

SOUTH AUSTRALIA

**JUDICIAL ADMINISTRATION (AUXILIARY APPOINTMENTS
AND POWERS) ACT 1988**

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 18 November 1999.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

1. Short title
2. Interpretation
3. Appointment of judicial auxiliaries
4. Powers of judicial auxiliary
5. Power of judicial officer to act in co-ordinate and less senior offices
6. Concurrent judicial appointments

SCHEDULE 1

Amendment of Supreme Court Act 1935

SCHEDULE 2

Amendment of Local and District Criminal Courts Act 1926

SCHEDULE 3

Amendment of Magistrates Act 1983

APPENDIX LEGISLATIVE HISTORY

JUDICIAL ADMINISTRATION (AUXILIARY APPOINTMENTS AND POWERS) ACT 1988

being

Judicial Administration (Auxiliary Appointments and Powers) Act 1988
No. 95 of 1988 [Assented to 15 December 1988]

as amended by

Judicial Administration (Auxiliary Appointments and Powers) Act Amendment Act 1989 No. 59 of 1989 [Assented to 26 October 1989]

Statutes Amendment (Attorney-General's Portfolio) Act 1991 No. 33 of 1991 [Assented to 24 April 1991]¹

**Judicial Administration (Auxiliary Appointments and Powers) (Definition of Judicial Office) Amendment Act 1999
No. 65 of 1999 [Assented to 18 November 1999]**

¹ Came into operation 6 June 1991: *Gaz.* 6 June 1991, p. 1776.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

2 **Judicial Administration (Auxiliary Appointments and Powers) Act 1988**

An Act to supplement, and achieve efficiencies in the deployment of, the State's judiciary; to amend the Supreme Court Act 1935; the Local and District Criminal Courts Act 1926 and the Magistrates Act 1983; and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*.

Interpretation

2. In this Act—

"**judicial office**" means—

- (a) the office of Judge of the Supreme Court;
- (b) the office of Master of the Supreme Court, District Court Judge, Judge of the Industrial Court, Judge of the Licensing Court or Judge of the Children's Court;
- (c) the office of District Court Master or Deputy District Court Master;
- (d) the office of Magistrate or Industrial Magistrate;
- (e) the office of commissioner of the Environment, Resources and Development Court,

(and the order of the above paragraphs indicates the level of seniority of the various offices, the inclusion of reference to more than one office in the same paragraph indicating a co-ordinate level of seniority);

"**judicial officer**" means a person appointed to hold or act in a judicial office and includes a person appointed under this Act to act in a judicial office on an auxiliary basis.

Appointment of judicial auxiliaries

3. (1) The Governor may, with the concurrence of the Chief Justice, appoint a person to act in a specified judicial office or in specified judicial offices on an auxiliary basis.

(2) A person cannot be appointed to act in a judicial office under this section unless the person—

- (a) is eligible for appointment to the relevant judicial office on a permanent basis; or
- (b) would be eligible for appointment to the relevant judicial office on a permanent basis but for the fact that he or she is over the age of retirement; or
- (c) has retired from office as a judge of—
 - (i) the High Court; or
 - (ii) the Federal Court; or
 - (iii) the Supreme Court of some other State, or a Territory, of the Commonwealth; or
 - (iv) the Court of Appeal or the Supreme Court of New Zealand.

(3) A person who already holds a judicial office may concurrently hold an appointment under this section to act in some other judicial office on an auxiliary basis.

(4) An appointment made under this section will be for an initial term (not exceeding 12 months) specified in the instrument of appointment and may, with the concurrence of the Chief Justice, be extended for a further term or terms (but the appointment may not be extended on any one occasion by more than 12 months).

(5) An appointment under this section cannot be revoked.

(6) The remuneration and conditions of service applicable to a person holding an appointment under this section will be determined by the Governor with the concurrence of the Chief Justice.

(7) A person acquires no rights under the *Judges' Pensions Act 1971* in respect of service in a judicial office on an auxiliary basis unless that person concurrently holds an appointment (on a permanent basis) to some other judicial office that attracts such rights, in which case the service will be treated as if it were service in the office that he or she holds on a permanent basis.

Powers of judicial auxiliary

4. (1) A person appointed to act in a judicial office on an auxiliary basis has, during the term of appointment, the same jurisdiction and powers as if appointed to the relevant judicial office on a permanent basis.

(1a) A person appointed to act in a judicial office on an auxiliary basis may only exercise the jurisdiction and powers deriving from that office in respect of matters assigned to that person by—

- (a) the judicial head of the court in which the office exists; or
- (b) the judicial head of some other court in which he or she is undertaking, or is about to undertake, judicial work.

(2) A person appointed to act in a judicial office on an auxiliary basis may, after the conclusion of a term of appointment, continue to act in the relevant office for the purpose of completing the hearing and determination of proceedings part-heard before the expiration of that term.

