

South Australia

# Judicial Administration (Auxiliary Appointments and Powers) Act 1988

An Act to supplement, and achieve efficiencies in the deployment of, the State's judiciary; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

### 1—Short title

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

### 2—Interpretation

In this Act—

*judicial office* means—

- (a) the office of Judge of the Supreme Court (including a Judge of the Court of Appeal Division of the Supreme Court);
- (b) the office of Associate Justice of the Supreme Court, District Court Judge, Judge of the Licensing Court or Judge of the Environment, Resources and Development Court;
- (ba) the office of a Presidential member of the South Australian Employment Tribunal (other than a Presidential member who is a Magistrate);
- (c) the office of Associate Judge of the District Court;
- (d) the office of Chief Magistrate or Magistrate;
- (da) the office of a Presidential member of the South Australian Employment Tribunal where the Presidential member is a 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.

### 3—Appointment of judicial auxiliaries

- (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—
    - (i) as a judge of—
      - (A) the High Court; or
      - (B) the Federal Court; or
      - (C) the Supreme Court of some other State, or a Territory, of the Commonwealth; or
      - (D) the District Court or County Court of some other State, or a Territory, of the Commonwealth; or
      - (E) the Court of Appeal or the Supreme Court of New Zealand; or
    - (ii) as a magistrate; or
  - (d) holds office—
    - (i) as a judge of—
      - (A) the Federal Court; or
      - (B) the Supreme Court of some other State, or a Territory, of the Commonwealth; or
      - (C) the District Court or County Court of some other State, or a Territory, of the Commonwealth; or
      - (D) the Court of Appeal or the Supreme Court of New Zealand; or
    - (ii) as a magistrate; or
  - (e) holds a prescribed office in a prescribed court of a jurisdiction outside Australia.

- (2a) However, a person cannot be appointed under subsection (2)(d) or (e) except with the concurrence of the judicial head of the Court of the other jurisdiction.
- (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.
- (8) For the purposes of this section, if in order to be eligible for appointment to a judicial office on a permanent basis a person must hold some other judicial office, the person is to be regarded as eligible for appointment to the judicial office on a permanent basis if he or she is eligible for appointment to the other judicial office on a permanent basis or would be so eligible but for the fact that he or she is over the age of retirement.

#### **4—Powers of judicial auxiliary**

- (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.

#### **5—Power of judicial officer to act in co-ordinate and less senior offices**

- (1) 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.
- (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).

## **6—Concurrent judicial appointments**

- (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.

## **7—Regulations**

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Judicial Administration (Auxiliary Appointments and Powers) Act 1988* amended the following:

*Local and District Criminal Courts Act 1926*

*Magistrates Act 1983*

*Supreme Court Act 1935*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1988	95	<i>Judicial Administration (Auxiliary Appointments and Powers) Act 1988</i>	15.12.1988	15.12.1988
1989	59	<i>Judicial Administration (Auxiliary Appointments and Powers) Act Amendment Act 1989</i>	26.10.1989	26.10.1989
1991	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1991</i>	24.4.1991	6.6.1991 ( <i>Gazette 6.6.1991 p1776</i> )
1999	65	<i>Judicial Administration (Auxiliary Appointments and Powers) (Definition of Judicial Office) Amendment Act 1999</i>	18.11.1999	18.11.1999
2001	69	<i>Statutes Amendment (Courts and Judicial Administration) Act 2001</i>	6.12.2001	Pt 7 (ss 14 & 15)—13.1.2002 ( <i>Gazette 10.1.2002 p4</i> )
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 15 (ss 26 & 27)—18.1.2007 ( <i>Gazette 18.1.2007 p234</i> )
2012	17	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2012</i>	24.5.2012	Pt 8 (s 20)—5.8.2012 ( <i>Gazette 2.8.2012 p3302</i> )
2014	16	<i>Return to Work Act 2014</i>	6.11.2014	Sch 9 (cl 4)—1.7.2015 ( <i>Gazette 4.12.2014 p6610</i> )
2016	32	<i>Statutes Amendment (Youth Court) Act 2016</i>	30.6.2016	Pt 7 (ss 26 & 27)—1.1.2017 ( <i>Gazette 8.12.2016 p4903</i> )

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2016	46	<i>Judicial Administration (Auxiliary Appointments and Powers) (Qualification for Appointment) Amendment Act 2016</i>	29.9.2016	29.9.2016
2016	63	<i>Statutes Amendment (South Australian Employment Tribunal) Act 2016</i>	8.12.2016	Pt 13 (ss 111 & 112)—1.7.2017 ( <i>Gazette 16.5.2017 p1221</i> )
2019	45	<i>Supreme Court (Court of Appeal) Amendment Act 2019</i>	19.12.2019	Sch 1 (cl 51)—1.1.2021 ( <i>Gazette 10.12.2020 p5638</i> )
<b>2024</b>	<b>23</b>	<b><i>Statutes Amendment (Attorney-General's Portfolio) Act 2024</i></b>	<b>27.6.2024</b>	<b>Pt 5 (s 27)—26.8.2024 (<i>Gazette 22.8.2024 p2871</i>)</b>

**Provisions amended**

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
s 2		
judicial office	amended by 65/1999 s 2	18.11.1999
	amended by 69/2001 s 14	13.1.2002
	amended by 44/2006 s 26	18.1.2007
	amended by 16/2014 Sch 9 cl 4	1.7.2015
	amended by 32/2016 s 26	1.1.2017
	amended by 63/2016 s 111(1)—(4)	1.7.2017
	amended by 45/2019 Sch 1 cl 51	1.1.2021
	<b>amended by 23/2024 s 27(1), (2)</b>	<b>26.8.2024</b>
s 3		
s 3(2)	amended by 33/1991 s 11	6.6.1991
	amended by 44/2006 s 27(1)	18.1.2007
	amended by 46/2016 s 3(1)	29.9.2016
s 3(2a)	inserted by 44/2006 s 27(2)	18.1.2007
	amended by 46/2016 s 3(2)	29.9.2016
s 3(7)	inserted by 59/1989 s 2	26.10.1989
s 3(8)	inserted by 17/2012 s 20	5.8.2012
	amended by 32/2016 s 27	1.1.2017
s 4		
s 4(1a)	inserted by 59/1989 s 3	26.10.1989
s 5		
s 5(1)	amended by 69/2001 s 15(a)	13.1.2002
	amended by 63/2016 s 112(1)	1.7.2017
s 5(1a)	<i>inserted by 69/2001 s 15(b)</i>	<i>13.1.2002</i>
	<i>deleted by 63/2016 s 112(2)</i>	<i>1.7.2017</i>

<i>s 5(2)</i>	<i>deleted by 63/2016 s 112(3)</i>	<i>1.7.2017</i>
<i>s 6</i>	<i>inserted by 59/1989 s 4</i>	<i>26.10.1989</i>
<i>s 7</i>	<i>inserted by 46/2016 s 4</i>	<i>29.9.2016</i>
<i>Schs 1—3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	

## Historical versions

Reprint No 1—15.8.1991

Reprint No 2—18.11.1999

Reprint No 3—13.1.2002

18.1.2007

5.8.2012

1.7.2015

29.9.2016

1.1.2017

1.7.2017

1.1.2021