42]

Of the two submissions received by the Committee in relation to this aspect of the Bill, only one supported the proposed changes.

In supporting the Bill, the Electrical Contractors Association (also to be read as that of Master Electricians Australia) stated:

> *The ECA supports the government's move to improve efficiency and accountability in the systems and practices of government. We are optimistic that the proposed changes to the* Electrical Safety Act 2002 *contained in the* [Bill] *will be a positive step forward in this regard. The ECA is also confident that the proposed amendments to the* Electrical Safety Act 2002 *will not reduce the inspectorate's capacity to respond to incidents and complaints nor in any other way compromise the electrical safety of electrical workers or the wider Queensland public. We anticipate that the resources previously dedicated to maintaining the position of a commissioner and permanent committees can then be utilised to fund activities specifically targeted at maximising electrical safety, such as education, training and public awareness campaigns.*[43]

In contrast, the Electrical Trades Union (ETU) stated that it is "*appalling, and is extremely saddened, that the Minister for Justice would introduce the [Bill] that removes the position of Commissioner for Electrical Safety and two standing committees … .*'[44] The ETU "*urges the Government to retain the*

[41] Letter from the Department of Justice and Attorney-General, 13 September 2012, page 4.
[42] Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, pages 3-5.
[43] Electrical Contractors Association, Submission No 2.
[44] Electrical Trades Union of Employees, Submission No. 3, page 7.

position of "Commissioner of Electrical Safety" and the two Statutory Committees" and to remove this Part of the Bill.[45]

In support of its position, the ETU provided some background information on the introduction of the *Electrical Safety Act 2002*, which included reference to a Taskforce Report and Ministerial review, both published in 2001.[46] The arguments put forward by the ETU relate to matters of independence and appointment, the extent of any 'potential savings' as well any impact on ongoing safety. The ETU also queried the lack of industry consultation in relation to the development of the Bill.

In relation to matters of independence, the ETU stated:

> *The Commissioner for Electrical Safety is an independent statutory position. The Commissioner's role includes Chairing the Board and the three Committees set up in the legislation. This means that there is consistency and a free exchange of information between these bodies.*
>
> *The ETU believes that it is a serious step (and contrary to the recommendations of the 2001 Task Force) to remove the statutory position of Commissioner for Electrical Safety and appoint instead a Chairperson for the Electrical Safety Board and a separate Chairperson for the Electrical Licensing Committee. Removing the position of Commissioner for Electrical Safety means that instead of having a statutory officer setting the agenda for the committees and liaising between the various stakeholders, the Department and the Minister, the Department itself will be setting the agenda.*
>
> *As it currently stands, if, for example, an electrical contractor or consumer can contact the Commissioner for Electrical Safety and he can raise issues directly with the Department. This role will be lost with the removal of that position.*[47]

In responding to the ETU's submission regarding matters of independence, the Department referred to the role and functions of the Commissioner and Electrical Safety Board. The Department also confirmed that persons will still be able to raise issues independently of the Department and that there will continue to be consistency and information exchange.

> *There is no direct accountability relationship between the Electrical Safety Board, or the Commissioner, and the Department; however, the priorities of the Department (as Queensland's electrical safety regulator) are driven by the five year Electrical Safety Plan for Queensland developed by the Board.*
>
> *This plan outlines the high level strategies, goals and targets to support improvements in electrical safety in Queensland over a five year period. It is supported by the business plan of the Department, which describes the annual activities and milestones to be undertaken. The Department's business plan priorities the implementation of five year strategies, taking into account available resources.*
>
> *The statutory role of Commissioner for Electrical Safety was created in 2002 to manage the transition into new electrical safety arrangements created under the then new* Electrical Safety Act 2002*. Functions of the role include managing the activities of the Electrical Safety Board and committees (independent bodies), and acting in an advisory capacity to the Minister.*

[45] Electrical Trades Union of Employees, Submission No. 3, page 7.

[46] *Electrical Safety Taskforce Final Report of a Review of Industry Compliance with Electrical Safety Standards and the Investigation of Serious Electrical Incidents*, April 2001; Queensland Government, Department of Industrial Relations, *Ministerial Review of the Electrical Safety Office, Final Report*, July 2001.

