



Magistrates Act 1991

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Queensland

Magistrates Act 1991

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Magistrates Act 1991

An Act relating to the offices of magistrates and judicial registrars, their independence, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Magistrates Act 1991*.

2 Commencement

- (1) Section 55 commences immediately after the commencement of section 111 of the *Supreme Court of Queensland Act 1991*.
- (2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

3 Definitions

In this Act—

acting magistrate means a person appointed to act as a magistrate under section 6(1).

acting period, in relation to an acting magistrate, means each part of the period of the person's appointment as an acting magistrate when the person acts as a magistrate as provided under section 6(6).

advisory committee means the court governance advisory committee established under section 15.

application for review means an application for review of a transfer decision made under section 33.

carry out, in relation to the duties of office of a magistrate, includes being present in court or chambers for the purposes of carrying out the duties of office of a magistrate.

Chief Judge means the Chief Judge of the District Court.

Chief Justice means the Chief Justice of Queensland.

clerk of the court means a clerk of the court within the meaning of the *Justices Act 1886*.

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 659 applies to the indictable offence.

temporary transfer decision means a transfer decision to which section 30 applies.

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

transfer policy see section 21.

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.

Part 2 **Appointment, jurisdiction and powers**

4 Qualifications for appointment of magistrates

- (1) A person who has not attained the age of 70 is qualified to be appointed as a magistrate if the person is—
 - (a) a barrister or solicitor of the Supreme Court; or
 - (b) a barrister, solicitor, barrister and solicitor or legal practitioner of—
 - (i) the Supreme Court of another State or a Territory;
or
 - (ii) the High Court;of at least 5 years standing.
- (2) For the purposes of subsection (1), a person who—
 - (a) immediately before the commencement of this section, was qualified for admission as a barrister or solicitor of the Supreme Court; and
 - (b) is admitted as a barrister or solicitor; and
 - (c) immediately before the commencement of this section was employed in a Magistrates Courts Office;is taken to have been a barrister or solicitor from when the person became qualified.

5 Appointment of magistrates

- (1) The Governor in Council may appoint as many magistrates as are necessary for transacting the business of the Magistrates Courts.
- (2) Before making a recommendation to the Governor in Council about the appointment of a magistrate, the Minister must first consult with the Chief Magistrate.

- (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.
- (4) However, the Chief 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 a period mentioned in the subsection ends, the Chief Magistrate may, for good reason directly related 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.
- (7) The Governor in Council may appoint 1 or more magistrates as a Deputy Chief Magistrate.
- (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.

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- (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.
 - (11) A magistrate is to be appointed under this Act, and not under the *Public Service Act 2008*.

5A Appointment of acting Deputy Chief Magistrate

- (1) This section applies if—
 - (a) a Deputy Chief Magistrate’s position is vacant; or
 - (b) a Deputy Chief Magistrate is not available to perform the functions of a Deputy Chief Magistrate, because of absence or another reason.
- (2) The Chief Magistrate may appoint a magistrate to act as a Deputy Chief Magistrate.
- (3) The instrument of appointment must state the period of the appointment.
- (4) The period of appointment must not be longer than 6 months.
- (5) However, the appointment may be renewed at any time.
- (6) In this section—

magistrate does not include a person who is acting as a magistrate.

6 Appointment of acting magistrates

- (1) The Governor in Council may appoint any of the following persons to act as a magistrate—
 - (a) a clerk of the court;
 - (b) a person qualified to be appointed as a magistrate;

- (c) a person who is, or has been, a judge or magistrate of a court of another State or Territory;
 - (d) a person who is, or has been, a judge of a federal court or a federal magistrate;
 - (e) a Supreme Court judge, if the Chief Justice consents;
 - (f) a District Court judge, if the Chief Judge consents;
 - (g) a retired magistrate.
- (2) 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) Unless the Minister is satisfied there are exceptional circumstances, the Minister may recommend that a clerk of the court be appointed to act as a magistrate only if the person is qualified to be appointed as a magistrate under section 4.
- (4) The appointment may be for a specified period or for a specified matter.
- (5) An appointment under subsection (1)(g) must be for a specified period ending not later than the day the retired magistrate attains the age of 75.
- (6) A person who is appointed to act as a magistrate for a specified period, or a person to whom section 58 applies, acts as a magistrate only when directed by the Chief Magistrate to carry out the duties of office of a magistrate during the person's period of appointment.
- (7) The Chief Magistrate may direct the person to carry out the duties of office of a magistrate on a full-time basis, part-time basis or from time to time as directed by the Chief Magistrate.
- (8) For the purpose of the person acting as a magistrate—
- (a) this Act and other Acts apply to the person as if the person were a magistrate; and
 - (b) the person has all the powers and functions of a magistrate.

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- (9) For the *Judicial Remuneration Act 2007*, section 28, the person holds judicial office only during the acting period.
- (10) A person who has acted as a magistrate may constitute a Magistrates Court at a place directed by the Chief Magistrate to give judgment in, or otherwise complete, a proceeding heard by the person while acting as a magistrate, despite the fact that the person is no longer a magistrate.
- (11) In this section—
- retired magistrate*** means a person who—
- (a) ceases to be a magistrate under section 42(a), (b) or (d); and
 - (b) has not attained the age of 75.

7 Acting magistrates who are clerks of the court

- (1) This section applies if a clerk of the court is appointed to act as a magistrate.
- (2) The *Public Service Act 2008* does not apply to the clerk while the clerk is acting as a magistrate.
- (3) The clerk retains all rights that have accrued to the clerk because of the clerk's employment, or that would accrue in the future to the clerk because of that employment, as if service acting as a magistrate were a continuation of service as a clerk of the court.

8 Jurisdiction and powers of magistrates

A magistrate may exercise, throughout the State, all the jurisdiction, powers and functions conferred on a magistrate, or on 2 justices, by or under any law of the State.

