

**PUBLIC HEALTH AND WELLBEING AMENDMENT (PANDEMIC MANAGEMENT)
BILL 2021**

**(Amendments suggested by the Legislative Council on the consideration of the
Bill in Committee)**

1. Clause 4, after line 14 insert—

"Detention Appeals Officer means a person appointed to be a
Detention Appeals Officer under section 32A(1);

Detention Appeals Registrar means the person appointed to be
the Detention Appeals Registrar under section 32F(1);".

2. Clause 4, page 4, after line 33 insert—

"(2A) In section 3(1) of the Principal Act, the definition of *Detention
Review Officer* is repealed."

NEW CLAUSE

3. Insert the following New Clause to follow clause 10—

'10A Detention Appeals Officers and Registrar

For section 32A of the Principal Act **substitute—**

"32A Governor in Council may appoint Detention Appeals Officers

- (1) Subject to subsection (2), the Governor in Council, on the recommendation of the Minister, may by instrument appoint a person as a Detention Appeals Officer at any time when a pandemic declaration or a declaration of a state of emergency is in force.
- (2) A person appointed as a Detention Appeals Officer must be an Australian lawyer of at least 10 years' experience.

32B Remuneration and allowances

A person appointed as a Detention Appeals Officer is entitled to the remuneration and allowances determined from time to time by the Governor in Council.

32C Terms and conditions of appointment

- (1) A Detention Appeals Officer —
 - (a) holds office for the period specified in the instrument of appointment, which must not end after the time when the

pandemic declaration or declaration of a state of emergency referred to in section 32A(1) ceases to be in force; and

- (b) is eligible to be reappointed; and
- (c) holds office on the terms and conditions determined by the Governor in Council.

- (2) A Detention Appeals Officer is not, in respect of the office of Detention Appeals Officer, subject to the **Public Administration Act 2004**.

32D Independence of Detention Appeals Officers

A Detention Appeals Officer —

- (a) must act independently, impartially and in the public interest in the performance of their functions and duties and the exercise of their powers; and
- (b) is not subject to the direction or control of the Secretary or the Minister in relation to the performance of their functions or duties or the exercise of their powers under this Act or the regulations.

32E Detention Review Officers taken to be Detention Appeals Officers

- (1) A person who, immediately before the commencement day, held office as a Detention Review Officer under the old Act is taken to have been appointed as a Detention Appeals Officer under section 32A(1) on and from the commencement day.
- (2) The Governor in Council is taken to have determined the same terms and conditions as applied under the old Act, in respect of a person taken to be appointed as a Detention Appeals Officer because of the operation of subsection (1), to the extent that those terms and conditions are consistent with sections 32A, 32B, 32C and 32D, with the following modifications—
 - (a) the Governor in Council may terminate the appointment of the person and the Secretary may not terminate the appointment of the person;
 - (b) the terms and conditions on which the person holds office, including in relation to remuneration and allowances, may be later amended by the Governor in Council and not by the Secretary;

- (c) a reference in the original instrument of appointment to a Detention Review Officer is taken to include a reference to a Detention Appeals Officer;
 - (d) a reference in the original instrument of appointment to a state of emergency ceasing to exist or be in force is taken to include a reference to a pandemic declaration ceasing to be in force;
 - (e) a reference in the original instrument of appointment to the functions, duties and powers of a Detention Review Officer is taken to include a reference to the functions, duties and powers of a Detention Appeals Officer under section 200C and Part 8A of this Act;
 - (f) a reference in the original instrument of appointment to the detention under section 200 is taken to include a reference to detention under section 165B(1)(b) or section 165BA(1)(b).
- (3) In this section—
- commencement day* means the day on which this section came into operation;
- Detention Review Officer* has the meaning given by the old Act;
- old Act* means this Act, and regulations and instruments made under this Act, as in force immediately before the commencement day;
- original instrument of appointment* means the instrument of appointment of a person as a Detention Review Officer under the old Act.

32F Secretary may appoint Detention Appeals Registrar

- (1) The Secretary by instrument may appoint a person to be the Detention Appeals Registrar for the purposes of this Act.
- (2) An instrument of appointment of a person as the Detention Appeals Registrar may—
 - (a) specify the functions, duties or powers under this Act or the regulations to which the appointment relates; and
 - (b) be made subject to any conditions that the Secretary considers to be appropriate.
- (3) A person appointed as the Detention Appeals Registrar is employed under Part 3 of the **Public Administration Act 2004**.

