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Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane Qld 4000

By Email Only: CSSC@parliament.qld.gov.au

Dear Committee Secretary

Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021

This is the Queensland Human Rights Commission's (**the Commission**) submission on the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 (**the Bill**).

The Public Trustee provides an important public service for vulnerable Queenslanders, including as substituted financial decision maker for people with impaired decision making capacity.

As a public entity under the *Human Rights Act 2019* (Qld) (**HR Act**), the Public Trustee owes obligations to individuals to:

- (a) Act and decide compatibly with human rights; and
- (b) Give proper consideration to human rights when making a decision (section 58(1) of the HR Act).

This means that if the acts or decisions of the Public Trustee limit human rights, then they must be demonstrably justified in a free and democratic society based on human dignity, equality and freedom (sections 8 and 13 of the HR Act).

The Public Trustee's acts and decisions have the potential to significantly limit a person's human rights, including to:

- Recognition and equality before the law, including the right to enjoy rights without discrimination and the right to equal protection before the law (section 15 of the HR Act);
- Freedom of movement, which includes the freedom to choose where to live (section 19 of the HR Act);

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- Property rights, which protects a person's right to own property, and to not be arbitrarily deprived of their property (section 24 of the HR Act);
 - Privacy, which extends to the right to be free from unlawful or arbitrary interference with a person's autonomy, social individuality and identity, home and family (section 25 of the HR Act);
 - Cultural rights of Aboriginal peoples and Torres Strait Islander peoples, and that they are not denied the right to enjoy, maintain, control their identity and cultural heritage, their kinship ties, their relationship to the land, and to conserve and protect the environment (section 28 of the HR Act).

On 10 March 2021, the Public Advocate tabled her report *Preserving the financial futures of vulnerable Queenslanders: A Review of the Public Trustee's fees, charges and practices* in the Legislative Assembly (**the OPA Report**). The OPA Report outlined concerns regarding the Public Trustee's fees and charges and other practices, such as investment policies, information access and decision accountability.

The reform proposed by the Bill is in response to Recommendation 30 of the OPA Report to 'consider whether the Public Trustee and its clients would benefit from additional oversight and/or reporting mechanisms to improve the Public Trustee's performance, transparency and public accountability.'

The Bill proposes to establish the Public Trustee Advisory and Monitoring Board (**the Board**), to provide advisory and monitoring oversight over the Public Trustee, for the purpose of enhancing the Public Trustee's performance, transparency and accountability.¹

The additional oversight will go towards promoting and protecting the human rights of people who have interactions with the Public Trustee, and the reform is generally supported by the Commission.

This submission draws the Committee's attention to the following two issues:

1. Ensuring that Board membership has the necessary mix of expertise and skills, including giving voice to the people most impacted by the functions of the Public Trustee;
2. Whether advice and recommendations of the Board should go to the Parliamentary Committee or otherwise published to improve effectiveness, transparency, and accountability.

Need for further oversight

Recommendation 30 of the OPA Report is made in the context of observations that, while the Public Trustee is accountable to annual Budget and Estimates processes and appears before Parliamentary Committees, there is limited other oversight over the Public Trustee's fees and charges. Concerns were also expressed about the Public Trustee's complaint processes and its accessibility for people with impaired capacity and effectiveness for systemic improvement, and that there were limits to

¹ Statement of Compatibility 1.

external review mechanisms offered by the Queensland Ombudsman and the Crime and Corruption Commission.

The Commission notes that it also has a function of receiving individual complaints about the Public Trustee in relation to unlawful discrimination under the *Anti-Discrimination Act 1991* (Qld), and unjustified limitations of human rights under the HR Act. Since 2010, the Commission has received 126 enquiries that mention the Public Trustee, and 26 complaints² which name the Public Trustee as a respondent. The numbers of enquiries and complaints have significantly increased in the last two years³, although the majority of complaints have not met threshold requirements for acceptance under the Acts.

Existing individual complaints mechanisms, while important, are insufficient to identify and address broader issues of systems, culture and structures. It further relies on individuals to make complaints, many of whom may not be in a position to do so as a result of disability, disempowerment and isolation.

The Commission supports the introduction of an oversight mechanism which allows for a contemporary, external gaze on the practice, procedures, and policy of the Public Trustee. Implementation through legislation, rather than through administrative arrangements, allows for the setting of functions and obligations of the Board, and increases its independence, accountability and transparency. The proposed Board also has the advantages of access to information of the Public Trustee, a specific focus, and a mix of expertise and skills directly relevant to the Public Trustee's functions.

Board membership

The Board's membership will be critical to the achievement of its purpose.

The Bill currently specifies the makeup of the Board to be:

- five permanent members, being the chief or senior executives of the Department of Justice and Attorney-General, and the departments responsible for the *Financial Accountability Act 2009*, the *Disability Services Act 2006*, seniors, and the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*;
- At least four but not more than five appointed members including
 - at least one person with knowledge, qualifications or skills in relation to advocacy, services and support for seniors and persons with a disability, including persons with impaired capacity;
 - at least one person with legal knowledge, qualifications or skills in relation to one or more of the following: commercial litigation; duties and obligations of trustees; powers of attorney; substituted decision-making for adults with impaired capacity; succession law; or the principles and rules of equity.

² Note that some of these complaints may relate to workplace issues, rather than provision of services.

³ During 2020 and 2021, the Commission has received 76 enquiries and 14 complaints involving the Public Trustee.

In addition, the Minister must ensure the appointed board members reflect the diversity of the Queensland community and at least one appointed board member is an Aboriginal person or Torres Strait Islander. While not public servants, both the Board and the appointed board members are likely to be public entities with responsibilities under the HR Act (see sections 9(f) and (i) of the HR Act).

The Commission recommends further consideration be given to specifying appointed board members who are or who have expertise in:

- a consumer or carer representative with lived experience;
- mental health; and
- human rights.

Further, given that the departments of some of the permanent members currently overlap⁴, are likely to continue to overlap, and the importance of ensuring a board that is diverse and inclusive, consideration could be given to reducing the number of permanent members, in favour of more appointed members.

Effectiveness, transparency and accountability

The OPA Report at [712] suggested that reports of the Board be to the Parliamentary Committee.

In the Bill, the Board provides its reports to the Attorney-General, who has no obligation to table or publish the report. Annual reporting on the performance of the Board's functions and powers is to be contained in the Public Trustee's annual report. This has the potential to undermine the Board's effectiveness and limits its transparency and public accountability.

The Commission recommends that the advice and recommendations of the Board go to the Parliamentary Committee, or at a minimum be published.

Thank you for this opportunity to provide submissions on the Bill.

Yours sincerely



Scott McDougall
Commissioner

⁴ Three of the five members are from the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships