

# Local Courts Act 1982 No 164

[1982-164]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)
  - [Courts Legislation Further Amendment Act 2002 No 70](#), Sch 4 [2] and [3] (not commenced)

### Authorisation

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New South Wales

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# Local Courts Act 1982 No 164



New South Wales

An Act to provide for Local Courts within New South Wales and for the appointment of Magistrates and Clerks of those Courts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Local Courts Act 1982*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**appointed day** means the day appointed and notified under section 2 (2).

**Chief Magistrate** means the person appointed under section 14 (1) to be the Chief Magistrate of the Local Courts.

**Court** means a Local Court established under section 6 (1).

**Deputy Chief Magistrate** means a person appointed under section 15 (1) to be a Deputy Chief Magistrate of the Local Courts.

**Designated Magistrate** means any of the following:

- (a) the State Coroner,
- (b) the Chairman of the Licensing Court,

(c) the Chief Industrial Magistrate.

(d) (Repealed)

**justice** means a Justice of the Peace.

**limited tenure**, in relation to the office of Magistrate, means a limitation imposed on the office under section 13.

**Magistrate** means a person appointed under section 12 (1) to be a Magistrate.

**part-time Magistrate** means a person:

- (a) appointed to hold the office of Magistrate on a part-time basis, or
- (b) exercising the functions of the office of Magistrate on a part-time basis, as provided by an agreement referred to in section 12A, or
- (c) who, in accordance with section 8 of the [Liquor Act 1982](#), becomes a Magistrate on becoming a licensing magistrate and who holds office as a licensing magistrate on a part-time basis under section 8 (6) (b) of that Act.

**regulation** means a regulation made under this Act.

(2) A reference in this Act to:

- (a) a function includes a reference to a power, authority and duty, and
- (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) A reference in this Act to:

- (a) an Act, other than a reference to this Act, includes a reference to an Act of the Commonwealth, and
- (b) a Magistrate who has limited tenure is a reference to a Magistrate whose term of office is specified under section 13 (1) in the commission by which the Magistrate was appointed.

(4) (Repealed)

## **5 Savings and transitional provisions**

Schedule 1 has effect.

## **Part 2 Local Courts of New South Wales**

### **6 Establishment of Courts and appointment of places and districts**

(1) The Governor may, by order published in the Gazette:

- (a) establish Local Courts and appoint the place at and the district for which any such Court shall be held, and
  - (b) abolish any Court established, or alter any place or district appointed, under paragraph (a).
- (2) Notwithstanding the provisions of any other Act, the alteration of the place at or the district for which a Court shall be held shall not affect any proceedings commenced in the Court before the making of the alteration, and the proceedings may be continued and completed, and any judgment or order given or made in respect thereof enforced, as if the alteration had not been made.

**Editorial note—**

For orders under this section see Gazette No 178 of 24.12.1998, p 10129.

## **7 Jurisdiction**

- (1) Every Court shall have the same jurisdiction, civil and criminal, as Courts of Petty Sessions possessed in New South Wales immediately before the appointed day.
- (2) Courts shall have the jurisdiction conferred or imposed on them by or under any Act or other law.

## **8 Composition of a Court**

Except as may be otherwise provided by or under any other Act or law, a Court shall be constituted by a Magistrate sitting alone or 2 or more justices.

## **9 Abolition of Courts of Petty Sessions**

Courts of Petty Sessions are abolished.

## **10 Clerks of the Local Courts**

- (1) There shall be a Clerk of the Local Court for each Local Court.
- (2) The Clerk of a Local Court shall be:
  - (a) appointed by the Governor under and subject to the [Public Service Act 1979](#), or
  - (b) the holder of an office or position:
    - (i) who was appointed to that office or position otherwise than under and subject to that Act, and
    - (ii) who is appointed by the Governor to be Clerk of the Local Court so long as the holder holds that office or position.
- (3) A person holding the office of Clerk of a Local Court shall be deemed to vacate that

office when the appointment by the Governor of another person to hold that office takes effect.

