

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, May 2022*



Queensland

No.

A BILL for

An Act to amend the Public Trustee Act 1978 for particular purposes



Queensland

Public Trustee (Advisory and Monitoring Board) Amendment Bill 2022

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2022

A Bill

for

An Act to amend the *Public Trustee Act 1978* for particular purposes

[s 1]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Public Trustee (Advisory and Monitoring Board) Amendment Act 2022*.

1A Commencement

This Act commences on a day to be fixed by proclamation.

2 Act amended

This Act amends the *Public Trustee Act 1978*.

3 Amendment of s 6 (Definitions)

Section 6—

insert—

appointed board member, for part 8A, see section 117V.

board, for part 8A, see section 117V.

board meeting, for part 8A, see section 117ZO(1).

board member, for part 8A, see section 117ZB.

permanent board member, for part 8A, see section 117V.

personal information means information or a document about an individual's affairs, but does not include—

- (a) information or a document that is publicly available; or
- (b) criminal history information within the meaning of section 117ZM(5); or

-
- (c) statistical or other information, or a document containing statistical or other information, that could not reasonably be expected to result in the identification of the individual to whom the information or document relates.

spent conviction, for part 8A, see section 117V.

4 Insertion of new pt 8A

After part 8—

insert—

Part 8A Public Trustee Advisory and Monitoring Board

Division 1 Preliminary

117V Definitions for part

In this part—

appointed board member means a person who is appointed as an appointed board member under section 117ZD.

board means the Public Trustee Advisory and Monitoring Board established under section 117X.

board meeting see section 117ZO(1).

board member see section 117ZB.

permanent board member means a person who is a permanent board member under section 117ZC(1).

spent conviction means a conviction—

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- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

117W References to functions

In this part—

- (a) a reference to a function includes a power; and
- (b) a reference to performing a function includes exercising a power.

Division 2 Establishment, functions and powers

117X Establishment

The Public Trustee Advisory and Monitoring Board is established.

117Y Functions

The board has the following functions—

- (a) to monitor and review the performance of the public trustee's functions;
- (b) to monitor complaints received by the public trustee about the performance of the public trustee's functions;
- (c) to monitor and review the public trustee's processes for managing complaints mentioned in paragraph (b);

- (d) to give written advice or make written recommendations to the Minister about the following—
 - (i) 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;
 - (ii) 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;
- (e) 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;
- (f) to give advice or make recommendations to the public trustee about matters relating to the performance of the public trustee's functions;
- (g) another function given to the board under this Act.

117Z Powers

The board may do anything necessary or convenient to be done in the performance of its functions.

117ZA Board must act independently and in public interest

- (1) In performing its functions, the board must act independently and in the public interest.

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- (2) Without limiting subsection (1), the board is not subject to direction by anyone, including the Minister, about how it performs its functions.

Division 3 Membership

117ZB Members of board

The board consists of the following members (each a *board member*)—

- (a) the permanent board members;
- (b) the appointed board members.

117ZC Permanent board members

- (1) The permanent board members are the following—
- (a) the chief executive of the department in which this Act is administered or a senior executive nominated by that chief executive;
 - (b) the chief executive of the department in which the *Financial Accountability Act 2009* is administered or a senior executive nominated by that chief executive;
 - (c) the chief executive of the department in which the *Disability Services Act 2006* is administered or a senior executive nominated by that chief executive;
 - (d) the chief executive of the department mainly responsible for seniors or a senior executive nominated by that chief executive;
 - (e) 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.

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

117ZD Appointed board members

- (1) The appointed board members are appointed by the Minister.
- (2) The Minister must appoint at least 5, but not more than 6, appointed board members.
- (3) In appointing the appointed board members, the Minister must ensure that—
 - (a) at least 1 appointed board member has knowledge, qualifications or skills in relation to 1 or more of the following—
 - (i) corporate governance;
 - (ii) finance and banking;
 - (iii) financial investment;
 - (iv) financial services;
 - (v) insurance;
 - (vi) the management of financial funds, financial risk or trusts; and
 - (b) at least 1 appointed board member has knowledge, qualifications or skills in relation to advocacy, services and support

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- for seniors and persons with a disability, including persons with impaired capacity; and
- (c) at least 1 appointed board member has legal knowledge, qualifications or skills in relation to 1 or more of the following—
 - (i) commercial litigation;
 - (ii) duties and obligations of trustees;
 - (iii) powers of attorney;
 - (iv) substituted decision-making for adults with impaired capacity;
 - (v) succession law;
 - (vi) the principles and rules of equity; and
 - (d) at least 1 appointed board member has knowledge, qualifications or skills in relation to human resource management and culture change management; and
 - (da) at least 1 appointed board member has experience living with impaired capacity, including as a carer or family member of a person with impaired capacity; and
 - (e) any other appointed board members have the knowledge, qualifications or skills the Minister considers appropriate.
- (4) Also, the Minister must ensure—
- (a) the appointed board members reflect the diversity of the Queensland community; and
 - (b) at least 1 appointed board member is an Aboriginal person or Torres Strait Islander.
- (5) The appointed board members are appointed under this Act and not the *Public Service Act 2008*.
- (6) An appointed board member must not be a permanent board member.

