



COMMUNITY SUPPORT AND SERVICES COMMITTEE

Members present:

Ms CP McMillan MP—Chair
Mr SA Bennett MP
Mr MC Berkman MP
Mr JM Krause MP
Ms CL Lui MP
Mr RCJ Skelton MP (virtual)

Staff present:

Ms L Pretty—Acting Committee Secretary
Ms C Furlong—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE PUBLIC TRUSTEE (ADVISORY AND MONITORING BOARD) AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

MONDAY, 29 NOVEMBER 2021

Brisbane

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The committee met at 10.30 am.

CHAIR: Good morning. I declare open this public hearing for the Community Support and Services Committee's inquiry into the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay my respects to elders past, present and emerging. I also acknowledge the member for Cook, Ms Cynthia Lui, a First Nations woman and the first Torres Strait Islander woman of the Queensland parliament. We acknowledge her contributions. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all share.

On 28 October 2021 the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 was referred to this committee for examination, with a reporting date of 21 January 2022. My name is Corrine McMillan. I am the member for Mansfield and chair of the committee. Mr Stephen Bennett, the member for Burnett, is the deputy chair. The other committee members are: Mr Michael Berkman, the member for Maiwar; Mr Jon Krause, the member for Scenic Rim; Ms Cynthia Lui, the member for Cook; and Mr Robert Skelton, the member for Nicklin. Mr Skelton is on the phone this morning from Townsville. Welcome, Mr Skelton.

The purpose of today's hearing is to assist the committee with its inquiry into the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021. I ask that any responses to questions taken on notice today are provided to the committee by 5 pm on Friday, 3 December 2021. The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Thank you to Hansard.

Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobiles phones off or to silent mode.

Finally, while the current COVID-19 restrictions for South-East Queensland remain in force, we will be adhering to limits on the number of people present in the hearing room today. I thank everyone for their understanding. The program for today has been published on the committee's webpage, and there are hard copies available from committee staff.

CHESTERMAN, Dr John, Public Advocate, Office of the Public Advocate

CHAIR: I now welcome Dr John Chesterman, the Public Advocate. It is good to see you again. Good morning and thank you for appearing before the committee today. I invite you to make a brief opening statement, after which time I am sure committee members will have questions for you.

Dr Chesterman: I begin by thanking members of the committee for having me here today. I also acknowledge that I am speaking on the traditional lands of the Jagera and Turrbal peoples and pay my respects to elders past, present and emerging.

As members of the committee would know, the report from my office entitled *Preserving the financial futures of vulnerable Queenslanders: a review of Public Trustee fees, charges and practices*, which was completed under the leadership of the previous Public Advocate, Mary Burgess, was tabled in parliament on 10 March 2021. I began my term as Public Advocate on 13 August this year. The introduction of the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 is a significant step towards implementing the government's acceptance of recommendation 30 of the *Preserving the financial futures of vulnerable Queenslanders* report.

In my brief written submission I welcomed very much the development that this bill signifies and I also made two observations. Firstly, I noted that the proposed functions of the board, as articulated in the bill, are essentially to monitor and review the performance of the Public Trustee's functions as well as monitor complaints and provide advice about legislative and other changes that would improve the Public Trustee's operations and performance. I did note that other statutory entities

have boards with stronger governance functions. The example I gave in my submission concerned the board of Legal Aid Queensland, which has functions to responsibly manage Legal Aid and ensure that Legal Aid achieves its objects. I did also note that the proposed functions of the Public Trustee board are consistent with the government's commitment made upon the public release of my office's report to establish a board with an advisory and monitoring function.

The other point I made concerned the proposed composition of the board, which, as the bill sets out, would comprise nine or 10 members, including five permanent members and four or five appointed members. I noted that, due to current governmental arrangements, three of the five proposed permanent members of the board are the chief executive or delegate of the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships. As we know, that department is responsible for multiple policy areas of relevance, including disability services, seniors and Indigenous affairs. I recognise that senior departmental representatives in all of those areas would have much to add to the board's operations. I did suggest that the board's expertise in the area of seniors, for instance, could be achieved by removing one of the permanent board positions and by adding the requirement for one of the appointed board members to have expertise in that field, and I gave some possible wording for such a change to the bill.

As I say, in total the development of this bill goes a significant way towards implementing the government's commitment regarding recommendation 30 of my office's report, which I do welcome. I am happy to finish my introductory comments there. Thank you again for having me here today. I welcome any questions or comments.

Mr BENNETT: Congratulations for turning a spotlight on the issues of our seniors and others around their financial vulnerability. In relation to recommendation 30 of the report, the Public Trustee has a number of boards, governance structures, CEOs and ministerial oversight. Could you explain where the concept and necessity for another advisory and monitoring board came from? For me, I will be brutally honest, it is another level of governance. I am curious for your thoughts about how that would make any difference.

Dr Chesterman: It is interesting to reflect on the situation in other jurisdictions in Australia. There are two such boards. The equivalent in Victoria of the Public Trustee up here is the State Trustees of Victoria, which has a board. The Public Trustee in Tasmania has a board as well. The other public trustees throughout Australia do not.

The issue being flagged in that recommendation by my office, prior to my beginning here, was that there needed to be some level of independent eyes over significant decisions being made about investment, fees, charges and practices. A board is one example of a governance entity that could provide that oversight. There is always a question how one determines whether oversight money is money well spent.

I take the point that increased regulatory expenditure does not necessarily result in positive outcomes. It depends on both the regulatory set-up and the practices of that board. That was why I was keen to turn my mind to what the board's functions are. They are to monitor and review. The question for this committee is whether that is going to provide sufficient oversight for the administrative and other expenses engaged in setting up a board.

Mr BENNETT: I am not wanting to put words in your mouth, but we are talking about independence and we are looking for a governance structure that obviously adds value for the people who rely on the Public Trustee every day, and they are usually mums and dads and families of Queenslanders. The independence and governance structure is what we are looking for here. How can Queenslanders have confidence in the membership of the board as articulated, being directors-general of other departments who, it could be argued, already have skin in the game and should be doing that role anyway, particularly around the financial governance and protection of deceased estates and other such examples and that they will be valid if the board is not truly independent?

Dr Chesterman: That is a good question. My reflections on that would be that by giving the members, however constituted, the specific role of monitoring and reviewing, I would imagine there is a very clear onus on them to ask questions and get information that would then be subject to a report that the board would provide to the Attorney-General. It would be due diligence on the part of the directors, however constituted, to make those inquiries and be confident that the responses to those inquiries are sound. Not making appropriate inquiries and/or being happy with advice that was sound would put those directors very much in the spotlight. I think we could be reasonably confident that the specific requirements on the board would give us some level of confidence in the improved oversight of the Public Trustee.

Ms LUI: You mentioned in your opening statement that other boards and entities have stronger governance compared to government boards. Can you elaborate on that?

Dr Chesterman: For instance, outside of government, boards often have the power to hire and fire the CEO and set the strategic focus for the organisation and ensure the organisation achieves that strategic focus. Boards of statutory creatures can be very different. The example I gave was Legal Aid. There are other examples of statutory organisations. I have come from Victoria. The Victorian Equal Opportunity and Human Rights Commission has a board which has a little stronger powers than to monitor and review. Then there are boards that have pretty much an advisory function when we are talking about statutory entities.

There is no right or wrong answer. On reading the bill, I was struck that the governance powers of the proposed board are reasonably limited. Having said that, as I answered previously, nonetheless, the power to monitor and review does put an onus on board members to ask probing questions and have some level of satisfaction with the answers that are provided. I would say in sum that this will lead to an improvement in the governance of the Public Trustee.