- (4) The Minister may, by order in writing, appoint a person to act in the office of a Clerk of a Local Court during:
  - (a) an absence from duty of the Clerk of the Local Court, or
  - (b) a vacancy of not more than 6 months' duration in the office of that Clerk.
- (4A) The Minister may delegate in writing to the Director-General of the Attorney General's Department the Minister's power of appointment under subsection (4).
- (5) A person appointed for the time being under subsection (4) shall, while the person is acting in the office of a Clerk of a Local Court, have and may exercise all of the functions of that office.
- (6) Any act, matter or thing done by a person while purporting to exercise a function conferred on the person by subsection (5) is not ineffective or unlawful by reason only that either of the circumstances referred to in subsection (4) (a) and (b) did not exist when the act, matter or thing was done.
- (7) Any act, matter or thing done by a person while the person is acting in the office of a Clerk of a Local Court shall be deemed to have been done by the Clerk of the Local Court.

## **11 Sittings of Local Courts**

- (1) A Court shall be held at each of the places appointed under section 6 (1).
- (2) Arrangements for the sittings of Courts, including the nomination of the Magistrates to sit at particular places at which Courts are required to be held, shall be in accordance with the directions of the Chief Magistrate.
- (3) A direction given under subsection (2) may provide for:
  - (a) the establishment of circuits comprised of specified places at which, districts for which, or other parts of New South Wales within which, Courts are required to be held, or
  - (b) the exercise by Magistrates of their functions, at specified times or during specified periods, at different places or within different districts or other parts of New South Wales.
- (4) A Magistrate shall comply with any direction which relates to the Magistrate given under subsection (2) by the Chief Magistrate.

## Part 3 Magistrates

### 12 Appointment of, and qualifications for, Magistrates

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Magistrate.
- (2) A person is qualified to be appointed as a Magistrate if the person is, or is eligible to be admitted as:
  - (a) a barrister or solicitor of the Supreme Court of New South Wales, or
  - (b) a barrister or solicitor, or a barrister and solicitor, of:
    - (i) any Court of any other State, or of any Territory, of Australia, or
    - (ii) the High Court of Australia.
- (3) A Magistrate shall, while the Magistrate holds office as such, be deemed to have been appointed as a justice and a Stipendiary Magistrate.
- (4) The provisions of the *Public Service Act 1979* shall not apply to or in respect of the appointment of a Magistrate and a Magistrate shall not, in the Magistrate's capacity as a Magistrate, be subject to those provisions during the Magistrate's term of office as a Magistrate.
- (5) A person's appointment as a Magistrate is taken to be an appointment on a full-time basis unless the appointment is expressed, in the commission by which the person was appointed, to be on a part-time basis.

### 12A Part-time arrangements

A Magistrate, although not appointed on a part-time basis, may, by agreement in writing entered into with the Chief Magistrate, exercise the functions of the office of Magistrate on a part-time basis.

### 13 Appointments for limited tenure

- (1) Where the Governor considers it appropriate that a Magistrate should be appointed for a particular term of office, the Governor may, in the commission of the Magistrate's appointment:
  - (a) by a reference to dates, specify the term of office (not being a term continuing past the date on which the Magistrate will attain the age of 70 years) for which the Magistrate is appointed, and
  - (b) fix the terms and conditions (including terms and conditions requiring the Magistrate to exercise the Magistrate's functions at a particular place) subject to which the Magistrate shall serve in the Magistrate's office.



(2)-(4) (Repealed)

#### **14 The Chief Magistrate**

- (1) The Governor may, by the commission of a person's appointment as a Magistrate or by a subsequent commission under the public seal of the State, appoint a Magistrate to be Chief Magistrate of the Local Courts.
- (2) The Chief Magistrate shall hold the office of Chief Magistrate so long as the Chief Magistrate holds office as a Magistrate otherwise than pursuant to section 21 (1).
- (3) With the approval of the Governor, the Chief Magistrate may resign the office of Chief Magistrate without resigning the office of Magistrate.
- (4) The Chief Magistrate may require specified functions of Magistrates to be exercised by specified Magistrates or Magistrates of a specified class, and any Magistrate of whom a requirement is made under this subsection shall comply with the requirement.
- (5) The Chief Magistrate may not make such a requirement in respect of a Magistrate who is a Children's Magistrate except with the consent of the Senior Children's Magistrate.
- (6) The Chief Magistrate may not make such a requirement in respect of a Magistrate who is a member of the Victims Compensation Tribunal constituted under the [Victims Compensation Act 1996](#) except with the consent of the Chairperson of the Tribunal.

