

Queensland



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

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STIPENDIARY MAGISTRATES AND OTHER ACTS AMENDMENT BILL 1999

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1999

A BILL

FOR

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

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The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

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Clause **1.** This Act may be cited as the *Stipendiary Magistrates and Other Acts Amendment Act 1999*.

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**PART 2—AMENDMENT OF STIPENDIARY
MAGISTRATES ACT 1991**

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Act amended in pt 2

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Clause **2.** This part amends the *Stipendiary Magistrates Act 1991*.

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Amendment of s 3 (Definition)

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Clause **3.** Section 3—

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insert—

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“**Chief Judge**” means the Chief Judge of the District Court.

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“**Chief Justice**” means the Chief Justice of Queensland.

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“**committee**” means the judicial committee established under section 10A.

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“**reviewable determination**” means—

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- (a) a determination of the Chief Stipendiary Magistrate under section 5(5) or 10(2)(a) about the place at which a magistrate is to constitute a Magistrates Court, other than a temporary determination; or

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(b) a refusal by the Chief Stipendiary Magistrate under section 18A(3)(b) to make a determination requested under section 18A(2).

“**temporary determination**” has the meaning given by section 10(6).’.

Amendment of s 5 (Appointment of Magistrates)

Clause

4.(1) Section 5(2) to (4)—

renumber as section 5(6) to (8).

(2) Section 5—

insert—

‘**(2)** Before making a recommendation to the Governor in Council about the appointment of a magistrate, the Minister must first consult with the Chief Stipendiary Magistrate.

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

(a) the place where the magistrate is first to constitute a Magistrates Court appointed under the *Justices Act 1886*, section 22B(1)(c); and

(b) the period, not longer than 5 years, the magistrate is to constitute the Magistrates Court at the place.

‘**(4)** However, the Chief Stipendiary Magistrate and the magistrate may agree that the magistrate is to constitute a Magistrates Court at another place for an agreed period before the period mentioned in subsection (3)(b) ends.

‘**(5)** Despite subsection (3) and before the period mentioned in subsection (3)(b) ends, the Chief Stipendiary Magistrate may, for good reason directly related to the magistrate, determine that the magistrate is to constitute a Magistrates Court at a place other than the place mentioned in subsection (3)(a).

Examples of good reasons—

- the Chief Stipendiary Magistrate has disciplined the magistrate under section 10(8) and a transfer is necessary to maintain community confidence in the court

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- the magistrate’s incompatibility with the local community 1
- the magistrate’s incompatibility with another magistrate at the place is 2
detrimental to the efficient functioning of the court.’. 3

