



## Guardianship And Protected Estates Legislation Amendment Bill

Second Reading

Corrected  
Copy  
21/11/2002

### GUARDIANSHIP AND PROTECTED ESTATES LEGISLATION AMENDMENT BILL

Page: 7422

**Bill introduced and read a first time.**

#### Second Reading

**Mr WHELAN** (Strathfield—Parliamentary Secretary), on behalf of Mr Debus [5.33 p.m.]: I move:

That this bill be now read a second time.

This bill provides a simple, cheap and quick process for appeal to the Administrative Decisions Tribunal [ADT] from decisions of the Guardianship Tribunal, the Mental Health Tribunal, and magistrates against guardianship and financial management orders. It also allows the ADT to review the decisions of the Public Guardian and the Protective Commissioner. The bill implements the recommendations of the Public Bodies Review Committee report entitled "Personal Effects: The Roles of the Public Guardian and the Protective Commissioner in Managing Clients' Affairs". The committee recommended that the Protective Commissioner function independently from the Supreme Court and that an external right of appeal to the ADT should be available for clients. The bill makes amendments to four Acts: the Guardianship Act 1987, the Protected Estates Act 1983, the Administrative Decisions Tribunal Act 1997 and the Defamation Act 1974.

I deal first with the amendments to the Guardianship Act 1987. Under the current Act, any decision of the Guardianship Tribunal is subject to appeal to the Supreme Court. This right of appeal continues under the provisions of this bill. The amendments in schedule 1 supplement this right of appeal by allowing parties to appeal to the Administrative Decisions Tribunal against certain decisions made by the Guardianship Tribunal. Appeals to the ADT are cheaper, quicker and easier for parties. The procedures are simple and parties usually do not need legal representation. The ADT acts with as little formality as the circumstances of the case permit. It is not bound by rules of evidence and it has a duty to act as quickly as is practicable. The provisions of this bill allow access to a fair, transparent and independent tribunal for people who may not be capable or willing to mount a Supreme Court case.

The simple appeal process from the Guardianship Tribunal to the ADT is available to people who are affected by decisions relating to the appointment of enduring guardians, the making of guardianship orders, the making of financial management orders, and the giving of directions to guardians. The bill makes it clear that parties must be provided with reasons for the decision by the Guardianship Tribunal and be advised of their right to appeal. In addition to the appeal rights, the bill provides a process for review of decisions made by the Public Guardian. The bill gives the ADT jurisdiction to review these decisions on the application of the person to whom the decision relates, their spouse or carer, and any other person whose interests have been adversely affected by the decision.

I turn now to the amendments to the Protected Estates Act 1983. Historically, the Protective Commissioner was an officer of the Supreme Court who performed judicial as well as administrative functions relating to financial management orders. This is not consistent with modern best practice. The bill separates the functions of judicial decision making from financial management. Under the new scheme the Supreme Court and the Guardianship Tribunal will continue to have the power to

make financial management orders, and the Protective Commissioner will act exclusively as the financial manager or the supervisor of private financial managers.

The bill promotes transparency and independence in the decision-making process. It allows the Ombudsman to review the administrative decisions of the Protective Commissioner. This provides clients and their families with a cheap and simple avenue for resolving complaints and is consistent with the recommendations of the Public Bodies Review Committee. Alternatively, clients can ask the ADT to review the decisions of the Protective Commissioner relating to the approval of a private manager to authorise a protected person to deal with part of the estate, and the general management of estates of protected persons.

The bill also allows the Protective Commissioner to supervise the functions of private estate managers who have been appointed by the Supreme Court or the Guardianship Tribunal. It creates an offence for failing to comply with a direction of the commissioner. The provisions are necessary because the Protective Commissioner needs statutory power to perform the duties previously undertaken by an officer of the Supreme Court and coercive powers to ensure compliance. The decisions of the Protective Commissioner in relation to the functions of private managers will be reviewable by the ADT unless the decision was as a result of a direction by the Supreme Court. The bill allows private estate managers to lodge estate funds with the Protective Commissioner and allows the commissioner to invest the funds. These provisions give private estate managers greater choice in where they lodge their investments and will allow the Protective Commissioner to compete with private sector trust companies for estates which are managed privately.

