



Queensland

# **Judicial Remuneration Act 2007**

**Act No. 55 of 2007**





## Queensland

# Judicial Remuneration Act 2007

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Queensland

## **Judicial Remuneration Act 2007**

### **Act No. 55 of 2007**

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**An Act to provide for salaries and allowances payable to judges and other particular office holders, and for other purposes**

**[Assented to 9 November 2007]**

**The Parliament of Queensland enacts—****Part 1 Preliminary****1 Short title**

This Act may be cited as the *Judicial Remuneration Act 2007*.

**2 Commencement**

(1) This Act, other than the following provisions, commence on a day to be fixed by proclamation—

- part 5, divisions 4 and 5
- schedule 1, to the extent of the amendment of—
  - the *Industrial Relations Act 1999*, amendment 1
  - the *Industrial Relations Act and Other Legislation Amendment Act 2007*
  - the *Magistrates Courts Act 1921*
  - the *Supreme Court of Queensland Act 1991*, amendments 4 and 5.

(2) Schedule 1, to the extent of the amendment of the *Supreme Court of Queensland Act 1991*, amendments 4 and 5, commences on 1 January 2008.

**3 Main purpose**

The main purpose of this Act is to provide for salaries and allowances for judicial officers in a way that—

- (a) maintains judicial independence; and
- (b) ensures Queensland continues to attract and retain judicial officers of the highest quality; and
- (c) is generally consistent with other Australian jurisdictions.



## **4 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

# **Part 2 Salaries generally and jurisprudential allowances for particular judicial officers**

## **5 Supreme Court judge other than Chief Justice or President of the Court of Appeal**

A Supreme Court judge, other than the Chief Justice or the President of the Court of Appeal, is entitled to be paid an amount for a financial year, as salary and jurisprudential allowance, that is equal to the salary payable to a Federal Court judge for the financial year.

## **6 Chief Justice**

The Chief Justice is entitled to be paid an amount for a financial year, as salary and jurisprudential allowance, that is equal to 113.2% of the benchmark amount for the financial year.

## **7 President of the Court of Appeal**

The President of the Court of Appeal is entitled to be paid an amount for a financial year, as salary and jurisprudential allowance, that is equal to 97.5% of the amount the Chief Justice is entitled, under section 6, to be paid for the financial year.

## **8 Chief Judge**

The Chief Judge is entitled to be paid an amount for a financial year, as salary and jurisprudential allowance, that is equal to 100% of the benchmark amount for the financial year.

**9 District Court judge other than the Chief Judge**

A District Court judge, other than the Chief Judge, is entitled to be paid an amount for a financial year, as salary and jurisprudential allowance, that is equal to 90% of the benchmark amount for the financial year.

**10 President of the Land Court**

The President of the Land Court is entitled to be paid an amount for a financial year, as salary and jurisprudential allowance, that is equal to 100% of the benchmark amount for the financial year.

**11 Member of the Land Court other than the President of the Land Court**

A member of the Land Court, other than the President of the Land Court, is entitled to be paid an amount for a financial year, as salary and jurisprudential allowance, that is equal to 90% of the benchmark amount for the financial year.

**12 Presidential members of the Industrial Commission**

- (1) The President of the Industrial Court is entitled to be paid an amount for a financial year, as salary and jurisprudential allowance, that is equal to 100% of the benchmark amount for the financial year.
- (2) The Vice President of the Industrial Commission is entitled to be paid the following amounts for a financial year—
  - (a) an amount, as salary, that is equal to 97% of the amount that the President of the Industrial Court is entitled, under subsection (1), to be paid as salary for the financial year;
  - (b) an amount, as jurisprudential allowance, that is equal to 100% of the amount that a District Court judge is entitled, under section 9, to be paid as jurisprudential allowance for the financial year.
- (3) A deputy president of the Industrial Commission is entitled to be paid an amount for a financial year, as salary, that is equal to 90% of the amount that the President of the Industrial Court

is entitled, under subsection (1), to be paid as salary for the financial year.

**13 Commissioner other than a presidential member of the Industrial Commission**

A commissioner, other than a presidential member of the Industrial Commission, is entitled to be paid an amount for a financial year, as salary, that is equal to 85% of the amount that the President of the Industrial Court is entitled, under section 12(1), to be paid as salary for the financial year.

**14 Chief Magistrate and Deputy Chief Magistrate**

- (1) Subject to subsection (2), the Chief Magistrate is entitled to be paid an amount for a financial year, as salary, that is equal to 85.5% of the benchmark amount for the financial year.
- (2) Subsection (1) does not apply to the Chief Magistrate if he or she is a District Court judge.
- (3) The Deputy Chief Magistrate is entitled to be paid an amount for a financial year, as salary, that is midway between the following—
  - (a) the amount a Chief Magistrate who is not a District Court judge is, under subsection (1), entitled to be paid for the financial year;
  - (b) the amount a magistrate, other than the Chief Magistrate or Deputy Chief Magistrate, is, under section 15, entitled to be paid for the financial year.

**15 Magistrate other than Chief Magistrate or Deputy Chief Magistrate**

A magistrate, other than the Chief Magistrate or the Deputy Chief Magistrate, is entitled to be paid an amount for a financial year, as salary, that is equal to 78.7% of the benchmark amount for the financial year.



expenses incurred after the end of the period of 7 financial years after the end of the financial year to which the allowance relates.

