

Queensland



MAGISTRATES AMENDMENT ACT 2003

Act No. 86 of 2003

Queensland



MAGISTRATES AMENDMENT ACT 2003

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Queensland



Magistrates Amendment Act 2003

Act No. 86 of 2003

An Act to amend the *Magistrates Act 1991*, and for other purposes

[Assented to 18 November 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Magistrates Amendment Act 2003*.

PART 2—AMENDMENT OF MAGISTRATES ACT 1991

2 Act amended in this part

This part amends the *Magistrates Act 1991*.

3 Amendment of s 3 (Definitions)

(1) Section 3, definitions “committee”, “reviewable determination” and “temporary determination”—

omit.

(2) Section 3—

insert—

‘ “**advisory committee**” means the court governance advisory committee established under section 12A.

“**application for review**” means an application for review of a transfer decision made under section 12S.

“**conviction**” means a finding of guilt, or the acceptance of a plea of guilty, by a court of an offence, whether or not a conviction is recorded on sentence.

“**indictable offence**” includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659¹ applies to the indictable offence.

“**temporary transfer decision**” means a transfer decision to which section 12P applies.

“**transfer decision**” means a decision made by the Chief Magistrate in relation to a transfer recommendation.

“**transfer policy**” see section 12G.

“**transfer recommendation**” means a recommendation to the Chief Magistrate about—

- (a) which magistrate, or whether a particular magistrate, is to constitute a Magistrates Court at a particular place; and
- (b) the period the magistrate is to constitute a Magistrates Court at the place.’.

4 Amendment of s 5 (Appointment of Magistrates)

(1) Section 5(3)—

omit, insert—

‘(3) The appointment of a magistrate must state and has effect to decide—

- (a) the place where the magistrate is first to constitute a Magistrates Court appointed under the *Justices Act 1886*, section 22B(1)(c) and the period, not longer than 1 year, the magistrate is to constitute a Magistrates Court at the place; and
- (b) the place, which may be the place mentioned in paragraph (a), where the magistrate is next to constitute a Magistrates Court and the period, not longer than 5 years, the magistrate is to constitute a Magistrates Court at the place.’.

(2) Section 5(5) and (6)—

omit, insert—

‘(5) Despite subsection (3) and before a period mentioned in the subsection ends, the Chief Magistrate may, for good reason directly related

¹ Criminal Code, section 659 (Effect of summary conviction for indictable offences)

to the magistrate, decide that the magistrate is to constitute a Magistrates Court at a place other than a place mentioned in the magistrate's appointment.

Examples of good reasons—

- the magistrate's incompatibility with the local community
- the magistrate's incompatibility with another magistrate at the place is detrimental to the efficient functioning of the court.

'(6) The Governor in Council may appoint a District Court judge or a magistrate to be the Chief Magistrate either at the time of the person's appointment as a judge or magistrate or at any time afterwards.'

(3) Section 5(8)—

renumber as section 5(11).

(4) Section 5—

insert—

'(8) A person's appointment as a magistrate is taken to be an appointment on a full-time basis unless the appointment is stated, in the instrument of appointment, to be on a part-time basis.

'(9) A magistrate, although appointed on a full-time basis, may, if the Attorney-General agrees in writing, exercise the jurisdiction, powers and functions of a magistrate on a part-time basis.

'(10) A magistrate, although appointed on a part-time basis, may, if the Attorney-General agrees in writing, exercise the jurisdiction, powers and functions of a magistrate on a full-time basis.'

5 Replacement of s 9 (Chief Magistrate)

Section 9—

omit, insert—

'9 Magistrate appointed as Chief Magistrate

'(1) This section applies if a magistrate is appointed as Chief Magistrate.

'(2) The Chief Magistrate holds office as Chief Magistrate while the Chief Magistrate is a magistrate.

'(3) With the approval of the Governor in Council, the Chief Magistrate may resign office as Chief Magistrate but remain a magistrate.

9A District Court judge appointed as Chief Magistrate

‘(1) This section applies if a District Court judge is appointed as Chief Magistrate.

‘(2) The Chief Magistrate is to be paid the salary, expenses and allowances of, and has the title, tenure and seniority of, a District Court judge.

