



Queensland
Law Society

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Office of the President

23 November 2021

Our ref: [BT: EL/H&D]

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

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

Dear Committee Secretary

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**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation. This response has been compiled by the QLS Health & Disabilities Law Committee and Elder Law Committee, whose members have substantial expertise in this area.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

A stronger oversight mechanism

QLS recognises that the Public Trustee Advisory and Monitoring Board's (**the Board**) establishment is a response to the former Public Advocate's report,¹ in relation to how the Public Trustee of Queensland (**PTQ**) deals with certain clients. In that report, the former Public Advocate highlighted two possible oversight mechanisms to improve the PTQ's performance, transparency and public accountability, being:

- a governance board that would provide direction and oversight to the PTQ; or,
- the requirement for the Public Trustee to report to a Parliamentary Committee, similar to the requirement for the Crime and Corruption Commission to report to the Parliamentary Crime and Corruption Committee.²

The Bill, however, proposes that the Board will have only an advisory and monitoring function, in that it will monitor the PTQ's performance and provide advice and make recommendations to the Attorney-General about how the PTQ's performance can be improved.

¹ Queensland Public Advocate, *Preserving the financial futures of vulnerable Queenslanders: A review of the Public Trustee's fees, charges and practices*, (Report, 10 March 2021).

² *Crime and Corruption Act 2001* (Qld) s 9.

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While QLS supports the Government's move to establish an oversight mechanism for the PTQ, we would prefer the first oversight mechanism suggested by the former Public Advocate, being a governance board. We understand that the Board contemplated under the Bill aligns with the PTQ's current corporate structure, being a corporation sole,³ and that the establishment of a governance board would require that the *Public Trustee Act 1978* be further amended to change the PTQ's legal structure from a corporation sole to a statutory authority. However, we consider that a stronger oversight mechanism than an advisory and monitoring board is required, given the central role that the PTQ plays in Queensland, its breadth of services, and the significant amount of funds under its management.⁴

We also highlight that this type of structure would be consistent with other statutory entities and commissions that have boards with stronger governance functions. For example, the board of Legal Aid Queensland is required to 'responsibly manage Legal Aid' and ensure it 'achieves its objects' under the legislation.⁵ A governance board would also be consistent with what occurs in some other Australian jurisdictions. For example, State Trustees in Victoria has an independent board of directors,⁶ as does the Public Trustee of Tasmania.⁷

Accordingly, QLS recommends that the Government consider the benefits of amending the PTQ's corporate structure to enable the establishment of an independent board of directors comprised of board members who are selected on the basis of particular skills and expertise relevant to the PTQ's functions.

Proposed structure and composition of the Board

Should the Government proceed with the Advisory and Monitoring Board, we have some concerns about the proposed structure and composition of the Board. In particular, we query the need for 5 Government department chief executives or their delegates as permanent members of the Board under section 117ZC of the Bill. Further, 3 of these 5 chief executives are currently the same person, being:

- the chief executive of the department in which the *Disability Services Act 2006* is administered;
- the chief executive of the department mainly responsible for seniors; and
- the chief executive of the department in which the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* are administered.

While the chief executive of these departments can nominate a senior executive of the relevant department to be a permanent board member, QLS considers that it is problematic for the Board to have such a large number of Government department chief executives, and further, for the majority of permanent board members to come from the same Government department (being the Department of Seniors, Disability Services and Aboriginal Torres Strait Islander Partnerships). We highlight that the boards of other statutory entities, for example the Legal Aid Board, do not have permanent Government appointments.

³ *Public Trustee Act 1978* (Qld) s 8.

⁴ According to its 2019-20 annual report, the Public Trustee held \$731M in trust on behalf of clients: Queensland Public Advocate, *Preserving the financial futures of vulnerable Queenslanders: A review of the Public Trustee's fees, charges and practices*, (Report, 10 March 2021).

⁵ *Legal Aid Queensland Act 1997* (Qld) s 52.

⁶ The State Trustees of Victoria is a State Government owned company and operates as a corporation, and is required to comply with the *State Owned Enterprises Act 1992* (Vic), s 23 of which requires that there be a board of directors of each State business corporation.

⁷ The Public Trustee of Tasmania is also a Government Business Enterprise owned by the Tasmanian Government, and is therefore required to have an independent board of directors under s 11 of the *Government Business Enterprises Act 1995* (Tas).

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This is compounded by the requirement that decisions must be made by majority vote, where at least half of the Board members must be present for a quorum, of which only 3 must be appointed Board members. QLS also questions why the Government appointed Board members need to be Permanent Board members, as opposed to appointed Board members. We are unable to find any justification in the explanatory material as to why such a large number of Board members are Government appointments, and why those members need to be permanent Board members.

It is QLS' view that this structure risks appointed Board members being effectively unable to play a meaningful role on the Board. Additionally, QLS considers that such a large number of Government appointed permanent Board members who are members of executive government creates difficulty with the Board being seen to be independent. We note that section 117ZA(1) of the Bill, provides that '[i]n performing its functions, the board must act independently and in the public interest'.

Accordingly, QLS recommends that to ensure the proper performance of its required functions, the Board should be more arm's length from the Queensland Government. If permanent members who are chief executives of departments are considered necessary, then their number should be limited to no more than 2.

In relation to the appointed Board members, QLS supports section 117ZE of the Bill requiring the chairperson of the Board to be an appointed Board member, and section 117ZG providing appointed Board members with 3 year terms. However, QLS considers that the Board would also benefit from a member with knowledge, qualifications or skills in relation to neuroscience, psychiatry or cognitive psychology to ensure that there is sufficient understanding and expertise in relation to the most vulnerable clients that the PTQ services, being those people with impaired decision-making capacity under financial administration.

QLS also recommends that the Bill should require the Minister to consult with relevant bodies in appointing Board members to provide increased impartiality of the Board. For example, members of the QLS Elder, Health & Disability, and Succession Law Committees have expertise and experience in the areas set out in section 117ZD(3)(c) of the Bill.

Transparency and accountability

Section 117Y provides that any advice or recommendation made by the Board is provided to the Attorney-General, who is not obligated to table or make the report publicly available. In the interest of transparency and accountability, QLS recommends that section 117Y of the Bill be amended to provide that any advice or recommendations of the Board are provided to a Parliamentary Committee, or are made publicly available.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED].

Yours faithfully



Elizabeth Shearer
President