

STIPENDIARY MAGISTRATES.

No. 15 of 1979.

AN ACT to amend the Stipendiary Magistrates Act,
1957-1975.

[Assented to 30th August, 1979.]

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 Amendment Act, 1979*. Short title and citation.

(2) In this Act the Stipendiary Magistrates Act, 1957-1975 is referred to as the principal Act. Act No. 17 of 1957, amended by Acts No. 5 of 1985 and 41 of 1975.

(3) The principal Act as amended by this Act may be cited as the Stipendiary Magistrates Act, 1957-1979.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Section 3
repealed
and
re-enacted.

3. Section 3 of the principal Act is repealed and the following section substituted—

Interpre-
tation.

3. In this Act unless the contrary intention appears—

“Chief Stipendiary Magistrate” means the person appointed and holding office as Chief Stipendiary Magistrate, or acting as such, under this Act;

“stipendiary magistrate” means a person appointed to and holding office as a stipendiary magistrate under this Act and includes the Chief Stipendiary Magistrate.

Section 4
repealed
and
re-enacted.

4. Section 4 of the principal Act is repealed and the following section substituted—

Appointment
of stipen-
diary magis-
trates.

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 any other Act a person shall not be appointed a stipendiary magistrate unless—

(a) he is or has been a barrister or solicitor of the Supreme Court;

(b) he is or has been a barrister or solicitor of—

(i) a State or Territory of the Commonwealth;

(ii) the High Court of Australia; or

(iii) England or Northern Ireland; or

(c) he has passed the prescribed examinations and fulfils such other requirements as may be prescribed.

(3) A person appointed as a stipendiary magistrate is empowered to act as such at any place in the State.

(4) The Governor may appoint one of the stipendiary magistrates to be the Chief Stipendiary Magistrate and may, at any time, revoke any such appointment.

(5) Except as otherwise provided in this Act, the Chief Stipendiary Magistrate and any other stipendiary magistrate appointed to and holding office under this Act has in all respects, equal power, authority and jurisdiction.

(6) Every person holding office as a stipendiary magistrate immediately before the date of the coming into operation of the Stipendiary Magistrates Act Amendment Act, 1979 in a permanent or temporary capacity shall continue to hold office in a permanent or temporary capacity, as the case requires, under and subject to this Act as in force after that date.

(7) Nothing in this section affects section nineteen of the Child Welfare Act, 1947 or section twelve of the Local Courts Act, 1904. .

5. Section 5 of the principal Act is amended— Section 5
amended.

(a) as to subsection (1), by deleting the word “section” in line one and substituting the word “Act”;

(b) as to paragraph (a) of subsection (3)—

(i) by deleting the word “charge” in line two and substituting the words “allegation of misbehaviour”;

(ii) by deleting the word “Minister” where occurring in line two and in line three and substituting the words “Attorney General”; and

- (iii) by deleting the word “charge” where occurring in line four, line six and line ten and substituting the word “allegation” in each case;
- (c) as to subsection (4), by deleting the word “Minister” where occurring in line one, line four and line nine and substituting the words “Attorney General” in each case; and
- (d) by repealing subsection (5), subsection (6) and subsection (7).

Section 5A
repealed
and
re-enacted.

6. The principal Act is amended by repealing section 5A and substituting the following section—

Vacation
of office.

5A. A stipendiary magistrate shall be deemed to have vacated his office—

- (a) if he becomes bankrupt or insolvent, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his salary for their benefit;
- (b) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts his resignation; or
- (c) 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,

and the Governor declares by notice published in the *Government Gazette* that the office has become vacant. .

Section 5B
added.

7. The principal Act is amended by adding a new section to stand as section 5B as follows—

Retirement
from office
and
re-appoint-
ment.

5B. (1) A stipendiary magistrate shall retire from office on the day on which he attains the age of sixty-five years but a stipendiary

magistrate who, under the provisions of this Act as in force immediately before the date of the coming into operation of the Stipendiary Magistrates Act Amendment Act, 1979, was entitled to continue in office until he attains the age of seventy years may, subject to this Act, continue in office until he attains the age of seventy years.

