

Justices Regulation 2014

Explanatory notes for SL 2014 No. 191

made under the

Justices Act 1886

General Outline

Short title

Justices Regulation 2014

Authorising law

Sections 22B and 266 of the *Justices Act 1886*.

Policy objectives and the reasons for them

In accordance with the *Statutory Instruments Act 1992*, the *Justices Regulation 2004* (the 2004 Regulation) will automatically expire on 1 September 2014. The *Justices Regulation 2014* (the Regulation) repeals and replaces the 2004 Regulation.

The *Justices Act 1886* (the Act) consolidates the law about the powers and jurisdiction of justices and magistrates and provides for proceedings before, and appeals from, justices and magistrates. It governs the operation of various criminal law procedures including, but not limited to, complaints, summonses and warrants, pleas, the taking of evidence and the enforcement of decisions.

The Regulation makes continued provision for the purposes of the Act including prescribing:

- the procedures for filing documents associated with the issue of warrants for the bringing of a defendant or a witness before the court or the issue of a summons for the attendance of a witness before the court;
- the types of warrants that may be created, stored or otherwise managed by computers and the procedures for using and executing computer warrants;
- the procedures for bench charge sheets and bench cover sheets;
- the districts, divisions and places for holding Magistrates Courts;
- the fees payable to the clerk of the court and certain fee exemptions; and
- the amounts up to which costs may be allowed for legal professional work and disbursements under a costs order for summary convictions, orders and dismissals in the Magistrates Court and costs on appeal in the District Court.

The Regulation is generally consistent with the 2004 Regulation, updated to reflect current drafting practices. Departures in policy from the 2004 Regulation are noted below.

Part 1 of the Regulation is introductory.

Part 2 of the Regulation makes provision for warrants.

Part 2, division 1 makes provision for the procedures, such as filing and fee payment, where a warrant is issued under the Act for the bringing of a defendant or a witness before the court.

Part 2, division 2 makes provision regarding computer warrants. Division 2 prescribes the types of warrants that may be created, stored or otherwise managed by computers. The division also prescribes the procedures, approved by the chief executive and the Commissioner of the Queensland Police Service, which are to be followed for the use of computers for warrants.

A computer warrant may be executed using a written version of the computer warrant or by using a document containing prescribed information (section 69B (Execution of a computer warrant) of the Act). Division 2 prescribes the information that must be contained in such a document. If the execution of a computer warrant is relevant in a proceeding before a court, then the document containing the prescribed information, certified in accordance with a regulation, is admissible as proof of a warrant about which it purports to contain information. Division 2 prescribes that such certification is to be by the arresting officer.

Section 69E (Facilitation of execution of written warrant) of the Act allows a written warrant to be executed by using a document prescribed under a regulation containing information about outstanding warrants. Part 2, division 3 prescribes the document containing information about outstanding warrants that may be used to execute warrants. If the execution of a warrant is relevant in a proceeding before a court, then a document purporting to be the prescribed document containing the information about outstanding warrants, certified in accordance with a regulation, is admissible as proof of the warrants about which it purports to contain information. Division 3 prescribes that such certification is to be by the arresting officer.

Part 3 makes provision for the procedures such as filing and fee payment where a summons is issued for a witness under section 78 (Power to issue summons to witness) or 83 (Production of documents before justices) of the Act.

Part 4 makes provision in relation to bench charge sheets and bench cover sheets.

A bench charge sheet sets out a charge of an offence against a defendant. Part 4, division 1 provides that where a defendant has been arrested or served with a notice to appear under the *Police Powers and Responsibilities Act 2000*, a police officer must give a bench charge sheet for each charge to the clerk of the court. Division 1 also sets out the information that a bench charge sheet must contain.

Division 2 sets out the information that a court is to record upon a bench charge sheet.

Division 3 sets out the information that a court is to record upon a bench cover sheet. A bench cover sheet is used in proceedings for which a bench charge sheet is not required under section 13 of the Regulation.

