

WESTERN AUSTRALIA

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## **ACTS AMENDMENT (AUXILIARY JUDGES) ACT 1997**

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No. 23 of 1997

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**AN ACT to amend the *District Court of Western Australia Act 1969*, the *Interpretation Act 1984*, the *Judges' Retirement Act 1937*, the *Judges' Salaries and Pensions Act 1950*, the *Juries Act 1957*, the *Prisons Act 1981*, the *Restraint of Debtors Act 1984*, the *Salaries and Allowances Act 1975* and the *Supreme Court Act 1935* in order to enable the appointment of auxiliary Judges of the Supreme Court and auxiliary Judges of the District Court of Western Australia.**

*[Assented to 18 September 1997]*

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Acts Amendment (Auxiliary Judges) Act 1997*.

**Commencement**

2. This Act comes into operation on the day on which it receives the Royal Assent.

**PART 2 — AMENDMENTS TO *DISTRICT COURT OF WESTERN AUSTRALIA ACT 1969***

**Principal Act**

3. In this Part, the *District Court of Western Australia Act 1969*\* is referred to as the principal Act.

[\* Reprinted as at 20 February 1996.  
For subsequent amendments, see 1996 Index to  
Legislation of Western Australia, Table 1, pp. 65-6.]

**Section 6 amended**

4. Section 6 of the principal Act is amended —

- (a) by inserting in the appropriate alphabetical position the following definition —

“  
    **“auxiliary District Court Judge”** means an  
    auxiliary District Court Judge appointed  
    under section 18A (1);  
”;

and

- (b) in the definition of “District Court Judge” by deleting “or acting Judge of the Court” and substituting the following —

“  
    , acting Judge of the Court or auxiliary District  
    Court Judge  
”.

**Section 11 amended**

5. Section 11 (2) of the principal Act is amended by deleting “or an acting District Court Judge” and substituting the following —

“  
    , acting District Court Judge or auxiliary District Court Judge  
”.

**Section 12 amended**

6. (1) Section 12 (1) of the principal Act is amended by deleting “subsection (3)” and substituting the following —

“ subsections (3) and (3a), ”.

(2) Section 12 of the principal Act is amended by inserting after subsection (3) the following subsection —

“  
    (3a) There shall be paid out of the Consolidated Fund by way of salary, without further appropriation than this Act, to an auxiliary District Court Judge who is receiving a non-contributory pension under the *Judges' Salaries and Pensions Act 1950* or any other Act, or under a law of the Commonwealth or of another State or a Territory, the difference between that pension and the salary payable under subsection (1) (b) to an auxiliary District Court Judge, in lieu of the full amount of that salary.  
”.

**Section 18 amended**

7. Section 18 (3) of the principal Act is amended —

(a) by deleting “or” at the end of paragraph (a); and

(b) by inserting after paragraph (a) the following —

“

(aa) there is a vacancy in the office of a District Court Judge, the Governor may appoint a person qualified to be appointed a District Court Judge to act as a District Court Judge until the filling of that vacancy or until that person completes the trial or hearing of any cause or matter that he or she had entered upon and not completed before the filling of that vacancy, whichever is the later; or

”.

**Section 18A inserted**

**8.** Division 2 of Part II of the principal Act is amended by inserting after section 18 the following section —

“

**Auxiliary appointments**

**18A.** (1) When for any reason the conduct of the business of the Court requires, in the opinion of the Governor, the appointment of an auxiliary District Court Judge, the Governor may by commission in Her Majesty's name appoint a person —

- (a) who would, but for the fact that he or she has attained the age referred to in section 3 of the *Judges' Retirement Act 1937*, be qualified to be appointed a District Court Judge; or
- (b) who is a retired Judge of the Supreme Court or a retired District Court Judge but has not yet attained that age,

to be an auxiliary District Court Judge for such period not exceeding 12 months as is specified in that commission.

(2) The appointment of an auxiliary District Court Judge under subsection (1) authorizes him or her to complete the hearing and determination of any proceedings that may be pending before him or her at the expiry of —

- (a) the period of his or her appointment; or
- (b) any period of extension referred to in subsection (3),

so that he or she holds an appointment as an auxiliary District Court Judge during any further period while he or she is completing that hearing and determination.

(3) An appointment made under subsection (1) may be extended by the Governor by commission in Her Majesty's name for a further period or periods, but that appointment can only be extended on any one occasion for such period not exceeding 12 months as is specified in the relevant commission.

(4) A person appointed to be an auxiliary District Court Judge under subsection (1) —

- (a) has the same powers and may exercise the same jurisdiction as a District Court Judge; and
- (b) is liable to be removed from office while so appointed in the same manner and upon the same grounds as a District Court Judge is liable to be removed from office.