Mr BERKMAN: Obviously this bill has been introduced in the context of a much longer list of recommendations that came from the Public Advocate. You said in your opening statement that this bill and the proposed board go some way to implementing recommendation 30. What remains beyond what is proposed in the bill to completely implement that recommendation?

Dr Chesterman: The report has 32 recommendations. There are some recommendations about which the Public Trustee has taken issue, but they are a minority of the recommendations. Most of the recommendations the Public Trustee has actually embraced. I think it is fair to say that the Public Trustee—and I am monitoring this—is on a genuine change pathway. They have instigated a number of initiatives, including a prices and charges review that is underway.

There is still a substantial amount of work to do before those recommendations could be said to be met. What I am proposing to do in my role, having come in with the report already completed, is have my office prepare a table with all the recommendations and what has happened since. We will complete it around the anniversary of the tabling of this report, which will be 10 March next year. We will have a look at all of the recommendations and what has happened—noting that the Public Trustee has taken a different view on some of the recommendations.

Some of the recommendations are for the government and some are for the Public Trustee and some are a bit of a combination. Clearly this one—recommendation 30—is for the government, and that is very much being acted upon with this bill. There are others, mainly around prices, investment practices and so on, that are subject to ongoing work. We will have to see down the track the extent to which those reform initiatives underway are actually achieving what was sought in the report.

Mr BERKMAN: Apologies if I misunderstood your opening statement. Is it your view that the board as proposed in the bill is a complete response to recommendation 30? You are content with it?

Dr Chesterman: Yes. I take the view that it is. I think it would substantially improve the governance functions. A lot depends on the culture of a new board. I am hopeful and confident, given the likely seniority of members of the board. As I said before, there is a pretty significant onus, especially given the background of the report and so on, on any board coming in to exercise due diligence and to ensure that those board members are happy with what is happening. I would say this satisfies recommendation 30.

Mr SKELTON: The submission proposes a change to the composition of the board. It suggested adding the requirement for one of the board members to have expertise in the area of seniors. Can you outline the benefit of including this requirement?

Dr Chesterman: As the committee knows from my previous time before the committee a few weeks ago, I am hearing impaired. That was around the seniors proposal?

CHAIR: The inclusion of seniors on the board and what the benefits of that are, Dr Chesterman.

Dr Chesterman: Thank you. Currently three of the proposed permanent members would be the chief executive of the one department. It would make more sense, in my view, to remove three and have two—take one out. I thought the seniors one is probably one where you could get expertise from someone in the community. We have active seniors and disability members of the community. In the context and the mix of the various board representatives, seniors would be an area where I thought you could get someone from outside who has expertise, either personal expertise or working for an agency that has relevant skills in this field. That would be a way of changing the dynamics slightly on the board.

CHAIR: Are the vast majority of inquiries, claims and case studies that the Public Trustee deal with in relation to seniors?

Dr Chesterman: It is certainly a significant area of their work. I would not know if it was the majority. I would have to take advice on that. It is more significant in disability, but disability is otherwise catered for in the proposed composition of the board. Disability certainly is the main area, but I do think that is an area that is covered elsewhere.

CHAIR: It is obviously an area of concern of yours.

Dr Chesterman: Yes.

Mr BENNETT: I acknowledge that this is prior to your time, but a lot of the advocacy work that we do for our constituents is about some of the historic problems or difficulties navigating the Public Trustee. With the research that was done to put together the 32 recommendations, what sort of body of work did that come from? Were there surveys and engagement with Queenslanders who rely on the Public Trustee for so much of the sometimes difficult work that has to happen?

Dr Chesterman: Yes, indeed. The previous Public Advocate did meet, I understand, with both individuals and families of people whose assets are managed by the Public Trustee. That was the genesis of the report, really. The report did highlight some of the complexities associated with the fees charged by the Public Trustee. There are a series of fees that are charged. The Public Trustee, I know, acknowledges that that can be quite confusing for people.

There are four main areas of fees: a personal financial administration fee, an asset management fee, a real estate property fee and an additional services fee. That can be quite confusing for people, even though there is justification for separating out those fees. It can mean that people get information which is sometimes very difficult to comprehend. The Public Trustee recognises that. They are engaged at the moment in their fees and charges review in trying to find a better way to do things, trying to be more transparent in their communications and fairer overall. That is part of the fees and charges review.

Mr BENNETT: Every case is unique and different. The role that the Public Advocate plays is in advocacy for those issues and trying to navigate some of the complexities of the Public Trustee. Is that ongoing work for you and your colleagues?

Dr Chesterman: Yes. I am restricted in not being able to be an individual advocate for people. When there are a significant number of concerns that are raised with my office then I take on a systemic advocacy matter. This was an example of a systemic advocacy matter. It was not individual cases that were raised with the Public Trustee in the report but rather en masse. That became the basis of the report. When there are individual people who come to the office, we make appropriate referrals to other agencies that can assist in a particular matter. Where it raises a systemic issue, we will certainly take that on board as well.

Mr BENNETT: It is very presumptuous of me to highlight anything—I am sure you are doing wonderful work. There is a new dashboard in relation to recommendations and what has not been done. The Queensland Audit Office have just introduced that. It might save you some work in putting all of that together because it is very good.

Dr Chesterman: Yes, thank you. I know of that but I will follow that up in more detail. It is very useful and that is something I do know from the past. It is all very well to make recommendations, but who is monitoring the recommendations and following through?

Ms LUI: Dr Chesterman, are you confident that the Public Trustee will be receptive and supportive of measures that may be proposed by the new board under the board's powers proposed by the bill?

Dr Chesterman: Yes. I would say that overall I do have confidence. There are significant reform moves afoot. I have met with the Public Trustee. I do take heart from the genuine change approach that is being adopted. I always say that you have to look at what happens and not just at the good intentions, so I will continue to monitor what happens. I do have confidence that the Public Trustee is reforming what is happening with the Public Trustee Office. I think the early signs are good. As I say, I will continue to monitor that, as I know will others.

Mr BERKMAN: I wanted to draw out one issue that is raised in the submission from the Human Rights Commission. They have highlighted how the report suggests that the board should report to a parliamentary committee as opposed to the Attorney-General which is what the bill provides for. The concern raised is that that reporting arrangement could undermine the board's effectiveness and limit its transparency and public accountability. Do you have a view on that suggestion from the commission?

Dr Chesterman: Yes, I am aware of that. I did think about that in putting my submission together. I do not have a strong view that the board would need to report to parliament. I do not have a strong view that it should not. It was not something that I thought was so significant as to mention

in my submission. There would be an onus on the directors to provide a report that they think reflects the situation. For instance, an adverse report by the board to the Attorney-General would very much put the onus on the Attorney-General to take appropriate action. That is why I think a report to the Attorney-General would probably suffice here. I understand the argument about having a report to parliament. I do not have a strong view that there would need to be a report to parliament.

Mr BERKMAN: Is there any risk, though, that should an adverse report be handed to the Attorney-General it may not see the light of day from that point? Clearly the discretion would remain with the Attorney whether that report was to be made public. Equally, if it were to report to a parliamentary committee, there are no guarantees that the public would be made aware of those findings. Would it not be preferable for there to be a requirement around the publication of those reports, not just its provision to any particular entity, at the end of the day?

Dr Chesterman: In imagining a scenario where the board makes an adverse report to the Attorney-General and that report is not actioned, I think the board would then have to ask itself whether it was able to perform its functions anymore. That would create something of a governance crisis, I would say, for the Public Trustee—which is something that the Attorney-General would be aware of as well. If the Attorney-General received an adverse report and did nothing about it then the board would have to ask what its role was actually achieving. That would cause sufficient concern. That is why I did not take a strong view about the need to report to parliament.

CHAIR: There were other recommendations made—30, in fact. What other recommendations are you particularly looking at monitoring or that you are concerned about?