Part 5 makes provision with respect to districts, divisions and places for holding Magistrates Courts. Section 22B (Magistrates Courts districts) of the Act provides that the Governor in Council may make regulations with respect to the appointment of districts and divisions of districts for the purposes of Magistrates Courts, the names of districts and divisions, and the appointment of places for holding Magistrates Courts within districts and divisions. Part 5 states that schedule 1 sets out these districts, divisions and places for holding Magistrates Court, other than the metropolitan district. The metropolitan district is described in part 5 itself.

Part 6 makes provision for costs and fees.

Part 6 provides that the scale of costs for part 6, division 8 and part 9, division 1 of the Act is set out in schedule 2. Part 6, division 8 of the Act regulates costs awards upon conviction or dismissal of a complaint in the Magistrates Court. Part 9, division 1 of the Act regulates costs awards in relation to appeals from the Magistrates Court to a single judge of the District Court. In both cases, the costs that may be awarded are to be in accordance with the prescribed scale, although higher amounts may be awarded having regard to the special difficulty, complexity or importance of a case.

Part 6 provides that the fees payable to the clerk of the court are set out in schedule 3.

Part 6 provides fee exemptions for a State-related complainant (a term which is defined). The fee exemptions apply to items 1 to 5 of schedule 3. These exemptions are wider than the exemptions contained in section 19A of the 2004 Regulation which exempt State-related complainants from paying the fees set out in items 1 to 3 of schedule 3. This change aligns the position with that applicable to State-related parties in matters within the civil jurisdiction of the court under the *Uniform Civil Procedure (Fees) Regulation 2009*.

Part 6 provides that where a court makes an order against a defendant in relation to a complaint brought by a State-related complainant, the court must order the defendant to pay the fees that would otherwise have been payable by the State-related complainant - but only in relation to items 1 to 3 of schedule 3. This maintains the position in the 2004 Regulation, that is, the liability of unsuccessful defendants, in cases where the complainant is a State-related complainant, has not been expanded beyond liability for payment of the fees in items 1 to 3 of schedule 3.

Part 6 also provides a fee exemption for the supply of a record of a decision to a person about whom the decision was made. This means the person is exempted from the fee otherwise payable under schedule 3, item 5. This exemption is wider than the exemption contained in section 19B of the 2004 Regulation which exempts payment of the fee under item 5, schedule 3 only for a record of a decision concerning certain orders made about driver licences. This change aligns the position in the Magistrates Court with that in the *Criminal Practice Rules 1999* applicable to defendants in matters before the Supreme Court or District Court.

Part 7 makes transitional provision to continue the effect of section 19A (Fee exemption for State-related complainant) of the 2004 Regulation in relation to proceedings for which a complaint has been filed by a State-related complainant, but no order has yet been made against the defendant for payment of the filing fee. The 2004 Regulation continues to apply in such a case, to ensure the continued liability of a defendant in such a case.

Part 8 repeals the 2004 Regulation.

Schedule 1 sets out the districts, divisions and places for holding Magistrates Courts.

Schedule 2 sets out the scale of costs for part 6, division 8 and part 9, division 1 of the Act.

Schedule 3 sets out the fees payable to the clerk of the court that are relevant to the Act.

Schedule 4 contains the dictionary for the Regulation.

Achievement of policy objectives

The policy objectives are achieved by the Regulation which makes provision for the purposes of the *Justices Act 1886*.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The expanded fee exemption for State-related complainants contained in section 21 of the Regulation will involve a minimal reduction in revenue, however, this is expected to be offset by the saving of court registry resources in administering a fee system that is consistent with the civil jurisdiction.

The expanded fee exemption for defendants contained in section 22 of the Regulation will involve a minimal reduction in revenue, however, the expanded fee exemption will contribute to the fair administration of justice in Queensland by increasing the accessibility of records of decisions by persons subject to a court decision.

Consistency with fundamental legislative principles

There is no inconsistency with fundamental legislative principles.

Consultation

All State Government departments and the following stakeholders were advised of the intention to re-make the 2004 Regulation and invited to make submissions: the former Chief Magistrate; the Queensland Law Society; the Bar Association Queensland; the Director of Public Prosecutions; and Legal Aid Queensland.

The Bar Association Queensland and the Queensland Law Society responded regarding the scale of costs for professional legal work. A review of the scale of costs has not been progressed as part of this re-make. No other significant issues were raised.