

TASMANIA

VALIDATION BILL 2021

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VALIDATION BILL 2021

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
14 October 2021

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Guardianship and Administration Act 1995*, the *Industrial Relations Act 1984*, the *Justices of the Peace Act 2018*, the *Legal Profession Act 2007*, the *Mental Health Act 2013* and the *Workers Rehabilitation and Compensation Act 1988*, so as to validate certain appointments, actions and decisions purportedly made under those Acts, and to amend certain provisions of the *Industrial Relations Act 1984* in relation to the appointment of members of the Tasmanian Industrial Commission and to provide for certain transitional arrangements in relation to such amendments

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Validation Act 2021*.

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Part 1 – Preliminary

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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Part 2 – Guardianship and Administration Act 1995 Amended

s. 3

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

3. Principal Act

In this Part, the *Guardianship and Administration Act 1995** is referred to as the Principal Act.

4. Section 90C inserted

After section 90B of the Principal Act, the following section is inserted in Division 6:

90C. Validation

(1) In this section –

Board means the Guardianship and Administration Board established under this Act as in force immediately before the validation day;

member of the Board has the same meaning as in this Act as in force immediately before the validation day;

validation day means the day on which the *Validation Act 2021* commences.

(2) If –

*No. 44 of 1995

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s. 4

Part 2 – Guardianship and Administration Act 1995 Amended

- (a) a person was appointed as a member of the Board before the validation day; and
- (b) during all or part of the period –
 - (i) beginning on the day on which the appointment referred to in paragraph (a) expired; and
 - (ii) ending immediately before the validation day –

the person purported to be authorised, under this Act or the *Acts Interpretation Act 1931*, to perform, or exercise, as a member of the Board, a function or power of a member of the Board that a member of the Board may perform or exercise –

then, despite any provision of this Act or any other Act –

- (c) the person is to be taken to have been, and to always have been, a member of the Board during the period; and
- (d) that performance or exercise of that function or power by the person during the period is not to be taken to be, or to ever have been, invalid by reason only that

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Part 2 – Guardianship and Administration Act 1995 Amended

s. 4

the person was not, but for this section, a member of the Board during all or part of the period; and

- (e) the Board is not to be taken to have been, or to ever have been, invalidly constituted by reason only that the person was not, but for this section, a member of the Board during all or part of the period.

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Part 3 – Industrial Relations Act 1984 Amended

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

5. Principal Act

In this Part, the *Industrial Relations Act 1984** is referred to as the Principal Act.

6. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting “appointed under section 5(2A)” after “Commission” in the definition of *Commissioner*;
- (b) by inserting “appointed under section 5(2A)(b)” after “Commission” in the definition of *Deputy President*;
- (c) by inserting “appointed under section 5(2A)(a)” after “Commission” in the definition of *President*.

7. Section 5 amended (Constitution of the Commission)

Section 5 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsections:

*No. 21 of 1984

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Part 3 – Industrial Relations Act 1984 Amended

s. 7

(2) Subject to this section, the Commission consists of –

- (a) the President of the Commission appointed under subsection (2A)(a); and
- (b) the Deputy President of the Commission appointed under subsection (2A)(b); and
- (c) the other Commissioners appointed under subsection (2A)(c).

(2A) The Governor is to appoint –

- (a) a person to be a Commissioner and to be the President of the Commission; and
- (b) a person to be a Commissioner and to be the Deputy President of the Commission; and
- (c) one or more persons to be Commissioners.

(2B) The Governor is to appoint under subsection (2A)(c) at least one person to be a Commissioner but may, under that subsection,

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Part 3 – Industrial Relations Act 1984 Amended

appoint the number, of persons,
that the Governor thinks fit.

(b) by omitting subsection (5).

**8. Section 6 amended (Provisions relating to
appointment of Commissioners)**

Section 6 of the Principal Act is amended as
follows:

(a) by omitting subsection (1) and
substituting the following subsection:

(1) Subject to sections 11 and 12, a
person who is –

(a) appointed under
section 5(2A) –

(i) as a
Commissioner and
as the President of
the Commission
holds office for
the period, of not
more than 7 years,
specified in the
person's
instrument of
appointment; or

(ii) as a
Commissioner and
as the Deputy
President of the

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Commission holds office for the period, of not more than 7 years, specified in the person's instrument of appointment; or

(iii) as a Commissioner but not as the President, or the Deputy President, of the Commission holds office for the period, of not more than 3 years, specified in the person's instrument of appointment; and

(b) is to be appointed on the terms and conditions that are specified in the person's instrument of appointment; and

(c) may be re-appointed as a Commissioner, as the President, or as the Deputy President, of the Commission.

