

## Explanatory Notes

### FOR

## Amendment to be moved during consideration in detail by the Member for Maiwar, Michael Berkman MP

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

### Policy objectives and the reasons for them

The Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021 (**the Bill**) is a welcome although long-overdue step forward in addressing the transparency and accountability issues in the Public Trustee.

The Greens support the Bill, however, there are improvements that can be achieved with the proposed amendment. The Bill as it stands implements 1 of 32 recommendations made in the Office of the Public Advocate 2021 Report - *Preserving the financial future of vulnerable Queenslanders: A Review of the Public Trustee's fees, charges and practices (OPA Report)*.<sup>1</sup> The proposed amendment is designed to ensure that the remaining recommendations are appropriately considered, and implemented quickly and transparently.

The objective of the amendment is to ensure that progress on implementing the recommendations of the OPA Report is reported on in order to improve the performance, transparency and public accountability of the Public Trustee.

The OPA Report outlines 32 recommendations. The Government response to the OPA Report<sup>2</sup> affirmed that the Government supported in principle five recommendations and will further consider four recommendations.

---

<sup>1</sup> The Public Advocate, *Preserving the financial futures of vulnerable Queenslanders: A Review of the Public Trustee fees, charges and practices* - January 2021  
<<https://documents.parliament.qld.gov.au/tp/2021/5721T283.pdf>> (**OPA Report**).

<sup>2</sup> Government response - *Preserving the financial futures of vulnerable Queenslanders: A Review of the Public Trustee fees, charges and practices* - March 2021  
<<https://documents.parliament.qld.gov.au/tp/2021/5721T284.pdf>>

In particular, the Government supports in principle:<sup>3</sup>

- Recommendation 3: Consider the effect of fees when appointing the Public Trustee as financial administration;
- Recommendation 6: Seek a Goods and Services Tax exemption in relation to its fees and charges for administration clients;
- Recommendation 11: Do not profit from administration clients unless expressly permitted by law;
- Recommendation 15: Limit the amount of Public Trustee surpluses and reserves that can be accumulated, with excess to be returned to clients in reduced or rebated fees; and
- Recommendation 29: Amend legislation to clarify how the Public Trustee can invest client funds.

The Government also committed to consider four recommendations:<sup>4</sup>

- Recommendation 24: Review the role and operations of the Official Solicitor;
- Recommendation 26: Amend legislation so Public Trustee solicitors are overseen by the Legal Services Commission;
- Recommendation 31: Update the Public Trustee Act to better acknowledge rights and interests of people with impaired decision-making capacity; and
- Recommendation 32: Amend legislation to ensure the Public Trustee is an appointment of last resort and the appointment is periodically reviewed.

The object of the OPA Report and its recommendations is ‘to protect the rights and interests of people with impaired decision-making capacity and improve their lives by supporting them to achieve greater autonomy and dignity’.<sup>5</sup> The purpose of this amendment is to ensure transparency and parliamentary oversight of the implementation of these recommendations and assist in achieving the OPA Report’s objective.

In particular, implementation of Recommendation 11 is critical to the protection of vulnerable Queenslanders. A legislative requirement not to profit from administration clients, unless expressly permitted, ensures key fiduciary obligations the Public Trustee owes to its clients are not breached. The ‘no-profit’ rule is core to ensuring that Public Trustee acts in the interest of its clients. The need for the rule is very clearly demonstrated by the many stories of overcharging,

---

<sup>3</sup> Government response - *Preserving the financial futures of vulnerable Queenslanders: A Review of the Public Trustee fees, charges and practices* - March 2021  
<<https://documents.parliament.qld.gov.au/tp/2021/5721T284.pdf>>

<sup>4</sup> Government response - *Preserving the financial futures of vulnerable Queenslanders: A Review of the Public Trustee fees, charges and practices* - March 2021  
<<https://documents.parliament.qld.gov.au/tp/2021/5721T284.pdf>>

<sup>5</sup> OPA Report, page xivii.

including those aired on ABC's Four Corners,<sup>6</sup> in which one Brisbane man was \$1 million worse off after 4.5 years under the administration of the Public Trustee.