Dr Chesterman: A lot of the recommendations are in relation to fees and charges and investment strategies and so on. I will not go through the whole list of them. The fees and charges review being conducted by the Public Trustee is very important. When you look at the way fees and charges are levied here in Queensland as against other jurisdictions—a couple of jurisdictions are referenced—there were some inequities and unfairness that resulted, particularly for people who were, you might say, asset sound but cash poor. The way that fees and charges impacted on them was disproportionate and, when compared with other jurisdictions, did not seem fair. That is one element that is being looked at by the Public Trustee now. In fact, they have made one change around removing the value of a principal place of residence in calculating a community service obligation. That is one change that has been made. There is an acceptance that there is some unfairness in the way those charges are levied at the moment, which is the key part of that fees and charges review.

There are other recommendations around reviewing hardship provisions, investment practices, the role of the official solicitor getting outside legal advice and so on. We will monitor every recommendation and provide a response, both from the Public Trustee and from the government, come 10 March next year, on the anniversary of the report's tabling.

CHAIR: There being no further questions, Dr Chesterman, thank you very much for your time today. I do not think there were any questions taken on notice. Thank you for your support of the committee and its work. It is always good to see you, Dr Chesterman. Thank you for your time.

Dr Chesterman: Thank you for having me.

HOLMES, Ms Neroli, Deputy Commissioner, Queensland Human Rights Commission

LEONG, Ms Rebekah, Principal Lawyer, Queensland Human Rights Commission

CHAIR: Good morning to you both. It is good to see you again. Thank you for the support you provide to the work of this committee. I invite you to make a brief opening statement, after which committee members I am sure will have questions for you.

Ms Holmes: Thank you to the committee for allowing us to appear before you today. We are very grateful for the opportunity. I pay my respects to the traditional owners of the land on which we meet today and to elders past, present and emerging.

The Public Trustee of Queensland has the important role of making financial decisions on behalf of people with impaired decision-making capacity. In that role, the Public Trustee wields substantial power and responsibility over a person, and their decisions and actions have the potential to significantly limit human rights and therefore must be justified. Relevant to this consideration is whether there are sufficient and appropriate safeguards in place such as transparency and oversight, rights of review and accountability.

The Queensland Human Rights Commission provides one such safeguard through its function of receiving human rights and anti-discrimination complaints against public entities. However, like other complaints processes, the commission is unlikely to see complaints from people most in need and cannot address broader systemic issues like those identified in the Public Advocate's report. We therefore see the proposed advisory and monitoring board as fulfilling an important oversight role not currently filled and promotes the protection of human rights for people with impaired decision-making capacity.

In terms of the board's constitution, the commission agrees with a number of other submissions that the number of appointed members may need to be increased and perhaps permanent members decreased to ensure appropriate expertise, independence and representation, particularly in relation to lived experience, substitute decision-making and human rights. There are a couple of other boards that we are aware of that do have that sort of mix in them such as the Domestic and Family Violence Death Review and Advisory Board and the Veterans' Council.

We also consider that the board's effectiveness would be strengthened by a requirement to publish its recommendations or that it report to a parliamentary committee. The bill merely requires that the PTQ include in its annual report information about the performance of the board's functions and exercise of the board's powers during the financial year. A couple of other committees' advisory boards do publish in the parliament, including the Domestic and Family Violence Death Review and Advisory Board and the Queensland Mental Health Commission.

In addition, we note that other legislation expressly requires that the board be provided with the administrative support services reasonably required to perform their functions effectively and efficiently, such as in the Coroners Act and the Queensland Veterans' Council Act. We would support such a provision in support of the bill for this board.

In the absence of increased reporting and transparency, we would support the submission made by ADA Australia that there be an independent review of the board within a reasonable time after the board has been established, perhaps at the end of the first appointees' term of three years, just to see how the first three years have proceeded. Apart from that, the commission does not have much further to add other than what we have put in our submission.

Mr BENNETT: Your submission talks about equality before the law. Just as an observation, we have one class of Queenslanders who can afford private lawyers and another class of Queenslanders who use the Public Trustee. My blunt question is: how will another advisory or monitoring board make any difference to the class of Queenslanders who are subject to the will or processes of the Public Trustee?

Ms Holmes: That is a very good question. That is always the question for people who have a voice that cannot be articulated and heard. I do not think it is unique to the Public Trustee. We would say that is often the occasion in many such instances.

Ms Leong: We would hope this board would be able to provide recommendations that would improve equality for people under the Public Trustee who may not have the resources to get the support they need. I guess that is part of our submission. We receive complaints and we can deal with those complaints individually, but we would hope the board would have an effect on these broader issues that need systemic and cultural change.

Mr BENNETT: All credit to the government for implementing a review of fees and charges, but from your perspective do those complaints relate to their capacity to navigate the processes of the Public Trustee? I think the commission has received 26 complaints. I would have thought there would be 1,026. I am curious about your processes for people who cannot navigate the process with the Public Trustee. Is that where a lot of your complaints come from?

Ms Leong: To be honest with you, I cannot say.

Mr BENNETT: That is fine; I do not want to put you on the spot.

Ms Leong: You are right: they are low numbers. The number of complaints has been increasing in the last 24 months, but perhaps that is also an indicator of the ability of certain people to bring complaints to the commission as well as internal complaints to the Public Trustee. We would hope that the advisory board, in their monitoring role of looking at internal complaints, would be able to identify barriers for people to make internal complaints and having meaningful responses to those complaints and improve systems.

Ms LUI: In your submission you mention that the Public Trustee's acts and decisions have the potential to significantly limit a person's human rights. Could you please elaborate on that?

Ms Leong: The primary rights that we were thinking of are the right to make your own decisions and the right to self-determination and autonomy. These rights are protected by the right to recognition and equality before the law and the right to privacy under the Human Rights Act. Any decision made by the Public Trustee which is a substitute for a person's own financial decision is going to limit these rights, so they need to be justified. The justification comes from the fact that we have the QCAT processes and strict legal criteria, the oversight and safeguards that need to be in place, and also consultation with the individual involved and their support networks.

Also included in the right to privacy is the right to be free from arbitrary and unlawful interference with a person's private life, their private information, their family and their home. It is quite easy to see how a decision by the Public Trustee to make decisions about a person's property, about their finances—for example, whether they can gift money to family members, sell the family home or the support services they need to engage—can limit this right. Decisions about the family home also impact the right to property and freedom of movement, which includes the freedom to choose where a person lives.

I also wanted to make special mention of the cultural rights of Aboriginal and Torres Strait Islander people. They have been given special recognition under the Human Rights Act, which protects a person's identity as well as their cultural heritage, kinship ties and relationship with country. These issues must also be taken into account by the Public Trustee when making human rights decisions relating to Aboriginal and Torres Strait Islander people.

Mr BERKMAN: I want to touch again on the publication of reports from the proposed new board. You are not alone in having identified this issue. QAI's submission recommends that, for example, the board should release communiques from its meetings and any written recommendations. You heard the Public Advocate's response to my question before. Do you have any further reflections on that issue and the way the Public Advocate has viewed it?

Ms Holmes: He made some very good points. This is not an issue we would say is an absolute position of the commission. We think public reporting would strengthen it. If the review happens after three years—as we have just suggested in our submission—we can see how things have gone if that recommendation does not happen. We can see if there have been recommendations made by the board that have not been acted on, in the way that was suggested by the Public Advocate in relation to the board standing down if they feel like they have made a strong recommendation that has not been acted on. I think there are other mechanisms that can work. As transparency is of principal importance in a democracy, we think that is a worthy amendment to be considered by the committee and the parliament.

