



Western Australia

## **Stipendiary Magistrates Act 1957**

Compare between:

[02 Jan 2001, 02-a0-05] and [01 May 2005, 02-b0-07]



## Stipendiary Magistrates Act 1957

**An Act to provide for the appointment of stipendiary magistrates with secure tenure of office and other relative purposes.**

### 1. Short title and citation

- (1) This Act may be cited as the *Stipendiary Magistrates Act 1957*<sup>1</sup>.
- (2) This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

### 2. Repeal

*[Omitted under the Reprints Act 1984 s.7(4)(f).]*

### 3. Interpretation

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 and Deputy Chief Stipendiary Magistrate.

*[Section 3 inserted by No. 15 of 1979 s.3; amended by No. 89 of 1990 s.4.]*

### 4. Appointment of stipendiary magistrates

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

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- (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) before the commencement of the *Stipendiary Magistrates Amendment Act 1986*<sup>1</sup>, that person —
    - (i) has passed the prescribed examinations and fulfilled such other requirements as are prescribed; or
    - (ii) has passed or received a credit in respect of at least one of the prescribed examinations and, within the time prescribed, subsequently passes the other prescribed examinations and fulfils such other requirements as are 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 one to be Deputy Chief Stipendiary Magistrate and may, at any time, revoke any such appointment.
- (5) Except as otherwise provided in this Act, the Chief Stipendiary Magistrate, the Deputy 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*<sup>1</sup> 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 10 of the *Children's Court of Western Australia Act 1988* or section 12 of the *Local Courts Act 1904*.

*[Section 4 inserted by No. 15 of 1979 s.4; amended by No. 74 of 1986 s.3; No. 49 of 1988 s.69; No. 89 of 1990 s.5; No. 15 of 1991 s.21; No. 73 of 1994 s.4.]*

## 5. Tenure of office

- (1) Subject to this Act, 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 allegation of misbehaviour made by the Attorney General, and in such a case the Attorney General shall report the allegation and suspension to the Chief Justice of Western Australia; and if the magistrate does not, in writing, admit the truth of the allegation 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 allegation, 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,

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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).

- (4) Where the Attorney General is of opinion that a stipendiary magistrate is physically or mentally unfit to discharge efficiently the duties of his office, the Attorney General may relieve him of his duties and constitute a medical board consisting of 3 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 Attorney General. 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*<sup>1a</sup>. 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.

*[Section 5 amended by No. 5 of 1965 s.2; No. 15 of 1979 s.5.]*

**5A. Vacation of office**

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 55 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 5A inserted by No. 15 of 1979 s.6; amended by No. 89 of 1990 s.6.]*

**5B. Retirement from office and reappointment**

- (1) A stipendiary magistrate shall retire from office on the day on which he attains the age of 65 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*<sup>1</sup>, was entitled to continue in office until he attains the age of 70 years may, subject to this Act, continue in office until he attains the age of 70 years.
- (2) A stipendiary magistrate who retires from office pursuant to subsection (1) may nevertheless be continued in office by the Governor for any period not exceeding 30 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 65 years but has not attained the age of 70 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 65 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 70 years, as the Governor in each case directs.

*[Section 5B inserted by No. 15 of 1979 s.7.]*

**5C. Temporary appointments**

- (1) Where the Chief Stipendiary Magistrate is, or is expected to be, absent from duty the Governor may appoint a stipendiary magistrate to act as Chief Stipendiary Magistrate during the absence from duty of the Chief Stipendiary Magistrate.
- (1a) Where the Chief Stipendiary Magistrate is absent from duty and no appointment is made under subsection (1) the Deputy Chief Stipendiary Magistrate may act as Chief Stipendiary Magistrate.
- (2) Notwithstanding anything in section 5B, 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) may be made on other than a full-time basis.
- (4) A person appointed to be a stipendiary magistrate pursuant to subsection (2), 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) there remain 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 30 days of the expiration of the period of his appointment as though he continued to hold the office of stipendiary magistrate during that period.

*[Section 5C inserted by No. 15 of 1979 s.8; amended by No. 89 of 1990 s.7.]*

## 6. References in other Acts to magistrates

- (1) Except as provided by this Act or under section 10 of the *Children's Court of Western Australia Act 1988*, no person shall be appointed 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 magistrate of the Children's Court, 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.

*[Section 6 amended by No. 15 of 1979 s.9; No. 49 of 1988 s.70; No. 15 of 1991 s.21; No. 73 of 1994 s.4.]*

## 7. Remuneration and allowances

- (1) Subject to the *Salaries and Allowances Act 1975*<sup>2</sup>, a stipendiary magistrate is entitled to such conditions of service as are determined by the Governor from time to time.
- (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*<sup>1</sup>, his existing and accruing rights immediately before that date, including his rights under the *Superannuation and Family Benefits Act 1938*<sup>1a</sup>, 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* <sup>1a</sup>.
- (5) Subject to subsection (6), subsection (4) does not apply to a person appointed to hold office as stipendiary magistrate pursuant to section 5C(2) <sup>1a</sup>.
- (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 <sup>1a</sup>.

