

# Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021

## Explanatory Notes

### Short title

The short title of the Bill is the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021.

### Policy objectives and the reasons for them

The Public Trustee operates as a corporation sole, is governed by the *Public Trustee Act 1978* (the PTA), and provides a range of financial, trustee and legal services to Queenslanders. 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 (QCAT) under the *Guardianship and Administration Act 2000* (the GAA) as an administrator and by a principal under the *Powers of Attorney Act 1978* (the POA) as an attorney in an enduring power of attorney to make decisions about financial matters or legal matters in relation to property.

Under the GAA, the Public Advocate has a statutory responsibility to undertake systems advocacy on behalf of Queensland adults with impaired decision-making capacity. On 10 March 2021, the Public Advocate's report, *Preserving the financial futures of vulnerable Queenslanders: A Review of the Public Trustee's fees, charges and practices* (the OPA Report) was tabled in the Legislative Assembly, together with the Government Response.

The OPA Report makes 32 recommendations relating to the Public Trustee's fees and charges regime, transparency, sustainability and provision of legal services. Recommendation 30 of the OPA Report is that Government consider additional oversight and/or reporting mechanisms to improve the Public Trustee's performance, transparency and public accountability.

In response to recommendation 30, the Government committed to the establishment of a Public Trustee Board with an advisory and monitoring focus.

The objective of the Bill is to amend the PTA to establish the Public Trustee Advisory and Monitoring Board (the Board). The Board will provide additional oversight over the Public Trustee to enhance transparency and public accountability.

## Achievement of policy objectives

The Bill achieves its policy objectives by establishing the Board and setting out the Board's functions and powers, membership, provisions for the operation of meetings, and reporting and confidentiality requirements.

### Functions and powers

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;
- to monitor and review the Public Trustee's processes for managing these complaints;
- to give written advice or make written recommendations to the Minister 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 functions; 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;
- if asked by the Minister, to give written advice or make written recommendations to the Minister about matters relating to the performance of the Public Trustee's functions;
- to give advice or make recommendations to the Public Trustee about matters relating to the performance of the Public Trustee's functions; and
- another function given to the Board under the PTA.

### Membership of the Board

The Bill provides that the Board will have a membership comprising a mix of ex-officio members appointed by virtue of the office that they hold (permanent Board members) and members appointed by the Minister (appointed Board members). There must be a minimum of four appointed Board members but no more than five, they will be appointed for a maximum term of three years and they may be reappointed.

Permanent Board members will comprise:

- the chief executive (so, the Director-General of the Department of Justice and Attorney-General (DJAG)) or a senior executive of DJAG nominated by that chief executive;
- the chief executive of the department in which the *Financial Accountability Act 2009* is administered, or a senior executive of that department nominated by that chief executive;

- the chief executive of the department in which the *Disability Services Act 2006* is administered, or a senior executive of that department nominated by that chief executive;
- the chief executive of the department mainly responsible for seniors or a senior executive of that department nominated by that chief executive; and
- the chief executive of the department in which the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* are administered or a senior executive of that department nominated by that chief executive.

Where a chief executive is a permanent member for more than one department listed, the chief executive may nominate a senior executive for each department for which that chief executive may be a permanent member.

Appointed Board members will comprise:

- at least one person with knowledge, qualifications or skills in relation to one or more of the following: 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 relation to one or more of the following: 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 culture change management; and
- any other persons with the knowledge, qualifications or skills the Minister considers appropriate.

The Minister must ensure the appointed Board members reflect the diversity of the Queensland community, and at least one appointed Board member is an Aboriginal person or Torres Strait Islander.

The Minister may appoint an appointed Board member to be the chairperson of the Board.

The Public Trustee will not be a member of the Board. However, the Board may invite the Public Trustee to attend and observe a Board meeting for the purpose of advising or informing the Board on any matter.

