




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 28 October 2021

PUBLIC TRUSTEE (ADVISORY AND MONITORING BOARD) AMENDMENT BILL

Message from Governor

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.17 am): I present a message from His Excellency the Governor.

Mr SPEAKER: The message from His Excellency the Governor recommends the Public Trustee (Advisory and Monitoring Board) Amendment Bill. The contents of the message will be incorporated in the *Record of Proceedings*. I table the message for the information of members.

MESSAGE

PUBLIC TRUSTEE (ADVISORY AND MONITORING BOARD) AMENDMENT BILL 2021

Constitution of Queensland 2001, section 68

I, PAUL de JERSEY AC CVO, Governor, recommend to the Legislative Assembly a Bill intituled—


A Bill for an Act to amend the Public Trustee Act 1978 for particular purposes

GOVERNOR

Date: 28 October 2021

Tabled paper: Message, dated 28 October 2021, from His Excellency the Governor recommending the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 [1835](#).

Introduction

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.18 am): I present a bill for an act to amend the Public Trustee Act 1978 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Legal Affairs and Safety Committee to consider the bill.

Tabled paper: Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 [1836](#).

Tabled paper: Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, explanatory notes [1837](#).

Tabled paper: Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, statement of compatibility with human rights [1838](#).

Today I present the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021. The bill amends the Public Trustee Act 1978 to establish the Public Trustee Advisory and Monitoring Board to monitor and review the operations of the Public Trustee.

The Public Trustee performs a vital role in our community, including providing financial management services to more than 10,000 Queenslanders each year. Importantly, the Public Trustee forms a central role in the guardianship system in Queensland. The guardianship system provides for

a range of substitute decision-makers to make decisions on behalf of adults with impaired decision-making capacity. The Public Trustee may be appointed by the Queensland Civil and Administrative Tribunal under the Guardianship and Administration Act 2000 as an administrator and by a principle under the Powers of Attorney Act 1998 and as an attorney in an enduring power of attorney to make decisions about financial matters or legal matters in relation to property.

Protecting Queenslanders, especially those experiencing vulnerability, is a priority for this government, and that is why the government has moved decisively to establish the Public Trustee Advisory and Monitoring Board. The board is part of the government's response to the Public Advocate's report, *Preserving the financial futures of vulnerable Queenslanders: A review of Public Trustee fees, charges and practices*, which was tabled in the Legislative Assembly on 10 March 2021.

The report makes 32 recommendations in relation to the Public Trustee's fees and charges regime, sustainability and provision of legal fees. Government is responsible for the implementation of 10 of these recommendations, including one jointly with the Public Trustee. The report found that many of the Public Trustee's customers appear to receive a high level of service for very little or no cost. However, the report also identified opportunities for improvement in the way the Public Trustee engages with its customers. Relevantly, recommendation 30 of the report was that the government consider additional oversight and reporting mechanisms to improve the Public Trustee's performance, transparency and public accountability.

The bill is consistent with the government response to the Public Advocate's report, tabled in March this year, in which government publicly committed to the establishment of a Public Trustee board with an advisory and monitoring focus. The board will monitor the performance of the Public Trustee's functions and provide advice and make recommendations about how the performance of these functions can be improved.

Specifically, the bill provides that the board will have the following functions: to monitor and review the performance of the Public Trustee's functions; to monitor complaints received by the Public Trustee about the performance of the Public Trustee's functions; and to monitor and review the Public Trustee's processes for managing these complaints. The board may also give written advice or make written recommendations to the Attorney-General about: changes to legislation or improvements to the policies, practices, resources, services or training of the Public Trustee to ensure the Public Trustee can effectively perform its duties; and improvements or enhancements to the performance of the Public Trustee's functions to promote the interests of the Public Trustee's clients, particularly clients with impaired decision-making capacity.

The Attorney-General can also request the board to give advice or make written recommendations to the Attorney-General about specific matters relating to the performance of the Public Trustee's functions. Separate to this, the board may also give advice or make written recommendations to the Public Trustee about matters relating to the performance of the Public Trustee's functions. The board will not have any management functions or the ability to direct the Public Trustee, except to require the Public Trustee to provide it with information about the performance of the Public Trustee's functions. This will maintain the Public Trustee's independence as an independent statutory office and avoid a conflict with the Public Trustee's statutory, fiduciary and other obligations.

In performing its functions, the board must act independently and in the public interest and is not subject to direction by anyone, including the minister, about how to perform its functions. It is important, given the nature of the Public Trustee's role and functions, that the board is comprised of persons with relevant knowledge, qualifications and skills including in relation to: management and delivery of public sector services, including executive experience in management of human, physical and financial resources; legislation, policy and programs for seniors and people with disability, including people with impaired decision-making capacity; finance, banking and financial services; and legal frameworks and practices relevant to succession law, powers of attorney, duties and obligations of trustees, substituted decision-making for adults with impaired capacity, commercial litigation, and the principles and rules of equity.

The Public Trustee Advisory and Monitoring Board will have a membership of up to 10 people, comprising up to five ex-officio members, or permanent board members, and at least four, but no more than five, members appointed by the minister. The permanent board members will be the chief executive, or nominated senior executive, of the following departments: the department that administers the Public Trustee Act 1978; the department in which the Financial Accountability Act 2009 is administered; the department in which the Disability Services Act 2006 is administered; the department mainly responsible for seniors; and the department in which the Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Cultural Heritage Act 2003 are administered.

The appointed board members will be comprised of: at least one person with knowledge, qualifications or skills in corporate governance, finance and banking, financial investment, financial services, insurance, or the management of financial funds, financial risk or trusts; at least one person with knowledge, qualifications or skills in relation to advocacy, services and support for seniors and persons with a disability, including persons with impaired capacity; at least one person with legal knowledge, qualifications or skills in commercial litigation, duties and obligations of trustees, powers of attorney, substituted decision-making for adults with impaired capacity, succession law, or the principles and rules of equity; at least one person with knowledge, qualifications or skills in relation to human resource management and, importantly, culture change management; and any other persons with the knowledge, qualifications or skills the minister considers appropriate.

When appointing appointed board members, the minister must ensure the members reflect the diversity of the Queensland community and that at least one is an Aboriginal person or a Torres Strait Islander. Given that the purpose of the board is to provide oversight over the operations of the Public Trustee, the Public Trustee will not be a member of the board. However, the board may invite a person to attend a board meeting for the purpose of advising or informing the board and this could include the Public Trustee. The chairperson for the board is to be appointed by the minister and will be an appointed board member, not a permanent board member.

The bill includes arrangements for meetings and ensuring the integrity of board members, including through criminal history screening and processes for dealing with members' conflicts of interest. Given the sensitivity of the information the board will likely be exposed to, there is also a prohibition on board members disclosing personal information. This includes, for example, personal information of the Public Trustee's clients, except to the extent the use or disclosure is necessary to perform the person's functions under the act or as otherwise required or permitted under the act or another law. This prohibition extends to including personal information in any recommendation or advice to the minister. The board will report in the Public Trustee's annual report on the exercise of its functions and powers during the relevant financial year.

In summary, this bill demonstrates the commitment of the Palaszczuk government to look after the interests of vulnerable Queenslanders by establishing the board and ensuring additional independent oversight over the Public Trustee. The government will continue to work with the Public Trustee, the Public Advocate and other experienced stakeholders for the detailed consideration of the remaining nine recommendations that are the government's responsibility. I commend the bill to the House.

First Reading

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.26 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Legal Affairs and Safety Committee

Mr DEPUTY SPEAKER (Mr Martin): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Safety Committee.