Amendment of s 10 (Functions of Chief Stipendiary Magistrate) 4

Clause	<p>5.(1) Section 10(2)(a), ‘section 22’— 5</p> <p><i>omit, insert—</i> 6</p> <p>‘section 22B(1)(c)’ . 7</p> <p>(2) Section 10(3)— 8</p> <p><i>omit.</i> 9</p> <p>(3) Section 10(4), ‘(3)(d)’— 10</p> <p><i>omit, insert—</i> 11</p> <p>‘(8)(d)’ . 12</p> <p>(4) Section 10(6), ‘(3)’— 13</p> <p><i>omit, insert—</i> 14</p> <p>‘(8)’ . 15</p> <p>(5) Section 10(4) to (6)— 16</p> <p><i>renumber</i> as section 10(9) to (11). 17</p> <p>(6) Section 10, subsection (2A)— 18</p> <p><i>renumber</i> as subsection (3). 19</p> <p>(7) Section 10— 20</p> <p><i>insert—</i> 21</p> <p>‘(4) The Chief Stipendiary Magistrate must not make a determination 22 under subsection (2)(a) about the place at which a magistrate is to constitute 23 a Magistrates Court unless the Chief Stipendiary Magistrate— 24</p> <p style="padding-left: 20px;">(a) first— 25</p> <p style="padding-left: 40px;">(i) consults with the magistrate; and 26</p>
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- (ii) gives the magistrate written notice of the proposed maximum period that the magistrate is to constitute a Magistrates Court at the place; and 1
2
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- (b) has sufficient and reasonable regard to the magistrate’s personal circumstances and all other relevant considerations. 4
5
- ‘(5) The Chief Stipendiary Magistrate must give a magistrate written notice of a determination under subsection (2)(a) stating— 6
7
- (a) the place the magistrate is to constitute a Magistrates Court; and 8
- (b) the period the magistrate is to constitute the Magistrates Court at the place; and 9
10
- (c) the reasons for the determination. 11
- ‘(6) However, subsection (4) does not apply if— 12
- (a) because of urgent circumstances, the Chief Stipendiary Magistrate makes a determination (a “**temporary determination**”) under subsection (2)(a) about the place at which a magistrate is to constitute a Magistrates Court; and 13
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- (b) under the temporary determination, the magistrate is to constitute a Magistrates Court at the place for no longer than 3 months. 17
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- ‘(7) To remove doubt, it is declared that subsection (4) does not affect a condition of appointment or agreement under section 5(3) or (4). 19
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- ‘(8) The Chief Stipendiary Magistrate may discipline by way of reprimand a magistrate who, to the Chief Stipendiary Magistrate’s satisfaction— 21
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23
- (a) is seriously incompetent or inefficient in the discharge of the administrative duties of office; or 24
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- (b) is seriously negligent, careless or indolent in the discharge of the administrative duties of office; or 26
27
- (c) is guilty of misconduct; or 28
- (d) is absent from duty without leave or reasonable excuse; or 29

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- (e) wilfully fails to comply with a reasonable direction given by the Chief Stipendiary Magistrate or a magistrate authorised to give the direction; or 1
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- (f) is guilty of conduct unbecoming a magistrate.’. 4

Insertion of new ss 10A to 10I 5

Clause **6.** After section 10— 6
insert— 7

‘Establishment of judicial committee 8

‘10A. A judicial committee (the “**committee**”) is established. 9

‘Function of judicial committee 10

‘10B. The committee’s function is to review a reviewable determination on receipt of a written request from a magistrate aggrieved by the determination. 11
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‘Composition of committee 14

‘10C.(1) The members of the committee for each review are— 15

- (a) the Chief Justice or a judge of the Supreme Court nominated by the Chief Justice; and 16
17
- (b) the Chief Judge or a judge of the District Court nominated by the Chief Judge; and 18
19
- (c) a judge of either the Supreme Court or the District Court nominated by the Chief Justice. 20
21

‘(2) The committee may be constituted for more than 1 review at any time with the same or different membership for each review. 22
23

‘Request for review 24

‘10D.(1) A magistrate aggrieved by a reviewable determination may request the committee to review the determination. 25
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‘(2) The request must be given to the committee in writing within 14 days after the Chief Stipendiary Magistrate gives written notice of the reviewable determination to the magistrate.

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‘Powers of committee on review

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‘10E.(1) The committee must consider the merits of the reviewable determination and either affirm it or substitute its own different determination.

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‘(2) If the committee makes its own determination, that determination has effect.

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‘Procedure

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‘10F.(1) The committee has full and unfettered discretion to determine its own procedure when conducting a review.

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‘(2) When conducting a review, the committee is not bound—

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(a) by the rules of evidence; or

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(b) to conduct any oral or public hearing; or

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(c) to permit a party to the review to be legally represented.

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‘(3) The committee may conduct a review solely on the basis of the written materials it considers appropriate.

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‘(4) The Chief Justice may issue directions for the procedure for a review.

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‘Stay of operation and implementation of determination pending review

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‘10G.(1) 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 the reviewable determination, requests the committee to review the determination.

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‘(2) The stay is effective from the time the magistrate gives the Chief Stipendiary Magistrate a copy of the request under section 10H.

