

Magistrates Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Magistrates Amendment Bill 2015.

Policy objectives

The objectives of the Bill are to amend the *Magistrates Act 1991* (Magistrates Act) to:

- validate the appointment, and the exercise of the powers or functions, of certain magistrates, acting magistrates and acting judicial registrars (relevant judicial officers) appointed during the period from and including 12 April 2013 to and including 24 April 2015 (the relevant period) who have taken and subscribed an incorrect oath or made and subscribed an incorrect affirmation; and
- validate the appointment, and the exercise of the powers or functions, of particular magistrates appointed before the commencement who may have failed to take and subscribe an oath or affirmation.

Achievement of objectives

The Bill will achieve the policy objectives by amending the Magistrates Act to:

- declare the oath or affirmation, in the form prescribed by the repealed *Magistrates Regulation 2003* (2003 oath or affirmation) that has been taken and subscribed by those relevant judicial officers during the relevant period is as effective as it would be if the relevant judicial officers had taken and subscribed the correct oath or affirmation as prescribed by the *Magistrates Regulation 2013* (2013 oath or affirmation);
- declare that the relevant judicial officers have exercised, and continue after the commencement of the Bill to exercise, the jurisdiction, powers and functions of the office as validly as if they had taken the 2013 oath or affirmation; and
- declare that those relevant judicial officers did not cease to be, or hold office as, magistrates, acting magistrates or acting judicial registrars (as applicable) under sections 9(3), 42(e), 53F(3) or 53N(1)(f) of the Magistrates Act (as applicable) only because they took or made the 2003 oath or affirmation.

The Bill will achieve the policy objective of validating the appointment, and the exercise of powers and functions, of particular magistrates who may have failed to take an oath or affirmation by amending the Magistrates Act to:

- declare that the particular magistrates did not cease to be, or hold office as, magistrates only because they did not take an oath or affirmation;
- declare that the particular magistrates exercise and have exercised the jurisdiction, powers and functions of the office during the period from their appointment up to when they take the 2013 oath or affirmation or cease to hold office; and
- provide that the particular magistrates must, within 3 months after the commencement, take the 2013 oath or affirmation (failing which they will cease to be, and hold office as, magistrates at the end of that period).

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives other than amending the Magistrates Act.

Estimated cost for government implementation

There are no costs associated with these amendments.

Consistency with fundamental legislative principles

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

The amendments will operate retrospectively. However, they simply validate existing appointments and actions of judicial officers to whom the provisions apply and do not impose obligations on, or affect the rights and liberties of, individuals. Accordingly, in the circumstances, the amendments have sufficient regard to the fundamental legislative principle stated in section 4(3)(g) of the *Legislative Standards Act 1992*.

Consultation

The amendments are in response to a request by the Chief Magistrate.

Consistency with legislation of other jurisdictions

The amendments are specific to Queensland. The Magistrates Act is not part of a uniform or complementary legislative scheme involving the Commonwealth or other States.

Notes on provisions

Clause 1 provides that the Act may be cited as the *Magistrates Amendment Act 2015*.

Clause 2 provides that the Act amends the *Magistrates Act 1991*.

Clause 3 amends the heading of part 10 (Transitional provisions) to provide that part 10 also includes validation provisions as well as transitional provisions.

Clause 4 inserts a new division 8 (Validation provisions for particular magistrates and judicial registrars) into part 10, which includes new sections 67 to 70.

New section 67 (Definition for div 8) provides for the definition of *repealed regulation* for use in new part 10, division 8. *Repealed regulation* means the repealed *Magistrates Regulation 2003*.

New section 68 (Oaths or affirmations taken or made by magistrates) applies to a person (the magistrate) who was appointed under section 5 or 6 and who, during the period from and including 12 April 2013 to and including 24 April 2015 and within three months after being appointed, took and subscribed the oath under section 3(1) of the repealed regulation (2003 oath), or made and subscribed the affirmation under section 3(2) of the repealed regulation (2003 affirmation), in the way permitted for the taking of oaths, or the making of affirmations, under section 9(2).

New section 68 declares that the taking of the 2003 oath, or the making of the 2003 affirmation, is, was and always has been, as effective for all purposes as it would be if the magistrate had taken and subscribed the oath (2013 oath), or made and subscribed the affirmation (2013 affirmation), prescribed for section 9(1) by the *Magistrates Regulation 2013*.

New section 68 also declares that 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 taken and subscribed the 2013 oath, or made and subscribed the 2013 affirmation, instead of the 2003 oath or 2003 affirmation and that 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).

Relevant exercise of jurisdiction is defined for new section 68 to mean an exercise of the jurisdiction, powers and functions conferred on a magistrate, or on two 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 to include a relevant exercise of jurisdiction after the commencement.

New section 69 (Failure of magistrate to take oath or make affirmation) applies to a person (the magistrate) appointed under section 5 or 6 before the commencement who did not take and subscribe an oath, or make and subscribe an affirmation, in relation to the magistrate's appointment.

New section 69 declares that, despite section 9, 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 he or she was appointed, taken and subscribed the oath, or made and subscribed the 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. The section also declares that 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 an oath, or make an affirmation, within the period prescribed by section 9(3).

However, new section 69(3) provides that if the magistrate does not, within three months after the commencement of new section 69, take the 2013 oath, or make the 2013 affirmation, the magistrate ceases to hold office as, and be, a magistrate when that period ends.

Relevant exercise of jurisdiction is defined for new section 69 to mean an exercise of the jurisdiction, powers and functions conferred on a magistrate, or on two 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* is defined for the section to mean the period from and including the day the magistrate was appointed to and including (a) if the magistrate takes the 2013 oath or makes the 2013 affirmation within the time period prescribed by new section 69(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 three months after the commencement, the day on which the magistrate ceased or ceases to hold office as a magistrate or be a magistrate.

New section 70 (Oaths or affirmations taken or made by judicial registrars) applies to a person (the judicial registrar) who was appointed under section 53 or 53A and who, during the period from and including 12 April 2013 to and including 24 April 2015 and within three months after being appointed, took and subscribed the oath under section 4(1) of the repealed regulation (2003 oath), or made and subscribed the affirmation under section 4(2) of the repealed regulation (2003 affirmation), in the way permitted for the taking of oaths, or the making of affirmations, under section 53F(2).

New section 70 declares that the taking of the 2003 oath, or the making of the 2003 affirmation, by the judicial registrar is, was and always has been, as effective for all purposes as it would be if the judicial registrar had taken and subscribed the oath (2013 oath), or made and subscribed the affirmation (2013 affirmation), prescribed for section 53F(1) by the *Magistrates Regulation 2013*.

New section 70 also declares that 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 taken and subscribed the 2013 oath, or made and subscribed the 2013 affirmation, instead of the 2003 oath or 2003 affirmation and that 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).

Relevant exercise of a power or function is defined for new section 70 to mean 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 to include an exercise of a power or function of a judicial registrar after the commencement of new section 70.

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