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Part 3 – Industrial Relations Act 1984 Amended

(b) by inserting the following subsection after subsection (7):

(8) Despite subsection (4), a person who holds –

(a) office as a member, other than the President, of the Fair Work Commission established under the *Fair Work Act 2009* of the Commonwealth may, with the prior agreement of the Minister for the time being administering that Act, be appointed under section 5(2A) as a Commissioner, the President, or the Deputy President, of the Commission; or

(b) a similar office in a commission or similar body with jurisdiction in relation to industrial matters that is constituted under an enactment of another State or of a Territory of the Commonwealth may, with the prior agreement of the Minister for the time being administering that enactment, be appointed under

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Part 3 – Industrial Relations Act 1984 Amended

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section 5(2A) as a
Commissioner, the
President, or the Deputy
President, of the
Commission.

9. Section 10A repealed

Section 10A of the Principal Act is repealed.

10. Section 100 inserted

After section 99 of the Principal Act, the
following section is inserted in Part VIII:

100. Validation and transitional

(1) In this section –

amending Act means the *Validation
Act 2021*;

relevant office means any of the
following offices:

- (a) the office of
Commissioner under this
Act as in force
immediately before the
validation day;
- (b) the office of President
under this Act as in force
immediately before the
validation day;

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Part 3 – Industrial Relations Act 1984 Amended

- (c) the office of Deputy President under this Act as in force immediately before the validation day;

relevant previous office means the office of additional Commissioner under section 10A of this Act as in force immediately before the validation day;

the 2012 amendment day means the day on which section 37 of the *State Service Amendment Act 2012* commenced;

validation day means the day on which the amending Act commences.

- (2) If a person was, immediately before the 2012 amendment day, the holder of a relevant office –

- (a) the substitution, by section 37 of the *State Service Amendment Act 2012*, of section 5(2) of this Act, as in force immediately before the 2012 amendment day, is not to be taken to have caused, or to ever have caused, the person to cease, or to have ceased, being the holder of the relevant office; and

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Part 3 – Industrial Relations Act 1984 Amended

s. 10

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- (b) the purported performance, or purported exercise, by the person, after that day, of a function or power as the holder of the relevant office or as a member of a Full Bench of the Commission, is not to be taken to be, or to ever have been, invalid by reason of the commencement of section 37 of the *State Service Amendment Act 2012*; and
 - (c) the Commission, and a Full Bench of the Commission, is not to be taken to be, or to ever have been, invalidly constituted, after the 2012 amendment day, by reason of the commencement of section 37 of the *State Service Amendment Act 2012*.
 - (3) If a person was, on a day (*the relevant day*) before the validation day, purportedly appointed, by the Minister or the Governor, to a relevant office then, despite any other provision of this Act –
 - (a) the purported appointment of the person to the office is to be taken to be, and to have always been, a valid appointment of the person to the office; and
 - (b) the performance or exercise by the person, on or after the relevant day, of a function or

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Part 3 – Industrial Relations Act 1984 Amended

power is not to be taken to be, or to ever have been, invalid by reason only that the purported appointment of the person to the office would, but for this subsection, have been invalid; and

- (c) the Commission, and a Full Bench of the Commission, as purportedly constituted in whole or in part by the person, is not to be taken to be, or to ever have been, invalidly constituted by reason only that the appointment of the person to the office would, but for this subsection, have been invalid.
- (4) If a person was, on a day (*the relevant day*) before the validation day, purportedly appointed, by the Minister or the Governor, to the relevant previous office then, despite any other provision of this Act –
- (a) the purported appointment of the person to the relevant previous office is to be taken to be, and to have always been, a valid appointment of the person to the office of Commissioner; and
 - (b) the performance or exercise by the person, on or after the relevant day, of a function or

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power is not to be taken to be, or to ever have been, invalid by reason only that, but for this subsection, the person would not have been validly appointed to the office of Commissioner; and

- (c) the Commission, and a Full Bench of the Commission, as purportedly constituted in whole or in part by the person, is not to be taken to be, or to ever have been, invalidly constituted by reason only that, but for this subsection, the person would not have been validly appointed to the office of Commissioner.

