

## CLAUSE NOTES

### *Validation Bill 2021*

#### PART 1 - PRELIMINARY

**Clause 1                      Short Title**

This clause provides that, once passed, the Bill will be cited as the *Validation Act 2021*.

**Clause 2                      Commencement**

This clause provides for the amendments to commence on Royal Assent.

#### PART 2 – GUARDIANSHIP AND ADMINISTRATION ACT 1995 AMENDED

**Clause 3                      Principal Act**

This clause provides that the Principal Act to which the amendments in this Part relate is the *Guardianship and Administration Act 1995*.

**Clause 4                      Section 90C inserted**

This clause inserts section 90C to the *Guardianship and Administration Act 1995*. The clause is required to validate the exercise of powers or functions of a person appointed to the Guardianship and Administration Board, whose appointment had expired, but had continued to sit and make determinations under the misapprehension that the Principal Act or *Acts Interpretation Act 1931* applied to extend the period in which they could do so. It also validates the constitution of the Board where any member may have been affected by the potential invalidity.

#### PART 3 – INDUSTRIAL RELATIONS ACT 1984 AMENDED

**Clause 5                      Principal Act**

This clause provides that the Principal Act to which the amendments relate is the *Industrial Relations Act 1984*.

**Clause 6                      Section 3 amended (Interpretation)**

This clause updates the definitions of Commissioner, Deputy President and President to refer to their appointment under the new section 5(2A).

**Clause 7                      Section 5 amended (Constitution of the Commission)**

This clause replaces section 5(2) and provides the Commission consists of the President, Deputy President and Commissioners who are to be

appointed under section 5(2A). Section 5(2A) establishes that the Governor is to appoint a person as a Commissioner and President, a person as Commissioner and Deputy President, and one or more other persons as Commissioners. Section 5(2B) ensures at least one person is appointed as Commissioner and as many as the Governor considers necessary. This clause also removes subsection (5) as it is made redundant by the new section 5(2A).

#### Clause 8

#### **Section 6 amended (Provisions relating to the appointment of Commissioners)**

This clause replaces the current section 6(1) and provides for a person appointed as Commissioner and President or Commissioner and Deputy President to be appointed for a term of 7 years. It also provides for a person who is appointed as Commissioner, but not President or Deputy President, to be appointed for a period not more than 3 years. The provision continues to provide for the re-appointment of Commissioners.

This clause also inserts a new subsection in section 6 (subsection 8), which provides for a person who is a member of the Fair Work Commission, except the President, to be appointed as a member of the Tasmanian Industrial Commission with the approval of the Minister responsible for the administration of the *Fair Work Act 2009*. A person who is a member of a similar office in a commission or similar body with jurisdiction in relation to industrial matters of another State or Territory may also be appointed with the approval of the Minister responsible for administration of the relevant enactment legislation.

#### Clause 9

#### **Section 10A repealed**

Section 10A of the Act (Additional Commissioners) is repealed, as other Commissioners are now appointed under section 5.

#### Clause 10

#### **Section 100 inserted**

This clause inserts section 100 into the *Industrial Relations Act 1984*, to provide for the validation of matters related to the Commission.

Section 100(2) validates the appointment, and therefore the actions and determinations, of Commissioners, who were appointed to the Commission immediately prior to the *State Service Amendment Act 2012*. This puts beyond doubt that all existing appointments continued after the commencement of those amendments. The clause validates the constitution of the Commission and Full Bench which might otherwise have been affected.

Section 100(3) and 100(4) also validates the appointments and powers exercised by any Commissioner, including additional Commissioners appointed under the 2012 amendments. This addresses any administrative errors in the appointment process, including those arising under the 2012 amendments such as additional Commissioners being appointed by the Governor rather than the Minister. The clause also ensures that any constitution of the Commission, including the Full Bench, is not affected by any members whose appointment may have been affected by invalidity in the appointment processes.

Section 100(5) and 100(6) is required to validate the exercise of powers and functions of any Commissioner whose appointment had expired, but had continued to sit and make determinations under the misapprehension that the Principal Act or *Acts Interpretation Act 1931* applied to extend the period in which they could do so. It also validates the constitution of the Commission and Full Bench where any member may have been affected by the potential invalidity.

Section 100(7) includes transitional arrangements for the newly created appointment provisions under section 5(2A), including providing for the current instruments of appointments to continue on their current terms and for the periods currently defined in those instruments.

#### PART 4 – JUSTICES OF THE PEACE ACT 2018 AMENDED

##### Clause 11                      Principal Act

This clause provides that the Principal Act to which the amendments relate is the *Justices of the Peace Act 2018*.

##### Clause 12                      Section 44 inserted

This clause inserts section 44 to the *Justices of the Peace Act 2018*. This clause is required to validate the appointments and performance of functions by Justices of the Peace under the former *Justices Act 1959* who did not notify the Secretary before the commencement day of the 2018 Act of their intent to continue in the office in accordance with the transitional arrangements in section 43(3) or 43(5), and continued to exercise a function or power of a Justice of the Peace. For example, a number of Justices of the Peace were unaware of this requirement to notify the Secretary. The clause applies between the commencement day of the *Justices of the Peace Act 2018* and the commencement of this Act.

#### PART 5 – LEGAL PROFESSION ACT 2007 AMENDED

##### Clause 13                      Principal Act

This clause provides that the Principal Act to which the amendments relate is the *Legal Profession Act 2007*.

**Clause 14            Section 660A inserted**

This clause inserts section 660A into the *Legal Profession Act 2007* to validate the appointment, and therefore the actions and determinations, of legal practitioners to the Legal Profession Disciplinary Tribunal who were purportedly appointed prior to the 22 June 2021. It also validates the constitution of the Tribunal where any member may have been affected by the potential invalidity.

**PART 6 – MENTAL HEALTH ACT 2013 AMENDED**

**Clause 15            Principal Act**

This clause provides that the Principal Act to which the amendments relate is the *Mental Health Act 2013*.

**Clause 16            Section 233 inserted**

The clause inserts section 233 into the *Mental Health Act 2013*. The clause is required to validate the exercise of powers or functions of a person appointed to the Mental Health Tribunal, whose appointment had expired, but had continued to sit and make determinations under the misapprehension that the Principal Act or *Acts Interpretation Act 1931* applied to extend the period in which they could do so. It also validates the constitution of the Board where any member may have been affected by the potential invalidity.

**PART 7 – WORKERS REHABILITATION AND COMPENSATION ACT 1988 AMENDED**

**Clause 17            Principal Act**

This clause provides that the Principal Act to which the amendments relate is the *Workers Rehabilitation and Compensation Act 1988*.

**Clause 18            Section 164E inserted**

The clause inserts section 164E into the *Workers Rehabilitation and Compensation Act 1988*. The clause is required to validate the exercise of powers or functions of a person appointed to act as Chief Commissioner of the Workers Rehabilitation and Compensation Tribunal, whose appointment had expired, but had continued to sit and make determinations under the misapprehension that the Principal Act or *Acts Interpretation Act 1931* applied to extend the period in which they could do so. It also

validates the constitution of the Tribunal where any member may have been affected by the potential invalidity.

## PART 8 – CONCLUDING PROVISION

### Clause 19                      Repeal of Act

This clause provides that the *Validation Act 2021* is repealed on the first anniversary of the day on which it commenced.