The bill provides a right of appeal against orders by magistrates or the Mental Health Review Tribunal making estates subject to management under the Protected Estates Act 1983. Any person to whom an estate management order relates, or who was party to the proceedings, may appeal to the ADT against the order. To further safeguard the interests of protected persons, the bill requires the decision maker, either the Mental Health Review Tribunal or the magistrate, to provide formal written reasons for the decision at the request of any party to the proceedings. The decision maker must also inform the party of their appeal rights.

The Administrative Decisions Tribunal is now well established as a multidisciplinary body which has jurisdiction over a diverse range of decision making. Since its inception the ADT has demonstrated the capacity to adapt its procedures to accommodate new areas of jurisdiction in a client-oriented and accessible manner. It is imperative that clients, subject to decisions made by the Protective Commissioner, the Public Guardian, the Guardianship Tribunal, the Mental Health Review Tribunal and magistrates be given access to this specialist forum for dispute resolution. The bill gives the ADT the jurisdiction to review many of the administrative decisions made in relation to protected persons and the jurisdiction to hear and determine appeals from tribunals.

The bill provides for a specialist panel to determine the appeals from external judicial decisions. The appeal panel consists of a presidential judicial member of the ADT, one other judicial member and a non-judicial member who has experience in dealing with people with a disability. This structure provides a combination of extensive expertise and specialist knowledge and empathy with specific client needs to ensure that the rights of people with a disability are vigilantly protected. The bill provides for the review of administrative decisions by the Public Guardian and the Protective Commissioner in the general division of the tribunal. Further, to ensure that people with disabilities are able to comprehensively put their case to the appeal panel, the bill allows the ADT to appoint a representative to any person who is a protected person within the meaning of the Guardianship Act 1987 or the Protected Estates Act 1983, or in respect of whom a guardianship order has been made or refused.

Under section 79 of the Protected Estates Act 1983, the Protective Commissioner may direct a person to provide a written report on a protected person. The report may contain sensitive information about the protected person such as comments about their state of mind, bodily health, general condition, and care and treatment. The amendment provides that the person preparing and publishing the report has a defence in any action for defamation arising from the contents of the report. This ensures that the report can provide a full and frank assessment of the person and the

circumstances without the author risking a law suit for defamation. The bill confirms the ADT as the principal forum for reviewing the decisions of public authorities, and establishes the ADT as an accessible appeal forum for people aggrieved by the decisions of tribunals. It implements the key findings of the Public Bodies Review Committee and provides a simple and accessible means of review and appeal by people with disabilities and their relatives and carers.

The bill demonstrates the continuing commitment of this Government to the delivery of access to justice, and fair and transparent administrative and judicial decision making. It ensures that parties are provided with a cheap and quick appeal process. More importantly, it ensures they are given information and assistance to enable them to understand their rights, and a specialist, informal appeal forum in which to exercise them. I commend this bill to the House. I thank the Opposition for its co-operation in this matter.

**Mrs CHIKAROVSKI** (Lane Cove) [5.42 p.m.]: The reason for the Opposition's co-operative attitude to the passage of this bill is that it is long overdue. As the Leader of the House pointed out, this bill has been introduced in response to a report published by the Public Bodies Review Committee in 2001. The committee examined the Office of the Public Guardian and the Office of the Protective Commissioner to assess how they were working. Although I am not a member of that committee, I have had discussions with the honourable member for Wagga Wagga and other members of the committee. They told me that the inquiry was a trying one because of the terrible stories told by witnesses who were completely overwrought after their dealings with both the Public Guardian and the Protective Commissioner.

The stories often concerned families that were under stress and in strife because of the mismanagement of the care of their relatives. It is probably true that people come under the care of the Protective Commissioner because of family disputes, and it should be said that that does not make the task of the Protective Commissioner or the Public Guardian any easier. Having said that, I must also say that those offices have clearly been the subject of great concern for a long period. In 2001 the committee held public meetings and hearings at which woeful stories were told of family despair, fraud and the cessation of regular contact between family members and their relatives who were under the care of the Protective Commissioner. The problems all seemed to be characterised by a lack of financial planning and consultation with family members. In many instances people in care in small communities seemed to have no outreach within those communities.