‘(3) Service as the Chief Magistrate counts as service as a District Court judge for all purposes including, for example, the *Judges (Pensions and Long Leave) Act 1957*.

‘(4) The Chief Magistrate may only be removed from office as Chief Magistrate in the way provided in the *Constitution of Queensland 2001*, section 61² for the removal from office of a judge and that section applies as if a reference to a judge in that section, other than in subsections (9) and (10), included a reference to the Chief Magistrate.

‘(5) However, the Chief Magistrate may not perform the duties, or exercise the powers, of a District Court judge while the Chief Magistrate holds office as Chief Magistrate.

‘(6) Sections 14, 15, 16, 16A, 17 and 18³ do not apply to the Chief Magistrate.

‘(7) With the approval of the Governor in Council, the Chief Magistrate may resign office as Chief Magistrate and magistrate but remain a District Court judge.’.

6 Amendment of s 10 (Functions of Chief Magistrate)

(1) Section 10(2)(a), ‘determining’—

omit, insert—

‘deciding’.

(2) Section 10(4) to (11)—

omit.

2 *Constitution of Queensland 2001*, section 61 (Removal from office for misbehaviour or incapacity)

3 Sections 14 (Tenure of office), 15 (Suspension of magistrate by Governor in Council), 16 (Suspension of magistrate in relation to an indictable offence), 16A (Remuneration during suspension and after conviction), 17 (Removal of magistrate from office) and 18 (Terms and conditions of employment)

7 Omission of pt 4 (Reviewable determinations)

Part 4—

omit.

8 Insertion of new pts 5A, 5B and 5C

After section 12—

insert—

‘PART 5A—COURT GOVERNANCE ADVISORY COMMITTEE**‘12A Establishment of court governance advisory committee**

‘A court governance advisory committee (“**advisory committee**”) is established.

‘12B Functions of advisory committee

‘The advisory committee has the following functions—

- (a) to make, in conjunction with the Chief Magistrate, a transfer policy for magistrates;
- (b) to make transfer recommendations on matters referred to it by the Chief Magistrate under section 12I having regard to the transfer policy;⁴
- (c) to consider and make recommendations about other matters affecting Magistrates Courts referred to it by the Chief Magistrate.

‘12C Composition of advisory committee

‘(1) The advisory committee has 2 permanent members and 3 temporary members.

‘(2) The permanent members are—

4 Section 12I (Decisions about constituting Magistrates Courts)

- (a) the Deputy Chief Magistrate, who is the chairperson of the advisory committee; and
- (b) the State Coroner.

‘(3) The temporary members are magistrates selected by the Chief Magistrate in consultation with the permanent members.

‘(4) However, at least 1 of the temporary members must constitute a Magistrates Court at a place outside the south east Queensland Magistrates Courts districts.

‘(5) Temporary members of the advisory committee hold appointment for 2 years.

‘(6) A magistrate who was a temporary member of the advisory committee may not be reappointed as a temporary member for at least 4 years after the magistrate’s last appointment as a temporary member ended.

‘(7) A temporary member of the advisory committee may resign by signed notice given to the Chief Magistrate.

‘(8) In this section—

“**south east Queensland Magistrates Courts districts**” means the Beenleigh, Brisbane, Caboolture, Cleveland, Dalby, Gold Coast, Gympie, Ipswich, Kingaroy, Maroochydore, Redcliffe, Toowoomba and Warwick Magistrates Courts districts.

‘12D Quorum

‘A quorum for a meeting of the advisory committee is 3 members.

‘12E Presiding at meetings

‘(1) The Deputy Chief Magistrate presides at all meetings of the advisory committee at which the deputy is present.

‘(2) If the Deputy Chief Magistrate is absent, the member chosen by the members present is to preside.

‘12F Conduct of meetings

‘(1) A question at an advisory committee meeting is to be decided by a majority of the votes of the members present and voting.

‘(2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the presiding member has a casting vote.

‘(3) If a member becomes aware that the member has a conflict of interest in relation to a matter before the advisory committee, the member must—

- (a) disclose the issue giving rise to the conflict to the advisory committee; and
- (b) take no further part in the consideration of the matter.