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‘Magistrate to give Chief Stipendiary Magistrate notice of application	1
‘10H. A magistrate who requests a review under section 10D is to give a copy of the request to the Chief Stipendiary Magistrate as soon as possible after requesting the review.	2 3 4
‘No further review	5
‘10I.(1) A determination made under section 10E—	6
(a) is final and conclusive; and	7
(b) can not be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the <i>Judicial Review Act 1991</i> or otherwise whether by the Supreme Court, another court, a tribunal or another entity; and	8 9 10 11
(c) is not subject to a writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.	12 13
‘(2) In this section—	14
“determination” includes—	15
(a) conduct engaged in to make a determination; and	16
(b) conduct related to making a determination; and	17
(c) failure to make a determination.’.	18
Insertion of new s 18A	19
Clause 7. After section 18—	20
<i>insert—</i>	21
‘Magistrate may request transfer determination	22
‘18A.(1) This section applies if a magistrate has constituted a Magistrates Court at a place for at least—	23 24
(a) for a magistrate appointed under section 5(3) or given a notice under section 10(5)—the period stated in the appointment or notice; or	25 26 27

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(b) for a magistrate who constitutes a Magistrates Court at a place for a period agreed under section 5(4)—the period agreed; or 1
2

(c) for a magistrate who constitutes a Magistrates Court at a place at the commencement of this section—5 years. 3
4

‘(2) The magistrate may request the Chief Stipendiary Magistrate to determine under section 10(2)(a) that the magistrate is to constitute a Magistrates Court at another place. 5
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‘(3) Within 28 days of receiving the request, the Chief Stipendiary Magistrate must— 8
9

(a) agree to make the determination; or 10

(b) refuse to make the determination. 11

‘(4) If the Chief Stipendiary Magistrate refuses to make the determination, the Chief Stipendiary Magistrate must give written notice to the magistrate within 14 days of the refusal. 12
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14

‘(5) The notice must state the reasons for refusing to make the determination. 15
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‘(6) To remove doubt, it is declared that for subsection (1)(c) the period that a magistrate constitutes a Magistrates Court at a place includes any period that the magistrate has constituted the court at the place before the commencement of this section.’ 17
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Insertion of new s 24 21

Clause **8.** After section 23— 22

insert— 23

‘Transitional provision for Stipendiary Magistrates and Other Acts Amendment Act 1999 24
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‘**24.(1)** This section applies to a reviewable determination made under section 10(2)(a) between 31 March 1999 and the commencement of section 6 of the *Stipendiary Magistrates and Other Acts Amendment Act 1999* (the “**amending Act**”). 26
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- ‘(2) A magistrate aggrieved by the determination may request a review under section 10D as if the determination had been made after the commencement of section 6 of the amending Act. 1
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- ‘(3) The request must be given to the committee within 14 days of the commencement of this section. 4
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- ‘(4) If a magistrate requests a review under subsection (2), the magistrate may not— 6
7
- (a) seek a review of the determination under the *Judicial Review Act 1991* or any other Act; or 8
9
 - (b) challenge or appeal against the determination or ask for it to be reviewed, quashed, set aside, or called in question in another way before the Supreme Court, another court, a tribunal or other entity. 10
11
12
- ‘(5) If a magistrate requests a review under subsection (2), after starting a proceeding mentioned in subsection (4)(a) or (b), that proceeding is terminated. 13
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- ‘(6) This section expires 1 year after it commences.’. 16

PART 3—AMENDMENT OF FREEDOM OF INFORMATION ACT 1992 17
18

Act amended in pt 3 19

Clause 9. This part amends the *Freedom of Information Act 1992*. 20

Amendment of s 11 (Act not to apply to certain bodies etc.) 21

Clause 10. Section 11(1)(g)— 22

omit, insert— 23

‘(g) the judicial committee established under the *Stipendiary Magistrates Act 1991*, section 10A; or’. 24
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**PART 4—AMENDMENT OF JUDICIAL REVIEW ACT
1991**

	Act amended in pt 4	1 2 3
Clause	11. This part amends the <i>Judicial Review Act 1991</i> .	4
	Amendment of sch 1 (Operation of other laws)	5
Clause	12. Schedule 1, part 2— <i>insert—</i>	6 7
	‘5. <i>Stipendiary Magistrates Act 1991</i> , sections 5(5), 10(2)(a), 10E and 18A(3)(b)’.	8 9