



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 36

2014

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 2 of 2014: Magistrates Amendment Act, 2014.

Act No. 2, 2014 MAGISTRATES AMENDMENT ACT, 2014**EXPLANATORY NOTE:**

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| _____ | Words underlined with a solid line indicate insertions in existing provisions. |
| [] | Words in bold type in square brackets indicate omissions from existing provisions. |

ACT

To amend the Magistrates Act, 2003, so as to provide for certain definitions; to empower the Commission to recognise one association of magistrates; to empower the association of magistrates to nominate divisional magistrates and regional magistrates for appointment as members of the Commission; to provide for qualification for appointment or designation as member of the Commission; to limit the term of office of a member of the Commission to not more than two consecutive terms; to empower the Minister to withdraw a member from the Commission on the recommendation of the Commission; to empower the Commission to transact urgent business by circulation among all members without the holding of a meeting; to further provide for the jurisdiction and functions of a clerk of a magistrate's court appointed temporarily to act as assistant magistrate for a district or subdistrict; to further clarify the designations of magistrates and assignments of magistrates to certain courts; to limit the appointment of Chief Magistrate to five year term of office; to provide for a person to revert to the post of magistrate after having failed to secure for a reappointment as Chief Magistrate; to further empower the Minister to create temporary posts additional to the permanent establishment; to provide for the appointment of persons as magistrates on fixed-term contracts of employment on the permanent establishment; to subject the appointment of magistrates to a probation of not less than six months; to empower the Minister to recognise qualifications in law by notice in the *Gazette* to be qualification of satisfactory standard of professional education for the appointment of persons as magistrates; to make clear the powers and functions of certain magistrates; to provide for further acts or omissions as misconducts; to empower the presiding officer at a disciplinary investigation to issue a warrant of arrest against a person who fails, without lawful excuse, to attend or remain in attendance at investigation to give evidence or to produce documents and to impose penalties; to increase penalties for certain offences; and to provide for incidental matters.

(Signed by the President on 12 March 2014)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of section 1 of Act No. 3 of 2003

1. Section 1 of the Magistrates Act, 2003 (Act No. 3 of 2003) (in this Act referred to as the principal Act) is amended by the insertion of the following definitions:

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- (a) before the definition of “affirmative action”:

“additional magistrate” means a magistrate appointed additional to the district magistrate in terms of section 11(3); and

“administrative division” means a division created under section 2(2) of the Magistrates’ Courts Act;”;

- (b) after the definition of “affirmative action”:

“association” means the association of magistrates recognised under section 4(2)(c);

- (c) after the definition of “committee”:

“district court” means a court created for a specific magisterial district as seat of the district magistrate under section 2(1) of the Magistrates’ Courts Act;

“district division”, “district” or “subdistrict” means a district division, district or subdistrict created under section 2(1) of the Magistrates’ Courts Act;

“district magistrate” means a magistrate appointed under section 11(1)(e), or designated under section 11(2)(b), as a district magistrate who is the head of a district court;”;

“divisional magistrate” means a magistrate appointed under section 11(1)(c) as divisional magistrate who is the head of an administrative division;”;

- (d) after the definition of “prescribed”:

“regional court magistrate” means a magistrate appointed under section 11(1)(d) as regional court magistrate;”.

Amendment of section 4 of Act No. 3 of 2003

2. Section 4 of the principal Act is amended -

- (a) by the substitution of the following paragraph for paragraph (b) of subsection (1):

“(b) compile or amend, [after consultation with the Judges’ and Magistrates’ Association of Namibia,] after consultation with the association, a Code of Conduct to be complied with by magistrates;”;

- (b) by the addition of the following paragraph after paragraph (b) of subsection (2):

“(c) may recognise one professional association of magistrates when the Commission is satisfied with the constitution of the association and its representation and objectives.”.