#### **14A Special provision relating to certain Chief Magistrate**

- (1) This section applies to a person:
  - (a) who was a Judge of the District Court before being appointed as the Chief Magistrate, and
  - (b) who was the first person appointed as Chief Magistrate after the commencement of this section, and
  - (c) whose instrument of appointment declared that this section applies to the person's appointment as Chief Magistrate.
- (2) The appointment of the person as Chief Magistrate, or service by the person as Chief Magistrate, does not affect:
  - (a) the person's tenure as a Judge of the District Court, or
  - (b) the person's rank, title, status, remuneration or other rights or privileges as a Judge of the District Court.
- (3) The person's service as Chief Magistrate is, for all purposes, taken to be service as the holder of the office of Judge of the District Court.

- (4) Despite anything to the contrary in this section, the person is not to exercise the jurisdiction of the District Court while holding office as Chief Magistrate (except, with the approval of the Chief Judge of the District Court, in respect of a matter that was being dealt with by the person immediately before being appointed as Chief Magistrate).

## **15 Deputy Chief Magistrates**

- (1) The Governor may, by the commission of a person's appointment as a Magistrate or by a subsequent commission under the public seal of the State, appoint a Magistrate to be a Deputy Chief Magistrate of the Local Courts.
- (2) More than one person may hold the office of Deputy Chief Magistrate at any one time.
- (3) A Deputy Chief Magistrate shall hold the office of Deputy Chief Magistrate so long as the Deputy Chief Magistrate holds office as a Magistrate otherwise than pursuant to section 21 (1).
- (4) With the approval of the Governor, a Deputy Chief Magistrate may resign the office of Deputy Chief Magistrate without resigning the office of Magistrate.
- (5) A Deputy Chief Magistrate shall, in addition to exercising functions as a Magistrate, exercise such other functions as the Chief Magistrate may direct.
- (6) A Deputy Chief Magistrate nominated for the purposes of this subsection by an order in writing of the Minister (which order the Minister is hereby authorised to make) may act in the office of the Chief Magistrate during:
  - (a) an absence from duty of the Chief Magistrate, or
  - (b) a vacancy in the office of Chief Magistrate.
- (7) The Deputy Chief Magistrate nominated for the time being under subsection (6) shall, while the Deputy Chief Magistrate is acting in the office of the Chief Magistrate, have and may exercise all of the functions of that office.
- (8) Any act, matter or thing done by a Deputy Chief Magistrate while purporting to exercise a function conferred on the Deputy Chief Magistrate by subsection (7) is not ineffective or unlawful by reason only that either of the circumstances referred to in subsection (6) (a) and (b) did not exist when the act, matter or thing was done.
- (9) Any act, matter or thing done by a Deputy Chief Magistrate while the Deputy Chief Magistrate is acting in the office of the Chief Magistrate shall be deemed to have been done by the Chief Magistrate.

## **16 Oaths to be taken by Magistrates**

- (1) A person appointed under section 12 (1) shall not exercise the functions of a

Magistrate, or of the Chief Magistrate or a Deputy Chief Magistrate, unless the person has:

(a) taken and subscribed under the *Oaths Act 1900* both the oath of allegiance and the judicial oath, or

(b) made and subscribed solemn affirmations in the form of those oaths,

and has transmitted them to the Minister.

(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 Judge of the Supreme Court or of the District Court of New South Wales,

(b) except where the oath or affirmation is taken or made by the Chief Magistrate—the Chief Magistrate, or

(c) the holder of an office prescribed for the purposes of this paragraph.

(3) A Magistrate who does not, within the period of 3 months after the Magistrate's appointment as such:

(a) take the oaths or make the affirmations referred to in subsection (1), and

(b) transmit them to the Minister,

ceases to hold office as a Magistrate when that period ends.

## **17 Jurisdiction of Magistrates**

(1) Except as may be otherwise provided by or under this or any other Act or the regulations:

(a) a Magistrate may exercise the functions of the office of Magistrate at any place within New South Wales, and

(b) each Magistrate shall have the same jurisdiction and may exercise the same functions.