### **Other requirements**

The Bill also provides for:

- **Meeting arrangements:** The Board must meet at least three times annually; may hold meetings, or allow members to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous

communication; a quorum is at least half of the members of the Board, including at least three appointed Board members; and questions are decided by a majority of votes with the presiding member having the casting vote where votes are equal;

- **Integrity of members:** Persons will be disqualified from becoming or continuing as members if they have a conviction (other than a spent conviction) for an indictable offence, are an insolvent under administration under section 9 of the *Corporations Act 2001* (Cth) (Corporations Act), or are disqualified from managing a corporation under Part 2D.6 of the Corporations Act. Members' conflicts of interest must be disclosed and recorded in a register;
- **Confidentiality:** There will be a prohibition on a member disclosing personal information other than where necessary for the performance of the member's functions under the Act, and on disclosing personal information in any recommendation or advice given to the Minister; and
- **Reporting:** The Public Trustee's annual report must include information about the performance of the Board's functions and the exercise of its powers in the relevant financial year. The Board may give advice or make recommendations to the Minister about matters relating to the performance of the Public Trustee's functions and the Public Trustee will first have an opportunity to provide submissions, which are to be included with the advice or recommendations to the Minister.

## Alternative ways of achieving policy objectives

An alternative way of achieving the policy objective is for the Public Trustee to establish the Board administratively, rather than by legislation. However, a board established in legislation will provide greater oversight and accountability of the Public Trustee's activities by government and will strengthen the independence of the Board from the Public Trustee. Legislation is also desirable to ensure the appropriate composition of Board members, to address confidentiality issues and to empower the Board to require the Public Trustee to provide it with information in order to fulfil its functions.

## Estimated cost for government implementation

Resource impacts from the establishment of the Board are likely to be minimal. Permanent Board members will be public servants and will not be paid for their services as members. Appointed Board members are to be paid the remuneration and allowances decided by the Minister.

Any costs for implementation of the amendments will be met from within existing budget allocations.

## Consistency with fundamental legislative principles

The Bill has been drafted with regard to the fundamental legislative principles in the *Legislative Standards Act 1992* (the LSA). The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

## **Delegation of administrative powers**

New section 117ZC provides that permanent Board members are chief executives of certain departments, or a senior executive of the relevant department nominated by the relevant chief executive.

This potentially breaches the fundamental legislative principle that legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons (section 4(3)(c) of the LSA).

Any potential breach is considered justified as it is appropriate that a chief executive of a department be able to delegate their role as a Board member, to ensure flexibility in the Board performing its functions. The role can only be delegated to a senior executive officer who will be appropriately qualified to perform the role. Further safeguards include that a quorum is at least half of all Board members, including at least three appointed Board members. The Bill also provides for transparency in the operation of the Board's functions and exercise of its power, with the requirement that the annual activities of the Board are published in the Public Trustee's annual report.

## **Power to obtain criminal history**

New section 117ZK provides the Minister with the power to obtain criminal history information about prospective and current appointed Board members. New section 117ZL imposes an obligation on appointed Board members to, unless they have a reasonable excuse, immediately give notice to the Minister if they are convicted of an indictable offence.

The power to obtain a person's criminal history potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals (LSA, section 4(2)(a)) including the right to privacy. However, it is considered that any potential breach of the right to privacy is justified as the power for the Minister to obtain criminal history information is necessary to ensure the suitability of individuals appointed to the Board. Similarly, the obligation imposed on appointed Board members to disclose if they are convicted of an indictable offence is necessary to ensure the integrity of the Board.

The Bill includes safeguards to protect an individual's criminal history information. The Bill provides that the Minister may only exercise the power under section 117ZK with the written consent of the individual. In addition, new section 117ZM provides safeguards to protect an individual's criminal history information and operates to prevent further disclosure, limits the purpose for which the criminal history information may be used, and provides that the criminal history report obtained under section 117ZK and any notice provided in accordance with section 117ZL must be destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

## **Offences**

The Bill provides for a number of offences. These offences may breach the fundamental legislative principle that legislation should have sufficient regard to the rights and

liberties of individuals (LSA, section 4(2)(a)). Any new offence must be appropriate and reasonable in light of the conduct that constitutes the offence. A penalty should be proportionate and relevant to the offence.

#### *Failure to disclose certain information*

Under the Bill, a person is disqualified from being or continuing as an appointed Board member if the person has a conviction for an indictable offence, is an insolvent under administration under section 9 of the Corporations Act, or is disqualified from managing a corporation because of part 2D.6 of the Corporations Act.

