Speech By

Tim Nicholls

MEMBER FOR CLAYFIELD

Record of Proceedings, 10 May 2022

PUBLIC TRUSTEE (ADVISORY AND MONITORING BOARD) MANAGEMENT BILL

Mr NICHOLLS (Clayfield—LNP) (6.00 pm): The Public Trustee deals with matters of the utmost seriousness to vulnerable Queenslanders, their loved ones and their carers. Almost 10,000 people deemed to have impaired capacity to varying degrees have a significant part of their lives controlled by the Public Trustee. This control extends to how much money they are allowed to have and to spend, the type and style of housing and accommodation they can live in, the car they drive, the food they eat, the presents and gifts they can buy for loved ones and friends, and where they can go for entertainment and holidays. It extends to control over their assets and belongings—everything from million dollar properties to their jewellery and sentimental items.

I ask members in this place to consider what that might be like. Consider what it must be like if they have been placed in that situation against their wishes and without their consent by well-meaning but ultimately unaccountable people who may never have contact with them again—someone in a hospital, someone in a psychiatric institution. How would they feel in those circumstances? Would they feel empowered? Would they feel respected? Would they feel understood? These are all the catchwords used by the Public Trustee in its PR material.

Honourable members should imagine they are that person's brother or sister. Imagine if they are the son or daughter or maybe the partner of someone who, through circumstance and the vicissitudes of life, has had to have the Public Trustee appointed to manage their personal affairs but for whom honourable members have the day-to-day responsibility of caring for and looking after. Every time they wanted to do something for that loved one, they have to contact a government bureaucracy to check if it is okay to spend the money on anything from incontinence pads to physiotherapy to seeing a movie or even to buy that person they love and care for some new clothes or maybe to take them to the hairdresser.

Imagine then having to keep every receipt from a cup of coffee to a grocery list or a petrol voucher and to have to account for it every week or every month and to have the spending questioned and sometimes even refused by someone who is not there, does not really know their loved one and does not see them every day. That someone may not even be the same person from week to week or month to month. As that great US president Ronald Reagan said, 'The nine most terrifying words in the English language: I'm from the government and I'm here to help.'

That is the experience of many Queenslanders who deal with the Public Trustee. Those are the stories that we have heard from people who have had to deal on a day-to-day basis with the machinations of the Public Trustee office with little or no recourse, little or no vehicle for complaint and the odds stacked against them.

Honourable members should consider that the Public Trustee often acts as the executor of estates, often appointed in wills drafted under the guise of the free will-making service. We all know there is no such thing as a free will-making service; someone somewhere has to pay. What is less well

understood by those who use the service is that the free will often comes with an expensive administration—often more expensive than having a local solicitor draw up a will appointing family or trusted associates to administer the estate, those people often not charging anything.

Members can imagine seeing a modest inheritance that has been put together by someone who has earnestly saved, paid off a mortgage and who went without and was frugal being denuded by seemingly meaningless and ultimately wasted administration fees and charges. Can they imagine the incredible feelings of frustration and impotence when someone wants to take back control of their life and finances but is met with resistance and rejection and finds themselves in court or in QCAT up against the Public Trustee, a Public Trustee who is using their own money to resist their application to take back control of their life and who has all the resources of the official solicitor of the Public Trustee's office on side to do so?

Mrs Gerber: Talk about a power imbalance.

Mr NICHOLLS: It is an enormous power imbalance.

What I have described I have asked honourable members to imagine, but for many caught up in the confusing and complicated web of financial and personal administration this is a reality. It is a reality that we in the opposition have been hearing about for years now and it is a reality that was exposed only two months ago on the ABC's *Four Corners* program when we heard Chris's story. We heard the experienced forensic accountants reporting in that story they had estimated he was charged more than a million dollars in fees by the Public Trustee. That has led to two inquiries announced by the Attorney-General in respect of the matters referred to in that ABC *Four Corners* program.

This is not ancient history. It was not five years ago or seven years ago or 10 years ago; it happened in the last 24 months—even after the myriad complaints and media stories had emerged about the poor experiences of customers of the Public Trustee, of its clients. It has happened after we have been told about the Public Trustee's often promoted 'customers-first strategy', a strategy that started as the customers-first agenda in 2019 that was to ensure that 'our customers were the focus of all our processes and decisions'. I bet they were when there was a million dollars worth of fees coming in the door from them! It has morphed into a variety of nice-sounding words that are really meaningless corporate speak without any determined action to fix the problems. It has happened after we were told in annual reports and in estimates in this place that the Public Trustee is fixing up the problems of the past, that staff training is underway, that there will be organisational capability and process and technology changes. Every year in the SDS there is a new catchword, a new buzzword and a new program underway, and the problems still occur.