Act No. 2, 2014 MAGISTRATES AMENDMENT ACT, 2014**Amendment of section 5 of Act No. 3 of 2003**

3. Section 5 of the principal Act is amended -
- (a) by the substitution of the following paragraph for paragraph (c) of subsection (1):
- “(c) one divisional or regional court magistrate appointed by the Minister from a list of three magistrates nominated by the [Judges’ and Magistrates’ Association of Namibia] association from divisional or regional court magistrates, and who is not an executive member of the association; and
- (b) by the substitution of the following subparagraph for subparagraph (i) of paragraph (b) of subsection (2):
- “(i) the association [Judges’ and Magistrates’ Association of Namibia] to nominate in writing, within the period specified in the invitation, three magistrates who are divisional or regional court magistrates; and”; and
- (c) by the insertion of the following subsection after subsection (2):
- (2A) If a designation or nomination referred to in subsection (2) is not received by the Minister within the period specified in the directive or invitation, the Minister may accordingly designate or appoint such person as the Minister thinks suitable, subject to section 5A.”.

Insertion of section 5A in Act No. 3 of 2003

4. Section 5A is inserted in the principal Act after section 5:

“Qualification for designation and appointment as member of Commission

5A. A person does not qualify for designation or appointment as member of the Commission if such person -

- (a) is not a Namibian citizen or permanent resident in Namibia;
- (b) has been declared as mentally ill under any law relating to mental health;
- (c) is an unrehabilitated insolvent;
- (d) has, at any time, been convicted of an offence and sentenced to a term of imprisonment without the option of a fine;
- (e) has been removed from an office of trust on account of misconduct;

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- (f) has never been at management level in his or her profession or employment or has less than 10 years work experience; or
- (g) appears in the magistrates' courts on behalf of the State or other clients.".

Amendment of section 6 of Act No. 3 of 2003, as amended by section 3 of Act No. 5 of 2009

5. Section 6 of the principal Act is amended -

- (a) by the substitution for subsection (2) of the following subsection:

"(2) Any person whose period of office as a member of the Commission has expired, may be reappointed or redesignated for another term, but a member may not hold office for more than two consecutive terms.";

- (b) by the insertion after subsection (3) of the following subsection:

"(3A) The Minister -

- (a) on the recommendation of the Commission, made after a member having been given an opportunity to be heard by the Commission; and
- (b) after consultation with the designating or nominating authority,

may on any valid reason withdraw a member from the Commission.";
and

- (c) by the substitution for subsection (4) of the following subsection:

"(4) A member whose designation or nomination has been withdrawn under subsection (3) or a member who has been withdrawn from the Commission under subsection (3A) ceases to hold office as from the date of such withdrawal."

Amendment of section 7 of Act No. 3 of 2003

6. Section 7 of the principal Act is amended by the addition after subsection (5) of the following subsection:

"(6) The Commission may transact a business of urgent nature which cannot be kept pending till the next meeting by circulating, in any manner determined by the Commission, the matter together with proposed solution, if any, among all members, and -

- (a) any resolution so circulated and approved by a majority of the members is as effective and binding as if such resolution had been passed at a meeting of the Commission;

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- (b) the business so transacted and the resolution so circulated and approved must be reported and recorded in the minutes at the next meeting of the Commission.”.

Amendment of section 10 of Act No. 3 of 2003

7. Section 10 of the principal Act is amended -

(a) by the substitution for subsection (2) of the following subsection:

“(2) The Chief Magistrate must -

- (a) designate one of the staff members referred to in subsection (1) as secretary of the Commission; and
- (b) supervise and take full control over the staff members referred to in subsection (1).

(b) by the addition of the following subsection after subsection (2):

(3) A person outside the magistracy may not give any assignment to any of the staff members referred to in subsection (1) without the approval of the Chief Magistrate.”.

Substitution of section 11 of Act No. 3 of 2003, as amended by section 2 of Act No. 5 of 2009

8. The principal Act is amended by the substitution for section 11 of the following section:

“Composition of magistracy

11. (1) There is a magistracy consisting of the following magistrates appointed permanently or on fixed-term contracts of employment or temporarily in respect of lower courts under and subject to this Act -

- (a) a magistrate appointed as Chief Magistrate;
- (b) magistrates appointed as deputy chief magistrates;
- (c) magistrates appointed as divisional magistrates;
- (d) magistrates appointed as regional court magistrates;
- (e) magistrates appointed as district magistrates; and
- (f) magistrates appointed as additional magistrates for districts and subdistricts.
- (2) (a) One or more magistrates may be appointed in accordance with this Act for any regional division, district division, district or subdistrict.

