
MAGISTRATES AMENDMENT ACT 1989

No. 13 of 1989

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MAGISTRATES AMENDMENT ACT 1989

No. 13 of 1989

AN ACT to amend the Magistrates Act 1987 and other Acts.

[Royal Assent 18 April 1989]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Magistrates Amendment Act 1989*. Short title.

2—(1) This section and section 1 shall commence on the day on which this Act receives the Royal assent. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

3—In this Act, the *Magistrates Act 1987** is referred to as the *Principal Act*. Principal Act.

* No. 45 of 1987.

Amendment of long title to Principal Act.

4—The long title to the Principal Act is amended as follows:—

- (a) by inserting “to provide for the establishment of a Magistrates Court,” after “An Act”;
- (b) by omitting “Administrator of Magistrates Courts” and substituting “senior officers of that Court”.

Insertion in Principal Act of new heading: PART I—PRELIMINARY.

5—The Principal Act is amended by inserting the following heading before section 1:—

PART I
PRELIMINARY

Amendment of section 1 of Principal Act (Short title).

6—Section 1 of the Principal Act is amended by inserting “Court” after “Magistrates”.

Amendment of section 3 of Principal Act (Interpretation).

7—Section 3 of the Principal Act is amended as follows:—

- (a) by omitting the definition of “Administrator of Magistrates Courts” or “Administrator” and substituting the following definition:—

“Administrator of the Magistrates Court” or “Administrator” means the person who is appointed as Administrator of the Magistrates Court pursuant to section 16;

- (b) by inserting the following definition after the definition of “Deputy Chief Magistrate”:—

“division” means a division of the Magistrates Court;

- (c) by inserting the following definition after the definition of “function”:—

“lower courts” means—

- (a) the Magistrates Court;
- (b) courts of summary jurisdiction within the meaning of the *Justices Act 1959*;
- (c) local courts within the meaning of the *Local Courts Act 1896*;
- (d) any proceedings before the Workers Compensation Commissioner or a part-time Workers Compensation Commissioner under the *Workers Compensation Act 1988*;

- (e) children's courts within the meaning of the *Child Welfare Act 1960*; and
- (f) any proceedings before a coroner under the *Coroners Act 1957*;
- (d) by omitting the definition of "magistrates courts" and substituting the following definition:—
- "Magistrates Court" means the Magistrates Court of Tasmania established by this Act;
- (e) by omitting the definitions of "part-time Special Commissioner" and "Special Commissioner" and substituting the following definitions:—

"part-time Workers Compensation Commissioner" has the meaning assigned to that expression by the *Workers Compensation Act 1988*;

"Workers Compensation Commissioner" means the Workers Compensation Commissioner appointed and holding office under the *Workers Compensation Act 1988*;

8—The Principal Act is amended by inserting the following heading after section 3:—

PART II
THE MAGISTRATES COURT

Insertion in Principal Act of new heading: PART II—THE MAGISTRATES COURT.

9—After section 3 of the Principal Act, the following sections are inserted:—

Insertion in Principal Act of new sections 3A and 3B.

3A—(1) There is established by this Act a court to be known as the Magistrates Court of Tasmania.

Creation of the Magistrates Court.

(2) The Magistrates Court is a court of record and shall have jurisdiction throughout the State.

(3) The Magistrates Court consists of the Chief Magistrate, the Deputy Chief Magistrate, and the magistrates.

3B—(1) The Magistrates Court shall have such jurisdictions as are conferred on it by or under this Act or any other Act.

Jurisdiction and divisions of the Magistrates Court.

(2) For the purposes of the organization and conduct of the business of the Magistrates Court, the Court shall exercise its jurisdictions in divisions, which may be created by or under this Act or any other Act and every proceeding in the Court shall be instituted, heard, and determined in one of those divisions.

(3) Where an Act confers a jurisdiction on the Magistrates Court but does not specify in which division proceedings under that Act shall be adjudicated upon, the Chief Magistrate shall direct in which division the proceedings shall be instituted, heard, and determined.

(4) The Chief Magistrate may assign in writing a magistrate (including himself and the Deputy Chief Magistrate) to such division or divisions of the Magistrates Court as he thinks fit.

(5) A magistrate who is not assigned to a division or divisions of the Magistrates Court may take part in the exercise of the jurisdiction of the Magistrates Court in any of its divisions but, subject to subsection (6), a magistrate who is assigned to a division or divisions of the Court shall take part in the exercise of the jurisdiction of the Court in that division or those divisions only.

