

Queensland



STIPENDIARY MAGISTRATES ACT 1991

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Queensland



Stipendiary Magistrates Act 1991

Act No. 75 of 1991

An Act relating to the office of Stipendiary Magistrates, the judicial independence of the magistracy, and for related purposes

[Assented to 21 November 1991]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

Short title

1. This Act may be cited as the *Stipendiary Magistrates Act 1991*.

Commencement

2.(1) Section 25 commences immediately after the commencement of section 111 of the *Supreme Court of Queensland Act 1991*.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

Definition

3. In this Act—

“**clerk of the court**” means a clerk of the court within the meaning of the *Justices Act 1886*.

Qualifications for appointment of Magistrates

4.(1) A person who has not attained the age of 65 is qualified to be appointed as a Magistrate if the person is—

- (a) a barrister or solicitor of the Supreme Court; or
- (b) a barrister, solicitor, barrister and solicitor or legal practitioner of—
 - (i) the Supreme Court of another State or a Territory; or
 - (ii) the High Court;

of at least 5 years standing.

- (2) For the purposes of subsection (1), a person who—

- (a) immediately before the commencement of this section, was qualified for admission as a barrister or solicitor of the Supreme Court; and

(b) is admitted as a barrister or solicitor; and

(c) immediately before the commencement of this section was employed in a Magistrates Courts Office;

is taken to have been a barrister or solicitor from when the person became qualified.

Appointment of Magistrates

5.(1) The Governor in Council may appoint as many Magistrates as are necessary for transacting the business of the Magistrates Courts.

(2) The Governor in Council may appoint a Magistrate to be the Chief Stipendiary Magistrate either at the time of the person's appointment as a Magistrate or at any time afterwards.

(3) The Governor in Council may appoint a Magistrate to be the Senior Stipendiary Magistrate either at the time of the person's appointment as a Magistrate or at any time afterwards.

(4) The *Public Service Management and Employment Act 1988* does not apply to the appointment of a Magistrate.

Appointment of acting Magistrates

6.(1) The Governor in Council may appoint a clerk of the court to act as a Magistrate.

(2) The *Public Service Management and Employment Act 1988* does not apply to a clerk of the court while the clerk acts as a Magistrate.

(3) A clerk of the court retains all rights that have accrued to the clerk because of employment as a clerk, or that would accrue in the future to the clerk because of that employment, as if service acting as a Magistrate were a continuation of service as a clerk.

Jurisdiction and powers of Magistrates

7. A Magistrate may exercise, throughout the State, all the jurisdiction, powers and functions conferred on a Magistrate, or on 2 justices, by or under any law of the State.

Oaths to be taken by Magistrates

8.(1) A person appointed under section 5 or 6 must not exercise any powers or functions of a Magistrate unless the person has—

- (a) taken and subscribed the oath prescribed by the regulations or, if not so prescribed, by any other Act; or
- (b) made and subscribed an affirmation in the form of that oath.

(2) An oath or affirmation referred to in subsection (1) may be taken or made before, and may be administered and received by—

- (a) a Supreme Court Judge; or
- (b) a District Court Judge; or
- (c) a Magistrate.

(3) A Magistrate who does not, within 3 months after appointment as a Magistrate, take the oath or make the affirmation referred to in subsection (1) ceases to hold office as a Magistrate when that period ends.

(4) A Magistrate who complies with this section is not required to take an oath or make an affirmation prescribed under any other Act in relation to justices or Magistrates.

Chief Stipendiary Magistrate

9.(1) The Chief Stipendiary Magistrate holds office as Chief Stipendiary Magistrate while the Chief Stipendiary Magistrate is a Magistrate.

(2) With the approval of the Governor in Council, the Chief Stipendiary Magistrate may resign office as Chief Stipendiary Magistrate but remain a Magistrate.

Functions of Chief Stipendiary Magistrate

10.(1) The Chief Stipendiary Magistrate is responsible for ensuring the orderly and expeditious exercise of the jurisdiction and powers of Magistrates Courts.

(2) Subject to this Act and to such consultation with Magistrates as the Chief Stipendiary Magistrate considers appropriate and practicable, the Chief Stipendiary Magistrate has power to do all things necessary or

convenient to be done for ensuring the orderly and expeditious exercise of the jurisdiction and powers of Magistrates Courts, including, for example—

- (a) determining the Magistrates who are to constitute Magistrates Courts at particular places appointed under section 22 of the *Justices Act 1886* or who are to perform particular functions; and
- (b) issuing directions with respect to the practices and procedures of Magistrates Courts; and
- (c) allocating the functions to be exercised by particular Magistrates; and
- (d) nominating a Magistrate to be a supervising Magistrate or a co-ordinating Magistrate for the purpose of the allocation of work of the Magistrates Court.