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- (b) Where more than one magistrate is appointed for a regional division, district division, district or subdistrict, the Commission must designate one of their number as the head of that regional division, district division, district or subdistrict.
- (3) The Commission must assign a magistrate to a specific regional division, district division, district or subdistrict to serve as magistrate of that regional division, district division, district or subdistrict.
- (4) Despite subsection (3) -
- (a) a divisional magistrate of an administrative division may at the same time also be assigned as -
- (i) a divisional magistrate of another administrative division; and
- (ii) a district magistrate or an additional magistrate of each district falling wholly or partly within the administrative division of which he or she is the divisional magistrate, and is for all purposes deemed to have been assigned as district or additional magistrate of each district falling wholly in his or her administrative division;
- (b) a regional court magistrate may also be a magistrate of a district court, and is for the purposes of section 16(6) deemed to have been duly appointed as a magistrate for each district falling wholly or partly within the district division of which he or she is the regional court magistrate;
- (c) a magistrate appointed for a district may at the same time be assigned by a divisional magistrate to act as additional magistrate of another district in the same administrative division;
- (d) a magistrate who is a member of the relief component may be appointed as additional magistrate for any district in the country.
- (5) (a) Every magistrate, after appointment and before commencing with his or her functions in terms of this Act, must take an oath or make an affirmation subscribed by him or her, in the form set out in Schedule 1.
- (b) An oath or affirmation referred to in paragraph (a) must be taken or made in open court before the most senior available magistrate, who must at the foot thereof endorse a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.
- (6) Whenever by reason of absence or incapacity a magistrate is unable to perform the functions of his or her office, or whenever such office

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becomes vacant, the Commission may assign another magistrate to act in the place of the absent or incapacitated magistrate during such absence or incapacity or to act in the vacant office until the vacancy is filled.

- (7) (a) Despite section 13(1), the Commission may appoint temporarily any person who is qualified to be appointed as a magistrate under this Act to act, either generally or in a particular matter, as magistrate of a regional court or district or subdistrict court in addition to any magistrate of that regional court, district or subdistrict court.
- (b) A person appointed under paragraph (a) is appointed for such period as the Commission may determine at the time of the appointment or for the duration of a particular matter.
- (c) Despite section 18(1) and (2), the Minister, with the concurrence of the Commission and the Minister responsible for finance, may determine the remuneration and allowances, and the method of calculation of such remuneration and allowances, payable to a person appointed under paragraph (a) who is not subject to the laws governing the Public Service.
- (7A) (a) Despite section 13(1) and (2) but subject to paragraphs (b) and (c), the Commission or the Chief Magistrate or a divisional magistrate so authorized by the Commission may temporarily appoint the clerk of a magistrate's court to act as assistant magistrate of a district or subdistrict in addition to any magistrate of that district or subdistrict.
- (b) Despite section 16(1)(a) and despite section 8 of the Magistrates' Courts Act, an assistant magistrate appointed under paragraph (a) may, in the absence of a magistrate, hold a court of a district or subdistrict, but only for the purposes of -
- (i) postponing cases;
 - (ii) granting of unopposed bail;
 - (iii) withdrawing cases upon the request of the prosecution but before pleading;
 - (iv) authorising of warrant of arrest, execution to be held over 14 days and authorising accused persons to be held in custody;
 - (v) handling estates of deceased persons in terms of the Policy and Procedure Manual for Magistrates;
 - (vi) signing formal documents in respect of duties assigned to magistrates in respect of deaths;
 - (vii) solemnising marriages; and

