

FACT SHEET

Validation Bill 2021

The Validation Bill 2021 includes amendments to retrospectively validate the appointments of certain statutory officers, and consequently the decisions of certain statutory bodies, where a person appointed continued to exercise and perform all the powers, authorities, functions, and duties of the appointment for a period of time after the expiry of their appointment, due to a mistaken belief that section 21(3) of the *Acts Interpretation Act 1931* had extended their appointment.

The relevant persons and statutory bodies are:

- Members of the Guardianship and Administration Board;
- Members of the Mental Health Tribunal;
- Additional Commissioners of the Industrial Relations Commission; and
- Acting Chief Commissioners of the Workers Rehabilitation and Compensation Tribunal.

The Bill includes amendments to retrospectively validate the appointment of members of the Legal Profession Disciplinary Tribunal, and therefore actions and decisions of the members and Tribunal, whose appointment prior to the 22 June 2021 was inadvertently inconsistent with section 610 of the *Legal Profession Act 2007*.

The Bill also includes amendments to retrospectively validate the appointment of Justices of the Peace who were previously appointed to the office under the *Justices Act 1959*, and for administrative reasons did not meet the transitional requirements under section 43 of the *Justices of the Peace Act 2018* to continue to act in the office of Justice of the Peace.

The Bill includes amendments to retrospectively validate the appointment of Commissioners to the Tasmanian Industrial Commission (the Commission) under the *Industrial Relations Act 1984*, due to inadvertent issues arising from the commencement of the *State Service Amendment Act 2012*.

While there are common law doctrines that might prevent a decision by an officer or statutory body being challenged on the basis of technical invalidity of appointment, the Bill provides retrospective validation of relevant matters for the avoidance of doubt.

In addition, the Bill includes amendments to the *Industrial Relations Act 1984* to address issues relating to amendments included in the *State Service Amendment Act 2012*. The amendments in the Bill:

- provide a consistent appointment process for all members of the Commission;
- provide for Commissioners, other than the President and Deputy President, to be appointed to the Commission for periods up to three (3) years;
- ensure the Commission will be constituted by the minimum number of persons necessary to fulfil the powers and functions under the *Industrial Relations Act 1984*;
- provide that members of the Fair Work Commission, except the President, can be appointed as members of the Commission, subject to the approval of the Minister responsible for the *Fair Work Act 2009*;
- provide that members of a similar body to the Commission of another State or Territory can be appointed as members of the Commission, with the approval of the Minister responsible for the relevant enactment legislation; and
- provide transitional arrangements to continue the appointments of current members of the Commission.