9 Oaths to be taken by magistrates

- (1) A person appointed under section 5 or 6 must not exercise any powers or functions of a magistrate unless the person has—

- (a) taken and subscribed the oath prescribed by the regulations or, if not so prescribed, by any other Act; or
 - (b) made and subscribed an affirmation in the form of that oath.
- (2) An oath or affirmation referred to in subsection (1) may be taken or made before, and may be administered and received by—
- (a) a Supreme Court judge; or
 - (b) a District Court judge; or
 - (c) a magistrate.
- (3) A magistrate who does not, within 3 months after appointment as a magistrate, take the oath or make the affirmation referred to in subsection (1) ceases to hold office as a magistrate when that period ends.
- (4) A magistrate who complies with this section is not required to take an oath or make an affirmation prescribed under any other Act in relation to justices or magistrates.

Part 3 Chief Magistrate

10 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.

11 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 61 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) The Chief Magistrate may exercise, throughout the State, all the jurisdiction, powers and functions conferred on a magistrate, by or under any law of the State.
- (6) 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.
- (7) Sections 42, 43, 44, 45, 46 and 47 do not apply to the Chief Magistrate.
- (8) 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.

12 Functions of Chief Magistrate

- (1) The Chief Magistrate is responsible for ensuring the orderly and expeditious exercise of the jurisdiction and powers of Magistrates Courts.

Note—

See also the *Childrens Court Act 1992*, section 8A(2).

- (2) Subject to this Act and the *Childrens Court Act 1992* and to such consultation with magistrates as the Chief Magistrate considers appropriate and practicable, the Chief Magistrate has power to do all things necessary or convenient to be done for ensuring the orderly and expeditious exercise of the jurisdiction and powers of Magistrates Courts, and of the Childrens Court when constituted by a Childrens Court magistrate, magistrate or justices, including, for example—
- (a) deciding the magistrates who are to constitute the Magistrates Courts at particular places appointed under the *Justices Act 1886*, section 22B(1)(c) or who are to perform particular functions; and
 - (aa) deciding, for the *Childrens Court Act 1992*, section 5(3)(b) or (c), the magistrates or justices who are to constitute the Childrens Court at particular places and times under that Act; and
 - (b) giving directions about the practices and procedures of Magistrates Courts; and
 - (ba) under the *Childrens Court Act 1992*, section 8(4), issuing directions about the procedure of the Childrens Court when constituted by a Childrens Court magistrate, magistrate or justices; and
 - (c) deciding the magistrates who are to exercise the jurisdiction and powers of Magistrates Courts in particular matters or particular classes of matters; and
 - (d) allocating the functions to be exercised by particular magistrates and deciding when and where the functions are to be exercised; and
 - (e) deciding the days, places and times for constituting Magistrates Courts; and
 - (f) nominating a magistrate to be a supervising magistrate or a coordinating magistrate for the purpose of allocating the work of Magistrates Courts; and
 - (g) nominating a Deputy Chief Magistrate to act as the Chief Magistrate under section 14(b); and

- (h) giving directions to an acting magistrate or acting judicial registrar about when the person is to carry out the duties of office of a magistrate or judicial registrar during the person's period of appointment.
- (4) Also, the Chief Magistrate is responsible for directing magistrates to undertake professional development and continuing education and training.
- (5) Subsection (2) does not authorise the Chief Magistrate to promote a magistrate.
- (6) The Chief Magistrate may delegate the Chief Magistrate's powers under subsection (2)(c), (d), (e) or (h) to—
 - (a) a Deputy Chief Magistrate; or
 - (b) another magistrate appointed on a full-time basis.
- (7) In subsections (2)(a), (c) and (d) and (4), a reference to magistrates includes a reference to judicial registrars.
- (8) In subsection (2)(a), (c) and (d), a reference to magistrates includes a reference to justices of the peace constituting a Magistrates Court.

Part 4 Deputy Chief Magistrate

13 Deputy Chief Magistrate

- (1) A Deputy Chief Magistrate holds office as Deputy Chief Magistrate while the Deputy Chief Magistrate is a magistrate.
- (2) With the approval of the Governor in Council, a Deputy Chief Magistrate may resign office as Deputy Chief Magistrate but remain as a magistrate.

14 Functions of Deputy Chief Magistrate

A Deputy Chief Magistrate—

- (a) in addition to exercising functions as a magistrate, must exercise such other functions as the Chief Magistrate directs; and
- (b) if the magistrate is nominated under section 12(2)(g), may act as the Chief Magistrate during—
 - (i) a vacancy in the office; or
 - (ii) any period when the Chief Magistrate is absent from duty or from the State or is, for any other reason, unable to perform the duties of the office.

Part 5

Court governance advisory committee

15 Establishment of court governance advisory committee

A court governance advisory committee (*advisory committee*) is established.

16 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 23 having regard to the transfer policy;
- (c) to consider and make recommendations about other matters affecting Magistrates Courts referred to it by the Chief Magistrate.

17 Composition of advisory committee

- (1) The advisory committee has the following members—

- (a) the relevant Deputy Chief Magistrate;
 - (b) the State Coroner;
 - (c) 3 temporary members.
- (2) The relevant Deputy Chief Magistrate is the chairperson of the advisory committee.
 - (3) The temporary members are magistrates selected by the Chief Magistrate in consultation with the chairperson and the State Coroner.
 - (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—

relevant Deputy Chief Magistrate means—

- (a) if there is only 1 Deputy Chief Magistrate—the Deputy Chief Magistrate; or
- (b) if there is more than 1 Deputy Chief Magistrate—a Deputy Chief Magistrate selected by the Chief Magistrate.

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.

18 Quorum

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

19 Presiding at meetings

- (1) The chairperson presides at all meetings of the advisory committee at which the deputy is present.
- (2) If the chairperson is absent, the member chosen by the members present is to preside.

20 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

21 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, Ipswich, Maroochydore and Redcliffe Magistrates Courts districts.