‘(4) However, a failure to disclose a conflict of interest does not, of itself, affect the advisory committee’s consideration of the matter or any transfer recommendation made in relation to the matter.

‘(5) Subject to this part, the advisory committee may conduct its meetings in any way it considers appropriate, including, for example, by permitting its members to take part in its meetings by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Example of use of technology—

Teleconferencing.

‘12G Transfer policy

‘(1) The advisory committee, in conjunction with the Chief Magistrate, must make a policy (“**transfer policy**”) to guide decisions about which magistrates are to constitute Magistrates Courts at particular places.

‘(2) The advisory committee, in conjunction with the Chief Magistrate, may amend the transfer policy to ensure its continuing effectiveness.

‘(3) The transfer policy must set out the procedures to be used and the matters to be considered for the purposes of transfer recommendations and transfer decisions.

‘(4) The transfer policy may include other matters relevant to transfer recommendations or transfer decisions that the advisory committee considers appropriate but the policy must reflect the following principles—

- (a) magistrates are expected to serve in regional areas;
- (b) generally, a magistrate, under a transfer recommendation or transfer decision, is to constitute a Magistrates Court at the place for a period of between 2 and 5 years;

- (c) generally, before making a decision about which magistrate is to constitute a Magistrates Court at a particular place, expressions of interest are to be called for from magistrates willing to constitute a Magistrates Court at the place;
- (d) subject to subsection (5), if no expressions of interest are received, magistrates without prescribed regional experience are to be considered for constituting a Magistrates Court at a place in regional Queensland before magistrates with prescribed regional experience;
- (e) a magistrate is to be consulted before a decision is made about where the magistrate is to constitute a Magistrates Court;
- (f) a magistrate's personal circumstances are to be taken into account before a decision is made about where the magistrate is to constitute a Magistrates Court.

‘(5) The transfer policy must also provide that regard is to be had to a magistrate's transfer history.

‘(6) In this section—

“magistrate's transfer history” means the number of places at which a magistrate has constituted a Magistrates Court, and the number of times a magistrate has been required to change residence in order to constitute Magistrates Courts at places, since the magistrate's appointment as a magistrate.

“magistrates without prescribed regional experience” means magistrates who have not constituted a Magistrates Court at a place or places in regional Queensland at all or for at least 2 years within the last 10 years.

“magistrates with prescribed regional experience” means magistrates who have constituted a Magistrates Court at a place or places in regional Queensland for at least 2 years within the last 10 years.

“regional Queensland” means that part of Queensland outside the Beenleigh, Brisbane, Caboolture, Cleveland, Gold Coast, Gympie, Ipswich, Maroochydore, Redcliffe and Toowoomba Magistrates Courts districts.

‘12H Magistrates may express interest in where they are willing to constitute Magistrates Courts

‘(1) A magistrate may, at any time, advise the Chief Magistrate of a place or places where the magistrate is willing to constitute a Magistrates Court.

‘(2) The Chief Magistrate must advise the advisory committee of the magistrate’s willingness to constitute a Magistrates Court at the place or places and the advisory committee may take that into account when considering making transfer recommendations.

‘PART 5B—TRANSFER RECOMMENDATIONS AND TRANSFER DECISIONS

‘Division 1—Referral

‘12I Decisions about constituting Magistrates Courts

‘(1) The Chief Magistrate must refer the following matters to the advisory committee for consideration and a transfer recommendation—

- (a) for the purposes of section 5(5), whether a magistrate is to constitute a Magistrates Court at a place other than a place mentioned in the magistrate’s appointment under section 5(3);
- (b) for the purposes of section 10(2)(a), whether a magistrate is to continue to constitute a Magistrates Court at the place where the magistrate currently constitutes a Magistrates Court and, if not, where a magistrate is to constitute a Magistrates Court.

‘(2) The Chief Magistrate is not required to act under subsection (1)(b) only because of the ending of the period for which a magistrate is required to constitute a Magistrates Court at a place if the magistrate does not ask for a transfer decision.

‘(3) When the period to which subsection (2) applies ends, the magistrate is to continue to constitute the court at the place until a transfer decision is made requiring the magistrate to constitute a Magistrates Court at another place.