The evidence gave rise to three important issues. First, the Protective Commissioner is an officer of the Supreme Court. Appeals against decisions made by the Protective Commissioner must be heard by the Supreme Court. Apart from any other problem that may create, by far the most significant problem for family members was the prohibitive cost of actions in the Supreme Court. Second, in the event of an appeal the Protective Commissioner would defend its case in the Supreme Court and, in doing so, would use the financial resources of the person whose affairs were being managed. In other words, the office was using its client's money to defend actions in the Supreme Court, thereby diminishing the estate of the very person it was supposed to be protecting.

As honourable members may imagine, that caused enormous concern for family members because the standard of care that was the subject of complaint at first instance would have been lowered because the funding for that care was being reduced by the costs of the legal action. Third, there did not seem to be any oversight of the office of the Protective Commissioner. That was in fact the case because, as an officer of the Supreme Court, the decisions of the Protective Commissioner are not subject to independent review. This bill is designed to address a number of these issues.

Honourable members may wonder why I, as the shadow Minister for Infrastructure and Major Projects and shadow Minister for Public Private Partnerships, am leading for the Opposition in this debate. In common with other honourable members, my constituents have been affected by decisions of the Office of the Protective Commissioner. Some time ago I became involved when a constituent who was in dispute with her brother came to see me. Her brother had committed their father to the care of the Protective Commissioner. The first decision was that her father, for whom she had been caring in the family home, was removed and placed in a nursing home. Her father was suffering from dementia but was not overwhelmingly affected. He was coherent, orientated and was

still able to function, but he was in the first stages of Alzheimer's disease.

My constituent's concern was that the removal of her father from his home—from surroundings which were familiar to him and where he was comfortable, having spent so many years of his life there—would cause him to deteriorate rapidly, and that is exactly what happened. It is fair to say that we fought for a number of years to try to have her father returned to her care. She used to say to me, "I understand the reason why my brother is doing this. He thinks I am using up his inheritance, but this is our father we are talking about, and we should not be worried about what happens to his money after he dies. We should be worried about how his money can be used to look after him now." That is why she wanted to keep her father at home: so he would be cared for in familiar surroundings.

She admitted that she would give up her job and use some of her father's money. However, at the end of the day she was not using the money for herself, but for her father. It was probably one of the saddest days of my political career when I was informed that the fight had become too much for that woman. One day she stepped into a bathtub of water, threw a hairdryer into the water and killed herself. That is why I am participating in this debate. I want to ensure that that does not happen to anyone else. Clearly, the bill before the House is designed to do that.

The changes proposed by the Government will ensure that family members who object to the way in which their relatives are being treated may appeal against decisions made in relation to their relatives' care. The removal of the Office of the Protective Commissioner from the Supreme Court will mean that in future appeals will not have to be referred to the Supreme Court. Experience points to the probability that lodging appeals with the Administrative Decisions Tribunal [ADT] will mean that appeals will be able to be dealt with in a quicker and less expensive way. The removal of appeals from the Supreme Court to the ADT will mean that people who object to the way in which their family members are being cared for will have the benefit of a simpler and cheaper process.

The taking of appeals to the ADT is also important because it will ensure the separation of that power from the Supreme Court. There seems to be a view that the Protective Commissioner being an officer of the Supreme Court could lead to a bias in the court. I know that is not the case, but that is certainly the perception. Transferring that appeals process to the ADT will ensure that there is no perception of bias. Removing the Protective Commissioner from the umbrella of the Supreme Court will allow the office to be subject to the scrutiny of the Ombudsman. That is important because there will be another way in which complaints can be investigated.

For a long time people have sought to have their complaints investigated in a way that is effective and, at the end of the day, relatively inexpensive. The Opposition has not had an opportunity to go through the details of the bill. That is because the Government and the Opposition have agreed to pass the bill quickly. We have agreed that if the bill does not go through today, the people who are most affected by it will have to wait at least another six months, given that the House will adjourn shortly. Those people have waited too long already. The Opposition will not oppose the bill. In fact, we support it. Undoubtedly, those in the community who have been desperately crying out for it will also support it.