Mr SKELTON: Your submission refers to permanent and appointed members of the board and states that consideration could be given to reducing the number of permanent members in favour of more appointed members. I think you pretty much elaborated on why. Do you have anything more to add or any suggested ways of implementing that?

Ms Holmes: Lived experience is always of importance in this space. The gaps that we identified were people with mental health lived experience and other groups with lived experience. Of course, if you are still under a limitation in relation to decision-making it may be very hard to get a person on a board, but there are people with lived experience who are now quite capable of sitting

on boards who could probably contribute a lot of their own experience. Alternatively, you could get carers of people who have had lived experience who know the real-life impacts of what happens in situations.

Often public servants can get into a bit of a mind trap—we are all very professional—and come at it from a certain viewpoint that does not reflect what happens and what people experience on the ground. If it can be accommodated, it is always a useful thing to do. It adds greatly to the richness of discussions and a deeper understanding of what actually happens when you are in a situation where you have to receive services from someone. In the situation where the Public Trustee is delivering them, we think it would add a great deal of value.

CHAIR: Ms Holmes, if we think about the categories of those who have lived experience and the majority of people you deal with, would there be particular groups? You mentioned mental health, but would there be other groups that you see who are significantly represented in the work you do?

Ms Holmes: I think so.

Ms Leong: People with disability and seniors would be the main groups of people. We pointed out mental health just because it had not been listed as one of the areas of expertise currently listed in the bill, so we are not picking it out as having particular importance. The other point I was reflecting on is that one of the areas of expertise identified amongst appointed members is a person with legal knowledge in relation to 'one or more of the following areas', and substituted decision-making is only one of a potential number of areas. It is a lot for that particular person to cover, potentially, so perhaps that could be split to make it very clear that we need someone with expertise in that particular field.

Mr BENNETT: We talked a lot about the expertise of the board. I will say that the department was very vague in the terms of reference on what they would be monitoring and advising on. We talked about equity, discrimination and people with mental health issues. Is there anything specific you would like to encourage the board to establish in terms of the set of parameters they would monitor and advise on so that it is meaningful for complainants and, more importantly, the thousands of Queenslanders who rely on the Public Trustee every day? You have mentioned a lot in your submission; I acknowledge that.

Ms Holmes: I do not know if they need to be reflected in the legislation, but some criteria that are contributed to by a broad set of stakeholders so they know that is what the board will be looking at would be helpful, I would think.

Mr BENNETT: That is something we hope will happen as well, so thank you.

CHAIR: I do not want to be rude, member for Burnett, but I have a follow-on question to my previous one. We talked about legal knowledge, particularly people with a lived experience who have the relevant board expertise. If we think about the skills matrix of the board, were there any other areas that you felt could be of relevance to the board other than legal knowledge and lived experience?

Ms Holmes: Apart from the ones my colleague Rebekah has already alluded to, obviously we are very concerned that people have expertise in human rights as well—not necessarily a legal person but people who are cognisant of how to make a Human Rights Act compliant decision and looking at that in the overall performance of the Public Trustee, that each and every officer in the Public Trustee is performing their duties in a way that is compliant with human rights. It is that level of expertise. We hope that in due course every Queensland public servant and person sitting on a board will have a good knowledge of that, but in the early days that might be an important consideration as well.

CHAIR: Is there work that the Human Rights Commission does in relation to supporting the Public Trustee around that expertise or knowledge?

Ms Holmes: Absolutely. I cannot tell you exactly if we have done a series of training sessions for the Public Trustee, but my vague recollection is that we have done some work. We could not say definitely there, but certainly the Public Trustee requires us to do some training of their staff or to help them with some of their processes and procedures. That is part of our role. We are very open to helping the Public Trustee acquire that knowledge and get that expertise and in-house knowledge so that all of those staff are acting in a way that is compatible with human rights.

CHAIR: Thank you, Ms Holmes and Ms Leong. It is always good to see you. Our committee thanks you for the contribution that you make to the work of the committee and the critique that you provide.

GREY, Ms Cassandra, PLT Student, Queensland Advocacy Inc.

PHILLIPS, Dr Emma, Deputy Chief Executive Officer and Principal Solicitor, Queensland Advocacy Inc.

ROWE, Mr Geoff, Chief Executive Officer, Aged and Disability Advocacy

CHAIR: Good morning to you all, and thank you for appearing before our committee today. I invite you to make a brief opening statement. Following that, I am sure the committee will have some questions for you.

Mr Rowe: Thank you for the opportunity of addressing you today. I will take our submission as read. Before making some opening comments, I also acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past, present and emerging.

ADA has been, as you may know, very critical of the work of the Public Trustee over many years. It is an organisation that in some ways is very proud that it has been around for 100 years but in other ways acts like it has been around for 100 years and has become quite institutional over time. We very much welcome the report from the Public Advocate and the recommendations. Certainly, we also supported the government's decision to act on all but seven of the recommendations.

The effectiveness of the new board, which we are supportive of, will ultimately be dependent on the membership of that committee, the transparency of the work that it does and also the training its members receive. You will see that in our submission we talked about the need for members of the board to receive training on human rights and on substitute and supported decision-making.

The Public Trustee itself is not an island. At times I get concerned that the Public Trustee appears to be blamed for capturing people and bringing them into the system. The Public Trustee, as I understand it, was set up to be the provider of last resort, not first resort. While it is perhaps not within the committee's gamut, I would encourage the committee to raise with government the concerns that are held more broadly around the systems that capture people with a disability and older people with impaired capacity and bring them into that system. Real reform will require not only work within the Public Trustee but also work across other areas of government.

Similar to the comments of the Public Advocate, we have been working closely with the Public Trustee in recent years and are very supportive of the reforms that the Public Trustee is seeking to bring into place. Our concerns regarding the reform are around how long it will take. I go back to my reference of it being an older organisation. It is institutional and at times it feels that, when we deal with staff on the ground at the Public Trustee, it is taking some time for the changes that management is seeking to implement to filter down into practice. We are very keen for the Public Trustee to be empowering clients to have as much control over their lives as possible. That is where we talk about supported decision-making rather than substitute decision-making.

In ADA Australia, a significant cohort of the people we see are clients of the Public Trustee who are unable to effect change on how decisions are made regarding themselves. There are people who have been placed under orders at a time when they have been unwell but have since recovered, and escaping from the system is indeed very difficult. You may well have a cohort of people within that group who have 'escaped' the system, who may be a good asset as a member of the board to give that real lived experience of what it is like to receive those services and are now deemed to have capacity. Transparency of the board—I have heard the committee talk about that—is an absolute imperative. It is imperative not only that there is transparency but also that the advice the board provides is frank and fearless.

Dr Phillips: Good morning, and thank you for the opportunity to appear today. I do want to express my apologies: our colleague Sophie Wiggins is unwell so unfortunately will not be joining us. I, too, would like to acknowledge the traditional owners of the land we are meeting on today, the Turrbal and Jagera people, and pay my respects to elders past, present and emerging. I would particularly like to acknowledge our first people with disability who have experienced intersectional disadvantage and human rights violations including by and as a consequence of the making of substitute decision-making appointments.

Queensland Advocacy Inc. is an independent, community based advocacy organisation and a community legal service that provides individual and systems advocacy for people with disability. Our mission is to advocate for the protection and advancement of the needs, rights and lives of people with disability in Queensland. Our board is comprised of a majority of people with disability, whose wisdom and lived experience of disability is our foundation and guide.

We have been engaged in systems advocacy for over 30 years. For over a decade we have provided highly-in-demand individual advocacy services which are now provided through three advocacy practices: our human rights advocacy practice, which I supervise; our mental health advocacy practice; and our NDIS appeals advocacy practice. Our individual advocacy experience informs our understanding and our prioritisation of the systemic advocacy issues we pursue.