‘(4) Subsection (1) applies whether the matter is initiated by the Chief Magistrate or a particular magistrate.

‘Division 2—Role of advisory committee**‘12J Magistrate’s right to be heard**

‘(1) If the advisory committee is proposing to make a transfer recommendation, the advisory committee must—

- (a) give the magistrate who is the subject of the proposed transfer recommendation written notice—
 - (i) that the advisory committee proposes to make the transfer recommendation; and
 - (ii) of what the proposed transfer recommendation is; and
- (b) allow the magistrate at least 14 days after receiving the notice to make representations to the advisory committee about the proposed transfer recommendation.

‘(2) The magistrate may make representations to the advisory committee within the time allowed by written submission or verbally.

‘(3) If the magistrate wishes to make representations verbally, allowing the magistrate to make the representations to the advisory committee using teleconferencing technology is enough to satisfy the magistrate’s right to be heard.

‘(4) In this section—

“teleconferencing technology” means teleconferencing or other technology that reasonably allows the members and the magistrate to hear, and take part in discussions about, the representations while the representations are being made.

‘12K Advisory committee to consider representations

‘The advisory committee must consider any representations made by the magistrate having regard to the transfer policy.

‘12L Advisory committee to make transfer recommendation

‘When making a transfer recommendation, the advisory committee must have regard to the transfer policy and give concise reasons for the transfer recommendation to the Chief Magistrate.

‘Division 3—Role of Chief Magistrate

‘12M Chief Magistrate to consider transfer recommendation

‘The Chief Magistrate must consider the advisory committee’s transfer recommendation and the transfer policy when making a transfer decision.

‘12N Chief Magistrate not bound by transfer recommendation

‘(1) The Chief Magistrate is not bound by the advisory committee’s transfer recommendation.

‘(2) If, having considered the advisory committee’s transfer recommendation, the Chief Magistrate proposes to make a transfer decision that differs from the transfer recommendation, the Chief Magistrate must—

- (a) give the magistrate who is the subject of the proposed transfer decision written notice—
 - (i) that the Chief Magistrate proposes to make the transfer decision; and
 - (ii) of what the proposed transfer decision is; and
- (b) allow the magistrate at least 14 days after receiving the notice to make representations to the Chief Magistrate about the proposed transfer decision.

‘(3) The magistrate may make representations to the Chief Magistrate within the time allowed by written submission or verbally.

‘(4) If the magistrate wishes to make representations verbally, allowing the magistrate to make the representations to the Chief Magistrate using teleconferencing technology is enough to satisfy the magistrate’s right to be heard.

‘(5) If the Chief Magistrate makes a transfer decision that does not differ from the transfer recommendation, it is not necessary that the Chief Magistrate allow the magistrate who is the subject of the transfer decision an opportunity to make further representations about the transfer decision to satisfy procedural fairness requirements.

‘(6) In this section—

“**teleconferencing technology**” means teleconferencing or other technology that reasonably allows the Chief Magistrate and the

magistrate to hear, and take part in discussions about, the representations while the representations are being made.

‘12O Chief Magistrate to advise magistrate of transfer decision

‘(1) The Chief Magistrate must give the magistrate who is the subject of a transfer decision and the advisory committee written notice of the Chief Magistrate’s transfer decision stating—

- (a) the place where the magistrate is to constitute a Magistrates Court; and
- (b) the period the magistrate is to constitute a Magistrates Court at the place; and
- (c) whether or not the transfer decision differs from the advisory committee’s transfer recommendation.

‘(2) The Chief Magistrate must also give the magistrate and the advisory committee concise reasons for the transfer decision.

‘(3) The requirement to give reasons does not require the Chief Magistrate to give reasons why the magistrate who is the subject of the transfer decision was chosen instead of another magistrate.

‘Division 4—Temporary transfer decisions

‘12P Temporary transfer decisions about constituting Magistrates Courts

‘(1) This section applies if—

- (a) the Chief Magistrate makes a transfer decision under section 10(2)(a); and
- (b) under the decision, the magistrate who is the subject of the decision is to constitute a Magistrates Court at a place for a period less than 3 months.