- (4) The cost of self-education includes the cost of a spouse accompanying a judicial officer to a place for the self-education.
- (5) An estimated expense must be acquitted.

### **18 Jurisprudential allowance may be paid as salary**

- (1) A judicial officer entitled to be paid a jurisprudential allowance may elect to be paid all or part of the amount of the jurisprudential allowance as salary.
- (2) If an election under subsection (1) is made by the judicial officer, the amount of the jurisprudential allowance for a financial year is payable to the judicial officer on a pro rata basis at the same time as salary.

### **19 Jurisprudential allowance may be paid as lump sum**

- (1) This section applies to an amount of a jurisprudential allowance for a financial year that a judicial officer is entitled to be paid but is not paid to the judicial officer under section 17 or 18.
- (2) The judicial officer may elect to be paid all or part of the amount as a lump sum, including as a lump sum on retirement or resignation.
- (3) However, a judicial officer is not entitled to be paid all or part of the amount of a jurisprudential allowance for a financial year as a lump sum after the end of the period of 7 financial years after the end of the financial year to which the allowance relates.

### **20 Education and conference allowance**

- (1) The purpose of this section is to make provision for an education and conference allowance payable for each financial year to particular judicial officers.

- (2) Each of the following judicial officers is entitled to the payment of an education and conference allowance—
  - (a) a commissioner other than a presidential member of the Industrial Commission;
  - (b) a deputy president of the Industrial Commission.
- (3) The amount of the education and conference allowance payable for a financial year to each judicial officer increases each financial year at the same rate as the salary for the judicial officer increases for that year.
- (4) If the increase of the education and conference allowance for a financial year is worked out after the start of that year, it must be backdated to the start.
- (5) The education and conference allowance for a financial year may be paid to a judicial officer to reimburse his or her vouched or estimated expenses incurred during the financial year for the cost of self-education.
- (6) An amount of education and conference allowance for a financial year that is not paid to a judicial officer under subsection (5) may be paid to the judicial officer to reimburse his or her vouched or estimated expenses incurred in a later financial year for the cost of self-education.
- (7) The education and conference allowance is not payable at any time as salary or a lump sum, including as a lump sum on retirement or resignation.
- (8) An estimated expense must be acquitted.

## **21 Expense-of-office allowance**

- (1) The purpose of this section is to make provision for an expense-of-office allowance payable for each financial year to particular judicial officers.
- (2) Each of the following judicial officers is entitled to the payment of an expense-of-office allowance—
  - (a) the Chief Justice, the President of the Court of Appeal and the other Supreme Court judges;
  - (b) the Chief Judge and the other District Court judges;

- (c) the President of the Land Court and the other members of the Land Court;
  - (d) the President of the Industrial Court.
- (3) The amount of the expense-of-office allowance for a financial year payable to a judicial officer increases each financial year in accordance with the consumer price index for the preceding financial year.
- (4) If the increase of the expense-of-office allowance for a financial year is worked out after the start of that year, it must be backdated to the start.
- (5) The expense-of-office allowance for a financial year may be paid to a judicial officer to reimburse his or her vouched expenses in that year for 1 or more of the following—
- (a) attendance by the judicial officer and his or her spouse at official functions, conferences and conventions;
  - (b) library books and subscriptions and maintenance, binding and insurance of the books or matters covered by the subscriptions;
  - (c) fees for membership of professional associations;
  - (d) purchase, maintenance and insurance of judicial wigs and regalia;
  - (e) purchase of newspapers and periodicals;
  - (f) travel for the judicial officer and his or her spouse, including accommodation as part of the travel, in connection with official functions, conferences, conventions and academic activities.
- (6) However the expense-of-office allowance payable for a financial year to a judicial officer may only be paid for a purpose mentioned in subsection (5)(f) if the judicial officer has not travelled at public expense during the financial year for more than the following—
- (a) once overseas otherwise than to or from New Zealand;
  - (b) twice within Australia or to, from or within New Zealand.
- (7) For subsection (6), the class of travel undertaken by a judicial officer is irrelevant.

- (8) An amount of expense-of-office allowance for a financial year that is not paid to a judicial officer under subsection (5) may be paid to the judicial officer to reimburse expenses incurred in a later financial year for a matter mentioned in that subsection.
- (9) The expense-of-office allowance is not payable at any time as salary or a lump sum, including as a lump sum on retirement or resignation.
- (10) In this section—
- at public expense*, in relation to travel, means all or part of the cost of the travel was paid for using an amount paid as education and conference allowance or expense-of-office allowance.
- consumer price index* means either of the following—
- (a) the Consumer Price Index (All Groups) Brisbane, as published by the Australian Statistician, Brisbane;
  - (b) if another index is nominated by the Australian Statistician as mentioned in section 30, the other index.

## **22 Long leave allowance**

- (1) The purpose of this section is to make provision for a long leave allowance payable for each financial year to particular judicial officers.
- (2) Each of the following judicial officers is entitled to the payment of a long leave allowance for each financial year—
- (a) the Chief Justice, the President of the Court of Appeal and the other Supreme Court judges;
  - (b) the Chief Judge and the other District Court judges;
  - (c) the President of the Land Court and the other members of the Land Court;
  - (d) a presidential member of the Industrial Commission.
- (3) Subject to subsection (4), the amount of the long leave allowance for the judicial officer for a financial year is 2.86% of the amount of the salary to which the officer is entitled for the financial year.



