



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

**Submission by  
Queensland Advocacy Incorporated**

**Community Support and Services Committee**

**November 2021**

## About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (**QAI**) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our mission is to advocate for the protection and advancement of the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland. QAI's board is comprised of a majority of persons with disability, whose wisdom and lived experience of disability is our foundation and guide.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform. QAI has also supported the development of a range of advocacy initiatives in this state. For over a decade, QAI has provided highly in-demand individual advocacy services. These services are currently provided through our three advocacy practices: the Human Rights Advocacy Practice (which provides legal advocacy in the areas of guardianship and administration, disability discrimination and human rights law, non-legal advocacy support with the Disability Royal Commission, the justice interface and education, and social work services); the Mental Health Advocacy Practice (which supports people receiving involuntary treatment for mental illness); and the NDIS Advocacy Practice (which provides support for people challenging decisions of the National Disability Insurance Agency and decision support to access the NDIS). Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

## QAI's recommendations

### **QAI recommends:**

- The additional appointment of a person with lived experience in disability who has the requisite 'knowledge, qualifications or skills' in disability advocacy to be an appointed board member in the spirit of the Public Trustee's recognition and representation of the diversity of the Queensland community.
- Further guidance on the intention for appointed board members to 'reflect the diversity of the Queensland community'. For example, quantification of representatives from distinct diverse groups would allow full and considered, publicly accountable diverse representation on the Board.
- Further consideration be given to increasing the frequency of Board meetings and level of resources available to the Board, given the breadth of services offered by the Public Trustee and the scale of reform that is required, as demonstrated by the Public Advocate's report.
- Regular mandatory, independent reporting by the Board, in addition to the information about the performance of the Board's functions that is to be included in the Public Trustee's annual report. For example, the Board should release communiques from their meetings and should release any written recommendations or advice given to the Minister or Public Trustee regarding changes or improvements that it sees as necessary.
- The Public Trustee be legislatively required to publicly provide a written response to any advice or recommendations made by the Board.
- The establishment of the Board alone is not sufficient to address the numerous issues of concern raised by the Public Advocate's report. QAI therefore urges the government to continue working towards implementing the remainder of the Public Advocate's recommendations that fall within the government's remit.

## Introduction

QAI welcomes the opportunity to provide feedback on the introduction of the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 (Qld) which seeks to establish the Public Trustee Advisory and Monitoring Board (**the Board**). We acknowledge that the proposed vision of the Board is to ensure oversight, enhance transparency and increase public accountability of the Public Trustee after the release of the Public Advocate's *'Preserving the financial futures of vulnerable Queenslanders: A review of the Public Trustee's fees, charges and practices'* report earlier this year.<sup>1</sup> This report revealed a range of Public Trustee fees, policies and practices that suggest the Public Trustee is breaching some of its legal and fiduciary duties, and not acting in the interests of its clients. It raised serious concern for many of QAI's clients who are under the administration of the Public Trustee. QAI endorses the report in its entirety and the 32 recommendations for reform contained therein, including recommendation 30 relating to the consideration of additional oversight mechanisms.

QAI supports the establishment of the Board and its intended functions to monitor and review the performance of the Public Trustee's functions, to monitor complaints and the Public Trustee's processes for managing complaints, to give written advice or recommendations to the Minister and to the Public Trustee on changes or improvements that will promote the interests of its clients, and which will ensure the Public Trustee can effectively perform its functions. However, QAI considers that further detail and specificity regarding the proposed activities of the Board is required in order to ensure it will achieve the level of increased oversight and accountability that is purportedly behind this reform. Further, the establishment of the Board alone is not sufficient to address the numerous issues of concern raised by the Public Advocate's report. QAI therefore urges the government to continue working towards implementing the remainder of the Public Advocate's recommendations that fall within the government's remit.

## Board membership

QAI welcomes the proposed inclusion of the chief executive, or a nominated senior executive, of the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships as a permanent member of the Board.<sup>2</sup> QAI also strongly supports the proposed inclusion of at least one appointed member of the Board with 'knowledge, qualifications or skills in relation to advocacy, services and support for... persons with a disability, including persons with impaired capacity'.<sup>3</sup> According to the Public Trustee's own statistics in 2019-2020, 29% of the Public Trustee's customers live with an intellectual or psychiatric disability.<sup>4</sup> Representation of disability on the Board's membership will ensure that the vulnerability of these Public Trustee customers is not exploited. QAI also strongly encourages the appointment of a person with lived experience in disability who has the requisite 'knowledge, qualifications or skills' in disability advocacy to be an appointed board member in the spirit of the Public Trustee's recognition and representation of the diversity of the Queensland community.

