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South Australia

Magistrates (Miscellaneous) Amendment Bill 2013

A BILL FOR

An Act to amend the *Magistrates Act 1983*; and to make related amendments to the *Coroners Act 2003*; the *Evidence Act 1929*; the *Fair Work Act 1994*; and the *Remuneration Act 1990*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Magistrates (Miscellaneous) Amendment Act 2013*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Magistrates Act 1983*

4—Amendment of section 3—Interpretation

(1) Section 3, after the definition of ***the Chief Magistrate*** insert:

magistrate means a magistrate remunerated by salary in respect of his or her magisterial office;

(2) Section 3, definition of ***stipendiary magistrate***—delete the definition

(3) Section 3, definition of ***working day***—delete the definition and substitute:

working day for a magistrate means a day on which the magistrate would ordinarily be required to work (assuming he or she were not on leave).

5—Repeal of section 4

Section 4—delete the section

6—Amendment of section 5—Appointment of magistrates

(1) Section 5(2)—delete subsection (2)

(2) Section 5(4)(b)—delete "if the appointment is to be on a part-time basis—"

7—Substitution of section 6

Section 6—delete the section and substitute:

6—Magistracy

(1) There will be—

(a) a Chief Magistrate; and

(b) a Deputy Chief Magistrate,

appointed by the Governor on the recommendation of the Attorney-General.

(2) A person is not eligible for appointment as the Chief Magistrate or Deputy Chief Magistrate unless he or she is a legal practitioner of at least 7 years standing.

(3) The Deputy Chief Magistrate will be taken to have been appointed as a magistrate (if he or she is not already a magistrate).

(4) For the purpose of determining whether a legal practitioner has the standing necessary for appointment under this section, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.

(5) Notice of intention to resign an office under this section must be given to the Attorney-General at least 1 month before the resignation is to take effect.

8—Amendment of section 7—Administration of magistracy

(1) Section 7(1)—delete ", subject to the control and direction of the Chief Justice,"

(2) Section 7(3)—delete subsection (3) and substitute:

(3) The Chief Magistrate may (without derogating from his or her own powers) delegate to a magistrate any of the Chief Magistrate's administrative powers or functions.

9—Substitution of section 8

Section 8—delete the section and substitute:

8—Magistrates responsible to Chief Magistrate

Magistrates are responsible to the Chief Magistrate in relation to administrative matters and, in particular, are subject to direction by the Chief Magistrate as to the duties to be performed and the times and places at which those duties are to be performed.

10—Substitution of section 9

Section 9—delete the section and substitute:

9—Tenure of office

(1) A person ceases to hold office as a magistrate if—

(a) the person resigns his or her office; or

(b) having attained the age of 55 years—the person retires from his or her office; or

(c) the person attains the age of 70 years; or

(d) in the case of an acting magistrate—the person's term of office expires; or

(e) the person is removed from office by the Governor.

(2) Notice of a magistrate's intention to resign, or retire, from office must be given to the Attorney-General at least 1 month before the resignation or retirement is to take place.

(3) A person who ceases to hold office as a magistrate (otherwise than by reason of removal from office) may, with the approval of the Chief Magistrate, sit to hear and determine proceedings previously part-heard by the person and, for the purposes of those proceedings, the person will be taken to continue as a magistrate.

11—Amendment of section 10—Suspension from office

Section 10(4)—delete "stipendiary magistrate shall" and substitute:

magistrate will

12—Substitution of section 11

Section 11—delete the section and substitute:

11—Removal of magistrate from office

(1) An investigation to determine whether proper cause exists for removing a magistrate from office—

(a) may be conducted by the Attorney-General on the Attorney-General's own motion; and

(b) must be conducted by the Attorney-General at the request of the Chief Justice (made after consultation with the Chief Magistrate).

(2) The Attorney-General may, with the approval of the Chief Justice, require a magistrate being investigated pursuant to subsection (1)(b), to undergo 1 or more medical examinations for the purpose of assisting in determining whether proper cause exists for removing the magistrate from office.

(3) Once an investigation under subsection (1) is completed, the Attorney-General must cause a written report of the investigation to be prepared and copies of the report to be provided to the Chief Justice and the Chief Magistrate.

(4) A written report of the investigation of a magistrate may include either of the following (if relevant in the particular circumstances):

(a) the results of any medical examinations undergone as part of the investigation;

(b) a statement as to the failure of the magistrate to undergo a medical examination as required.

