

LEGISLATIVE COUNCIL

PUBLIC HEALTH AND WELLBEING AMENDMENT (STATE OF EMERGENCY
EXTENSION) BILL 2021(Amendments and New Clauses to be proposed in Committee by Ms SYMES)

1. Clause 1, after line 8 insert—
 - "(ab) to provide for enhanced review rights for detained persons; and
 - (ac) to provide for prescribed penalties to be different for adults and children; and".
2. Clause 2, line 2, omit "This" and insert "(1) Subject to subsection (2), this".
3. Clause 2, after line 3 insert—

"(2) Sections 2A, 2B and 3A come into operation on 20 April 2021."

NEW CLAUSES

4. Insert the following New Clauses before clause 3—

'2A Definitions

In section 3(1) of the **Public Health and Wellbeing Act 2008** insert—

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

2B New section 32A inserted

After section 32 of the **Public Health and Wellbeing Act 2008** insert—

"32A Secretary may appoint Detention Review Officers

- (1) The Secretary by instrument may appoint a person to be a Detention Review Officer for the purposes of this Act.
- (2) A person appointed as a Detention Review Officer must be an Australian lawyer of at least 10 years' experience.
- (3) An instrument of appointment of a person as a Detention Review Officer may—
 - (a) specify the functions, duties or powers under this Act or the regulations to which it relates; and
 - (b) be made subject to any conditions that the Secretary considers to be appropriate.
- (4) The Secretary may give a general direction to a Detention Review Officer in relation to the performance of the Detention Review Officer's functions or duties or the exercise of the Detention Review Officer's powers under this Act or the regulations.

- (5) An instrument of appointment under subsection (1) must be published in the Government Gazette as soon as reasonably practicable after it is made, but a failure to publish the instrument does not affect its validity.
- (6) A person appointed as a Detention Review Officer is employed under Part 3 of the **Public Administration Act 2004**.".!

5. Insert the following New Clauses after clause 3—

3A New sections inserted

After section 200 of the **Public Health and Wellbeing Act 2008** insert—

"200A Information to be given to detained persons

- (1) As soon as practicable after a person is made subject to detention under section 200(1)(a), the person must be provided with the following information in a form that the person is capable of understanding—
 - (a) the purpose of the detention and its terms;
 - (b) any exemptions that may be available to the person in respect of the detention;
 - (c) an explanation of the person's rights and entitlements in relation to making a complaint or seeking a review of the decision to make the person subject to detention including, but not limited to—
 - (i) the process for making a complaint or seeking an exemption; and
 - (ii) the process for making an application for review under section 200B.
- (2) Nothing in this section limits the requirements under this Act or any other Act in respect of information to be given to a person who is subject to detention under section 200(1)(a) including, but not limited to, the information required to be given to the person under section 200.

200B Applications may be made for review of certain decisions in relation to a person subject to detention

- (1) A person who is subject to detention under section 200(1)(a) may make an application to the Secretary for a review by a Detention Review Officer of—
 - (a) the decision under section 200(1)(a) to make the person subject to detention including, but not limited to, in respect of the following—
 - (i) the reasons for the detention;
 - (ii) the period of the detention;
 - (iii) the place of the detention;
 - (iv) the conditions of the detention; or
 - (b) a decision under section 200(1)(d) that relates to the person's detention.

- (2) An application under subsection (1) cannot be made in respect of a decision under section 200(6) that the continued detention of a person is reasonably necessary to eliminate or reduce a serious risk to public health.
- (3) A person who is subject to detention under section 200(1)(a) and has made an application under subsection (1) may make further applications under subsection (1) in respect of that detention if—
 - (a) the most recent application made by the person has been determined; and
 - (b) since the most recent application was determined, new and materially different circumstances have arisen that affect the person in respect of the detention.
- (4) An application under subsection (1)—
 - (a) must be in writing; and
 - (b) must specify the grounds on which the application is made; and
 - (c) if the application is a further application of the kind permitted by subsection (3), must include a description of the new and materially different circumstances that have arisen and affect the person in respect of the detention; and
 - (d) must include any prescribed information; and
 - (e) may include any other information that the person making the application considers appropriate.
- (5) The Secretary must ensure that an application made under subsection (1) is referred to a Detention Review Officer immediately after the application is made.

200C Detention Review Officer must decide applications

- (1) This section applies if an application in respect of a decision is referred to a Detention Review Officer under section 200B(5).
- (2) The Detention Review Officer must use their best endeavours to decide the application, and advise the applicant in writing of the decision and the reasons for it, within 24 hours after the application was received by the Secretary.
- (3) In deciding the application, the Detention Review Officer—
 - (a) must consider the information included in the application; and
 - (b) may make such further inquiries and seek such further information in relation to any aspect of the application as the Detention Review Officer thinks fit including, but not limited to, making inquiries to or seeking information from persons with expertise in public health.
- (4) The Detention Review Officer may decide—
 - (a) to affirm the decision under review; or

- (b) to refer the application to the Chief Health Officer, accompanied by such non-binding recommendations as the Detention Review Officer considers appropriate (if any).
- (5) A decision by a Detention Review Officer to affirm a decision made by an authorised officer is taken to be a decision of that authorised officer.

200D Review referred back to Chief Health Officer

- (1) If a Detention Review Officer refers an application to the Chief Health Officer under section 200C(4)(b), the Chief Health Officer must use their best endeavours to decide the application, and advise the applicant in writing of the decision and the reasons for it, within 24 hours after the application is referred.
- (2) The Chief Health Officer may—
 - (a) affirm the decision under review; or
 - (b) vary the decision under review; or
 - (c) set aside the decision under review and make a new decision in substitution for it.

200E Detention not unlawful merely because of a decision on review

If a person makes an application under section 200B(1) for review of a decision, and the detention of the person ceases because of a decision made on the review, the detention of the person is not unlawful merely because of the decision made on the review."

3B Regulations

After section 232(2) of the **Public Health and Wellbeing Act 2008** insert—

- "(3) Despite anything to the contrary in Division 5 of Part 2 of the **Infringements Act 2006**, regulations prescribing an amount as the infringement penalty for an offence may—
 - (a) prescribe a lower amount of penalty for an offence committed by a person under the age of 18 years; and
 - (b) specify the circumstances in which the different amounts of penalty apply."!

- 6. Clause 5, lines 3 and 4, omit "the first anniversary of its commencement" and insert "20 April 2022".