[47] Electrical Trades Union of Employees, Submission No. 3, pages 5-6.

> *The functions of the Chairperson will essentially be the same as those of the Commissioner; including managing the activities of the Electrical Licensing Committee and advisory committees as these committees report to the Board.*
>
> *Any person, whether from the electrical industry or otherwise will continue to be able to raise issues independently of the Department by contacting the Chairperson of the Board or the Minister's office, as is currently the case. This is the model that has been in place for workplace health and safety for some twenty years.*
>
> *The current commissioner does chair the Board and three committees; however, under the Act, the Commissioner is only required to chair the Board and the Electrical Licensing Committee.*
>
> *The proposed amendments do not preclude a single chairperson for the Board and Licensing Committee. Additionally, all committees report to the Board and these bodies are supported by a single secretariat function which will continue to ensure consistency and information exchange between these bodies as appropriate.*[48]

In relation to matters concerning the appointment of the 'Chairperson', the ETU stated:

> *It also appears that the amendment will reduce the level of mandatory qualification for the position of Chairperson for the Electrical Safety Board (in comparison to the mandatory qualifications for the Commissioner for Electrical Safety).*
>
> *Currently the Act requires that to be appointed as the Commissioner for Electrical Safety "*a person must have an electrical trade or qualification and professional experience in electrical safety*"* [Footnote reference: Section 69 of the Electrical Safety Act]*. However, under the proposed amendment, to be appointed the Chairperson of the Electrical Safety Board "a person must have professional experience in the electrical industry".* [Footnote reference: See Clause 20 of the Guardianship and Administration and Other Legislation Amendment Bill 2012]
>
> *This is a significant (and intentional) reduction in the mandatory qualifications for the person appointed to Chair the Electrical Safety Board. Specifically, the Explanatory memorandum states that* "… such an approach would remove the current statutory requirement for the appointee to be a qualified and licensed electrical worker*."* [Footnote reference: Guardianship and Administration and Other Legislation Amendment Bill 2012, page 4][49]

The Committee notes that the eligibility qualifications of the Chairperson of the Electrical Safety Board has been reduced so that it need only be a person with professional experience in the electrical industry. [50] The Department provided the following explanation:

> *The proposed professional electrical industry experience requirement for appointment as chairperson of the Board is a point of difference to the current electrical qualification requirement for appointment as Commissioner.*
>
> *While it is highly likely that a person appointed by the Minister as chairperson of the Board will have an electrical trade or qualification; this variation allows for a broadening of the pool of persons with skills appropriate for the role.*

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48 Letter from the Department of Justice and Attorney-General, 10 October 2012, pages 4-5.

49 Electrical Trades Union of Employees, Submission No. 3, pages 5 6.

50 Guardianship and Administration and Other Legislation Amendment Bill 2012, clause 20. Section 69 of the *Electrical Safety Act 2002* currently provides that the commissioner must have an electrical trade or qualification and professional experience in electrical safety.

> *Ultimately, the Minister must be satisfied under provisions of the Act that the person to be appointed as chairperson (or indeed any member of the board or committee) is suited to the role which includes reporting directly to the Minister.*[51]

The Committee notes that the appointment requirements for the chairperson of the Licensing Committee (this statutory committee is not affected by this Bill) '*mirror those for the former 'commissioner' role, as they are considered appropriate in light of the disciplinary functions performed by the licensing committee*.'[52] In effect, and as noted above, this means that it will be possible under the Act to have separate Chairpersons for the Electrical Safety Board and the Licensing Committee.

