

TASMANIA

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**SUPREME COURT AMENDMENT (JUDGES) BILL  
2016**

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**SUPREME COURT AMENDMENT (JUDGES) BILL  
2016**

*(Brought in by the Premier, the Honourable William Edward  
Felix Hodgman)*

**A BILL FOR**

**An Act to amend the *Supreme Court Act 1887* and the  
*Supreme Court Act 1959***

Be it enacted by Her Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

**PART 1 – PRELIMINARY**

**1. Short title**

This Act may be cited as the *Supreme Court  
Amendment (Judges) Act 2016*.

**2. Commencement**

This Act commences on the day on which this  
Act receives the Royal Assent.

**3. Repeal of Act**

This Act is repealed on the three hundred and  
sixty fifth day from the day on which it  
commences.

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**PART 2 – SUPREME COURT ACT 1887 AMENDED**

**4. Principal Act**

In this Part, the *Supreme Court Act 1887*\* is referred to as the Principal Act.

**5. Section 1 amended (Interpretation)**

Section 1 of the Principal Act is amended as follows:

- (a) by omitting the definition of *barrister*;
- (b) by omitting the definition of *solicitor*.

**6. Section 2 amended (Additional puisne judges)**

Section 2 of the Principal Act is amended by omitting “may appoint barristers of the Court, duly qualified in that behalf, to be” and substituting “may appoint persons to be”.

**7. Section 3 amended (Acting judges)**

Section 3 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “he” and substituting “he or she”;
- (b) by omitting from subsection (1) “his instrument of appointment” and

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substituting “the instrument of  
appointment”;

(c) by inserting the following subsections  
after subsection (1A):

(1B) The Governor may appoint an  
acting judge to that office on a  
full-time basis, or a part-time  
basis, as may be specified in the  
instrument of appointment.

(1C) If –

(a) an acting judge has been  
appointed to that office  
until the happening of an  
event or for a period  
specified in the  
instrument of  
appointment; and

(b) that event occurs, or that  
period expires, after the  
acting judge has  
commenced hearing a  
matter but before the  
acting judge has  
determined the matter,  
including determining any  
applications for  
consequential orders in  
relation to the matter –

the acting judge is taken to have  
been appointed to the office of  
acting judge on a part-time basis,

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or is taken to continue to be appointed to the office of acting judge on a part-time basis, until the acting judge has so determined the matter.

- (d) by omitting from subsection (2) “he” and substituting “he or she”;
- (e) by omitting from subsection (3) “An acting judge” and substituting “If an acting judge is appointed to that office on a full-time basis, the acting judge”;
- (f) by inserting the following subsection after subsection (3):

(3A) If an acting judge is appointed to that office on a part-time basis, the acting judge is entitled to be paid out of the Consolidated Revenue (which, to the necessary extent, is appropriated accordingly) a salary at the rate of –

- (a) for each full sitting day the acting judge serves as an acting judge for the purposes of this Act, 1/230th of the annual salary payable to a puisne judge; or
- (b) if the acting judge is required to serve as acting judge for less than a full

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sitting day, a proportion of the rate specified in paragraph (a) for a full sitting day that is equivalent to the proportion of the sitting day so served.

(g) by inserting the following subsection after subsection (5):

(6) For the avoidance of doubt, an acting judge appointed under this section is not a puisne judge for the purposes of section 2.

**8. Section 4 substituted**

Section 4 of the Principal Act is repealed and the following section is substituted:

**4. Qualification for appointment**

(1) A person is eligible for appointment to the office of judge of the Supreme Court if the person –

(a) is an Australian lawyer of no less than 10 years' standing who has attained the age of 35 years; or

(b) is, or has been, a judge of –

(i) the Federal Court of Australia; or

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- (ii) the Family Court of Australia; or
  - (iii) the Supreme Court of another State or a Territory; or
  - (iv) the High Court of New Zealand; or
  - (v) the Supreme Court of New Zealand; or
- (c) is, or has been, appointed as a magistrate under the *Magistrates Court Act 1987*.
- (2) An appointment of a person as a judge under this Act, as in force before the commencement of the *Supreme Court Amendment (Judges) Act 2016*, is not invalid by reason only that the person did not hold the qualifications, or had not attained the age, required under this Act as in force at the time of the appointment.
- (3) An appointment of a person as a judge, as referred to in subsection (2), is deemed for the purposes of any Act –
- (a) to have been validly made on the relevant day; and
  - (b) to have always been validly made on the relevant day; and



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- (c) to have been validly made before the person served as, or performed or exercised a function, duty or power of, a judge under any Act –

and no action taken or omitted to be taken by the person after such an appointment is invalid by reason only that, at the time when the action was taken or omitted to be taken, this section was not in force.

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**PART 3 – SUPREME COURT ACT 1959 AMENDED**

**9. Principal Act**

In this Part, the *Supreme Court Act 1959*\* is referred to as the Principal Act.

**10. Section 4 amended (Appointment of Associate Judge)**

Section 4 of the Principal Act is amended by omitting subsection (2) and substituting the following :

- (2) A person is eligible for appointment to the office of Associate Judge if the person –
  - (a) is an Australian lawyer of no less than 10 years' standing who has attained the age of 35 years; or
  - (b) is, or has been, a judge of –
    - (i) the Federal Court of Australia; or
    - (ii) the Family Court of Australia; or
    - (iii) the Supreme Court of another State or a Territory; or

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\*No. 41 of 1959

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- (iv) the High Court of New Zealand; or
  - (v) the Supreme Court of New Zealand; or
  - (c) is, or has been, appointed as a magistrate under the *Magistrates Court Act 1987*.
- (3) An appointment of a person as Associate Judge under this Act, as in force before the commencement of the *Supreme Court Amendment (Judges) Act 2016*, is not invalid by reason only that the person did not hold the qualifications required under this Act as in force at the time of the appointment.
- (3A) An appointment of a person as Associate Judge in respect of which subsection (3) applies, is deemed for the purposes of any Act –
- (a) to have been validly made on the relevant day; and
  - (b) to have always been validly made on the relevant day; and
  - (c) to have been validly made before the person served as, or performed or exercised a function, duty or power of, Associate Judge under any Act –

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and no action taken or omitted to be taken by the person after such an appointment is invalid by reason only that, at the time when the action was taken or omitted to be taken, this section was not in force.

**11. Section 4A amended (Power to appoint Acting Associate Judge)**

Section 4A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “who is a barrister of at least 5 years’ standing” and substituting “who is eligible under subsection (1A)”;
- (b) by inserting the following subsection after subsection (1):
  - (1A) A person is eligible for appointment to the office of Acting Associate Judge if the person is eligible for the office of Associate Judge.