New sections 117ZL and 117ZI impose obligations on appointed members of the Board to, unless they have a reasonable excuse, immediately give notice to the Minister if they are convicted of an indictable offence, become insolvent under administration under the Corporations Act, or are disqualified from managing corporations under part 2D.6 of the Corporations Act. Failure to comply with each of these obligations is an offence with a maximum penalty of 100 penalty units.

Requiring the notice to be given ‘immediately’ is an appropriate timeframe. While ‘immediately’ is a subjective term, it is a stronger expression than ‘as soon as practicable’. This is an appropriate timeframe for compliance with this requirement, particularly given that new section 117ZF operates to automatically end the person’s term of appointment, should such circumstances arise. Further, a person will have a reasonable excuse for non-compliance. The obligation for appointed Board members to disclose certain matters that relate to their suitability reinforces the expectation that members are to behave ethically and legally and ensures that the Minister is aware of matters that may impact on the integrity of the Board. There is a strong public interest in ensuring that there is appropriate oversight and accountability imposed on people who seek appointment, or are appointed, to a public oversight office. Imposing such an obligation on members is reasonable. The information in the notice is also required to be kept confidential by a person who may have access to the information, including the Minister or a member of the Minister’s staff, or an employee of the department.

It is noted that similar provisions requiring a person to disclose certain matters are found in other Queensland legislation, including for example the *Health and Wellbeing Queensland Act 2019*, the *Hospital Foundations Act 2018*, the *Jobs Queensland Act 2015* and the *Cross River Rail Delivery Authority Act 2016*, all of which impose a penalty where a person fails to disclose a conviction relating to an indictable offence. In addition, Queensland university legislation, such as *University of Queensland Act 1998* and *Queensland University of Technology Act 1998*, includes provisions that impose a penalty where a person fails to disclose a disqualification from managing corporations under the Corporations Act.

Having regard to the above, including similar offences in other Queensland legislation, the offence and penalty is considered appropriate and reasonable.

#### *Unlawful disclosure or use of criminal history information*

New section 117ZM creates a new offence for a person who possesses criminal history information because the person is, or has been, a Board member, or another person

involved in administering the Act, to disclose or use another person's criminal history information other than as provided for under the provision. The maximum penalty for breach of this provision is 100 penalty units.

It is expected that the Minister or a member of the Minister's staff may receive criminal history information as part of their role in determining the eligibility of a person to be appointed to the Board. The offence is included in the Bill to protect the rights of the person about whom the information relates and provide an important safeguard against unlawful use or disclosure. Similar offences are included across the Queensland statute book, including section 78C of the *Ombudsman Act 2001* and section 38 of the *Hospital Foundations Act 2018*.

Having regard to similar offences, appropriate deterrence, and the need to protect the rights of an individual, particularly to have their criminal history information appropriately protected from unlawful use or disclosure, the offence and penalty is considered justified.

### *Unlawful disclosure or use of confidential information*

New section 117ZX creates an offence for a person who is, or has been, a Board member and in that capacity has acquired or has access to personal information about another person, to disclose or use the information other than as provided for under the provision. The maximum penalty for breach of this provision is 200 penalty units.

Given the functions of the Board, it is likely to have access to sensitive personal information. This offence is included in the Bill to protect the rights of the person about whom the information relates and provide an important safeguard against the use and disclosure of a person's protected information.

Similar offences are included across the Queensland statute book, such as section 88M of the *Public Service Act 2008*, section 249A of the *GAA*, section 228 of the *Disability Services Act 2006*, section 74A of the *Powers of Attorney Act 1998* and section 140 of the *Public Guardian Act 2014*, which provide similar protections to prevent confidential information from unauthorised disclosure.

The penalty is set at a level to provide the appropriate deterrence and is consistent with similar offences in Queensland legislation.

On this basis the inclusion of the offence and penalty in the Bill is considered appropriate and reasonable.

### *Other obligations*

The Bill imposes other obligations in the PTA, but without expressly imposing a penalty in the Bill. For example new section 117ZM(4) provides that a person who possesses a report given to the Minister under section 117ZK or a notice under section 117ZL must ensure the report or notice is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

It should be noted that currently section 140 of the PTA provides that, except as is expressly provided by the Act, every person who contravenes or fails to comply with any provision of the Act commits an offence against the Act and, if no penalty is expressly provided for that offence, is liable on conviction to a maximum penalty of 10 penalty units.