I take this opportunity to thank the members of the committee, particularly the honourable member for Swansea. Over the past week he has worked tirelessly with me to ensure that the bill will receive support. In this House there are times when we put aside politics and acknowledge that what we are doing is in the best interests of the community. This is one of those times. I thank Patty Costa, a name familiar to anyone who sat on the committee. Patty started an organisation called the Carers of Protected Persons Association. She has fought tirelessly for changes in the law to ensure that there are fairer provisions for people who are in the care of the Office of the Protective Commissioner, the Guardianship Board or the Public Guardian. I thank Patty for all the work she has done over the years and her tireless lobbying.

I thank also Judie Stephens, a lady who is known to many people in this House. I acknowledge that Judie is present in the public gallery. Judie has lobbied not only the State Government on this matter, she has also successfully lobbied the Federal Government in relation to structured

settlements. Judie has my total admiration for all sorts of reasons. She is probably one of the best and most successful lobbyists I have ever known. She is also the carer of her grandson, Jackson, a most beautiful boy. Many years ago Jackson suffered a disability as a result of car accident. One reason Judie has been fighting over this issue is to make sure that she continues to have the care of that beautiful child.

This bill is a victory for Patty Costa, Judie Stephens and Jackson. It is a victory for all those who knew that if they continued to argue, fight to be heard and talk to politicians, they would eventually get it right. Everything that needs to be done has not yet been done, and the honourable member for Wagga Wagga will probably have a few words to say about the report. On the last full sitting day of this session, this is an appropriate victory and an appropriate way for Parliament to conclude. The bill is in the interests of the people of New South Wales, whom we are elected to represent. I thank the Government for its co-operation in ensuring that this bill is passed before Parliament rises for the election. For those who need care and for the family members who know that they need care, we need to make sure that we get it right. Looking after those who are unable to look after themselves is one of the most important things that any government, any family, any community, can do.

**Mr ORKOPOULOS** (Swansea) [5.55 p.m.]: This bill, which has bipartisan support, is a triumph for the committee system of this Parliament. The report that brought the recommendations to the attention of the Government and the Parliament also had bipartisan support. Clearly, the sentiments of the honourable member for Lane Cove are echoed by members on this side of the House. The honourable member for Lane Cove covered amply most of the salient points of the report. The bill implements the recommendations of the Public Bodies Review Committee contained in the report entitled "Personal Effects: A Review of the Offices of the Public Guardian and the Protective Commissioner". The bill goes beyond the recommendations of the committee's report and includes the Guardianship Tribunal and the Mental Health Review Tribunal within its provisions.

The bill amends four Acts, the Guardianship Act 1987, the Protective Estates Act 1983, the Administrative Decisions Tribunal Act 1997 and the Defamation Act 1974 and allows for a greater, easier and more accessible process of review of the decisions of those tribunals. In the course of the inquiry the committee found that the original shock, anger and frustration of many people who gave evidence to the committee or made submissions to it resulted in the first instance from contact with the Guardianship Tribunal. They were in conflict with the Guardianship Tribunal process; they fundamentally disagreed with it. In a large number of cases, the decisions made by the tribunal were difficult for families to accept.

The immediate relatives of a constituent of mine who needed care fundamentally disagreed with the tribunal's decision to award financial guardianship to a distant niece who had spent some time in prison for fraud. That made me aware of the experiences of many people who wanted to challenge the decisions of the Protective Commissioner, the Public Guardian, the Mental Health Review Tribunal or the Guardian Tribunal. They were thwarted because the only body they could appeal to was the Supreme Court of New South Wales. Clearly, that is an inappropriate course for many people. Not many people have a lazy \$50,000-odd to spend on lawyers to get a simple decision reversed or reviewed. This bill provides a mechanism to resolve that problem.