(7) In this section—

carer, of a person with impaired capacity, does not include—

- (a) a paid carer for the person; or
- (b) a carer who provides care for the person as a volunteer for an organisation.

paid carer, for a person, means an individual who—

- (a) performs services for the person's care; and
- (b) receives remuneration from any source for the services, other than—
 - (i) a carer payment or other benefit received from the Commonwealth or a State for providing home care for the person; or
 - (ii) remuneration attributable to the principle that damages may be awarded by a court for voluntary services performed for the person's care.

117ZE Chairperson

- (1) The Minister may appoint an appointed board member to be the chairperson of the board.
- (2) An appointed board member may be appointed as the chairperson at the same time the person is appointed as an appointed board member.
- (3) The chairperson holds office for the term, ending not later than the person's term of appointment as an appointed board member, stated in the person's appointment as chairperson.
- (4) However, a person's appointment as chairperson ends if, during the term of the appointment, the person stops being an appointed board member.

117ZF Disqualification as appointed board member

A person is disqualified from becoming or continuing as an appointed board member if—

- (a) the person has a conviction, other than a spent conviction, for an indictable offence; or
- (b) the person is an insolvent under administration under the Corporations Act, section 9; or
- (c) the person is disqualified from managing a corporation because of the Corporations Act, part 2D.6; or
- (d) the person is the public trustee; or
- (e) the Minister asks for the person's consent to make a request under section 117ZK in relation to the person and the person does not consent.

117ZG Term of appointment

- (1) An appointed board member holds office for the term, not longer than 3 years, stated in the member's instrument of appointment.
- (2) An appointed board member may be reappointed.

117ZH Conditions of appointment

- (1) An appointed board member is to be paid the remuneration and allowances decided by the Minister.
- (2) However, an appointed board member who is a State employee under the *Public Service Act 2008*, section 26B(4) is not entitled to be paid remuneration for holding office as an appointed board member.
- (3) For matters not provided for by this Act, an

appointed board member holds office on the terms and conditions decided by the Minister.

117ZI Appointed board members must disclose particular matters

- (1) This section applies in relation to a person who is an appointed board member if, during the term of the person's appointment, the person—
 - (a) becomes an insolvent under administration under the Corporations Act, section 9; or
 - (b) is disqualified from managing a corporation because of the Corporations Act, part 2D.6.
- (2) The person must, unless the person has a reasonable excuse, immediately give written notice of the insolvency or disqualification to the Minister.

Maximum penalty—100 penalty units.

117ZJ Vacancy in office

- (1) An appointed board member's office becomes vacant if the member—
 - (a) completes the member's term of office and is not reappointed; or
 - (b) resigns from office by signed notice given to the Minister; or
 - (c) becomes disqualified from continuing as an appointed board member under section 117ZF; or
 - (d) is absent from 3 consecutive board meetings—
 - (i) without the board's permission; and
 - (ii) without reasonable excuse; or

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- (e) is removed from office by the Minister under subsection (2).
- (2) 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 Criminal history information

117ZK Minister may request criminal history reports

- (1) 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) a written report about the criminal history of the person; and
 - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (2) However, the Minister may make the request only if the person has given the Minister written consent for the request.
- (3) The commissioner of the police service must comply with the request.
- (4) However, 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.
- (5) In this section—
criminal history, for a person, means the person's

criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

117ZL New convictions must be disclosed

- (1) This section applies if a person who is an appointed board member is convicted of an indictable offence during the term of the person's appointment.
- (2) The person must, unless the person has a reasonable excuse, immediately give written notice of the conviction to the Minister.

Maximum penalty—100 penalty units.

- (3) The notice must include the following information—
 - (a) the existence of the conviction;
 - (b) when the offence was committed;
 - (c) details adequate to identify the offence;
 - (d) the sentence imposed on the person.

117ZM Confidentiality of criminal history information

- (1) This section applies to a person who—
 - (a) is or has been—
 - (i) the Minister; or
 - (ii) a board member; or
 - (iii) a public service employee performing functions under or relating to the administration of this Act; and
 - (b) in that capacity, has acquired or has access to criminal history information.
- (2) The person must not disclose the criminal history

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information to anyone else, or use the information, other than under this section.

Maximum penalty—100 penalty units.

- (3) The person may disclose or use the criminal history information—
- (a) to the extent the disclosure or use is—
- (i) necessary to perform the person’s functions under or relating to this part; or
- (ii) otherwise required or permitted under this Act or another law; or
- (b) with the consent of the person to whom the criminal history information relates.
- (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.
- (5) In this section—
- criminal history information* means information contained in—
- (a) a report given to the Minister under section 117ZK; or
- (b) a notice given to the Minister under section 117ZL.

disclose includes give access to.

Division 5 Board meetings

117ZN Conduct of business

Subject to this division, the board may conduct its business, including its board meetings, in the way

it considers appropriate.