It has happened after a blistering report into the financial practices of the Public Trustee was delivered by the Public Advocate in March last year. It has happened after the Auditor-General's report into the Public Trustee's handling of complaints in 2020, a report tabled in September 2020 that looked at complaints handling by the Public Trustee and made damning findings about the Public Trustee's processes. It has happened after the actions of the former public trustee and well-known Labor mate Peter Carne was subject to a CCC investigation and report to the then attorney-general, Yvette D'Ath.

It has happened after Mr Carne, an individual with an uninhibited sense of entitlement and who, let's not forget, was paid by the poor old clients of the Public Trustee, was stood aside and issued a show cause notice and quit a year later having avoided answering the show cause notice after pocketing $385,000 for not working that year. Imagine that—an individual who, it was revealed in estimates in 2020, billed Public Trustee customers tens of thousands of dollars for university courses and who even now is asking the Court of Appeal to stop the release of a Crime and Corruption Commission report to this House about his behaviour as public trustee after Justice Peter Davis in the Supreme Court found he had no grounds to do so.

'Something stinks' were the concluding words to the disturbing *Four Corners* report on the operations of Queensland's Public Trustee and when I spoke in this chamber on 21 March last year following the release of the Public Advocate's report I said that there is clearly something rotten with the state of the Public Trustee in Queensland. In the time since, nothing this government has done has served to remove that stink or fix the fundamental issues in the Public Trustee's office. I want to be clear about this: I have no beef with and make no adverse allegations about the current Public Trustee, Mr Samay Zhouand. I think Mr Zhouand has done his best in difficult circumstances, but unfortunately the problem is greater than one person can fix and unfortunately this bill will not fix the very real issues the Public Trustee of Queensland faces.

The bill in its current form really is just window-dressing and it will not address the vast number of issues raised in the Public Advocate's report last year, let alone the more deep-seated cultural and organisational issues. Recommendation 30 of the Public Advocate's report said that the government

should consider whether the Public Trustee and its clients would benefit from additional oversight and/or reporting mechanisms to improve the Public Trustee's performance, transparency and public accountability, but this is not the entire story.

The board to be established by this bill will be advisory only. It has no governance power. It simply monitors and reviews. The functions of the board are set out in proposed clause 117Y to monitor and review the performance; to monitor complaints received by the Public Trustee about the Public Trustee's functions; to monitor and review the Public Trustee's processes for managing complaints; to give written advice or make recommendations to the minister about changes to legislation, resources, service or training, improvements or enhancements to the performance of the Public Trustee's functions; to give written advice if asked by the minister to give advice or make recommendations about matters relating to the performance of the Public Trustee's functions; and another function given to the board under this act. They are the subclauses in summary but not the entire subclauses.

In essence, it is a toothless tiger, and it is not much of a tiger. It has no power to direct the Public Trustee on administrative issues, for example—administrative issues that do not affect the obligations of the Public Trustee acting as a fiduciary. It cannot say, 'What's wrong with the IT system?' It cannot say, 'This is what is wrong with the complaints monitoring system and this is what you need to do to fix it.' These are functions that have no bearing whatsoever on the Public Trustee carrying out its common law and statutory duties as a fiduciary to its clients.

I note that I listened carefully to the Attorney's speech and she was very careful in her language, but she was almost overenthusiastic to say why the board could not have more powers than it did and she relied extensively on the basis of the relationship of the fiduciary obligation, as if there has been no thought given to how it might be able to be made to work. This new board cannot challenge Public Trustee decisions. It cannot even investigate a complaint. It does not have that power. Fortunately for all involved, in doing all of this nothing it must do so independently and in the public interest. That will be of great comfort to all of those involved.

In the committee the department advised that this is because it is necessary to 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, as the Attorney mentioned in her speech in the House, but the Attorney was careful to use 'under its current structure'. But that is not the end of it. There has been no thought process given to how the structure might be adapted to in fact allow greater oversight of the operations of the individual who is the Public Trustee and the corporation sole constituted as the Public Trustee. There is complaint about conflict as if there already is not an inherent conflict—a conflict that was highlighted time and again in the Public Advocate's report.

The Public Trustee is conflicted to keep as many people under administration by the Public Trustee as possible because the self-funding model demands that it does it in order to earn the fees to pay the salaries of the people who run the Public Trustee. It is inherently conflicted and it is inherently conflicted on those clients with big estates, because guess what? They were paying the big bills. Disproportionately, the Public Advocate's report found that they were paying a larger amount of fees and subsidising, in breach of an existing fiduciary duty, other clients—taking more money from one in order to subsidise another. How does that work as a fiduciary obligation of the Public Trustee that is being fulfilled? The department's advice was disingenuous.