‘(2) The Chief Magistrate is not required to have regard to the transfer policy when making the decision and sections 12I, 12O and 12S⁵ do not apply to the decision.

‘(3) The Chief Magistrate must give the magistrate written notice of the Chief Magistrate’s decision stating—

- (a) the place where the magistrate is to constitute a Magistrates Court; and
- (b) the period, less than 3 months, the magistrate is to constitute a Magistrates Court at the place.

‘PART 5C—REVIEW OF TRANSFER DECISIONS

‘Division 1—Transfer decision not differing from transfer recommendation

‘12Q No review of transfer decision

‘(1) This section applies if a transfer recommendation is made and the Chief Magistrate makes a transfer decision that does not differ from the transfer recommendation.

‘(2) The transfer decision is not subject to review and no appeal lies from the decision.

‘Division 2—Transfer decision differing from transfer recommendation

‘12R Application

‘This division applies if a transfer recommendation is made and the Chief Magistrate makes a transfer decision that differs from the transfer recommendation.

5 Sections 12I (Decisions about constituting Magistrates Courts), 12O (Chief Magistrate to advise magistrate of transfer decision) and 12S (Supreme Court judge may review transfer decisions)

‘12S Supreme Court judge may review transfer decisions

‘(1) The magistrate who is the subject of the transfer decision may apply to a Supreme Court judge to review the transfer decision.

‘(2) The application for review must be made within 14 days after the magistrate receives written notice of the transfer decision.

‘(3) If an application for review is made under this section, the transfer decision is stayed until the application is decided or withdrawn.

‘12T Form of application for review

‘The application for review must state the grounds on which the application is brought.

‘12U Filing documents

‘(1) The application for review must be filed in the Supreme Court registry at Brisbane.

‘(2) When filing the application for review, or as soon afterwards as is practicable, the applicant must file copies of the following documents—

- (a) a copy of the notice given to the applicant by the Chief Magistrate under section 12O(1);
- (b) a copy of the Chief Magistrate’s reason given to the applicant by the Chief Magistrate under section 12O(2);
- (c) anything else the applicant intends to rely on to support the application.

‘12V Setting directions hearing

‘When an application for review is filed, the registrar must set a time, day and place for a directions hearing before a Supreme Court judge.

‘12W Service on Chief Magistrate

‘At least 14 days before the directions hearing, the applicant must give the Chief Magistrate—

- (a) a copy of the application for review; and

- (b) notice of the time, day and place of the directions hearing; and
- (c) a copy of all documents filed under section 12U.

‘12X Orders and directions at directions hearing

‘At the directions hearing, a Supreme Court judge may make any orders and give any directions relating to the conduct of the proceeding the judge considers appropriate.

‘12Y Hearing and deciding application at directions hearing if parties agree

‘The Supreme Court judge may hear and decide the application for review at a directions hearing if the parties agree.

‘12Z Power of Supreme Court judge on review

‘(1) A Supreme Court judge may, by order, affirm the transfer decision or declare the transfer decision to be of no effect.

‘(2) The judge may declare the transfer decision to be of no effect only if the judge is satisfied—

- (a) the transfer decision was so unreasonable that no person having the functions of the Chief Magistrate could properly consider the transfer decision to be a reasonable exercise of the Chief Magistrate’s discretion; or
- (b) the applicant was not afforded procedural fairness by the Chief Magistrate.

‘(3) Each party to the review must bear the party’s own costs.

‘(4) However, the judge may award costs to the applicant if, in exceptional circumstances, the judge considers that an award of costs is appropriate.

‘(5) A declaration that the transfer decision is of no effect is not, of itself, exceptional circumstances for subsection (4).

‘(6) No appeal lies from the judge’s decision on the transfer decision and costs.’.

9 Amendment of s 13 (Functions of Magistrates generally)

(1) Section 13(2), after ‘A Magistrate’—

insert—

‘appointed on a full-time basis’.

(2) Section 13(3) and (4)—

omit, insert—

‘(3) However, a magistrate appointed on a full-time basis may hold another office or perform other duties if—

- (a) the holding of the other office or the performance of the other duties is compatible with the office of magistrate; and
- (b) the Governor in Council approves that the magistrate hold the office or perform the duties.

