




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 11 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) (3.55 pm), in reply: I thank honourable members for their contributions to the debate on the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021. The Public Advocate's report did raise serious issues in relation to the Public Trustee's fees, charges and practices and the impacts on those who are vulnerable in Queensland. Adults with impaired capacity who are subject to the guardian and administration system are among our most vulnerable and the Public Trustee plays a significant role in this system.

As I have mentioned earlier, the Public Trustee has been on a significant reform journey to transform into a modern, customer-centric organisation and as a government we are committed to continuing this reform process. This bill is an important step towards addressing the issues identified by the Public Advocate. The bill establishes the Public Trustee Advisory and Monitoring Board which will provide independent and effective oversight over the Public Trustee to improve performance, transparency and public accountability.

I will now address some of the matters raised by members during the course of this debate. There are 10 recommendations for government to consider from the Public Advocate's report, one jointly with the Public Trustee. This bill implements recommendation 30 by establishing an oversight mechanism for the Public Trustee. The government has also done its part to implement recommendation 6 by supporting the Public Trustee in seeking a GST exemption from the Australian Taxation Office. This leaves eight recommendations for government to consider, many of which contemplate legislative changes, and we take these seriously. The Public Trustee operates in a complex environment and these remaining government recommendations will be fully considered in consultation that is underway with key stakeholders to ensure the best outcomes.

The government is absolutely committed to ensuring vulnerable Queenslanders are supported and protected when they need it most and there have been a number of updates since the recommendations were made, including an implementation update from the Public Advocate and a progress update from the Public Trustee tabled in the House in February this year. These updates show that, over the past year and under new leadership, the Public Trustee has been working considerably on these recommendations and working hard to transform the organisation. The government acted quickly and committed to establishing this board and introduced this bill in October last year following careful consideration of the legal structure of the Public Trustee and how best to achieve an oversight mechanism recommended by the Public Advocate.

It is incredibly disappointing to hear some members opposite, including the member for Currumbin in particular, come in here and throw around stories trivialising elder abuse for dramatic effect. As members of parliament we do have an obligation if there are any matters on which there is

evidence of any elder abuse of anyone. With the integrity and accountability system in Queensland, they are the sorts of issues that can come to me as the relevant minister as well as to the Public Advocate, the Public Guardian and the Ombudsman. Members do not just get to come into this place and throw around terms like 'state sanctioned elder abuse'. This is not the first time the member for Currumbin has come in here and misled the House, and not just on my bills. We have responsibilities as members of parliament and this is not the first time I have had to pull the member for Currumbin up about coming in here with no evidence and using dramatic words and throwing around comments like 'state sanctioned elder abuse'. It is absolutely disgraceful and I have to say that it is embarrassing on behalf of the constituents of Currumbin. I note other concerns that have been raised by members, including the member for Burnett, in relation to the effectiveness of the proposed board.

The Public Advocate himself, Dr John Chesterman, stated in his oral submission to the committee that the bill satisfies recommendation 30 of the Public Advocate's report. I would also like to point out that the Public Advocate noted that the board's power to monitor and review does put an onus on board members to ask probing questions. Dr Chesterman stated that this 'will lead to an improvement in the governance 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 publicly report on any recommendations made by the board to the Public Trustee or the minister.

Giving the board the power to require the Public Trustee to provide information lends enormous power and effectiveness to the board in terms of its reach to impact the issues that may arise within the Public Trustee. This added layer of effectiveness lies in the board's ability to report to the Attorney-General, which ensures that the minister is aware of the independent assessment of issues and concerns as they arise. The member for Gregory stated that the Public Trustee operates privately without any of the checks and balances that apply to government departments. Again, that is simply not true.

The Public Trustee is subject to the same scrutiny and oversight that applies to other government agencies. The Public Trustee is subject to the annual scrutiny of parliament through the parliamentary estimates process. Under the Public Trustee Act the Public Trustee must submit a budget to the minister every year and lay before parliament a profit and loss account, a balance sheet and a statement showing the position and investment of the Unclaimed Moneys Fund.

The Public Trustee is also a public authority under the Public Records Act, an agency under the Right to Information Act, a public entity under the Human Rights Act, a unit of public administration under the Crime and Corruption Act and a public sector entity under the Public Interest Disclosure Act. In addition, I understand that the Public Trustee has established increased governance and accountability measures through its Customers First Agenda, including the oversight roles undertaken by the customer and government reference groups established by the Public Trustee.

The board will be established to monitor and review the performance of the Public Trustee's functions, complaints received by the Public Trustee about the performance of the Public Trustee's functions and the Public Trustee's processes for managing these complaints. These functions are broad enough to allow the board to review the Public Trustee's fees and charges, an issue which has been raised by non-government members during the debate. The board can give written advice or make recommendations to the minister about changes to legislation, improvements to the policies, practices, resources, services or training of the Public Trustee, improvements or enhancements to the performance of the Public Trustee's functions to promote the interests of the Public Trustee's clients, and the board can also give advice or make recommendations about any matters relating to the performance of the Public Trustee's functions to the minister, at the request of the minister and the Public Trustee.

Of course, this is on top of the Public Trustee's fees and charges review through an independent consultancy which will benchmark fees against the sector to bring together submissions in consultation with stakeholders and customers to develop a fees model which is founded in the principles of equity, efficiency and sustainability. As a consequence, the outcomes of the Public Trustee's fees and charges review could be considered by the board at the discretion of the board.

The establishment of the board is in response to the report which recommended additional oversight to improve its performance, transparency and public accountability. To be effective, an oversight board should be completely independent from the entity it is overseeing. A governance board cannot be expected to oversee itself. That would not be an effective oversight mechanism. A governance board would merely assume the Public Trustee's management and operational responsibilities and not achieve the outcomes recommended by the Public Advocate. The proposed board is specifically designed to be completely independent from both the Public Trustee and government.