- (4) The Secretary must ensure that the Detention Appeals Registrar has access to such information as may reasonably be required for the performance of the functions and duties and the exercise of the powers of the Detention Appeals Registrar under this Act or the regulations.
- (5) The Secretary may employ persons under Part 3 of the **Public Administration Act 2004** to assist the Detention Appeals Registrar in the performance of the functions and duties and the exercise of the powers of the Detention Appeals Registrar under this Act or the regulations.".'.
4. Clause 12, page 18, lines 3 and 4, after ": see sections 165B(1)(b) and 165BA(1)(b)." insert "Special protections apply to detention under this Part, including the right of a detained person to apply for review by a Detention Appeals Officer of the detention: see Division 6."
5. Clause 12, page 35, lines 23 and 24, after ": see section 165AI(2)(a) and (b)." insert "Special protections apply to detention under this Part, including the right of a detained person to apply for review by a Detention Appeals Officer of the detention: see Division 6."
6. Clause 12, page 41, after line 18 insert—
- "(2A) Without limiting subsection (2)(c), an explanation under that subsection must include an explanation of the following rights that the person has, or may have, and the processes in respect of those rights—
- (a) the right to complain to the Ombudsman under the **Ombudsman Act 1973**;
- (b) the right to make a complaint under section 185 of this Act;
or
- (c) the right to seek review in a court."
7. Clause 12, page 44, lines 6 and 7, omit "Secretary for a review by a Detention Review Officer" and insert "Detention Appeals Registrar for review by a Detention Appeals Officer".
8. Clause 12, page 45, line 20, omit "Secretary" and insert "Detention Appeals Registrar".
9. Clause 12, page 45, line 22, omit "Detention Review Officer" and insert "Detention Appeals Officer".
10. Clause 12, page 45, after line 23 insert—

"165BIA Secretary and Detention Appeals Registrar to provide relevant information and assistance to Detention Appeals Officers

- (1) The Secretary and the Detention Appeals Registrar must use their best endeavours to provide a Detention Appeals Officer with all relevant information in their possession including, but not limited to, documents and information mentioned in section 165BJ(3)(ab), as soon as reasonably practicable after an application under section 165BI is received by the Detention Appeals Registrar.
- (2) The Secretary and the Detention Appeals Registrar must use their best endeavours to provide a Detention Appeals Officer with any information requested by the Detention Appeals Officer under section 165BJ(3)(c) within 24 hours after receiving the request.
- (3) The Secretary and the Detention Appeals Registrar must provide all reasonable assistance requested by a Detention Appeals Officer for the purposes of the Detention Appeals Officer considering and deciding applications for review.
- (4) The provision of information under subsection (1) or (2) is authorised or required by law for the purposes of the **Privacy and Data Protection Act 2014** and the **Health Records Act 2001**."

11. Clause 12, page 45, line 24, omit "**Detention Review Officer**" and insert "**Detention Appeals Officer**".
12. Clause 12, page 45, line 28, omit "Detention Review Officer" and insert "Detention Appeals Officer".
13. Clause 12, page 45, lines 30 and 31, omit "Detention Review Officer" and insert "Detention Appeals Officer".
14. Clause 12, page 45, line 34, omit "and the reasons for it, within—" and insert ", the reasons for it and the review rights available to the applicant within 72 hours after the application was received by the Detention Appeals Registrar or within such longer period as is requested by the applicant."
15. Clause 12, page 46, lines 1 to 6, omit all words and expressions on these lines.
16. Clause 12, page 46, after line 6 insert—
 - "(2A) Without limiting subsection (2), the advice under that subsection must include an explanation of the following rights that the

person has, or may have, and the processes in respect of those rights—

- (a) the right to complain to the Ombudsman under the **Ombudsman Act 1973**;
- (b) the right to make a complaint under section 185 of this Act;
- (c) the right to seek review in a court."

17. Clause 12, page 46, lines 7 and 8, omit "Detention Review Officer" and insert "Detention Appeals Officer".
18. Clause 12, page 46, after line 10 insert—
 - "(ab) may consider any documents and other information relied upon by the authorised officer who detained the person or extended the detention of the person under section 165B(1)(b) or 165BA(1)(b) and may consider any other information in relation to the person's detention; and
 - (ac) must take reasonable steps to contact the applicant in relation to the application; and".
19. Clause 12, page 46, line 12, omit "Detention Review Officer" and insert "Detention Appeals Officer".
20. Clause 12, page 46, line 15, omit "Detention Review Officer" and insert "Detention Appeals Officer".
21. Clause 12, page 46, line 20, omit "Detention Review Officer" and insert "Detention Appeals Officer".
22. Clause 12, page 46, line 25, omit "Detention Review Officer" and insert "Detention Appeals Officer".
23. Clause 12, page 46, lines 27 to 31, omit all words and expressions on these lines and insert—
 - "(b) subject to subsections (5), (6) and (7), to vary or cease the person's detention."
24. Clause 12, page 46, lines 32 to 35 and page 47, lines 1 to 8, omit all words and expressions on these lines and insert—
 - "(5) A Detention Appeals Officer must not vary or cease a person's detention under subsection (4)(b) unless the Detention Appeals Officer has consulted and considered the advice of the Chief Health Officer about the proposed variation or cessation.

Note

The Chief Health Officer can delegate powers, duties and functions: see section 22.

- (6) If a Detention Appeals Officer consults the Chief Health Officer about the proposed variation or cessation of a person's detention, the Chief Health Officer must make their best endeavours to provide oral or written advice about the proposed variation or cessation within 24 hours.
- (7) If the Chief Health Officer provides oral advice under subsection (6), a written record of the advice must be prepared as soon as practicable—
 - (a) by the Chief Health Officer; or
 - (b) by the Detention Appeals Officer, who must provide a copy of the written record to the Chief Health Officer for endorsement by the Chief Health Officer."