I am particularly pleased that the Office of the Protective Commissioner is to be separated from the Supreme Court. That connection is anachronistic. In the past the jurisdiction was exercised in New Wales by an officer of the court known as the Master in Lunacy, who was under the general oversight of the Chief Judge in Equity. The Office of the Protective Commissioner was holed up in a registry in the Supreme Court with enormous security. To seek a review of a decision some internal complaints handling processes were instituted rather belatedly, certainly after the performance audit review by the Audit Office. If any external review were required the Supreme Court would be the only avenue of appeal. I thank Patty Costa and Ms Judie Stephens, who is present in the gallery, for their constant vigilance. This excellent report, which was supported by all members of the committee, will shape government policy for the betterment of this State. The bill will achieve just that.

**Mr MAGUIRE** (Wagga Wagga) [6.00 p.m.]: The honourable member for Lane Cove and the honourable member for Swansea referred succinctly to the contents of the committee's report. If the

bill achieves the results that all members believe it will achieve, it will be a legacy of the Fifty-second Parliament. As a member of the Public Bodies Review Committee I am aware of the necessity for this report. Members of the community desperately wanted the Government to do something about those issues raised earlier by the honourable member for Lane Cove and the honourable member for Swansea. I will not refer to the detail of this report, which, as I said earlier, was referred to succinctly and dealt with competently by other members.

The report contains 24 recommendations. I understand, after speaking to the chairman of that committee, that all but one of those recommendations have been implemented. The action that has been taken by the Government, which is fully supported by all members, will make life much better for those who so bravely made submissions and lobbied long and hard for changes to the roles of the Protective Commissioner and the Public Guardian. I looked through the committee's report to remind myself of some of the events that occurred while we were compiling it. I attended every meeting of the committee as I wanted to help to make permanent and lasting changes for people with brain injuries and others with disabilities. The stories that we heard were horrendous and woeful. It is disgraceful that governments of all political persuasions have left these people to suffer under the conditions that were described to us.

It was a pleasure to work with all members of the committee in compiling this unanimous report. I say to the chairman of the committee, the honourable member for Swansea, "Well done." His chairmanship guided us through this inquiry in a professional and constructive manner. The honourable member for Port Stephens, the honourable member for East Hills and the honourable member for The Hills all contributed to what I believe to be one of the best reports to be presented to the Fifty-second Parliament. I acknowledge the hard work of the staff of the committee. The staff of a committee are often the unsung heroes. They have to deal with the demands of members and meet all sorts of deadlines.

I thank Catherine Watson, Committee Manager; Jackie Ohlin, Project Officer; Keith Ferguson, Committee Officer; Glendora Magno, Assistant Committee Officer; and John Chan Sew, Financial Consultant, for their contributions. They assisted in the formulation of this bill, which will make a difference for those people who have been mentioned in debate by other honourable members. I am pleased that the Government has accepted and implemented most of the committee's recommendations. I hope that this legislation will achieve the desired outcomes.

**Mr ASHTON** (East Hills) [6.05 p.m.]: I thank the honourable member for Lane Cove for ensuring that this bill was dealt with before the conclusion of this parliamentary session. As the honourable member for Wagga Wagga has said, this legislation is a great achievement. The Public Bodies Review Committee wanted to produce a report that would assist those in the same position as the thousands of people in New South Wales who, for more than 100 years, have been affected by decisions made by the Public Guardian and the Protective Commissioner. Only last week Ms Judie Stephens arranged a meeting with a group of people who had been affected by such decisions. I thank the Attorney General, the Hon. Bob Debus, and his staff for their speedy preparation of this legislation. Most committee members would be aware that often reports are called for, an investigation is undertaken, the report is eventually produced and it remains on the table and gathers dust.

The bill will enhance the lives of many people. If carers and those for whom they are caring disagree with decisions that are taken against their interests, at present they are compelled to take their case to the Supreme Court, which involves them in a great deal of expenditure. Under the bill the Administrative Decisions Tribunal [ADT] will be given the power to hear and determine appeals against guardianship and financial management orders made by the Guardianship Tribunal, magistrates, the Mental Health Review Tribunal, the Public Guardian and the Protective Commissioner. That will make them more accountable for the decisions they make. Many witnesses who appeared before the committee said that they could not get people to return their phone calls or client officers to report on what was happening to their loved ones. Some officers who had to review the cases of 35 or 40 people were not able to make decisions.