The obligations imposed in the Bill without a penalty are similar to existing obligations under the PTA which do not expressly impose a penalty, and their inclusion is considered appropriate and reasonable. Any penalty imposed due to the application of section 140 of the PTA is considered proportionate and reasonable.

### **Reversing the onus of proof**

As outlined above, new sections 117ZI and 117ZL impose an obligation on appointed Board members of the Board to, unless they have a reasonable excuse, immediately give notice to the Minister if they are convicted of an indictable offence, become insolvent under administration, or are disqualified from managing corporations under part 2D.6 of the Corporations Act.

This could breach the fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification (LSA, section 4(3)(d)).

However, it is considered that the reversal of the onus is justified on the basis that the relevant fact (i.e. the change in criminal history or becoming insolvent under administration or disqualified from managing corporations) is something impractical to test by alternative evidential means and the facts giving rise to a reasonable excuse are within the particular knowledge of the defendant.

Including a reasonable excuse provision in these clauses allows a person who is subject to the offence to raise a defence of a reasonable excuse for failing to comply with the obligation. The clauses are drafted on the assumption that section 76 of the *Justices Act 1886* applies to place both the evidential and legal onus on the member of the Board to prove the existence of a reasonable excuse for failing to comply with the obligation to disclose. Reversing the onus of proof in these circumstances is appropriate as the person subject to the offence is best placed to provide the relevant information that would support the reasonable excuse defence.

The reasonable excuse provision is included in similar provisions requiring a person to disclose certain matters in other Queensland legislation, including for example the *University of Queensland Act 1998*, the *Health and Wellbeing Queensland Act 2019*, the *Hospital Foundations Act 2018*, the *Jobs Queensland Act 2015* and the *Cross River Rail Delivery Authority Act 2016*.

In light of the above and having regard to the underlying policy intent of the offence provisions to ensure the integrity of the membership of the Board, reversing the onus of proof is considered appropriate and reasonable.



## **Protection from civil liability**

New section 117ZZ provides protection from civil liability for Board members for an act done, or omission made, honestly and without negligence under new Part 8A of the PTA.

This potentially breaches the fundamental legislative principle that legislation should not confer immunity from proceedings or prosecution without adequate justification (LSA, section 4(3)(h)).

It is considered that any potential breach is justified on the basis that:

- immunity from prosecution is appropriate if it is conferred on persons carrying out statutory functions, as is the case in this instance;
- the immunity is appropriately limited in scope, as it does not attach to acts done or omissions made which are dishonest or negligent; and
- liability for the consequences of actions done, or omissions made, is not extinguished by the Bill, but attaches to the State instead. Therefore, where persons consider themselves to have been injured by the relevant action or omission, a legal redress remains open to them.

New section 117ZY provides that, where a person gives information to the Board under section 117ZT (so, a person at the request of the Board or the Public Trustee on its own initiative, where the Public Trustee believes the information will help the Board in the performance of its functions), the person is not liable, civilly, criminally or under an administrative process, for giving the information. Further, by giving the information, the person will not have breached any code of professional etiquette or ethics or departed from accepted standards of professional conduct. If the person would otherwise be required to maintain confidentiality about the information under the PTA or another Act, an oath, or a rule of law or practice, the person will not have contravened the Act, oath, or rule of law or practice by giving the information and is not liable to disciplinary action.

This also engages with the fundamental legislative principle that legislation does not confer immunity from proceedings or prosecution without adequate justification. Again, however, the immunity conferred is appropriate. A person should not be liable for proceedings where they are either merely complying with a request by the Board for information or, in the case of the Public Trustee giving information on its own initiative, where the Public Trustee believes the information will assist the Board. It is considered that there is no public interest in having action taken against such a person, or the Public Trustee, in these circumstances.

## **Consultation**

A draft of the Bill was provided to the Public Trustee Public Advocate and the Public Guardian. The Public Trustee and Public Advocate provided overall support for the draft Bill. The Public Guardian did not comment on the draft Bill but provided support for the establishment of an advisory and monitoring board to enhance the performance of the Public Trustee.

## Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state. There are no comparable advisory and monitoring boards providing oversight over a Public Trustee in other Australian jurisdictions. To the extent that other jurisdictions (Tasmania and Victoria) have a Public Trustee board, it is a governance board (because in Tasmania the Public Trustee is a Government Business Enterprise and in Victoria the Public Trustee is a State Government owned company). The approach adopted in Queensland is specific to achieving the policy objectives of an advisory and monitoring board only.

## Notes on provisions

*Clause 1* provides that short title of the Act is the *Public Trustee (Advisory and Monitoring Board) Amendment Act 2021*.

*Clause 2* provides that the Act amends the PTA.

*Clause 3* amends section 6 of the PT Act to insert definitions of ‘appointed board member’, ‘board’, ‘board meeting’, ‘board member’, ‘permanent board member’, ‘personal information’ and ‘spent conviction’.

*Clause 4* inserts a new part 8A in the PTA (the Public Trustee Advisory and Monitoring Board) divisions 1 to 6.

Division 1 of new part 8A (Preliminary) contains new sections 117V to 117W.

New section 117V (Definitions for part) provides definitions for new part 8A for ‘appointed board member’, ‘board’, ‘board meeting’, ‘board member’, ‘permanent board member’ and ‘spent conviction’.

New section 117W (References to functions) provides that, in new part 8A, a reference to a function includes a power, and a reference to performing a function includes exercising a power.

Division 2 of new part 8A (Establishment, functions and powers) contains new sections 117X to 117ZA.

New section 117X (Establishment) states that the Public Trustee Advisory and Monitoring Board is established.

New section 117Y (Functions) sets out the functions of the board, which are:

- 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;
- to monitor and review the Public Trustee’s processes for managing these complaints;

- to give written advice or make written recommendations to the Minister about the following:
  - 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 functions;
  - 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;
- if asked by the Minister, to give written advice or make written recommendations to the Minister about matters relating to the performance of the Public Trustee's functions;
- to give advice or make recommendations to the Public Trustee about matters relating to the performance of the Public Trustee's functions; and
- another function given to the board under the PTA.

New section 117Z (Powers) provides that the board may do anything necessary or convenient to be done in the performance of its functions.

New section 117ZA (Board must act independently and in public interest), subsection (1), provides that when performing its functions, the board must act independently and in the public interest. Subsection (2) clarifies that without limiting subsection (1), the board is not subject to direction by anyone, including the Minister, about how it performs its functions.

Division 3 of new part 8A (Membership) contains new sections 117ZB to 117ZJ.

New section 117ZB (Members of board) provides that the board consists of the permanent board members and the appointed board members (each a 'board member').

New section 117ZC (Permanent board members), subsection (1), provides that the permanent board members are the following:

- the chief executive of the department in which the PTA is administered or a senior executive nominated by that chief executive;
- the chief executive of the department in which the *Financial Accountability Act 2009* is administered or a senior executive nominated by that chief executive;
- the chief executive of the department in which the *Disability Services Act 2006* is administered or a senior executive nominated by that chief executive;
- the chief executive of the department mainly responsible for seniors or a senior executive nominated by that chief executive; and
- the chief executive of the department in which the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* are administered or a senior executive nominated by that chief executive.

Subsection (2) provides that, if a chief executive of a department mentioned in subsection (1) may be a permanent board member under more than one paragraph in subsection (1), that chief executive may nominate a senior executive for each paragraph for which that chief executive may be a permanent board member.

Under subsection (3), a senior executive nominated by a chief executive under subsection (1) is a permanent board member for the period decided by that chief executive.

New section 117ZD (Appointed board members), provides that the appointed board members are appointed by the Minister (subsection 1) and that the Minister must appoint at least four, but not more than five, appointed board members (subsection 2).