I note the concerns of the member for Burnett and other non-government members in relation to the membership of the board. The mix of members has been informed by the proposed role of the board to provide that much needed oversight. In order to effectively oversee the Public Trustee, the board members must have the necessary skills to understand the breadth of services offered by the Public Trustee, as well as the legal, financial, social and human rights issues associated with the performance of those functions. The permanent board members are themselves chief executives or senior executives of government departments responsible for the administration of services and policy directly related to the Public Trustee's functions. The chief executives are acutely aware of the Public Trustee's responsibilities as chief executives of a government agency, including the responsibilities associated with the delivery of public sector finances and financial management for the organisation and they have executive experience in the management of human, physical and financial resources. In addition, the chief executives are also aware of the key issues relevant to the Public Trustee's clients, including emerging law reform and emerging policy issues, and I am very confident that the current combination of permanent board members and appointed board members will bring these to the board.

It is vitally important that the board is independent. I note the concerns of non-government members, including the member for Clayfield, in relation to independence. The bill provides that when performing its functions the board must act independently and in the public interest. In addition, the bill expressly provides that the board is not subject to direction by anyone, including the minister, about how it performs its functions. The proposed amendments to implement recommendation 2 of the committee report will enhance the board's independence from government by ensuring that the appointed board members can never be outnumbered by the permanent board members. The bill also provides that a board meeting cannot occur without a minimum of four community board members in attendance and board resolutions will be valid if at least half the board members appointed are in agreement. The amendment is in response to recommendation 2 of the committee's report and ensures appointed board members can never be outnumbered and therefore enhances the independence of the board.

The bill provides that the appointed board members are to be appointed by the minister. A formal recruitment process for appointed board members, to appoint members with the requisite knowledge, qualifications, skills or experience including the chairperson, will commence following passage of the bill. Specific skill sets are required and for this reason the amendment proposes to commence the bill by proclamation. It could take several months to find, select and appoint members with appropriate expertise.

In relation to the member for Clayfield's proposed amendments to require the board to provide an annual report to the minister within 30 days of the end of the financial year, I am not aware of any similar body that would be required to pull together an annual report with such extraordinary speed. Departments and statutory bodies are given three months to prepare their annual report, providing sufficient time for the information to be collected, for the report to be compiled and accounts to be audited. It is only fair to afford the Public Trustee Advisory and Monitoring Board a reasonable amount of time to prepare the report.

The member for Clayfield's amendments would also require the minister to table the report within 30 days instead of 14 sitting days. I note that 14 sitting days is a common requirement for tabling of reports, such as those by the Public Advocate, the Public Guardian, the Law Reform Commission, the State Coroner, the Parole Board and most others. Further, the member for Clayfield's proposed amendment No. 2 is to expand upon the matters that the Public Trustee Advisory and Monitoring Board must include in its annual report. This part of the amendment is not necessary. Proposed new section 117ZZA(1) already requires the annual report about the performance of the board's functions during the financial year. The member for Clayfield's proposed amendment is to also require the annual report to include the expenditure of the board in the financial year. The Public Trustee Advisory and Monitoring Board will not receive or control funds and therefore the proposed amendment is not necessary.

I now turn to amendments proposed by the member for Maiwar to enshrine in legislation a requirement to regularly report on the progress towards implementing the recommendations in the Public Advocate's report. Whilst I am committed to providing six-monthly updates on the implementation of the recommendations, and I give the House my undertaking to do so, I do not think the requirement should be enshrined in legislation.

Firstly, reporting requirements like this are very unusual for legislation. Many statutory roles often produce reports about systemic issues relevant to their functions that, when provided to the minister, must be tabled in parliament, which is absolutely appropriate. This includes, for example, the Public Advocate and the Human Rights Commissioner. However, there is no statutory requirement for the government to table a response to these reports. There is no statutory requirement for government to table a response to reports by the Queensland Law Reform Commission, for example.

Secondly, where there is a statutory requirement to table a government response, for example, in the case of a report by a parliamentary committee which recommends that the government or minister take a particular action about an issue, it is often a one-off report or an interim report followed by a final report setting out the minister's intentions in relation to the recommendations. The Parliament of Queensland Act 2001 requires that the response set out any recommendations to be adopted and the way and the time within which they will be carried out and any recommendations that will not be adopted and the reasons that government will not be adopting them. It does not provide for an ongoing progress report. These types of progress reports are usually provided administratively.

I have been incredibly transparent in continuing to update the parliament in relation to the progress of the Public Trustee and the progress of government in implementing the Public Advocate's report. The government tabled a response to the Public Advocate's report when the report was tabled in March—at the same time. On 24 February 2022, I tabled an update by the Public Trustee on progress towards the implementation of the recommendations and, at the time, made a ministerial statement about government's progress on the recommendations directed to government. In March of this year, 12 months on from the tabling of the report, the Public Advocate also published an update on progress towards implementing the recommendations. Both the Public Trustee and the government contributed to that update.

I thank the member for Maiwar for the proposal. I think it is important to provide regular updates on the progress towards implementing these recommendations. However, I do not believe that the best way to go about it is to enshrine it in legislation, in a provision that will become superfluous at some point in time and that will stay on the statute books for a long time. It is ambiguous about when the minister's obligations end.

In conclusion, the bill implements recommendation 30 of the Public Advocate's report by establishing the Public Trustee Advisory and Monitoring Board, an independent oversight mechanism of the Public Trustee. Once again I thank all honourable members for their contributions during the debate. I commend the bill to the House.