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- (viii) approving applications for temporary liquor licenses.
- (c) Except when performing the functions of a magistrate as specified in paragraph (b), a clerk of the court appointed under paragraph (a) to act as assistant magistrate remains subject to -
- (i) the laws governing the Public Service; and
- (ii) the conditions of service applicable to employees in the Public Service.
- (8) The Commission may, subject to such directions as it may issue from time to time, in general or in a specific case, in writing delegate the power conferred on the Commission by subsection (6) to the Chief Magistrate.
- (9) The Chief Magistrate referred to in subsection (1)(a) -
- (a) is appointed by the Minister on the recommendation of the Commission;
- (b) is appointed for a five year term of office;
- (c) is eligible for reappointment at the expiry of his or her five year term of office;
- (d) is the administrative head of the magistracy; and
- (e) may preside over cases in any lower court.
- (10) If the Chief Magistrate fails to secure a reappointment contemplated in subsection (9) -
- (a) he or she becomes a magistrate of any designation immediately below the designation of Chief Magistrate, unless he or she decides to resign as magistrate; and
- (b) the Commission may give him or her any assignment in the magistracy.
- (11) The Chief Magistrate is assisted by deputy chief magistrates in his or her office who, in the absence of the Chief Magistrate, act as Chief Magistrate as the Commission may assign generally or in particular case."

Substitution of section 12 of Act No. 3 of 2003

9. The principal Act is amended by the substitution for section 12 of the following section:

“Permanent establishment of magistracy

12. The Minister, in consultation with the Commission and with the concurrence of the Minister responsible for finance -

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- (a) must create posts for magistrates on the permanent establishment of the magistracy and determine the number, grading, regrading, designation, redesignation or conversion of posts on such establishment; and
- (b) may create temporary posts additional to the permanent establishment when it becomes necessary to temporarily increase the number of magistrates.”.

Substitution of section 13 of Act No. 3 of 2003

10. The principal Act is amended by the substitution for section 13 of the following section:

“Appointment of magistrates on permanent establishment

13. (1) The Minister, on the recommendation of the Commission, but subject to subsection (2), either on a permanent basis or on fixed-term contract of employment, may appoint as many magistrates as there are posts on the permanent establishment of the magistracy or in temporary posts additional to the permanent establishment.

(2) The Minister may not appoint a person as a magistrate under subsection (1), unless such person -

- (a) is -
- (i) a Namibian citizen; or
- (ii) a non-Namibian citizen to be appointed on a fixed-term contract of employment;
- (b) is qualified to be so appointed in terms of section 14; and
- (c) is certified by the Commission to be in all respects suitable for appointment as a magistrate.

(3) The appointment of every magistrate must be effected on such contract of employment, not being inconsistent with this Act, as the Minister may approve on the recommendation of the Commission.

(4) Except where the Minister on the recommendation of the Commission otherwise approves, the appointment of every magistrate at entry level on the permanent establishment is on probation for a period of not less than six months.

(5) If the appointment of a magistrate is not confirmed after six months, the period of probation may be conditionally extended for another six months.

(6) If the appointment of a magistrate is not confirmed after the probation period or the extended probation period, the Minister, on

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the recommendation of the Commission, must terminate the services of the magistrate -

- (a) by giving the magistrate a notice of 30 days; or
- (b) at any time during the probation period without prior notice, if the conduct of the magistrate is unsatisfactory, but by paying the magistrate a salary of one month in lieu of such notice.”.

Substitution of section 14 of Act No. 3 of 2003

11. The principal Act is amended by the substitution for section 14 of the following section:

“Qualifications for appointment as magistrate

14. (1) Subject to section 29(2), a person who immediately before the date of commencement of this section did not hold a substantive appointment as magistrate is not qualified to be appointed as a magistrate under this Act, unless such person has obtained a qualification in law referred to in subsection (2).

(2) The Minister, by notice in the *Gazette*, on the recommendation of the Commission in general or in any particular case, may recognise any qualification in law to be a qualification of a satisfactory standard of professional education for the appointment of a person as magistrate.

(3) A person who has been appointed as magistrate before the recognition of any qualification contemplated in subsection (2) his or her appointment is not affected by such qualification so recognised.”.