Our human rights law team, which is a small team within our human rights advocacy practice, provides legal advice and representation for guardianship and administration applications and reviews for persons with questioned or impaired decision-making capacity, including separate representative appointments under section 125 of the Guardianship and Administration Act. In the past financial year we have provided 173 legal services to these clients in addition to adjunct social work support to clients whose decision-making capacity is at issue in guardianship and administration matters before the Queensland Civil and Administrative Tribunal.

As our submission makes clear, we express in-principle support for the bill as an important reform in this area. We are hopeful that the changes introduced by this bill will form one part of a broader raft of reforms responding to the myriad issues raised by the Public Advocate's report. We acknowledge that the proposed vision of the board is to ensure oversight, enhance transparency and increase public accountability of the Public Trustee after the release of the Public Advocate's report earlier this year which revealed a range of Public Trustee fees, policies and practices that suggest the Public Trustee was breaching some of its legal and fiduciary duties and not acting in the interests of its clients. It raised serious concerns for many of QAI's clients, many who are facing express disadvantage, who are under the administration of the Public Trustee. We endorse the Public Advocate's report in its entirety and the 32 recommendations for reform contained therein, including recommendation 30, which relates to the consideration of additional oversight mechanisms.

As I have mentioned, we do support the establishment of the board and its intended functions to monitor and review the performance of the Public Trustee's functions to monitor complaints and the Public Trustee's processes for managing complaints et cetera to ensure the Public Trustee can effectively perform its functions; however, we consider further detail and specificity regarding the proposed activities of the board are required to ensure it will achieve the level of increased oversight and accountability that is purportedly behind this reform. Further, we consider that the establishment of the board alone will certainly not be sufficient. We very much situate our submissions today in the context of that call for a much broader range of reforms that are greatly needed in this area. We urge the government to continue working towards implementing the remainder of the recommendations in the report.

We have offered in our written submission some key recommendations for strengthening the bill which include: the additional appointment of a person with lived experience of disability who has direct experience of having the Public Trustee appointed as an administrator over their financial affairs to ensure the board is properly informed and aware of key disability issues in conducting its important work; the provision of further guidance on the intention for appointed board members to reflect the diversity of the Queensland community; consideration of increasing the frequency of board meetings and resourcing of the board; and increased reporting requirements in the form of regular, mandatory, independent reporting which should be publicly available and publicly responded to. We consider this important in increasing the openness and transparency of the Public Trustee's operations.

I will now hand over to my colleague Cassandra Grey, who contributed to our work on this bill. With our clients' consent and with the committee's indulgence, she will provide two brief de-identified case studies which we think are really helpful to demonstrate the experiences of our clients who have been under the administration of the Public Trustee and some of the issues that gave rise to the Public Advocate's review.

CHAIR: Thank you, Dr Phillips. I will just confer with my deputy chair. Have we the time?

Mr BENNETT: I am cognisant of time, but I think it is very valuable that we do hear these case studies.

CHAIR: Thank you, Ms Grey.

Ms Grey: Thank you very much. Julia is a 68-year-old woman who has multiple mental health diagnoses. Julia was subject to a Guardianship and Administration Act order appointing the Public Guardian as her guardian and the Public Trustee as her administrator for approximately 18 months. Julia had minimal assets, no liabilities and was a recipient of the age pension of approximately \$945 per fortnight. During the Public Trustee's appointment, Julia maintained most of her financial independence, paying her bills and living expenses herself. Julia had concerns about what the Public Trustee was charging her to manage her limited assets: approximately \$570 per month comprised of

a personal financial administration fee and an assets management fee. When Julia's advocate raised these concerns to the Public Trustee on her behalf, the advocate was informed that, as part of the Public Trustee's community service obligation, Julia is in receipt of a hardship rebate and 'additional information regarding fees and charges can be found on the Public Trustee of Queensland website under "financial administration fees and charges"'. This response was not only vague and non-descriptive, but the hardship rebate was inconsistently applied to Julia's account. In addition to the ambiguity surrounding the Public Trustee's fee structure and response to this uncertainty, the Public Trustee also cancelled Julia's funeral insurance policy.

Upon appointment as her administrator, the Public Trustee cancelled all direct debits including her funeral insurance policy, which Julia had contributed towards for approximately nine years. The Public Trustee explained it instead attempted to make annual payment to Julia's policy; however, the insurance company was unable to reconcile this payment and redirected the money back to the Public Trustee. No further action was taken by the Public Trustee and, consequently, Julia's funeral insurance policy was cancelled. The Public Trustee took no action to rectify this and simply informed Julia that she is able to look for a new insurance policy.

Morgan is a 50-year-old man with an acquired brain injury arising from a serious traffic accident he was involved in five years ago. As a result of this accident, Morgan received significant financial compensation in the realm of millions of dollars, which is now managed by the Public Trustee under an administration order made by the Queensland Civil and Administrative Tribunal pursuant to the Guardianship and Administration Act. As a result of his significant assets managed by the Public Trustee, Morgan is ineligible for any social security payment. Consequently, Morgan receives from his compensation approximately \$450 a week from the Public Trustee for living expenses. This amount is less than the maximum amount of the disability support pension and well below the national minimum wage. When Morgan raised concerns about his weekly income with his trust officer, he was told there was nothing the trust officer could do.

In addition, Morgan has concerns about the amount of fees the Public Trustee is charging him to manage his assets pursuant to an order that he does not agree with. Further, Morgan does not understand how the Public Trustee is spending his money and making payments for his small debts such as bills. As noted above, Morgan has difficulty in contacting and speaking with his trust officer about these concerns.

These case studies highlight the serious procedural and substantive deficiencies that have led to the recognition for the oversight of the Public Trustee's functions by the establishment of the proposed board. They also emphasise why lived experience is integral on the board. We consider that the board would be significantly strengthened by the inclusion of a requirement that at least one member have lived experience. We note that this submission resonates with the submissions of the Queensland Human Rights Commission that consideration be given to specifying appointed board members with lived experience as a consumer of Public Trustee services. We also note and support the bill's proposal that at least one appointed board member have knowledge, qualifications or skills in relation to advocacy and we endorse the submissions of the Public Advocate and the Queensland Human Rights Commission to further strengthen this clause. Thank you.

CHAIR: Thank you, Ms Grey. They are certainly very powerful stories and the committee appreciates that contribution. Thank you.

Mr BENNETT: Thank you, everyone. Mr Rowe, Queensland Advocacy Inc. has done a pretty good job of summing up my whole line of questions for this morning, but in endorsing the board can I put it to you that, unless we are going to get true independence and representation of the board membership, arbitrarily supporting a new board as oversight and monitoring is just adding another layer of bureaucracy if we are going to include bureaucrats as half of that board as a starting point, with no mission or vision statement about what the outcomes would be.

Mr Rowe: I am not going to debate your analysis.

Mr BENNETT: I was not being argumentative.

Mr Rowe: I did not take it as that. I am accepting what you are saying. That is where I guess our submission was very supportive of looking at the balance of membership, the diversity of membership, but also training of members so that they understand. The final comment is around the transparency. We want the board to be transparent. We want them to communicate the sorts of things they are talking about, the issues they are considering, to the broader community because I think as Queenslanders we all should have an interest in the functions of government that are there to protect us if we become unwell or if we acquire a disability. We want to know that in the future we will be

looked after. Therefore, that transparency is important not only for accountability but also for the rest of us here in this room. Potentially, literally a wrong step leaving this room today could make us a client of the Public Trustee.

Mr BENNETT: Especially if you do not have the resources and you are caught up in that space.

