

# Mental Health Amendment Bill 2016

Amendments during consideration in detail to be moved by  
The Honourable the Minister for Health and Minister for Ambulance  
Services

## 1 After clause 1

Page 6, after line 5—

*insert—*

### 1A Commencement

Section 50A, to the extent it inserts new chapter 18A, parts 3 and 4, commences on a day to be fixed by proclamation.

## 2 After clause 50

Page 26, after line 27—

*insert—*

### 50A Insertion of new ch 18A

After chapter 18—

*insert—*

## Chapter 18A Validation of appointment to tribunal and related provisions

### Part 1 Preliminary

#### 800A Definitions for chapter

In this chapter—

*relevant decision* see section 800D(1).

*repealed Act* means the repealed *Mental Health Act 2000*.

*special tribunal* see section 800C(1).

## Part 2                      Validation

### **800B Validation provision for purported appointment of ineligible person**

- (1) This section applies in relation to the person—
  - (a) who was purportedly appointed as a member of the tribunal under the repealed Act on 28 February 2002 on the basis that the person was eligible for appointment because the person was a lawyer of at least 5 years standing under the repealed Act, section 440(4)(a); and
  - (b) whose purported appointment was continued on that basis even though the person was not eligible for appointment under the repealed Act, section 440(4)(a) during the relevant period.
- (2) For the repealed Act, the person is taken—
  - (a) to have been eligible for appointment under the repealed Act, section 440(4)(a) during the relevant period; and
  - (b) to have been validly appointed on that basis as a member of the tribunal for the relevant period.
- (3) Anything done or omitted to be done during the relevant period that would have been valid and lawful under the repealed Act had the person been validly appointed as a member is taken to be, and always to have been, valid and lawful.
- (4) In this section—

*relevant period* means the period starting on 28 February 2002 and ending on 31 August 2016.

## **Part 3                      Referral of particular decisions to special tribunal**

### **800C Special tribunal**

- (1) The *special tribunal* is the tribunal constituted under subsection (2) for hearing a referral by the chief executive under section 800E.
- (2) The special tribunal must be constituted by at least 3, but not more than 5, members of whom—
  - (a) at least 1 must be a lawyer; and
  - (b) at least 1 must be a psychiatrist or, if a psychiatrist is not readily available but another doctor is available, another doctor; and
  - (c) at least 1 person must be a person who is not a lawyer or doctor.

### **800D Request to refer relevant decision to the special tribunal**

- (1) This section applies in relation to a decision (a *relevant decision*) made by the tribunal under the repealed Act as constituted by—
  - (a) the person mentioned in section 800B(1); or
  - (b) members who included the person mentioned in section 800B(1).
- (2) The following persons may ask the chief executive to refer a relevant decision to the special tribunal for a decision under section 800F—
  - (a) the person who is or was the subject of the decision, or an interested person for the person;

- (b) if the relevant decision was made under the repealed Act, section 318R in a proceeding for a forensic information order—the applicant in the proceeding.
- (3) The request must be made to the chief executive within 6 months after the commencement.

### **800E When chief executive may refer relevant decision**

The chief executive may refer a relevant decision to the special tribunal only if the chief executive considers the decision is likely to have been affected in a material way because, when the decision was made, the tribunal was constituted in a way mentioned in section 800D(1).

### **800F Decision by special tribunal on referral**

- (1) This section applies if, on considering a referral of a relevant decision, the special tribunal is satisfied the relevant decision is likely to have been affected in a material way because, when the decision was made, the tribunal was constituted in a way mentioned in section 800D(1).
- (2) The special tribunal may—
  - (a) if the relevant decision is still in force—refer the matter to the tribunal for a new decision under section 800G; and
  - (b) make any other recommendation to the chief executive about the relevant decision the tribunal considers appropriate.
- (3) However, if an appeal is or has been made against the relevant decision, the special tribunal must not make a decision under subsection (2) until the appeal is decided or withdrawn.

---

## Part 4                      Decisions by tribunal

### 800G Decision by tribunal on referral

- (1) If the special tribunal refers the matter to the tribunal for a new decision, the tribunal must—
  - (a) hear and decide the matters the subject of the proceeding in which the relevant decision was made, by way of a fresh hearing on the merits; and
  - (b) set aside the relevant decision and substitute a new decision.
- (2) The repealed Act applies in relation to a proceeding under this section as if it had not been repealed.
- (3) For this Act and the repealed Act, the new decision substituted under subsection (1)(b)—
  - (a) is the tribunal's final decision in the proceeding; and
  - (b) for chapter 20, part 7—is taken to have been made on the same day as the relevant decision.
- (4) To remove any doubt, it is declared that—
  - (a) the new decision by the tribunal may be consistent with the relevant decision; and
  - (b) the repealed Act, chapter 8 applies in relation to the new decision.

### 3                      Clause 51 (Amendment of sch 3 (Dictionary))

Page 27, after line 14—

*insert—*

***relevant decision***, for chapter 18A, see section 800D(1).

*repealed Act*, for chapter 18A, see section 800A.

*special tribunal*, for chapter 18A, see section 800C(1).

© State of Queensland 2017