(2) Any act, matter or thing done by a Magistrate while purporting to exercise a function of the office of Magistrate is not ineffective or unlawful by reason only of any contravention by the Magistrate of section 11 (4), 14 (4), 15 (5) or 23 (1) or (3).

## **18, 19 (Repealed)**

### **19A Court dress**

No Magistrate may robe at any sitting of a Local Court.

## 20 Vacation of office

Subject to this and any other Act, a Magistrate is taken to have vacated the office of Magistrate if:

- (a) the Magistrate dies, or
- (b) the Magistrate resigns that office by instrument in writing served on the Minister, and the Governor accepts the resignation, or
- (c) after attaining the age of sixty years, the Magistrate, by instrument in writing served on the Minister, signifies a desire to retire from that office and the Governor consents to the retirement, or
- (d) by operation of section 16 (3), the Magistrate ceases to hold that office, or
- (e) the Magistrate retires from that office under a provision of any other Act under which the Magistrate may so retire, or
- (f) the Magistrate is a Magistrate who has limited tenure and the term of the Magistrate's office specified in the Magistrate's commission of appointment expires without the Magistrate's having been appointed to hold the office of Magistrate on and from the day on which that term expires, or
- (g) (Repealed)

## 21 Additional terms of office

- (1) If a former Magistrate has vacated office by reason of section 20 (c) or (e), the Governor may, by notification published in the Gazette and with the written consent of the former Magistrate, reinstate the former Magistrate in the Magistrate's former office of Magistrate for a period (not being a period continuing past the date on which the former Magistrate will attain the age of 70 years) specified in the notification.
- (2) During the period for which a former Magistrate is reinstated under subsection (1):
  - (a) subject to this Act, the Magistrate is taken to be a Magistrate and to hold office as such,
  - (b) section 16 does not apply to or in respect of the Magistrate,
  - (c) if the Magistrate has vacated office under section 20 (e), the Magistrate is taken not to be an employee for the purposes of the [Superannuation Act 1916](#) (except for section 94 of that Act).
- (3) Subject to any other Act, while a person holds the office of Magistrate by reason of the publication of a notification under subsection (1), the person is taken to hold any other office specified in the notification, being an office that the person held:

- (a) when the person last held the office of Magistrate before the person's reinstatement, and
  - (b) by reason of the person's being a Magistrate when the person was appointed to, or nominated for, that other office.
- (4) Where a notification is published in the Gazette under subsection (1), a statement in the notification that a consent referred to in that subsection has been given shall be conclusive evidence of the giving of that consent.
- (5) Nothing in this section affects the operation of section 114, 133N (3) or 133BA (3) of the *Justices Act 1902*.

## **22 Conditions of service generally**

- (1) The terms and conditions of service (including leave of absence) of Magistrates shall be as determined by the Minister after consultation with the Chief Magistrate.
- (2) This section extends to the terms and conditions to be included in any agreement referred to in section 12A.

### **Editorial note—**

For terms and conditions of service published in the Gazette, see Gazettes of 21.8.1995; 1.12.2000 and 20.4.2001.

## **23 Employment of Magistrates in other offices etc**

- (1) Except as provided by this section, a Magistrate shall devote the whole of the Magistrate's time to the duties of the Magistrate's office.
- (2) A person may, with the approval of the Governor (which approval the Governor is hereby authorised to grant), hold and exercise the functions of the office of Magistrate and another office or appointment.
- (3) A Magistrate may not, however, practise as a barrister or solicitor for fee, gain or reward, and no approval under subsection (2) may be granted to permit it.
- (4) Subsection (1) does not prevent a person from holding office as and exercising the functions of a Magistrate on a part-time basis, but such a person must not, while so holding office:
  - (a) accept or continue to hold or discharge the duties of or be employed in any paid office in connection with any commercial business, or
  - (b) engage in or undertake any such business, whether as principal or agent, or
  - (c) engage in or continue in the private practice of any profession, occupation or trade, or enter into any employment, whether remunerated or not, with any

person so engaged.

- (5) To the extent specified in the commission by which the Magistrate was appointed, subsections (1) and (3) do not apply to a Magistrate who has limited tenure.