(2) The Chief Stipendiary Magistrate may discipline by way of reprimand a Magistrate who, to the Chief Stipendiary Magistrate's satisfaction, is—

- (a) seriously incompetent or inefficient in the discharge of the administrative duties of office; or
- (b) seriously negligent, careless or indolent in the discharge of the administrative duties of office; or
- (c) guilty of misconduct; or
- (d) absent from duty without leave or reasonable excuse; or
- (e) wilfully fails to comply with a direction given by the Chief Stipendiary Magistrate or a Magistrate authorised to give the direction; or
- (f) guilty of conduct unbecoming a Magistrate.

(3) If action is contemplated under subsection (2)(d), the Chief Stipendiary Magistrate may appoint a medical practitioner to examine and report on the mental and physical condition of the Magistrate, and may direct the Magistrate to submit to the examination.

(4) If the Chief Stipendiary Magistrate reprimands a Magistrate, the Chief Stipendiary Magistrate must immediately submit a written report on the matter to the Minister.

(5) Action taken by the Chief Stipendiary Magistrate under subsection

(2) does not affect the operation of sections 15 and 17.

Senior Stipendiary Magistrate

11.(1) The Senior Stipendiary Magistrate holds office as Senior Stipendiary Magistrate while the Senior Stipendiary Magistrate is a Magistrate.

(2) With the approval of the Governor in Council, the Senior Stipendiary Magistrate may resign office as Senior Stipendiary Magistrate but remain as a Magistrate.

Functions of Senior Stipendiary Magistrate

12.(1) The Senior Stipendiary Magistrate—

- (a) in addition to exercising functions as a Magistrate, must exercise such other functions as the Chief Stipendiary Magistrate directs; and
- (b) may act as the Chief Stipendiary Magistrate during—
 - (i) a vacancy in the office; or
 - (ii) any period when the Chief Stipendiary Magistrate is absent from duty or from the State or is, for any other reason, unable to perform the duties of the office.

Functions of Magistrates generally

13.(1) Every Magistrate must comply with every reasonable direction given to, or requirement made by, the Chief Stipendiary Magistrate or by another Magistrate authorised in that behalf by the Chief Stipendiary Magistrate.

(2) A Magistrate must devote the whole of his or her time to the duties of the office of a Magistrate.

(3) Subsection (2) does not apply to a person appointed to act as a Magistrate if the appointment excludes the operation of subsection (2).

(4) Without limiting subsection (2), a Magistrate must not practise as a barrister or solicitor for fee or reward.

Tenure of office

14. A person ceases to be a Magistrate if—

- (a) the person resigns by written notice given to the Minister; or
- (b) having attained 55, the person elects to retire by written notice given to the Minister; or
- (c) the person is removed from office; or
- (d) the person attains 65; or
- (e) the person ceases to hold office under section 8(3).

Suspension of Magistrate

15.(1) The Governor in Council may suspend a Magistrate from office.

(2) Notice of the suspension is to be served on the Magistrate and published in the Gazette.

(3) A Magistrate must not be suspended from office unless a Supreme Court Judge, on the application of the Attorney-General without notice to any person, has determined that there are reasonable grounds for believing that proper cause for removal of the Magistrate exists.

(4) There is proper cause to remove the Magistrate if the Magistrate—

- (a) has been convicted of an indictable offence or an offence that, if committed in the State, would be an indictable offence; or
- (b) is mentally or physically incapable of carrying out satisfactorily the duties of office; or
- (c) is incompetent or guilty of serious neglect of duties; or
- (d) is guilty of proved misbehaviour.

(4) If a Magistrate is suspended from office, the Attorney-General must, as soon as practicable, apply to the Supreme Court for a determination whether proper cause exists to remove the Magistrate.

(5) The suspension lapses if—

- (a) the Supreme Court determines under section 16 or 17 that proper cause to remove the Magistrate has not been established; or
- (b) the Governor in Council lifts the suspension.

(6) Notice of the lapsing of the suspension must be served on the Magistrate and published in the Gazette.

(7) The Magistrate is entitled to remuneration in relation to the period of suspension.

Appeal against suspension of Magistrate

16.(1) A Magistrate who is suspended from office may appeal to the Supreme Court against the suspension.

(2) The appeal may be heard with any application made under section 17.

(3) On the appeal, the Supreme Court must determine whether proper cause, as specified in section 15(3), exists to remove the Magistrate.

Removal of Magistrate from office

17.(1) A Magistrate must not be removed from office unless the Supreme Court determines, on an application under section 15(4) or an appeal under section 16, that proper cause exists to remove the Magistrate.