- (4) The long leave allowance is to be paid on a pro rata basis at the same time as salary.

## **Part 4                      General provisions**

### **23            Appropriation**

- (1) Subject to subsection (2), the following are payable out of the consolidated fund and the fund is appropriated accordingly—
- (a) amounts for salaries and allowances payable under this Act;
  - (b) amounts payable under a determination mentioned in section 26.
- (2) This section does not affect the *Constitution of Queensland 2001*, section 62(3).

### **24            No decrease of salaries and allowances**

- (1) The total amount of salary and allowances payable to a judicial officer for a financial year under this Act can not be decreased in any later financial year.
- (2) Subsection (1) has effect despite any other provision of this Act.
- (3) This section does not affect the *Constitution of Queensland 2001*, section 62(2).

### **25            Adjustment of salary of Federal Court judge**

- (1) An adjustment of an amount payable to a judicial officer under part 2 in relation to a financial year only takes effect as provided by subsection (2).
- (2) If—
- (a) an adjustment of the salary of a Federal Court Judge takes effect during the financial year; and

- (b) the relevant determination of the Federal Remuneration Tribunal is not disapproved of by a resolution passed by either House of the Parliament of the Commonwealth under the *Remuneration Tribunal Act 1973* (Cwlth);
- the adjustment takes effect on the later of the following—
- (c) the beginning of the day after the last day on which either House of that Parliament could have passed a resolution in relation to that determination;
- (d) the date on which that determination takes effect.
- (3) If, under subsection (2), an adjustment takes effect after the date mentioned in subsection (2)(d), a judicial officer who held the relevant office at any time during the period of deferral is entitled to receive the difference between—
- (a) the amount that would have been payable to him or her during the period of deferral if the adjustment had taken effect on the date mentioned in subsection (2)(d); and
- (b) the amount that was payable to him or her in relation to the period of deferral.
- (4) In this section—

***Federal Remuneration Tribunal*** means the Remuneration Tribunal established by the *Remuneration Tribunal Act 1973* (Cwlth), section 4(1).

***period of deferral***, in relation to an adjustment, means the period starting on the date mentioned in subsection (2)(d) and ending on the day on which the adjustment takes effect.

## 26 **Determination made under the Supreme Court of Queensland Act 1991 relating to pension entitlements**

- (1) This section applies in relation to a person who—
- (a) was appointed as a justice of the Court of Appeal before 1 August 1997; and
- (b) had retired before the commencement of this section.
- (2) This section also applies to the determination made under the *Supreme Court of Queensland Act 1991* by the Governor in Council on 24 October 1991 in relation to pension

entitlements to the extent the determination related to the person before the commencement of this section.

- (3) The determination continues to have effect—
  - (a) for deciding pension entitlements in relation to the person; and
  - (b) as the appropriate way in which pension entitlements are to be worked out.

## **27 Notification of salary and allowances**

After an adjustment to the amount of the salary or an allowance payable to a judicial officer takes effect, the Governor in Council must publish, by gazette notice, the adjusted salary or allowance.

## **28 Salary and allowances not payable if not holding judicial office**

- (1) This section applies to a person in relation to the financial year in which the person starts holding, or stops holding, judicial office.
- (2) Salary and allowances payable to holders of that judicial office for the financial year are not payable to the person in relation to any period during which the person did not or does not hold the judicial office.
- (3) Subsection (2) applies despite a reference in another provision of this Act to an entitlement to the salary or allowance for a financial year.

## **29 Notice of election**

Written notice given to the following for an election under section 18 or 19 is evidence of the election—

- (a) for a presidential member of the Industrial Commission—the chief executive of the department that administers the *Industrial Relations Act 1999*;
- (b) for all other judicial officers—the chief executive.

**30 Discontinuance, change or substantial variation of CPI**

- (1) This section applies if the Consumer Price Index (All Groups) Brisbane, as published by the Australian Statistician, is discontinued, changed or substantially varied.
- (2) Another index nominated by the Australian Statistician which, in his or her opinion, is appropriate for measuring the variation in the cost of living in Brisbane is to be used instead of the Consumer Price Index (All Groups) Brisbane.

**31 Regulation-making power**

The Governor in Council may make regulations under this Act.

## **Part 5 Repeal and transitional provisions and consequential and other amendments**

### **Division 1 Definitions**

**32 Definitions for pt 5**

In this part—

*commencement* means the commencement of this section.

*current financial year* means the financial year starting on 1 July 2007.

*new Act* means this Act as in force immediately after commencement.

*relevant allowance*, in relation to a judicial officer, means—

- (a) if the judicial officer is entitled to be paid jurisprudential allowance—jurisprudential allowance; or

- (b) if the judicial officer is entitled to be paid an education and conference allowance—education and conference allowance.

*repealed Act* means the repealed *Judges (Salaries and Allowances) Act 1967*.

## **Division 2                      Repeal and related provisions**

### **33            Repeal**

- (1) The Judges (Salaries and Allowances) Act 1967, No. 40 is repealed.
- (2) On commencement—
  - (a) the Salaries and Allowances Tribunal is dissolved; and
  - (b) the members of the tribunal go out of office.
- (3) No compensation is payable to a member because of subsection (2).
- (4) No liability attaches to a member of the tribunal in relation to a failure to comply with section 12 of the repealed Act.