A board with powers to direct need not conflict with the Public Trustee's fiduciary obligations. Indeed, a board has to ensure, in fact, the opposite. The board has to ensure that the trustee fulfils its fiduciary obligations and any suggestion otherwise is arrant nonsense. How else do organisations like Australian Unity Trustees, Equity Trustees, Perpetual and the myriad other private trusts and organisations, large and small, with boards perform their duties and maintain their fiduciary obligations? Some form of legal magic obviously that does not apply in the government sector and that it cannot make work. Arrant nonsense! Of course not! Those private organisations and others follow the law and act in the best interests of their clients and the board proposed by this bill is not the type of board recommended by the OPA report as referenced by the Attorney-General. What the report actually said was—

There may be benefits in exploring additional oversight mechanisms for an agency with the extensive powers and responsibilities of the Public Trustee. One possible additional oversight mechanism could be to establish a Public Trustee board that would provide direction and oversight to the organisation.

I have dealt with the issues of direction, certainly in an administrative sense. We have dealt with the nonsense regarding the fiduciary obligations and we have not yet heard another good reason why it could not be done that way, because the report goes on to state—

State Trustees in Victoria is ... a state-owned corporation with a diverse and independent board of directors.

It is not a simple exercise—that is what the Attorney-General said—but there is a whole government over there and a whole department over there that could take up the cudgels and work out how to do it, because if they can sell the Titles Office off and transfer all of those assets over in a couple of months you would reckon that they would be able to sort out the 400-plus employees and the assets at the Public Trustee's office! But, no, that seems to be beyond the capability of this government, which seems to only be able to do the simple exercises.

Mrs Gerber: Tinker around the edges.

Mr NICHOLLS: Tinker around the edges, exactly; I take that interjection. While there would be changes needed to the current structure of the Public Trustee, it is clear the government has given absolutely no powers to the board similar to those suggested in the OPA report and nor has it taken an active step to try and do something better.

Turning to the composition of the board as proposed by this bill, section 117ZA(1) of the bill proposes—

In performing its functions, the board must act independently and in the public interest.

I have covered that. However, given half the members as originally proposed were going to be senior executives and public servants, there was in submitters' submissions a very real apprehension board members would not act independently but would in fact simply reflect what the government expects—and it is certainly impossible to see the permanent members criticise a government position on the Public Trustee board—and they should not do that. If they are senior members of the government and they disagree with what they are being asked to do by the government, they should resign. That is the honourable thing to do. The OPA provided the following advice—

A board provides the opportunity for board members, who could be selected on the basis of particular skills or expertise relevant to the Public Trustee's functions, to have a governance role as well as supporting senior management and guiding strategic decision-making.

The OPA references State Trustees in Victoria and references its members' backgrounds. Half the board as originally proposed in this bill were made up of departmental representatives and the other half were appointed members and three of the five departmental representatives would, in the current make-up of the government—that is, the current administrative orders—come from the same department. That hardly constitutes a board likely to act independently and in the best interests of the public.

In response to criticism by stakeholders on this point, the committee made recommendation 2. That recommendation, in essence, is to increase the number of appointed board members by one and ensure the balance lies with the non-government members—that is, the appointed members not the bureaucracy. The government has accepted this recommendation—

Mrs Gerber: And so it should!

Mr NICHOLLS: I take that interjection from the member for Currumbin—after strident opposition to its original proposal from the very many submissions made to the committee hearings by very many organisations.

Turning to the transparency aspect in the form of the proposed reporting requirements, originally, of course, there were none. That was helpful to transparency and openness, the catchwords of this government, more honoured in the breach than the observance. The board was subject to minimal reporting obligations and the minister even less. While the board can give advice or make recommendations to the minister about matters relating to the performance of the Public Trustee's functions, there was originally no obligation on the minister to table or make these recommendations public.

Clause 5 of the bill required the Public Trustee to include in its annual report information about the performance of the board's functions and the exercise of its powers and nothing else. How could that board have acted independently and in a supervisory role and be confident, given the revelations we have heard over the last six months in relation to how reports are prepared and vetted and go through the government, that this would occur?

Given the paucity of real information that would have been available, it is no wonder that submitters to the committee called for greater transparency and that led to recommendation 3 of the committee report that the bill be amended to require a separate annual report of the advisory board to the Public Trustee to be provided to the minister and tabled in the House. Had the government not agreed to this proposal, in an attempt to improve this bill the LNP would have introduced amendments to do the following: to limit the number of permanent board members to four, increase the number of appointed members to at least six but not more than seven and expand the appointed members' experience taking into account stakeholders' submissions to the committee report—and I note that the government has accepted that aspect of it.