(5) If it appears to the Attorney-General or the Chief Justice (whether from the results of an investigation conducted under this section or otherwise) that a judicial inquiry should be held to determine whether proper cause exists for removing a magistrate from office, the Attorney-General must apply to the Supreme Court for such an inquiry (which must be conducted by a single judge of the Supreme Court).

(6) If—

(a) a magistrate is convicted of an indictable offence; or

(b) it appears from the findings of a judicial inquiry under this section that proper cause exists for removing a magistrate from office,

the Attorney-General must apply to the Full Court for a determination of whether the magistrate should be removed from office.

(7) If the Full Court determines, on an application under subsection (6), that a magistrate should be removed from office, the Governor may remove the magistrate from office.

(8) In proceedings before the Supreme Court under this section, the Attorney-General and the magistrate to whom the proceedings relate are entitled to appear and be heard.

(9) Proper cause for removing a magistrate from office exists if—

(a) the magistrate is mentally or physically incapable of carrying out satisfactorily the duties of the office; or

(b) the magistrate is convicted of an indictable offence; or

(c) the magistrate is incompetent, or guilty of neglect of duty; or

(d) the magistrate is guilty of unlawful or improper conduct in the performance of the duties of the office; or

(e) the magistrate is guilty of conduct that renders the magistrate unfit to hold office as a magistrate, regardless of whether that conduct relates to the functions of the office.

13—Amendment of section 13—Remuneration of magistrates

(1) Section 13(1)—delete subsection (1) and substitute:

(1) Subject to this section, the Remuneration Tribunal will determine the rates of remuneration of magistrates, including the Chief Magistrate and Deputy Chief Magistrate.

(2) Section 13(1a)—delete "stipendiary"

(3) Section 13(1b)—delete "stipendiary" wherever occurring

(4) Section 13(2)—delete subsection (2)

(5) Section 13(5)—delete subsection (5) and substitute:

(5) In this section—

remuneration means salary, or salary and allowances.

14—Amendment of section 14—Superannuation

Section 14—delete "stipendiary"

15—Amendment of section 15—Recreation leave

(1) Section 15(1)—delete "stipendiary magistrate shall be entitled to twenty" and substitute:

magistrate is entitled to 20

(2) Section 15—delete "stipendiary" wherever occurring

16—Amendment of section 16—Sick leave

(1) Section 16(1)—delete subsection (1) and substitute:

(1) Subject to this section, a magistrate is entitled to 12 working days sick leave in respect of each completed year of service.

(2) Section 16—delete "stipendiary" wherever occurring

17—Amendment of section 17—Long service leave

(1) Section 17(1)—delete subsection (1) and substitute:

(1) A magistrate is entitled to long service leave calculated as follows:

(a) in respect of the first 10 years of service—90 days leave;

(b) in respect of each subsequent year of service up to and including the fifteenth year of service—9 days leave;

(c) in respect of each subsequent year of service thereafter—15 days leave.

(2) Section 17—delete "stipendiary" wherever occurring

18—Amendment of section 18—Special leave

Section 18—delete "stipendiary" wherever occurring

19—Amendment of section 18A—Concurrent appointments and outside employment etc

Section 18A—delete "stipendiary" wherever occurring

20—Amendment of section 19—Determination of rights on transition from other employment

Section 19(1)—delete "stipendiary"

21—Substitution of section 20

Section 20—delete the section and substitute:

20—Payment of monetary equivalent of leave to personal representative etc

(1) If a magistrate dies without having taken all the recreation leave and long service leave to which he or she is entitled under this Act, the monetary equivalent of such leave standing to his or her credit on the date of his or her death is payable as if it were a debt that had become payable to the magistrate immediately before his or her death.

(2) If a magistrate dies before becoming entitled to long service leave, but after completing 7 or more years service, the monetary sum representing *pro rata* long service leave to which he or she would have been entitled if he or she had resigned on the date of his or her death is payable as if it were a debt that had become payable to the magistrate immediately before his or her death.

(3) The Attorney-General has complete discretion to direct that the whole or a part of an amount payable under subsection (1) or (2) is to be paid to a dependant of the deceased magistrate or divided between persons who are dependants of the deceased magistrate.

(4) The Attorney-General may refuse to give a direction under subsection (3) unless such indemnities or undertakings as the Attorney-General thinks necessary are given.

(5) No action lies against the Crown, the Attorney-General or any other person representing the Crown in respect of a payment made pursuant to subsection (3).

(6) Nothing in this section relieves a person receiving money paid pursuant to subsection (3) from any liability to account for or apply such money in accordance with law.

