

First print



New South Wales

Local Courts Amendment (Part-time Magistrates) Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Local Courts Act 1982* to provide for part-time Magistrates. Persons will be able to be appointed as Magistrates on a part-time basis, and Magistrates who are full-time appointees will be able to exercise their functions on a part-time basis under arrangements with the Chief Magistrate.

The Bill also amends other Acts that create offices in which Magistrates serve, such as (liquor) licensing magistrates or industrial magistrates. Magistrates will be able to serve in these other offices on a full-time or part-time basis.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Local Courts Act 1982* set out in Schedule 1.

Clause 4 is a formal provision giving effect to consequential amendments of the Acts set out in Schedule 2.

Schedule 1 Amendment of Local Courts Act 1982

Schedule 1 [1] and **[5]** make consequential amendments.

Schedule 1 [2] amends section 12 of the Act, to allow appointments of Magistrates to be made on a part-time basis.

Schedule 1 [3] inserts a new section 12A into the Act, to allow Magistrates who are appointed on a full-time basis to work part-time in accordance with an agreement entered into with the Chief Magistrate.

Schedule 1 [4] repeals sections 18 and 19 of the Act, abolishing the statutory scheme of seniority of Magistrates. No statutory rights attached to seniority.

Schedule 1 [6] amends section 23 of the Act, which deals with the conditions of service of Magistrates. The amendment prohibits part-time Magistrates from engaging in or being employed in any business or profession while they hold office as Magistrates.

Schedule 1 [7] and **[8]** amend Schedule 1 to the Act to include a transitional provision (to determine the salary payable to a part-time Magistrate, until a salary is determined for them by the Statutory and Other Offices Remuneration Tribunal) and to enable regulations to be made that provide for other savings or transitional matters.

Schedule 2 Consequential amendment of other Acts

This Schedule amends other Acts that create offices in which Magistrates serve. The amendments provide that these offices may be held on a part-time basis, and include (where appropriate) transitional provisions similar to the one contained in Schedule 1 [8].



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New South Wales

Local Courts Amendment (Part-time Magistrates) Bill 1999

No. , 1999

A Bill for

An Act to amend the *Local Courts Act 1982* to provide for the office of Magistrate to be held on a part-time basis; to amend certain Acts consequentially; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Local Courts Amendment (Part-time Magistrates) Act 1999</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Local Courts Act 1982 No 164	8
The <i>Local Courts Act 1982</i> is amended as set out in Schedule 1.	9
4 Consequential amendment of other Acts	10
Each Act specified in Schedule 2 is amended as set out in that Schedule.	11 12

Schedule 1	Amendment of Local Courts Act 1982	1
	(Section 3)	2
[1]	Section 4 Definitions	3
	Insert in alphabetical order in section 4 (1):	4
	<i>limited tenure</i> , in relation to the office of Magistrate, means a limitation imposed on the office under section 13.	5 6
	<i>part-time Magistrate</i> means a person:	7
	(a) appointed to hold the office of Magistrate on a part-time basis, or	8 9
	(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	10 11 12
	(c) who, in accordance with section 8 of the <i>Liquor Act 1982</i> , 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.	13 14 15 16 17
[2]	Section 12 Appointment of, and qualifications for, Magistrates	18
	Insert after section 12 (4):	19
	(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.	20 21 22 23
[3]	Section 12A	24
	Insert after section 12:	25
	12A Part-time arrangements	26
	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.	27 28 29 30

[4] Sections 18 and 19	1
Omit the sections.	2
[5] Section 22 Conditions of service generally	3
Insert at the end of section 22:	4
(2) This section extends to the terms and conditions to be included in any agreement referred to in section 12A.	5 6
[6] Section 23 Employment of Magistrates in other offices etc	7
Omit section 23 (3) and (4). Insert instead:	8
(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.	9 10 11
(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:	12 13 14
(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	15 16 17
(b) engage in or undertake any such business, whether as principal or agent, or	18 19
(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.	20 21 22 23
(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 25 26
[7] Schedule 1 Savings and transitional provisions	27
Insert at the end of clause 8 (1):	28
<i>Local Courts Amendment (Part-time Magistrates) Act 1999</i>	29

[8] Schedule 1, clause 10	1
Insert after clause 9 of Schedule 1:	2
10 Remuneration of part-time Magistrates	3
Until a relevant determination is made and takes effect under the <i>Statutory and Other Offices Remuneration Act 1975</i> , 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.	4 5 6 7 8 9