(5) In subsection (1) (b), the reference to a retired Judge of the Supreme Court or a retired District Court Judge includes a reference to a person who has resigned from his or her office as —

- (a) a Judge of the Supreme Court; or
- (b) a District Court Judge.

”.

**PART 3 — AMENDMENTS TO *INTERPRETATION*  
*ACT 1984***

**Section 5 amended**

**9.** Section 5 of the *Interpretation Act 1984*\* is amended in the definition of —

- (a) “District Court Judge” by deleting “or acting Judge of the District Court” and substituting the following —

“  
    , acting Judge or auxiliary Judge of the District  
    Court  
”;

and

- (b) “Judge” by deleting “or acting Judge of the Supreme Court” and substituting the following —

“  
    , acting Judge or auxiliary Judge of the Supreme  
    Court  
”.

[\* *Reprinted as at 15 March 1996.*  
*For subsequent amendments, see 1996 Index to*  
*Legislation of Western Australia, Table 1, p. 112.*]

**PART 4 — AMENDMENTS TO *JUDGES' RETIREMENT ACT 1937***

**Principal Act**

**10.** In this Part, the *Judges' Retirement Act 1937\** is referred to as the principal Act.

[\* *Reprinted as at 19 January 1989.*]

**Section 2 amended**

**11.** Section 2 of the principal Act is amended in paragraph (c) of the definition of "Judge" by inserting after "Acting Judge" the following —

“ or Auxiliary Judge ”.

**Section 3 amended**

**12.** Section 3 of the principal Act is amended by deleting "*Supreme Court Act 1935*, every Judge" and substituting the following —

“

*Supreme Court Act 1935*, but subject to —

- (a) section 11AA of the latter Act; or
- (b) sections 16 and 18A of the *District Court of Western Australia Act 1969*,

as the case requires, every Judge

”.



**PART 5 — AMENDMENTS TO *JUDGES' SALARIES AND PENSIONS ACT 1950***

**Principal Act**

**13.** In this Part, the *Judges' Salaries and Pensions Act 1950*\* is referred to as the principal Act.

[\* Reprinted as at 3 March 1994.  
For subsequent amendments, see 1996 Index to  
Legislation of Western Australia, Table 1, pp. 116-7.]

**Section 5 amended**

**14.** (1) Section 5 (1) of the principal Act is amended by inserting after "*Salaries and Allowances Act 1975*" the following —

“ and to subsection (1b) ”.

(2) Section 5 of the principal Act is amended by inserting after subsection (1a) the following subsection —

“ (1b) The rate of the annual salary payable to a person —

- (a) who is an auxiliary Judge; and
- (b) who is receiving a non-contributory pension under this Act or any other Act, or under a law of the Commonwealth or of another State or a Territory,

shall be the difference between the rate of that pension and the rate of the annual salary payable under subsection (1) (c) to that person, in lieu of the full amount of that rate of salary.

”.

**Section 6 amended**

15. Section 6 of the principal Act is amended —

(a) in subsection (3) by deleting “If a person” and substituting the following —

“ Subject to subsection (3a), if a person ”; and

(b) by inserting after subsection (3) the following subsections —

“

(3a) If a person entitled to receive, or in receipt of, a pension under this Act holds the office of auxiliary Judge, then, while that person holds that office, subsection (3) does not apply to or in relation to that person in respect of that office.

(3b) Service as an auxiliary Judge does not constitute service as a Judge for the purposes of this section.

(3c) In subsections (3a) and (3b) —

“**auxiliary Judge**” means auxiliary Judge referred to in section 11AA of the *Supreme Court Act 1935*.

”.

**PART 6 — AMENDMENTS TO *JURIES ACT 1957***

**Section 3 amended**

**16.** Section 3 of the *Juries Act 1957*\* is amended in the definition of “Judge” by deleting “or acting Judge” wherever it occurs and substituting in each place the following —

“ , acting Judge or auxiliary Judge ”.

[\* *Reprinted as at 2 December 1987.*  
*For subsequent amendments, see 1996 Index to  
Legislation of Western Australia, Table 1, pp. 117-8,  
and Act No. 2 of 1996.*]

**PART 7 — AMENDMENTS TO *PRISONS ACT 1981***

**Section 3 amended**

17. Section 3 of the *Prisons Act 1981*\* is amended —

(a) in the definition of “District Court Judge” by deleting  
“or an acting Judge” and substituting the following —

“ , an acting Judge or an auxiliary Judge ”; and

(b) in the definition of “Judge of the Supreme Court” by  
inserting after “acting Judge” the following —

“ or auxiliary Judge ”.