### **34            Determination under Judges (Salaries and Allowances) Act 1967**

- (1) If, under a SAT determination, a person accrued an entitlement to an allowance in relation to a financial year before the current financial year but was not paid the allowance before commencement, despite the repeal of the repealed Act, the person retains the entitlement.
- (2) Each retained entitlement is subject to the same conditions and limitations that applied to it immediately before commencement.
- (3) If a SAT determination was made but not gazetted before commencement, to remove any doubt, it is declared that the SAT determination has no effect and must not be gazetted or tabled in the Legislative Assembly.
- (4) In this section—

*SAT determination* means a determination made by the Salaries and Allowances Tribunal under section 12 of the repealed Act.

**35 Previous election for jurisprudential allowance as salary**

If, before commencement, a judicial officer had elected to take jurisprudential allowance as salary and the election had not been revoked, the election has effect as if it were an election under section 18.

**36 References to repealed Act**

In an Act or document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Act.

**Division 3 Provisions relating to the current financial year**

**37 Purpose of div 3**

The purpose of this division is to provide for the application of the new Act to the payment of amounts in relation to the current financial year.

**38 Act has effect for the current financial year**

- (1) This section applies to a judicial officer if, immediately after commencement, the judicial officer is entitled to an amount as salary or an allowance.
- (2) The amounts the judicial officer is entitled to be paid in relation to the current financial year are to be worked out under the new Act on commencement and whenever any 2007 adjustment takes effect under section 25 after commencement.
- (3) However, to work out the amount payable under section 5 if no 2007 adjustment took effect before commencement, a reference in that section to the salary of a Federal Court judge for a financial year is the salary payable to a Federal Court judge at commencement.

- (4) In this section—

*2007 adjustment* means an adjustment, under the *Remuneration Tribunal Act 1973* (Cwlth), of the salary payable to a Federal Court judge in relation to the current financial year.

### **39 First increase of jurisprudential allowance and education and conference allowance**

- (1) The purpose of this section is to provide for working out the first increase under the new Act of a relevant allowance payable to a judicial officer for the purposes of sections 16(3) and 20(3).
- (2) The rate of increase of salary is to be worked out by comparing the following—
- (a) the salary payable under the new Act to the judicial officer at the time of the first increase;
  - (b) the salary payable to the judicial officer at the time the relevant allowance was last increased under the repealed Act.

### **40 Amount of relevant allowances before commencement**

- (1) The section states amounts of relevant allowances payable to a judicial officer immediately before commencement in order to work out the amount of the relevant allowances payable to the judicial officer on commencement.
- (2) The following jurisprudential allowances were payable—
- (a) for the Chief Justice—\$26950;
  - (b) for the President of the Court of Appeal—\$26120;
  - (c) for a Supreme Court judge other than the Chief Justice or the President of the Court of Appeal—\$22950;
  - (d) for the Chief Judge—\$22950;
  - (e) for a District Court judge other than the Chief Judge—\$20650;
  - (f) for the President of the Land Court and the President of the Industrial Court—\$22950;

- (g) for a member of the Land Court, other than the President of the Land Court, and the Vice President of the Industrial Commission—\$20650.
- (3) An education and conference allowance of \$12695 was payable to the following—
  - (a) a deputy president of the Industrial Commission;
  - (b) a commissioner, other than a presidential member of the Industrial Commission.

#### **41 Amount of expense-of-office allowance after commencement**

- (1) This section states the amount of the expense-of-office allowance payable on commencement under the new Act for the current financial year to each of the following—
  - (a) the Chief Justice, the President of the Court of Appeal and the other Supreme Court judges;
  - (b) the Chief Judge and the other District Court judges;
  - (c) the President of the Land Court and the other members of the Land Court;
  - (d) the President of the Industrial Court.
- (2) The amount of the expense-of-office allowance for the current financial year is \$8780.
- (3) The amount in subsection (2) is taken to have been worked out under section 21(3) for the current financial year but this section does not otherwise limit section 21.

### **Division 4 Amendment of Freedom of Information Act 1992**

#### **42 Act amended in div 4**

This division amends the *Freedom of Information Act 1992*.



**43 Amendment of s 27 (How applications are dealt with)**

Section 27—

*insert—*

- ‘(5A) As soon as practicable after a decision the agency’s principal officer or the Minister is taken to have made under subsection (5), the principal officer or the Minister must give written notice to the applicant—
- (a) stating the decision taken to have been made; and
  - (b) specifying—
    - (i) the day on which the decision is taken to have been made; and
    - (ii) the right of review conferred by part 5 in relation to the decision; and
    - (iii) the procedures to be followed for exercising the right; and
    - (iv) the time within which an application for review must be made.’.

**44 Insertion of new s 27B**

After section 27A—

*insert—***‘27B Extended processing period**

- ‘(1) Before or after an agency’s principal officer or a Minister is taken to have made a decision under section 27(5) in relation to an application (the *deemed decision*), the agency or the Minister may ask the applicant for a further specified period (an *extended processing period*) within which the agency or the Minister may continue to consider the application and make a decision in relation to it.
- ‘(2) Additional requests may be made under subsection (1) to allow further extended processing periods.
- ‘(3) Until a considered decision is made under subsection (4), an application for review of the deemed decision—

- (a) may be made even if the applicant has agreed to a request made under subsection (1); and
  - (b) despite section 73(1)(d), may be made—
    - (i) at any time before 28 days from the end of the extended processing period or, in the case of more than 1 extended processing period, the last extended processing period; or
    - (ii) within the longer period the commissioner allows.
- ‘(4) The agency or the Minister may, at any time before the agency or the Minister is informed under section 73A of an application for review of the deemed decision, continue to consider the application and make a decision in relation to it (a *considered decision*).
- ‘(5) Subsection (4) applies even if—
- (a) no request has been made under subsection (1); or
  - (b) the applicant has not agreed to a request made under subsection (1).
- ‘(6) If a considered decision is made, the considered decision replaces the deemed decision for the purposes of this Act.

