

Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021

Statement of Compatibility

FOR

Amendments during consideration in detail to be moved by the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (the HR Act), I, the Honourable Shannon Fentiman, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, make this statement of compatibility with respect to amendments to be moved during consideration in detail (ACiDS) of the Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 (the Bill).

In my opinion, the ACiDS for the Bill are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

The Bill amends the *Public Trustee Act 1978* (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 its performance, transparency and public accountability.

The establishment of the Board implements recommendation 30 of the former 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), which was tabled in the Legislative Assembly on 10 March 2021.

The Bill was introduced into Parliament on 28 October 2021 and referred to the Community Support and Services Committee (the Committee). The Committee's report, tabled on 21 January 2022, made three recommendations, including that the Bill be passed.

The objectives of the amendments during consideration in detail of the Bill are:

- to commence the Bill on a date to be fixed by proclamation; and
- to implement the Committee's recommendations including:
 - recommendation 2: that clause 4, new section 117ZD (Appointed Board Members), be amended to add another appointed board member to the Board, with lived experience and that new section 117ZD(2) be amended to provide that the Minister must appoint at least five, but not more than six, appointed Board members; and
 - recommendation 3: that clause 5, new section 141B, be amended to ensure a separate annual report of the Board of the Public Trustee be provided to the Minister and tabled in the Queensland Legislative Assembly

The proposed amendments:

- insert new clause 1A, which provides that the Act will commence on a day to be fixed by proclamation;
- amend new section 117ZD(2) of the PTA, inserted by clause 4 of the Bill, to provide that the Minister must appoint at least five, but not more than six, appointed Board members;
- insert new section 117ZD(3)(da) of the PTA, inserted by clause 4 of the Bill, to require the Minister to ensure that at least one appointed Board member has experience living with impaired capacity, including as a carer or family member of a person with impaired capacity;
- insert new subsection (7) in new section 117ZD of the PTA, inserted by clause 4 of the Bill, to define 'carer' and 'paid carer' for section 117ZD;
- amend new section 117ZQ of the PTA, inserted by clause 4 of the Bill, to provide that a quorum for a Board meeting is a least half of the members for the time being, including at least four appointed Board members;
- insert new section 117ZZA of the PTA, to require that the Board provide the Minister with an Annual Report as soon as practicable after the end of each financial year, and for the Minister to table the Annual Report in the Legislative Assembly within 14 sitting days of receipt; and
- omit new section 141B of the PTA, given that the annual reporting requirement will be inserted by new section 117ZZA.

Human Rights Issues

Human rights relevant to the Amendments (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human right under the HR Act that is relevant to the ACiDS is the right to take part in public life (section 23, HR Act).

The Bill currently requires the Minister to appoint Appointed Board Members with particular skills and experience or other eligibility requirements. The Statement of Compatibility for the Bill outlines that this limits the right to take part in public life (section 23, HR Act).

The ACiDS will similarly limit the right to take part in public life by requiring the Minister to appoint an additional Appointed Board Member with experience living with impaired capacity, including as a carer or family member of a person with impaired capacity. By nominating certain individuals for appointment based on certain eligibility requirements for Appointed Board Members, the ACiDS limit individuals' right of access to a position as a Board member, and therefore a position in public office.

If human rights may be subject to limitation if the amendments to the Bill are enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 HR Act)

(a) the nature of the right

The right to take part in public life (section 23, HR Act) provides that every person in Queensland has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. The right includes a right for every eligible person to have access on general terms of equality to the public service and to public office.

(b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

As stated in the Statement of Compatibility for the Bill, the purpose of the Bill is to establish the Board, to provide additional oversight over the Public Trustee to enhance the Public Trustee's performance, transparency and public accountability. This is consistent with a free and democratic society based on human dignity, equality and freedom.

The purpose of the amendment to require the appointment of an additional Appointed Board Member with lived experience of impaired capacity, is to ensure that the Board is established with appropriate skills and experience to enable the Board to achieve its functions, including by ensuring that the Board benefits from a member with personal experience of the interests of the people who are the clients of the Public Trustee. By imposing criteria on eligibility, the amendment limits an individual's right of access to a position as an Appointed Board Member, and therefore a position in a public office.

(c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to take part in public life is limited in scope – it is exclusively concerned with the composition of the Board. The limitation is designed to ensure the Board has members that collectively provide the appropriate skills, knowledge and representation of the community, with integrity, for the effective performance of the Board’s statutory functions and fulfilment of its purpose. The appointment of an additional Appointed Board Member with lived experience of impaired capacity will provide valuable experience and insights to the membership of the Board and ensures the Board includes, and benefits from, a member with personal experience of the interests of the people who are the clients of the Public Trustee.

The limitation on the right to take part in public life is therefore directly related to, and helps to achieve, the purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

The approach adopted in the amendments to provide for the membership of the Board to include an Appointed Board Member with lived experience of impaired capacity is considered the least restrictive way of achieving the policy intent of establishing an advisory and monitoring Board to provide oversight over the Public Trustee, with members with appropriate skills, knowledge and experience to effectively perform the Board’s functions and fulfill its purpose.

(e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill, as amended by the ACiDs, will establish the Board, which will provide important advisory and monitoring oversight over the Public Trustee, to improve the Public Trustee’s performance, transparency and public accountability. Any limitations on a person’s right to take part in public life that is protected by section 23 of the HR Act is reasonable and justified, when balanced against the public interest in the Board being comprised of individuals with appropriate skills, knowledge and experience. This will enable the Board to perform its functions and fulfill its purpose effectively.

(f) any other relevant factors

The limitation on a person’s right to be appointed to the Board by requiring the person to have lived experience of impaired capacity also acts to promote the human rights of clients of the Public Trustee by ensuring Board members benefit from the skills and perspectives uniquely acquired by persons who have personal experience of mental health challenges, service use, periods of healing and personal recovery or experience of supporting someone through mental health challenges. The amendments aim to ultimately improve the services provided by, and decisions made by, the Public Trustee for clients with impaired capacity and therefore have the potential to promote human rights (depending on the nature of the decision made by the Public Trustee for the person) for example: the right to recognition and equality before the law (section 15, HR Act), property rights (section 24, HR Act), protection of families and children (section 26, HR Act), the right to education (section 36, HR Act) and the right to health services (section 37, HR Act).

Conclusion

In my opinion, the amendments to be moved during consideration in detail of the Bill are compatible with human rights under the HR Act because they limit human rights only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the HR Act.

SHANNON FENTIMAN MP
Attorney-General and Minister for Justice
Minister for Women and Minister for the Prevention of Domestic and Family Violence

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