## **24 Remuneration**

- (1) A Magistrate, other than a Magistrate referred to in subsection (2), is entitled to be paid:
- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Magistrate.
- (2) A Magistrate who has limited tenure is entitled to be paid:
- (a) such remuneration as the Governor considers appropriate, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Magistrate.
- (3) (Repealed)
- (4) The remuneration and allowances referred to in this section and payable to a Magistrate shall be paid to the Magistrate so long as the Magistrate continues to hold office as such.

## **25 Superannuation and certain other rights**

- (1) Where a person was, immediately before the person's appointment as a Magistrate, an officer of the Public Service or an employee within the meaning of the *Superannuation Act 1916*, the person shall retain any rights which have accrued or are accruing to the person as such an officer or employee and the person shall continue to contribute to any fund or account and shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if the person had continued to be such an officer or employee during the person's service as a Magistrate and, for the purposes of this subsection, the person's service as a Magistrate shall be deemed to be service for the purposes of that Act and the *Public Service Act 1979*.
- (2) A Magistrate shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.
- (3) A Magistrate who has limited tenure, not being a person to whom subsection (1) applies, shall be deemed not to be an employee for the purposes of the *Superannuation Act 1916*, section 94 of that Act excepted.
- (4) Nothing in this section affects the operation, with respect to Magistrates, of any

provision of the *Superannuation Act 1916*.

## **Part 4 Miscellaneous**

### **26 Directions as to procedure**

If the manner or form of procedure for taking any step in any proceedings is not prescribed by or under the *Justices Act 1902*, the *Local Courts (Civil Claims) Act 1970* or any other law under which the step is to be taken or by the practice of Courts, a Court, on application made to it in such manner as it considers appropriate, may direct what manner or form of procedure is to be followed, and any step taken in accordance with a direction so given shall, for the purposes of the proceedings, be regular and sufficient.

### **27 Periodic reports**

The Chief Magistrate shall submit to the Minister, at such times and in respect of such periods as the Minister directs, and, subject to any such direction, at such times and in respect of such periods as the Chief Magistrate considers appropriate, reports setting forth:

- (a) particulars of:
  - (i) the incidence of delays in Courts,
  - (ii) arrangements which have been made for the sittings of Courts, and
  - (iii) any matters relating to discipline which have arisen and which may have affected or may affect the availability of Magistrates or the disposal of business by Courts,
- (b) particulars of projected workloads in Courts and an assessment of the number of Magistrates which will, in the opinion of the Chief Magistrate, be available to meet those workloads, and
- (c) comments upon any other matters relating to Courts or Magistrates about which, in the opinion of the Chief Magistrate, the Minister should be advised or about which the Minister has requested to be advised by the Chief Magistrate.

### **28 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **Part 5 Rule Committees**

### **29 Definitions**

In this Part:

**barrister** means a legal practitioner who holds a current practising certificate as a barrister.

**Director-General** means the Director-General of the Attorney General's Department.

**Rule Committee** means a Rule Committee established by this Part.

**solicitor** means a legal practitioner who holds a current practising certificate as a solicitor.

### **30 Local Court Rule Committee**

- (1) There is to be a Local Court Rule Committee.
- (2) The Local Court Rule Committee is to consist of the following members:
  - (a) the Chief Magistrate,
  - (b) at least 1 and not more than 6 Magistrates (in addition to the Chief Magistrate),
  - (c) a barrister,
  - (d) a solicitor,
  - (e) a Clerk of a Local Court,
  - (f) a person nominated by the Director of Public Prosecutions,
  - (g) a person nominated by the Legal Aid Commission,
  - (h) a person appointed by the Director-General,
  - (i) a person appointed by the Minister.
- (3) A member referred to in subsection (2) (b)-(g):
  - (a) is to be appointed by the Chief Magistrate, and
  - (b) is to hold office for the period specified in the member's instrument of appointment and is eligible (if otherwise qualified) for re-appointment.
- (4) The member appointed by the Director-General is to hold office as such until the Director-General otherwise directs.
- (5) The member appointed by the Minister is to hold office as such until the Minister otherwise directs.
- (6) A member ceases to hold office:
  - (a) in the case of a member referred to in subsection (2) (a)-(e), when the member ceases to hold the qualification by virtue of which the member was appointed or



holds office, or

(b) in the case of a member appointed by the Chief Magistrate, if the member resigns as a member by instrument in writing addressed to the Chief Magistrate, or

(c) in the case of the member appointed by the Director-General, if the member resigns as a member by instrument in writing addressed to the Director-General, or

(d) in the case of the member appointed by the Minister, if the member resigns as a member by instrument in writing addressed to the Minister.