*Example—*

The agency or the Minister must give notice of the considered decision under section 34 and the considered decision is potentially subject to internal review under section 52, in addition to external review under part 5.’.

## 45 **Amendment of s 34 (Notification of decisions and reasons)**

Section 34—

*insert—*

- ‘(4) This section does not apply in relation to a decision an agency’s principal officer or a Minister is taken to have made under section 27(5).’.

**46 Amendment of s 57 (Time within which agency or Minister must notify applicant)**

Section 57—

*insert—*

- ‘(3) As soon as practicable after the agency’s principal officer or the Minister is taken to have made a decision under subsection (2), the principal officer or the Minister must give written notice to the applicant—
- (a) stating the decision taken to have been made; and
  - (b) specifying—
    - (i) the day on which the decision is taken to have been made; and
    - (ii) the right of review conferred by part 5 in relation to the decision; and
    - (iii) the procedures to be followed for exercising the right; and
    - (iv) the time within which an application for review must be made.’.

**47 Insertion of new s 57A**

After section 57—

*insert—*

**‘57A Extended processing period**

- ‘(1) Before or after an agency’s principal officer or a Minister is taken to have made a decision under section 57(2) in relation to an application (the *deemed decision*), the agency or the Minister may ask the applicant for a further specified period (an *extended processing period*) within which the agency or the Minister may continue to consider the application and make a decision in relation to it.
- ‘(2) Additional requests may be made under subsection (1) to allow further extended processing periods.
- ‘(3) Until a considered decision is made under subsection (4), an application for review of the deemed decision—

- (a) may be made even if the applicant has agreed to a request made under subsection (1); and
  - (b) despite section 73(1)(d), may be made—
    - (i) at any time before 28 days from the end of the extended processing period or, in the case of more than 1 extended processing period, the last extended processing period; or
    - (ii) within the longer period the commissioner allows.
- ‘(4) The agency or the Minister may, at any time before the agency or the Minister is informed under section 73A of an application for review of the deemed decision, continue to consider the application and make a decision in relation to it (a *considered decision*).
- ‘(5) Subsection (4) applies even if—
- (a) no request has been made under subsection (1); or
  - (b) the applicant has not agreed to a request made under subsection (1).
- ‘(6) If a considered decision is made, the considered decision replaces the deemed decision for the purposes of this Act.

*Example—*

The agency or the Minister must give notice of the considered decision under section 58(2) and the considered decision is potentially subject to internal review under section 60, in addition to external review under part 5.’.

**48 Amendment of s 58 (Decision to be made by authorised person and reasons given)**

Section 58—

*insert—*

- ‘(3) However, subsection (2) does not apply to a decision an agency’s principal officer or a Minister is taken to have made under section 57(2).’.

**49 Insertion of new s 73A**

After section 73—

*insert—*

**‘73A Agency or Minister to be informed of application for review of deemed decision**

‘If an application is made for review of a decision of an agency’s principal officer or a Minister taken to have been made under section 27(5) or 57(2), the commissioner must inform the agency or Minister of the application as soon as practicable after it is made.’.

**50 Amendment of s 74 (Commissioner to notify agency or Minister)**

Section 74, heading—

*omit, insert—*

**‘74 Agency or Minister to be informed before review of decision’.****51 Amendment of s 113 (Definition for pt 10)**

(1) Section 113, heading, ‘pt 10’—

*omit, insert—*

‘div 4’.

(2) Section 113, ‘part’—

*omit, insert—*

‘division’.

**52 Replacement of pt 11 heading (Transitional provision for State Development and Public Works Organisation and Other Legislation Amendment Act 2005)**

Part 11, heading—

*omit, insert—*

**‘Division 5                    Provision for State Development  
and Public Works Organisation and  
Other Legislation Amendment Act  
2005’.**

**53            Insertion of new pt 7, div 6**

After section 123—

*insert—*

**‘Division 6                    Provisions for Judicial  
Remuneration Act 2007, part 5,  
division 4**

**‘124    Notification requirement after deemed decision**

- ‘(1) Sections 34 and 58(2) do not apply, and are taken never to have applied, in relation to a decision an agency’s principal officer or a Minister is taken to have made under section 27(5) or 57(2) before the commencement of this section.
- ‘(2) However, if the decision is taken to have been made not more than 28 days before the commencement of this section, the agency’s principal officer or the Minister must give written notice to the applicant—
- (a) stating the decision taken to have been made under section 27(5) or 57(2) (the *deemed decision*); and
  - (b) specifying—
    - (i) the day on which the deemed decision was taken to have been made; and
    - (ii) the right of review conferred by part 5 in relation to the deemed decision; and
    - (iii) the procedures to be followed for exercising the right; and
    - (iv) the time within which an application for review must be made.