Substitution of section 16 of Act No. 3 of 2003

12. The principal Act is amended by the substitution for section 16 of the following section:

“Powers and duties of magistrates

16. (1) A magistrate of a district -

- (a) may hold a court in the district court or any other lower court for the district division for which he or she holds an appointment;
- (b) has the powers and perform the duties conferred or imposed upon magistrates by law; and
- (c) must exercise administrative control over and distribute the work amongst the additional magistrates of the district and subdistrict under his or her supervision.

(2) An additional magistrate -

- (a) may hold a court in the district court or any other lower court as assigned by the district magistrate; and

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(b) has the powers and perform the duties conferred or imposed upon magistrates by law in so far as he or she is not expressly prohibited from exercising or performing either by the Commission or by the magistrate of the district.

(3) A regional court magistrate -

(a) may hold court in the regional court;

(b) has the powers and performs the duties conferred or imposed upon regional court magistrates by law; and

(c) when presiding in a civil trial or an inquest in a district court has the powers and performs the functions imposed upon magistrates by law.

(4) A divisional magistrate -

(a) may hold court in a district court situated in his or her administrative division and may be assigned to perform relief duties in any regional court;

(b) has the powers and performs the duties conferred or imposed upon divisional magistrates by or under this Act; and

(c) has the powers and performs the duties conferred or imposed upon magistrates by law in so far as he or she is not expressly prohibited from exercising by the Commission or the Chief Magistrate.

(5) A person appointed temporarily under section 11(7) to act as a magistrate has the powers and jurisdiction and performs the duties connected with the office in which he or she is acting, for the particular case or during the time or in the circumstances for which he or she is appointed to act subject to such conditions or restrictions as the Commission when appointing him or her may impose.

(6) A magistrate may, in his or her capacity as -

(a) in the case of a regional court magistrate, a magistrate of a district in terms of section 11(4)(a)(ii); or

(b) in the case of a divisional magistrate of an administrative division, a magistrate of a district in terms of section 11(4)(b),

hold a court of any district in the division for which he or she has been appointed for the hearing of any civil matter within the jurisdiction of the district court.

(7) A district magistrate is accountable for -

(a) the efficient management and administration of his or her office and branch offices, sub-districts and periodical courts in the district for which he or she has been appointed; and

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(b) the proper administration of justice in his or her district.

(8) A divisional magistrate is accountable for the administration of justice in the regional and district courts, and exercises administrative control over the magistrates, in his or her administrative division.

(9) Magistrates may form and belong to a professional association of magistrates representing the interests of magistrates.”.

Amendment of section 19 of Act No. 3 of 2003

13. Section 19 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Commission may -

(a) when the interests of the administration of justice so require; or

(b) on valid reason, upon written request by a magistrate,

transfer a magistrate from the seat of one lower court to the seat of another lower court;” and

(b) by the insertion after subsection (1) of the following subsection:

“(1A) A magistrate so transferred under subsection (1) must be given an appropriate notice before the transfer date.” and

(c) by the substitution for subsection (3) of the following subsection:

“(3) A transfer under subsection (1), except when made at the request of the magistrate, is at the expense of the State and the magistrate so transferred is entitled to the prescribed transfer and resettlement costs.”.

Amendment of section 20 of Act No. 3 of 2003

14. Section 20 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) If it is in the interests of the administration of justice to retain the services of a magistrate beyond the age of 65 years, he or she may, with his or her consent and with the approval of the Minister, be so retained for a further period determined by the Minister on the recommendation of the Commission but expiring not later than the last day of the month in which he or she attains the age of 70 years.”.

