

STIPENDIARY MAGISTRATES.

6° Elizabeth II., No. XVII.

No. 17 of 1957.

AN ACT to provide for the Appointment of Stipendiary Magistrates with Secure Tenure of Office and other relative purposes.

[Assented to 30th September, 1957.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Stipendiary Magistrates Act, 1957.* Short title and citation.

(2) This Act shall come into operation on a day to be fixed by proclamation. Commencement.

2. The Stipendiary Magistrates Act, 1930-1953 is repealed. Repeal.

Interpre-
tation.

3. In this Act—

“Public Service Act, 1904” means that Act as approved for reprint on the 28th day of October, 1953 and incorporated in Volume 6 of the Reprinted Acts of the Parliament of Western Australia and as amended by Acts Nos. 54 of 1954, 53 of 1955, and 69 of 1956, but without prejudicing the application of the Interpretation Act, 1918, and in particular section fourteen thereof.

Appointment
of stipen-
diary
magistrates.

4. (1) The Governor may from time to time by warrant under his hand appoint fit and proper persons to be stipendiary magistrates.

(2) Notwithstanding the provisions of this Act, appointments of special magistrates may be made under section nineteen of the Child Welfare Act, 1947, temporary appointments of any magistrates may be made under section thirty-four of the Interpretation Act, 1918, or under the proviso to section twenty-five of the Public Service Act, 1904, and full operation shall be given to section twelve of the Local Courts Act, 1904.

(3) Subject to section five of this Act, the persons whose names appear in the first column of the Schedule to this Act, being persons who immediately prior to the commencement of this Act are holding office in a permanent capacity as magistrates by the designations stated in the second column of the Schedule opposite such names respectively, are deemed to have been appointed and shall hold office as if their appointments had been made as stipendiary magistrates under this Act.

Tenure of
office.

5. (1) Subject to this section, all stipendiary magistrates shall hold their offices during good behaviour.

(2) The Governor may remove any stipendiary magistrate from office upon the address of both Houses of Parliament made at any time.

(3) (a) The Governor may suspend any stipendiary magistrate on any charge made by the Minister, and in such a case the Minister shall report the charge and suspension to the Chief Justice of Western Australia; and if the magistrate does not, in writing, admit the truth of the charge made against him, the Chief Justice or a Judge nominated by the Chief Justice shall, in such manner as he shall think fit or as may be prescribed by Rules of Court, inquire into the truth of the charge, and shall then report to the Governor his opinion thereon and his recommendation in regard to the case.

(b) On the recommendation of the Chief Justice or, where a Judge is nominated by the Chief Justice, then on the recommendation of that Judge, the Governor may confirm the suspension upon such terms as to salary since the date of suspension as may be recommended, and, if so recommended as aforesaid, may continue the suspension upon such terms as to future salary as the Governor thinks fit pending consideration of the removal of the magistrate under subsection (2) of this section.

(4) Where the Minister is of opinion that a stipendiary magistrate is physically or mentally unfit to discharge efficiently the duties of his office, the Minister may relieve him of his duties and constitute a medical board consisting of three qualified medical practitioners who, in such manner as the board shall think fit or as may be prescribed, shall inquire whether or not the magistrate is so unfit and shall report thereon to the Minister. On the recommendation of the board, the Governor may reinstate the magistrate or may retire him from office. A retirement under this subsection shall be deemed to be a retirement through invalidity or physical or mental incapacity for the purposes of the Superannuation and Family Benefits Act, 1938. Whilst relieved of his duties under this subsection, the magistrate shall not act as a magistrate or as a justice but shall be entitled to salary in full.

(5) Every magistrate in office as a magistrate, howsoever designated, immediately prior to the commencement of this Act who while in office shall

attain the age of seventy years, shall retire from office on the day on which he attains such age and every stipendiary magistrate and special magistrate appointed after the commencement of this Act, who while in office shall attain the age of sixty-five years shall retire from office on the day on which he attains such age, and on any such retirement as mentioned in this subsection, the office of the retired magistrate shall thereupon become vacant, save for the purpose of completing the trial of any action as next hereinafter provided; and such office may, notwithstanding the pendency of such trial be filled by the appointment of any qualified person.

(6) Any magistrate who retires under subsection (5) of this section may nevertheless within thirty days of his retirement complete the trial of any action which he had entered upon and not completed before retirement.

(7) Any magistrate shall be deemed to have vacated his office—

- (a) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts such resignation; or
- (b) if, after attaining the age of sixty years, he signifies by writing under his hand addressed to the Governor his desire to retire, and the Governor agrees.

References
in other
Acts to
magistrates.

6. (1) Except as provided by this Act or under section nineteen of the Child Welfare Act, 1947, no person shall be appointed in a permanent capacity as a stipendiary magistrate, police magistrate, resident magistrate, or magistrate of a local court or otherwise as a paid or salaried magistrate.

(2) Any reference in any Act to a magistrate, howsoever designated otherwise than as a special magistrate, shall, unless the context otherwise requires, be construed to include a reference to a stipendiary magistrate appointed or deemed to have been appointed under this Act.

