

**Chapter 3**  
Magistrates courts and  
the *Justices Act 1886* (Qld)

# Chapter 3—Magistrates courts and the *Justices Act 1886* (Qld)

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## A. Overview

### 3-1 Justices Act

The [Justices Act 1886](#) (Qld) provides the machinery for the establishment of magistrates courts and procedures to follow. The Act is divided into the following 12 parts:

- Part 1—Preliminary
- Part 2 (repealed)
- Part 3—Jurisdiction (constitution of magistrates courts and powers of justices of the peace to hear matters)
- Part 4—General procedure (complaints, summonses, warrants, arrest, taking evidence and disclosure directions)
- Part 5—Proceedings in case of indictable offences (including committal proceedings, private complaints and registry committals)
- Part 6—Proceedings in case of simple offences and breaches of duty (hearings, costs, enforcement, and ex parte sentencing)
- Part 6A—Use of video link facilities
- Part 7—Reciprocal enforcement of fines against bodies corporate
- Part 8 (repealed)
- Part 9—Appeals from the decisions of justices (s 222 appeals to a district court judge)
- Part 10—Miscellaneous (forms [available online] and regulations)
- Part 11—Validations, savings and transitional

### 3-2 Justices Regulation

The [Justices Regulation 2004](#) (Qld) contains details of the procedures and information in warrants and bench charge sheets, and sets out the schedule of costs. The forms can be found on the Queensland Courts website.

### 3-3 Relevant parts for duty lawyers

The parts of the Justices Act that are most relevant for you as a duty lawyer are 4, 5 and 6, as well as Part 9, Division 1, regarding appeals. These are discussed in more detail below.

## B. General procedures

### 3-4 General procedures

Under Part 4 of the Justices Act, all proceedings must be commenced in writing except where the defendant is arrested without warrant. When the defendant appears, further charge sheets can be handed up, with consent (s 42). Each complaint may contain only one matter (s 43). The complaint must contain sufficient description of the offence and be served on the defendant (s 47). Complaints can be amended (s 48).

With regard to simple offences and breaches of duty, a ‘complaint must be made within 1 year from the time when the matter of complaint arose’. However, if the indictable offences are discontinued and substituted with summary offences, the limitation period is two years (s 52).

Division 5 deals with summonses, particularly their content and service. For you, these will arise most often in relation to proceedings instituted by either the Department of Corrective Services for breaches of community-based orders or the Commonwealth Director of Public Prosecutions for Centrelink prosecutions.

Divisions 6 and 6A deal with warrants and computer warrants. For you, the most relevant section is s 59 ‘Warrant in the first instance’, which is used when the police or prosecuting authority wish to initiate proceedings but cannot find the person to serve or arrest them. It enables the prosecuting authority to obtain a warrant of first instance, ordering police to apprehend the person and take them into custody.

Under s 65, when a person is arrested without warrant and taken into custody, they must be brought before a court ‘to be dealt with according to law as soon as practicable after the person is taken into custody’. In *Williams v R* (1986) 161 CLR 278; [1986] HCA 88, it was held that, while police were allowed to question a person in custody, it was unlawful to delay their appearance before a court for the purpose of questioning, as they had not detained the person for the purpose of bringing the suspect before a court as soon as practicable.

See also s 552 of the *Criminal Code Act 1899* (Qld), which states that ‘[i]t is the duty of a person who has arrested another upon a charge of an offence to take the person forthwith before a justice to be dealt with according to law’. In *Michaels v R* (1995) 184 CLR 117; [1995] HCA 8, it was held that it was unlawful for a police officer to delay taking an arrested person before a justice to question the person or make further enquiries.

Division 7 of the Justices Act allows courts to be closed proceedings or exclude people, if appropriate, and prohibits people taking photographs etc in the courtroom.

Divisions 8, 9 and 10 permit legal representatives to appear. They describe the way evidence is taken, and the summoning and calling of witnesses.

Division 10A is an important division regarding seeking disclosure of material from prosecutors, and includes provision for listing matters for a directions hearing (s 83A) to obtain orders for disclosure and other matters.

Division 11 permits remands and adjournments, including verbally.

The court has a general power to remand any person charged with an indictable offence due to the absence of witnesses or any other reasonable cause, but cannot remand the defendant in custody for more than eight days at any one time without the defendant’s consent (s 84).

The court also has the power to adjourn the hearing of any simple offence or breach of duty to a particular time and place if it gives the parties to the complaint reasonable notice of the hearing’s time and place (s 88(1)).

The court may remand the defendant in custody or admit them to bail, or allow the defendant to go at large (s 88(2)). The court may make any order in relation to the adjournment costs that it believes just (s 88(3)).

## C. Proceedings in case of indictable offences

### 3-5 Proceedings in case of indictable offences

Part 5 of the Justices Act covers proceedings in the case of indictable offences.

Division 2—Private complaints

Duty lawyers do not act in these matters.

Division 3—Committals

Duty lawyers do not act in committal proceedings, even for a full hand-up committal.

## D. Proceedings in case of simple offences and breaches of duty

### 3-6 Proceedings in case of simple offences and breaches of duty

The divisions in Part 6 of the Justices Act are important for and relevant to you as a duty lawyer.

Generally, ‘a complaint of a simple offence or breach of duty shall be heard or determined at a place appointed for holding Magistrates Courts within the district within which the offence or breach of duty was committed’ (s 139(1)(a)). Such complaint can also be heard ‘at a place appointed for holding Magistrates Courts within the district within 35km of the boundary of [the Magistrates Court district in] which the offence or breach of duty was committed’ (s 139(1)(b)).