Amendment of section 21 of Act No. 3 of 2003

15. Section 21 of the principal Act is amended -

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- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- “(b) The Commission may suspend a magistrate under paragraph (a) only if the Commission has reason to believe that the magistrate **[is]** -
- (i) on the ground of alleged misconduct;
- [(ii) on account of continued ill-health;]** or
- (iii) on account of incapacity to perform the duties of his or her office efficiently,
- is no longer fit to hold office, or may interfere or is likely to interfere with witnesses or tamper with evidence in circumstances where the magistrate is being investigated for the alleged misconduct.”;
- (b) by the substitution for subparagraph (ii) of paragraph (b) of subsection (4) of the following subparagraph:
- “(ii) must be **[prosecuted]** processed as if it were an appeal from a judgment of a magistrate’s court in a civil matter, and all rules applicable to the hearing of such an appeal apply with the necessary changes to an appeal under this subsection.”; and
- (c) by the substitution for paragraph (e) of subsection (5) of the following paragraph:
- “(e) Nothing in paragraph (a) contained is to be construed as preventing a magistrate from vacating his or her office without the approval of the Minister by resigning as magistrate on 30 days’ notice.”.

Substitution of section 24 of Act No. 3 of 2003

16. The principal Act is amended by the substitution for section 24 of the following section:

“Definition of misconduct

24. A magistrate commits misconduct if he or she -

- (a) is found guilty of serious offence -
- (b) contravenes or fails to comply with a provision of this Act;
- (c) is negligent or indolent in the performance of the duties of his or her office;
- (d) uses intoxicants or stupefying drugs excessively resulting in his or her incapacity to perform the duties of his or her office efficiently;

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- (e) accepts or demands in respect of the performance of or failure to perform his or her duties any commission, fee or pecuniary or other award to which he or she is not entitled by virtue of his or her office;
 - (f) operates or undertakes, without the approval of the Commission, any private agency or private work in regard to any matter directly or indirectly related to the performance of the functions of his or her office or any matter directly or indirectly related to the field of operations of a magistrate, or fails to declare that a member of his or her household operates or undertakes any such private agency or private work;
 - (g) misappropriates or makes improper use of any property of the State;
 - (h) uses any property belonging to the State without the consent of the staff member having lawful control over it, or without lawful excuse;
 - (i) absents himself or herself from his or her office or duty without leave or valid cause;
 - (j) makes a false or incorrect statement, knowing it to be false or incorrect, with a view to obtain any privilege or advantage in relation to his or her official position or his or her duties or to the prejudice of the administration of justice;
 - (k) commits any act which brings or is likely to bring the administration of justice or the magistracy into disrepute;
 - (l) refuses to execute a lawful order; or
 - (m) contravenes or fails to comply with the code of conduct referred to in section 4(1)(b).
- (2) If a magistrate is absent without leave or valid reason from his or her office or duty for a period of five consecutive working days or longer -
- (a) the Chief Magistrate must accordingly inform the Commission without delay;
 - (b) the magistrate is deemed to have absconded and made himself or herself guilty of misconduct.
- (3) After the Commission has been informed of the absence under subsection (2) it must order a preliminary investigation in terms of section 25(1) to determine whether the magistrate must be dismissed.
- (4) If a magistrate -
- (a) despite appropriate guidance, induction, instructions, mentoring or training provided to him or her, fails to meet the performance standard expected of a magistrate; and

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- (b) despite written warning and reasonable time given to him or her to improve his or her performance standard, fails to improve his or her performance standard,

he or she commits a misconduct due to poor work performance.

Amendment of section 25 of Act No. 3 of 2003

17. Section 25 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) If the Commission has reason to believe that a magistrate has committed misconduct, the Commission must, subject to subsection (2), appoint a magistrate senior to the magistrate being charged or of equal rank or other person (hereinafter called the investigating officer) to carry out a preliminary investigation and to obtain evidence in order to determine whether there are any grounds for a charge of misconduct against the magistrate.”.