Mr Rowe: This is part of my earlier comment that you cannot look at the Public Trustee in isolation. You need to look at all of the mechanisms that tend to fast-track us into these systems. As an advocacy organisation, we support about 5,000 Queenslanders a year across aged care and disability, and the repeating theme we hear is that the systems that have been set up to protect people are actually the systems that are being used to abuse people, whether it is enduring powers of attorney or whether it is within the trustee and guardianship system, and it really should not be that way. The intent was there; the execution falls short.

Ms LUI: I thank the three of you for being here this morning. Cassandra, thank you for sharing those personal case studies. It was very powerful and it gave a really good insight into why we need to have persons with lived experience on the board. Now I can clearly understand your opening statement, your submission and also the last panel that was here expressing their views about having people with lived experience on the board. Mr Rowe, you mentioned that the Public Trustee is not an island and it should be a provider of last resort, not first resort. Can you explain what you mean by that? Do you see any risks associated with it being last resort as compared to first resort?

Mr Rowe: I will give it a go in the short time that we have. The last resort is about, as it sounds, looking at what other options are available to support people before you end up under the care of the Public Trustee. It could be friends; it could be family. One of the things we see time and time again is that young people with a disability at 18 will often be put under the care of the Public Trustee because they are not deemed to have the financial management skills to look after themselves. You could ask how many 18-year-olds out there actually have it, full stop, but if you have an intellectual impairment it is going to take some work to give you the skills so that you can manage.

Following that example through, it is really important that our systems support people to acquire the skills where they can look after themselves, rather than just say, 'You're not capable. Go there.' That is a conversation we have been having with the Public Trustee in recent times, saying, 'There are a whole lot of people that you currently support who, with some education, with some training and with some skilling up, could be independent of you, but the system has captured them.'

We see older people finding themselves in the health system. There is a significant pressure to free up the hospital bed. We are seeing people who are fast-tracked into residential aged care because it is easier than trying to get them home with support, and as a combined package they end up before QCAT and end up being subject to a guardianship order or a Public Trustee order or the whole box and dice. We see QCAT hearings occurring without the individual, without them even being aware that those hearings are being held, and decisions being made about their future care and support. They are not asked what their preferences are. That is where I am talking about last resort. People are fast-tracked into the systems that are there and that is really deeply concerning.

Mr BERKMAN: I appreciate your time this morning. The QAI submission makes the recommendation that there should be a legislative requirement for the Public Trustee to respond to any recommendations from the board. Are you able to elaborate on why you think that is so important and, more broadly, any reflections on the other transparency and accountability recommendations that you and others have made in your submissions?

Dr Phillips: Thank you for the question. We think it is really important. This is a space that has been a very closed space, and that is partly by virtue of the disadvantage, as the Human Rights Commission has alluded to, of the clientele that are under the Public Trustee in terms of the ability to raise complaints and to progress those issues. We also have seen in this space some legislation that is really quite strong in many ways. For example, we had human rights principles in the Guardianship and Administration Act well preceding the enactment of the Human Rights Act of Queensland, which came into effect from the beginning of last year. Our concern would be that sometimes these principles can look really good on paper but they do not translate quite so authentically into practice. Concerns can be raised and recommendations made that ultimately are not actioned and ultimately go nowhere and are not addressed. That certainly has been our experience.

I note what my colleagues said earlier about the progress over recent years. We have also been actively involved in some really productive work with the Public Trustee around some of its functions and have been really gratified to see some of the improvements in that space, but I think we would really like to ensure that, where there are recommendations made about breaches of rights or about inappropriate conduct, the Public Trustee does have an opportunity to respond. Deficits in

process and in training and resourcing can be properly and transparently recognised and addressed. We see that as a really important governance principle in terms of making sure that the functions of the board are not only theoretical, so that we have these reviews and the problems are identified, but also we actually see the response of the Public Trustee in terms of their position with respect to feedback raised and what they are proposing to do to address that. That is also then something we can, in a tangible way, be aware of and then we are able to, on an individual basis as well as a more systemic basis, assist our clients to understand and to action.

Ms LUI: In your submission you express concern about the ambiguous and unquantifiable proposed requirement that the appointed board members reflect the diversity of the Queensland community. You have spoken a bit about people with lived experience. What amendment would QAI propose to the wording of this section of the bill?

Dr Phillips: Thank you for that question. It is a good question. We have not actually proposed specific wording but, essentially, we did see that as quite a broad and vague clause of the bill. We share the concerns of others who have made submissions to this inquiry regarding the balance of permanent and appointed members and ensuring there really is a proper balance. There is some really significant skills that will be needed on this board to ensure that it is not, as the concern has been raised, simply another layer of reporting requirement—that it is actually genuinely making a difference to the lives of people who are under the administration of the Public Trustee. There are many, many Queenslanders. We would certainly like to see a person with lived experience—someone who has had impaired decision-making capacity or currently has impaired decision-making capacity. We believe that, with support following the capacity guidelines, they can make a really important contribution to a board. That could be someone with intellectual disability or someone with psychosocial disability or mental illness. They can bring quite different experiences to the board.

We note and support the recommendation that at least one appointed board member be an Aboriginal or Torres Strait Islander person. We would ideally like to see representation of both Aboriginal and Torres Strait Islander persons on the board, particularly given that in our work there is an over-representation of Aboriginal and Torres Strait Islander persons who are under substitute decision-making appointments. Many of those, as my colleague has mentioned, are simply put under the Public Trustee almost as a matter of course. They exit the child protection system and from 17½ it is considered that there is going to be a need for a substitute decision-maker to be appointed. Diversity can have many meanings. We think it is positive that there is that lens being applied to the consideration of the membership.

We would like the legislation to provide further clarity and specificity and also, as has been noted this morning on a few occasions now, including by my colleague with me at the moment, make sure that, in terms of the legal and advocacy skills, there are specific skills in providing representation for people who are before QCAT in guardianship and administration matters, because that is a very specific and very eye-opening experience. We think that experience would be really informative for the board in understanding the experiences of people under the Public Trustee, particularly those who are placed under the Public Trustee against their wishes, under a substitute decision-making appointment.

Mr BENNETT: In the interests of time, I will make a statement only. I thank you for raising the meeting frequency of the proposed board. With the seriousness and the amount of Queenslanders who are under the trust of the Public Trustee, we should be legislating for a more robust agenda for this new board, whatever they turn out to be or hope to be. I think it is really important and I thank you for raising that issue to the committee.

Mr BERKMAN: The composition of the board has been probably the most commonly raised issue. Your testimony already about the importance of lived experience is really valuable. Can you reflect on, from the perspective of your own organisations, how important it is to have lived experience on the board of the organisation—what it means in practice for the outcomes for your clients and the services you can offer?

Mr Rowe: It is very difficult to put in a small number of words the importance of lived experience. It brings a perspective that the rest of us do not have and cannot have. Storytelling absolutely gives an insight, but when there is a conversation occurring about any particular matter you always have that other perspective being brought in. At times I think we lose the human in the exercise that we are going through—we lose the person; we lose the individual—and I think a voice that can remind us of that is incredibly important.

I will say now that, while absolutely I am really supportive of the increased frequency of meetings—and I want to have that on record—I am really concerned that, as a community, we see capacity a bit like pregnancy: you either have capacity or you do not have capacity. Capacity is not

like that. With regard to capacity, particularly if you are talking about a brain injury, you can have people in the top five per cent of the population for some matters and in the bottom five per cent for other matters. With support, people can make decisions and should be encouraged to make decisions.

Dr Phillips: We certainly endorse that. Back in 2014, QAI, with the support of the Law Society and a pro bono partner, developed the capacity guideline for legal practitioners working in this space. Last year, with the raft of reforms to the Guardianship and Administration Act, we saw some further guidelines developed aiming to give some really practical guidance regarding how capacity can be understood and how it can be increased with appropriate supports and safeguards. We certainly think there is a really significant need for that to be taken on. It is all there; it is just getting it out to the people who need to know about it and making sure, in practice, everyday decisions reflect those guidelines. People with lived experience of this space can tell that story.