(7) If the office of an appointed member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

### **31 Local Court (Civil Claims) Rule Committee**

(1) There is to be a Local Court (Civil Claims) Rule Committee.

(2) The Local Court (Civil Claims) Rule Committee is to be composed of the following members:

(a) the Chief Magistrate,

(b) at least 1 and not more than 6 Magistrates (in addition to the Chief Magistrate),

(c) a barrister,

(d) a solicitor,

(e) a person appointed to represent consumer groups,

(f) a person appointed by the Director-General,

(g) a person appointed by the Minister.

(3) A member referred to in subsection (2) (b)-(e):

(a) is to be appointed by the Chief Magistrate, and

(b) is to hold office for the period specified in the member's instrument of appointment and is eligible (if otherwise qualified) for re-appointment.

(4) The member appointed by the Director-General is to hold office as such until the Director-General otherwise directs.

(5) The member appointed by the Minister is to hold office as such until the Minister otherwise directs.

(6) A member ceases to hold office:

- (a) in the case of a member referred to in subsection (2) (a)-(d), when the member ceases to hold the qualification by virtue of which the member was appointed or holds office, or
  - (b) in the case of a member appointed by the Chief Magistrate, if the member resigns as a member by instrument in writing addressed to the Chief Magistrate, or
  - (c) in the case of the member appointed by the Director-General, if the member resigns as a member by instrument in writing addressed to the Director-General, or
  - (d) in the case of the member appointed by the Minister, if the member resigns as a member by instrument in writing addressed to the Minister.
- (7) If the office of an appointed member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

### **32 Deputies**

- (1) The Chief Magistrate may, from time to time, appoint to a Rule Committee:
  - (a) a barrister to be the deputy of the barrister member of the Committee, and
  - (b) a solicitor to be the deputy of the solicitor member of the Committee.
- (2) The Chief Magistrate may revoke any such appointment.
- (3) In the absence of the barrister member or the solicitor member of a Rule Committee, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has the functions of the member and is taken to be the member.

### **33 Chairperson**

- (1) The Chief Magistrate is to be the chairperson of each Rule Committee.
- (2) The Chief Magistrate is to appoint in writing one of the other members of a Rule Committee who is a Magistrate as deputy chairperson.

### **34 Meetings**

- (1) A Rule Committee is (subject to this section) to regulate its own procedure.
- (2) The chairperson of a Rule Committee or, in the absence of the chairperson, the deputy chairperson of the Committee is to preside at a meeting of the Committee.
- (3) In the absence from a meeting of a Rule Committee of both the chairperson and the deputy chairperson, another member of the Committee who is a Magistrate is to be

chosen by the members present to preside at the meeting.

- (4) The quorum for a meeting of a Rule Committee is a majority of the number of the members for the time being. Any duly convened meeting of a Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and has and may exercise all the functions of the Rule Committee.
- (5) A decision supported by a majority of the votes cast at a meeting of a Rule Committee at which a quorum is present is the decision of the Rule Committee.
- (6) The person presiding at a meeting of a Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) The Chief Magistrate is to call meetings of a Rule Committee as the Chief Magistrate thinks necessary (subject to any decision of the Committee under subsection (1)).
- (8) A Rule Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.

## Schedule 1 Savings and transitional provisions

(Section 5)

### 1 Definition

In this Schedule, **corresponding Court**, in relation to a Court of Petty Sessions, means the Local Court required by clause 2 (2) to be held at the place at which the Court of Petty Sessions was required under section 5 (1) of the *Justices Act 1902* to be held immediately before the appointed day.