(5) If –

- (a) a person was, before the validation day, appointed, or purportedly appointed, to a relevant office or a relevant previous office; and
- (b) during all or part of the period –
 - (i) beginning on the day on which the appointment, or purported appointment, referred to in paragraph (a), expired; and

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Part 3 – Industrial Relations Act 1984 Amended

- (ii) ending immediately
before the validation
day –

the person purported to be authorised, under a provision of this Act or the *Acts Interpretation Act 1931*, to perform or exercise a function or power that a holder of the relevant office, or a holder of the relevant previous office, respectively, may perform or exercise –

then, despite any provision of this Act or of the *Acts Interpretation Act 1931*, the person is to be taken to have held, and to always have held, the relevant office, or the relevant previous office, respectively, during the period.

- (6) If, in accordance with subsection (5), a person is taken to have held the relevant office, or the relevant previous office, during a period then, despite any other provision of this Act or of the *Acts Interpretation Act 1931* –
 - (a) the purported performance or purported exercise, by the person, during the period, of a function or power is not to be taken to be, or to ever have been, invalid; and
 - (b) the Commission, and a Full Bench of the Commission, is not

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to be taken to have been, or to
ever have been, during the period,
invalidly constituted –

by reason only that the person did not,
but for this section, hold the relevant
office, or the relevant previous office,
respectively, during all or part of the
period.

- (7) A person who was, immediately before
the validation day –
- (a) the holder of the office of
President under this Act as in
force before the validation day is
to be taken to have been, and to
always have been, appointed
under section 5(2A)(a) to be a
Commissioner and the President
of the Commission on and from
that day; and
 - (b) the holder of the office of Deputy
President under this Act as in
force before the validation day is
to be taken to have been, and to
always have been, appointed
under section 5(2A)(b) to be a
Commissioner and the Deputy
President of the Commission on
and from that day; and
 - (c) the holder of the office of
Commissioner under this Act as
in force before the validation day,

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but not of the office of President, or Deputy President, under this Act as in force before the validation day, is to be taken to have been, and to always have been, appointed under section 5(2A)(c) to be a Commissioner on and from that day.

- (8) If a person is taken under subsection (7) to have been appointed to an office under this Act as in force after the validation day –
- (a) an instrument of appointment, of the person to an office under this Act before that day, that was in effect immediately before the validation day, remains in effect after that day as if a reference in that instrument to the office the person held before the validation day were a reference to the office held by the person, by virtue of that subsection, after that day; and
 - (b) a period of appointment that is specified in the instrument of appointment by reference to a period calculated from the day on which the person was appointed to an office under this Act as in force before the validation day, is to continue to be calculated from

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the day on which the person was
appointed to an office under this
Act as in force before the
validation day.

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s. 11

Part 4 – Justices of the Peace Act 2018 Amended

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

11. Principal Act

In this Part, the *Justices of the Peace Act 2018** is referred to as the Principal Act.

12. Section 45 inserted

After section 43 of the Principal Act, the following section is inserted in Part 7:

45. Validation

(1) In this section –

amending Act means the *Validation Act 2021*;

commencement day means the day on which this Act commenced;

validation day means the day on which the amending Act commences.

(2) If –

- (a) a person was a person who held, immediately before the commencement day, the office of Justice of the Peace in accordance with an appointment under section 4(1) of the *Justices Act*

*No. 15 of 2018

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1959 or who is taken, in accordance with section 43(8), to be such a person for the purposes of section 43; and

- (b) the person did not, before the commencement day, notify the Secretary under section 43(2) or (5) that he or she wishes to continue in the office of Justice of the Peace; and
- (c) after the commencement day but before the validation day, the person purported to perform or exercise a function or power of a Justice of the Peace under this Act –

then, despite any other provision of this Act, and irrespective of whether or not the person was eligible under section 8 to be appointed as a Justice of the Peace under that section –

- (d) the person is to be taken to have been, and to always have been, validly appointed under section 8 as a Justice of the Peace on and from the commencement day until the validation day; and
- (e) the performance or exercise of the function or power is not to be taken to be, or to ever have been, invalid by reason only that the

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s. 12

Part 4 – Justices of the Peace Act 2018 Amended

person was not, but for this section, validly appointed under section 8 as a Justice of the Peace on and from the commencement day until the validation day.

PART 5 – LEGAL PROFESSION ACT 2007 AMENDED

13. Principal Act

In this Part, the *Legal Profession Act 2007** is referred to as the Principal Act.

14. Section 660A inserted

After section 660 of the Principal Act, the following section is inserted in Part 8.2:

660A. Validation of appointments

(1) In this section –

relevant office means –

- (a) the office of a member of the Tribunal; and
- (b) the office of the chairperson of the Tribunal; and
- (c) the office of the deputy chairperson of the Tribunal;

validation day means the day on which the *Validation Act 2021* commences.