Implementation of Recommendation 31 (acknowledging the rights and interests of clients) and 32 (appointment as a last resort) will encourage the Public Trustee to engage in, and honour, its core function: to help 'make decisions that enhance the dignity, rights and interests of Queenslanders'.<sup>7</sup>

The remaining recommendations listed above are critical to the Public Trustee fulfilling its core function and fiduciary duties. All recommendations of the OPA Report should be implemented, for this fundamental reason, and to protect our most vulnerable Queenslanders, at a time they need it most.

This proposed amendment sits alongside and complements several ongoing reviews related to the Public Trustee. On 24 February 2022, the Attorney-General tabled the '*Public Trustee: Progress Overview on Recommendations from the Public Advocate*' (**AG Update**).<sup>8</sup> Another review was conducted by the Public Advocate 'one year on', which included contributions by the Queensland Government (**Public Advocate Update**).<sup>9</sup> While these updates provide useful insight into the progress towards the OPA recommendations, there is no clear legislative requirement to continuously report on this.

Given the gravity of the Public Trustee's role, and the seriousness of the recent wrongdoings by the Public Trustee, Queenslanders deserve greater transparency around implementation of all the OPA Report's recommendations. In the spirit of the transparency and accountability that the Bill seeks to achieve, tabling an update on progress towards the OPA recommendations every six months enhances the transparency and accountability of the government's commitment to implementing these recommendations and improving the Public Trustee.

### **Estimated cost for government implementation**

There are no significant cost impacts from this amendment.

---

<sup>6</sup> ABC Four Corners, Anne Connolly, Ali Russell and Stephanie Zillman, *Queensland's Public Trustee system to be investigated after Four Corners report revealed high fees and financial mismanagement* - 15 March 2022

<<https://www.abc.net.au/news/2022-03-15/public-trustee-system-under-fire-over-fees-to-vulnerable-people/100908772>>.

<sup>7</sup> Public Trustee, 'About us' page, accessible via <<https://www.pt.qld.gov.au/about/about-us/>>.

<sup>8</sup> Public Trustee, Public Trustee Progress Overview on REcommendations from the Public Advocate, tabled 24 February 2022 <<https://documents.parliament.qld.gov.au/tp/2022/5722T205-588F.pdf>>.

<sup>9</sup> The Public Advocate, Implementation Update: Preserving the financial futures of vulnerable Queenslanders: A review of Public Trustee fees, charges and practices, 10 March 2022 <[https://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0008/709298/202203010-implementation-update-public-trustee-report-final.pdf](https://www.justice.qld.gov.au/__data/assets/pdf_file/0008/709298/202203010-implementation-update-public-trustee-report-final.pdf)>.

### **Consistency with Fundamental Legislative Principles (FLPs)**

The amendment is consistent with fundamental legislative principles, and seeks to improve the bill's compliance with those principles.

Section 4(2)(a) of the *Legislative Standards Act 1992* (Qld) **requires that legislation have sufficient regard to the rights and liberties of individuals.** 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.

The new section 26A imposes an obligation on the Minister to table a report about action taken in relation to each recommendation of the public advocate report, within 6 months of commencement, and every 6 months after until recommendations are finally dealt with. Failure of which may leave open the possibility of a penalty imposed on the Minister under section 140 of the *Public Trustee Act 1978* (Qld) (**PTA**).

Although the PTA does not currently impose similar obligations on the Minister, the proposed new obligation reflects the timing of recent updates on the OPA report published by Office of the Public Advocate and the Attorney General on 10 March 2022 and 24 February 2022, respectively. Should the Bill pass, a progress update would be tabled in late 2022 and again in early 2023. Any penalty imposed due to the default application of section 140 of the PTA is considered proportionate and reasonable.

### **Consultation**

The Member has developed this amendment from stakeholder and community feedback, including via participation in the inquiry on the Bill as a member of the Committee.

### **Consistency with legislation of other jurisdictions**

Each Australian jurisdiction has unique approaches to addressing the matters contained in this amendment.

**Notes on provisions**

**Amendment 1** inserts a new section 26A to create a requirement that the Minister table a report about the progress of the actions taken to implement the recommendations of the Office of the Public Advocate report within six months of commencement, and every subsequent six months until the Minister tables a report to the effect that they consider each recommendation in the OPA Report has been finally dealt with.