22 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 6 **Transfer recommendations and transfer decisions**

Division 1 **Referral**

23 **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 12(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.
- (5) The Chief Magistrate may refer to the advisory committee, for consideration and a transfer recommendation, the question of which magistrate is to constitute a Magistrates Court at a place where the person who was the magistrate—
 - (a) has ceased to be a magistrate under section 42; or

- (b) has been the subject of a transfer decision under section 12(2)(a) requiring the magistrate to constitute a Magistrates Court at another place; or
- (c) has been the subject of an agreement under section 5(4);
or
- (d) has been the subject of a decision under section 5(5).

Division 2 Role of advisory committee

24 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.

25 Advisory committee to consider representations

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

26 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

27 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.

28 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.

29 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

30 **Temporary transfer decisions about constituting Magistrates Courts**

- (1) This section applies if—
- (a) the Chief Magistrate makes a transfer decision under section 12(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.

Example of a decision under subsection (1)—

The Chief Magistrate decides that a magistrate is to constitute a Magistrates Court on a temporary basis, or on circuit, for a period of 2 weeks.

- (2) The Chief Magistrate is not required to have regard to the transfer policy when making the decision and sections 23, 29 and 33 do not apply to the decision.

Editor's note—

sections 23 (Decisions about constituting Magistrates Courts), 29 (Chief Magistrate to advise magistrate of transfer decision) and 33 (Supreme Court judge may review transfer decisions)

- (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 7 Review of transfer decisions

Division 1 Transfer decision not differing from transfer recommendation

31 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

32 Application

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

33 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.

34 Form of application for review

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

35 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 29(1);
 - (b) a copy of the Chief Magistrate's reason given to the applicant by the Chief Magistrate under section 29(2);
 - (c) anything else the applicant intends to rely on to support the application.

36 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.

37 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 35.

38 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.

39 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.

40 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.

Part 8 Functions and tenure of office

41 Functions of magistrates generally

- (1) Every magistrate must comply with every reasonable direction or requirement given or made to the magistrate by the Chief Magistrate or by another magistrate authorised in that behalf by the Chief Magistrate.
- (2) A magistrate appointed on a full-time basis must devote the whole of his or her time to the duties of the office of a magistrate.
- (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.

42 Tenure of office

A person ceases to be a magistrate if—

- (a) the person resigns by written notice given to the Minister; or
- (b) having attained 55, the person elects to retire by written notice given to the Minister; or
- (c) the person is removed from office; or
- (d) the person attains 70; or
- (e) the person ceases to hold office under section 9(3).

43 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 office 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.

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- (5) A suspension under subsection (1) lapses if any of the following happens—
 - (a) the Supreme Court decides under section 46 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 46.
 - (10) In this section—

duties, of office, includes administrative duties of office.

44 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 46 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;

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- (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.

Note—

For indictments under a law of the State, see—

- (a) the Criminal Code, section 1, definition *indictment*; and
- (b) the *Acts Interpretation Act 1954*, schedule 1, definition *indictment*.

45 Remuneration during suspension and after conviction

- (1) A magistrate is entitled to remuneration during a period of suspension under section 43(1) or section 44(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 46 that there is no proper cause to remove the magistrate.
- (4) Subsection (2) has effect despite section 47 and the *Judicial Remuneration Act 2007*.

46 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 43(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 44(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 44(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 43(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.

Part 9 General

47 Terms and conditions of employment—full-time and part-time magistrates

- (1) A magistrate is to be paid—
 - (a) salary provided for under the *Judicial Remuneration Act 2007*; and

- (b) such allowances as are determined by the Governor in Council.
- (2) 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.
- (3) A magistrate may be promoted only in accordance with a decision of the Governor in Council.
- (4) A magistrate holds office on such terms and conditions not provided for by this Act as are decided by the Governor in Council.
- (5) Employment as a magistrate is not subject to any industrial instrument or any decision or rule of an industrial tribunal.

47A Terms and conditions of employment—acting magistrates

- (1) An acting magistrate, including an acting magistrate who is a clerk of court, is to be paid—
 - (a) for the acting period, the appropriate proportion of the salary of a magistrate provided for under the *Judicial Remuneration Act 2007*; and
 - (b) the allowances decided by the Governor in Council.
- (2) The entitlement to leave of an acting magistrate for the acting period, including an acting magistrate who is a clerk of court, is the appropriate proportion of the leave to which a magistrate appointed on a full-time basis is entitled.
- (3) If an acting magistrate, other than an acting magistrate who is a clerk of court, has a leave entitlement at the end of an acting period, the acting magistrate is to be paid an amount for the entitlement at the end of the acting period.

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- (4) An acting magistrate holds office on the terms and conditions not provided for by this Act that are decided by the Governor in Council.
 - (5) Employment as an acting magistrate is not subject to any industrial instrument or any decision or rule of an industrial tribunal.

48 Preservation of rights

- (1) This section applies if an officer of the public service is appointed as a magistrate.
- (2) The person retains all rights that have accrued to the person because of employment as such an officer, or that would accrue in the future to the person because of that employment, as if service as a magistrate were a continuation of service as an officer of the public service.
- (3) If the person ceases to be a magistrate on being appointed to an office of the public service, the person's service as magistrate is to be regarded as service of a like nature in the public service for the purpose of deciding the person's rights as an officer of the public service.

49 Continuation of jurisdiction on retirement

A person who ceases to be a magistrate for any reason (other than death or removal from office) is taken to continue to be a magistrate so far as it is necessary to give a decision in a matter that is partly heard or standing for the decision of the magistrate.