7. (1) No person shall hereafter be appointed a stipendiary magistrate in a permanent capacity unless he is qualified under section twenty-five of the Public Service Act, 1904, or is a barrister or solicitor entitled to practise in a State of the Commonwealth or in the High Court of Justice in England or Northern Ireland.

Qualifica-
tions for
appointment.

(2) The office of stipendiary magistrate may be held in conjunction with any other office, appointment, duty or function which the Governor shall deem not incompatible.

(3) No stipendiary magistrate shall practise as a legal practitioner, barrister or solicitor.

(4) (a) Each stipendiary magistrate and each special magistrate appointed after the commencement of this Act shall, before exercising any function of his office, take the oath of allegiance and judicial oath prescribed in the Third Schedule to the Justices Act, 1902.

(b) Without prejudice to the exercise of jurisdiction and powers, but as soon as conveniently may be after the commencement of this Act, any magistrate, howsoever designated, in office immediately prior to the commencement of this Act may be required by the Minister to take before a Judge or before any person authorised in that behalf by the Governor the oath of allegiance and judicial oath prescribed in the Third Schedule to the Justices Act, 1902, and thereafter there may be issued to the magistrate a warrant under subsection (1) of section four of this Act, which warrant may include a reference to previous service as a magistrate.

8. (1) Except as provided by this Act, the provisions of the Public Service Act, 1904, including provisions as to remuneration, leave of absence and allowances apply to all stipendiary magistrates, as if they were officers of the Public Service within the

Application
of Public
Service Act.

Professional Division thereof, and each magistrate shall be deemed to be within such department thereof as the Governor may from time to time direct.

(2) Service as a magistrate, howsoever designated, and leave granted to him prior to the commencement of this Act shall be taken into consideration for the purpose of calculating his leave entitlement as a stipendiary magistrate after such commencement.

(3) The provisions of the Government Employees (Promotions Appeal Board) Act, 1945 do not apply to vacancies or new offices created in the office of stipendiary magistrate.

(4) Stipendiary magistrates are deemed to be "employees" within the meaning and for the purposes of the Superannuation and Family Benefits Act, 1938.

(5) Stipendiary magistrates are deemed to be "public servants" within the meaning and for the purposes of the Public Service Appeal Board Act, 1920.

Jurisdiction
and powers.

9. Every stipendiary magistrate, by virtue of his office

(a) shall be a justice for the State;

(b) shall, though sitting alone, have, and may exercise throughout the State, all such jurisdiction and powers, including functions, authorities and discretions, as now are or hereafter may be exercised, under any existing or future Act, by two justices or by a stipendiary, police, resident, industrial or special magistrate, by a magistrate of a local court or by a chairman of a court of session;

(c) may do alone whatever may under any existing or future Act be done by two justices; and

(d) shall be a coroner for the State.

10. (1) The Governor may from time to time assign to one or more stipendiary magistrates any local or children's court or courts, or court or courts of session, or of petty sessions, or magisterial district or districts for and in which he or they may be required to act and may from time to time revoke or vary such assignment; but the jurisdiction and powers of such magistrate or magistrates shall not be deemed to be limited by any such assignment or revocation. Assignment
of duties.

(2) The Minister may make temporarily any assignment referred to in this section.

(3) Where by or under any Act a tribunal or board is or may be constituted by a magistrate, howsoever designated and whether sitting or acting alone or with another or others, the Governor may appoint any stipendiary magistrate to be or to act as the magistrate constituting or included on the tribunal or board, and it shall be the duty of the person so appointed to act accordingly. The Governor may authorise the payment from the Consolidated Revenue Fund of a fee, honorarium or allowance to a magistrate acting under this subsection and may fix the amount thereof.

11. (1) The Governor may make regulations prescribing all matters and things which by this Act are contemplated, required or permitted to be prescribed, or which appear to him to be necessary or convenient for the purpose of effectually carrying out the provisions of this Act and for better effecting the operation, objects and purposes of this Act. Regulations.

(2) Regulations may impose a penalty not exceeding fifty pounds for a breach thereof.

THE SCHEDULE.

<i>Column 1.</i>	<i>Column 2.</i>
WALLWORK, William John	Stipendiary Magistrate.
SMITH, Alan Gregory	Stipendiary Magistrate.
DOUGALL, Keir Johnston	Stipendiary Magistrate.
BATEMAN, Frank Ernest Allan	Stipendiary Magistrate.
PARKER, Kenneth Herbert	Stipendiary Magistrate.
RODRIGUEZ, Richard Patrick Gerald	Stipendiary Magistrate.
HARWOOD, Maurice	Resident Magistrate.
STOTTER, Leslie William	Resident Magistrate.
HOGG, Keith Hamilton	Resident Magistrate.
SMITH, Hector George	Resident Magistrate.
ANSELL, Theodore	Resident Magistrate.
TAYLOR, Arthur Lane Francis	Resident Magistrate.
DRAPER, Thomas Alexander	Resident Magistrate.
O'SULLIVAN, Bernard Matthew	Resident Magistrate.
PHILP, Kenneth Alexander	Resident Magistrate.
O'BRIEN, Arthur Lawson	Resident Magistrate.
ARNEY, Earle Brent	Special Magistrate, Children's Court, Perth.