There are exceptions regarding offences involving vehicles, vessels or aircraft in the course of the journey (s 139(1)(c) and (d)). However, the court can adjourn the hearing to any other place in Queensland if it would be more convenient (s 139(2)). If there are two or more places within a magistrates court district appointed for holding magistrates courts, the court may adjourn the hearing to one of these places if more convenient (s 140(1)).

Division 2 deals with ex parte sentences. (Note: Duty lawyers do not appear on these.) These situations arise when a complainant or defendant fails to appear on a complaint, or simple offence or breach of duty. If the complainant does not appear, the complaint can be dismissed (s 141). If the defendant does not appear, the court can:

- hear the matter in their absence (ex parte)
- issue a warrant
- sentence in their absence if they have sent written notice to the court of a guilty plea to be entered if s 146A has been complied with, or
- adjourn the matter (s 142(1)).

A court cannot disqualify a person’s driver licence or imprison them in their absence (s 142(2)). Section 142A further clarifies the procedures for sentencing a person in their absence. The court must be satisfied that the defendant was properly aware of the court date; was properly served with a notice to appear; or signed a bail undertaking to that effect.

These sections are subject to s 146A, which prevents ex parte sentences on:

- (a) ‘an offence that is also triable on indictment; or
- (b) an offence prescribed by regulation for the purposes of this paragraph; or

an offence in relation to which another Act requires the court or justices to proceed in a way different from that provided by this section’.

### 3-7 Defendant to be asked to plead

The court is required to ask the defendant to plead to a complaint and, if they plead guilty, the court must then enter a conviction and deal with the defendant according to law (s 145). Some magistrates follow this procedure strictly and ask the defendant personally, rather than the duty lawyer, for their plea. You should tell the defendant this before they appear in court. You are required to allow defendants to enter their own plea. All proceedings should be recorded electronically, which prevents difficulties later regarding whether the defendant's plea was voluntary. See *Brown v Qld Police Service* [2011] QDC 301 for authority that the charges must be read to the defendant and that they must enter their own pleas.

### 3-8 Court can re-open proceedings

If a court convicts a defendant and imposes a penalty contrary to law; fails to impose a penalty that conforms with the law; or imposes a sentence decided on a clear factual error of substance, the court may re-open the proceedings either of its own motion or on a party's application. After allowing the parties to be heard, the court may amend the order made on the complaint and impose a penalty that conforms with the law or accounts for the factual error (*Penalties and Sentences Act 1992* (Qld), s 188).

If a court convicts or makes an order based on or containing an error of fact, the court may set aside the conviction, or vacate or vary the order, to conform with the facts (s 147A(2). This can include setting aside, or vacating or varying, an order if the court is 'satisfied that—

- (a) the conviction or order has been recorded or made against the wrong person; or
- (b) the summons issued upon the complaint...did not come to the knowledge of the defendant; or
- (c) the defendant...has previously been convicted of the offence, the subject of the complaint' (s 147A(3)).

However, this subsection does not limit the court's power under s 147A(2) of the Justices Act. Any application under s 188 of the Penalties and Sentences Act or s 147A(2) of the Justices Act must be made within 28 days after the conviction or order date, or at such time as the court may allow (*Penalties and Sentences Act*, s 188(5), and *Justices Act*, s 147A(5)).

## E. Appeals

Under Part 9, Division 1 of the Justices Act, if you believe that a sentence is 'manifestly excessive', you can file an appeal against the sentence and apply for appeal bail, particularly where you can do this in the same day.

### 3-9 Offences dealt with summarily

Under s 222 of the Justices Act, a person convicted of an offence in the magistrates court (whether summary or indictable) has a right of appeal to the district court. They must bring appeals to the district court within one month (s 222(1)).

However, a defendant cannot appeal against conviction if they pleaded guilty or admitted the truth of a complaint, including under s 651 of the Criminal Code, 'Plea of guilty' (s 222(2)).

'To start the appeal, the appellant must file a notice of appeal in a District Court registry in the district in which the appeal must be heard' (s 222(3)).

'For this section, an appellant is taken to have filed the notice of appeal in the District Court registry—

- (a) if the District Court registry is more than 50km from the place where the order was made; and
- (b) the appellant gives the notice of appeal to the relevant clerk of the court' (s 222(4)).

Note: If the appellant is in custody and subject to s 116(2) and (3) of the *District Court of Queensland Act 1967* (Qld), 'the appeal must be heard in the District Court district where the appellant is in custody' (s 222(9)). Under

s 222, an appellant in custody in prison ‘is taken to have filed the notice of appeal in the District Court registry if the appellant...gives the notice of appeal to the prison’s general manager’ (s 222(5)).

### **3-10 Bail**

Both the magistrates and district courts have jurisdiction to grant bail pending an appeal ([Bail Act 1980](#) (Qld), s 8). However, for indictable offences dealt with summarily, only the Supreme Court has jurisdiction over bail pending an appeal (see also [Chapter 2—Bail](#)).

### **3-11 Duty lawyer obligations**

If you identify a matter with potential merit for appeal and the defendant is in custody, you will give the relevant Legal Aid Queensland office a copy of any relevant documents, including the duty lawyer form. You will ask the Legal Aid Queensland office to contact the defendant for advice and, if instructed, the appeal documents.

If the defendant is not in custody, advise them to contact a Legal Aid Queensland office as soon as possible for further advice and give them any relevant documentation, if practical.