

Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence

Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021

Objectives of the Amendments

The Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 (the Bill) amends the *Public Trustee Act 1978* (the PTA) to establish the Public Trustee Advisory and Monitoring Board (the Board). The Board will provide additional oversight over the Public Trustee to enhance its performance, transparency and public accountability.

The establishment of the Board implements Recommendation 30 of the former Public Advocate's report, *Preserving the financial futures of vulnerable Queenslanders: A Review of the Public Trustee's fees, charges and practices* (the OPA Report), which was tabled in the Legislative Assembly on 10 March 2021.

The Bill was introduced into Parliament on 28 October 2021 and referred to the Community Support and Services Committee (the Committee). The Committee's report, tabled on 21 January 2022, made three recommendations, including that the Bill be passed.

The objectives of the amendments are:

- to commence the Bill on a date to be fixed by proclamation; and
- to implement the Committee's recommendations including:

- recommendation 2: that clause 4, new section 117ZD (Appointed Board Members), be amended to add another appointed board member to the Board, with lived experience and that new section 117ZD(2) be amended to provide that the Minister must appoint at least five, but not more than six, appointed Board members; and
- recommendation 3: that clause 5, new section 141B, be amended to ensure a separate annual report of the Board of the Public Trustee be provided to the Minister and tabled in the Queensland Legislative Assembly

Commencement of the Bill

The objective of Amendment 1 is to provide for the commencement of the Bill on a date to be fixed by proclamation. This will allow sufficient time for the recruitment and appointment of appointed Board members.

Implementation of Recommendation 2 of the Committee's Report

The objectives of Amendments 2 to 5 are to implement Recommendation 2 of the Committee's Report.

Increase the number of appointed Board members

New sections 117ZC and 117ZD of the PTA as inserted by the Bill provide that the Board has a combination of ex-officio members (permanent Board members – up to five) and members appointed by the Minister (appointed Board members – at least four but no more than five).

Part of Recommendation 2 of the Committee's Report is that the Bill be amended to provide that the Minister must appoint at least five, but not more than six, appointed Board members, thereby increasing the total number of Board members by one (for a maximum of 11).

It is proposed to amend section 117ZD of the PTA as inserted by the Bill to provide that the Minister must appoint at least five, but not more than six, appointed Board members. An additional appointed Board member would increase the maximum Board membership by one, to up to 11.

Additional appointed Board member with lived experience of impaired capacity

Section 117ZD of the PTA inserted by the Bill lists the knowledge, qualifications or skills the appointed Board members must have, as ensured by the Minister when appointing.

Part of Recommendation 2 of the Committee's Report is that the Bill be amended to add an appointed Board member with lived experience with impaired capacity, either in regard to themselves or others. This followed submissions to the Committee in its inquiry into the Bill that the Board should include a Board member with 'lived experience', to ensure appropriate expertise and representation.

It is proposed to amend section 117ZD of the PTA inserted by the Bill to provide that, in appointing the Board members, the Minister must ensure that at least one appointed

Board member has experience living with impaired capacity, including as a carer or family member of a person with impaired capacity.

The proposed amendment ensures the Board includes, and benefits from, a member with personal experience of the interests of the people who are the clients of the Public Trustee.

Updated quorum for Board meetings

Section 117ZQ of the PTA as inserted by the Bill provides that a quorum for a Board meeting is at least half of the Board members, including at least three appointed Board members.

It is proposed to amend section 117Q of the PTA inserted by the Bill to update the quorum to be at least half of the Board members, including at least four appointed Board members. This complements the other amendments that implement Recommendation 2 of the Committee's Report to ensure an appropriate balance of permanent Board members and appointed Board members at Board meetings.

Implementation of Recommendation 3 of the Committee's Report

Section 141B of the PTA as inserted by Bill provides that the Public Trustee must include in its annual report under the *Financial Accountability Act 2009* information about the performance of the Board's functions and the exercise of the Board's powers during the financial year.

Recommendation 3 of the Committee's Report is that the Bill be amended to ensure a separate annual report of the Board be provided to the Minister and tabled in the Queensland Legislative Assembly.

It is proposed to insert new section 117ZZA into new Part 8A of the PTA, as inserted by the Bill, to require that the Board provide the Minister with its own Annual Report as soon as practicable after the end of the financial year and for the Minister to table the Annual Report in the Legislative Assembly within 14 sittings days of receipt. This will replace section 141B of the PTA as inserted by the Bill.