*[Section 7 inserted by No. 15 of 1979 s.10.]*

**8. Office may be held in conjunction with any other office**

- (1) 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.
- (2) No stipendiary magistrate shall practise as a legal practitioner, barrister or solicitor.
- (3) Subsection (2) does not apply to a stipendiary magistrate appointed pursuant to section 5C(2) on other than a full-time basis.
- (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 the oath or affirmation of allegiance and an oath or affirmation in accordance with the form set forth in the Schedule.

*[Section 8 inserted by No. 15 of 1979 s.10; amended by No. 7 of 1982 s.17.]*

## 9. Jurisdiction and powers

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 2 justices or by a stipendiary, police, or resident magistrate, by a magistrate of a local court or by a chairman of a court of session; and
- (c) may do alone whatever may under any existing or future Act be done by 2 justices.

*[Section 9 amended by No. 49 of 1988 s.71; No. 44 of 1991 s.18; No. 2 of 1996 s.61.]*

## 10. Assignment of duties

- (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*<sup>1</sup> 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).
- (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) 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) (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) may be revoked by the Governor at any time and no delegation prevents the Governor from exercising any power conferred by this section.
- (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) and shall fix the amount thereof and any fee, honorarium or allowance shall be paid in accordance with the determination and charged to the Consolidated 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.
- (8) In addition to his duties and functions as a stipendiary magistrate, the Chief Stipendiary Magistrate, subject to the direction of the Attorney General, —
  - (a) shall arrange throughout the State the sittings of courts of petty sessions and, subject to the *Local Courts Act 1904*, the sittings of local courts;

- (b) shall assign duties or any class of duties among stipendiary magistrates who —
    - (i) have like assignments or appointments under this Act or any other Act; or
    - (ii) are exercising all or any of their jurisdiction and powers under this Act or any other Act at the same place;
 and
  - (c) shall arrange reliefs for stipendiary magistrates as and when required.
- (9) It shall be the duty of stipendiary magistrates to act in accordance with the arrangements and assignments made by the Chief Stipendiary Magistrate under this section.

*[Section 10 amended by No. 41 of 1975 s.3; No. 15 of 1979 s.11; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]*

#### 10A. Saving

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*<sup>1</sup> 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.

*[Section 10A inserted by No. 15 of 1979 s.12.]*

#### 11. Regulations

- (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.

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- (2) Regulations may impose a penalty not exceeding \$100 for a breach thereof.

*[Section 11 amended by No. 113 of 1965 s.8.]*

## **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.

*[Schedule inserted by No. 15 of 1979 s.13.]*

## Notes

- <sup>1</sup> This is a compilation of the *Stipendiary Magistrates Act 1957* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

### Compilation table

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Stipendiary Magistrates Act 1957</i>	17 of 1957	30 <del>September</del> <u>Sep</u> 1957	Proclaimed <del>25 October</del> <u>Oct</u> 1957 (see section 1(2) and <i>Gazette</i> 25 <del>October</del> <u>Oct</u> 1957 p.2965)	
<i>Stipendiary Magistrates Act Amendment Act 1965</i>	5 of 1965	15 <del>September</del> <u>Sep</u> 1965	15 <del>September</del> <u>Sep</u> 1965	
<i>Stipendiary Magistrates Act Amendment Act 1975</i>	41 of 1975	11 <del>September</del> <u>Sep</u> 1975	11 <del>September</del> <u>Sep</u> 1975	
<i>Stipendiary Magistrates Act Amendment Act 1979</i>	15 of 1979	30 <del>August</del> <u>Au</u> <u>g</u> 1979	Proclaimed <del>1 October</del> <u>Oct</u> 1979 (see section 2 and <i>Gazette</i> 21 <del>September</del> <u>Sep</u> 1979 p.2919)	
<i>Acts Amendment (Judicial Appointments) Act 1982, Part V</i>	7 of 1982	6 May 1982	6 May 1982	
<i>Stipendiary Magistrates Amendment Act 1986</i>	74 of 1986	4 <del>December</del> <u>Dec</u> 1986	Proclaimed <del>27 February</del> <u>Feb</u> 1987 (see section 2 and <i>Gazette</i> 27 <del>February</del> <u>Feb</u> 1987 p.497)	
<i>Acts Amendment (Children's Court) Act 1988, Part 11</i>	49 of 1988	22 <del>December</del> <u>Dec</u> 1988	Proclaimed <del>1 December</del> <u>Dec</u> 1989 (see section 2 and <i>Gazette</i> 24 <del>November</del> <u>Nov</u> 1989 p.4327)	
<i>Stipendiary Magistrates Amendment Act (No. 2) 1990</i>	89 of 1990	20 <del>December</del> <u>Dec</u> 1990	20 <del>December</del> <u>Dec</u> 1990 (see section 2)	



Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991, section 21</i>	15 of 1991	21 <del>June</del> <a href="#">Jun</a> 1991	Proclaimed <del>9 August</del> <a href="#">Aug</a> 1991 (see section 2(2) and <i>Gazette</i> 9 <del>August</del> <a href="#">Aug</a> 1991 p.4101)	
<i>Acts Amendment (Industrial Magistrate's Courts) Act 1991, Part 5</i>	44 of 1991	17 <del>December</del> <a href="#">Dec</a> 1991	Proclaimed <del>3 January</del> <a href="#">Jan</a> 1992 (see section 2 and <i>Gazette</i> 3 <del>January</del> <a href="#">Jan</a> 1992 p.41)	
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 <del>August</del> <a href="#">Aug</a> 1993	Deemed operative <del>1 July</del> <a href="#">Jul</a> 1993 (see section 2(1))	
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 <del>December</del> <a href="#">Dec</a> 1994	9 <del>December</del> <a href="#">Dec</a> 1994 (see section 2)	
<i>Coroners Act 1996, section 61</i>	2 of 1996	24 May 1996	Proclaimed <del>7 April</del> <a href="#">Apr</a> 1997 (see section 2 and <i>Gazette</i> 18 <del>March</del> <a href="#">Mar</a> 1997 p.1529)	
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 <del>October</del> <a href="#">Oct</a> 1996	25 <del>October</del> <a href="#">Oct</a> 1996 (see section 2(1))	
<u><b>This Act was repealed by the Courts Legislation Amendment and Repeal Act 2004 s. 14 (No. 59 of 2004) as at 1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)</b></u>				

<sup>1a</sup> On the date on which this compilation was prepared, provisions referred to in the following table had not come into operation and are not included in this compilation. For the text of the provisions see the endnote referred to after the short title.

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 66 <sup>3</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

<sup>2</sup> Formerly the *Salaries and Allowances Tribunal Act 1975*. Text changed under the *Reprints Act 1984*, s.7(3)(gb).

<sup>3</sup> On the date on which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 66 had not come into operation. It reads —

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**66. Stipendiary Magistrates Act 1957 amended**

The *Stipendiary Magistrates Act 1957* is amended as follows:

- (a) in section 5(4) by deleting “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*.”;
- (b) in section 7(2) by deleting “, including his rights under the *Superannuation and Family Benefits Act 1938*,”;
- (c) by repealing section 7(4), (5) and (6).

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<sup>4</sup> The *Courts Legislation Amendment and Repeal Act 2004* s. 15 reads as follows:

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**15. Transitional provisions**

- (1) In this section —  
“**commencement**” means the commencement of this Part;  
“**repealed Act**” means the *Stipendiary Magistrates Act 1957*.
- (2) If immediately before commencement a person, by virtue of an appointment under a provision of the repealed Act referred to in column 1 of the Table to this subsection, holds an office described

in column 2, then on commencement the person is to be taken to have been appointed under the provision of the *Magistrates Court Act 2004* referred to in column 3 to the office described in column 4.

**Table**

<b>Repealed Act</b>	<b>Old office</b>	<b><i>Magistrates Court Act 2004</i></b>	<b>New office</b>
s. 4(1)	Stipendiary magistrate	Schedule 1 clause 3	Magistrate
s. 4(4)	Chief Stipendiary Magistrate	Schedule 1 clause 6(1)	Chief Magistrate
s. 4(4)	Deputy Chief Stipendiary Magistrate	Schedule 1 clause 6(2)	Deputy Chief Magistrate
s. 5C(2)	Stipendiary magistrate on terms and conditions	Schedule 1 clause 9	Acting magistrate on the same terms and conditions

- (3) If immediately before commencement a person is the subject of a direction made under section 5B(3) of the repealed Act, then on commencement the person is to be taken to have been appointed under the *Magistrates Court Act 2004* Schedule 1 clause 9 as an acting magistrate for a period ending at the time when the person would leave office under the direction.
- (4) A person who under this section is taken to have been appointed under the *Magistrates Court Act 2004* to an office is not required to take the oaths or affirmations of office under that Act in respect of that office.
- (5) For the purposes of the *Magistrates Court Act 2004* Schedule 1 clause 7 the seniority of people who under subsection (2) are to be taken to have been appointed as magistrates of the Magistrates Court is to be determined according to the dates of their appointment as stipendiary magistrates.
- (6) The remuneration, existing or accrued rights, rights under a superannuation scheme, or continuity of service, of a stipendiary magistrate to whom subsections (2) and (3) apply is not affected by those subsections.
- (7) A reference in a written law or book, document or writing to a stipendiary magistrate is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to a magistrate.

- (8) A reference in a written law or book, document or writing to the Chief Stipendiary Magistrate is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the Chief Magistrate.

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