In relation to any 'potential savings' and impact on ongoing safety, the ETU submitted:

> *Currently all of the Committees* [Footnote reference: The Electrical Licensing Committee, the Electrical Safety Education Committee and the Electrical Equipment Committee] *that are set up under the Act are standing committees and as such are required to meet at least 4 times a year. The explanatory memorandum states that "*There are significant expenses (especially travel) associated with the … committee meetings*".* [Footnote reference: The Electrical Licensing Committee, the Electrical Safety Education Committee and the Electrical Equipment Committee]
>
> *The ETU is surprised by this assertion. The ETU does not believe that there are "*significant expenses*" associated with the Committee Meetings.*
>
> *For example, the Electrical Equipment committee includes a broad range of industry participants, manufacturers, the Energex Testing Laboratory as well as consumer advocates. It has played an important role in relation to recalls of electrical equipment, testing of electrical equipment, post production auditing and liaising with interstate organisations.*
>
> *Of all of the committee members, the ETU understands that the only costs for the Electrical Equipment Committee are flights from Cairns, Townsville and Rockhampton. There is no payment of travel allowance, there is no overnight accommodation provision, there is no provision of lunch. Given the clear benefits to the community of this committee, the cost of flights (presumably in the order of $1000 per committee meeting) seems more than reasonable.*
>
> *To abolish this Committee as a standing committee, and instead move its functions into the Electrical Safety Board, has the potential to impact negatively on the ongoing safety of electrical equipment in Queensland.*[53]

The Department responded:

> *While the changes deliver savings by cutting costs, they also reflect a proven model which balances the needs of all stakeholders including business, government and the community.*
>
> *These amendments are not expected to result in any reduction in electrical safety outcomes. This view is supported by the submission received by the Committee from the* [Electrical Contractors Association] *which supports the proposed changes and expresses the* [Electrical Contractors Association]*'s confidence that these proposed changes will not compromise the electrical safety of electrical workers or the wider Queensland public.*[54]

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51 Letter from the Department of Justice and Attorney-General, 10 October 2012, pages 5-6.

52 Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 14.

53 Electrical Trades Union, Submission No. 3, pages 6-7.

54 Letter from the Department of Justice and Attorney-General, 10 October 2012, page 6.

In addition, the Committee notes that identified cost savings relate not only to costs associated with dissolution of two of the three Committee Boards, but also with the removal of the statutory office of Commissioner. In particular, the Explanatory Notes provide that the replacement of the Commissioner with the Chairperson '*could be discharged on the basis of 1-2 days per licensing committee and Board meeting with no requirement for dedicated office accommodation*.'[55]

In relation to the submission by ETU that ongoing safety will be impacted through the abolition of, in particular, the Electrical Equipment Committee whose functions will transfer to the Electrical Safety Board, the Department provided the following response:

> *Queensland, through the Electrical Regulatory Authorities Council (ERAC), has played a key role in the development of the new national electrical equipment safety system (EESS) which commences in Queensland on 1 March 2013.*
>
> *The new EESS provides many improvements over the current system, including for industry consultative arrangements in relation to the risk assessment process for the risk level classification of electrical equipment.*
>
> *Additionally, the Electrical Safety Office as Queensland's electrical safety regulator proactively consults widely on electrical equipment safety matters – independent of Electrical Equipment Committee meetings.*
>
> *The activities of the Electrical Equipment Committee and Electrical Safety Education Committee may be continued under existing 'advisory committee' provisions, rather than moving their functions into the work of the Board itself.*
>
> *Accordingly, the proposed removal of the 'standing committee' status of the Electrical Equipment Committee or the Electrical Safety Education Committee is not expected to impact negatively on the ongoing safety of electrical equipment in Queensland.*[56]

In relation to consultation, the ETU stated that it was "*surprised and disappointed that this Bill has been introduced to Parliament without any consultation with the ETU, the Union that represents electrical workers*."[57]

The Explanatory Notes provided:

> *No consultation was undertaken with non-government groups as amendments are in line with established key Government policies to reduce red-tape reduction and cutting back on public sector expenditure. Additionally, these amendments are not expected to result in any reduction in electrical safety outcomes.*[58]

This explanation was reiterated by the Government in the written briefing received by the Committee.[59]

Finally, regarding the ETU's appeal to the Government to remove this part of the Bill, the Department responded:

> *The proposed changes seek to align Board and committee legislative requirements under the* Electrical Safety Act 2002 *with those of the* Work Health and Safety Act 2011*. This model was the subject of these WHS laws which were widely consulted with stakeholders prior to passage in 2011. No adverse comment was recorded regarding the Board and Committees model.*

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55 Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 5.
56 Letter from the Department of Justice and Attorney-General, 10 October 2012, pages 7-8.
57 Electrical Trades Union, Submission No. 3, page 2.
58 Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 9.
59 Letter from the Department of Justice and Attorney-General, 10 October 2012, page 4.