- 25. Clause 12, page 47, lines 9 to 29, omit all words and expressions on these lines.
- 26. Clause 12, page 67, lines 26 to 30, omit all words and expressions on these lines.
- 27. Clause 12, page 68, lines 1 to 4, omit all words and expressions on these lines.
- 28. Clause 12, page 73, line 14, omit "Detention Review Officer" and insert "Detention Appeals Officer".

NEW CLAUSES

- 29. Insert the following New Clauses to follow clause 14—

'14A Information to be given to detained persons

After section 200A(1) of the Principal Act **insert**—

- "(1A) Without limiting subsection (1)(c), an explanation under that subsection must include an explanation of the following rights that the person has, or may have, and the processes in respect of those rights—
 - (a) the right to complain to the Ombudsman under the **Ombudsman Act 1973**;
 - (b) the right to make a complaint under section 185 of this Act;
 - (c) the right to seek a review in a court."

14B Applications may be made for review of certain decisions in relation to a person subject to detention

- (1) In section 200B(1) and (5) of the Principal Act, for "Secretary" **substitute** "Detention Appeals Registrar".
- (2) In section 200B(1) and (5) of the Principal Act, for "Detention Review Officer" **substitute** "Detention Appeals Officer".
- (3) In section 200B(5) of the Principal Act, for "made" **substitute** "received".

14C New section 200BA inserted

After section 200B of the Principal Act **insert**—

"200BA Secretary and Detention Appeals Registrar to provide relevant information and assistance to Detention Appeals Officers

- (1) The Secretary and the Detention Appeals Registrar must use their best endeavours to provide a Detention Appeals Officer with all relevant information in their possession including, but not limited to, documents and information mentioned in section 200C(3)(ab), as soon as reasonably practicable after an application under section 200B is received by the Detention Appeals Registrar.
- (2) The Secretary and the Detention Appeals Registrar must use their best endeavours to provide a Detention Appeals Officer with any information requested by the Detention Appeals Officer under section 200C(3)(b) within 24 hours after receiving the request.
- (3) The Secretary and the Detention Appeals Registrar must provide all reasonable assistance requested by a Detention Appeals Officer for the purposes of the Detention Appeals Officer considering and deciding applications for review.
- (4) The provision of information under subsection (1) or (2) is authorised or required by law for the purposes of the **Privacy and Data Protection Act 2014** and the **Health Records Act 2001**".

14D Detention Review Officer must decide applications

- (1) For the heading to section 200C of the Principal Act **substitute**—
"Detention Appeals Officer must decide applications".
- (2) In section 200C of the Principal Act, for "Detention Review Officer" (wherever occurring) **substitute** "Detention Appeals Officer".
- (3) In section 200C(2) of the Principal Act, for "the reasons for it, within 24 hours after the application was received by the Secretary"

substitute "the reasons for it, and the review rights available to the applicant, within 72 hours after the application was received by the Detention Appeals Registrar or within such longer period as is requested by the applicant".

(4) After section 200C(3)(a) of the Principal Act **insert**—

"(ab) may consider any documents and other information relied upon by the authorised officer who detained the person or extended the detention of the person under section 200 and may consider any other information in relation to the person's detention; and

(ac) must take reasonable steps to contact the applicant in relation to the application; and".

(5) For section 200C(4)(b) of the Principal Act **substitute**—

"(b) subject to subsections (6), (7) and (8), to vary or cease the person's detention."

(6) After section 200C(5) of the Principal Act **insert**—

"(6) A Detention Appeals Officer must not vary or cease a person's detention under subsection (4)(b) unless the Detention Appeals Officer has consulted and considered the advice of the Chief Health Officer about the proposed variation or cessation.

Note

The Chief Health Officer can delegate powers, duties and functions: see section 22.

(7) If a Detention Appeals Officer consults the Chief Health Officer about the proposed variation or cessation of a person's detention, the Chief Health Officer must make their best endeavours to provide oral or written advice about the proposed variation or cessation within 24 hours.

(8) If the Chief Health Officer provides oral advice under subsection (7), a written record of the advice must be prepared as soon as practicable—

(a) by the Chief Health Officer; or

(b) by the Detention Appeals Officer, who must provide a copy of the written record to the Chief Health Officer for the endorsement of the Chief Health Officer."

14E Review referred back to Chief Health Officer

Section 200D of the Principal Act is **repealed**.'

30. Clause 19, after line 29 insert—

"248CA Applications made under old section 200B

(1) If, immediately before the commencement day, an application made by a person under section 200B of the old Act had not been determined, the old Act continues to apply in relation to the determination of the application.

(2) In this section—

commencement day means the day on which Part 2 of the **Public Health and Wellbeing Amendment (Pandemic Management) Act 2021** came into operation;

old Act means this Act, and regulations and instruments made under this Act, as in force immediately before the commencement day."

Certified -

Clerk of the Legislative Council