(2) A stipendiary magistrate who retires from office pursuant to subsection (1) of this section may nevertheless be continued in office by the Governor for any period not exceeding thirty days for the purpose of completing the trial of any matter which he had commenced and not completed before the date of his retirement.

(3) Where a person appointed to the office of stipendiary magistrate—

- (a) attains the age of sixty-five years but has not attained the age of seventy years;
- (b) the Governor is of opinion that the occasion requires that the person should continue in, or resume, the office after he attains the age of sixty-five years; and
- (c) the person is able and willing to continue in, or resume, the office of stipendiary magistrate,

the Governor may, at any time, and from time to time, direct the person to continue in, or resume, that office on and from such date and for such period or periods, not exceeding the date on which the person attains the age of seventy years, as the Governor in each case directs.

8. The principal Act is amended by adding a new section to stand as section 5C as follows—

5C. (1) Where the Chief Stipendiary Magistrate is, or is expected to be, absent from duty the Governor may appoint a stipendiary

Section 5C
added.

Temporary
appoint-
ments.

magistrate to act as Chief Stipendiary Magistrate during the absence from duty of the Chief Stipendiary Magistrate.

(2) Notwithstanding anything in section five B of this Act, where—

- (a) a stipendiary magistrate is, or is expected to be, absent from duty; or
- (b) for any reason, in the opinion of the Governor, a temporary appointment of a stipendiary magistrate should be made,

the Governor may appoint a qualified person to be a stipendiary magistrate on such terms and conditions and for such period as the Governor thinks fit and specifies in the instrument of appointment.

(3) An appointment of a person to be a stipendiary magistrate pursuant to subsection (2) of this section may be made on other than a full-time basis.

(4) A person appointed to be a stipendiary magistrate pursuant to subsection (2) of this section, during the period of his appointment—

- (a) has the same powers and may exercise the same jurisdiction as a stipendiary magistrate; and
- (b) is subject to suspension from, removal from, and vacation of, office in the same manner and on the same grounds as any other stipendiary magistrate.

(5) Where at the expiration of the period of an appointment made pursuant to subsection (2) of this section there remains proceedings pending before the person so appointed that person is, by force of this subsection, authorised to complete the hearing and determination of any such proceedings within a period of thirty days of the expiration of the period of his appointment as though he continued to hold the office of stipendiary magistrate during that period. .

9. Section 6 of the principal Act is amended by deleting the words "in a permanent capacity" in line three of subsection (1).

Section 6
amended.

10. The principal Act is amended as to sections 7 and 8 as follows—

Sections 7
and 8
amended.

(a) by repealing subsection (1) of section 7 and substituting the following subsections—

(1) Subject to the Salaries and Allowances Tribunal Act, 1975, a stipendiary magistrate is entitled to such conditions of service as are determined by the Governor from time to time.

Remuneration
and
allowances.

(2) Where a person holds office as a stipendiary magistrate immediately before the date of the coming into operation of the Stipendiary Magistrates Act Amendment Act, 1979, his existing and accruing rights immediately before that date, including his rights under the Superannuation and Family Benefits Act, 1938, shall be taken into account in determining his existing and accruing rights in respect of service in the office after that date.

(3) Where a stipendiary magistrate was, immediately before his appointment as a stipendiary magistrate, an officer of the Public Service of the State, he retains his existing and accruing rights on his appointment as a stipendiary magistrate.

(4) A stipendiary magistrate shall, while he holds his office, be deemed to be an employee within the meaning of and for the purposes of the Superannuation and Family Benefits Act, 1938.

(5) Subject to subsection (6) of this section, subsection (4) of this section does not apply to a person appointed to hold office as stipendiary magistrate pursuant to subsection (2) of section five C of this Act.

