




Speech By  
**Peter Russo**  
MEMBER FOR TOOHEY

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Record of Proceedings, 11 May 2022

## **PUBLIC TRUSTEE (ADVISORY AND MONITORING BOARD) MANAGEMENT BILL**

 **Mr RUSSO** (Toohey—ALP) (12.17 pm): I rise to speak in support of the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021. The purpose of the bill is to amend the Public Trustee Act 1978 to establish the Public Trustee Advisory and Monitoring Board. The board is intended to provide additional oversight over the Public Trustee to enhance transparency and public accountability. To say one-size-fits-all in this space is possibly a misunderstanding of the work of the Public Trustee and the protection of the most vulnerable in our community. The bill was introduced into the Legislative Assembly and referred to the Community Support and Services Committee on 28 October 2021. The committee in its report, which was tabled in the Assembly on 21 January 2022, has recommended to the Assembly that this bill be passed along with additional recommendations.

The Public Trustee of Queensland provides a range of vital services to Queenslanders, including financial administration and financial attorney services for those with impaired capacity for financial decision-making. I believe it is important to ensure that the Public Trustee is held to the highest level of integrity and confidentiality. Over 10,000 people, whose finances the Public Trustee manages, are some of the most vulnerable members of our community and it is our responsibility to them and their families to ensure that their interests are protected.

There have been concerns raised by people who are under the administration of the Public Trustee and their families and supporters about the level and types of fees and their negative effect on the financial outcomes of people under administration. In 2020 the Public Advocate launched a review to explore the concerns raised. In March 2021 the Public Advocate's report *Preserving the financial futures of vulnerable Queenslanders: a review of Public Trustee fees, charges and practices* was tabled. The government's response to that report was also tabled on 10 March 2021. The government's response publicly committed to the establishment of a Public Trustee board with an advisory and monitoring focus.

The Public Advocate's report made 32 recommendations relating to the Public Trustee's fees, financial management, client services, legal services and administration. While 23 of the recommendations were the responsibility of the Public Trustee to implement, the government accepted the Public Advocate's recommendation 30 to establish additional oversight and/or reporting mechanisms to improve the Public Trustee's performance, transparency and public accountability. The government's response accepted this recommendation and stated that the government 'has committed to establishment of a Public Trustee board that will have an advisory and monitoring function'.

The bill acts on recommendation 30 of the report; that is, that the government consider additional oversight and/or reporting mechanisms to improve the Public Trustee's performance, transparency and public accountability. The government's response to the report was to publicly commit to the establishment of a Public Trustee board with an advisory and monitoring focus. This bill is to amend the Public Trustee Act 1978 to establish the Public Trustee Advisory and Monitoring Board. The board is intended to provide additional oversight over the Public Trustee, improve the importance of the Public Trustee and enhance transparency and public accountability.

The committee invited written submissions and a public hearing was held. The Public Trustee provided overall support of the bill, the Public Guardian provided support for the establishment of the board, and the Public Advocate provided a submission to the committee, noting that the proposed functions of the board as set out in the bill were consistent with the government's commitment. The committee received submissions from stakeholders describing some of the barriers and challenges experienced by clients of the Public Trustee. The committee recognised that the objectives of the bill will help improve the performance, transparency and public accountability of the Public Trustee and this will better protect vulnerable Queenslanders.

The department advised that, while all public trustees in Australia are statutory corporations, they vary concerning structure and governance. In other jurisdictions there is no comparable board similar to the board proposed in the bill, which is to oversee with an advisory and monitoring role rather than a governance role. The oversight proposed in this bill reflects the conclusion of the report, which stated—

The Public Trustee has significant power over its administration clients. It is in a position of trust, controlling the person's money and property, making many, if not all, of the financial decisions for the person and having significant power over their lives. The administrator's role can include paying household bills, buying or selling property, running a business, entering into contracts, applying for government benefits, making business decisions, managing investments, and bringing or defending legal proceedings of a financial nature.

During the examination of the bill it was noted that in their submission the Queensland Human Rights Commission expressed that 'the additional oversight will go towards promoting and protecting the human rights of people who have interactions with the Public Trustee'.

Several submitters and committee members have commented that the board should have stronger governance functions, with the ability to direct the Public Trustee in the exercise of their functions. However, it would be problematic to introduce a governance board in Queensland and maintain the current structure of the Public Trustee because it is the Public Trustee that owes a range of statutory, fiduciary and common law duties to its clients and the Public Trustee must ensure those duties are discharged. It would be inappropriate to allow any other entity to direct the Public Trustee where the Public Trustee remains responsible and liable for meeting those obligations. By having a board with advisory and monitoring functions reporting to the minister on the outcomes of that monitoring, the Public Trustee would then not be subject to any direction about the administration of estates of financial administration clients and you would not have that fundamental conflict.

In response to submitters' views, the department advised that the board will not have any governance or management functions and will have no power to direct the Public Trustee. The department advised that this would maintain the Public Trustee's position as an independent statutory office and avoid a conflict with the Public Trustee's fiduciary and other obligations and duties. The department further advised—

The purpose of the Board (to provide additional oversight over the Public Trustee) can be achieved by the proposed advisory and monitoring model, without the need to alter the Public Trustee's existing corporate framework.

Many stakeholders' submissions focused on the skills and experience of the board, including ensuring there was someone on the board who reflected the diverse spectrum of the Queensland community with regard to the board, including: at least one Aboriginal or Torres Strait Islander person who also had lived and professional experience of members; someone with expertise in advocacy, services and support for the person with impaired decision-making ability; a consumer or carer representative with lived experience; expertise in mental health or human rights; and that people with a lived and firsthand understanding, including as a carer or family member of a person with lived impairment capacity, could provide an insight based on this experience.

The committee agreed with the stakeholders on these points. This led to the second recommendation from the committee: to increase the number of board members by one. This will bring the maximum board membership up to 11, being up to five permanent board members and at least five, but no more than six, appointed board members.

There were many comments on the reporting framework. The committee recognised the importance of the board's independence and transparency. They noted the evidence of the deputy commissioner of the Queensland Human Rights Commission, who stated—

The board's effectiveness would be strengthened by a requirement to publish its recommendations or that it report to a parliamentary committee.

The committee noted that in its annual report the Public Trustee must include information about the performance of the board and the exercise of board's powers during the financial year. The evidence of the deputy commissioner was noted where she stated that 'the board's effectiveness would be strengthened by a requirement to publish its recommendations'. I commend the bill to the House.