- ‘(3) Subsection (2) does not apply in relation to a deemed decision for an application (the *original application*) if, before the commencement of this section—
- (a) the agency or the Minister advised the applicant that the applicant could make another application in the same terms as, or in similar terms to, the original application; and
  - (b) the applicant made another application in those terms.

## ‘125 Considered decision or review after deemed decision

- ‘(1) At any time before the agency or the Minister is informed of an application for review of a decision the agency’s principal officer or the Minister is taken to have made under section 27(5) or 57(2) before the commencement of this section (the *deemed decision*), the agency or the Minister, may, and is taken always to have been able to, continue to consider the application and make a decision in relation to it (a *considered decision*).
- ‘(2) If a considered decision is or was made, the considered decision replaces, and is taken always to have replaced, the deemed decision for the purposes of this Act.

### *Examples—*

- 1 The agency or the Minister must give notice of the considered decision under section 34 or 58(2).
  - 2 The considered decision is, and is taken always to have been, potentially subject to internal review under section 52 or 60, in addition to external review under part 5.
  - 3 Any protection provided by this Act to a person or agency applies, and is taken always to have applied, for acts or omissions in relation to the considered decision.
- ‘(3) However, the commissioner may continue to deal with an application for review of a deemed decision made before the commencement of this section despite there being a considered decision when the application for review was made.
- ‘(4) Despite section 73(1)(d), if the deemed decision is taken to have been made more than 28 days before the commencement of this section, an application for review of the deemed

decision may be made, and is taken always to have been able to be made, at any time.

- ‘(5) To remove any doubt, it is declared that if the deemed decision is taken to have been made not more than 28 days before the commencement of this section, section 73(1)(d) applies as if the reference in that section to written notice were a reference to written notice under section 124(2).
- ‘(6) To remove any doubt, it is also declared that—
- (a) the validity and effectiveness of a considered decision made before the commencement of this section was not, and is not, affected by any relevant lack of power to make the considered decision; and
  - (b) a person or agency has, and is taken always to have had, the same protection for acts or omissions in relation to a considered decision made before the commencement of this section as the person or agency would have had if the considered decision were not affected by any relevant lack of power; and
  - (c) any review of a considered decision made before the commencement of this section was not, and is not, affected by any lack of power to review the considered decision because of any relevant lack of power to make the considered decision; and
  - (d) a person or agency has, and is taken always to have had, the same protection for acts or omissions in relation to a review of a considered decision made before the commencement of this section as the person or agency would have had if the considered decision were not affected by any relevant lack of power.
- ‘(7) In this section—
- relevant lack of power*** means a lack of power because of section 27(5) or 57(2).’.



**Division 5                      Amendment of other Acts****54            Acts amended in sch 1**

Schedule 1 amends the Acts mentioned in it.

## Schedule 1      Acts amended

section 54

### Industrial Relations Act 1999

- 1      **Section 342(6) and (7), before ‘287(10)’—**  
*insert—*  
‘section’.
  
- 2      **Schedule 2, part 1, section 1(3), ‘fixed under the *Judges (Salaries and Allowances) Act 1967*’—**  
*omit, insert—*  
‘provided for under the *Judicial Remuneration Act 2007*’.
  
- 3      **Schedule 2, part 1, section 2(1), after ‘sections 2A’—**  
*insert—*  
‘, 2AA’.
  
- 4      **Schedule 2, part 1, section 4B, ‘*Judges (Salaries and Allowances) Act 1967*’—**  
*omit, insert—*  
‘*Judicial Remuneration Act 2007*’.

## Schedule 1 (continued)

**Industrial Relations Act and Other Legislation  
Amendment Act 2007 (Amendment of Judicial Review  
Act 1991)****1 Section 55, '42T(1)'—***omit, insert—*

'42T'.

**Industrial Relations Act and Other Legislation  
Amendment Act 2007 (Amendment of Magistrates  
Courts Act 1921)****2 Section 59, inserted section 42T(2) and inserted part 5A,  
division 2, subdivision 7—***omit.***3 Section 59, inserted section 42(T), '(1)'—***omit.***Judges (Pensions and Long Leave) Act 1957****1 Section 2A, heading, after 'service'—***insert—*

'if previously an acting judge in Queensland'.

**2 Section 2A, from 'For' to 'determining'—***omit, insert—*

'For this Act, in deciding'.

## Schedule 1 (continued)

**3 After section 2A—***insert—***‘2AA Length of service if previously a judge in a court of the Commonwealth or another State**

- ‘(1) This section applies to a person appointed as a judge after the commencement of this section.
- ‘(2) For this Act, in deciding the length of service as a judge, service as a judge, other than as an acting judge, in another Australian court before the appointment is to be counted as service as a judge.
- ‘(3) This section does not limit the application of section 2A.
- ‘(4) In this section—  
*another Australian court* means a court of the Commonwealth or another State, other than a magistrates court of the Commonwealth or the other State.’.

**4 Section 2B(4), definitions *applicable determination*, *determination* and *Tribunal*—***omit.***5 Section 2B(4), definition *latest notional salary package amount*, from ‘under’—***omit, insert—*‘applicable under the *Judicial Remuneration Act 2007*.’.**6 Part 2, division 1—***insert—***‘8C Service in other jurisdictions not counted**

‘A person is not entitled to be paid a pension under this Act if—

- (a) the person’s length of service as a judge for this Act includes service as a judge in a court of the

### Schedule 1 (continued)

Commonwealth or another State as mentioned in section 2AA(2); and

- (b) in relation to the service as a judge in a court of the Commonwealth or another State, the person is or will be entitled to be paid a pension under another law.’.