Amendment of section 26 of Act No. 3 of 2003

18. Section 26 of the principal Act is amended -

- (a) by the substitution for subsection (4) of the following subsection:

“(4) If the magistrate charged -

(a) denies the charge; or

(b) fails to comply with the direction referred to in subsection (2)(b)(i),

the Commission must, within seven days of receipt of the written denial or, in the case of a failure to comply with the direction referred to in subsection (2)(b)(i), of the lapsing of the period mentioned in that subsection, appoint a magistrate or other qualified and suitable person (hereinafter called the presiding officer) to preside at the investigation, and a magistrate or other qualified and suitable person as initiator to lead evidence.”;

- (b) by the insertion after subsection (6) of the following subsection:

“(6A) If a person, being duly subpoenaed to give evidence or to produce any book, paper or document in his or her possession or under his or her control, which the party requiring his or her attendance desires to show in evidence -

(a) fails, without lawful excuse, to attend or to give evidence or to produce such book, paper or document according to the subpoena; or

(b) unless duly excused, fails to remain in attendance throughout the investigation,

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the presiding officer, upon being satisfied upon oath or by the return of the messenger that such person has been duly subpoenaed and that his or her reasonable expenses, calculated in accordance with the tariff prescribed under section 51bis of the Magistrates' Courts Act, have been paid or offered to him or her, may -

- (i) issue a warrant of arrest of the person in order that the person may be brought up to give his or her evidence or to produce such book, paper or document according to the subpoena, and to be otherwise dealt with according to law; or
- (ii) impose upon the person a fine not exceeding N\$2 000 or imprisonment for a period not exceeding three months,

as if the investigation was a matter before the civil court, whether or not the person is otherwise subject to the jurisdiction of the court in whose jurisdiction the investigation is being conducted.”.

Amendment of section 27 of Act No. 3 of 2003

19. Section 27 of the principal Act is amended -

(a) by the substitution for paragraph (o) of subsection (1) of the following paragraph:

“(o) the recognition of a professional [**society or body**] association representing the interests of magistrates;”;

(b) by the insertion -

(i) after paragraph (k) of the following paragraph:

“(kA) the classifying of misconducts referred to in section 24 into categories of minor and serious misconducts for the purposes of sanctions and the manner of investigating such misconducts and determining them;”;

(ii) after subsection (1) of the following subsection:

“(1A) The Minister, with the concurrence of the Commission, may make regulations conferring or imposing administrative powers or duties of a general nature on magistrates.”.

Substitution of section 28 of Act No. 3 of 2003

20. The principal Act is amended by the substitution for section 28 of the following section:

Act No. 2, 2014**MAGISTRATES AMENDMENT ACT, 2014****“Penalty**

28. A person who willfully obstructs or interferes with the Commission or a committee or person appointed by the Commission to perform any function, in the performance of its, his or her functions in terms of this Act or any other law [**is guilty of**] commits an offence and is liable on conviction to a fine not exceeding [N\$1 000] N\$4 000 or to imprisonment for a period not exceeding [three] 12 months, or to both such fine and such imprisonment.”.

Insertion of Schedule 1 in Act No. 3 of 2003 and numbering of Schedule

21. The principal Act is amended -

(a) by the insertion after section 32 of the following Schedule:

“SCHEDULE 1

OATH/AFFIRMATION BY MAGISTRATE

(Section 11(5))

I,
(*full name of magistrate*)

do hereby swear/solemnly affirm that in my capacity as a magistrate I will be faithful to the Republic of Namibia, will uphold and protect the Namibian Constitution as the supreme law and the fundamental human rights and freedoms entrenched in it, and will administer justice to all persons alike in accordance with the Constitution and the law without fear, favour or prejudice.

(*In the case of an oath*)

So help me God!

(*In the case of affirmation*)

I affirm!

This oath/affirmation was taken/made before me on this.....day
of20.....

.....
(**Signature of most senior available magistrate**)”

(b) by the substitution for the “Schedule” of the following Schedule:

“SCHEDULE 2”.

Savings

22. (1) A person appointed or designated as member of the Commission before the commencement of this Act is deemed to have been qualified for appointment or designation as member of the Commission in terms of section 5A.

(2) A non-Namibian citizen appointed as magistrate on fixed-term contract of employment before the commencement of this Act is deemed to have been appointed

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under section 13 and his or her appointment is valid as if subsection (2)(a)(ii) of that section had commenced on 30 June 2003.

Short title

- 23.** This Act is called the Magistrates Amendment Act, 2014.
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