



Speech By
Andrew Powell

MEMBER FOR GLASS HOUSE

Record of Proceedings, 26 March 2019

GUARDIAN AND ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL

 **Mr POWELL** (Glass House—LNP) (4.15 pm): I too rise to address the Guardianship and Administration and Other Legislation Amendment Bill 2018. As other speakers have alluded to, there are a number of amendments this bill makes to a number of acts. I want to confine my comments to those changes that are being made to the guardianship legislation. In the explanatory notes the policy objectives of the bill are to amend the guardianship legislation to provide a focus on contemporary practices and human rights for adults with impaired capacity, enhance safeguards for adults with impaired capacity in the guardianship system and to improve the efficiency of and improve clarity of guardianship legislation.

Like the member for Everton, who spoke before me, I want to drill down on a couple of changes that are specifically impacting on the ability of parents who have adult children requiring guardianship to continue to have a role to play in those adult children's lives. There are a couple of changes that are being made. I refer again to the explanatory notes where it says these changes will require QCAT, in carrying out functions or powers under the GAA, to seek and take into account the views, wishes and preferences expressed or demonstrated by an adult and the views of any member of the adult's support network. It also talks about clarifying that when QCAT is reviewing an appointment of a guardian and the Public Guardian is currently the adult's guardian, QCAT can remove the Public Guardian if there is another appropriate person available for appointment, for example, another person in the adult's support network, and that is a direct recommendation from the Queensland Law Reform Commission, recommendation 14-14.

I do note, however, that the Public Advocate has raised some element of concern about this. It reflects a story about a constituent of mine that I will relay very shortly. The Public Advocate raised concerns that 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. However, the bill does not implement recommendations 14-13 and 14-15 to provide a similar process for the Public Trustee. The Public Advocate explicitly stated—

... it is unclear why QLRC 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.

That is pertinent to a situation that one of my constituents found themselves in. Out of respect for their privacy I will not use names in this instance, but I would like to give some detail of the particular case. A constituent of mine held very grave concerns for her adult daughter, her adult daughter being a 26-year-old with autism as well as epilepsy who lived away from her mother in disability housing and until late 2017 had carers come and assist her through funding provided through Disability Services. The mother was able to provide letters of clarification around the situation the adult daughter found herself in. She was diagnosed at referral with ADHD, Asperger's syndrome, epilepsy and possible pseudoseizures.

Once the ongoing care provided by Disability Services was removed, the mother was very concerned about how her adult child would care for herself. In early 2018 that became even more of a concern when her daughter met a man who lived in the same complex who cancelled all her services and support. That man also encouraged her to cut all contact with her family, friends and service providers. More concerning is that my constituent understood that the man had only recently been released from jail. Her daughter was very vulnerable and therefore she was very concerned for her daughter's wellbeing, given this man's controlling behaviour. My constituent was advised to apply to be her daughter's legal guardian, which she did; however, she was advised that an adult guardian had already been appointed—the Public Trustee—on 9 February. Being very concerned to do the right thing and assist her adult daughter with a disability to navigate life, the mother applied for legal guardianship, only to find that it had been appointed already to the Public Trustee.

To compound the situation, when my constituent tried to reach out to the Public Trustee as her daughter's guardian she could not make contact. As the situation deteriorated with her daughter, my constituent became more and more alarmed and concerned with the Public Trustee's ability to act on her daughter's behalf. It comes to that issue that the Public Advocate raised—that is, that in instances like this where there is a family member who is willing and able, surely they should be considered as the guardian in the first instance. As the Public Trustee said, if there is no other appropriate person the Public Trustee should be appointed as the guardian.

The good news to this story is that, upon writing to the Attorney-General—and I appreciate that the Attorney-General cannot intervene in matters being dealt with by the Office of the Public Guardian—the Attorney-General was able to provide an update that, through a number of means of communication with the daughter and with the mother, the matter went back to QCAT in May 2018. QCAT then decided that the continued appointment of a formal guardian in the decision-making areas of health care, service provision and contact was not required. My constituent was in attendance at that time and thanked the Office of the Public Guardian for their assistance during the interim period. The appointment of the Public Trustee was continued in terms of being the administrator but not as guardian. That means that the mother has more interaction with her adult daughter. I understand that the situation has also improved in terms of dealing with the man influencing the daughter.

It is a pertinent case and a timely reminder that, when making positive legislative changes—and, as many speakers have said, we support these legislative changes brought forward today—there is perhaps opportunity to go that one step further. It is disappointing that we have not, as requested by the Public Advocate, gone that one step further to make it very clear that, in these situations, if there is someone within that adult's support network—and nothing is more beneficial in a support network than a family member, particularly a mother—surely that person should be appointed as a guardian. First and foremost, this should occur before any consideration is given to anyone else, particularly the Public Trustee. We have talked about the challenges that QCAT faces and how swamped it is, but from my dealings with the Public Trustee I contend that it is equally swamped in terms of its dealings, not only as Public Guardian but as administrator in a number of instances.

Given it does not appear that we will address this issue in this piece of legislation, I hope that in subsequent legislation and as we continue to implement the recommendations of the Queensland Law Reform Commission report this is also picked up, that the words of the Public Advocate are picked up and that we get to a situation where parents can play a far more active role in the ongoing guardianship of their adult children with disability. I commend the bill to the House.