




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 10 May 2022

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

Second 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) (5.46 pm): I move—

That the bill be now read a second time.

On 28 October 2021, the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 was introduced into parliament and referred to the Community Support and Services Committee. The committee tabled its report on 21 January 2022, making three recommendations. I thank the committee for its thorough consideration of the bill. I would also like to thank the organisations and individuals who made submissions to the committee and participated in the public hearing. The first recommendation was that the bill be passed, and I thank the committee for its support of the bill. The government response to the Community Support and Services Committee report was tabled on 21 April 2022. I will shortly address the other two recommendations in the committee's report. I foreshadow that I will be proposing amendments to the bill during consideration in detail in response to these recommendations.

On 10 March 2021, I tabled a report by the former public advocate entitled *Preserving the financial futures of vulnerable Queenslanders: a review of Public Trustee fees, charges and practices*. The report made 32 recommendations to improve the operations of the Public Trustee and, importantly, the outcomes for vulnerable Queenslanders. As I have previously stated in this House, the Public Trustee has under new leadership been on a significant reform journey. It is working hard to transform into a modern, customer-centric organisation. Much positive change has already occurred, but of course there is still more to do.

The establishment of the board is in response to the Public Advocate's report which recommended additional oversight over the Public Trustee to improve its performance, transparency and public accountability. The oversight body should be completely removed from the Public Trustee, not responsible for carrying out the functions and duties of the Public Trustee. The bill gives the board the tools it requires to effectively perform its oversight function, including: a skilled and knowledgeable membership providing a fresh perspective; the power to require the Public Trustee to provide the board with information; and the responsibility to report on any recommendations made by the board to the Public Trustee or the minister.

The majority of submitters broadly support the bill, including the Public Advocate, Carers Queensland, the Queensland Human Rights Commission, Queensland Advocacy Incorporated, the Crime and Corruption Commission and Aged and Disability Advocacy. However, a number of issues were raised through the committee inquiry about the functions, composition and accountability of the board, some of which are also the subject of recommendations in the committee's report, and I would now like to address these concerns.

Firstly, a number of 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. To introduce a governance board in Queensland and maintain the current structure of the Public Trustee would be problematic 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 the financial administration clients and you would not have that fundamental conflict.

Governance boards are used for many statutory bodies including, for example, Legal Aid Queensland, and they do offer many advantages. Different to an advisory and monitoring board, governance boards have responsibility for managing the affairs of the corporation. They are responsible for ensuring a corporation achieves its objectives, performs its functions and meets its obligations and duties at law. Under the current corporate structure of the Public Trustee of Queensland, it is the Public Trustee who has the responsibility to ensure that the Public Trustee of Queensland's significant statutory, fiduciary and common law duties are fulfilled.

A governance board would take over the running of the Public Trustee rather than providing that oversight. In contrast, the advisory and monitoring board that the bill establishes will be independent from the entity it is overseeing. The board will monitor the performance of the Public Trustee's functions and provide advice and make recommendations about how the performance of those functions could be improved. The board will also monitor complaints received by the Public Trustee about the performance of the Public Trustee's functions and the Public Trustee's processes for managing complaints. I would also like to point out that the Public Advocate provided overall support for the bill and, when asked by the committee, stated that the bill satisfies recommendation 30 of the Public Advocate's report.

It is not possible to set up a new board to manage the affairs of the Public Trustee without changing the entire corporate structure of the Public Trustee and removing the corporation sole. That is not a simple exercise and would require a complete overhaul of the corporate structure of the Public Trustee and a complete rewrite of the Public Trustee Act 1978. Consideration may need to be given to any consequential amendments that would be required to associated legislation in that case, such as the Guardianship and Administration Act 2000 and the Powers of Attorney Act 1998.

Establishing an advisory and monitoring board in this bill implements recommendation 30 of the Public Advocate report by establishing that independent oversight mechanism. Importantly, the board will also be able to support the ongoing reform process to address the issues raised in the Public Advocate's report and will ensure ongoing oversight once the reforms are implemented to make sure that new and emerging issues are identified.

As I have stated, the Public Trustee owes a range of statutory, fiduciary and common law duties to the clients, and if a public trustee was also required to comply with directions from a governance board it would be problematic, including, for example, if a direction from the board conflicted with the Public Trustee's discharge of its duties. If the board had the ability to direct the Public Trustee, the board would essentially share some of the governance responsibility for the operations. The directions could have impacts on the other operations of the Public Trustee, including its financial performance in the accounts of the Public Trustee's non-administration clients. Again, this would be problematic as the Public Trustee would remain solely accountable for matters that are not entirely within its control.

No Australian jurisdiction has a board independent from the Public Trustee that can direct the Public Trustee. While two other states, Victoria and Tasmania, have boards of directors as part of their governance structure for the state or public trustees, both of those particular state trustees are government owned companies. In these jurisdictions the board, like any other company, assumes overall responsibility for managing the affairs of the corporation and is responsible for ensuring the corporation achieves its objectives, performs its functions and meets its obligations and duties.