### 2 Former Courts of Petty Sessions to be Local Courts

- (1) All Courts of Petty Sessions which existed immediately before the appointed day shall be deemed to be Local Courts established under section 6 (1).
- (2) The place at and the district for which each Court which is deemed to have been established by subclause (1) shall be held shall:
  - (a) be the same place and district as was appointed under section 5 (1) of the *Justices Act 1902* in relation to the Court of Petty Sessions held at that place immediately before the appointed day, and
  - (b) be deemed to have been appointed under section 6 (1).

### 3 Saving relating to abolition of Courts of Petty Sessions

Any Act or other law which, if section 9 had not been enacted, would have applied, on or

after the appointed day:

- (a) to or in respect of all Courts of Petty Sessions, shall apply to or in respect of all Local Courts as if Local Courts were Courts of Petty Sessions, or
- (b) to or in respect of a particular Court of Petty Sessions, shall apply to or in respect of the corresponding Court as if the corresponding Court were that Court of Petty Sessions.

#### **4 Acts done by former Courts of Petty Sessions etc**

- (1) Any act, matter or thing done, before the appointed day, under any Act or other law:
  - (a) by a stipendiary magistrate or a justice or justices constituting and exercising any of the functions of a Court of Petty Sessions—shall be deemed to have been done by a Magistrate or a justice or justices constituting and exercising a function of the corresponding Court,
  - (b) by a person exercising any of the functions of the chairman of the bench of stipendiary magistrates—shall be deemed to have been done by the Chief Magistrate,
  - (c) by a person exercising any of the functions of a stipendiary magistrate, otherwise than when the person constituted a Court of Petty Sessions—shall be deemed to have been done by a Magistrate,
  - (d) by a person exercising any of the functions of a clerk of petty sessions at a particular Court of Petty Sessions—shall be deemed to have been done by the Clerk of the Local Court which is the corresponding Court, or
  - (e) by a bailiff of a Court of Petty Sessions—shall be deemed to have been done by a bailiff of the corresponding Court.
- (2) In subclause (1), a reference to an Act does not include a reference to the *Courts of Petty Sessions (Civil Claims) Act 1970*.
- (3) In subclause (1) (b), a reference to a person exercising any of the functions of the chairman of the bench of stipendiary magistrates includes a reference to a person exercising any of the functions of an office held by the person under any other Act, where the person held that office by reason of the person's holding the office of chairman of the bench of stipendiary magistrates.
- (4) In subclause (1) (c), a reference to a person exercising any of the functions of a stipendiary magistrate includes a reference to a person exercising any of the functions of:
  - (a) the office, under the *Coroners Act 1980*, of a coroner, or

(b) an office held by the person under any other Act,

where the person held that office by reason of the person's holding the office of a stipendiary magistrate.

(5) In subclause (1) (d), a reference to a person exercising any of the functions of a clerk of petty sessions at a particular Court of Petty Sessions includes a reference to a person exercising any of the functions of:

(a) the office, under the *Landlord and Tenant (Amendment) Act 1948*, of clerk of the Fair Rents Board, if any, at the place at which that Court of Petty Sessions was required to be held under the *Justices Act 1902*, or

(b) an office held by the person under any other Act,

where the person held that office by reason of the person's holding the office of a clerk of petty sessions.

## 5 Savings relating to stipendiary magistrates

(1) In this clause, **former Magistrate** means a person who, immediately before the appointed day, was employed under the *Public Service Act 1979* in the position of stipendiary magistrate.

(2) A former Magistrate who:

(a) accedes to the office of a Magistrate on the appointed day, and

(b) immediately before the appointed day, held another office under any other Act (other than the office of chairman of the bench of stipendiary magistrates) by reason of the former Magistrate's having been a stipendiary magistrate when the former Magistrate was appointed to, or nominated for, that other office,

shall not vacate that other office by reason only of the former Magistrate's not having been a Magistrate when the former Magistrate was appointed to, or nominated for, that other office.

(3) A former Magistrate who does not accede to the office of a Magistrate on the appointed day is, if the former Magistrate has not attained the age of 60 years, entitled to be appointed to some position in the Public Service and is, until:

(a) attaining that age, or

(b) ceasing to be a public servant,

whichever first occurs, entitled to be paid salary at a rate not lower than the rate of salary for the time being payable to a Magistrate of the rank or grading that is the equivalent (or the nearest equivalent) of the rank or grading held by the former Magistrate immediately before the appointed day.