Power of judicial officer to act in co-ordinate and less senior offices

5. (1) Subject to subsection (2), a judicial officer holding or acting in a particular judicial office may exercise, in addition to the jurisdiction and powers attaching to that office, the jurisdiction and powers attaching to any other judicial office of a co-ordinate or lesser level of seniority.

(2) This section does not authorise a judicial officer to exercise the jurisdiction or powers of the Industrial Court.

(3) A judicial officer who holds a particular judicial office but is acting in another may adopt the title appropriate to that other office.

(4) A judicial officer who has been appointed to hold or act in a judicial office in a particular court must obtain the consent of the judicial head of that court before undertaking judicial work in another court (but such a consent is not required where the occasion to exercise the jurisdiction and powers of some other court arises incidentally in some matter before the court to which the judicial officer was appointed).

Concurrent judicial appointments

6. (1) A judicial officer may hold concurrent appointments to two or more judicial offices.

(2) Where the Governor makes an appointment by virtue of which a judicial officer will hold two or more concurrent appointments, one of the judicial offices must be designated by the Governor (with the consent of the appointee) as the primary judicial office.

(3) The remuneration and conditions of service of a judicial officer who holds two or more concurrent appointments will be the same as for a judicial officer who holds a single appointment to the primary office.

(4) Subject to subsection (5), the retirement, resignation or removal from office of a judicial officer who holds two or more concurrent appointments will be governed by the law applicable to the primary office and the judicial officer will, until retirement, resignation or removal from office (or earlier death), continue to hold both or all of those appointments.

(5) A judicial officer who holds two or more concurrent appointments may not, except with the approval of the Governor, resign from one or more of the relevant judicial offices without resigning from all of them, and a resignation, unless it is a resignation from all judicial offices, will not give rise to any right to pension, retirement leave or other similar benefit.

(6) This section does not apply in relation to—

- (a) the appointment of a person to act in two or more judicial offices on an auxiliary basis;
or
- (b) the appointment of a judicial officer who holds judicial office on a permanent basis to act in some other judicial office on an auxiliary basis.

SCHEDULE 1

Amendment of Supreme Court Act 1935

The *Supreme Court Act 1935* is amended as follows:

Section 8—

After subsection (3) insert subsection as follows:

(4) For the purpose of determining whether a practitioner of the court has the standing necessary for appointment as a judge or master, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.

Section 11—

Delete subsection (1a) and substitute the following subsections:

(1a) A former judge or master who has retired from office is eligible for appointment as an acting judge or an acting master.

(1b) An appointment under this section will be for a term not exceeding 12 months.

Section 12—

Delete this section and substitute:

Remuneration of judges and masters

12. (1) The Chief Justice and each puisne judge are entitled to salary and allowances at rates determined by the Remuneration Tribunal in relation to the respective offices.

(2) A master is entitled to salary and allowances at the rates applicable to a District Court Judge.

(3) A rate of salary for a judge or master cannot be reduced by determination of the Remuneration Tribunal.

(4) The remuneration of the judges and masters is payable from the General Revenue of the State, which is appropriated to the necessary extent.

SCHEDULE 2

Amendment of Local and District Criminal Courts Act 1926

The *Local and District Criminal Courts Act 1926* is amended as follows:

Section 5B—

Delete subsection (3a) and substitute the following subsection:

(3a) For the purpose of determining whether a legal practitioner has the standing necessary for appointment as a Judge or Master, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.

Section 5C—

Delete subsection (1) and substitute the following subsection:

(1) Subject to subsection (6), where the Governor is of the opinion that it is in the interests of justice to do so, the Governor may—

- (a) appoint a fit and proper person who is qualified under section 5B(3); or
- (b) appoint a former Judge who has retired from office,

to acting judicial office.

Delete subsections (4) and (5) and substitute the following subsection:

- (4) An appointment under subsection (1) will be for a term not exceeding 12 months.

SCHEDULE 3

Amendment of Magistrates Act 1983

The *Magistrates Act 1983* is amended as follows:

Section 5—

Strike out from subsection (3) "three months" and substitute "12 months".

After subsection (3) insert subsection as follows:

(3a) A former magistrate who has retired from office is eligible for appointment as an acting magistrate.

After subsection (5) insert subsection as follows:

(6) For the purpose of determining whether a legal practitioner has the standing necessary for appointment as a magistrate, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 2:	definition of "judicial office" amended by 65, 1999, s. 2
Section 3(2):	amended by 33, 1991, s. 11
Section 3(7):	inserted by 59, 1989, s. 2
Section 4(1a):	inserted by 59, 1989, s. 3
Section 6:	inserted by 59, 1989, s. 4