Requiring the Board to prepare and table its own annual report will enhance the Board's transparency, independence and effectiveness, including by ensuring any recommendations or advice given to the Minister, and recommendations made to the Public Trustee, are published.

Achievement of the Objectives

The amendments to the Bill will achieve the stated policy objectives by:

- inserting new clause 1A, which provides that the Act will commence on a day to be fixed by proclamation;
- amending new section 117ZD(2) of the PTA, inserted by clause 4 of the Bill, to provide that the Minister must appoint at least five, but not more than six, appointed Board members;

- inserting new section 117ZD(3)(da) of the PTA, inserted by clause 4 of the Bill, to require the Minister to ensure that at least one appointed Board member has experience living with impaired capacity, including as a carer or family member of a person with impaired capacity;
- inserting new subsection (7) in new section 117ZD of the PTA, inserted by clause 4 of the Bill, to define ‘carer’ and ‘paid carer’ for section 117ZD;
- amending new section 117ZQ of the PTA, inserted by clause 4 of the Bill, to provide that a quorum for a Board meeting is a least half of the members for the time being, including at least four appointed Board members;
- inserting new section 117ZZA of the PTA, to require that the Board provide the Minister with an Annual Report as soon as practicable after the end of each financial year, and for the Minister to table the Annual Report in the Legislative Assembly within 14 sitting days of receipt; and
- omitting new section 141B of the PTA.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

Appointed Board members are to be paid the remuneration and allowances decided by the Minister. An additional Appointed Board Member will therefore result in additional costs.

Any costs for implementation of the amendments will be met from existing budget allocations.

Consistency with Fundamental Legislative Principles

The proposed amendments to the Bill do not raise any additional fundamental legislative principles beyond those identified in the explanatory notes to the Bill.

Consultation

The development of the amendments was informed by the submissions to the Committee. No consultation external to Government was undertaken on the proposed amendments.

Consistency with legislation of other jurisdictions

See the Explanatory Notes to the Bill.

The amendments to the Bill are specific to the State of Queensland.

NOTES ON PROVISIONS

Amendment 1 – After clause 1

Amendment 1 inserts new clause 1A to the Bill to provide that the Act commences on a day to be fixed by proclamation.

Amendment 2 – Clause 4 (Insertion of new pt 8A)

Amendment 2 amends new section 117ZD(2) of the PTA (Appointed board members) (inserted by clause 4 of the Bill) to provide that the Minister must appoint at least 5, but not more than 6, appointed board members.

Amendment 3 – Clause 4 (Insertion of new pt 8A)

Amendment 3 amends new section 117ZD(3) of the PTA (Appointed board members) (inserted by clause 4 of the Bill) to insert a new subsection (da) providing that the Minister must ensure that at least one appointed board member has experience living with impaired capacity, including as a carer or family member of a person with impaired capacity.

Amendment 4 – Clause 4 (Insertion of new pt 8A)

Amendment 4 amends new section 117ZD of the PTA (Appointed board members) (inserted by clause 4 of the Bill) to insert new subsection (7), to provide definitions of ‘carer’ and ‘paid carer’ for new section 117ZD. These terms are used in section 117ZD(3)(da) inserted by Amendment 3.

Amendment 5 – Clause 4 (Insertion of new pt 8A)

Amendment 5 amends new section 117ZQ of the PTA (Quorum) (inserted by clause 4 of the Bill) to provide that a quorum for a board meeting is at least half of the board members for the time being, including at least 4 appointed board members.

The words ‘for the time being’ clarify that the quorum requirement is calculated on the number of members appointed at the time the board meeting is held, not the total number of possible board members.

Amendment 6 – Clause 4 (Insertion of new pt 8A)

Amendment 6 inserts new section 117ZZA of the PTA (Annual report).

Subsection (1) of new section 117ZZA provides that, as soon as practicable after the end of each financial year, the board must prepare and give to the Minister a written report about the performance of the board’s functions during the year.

Subsection (2) provides that the report must include details of the following for the financial year:

- (a) advice given or recommendations made to the Minister under Part 8A of the PTA; and

(b) recommendations made to the public trustee under Part 8A of the PTA.

Subsection (3) provides that the board must ensure that information included in the report does not disclose personal information.

Subsection (4) provides that the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

Amendment 7 – Clause 5 (Insertion of new s 141B)

Amendment 7 omits new section 141B of the PTA (inserted by clause 5 of the Bill).