One of the committee's final recommendations specified that appeals should be determined by

the ADT and that the ADT should be able to rule against certain decisions of the Guardianship Tribunal, such as decisions relating to guardianship, and financial management orders. The bill will allow appeals to the ADT against orders by magistrates or the Mental Health Review Tribunal and the estates of persons will be subject to certain arrangements. The decisions made by the Protective Commissioner and the Public Guardian will be reviewed by the ADT. The role of the Protective Commissioner will be separated from the Supreme Court.

Many people were concerned about the fact that if they believed they had not been treated fairly and wanted to appeal against the decision, the matter had to be dealt with by the Supreme Court. The legislation, which will give that power to the ADT, will assist in helping a number of people. I thank the members of the committee. There were no disputes in the preparation of the committee's report; it had the unanimous support of all committee members. I thank Opposition members for their support for this legislation.

**Mr KERR** (Cronulla) [6.08 p.m.]: I support the legislation, which I realise will not solve all the problems that are being experienced by many people. The conflicts are too deep and the issues involving families and citizens in this State are so complex that reconciliation will not be able to be achieved. The unanimous report of the Public Bodies Review Committee was tabled in October 2001. No reason was given by the Minister in his second reading speech why this legislation was not introduced earlier than today. The Government could have acted upon the committee's recommendation much earlier. In fact, a great deal of hardship and pain was inflicted as a result of that delay—even the honourable member for East Hills would appreciate that justice delayed is justice denied. The delay in introducing this legislation has occasioned injustice.

It is worth retelling how this legislation came into being and why its introduction was so unconventional. There was a demonstration outside the Parliament about a week ago attended by Judie Stephens, who is in the gallery. With the honourable member for Lane Cove leading the way, we went and spoke to the chairman of the Public Bodies Review Committee, the honourable member for Swansea, and the honourable member for East Hills. They gave undertakings that they would do all they could to ensure that the legislation was introduced in Parliament before the end of the session. It is a great credit to those individuals, rather than the Government, that this legislation is now before the House.

This legislation came into being because those people who demonstrated outside the Parliament would not take no for an answer. Justice was on their side and their complaints were authenticated by the committee. They asked simply that the committee's recommendations be implemented—the bill would not have been drafted otherwise. It is nearing the end of this parliamentary session and we are about to go to an election. Many of my constituents, including Judie Stephens, have been instrumental in this process. They appeared before the committee and convinced its members to accept their evidence. When the committee made its recommendations they ensured that those recommendations were converted into legislation. The legislation that we are about to pass—I do not believe the House will divide on its second reading—is the result of last week's demonstration.

I have been lobbied by some of my constituents as the legislation will impact on my electorate. This is very good legislation in that it complies with their wishes. I hope that the legislation will pass through the upper House and go on to be proclaimed. I ask Government members to keep an eye on it and ensure that that happens. There is no point completing this process and then finding, when the survivors assemble after the election, that the legislation has not been proclaimed.

**Mr Ashton:** I think it will be proclaimed.

**Mr KERR:** Thank you. Happiness will be achieved. I rely upon the honourable member for East Hills to ensure that that proclamation takes place. The price of success in these matters is eternal vigilance, and no-one will be complacent about this legislation.

**Mr ROZZOLI** (Hawkesbury) [6.13 p.m.]: I welcome the opportunity to say a few words about the Guardianship and Protected Estates Legislation Amendment Bill. I appreciate that this is humanitarian legislation and that certain aspects of it are needed desperately. I appreciate the fact

that honourable members on both sides of the House believe the legislation should be passed today otherwise those who hope to benefit from it will have to wait many more months before another likely opportunity presents itself. Having said that, I believe it is reprehensible that legislation as important and significant as this, with far-reaching ramifications for the lives of people who suffer great disadvantages, should be rushed through the House with such expedition. I received a copy of the bill only a few minutes ago, although I gather it was discussed by Government and Opposition members prior to this debate. That is simply not good enough. This legislation is worthy of proper investigation by Parliament and we should be given the opportunity perhaps to improve it. I condemn the Government for delaying the introduction of this legislation for so long. I gather from the debate that its introduction is due to the prompting of Judie Stephens, who is in the gallery. The Government's incompetence is equally reprehensible.