‘(4) A magistrate appointed on a part-time basis may hold another office, perform other duties or engage in other employment if—

- (a) the holding of the other office, the performance of the other duties or the engagement in the other employment is compatible with the office of magistrate; and
- (b) the Governor in Council approves that the magistrate hold the office, perform the duties or engage in the employment.

‘(5) A magistrate must not practise as a barrister or solicitor for fee or reward.

‘(6) A magistrate must immediately stop holding an office, performing other duties or engaging in other employment if required to do so by the Governor in Council.’.

10 Replacement of ss 15 to 17

Sections 15 to 17—

omit, insert—

‘15 Suspension of magistrate by Governor in Council

‘(1) The Governor in Council may suspend a magistrate from office.

‘(2) However, a magistrate must not be suspended from office under subsection (1) unless a Supreme Court judge, on the application of the

Attorney-General, has decided that there are reasonable grounds for believing that proper cause for removal of the magistrate exists.

‘(3) A copy of an application under subsection (2) must be given to the magistrate at least 14 days before the application is heard.

‘(4) There is proper cause to remove a magistrate from office⁶ if the magistrate—

- (a) is incompetent or guilty of serious neglect of the duties of office; or
- (b) is mentally or physically incapable of carrying out satisfactorily the duties of office; or
- (c) is guilty of proved misbehaviour, misconduct or conduct unbecoming a magistrate; or
- (d) fails, without reasonable excuse, to constitute a Magistrates Court at a particular place in accordance with a transfer decision as required by the Chief Magistrate.

‘(5) A suspension under subsection (1) lapses if any of the following happens—

- (a) the Supreme Court decides under section 17 that there is no proper cause to remove the magistrate;
- (b) the Governor in Council lifts the suspension.

‘(6) The Minister must give the following notices to the magistrate and publish them in the gazette—

- (a) if the magistrate is suspended under subsection (1)—notice of the suspension;
- (b) if the magistrate’s suspension lapses under subsection (5)—notice of the lapsing of the suspension.

‘(7) However, a failure to comply with subsection (6)(a) does not affect the suspension or the removal of the magistrate following suspension.

‘(8) A magistrate who is suspended from office under subsection (1) may appeal to the Supreme Court against the suspension.

‘(9) The appeal may be heard with any application made under section 17.

⁶ For removal of a magistrate from office, see section 17.

‘(10) In this section—

“duties”, of office, includes administrative duties of office.

‘16 Suspension of magistrate in relation to an indictable offence

‘(1) A magistrate is suspended from office immediately on the happening of any of the following whether in Queensland or in another State—

- (a) the magistrate is arrested by a police officer on a charge of an indictable offence;
- (b) the magistrate appears before a court or justices as required under a complaint and summons issued by a police officer charging the magistrate with an indictable offence;
- (c) the magistrate is present as a defendant before a court and a further charge or an amended charge of an indictable offence is made against the magistrate;

Example—

A further charge or an amended charge of an indictable offence may be made against the magistrate under the *Justices Act 1886*, section 42(1A).

- (d) the magistrate is committed for trial or sentence by a court on a charge of an indictable offence;
- (e) an indictment is presented to a court by a person authorised to present the indictment by the State, another State or the Commonwealth charging the magistrate with an indictable offence.

‘(2) A magistrate’s suspension from office under subsection (1) continues if, on appeal from a conviction of an indictable offence, the appellate court quashes the conviction but orders a new trial.

‘(3) A suspension under subsection (1) lapses if the Governor in Council lifts the suspension or either of the following happens in proceedings arising from the charging of the offence—

- (a) the magistrate is not convicted of any indictable offence;
- (b) no charge of an indictable offence is proceeded with.

‘(4) A suspension under subsection (2) lapses if the Governor in Council lifts the suspension or either of the following happens in proceedings arising from the order for a new trial—

- (a) the magistrate is not convicted of any indictable offence;

(b) no charge of an indictable offence is proceeded with.

‘(5) A suspension also lapses if the Supreme Court decides under section 17 that there is no proper cause to remove the magistrate.