Subsection (3) provides that, in appointing the appointed board members the Minister must ensure that:

- at least one appointed board member has knowledge, qualifications or skills in relation to one or more of the following:
  - corporate governance;
  - finance and banking;
  - financial investment;
  - financial services;
  - insurance;
  - the management of financial funds, financial risk or trusts; and
- at least one appointed board member has knowledge, qualifications or skills in relation to advocacy, services and support for seniors and persons with a disability, including persons with impaired capacity; and
- at least one appointed board member has legal knowledge, qualifications or skills in relation to 1 or more of the following:
  - commercial litigation;
  - duties and obligations of trustees;
  - powers of attorney;
  - substituted decision-making for adults with impaired capacity;
  - succession law;
  - the principles and rules of equity; and
- at least one appointed board member has knowledge, qualifications or skills in relation to human resources management and culture change management; and
- any other appointed board members have the knowledge, qualifications or skills the Minister considers appropriate.

Subsection (4) provides that the Minister must ensure the appointed board members reflect the diversity of the Queensland community, and at least one appointed board member is an Aboriginal person or Torres Strait Islander. Subsection (5) provides that the appointed board members are appointed under the PTA and not the *Public Service Act 2008*, and subsection (6) provides that an appointed Board must not be a permanent board member.

New section 117ZE (Chairperson), subsection (1), provides that the Minister may appoint an appointed board member to be the chairperson of the board. Under subsection (2), an appointed board member may be appointed as the chairperson at the same time the person is appointed as an appointed board member. Subsection (3) provides that the chairperson holds office for the term stated in the person's appointment as chairperson, and ending not later than the person's term of appointment as an appointed board member. Under subsection (4), however, a person's appointment

as chairperson ends if, during the term of the appointment, the person stops being an appointed board member.

New section 117ZF (Disqualification as appointed board member) provides that a person is disqualified from becoming or continuing as an appointed board member if:

- the person has a conviction, other than a spent conviction, for an indictable offence; or
- the person is an insolvent under administration under section 9 of the *Corporations Act 2001* (Corporations Act); or
- the person is disqualified from managing a corporation because of part 2D.6 of the Corporations Act; or
- the person is the Public Trustee; or
- the Minister asks for the person's consent to make a request under new section 117ZK (Minister may request criminal history reports) in relation to the person and the person does not consent.

New section 117ZG (Term of appointment), subsection (1), states that an appointed board member holds office for the term stated in the member's instrument of appointment, which can be no longer than three years. Subsection (2) states that an appointed board member may be reappointed.

New section 117ZH (Conditions of appointment), subsection (1), provides that an appointed Board member is to be paid the remuneration and allowances decided by the Minister. Subsection (2) states, however, that an appointed board member who is a State employee under section 26B(4) of the *Public Service Act 2008* is not entitled to be paid remuneration for holding office as an appointed board member. Subsection (3) provides that, for matters not provided for by the PTA, an appointed board member holds office on the terms and conditions decided by the Minister.

New section 117ZI (Appointed board members must disclose particular matters), subsection (1), provides that section 117ZI applies to a person who is an appointed board member if, during the term of the person's appointment, the person becomes an insolvent under section 9 of the Corporations Act, or is disqualified from managing a corporation because of part 2D.6 of the Corporations Act. Subsection (2) provides that the person must, unless the person has a reasonable excuse, immediately give written notice of the insolvency or disqualification to the Minister. Failure to do so is an offence with a maximum penalty of 100 penalty units.

New section 117ZJ (Vacancy in office), subsection (1), provides that an appointed board member's office becomes vacant if the member:

- completes the member's term of office and is not reappointed; or
- resigns from office by signed notice given to the Minister; or
- becomes disqualified from continuing as an appointed board member under section 117ZF; or
- is absent from three consecutive board meetings without the board's permission and without reasonable excuse; or
- is removed from office by the Minister under subsection (2).

Subsection (2) states that the Minister may, by written notice given to an appointed board member, terminate the member's appointment if the Minister is satisfied the member is incapable of satisfactorily performing the member's functions.

Division 4 of new part 8A (Criminal history information) contains new sections 117ZK to 117ZM.

New section 117ZK (Minister may request criminal history reports), subsection (1), provides that, to decide if a person is disqualified from becoming or continuing as an appointed board member under section 117ZF(a), the Minister may ask the commissioner of the police service for:

- a written report about the criminal history of the person; and
- a brief description of the circumstances of a conviction mentioned in the criminal history.