(7) In this section—

dependant means a person who is wholly or partly dependent on the earnings of the magistrate at the time of the magistrate's death.

22—Amendment of section 21—Industrial awards not to affect magistrates

Amendment of section 21—delete "stipendiary"

Schedule 1—Related amendments

Part 1—Amendment of *Coroners Act 2003*

1—Amendment of section 4—Appointment of State Coroner

Section 4(3)—delete "stipendiary"

Part 2—Amendment of *Evidence Act 1929*

2—Amendment of section 60—Sufficiency of notice of action

Section 60—delete "the judge, commissioner, stipendiary or special magistrate, or justice of the peace presiding" and substitute:

the person presiding

Part 3—Amendment of *Fair Work Act 1994*

3—Amendment of section 155B—Conciliation conference

Section 155B(2)—delete "stipendiary"

Part 4—Amendment of *Remuneration Act 1990*

4—Amendment of section 13—Determination of remuneration of judges, magistrates and certain others

Section 13(i) to (l)—delete paragraphs (i) to (l) inclusive

Schedule 2—Statute law revision amendments of *Magistrates Act 1983*

Provision amended	How amended
Section 5(1)	Delete "upon" and substitute: on
Section 5(1)	Delete "he" and substitute: the Governor
Section 5(3)	Delete "shall" wherever occurring and substitute in each case: will
Section 5(3)	Delete "his" first occurring
Section 5(3)	Delete "his" second occurring and substitute: the
Section 5(5)	After "he" insert: or she
Section 7(2)	Delete "his" and substitute: the
Section 10(2)	Delete subsection (2) and substitute: (2) If a magistrate is suspended from office under this section, he or she must be served with notice of the suspension.
Section 10(3)	Delete "shall" and substitute: may
Section 10(3)(a)	Delete "he" and substitute: the magistrate
Section 10(5)	Delete "shall" and substitute: will
Section 12	Delete "shall" and substitute: may
Section 13(1a)	Delete "shall be" and substitute: is
Section 13(3)	Delete "shall" and substitute: may

Provision amended	How amended
Section 13(4)	Delete "shall be paid out of the General Revenue of the State" and substitute: will be paid out of the Consolidated Account
Section 15(2)	Delete "shall" and substitute: will
Section 15(3)	Delete "shall" and substitute: will
Section 15(4)	Delete "shall" and substitute: may
Section 15(5)	Delete "shall" and substitute: may
Section 15(5)	After "his" insert: or her
Section 15(6)	Delete "shall" and substitute: must
Section 15(7)	Delete subsection (7) and substitute: (7) If a magistrate fails to take recreation leave to which the magistrate is entitled at or within a time required or approved by or under this section, the magistrate will cease to be entitled to the leave.
Section 15(8)	Delete subsection (8) and substitute: (8) If a person ceases for any reason to be a magistrate before taking recreation leave to which the person is entitled under this section, the person is entitled, in lieu of that leave, to the monetary equivalent of that leave standing to his or her credit on the date on which he or she ceased to be a magistrate.
Section 16(2)	Delete "shall accrue" and substitute: accrues
Section 16(3)	Delete "shall" and substitute: will

Provision amended	**How amended**
Section 17(2)	Delete subsection (2) and substitute: (2) A magistrate may, if the magistrate so elects, take leave to which he or she is entitled under this section at half his or her ordinary remuneration and, in that event, the magistrate will be entitled to twice the number of days leave to which he or she would otherwise have been entitled.
Section 17(3)	Delete "shall" and substitute: must
Section 17(4)	Delete "shall" and substitute: will
Section 17(5)	Delete "Where" and substitute: If
Section 17(5)	After "he" wherever occurring, insert in each case: or she
Section 17(5)	Delete "shall be entitled" and substitute: is entitled
Section 17(5)	Delete "his" wherever occurring
Section 17(6)	Delete "Where" and substitute: If
Section 17(6)	Delete "he" wherever occurring and substitute in each case: the person
Section 17(6)	Delete "shall be" and substitute: is
Section 17(6)	Delete "his"
Section 18(4)	Delete "shall count" and substitute: counts
Section 19(1)	Delete "Where" and substitute: If
Section 19(2)	Delete "shall have" and substitute: has
Section 19(3)	Delete "upon" and substitute: subject to

Provision amended	How amended
Section 21	Delete "shall be made under the *Industrial Conciliation and Arbitration Act 1972*" and substitute: may be made under the *Fair Work Act 1994*