> *This change will result in a contemporary Board and committees' structure matched to the needs of stakeholders and the community while also providing value for government. The proposed changes will achieve substantial ongoing savings to government, while not compromising safety outcomes.*[60]

Committee comment

The Committee has considered the policy objective of the amendments, as set out in the Explanatory Notes and information provided by the Department and is satisfied that these proposed changes will meet the stated policy objectives.

The Committee accepts that persons will still be able to raise issues independently of the Department and that while the appointment requirements of the new 'Chairperson' is set at a lower threshold, this will broaden the pool of persons who may apply while still requiring the Minister to be satisfied as to the suitability of the person who is appointed.

The Committee is also satisfied that matters of ongoing safety have been considered by the Government in proposing these amendments. In particular, the Committee notes that many of the safety functions have already been addressed in the Electrical Safety Office, as part of the Department's representation on the Electrical Regulatory Authorities Council,[61] and that industry and members of the community are represented on the Electrical Safety Board.

Further, if required, it is noted that the affected committees can continue as an advisory committee under the Act.

Finally, while consultation with community bodies is to be encouraged, the Committee acknowledges that the Government gave due consideration to the extent of consultation it should undertake having regard to matters of safety and government policy and considers that matters of safety will not be compromised by the amendments proposed in this Bill.

2.5 *Legal Profession Act 2007*

Part 5 (clauses 33-34) of the Bill amends the *Legal Profession Act 2007* '*to facilitate the use a former Supreme Court judge in relation to tribunal proceedings under that Act*.'[62]

These changes are being made as a consequence of the amendments proposed to the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act). Changes to the QCAT Act are discussed in part 2.7 of this report.

The Committee considers these amendments are necessary to support the changes to the QCAT Act provided for in Part 8 of the Bill.

2.6 *Motor Accident Insurance Act 1994*

Part 6 (clauses 35-36) of the Bill amends the *Motor Accidents Insurance Act 1994* '*to require that the judicial member who constitutes the tribunal for review under section 68 of that Act is to be a Supreme Court judge*.'[63]

This is another consequential amendment of the changes proposed to the QCAT Act discussed in part 2.7 of this report.

Again, the Committee considers these amendments are necessary to support the changes to the QCAT Act.

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60 Letter from the Department of Justice and Attorney-General, 10 October 2012, page 8.

61 Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 4.

62 Letter from the Department of Justice and Attorney-General, 13 September 2012, page 5.

63 Letter from the Department of Justice and Attorney-General, 13 September 2012, page 5.

2.7 *Penalties and Sentences Act 1992*

Part 7 of the Bill amends section 179C of the *Penalties and Sentences Act 1992* which provides for the imposition of the 'offender levy'. The offender levy was inserted in the *Penalties and Sentences Act 1992* by the *Penalties and Sentences and Other Legislation Amendment Act 2012*. That Act received Royal assent on 14 August 2012.

The need for the amendment was explained by the Attorney-General in his introductory speech:

> *… the bill amends the* Penalties and Sentences Act 1992 *to clarify the operation of earlier amendments to the act. Section 179C of the* Penalties and Sentences Act 1992 *provides for the imposition of the offender levy. The offender levy is not intended to apply where the only offence committed includes a breach of bail. Section 179C (6) provides that the section does not apply to an offence under the* Bail Act 1980 *section 29. Consistent with this policy, the bill amends section 179C of the* Penalties and Sentences Act 1992 *to exclude an offence for a breach of bail under section 33 of the* Bail Act 1980 *from the offender levy.*[64]

Clause 38 of the Bill therefore amends section 179C (6) of the *Penalties and Sentences Act 1992* to exclude an offence under section 33 of the *Bail Act 1980* from the offender levy.