There are no statutory, advisory and monitoring boards providing oversight of a public trustee in other Australian jurisdictions comparable to the proposed board. All Australian public trustees are assisted by various committees—for example, an audit and risk committee—which may or may not have a statutory basis; however, the functions of these committees do not have the same breadth of scope as those of the proposed board and none of them, again, have the power to direct the Public Trustee.

The other proposal was changing the Public Trustee to a body corporate, so changing the structure of the Public Trustee. As I have stated, this would fundamentally change the structure of the organisation and require a complete overhaul of the legislative framework. It is not a simple exercise

and it could not be done quickly. It would require lengthy consultation. It would be necessary to formally transfer assets, contractual rights, powers, delegations, and decision-making authorities, obligations and liabilities. The Public Trustee would owe duties to clients and it would be the board that would be required to ensure that the Public Trustee discharged those duties.

The advisory and monitoring board would be comprised of permanent members, ex officio members appointed by virtue of the position that they hold, and appointed members with particular expertise, knowledge and skills. The second issue raised by submitters and the committee members was about the independence of the board from government, particularly in light of the ratio of permanent board members to appointed board members. The mix of members on the board is informed by the proposed role of the board, which is to provide oversight of the performance of the Public Trustee's functions. It is important that the board's membership, which also includes senior Public Service officers, reflects the knowledge, qualifications and skills relevant to the Public Trustee's broad and complex role and functions.

Recommendation 2 of the committee report is that the membership of the board be increased by one to accommodate an additional appointed board member with lived experience with impaired decision-making capacity in regard to either themselves or others. I can foreshadow that I will be moving amendments during consideration in detail to implement this recommendation, increasing the maximum size of the board to 11 and requiring the appointment of an additional appointed board member with experience living with impaired capacity or with experience as a family member of or carer for a person with impaired capacity. Not only will these amendments ensure that the board benefits from the personal knowledge and experience that lived experience brings; they will also ensure that permanent board members cannot outnumber the appointed board members.

To complement this amendment to add an additional appointed board member, I will also be moving amendments to provide that the minister must appoint at least five but not more than six appointed board members, increasing the total number of board members by one, and provide that a quorum for board meetings is at least half of the board members including at least four appointed board members. This complements existing provisions in the bill that ensure the board's independence from government. The bill also provides that the chairperson is to be an appointed board member, not one of the government members.

The third issue raised by submitters was about the transparency of the board's activities, including any recommendations made to the Public Trustee or to the minister. Submitters were concerned that there was no explicit requirement for any advice provided or recommendations made by the board to be publicly available. Recommendation 3 of the committee report is that the bill be amended to require the board to prepare a separate annual report to the minister that is tabled in the parliament. I foreshadow that I will be moving amendments during consideration in detail to implement this recommendation also.

The board will be required to prepare and give to the minister a separate annual report about the performance of the board's functions that the minister must table in the Legislative Assembly within 14 sitting days after receiving the report. The report must include any advice given or recommendations made to the minister and any recommendations made to the Public Trustee. Together, the proposed amendments will strengthen the board's independence, accountability and transparency.

The fourth issue raised by submitters queried how quickly the board will be established, how frequently the board will meet and whether the board will be adequately resourced. Once the bill is passed, it will take some time to recruit and appoint the appropriate board members, particularly given some of the specific and unique skills and experience that the bill requires. For this reason, I foreshadow that I will be moving an amendment to commence the bill by proclamation to allow sufficient time for the appointment process to occur. The chair will be responsible for calling the first meeting of the board, and the board itself will determine its own work plan and schedule its own meetings. This is not a matter for government to decide. The Department of Justice and Attorney-General will fund the appointed members' fees and will put in place arrangements for the secretariat to support the board as soon as it is established.

Finally, a number of submitters and committee members expressed concerns about the delay in implementing remaining recommendations in the Public Advocate's report that are for government to consider. The government takes the recommendations of the Public Advocate very seriously. Following the Public Advocate's report, the Public Trustee and government have already actioned a number of recommendations and we are continuing to respond to the report.

Many of the remaining recommendations for government raise complex legal issues that require detailed consideration and further consultation with stakeholders to ensure the best outcome for vulnerable Queenslanders, and that consultation is underway. On 24 February this year I tabled a progress update by the Public Trustee on the status of implementation of the Public Advocate's report.

Since then, on 10 March, the anniversary of the Public Advocate's report, Public Advocate Dr John Chesterman released an implementation update that identifies actions that have been taken by the Public Trustee and government in relation to the report's 32 recommendations. That document is available on the Public Advocate's website. The government is absolutely committed to ensuring vulnerable Queenslanders are supported and protected when they need it most.

In summary, the bill effectively implements recommendation 30 of the Public Advocate's report and establishes an independent oversight mechanism for the Public Trustee to look after the interests of vulnerable Queenslanders. I commend the bill to the House.