The Leader of the House indicated in his second reading speech that the bill provides a cheap and simple answer to disputes that may arise between the Protective Commissioner, the Guardianship Board, the Guardianship Tribunal and the Public Guardian, which deal with those who are placed under protective orders of one kind or another. I do not think that is the case. I do not think the bill offers a simple and cheap avenue. The legislation immediately transfers to a disputes tribunal any problems experienced by those bodies in an endeavour to find some solution to the mish-mash of incompetence and the quite destructive behaviour of many agents of the government that deal with people who need some form of protection.

The Public Bodies Review Committee's original terms of reference were incomplete and inadequate. Whole areas that required scrutiny desperately were left out of the committee's brief. That is not the committee's fault; that is the brief it was given. The Government is at fault because it failed to widen the scope of the committee's terms of reference to include an examination of the many issues that fundamentally underline the problems in this area. This legislation does nothing to address those issues. It does nothing to address the causes of disputation and it does nothing to deal with the day-to-day administration and first-contact conduct of those bodies. They can continue to operate in their usual manner and anyone who disagrees can take their case to the Administrative Decisions Tribunal [ADT]. This will lead inevitably to the ADT grappling with many complex questions with which I think it will have much more difficulty than is envisaged in this legislation. It is not a cheap and simple answer. I wish it could be, but unless we go back and consider the fundamental issues that give rise to disputation, we will not address the problem.

The capacity to take a dispute to a tribunal should be based on the premise that the agency that is responsible for delivering the service in the first place gets it right in most instances. In the relatively rare cases when there is disagreement about the way in which an agency conducted its affairs the disputants should be able to go a tribunal to seek a resolution. Like all members of Parliament, I have had considerable experience in this area. I have been deeply involved in terribly time-consuming and traumatic issues. I have had constituents in my office in tears. In many cases I have gone far beyond the role expected of a member of Parliament in an effort to resolve issues because the fundamental conduct of these bodies leaves so much to be desired. Unless we address that problem we will make very little headway with this legislation. That is not to say that this bill should not be passed. I certainly do not oppose it. However, I do not think it will be the panacea that the Leader of the House suggested.

Some matters in the legislation are separate from the establishment of the Administrative Decisions Tribunal as the appeals tribunal, and need much more detailed consideration. Proposed section 31B, which deals with the development of financial plans, is an example. I acknowledge that we, as members of Parliament, hear only about the problems. No-one tells us that the Protective Commission is doing a great job. In many instances the Protective Commission has not demonstrated that it has the capacity to prepare appropriate financial plans for the estates of protected persons. That aspect has been glossed over in the legislation.

A more beneficial approach would have been to issue the legislation in draft form, so that we could have considered it much earlier. The legislation is a classic example of the parliamentary process to which I referred earlier today. A broader ranging debate delving into all the ramifications of this critical area of legislation would have been beneficial for the Parliament and the beneficiaries of



the legislation, the community who are disadvantaged by the way these agencies conduct themselves. I do not want to repeat what I said about the conduct of some of those agencies when the report was tabled, but that certainly leaves a lot to be desired. I am happy to support the legislation. It is a step forward. I hope sincerely that it will provide relief for some of those who currently find themselves in dispute with various agencies.

However, I fear that the legislation will not go as far as the Government believes. The conduct of these agencies is wide open for further review and amending legislation. I regret that I will not be here to speak on future debates in this area, but that is a natural fact of progressive history. I trust that in the life of the next Parliament a further reference to the Public Bodies Review Committee will enable the committee to explore in much more detail the area that needs to be considered. I compliment the Public Bodies Review Committee on its work. It is a conscientious and excellent report within the limited terms of its brief. I urge this House, in the Fifty-third Parliament following the election, to take on all the other unaddressed problems for no other reason than the simple humanity of allowing people who are in need of that form of protection to live their lives with compassion, dignity and security.