The Committee is not aware of any issues regarding this aspect of the Bill. The Committee supports these changes.

2.8 *Queensland Civil and Administrative Tribunal Act 2009*

Part 8 (clauses 39 – 46) of the Bill amends the *Queensland Civil and Administrative Tribunal Act 2009* to '*widen the pool of tribunal members who are able to make orders of a procedural nature and for the use of former judges as judicial members.*'[65]

These amendments were previously included in the lapsed Law Reform Bill 2011, introduced into the 53rd Parliament.

As stated by the Attorney-General in his introductory speech, these amendments:

> *… will improve the operation of the Queensland Civil and Administrative Tribunal by allowing former judges who are senior or ordinary members to sit as judicial members on a broader range of matters and removing some restrictions on the exercise of stated powers.*[66]

Further explanation was provided in the public briefing by the Department:

> *The bill amends the* Queensland Civil and Administrative Tribunal Act 2009*. Opportunities have been identified for improving the operation of the Queensland Civil and Administrative Tribunal, QCAT, by widening the pool of tribunal members who are able to make certain orders of a procedural nature and by allowing for former judges to act as judicial members. The bill provides for powers under sections 52(7), transfer to more appropriate forum; section 59(4), injunctions; and section 65(5), declarations of the act which can currently only be exercised by a judicial member of QCAT to be exercised by legally qualified members of the tribunal.*
>
> *The bill also provides that the powers under sections 61, 62 and 63 of the act to make procedural orders, issue directions and make orders requiring documents to be produced*

[64] Transcript of Proceedings, 11 September 2012, page 1805.
[65] Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 5.
[66] Transcript of Proceedings, 11 September 2012, pages 1805-1806.

> *can be exercised by a member of the tribunal in a proceeding in which he or she is not a member of the tribunal as constituted.*
>
> *The bill also widens the definition of 'judicial member' to enable former judges who are senior or ordinary members of QCAT to hear and decide matters that can only be determined by judicial members. The bill makes consequential amendment to the* Legal Profession Act 2007 *to allow former Supreme Court judges to be used for tribunal proceedings under the act and to the* Motor Accident Insurance Act 1994 *to require that the judicial member who constitutes the tribunal for a review under that act is to be a Supreme Court judge.*[67]

In response to the Committee's invitation to make a submission on the Bill, the President of QCAT stated:

> *I do not think it would be proper for the Tribunal to comment upon Parliamentary matters.*
>
> *That said, I have been seeking the proposed amendments to the* Queensland Civil and Administrative Tribunal Act 2009*, allowing former Judges to sit as Judicial Members on a broader range of matters, since late 2010 and see no impropriety in my strongly supporting of that part of the proposed amendment Bill.*[68]

The National Seniors Australia also made a submission in relation to this aspect of the Bill:

> *National Seniors support the amendments to Section 52 of this Act which widens the pool of tribunal members who are able to make orders of a procedural nature to include legally qualified members, in addition to judicial members, and for the use of former judges as judicial members. Allowing non-judicial members the ability to transfer matters to more appropriate forums will result in more efficient use and application of judicial resources.*
>
> *In its current form, the Act could be interpreted as limiting tribunal members to predominantly legal representatives. National Seniors believes that the incorporation of practitioner skills, experience and qualifications in membership of the tribunal will enhance the quality and consistency of outcomes for a person who uses the tribunal.*
>
> *Adoption of this recommendation would enhance fair, just and effective outcomes for a person who uses the tribunal. This is consistent with the objectives of the Act which express the importance and maintenance of specialist knowledge to better respond to the needs of a person who uses the tribunal.*[69]

In response to the submission by National Seniors Australia, the Department provided that '*under the current provisions of the QCAT Act, membership is not weighted towards legal representatives but must include people who are experts in the jurisdictions which are determined by QCAT.*'[70]

The Department explained:

> *Section 183 of the QCAT Act provides for the appointment of senior and ordinary members to QCAT and states a person is eligible for appointment if they are an Australian lawyer of at least eight or six years standing respectively. Also, a person is eligible if, in the Minister's opinion, the person has the extensive (if a senior member) or special (if an ordinary member) knowledge, expertise or experience relating to a class of matter determined by QCAT. When appointing members to QCAT, the Minister must, amongst other matters, also*

