Speech by

Jann Stuckey

MEMBER FOR CURRUMBIN

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GUARDIANSHIP AND ADMINISTRATION AND OTHER ACTS AMENDMENT BILL

Mrs STUCKEY (Currumbin—LNP) (12.05 pm): I rise to contribute to the debate on the Guardianship and Administration and Other Acts Amendment Bill 2008. This bill was introduced into this Assembly by the honourable Attorney-General and Minister for Justice, the member for Toowoomba North, on 14 May 2008. This bill goes some way towards securing the future of an efficient legal system, a guardianship system that is truly of benefit to those it serves and an alternative conception program Queensland-wide that would match the standards our modern society has come to expect. However, as honourable members have already heard from the shadow minister and member for Toowoomba South in his eloquent address, the LNP has some reservations about a couple of provisions contained in this legislation but we will be giving the bill our support.

Clauses 3 to 22 of the bill amend the Guardianship and Administration Act 2000 by implementing some of the key recommendations of the *Public justice, private lives: a new approach to confidentiality in the guardianship system,* a report published by the Queensland Law Reform Commission. The Attorney advised the House that the report completes the first stage in a review undertaken by the Queensland Law Reform Commission into this state's guardianship system. The report dated May 2008 explores the need for the state to strike a balance between the promotion of accountability and transparency in the making of decisions and the protection of privacy of persons within the system. There were 82 recommendations made that would purportedly improve legislation, practices and procedures in the Queensland guardianship system and over 60 of these are being implemented in this legislation.

The bill's intent is to promote accountability, increase community confidence in the guardianship system and improve outcomes for adults with impaired capacity in the guardianship system by doing several things. Firstly, it will replace the current regime of confidentiality orders with four new types of orders which are collectively called limitation orders. These include adult evidence orders, closure orders, non-publication orders and confidentiality orders. Secondly, it will establish a presumption of legislative openness as well as the requirement that serious harm or injustice be demonstrated prior to appearing before the Guardianship and Administration Tribunal, which is to grant or make out a limitation order. Thirdly, it will give permission for the publication of information regarding the proceedings of the tribunal provided the publication does not lead to the identification of the adult. Lastly, it will create a role for the Public Advocate to comment upon and identify any systemic issues that the making of limitation orders by the tribunal may give rise to.

The report found that currently too high an interest is placed on maintaining privacy and confidentiality and it concluded that there should be a greater openness in the guardianship system. The bill aims to tip the scales in favour of openness and what the Attorney calls 'open justice and procedural fairness'. It is important to clarify early on the nature of the clients to whom guardianship laws apply. These are important laws indeed, and it is very important that we as legislators get them right. These laws apply to adults who are unable to make some or all of their decisions due to having an impaired capacity. Within this terminology falls dementia, intellectual disability, acquired brain injury or damage, a mental illness or

an inability to communicate in some way. Degrees of impairment vary greatly, and there is no doubt that each of these individuals is vulnerable and needs protection by government legislation.

One of the many questions asked in the Queensland Law Reform Commission companion paper of July 2006 was whether it is fair that an adult's private life be a topic for public discussion just because they need assistance with decisions that would be made in private for most of us. As is often the case, the law has to make compromises in order to strike a balance and I understand this is the case here. In recent times we have heard many disturbing stories of elderly persons having their assets sold literally from underneath them by unscrupulous contacts and even relatives. This practice must be halted. The Scrutiny of Legislation Committee's *Alert Digest No. 8 of 2008* noted—

The committee referred to Parliament the question whether disclosure of personal information, as provided in and/or required by various clauses of the bill is justified in the circumstances of the bill.

I note the Attorney's reply that he was satisfied that proper protection was provided for in this bill and that disclosure of personal information was justified.

The committee also raised a number of issues with regard to sufficient regard to rights and liberties in relation to clauses 10, 11, 18, 20, 24 and 26 that required referrals to parliament. The committee also questioned the justification of the reversal of onus of proof in these same clauses and of negative effects of retrospectivity in clause 13. In all of these instances the Attorney stated that he was satisfied that circumstances were justified.

In addition, this bill provides for amendments to a host of unrelated acts that have been included. A concern that has already been mentioned by the honourable member for Toowoomba South comes in the amendment to the Jury Act 1995. The act will allow a jury to separate or a single member to separate from the jury once it has retired to consider its verdict if the judge considers that this would not prejudice a fair trial. This proposed amendment must come as a substantive shock to some members of the general public and of the judiciary—and I imagine also of this House—as the centuries-old notion of a jury being impenetrable prior to handing down its verdict is being changed by this government.

Conversely, a research paper completed by His Honour Jonathan Lippman, Chief Administrative Judge of the courts in New York State, found that the separation of deliberating juries in criminal trials benefits the state and its citizens without prejudicing criminal trials or endangering any significant new costs. Therefore, His Honour concluded it is recommended that trial judges be afforded permanent statutory authority to separate deliberating juries in all criminal trials with the exception of capital cases.

An amendment to the Status of Children Act 1978 seeking to clarify presumptions for the married mother of a child born as a result of artificial insemination or for a procedure where an embryo fertilised outside her body is implanted are also included in this bill. We are referring to the reproduction procedures of either artificial insemination or in-vitro fertilisation here. In Queensland, men who are eligible to donate semen must be aged between 18 and 45 years, have a healthy lifestyle and have no genetic disease history. In addition, they are screened via blood tests for sexually transmitted diagnoses such as HIV and hepatitis B and C. They are not paid for their donation but are reimbursed for their travel costs. Whilst they currently have no legal responsibility to any offspring, they are, however, required to be open to any potential contact with any child who is conceived as a result of their semen donation once that offspring reaches the age of 18.

The Scrutiny of Legislation Committee referred to parliament the question whether clause 29, which relates to the Status of Children Act 1978 and its proposed retrospective operation, was justified in all circumstances of the bill. Once again, the Attorney replied that he was satisfied this clause was justified. The amendment to this bill clarifies that a donor of eggs or sperm is at law presumed not to have been the donor, and with this exemption comes the denial of legal status as the father or mother of any child born of this process. By the same token, the amendments to section 18 and the introduction of new sections 18AA and 18AB of the Status of Children Act will confirm the denial of rights and liabilities of any sperm or egg donor insofar as artificial insemination and in-vitro fertilisation are performed where there is no male partner or consent of a partner.

Mr DEPUTY SPEAKER (Mr Moorhead): Order! There is too much audible conversation in the chamber. Can I use this break to welcome to the gallery students, staff and parents from the Holy Family Primary School in the electorate of Indooroopilly, which is represented by Mr Ronan Lee.

Mrs STUCKEY: As I was saying, the Status of Children Act will confirm the denial of rights and liabilities of any sperm or egg donor insofar as artificial insemination and in-vitro fertilisation are performed where there is no male partner or consent of a partner. In simple terms, this will exempt the donor from any financial responsibilities incurred in raising a child. These practical, albeit sensitive, amendments provide a sound and rational redevelopment of what was an unnecessarily burdensome application of the law to those who give selflessly for the benefit of others to bear children. With the reservations previously outlined, I commend the bill to the House.