49A Application if original magistrate unable to continue

- (1) This section applies if—
 - (a) a magistrate (the *original magistrate*) starts the hearing of a civil or criminal proceeding (including an appeal); and

- (b) before the proceeding has been determined, the original magistrate dies or resigns as a magistrate, or is certified as incapable of sitting.
- (2) For subsection (1), a magistrate is certified as incapable of sitting if the Chief Magistrate or the Deputy Chief Magistrate has issued a certificate (an *incapacity certificate*) stating the magistrate is incapable of sitting, whether temporarily or otherwise.
 - (3) A party to the proceeding may apply to the court for directions as to the determination of the proceeding.
 - (4) On its own initiative or on an application under this section, the court may—
 - (a) if there is an incapacity certificate stating the original magistrate is temporarily incapable of sitting—
 - (i) adjourn the proceeding to enable the original magistrate to complete the hearing and determination of the proceeding; or
 - (ii) order that the proceeding be heard and determined afresh; or
 - (b) in any other case—
 - (i) order that the proceeding be heard and determined afresh; or
 - (ii) make any other order it considers appropriate.
 - (5) If the court orders that a proceeding be heard and determined afresh, the court may make an order it considers appropriate to facilitate the hearing and determination.
 - (6) Without limiting the orders that may be made under subsection (5), the court may make an order that any order, or ruling or finding made by the original magistrate, be set aside.
 - (7) The court hearing and determining a proceeding afresh because of an order under this section may make the order it considers appropriate about the costs of the first hearing.

50 Judicial notice of office

All courts and persons acting judicially must take judicial notice of the signature in relation to a magisterial act of a person followed by—

- (a) Chief Magistrate; or
- (b) Deputy Chief Magistrate; or
- (c) magistrate; or
- (d) acting magistrate;

and that the person held the relevant office.

51 Protection for administrative acts

A magistrate has, in the performance or exercise of an administrative function or power conferred on the magistrate under an Act, the same protection and immunity as a magistrate has in a judicial proceeding in a Magistrates Court.

52 Regulation-making power

The Governor in Council may make regulations for the purposes of this Act.

Part 9A Provisions concerning judicial registrars

Division 1 Appointment

53 Appointment of judicial registrars

- (1) The Governor in Council may appoint judicial registrars.

- (2) Before making a recommendation to the Governor in Council about the appointment of a judicial registrar, the Attorney-General must first consult with the Chief Magistrate.
- (3) A person may be appointed as a judicial registrar only if the person is eligible to be appointed to act as a magistrate under section 6(1).
- (4) The appointment may be for a specified period.
- (5) A person's appointment as a judicial registrar 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.
- (6) A judicial registrar, although appointed on a full-time basis, may, if the Attorney-General agrees in writing, exercise the jurisdiction, powers and functions of a judicial registrar on a part-time basis.
- (7) A judicial registrar, although appointed on a part-time basis, may, if the Attorney-General agrees in writing, exercise the jurisdiction, powers and functions of a judicial registrar on a full-time basis.

53A Appointment of acting judicial registrars

- (1) The Governor in Council may appoint a person to act as a judicial registrar.
- (2) Before making a recommendation to the Governor in Council about the appointment of a person to act as a judicial registrar, the Attorney-General must first consult with the Chief Magistrate.
- (3) A person may be appointed to act as a judicial registrar only if the person is eligible to be appointed to act as a magistrate under section 6(1).
- (4) The appointment may be for a specified period or for a specified matter.
- (5) A person who is appointed to act as a judicial registrar for a specified period acts as a judicial registrar only when directed

by the Chief Magistrate to carry out the duties of office of a judicial registrar during the person's period of appointment.

- (6) The Chief Magistrate may direct the person to carry out the duties of a judicial registrar on a full-time basis, part-time basis or from time to time.
- (7) For the purpose of the person acting as a judicial registrar—
 - (a) this Act and other Acts apply to the person as if the person were a judicial registrar; and
 - (b) the person has all the powers and functions of a judicial registrar; and
 - (c) the person is to be paid the salary and allowances decided by the Governor in Council, not being less than the salary and allowances paid to a judicial registrar.

53B Acting judicial registrars who are clerks of the court

- (1) This section applies if a clerk of the court is appointed to act as a judicial registrar.
- (2) The *Public Service Act 2008* does not apply to the clerk while the clerk is acting as a judicial registrar.
- (3) The clerk retains all rights that have accrued to the clerk because of the clerk's employment, or that would accrue in the future to the clerk because of that employment, as if service acting as a judicial registrar were a continuation of service as a clerk of the court.

53C Conditions of appointment

- (1) A judicial registrar is to be appointed under this Act and not under the *Public Service Act 2008*.
- (2) A judicial registrar is to be paid the salary and allowances decided by the Governor in Council.
- (3) A judicial registrar holds office on the conditions not provided for by this Act that are decided by the Governor in Council.

[s 53D]

- (4) The office of judicial registrar is not subject to any industrial award or other industrial instrument or any decision or rule of an industrial tribunal.
- (5) When a judicial registrar is appointed, the judicial registrar's salary, allowances and conditions must be published in the gazette.
- (6) A judicial registrar's salary and allowances may not be reduced and any change to the judicial registrar's salary, allowances or conditions must be published in the gazette.

53D Preservation of rights

- (1) This section applies if an employee of a prescribed authority (the *relevant prescribed authority*) is appointed as a judicial registrar.
- (2) The person retains all rights that have accrued to the person because of employment by any prescribed authority, or that would accrue in the future to the person because of that employment, as if service as a judicial registrar were a continuation of service as an employee of the relevant prescribed authority.
- (3) If the person stops being a judicial registrar for a reason other than a reason mentioned in section 53N(1)(d), the person is entitled to be appointed to a position in the relevant prescribed authority at the classification level of the substantive position in which the person was employed at the relevant prescribed authority immediately before the person was appointed as a judicial registrar.
- (4) If the person stops being a judicial registrar because the person is appointed to a position in a prescribed authority, the person's service as judicial registrar is to be regarded as service of a like nature with the prescribed authority for deciding the person's rights as an employee of the prescribed authority.
- (5) In this section—

classification level, at a prescribed authority, includes another level, however described, reflecting seniority at the prescribed authority.

employee, of a prescribed authority, means—

- (a) a public service officer employed by the prescribed authority; or
- (b) a police officer employed by the prescribed authority; or
- (c) a person, other than a person mentioned in paragraph (a) or (b) or a person employed on a temporary or casual basis, employed by the prescribed authority.

prescribed authority means—

- (a) a department; or
- (b) the Crime and Corruption Commission; or
- (c) Legal Aid Queensland; or
- (d) the police service; or
- (e) another entity, whether or not incorporated, that is declared by regulation to be a prescribed authority.