(2) Notice of the removal must be served on the Magistrate (together with notice of the grounds) and published in the Gazette.

Terms and conditions of employment

18.(1) A Magistrate is to be paid—

(a) salary determined under the *Judges' Salaries and Pensions Act 1967*; and

(b) such allowances as are determined by the Governor in Council by order in council.

(2) A Magistrate holds office on such terms and conditions not provided for by this Act as are determined by the Governor in Council by order in council.

(3) Employment by a Magistrate is not subject to any industrial award or industrial agreement or any determination or rule of an industrial tribunal.

(4) A Magistrate is not an officer of the public service, and the *Public Service Management and Employment Act 1988* or the *Public Sector*

Management Commission Act 1990 does not apply to a Magistrate.

Preservation of rights

19.(1) This section applies if an officer of the public service is appointed as a Magistrate.

(2) The person retains all rights that have accrued to the person because of employment as such an officer, or that would accrue in the future to the person because of that employment, as if service as a Magistrate were a continuation of service as an officer of the public service.

(3) If the person ceases to be a Magistrate on being appointed to an office of the public service, the person's service as Magistrate is to be regarded as service of a like nature in the public service for the purpose of determining the person's rights as an officer of the public service.

Continuation of jurisdiction on retirement

20. A person who ceases to be a Magistrate for any reason (other than death or removal from office) is taken to continue to be a Magistrate so far as it is necessary to give a decision in a matter that is partly heard or standing for the decision of the Magistrate.

Judicial notice of office

21. All courts and persons acting judicially must take judicial notice of the signature in relation to a magisterial act of a person followed by—

- (a) "Chief Stipendiary Magistrate" or "CSM"; or
- (b) "Senior Stipendiary Magistrate" or "SSM"; or
- (c) "Stipendiary Magistrate" or "SM"; or
- (d) "Acting Stipendiary Magistrate" or "ASM";

and that the person held the relevant office.

Regulations

22. The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Existing Magistrates continue in office

23.(1) A person who immediately before the commencement of this section, is the Chief Stipendiary Magistrate, the Senior Stipendiary Magistrate or a Stipendiary Magistrate under the *Justices Act 1886* continues in office as Chief Stipendiary Magistrate, Senior Stipendiary Magistrate or Stipendiary Magistrate, as the case may be, under this Act.

(2) The salary of a person referred to in subsection (1) immediately before the commencement of this section continues to be the salary of the person under this Act until the salary is determined under the *Judges' Salaries and Pensions Act 1967*.

Amendment of Justices Act 1886

24. The *Justices Act 1886* is amended as set out in Schedule 1.

Amendment of Judges' Salaries and Pensions Act 1967

25. The *Judges' Salaries and Pensions Act 1967* is amended as set out in Schedule 2.

Amendment of Acts Interpretation Act 1954

26. The *Acts Interpretation Act 1954* is amended as set out in Schedule 3.

SCHEDULE 1**AMENDMENT OF JUSTICES ACT 1886**

section 24

Section 11—*omit.***Section 18—***omit.*

SCHEDULE 2**AMENDMENT OF JUDGES' SALARIES AND
PENSIONS ACT 1967**

section 25

After section 3—*insert—***‘PART 3A—SALARIES OF MAGISTRATES’****‘Salaries of Magistrates, etc.**

‘4. The rates of salary payable to the Chief Stipendiary Magistrate, the Senior Stipendiary Magistrate and other Stipendiary Magistrates are those respectively fixed from time to time by determinations by the Tribunal under Part 6.’.

After section 27(1)(b)*insert—*

‘(c) the rates of salary respectively payable to the Chief Stipendiary Magistrate, Senior Stipendiary Magistrate and other Stipendiary Magistrates;’.

After section 27(5)—*insert—*

‘(6) The Tribunal may determine whether there shall be 1 or more divisions of Magistrates (other than the Chief Stipendiary Magistrate and the Senior Stipendiary Magistrate) and fix the rate of salary under subsection (1) in relation to Magistrates in each division.

‘(7) Allowances for Magistrates are not to be fixed under this Act.’.

Section 29(2)—

after ‘of a Judge’—

insert ‘or the salaries of a Magistrate’.**Section 29(2)—**

after ‘to Judges’—

insert ‘or Magistrates’.**Section 29(2)—**

after ‘such a Judge’—

insert ‘or such a Magistrate’.

SCHEDULE 3**AMENDMENT OF ACTS INTERPRETATION ACT
1954**

section 26

Section 36 (definition “Stipendiary Magistrate”)—*omit ‘Justices Act 1886’, insert ‘Stipendiary Magistrates Act 1991’.*