We would have legislated a report from the board be tabled within 30 days of submission to the minister and that that report be completed within 30 days of 30 June each year: board gives report to minister within 30 days, minister tables report in the House within 30 days. We will continue to pursue this last amendment. I foreshadow the amendment will insert time frames around the reporting proposal because currently the clause simply says the board will provide a report as soon as practicably possible. There is no time limit. The Attorney then has 14 sitting days to table that report after receiving it.

We note in this respect the Auditor-General's recent report about statutory reporting time frames and the government's abject failure to maintain or improve those reporting time frames over the last two years. Members can read that for themselves in report No. 14 of 2021-22. While that goes to statutory bodies, recent experience with the courts shows this is not an isolated incidence. Whilst one might hope the Attorney-General would not play games on reporting deadlines, experience shows that that hope is forlorn.

Indeed, the recent last-minute tabling of the reports of all three courts—the Magistrates Court, the District Court and the Supreme Court—shows this government continues to play games with the reporting requirements. All court reports were tabled on practically the last permitted date in March of this year for a reporting period that ended on 30 June last year. In those reports was vital information, including information from the Chief Justice of the Supreme Court regarding the delays in parole that were seeing parole applications and judicial applications being made to the Supreme Court on a regular basis to the extent of almost 16 in one day because the government was failing to properly fund and operate the Parole Board—matters that we were raising earlier. If there had been proper transparency the public would have been informed, this House would have been informed and action could have been taken instead of the cover-up that occurred with the police minister obfuscating, dithering and delaying.

The amendment we propose is straightforward and simple and will improve the timeliness and transparency of the board's deliberations and fully reflect the recommendations made by the Public Advocate in her report last year and reflect the warnings given by the Auditor-General about the timeliness and adequacy of reports. That may give some hope to dissatisfied clients of the Public Trustee that concerns are being taken seriously.

There is much that needs to be looked at in the entire area of financial and personal administration of vulnerable Queenslanders and those affected by an incapacity of some type. It is not just the Public Trustee by any stretch, but the Public Trustee is the very public face of these failings—and these failings are very real. There is not just the ABC's *Four Corners* report, there have been reports that have been going on for the better part of three years now. Sue Nunn from the Sunshine Coast spoke on the *Four Corners* report. She has been raising issues and battling for more than three years in order to get justice not only for the matter that she spoke about, but also another matter where the Public Trustee is involved. She was fought every step of the way.

There are many more matters such as that, in particular on the issue of fees. The Public Trustee has been saying there is going to be a new scale of fees presented. It is 12 months on, here is the Public Trustee's report and we are still waiting. The next deadline for the Public Trustee to update their fees is now going to be 30 June 2022. In the meantime people are still paying the old fee structure and the old fee structure is still as opaque and confusing as it ever was. There is no clarity and no consistency. I suspect it is because this government does not want to ensure adequate funding for the Public Trustee. It does not want to bite the bullet.

As I said, there is much that needs to be looked at in the area of financial and personal administration. The interaction of laws about guardianship, administration, succession and capacity, as well as the role of QCAT and the courts, need to be considered holistically. Currently Queenslanders are labouring under the remnants of a trustee system that was originally designed when the Anzacs landed in Gallipoli 107 years ago. The origins of this legislation are from 1915.

In the 21st century we have very different ideas and understandings about capacity, the administration of estates, how we treat people who are found to have difficulties with administering their estates and who are under some form of disability. Much of this work has already been done by the Queensland Law Reform Commission from 2008 to 2010. There are two massive reports. I urge members to go online and have a look.

In 2010 the Queensland Law Reform Commission issued a two-volume report into the guardianship laws. With the passage of time a review and an updating of that report, taking into account what we have heard and learned about the operations of the Public Trustee, has become more and not less necessary. While no-one pretends that this is an area of law capable of an easy resolution—I certainly do not; it is complex, it is difficult and it puts a tremendous strain on the officers of organisations like the Public Trustee—or that there are undeniable complexities extending beyond the mere wording of legislation to the often confounding and sometimes intractable interplay of family relationships and

very human feelings, that is no reason to shy away from attempting to resolve this most important area of law. Regrettably, this bill does just that; it shies away from attempting to resolve this most important area of law.

This bill could have been so much more. It could have delivered so many better outcomes for customers of the Public Trustee and their families and loved ones. It barely scratches the surface. While it does provide some level of oversight and the amendments at least make it acceptable, it is in many respects still a toothless tiger. We have just heard that it is not even ready to go yet. The bill itself was introduced in October 2021. We are now in May and the government still cannot find six people to put on the board. The other members are already in their own departments. How hard can it be?

This bill barely scratches the surface. Clients and customers of the Public Trustee are still paying a high price for its mismanagement, for its incompetence and for its failure to be brought up to speed by a government that resolutely only takes the simple way out and does not take the right way out. Had the amendments currently proposed by the government not been made it would have been even less than worthless and not deserving of support. Even now it barely struggles to get across the line.