(6) Where he considers that circumstances make it desirable to do so, the Chief Magistrate may arrange for a magistrate who is assigned to a division or divisions of the Court to take part in the exercise of the jurisdiction of the Court in another division of the Court, and the magistrate shall take part in the exercise of that jurisdiction accordingly.

Amendment of section 6 of Principal Act (Deputy Chief Magistrate).

10—Section 6 of the Principal Act is amended as follows:—

(a) by inserting at the end of subsection (4) “and be entitled to receive the same remuneration as is ordinarily payable to the Chief Magistrate”;

(b) by inserting at the end of subsection (7) “and that magistrate shall, while he is acting in the office of Deputy Chief Magistrate, be entitled to receive the same remuneration as is ordinarily payable to the Deputy Chief Magistrate”.

Amendment of section 13 of Principal Act (Jurisdiction and powers of magistrates).

11—Section 13 (2) of the Principal Act is amended by omitting paragraph (d) and substituting the following paragraph:—

(d) is a part-time Workers Compensation Commissioner for the purposes referred to in section 19 of the *Workers Compensation Act 1988*.

12—Section 15 of the Principal Act is amended as follows:—

Amendment of section 15 of Principal Act (Arrangement of business of courts, and administrative matters).

(a) by omitting subsection (1) and substituting the following subsection:—

(1) In consultation with the Chief Magistrate, the Administrator shall, before 1st December in each year, determine the places where lower courts may be held in the State for the period of 12 months commencing on 1st January next following and may vary the determination at any time during the period of 12 months.

(b) by omitting from subsection (2) “Chief Magistrate”, twice occurring, and substituting “Administrator”;

(c) by omitting subsection (3) and substituting the following subsection:—

(3) If a court is not held at a place specified in a notice referred to in subsection (2) or a court is held at a place not specified in the notice, the failure to hold the court or cause a notice referred to in subsection (2) (b) to be published in the *Gazette* does not affect the validity of the cancellation of the court or the holding of the court, as the case may be.

(d) by omitting from subsection (4) “magistrates court and the dates and times when that jurisdiction shall be exercised by the court at that place” and substituting “lower court”;

(e) by omitting from subsection (5) “or part-time Special Commissioner or the Special Commissioner” and substituting “part-time Workers Compensation Commissioner, or the Workers Compensation Commissioner”.

13—The Principal Act is amended by inserting the following heading after section 15:—

PART III
REGISTRIES, OFFICERS, AND SEAL

Insertion in Principal Act of new heading:
PART III—
REGISTRIES,
OFFICERS,
AND SEAL.

14—After section 15 of the Principal Act, the following section is inserted in Part III:—

Insertion in Principal Act of new section 15A.

15A—(1) The Governor may cause such registries of the Magistrates Court to be established as he thinks fit. Registries.

(2) Each registry shall be a district registry in respect of such district as the Governor specifies.

Amendment of section 16 of Principal Act (Administrator of the Magistrates Court).

15—Section 16 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “Magistrates Courts” and substituting “the Magistrates Court”;

(b) by inserting the following subsection after subsection (2):—

(2A) The Administrator shall have and may exercise and discharge all such powers, authorities, duties, and functions as may be imposed on or given to a district registrar or a deputy district registrar under this or any other Act.

Insertion in Principal Act of new sections 16A and 16B.

16—After section 16 of the Principal Act, the following sections are inserted:—

Registrars.

16A—(1) Subject to and in accordance with the *Tasmanian State Service Act 1984*, there shall be a district registrar and at least one deputy district registrar appointed in respect of each district registry.

(2) A registrar shall have and may exercise and discharge such powers, authorities, duties, and functions as may be specified in this or any other Act.

(3) Where there is no district registrar or deputy district registrar for a district registry or, for any reason, the district registrar or deputy district registrar is unable to act, the Administrator may authorize a suitable person to perform the duties and exercise the powers of district registrar in respect of that district registry.

(4) A deputy district registrar or a person authorized under this section to perform the duties of district registrar may exercise any of the powers conferred by this Act or otherwise on the district registrar, and any act or other thing done by or before the deputy district registrar or the person so authorized has the same force and effect as if it were done by or before the district registrar.

Seals of Court.

16B—(1) The Magistrates Court shall have a seal, the design of which shall be determined by the Attorney-General.

