

# **STIPENDIARY MAGISTRATES AND OTHER ACTS AMENDMENT BILL 1999**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objective of the Legislation**

The objective of the *Stipendiary Magistrates and Other Acts Amendment Bill 1999* is to amend three items of legislation – the *Stipendiary Magistrates Act 1991*, *Freedom of Information Act 1992* and *Judicial Review Act 1991*. The Bill is designed to put in place a better system for the resolution of disputes over Magistrates' transfers. Further, that system preserves the independence of Queensland's magistrates.

In summary, the Bill provides for the appointment of a magistrate to a specified place for a period of up to five years to be served at that place unless otherwise agreed between the magistrate and the Chief Stipendiary Magistrate. Further, it establishes a judicial committee comprising the Chief Justice of the Supreme Court (or a judge of the Supreme Court nominated by the Chief Justice), the Chief Judge of District Courts (or nominee) and one other judge of either Court, to review, on its merits, at the request of a magistrate, a decision to transfer him or her. The Bill also affords a right to merits review of a refusal to transfer after either the notified term of the transfer, or a period of five years, has been served at a place.

#### **Reasons for the Bill**

The Bill addresses concerns about magistrates' transfers. It acknowledges the importance of the Separation of Powers enshrined in the Westminster convention. The Bill also acknowledges the necessity for the Chief Stipendiary Magistrate to have transfer powers and the necessity for the Judiciary to make decisions affecting judicial officers.

**Administrative Cost**

Nil

**Fundamental legislative principles**

The Bill is in accordance with fundamental legislative principle

The Bill does not prescribe procedures for the conduct of a review by the judicial committee. Rather, these matters are within the “*full and unfettered discretion*” of the committee (section 10F (Procedure)). It may be suggested that this approach offends the legislative principle that ensures legislation is drafted in an unambiguous and sufficiently clear and precise way (subsection 4(3)(k) of the Legislative Standards Act.) However, the Bill has been deliberately cast in this manner to ensure that the judicial independence of the committee is not fettered. The Bill, as drafted, minimises the intervention of executive government and the legislature with the affairs of the judicial arm of government.

New sections 18A (Magistrate may request transfer determination) and 24 (Transitional provisions for Stipendiary Magistrates and Other Acts Amendment Act 1999) create rights retrospectively.

New section 18A allows a magistrate, already appointed, who is seeking a transfer from a location at which he or she has served for at least five years, to seek merits review of a refusal to transfer him or her to another location.

New section 24 expressly applies to a reviewable determination made under section 10(2)(a) between 31 March 1999 and the commencement of section 6 of this amending Act. The section creates a right to seek review by the judicial committee as from 31 March 1999. Cast in this manner, the section is retrospective in a beneficial sense as it creates a right to seek merits review where none existed prior to 31 March 1999.

The above amendments merely provide access to merits review. They do not offend fundamental legislative principles as they do not adversely affect rights and liberties, or impose obligations retrospectively.

**Consultation**

Consultation has occurred with the Chief Justice of the Supreme Court, the Chief Judge of District Courts, the Chief Stipendiary Magistrate, the Stipendiary Magistrates' Association Queensland Inc. and the Crown Solicitor.

**NOTES ON CLAUSES*****Part 1—Preliminary***

*Clause 1* sets out the short title of the Act.

***Part 2 —Amendment of Stipendiary Magistrates Act 1991***

*Clause 2* provides that part 2 amends the *Stipendiary Magistrates Act 1991*.

*Clause 3* amends section 3 (Definition) of the Act by inserting a number of new definitions into the Act – “Chief Judge”, Chief Justice”, “committee”, “reviewable determination” and “temporary determination.

*Clause 4* makes a renumbering change to section 5 (Appointment of magistrates) and amends the section to require that the appointment by the Governor in Council must state the place and period, (not longer than 5 years), the magistrate is to constitute the Magistrates Court, unless otherwise agreed between the magistrate and the Chief Stipendiary Magistrate. The section provides that the Minister must first consult with the Chief Stipendiary Magistrate before making a recommendation to Governor in Council about a magistrate’s appointment. Provision is also made for the Chief Stipendiary Magistrate to transfer a magistrate, “for good reason”, directly related to the magistrate, prior to the end of the 5 year period. The amendment also provides examples of good reasons.

*Clause 5* amends section 10 (Functions of Chief Stipendiary Magistrate). It rectifies an incorrect section reference, clarifies the Chief Stipendiary Magistrate's powers of reprimand, and renumbers various subsections. The amendment states that before making a determination about a magistrate under subsection (2)(a) about the place at which the magistrate is to constitute a Magistrates Court, the Chief Stipendiary Magistrate must first consult with the magistrate, give the magistrate written notice of the proposed maximum period of transfer at the place, and have sufficient and reasonable regard to the magistrate's personal circumstances and other relevant considerations. (However, these requirements do not apply for a "temporary determination" made in urgent circumstances under subsection 10(6).) The Chief Stipendiary Magistrate must also give written notice of a determination under subsection (2)(a) to a magistrate.