Division 2 Role

53E Officer of the court

A judicial registrar is an officer of the Magistrates Courts.

Note—

See the *Evidence Act 1977*, section 42 (Signatures of holders of public offices etc. to be judicially noticed).

53F Oath or affirmation

- (1) A person appointed under section 53 or 53A must not exercise any powers, or perform any functions, of a judicial registrar unless the person has taken the oath, or made the affirmation, prescribed under the regulation for this section.

- (2) The oath or the affirmation may be taken or made before, and may be administered and received by, a magistrate.
- (3) A person who does not, within 3 months after appointment as a judicial registrar, take the oath or make the affirmation ceases to hold office as a judicial registrar when the period ends.
- (4) A judicial registrar is not required to take an oath or make an affirmation prescribed under any other Act in relation to justices or magistrates.

53G Independence of judicial registrars

A judicial registrar when constituting a Magistrates Court or otherwise exercising a judicial or quasi-judicial power is not subject to direction or control, other than as provided under this Act.

Note—

For example, see section 12 (Functions of Chief Magistrate) and section 53H.

53H Functions of judicial registrars generally

- (1) Every judicial registrar must comply with every reasonable direction given, or requirement made, by the Chief Magistrate or by another magistrate authorised in that behalf by the Chief Magistrate.
- (2) A judicial registrar appointed on a full-time basis must devote the whole of his or her time to the duties of the office of a judicial registrar.
- (3) However, a judicial registrar 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 judicial registrar; and
 - (b) the Governor in Council approves that the judicial registrar hold the office or perform the duties.

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- (4) A judicial registrar 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 judicial registrar; and
 - (b) the Governor in Council approves that the judicial registrar hold the office, perform the duties or engage in the employment.
 - (5) A judicial registrar must not practise as a barrister or solicitor for fee or reward.
 - (6) A judicial registrar must immediately stop holding an office, performing other duties or engaging in other employment if required to do so by the Governor in Council.

53I Power concerning prescribed applications and matters

- (1) A judicial registrar may hear and decide an application prescribed under a practice direction given under section 53J(1).
- (2) For those applications, the judicial registrar—
 - (a) if the application is to a magistrate—is taken to be, and has all the jurisdiction and powers of, a magistrate; or
 - (b) if the application is to a Magistrates Court—constitutes, and may exercise all the jurisdiction and powers of, a Magistrates Court.
- (3) A judicial registrar may also constitute, and exercise all the jurisdiction and powers of, a Magistrates Court for a matter prescribed under a practice direction given under section 53J(2).
- (4) However, a judicial registrar may not exercise any power of a Magistrates Court to punish for contempt.

Note—

See the QCAT Act, section 198A for provisions about a judicial registrar being an adjudicator under that Act.

53J Practice direction

- (1) The Chief Magistrate may give a practice direction prescribing any of the following types of applications as an application that may be heard and decided by a judicial registrar—
- (a) an application that may be made under the *Uniform Civil Procedure Rules 1999* to a magistrate;
 - (b) an application under the *Domestic and Family Violence Protection Act 2012* for—
 - (i) an adjournment of an application for an order under that Act; or
 - (ii) a temporary protection order; or
 - (iii) a domestic violence order or variation of a domestic violence order, the making of which has been consented to, or not opposed, by the parties to a proceeding for a domestic violence order;
 - (c) an application under the *Bail Act 1980*, section 8 if—
 - (i) the application is to grant, enlarge or vary bail for a defendant charged with an offence (other than an offence mentioned in section 16(3) of that Act); and
 - (ii) the complainant, the prosecutor or a person appearing on behalf of the Crown does not oppose the application;
 - (d) an application under the *Bail Act 1980*, section 8 if—
 - (i) the application is to enlarge or vary bail for a defendant charged with an offence mentioned in section 16(3) of that Act; and
 - (ii) the complainant, the prosecutor or a person appearing on behalf of the Crown does not oppose the application.
- (2) The Chief Magistrate may give a practice direction prescribing any of the following types of matters as matters

for which a judicial registrar may constitute, and exercise all the jurisdiction and powers of, a Magistrates Court—

- (a) an examination for which a person is summoned under the Corporations Act, section 596A or 596B;
- (b) a mention of a criminal proceeding.

53K Referring application or matter

- (1) If a judicial registrar considers it would be proper for an application or matter mentioned in section 53I to be dealt with by a Magistrates Court as constituted by a magistrate, the judicial registrar must refer the application or matter to a Magistrates Court as constituted by a magistrate.
- (2) If a judicial registrar is empowered to hear and decide an application mentioned in section 53J(1)(c), (d) or (e) and, after hearing the application, the judicial registrar does not decide to grant it, the judicial registrar must, without deciding the application, refer it to a Magistrates Court as constituted by a magistrate.

53L Decision of judicial registrar taken to be decision of magistrate

If a judicial registrar hears and decides an application under section 53I(1), the judicial registrar's decision is taken to be a decision of a magistrate for the purposes of the following provisions—

- (a) the *Magistrates Courts Act 1921*, sections 45 and 45A;
- (b) the *Domestic and Family Violence Protection Act 2012*, part 5, division 5;
- (c) the *Bail Act 1980*, section 19B(3).

53M Protection and immunity

In performing the functions of a judicial registrar, a judicial registrar has the same protection and immunity as a magistrate performing the functions of a magistrate.

