



19 November 2021

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

By email: CSSC@parliament.qld.gov.au

Dear Committee

Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021

Thank you for the opportunity to provide feedback on the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 (the **Bill**). Aged and Disability Advocacy Australia (**ADA**) appreciates being consulted on the introduction of this important framework.

About ADA Australia

ADA is a not for profit, independent, community-based advocacy and education service with nearly 30 years' experience in informing, supporting, representing and advocating in the interests of older people, and persons with disability in Queensland.

ADA also provides legal advocacy through ADA Law, a community legal centre and a division of ADA. ADA Law provides specialized legal advice to older people and people with disability, including those living with cognitive impairments or questioned capacity, on issues associated with human rights, elder abuse, and health and disability legal issues related to decision-making.

Review of the Bill

ADA has reviewed the Bill and the explanatory notes and provides the following for the Committee's consideration.

Establishment of the board

ADA supports the proposal to establish a board for the purpose of providing additional oversight of the Public Trustee of Queensland (the **Public Trustee**) in relation to its performance, transparency, and public accountability.

Establishment of the board aligns with recommendation 30 of the report by the Queensland Public Advocate, *'Preserving the financial futures of vulnerable Queenslanders: A review of Public Trustee fees, charges and practices'*¹ (the **OPA Report**).

¹ The Public Advocate of Queensland, *Preserving the financial futures of vulnerable Queenslanders*, January 2021, https://www.justice.qld.gov.au/_data/assets/pdf_file/0012/669747/opa-public-trustee-fees-and-charges-report-executive-summary.pdf.

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ADA Australia acknowledges the Traditional Custodians of this land and pays respect to Elders, past and present.
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The OPA Report highlighted the need for reforms which will be effective in improving the Public Trustee's accountability, particularly in relation to its duties and obligations as a trustee and fiduciary.

The proposed advisory and monitoring functions of the board, as well as the provision of advice and recommendations about how the Public Trustee's performance and functions can be improved, will play an important role in improving the Public Trustee's accountability, and in supporting its ability to fulfil its fiduciary duties.

Board composition

ADA supports the proposed composition and board membership, particularly, the obligation that members reflect the diversity spectrum of the Queensland community, inclusion of at least 1 member who is an Aboriginal or Torres Strait Islander person, as well as having regard to the lived and professional experiences of members.

It is critical that *at least* one member of the board holds extensive legal and practical knowledge with respect to the relevant legislation and human rights obligations associated with supported and substitute decision-making for persons with impaired capacity. Queenslanders with questioned or impaired capacity who are engaged with the Public Trustee are most impacted by its operations and performance standards.

We therefore submit that the member/s appointed by the Minister to assist the board on matters related to the legislation, policy and programs for older persons and people with disability, advocacy for people with impaired decision-making capacity, as well as regarding issues related to succession, powers of attorney, trustee matters, and substitute decision-making, must be able to demonstrate recent practical experience in relation to assessing decision-making capacity and assisting persons with questioned or impaired capacity.

Appropriate experience assisting persons with questioned or impaired capacity in the guardianship jurisdiction of the Queensland Civil and Administrative Tribunal should be highly regarded. Further, we recommend that all board members be required to complete an education session which aims to inform members about legal and decision-making capacity in the context of guardianship and administration.

ADA supports the inclusion of the ex-officio members as described. We note that for appointed board members, the Bill provides for disqualification of a member in the event of conviction of an indictable offence, insolvency, disqualification from managing a corporation pursuant to the *Corporations Act 2001*,² where the person is the public trustee, or in circumstances where the Minister requests the member's consent to make a request under section 117ZK relating to the person and they do not give consent.

Clause 117ZI of the Bill also imposes disclosure obligations with respect to the appointed members.

ADA supports the inclusion of these provisions with respect to appointed board members. However, we note that the Bill does not impose any like obligations, or disqualification provisions, in relation to ex-officio members. We suggest that these provisions should apply to all board members and recommend amending the identified clauses of the Bill accordingly.

² See clause 117ZF of the Bill, which refers to the *Corporations Act 2001* (Cth), part 2D.6.

Efficacy and statutory review

The Bill does not include a process requiring an independent review of the board to determine whether it is functioning in a way that meets its intended purpose and obligations. We suggest that provision for an independent review should be included in the legislation, to be completed within a reasonable period after the board has been established.

Thank you again for the opportunity to comment. ADA would be pleased to further assist the Committee with its inquiry. Should you wish to discuss this submission, please do not hesitate to contact Vanessa Krulin, Solicitor and Senior Policy and Research Officer on [REDACTED] or via [REDACTED].

Yours faithfully

A handwritten signature in black ink, appearing to read 'Geoff Rowe', with a long horizontal stroke extending to the right.

Geoff Rowe
Chief Executive Officer