[67] Transcript of Public Briefing, 14 September 2012, page 2.
[68] Queensland Civil and Administrative Tribunal, Submission No. 5.
[69] National Seniors Australia, Submission No. 8.
[70] Letter from the Department of Justice and Attorney-General, 10 October 2012, pages 9-10.

consider the range of knowledge, expertise and experience of current members of QCAT and the social and cultural diversity of the general community.[71]

Committee comment

The Committee notes these amendments have the support of the President of QCAT. The Committee also supports these amendments (together with the consequential amendments noted above) and considers that they will enhance the responsiveness of QCAT to its users. The Committee does not consider there is any reason why the amendments should not proceed.

2.9 *Trustee Companies Act 1968*

Part 9 of the Bill amends section 68C of the *Trustee Companies Act 1968* to:

… facilitate: voluntary transfers of trustee company business; and compulsory transfers of trustee company business to the Public Trustee of Queensland (with the consent of the Public Trustee of Queensland).'[72]

As was explained to the Committee at the public briefing:

In relation to the Trustee Companies Act 1968*, trustee companies perform state management functions such as administering or managing trusts or deceased estates. The* Trustee Companies Act 1968 *governs the operation of trustee companies in Queensland including their duties, functions and powers. Since May 2010 trustee companies have been licensed and regulated under chapter 5D of the* Commonwealth Corporations Act 2001 *by the Australian Securities and Investments Commission, ASIC. If ASIC cancels the licence of a trustee company, it may issue a certificate for the transfer of the trustee company's business to another trustee company. This is a compulsory transfer. Section 68C of the* Trustee Companies Act 1968 *facilitates these compulsory transfers by providing for the receiving company to become the successor in law in relation to estate assets and liabilities of the transferring company. Under Commonwealth legislation which came into effect in May 2011, ASIC can also approve a voluntary transfer of trustee company business from one company to another and compulsory transfers of trustee company business to a state or territory public trustee with the consent of that public trustee. The bill provides for complementary amendments to facilitate these transfers.*[73]

The Bill also provides for 'the registration or recording of the transfer of an asset or liability by the registrar of titles or another authorised person where a certificate of transfer issued by ASIC under section 601WBG of the Corporations Act has come into force.'[74]

Further information regarding the facilitative nature of these amendments was set out in a written briefing provided by the Department.

The Department advised that there was a requirement to pass these amendments by the end of the year:

The Bill provides for the complementary amendments to section 68C facilitate:

- *the voluntary transfer of trustee company business from one company to another under the new voluntary transfer regime in part 5D.6 of the Corporations Act;*
- *registration by the Registrar of Land Titles of any assets and liabilities the subject of a compulsory or voluntary transfer of trustee company business;*

[71] Letter from the Department of Justice and Attorney-General, 10 October 2012, page 9.
[72] Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 7.
[73] Transcript of Public Briefing, 14 September 2012, pages 2-3.
[74] Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 18.

- *the compulsory transfer of trustee company business to the Public Trustee, with the consent of the Public Trustee.*

The amendments need to be passed before 31 December 2012 because:

- *the national regulatory framework for trustee companies in 2010 provided a mechanism for private trustee companies operating across jurisdictions to consolidate their national operations under one national Australian Financial Services Licence to reduce compliance costs for the industry;*
- *under transitional arrangements ending on 31 December 2012, private trustee companies within a group are deemed to be licensed provided one company in the group held a relevant licence. and*
- *to continue to provide their services under one national licence after 31 December 2012, trustee companies need to apply to ASIC before 31 December for a transfer determination to enable the transfer of the company assets and liabilities to a company within the group that is to be licensed.*

The Bill also facilitates the compulsory transfer of trustee company business to the Public Trustee of Queensland (Public Trustee) by ASIC where the licence of the trustee company has been cancelled. Facilitating such transfers is important for protecting the stakeholders and assets of failing or non-compliant licensed private trustee companies. The Public Trustee has been consulted and supports this amendment because such transfer can only be effected under an ASIC certificate, with the Public Trustee's consent.