Division 3 Ceasing to hold office

53N Ceasing to be a judicial registrar

- (1) A person ceases to be a judicial registrar if—
 - (a) the person's term of appointment ends; or
 - (b) the person resigns by written notice given to the Attorney-General; or
 - (c) having attained 55, the person elects to retire by written notice given to the Attorney-General; or
 - (d) the person is removed from office; or
 - (e) the person attains 70; or
 - (f) the person ceases to hold office under section 53F(3).
- (2) However, a person who ceases to be a judicial registrar, other than under subsection (1)(d) or (f), is taken to continue to be a judicial registrar to the extent necessary to enable a decision to be given in a matter that is partly heard or standing for the decision of the judicial registrar.

53O Suspension of judicial registrar by Governor in Council

- (1) The Governor in Council may suspend a judicial registrar from office.
- (2) However, a judicial registrar 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 judicial registrar exists.

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- (3) A copy of an application under subsection (2) must be given to the judicial registrar at least 14 days before the application is heard.
 - (4) There is proper cause to remove a judicial registrar from office if the judicial registrar—
 - (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 judicial registrar.
 - (5) A suspension under subsection (1) lapses if any of the following happens—
 - (a) the Supreme Court decides under section 53R that there is no proper cause to remove the judicial registrar;
 - (b) the Governor in Council lifts the suspension.
 - (6) The Attorney-General must give the following notices to the judicial registrar and publish them in the gazette—
 - (a) if the judicial registrar is suspended under subsection (1)—notice of the suspension;
 - (b) if the judicial registrar'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 judicial registrar following suspension.
 - (8) A judicial registrar 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 53R.
 - (10) In this section—

duties, of office, includes administrative duties of office.

53P Suspension of judicial registrar in relation to an indictable offence

- (1) A judicial registrar is suspended from office immediately on the happening of any of the following whether in Queensland or in another State—
 - (a) the judicial registrar is arrested by a police officer on a charge of an indictable offence;
 - (b) the judicial registrar appears before a court or justices as required under a complaint and summons issued by a police officer charging the judicial registrar with an indictable offence;
 - (c) the judicial registrar is present as a defendant before a court and a further charge or an amended charge of an indictable offence is made against the judicial registrar;
Example—

A further charge or an amended charge of an indictable offence may be made against the judicial registrar under the *Justices Act 1886*, section 42(1A).
 - (d) the judicial registrar 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 judicial registrar with an indictable offence.
- (2) A judicial registrar'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 judicial registrar is not convicted of any indictable offence;
 - (b) no charge of an indictable offence is proceeded with.

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- (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 judicial registrar 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 53R that there is no proper cause to remove the judicial registrar.
- (6) The Attorney-General must give the following notices to the judicial registrar and publish them in the gazette—
- (a) if the judicial registrar is suspended under subsection (1)—notice of the suspension;
 - (b) if the judicial registrar'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 judicial registrar 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.

Note—

For indictments under a law of the State, see—

- (a) the Criminal Code, section 1, definition *indictment*; and
- (b) the *Acts Interpretation Act 1954*, schedule 1, definition *indictment*.

53Q Remuneration during suspension and after conviction

- (1) A judicial registrar is entitled to remuneration during a period of suspension under section 53O(1) or section 53P(1) or (2).
- (2) However, but subject to subsection (3), if a judicial registrar is convicted of an indictable offence, the judicial registrar is not entitled to remuneration on and from the day of the conviction.
- (3) A judicial registrar who is convicted of an indictable offence is entitled to remuneration during the period the judicial registrar is subject to the conviction if—
 - (a) the judicial registrar's conviction is quashed on appeal and proceedings for the offence are at an end; or
 - (b) the judicial registrar's conviction is quashed on appeal but a new trial is ordered; or
 - (c) the Supreme Court decides under section 53R that there is no proper cause to remove the judicial registrar.
- (4) Subsection (2) has effect despite section 53C.

53R Removal of judicial registrar from office

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

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- (a) on an application under subsection (2) or (3); or
 - (b) under subsection (5).
- (2) If a judicial registrar is suspended from office under section 53O(1), the Attorney-General must, as soon as practicable, apply to the Supreme Court for a decision whether proper cause exists to remove the judicial registrar.
- (3) If—
- (a) a judicial registrar is suspended from office under section 53P(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 53P(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 judicial registrar.

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 judicial registrar may include the conviction of the judicial registrar of an indictable offence.
- (5) On appeal by a judicial registrar under section 53O(8), the Supreme Court must decide whether proper cause exists to remove the judicial registrar whether or not the Attorney-General has made an application under subsection (2) or (3).
- (6) If a judicial registrar is removed from office, the Attorney-General must publish notice of the judicial registrar's removal in the gazette and give a copy of the notice to the judicial registrar.
- (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.

Part 10 **Transitional and validation provisions**

Division 1 **Transitional provision for Act No. 75 of 1991**

54 **Existing magistrates continue in office**

- (1) A person who immediately before the commencement of this section, is the Chief Stipendiary Magistrate, the Senior Stipendiary Magistrate or a stipendiary magistrate under the *Justices Act 1886* continues in office as Chief Stipendiary Magistrate, Senior Stipendiary Magistrate or stipendiary magistrate, as the case may be, under this Act.
- (2) The salary of a person referred to in subsection (1) immediately before the commencement of this section continues to be the salary of the person under this Act until the salary is determined under the *Judges (Salaries and Allowances) Act 1967*.

Division 2 **Transitional provisions for Justice and Other Legislation (Miscellaneous Provisions) Act 2000**

55 **References to stipendiary magistrate**

In an Act—

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- (a) a reference to the Chief Stipendiary Magistrate is taken to be a reference to the Chief Magistrate; and
 - (b) a reference to a Senior Stipendiary Magistrate is taken to be a reference to a Deputy Chief Magistrate; and
 - (c) a reference to a stipendiary magistrate is taken to be a reference to a magistrate.