#### 7 After section 15—

*insert—*

#### ‘15A Rate of accrual of entitlement relating to a judge to whom s 2AA applies if rate of accrual different to rate under s 15

- ‘(1) This section applies to a judge to whom section 2AA applies.
- ‘(2) In working out an entitlement under section 15 in relation to the judge, the previous rate is to be used in relation to any period of service as a judge of another Australian court that is counted as service as a judge.
- ‘(3) In this section—

*another Australian court* means a court of the Commonwealth or another State, other than a magistrates court of the Commonwealth or the other State.

*previous rate* means the rate at which the judge, when a judge of another Australian court, previously accrued an entitlement to additional leave of absence (however described).’.

#### 8 Section 18, ‘or Territory’—

*omit.*

#### 9 Section 18—

*insert—*

- ‘(2) However subsection (1) does not apply to a judge if—
- (a) the judge is 65 years of age or more; or
- (b) the service by the judge in the judicial office of the Commonwealth or a State is limited service.

Schedule 1 (continued)

- ‘(3) For subsection (2)(b), limited service is service under any of the following—
- (a) an appointment to a judicial office if the period of service is not for more than 6 months or, if there is more than 1 period of service, the periods are not more than 6 months when aggregated in any financial year;
  - (b) an appointment to a judicial office if the remuneration for the service under the appointment is based on the actual hours for which, or days on which, the judicial officer presides or sits;
  - (c) an appointment to a judicial office on a part-time basis if the remuneration payable for the appointment is limited to not more than 50% of the remuneration that would be payable to a holder of the judicial office if it were an appointment on a full-time basis.
- ‘(4) A judge is taken to be appointed in a judicial office for a period of no more than 6 months even if the judge continues to be the judicial officer so far as it is necessary to give a decision in a matter that is partly heard or standing for the decision of the judicial officer at the end of the 6 months.
- ‘(5) To remove any doubt, it is declared that the *Anti-Discrimination Act 1991* does not apply in relation to this section or acts necessary to ensure compliance with this section.
- ‘(6) In this section—
- appointment* includes an acting appointment.’.

**10 Section 19, heading ‘Supreme Court of Queensland Act’—**

*omit, insert—*

**‘other Acts’.**

## Schedule 1 (continued)

**11 Section 19, after ‘the’—***insert—**‘Judicial Remuneration Act 2007 and the’.***12 Part 4, heading—***omit, insert—***‘Part 4 Transitional provisions****‘Division 1 Provision for the Statute Law  
Revision Act (No. 2) 1995’.****13 After section 21—***insert—***‘Division 2 Provision for the Judicial  
Remuneration Act 2007, schedule 1****‘22 Application of s 18**

- ‘(1) This section applies to a judge who, at the commencement of this section, was serving for a period in a judicial office of the Commonwealth or a State.
- ‘(2) Section 18(2) to (6) does not apply to the judge in relation to that service in the judicial office.
- ‘(3) However, if the service stops and the judge subsequently serves for another period in a judicial office of the Commonwealth or a State, section 18 applies to the judge even if the service is under an appointment to the same judicial office.’.

## Schedule 1 (continued)

**Land Court Act 2000****1 Section 38—***omit, insert—***‘38 Remuneration**

‘The salary and allowances of the president and other members are provided for by the *Judicial Remuneration Act 2007*.’.

**2 Section 40, ‘section 15, applies’—***omit, insert—*

‘sections 2AA, 8C, 15 and 15A, apply’.

**Magistrates Act 1991****1 Section 6(1), ‘, at the request of the Chief Magistrate,’—***omit.***2 Section 6—***insert—*

‘(1A) Before making a recommendation to the Governor in Council about the appointment of a person to act as a magistrate, the Minister must first consult with the Chief Magistrate.’.

**3 Section 6—***insert—*

‘(5) In this section—

*retired magistrate* means a person who ceases to be a magistrate under section 42(a), (b) or (d).’.



## Schedule 1 (continued)

**4 Section 45(4), ‘Judges (Salaries and Allowances) Act 1967’—**

*omit, insert—*

*‘Judicial Remuneration Act 2007’.*

**5 Section 47(1)(a)—**

*omit, insert—*

‘(a) salary provided for under the *Judicial Remuneration Act 2007*; and’.

**Magistrates Courts Act 1921****1 Part 7—**

*insert—*

**‘58 Regulation-making power**

‘The Governor in Council may make regulations under this Act.’.

**Public Service Act 1996****1 Section 11(1)(b)—**

*omit, insert—*

‘(b) the salary for the office is provided for under the *Judicial Remuneration Act 2007*; or’.

## Schedule 1 (continued)

**Supreme Court of Queensland Act 1991****1 Section 44(d)—**

*omit, insert—*

‘(d) the *Judicial Remuneration Act 2007*.’.