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<sup>1</sup> Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, Explanatory Notes, page 1.

<sup>2</sup> Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, chapter 4, section 117ZC(1)(c).

<sup>3</sup> Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, chapter 4, section 117ZD(3)(b).

<sup>4</sup> Public Trustee of Queensland; <https://www.pt.qld.gov.au/fees-and-charges-review-public-consultation>.

QAI also supports the proposed inclusion of at least one Aboriginal or Torres Strait Islander person as an appointed member of the Board.<sup>5</sup> In 2018, almost one quarter (24%) of Aboriginal or Torres Strait Islander Australians were living with a disability, including 51,100 people with severe or profound disability.<sup>6</sup> The intersection of race and disability presents a unique experience which should be central to conversations on strategy and direction of public bodies such as the Public Trustee.

However, QAI is concerned about the ambiguous and unquantifiable proposed requirement that ‘the appointed board members reflect the diversity of the Queensland community’.<sup>7</sup> Further guidance on the intention for inclusion of this subsection and quantification of representatives from distinct diverse groups would allow full and considered, publicly accountable diverse representation on the Board.

## Board powers and functions

QAI notes the proposed functions of the Board are to monitor and review performance and processes, to provide written advice and make written recommendations to the Minister.<sup>8</sup> These proposed functions could allow the Board to undertake a full fees and charges review to improve the transparency of fees and charges which were, respectively, Recommendations 1 and 2 of the Public Advocate’s report. However, QAI questions whether these functions will ensure adequate implementation and enforcement of changes or reforms that are put forward by the Board. Further, the breadth of services offered by the Public Trustee and the scale of reform that is required, as evidenced by the Public Advocate’s review, leaves doubt as to whether a Board that meets potentially only three times per year will be well-placed to make well-informed and meaningful recommendations in the absence of increased resources and higher meeting frequencies. QAI therefore recommends further consideration be given to increasing the frequency of Board meetings and level of resources available to the Board in the performance of its functions.

QAI principally supports the proposed independence of the Board, who will be free from ‘direction by anyone, including the Minister, about how it performs its functions’.<sup>9</sup> A level of independence is required to allow the Board to achieve the vision behind its establishment. However, QAI questions how, when and to whom the Board will be publicly accountable for actions and decisions made in the performance of its functions, in the absence of any independent and public reporting requirements separate to a summary of its activities to be included in the Public Trustee’s annual report. QAI notes the seemingly unfettered nature of the Board’s proposed powers to ‘do anything necessary or convenient to be done in the performance of its functions’.<sup>10</sup> Considering the purpose for which the Board has been proposed, that is, to increase transparency and ensure public accountability, QAI recommends that regular independent reporting by the Board be required in addition to the information about the performance of the Board’s functions included in the Public Trustee’s annual report. For example, the Board should release communiques from their meetings and should release any written recommendations or advice given to the Minister or Public Trustee regarding changes or improvements that it sees as necessary. This would ensure transparency of the Board’s own actions in the context of their broad discretion and would underscore the Board’s independence from the Public Trustee by

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<sup>5</sup> Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, chapter 4, section 117ZD(4)(b).

<sup>6</sup> Australian Institute of Health and Welfare; <https://www.aihw.gov.au/reports/australias-welfare/disability-support-for-indigenous-australians>.

<sup>7</sup> Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, chapter 4, section 117ZD(4)(a).

<sup>8</sup> Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, chapter 4, section 117Y.

<sup>9</sup> Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, chapter 4, section 117ZA.

<sup>10</sup> Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, chapter 4, section 117Z.

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releasing information regarding its activities in a format that is separate to the Public Trustee's annual report. It would also remove any concern that information regarding the performance of the Board's activities as described in the Public Trustee's annual report, has been censored by the Public Trustee. It is vital that the Board and its actions embody the transparency and accountability that its functions are designed to facilitate.

Further, QAI recommends that the Public Trustee be legislatively required to publicly provide a written response to any advice or recommendations made by the Board. This would provide transparency regarding the Public Trustee's awareness of any systemic issues that have been identified by the Board and would ensure the Board and broader community are aware of their intentions (or otherwise) to address them.

## **Conclusion**

QAI thanks the Community Support and Services Committee for the opportunity to contribute to this review. We are happy to provide further information or clarification of any of the matters raised in this submission upon request.