*Clause 6* inserts the following new sections 10A to 10I:

**section 10A** establishes a judicial committee.

**section 10B** provides that the committee's function is to review a reviewable determination on receipt of a written request from a magistrate aggrieved by the determination.

**section 10C** sets out the composition of the committee.

**section 10D** provides that a magistrate, aggrieved by a reviewable determination, may request the committee to review the determination. The request must be given to the committee within 14 days after the Chief Stipendiary Magistrate gives written notice of the reviewable determination to the magistrate.

**section 10E** provides for the committee's powers on review. The section states that the committee must consider the merits of the reviewable determination and either affirm it or substitute its own different determination which has effect.

**section 10F** provides that the committee has full and unfettered discretion to determine its own procedure when conducting a review. It is not bound by the rules of evidence, or to conduct any oral or public hearing, or to permit a party to the review legal representation. Further, the committee may conduct a review solely on the basis of written materials considered appropriate.

The section does not prescribe procedures for the conduct of the merits review by the judicial committee. Rather, these matters are appropriately within the “full and unfettered discretion” of the committee.

The section has been deliberately cast in this way to ensure that the judicial independence of the committee is not fettered. The amendment, as drafted, minimises the intervention of executive government and the legislature in the affairs of the judicial arm of government.

**section 10G** provides that the operation and implementation of a reviewable determination, other than a refusal to make a determination under section 18A(3)(b), is stayed if a magistrate, the subject of a reviewable determination, requests the committee to review the determination. The stay operates from the time the magistrate gives the Chief Stipendiary Magistrate a copy of the request under section 10H.

**section 10H** provides that a magistrate requesting a review of a reviewable determination is to give a copy of the request to the Chief Stipendiary Magistrate as soon as possible after requesting the review.

**section 10I** states that a determination made under section 10E (Powers of committee on review) is completely final and conclusive. It cannot be challenged, appealed against, reviewed, quashed, set aside, or called in question under the *Judicial Review Act 1991* or otherwise whether by the Supreme Court, another court, a tribunal or another entity. Further, it is not subject to a writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.

*Clause 7* inserts new section 18A (Magistrate may request transfer determination) which provides that a magistrate may request a transfer if the magistrate has constituted a Magistrates Court at a place for at least the period stated in the original appointment under section 5(3), the period stated in the notice under section 10(5), or the period agreed under section 5(4). A magistrate who has constituted a Magistrates Court at a place at the commencement of the section for at least five years may also request a transfer. Further, under subsection (6), the five year period includes any period that the magistrate has constituted the court at the place before commencement of this section.

*Clause 8* inserts a transitional provision, new section 24 (Transitional provision for Stipendiary Magistrates and Other Acts Amendment Act 1999)—which applies to a determination made under section 10(2)(a) between 31 March 1999 and the commencement of section 6 (new sections 10A to 10I) of the *Stipendiary Magistrates and Other Acts Amendment Act 1999*. New section 24 gives a right to a magistrate, aggrieved by the determination, to request a judicial committee review. Should the magistrate exercise the right to review by the judicial committee, the request must be given to the committee within 14 days of the commencement of section 24. Once merits review is requested, the magistrate may not seek judicial review or challenge the determination in any other way. If a magistrate requests review by the judicial committee after starting a proceeding for judicial review or any other review, that proceeding is terminated.

The section expires 1 year after commencement.

### ***Part 3—Amendment of Freedom of Information Act 1992***

*Clause 9* provides that part 3 amends the *Freedom of Information Act 1992*.

*Clause 10* amends section 11 (Act not to apply to certain bodies etc) of the *Freedom of Information Act 1992* to exclude the operation of the Freedom of Information Act to the judicial committee, established under the *Stipendiary Magistrates Act 1991*, section 10A. The Freedom of Information Act does not apply to the exercise of judicial functions by judges and should not apply to their exercise of the statutory administrative function under this amending legislation.

### ***Part 4—Amendment of Judicial Review Act 1991***

*Clause 11* provides that part 4 amends the *Judicial Review Act 1991*.

*Clause 12* amends schedule 1 (Operation of other laws), part 2 of the Judicial Review Act to ensure that the provisions of the Judicial Review Act not apply to the *Stipendiary Magistrates Act 1991*, sections 5(5), 10(2)(a), 10E and 18A(3)(b), that is, the relevant determinations of the Chief Stipendiary Magistrate and the judicial committee.

There are two reasons for this exclusion. Firstly, the remedy of review on the merits and the making of what the committee regards as the best decision is greater than the remedy of judicial review, which can lead to the making of another decision by the original decision maker if there has been an error in the making of a decision. Secondly, it would be inappropriate to have a single Judge of the Supreme Court review a decision of a committee comprising the Chief Justice of the Supreme Court, Chief Judge of District Courts and another Judge of either the Supreme Court or District Court.