[\* *Reprinted as at 21 November 1996.*  
*For subsequent amendments, see 1996 Index to*  
*Legislation of Western Australia, Table 1, pp. 183-4,*  
*and Act No. 2 of 1996.]*

**PART 8 — AMENDMENTS TO *RESTRAINT OF DEBTORS*  
*ACT 1984***

**Section 3 amended**

**18.** Section 3 (1) of the *Restraint of Debtors Act 1984*\* is amended in the definition of “judicial officer” —

(a) by inserting after “acting Judge,” in paragraph (a) the following —

“ auxiliary Judge, ”; and

(b) by deleting “or acting Judge” in paragraph (b) and substituting the following —

“ , acting Judge or auxiliary Judge ”.

[\* *Act No. 73 of 1984.*]

**PART 9 — AMENDMENTS TO *SALARIES AND ALLOWANCES ACT 1975***

**Section 7 amended**

**19.** Section 7 (1) of the *Salaries and Allowances Act 1975*\* is amended by deleting “The Tribunal” and substituting the following —

“

Subject to section 5 (1b) of the *Judges’ Salaries and Pensions Act 1950* and section 12 (3a) of the *District Court of Western Australia Act 1969*, the Tribunal

”.

[\* *Reprinted as at 26 April 1994.*  
*For subsequent amendments, see 1996 Index to Legislation of Western Australia, Table 1, p. 204.*]

**PART 10 — AMENDMENTS TO *SUPREME COURT*  
*ACT 1935***

**Principal Act**

**20.** In this Part, the *Supreme Court Act 1935*\* is referred to as the principal Act.

[\* *Reprinted as at 23 November 1995.*  
*For subsequent amendments, see 1996 Index to*  
*Legislation of Western Australia, Table 1, pp 223-4.*]

**Section 11 amended**

**21.** Section 11 of the principal Act is amended by repealing subsection (2) and substituting the following subsection —

“

(2) When for any reason the conduct of the business of the Court requires, in the opinion of the Governor, the appointment of an acting Judge or there is a vacancy in the office of a Judge (other than that of the Chief Justice), the Governor by commission under the Public Seal of the State may appoint a person, who is qualified to be appointed a Judge or an acting Judge, to be an acting Judge until the expiry of the period of that appointment or until the filling of that vacancy, as the case requires, and the appointment of the acting Judge authorizes him or her to complete the hearing and determination of any proceedings that may be pending before him or her at that expiry or filling so that he or she holds an appointment as an acting Judge during any further period while he or she is completing that hearing and determination.

”.

**Section 11AA inserted**

**22.** After section 11 of the principal Act, the following section is inserted —

“

**Auxiliary Judges**

**11AA.** (1) When for any reason the conduct of the business of the Court requires, in the opinion of the Governor, the appointment of an auxiliary Judge, the Governor may by commission under the Public Seal of the State appoint a person —

- (a) who would, but for the fact that he or she has attained the age referred to in section 3 of the *Judges' Retirement Act 1937*, be qualified to be appointed a Judge or an acting Judge; or
- (b) who is a retired Judge or a retired District Court Judge but has not yet attained that age,

to be an auxiliary Judge for such period not exceeding 12 months as is specified in that commission.

(2) The appointment of an auxiliary Judge under subsection (1) authorizes him or her to complete the hearing and determination of any proceedings that may be pending before him or her at the expiry of —

- (a) the period of his or her appointment; or
- (b) any period of extension referred to in subsection (3),

so that he or she holds an appointment as an auxiliary Judge during any further period while he or she is completing that hearing and determination.

(3) An appointment made under subsection (1) may be extended by the Governor by commission under the Public Seal of the State for a further period or periods, but that appointment can only be extended on any one occasion for



such period not exceeding 12 months as is specified in the relevant commission.

(4) A person appointed to be an auxiliary Judge under subsection (1) —

- (a) has the same powers and may exercise the same jurisdiction as a Judge;
- (b) shall, when he or she enters on the execution of his or her office, take the oath of allegiance and the judicial oath prescribed in the Second Schedule in the presence of the Governor; and
- (c) is liable to be removed from office in such manner and upon the same grounds as a Judge is liable to be removed from office.

(5) In subsection (1) (b), the reference to a retired Judge or a retired District Court Judge includes a reference to a person who has resigned from his or her office as —

- (a) a Judge; or
- (b) a District Court Judge.

”.

#### **Section 11D amended**

**23.** Section 11D (1) of the principal Act is amended —

- (a) in paragraph (c) by deleting “those persons are unable to perform the duties of their offices” and substituting the following —

“ at least one of those persons is temporarily unable to perform the duties of his office

”;

and

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(b) by deleting “and are exercisable” and substituting the following —

“ , but are not exercisable ”.