56 Change of name of office not to affect office holders

To remove any doubt, it is declared that the change in the name of the office of Chief Stipendiary Magistrate, Senior Stipendiary Magistrate or stipendiary magistrate to Chief Magistrate, Deputy Chief Magistrate or magistrate does not affect the appointment to, or the continuation in, the office of a person holding the office immediately before the commencement of this section.

57 Existing appointments

A person who, immediately before the commencement of this section, holds an appointment as a magistrate under section 5, including a stipendiary magistrate mentioned in section 54, is taken from the commencement to be appointed as a magistrate under section 5.

Division 3 Transitional provision for Act No. 3 of 2003

58 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 4 Transitional provisions for Magistrates Amendment Act 2003

59 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 11 applies to the person.

60 Existing exemptions continue

- (1) This section applies to a magistrate appointed before the commencement of this section whose appointment excluded the operation of section 41(2) as in force immediately before the commencement.
- (2) The exclusion continues to have effect after the commencement despite the repeal of section 41(3) as in force immediately before the commencement.

61 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.

Division 5 Transitional provisions for Justice and Other Legislation Amendment Act 2008, part 20

62 Directions to acting magistrates

- (1) This section applies if—
 - (a) a person held an appointment to act as a magistrate at any time before the commencement of this section; and
 - (b) during the appointment, the Chief Magistrate, or another magistrate acting with the Chief Magistrate's authority, issued directions to the person about when the person was to carry out the duties of office of a magistrate during the person's period of appointment.
- (2) It is declared that—
 - (a) the directions of the Chief Magistrate are, and are taken to have always been, as validly issued as they would be if the amendments made by the *Justice and Other Legislation Amendment Act 2008*, part 20 had been in force when the directions were issued; and
 - (b) the directions of the other magistrate acting with the Chief Magistrate's authority are, and are taken to have always been, as validly issued as if they had been issued by the Chief Magistrate.

63 Remuneration of acting magistrates

- (1) This section applies if a person held an appointment to act as a magistrate at any time before the commencement of this section.
- (2) It is declared that—

- (a) the person's entitlement to remuneration and allowances is, and always has been, limited to an entitlement to remuneration and allowances for the acting period; and
 - (b) the person's entitlement to remuneration and allowances for the acting period is the appropriate proportion of the remuneration and the allowances that were payable, at the time the person held the appointment, to a magistrate appointed on a full-time basis.
- (3) In this section—
- entitlement to remuneration and allowances*, of a person, includes the person's entitlement to leave.

Division 6 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010

64 Continuing operation of practice direction for judicial registrars

- (1) This section applies to—
 - (a) an application that, immediately before the commencement of this section, was in the course of being heard and decided by a judicial registrar under a practice direction given under section 53J(1)(d); or
 - (b) a matter for which, immediately before the commencement of this section, a judicial registrar constituted a Magistrates Court under a practice direction given under section 53J(2)(c).
- (2) The judicial registrar may continue—
 - (a) to hear and decide the application; or
 - (b) to constitute, and exercise all the jurisdiction and powers of, a Magistrates Court for the matter.

Division 7 **Transitional provisions for Justice and Other Legislation Amendment Act 2010**

65 **Acting magistrates**

- (1) This section applies if—
 - (a) a person ceased to be a magistrate under pre-amended section 42(d); and
 - (b) the person has not attained the age of 70.
- (2) The person is taken to be a retired magistrate for section 6(5), definition *retired magistrate* until the person has attained the age of 70.
- (3) In this section—

pre-amended section 42(d) means section 42(d) as in force before its amendment by the *Justice and Other Legislation Amendment Act 2010*.

66 **Tenure of office of particular acting magistrates**

- (1) This section applies if—
 - (a) before the commencement, a retired magistrate was appointed under section 6 to act as a magistrate; and
 - (b) the appointment was in force immediately before the commencement.
- (2) Despite sections 6(3)(a) and 42(d), the appointment does not end only because the appointee attains the age of 70.
- (3) In this section—

commencement means the commencement of the *Justice and Other Legislation Amendment Act 2010*, section 148.

Division 8 **Validation provisions for particular magistrates and judicial registrars**

67 **Definition for div 8**

In this division—

repealed regulation means the repealed *Magistrates Regulation 2003*.

68 **Oaths or affirmations taken or made by magistrates**

(1) This section applies if—

(a) a person (the *magistrate*) was appointed under section 5 or 6; and

(b) at any time during the period from and including 12 April 2013 to and including 24 April 2015 the magistrate—

(i) took and subscribed the oath under section 3(1) of the repealed regulation (the *2003 oath*); or

(ii) made and subscribed the affirmation under section 3(2) of the repealed regulation (the *2003 affirmation*); and

(c) the 2003 oath was taken, or the 2003 affirmation was made—

(i) in the way permitted for the taking of oaths, or the making of affirmations, under section 9(2); and

(ii) within 3 months after the appointment of the magistrate.

(2) It is declared that—

(a) if subsection (1)(b)(i) applies—the magistrate's act of taking and subscribing the 2003 oath is, was and always has been, as effective for all purposes as it would be if the magistrate had taken and subscribed the oath prescribed for section 9(1) by the *Magistrates*

Regulation 2013 (the **2013 oath**) instead of the 2003 oath; or

- (b) if subsection (1)(b)(ii) applies—the magistrate’s act of making and subscribing the 2003 affirmation is, was and always has been, as effective for all purposes as it would be if the magistrate had made and subscribed the affirmation prescribed for section 9(1) by the *Magistrates Regulation 2013* (the **2013 affirmation**) instead of the 2003 affirmation.
- (3) It is also declared that—
- (a) a relevant exercise of jurisdiction by the magistrate is, or was and always has been, as valid as it would be if the magistrate had—
- (i) taken and subscribed the 2013 oath instead of the 2003 oath; or
- (ii) made and subscribed the 2013 affirmation instead of the 2003 affirmation; and
- (b) the magistrate did not, and does not, cease to hold office as a magistrate under section 9(3), or cease to be a magistrate under section 42(e), only because the magistrate did not take the 2013 oath or make the 2013 affirmation within the period prescribed by section 9(3).
- (4) In this section—
- relevant exercise of jurisdiction***, by a magistrate—
- (a) means an exercise of the jurisdiction, powers and functions conferred on a magistrate, or on 2 justices, by or under any law of the State (including the making of any decision or order), by the magistrate, after the magistrate took the 2003 oath or made the 2003 affirmation; and
- (b) includes a relevant exercise of jurisdiction after the commencement.