(6) If a person is a contributor within the meaning of the Superannuation and Family Benefits Act, 1938, at the time he is appointed a stipendiary magistrate, he may continue to be such a contributor notwithstanding his appointment as a stipendiary magistrate. ;

(b) by repealing subsection (2) and subsection (3) of section 7 and re-enacting them to stand as subsection (1) and subsection (2) of section 8 and section 8 as in force immediately before the coming into operation of this Act is repealed;

(c) by adding the following subsection to stand as subsection (3) of section 8—

(3) Subsection (2) of this section does not apply to a stipendiary magistrate appointed pursuant to subsection (2) of section five C of this Act on other than a full-time basis. ; and

(d) by repealing subsection (4) of section 7 and substituting the following subsection to stand as subsection (4) of section 8—

(4) A person who is appointed to be a stipendiary magistrate shall, before proceeding to discharge the duties of his office, take before a Judge or any person authorised in that behalf by the Governor an oath or affirmation in accordance with the form set forth in the Schedule to this Act. .

Section 10
amended.

11. Section 10 of the principal Act is amended—

(a) by repealing subsection (1) and subsection (2) and substituting the following subsections—

(1) Notwithstanding any assignment made pursuant to this section as in force immediately before the coming into operation of the Stipendiary Magistrates Act Amendment Act, 1979 the Governor

may from time to time by written direction direct that a stipendiary magistrate shall sit and exercise his jurisdiction and powers and perform his duties in such magisterial districts or parts of, or places in, the State as are specified in the direction and effect shall be given to such a direction.

(2) The Governor may from time to time vary or cancel any direction given pursuant to subsection (1) of this section.

(3) The jurisdiction and powers of a stipendiary magistrate are not in any way limited by reason of a direction given pursuant to subsection (1) of this section or any variation or cancellation thereof.

(4) The Governor may delegate to the person holding or acting in the office of Chief Stipendiary Magistrate any or all of the powers conferred on the Governor by subsection (1) and subsection (2) of this section (except this power of delegation) so that the delegated power may be exercised by the person holding or acting in the office of Chief Stipendiary Magistrate.

(5) Every delegation made pursuant to subsection (4) of this section may be revoked by the Governor at any time and no delegation prevents the Governor from exercising any power conferred by this section. ;

(b) by repealing and re-enacting subsection (3) to stand as subsections (6) and (7) as follows—

(6) Where by or under any Act a court, tribunal or board is or may be constituted by a magistrate or any office may be held or any duty or function may be performed by a magistrate, howsoever the magistrate may be designated and whether sitting or acting alone or not, the Governor may appoint any stipendiary

magistrate to that court, tribunal, board or office or to perform that duty or function and the stipendiary magistrate so appointed shall act accordingly.

(7) The Governor may determine that an additional fee, honorarium or allowance be paid with respect to an appointment under subsection (6) of this section and shall fix the amount thereof and any fee, honorarium or allowance shall be paid in accordance with the determination out of the Consolidated Revenue Fund, which is appropriated accordingly, or, where the law creating the court, tribunal, board or office to which the determination applies provides for the payment of a fee, honorarium or allowance with respect to that court, tribunal, board or office to be paid from some other fund or source, out of that other fund or source. ;

(c) as to subsection (4)—

(i) by redesignating the subsection as subsection (8); and

(ii) by deleting the word “Minister” in line four and substituting the words “Attorney General”; and

(d) by redesignating subsection (5) as subsection (9).

Section 10A
added.

12. The principal Act is amended by adding a new section to stand as section 10A as follows—

Saving.

10A. Any person who has passed any examination relating to the appointment of magistrates, or any part thereof, prescribed by or under any other Act, whether or not that other Act is in force at the time that the Stipendiary Magistrates Act Amendment Act, 1979 comes into operation, shall receive a credit in respect thereof towards the passing of examinations prescribed under this Act to the extent that such a credit is permitted by, and in accordance with, the regulations. .

13. The principal Act is amended by repealing the Schedule thereto and substituting the following Schedule—

Schedule
substituted.

SCHEDULE.

OATH

I, _____ do swear that I, will well and truly serve our Sovereign Lady Queen Elizabeth the Second, Her Heirs and Successors, according to law in the office of stipendiary magistrate and I will do right to all manner of people after the laws and usages of this State. without fear or favour, affection or illwill.

So help me God.

AFFIRMATION

I, _____ do solemnly and sincerely promise and declare that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second, Her Heirs and Successors, according to law in the office of stipendiary magistrate and I will do right to all manner of people after the laws and usages of this State without fear or favour, affection or illwill. .