It is quite easy, as an outsider and as a person who has had the opportunity to make good and bad financial decisions, without question, simply by virtue of not having an intellectual disability, an acquired brain injury or a mental illness where my capacity might fluctuate, to underestimate the impact that the appointment of a substitute decision-maker—particularly the decision-maker of last resort, the Public Trustee—can have on someone and how restrictive that can be across so many facets of their life. That is particularly so when it is accompanied, as it often is, by a guardianship appointment—appointing the Public Guardian to make decisions across a range of different areas. I think those insights tell a story. Certainly advocates and lawyers working in this space can contribute to that story, but I think it is really important that people with firsthand understanding can provide that insight like no-one else can. We really think that is such a valuable insight to inform the work of the board in an authentic way.

CHAIR: Thank you, Dr Phillips. We appreciate your insight, particularly around those very sensitive matters, and your contribution. I do not believe there were any questions taken on notice. Thank you sincerely, Mr Rowe, Dr Phillips and Ms Grey, for your critique this morning and for your contributions. The committee is assured that the bill will be a better bill as a result of your contributions.

DUNN, Mr Matt, General Manager, Advocacy, Guidance and Governance, Queensland Law Society

SHEARER, Ms Elizabeth, President, Queensland Law Society

THOMPSON, Dr Brooke, Policy Solicitor, Queensland Law Society

CHAIR: I now welcome our colleagues from the Queensland Law Society. Thank you for your ongoing contributions to the work of our committee. We could not do our work without your support and your contribution. I invite you to make a brief opening statement, after which our committee members will have questions.

Ms Shearer: In opening, I would like to acknowledge the traditional owners and custodians of the land on which we meet here in Meanjin, the Turrbal and Jagera people, and pay deep respect to elders past, present and emerging and to lawmen and lawwomen who for tens of thousands of years ensured the peace, order and good governance of this place long before it was known as Queensland.

The Queensland Law Society agrees that additional oversight of the Public Trustee is required, and we acknowledge and welcome the government's decision to establish an additional oversight mechanism. However, we have significant concerns regarding the proposed functions, structure and composition of this board. As proposed, the board has an advisory and monitoring function. In our submission, we recommend that the Public Trustee and the people of Queensland would be better served by an amendment to the act to allow a governance board of independent directors to sit across the Public Trustee. We submit that this is the most appropriate governance structure for an organisation that has such breadth of service and with such significant funds under management.

In the alternative, because that is not what is on the table—so addressing what is on the table—we think the proposed structure and composition of the board, as contained in the legislation, is inappropriate. We consider the dynamic of the five permanent and then four to five appointed members creates a really unfortunate dynamic in the board that meant that the appointed persons were likely to be easily sidelined in that structure. Of the five permanent members appointed by government chief executives currently, three of those are within the one department; that would be the one chief executive appointing three members. We struggle to see how the board as formulated in the legislation is an independent board with that composition.

We also agree with the submissions of other witnesses that there should be more transparency and oversight of any recommendations that are made. We are happy to take any questions.

I might add, having listened to the previous witnesses particularly, that today you are looking at one part of a system that faces many challenges. I endorse the comments of earlier witnesses about the limited utility of looking only at this one point to solve what really is a systemic problem about appropriate access to justice for people who face decision-making challenges. In terms of the Public Advocate, the Public Guardian, the Public Trustee, the operations of QCAT and all the member services that government funds in this space to deliver advocacy and support, we think there is a clear need for a wider civil justice review that looks particularly at this area.

CHAIR: Thank you, Ms Shearer. As always, your comments and contributions are much valued.

Mr BENNETT: Thank you, Ms Shearer, for that inclusion. That is exactly what I was going to ask you to comment on. Everything that has been said about the board in relation to our concerns I have raised before and are in your submission. What does it look like for those people who are under the care of the Public Trustee to access legal representation? I mentioned earlier—you may not have been here—about a class of Queenslanders: if you have money, you can be advocating here with your solicitor or barrister, but the others are caught up under the Public Trustee banner, rightly or wrongly. What does it look like for them to get their advocacy? Every case is different and the complexities of the individuals are also taken into account. Can you paint a picture for the committee of what it looks like for those individuals who are trying to navigate the processes of the Public Trustee—if you can comment? I do not want to put you in a position if you are not comfortable.

Ms Shearer: I am happy to comment on that. We consider that there is a really urgent need for legal aid and legal assistance to people who are facing an application—it could be by a family member; it could be by a social worker at the hospital; it could be by their accommodation provider; or it could be as a result of the NDIS package funding—to remove their right to make their own decisions. That is a fundamental human right. The fact that the process can occur sometimes without that person being present and without their voice being heard and them being supported through that

process is, I think, an indication that perhaps we do not value human rights to the extent that we say we do. If we did, we would ensure there was Legal Aid funding for people who could not afford their own representation through that process.

CHAIR: I know that in a school or an educational context, with adequate support, we can achieve capability. I am interested in the Queensland Law Society's view on how that works practically and how that is achieved in the court of law or with the Public Trustee. Whilst that approach is admirable, what are the challenges and vulnerabilities of that approach?

Ms Shearer: I guess it works well for people who have good social supports and never come into the legal system. You might have had the experience of helping an aged parent, for example, for whom there is no question of them needing a guardian but who, if they were left on their own to manage finances, would face a difficulty yet with support they can make appropriate decisions. The difficulty arises that people who end up as clients of the Public Trustee probably have not had that social support mechanism. That is the last-resort appointment that we spoke of earlier. It is probably very time-intensive to provide appropriate support to people. People have to be willing to accept support. However, I think there is scope, as earlier witnesses have identified, for much more significant efforts around that.

Last time I was before this committee talking about child protection, we talked about the placement principle and what a good principle that is and it has been for decades, yet we still do not have adequate systems in place to ensure that First Nations children are not removed from First Nations families. It is easy for us to espouse principles, but it is difficult on the ground to make these things work for vulnerable people who lack many social supports.

CHAIR: My point is: without increasing the vulnerabilities or the opportunity for coercion and further negative impacts or consequences.

Ms Shearer: There is no doubt there does need to be a system to deal with concerns about somebody being preyed upon by somebody who is after their money. We would not for a moment suggest there does not need to be a process through which there can be appointments of administrators and that the Public Trustee is not needed to be an administrator. Clearly, we do need that. The question is: do we need it as frequently as it currently occurs? There are all sorts of drivers in the system pushing people into this framework. To get people out of hospital, a social worker at hospital might institute an application for a guardian and administrator, but if you stepped back and thought, 'Maybe this person is acutely ill now but in the longer term could there be some supports in place,' then it may be that they do not need to be in the system at all. I digress, though, because that is not the bill before us, but they are important issues of public policy.

CHAIR: Absolutely, and the grey that surrounds our work.

Mr BERKMAN: Before I ask my question, I need to check if you heard the evidence earlier this morning from the Public Advocate.

Ms Shearer: No.

Mr BERKMAN: I suspected that might have been the case.

Ms Shearer: I was in another committee hearing.

Mr BERKMAN: I completely understand. I raised with the Public Advocate the concern that you have highlighted in your submission, as has the Human Rights Commission, around the reporting arrangements from the board to the Attorney-General, rather than to a parliamentary committee or a broader requirement for publication. If I can attempt to paraphrase his response, he seemed less concerned about the proposed reporting arrangements, because if the Attorney-General did not act on or publish or deal with the recommendations that would ultimately create a crisis of governance in the board and something would necessarily come of those recommendations. Do you have any reflections, or could you elaborate for us on why it is important that the reporting go elsewhere other than just the Attorney-General?