Under subsection (2), however, the Minister may make the request only if the person has given the Minister written consent for the request. Under subsection (3), the commissioner of the police service must comply with the request. However, subsection (4) provides that the duty to comply applies only to information in the possession of the commissioner of the police service or to which the commissioner of the police service has access. Subsection (5) provides a definition of 'criminal history'.

New section 117ZL (New convictions must be disclosed) applies if a person who is an appointed board member is convicted of an indictable offence during the term of the person's appointment. Subsection (2) provides that the person must, unless the person has a reasonable excuse, immediately give written notice of the conviction to the Minister. A maximum penalty of 100 penalty units is provided. Subsection (3) states that the notice must include the following information:

- the existence of the conviction;
- when the offence was committed;
- details adequate to identify the offence; and
- the sentence imposed on the person.

New section 117ZM (Confidentiality of criminal history information), subsection (1), provides that section 117ZM applies to a person who:

- is or has been:
  - the Minister; or
  - a board member; or
  - a public service employee performing functions under or relating to the administration of the PTA; and
- in that capacity, has acquired or has access to criminal history information.

Under subsection (2), the person must not disclose the criminal history information to anyone else, or use the information, other than under section 117ZM. A maximum penalty is provided of 100 penalty units. Subsection (3) then provides that the person may disclose or use the criminal history information:

- to the extent the disclosure or use is:
  - necessary to perform the person's functions under or relating to new part 8A; or
  - otherwise required or permitted under the PTA or another law; or
- with the consent of the person to whom the criminal history information relates.

Under subsection (4), a person who possesses a report given to the Minister under section 117ZK or a notice given to the Minister under section 117ZL must ensure the report or notice is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given. Subsection (5) defines 'criminal history information' and clarifies the meaning of 'disclose'.

Division 5 in the new part 8A (Board meetings) contains new sections 117ZN to 117ZS.

New section 117ZN (Conduct of business) provides that, subject to division 5, the board may conduct its business, including its board business, in the way it considers appropriate.

New section 117ZO (Board meetings generally) provides that the chairperson may convene a meeting of board members (a 'board meeting') as often as is necessary for the performance of the board's functions (subsection (1)), however, the chairperson must convene a board meeting at least 3 times each year (subsection (2)). Subsection (3) states that the board may hold board meetings, or allow board members to take part in board meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting. Under subsection (4), a board member who takes part in a board meeting under subsection (3) is taken to be present at the meeting.

Subsection (5) states that a question at a board meeting is to be decided by a majority of votes of the board members present at the meeting and able to vote on the question. If the votes are equal, the board member presiding has a casting vote (subsection (6)).

Subsection (7) states that a resolution is a valid resolution of the board, even though it is not passed at a board meeting, if:

- at least half of the board members give written agreement to the resolution; and
- notice of the resolution is given under procedures approved by the board.

Subsection (8) states that the board may invite a person to attend a board meeting for the purpose of advising or informing the board on any matter.

New section 117ZP (Minutes and other records) states that the board must keep minutes of its board meetings and a record of its decisions and resolutions.

Under new section 117ZQ (Quorum), a quorum for a board meeting is at least half of the board members, including at least 3 appointed board members.

New section 117ZR (Presiding at board meetings), subsection (1), provides that the chairperson is to preside at all board meetings at which the chairperson is present. Under

subsection (2), if the chairperson is not present at a board meeting, the board member chosen by the members present is to preside.

New section 117ZS (Disclosure of interests), subsection (1), provides that section 117ZK applies if:

- a board member has a direct or indirect financial or other interest in a matter being considered, or about to be considered, at a board meeting; and
- the interest could conflict with the proper performance of the member's duties about the consideration of the matter.

Under subsection (2), as soon as practicable after the relevant facts come to the board member's knowledge, the member must disclose the nature of the interest at a board. Particulars of the disclosure must be recorded by the board in a register of interests kept for the purpose (subsection (3)). New subsection (4) states that, unless the board directs otherwise, the board member must not:

- be present when the board considers the matter; or
- take part in a decision of the board about the matter.

Subsection (5) provides that the board member must not be present when the board is considering whether to give a direction under subsection (4). Subsection (6) states that a contravention of this section does not invalidate a decision of the board. Under subsection (7), however, the board must reconsider a decision it has made about a matter if the board becomes aware that:

- a board member contravened subsection (4)(a) in relation to the board's consideration of the matter before the board made the decision; or
- a board member contravened subsection (4)(b) in relation to the decision.