‘(6) The Minister must give the following notices to the magistrate and publish them in the gazette—

- (a) if the magistrate is suspended under subsection (1)—notice of the suspension;
- (b) if the magistrate’s suspension lapses under subsection (3), (4) or (5)—notice of the lapsing of the suspension.

‘(7) However, a failure to comply with subsection (6)(a) does not affect the suspension or the removal of the magistrate following suspension.

‘(8) For this section, proceedings arise from the charging of an indictable offence or from an order for a new trial if the proceedings relate to the same, or the same set of, circumstances as those giving rise to the charging of the indictable offence.

‘(9) In this section—

“**committed**”, by a court, includes any form of requirement by a court under which a person must appear for trial or sentence on a charge of an offence.

“**complaint and summons**” includes—

- (a) a notice to appear under the *Police Powers and Responsibilities Act 2000*; and
- (b) an instrument under a law of another State or the Commonwealth requiring a person to appear before any court in relation to a charge of an offence alleged to have been committed by the person.

“**indictment**”, in relation to an indictment presented outside the State, means any allegation of an offence made in a way that is the same as, or substantially the same as, an indictment under a law of the State.⁷

7 For indictments under a law of the State, see the Criminal Code, section 1 and the *Acts Interpretation Act 1954*, section 36.

‘16A Remuneration during suspension and after conviction

‘(1) A magistrate is entitled to remuneration during a period of suspension under section 15(1) or section 16(1) or (2).

‘(2) However, but subject to subsection (3), if a magistrate is convicted of an indictable offence, the magistrate is not entitled to remuneration on and from the day of the conviction.

‘(3) A magistrate who is convicted of an indictable offence is entitled to remuneration during the period the magistrate is subject to the conviction if—

- (a) the magistrate’s conviction is quashed on appeal and proceedings for the offence are at an end; or
- (b) the magistrate’s conviction is quashed on appeal but a new trial is ordered; or
- (c) the Supreme Court decides under section 17 that there is no proper cause to remove the magistrate.

‘(4) Subsection (2) has effect despite section 18 and the *Judges (Salaries and Allowances) Act 1967*.

‘17 Removal of magistrate from office

‘(1) A magistrate must not be removed from office unless the Supreme Court decides that proper cause exists to remove the magistrate—

- (a) on an application under subsection (2) or (3); or
- (b) under subsection (5).

‘(2) If a magistrate is suspended from office under section 15(1), the Attorney-General must, as soon as practicable, apply to the Supreme Court for a decision whether proper cause exists to remove the magistrate.

‘(3) If—

- (a) a magistrate is suspended from office under section 16(1) or (2); and
- (b) all proceedings arising from the charging of, or the conviction of, the indictable offence, including proceedings arising from an order for a new trial mentioned in section 16(2), have ended without the suspension having lapsed;

the Attorney-General must, as soon as practicable after proceedings have ended, apply to the Supreme Court to decide whether proper cause exists to remove the magistrate.

Examples of proceedings ending—

1. The appeal period has ended and an appeal has not started.
2. If an appeal has started, the appeal has been finally decided or the appeal has been abandoned.

‘(4) For subsection (3), proper cause to remove the magistrate may include the conviction of the magistrate of an indictable offence.

‘(5) On appeal by a magistrate under section 15(8), the Supreme Court must decide whether proper cause exists to remove the magistrate whether or not the Attorney-General has made an application under subsection (2) or (3).

‘(6) If a magistrate is removed from office, the Minister must publish notice of the magistrate’s removal in the gazette and give a copy of the notice to the magistrate.

‘(7) For this section, proceedings arise from the charging of an indictable offence or from an order for a new trial if the proceedings relate to the same, or the same set of, circumstances as those giving rise to the charging of the indictable offence.’

11 Amendment of s 18 (Terms and conditions of employment)

(1) Before section 18(1A)—

insert—

‘(1AA) However, if the magistrate is appointed on a part-time basis—

- (a) the magistrate’s salary is the appropriate proportion of the salary determined under subsection (1)(a); and
- (b) the magistrate’s entitlement to leave is the appropriate proportion of the leave to which a magistrate appointed on a full-time basis is entitled.’