Ms Shearer: I think if this model is adopted, then that reporting is necessary. If you were to adopt a full board with governance responsibilities, then the board would be empowered to ensure that change has happened, so it is a much more direct process. The board is ultimately responsible at a strategic level for the operations of the Public Trustee and could just put things in place, so it is much more direct. Obviously they would publish annual reports but you would not need, 'We have found something. We are going to tell the Public Trustee. If the Public Trustee does not do it, we will tell the minister.' Then it would be public and something would happen. That seems an indirect process to me.

Mr BERKMAN: Do you have any reflections on how the proposed composition of the board, and in particular those permanent members, ties into the answer you have just given and the limitations of how we might expect the board to respond to action or inaction in respect of any recommendations they make?

Ms Shearer: It is very hard to describe this model as an independent board when its majority members are appointed by chief executives of departments.

Mr BERKMAN: Thank you.

Ms LUI: You mentioned you had concerns about the proposed structure of the board. You made specific mention of the five permanent and five appointed members. You said that you struggled to see how this board would be independent. Could you speak to some of the limitations based on those statements?

Ms Shearer: I guess I am struggling to understand the reasoning behind five appointments from government departments. To the extent that there are interests that need to be reflective of certain groups who tend to be clients of the Public Trustee, my view would be in line with earlier witnesses—those views are more likely to be represented by organisations that work on the ground closely with that client group, rather than by the chief executive officer of a government department. It does not seem to me to be a compelling model to guarantee independence—or even why those government chief executives should be represented on the board.

Mr BENNETT: I am struggling with the new board concept. I say that to frame my comment and question. There already exists a governance board within the Public Trustee. There is a financial risk board and there is a number of other boards with remunerated positions. I am struggling with the concept of a new monitoring and advisory board. Are there legal frameworks under which the board members have fiduciary rights to be held accountable for what boards are meant to be doing and things like the CEO's responsibilities? Is that because it is government that we do not have those arrangements, as opposed to a private sector board and operations?

Ms Shearer: It is actually a bit of an anachronistic model; it is a corporation sole. Matt, do you want to talk about that?

Mr Dunn: I would be happy to. A corporation sole is a strange corporate beast, where a particular individual is themselves the entire corporation. An ordinary company will have shareholders, directors, a number of participants and members. In a corporation sole, there is simply the one person, and that is the Public Trustee. The Public Trustee is all the directors, all the members and all the responsible people in relation to that.

Some other examples that we have of corporations sole include the Archbishop of Canterbury, the Duke of Lancaster and the Lord Mayor of the City of London, so it is an unusual situation. The reason the Public Trustee is one of these is that in New Zealand, when they created the first public trustee in the world, the government there intended it to be the work of one person who would do it part-time, because they did not think the citizenry would want bureaucrats being involved in trust work of their property, but they needed someone competent, reliable and safe to be the last resort for people. As a result, they used this corporate structure where that one person—who was meant to be doing it part-time—would be an entire corporation. Then, when someone else needed to be appointed, they would appoint that person as the corporation, and all the trusts would have to roll on as they were.

Then, all of the boards that you talk about are themselves advisory boards to that one corporate person who is the entirety of the company, responsible for everything and the only person with duties. You can contractually make duties for your board members with charters and governance documents, but all of the director's duties material—everything you get in the Corporations Act—does not work or flow in the same way.

CHAIR: Mr Dunn, I would love you to continue. Interestingly, if we were to apply that information to the role of the minister and the role of the five ministerial appointments or members of the board that are delegates of existing agencies, what does that mean for the responsibilities of that board? What are the implications of that information for the board?

Mr Dunn: The implications of that are that those members are advisory in their role, as are all the members. If those members have a particular concern or problem, they have no right to make the corporate—the Public Trustee—do anything. That is why we have a legislative structure which deals with this. Otherwise, there would not be a way for the board to legally enact what it is doing, because the corporation sole is the sole decision-maker and the sole actor in the particular circumstances. This is why the Law Society contends that a governance board—more like a corporate structure or a statutory authority board, where the power and the governance is not invested in a single individual but is invested in a group—is a slightly different model.

The model that we have for the Public Trustee is the original model that the New Zealanders came up with in 1870, and it is in other places as well. Ironically, the New Zealanders moved to a different structure in 2001 and have implemented an ordinary statutory authority board model. Really, that is why this structure is advisory; that is why this structure has some reporting obligations but it does not have power to make changes. It does not have power to direct—it does not have power to do anything active. In our submission, the structure needs to change in order to facilitate proper governance and oversight. The current board structures of the PTO are excellent mechanisms, but, again, they are contractual and policy based mechanisms, rather than actual power.

One of the other points that might be relevant in this circumstance is: if those members were bound up by confidentiality with respect to what occurred in the proceedings of the advisory board, if there was no further action with respect to any of the concerns or complaints they had, they would not be able to air those concerns or complaints outside of the board. They would have the option to resign, but then they could not tell anyone why they had resigned. There are some logistical issues in this structure, which, again, go back to the fundamental nature; this is the way the Public Trustee has been since the very beginning.

CHAIR: Do you have any concern about the ability of board members to enact their fiduciary responsibility under the Corporations Act?

Ms Shearer: They do not have any responsibility other than to monitor and advise—that is what we think the difficulty is. If you think of other statutory authorities, Legal Aid Queensland for example, they have a board appointed by people with relevant expertise who are responsible. They engage the CEO, there are all sorts of structures and that is how that significant statutory authority with a significant budget works. The Public Trustee has the Public Trustee, who is the corporation sole, and the legal structure allows only other people to advise him—currently it is 'him'. All this board can really do is say, 'Here's an issue. Would you please address it?' Then, the board would write to the Attorney-General and say, 'This is an issue that has not been addressed,' but there is no direct authority to do anything.

CHAIR: Other than to advise and monitor.

Ms Shearer: Other than to advise and monitor. The extent of the failings that we have seen seems to suggest that maybe something more than that is necessary.

Mr BERKMAN: There have been suggestions from effectively all the submitters about the composition of the board and the skills they might bring. You have suggested someone with skills in relation to neuroscience, psychiatry or cognitive psychology. Others have said people with lived experience are imperative, or folks who have experience in advocating for seniors or people with a disability. I am curious to explore all of those recommendations together. Do you support those suggestions for membership with other skills beyond what you have recommended yourselves? How big might this board become before it becomes unwieldy? Obviously, there is benefit in including the additional skills and experience in its membership; what are the limits to that benefit, in your view?

Ms Shearer: From a governance perspective, we think the board should be composed of people who are best equipped to achieve the functions of the board. If the board is advisory only then, yes, a more diverse group of people who have experience of the interests of the people who are the clients of the Public Trustee is appropriate. If it is a full governance board, then there is a broader skill set that you would need.

It does trouble me, though, that the problem is so significant that we have to have people on a board with that experience, as opposed to this entity being able to inform itself in the ways that other organisations usually would about what their clients' views are and what they need. I guess it is the legacy of the model that we have that 'it is a government entity and we do things our way', whereas it should not be necessary for there to be a board member with lived experience for the organisation to understand the lived experience of their significant client group. I support the issues that other people have raised, but, again, it is insufficient to address the problems.

Mr SKELTON: I have no further questions. Thank you for the history lesson about the law.

CHAIR: It was a bonus. It is very important content, so thank you. I sincerely thank each and every one of you for your time this morning. I know that time is valuable to all of us but particularly to you three. That concludes our hearing this morning. On behalf of the committee I would like to thank all of the witnesses and the stakeholders who have participated today. I would like to thank and take this opportunity to acknowledge the many submitters who have engaged with this inquiry. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I now declare the public hearing closed. Thank you.

The committee adjourned at 12.17 pm.