- (4) Neither the enactment of nor the provisions of subclause (3) shall be treated by any court or tribunal, or in any other way, as a precedent for the manner in which other persons may be dealt with.

## **6 Saving relating to clerks of petty sessions**

A person who, immediately before the appointed day, held the office of clerk of petty sessions at a particular Court of Petty Sessions shall be deemed to have been appointed by the Governor as the Clerk of the Local Court which is the corresponding Court:

- (a) where the person was employed under the *Public Service Act 1979* immediately before that day—under and subject to that Act, or
- (b) in any other case—under section 10 (2) (b).

## **7 References to former Courts of Petty Sessions etc**

- (1) Except in so far as the context or subject-matter otherwise indicates or requires (and subject to the prescribed exceptions, if any), a reference in any other Act (whether that Act was assented to before, or is assented to on or after, the appointed day) or in any regulation, by-law, rule or other statutory instrument or in any other document, whether of the same or a different kind, to:
- (a) Courts of Petty Sessions or Petty Sessions shall be read and construed as a reference to Local Courts established under section 6 (1),
- (b) a particular Court of Petty Sessions shall be read and construed as a reference to the corresponding Court,
- (c) a stipendiary magistrate or police magistrate shall be read and construed as a reference to a Magistrate,
- (d) the chief stipendiary magistrate or the chairman of the bench of stipendiary magistrates shall be read and construed as a reference to the Chief Magistrate,
- (e) a clerk of petty sessions (other than the clerk of petty sessions at a particular Court of Petty Sessions) shall be read and construed as a reference to a Clerk of a Local Court, and
- (f) the clerk of petty sessions at a particular Court of Petty Sessions shall be read and construed as a reference to the Clerk of the Local Court which is the corresponding Court.
- (2) In subclause (1), a reference to another Act does not include a reference to the *Justices (Local Courts) Amendment Act 1982*, the *Courts of Petty Sessions (Civil Claims) Further Amendment Act 1982* or the *Miscellaneous Acts (Local Courts) Amendment Act 1982*.

## **7A Oath of office**

- (1) In this clause, **re-appointed person** means a person:
  - (a) who held the office of stipendiary magistrate immediately before the appointed day, and
  - (b) who is appointed under this Act by the Governor to be a Magistrate so as to accede to that office on the appointed day.
- (2) A re-appointed person who complied with section 9 of the *Justices Act 1902* before the appointed day shall be deemed to have:
  - (a) taken and subscribed the oaths, or made and subscribed the affirmations, referred to in section 16 (1) of this Act, and
  - (b) transmitted them to the Minister,within 3 months of the person's appointment as a Magistrate.

## **8 Regulations of a saving or transitional nature**

- (1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act, the *Justices (Local Courts) Amendment Act 1982*, the *Courts of Petty Sessions (Civil Claims) Further Amendment Act 1982* or the *Miscellaneous Acts (Local Courts) Amendment Act 1982* or any of the following Acts:

*Courts Legislation Further Amendment Act 1998*, but only in relation to the amendments made to this Act

*Local Courts Amendment (Part-time Magistrates) Act 1999*
- (2) A provision made under subclause (1) may take effect as from the appointed day or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.
- (4) A provision made under subclause (1) shall, if the regulations so provide, have effect notwithstanding:

- (a) any other clause of this Schedule, except clause 5 (3) and (4),
- (b) Schedule 9 to the *Justices (Local Courts) Amendment Act 1982*, and
- (c) Schedule 2 to the *Courts of Petty Sessions (Civil Claims) Further Amendment Act 1982*.

#### **9 Application of age limits to appointments of existing acting Magistrates**

The amendment made to section 13 of this Act by Schedule 7 [1] to the *Courts Legislation Further Amendment Act 1998* does not affect the validity of any appointment made before the commencement of the amendment that is still in force on that commencement.

#### **10 Remuneration of part-time Magistrates**

Until a relevant determination is made and takes effect under the *Statutory and Other Offices Remuneration Act 1975*, a part-time Magistrate is entitled to be paid in accordance with the determination in force for the time being for Magistrates, but on a pro rata basis (according to time spent in service), as calculated by the Minister.