(2) The seal of the Magistrates Court shall be kept at the office of the Administrator in such custody as the Chief Magistrate directs.

(3) The district registrar in respect of a district registry shall have in his custody a seal the design of which shall, as nearly as practicable, be the same as the design of the seal of the Magistrates Court, with the addition of such words as the Chief Magistrate directs for the purpose of relating the seal to that district registry.

(4) A document or a copy of a document sealed with a seal referred to in subsection (3) is as valid and effectual as if it had been sealed with the seal of the Magistrates Court.

(5) The seal of the Magistrates Court shall be affixed to documents as provided by or under this or any other Act.

17—The Principal Act is amended by inserting the following heading after section 16B as inserted by this Act:—

PART IV
MISCELLANEOUS

Insertion in
Principal Act of
new heading:
PART IV—
MISCELLANEOUS.

18—After section 17 of the Principal Act, the following section is inserted:—

Insertion in
Principal Act of
new section 17A.

17A—(1) If a person—

Contempt of
Court.

- (a) wilfully misbehaves himself before the Magistrates Court sitting in exercise of its jurisdiction under this or any other Act;
- (b) wilfully interrupts or obstructs any proceedings before the Court; or
- (c) is guilty of wilful prevarication in giving evidence before the Court,

that person shall be deemed guilty of contempt of court, and the magistrate sitting in the Court may, by oral order, direct that person to be removed from the Court or other place, and to be taken into custody and may, by warrant, commit that person to imprisonment for a period not exceeding 3 months or may fine him an amount not exceeding 5 penalty units.

(2) Where a person is guilty of misconduct referred to in subsection (1), the magistrate may, if he thinks fit, accept an apology for the misconduct, and may remit any penalty or punishment imposed either wholly or in part.

Consequential
amendments.

19—(1) Each of the provisions of the Principal Act specified in Column 1 of Schedule 1 is amended by omitting the words specified in Column 2 and substituting the words specified in Column 3 of that Schedule.

(2) Section 16 (1) of the *Justices Act 1959* is amended by omitting “Magistrates courts” and substituting “the Magistrates Court”.

(3) Section 17 of the *Local Courts Act 1896* is repealed.

(4) Section 20A (1) of the *Local Courts Act 1896* is amended as follows:—

(a) by omitting “Magistrates Courts” and substituting “the Magistrates Court”;

(b) by omitting “and the *Court of Requests (Small Claims Division) Act 1985*”.

(5) Section 19 (1) (b) of the *Workers Compensation Act 1988* is amended by omitting “those”.

Transitional and
saving.

20—(1) The person appointed and holding office as the Special Commissioner under the *Court of Requests (Small Claims Division) Act 1985* immediately before the proclaimed day shall be deemed to have been appointed a magistrate under the *Magistrates Court Act 1987* on that day and his services as Special Commissioner shall, for the purposes of section 4 (2) and (3) of that Act, be deemed to be services as an employee within the meaning of the *Tasmanian State Service Act 1984*.

(2) The person holding office as deputy registrar of the court of requests at Hobart immediately before the proclaimed day is deemed to have been appointed on that day as district registrar of the district registry established under this Act which includes Hobart in its area of responsibility.

(3) The persons holding office as registrar and deputy registrar of the court of requests at Launceston immediately before the proclaimed day are deemed to have been appointed as district registrar and deputy district registrar of the district registry established under this Act which includes Launceston in its area of responsibility.

(4) The persons holding office as registrar and deputy registrar of the court of requests at Devonport immediately before the proclaimed day are deemed to have been appointed as district registrar and deputy district registrar of the district registry established under this Act which includes Devonport in its area of responsibility.

(5) The persons holding office as registrar and deputy registrar of the court of requests at Burnie immediately before the proclaimed day are deemed to have been appointed as district registrar and deputy district registrar of the district registry established under this Act which includes Burnie in its area of responsibility.

(6) In this section, "proclaimed day" means the day fixed by proclamation under section 2 (2).

SCHEDULE 1 Section 19 (1)
CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT

COLUMN 1 Provision of Principal Act to be amended	COLUMN 2 Words omitted	COLUMN 3 Words substituted
Section 13 (4)	magistrates court	lower court
15 (2) (a)	magistrates courts	lower courts
(5)	magistrates courts	lower courts
16 (2)	magistrates courts	lower courts
(3)	magistrates courts	lower courts