New South Wales and the Australian Capital Territory have enacted corresponding enabling legislation. The Department of Justice and the Attorney-General understands that the other jurisdictions, including Victoria, intend to do so urgently before 31 December 2012.[75]

Of the eight submissions received by the Committee, only one commented on this aspect of the Bill. The Public Trustee of Queensland stated:

> *The proposed amendments to the* Trustee Companies Act 1968 *facilitate the regime provided for in Chapter 5 D of the Corporations Act – and my Office has no objection to these changes.*[76]

Committee comment

The Committee has not identified any issues in relation to this aspect of the Bill, nor have any issues been raised by any bodies affected by these clauses, including the Public Trustee of Queensland.

The Committee supports the amendments and considers the amendments must be passed to provide ongoing certainty for trustee companies operating in Queensland under the national arrangements.

2.10 *Work Health and Safety Act 2011*

Part 10 of the Bill amends the *Work Health and Safety Act 2011*.

Clause 50 removes section 374 (Amendment of s 94 (Functions of equipment committee) as this provision seeks to amend a section of the *Electrical Safety Act 2002* which is being omitted by this Bill.

[75] Letter from the Department of Justice and Attorney-General, 13 September 2012, page 6.
[76] Public Trustee of Queensland, Submission No. 6.

The Committee notes this change is necessary because of the amendments proposed to the *Electrical Safety Act 2002*.

2.11 Minor and consequential amendments

Clause 51 to the Bill also makes minor and consequential amendments to the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*. As set out in the Explanatory Notes, these changes have been made to '*correct and update section references; correct conjunctives; remove spent provisions; update styles; and remove or replace unused terms in various pieces of legislation.*'[77]

In its submission, the Office of the Adult Guardian advised that '*peripheral impacts contained in Minor and Consequential Amendments provisions contained in the Bill have been satisfactorily explained by Departmental advisers*.'[78]

The Committee has also reviewed this clause and the corresponding Schedule and is satisfied that no issues arise out of the proposed changes.

[77] Guardianship and Administration and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 19.
[78] Office of the Adult Guardian, Submission No. 1.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

The issue of whether amendments to the *Guardianship and Administration Act 2000* had sufficient regard to the rights and liberties of individuals arose due to possible privacy issues arising out of providing the Public Advocate with coercive power to require access to information, including personal information.

The Bill inserts new sections 210A and 210B into the *Guardianship and Administration Act 2000* to give the Public Advocate, in the performance of its functions, a right to all information necessary to monitor and review the delivery of services and facilities to adults with impaired capacity for a matter, and relating to a service or facility's policies and procedures for the provision of services and facilities to the adults (section 210A(1)).

The Public Advocate may give a written notice to a person with custody or control of that information (other than an adult with impaired capacity, or a family member or close friend of the adult who is a member of their support network), requiring they give the Public Advocate the information, or access to it, within a stated reasonable time (section 210A(2)). The person must, absent a reasonable excuse, comply with the notice (subject to a maximum penalty of 100 penalty units for non-compliance) (section 210A(4)).

Subsection 210A(5) provides that it is a reasonable excuse for a person to fail to comply with the notice if complying with the notice might tend to incriminate the person, or if complying would require they disclose information that is the subject of legal professional privilege.

Proposed new section 210B applies to confidential information given to the Public Advocate under section 210A. Subsection 210B(2) prescribes a maximum penalty of 200 penalty units ($22,000) if the Public Advocate or a member of staff, publishes, without reasonable excuse, the confidential information to the public if the publication is likely to result in the identification, by a member of the public, of a person to whom the information relates.

As set out in the Explanatory Notes, section 210A potentially affects the rights and liberties of individuals by providing the Public Advocate with power to require access to information, including personal information.

The Explanatory Notes advise that it is considered that the amendments are justified as they "…*include appropriate safeguards to protect the person giving the information, as well as the giving of any confidential information*."