**2 Section 44A—**

*omit.*

**3 Section 122—**

*omit.*

**4 Schedule 1, section 9(e) and (f)—**

*omit, insert—*

‘(e) conciliation processes, including, for example, the following—

- (i) experience and qualifications for approval, under the *Magistrates Courts Act 1921*, section 42T, as a conciliator;
- (ii) the way a conciliator is to be appointed under the *Magistrates Courts Act 1921*, section 42F;
- (iii) time within which conciliation processes should be finished;
- (iv) requirements about recording an agreement under the *Magistrates Courts Act 1921*, section 42M;
- (v) requirements for parties to help conciliators;
- (vi) ability of a conciliator to seek independent advice or information;
- (vii) appointment of a replacement conciliator;
- (viii) abandonment of a conciliation process;

## Schedule 1 (continued)

- (ix) information to be contained in the register to be kept under the *Magistrates Courts Act 1921*, section 42X;
- (x) form of a conciliation certificate;
- (f) offers to settle and payments by defendants;
- (g) the referral of cases to arbitration.’.

**5 Schedule 1, section 9—**

*insert—*

‘(2) In this section—

***conciliation certificate*** means a certificate mentioned in the *Magistrates Courts Act 1921*, section 42L.

***conciliation process*** see the *Magistrates Courts Act 1921*, section 42D.

***conciliator*** see the *Magistrates Courts Act 1921*, section 2.’.

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## Schedule 2      Dictionary

### section 4

**benchmark amount** means the amount that a Supreme Court judge, other than the Chief Justice or the President of the Court of Appeal, is entitled to be paid, as salary and jurisprudential allowance, for a financial year.

**Chief Judge** means the person who, by commission, is appointed as the Chief Judge of the District Court of Queensland under the *District Court of Queensland Act 1967*, section 10.

**Chief Justice** means the person who, by commission, is appointed as the Chief Justice of Queensland under the *Supreme Court of Queensland Act 1991*, section 12.

**Chief Magistrate** means a District Court judge or magistrate who is appointed as the Chief Magistrate under the *Magistrates Act 1991*, section 5(6).

**commencement**, for part 5, see section 32.

**commissioner** means a person appointed, by commission, as a commissioner under the *Industrial Relations Act 1999*, section 259.

**current financial year**, for part 5, see section 32.

**Deputy Chief Magistrate** means a magistrate appointed as the Deputy Chief Magistrate under the *Magistrates Act 1991*, section 5(7).

**deputy president of the Industrial Commission** means a person appointed as a deputy president of the Industrial Commission under the *Industrial Relations Act 1999*, section 258A.

**education and conference allowance** means the allowance payable under section 20.

**expense-of-office allowance** means the allowance payable under section 21.

## Schedule 2 (continued)

**Federal Court judge** means a judge of the Federal Court of Australia other than the Chief Justice of that court.

**Industrial Commission** means the Queensland Industrial Relations Commission, continued in existence under the *Industrial Relations Act 1999*, section 255.

**Industrial Court** means the Industrial Court of Queensland, continued in existence under the *Industrial Relations Act 1999*, section 242.

**judge of appeal** means a person who, by commission, is appointed as a judge of appeal under the *Supreme Court of Queensland Act 1991*, section 33.

**judicial office** means any of the following offices—

- (a) Chief Justice;
- (b) President of the Court of Appeal;
- (c) Supreme Court judge, other than Chief Justice or President of the Court of Appeal;
- (d) Chief Judge;
- (e) District Court judge, other than Chief Judge;
- (f) President of the Land Court;
- (g) member of the Land Court, other than President of the Land Court;
- (h) President of the Industrial Court;
- (i) Vice President of the Industrial Commission;
- (j) deputy president of the Industrial Commission;
- (k) commissioner, other than a presidential member of the Industrial Commission;
- (l) Chief Magistrate;
- (m) Deputy Chief Magistrate;
- (n) magistrate, other than Chief Magistrate or Deputy Chief Magistrate.

**judicial officer** means a person who holds a judicial office.

## Schedule 2 (continued)

***jurisprudential allowance*** means the allowance payable under section 16.

***long leave allowance*** means the allowance payable under section 22.

***member of the Land Court*** means a person appointed as a member of the Land Court under the *Land Court Act 2000*.

***new Act***, for part 5, see section 32.

***presidential member***, in relation to the Industrial Commission, means—

- (a) the President of the Industrial Court; or
- (b) the Vice President of the Industrial Commission; or
- (c) a deputy president of the Industrial Commission.

***President of the Court of Appeal*** means the person who, by commission, is appointed as the President of the Court of Appeal under the *Supreme Court of Queensland Act 1991*, section 36.

***President of the Industrial Court*** means the person who, by commission, is appointed as President of the Industrial Court under the *Industrial Relations Act 1991*, section 243.

***President of the Land Court*** means the person who, by commission, is appointed as the President of the Land Court under the *Land Court Act 2000*, section 16.

***relevant allowance***, for part 5, see section 32.

***repealed Act***, for part 5, see section 32.

***salary***, in relation to a Federal Court judge, means the salary payable from time to time to the holders of that office under the *Federal Court of Australia Act 1976* (Cwlth), section 9.

***Supreme Court judge*** means either of the following persons whether or not the person is also a judge of appeal—

- (a) a person who, by commission, is appointed as a judge of the Supreme Court under the *Constitution of Queensland 2001*, section 59(1);

**Schedule 2 (continued)**

- (b) a person who continues as a judge of the Supreme Court under the *Constitution of Queensland 2001*, section 90(1).

***Vice President of the Industrial Commission*** means the person appointed as Vice President of the Industrial Commission under the Industrial Relations Act 1999, section 258.