Division 6 of new part 8A (Miscellaneous) contains new sections 117ZT to 117ZZ.

New section 117ZT (Board may request or receive information from Public Trustee), subsection (1), provides that for performing the board's functions, the board may, by written notice, ask the Public Trustee to give the board information, including personal information, about the performance of the board's functions. Subsection (2) provides that the Public Trustee must comply with a request under subsection (1). Subsection (3) states that the Public Trustee may give information, including personal information, to the board on the public trustee's own initiative if the Public Trustee is satisfied the information will help the board in the performance of its functions.

New section 117ZU (Advice and recommendations to Minister not to include personal information), subsection (1), provides that section 117ZU applies if the board gives advice or makes a recommendation to the Minister under new part 8A. Under subsection (2), the advice or recommendation must be prepared in a way that does not disclose personal information.

New section 117ZV (Consultation before advice given or recommendations made to Minister), subsection (1), provides that the board must not give advice or make a recommendation to the Minister under this part without first giving the public trustee:



- written notice of the advice or recommendation; and
- a reasonable opportunity, of at least 30 days, to make a submission about the advice or recommendation.

Under subsection (2), if the Public Trustee makes a submission under subsection (1), the board must have regard to the submission before finalising the advice or recommendation, and include the Public Trustee's submission, or a fair summary of it, with the advice or recommendation.

New section 117ZW (Advice or recommendations to Minister if decision not unanimous) applies if the board gives advice or makes a recommendation about a matter to the Minister under new part 8A, the board's decision on the matter is not unanimous. Under subsection (2), the board must include with the advice or recommendation a fair summary of the views of the board members who did not agree with the decision.

New section 117ZX (Confidentiality), subsection (1), provides that section 117ZX applies to a person who:

- is or has been:
  - a board member; or
  - a person assisting the board in the performance of its functions; and
- in that capacity, has acquired or has access to personal information.

Under subsection (2), the person must not disclose the personal information to anyone else, or use the information, other than under section 117ZX. A maximum penalty of 200 penalty units applies. Subsection (3) states that the person may disclose or use the personal information to the extent the disclosure or use is:

- necessary to perform the person's functions under or relating to this part; or
- otherwise required or permitted under the PTA or another law.

Subsection (4) clarifies the meaning of 'disclose' for section 117ZX.

New section 117ZY (Protection from liability for giving information), subsection (1), provides that section 117ZY applies if a person gives information to the board under section 117ZT. Subsection (2) provides that the person is not liable, civilly, criminally or under an administrative process, for giving the information. Subsection (3) provides that, merely because the person gives the information, the person can not be held to have:

- breached any code of professional etiquette or ethics; or
- departed from accepted standards of professional conduct.

Subsection (4) states that, without limiting subsections (2) and (3), if the person would otherwise be required to maintain confidentiality about the information under this or another Act, an oath, or a rule of law or practice, the person:

- does not contravene the PTA, oath, or rule of law or practice by giving the information; and

- is not liable to disciplinary action for giving the information.

New section 117ZZ (Protection from liability for board members), subsection (1), states that a board member does not incur civil liability for an act done, or omission made, honestly and without negligence under new part 8A. Subsection (2) provides that, if subsection (1) prevents civil liability attaching to a board member, the liability attaches instead to the State. Subsection (3) states that section 117ZZ does not apply to a board member who is a State employee under the *Public Service Act 2008*, section 26B(4).

*Clause 5* inserts a new section 141B (Annual report to include particular information).

Subsection (1) of new section 141B provides that the Public Trustee must include in its annual report under the *Financial Accountability Act 2009* information about the performance of the board's functions and the exercise of the board's powers during the financial year. New subsection (2) states that the Public Trustee must ensure that information included in its annual report under subsection (1) does not disclose personal information. New subsection (3) states that the board must, if asked by the Public Trustee, give information about the performance of the board's functions or the exercise of the board's powers during a financial year. New subsection (4) states that, in new section 141B, 'board' means the Public Trustee Advisory and Monitoring Board established under section 117X.