**Mr HAZZARD** (Wakehurst) [6.23 p.m.]: I have given an undertaking to the Leader of the House that I will keep my contribution short because he wants to bring on other matters. I would have been delighted to speak on this bill and the problems within the Office of the Protective Commissioner and the Office of the Public Guardian at great length. I have been a solicitor for 25 years and a member of this House for 11, but I cannot count the number of times I have had to advise people on problems that arise in the interface between themselves and the Office of the Protective Commissioner or the Public Guardian. Unfortunately, it is always a difficult time. The committee quite properly observed that.

If the Protective Commissioner and the Public Guardian are involved there is already family conflict. Otherwise, by default, family members would manage the estates, assets and so on of the person who has some disability. We must acknowledge that the Protective Commissioner and the Public Guardian have a difficult job because of the genesis of the problem. However, the report that forms the background to the bill underlines some of the difficulties. It is more about lack of appropriate management of the issues at the earlier stages. In other words, we should be more focused when the family is in dispute about who should control what assets, what should happen with mum's or dad's assets, and where she or he should live. Otherwise we abrogate our responsibility to have the family properly sort it out.

Once an application is made to the Protective Commissioner or the Public Guardian becomes involved, we are on the next part of the treadmill. I am not denigrating the officers who work in the Office of the Protective Commissioner or the Office of the Public Guardian. But quite often the officers do not have the appropriate human skills to handle complex family problems surrounding core financial issues. Consequently, files are not properly maintained because of a lack of experience and capacity to handle these difficult issues. I am aware of files that have been put in bottom drawers and forgotten about, or phone calls not returned because the officer at the other end of the phone is fed up to the back teeth with talking to the family, and the family is causing the officer grief because they are unhappy with a decision of the Protective Commissioner or the Public Guardian.

The legislation will do very little to resolve the problem. I am not detracting from the hard work of the committee: it was a tough job. But the legislation will not necessarily resolve those problems. Parties who are aggrieved will no longer have to apply to the Supreme Court, which is an extremely modest benefit. But it will still be necessary to head off to the Administrative Decisions Tribunal, engage lawyers, properly prepare the cases and appear before the ADT. We talk about mediation and conciliation, but the solution offered by the committee and, effectively, this House to those who are suffering this grief is more litigation, but in a slightly different way.

I am a lawyer. I understand the value of litigation. But litigation should always be the last resort. There should be ways to bring people together at the earliest stages when problems are just arising. There should be ways to bring people together when the problems are at their white-hot point. There

should be a whole system of options. The legislation does not provide that. I am very disappointed that the legislation, which is important, was not properly negotiated. It was not made available in the form of a draft bill for discussion. We are talking about some steps to change the way people relate to an office that has quite remarkable control over a family's assets and the life of family members.

It would have been far more beneficial if the Labor Government had released draft legislation for consultation. I see no indication of who has been consulted about the legislation. As the honourable member for Hawkesbury recounted, the bill was produced to most members of the Opposition only a few minutes ago. It is farcical to say that the bill has undergone proper consultation. However, I notice the ever-omniscient presence of the honourable member for Strathfield in the Chamber. For that reason I shall cease my contribution with the forlorn hope that in the next Parliament, when the Liberal and National parties are in government, there will be proper consultation about this issue to ensure that real outcomes are achieved for families in distress.

**Ms MEAGHER** (Cabramatta—Parliamentary Secretary) [6.29 p.m.], in reply: I thank honourable members who have taken part in this debate.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

Bill Name: Guardianship And Protected Estates Legislation Amendment Bill  
Stage: Second Reading  
Business Type: Bill, Debate  
Keywords: 2R  
Speakers: Meagher, Mr; Whelan, Mr; Chikarovski, Mrs; Orkopoulos, Mr; Maguire, Mr; Ashton, Mr; Kerr, Mr; Rozzoli, Mr; Hazzard, Mr  
Database: LA Hansard Extracts - 52nd Parliament of NSW / 523pa064 / 40

[Next Page](#)  
[Previous Page](#)