69 Failure of magistrate to take oath or make affirmation

- (1) This section applies if—
 - (a) a person (the *magistrate*) was appointed under section 5 or 6 before the commencement; and
 - (b) the magistrate did not take and subscribe an oath or make and subscribe an affirmation in relation to the appointment.
- (2) It is declared that, despite section 9—
 - (a) a relevant exercise of jurisdiction by the magistrate is, or was and always has been, as valid as it would be if the magistrate had, on the day the magistrate was appointed, taken, or made, and subscribed a prescribed oath; and
 - (b) the magistrate did not, and does not, cease to hold office as a magistrate under section 9(3), or cease to be a magistrate under section 42(e), only because the magistrate did not take, or make, a prescribed oath within the period prescribed by section 9(3).
- (3) However, if the magistrate does not, within 3 months after the commencement, take the 2013 oath or make the 2013 affirmation, the magistrate ceases to hold office as, and be, a magistrate when that period ends.
- (4) In this section—

2013 affirmation see section 68(2)(b).

2013 oath see section 68(2)(a).

prescribed oath, for a magistrate, means an oath or affirmation in a form and taken or made in a way sufficient to comply with section 9 at the time of the magistrate's appointment.

relevant exercise of jurisdiction, by a magistrate, means an exercise of the jurisdiction, powers and functions conferred on a magistrate, or on 2 justices, by or under any law of the State (including the making of any decision or order), by the magistrate, during the relevant period.

relevant period means the period from and including the day the magistrate was appointed to and including—

- (a) makes the 2013 affirmation within the period prescribed by subsection (3)—the day on which the magistrate takes the 2013 oath or makes the 2013 affirmation; or
- (b) if the magistrate does not or can not take the 2013 oath or make the 2013 affirmation within the period prescribed by subsection (3)—the day on which the magistrate ceased or ceases to hold office as a magistrate or be a magistrate.

70 Oaths or affirmations taken or made by judicial registrars

- (1) This section applies if—
 - (a) a person (the ***judicial registrar***) was appointed under section 53 or 53A; and
 - (b) at any time during the period from and including 12 April 2013 to and including 24 April 2015 the judicial registrar—
 - (i) took the oath under section 4(1) of the repealed regulation (the ***2003 oath***); or
 - (ii) made the affirmation under section 4(2) of the repealed regulation (the ***2003 affirmation***); and
 - (c) the 2003 oath was taken, or the 2003 affirmation was made—
 - (i) in the way permitted for the taking of oaths, or the making of affirmations, under section 53F(2); and
 - (ii) within 3 months after the appointment of the judicial registrar.
- (2) It is declared that—
 - (a) if subsection (1)(b)(i) applies—the judicial registrar’s act of taking the 2003 oath is, was and always has been, as effective for all purposes as it would be if the judicial registrar had taken the oath prescribed for

section 53F(1) by the Magistrates Regulation 2013 (the **2013 oath**) instead of the 2003 oath; or

- (b) if subsection (1)(b)(ii) applies—the judicial registrar’s act of making the 2003 affirmation is, was and always has been, as effective for all purposes as it would be if the judicial registrar had made the affirmation prescribed for section 53F(1) by the Magistrates Regulation 2013 (the **2013 affirmation**) instead of the 2003 affirmation.
- (3) It is also declared that—
- (a) a relevant exercise of a power or function by the judicial registrar is, or was and always has been, as valid as it would be if the judicial registrar had—
 - (i) taken the 2013 oath instead of the 2003 oath; or
 - (ii) made the 2013 affirmation instead of the 2003 affirmation; and
 - (b) the judicial registrar did not, and does not, cease to hold office as a judicial registrar under section 53F(3), or cease to be a judicial registrar under section 53N(1)(f), only because the judicial registrar did not take the 2013 oath or make the 2013 affirmation within the period prescribed by section 53F(3).
- (4) In this section—
- relevant exercise of a power or function***, for the judicial registrar—
- (a) means an exercise of a power or the performance of a function of a judicial registrar (including the making of any decision or order whether as a judicial registrar, or when exercising the jurisdiction and powers of a magistrate or constituting, and exercising the jurisdiction and powers of, a Magistrates Court), by the judicial registrar, after the judicial registrar took the 2003 oath or made the 2003 affirmation; and

- (b) includes an exercise of a power or function of a judicial registrar, by the judicial registrar, after the commencement.

Division 9 Transitional provisions for Court and Civil Legislation Amendment Act 2017

71 Application of s 6(11), definition *retired magistrate*

A reference in section 6(11), definition *retired magistrate* to a person who ceases to be a magistrate under section 42(d) includes a person who had ceased, before the commencement, to be a magistrate under section 42(d).

72 Prescribed regional experience before commencement

- (1) This section applies in relation to a magistrate who, before the commencement, constituted a Magistrates Court in the Gympie Magistrates Courts district for 1 or more periods.
- (2) For applying section 21(6), definitions *magistrates without prescribed regional experience* and *magistrates with prescribed regional experience*, the magistrate is taken to have constituted a Magistrates Court at a place in regional Queensland for each period during which the magistrate constituted the court.

Division 10 Transitional provision for Evidence and Other Legislation Amendment Act 2022

73 Prescribed regional experience before commencement

For section 21, each period before the commencement during which a magistrate constituted a Magistrates Court in the Toowoomba Magistrates Court district is taken to be a period

during which the magistrate constituted a Magistrates Court at a place in regional Queensland.