

STIPENDIARY MAGISTRATES ACT 1957-1979

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Approved for Reprint 21 January 1981.

WESTERN AUSTRALIA.

STIPENDIARY MAGISTRATES.

6° Elizabeth II., No. XVII.

No. 17¹ of 1957.

[As amended by Acts:

No. 5 of 1965, assented to 15th September, 1965;

No. 41 of 1975, assented to 11th September, 1975;

No. 15 of 1979,² assented to 30th August, 1979;

and reprinted pursuant to the Amendments Incorporation Act 1938.¹

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:

1. (1) This Act may be cited as the *Stipendiary Magistrates Act 1957-1979*.

Short Title
and citation.
Amended by
No. 15 of
1979, s. 1.

(2) This Act shall come into operation on a day to be fixed by proclamation.¹

Commence-
ment.

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 The Stipendiary Magistrates Act 1930-1953 is repealed.

Repeal.

¹ Came into operation on 25th October, 1957, see *Government Gazette* 25/10/1957, p. 2965.

² Came into operation on 1st October, 1979, see *Government Gazette* 21/9/1979, p. 2919.

Interpre-
tation.
Substituted
by No. 15 of
1979, s. 3.

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.

Appointment
of stipen-
diary magis-
trates.
Substituted
by No. 15 of
1979, s. 4.

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

Tenure of office.
Amended by
No. 5 of
1965, s. 2;
No. 15 of
1979, s. 5.

(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, and, if so recommended as

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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 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 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 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. 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) [*Repealed by No. 15 of 1979, s. 5.*]

(6) [*Repealed by No. 15 of 1979, s. 5.*]

(7) [*Repealed by No. 15 of 1979, s. 5.*]

Vacation
of office.
Substituted
by No. 15 of
1979, s. 6.

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.

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.

Retirement
from office
and
re-appoint-
ment.
Added by
No. 15 of
1979, s. 7.

(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.

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Temporary
appoint-
ments.
Added by
No. 15 of
1979, s. 8.

5C. (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.

(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, authorized 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.

6. (1) Except as provided by this Act or under section nineteen of the Child Welfare Act 1947, 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.

References
in other
Acts to
magistrates.
Amended by
No. 15 of
1979, s. 9.

(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) 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.

Remunera-
tion and
allowances.
Substituted
by No. 15 of
1979, s. 10.

(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.

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(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.

Office may be held in conjunction with any other office. Substituted by No. 15 of 1979, s. 10.

8. (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.

(Formerly s. 7 (2) and s. 7 (3).)

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

(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.

(Formerly s. 7 (4).)

(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 authorized in that behalf by the Governor on oath or affirmation in accordance with the form set forth in the Schedule to this Act.

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) 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.

Assignment of duties.
Amended by No. 41 of 1975, s. 3; No. 15 of 1979 s. 11.

(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.

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(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.

(Formerly
s. 10 (4).)

(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.

(Formerly
s. 10 (5).)

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.

Saving.
Added by
No. 15 of
1979, s. 12.

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.
Amended
by Act
No. 113 of
1965, s. 8.

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

SCHEDULE.

OATH

Schedule.
Substituted
by No. 15 of
1979, s. 13.

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.