(2) Section 18(1A) and (3), ‘determination’—

omit, insert—

‘decision’.

(3) Section 18(2), ‘determined’—

omit, insert—

‘decided’.

12 Omission of s 18A (Magistrate may request transfer determination)

Section 18A—

omit.

13 Amendment of s 19 (Preservation of rights)

Section 19(3), ‘determining’—

omit, insert—

‘deciding’.

14 Insertion of new s 22A

Part 7, after section 22—

insert—

‘22A Amendment to renumber

‘(1) The provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.

‘(2) Subsection (1) applies to a provision of this Act enacted or otherwise affected (a **“relevant provision”**) by a provision of an amending Act enacted but uncommenced when subsection (1) is commenced (the **“uncommenced provision”**), with the following intent for the relevant provision—

- (a) if the number of the relevant provision would have changed under subsection (1) had the uncommenced provision commenced—
 - (i) a number is allocated to the relevant provision as if the uncommenced provision had commenced; and
 - (ii) when the uncommenced provision commences, the number of the relevant provision is amended by omitting it and inserting the number allocated to it under subparagraph (i);

- (b) if the relevant provision would have been omitted or relocated had the uncommenced provision commenced, its number remains the same as it was before the commencement of subsection (1) until the omission or relocation takes effect.

‘(3) Without limiting the *Reprints Act 1992*, section 43(4), each reference in this Act, and each reference in the *Judicial Review Act 1991*, schedule 1, part 2, item 5, to a provision of this Act renumbered under subsection (1), is amended, when the renumbering happens, by omitting the reference to the previous number and inserting the new number.

‘(4) This section expires the day after the commencement into effect of the last renumbering done under the section.

‘(5) In this section—

“**amending Act**” means an Act that amends this Act.’.

15 Insertion of new pt 8, div 4

Part 8, after section 27—

insert—

‘Division 4—Transitional provision for Act No. 3 of 2003

‘27A Acting magistrates who are clerks of the court

‘(1) This section applies in relation to a person if—

- (a) immediately before the commencement of the *Sexual Offences (Protection of Children) Amendment Act 2003*, section 26B, the person was a clerk of the court who held an appointment to act as a magistrate; and
- (b) the person’s appointment was not for a specified period or for a specified matter.

‘(2) It is declared that—

- (a) the appointment has, and has always had, effect according to its terms; and
- (b) section 6(3) applies, and has always applied, to the person.

‘Division 5—Transitional provisions for Magistrates Amendment Act 2003

‘28 Application of Act to Chief Magistrate

‘On the commencement of this section—

- (a) the person holding office as Chief Magistrate at the commencement continues to hold office as Chief Magistrate in accordance with this Act after the commencement; and
- (b) section 9A applies to the person.

‘29 Existing exemptions continue

‘(1) This section applies to a magistrate appointed before the commencement of this section whose appointment excluded the operation of section 13(2) as in force immediately before the commencement.

‘(2) The exclusion continues to have effect after the commencement despite the repeal of section 13(3) as in force immediately before the commencement.

‘30 Act as amended applies to all transfer decisions

‘This Act, as in force after the commencement of this section, applies to all transfer decisions without regard to anything, other than the places at which a magistrate constituted a Magistrates Court and the length of time the magistrate constituted a Magistrates Court at the place, that happened before the commencement.’.

PART 3—MINOR AND CONSEQUENTIAL AMENDMENTS

16 Acts amended in schedule

The schedule amends the Acts it mentions.

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

section 16

FREEDOM OF INFORMATION ACT 1992

1 Section 11(1)(g)—

omit.

JUDICIAL REVIEW ACT 1991

1 Schedule 1, part 2, item 5, ‘10E and 18A(3)(b)’—

omit, insert—

‘12L and 12P⁸’.

MAGISTRATES ACT 1991

1 Part 8, division 2 heading—

omit.

⁸ *Magistrates Act 1991*, sections 5 (Appointment of Magistrates), 10 (Functions of Chief Magistrate), 12L (Advisory committee to make transfer recommendation) and 12P (Temporary transfer decisions about constituting Magistrates Courts)



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