117ZO Board meetings generally

- (1) 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.
- (2) However, the chairperson must convene a board meeting at least 3 times each year.
- (3) 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.
- (4) A board member who takes part in a board meeting under subsection (3) is taken to be present at the meeting.
- (5) 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.
- (6) If the votes are equal, the board member presiding has a casting vote.
- (7) A resolution is a valid resolution of the board, even though it is not passed at a board meeting, if—
 - (a) at least half of the board members give written agreement to the resolution; and
 - (b) notice of the resolution is given under procedures approved by the board.
- (8) The board may invite a person to attend a board meeting for the purpose of advising or informing the board on any matter.

117ZP Minutes and other records

The board must keep—

- (a) minutes of its board meetings; and
- (b) a record of its decisions and resolutions.

117ZQ Quorum

A quorum for a board meeting is at least half of the board members for the time being, including at least 4 appointed board members.

117ZR Presiding at board meetings

- (1) The chairperson is to preside at all board meetings at which the chairperson is present.
- (2) If the chairperson is not present at a board meeting, the board member chosen by the members present is to preside.

117ZS Disclosure of interests

- (1) This section applies if—
 - (a) 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
 - (b) the interest could conflict with the proper performance of the member's duties about the consideration of the matter.
- (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 meeting.
- (3) Particulars of the disclosure must be recorded by the board in a register of interests kept for the purpose.

- (4) Unless the board directs otherwise, the board member must not—
 - (a) be present when the board considers the matter; or
 - (b) take part in a decision of the board about the matter.
- (5) The board member must not be present when the board is considering whether to give a direction under subsection (4).
- (6) A contravention of this section does not invalidate a decision of the board.
- (7) However, the board must reconsider a decision it has made about a matter if the board becomes aware that—
 - (a) a board member contravened subsection (4)(a) in relation to the board's consideration of the matter before the board made the decision; or
 - (b) a board member contravened subsection (4)(b) in relation to the decision.

Division 6 Miscellaneous

117ZT Board may request or receive information from public trustee

- (1) 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 public trustee's functions.
- (2) The public trustee must comply with a request under subsection (1).
- (3) The public trustee may give information, including personal information, to the board on

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the public trustee's own initiative if the public trustee is satisfied the information will help the board in the performance of its functions.

117ZU Advice and recommendations to Minister not to include personal information

- (1) This section applies if the board gives advice or makes a recommendation to the Minister under this part.
- (2) The advice or recommendation must be prepared in a way that does not disclose personal information.

117ZV Consultation before advice given or recommendations made to Minister

- (1) The board must not give advice or make a recommendation to the Minister under this part without first giving the public trustee—
 - (a) written notice of the advice or recommendation; and
 - (b) a reasonable opportunity, of at least 30 days, to make a submission about the advice or recommendation.
- (2) If the public trustee makes a submission under subsection (1), the board must—
 - (a) have regard to the submission before finalising the advice or recommendation; and
 - (b) include the public trustee's submission, or a fair summary of it, with the advice or recommendation.

117ZW Advice or recommendations to Minister if decision not unanimous

- (1) This section applies if—

- (a) the board gives advice or makes a recommendation about a matter to the Minister under this part; and
 - (b) the board's decision on the matter is not unanimous.
- (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.

117ZX Confidentiality

- (1) This section applies to a person who—
- (a) is or has been—
 - (i) a board member; or
 - (ii) a person assisting the board in the performance of its functions; and
 - (b) in that capacity, has acquired or has access to personal information.
- (2) The person must not disclose the personal information to anyone else, or use the information, other than under this section.

Maximum penalty—200 penalty units.

- (3) The person may disclose or use the personal information to the extent the disclosure or use is—
- (a) necessary to perform the person's functions under or relating to this part; or
 - (b) otherwise required or permitted under this Act or another law.
- (4) In this section—
disclose includes give access to.

117ZY Protection from liability for giving information

- (1) This section applies if a person gives information to the board under section 117ZT.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Also, merely because the person gives the information, the person can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.
- (4) 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—
 - (a) does not contravene the Act, oath, or rule of law or practice by giving the information; and
 - (b) is not liable to disciplinary action for giving the information.

117ZZ Protection from liability for board members

- (1) A board member does not incur civil liability for an act done, or omission made, honestly and without negligence under this part.
- (2) If subsection (1) prevents civil liability attaching to a board member, the liability attaches instead to the State.
- (3) This section does not apply to a board member who is a State employee under the *Public Service Act 2008*, section 26B(4).

Note—

For protection from civil liability in relation to State employees, see the *Public Service Act 2008*, section 26C.

117ZZA Annual report

- (1) As soon as practicable after the end of each financial year, the board must prepare and give to the Minister a written report about the performance of the board's functions during the year.
- (2) The report must include details of the following for the financial year—
 - (a) advice given or recommendations made to the Minister under this part;
 - (b) recommendations made to the public trustee under this part.
- (3) The board must ensure that information included in the report does not disclose personal information.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

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