The safeguards identified in the Explanatory Notes are:

- *access to information is limited for the purpose of the Public Advocate performing the statutory functions of systems advocacy;*

- *the* Guardianship and Administration Act 2000 *contains existing obligations about the confidentiality of personal information that apply to the Public Advocate;*
- *the proposed amendments allow a person to refuse to comply with a requirement to provide information if they have a reasonable excuse (eg. if complying might tend to incriminate the person or if they claim legal professional privilege);*
- *making it an offence for the Public Advocate or any member of the Public Advocate's staff to publish confidential information; and*
- *protecting a person from liability for providing the information.*

The Committee considers the above safeguards adequately protect the provider of the information and that there has been sufficient consideration to the Fundamental Legislative Principles in this regard.

Section 4(3)(h) of the *Legislative Standards Act 1992* requires that legislation does not confer immunity from proceeding or prosecution without adequate justification.

The Bill inserts a new section 248B into the *Guardianship and Administration Act 2000* which protects people from liability where they give information to the Adult Guardian under sections 183 or 184, or to the Public Advocate under section 210A.

The proposed section 248B(2) will allow a person to give information under sections 183, 184 or 210A '*despite any other law that would otherwise prohibit or restrict the giving of the information*.' Subsection 248B(3) will confer immunity on a person from civil, criminal or administrative liability for the giving of the information under sections 183, 184 or 210A to the Adult Guardian or the Public Advocate respectively, provided the person acted honestly.

Similarly, the person cannot be held to have breached any code of professional etiquette or ethics, or departed from accepted standards of professional conduct, merely because they provided the information (section 248B(4)). In addition, in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information, and if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person does not contravene the Act, oath or rule of law or practice by giving the information and is not liable to disciplinary action for doing so (section 248B (5)).

Given the statutory obligations imposed on people to provide information to the Adult Guardian and Public Advocate under the Act, the Committee considers it would appear justified and appropriate that they then be granted the various immunities from proceeding and prosecution outlined above.

The Committee considers that if a person has a legal duty to provide information to a statutory officer, it would be incongruous if they could then be proceeded against or suffer other detriment for merely complying with their statutory duty.

Section 4(3)(g) of the *Legislative Standards Act 1992* requires that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

Part 7 of the Bill relating to the *Penalties and Sentences Act 1992* is taken to have commenced on 21 August 2012. With the Bill being introduced into the House on 11 September 2012 and likely to be passed in November 2012, subclause 2(2) in relation to Part 7 is clearly retrospective.

Part 7 of the Bill amends, by clause 38, section 179C (6) of the *Penalties and Sentences Act 1992* to exclude a breach of bail offence under section 33 of the *Bail Act 1980* from the offender levy imposed under section 179C.

The retrospective operation of this clause serves to benefit those persons who breach bail on/from 21 August 2012 by clarifying that they are not required to pay the offender levy that applies to other offenders pursuant to section 179C.

Accordingly, the Committee considers the retrospective nature of sub-clause 2(2) does not offend the fundamental legislative principle set out in section 4(3)(g) *Legislative Standards Act 1992* because its retrospective operation neither adversely affects rights and liberties nor imposes obligations on an individual.

3.2 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

The Committee has addressed the omnibus nature of the Bill earlier in this Report.

3.3 Proposed New Offence Provisions

The Committee also draws to the attention of the House the following new offence provisions contained in the Bill.

Clause	Proposed offence	Proposed maximum penalty
7, inserts section 210A	Failure (absent reasonable excuse) to comply with a written notice from the Public Advocate requiring a person give the Public Advocate information, or access to it, under section 210A, within a stated reasonable time.	100 penalty units ($ 11,000)
7, inserts section 210B	Publishing (absent reasonable excuse) confidential information to the public where such publication is likely to identify a person to whom the information relates.	200 penalty units ($ 22,000)

Appendix A – List of Submissions

Sub #	Submitter
001	Office of the Adult Guardian, Queensland
002	Electrical Contractors Association
003	Electrical Trades Union of Employees
004	Queensland Law Society
005	Queensland Civil and Administrative Tribunal
006	Public Trustee of Queensland
007	Endeavour Foundation
008	National Seniors Australia