(2) If a person was a legal practitioner who was, before 22 June 2021, purportedly

*No. 24 of 2007

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s. 14

Part 5 – Legal Profession Act 2007 Amended

appointed to a relevant office for a period, then, despite any other provision of this Act –

- (a) the person is to be taken to have been, and to always have been, validly appointed to the relevant office for the period –
 - (i) beginning on and from the day on which the person was purportedly appointed to the office; and
 - (ii) ending on the day on which, if the person had been validly appointed to the relevant office, the person would have ceased to hold the office; and
- (b) the purported performance or purported exercise, by the person, during the period, of a function or power of a holder of the relevant office is not to be taken to be, or to ever have been, invalid by reason only that the person was not, but for this section, validly appointed to the relevant office for the period; and
- (c) the Tribunal is not to be taken to be, or to ever have been, invalidly constituted by reason only that,

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Part 5 – Legal Profession Act 2007 Amended

s. 14

before the validation day, the person was not, but for this section, validly appointed to the relevant office for the period.

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s. 15

Part 6 – Mental Health Act 2013 Amended

PART 6 – MENTAL HEALTH ACT 2013 AMENDED

15. Principal Act

In this Part, the *Mental Health Act 2013** is referred to as the Principal Act.

16. Section 233 inserted

After section 232 of the Principal Act, the following section is inserted in Part 3:

233. Validation

(1) In this section –

member of the Tribunal has the same meaning as in this Act as in force immediately before the validation day;

Tribunal means the Mental Health Tribunal established under section 167 of this Act as in force immediately before the validation day;

validation day means the day on which the *Validation Act 2021* commences.

(2) If –

*No. 2 of 2013

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-
- (a) a person was appointed as a member of the Tribunal before the validation day; and
 - (b) during all or part of the period –
 - (i) beginning on the day on which the appointment referred to in paragraph (a) expired; and
 - (ii) ending immediately before the validation day –

the person purported to be authorised, under this Act or the *Acts Interpretation Act 1931*, to perform, or exercise, as a member of the Tribunal, a function or power of a member of the Tribunal that a member of the Tribunal may perform or exercise –

then, despite any provision of this Act or any other Act –

- (c) the person is to be taken to have been, and to always have been, a member of the Tribunal during the period; and
- (d) that performance or exercise of that function or power by the person during the period is not to be taken to be, or to ever have

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s. 16

Part 6 – Mental Health Act 2013 Amended

been, invalid by reason only that the person was not, but for this section, a member of the Tribunal during all or part of the period; and

- (e) the Tribunal is not to be taken to have been, or to ever have been, invalidly constituted by reason only that the person was not, but for this section, a member of the Tribunal during all or part of the period.

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Part 7 – Workers Rehabilitation and Compensation Act 1988 Amended

s. 17

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

17. Principal Act

In this Part, the *Workers Rehabilitation and Compensation Act 1988** is referred to as the Principal Act.

18. Section 164E inserted

After section 164D of the Principal Act, the following section is inserted in Part XIII:

164E. Validation

(1) In this section –

Chief Commissioner has the same meaning as in this Act as in force immediately before the validation day;

Tribunal means the Tribunal established under section 16 of this Act as in force immediately before the validation day;

validation day means the day on which the *Validation Act 2021* commences.

(2) If –

*No. 4 of 1988

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s. 18

Part 7 – Workers Rehabilitation and Compensation Act 1988 Amended

- (a) a person was appointed under section 18(1) to act in the office of the Chief Commissioner before the validation day; and
- (b) during all or part of the period –
 - (i) beginning on the day on which the appointment to act referred to in paragraph (a) expired; and
 - (ii) ending immediately before the validation day –

the person purported to be authorised, under this Act or the *Acts Interpretation Act 1931*, to perform, or exercise, a function or power of the Chief Commissioner, that is a function or power that the Chief Commissioner may perform or exercise –

then, despite any provision of this Act or any other Act –

- (c) the person is to be taken to have been, and to always have been, validly appointed to act in the office of the Chief Commissioner during the period; and
- (d) that performance or exercise of that function or power by the

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person during the period is not to be taken to be, or to ever have been, invalid by reason only that the person was not, but for this section, validly appointed to act in the office of the Chief Commissioner during all or part of the period; and

- (e) the Tribunal is not to be taken to have been, or to ever have been, invalidly constituted by reason only that the person was not, but for this section, validly appointed to act in the office of the Chief Commissioner during all or part of the period.

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s. 19

Part 8 – Concluding Provision

PART 8 – CONCLUDING PROVISION

19. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.