Schedule 2	Consequential amendment of other Acts	1
	(Section 4)	2
2.1	Children’s Court Act 1987 No 53	3
[1]	Schedule 1 Provisions relating to Children’s Magistrates	4
	Insert after clause 2:	5
	2A Conditions of service	6
	A person holding office as Children’s Magistrate is taken to hold the office on either a full-time or part-time basis, according to whether the person holds the office of Magistrate on a full-time or part-time basis under the <i>Local Courts Act 1982</i> .	7 8 9 10 11
[2]	Schedule 2	12
	Insert after Schedule 1:	13
	Schedule 2 Savings and transitional provisions	14
	1 Regulations	15
	(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	16 17 18
	<i>Local Courts Amendment (Part-time Magistrates) Act 1999</i>	19
	(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	20 21 22
	(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	23 24 25

(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, or	1 2 3
(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.	4 5 6
2	Remuneration of part-time Children's Magistrates	7
	Until a relevant determination is made and takes effect under the <i>Statutory and Other Offices Remuneration Act 1975</i> , a Children's Magistrate holding office on a part-time basis is entitled to be paid in accordance with the determination in force for the time being for Children's Magistrates, but on a pro rata basis (according to time spent in service), as calculated by the Attorney General.	8 9 10 11 12 13 14
2.2	Coroners Act 1980 No 27	15
[1]	Section 5 Appointment of coroners	16
	Insert after section 5 (2):	17
	(3) A person holding office as coroner is taken to hold the office on either a full-time or part-time basis, according to whether the person holds the office of Magistrate on a full-time or part-time basis under the <i>Local Courts Act 1982</i> .	18 19 20 21
[2]	Schedule 3 Savings and transitional provisions	22
	Insert after clause 8:	23
9	Remuneration of part-time coroners	24
	Until a relevant determination is made and takes effect under the <i>Statutory and Other Offices Remuneration Act 1975</i> , a coroner holding office on a part-time basis is entitled to be paid in accordance with the determination in force for the time being for coroners, but on a pro rata basis (according to time spent in service), as calculated by the Attorney General.	25 26 27 28 29 30

2.3 Industrial Relations Act 1996 No 17	1
[1] Section 381 Appointment of Chief and other Industrial Magistrates	2
Insert after section 381 (4):	3
(5) A person holding office as Industrial Magistrate is taken to hold the office on either a full-time or part-time basis, according to whether the person holds the office of Magistrate on a full-time or part-time basis under the <i>Local Courts Act 1982</i> .	4 5 6 7 8
[2] Schedule 4 Savings, transitional and other provisions	9
Insert at the end of clause 2 (1):	10
<i>Local Courts Amendment (Part-time Magistrates) Act 1999</i>	11
[3] Schedule 4, Part 7	12
Insert at the end of clause 39:	13
(2) Until a relevant determination is made and takes effect under the <i>Statutory and Other Offices Remuneration Act 1975</i> , an Industrial Magistrate holding office on a part-time basis is entitled to be paid in accordance with the determination in force for the time being for Industrial Magistrates, but on a pro rata basis (according to time spent in service), as calculated by the Attorney General.	14 15 16 17 18 19 20
2.4 Liquor Act 1982 No 147	21
[1] Section 8 Appointment of licensing magistrates	22
Insert after section 8 (5):	23
(6) A person holding office as licensing magistrate is taken to hold the office on a part-time basis:	24 25
(a) if, immediately before being appointed to the office, the person was a part-time Magistrate within the meaning of the <i>Local Courts Act 1982</i> , or	26 27 28

(b)	if the person became a Magistrate by virtue of being appointed to the office and:	1
	(i)	2
	the person's appointment as a licensing magistrate is expressed, in the instrument by which the person is appointed, to be on a part-time basis, or	3
		4
	(ii)	5
	although not appointed on a part-time basis, the person, by agreement in writing entered into with the Chief Magistrate, exercises the functions of the office of licensing magistrate on a part-time basis.	6
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[2]	Schedule 1 Savings and transitional provisions	12
	Insert at the end of clause 1 (1):	13
	<i>Local Courts Amendment (Part-time Magistrates) Act 1999</i>	14
[3]	Schedule 1	15
	Insert in Schedule 1 (with appropriate Part and clause number):	16
Part	Local Courts Amendment (Part-time Magistrates) Act 1999	17
		18
	Remuneration of part-time licensing magistrates	19
	Until a relevant determination is made and takes effect under the <i>Statutory and Other Offices Remuneration Act 1975</i> , a licensing magistrate holding office on a part-time basis is entitled to be paid in accordance with the determination in force for the time being for licensing magistrates, but on a pro rata basis (according to time spent in service), as calculated by the Attorney General.	20
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		26
2.5	Mining Act 1992 No 29	27
[1]	Section 293 Appointment of chief warden and wardens	28
	Insert after section 293 (3):	29

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Schedule 2 Consequential amendment of other Acts

(4) A person holding office as warden is taken to hold the office on either a full-time or part-time basis, according to whether the person holds the office of Magistrate on a full-time or part-time basis under the *Local Courts Act 1982*. 1
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[2] Schedule 6 Savings, transitional and other provisions 5

Insert at the end of clause 1 (1): 6

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